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

Pronounced on: 23rd May 2023

+ CS(COMM) 246/2021

RDB AND CO. HUF

..... Plaintiff

Through: Mr. Hemant Daswani, Mr. Siddhant Shrivastava and Mr. Sarabpreet Singh, Advs.

versus

HARPERCOLLINS PUBLISHERS
INDIA PRIVATE LIMITED

..... Defendant

Through: Ms. Swathi Sukumar, Ms. Ashima Obhan, Ms. Taarika Pillai, Mr. Naveen Nagarjuna and Ms. Tarini Sahai, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
23.05.2023

IA 9516/2021 in CS(COMM) 246/2021

The issue

1. Who owns the copyright in the screenplay of a film, if the author has been commissioned by the producer of the film to write the screenplay? Is it the producer of the film, or the author of the screenplay?

2. This is the question that arises for consideration in the present case. The film in question is "Nayak", released in 1966 and regarded as one of the masterworks of Bharat Ratna Satyajit Ray, unarguably

one of the greatest directors in recorded film history.

The controversy, in *precis*

3. Satyajit Ray was commissioned, by R.D. Bansal, stated to be the Karta of the plaintiff-HUF, to write the screenplay of, and to direct, the film “Nayak”. Satyajit Ray wrote the screenplay and also directed the film.

4. Having already achieved artistic immortality, Satyajit Ray cast off his mortal coil on 23rd April 1992.

5. Sometime in or around 2018, Mr. Bhaskar Chattopadhyay novelized the screenplay of “Nayak”. The novel was published by the defendant and released on 5th May 2018.

6. The plaintiff claims to be the owner of copyright in the screenplay of “Nayak”.

7. The present plaint, therefore, alleges that the novelization of the screenplay by Bhaskar Chattopadhyay, and the publication of the novel by the defendant, constituted infringement of the plaintiff’s copyright, within the meaning of Section 51¹ of the Copyright Act,

¹ 51. **When copyright infringed.** – Copyright in a work shall be deemed to be infringed –

(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act –

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person –

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

1957.

8. The defendant, *per contra*, disputes the plaintiff's claim of copyright over the screenplay of "Nayak". According to the defendant, copyright in the screenplay vested in Mr. Satyajit Ray. Consequent on his death in 1992, therefore, copyright in the screenplay vested in his son Sandip Ray and the Society for Preservation of Satyajit Ray Archives ("SPSRA", hereinafter), of which Sandip Ray is a member. The defendant claims to have obtained a license from Sandip Ray and SPSRA to novelize the screenplay of the film.

9. The core issue which arises for consideration is, therefore, whether copyright in the screenplay of the film vested in Satyajit Ray or in R.D. Bansal. More generally, as a question of law, the issue which arises for consideration is whether, in a case in which the author of the screenplay of the film does so under a contract with the producer, against remuneration, copyright in the screenplay would vest in the author or in the producer.

The present application

10. This judgment adjudicates I.A. 9516/2021, which has been preferred by the defendant under Order XIII A Rule 4 of the Code of Civil Procedure, 1908 (CPC), as amended by the Commercial Courts Act, 2015. The defendant, by the said application, seeks a summary judgment dismissing the suit, as bereft of any cause of action.

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- (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
 - (iii) by way of trade exhibits in public, or
 - (iv) imports into India,

any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation. – For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

11. However, during the course of the hearing, Ms. Swathi Sukumar, learned Counsel for the defendant, limited her relief in the present application to a summary rejection of prayer (a) in the plaint, which reads thus:

“34. In the circumstances, the plaintiff prays for the following reliefs:

a. A Decree for permanent injunction restraining the Defendant, either by themselves or through its dealers, distributors, stockist, agents, associates, sister concerns, employees, servants, and/or assigns from making, selling, offering for sale, advertising directly or indirectly any work including indulging in novelization of the film/script whether direct, indirect, derivative with respect to the cinematograph film NAYAK amounting to infringement of copyright of the Plaintiff;”

This judgment, therefore, only examines whether prayer (a) in the suit should be subjected to oral evidence and trial, or can be dismissed straightaway as sought by Ms Sukumar, on the premise that the plaintiff has no chance of succeeding in the prayer.

12. I have heard Mr. Hemant Daswani, learned Counsel for the plaintiff, and Ms. Swathi Sukumar, learned Counsel for the defendant, at great length.

13. Written submissions have also been placed on record by learned Counsel. Written submissions were filed on behalf of the plaintiff on 16th July 2021 and 2nd May 2023, whereas written submissions were filed by the defendant on 12th October 2021 and 16th July 2021.

Rival stands

Rival stands in pleadings

The plaint

14. The plaint asserts that, in 1965-66, R.D. Bansal (“RDB” hereinafter) commissioned Satyajit Ray to write the screenplay of, and to direct, the film “Nayak”. The plaintiff-HUF claims to be the successor in title to RDB. As the producer of “Nayak”, the plaint asserts that copyright in the film, as well as all indirect, derivative and related rights associated with the film vested in RDB, at all times.

15. Para 5(a) of the plaint seeks to distinguish a screenplay from a script of a film thus:

“5(a) At this juncture it is pertinent to point out that the screenplay of the movie far exceeds the sum of the script that is written by the author. Within the screenplay the movements, actions, expression and dialogues of the characters are also narrated. It generally means the developed version of the story, broken down into individual scenes, which include all the essential details such as scene headings, a description of the action of that scene and a clear indication of the verbal exchange between characters (dialogue) etc. if the scene contains that all of which is only written at instance of the producer when he steps in and allocates a particular budget of the film that he intends to risk of all commercial benefit or failure.”

16. The plaintiff relies on Clause (b) of the proviso to Section 17²

² 17. **First owner of copyright.** – Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that –

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work, in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the

of the Copyright Act to claim copyright in the screenplay of the film. In this context, it is emphasized that RDB invested all monies in the making of the film and was solely responsible for its commercial release and commercial exploitation. The entire risk of commercial failure of the film was, therefore, taken on his shoulders by RDB. RDB, thereby, it is asserted, became the owner of all direct, indirect, derivative and related rights with respect to the film. He was the producer and worldwide distributor of the film and made the first publication of the film in 1966. Paras 6 to 8 of the plaint set out the details of expenses undertaken by RDB on preservation, etc, of the film.

17. In these circumstances, the plaint alleges that the plaintiff was justifiably chagrined on being informed, by a communication from the SRSPA on 10th April 2018, that the defendant had published the novelized version of the screenplay of the film and was going to launch the book shortly. The communication sought the permission of the plaintiff for screening the film at the launch of the novel.

18. There ensued, thereafter, a series of communications between the plaintiff and the defendant, with the plaintiff asserting copyright in the screenplay of the film and the defendant denying all such assertions. The plaintiff claimed to be the copyright holder in the

instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(e) in the case of a work to which the provisions of Section 41 apply, the international organisation concerned shall be the first owner of the copyright therein.

Provided that in case of any work incorporated in a cinematograph work, nothing contained in clauses (b) and (c) shall affect the right of the author in the work referred to in clause (a) of sub-section (1) of Section 13;

screenplay of the film, and expressed reservations at the novelization of the film without the plaintiff's knowledge and without obtaining any license or permission from the plaintiff. The defendant, *per contra*, submitted that it was unaware that the rights in the script of the film vested in the plaintiff and had, therefore, signed a contract with the legal representatives of Satyajit Ray, i.e., Sandip Ray and SRSPA, whereunder the defendant was permitted to novelize the screenplay of the film. The plaintiff asserts that, in its communication dated 28th May 2018, the defendant admitted the factum of copyright infringement and offered compensation in that regard.

19. It is further asserted, in the plaintiff, that, thereafter, the defendant verbally assured the plaintiff that it was not proceeding to novelize the film. In clear violation of the said verbal assurance, it is alleged in para 14 of the plaintiff, that, on 22nd October 2020, the plaintiff came to know that the defendant was proceeding for global launch of the novel. Subsequently, the novel was found to be widely available on several e-commerce portals. This, alleges the plaintiff, constitutes a brazen violation of the plaintiff's copyright in the screenplay of the film.

20. Again, a series of communications followed between the plaintiff and the defendant, with each disputing the rights asserted by the other.

21. It was in these circumstances that the plaintiff instituted the present plaintiff before this Court. The plaintiff was subsequently amended by way of I.A. 10986/2021, which came to be allowed by this Court *vide* order dated 8th September 2021.

22. Subsequently, the defendant filed the application under Order XIII A for summary judgment, which this judgment disposes of.

