

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

WEDNESDAY, THE 11TH DAY OF DECEMBER 2019 / 20TH AGRAHAYANA, 1941

FAO.No.191 OF 2019

AGAINST THE ORDER IN I.A. NO. 6058 OF 2019 IN OS 9/2019 OF II
ADDITIONAL DISTRICT COURT, ERNAKULAM

APPELLANT/PETITIONER/PLAINTIFF:

SAJEEV PILLAI
AGED 47 YEARS
S/O.AYAPPAN PILLAI, SREENILAYAM, KOPPAM,
VITHURA.P.O., THIRUVANANTHAPURAM-695 551.

BY ADVS.
SRI.VIZZY GEORGE KOKKAT
SRI.G.SREEKUMAR (CHELUR)
SRI.HARIKRISHNAN

RESPONDENT/RESPONDENTS/DEFENDANTS:

- 1 VENU KUNNAPALLI,
AGED 53 YEARS
S/O.PADMANABHAN KUNNUPILLY, FLAT 3C,
DD SAMUDRA DARSHAN, MARINE DRIVE, COCHIN-682011.
- 2 M.PADMAKUMAR,
AGED ABOUT 55 YEARS, FATHER'S NAME NOT KNOWN,
NO.4621, BLOCK II, KSHB COLONY, BILATHIKKULAM,
KOZHIKODE-673 006.

R1 BY ADV. SRI.SAIBY JOSE KIDANGOOR
R2 BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
09.12.2019, THE COURT ON 11.12.2019 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of December 2019

History describes 'Mamankam' as a grand festival held once in twelve years on the banks of Nila river/ Bharathapuzha at Thirunavaya during the 14th to 19th century. Mamankam mainly relates to the story of Perumal, the ruler of the country and chaver pada / warriors (suicide squad). The release of a much awaited movie by name Mamankam based on this historical fact is proposed to be on 12.12.2019. Whether, there is any justification for restraining the release of the movie on the proposed date, by an order of temporary injunction, is the question for consideration, here in this appeal.

2. Heard Adv. Sreekumar G Chelur, the learned counsel for the appellants and Adv. Saiby Jose Kidangoor, the learned counsel for the 1st respondent and Sri. V. Ramkumar Nambiar, the learned counsel for the 2nd respondent.

3. The appellant/plaintiff claims that he had worked on the history of this festival and made research on this festival from 1999 onwards. Thereafter, he had written a script for a film on this subject and it was his dream project. He is a film director and a script writer who achieved skill and knowledge in the field under

eminent directors. In the year 2011, he met a senior actor of Malayalam industry and had discussions with the intention to have him in the lead role. Before that the draft of his script was registered with the Film Writers Association in the name 'Kinavu/Changatham'. Subsequently, the name was changed as 'Mamankam'. In search of a producer, he met the 1st respondent who was desirous of taking a film and signed a Memorandum of Understanding (MOU) on 13.9.2017 believing that the same was entered with M/s. Kavya Film Company, a company registered under the Company's Act. But, later it was learnt that the MOU was entered with a non-existent entity. So, fraud was played by the 1st respondent upon the appellant. By that time, shooting of the film started. The appellant was the director at that point of time. After completion of two schedules, the appellant was terminated from serving as Director of the film and another person was appointed as the new Director. The shooting of the film was completed mutilating, distorting and modifying the script of the appellant. He is the author of the script of the film 'Mamankam' based on history with so many characters, both historical and fictitious characters. Hence, the suit was filed seeking various reliefs. Along with the suit, a petition for interim injunction was also filed with a prayer to restrain the respondents from

releasing, publishing, distributing, exploiting the film 'Mamankam' by any and all modes of dissemination to public and issuing pre-release publicity without providing adequate authorship credits to appellant as per film industry standards, pending determination of the suit. But by an order dated 14.11.2019, the petition was dismissed by the learned Additional District Judge. Hence, this appeal.

