CHAPTER: 5

CASE STUDY AND ANALYSIS WITH REFERENCE TO COPYRIGHT
The importance of Judiciary in a democratic set up for protection of personal and proprietary rights can hardly be overestimated. The principal function of Judiciary is to provide legal protection and remedies against infringement of personal and property rights of persons.

The copyright for their effectiveness depend upon the speed with which they can be enforced by the courts. The statutory provisions provide only a modicum of direction as regards the nature of remedies and the procedure for safeguarding them, leaving a large extent of free play within the province of judges.

Infringement of copyright is a tortuous invasion of property in general. The common law has developed several heads of liability constituting the economic torts. ‘Their general characteristics are that the defendant must be acting intentionally or recklessly; that the plaintiff must suffer or be about to suffer damage; and that they will not apply if some ground of justification is open to the defendant’. Before statutory provisions in respect of these rights were enacted the remedy was the award of damages by the common law courts, and, remedy by way of injunction was developed by the equity courts.

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Copyright is inchoate property when manifested in a legally recognizable way. Property right till the deletion of Article 19(1)(f) and Article 31 of the Constitution of India by 44th amendment, 1978, was a fundamental right for citizens, but now placed under Article 300-A, it is separately notified as a Constitutional right ensuring that no person can be deprived of his property save by the authority of law.

5.1 CONSTITUTIONAL MANDATE ASSURING EQUALITY:

Even though certain important fundamental rights including right to carry on any trade or business are guaranteed only to citizens, all persons including non-citizens can claim equality before the law and equal protection of the laws. Therefore, any arbitrary discrimination against a person, who is a non-citizen qua his claim to be treated equally as others before the law, can be challenged before the Courts.

Recourse to Court by law is a well recognized concept world over and firmly entrenched in the Constitutional and other laws of India. Therefore, any person can claim a statutorily or customarily recognized right to property. In case of infringement of a legally recognized right recourse to law cannot be denied and the rule of law enshrined in Article 14 of the Constitution will enable any person including a non-citizen to approach the legal forum of the country for redressal of his grievances. In India, as provided by Section 83 of the Code of Civil Procedure alien friends may sue in any Court otherwise competent to try the suit, as if they were citizens of India. The alien enemies residing in India or in a foreign country shall not be allowed to sue in any such Court without permission of the Central Government.

Ordinarily, infringement of copyright has a private dimension in as much as it affects the proprietary rights of individuals and may cause financial loss and loss of credit to the owner. Therefore, the question of national or public interest

333 Article 14 of the Constitution of India.
would rarely arise when redressal is sought by a non-citizen for violation of such proprietary rights by the infringer. The judiciary is under an obligation to implement the laws and redress grievances of all persons including aliens to uphold their common law or statutorily recognized rights.

5.2 CONSTITUTIONAL DIRECTIVES ADMIRING INTERNATIONAL LAW:

As provided by Article 51(c) of the Constitution of India, the State is under a constitutional directive to endeavour to foster respect for international law and treaty obligations in the dealings of the organized peoples with one another. Though the directive principles of State Policy are non-justiciable rights, nevertheless, they are fundamental in the governance of the Country. The definition of 'State' given in Article 12 of the Constitution relating to Fundamental Rights and incorporated in Article 36 which contains the Directive Principles of State Policy covers judicial and quasi-judicial authorities also. Therefore, the courts in India are obliged to endeavour to foster respect for international law and obligations under the international treaties.

The constitutional concern for respecting international laws including international treaties and conventions is also reflected under Article 253 which, notwithstanding the distribution of legislative powers between the Federal Union and the States, empowers the Parliament to make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other Country or Countries or any decision made at any international Conference, association or other body. The Parliament is under Article 246 read with entry 14 of the Union List of subjects on which it can legislate contained in Schedule VII of the Constitution, empowered to legislate with respect to the subject of entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with
foreign countries. However, barring treaties which require legislation to be made, the international agreements entered into by the Union in exercise of its executive power under Article 73 which are not contrary to law are required to be recognized by the Municipal Courts. For entering into treaty or bringing it in force for India, it is not a Constitutional requirement that the executive should have the support of Parliamentary legislation.\footnote{Maganbhai vs Union of India, AIR 1969 SC 783.} The copyright along with other intellectual properties like inventions, patent, trademarks, design and merchandise marks is assigned to the Parliament under entry 49 of the Union List for the purpose of legislation.