Written statement by defendant

23. By way of preliminary objections, the defendant contends, in the written statement, as under:

(i) The suit deserves to be dismissed as the plaintiff has not even placed on record the screenplay, which forms the very basis of the copyright claim on which the suit is instituted. Nor is any comparison, between the said screenplay, and the novel forming the subject matter of the challenge, provided.

(ii) Para 5 of the plaint admits Satyajit Ray to be the writer and director of the film. As the writer of the film, Satyajit Ray would, *ipso facto*, be the owner of copyright in its script and screenplay, as they constitute independent literary works, distinct from the film. There is no pleading in the plaint, that the plaintiff is the first owner of copyright in the script and screenplay, nor is there any pleading that the plaintiff was assigned rights in copyright, in the script and screenplay, by Satyajit Ray or by his legal representatives. As such, the suit is devoid of a cause of action.

24. The defendant contends in its written statement that it has not used any part of the film in which the plaintiff holds copyright. The defendant has only used the screenplay of the film, which is a literary work, as well as still photographs from the film in which, too,

copyright is vested in Satyajit Ray, in the impugned novel. No violation of any copyright of the plaintiff, therefore, exists.

25. The written statement distinguishes between the cinematographic film and its underlying works. It is stated that the script, the screenplay and still photographs from the film constitute “underlying works”. The right of a producer to a film is restricted to the physical form of the film, and does not extend to underlying works such as the screenplay and script of the film. The plaintiff, as the producer of the film, has no separate copyright or right of use over the underlying works. It is specifically averred, in this context, that “copyright in a cinematographic work does not extend to ownership of the underlying works incorporated in the film”.

26. The defendant has, in this context, referred to Section 13(4)³ of the Copyright Act which, according to the defendant, covers the issue, inasmuch as it clearly holds that copyright in a cinematographic film would not affect copyright in the underlying works even if they constitute a substantial part of the film itself. The defendant has also cited Section 2(d)(v)⁴ to contend that authorship, for the purpose of the Copyright Act, vested in the plaintiff only in respect of the

³ 13. **Works in which copyright subsists. –**

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, -

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

(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.

⁴ (d) “author” means, -

- (i) in relation to a literary or dramatic work, the author of the work;
- (ii) in relation to a musical work, the composer;
- (iii) in relation to an artistic work other than a photograph, the artist;
- (iv) in relation to a photograph, the person taking the photograph;
- (v) in relation to a cinematograph film, the owner of the film at the time of its completion; or sound-recording, the producer; and

cinematograph film, and not in respect of its underlying works. Predicated on these provisions, the written statement asserts that, in respect of the underlying works in a cinematographic film, the authors of such works would continue to remain the authors and, consequently, the copyright holder in respect thereof. There is no assignment, in favour of the plaintiff, from any of the said authors.

27. It is further pointed out, relying on Section 14(1)(a)⁵ of the Copyright Act, that Satyajit Ray had merely consented to write the script and screenplay on the basis of which the film came to be made. This consent, by Satyajit Ray, did not amount to any assignment of the copyright held by him in the script/screenplay in favour of the plaintiff. Any such assignment would have to be by way of a separate agreement, and no such agreement was in existence. As against this, it was pointed out the defendant had derived rights to novelise the screenplay from the legal representative of Satyajit Ray and from the

(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;

⁵ 14. **Meaning of copyright. –**

(1) For the purpose of this Act, "copyright" means the exclusive right, by virtue of and subject to the provisions of, this Act,

(a) in the case of a literary, dramatic or musical work, to do and authorise the doing of any of the following acts, namely:-

- (i) to reproduce the work in any material form;
- (ii) to publish the work;
- (iii) to perform the work in public;
- (iv) to produce, reproduce, perform or publish any translation of the work;
- (v) to make any cinematograph film or a record in respect of the work;
- (vi) to communicate the work by radio-diffusion or to communicate to the public by a loud-speaker or any other similar instrument the radio-diffusion of the work;
- (vii) to make any adaptation of the work;
- (viii) to do in relation to a translation or any adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi);

(c) in the case of a cinematograph film, to do or authorise the doing of any of the following acts, namely:-

- (i) to make a copy of the film;
- (ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
- (iii) to make any record embodying the recording in any part of the sound track associated with the film by utilising such sound track;
- (iv) to communicate the film by radio-diffusion;

SPSRA, who were the rightful copyright owners in respect thereof.

28. The entire suit, it is submitted, was predicated on the faulty presumption that all rights in the underlying works in a cinematographic film automatically vested in the producer of the film. This presumption, it is asserted, is contrary to Section 19⁶ of the Copyright Act.

29. On facts, the written statement further asserts that the defendant had, in fact, paid royalty to Sandip Ray and had obtained a license, both in respect of the screenplay as well as still photographs from the film from Sandip Ray as well as from the SPSRA. A specific contract was executed, between Sandip Ray, the SPSRA and Bhaskar Chattopadhyay, the author of the novel, on 8th July 2015. The rights to use the film stills and the cover of the book were separately granted by SPSRA to the plaintiff. It was only after acquiring these rights in accordance with law that the screenplay was novelized, and the novel released on 5th May 2018.

30. Thus, the written statement asserts that, at all times, Satyajit Ray remained the copyright owner in the literary works and the artistic works associated with the film which included the screenplay and the still photographs from the film. It is pointed out that the Bengali Motion Pictures Diary, in 1968, recognized Satyajit Ray to be the writer both of the screenplay as well as the story of “Nayak”. The written statement, therefore, categorically denies the assertion, of the plaintiff, that, as the producer of the film, the plaintiff was *ipso facto*

⁶ 19. **Mode of assignment –**

(1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or his duly authorised agent.

entitled to all direct, indirect, and derivative rights in respect of the film.

31. The reliance, by the plaintiff, on Clause (b) of the proviso to Section 17 of the Copyright Act is, it is submitted, misdirected as the appropriate clause which would apply, would, in fact, be Clause (a). It is further submitted that Satyajit Ray was not the employee of RDB but that there was an independent contract between RDB and Satyajit Ray.

32. The written statement finally denies the assertion, of the plaintiff, that, in its communications, the defendant had acknowledged the copyright of the plaintiff in the screenplay of the film. Rather, asserts the defendant, it had all the time denied the said claim of the plaintiff and had, in fact, called upon the plaintiff to provide material to justify the claim. The mere fact that, before screening the film at the time of launch of the novel, the permission of the plaintiff was sought, did not amount, in any manner, to an acknowledgment of any copyright held by the plaintiff in the screenplay of the film.

Rival stands at the Bar

33. In addition to the above, the rival stands of learned Counsel, as they emerged from arguments at the Bar and from written submissions placed on record, may be set out thus.

Initial/introductory Submissions of Mr Hemant Daswani for the plaintiff

34. Mr. Daswani submits that clause (b) of the proviso to Section

17 of the Copyright Act vests, in the plaintiff, the copyright in respect of the screenplay of the film. This provision overrides Section 13(4). As the producer of the film, the plaintiff was the first owner of copyright and all other direct, indirect and related rights in the film. Reliance has been placed, in this context, in para 47 of the judgment of the High Court of Bombay in *Ramesh Sippy v. Shaan Ranjeet Udhsingh*⁷ and on Para 18 of the judgment of the Supreme Court in *Indian Performing Rights Society v. Eastern Indian Motion Pictures*⁸ (“IPRS”, hereinafter).

35. Mr. Daswani has drawn my attention to the following emails exchanged between the parties:

E-mail dated 11th April 2018 at 3.15 pm from defendant to plaintiff

“**From:** Chaudhuri, Shantanu

Sent: Wednesday, April 11, 2018 3:15 PM

To: RDB ORGANIZATION <rdb@rdborganization.com>

Cc: satyajitraysociety@gmail.com

Subject: Attn: Sri Dilip Mitra

Dear Mr Mitra,

We connected with the Satyajit Ray Society for the same and signed a contract with them, which Mr Sandip Ray signed on behalf of the Ray Society.

We were not aware that the script rights are with anyone else. We have associated with the Ray Society on a number of projects before this, including a translation of stories that Satyajit Ray filmed, a book on Pather Panchali, which included its shooting script, and others. As such, we assumed that rights rest with the Society.

I would request Arup to clarify the position on this.