4. The respondents inter alia contended that M/s. Kavya Film Company is a partnership firm and the MOU is not a void one unless and until it is declared so by a court of law. In fact, the appellant had sold his authorship for a sale consideration of Rs.3,00,000/- and so the appellant is not entitled to get the credit of the film regarding story ,screen play etc. The company had spent Rs.50 Crores for making the movie. Release of the film was tentatively fixed to 21.11.2019 and now rescheduled to 12.12.2019 and they are waiting for the Censor Board Certificate which will be obtained before 12.12.2019.

5. It is submitted by the learned counsel for the respondents that the film is the most biggest one with a unique theme in Malayalam. Though originally shot in Malayalam, it is

dubbed in three languages also and is proposed to be released all over the world. It is vehemently argued by the learned counsel for the respondents that as the copy right has been assigned by the appellant for valuable consideration, he is not entitled to claim authorship of his work and not entitled to block the release of such a big budget film in Malayalam.

6. It is worth mentioning that an age old festival that celebrated on the banks of Nila river centuries back that too once in 12 years which came to an end by 1776 is theme of the film . It was developed into a story for the film and a screen play was prepared . Screen play of a film can be termed as the backbone of the film as without a screen play it may not be possible to make a film. A Screen play is a written work /script which includes action,movement, dialogues of different characters, etc. Director only directs the film as per the script and the producer produces the film and therefore there is no doubt that without a screen play a full fledged big budget movie cannot be produced or directed by anyone. At this juncture, it is worth mentioning that in para 14 of the counter it is stated as follows;

"14. It is relevant to submit that as per the MoU dated

13.09.2017, all the rights including the ownership of the petitioner over the script including the dialogues and screenplay together with all copyrights, all underlying works, intellectual property rights, performer rights and title of the said project, prequel and sequel rights, remake rights (in any language) is already transferred to M/s. Kavya Film Company and therefore no rights whatsoever even the rights as contemplated under the Copyright Act subsists in favour of the petitioner and the allegations to the contrary are vehemently denied."

7. It is so obvious that 'Mamankam' is a film started with the screen play written by the appellant. The appellant assigned his work which includes the story, script, screenplay and dialogue to the 1st respondent and hence he lost his authorship over it, is the definite stand of the respondents. Whether, the appellant has any right after assignment of his work, to the 1st respondent, Producer of the film, is to be considered on basis of the provisions of the Copy Right Act, a law which recognize and gives right to creators of literary, dramatic, artistic, musical works etc.

Section 2 (d) of the Copy right act defines 'author' as under:

"(d) "author" means, -

- (i) in relation to a literary or dramatic work, the author of the work;

- (ii) *****
- (iii) *****
- (iv) *****
- (v) in relation to a cinematograph film or sound recording ,
the producer; and

Section 18 of the Copyright Act reads as follows:

"18. Assignment of copyright.- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

.....

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

Section 57 of the Copyright Act reads as follows:

"57. Author's special right.- (1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

- (a) to claim authorship of the work; and
- (b) to restrain or claim damages in respect of any distortion,

mutilation, modification or other act in relation to the said work, if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of Section 52 applies.

Explanation.- Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.

(2) The right conferred upon an author of a work by sub-section (1), may be exercised by the legal representatives of the author."

8. Copyright is a form of intellectual property and here the appellant as the creator of the screen play, script etc. has approached the District Court by filing the suit. What is enshrined in Section 57(1) (a) of the Copy Right Act is that even if the copyright has been assigned, the author of a work shall have the special right to claim the authorship of the work. Section 57 (1) (b) consists of two segments. The first part would entitle the author to restrain the opposite party from making any distortion, mutilation or modification or any other act in relation to the said work if it would be prejudicial to his honour or reputation. The second part says that, the author is entitled to claim damages in respect of any distortion,

