2025:DHC:567

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

\+ CS(COMM) 38/2025 & I.A. 1021/2025, I.A. 2163/2025

SAREGAMA INDIA LIMITED .....Plaintiff

Through: Mr. CM Lall, Sr. Adv. with Mr. Ankur Sangal, Ms. Sucheta Roy, Ms. Amira Dhawan, Ms. Shambhavi Mishra, Ms. Ananya Mehan, Ms. Samanyu Sethi, Advocates (M:9910113028)

versus

VELS FILM INTERNATIONAL LIMITED & ORS. .....Defendants

Through: Mr. K. Rigved Prasad, Ms. PS Deepika and Mr. V. Shreekumar, Advocates for D-1.
Mob: 9790913150
Email: advrigved@gmail.com
Ms. Anushree Rauta, Mr. Deepank Singhal, Ms. Anisha Shetty, Mr. Shwetank Tripathi, Advocates for D-2 (M:9782830038)
Mr. Manu Kulkarni, Mr. Ankit Parhar, Ms. Shloka Narayanan, Ms. Sriparna Dutta Choudhury, Advocates for D-3 (M:9871766591)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT

% 30.01.2025

I.A. 1021/2025 & I.A. 2163/2025

1. The present suit has been filed by the plaintiff against the defendants for infringement of its copyright in the literary and musical work of the song ‘En Iniya Pon Nilave’ from the cinematograph film ‘Moodu Pani’ in the cinematograph film ‘Aghathiyaa’, produced by defendant no. 1, which is

slated for release on 31st January, 2025. It is undisputed that the defendants have used the lyrics and music composition of the song in question and have caused a fresh recording of the same.

2. By this judgment, this Court shall decide the applications filed by the plaintiff and defendant no. 1 respectively, for grant of injunction and vacation of the interim order dated 16th January, 2025, pertaining to the rights of the parties in the song 'En Iniya Pon Nilave' from the cinematograph film 'Moodu Pani'. While the plaintiff claims right in the said song on the basis of assignment from the producer of the cinematograph film in question, the defendant no. 3 claims his right in the said song, being the music composer of the said song. Defendant no. 1 claims its right on the basis of agreement with defendant no. 3.

Facts of the case:

3. The case, as set up by the plaintiff, is as follows:

3.1 Plaintiff is *inter alia* engaged in the business of acquisition of copyright in sound recordings and literary, musical, dramatic works contained therein and distribution, sale and exploitation of the same through various modes and mediums.

3.2. The plaintiff was formerly known as 'The Gramophone Company of India Limited'. The plaintiff was also known as 'HMV' (His Master's Voice).

3.3 The plaintiff is in the business of music entertainment and has produced and/or acquired and therefore, owned and continues to own the copyright in many sound recordings, as well as musical and dramatic works, which form part of the said sound recordings.

3.4 The plaintiff owns a sizeable catalogue of films as well as a rich catalogue of film music and non-film music in Tamil as well as other

regional languages. The plaintiff enters into various license agreements with third parties to allow them to use the plaintiff's works.

3.5 Producer of the cinematograph film 'Moodu Pani', i.e., Raja Cine Arts, entered into an agreement dated 25th February, 1980 with the plaintiff (then known as 'The Gramophone Company of India Limited') through the plaintiff's agent, Saraswati Stores. Hence, as per the terms of the plaintiff's agreement, the plaintiff is the owner of the sound recordings and the musical and literary works in the songs of the cinematograph film 'Moodu Pani', including, the song 'En Iniya Pon Nilave'.

3.6 Recently, on 9th January, 2025, the plaintiff was shocked to come across a teaser of the cinematograph film 'Aghathiyaa', on various social media platforms, wherein, defendant nos. 1 and 2 were announcing the release of sound recording on 10th January, 2025, which proclaimed to be a 'recreation' of the song 'En Iniya Pon Nilave'.

3.7 Upon receiving knowledge of the same, the plaintiff immediately sent a cease-and-desist notice dated 10th January, 2025 to the defendant nos. 1 and 2 directing the said defendants to *inter alia* cease-and-desist from using/exploiting the plaintiff's copyrighted works, as well as from publishing the infringing song on various platforms.

3.8 However, despite receiving the legal notice from the plaintiff, the defendant nos. 1 and 2 proceeded to publish the infringing song on various streaming websites.