⁷ 2013 (55) PTC 95 (Bom)

⁸ (1977) 2 SCC 829

Regards
Shantanu

e-mail dated 11th April 2018 at 4.31 pm from SPSRA to defendant

From: Satyajit Ray Society [mailto:satyajitraysociety@gmail.com]
Sent: Wednesday, April 11, 2018 4:31 PM

To: Chaudhuri, Shantanu <Shantanu.Chaudhuri@harpercollins-india.com>
Subject: Re: Attn: Sri Dilip Mitra

Dear Shantanu,

It is wrong to say that the Society has given you the permission to novelize the script for Nayak, written by Satyajit Ray. Sandip Ray, being the only heir to Satyajit Ray, has the copyright for Satyajit Babu's writings. The scripts that Ray wrote are some of Satyajit Babu's writings. But of course the producers have the rights to the films which Ray made.

Regards
Arup

e-mail dated 28th May 2018 at 2.35 pm from defendant to plaintiff

From: Chaudhuri, Shantanu

[mailto:Shantanu.Chaudhuri@harpercollins-india.com]

Sent: 28 May 2018 14:35

To: RDB ORGANIZATION

Cc: 'Satyajit Ray Society'; kamal@rdborganization.com; varsha@rdborganization.com; 'Arup De'; 'Pinaki De'

Subject: RE: [SPAM] RE: [SPAM] RE: Meeting with Harpercollins Dear Mr Mitra

We have had protracted discussions on the book at our end, with our rights and contracts people. It's been an unfortunate series of events that has brought us to this pass.

The position as per contract is clear vis-à-vis HarperCollins: the third party indemnity clause clearly states that the signatory to the contract confirms that no third-party copyright is being violated.

As far as monetary compensation is concerned, contractually we are not bound to pay. Legally, the third-party copyright clause puts us in the clear.

As far as the copyright is concerned, if the Ray Society and Sandip da as heir to Satyajit Ray's films did not know the copyright situation, surely we at Harper have no way to know. We signed this on the basis we signed the rest of our books with the Society – the contract terms for all books are the same. There was no way anyone outside the Ray Society would be aware that the copyright could belong to anyone but you.

In fact, Arup De had even mentioned that Ray Society would bill and we were supposed to pay the Society for the images in the book, which too came from the Society and were sent by Arup (we did not even know that the images too were yours since it came from the Society and Arup had mentioned making the payment to the Society).

If we had an inkling of this, there is no way we would have proceeded without having you involved. It was only a matter of changing the contract and the financials – instead of contract with Sandip-da, it would have been with you.

Unfortunately, because of these circumstances and the total lack of promotions and publicity arising thereof, the book has flopped badly. We will not even be able to recover the advance we paid to Sandip-da. As such we are deeply in the red as far as publishing this book is concerned. The only payment we can make is the amount of Rs 10,000 that we set aside for the images which Ray Society had supplied and which Arup was going to bill us for (even offering this amount makes me embarrassed). It has been a huge loss for us not being able to promote and sell. And that has impacted my position in Harper – for no fault of mine.

Which is infinitely sad because whoever has read the book has been all praise for it. Sharmila Tagore called it a seamless effort to translate the screenplay, almost as if the screenplay evolved from the novel and not the other way round. Gulzar-ji publicly stated last week how wonderful the novelization reads (and that it has given him an idea of novelize one of his films!). Shoojit Sircar called personally to congratulate me. We have received offers from Hindi and Marathi publishers for translation of the novel – all of which we have had to put on hold. HarperCollins has basically suffered for no fault of ours. But for the unfortunate rights situation, we could all have benefited from the book. Given your financial clout, if we had been aware of the contractual position, I would have even suggested that Criterion and/or you could probably buy 2000 copies of the book at 50% discount to give away with the Criterion Collection DVD as a business promotion

scheme. I do hope you understand where we stand. And that going ahead we can work together on some projects.

Regards
Shantanu”

36. These communications, submits Mr. Daswani, incorporate acknowledgments, by the defendant, of the plaintiff’s copyright in the screenplay of the film.

37. Apropos Section 17 read with Section 2(d) of the Copyright Act, Mr. Daswani has placed reliance on paras 3, 21 to 29 of the judgment of the High Court of Madras in *Sree Gokulam Chit and Finance Co. (P) Ltd. v. Johnny Sagariga Cinema Square*⁹. Mr. Daswani further emphasized the following passage from the email dated 28th May 2018 from the defendant, *inter alia*, to the plaintiff:

“Which is infinitely sad because whoever has read the book has been all praise for it. Sharmila Tagore called it a seamless effort to translate the screenplay, almost as if the screenplay evolved from the novel and not the other way round. Gulzar-ji publicly stated last week how wonderful the novelization reads (and that it has given him an idea of novelize one of his films!). Shoojit Sircar called personally to congratulate me.”

38. Thus, submits Mr. Daswani, it is not in dispute that the novel was a direct copy of the screenplay of the film in which the plaintiff held copyright.

Submissions of Ms. Swathi Sukumar in the present IA

39. Responding to Mr. Daswani, Ms. Sukumar submits that Satyajit Ray was the owner of the screenplay as well as the script of the film

⁹2011 (3) CTC 747 (Mad)

and held, therefore, copyright in respect thereof. She submits that the plaintiff is fundamentally in error in law in claiming that the plaintiff's copyright in the film carried, with it, copyright in the underlying works in the film. Admittedly, she submits that there has been no assignment of copyright of any sort, in favour of the plaintiff, by Satyajit Ray or anyone else, in any aspect of the film. According to the plaintiff, all rights in everything associated with a cinematographic film including copyright in the underlying works as well as stills from the film itself, would stand subsumed in the copyright that the producer of the film enjoys in the film itself.

40. Ms. Sukumar further submits that, even if it were to be assumed that the plaintiff held copyright in the screenplay of the film, the film itself having been released in 1966, under Section 23 of the Copyright Act, the term of copyright would be 50 years from the year immediately after the film was released. Thus reckoned, she submits that the copyright of the plaintiff in the screenplay of the film, even if it were assumed to exist, would have come to an end in 2017 and would not, therefore, be subsisting in 2018, when the film was novelized. She relies, for this purpose, on Section 2¹⁰ of the Copyright (Amendment) Act, 1993.

41. Ms. Sukumar submits that Section 13(4) of the Copyright Act, read with Section 2(1)(d), is a complete answer to the plaint, and demolishes the very cause of action on which the plaint is based.

¹⁰ “2. **Amendment of Chapter V** – In Chapter V of the Copyright Act, 1957 (hereinafter referred to as the principal Act), for the words “fifty years”, wherever they occur, the words “sixty years” shall be substituted.

42. In conjunction, Ms. Sukumar has also relied on Section 14 of the Copyright Act, which defines “copyright”. She submits that the right to make a cinematographic film in respect of literary work is a separate right envisaged by Section 14(1)(a)(v) of the Copyright Act. Section 14(1)(a) envisages eight type of copyrights in respect of literary, dramatic and musical works, viz the right to reproduce the work in any material form [clause (i)], the right to publish the work [clause (ii)]; the right to perform the work in public [clause (iii)]; the right to produce, reproduce, perform or publish any translation of the work [clause (iv)]; the right to make a cinematographic film or a record in respect of the work [clause (v)]; the right to communicate the work by radio-diffusion or to communicate to the public by a loudspeaker or any other similar instrument the radio-diffusion of the word [clause (vi)]; the right to make any adaptation of the work [clause (vii)] and the right to do in relation to a translation or any adaptation of the word any of the acts specified in the preceding clauses [clause (viii)]. It was the only the right relatable to Section 14(1)(a)(v) that, at best, could be said to have been licensed by Satyajit Ray in favour of the plaintiff. All other rights envisaged in Section 14(1)(a) of the Copyright Act continued to vest in Satyajit Ray by virtue of the said provision. She also refers to Clause (c) of Section 14(1) of the Copyright Act, which does not envisage the inclusion, in the rights emanating from copyright held in a cinematographic film, of the right to novelize the underlying work. The right to novelize the underlying work in a cinematographic film, therefore, she submits, is a right which is independent of the copyright held in the cinematographic film itself. The right of the producer in the cinematographic film did not, therefore, extend to the right to novelize the underlying work or, consequently, to monitor or restrict the novelization of the underlying

work. She points out that by virtue of Clauses (a) and (b) of Section 17 of the Copyright Act, the copyright of the plaintiff in the film did not extend to the underlying work. As such, the copyright in the underlying work of the film, which included its script and screenplay, therefore, vested at all times in author of the script and the screenplay i.e. Satyajit Ray. Any assignment of such right, whether in favour of the plaintiff or anyone else had, by virtue of Section 19 of the Copyright Act, necessarily to be in writing. No such written assignment of the right being forthcoming, Ms. Sukumar submits that the entire case set up by the plaintiff is devoid of a sustainable cause of action.

