

\$~26

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) (COMM) 167/2023**

RDB AND CO(HUF)

..... Appellant

Through: Mr. Hemant Daswani, Ms.
Sauyma Bajpai, Advs.

versus

HARPER COLLINS PUBLISHERS INDIA PVT. LTD.

..... Respondent

Through: Ms. Swati Sukumar, Mr.
Essenese, Ms. Ashima Obhan,
Mr. Ritik Raghuvanshi, Mr.
Pratyush Rao, Ms. Ayesha
Ghutha Kurtha, Ms. Seerat
Bhutani, Mr. Naveen
Nagarjuna, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

11.08.2023

%

CM APPL. 41338/2023

Exemption allowed, subject to all just exceptions.

Application shall stand disposed of.

FAO(OS) (COMM) 167/2023 & CM APPL. 41337/2023(Stay)

1. The plaintiff / appellant has instituted this appeal aggrieved by the order dated 23 May 2023 in terms of which a learned Single Judge has proceeded to allow an application moved by the defendant / respondent referable to Order XIII A Rule 4 of the **Code of Civil Procedure, 1908**¹ as amended and adopted by the Commercial Courts Act, 2015.

¹ the Code

2. The defendant in terms of that application had sought the rendition of a summary judgment for dismissal of the suit on the ground that it was bereft of any cause of action. In terms of the order impugned, prayer 'a' as made in the plaint came to be rejected.

3. Prayer 'a' of the plaint sought a permanent injunction restraining the defendant from making, selling, offering for sale, advertising, directly or indirectly any work including indulging in novelization of the film/script relating to the cinematograph work titled "Nayak". The plaintiff essentially asserted that the novelization of the film/script amounted to an infringement of the copyright held by it.

4. The learned Single Judge has noticed the case set forth in the plaint succinctly in the judgment impugned before us. For the sake of sketching a brief backdrop in the context of which the instant appeal arises, the following essential facts may be noticed. The legendary cinematographer and Bharat Ratna, the Late Mr. Satyajit Ray was commissioned by the Karta of the plaintiff Hindu Undivided Family [HUF], to script a screenplay of and to direct the film "Nayak". The plaintiff claims to be the producers of that film.

5. On or about 2018, Mr. Bhaskar Chattopadhyay novelized the screenplay of "Nayak" which was published by the defendant and released on 05 May 2018. The plaintiff asserting itself to be the owner of the copyright in the screenplay of "Nayak" brought the suit for infringement.

6. According to the defendant, the plaintiff's claim of copyright over the screenplay of "Nayak" is untenable since the same had been authored and scripted by the Late Mr. Satyajit Ray and consequently the copyright therein would vest in the said individual alone. It was

further asserted that upon his death in 1992, the copyright in the said screenplay came to vest in his son Sandip Ray and the **Society for Preservation of Satyajit Ray Archives**². The defendant is stated to have obtained a license from Sandip Ray and SPSRA to novelize the same.

7. While dealing with the application under Order XIII A Rule 4 of the Code, the learned Single Judge has principally found that the plaintiff cannot claim any copyright in the screenplay since undisputedly the same had been authored by the Late Mr. Satyajit Ray. Finding that the screenplay would clearly fall within the ambit of a “literary work” for the purposes of Section 13(1)(a) of the **Copyright Act, 1957**³, the Court has proceeded to observe as follows:-

“60.19 Given the ambit of the expression “literary work”, there can, in my view, be little doubt about the fact that the screenplay of a film Nayak is unquestionably a “literary work” for the purpose of Section 13(1)(a) of the Copyright Act.

60.20 Per sequitur, *by operation of Section 13(4), the copyright in the screenplay, as a “literary work”, which stands vested by Section 13(1)(a), cannot be affected by the separate copyright in the cinematograph film itself, which, unquestionably, vests in the plaintiff as its producer.”*

8. The learned Single Judge has in our opinion rightly rested the aforesaid conclusions on Section 13(4) of the Act which reads as under:-

“**13. Works in which copyright subsists.—**

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the sound recording is made.”

9. Proceeding then to deal with the principal issue of who could

² SPSRA

³ the Act

claim a copyright in the work in question, the learned Single Judge has returned the following findings:-

62.3 As the first owner of the copyright in the screenplay of the film "Nayak", therefore, the right to novelize the screenplay also vested in Satyajit Ray. That right could be assigned by him- and, consequent on his demise, by his son and others on whom the right devolved - on any other person, under Section 18(1) of the Copyright Act. The assignment of the right to novelize the screenplay of the film "Nayak", by Sandip Ray and the SPSRA, in favour of the defendant is, therefore, wholly in order and in accordance with the provisions of the Act. On the other hand, the assertion, by the plaintiff, of the copyright in the screenplay of the film "Nayak" is unsupported by any provision in the Act and is, in fact, in violation of the provisions which have been referred to hereinabove.

62.4 Copyright in the screenplay of the film "Nayak" vested, therefore, consequent on the demise of Satyajit Ray, on his son Sandip Ray and the SPSRA. The conferment of the right to novelize the screenplay, by Sandip Ray and the SPSRA on the defendant, therefore, is wholly in order. I may note, here, that the plaintiff has not chosen to discredit the grant of the right to novelize the screenplay of the film to the defendant on any ground other than the contention that the copyright in the screenplay vested, not in Sandip Ray and the SPSRA, but in the plaintiff. That contention, I have already found, is completely without merit."

10. The plaintiff / appellant did not at any point of time aver or assert that the screenplay had been drawn by anyone other than the Late Mr. Satyajit Ray. In view of the aforesaid, the provisions of Section 17 of the Act clearly applied and the copyright in the said screenplay would thus have to be recognised to vest in the author of the literary work who in this case was the Late Mr. Satyajit Ray.

11. While the plaintiff / appellant may have been the producer of the film "Nayak", it could not have possibly claimed a supervening right in the screenplay in light of the clear language and intent of Section 13(4) of the Act. Once it is recognised that the copyright existed in the author of the screenplay, any right which the plaintiff / appellant could claim in the cinematographic work would not have

either impacted or diluted the right of the author of the screenplay.

12. For all aforesaid reasons, we find no merit in the challenge raised to the impugned order. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

TUSHAR RAO GEDELA, J.

AUGUST 11, 2023
SU