3.9 Defendant no. 1 vide Email dated 11th January, 2025, responded to the legal notice sent by the plaintiff and submitted that defendant no. 1 had taken a license to adapt, record/recreate and synchronize the original song 'En Iniya Pon Nilave' from the owner of the copyright in the said song and underlying works, i.e., defendant no. 3.

3.10 Thus, the present suit has come to be filed by the plaintiff alleging infringement of its copyright in the song in question by the defendants.

Proceedings before the Court:

4. When the present matter was listed for hearing on 16th January, 2025, on the basis of preliminary hearing and noting that the defendants had not appeared despite advance service, this Court restrained the defendants from releasing/publishing the song 'En Iniya Pon Nilave', on any platform or media, till the next date of hearing.

5. Thereafter, when the matter was taken up for hearing on the next date, i.e., 27th January, 2025, learned counsel appearing for defendant no. 2 submitted that it was merely the licensee, distributor and content manager of defendant no. 1. It was submitted on behalf of defendant no. 2 that in compliance of the order dated 16th January, 2025, the defendant no. 2 had already taken down the song in question from all the social media platforms. He further submitted that the defendant no. 2 undertakes to be bound by any order passed by this Court, which shall be duly complied with. Noting the said submission made by defendant no. 2 and binding the defendant no. 2 to the said statement, with the consent of the plaintiff, defendant no. 2 was deleted from the array of parties vide order dated 27th January, 2025.

Submissions by Plaintiff:

6. On behalf of the plaintiff, it has been submitted, as follows:

6.1 As per Section 17 of The Copyright Act, 1957 ("Copyright Act"), as well as various judicial pronouncements, it is settled law that the producer of a cinematograph film or a sound recording is the first owner of the copyright in the sound recordings, literary works, musical works and other works, which form a part of the said cinematograph film. Thus, producer of the cinematograph film has all the rights granted to an owner of copyright over

the musical and literary works in a cinematograph film, including, the right to assign the same to another entity.

6.2 As per the terms of the plaintiff's agreement with the producer of the cinematograph film 'Moodu Pani', the plaintiff is the owner of the sound recordings and musical and literary works in the songs of the cinematograph film 'Moodu Pani', including the song 'En Iniya Pon Nilave'.

6.3 Defendant no. 3 was the music composer and hence, the author of the musical work of the original song. However, as the original song was made for and is part of the cinematograph film 'Moodu Pani', it is the producer of the said cinematograph film who was the first owner of the copyright in the musical work and literary works of the original song. As the said producer assigned all the copyrights in the original song to the plaintiff, the plaintiff is the subsequent owner of the copyright in the literary and musical works in the original song and not the defendant no. 3. Thus, the defendant no. 3 did not have the right to issue any license in favour of the defendant no. 1 in relation to the musical work of the original song.

6.4 Defendant no. 3 is not the author of the literary work, i.e., the lyrics of the original song. Therefore, defendant no. 3 cannot claim any rights in the literary work of the original song. In view thereof, defendants are illegally exploiting the plaintiff's copyrighted works and are taking benefit of the copyright, which is owned by the plaintiff.

6.5 The infringing song cannot be called an adaptation, as the defendants have neither made any arrangement nor transcription of the work in terms of the definition of adaptation as given in the Copyright Act.

Submissions by Defendant No. 1:

7. Per contra, on behalf of defendant no. 1, it has been submitted as follows:

7.1 Defendant no.3 is the composer of the original song and is accordingly the author and owner of the underlying musical work.

7.2 Defendant no.1 is the producer of the cinematograph film 'Aghathiyaa' and for the same purpose, has created a new sound recording, which is an adaptation of the original song. Defendant no.1 has invested significant monies, engaged a music composer to compose the adaptation and also funded the orchestra and synchronization of the adaptation. Hence, the ownership of the new sound recording of the adaptation and the right to exploit the new sound recording, enures to the benefit of defendant no. 1.

7.3 Defendant no.1 is a *bona fide* third party licensee of the underlying musical and literary work, by virtue of license agreement dated 17th March, 2023, and has paid a sum of Rs. 5,40,000/- to defendant no. 3, as consideration.

7.4 Section 13(4) of the Copyright Act aims to protect the copyright of the original author in the musical or literary work. Defendant no. 1 herein, specifically, has the right to make an adaptation of the work in terms of Section 14 of the Copyright Act.

7.5 Reliance on Section 17 by the plaintiff to claim ownership over all the rights granted to an owner of copyright over the musical and literary works, is therefore, completely unfounded and contrary to the Copyright Act.