43. While relying on paras 1.3, 3.1, 4, 18.4, 19.7, 21 and 25 to 28 of the judgment of the High Court of Madras in *Thiagarajan Kumararaja v. Capital Film Works (India) Pvt. Ltd.*¹¹, Ms. Sukumar submits that the case of her client is in fact superior to that which was before the court in *Thiagarajan*¹¹, as her client was not remaking the film. She also relies on paras 24, 28, 29, 49, 57 to 61, 67, 68 and 72 of the judgment of the High Court of Bombay in *Adai Mehra Production Pvt. Ltd v. Sumeet P. Mehra*¹², on paras 15 and 21 of the judgment of the Supreme Court in *IPRS*⁸ and on paras 26 and 33 of the judgment of the Supreme Court in *Power Control Appliances v. Sumeet Machines Pvt. Ltd*¹³.

¹¹ (2018) 73 PTC 365(Mad)

¹² (2014) 59 PTC 575(Bom)

¹³ (1994) 2 SCC 448

Mr. Daswani, in reply in the present IA

44. Responding to the submissions of Ms. Sukumar, Mr. Daswani relies on the judgment of the High Court of Calcutta in *Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah*¹⁴ and para 29 of *Thiagarajan*¹¹, which was cited by Ms. Sukumar. He further submits that, as the story of the novel is identical to that of the film, the novel is effectively a copy of the film. It was the film itself, therefore, which was being converted to pen and paper. There would be no distinction between the idea conveyed to the viewer of the film and the reader of the novel. The word “copy”, he submits, has to be given a broad interpretation. In support of his submission, Mr. Daswani has cited the judgments of the United States Court of Appeals in *Twin Peaks Productions v. Publication International*¹⁵ and in *Mirage Addition v. Albuquerque A.R.P. Company*¹⁶. The present case, too, he submits, constitutes copying from one medium to the other. Mr. Daswani has also relied on paras 19, 34 and 46 of the judgment of the Supreme Court in *R.G. Anand v. Delux Films*¹⁷, and paras 78 and 79 of the judgment of the learned Single Judge of this Court in *MRF Ltd v. Metro Tyres Limited*¹⁸.

45. As such, Mr. Daswani submits that there is no substance in the present application of the defendant and that, in fact, he would be entitled to interlocutory injunction as sought by him.

Ms. Sukumar in rejoinder in the IA

¹⁴ 2009 SCC Online Cal 2113

¹⁵ 61 US LW 2784

¹⁶ 856 F.2d 1341 (1988)

¹⁷ (1978) 4 SCC 118

¹⁸ 2019 SCC OnLine Del 8973

46. In rejoinder, Ms. Sukumar points out that under Section 14 of the Copyright Act, the rights of the owner of the film in a cinematographic film are much less than the right of the copyright holder in the literary work. She submits that the decision in *R.G. Anand*¹⁷ cannot be read in reverse. If the literary work is converted into a film without license from the author of the work, it would obviously result in infringement.

Analysis

Order XIII-A of the CPC as amended by the Commercial Courts Act, 2015

47. Order XIII-A of the CPC, as amended by the Commercial Courts Act, empowers the Commercial Court to decide a claim pertaining to a commercial dispute without recording oral evidence. The word “claim” includes, by virtue of Rule (2)(a)¹⁹ of Order XIII A, part of a claim as well.

48. The grounds on which a summary judgment can be given by a Court are set out in Order XIII Rule 3²⁰.

49. Clause (a) of Order XIII Rule 3 empowers the Court to give a summary judgment against either of the parties, if it considers that the party has no real prospect of succeeding in the case that it sets up, i.e., that the plaintiff has no real prospect of succeeding on the claim or the

¹⁹(2) For the purposes of this order, the word “claim” shall include –
(a) part of a claim;

²⁰3. **Grounds for summary judgment.** – The court may give a summary judgment against a plaintiff or defendant on a claim if it considers that –
(a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

defendant has no real prospect of defending the claim. Clause (b) confers wide powers inasmuch as it empowers the Court to dispose of a claim without recording oral evidence, if there is no other compelling reason why a claim should not be so disposed of.

50. The object and intent of Order XIII-A becomes apparent from sub-rule 3(b) of Rule 1 thereof. Expeditious disposal of commercial suits is clearly the *raison d'etre* of Order XIII-A. Order XIII-A Rule 3(b) is a peculiarly worded provision, with an intriguing double negative. It empowers a Court to summarily decide a commercial suit *where there is no compelling reason why it should not do so*, without recording oral evidence. Recording of oral evidence, therefore, is by no means a right in commercial suits. A Court, on its subjective satisfaction that there is no reason why the suit should not be disposed of without recording oral evidence, can proceed to do so.

51. Order XIII-A Rule 4, however, requires a specific procedure to be followed before a Court passes a summary judgment deciding any part of a claim in a commercial suit. An application is necessary for the said purpose. 30 days' notice has to be granted to the defendant before hearing the application and placing the respondent/non-applicant on notice of the claim that it proposes to decide at such hearing. The non-applicant may file a reply to the application, seeking summary judgment and it is only after the reply, if any, is filed and the parties are heard that the Court would proceed to pass summary judgment under Order XIII-A.

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

52. In the present case, Ms. Sukumar's contention is that, given the factual and legal position, the plaintiff has no chance in succeeding in prayer (a) in the suit. She, therefore, prays that summary judgment dismissing prayer (a) in the suit may be passed.

53. The prayer clause in the suit reads thus:

“34. In the circumstances, the Plaintiff prays for the following reliefs:

a. Decree for permanent injunction restraining the Defendant, either by themselves or through its dealers, distributors, stockist, agents, associates, sister concerns, employees, servants, and/or assigns from making, selling, offering for sale, advertising directly or indirectly any work including indulging in novelization of the film/script whether direct, indirect, derivative with respect to the cinematograph film NAYAK amounting to infringement of copyright of the plaintiff;

b. A Decree for permanent injunction restraining the Defendant, either by themselves or through its dealers, distributors, stockist, agents, associates, sister concerns, employees, servants, and/or assigns from making, selling, offering for sale, advertising directly or indirectly any film stills (pictures) from the cinematograph film NAY AK amounting to infringement of copyright of the Plaintiff;

c. Orders directing rendition of accounts of monies/profits/remunerations earned by the Defendant by selling, offering for sale, advertising directly or indirectly any work including indulging in novelization of the film/script whether direct, indirect, derivative with respect to the cinema to graph film NAYAK;

d. A decree for an enquiry to ascertain into the damages suffered by the Plaintiff by reason of such wrongful acts of the Defendant and a decree for payment of such amount be passed as may be found due and payable by the Defendant to the Plaintiff upon such enquiry;

e. Pass a decree for damages in tune of Rs. Two Crores Only (Rs 2,00,00,000/-) against the Defendant and in favour of the Plaintiff on account of selling, offering for sale, advertising directly or indirectly works including indulging in novelization of the film/script whether direct, indirect, derivative with respect to the cinematograph film NAYAK;

f. Allow costs in the proceedings in favour of Plaintiff; and

g. Any other or further orders as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case be also passed in favour of the Plaintiff against the Defendant.”

54. Prayer (a) in the suit seeks an injunction against the defendant and all others acting on its behalf, from making, selling, offering for sale or advertising any work including indulging novelization of the film/script whether direct, indirect or derivatives with respect to the film “Nayak” as would amount to infringement of copyright of the plaintiff.

55. It is nobody’s case that the defendant is novelizing the film “Nayak”. In fact, it is strictly speaking, not even the case of the plaintiff that the defendant is novelizing the script of the film. Learned Counsel are *ad idem* that what the defendant is novelizing is the *screenplay* of the film. Para 5(a) of the plaint (reproduced *supra*) itself distinguishes between the script and the screenplay of a film. As such, even on the assertions in the plaint and the case that the plaintiff seeks to make out, the question of injuncting the defendant from novelizing the film, or the script of the film “Nayak”, does not arise for consideration.

56. What the Court has to decide is whether the defendant can be permitted to novelize the screenplay of the film Nayak without the permission of the plaintiff. If such novelization amounts to infringement of copyright of the plaintiff, it is obvious that it cannot be allowed. If, however, there is no such infringement, the plaintiff cannot seek an injunction in terms of prayer 34(a) of the plaint and

resultantly, the defendant would be entitled to a summary judgment dismissing the said prayer.