### 5.3 INDEPENDENT INTEREGATED JUDICIAL SYSTEM:

India has a highly developed judicial system with the Supreme Court having plenary powers\footnote{Article 142 of the Constitution of India.} to make any order for doing complete justice in any cause or matter and a mandate in the Constitution,\footnote{Article 144 of the Constitution of India.} to all authorities, Civil and Judicial, within the territory of India to act in aide to the Supreme Court. The scope of Writ Jurisdiction of the High Courts\footnote{Article 226 of the Constitution of India.} is wider than traditionally understood and the judiciary is separate and independent of the executive to ensure impartiality in the administration of justice. The judiciary has a central role to play in this thriving democracy and shuns arbitrary executive action. The higher judiciary has been empowered to pronounce upon the legislative competence of the law making bodies and the validity of a legal provision. The range of judicial review recognized in the higher judiciary in India is the widest and most extensive known to any democratic set up in the world.

The Civil Courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.\footnote{Section 9 of the Code of Civil Procedure.} The exclusion of jurisdiction of a Civil Court to entertain civil causes is not readily
inferred and there is a presumption in favour of the jurisdiction of a Civil Court. As noted above aliens may sue in any court as if they were citizens of India. Therefore, in respect of violation of any property rights including intellectual property rights any aggrieved person can resort to remedies available under the Indian law in any court which has jurisdiction in the matter affected. Aliens and Foreign Corporation can invoke the principle of equality before the law enshrined under Article 14 of the Constitution of India which applies to 'any person' and is not limited to citizens. This should allay any doubts in the International Community about the protection of the legitimate interests of their nationals who may have to seek redressal in this country, of their grievances against violation of their legal rights.

5.4 COURT'S POWER UNDER THE PRESENT COPYRIGHT LAW:

The Courts in India are empowered under the municipal laws to grant reliefs against violation of Intellectual Property rights including copyright, and the parameters reflected in Part III of the TRIPs agreement are already adopted enabling the courts to protect these private rights. This can be briefly outlined:

The civil proceedings in respect of the infringement of copyright or any other rights conferred by the Copyright Act can be instituted in the District Court having jurisdiction. The civil remedies available for the infringement of the copyright are by way of injunction, damages, accounts of profit and otherwise as are or may be provided by law for such infringements. There is a rebuttable presumption that the person, whose name appears on the work or the copies of the work, as published, is the author or the publisher of the work, as the case may be. Independently of his copyright, the author of a work has a

339 Section 83 of the Code of Civil Procedure.
341 Section 62 of the Copyright Act 1957.
342 Section 55 of the Copyright Act 1957.
343 Section 55(2) of the Copyright Act 1957.
special right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other act which is done before the expiration of the term of copyright if such deviation would be prejudicial to the honour or reputation of the author.\textsuperscript{344} The infringing material (copies and plates) will be deemed to be the property of the owner of the copyright.\textsuperscript{345} Remedy in the case of groundless threat of legal proceedings, is by way of a declaratory suit that the infringement alleged was in fact not infringement of any legal rights of the person making such threats. The court can grant an injunction against continuance of groundless threats and award damages for the loss sustained by the owner by reason of such threats, except where the person making such threats with due diligence commences and prosecutes an action for infringement of the copyright claimed by him.\textsuperscript{346}

Though, no copyright can be claimed except as provided by the Act, it is specifically provided that there will be no abrogation of any right or jurisdiction to restrain a breach of trust or confidence.\textsuperscript{347}

The Central Government by Section 40 of Copyright Act, 1957, is empowered to direct that all or any of the provisions of the Copyright Act shall apply to foreign works. The government has made the International Copyright Order, 1991 applying the provisions of the Copyright Act as indicated in paragraph 3 of the Order, except those of Chapter VIII relating to Rights of Broadcasting Organisation and of Performers and the provisions which apply exclusively to Indian Works, to the Bern Conventions Countries and the Universal Copyright Convention Countries.