7.6 Reliance is placed on the judgment in the case of ***RDB and Co. HUF Versus Harper Collins Publishers India Pvt. Ltd., 2023 SCC OnLine Del 3046***, wherein, in the context of a conflict between the producer of the film and the author of the screenplay/ literary work, it was held that by operation of Section 13(4), copyright in the screenplay as a literary work, cannot be affected by the separate copyright in the cinematograph film itself.

7.7 The aforesaid judgment in the case of ***RDB (supra)*** was upheld by the

Division Bench by its order dated 11th August, 2023 passed in ***FAO(OS)(COMM) 167/2023, RDB and Co. (HUF) Versus Harper Collins Publishers India Pvt. Ltd***. In the said order, the Division Bench held that the producer of the film could not have possibly claimed a supervening right in the screenplay in the light of the clear language and intent of Section 13(4) of the Copyright Act.

7.8 The claim of the plaintiff is erroneous and unfounded and would effectively render Section 13(4) of the Copyright Act otiose.

7.9 Claim of the plaintiff that the original authors would be entitled to retain their rights under Section 14(1)(a) of the Copyright Act only after 2012, in view of the fact that proviso to Section 17 was inserted in 2012, is liable to be rejected. Such an interpretation is contrary to the judgment in the case of ***RDB (supra)*** and also the law, as laid down by Supreme Court. Such an interpretation would again render Section 13(4) of the Copyright Act otiose, since Section 13(4) was in force since 1957.

7.10 Proviso to Section 17, as inserted in the year 2012, is only clarificatory and does not confer any new right, which is evident from the wording of the said Section.

7.11 Plaintiff has conceded that rights under Section 14(1)(a), other than the right to make a cinematograph film/ sound recording, are retained by the original author of the underlying musical and literary work.

7.12 The *bona fide* of defendant no. 1 is evident from the fact that by Email dated 11th January, 2025, in reply to the legal notice of the plaintiff dated 10th January, 2025, defendant no. 1 clearly stated that it was always ready for an amicable solution for the issue.

7.13 The ownership over the right to adaptation subsisting in the original underlying musical and literary work, vests with the author. Thus, the

plaintiff has miserably failed to establish any *prima facie* case against the defendant. Thus, the present application is liable to be dismissed.

Submissions by Defendant No. 3:

8. On behalf of defendant no.3, it has been submitted as follows:

8.1 Defendant no. 3 owns the 'musical work' and has rights in relation to the said musical work, including, the right to create 'Adaptation' under Section 14(1)(a)(vi) of the Copyright Act.

8.2 This is a case of adaptation of musical work, in which the right lies with the author of the music, i.e., defendant no. 3, who is the music composer.

8.3 Under Section 17 of the Copyright Act, the author of the work is the first owner of the Copyright. In relation to musical work, composer is the author. Defendant no. 3 being the author of the musical works in the song, he is the first owner of the copyright in the musical work in the song.

8.4 Defendant no. 3 has all the rights under Section 14(1)(a) of the Copyright Act, including, reproducing the work in material form, issuing copies of work to the public, performing the work in public or communicating it to the public, making a cinematograph film or sound recording based on the work.

8.5 Section 14(1)(a)(vi) specifically permits defendant no. 3 to make any adaptation of the musical work. In the present case, plaintiff admits that the defendant no. 3 has adapted the musical work in the song.

8.6 Plaintiff has not shown that defendant no. 3 assigned any copyright under Section 14(1)(a) of the Copyright Act, except the limited right of using the 'musical work' for synchronization for the cinematograph film. No right of adaptation was assigned either to plaintiff or any other person.

8.7 Section 13(4) of the Copyright Act specifically protects the separate

copyright in the musical work, even if it is included in a cinematograph film or sound recording.

8.8 The plaintiff cannot take advantage of Section 17 of the Copyright Act as the necessary pleadings in regard thereto are missing from the plaint. The plaintiff was required to state that the work in question was created at the instance of a person, for valuable consideration. Plaintiff cannot rely on clause (b) of the first proviso to Section 17, because defendant no. 3 was not commissioned by the producer of the film/plaintiff.

8.9 Plaintiff has not demonstrated the essential requirements to claim ownership of the copyright in musical works, under Clause (b) of the first proviso to Section 17, i.e., that the musical work was made for valuable consideration at plaintiff's or producer's instance. Further, Section 17 of the Copyright Act does not state that if valuable consideration is given, the composer of music is divested of his right. The music composer being the author of the work has a right to create and make an adaptation of a song.