57. There is no dispute on facts. It is accepted by both the parties that (i) the plaintiff is the producer of the film “Nayak”, (ii) the plaintiff had contracted with Satyajit Ray to write the screenplay for the film, (iii) the screenplay was entirely written by Satyajit Ray, (iv) Sandip Ray is the son of Satyajit Ray and is a member of the SPSRA and (v) no licence has been obtained by the defendant from the plaintiff before novelizing the film.

58. These facts being undisputed, and the only issue before the Court being whether, on these facts, the defendant can be said to have infringed the plaintiff’s copyright, no requirement of leading of oral evidence exists in the present case. The case, therefore, clearly falls within Order XIII-A Rule 3(b) of the CPC, as amended by the Commercial Courts Act.

On Merits

59. Insofar as the merits of the rival contentions are concerned, I am of the opinion that, they can easily be decided even by reference to the provisions to the Copyright Act.

60. Section 13

60.1 Section 13(1) deals with works in which copyright subsists. Clause (a) of the said sub-section covers “original literary, dramatic, musical and artistic works”, whereas clause (b) covers “cinematograph films”. Clearly, therefore, copyright in cinematograph films is a

separate category of copyright, distinct and different from copyright in original literary, dramatic, musical and artistic works.

60.2 That copyright subsists in a cinematographic film is, therefore, statutorily envisaged by Section 13(1)(b). The plaintiff, therefore, has clearly subsisting copyright in the film Nayak.

60.3 Sub-section (4) of Section 13 clarifies that the copyright held in a cinematographic film shall not affect the separate copyright in any work, in respect of which, or in respect of a substantial part of which, the film is made. In other words, *if a cinematographic film is made in respect of a part of whole or another work in which separate copyright vests under Section 13(1), the copyright held in the cinematographic film would not affect such separate copyright.*

60.4 Re. submission of Ms. Sukumar of expiry of copyright by efflux of time:

60.4.1 Before proceeding further I may deal, in this context, that the submission of Ms. Sukumar that the copyright of the plaintiff in the film Nayak has expired by efflux of time. She relies, for the said purpose, on Section 2 of the Copyright (Amendment) Act, 1993 (“the 1993 Amendment Act”, hereinafter).

60.4.2 The 1993 Amendment Act substantially amended the Copyright Act. Section 2 replaced the words “fifty years” in Chapter V of the Copyright Act (which dealt with the life of copyright) with the words “sixty years”. The life of copyright was thereby increased from fifty to sixty years. Ms. Sukumar sought to contend that, as this

increase of the term of the copyright was effected by an amendment, which took place after the commencement of the copyright of the plaintiff in the film “Nayak”, the plaintiff would not be entitled to the benefit thereof.

60.4.3 The submission, to my mind, is misconceived. Section 3²¹ of the 1993 Amendment Act – which is titled “Copyright *not to* subsist if term has expired” with an unusual italicized emphasis on the words “not to” – declares, for the removal of doubts, that copyright shall not subsist by virtue of the 1993 Amendment Act in any work *in which the copyright did not subsist immediately before the commencement of the 1993 Amendment Act*. The corollary would, obviously, be that, where the copyright in the concerned work had *not* expired prior to the coming into force of the 1993 Amendment Act, it *would* subsist, and the copyright holder *would* be entitled to the benefit of the amendment. The copyright in the film, in favour of the plaintiff, *was* subsisting immediately prior to the 1993 Amendment Act. The plaintiff cannot, therefore, be denied the benefit of Section 2 of the 1993 Amendment Act. The life of the copyright held by the plaintiff in the film Nayak would, therefore, be 60 years from 1967 which would expire only in 2027.

60.4.4 Ms. Sukumar’s plea that the copyright of the plaintiff in the film Nayak has expired by virtue of Section 2, cannot, therefore, be accepted and is accordingly rejected.

²¹ 3. **Copyright *not to* subsist if term has expired.** – For the removal of doubts, it is hereby declared that copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act.

60.4.5 Even as on date, therefore, the copyright of the plaintiff in the cinematograph film “Nayak” is subsisting.

60.5 Returning, in that background, to Section 13 of the Copyright Act, what is to be seen is whether any separate copyright in the screenplay of the film “Nayak” exists, *de hors* the copyright held by the plaintiff in the film itself. If it does, then by virtue of Section 13(4), the copyright held by the plaintiff in the film cannot derogate from the separate copyright which exists in the screenplay of the film.

60.6 There is no dispute about the fact that the screenplay of the film is entirely the work of Satyajit Ray. The plaintiff has contributed no part thereto. Indeed, though this fact is not of particular relevance, even the film “Nayak” was entirely the directorial effort of Satyajit Ray. The plaintiff is merely the producer of the film.

60.7 What is to be seen, therefore, is whether the screenplay of a film attracts Section 13(1).

60.8 Sub-section (1) of Section 13 is exhaustive regarding the works in which copyright subsists. No copyright can subsist in any work outside of Section 13(1).

60.9 Clause (a) of Section 13(1) provides for subsistence of copyright in “original literary, dramatic, music and artistic works”, clause (b) in “cinematograph films” and clause (c) in “records”.

60.10 Interestingly, the Copyright Act provides a comprehensive definition of the words “artistic work” and “musical work”, in Clauses

(c)²² and (p)²³ of Section 2 but provides merely inclusive definitions for the words “literary work” and “dramatic work” in Clauses (o)²⁴ and (h)²⁵ of the said Section.

60.11 Clearly, the screenplay of the film *Nayak* cannot be treated as an “artistic work” or as a “musical work”, as defined in Clause (c) and (p) of Section 2.

60.12 The definition of “dramatic work” in Section 2(h) expressly excludes cinematograph films. The screenplay of the film would, nonetheless, not merit inclusion in the definition as it cannot be regarded as a “piece for recitation, choreographic work or entertainment in dumb show”.

60.13 “Literary work” is defined in Section 2(o) in an inclusive fashion as including “tables and compilations”.

60.14 Interpretation of definition clauses, in statutory instruments, which are couched purely in inclusive terms, has been subject matter of several judicial pronouncements. In *State of Maharashtra v. Reliance Industries Ltd.*²⁶, the Supreme Court was concerned with Section 3(a) of the Land Acquisition Act 1894 which stated that “land includes benefits arise out of the land, things attached to the earth or permanently fastened to anything attached to the earth”. The Supreme

²² (c) “artistic work” means, -
(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;
(ii) an architectural work of art; and
(iii) any other work of artistic craftsmanship

²³ (p) “musical work” means any combination of melody and harmony or either of them, printed, reduced to writing or otherwise graphically produced or reproduced;

²⁴ (o) “literary work” includes tables and compilations;

²⁵ (h) “dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting for of which is fixed in writing or otherwise but does not included a cinematograph film;

²⁶ (2017) 10 SCC 713

Court held that where a statute provides an inclusive definition “*the word not only bears its ordinary, popular and natural sense whenever that would be applicable, but it also bears its extended statutory meaning*”. The use of the word “includes” was held in ***Ramala Sahkari Chini Mills v. Commissioner of Central Excise***²⁷, as intending “to bring in, by legal fiction, something *within the accepted connotation of the substantive part*”. Similarly, in ***Oswal Oils and Fats Ltd. v. Additional Commissioner***²⁸, while dealing with the interpretation of the expression “person” as defined in Section 154(1) of the UP Zamindari Abolition and Land Reforms Act, 1950, which defined “person” as “including any company or association or body of individual whether incorporated or not” the Supreme Court held thus:

“The word “include” is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. The word “include” is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to “mean and include” and in that case it may afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to those words or expressions. (*Dilworth v. Stamps Commr.*²⁹)”

60.15 Thus, the words that follow “includes” in an inclusive definition expand the definition by augmenting the meaning of the expression as normally understood. The words which follow “includes” in an inclusive definition of an expression, as contained in a statutory instrument, cannot, therefore, in any manner restrict or limit the scope

²⁷ (2010) 14 SCC 744

²⁸ (2010) 4 SCC 728

²⁹ 1899 AC 99 : (1895-99) All ER Rep Ext 1576 (PC)

of the ordinary understanding of the main part of the definition in common parlance.

60.16 The expression “literary work” being defined in an inclusive fashion in Section 2(o) of the Copyright Act, therefore, has to embrace, within its scope and sweep, the normal etymological understanding of the expression “literary work”, and would include, apart from what is normally understood to be a literary work, tables and compilations.