mutilation or other modifications in the said work or any other action, in relation to the copyrighted work which would be prejudicial to his honour or reputation. This right is even available to the legal representatives of the author. So, the rights of the author is one way or other protected by the Act by placing the author in an elevated position as copyright is a form of intellectual property and intellectual property rights are the rights given to the creators for their work. It is doubtless that the author of the work is the creator or originator of his literary art. It is his idea developed as a screenplay to make the movie. He might have developed it based on a history, but it is his exclusive creation. According to the appellant, it was his dream project. A screen play is a written work by the screen play writer, which includes the action of the characters, the movement of the characters, the dialogue they have to deliver as the particular character on a particular point of time etc., written with the author's own idea and it is definitely a creation by the author. Creation of a work is the total result of the author's in-born gift, talent, skill, intelligence and experience he acquired in the work. When he is having a right even to restrain another from making any distortion to his work, the right conferred upon him is a valuable right which entitles him to get a legal remedy. Of-course, on an earlier occasion,

he had approached this Court with F.A.O. No. 80 of 2019 for an order of interim injunction to restrain the respondents from bringing advertisements with respect to the above movie without displaying his name as the author. But his plea was not accepted by this Court as there was no specific prayer for the same in the petition. So, leaving his right to agitate before the trial court, that appeal was dismissed.

9. In this second round of litigation before this Court, the relief sought for is to set aside the order under challenge. As an interim relief of temporary injunction, he has sought for an order to restrain the respondents from releasing/publishing and distributing the film Mamankam, without providing authorship credit to him.

10. The law is therefore, clear that even after assignment the author has legal right to protect his intellectual property. Doubtless that, the appellant has a strong prima facie against the respondents. Assignment of the work by him will not exhaust his legal right to claim authorship over it. But at the same time it is not possible to ignore the fact that the shooting of the film has been completed and it is ready for release, which is proposed to be on 12.12.2019. Of course, the appellant has also a case that the film

that is ready for release is the distorted version as mutilation and modification of the original script are made by the respondents. But that apprehension is a larger question which could be decided only after a full fledged trial by the trial court. As Section 57 of the Copyright Act envisage special rights on the author even after assignment of the copyright if his original creation has been changed, modified or distorted affecting his reputation and good name which acquired by him in the film industry, it could be ascertained and evaluated only after watching the movie in full and the case has to be decided on the facts and evidence. The appellant has a case that the original has been produced before the trial court which is kept by the learned Judge on guard.

11. In the given state of affairs ,it is prima facie, clear that the author of the screenplay, script etc. of the movie 'Mamankam', is the appellant and his right for his creation is safeguarded and protected by the Copyright Act. Section 57 of the Copyright Act is included in Chapter XII which deals with civil remedy available under the Act. So, the special provision gives protection and it ensures the right of the author for his creation, even after assignment.

12. As mentioned above, the 1st respondent, who is the producer of the film, had made all preparations and arrangements to release the movie on 12.12.2019. It is submitted by the learned counsel for the respondents, that the movie has to be released in almost all cities in India as well in foreign countries. As all arrangements have been made by the Producer, if the release is postponed for the reason that the name of the scriptwriter is shown as one Sanker Ramakrishnan, definitely the damages that would be caused to the 1st respondent will be huge and is beyond imagination. It would be pertinent to mention that in a film industry, the work and effort of so many persons are involved in making a film and if it is postponed, that will definitely cause untold difficulties to all those persons who rendered their effort and service for making the film ready for release. But the right of the appellant and his tears are not simple things which could be ignored by this Court. For the reasons stated above, I think that it is appropriate to interfere with the order under challenge and modify the same.

Therefore, release of the movie 'Mamankam' is permitted, only subject to the following conditions:

(i) Nobody's name shall be exhibited as the script writer or as writer of the screen play of the movie 'Mamankam' produced by M/s. Kavya Film Company, anywhere in the screen or in the advertisements, which is being released on 12.12.2019 or any subsequent date, till the disposal of the suit by the court below.

(ii) The first respondent shall make an undertaking by way of an affidavit before this Court to that effect, before the release of the movie, i.e., on 12.12.2019.

The trial court shall take all endeavour to dispose of the case expeditiously and preferably, within a period of six months from the date of receipt/production of the copy of this Judgment.

The appeal is disposed of as above.

Sd/-

SHIRCY V

JUDGE