8.10 Defendant no. 3, has time and again, asserted that most of his musical works were made at his own instance and were later incorporated in the cinematograph film after his assent, made pursuant to the request of the directors or producers of the movies concerned.

8.11 The decision of Supreme Court relied upon by the plaintiff, is wholly distinguishable because the Supreme Court did not consider the issue on whether musical works could be adapted by the composer even after it was synchronized in a cinematograph film.

8.12 The defendant no. 3 is claiming right from the date of the amendment of Section 17 in the year 2012. The 2012 amendment applies to the present case, at least, on and from 21st June, 2012, the date on which the amendment came into force. By virtue of second proviso to Section 17, defendant no. 3's

copyright in the musical work is intact and not defeated by plaintiff's right in the cinematograph film.

8.13 Defendant no. 3, being the music composer, had certain right earlier prior to the amendment of Section 17. Subsequently, the legislature has conferred more rights upon the author of a work. The 2012 amendment was made specifically to benefit the authors of musical and literary works. Therefore, the amendment is beneficial legislation for authors of musical and literary works.

8.14 Bombay High Court in the case of ***Indian Performing Rights Ltd. Versus Rajasthan Patrika, 2023 SCC OnLine Bom 944***, held that the 2012 amendment nullifies the effect of provisos (b) and (c) of Section 17 of the Copyright Act.

8.15 Defendant no. 3 is the owner of the musical work. Thus, he has all the rights in terms of Section 14 of the Copyright Act.

8.16 Proviso to Section 17 only refers to Section 13(1) of the Copyright Act and does not affect the rights of defendant no. 3 under Section 14 of the Copyright Act which defines copyright.

8.17 From a plain reading of the 2012 amendment, it is clear that it is intended to apply to existing agreements/rights.

8.18 Raja Cine Arts cannot assign defendant no. 3's copyright in the musical works of the song of the plaintiff, when it did not possess the said rights.

Findings and Analysis:

9. I have heard learned counsel for the parties and have perused the record.

10. The basic question that this Court is called upon to decide is as to whether the copyright in the song 'En Iniya Pon Nilave' from the

cinematograph film 'Moodu Pani', vests in the plaintiff, in view of the assignment in its favour by the producer of the movie 'Moodu Pani'; or as to whether the copyright of the same vests with defendant no. 3, the music composer of the song in question.

11. In order to decide the issue in question, it would be apposite to refer to the scheme of the Copyright Act, which elucidates the various works in which copyright subsists.

12. Various amendments were carried out in the Copyright Act from time to time. Since in the present case, the agreement on the basis of which rights are being claimed by the plaintiff, is of the year 1980, the provisions of the Copyright Act prior to amendment, shall be applicable.

13. Copyright is defined in Section 14 of the Copyright Act. In case of musical work, copyright has been defined to mean the exclusive right to do the following:

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 an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi);

14. However, the rights pertaining to copyright, in terms of Section 14 of

the Copyright Act, are subject to the other provisions of the said Act. Meaning thereby, the exclusive rights which are conferred as owner of copyright, are subservient to the other provisions of the Copyright Act and the said rights are not absolute.

15. Section 14(1)(a) of Copyright Act, pertaining to copyright in musical work, reads as under:

> ***14. (1)*** *For the purposes 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 an adaptation of the work any of the acts specified in relation to the work in clauses (i) to (vi);*
> > >
> > > *xxx xxx xxx"*
> >
> > *(Emphasis Supplied)*

16. Section 13 of the Copyright Act provides that copyright shall subsist throughout India, in the following classes of works:

a. Original literary, dramatic, musical and artistic works

b. Cinematograph films

c. Records

17. Section 13(4) further provides that 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, as the case may be, the record

is made. The rights, as conferred under Section 13 of the Copyright Act, are again subject to the other provisions of the Copyright Act. Thus, copyright is not an absolute right and would be subject to the various provisions of the Copyright Act.