60.17 On how the expression “literary work” is to be understood, however, the Copyright Act offers no assistance.

60.18 Courts have adopted an expansive understanding of the expression “literary work”. In *Rupender Kashyap v. Jeevan Publishing House*³⁰, this Court held that the words “literary work” are not confined to *works of literature in the commonly understood sense but include all works expressed in writing whether they have literary merit or not*. Thus, examination question papers were held to be original literary works for the purpose of the Copyright Act. In *Burlington Home Shipping (P) Ltd. v. Rajnish Chhiber*³¹, this Court went to the extent of including, within the ambit of the expression “literary work”, a compilation of a list of clients or customers developed by a person by devoting time, money, labour and skill, even from commonly available sources. In *Shree Manohar Lal Gupta v. State of Haryana*³², this Court included within the meaning of

³⁰ (1976) PTC 439 (Del.)

³¹ 61 (1996) DLT 6

³² (1996) 61 DLT 6

“literary work”, books on household accounts and domestic arithmetic.

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 the film *Nayak* is unquestionably a “literary work” for the purpose of Section 13(1)(a) of the Copyright Act.

60.20 *Per se* quitur, 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.

61. In whom does the copyright, in the screenplay of the film, vest?

61.1 In whom, then, would the copyright in the “literary work”, which consist of the screenplay of the film “*Nayak*”, vest? This is the next and, indeed, the seminal question which arises for consideration in the present case.

61.2 Section 17² provides the answer.

61.3 The opening words of Section 17 make it clear that *the author of a work shall be the first owner of the copyright in the work*. This is subject only to (i) other provisions of the Copyright Act and (ii) the proviso to Section 17 itself.

61.4 In a somewhat circular fashion, “author” is defined, in Section 2(d)(i), in relation to a literary work, as “the author of the work”. The author of the screenplay of the film “Nayak” is, therefore, indisputably, Satyajit Ray.

61.5 It is nobody’s case that there is any provision other than Section 17, which would confer copyright, in the screenplay of the film Nayak, on any other person. Indeed, the plaintiff, too, seeks to invoke the proviso to Section 17.

61.6 The proviso to Section 17, as it stood then, had four clauses, numbered (a), (b), (c), and (d).

61.7 Clause (a) of the proviso refers to a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical and obviously and would not, therefore, apply.

61.8 Clause (b) covers a photograph taken, a painting or portrait drawn or an engraving or a cinematograph film made at the instance of any person. This clause, too, therefore, does not cover a screenplay. The reference to “cinematograph film” in the said clause applies only to a situation where one person makes a cinematograph film at the instance of another person. That, quite obviously, is not a situation which is before us.

61.9 Clause (c) deals with a work made in the course of author’s employment under a contract of service or apprenticeship. This clause, too, would not apply for two reasons:

(i) The words “service” and “apprenticeship” being used together have to be interpreted *noscitur a sociis*, which requires the meaning of a word to be understood in the light of the company it keeps. The expression “service” as employed in clause (c) of the proviso to Section 17, therefore, would be service analogous to apprenticeship. “Apprenticeship” involves the principle of hire and the existence of a master-servant relationship. P. Ramanatha Aiyar, in his authoritative Advance Law Lexicon 5th Edition defines “apprenticeship” as “the service or a legal condition of an apprentice, the method or process of gaining knowledge of some trade, art or profession from the instruction of a master; the term during which one is an apprentice.” The existence of a master-servant relationship is, therefore, *sine qua non* of apprenticeship. The expression “service” being used in the company of “apprenticeship” has to be understood as analogous to apprenticeship, applying the *noscitur a sociis* doctrine. As such, the contract of service would be analogous to a contract of apprenticeship, which is an employment contract between the master and the servant.

(ii) This conclusion is also supported by the fact that the law recognizes the definition between a “contract of service” and a “contract for service”. The definition between these two expressions has been authoritatively explained in the judgment of the Supreme Court in *Sushilaben Indravadan Gandhi v. New Assurance Co. Ltd*³³. The following passages from the said decision, expostulate the law in that regard. Paras 32 to 36 of the judgment may be reproduced thus:

³³ (2021) 7 SCC 151

“32. A conspectus of all the aforesaid judgments would show that in a society which has moved away from being a simple agrarian society to a complex modern society in the computer age, the earlier simple test of control, whether or not actually exercised, has now yielded more complex tests in order to decide complex matters which would have factors both for and against the contract being a contract of service as against a contract for service. The early “control of the employer” test in the sense of controlling not just the work that is given but the manner in which it is to be done obviously breaks down when it comes to professionals who may be employed. A variety of cases come in between cases which are crystal clear — for example, a master in a school who is employed like other employees of the school and who gives music lessons as part of his employment, as against an independent professional piano player who gives music lessons to persons who visit her premises. Equally, a variety of cases arise between a ship's master, a chauffeur and a staff reporter, as against a ship's pilot, a taxi driver and a contributor to a newspaper, in order to determine whether the person employed could be said to be an employee or an independent professional. *The control test, after moving away from actual control of when and how work is to be performed to the right to exercise control, is one in a series of factors which may lead to an answer on the facts of a case slotting such case either as a contract of service or a contract for service. The test as to whether the person employed is integrated into the employer's business or is a mere accessory thereof is another important test in order to determine on which side of the line the contract falls. The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases. The test of who owns the assets with which the work is to be done and/or who ultimately makes a profit or a loss so that one may determine whether a business is being run for the employer or on one's own account, is another important test when it comes to work to be performed by independent contractors as against piece-rated labourers. Also, the economic reality test laid down by the US decisions and the test of whether the employer has economic control over the workers' subsistence, skill and continued employment can also be applied when it comes to whether a particular worker works for himself or for his employer. The test laid down by the Privy Council in *Lee Ting Sang v. Chung Chi-keung*³⁴, namely, is the person who has engaged*

³⁴ (1990) 2 AC 374 (PC)

himself to perform services performing them as a person in business on his own account, is also an important test, this time from the point of view of the person employed, in order to arrive at the correct solution. No one test of universal application can ever yield the correct result. It is a conglomerate of all applicable tests taken on the totality of the fact situation in a given case that would ultimately yield, particularly in a complex hybrid situation, whether the contract to be construed is a contract of service or a contract for service. Depending on the fact situation of each case, all the aforesaid factors would not necessarily be relevant, or, if relevant, be given the same weight. Ultimately, the Court can only perform a balancing act weighing all relevant factors which point in one direction as against those which point in the opposite direction to arrive at the correct conclusion on the facts of each case.

33. Given the fact that this balancing process may often not yield a clear result in hybrid situations, the context in which a finding is to be made assumes great importance. Thus, if the context is one of a beneficial legislation being applied to weaker sections of society, the balance tilts in favour of declaring the contract to be one of service, as was done in *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*³⁵, *Birdhichand Sharma v. Civil Judge*³⁶, *D.C. Dewan Mohideen Sahib & Sons v. United Beedi Workers' Union*³⁷, *Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments*³⁸, *Hussainbhai v. Alath Factory Thezhilali Union, Shining Tailors v. Industrial Tribunal*³⁹, *P.M. Patel & Sons v. Union of India*⁴⁰ and *Indian Banks Assn. v. Workmen of Syndicate Bank*⁴¹. On the other hand, where the context is that of legislation other than beneficial legislation or only in the realm of contract, and the context of that legislation or contract would point in the direction of the relationship being a contract for service then, other things being equal, the context may then tilt the balance in favour of the contract being construed to be one which is for service.

34. Looked at in this light, let us now examine the agreement between Dr Alpesh Gandhi and Respondent 3. The factors which would lead to the contract being one for service may be enumerated as follows:

³⁵ 1957 SCR 152 : AIR 1957 SC 264

³⁶ (1961) 3 SCR 161 : AIR 1961 SC 644

³⁷ (1964) 7 SCR 646 : AIR 1966 SC 370

³⁸ (1974) 3 SCC 498 : 1974 SCC (L&S) 31

³⁹ (1983) 4 SCC 464 : 1983 SCC (L&S) 533

⁴⁰ (1986) 1 SCC 32 : 1986 SCC (L&S) 155

⁴¹ (2001) 3 SCC 36 : 2001 SCC (L&S) 504

34.1. The heading of the contract itself states that it is a contract for service.

34.2. The designation of Dr Gandhi is an *Honorary Ophthalmic Surgeon*.

34.3. INR 4000 per month is declared to be honorarium as opposed to salary.

34.4. In addition to INR 4000 per month, Dr Gandhi is paid a percentage of the earnings of Respondent 3 from out of the OPD, operation fee component of hospitalisation bills, and room visiting fees.

34.5. The arbitration clause which speaks of disputes arising in the course of the tenure of this contract will be referred to the managing committee of the Institute, the decision of the managing committee being final, is also a clause which is unusual in a pure master-servant relationship.