5.5 **ANALYSIS OF CASES:**

Indian Judiciary is proactive one and benevolently responded to avert any sort of injustice or malpractices etc. It has rightly reacted in the area of copyright

\textsuperscript{344} Section 57 of the Copyright Act 1957.
\textsuperscript{345} Section 58 of the Copyright Act 1957.
\textsuperscript{346} Section 60 of the Copyright Act 1957.
\textsuperscript{347} Section 16 of the Copyright Act 1957.
also. It has not only taken the books of law but also considering the social demands in discharging their responsibility for protection of national property, bestowed to them in terms of protection of the dynamic nature of law. The Courts are not only protecting the rights of the owners or authors but also providing splendid mechanism for the protection of the copyright from infringers. The analysis of the following cases as decided by different Higher Courts in respect to the infringement of copyright will show the real development on law regarding copyright protection:

5.5.1 **MACMILLAN & ANOTHER CASE** 348

**Facts and Analysis of the Case:**

Macmillan and Company had published a book called 'The Golden Treasury of the Best Songs and Lyrics' which was a selection made by Professor Palgrave from the poems of numerous English authors of various periods. This book was very popular and there were several editions to this book. It was alleged that the defendants published a similar book containing the same poems. In this case the Court dealt with the question whether the Court can grant a copyright for the selection of original works?

**Analysis of Case:**

The Court held:

"In the case of works not original in the proper sense of the term but composed of or compiled or prepared from materials which are open to all, the fact that one man has produced such a work does not take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him. But, as the law is concisely stated by Hall, V.C., in Hogg Vs Scott (1), "the true principle

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348 Macmillan and another Vs Suresh Chunder Deb, ILR (1890) 17 Calcutta 951.
in all these cases is that the defendant is not at liberty to use or avail himself of the labour which the plaintiff has exerted for the purpose of producing his work, that is, in fact, it would amount to taking away a man's labour, or, in other words, his property."

Thus, anyone can use the publicly available materials to develop new ideas or creations. In doing new things by taking the assistance of the materials which are open to all, no question of copyright infringement will arise. The person who has invested labour and idea to create a new thing by taking resources available for open use will, of course, get the monopoly right over his creation.

5.5.2 UNIVERSITY OF LONDON CASE

Facts and Analysis of the Case:

It was held that the papers set up by the examiners were literary work within the meaning of the Copyright Act 1911. The court in this case was concerned with the question as to whether the question paper set up by the examiners was original work of the plaintiffs in that case.

According to the Court, the word 'original' did not in that connection meant that the work must be the expression of original inventive thought. Copyright Acts are not concerned with the originality of ideas but with the expression of thought, and, in the case of literary work, with the expression of thought in print or writing. It was held that the plaintiffs in that case had proved that they had thought out the questions which they set and that they made notes or memoranda for future questions which they set. The papers which they prepared originated from themselves and were within the meaning of the Act, the original creator is countering the arguments that the questions in the elementary papers are of common type, the Court held that most elementary

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books of mathematics may be said to be a common type, but that fact would not give impunity to a predatory infringer. The book and the papers alike originate from the author and are not copied by him from another book or other papers. After all, there remains the rough practical test that what is 'worth copying is _prima facie_ worth protecting'.

Thus, the main theme here is that the copyright law has nothing to do with the original idea moreover, it dealt with the concept of original expression of ideas. If the expression is original one by taking the existing idea, in that case also the creator will certainly come within the umbrella of copyright protection and shall be entitle to get copyright for his creation. In this case British Court held that the literary work, with original expression of thought in print or writing medium is the domain of the copyright law no further.