18. Relevant provisions of Section 13 of the Copyright Act, are reproduced as under:

> ***13. (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)* ***records****.*
>
> *xxx xxx xxx*
>
> *(4)* ***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****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

19. Author of a work has been recognized as the first owner of the copyright. As per definition of author, as given in the Copyright Act, in relation to a musical work, the composer is the author. In relation to a cinematograph film or sound recording, the producer of the film, is the author. The definition of author as given in Section 2(d) of the un-amended Copyright Act, is reproduced as under:

> *2. In this Act, unless the context otherwise requires,—*
>
> *xxx xxx xxx*
>
> *(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****; and*

(vi) ***in relation to a record, the owner of the original plate from which the record is made, at the time of the making of the plate****;*

xxx xxx xxx"

(Emphasis Supplied)

20. Cinematograph film has been defined to include the soundtrack, including, any work produced by any process analogous to cinematography. Section 2(f) of un-amended Copyright Act defines cinematograph film as follows:

"2. ……

xxx xxx xxx

(f) ***"cinematograph film" includes the sound track, if any, and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography****.*

xxx xxx xxx"

(Emphasis Supplied)

21. As per Section 17 of the Copyright Act, subject to other provisions of the Act, the author of a work is the first owner of the copyright. Thus, a music composer shall be the first owner of the copyright therein, however, subject to other provisions of the Copyright Act. However, in terms of Section 17(b) of the Copyright Act, in the case of a cinematograph film made for valuable consideration at the instance of any person, in the absence any agreement to the contrary, producer of such cinematograph film becomes the first owner of the copyright in the sound track associated with the film.

22. Under the Scheme of the Copyright Act, the copyright in the cinematograph film vests with the producer of the film, which includes, the soundtrack of the cinematograph film. Section 17 of the un-amended

Copyright Act, reads as under:

> *17.* ***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 instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein****;*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

23. Thus, as per Section 17 of the Copyright Act, the producer of a cinematograph film or a sound recording, is the first owner of the copyright in the sound recordings, literary works, musical works and other works, which form a part of the said cinematograph film. Accordingly, in view of the agreement dated 25th February, 1980 between the producer of the cinematograph film Moodu Pani with the plaintiff, the copyright in the sound recordings and the musical and literary works of the songs of the cinematograph film Moodu Pani, came to vest in the plaintiff. As per the terms of the plaintiff's agreement dated 25th February, 1980, the plaintiff is the owner of the sound recordings and the musical and literary works in the songs of the cinematograph film 'Moodu Pani', including the song 'En Iniya

Pon Nilave'.

24. Reference in this regard may be made to the judgment of the Supreme Court in the case of ***Indian Performing Right Society Ltd. Versus Eastern Indian Motion Pictures Association and Others, (1977) 2 SCC 820***. In the said judgment, the Supreme Court has categorically held that the producer of a cinematograph film can defeat the right of the composer of music by engaging him. It has been held that when a cinematograph film producer commissions a composer of music for valuable consideration for the purpose of making his cinematograph film or composing music, the sounds for incorporation or absorption in the soundtrack associated with the film, are included in a cinematograph film. In such case, the producer of the cinematograph film, becomes the first owner of the copyright therein and no copyright subsists in the composer of the music so composed, unless there is a contract to the contrary between the composer of the music and producer of the cinematograph film. Thus, Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> *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 therefore 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****. We are fortified in this view by the decision in Wallerstein v. Herbert [(1867) Vol. 16 Law Times Reports 453] relied upon by Mr Sachin Chaudhary where it was held that the music composed for reward by the plaintiff in pursuance of his engagement to give effect to certain situations in the drama entitled "Lady Andley's Secret", which was to be put on the stage was not an independent composition but was merely an accessory to and a part and parcel of the drama and the plaintiff did not have any right in the music.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

25. The aforesaid judgment has been relied upon by the Supreme Court and followed in a subsequent judgment in the case of ***International Confederation of Societies of Authors and Composers (ICSAC) Versus Aditya Pandey and Others, 2016 SCC OnLine SC 967***.

26. It is to be noted that in view of the provisions of Section 13(4) of the Copyright Act, which states categorically that copyright in a cinematograph film or a record shall not affect the separate copyright in any work in respect of which, the film or the record, is made, the defendant no. 3 as the music composer, is entitled to perform various acts as copyright owner in terms of Section 14(1)(a) of the Copyright Act, otherwise than as a part of a cinematograph film.

27. The defendant no. 3, as music composer of the song in question, in view of Section 17, proviso (b) of the Copyright Act, has already exhausted his right under Section 14(1)(v) of the Copyright Act. However, the defendant no. 3 is entitled to carry out all the other acts in terms of Section 14(1)(a) of the Copyright Act, except to make any cinematograph film or a record in respect of the musical work.