34.6. The fact that the appointment is contractual — for 3 years — and extendable only by mutual consent, is another pointer to the fact that the contract is for service, which is tenure based.

34.7. The fact that termination of the contract can be by notice on either side would again show that the parties are dealing with each other more as equals than as master-servant.

34.7. The fact that termination of the contract can be by notice on either side would again show that the parties are dealing with each other more as equals than as master-servant.

34.8. Clause XI of the agreement also makes it clear that the earlier appointment that was made of Dr Gandhi would cease the moment this contract comes into existence, Dr Gandhi no longer remaining as a *regular employee* of the Institute.

35. As against the aforesaid factors which would point to the contract the contract being a contract for service, the following factors would point in the opposite direction:

35.1. The employment is full-time. Dr Gandhi can do no other work, and apart from the seven types of work that Dr Gandhi is to perform under Clause IV, any other assignment that may get created in the course of time may also be assigned to him at the employer's discretion.

35.2. Dr Gandhi is to work on all days except weekly offs and holidays that are given to him by the employer. However, what is important is that though governed by the leave rules of the Institute as in vogue from time to time, Dr Gandhi will not be entitled to any financial benefit of any kind as may be applicable to other regular employees of the Institute under Clause V.

35.3. Dr Gandhi will be governed by the conduct rules of the Institute as invoked from time to time and as applicable to regular employees of the Institute.

35.4. That in the event of a proven case of indiscipline or breach of trust, the Institute reserves a right to terminate the contract at any time without giving any compensation whatsoever.

36. If the aforesaid factors are weighed in the scales, it is clear that the factors which make the contract one for service outweigh the factors which would point in the opposite direction. First and foremost, the intention of the parties is to be gathered from the terms of the contract. The terms of the contract make it clear that the contract is one for service, and that with effect from the date on which the contract begins, Dr Gandhi shall no longer remain as a regular employee of the Institute, making it clear that his services are now no longer as a regular employee but as an independent professional. Secondly, the remuneration is described as honorarium, and consistent with the position that Dr Gandhi is an independent professional working in the Institute in his own right, he gets a share of the spoils as has been pointed out hereinabove. Thirdly, he enters into the agreement on equal terms as the agreement is for three years, extendable only by mutual consent of both the parties. Fourthly, his services cannot be terminated in the usual manner of the other regular employees of the Institute but are terminable on either side by notice. The fact that Dr Gandhi will devote full-time attention to the Institute is the obverse side of piece-rated work which, as has been held in some of the judgments hereinabove, can yet amount to contracts of service, being a neutral factor. Likewise, the fact that Dr Gandhi must devote his entire attention to the Institute would not necessarily lead to the conclusion that dehors all other factors the contract is one of service. Equally important is the fact that it is necessary to state Dr Gandhi will be governed by the conduct rules and by the leave rules of the Institute, but by no other rules. And even though the leave rules apply to Dr Gandhi, since he is not a regular employee, he is not entitled to any financial benefit as might be applicable to other regular employees. Equally,

arbitration of disputes between Dr Gandhi and the Institute being referred to the managing committee of the Institute would show that they have entered into the contract not as master and servant but as employer and independent professional. A conspectus of all the above would certainly lead to the conclusion, applying the economic reality test, that the contract entered into between the parties is one between an Institute and an independent professional.”

(Emphasis supplied)

61.10 The use of the expression “contract of service”, especially in the company of the word “apprenticeship” in clause (c) of the proviso to Section 17 of the Copyright Act makes it clear that the clause does not apply to cases of a contract between equals in which one person contacts with another to render a service to him such as, in the present case, writing the screenplay for and directing a film. At the highest, such a contract would be only a contract for service and not a contract of service.

61.11 Clause (d) of Section 17 obviously does not apply to the present case.

61.12 *Inexorably, the conclusion is that Section 17 of the Copyright Act, Satyajit Ray, as the author of the screenplay of the film Nayak, was the first owner of the copyright in the said film.*

61.13 *The contention of Mr. Daswani that the plaintiff is the owner of the copyright in the screenplay in the film Nayak, therefore, cannot be accepted and is accordingly, rejected.*

62. What rights vest in the defendant?

62.1 The rights which vest in the owner of the copyright are captured in Section 14 of the Copyright Act, which explains the meaning of “copyright”. “Copyright”, as per clause (a) in Section 14(1), authorises, in the case of a literary, dramatic or musical work, *inter alia*, (i) reproduction of the work in any material form and (ii) adaptation of the work. “Adaption” is defined in Section 2(a) as being,

- (i) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise [*vide* sub-clause (ii)] and
- (ii) in relation to a literary work or a dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical [*vide* sub-clause (iii)].

Inasmuch as novelization of a screenplay does not involve either abridgement of the screenplay, or converting it into a version in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, novelization is not “adaptation” as defined in Section 2(a).

62.2 However, novelization would certainly involve reproduction of the screenplay in a material form. The Court of Appeals held, in *Francis Day & Hunter Ltd v. Bron*⁴², that “ “reproduction” need not be identical reproduction; it is enough if the alleged infringing work is substantially the same as the original work”. In similar terms, the

⁴² (1963) 2 All ER 16 (CA)

High Court of Madras, in *B.C.S. Bureau v. United Concern*⁴³, defined a reproduction as being “finally a representation in some form or by some means of the essential features of a thing”. The case of the plaintiff, in the suit, is that the impugned novel was a literal copy of the screenplay authored by Satyajit Ray. That being so, the novel is, clearly a “reproduction in material form” of the screenplay.

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)⁴⁴ 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.

⁴³ AIR 1967 Mad 381

⁴⁴ 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 term 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:

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

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.

Other pleas

63. Much emphasis was laid, by Mr Daswani, on the fact that all expenses with respect to the film “Nayak”, had been borne by the plaintiff. The plea cannot help the plaintiff. Copyright, in India, is a statutory dispensation. There can be no copyright *de hors* the Copyright Act. Mr. Daswani’s plea that all the monies, on the making of the film and its commercial exploitation, were spent by his client cannot, therefore, advance his case.

64. Mr Daswani also sought to rely on communications between the plaintiff and the defendant in which, according to him, the defendant had admitted that copyright in the screenplay of the film vested in his client. This, again, is a plea that leads nowhere, as copyright cannot be conferred by consent, *de hors* the law. Copyright must vest either in the person on whom the Copyright Act confers it, or on his assignee, to whom it has been assigned in accordance with Section 18

of the Copyright Act. Besides, I am unable to find, in the communications between the parties, any unequivocal acknowledgement, by the defendant, of the plaintiff's copyright in the screenplay of the film. On facts, too, therefore, Mr Daswani's submission fails to convince.

65. The decision in *Ramesh Sippy*⁷, on which Mr. Daswani relies, only held the producer to the “author” of the cinematograph film and, consequently, the first owner of copyright therein. There can be no cavil with the proposition; what, however, we are concerned with, is the copyright holder in the *screenplay* of the film.

66. The fact that the film is a scene by scene, line by line, transliteration of the screenplay, is but obvious, as that is what a screenplay is meant for. That, however, cannot detract from the legal position that emerges from the extant statutory provisions, which clearly envisage copyright in a cinematograph film being distinct and different from copyright in any literary work even if the literary work became a part, or the whole, of a film. Section 13(4) inhibits the former copyright from unseating the latter.

67. Particular reliance was placed by Mr Daswani on the judgment of the Supreme Court in *R.G. Anand*¹⁷. A bare reading of the judgment reveals why it has no application to the case before us. There, a playwright, who had authored a play, sought to sue the maker of a cinematograph film for having made the film based on the play without any license from him. Mr. Daswani stressed the following test to discern whether copyright infringement had taken place, postulated in para 46 of the said decision:

“3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.”

The observation has been relied upon, entirely out of context. In advancing his submission, Mr. Daswani ignores the fact that **R.G. Anand**¹⁷ was decided in the context of Section 2(1) read with Section 1(2)(d) of the Copyright Act, 1911, whereunder the dispute arose. Section 2(1) deemed copyright to be infringed “by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright”, and Section 1(2)(d) included, in the rights emanating from copyright, the right, “in the case of any literary, dramatic or musical work, to make ... any cinematograph film”. Thus, the making of a cinematograph film, of a literary or dramatic work, by a person, without licence from the author of the literary work, constituted infringement of copyright. We are not concerned, in the present case, with the making of any cinematograph film from the screenplay of the film ‘Nayak’ without authorization from the author of the screenplay. The case before us involves a lawful assignment, by the rightful copyright holder in the screenplay of the film ‘Nayak’, of the right to novelize the screenplay, which would amount to “reproduction of the work in any material form”. **R.G. Anand**¹⁷ cannot, therefore, help Mr. Daswani.