28. Thus, dealing with the rights of a music composer in relation to Section 13(4) and Section 14(1)(a) of the Copyright Act, Supreme Court in the case of ***Indian Performing Right Society Ltd. (supra)***, has held as

follows:

> *"xxx xxx xxx*
>
> *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 of 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.*

xxx xxx xxx"

(Emphasis Supplied)

29. Considering the definition of author, as given in Section 2(d) and provisions of Section 17 proviso (b) of the Copyright Act, it is clear that in case of soundtrack/sound recording, which forms part of a cinematograph film, the producer of the film is the author, who shall be the first owner of the copyright therein, in the absence of any agreement to the contrary. However, the right of the composer of the music shall be safeguarded in terms of Section 13(4) and 14(1) of the Copyright Act, otherwise than as a

part of the cinematograph film. Meaning thereby, the rights of the music composer, which is part of a cinematograph film, in terms of Section 14(1) of the Copyright Act, shall include the right to carry out all the acts, except to make any cinematograph film or a record in respect of the work as envisaged under Section 14(1)(v), as the said right of the music composer gets exhausted in terms of Section 17 proviso (b) of the Copyright Act.

30. It is also to be noted that the copyright in the song, which vests with a producer of the film, includes the musical work, the literary work, i.e., the lyrics, and the sound recording, which includes, musical composition as well as lyrics. The defendant no. 3, as the music composer, has no copyright over the literary work, i.e., the lyrics or the sound recording. Therefore, having no rights over the lyrics of the song, there is no question of defendant no. 3 having any right to assign rights in the lyrics of the song to a third party. In the present case, on the basis of the agreement with defendant no. 3, the defendant no. 1 has used the lyrics and musical composition of the song, in order to recreate the sound recording of the said song. In the absence of any rights in the lyrics of the song, the defendant no. 3 was not entitled to assign any right with respect thereto. Thus, on this account also, the defendant no. 1 is not entitled to claim any right on the basis of an agreement with the defendant no. 3.

31. This Court cannot accept the contention of defendant no. 3, i.e., the music composer, that in view of second proviso to Section 17, which has been inserted by way of amendment of the year 2012, he shall have right with effect from 2012. It is to be noted that in terms of the second proviso to Section 17, which has been inserted in the year 2012, in case of any work incorporated in a cinematograph work, the same shall not affect the rights of the author in the work. The second proviso to Section 17, as inserted by the

amendment of 2012, reads as under:

> ***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:*
>
> *xxx xxx xxx*
>
> *[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.]*

32. Thus, as per the second proviso of Section 17, which has been inserted by way of an amendment of 2012, the right of a music composer of a song which is part of a cinematograph film, will not be affected. Accordingly, after the amendment of 2012, only if the music composer enters into a specific agreement with the producer of the film, that his rights shall be transferred to the producer of the cinematograph film. However, the present case pertains to a work before the 2012 amendment, and therefore, the said amendment is not applicable to the present case. The said amendment is prospective in nature and cannot be considered to operate in a retrospective manner.

33. As regards the contention that the song in question is in the nature of adaptation in terms of Section 14 of the Copyright Act, the same is totally misplaced. 'Adaptation' has been defined in Section 2(a) of the Copyright Act in relation to a musical work, any arrangement or transcription of the work. In relation to the music composition, 'adaptation' would connote arrangement of the music. However, in the present case, it is undisputed that the defendants have used the lyrics and music composition of the song in question and have caused a fresh recording of the same. In the absence of any right over the lyrics of the song, defendant no. 3, as the music composer, had no right to cause the use of the lyrics and claim the same to be adaptation of his work, which was confined to only music composition and

not the literary work, i.e., the lyrics of the song.

34. It is undisputed that the defendant no. 3 is only the music composer and not the lyricist of the song in question. Therefore, the defendant no. 3 by no terms, can be considered as the author of the lyrics of the song in question, which forms part of the sound recording, in which the plaintiff has copyright in terms of agreement with the producer of the film in question. Thus, the defendant no. 3 had no authority to assign any right for use of the lyrics of the song, on which he has no copyright.