68. IPRS⁸, too, cannot help Mr. Daswani. The issue in controversy in that case has thus been captured by the Supreme Court, in the opening paragraph of the judgment:

“Whether in view of the provisions of the Copyright Act, 1957, an existing and future right of music composer, lyricist, is capable of

assignment and whether the producer of a cinematograph film can defeat the same by engaging the same person.”

More importantly, para 8 of the report identifies the “main point for determination” as being “whether the composer of lyric or musical work [which in terms of Section 2(p) of the Act means only a notationally written, printed or graphically produced or reproduced music] retains a copyright in the lyric or musical work *if he grants a licence or permission to an author (owner) of a cinematograph film for its incorporation in the sound track of a cinematograph film*”.

69. Further, the Supreme Court noted that Section 2(f) of the Copyright Act included, per definition, in the expression “cinematograph film”, “*the sound track, if any*”. The screenplay of the film, *per contra*, is by no means included in the definition of “cinematograph film”. Para 15 of the report proceeds, thereafter, to observe and hold as under:

“15. *The interpretation clause (f) of Section 2 reproduced above, which is not exhaustive, leaves no room for doubt when read in continuation with Section 14(1)(c)(iii) that the term “cinematograph film” includes a sound track associated with the film. In the light of these provisions, it cannot be disputed that a “cinematograph film” is to be taken to include the sounds embodied in a sound track which is associated with the film. Section 13 recognises “cinematograph film” as a distinct and separate class of “work” and declares that copyright shall subsist therein throughout India. Section 14 which enumerates the rights that subsist in various classes of works mentioned in Section 13 provides that copyright in case of a literary or musical work means inter alia (a) the right to perform or cause the performance of the work in public and (b) to make or authorise the making of a cinematograph film or a record in respect of the work. It also provides that copyright in case of cinematograph film means among other rights, the right of exhibiting or causing the exhibition in public of the cinematograph film i.e. of causing the film insofar as it consists of visual images to be seen in public and insofar it consists of sounds to be heard in public. Section 13(4) on which Mr Ashok Sen has leaned heavily in support of his contentions lays down that the copyright in a cinematograph film or a record 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 record is made. Though a conflict may at first sight seem to exist between Section 13(4) and Section 14(1)(a)(iii) on the one hand and Section 14(1)(c)(ii) on the other, a close scrutiny and a harmonious and rational instead of a mechanical construction of the said provisions cannot but lead to the irresistible conclusion that *once the author of a lyric or a musical work parts with a portion of his copyright by authorising a film producer to make a cinematograph film in respect of his work and thereby to have his work incorporated or recorded on the sound track of a cinematograph film, the latter acquires by virtue of Section 14(1)(c) of the Act on completion of the cinematograph film a copyright which gives him the exclusive right inter alia of performing the work in public i.e. to cause the film insofar as it consists of visual images to be seen in public and insofar as it consists of the acoustic portion including a lyric or a musical work to be heard in public without securing any further permission of the author (composer) of the lyric or musical work for the performance of the work in public. In other words, a distinct copyright in the aforesaid circumstances comes to vest in the cinematograph film as a whole which in the words of British Copyright Committee set up in 1951 relates both to copying the film and to its performance in public. Thus if an author (composer) of a lyric or musical work authorises a cinematograph film producer to make a cinematograph film of his composition by recording it on the sound track of a cinematograph film, he cannot complain of the infringement of his copyright if the author (owner) of the cinematograph film causes the lyric or musical work recorded on the sound track of the film to be heard in public and nothing contained in Section 13(4) of the Act on which Mr Ashok Sen has strongly relied can operate to affect the rights acquired by the author (owner) of the film by virtue of Section 14(1)(c) of the Act. The composer of a lyric or a musical work, however, retains the right of performing it in public for profit otherwise than as a part of the cinematograph film and he cannot be restrained from doing so. In other words, the author (composer) of a lyric or musical work who has authorised a cinematograph film producer to make a cinematograph film of his work and has thereby permitted him to appropriate his work by incorporating or recording it on the sound track of a cinematograph film cannot restrain the author (owner) of the film from causing the acoustic portion of the film to be performed or projected or screened in public for profit or from making any record embodying the recording in any part of the sound track associated with the film by utilising such sound track or from communicating or authorising the communication of the film by radio-diffusion, as Section 14(1)(c) of the Act expressly permits the owner of the copyright of the cinematograph film to do all these things. In such cases, the author (owner) of the cinematograph film cannot be said to wrongfully appropriate anything which belongs to the composer of*

the lyric or musical work. Any other construction would not only render the expresses provisions of clauses (f), (m), (y) of Section 2, Section 13(1)(b) and Section 14(1)(c) of the Act otiose but would also defeat the intention of the Legislature, which in view of the growing importance of the cinematograph film as a powerful media of expression, and the highly complex technical and scientific process and heavy capital outlay involved in its production, has sought to recognise it as a separate entity and to treat a record embodying the recording in any part of the sound track associated with the film by utilising such sound track as something distinct from a record as ordinarily understood.

The issue in *IPRS*⁸, therefore, bears no similarity, whatsoever, with the issue before me. The question that arose before the Supreme Court, in that case, was whether, having permitted, by contract, the producer of a film to include, in a film, the musical work made by him, the author of such musical work could injunct the public demonstration of the film, which contained his creation. The Supreme Court answered the question in the negative. *Even so, the Supreme Court clarified that the right of the creator of the musical work to otherwise commercially exploit the work stood preserved.*

70. Para 17 of *IPRS*⁸, on which Mr. Daswani placed especial reliance, reads thus:

“17. This takes us to the core of the question, namely, whether the producer of a cinematograph film can defeat the right of the composer of music ... or lyricist by engaging him. The key to the solution of this question lies in provisos (b) and (c) to Section 17 of the Act reproduced above which put the matter beyond doubt. According to the first of these provisos viz. proviso (b) when a cinematograph film producer commissions a composer of music or a lyricist for reward or valuable consideration for the purpose of making his cinematograph film, or composing music or lyric therefor i.e. the sounds for incorporation or absorption in the sound track associated with the film, which as already indicated, are included in a cinematograph film, he becomes the first owner of the copyright therein and no copyright subsists in the composer of the lyric or music so composed unless there is a contract to the contrary between the composer of the lyric or music on the one hand and the producer of the cinematograph film on the other. The

same result follows according to aforesaid proviso (c) if the composer of music or lyric is employed, under a contract of service or apprenticeship to compose the work. It is, therefore, crystal clear that the rights of a music ... composer or lyricist can be defeated by the producer of a cinematograph film in the manner laid down in provisos (b) and (c) of Section 17 of the Act.”

Proviso (b) to Section 17, in its plain terms, refers, insofar as cinematograph films are concerned, with the *making of a cinematograph film for valuable consideration at the instance of any person*. The decision, of the Supreme Court that, if the producer of a cinematograph film were to commission a music director or lyricist to compose the soundtrack for a film, proviso (b) would serve to divest the music director or lyricist of her, or his, copyright in the music or the lyric, which would then vest with the producer of the film, has apparently been returned, as is apparent from para 15 of the report, in the backdrop of Section 14(1)(c)(iii), which *confers, on the holder of copyright in the cinematograph film, i.e. the producer, the right to make any record embodying the recording in any part of the sound track associated with the film by utilising such soundtrack. No such right enures in the producer, qua the screenplay of the film.*

71. *IPRS*⁸, therefore, turns on an entirely distinct, and different, axis, and cannot help Mr. Daswani. One is only reminded of the exordium, by now trite, that, before applying a decision as a precedent, the factual and legal matrix in which the decision was rendered has to be borne in mind.

72. Several other decisions were cited, and have been noted in the body of this judgment. I do not deem it necessary to refer to each of them, however, as the propositions for which Mr. Daswani relied on the said decisions stand answered by the observations and findings

hereinabove, which are predicated on the plain words of the statute. Suffice it to state that I have not come across any judgment, of binding precedential value, with which my findings are not in conformity.

Conclusion

73. For the aforesaid discussion, the plaintiff has no right whatsoever, in law, to injunct the defendant from novelizing the screenplay of the film “Nayak”.

74. Accordingly, prayer (a) in para 34 of the plaint cannot be granted. It is accordingly, dismissed.

75. IA 9516/2021 which has been pressed only with respect to prayer (a) in para 34 of the plaint is, accordingly, allowed.

C.HARI SHANKAR, J

MAY 23, 2023

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