35. Similarly, recognizing the right of a producer of a sound recording, Bombay High Court in the case of ***Music Broadcast Private Limited Versus Indian Performing Right Society Limited, 2011 SCC OnLine Bom 953***, has held as follows:

> *"xxx xxx xxx*
>
> *93. The author of a literary work is the author of the work [section 2(d)(i)]. The composer is the author of a musical work [section 2(d)(ii)].* ***Section 17 provides "subject to other provisions of this Act, the author of a work shall be the first owner of the copyright therein." Thus, the first owner of the copyright in a literary work and a musical work are the author of the literary work and the composer of the musical work respectively****. Under section 14(1)(a)(iv), the composer of a musical work and the author of a literary work have the exclusive right to make or authorise the making of a cinematograph film or a sound recording in respect of their works. Once this is appreciated, it becomes clearer that the judgment of the Supreme Court applies to a sound recording with the necessary adaptations.* ***Thus, once the author of a lyric or a musical work parts with a portion of his copyright by authorising the producer of a sound recording to make a sound recording in respect of his work and thereby to have his work incorporated or recorded in a sound recording, the producer of the sound recording acquires by virtue of section 14(1)(e) of the Act, a copyright which gives him the exclusive right stipulated in section 14(1)(e) which includes the right to communicate the sound recording to the public. A distinct copyright comes to vest in the sound recording as a whole****. I see no reason why if this is the case for cinematograph films, it is not so in respect of a sound recording.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

36. The judgment relied upon by the defendants in the case of ***RDB (supra)*** is clearly distinguishable and does not apply to the facts and circumstances of the present case. The said judgment related to copyright in a screenplay and not musical and literary works incorporated in a sound recording/cinematograph film. The defendant in the said case was making a novel out of a screenplay of the original cinematograph film. The defendant was not making a new cinematograph film out of the screenplay. Whereas, in the present case, the defendant no.1 has made a new sound recording using the music and lyrics of the original song, for a cinematograph film.

37. Similarly, the judgment in the case of ***Rajasthan Patrika (supra)*** relates to the payment of royalties to the copyright societies for lyricists and composers. The said case deals with the issue of right of the authors to receive royalties for utilization of their works in any form. The said judgment does not give any finding regarding who owned the said rights prior to 2012. Therefore, the said judgment is distinguishable and not applicable to the present case.

38. In view of the aforesaid detailed discussion, the plaintiff has made out a *prima facie* case that as per the terms of the plaintiff's agreement with the producer of the cinematograph film 'Moodu Pani', the plaintiff is the owner of the sound recordings and musical and literary works in the songs of the cinematograph film 'Moodu Pani', including the song 'En Iniya Pon Nilave'. Accordingly, it is held that the defendant no. 1 cannot use the said song, as recorded by it, without license from the plaintiff.

39. However, considering the submissions made before this Court, this Court is of the view that balance of convenience lies in favor of the defendant no. 1, as the movie produced by defendant no.1, i.e., 'Aghathiyaa', where the song in question has been used, is slated for release

on 31st January, 2025. This Court further notes the submission of the defendant no. 1 that it has invested significant moneys for recreation of the sound recording of the song in question. Thus, this Court is of the view that irreparable loss shall be caused to the defendant no. 1, if it is restrained from using the song, which already forms part of its cinematograph film, 'Aghathiyaa'.

40. During the course of hearing, learned Senior Counsel appearing for the plaintiff had indicated an amount of Rs. 30 Lac, as license fee for the song in question, and had stated that the plaintiff had no objection if the defendant no. 1 pays the said amount to the plaintiff.

41. Considering the facts and circumstances of the present case, it is directed that the defendant no. 1 shall be allowed to use the song in question in its cinematograph film, subject to deposit of Rs. 30 Lac with the Registrar General of this Court, within a period of two days. The said amount shall be deposited by the defendant no. 1 with the Registrar General of this Court, without prejudice to its rights and contentions, as the rights and contentions of both the parties are left open, which are subject matter of final adjudication.

42. It is further clarified that the observations made in the present judgment, are only *prima facie* in nature and nothing contained herein shall be construed as an expression on the merits of the case.

43. This Court further notes the submission of defendant no.1 that it does not intend to pay any further amount, as it has already paid substantial amount to defendant no. 3. Thus, in case the defendant no. 1 does not intend to deposit the aforesaid amount, as directed by this Court, the defendant no. 1 shall stand injuncted from using the song in question, in its cinematograph film, 'Aghathiyaa'.

44. The present applications are disposed of, in the aforesaid terms.

MINI PUSHKARNA, J

JANUARY 30, 2025
AK/KR