5.5.3 _LADBROKE (FOOTBALL) LIMITED CASE_350

**Facts and Analysis of the Case:**

The respondents were well known bookmakers who had done business for many years in fixed odds football betting sending out to their clients each week during the football season a fixed odds football coupon. The coupon was a sheet of paper on which sixteen lists of matches to be played each week were printed; each list was headed with an appropriate name and offered a variety of wagers at stated odds and contained explanatory notes. One of the lists contained the full list of matches to be played at the end of the week this list being determined by the Football League who owned the copyright in it. The other lists were shorter lists of matches selected by the respondents from the full list. Altogether the coupon offered 148 varieties of wages at widely differing odds. A great deal of skill, judgment, experience and work had gone

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350 Ladbroke(Football) Limited Vs William Hill(Football) Limited, (1964) 1 All E.R. 465:(1964) 1 WLR 273 (HL)
into devising the coupon for the respondents had to select from the very great
variety of possible wagers those that would appeal to the punter while being
profitable to the respondents, and had then to arrange and describe the selected
wagers in an attractive way on the coupon. The respondents had not altered
their coupon since 1951, though the selection of matches in the lists was
necessarily changed each week. Some of the wagers offered by the respondents
were commonly offered by other bookmakers. The appellants, who were also
well-known bookmakers, decided to enter the field of fixed odds football
betting in 1959, and in developing their coupon for the 1960-1961 season they
copied from the respondents coupon fifteen out of the sixteen lists arranging
them in the same order as they appeared in the respondents coupon, in many
cases with the same headings and almost identical varieties of wager, and with
similar explanatory notes. They did not copy the odds offered by the
Respondents but worked these out for themselves and since the respondents
and the appellants coupons were published simultaneously each week there was
not copying of matches selected by the respondents. The respondents claimed
copyright in their coupon and alleged infringement by the appellants. As per
the Section 2(12) of the Copyright Act, 1957, copyright subsists in every
‘original’ literary work; a literary work includes, by virtue of section 48(1), a
compilation.

Under section 2(5) (a) and section 49(1) copyright holder is given the exclusive
right to reproduce a substantial part of the work in any form. Though the
appellants admitted copyright in the respondent’s selection of matches and
statement of adds (neither of which they had copied) they denied copyright in
the rest of the coupon. It was not disputed that, as regards a compilation(such
as the coupons), the originality requisite to render a work original for the
purpose of section 2(1) was a matter of degree depending on the amount of
skill, judgment or labour that had been involved in making of the compilation.
On these facts, the House of Lords held that the correct approach in deciding if there was infringement of copyright in literary compilation first was to determine whether the work as a whole was entitled to copyright, and, second, to enquire whether the part reproduced by the defendant was a substantial part of the whole; but it was not the correct approach to dissect the work into fragments and, if the fragments were not entitled to copyright, to deduce that the whole compilation could not be so entitled.

5.5.4 **SHYAMLAL PACHARIA CASE**

**Facts and Analysis of the Case:**

It was held that the expression literary work means not only such work which deals with any particular aspect of literature in prose and poetry but also indicates a work which is literary i.e. anything in writing which could be said to come within the ambit of literary work. A compilation derived from a common source falls within the ambit of literary work. In this case, the mistakes appearing in the plaintiff's book were also appearing in the defendant's book and commenting on that aspect of the case, it was held that it was true that the mere fact that the defendants had the plaintiff's book with him will not by itself lead to an irresistible inference that he had copied the calculations from the plaintiff's work. But from the fact that the mistakes committed by the plaintiffs in certain calculations in his book were found in the defendant's book in similar calculations, clearly shows that the defendants had copied the calculations from the plaintiff's book and must be deemed to have infringed the copyright of the plaintiff with regard to such calculations.

An observation of the above judgment shows that the court has accepted that compilation of data required considerable skill and labour, which is exercised in producing the work.

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In case, the publication of the plaintiffs is held to be their original literary work entitled to protection under the Copyright Act, defendants may have to be enjoined from reproducing the same. The only question, therefore, is whether the plaintiff's work is an original literary work and is entitled to protection under the Copyright Act. As already stated above, it is not denied that under Section 2(k) of the Copyright Act, 1957, a work which is made or published under the direction or control of any Court, Tribunal or Judicial Authority in India is a Government work. Under Section 52(q), the reproduction or publication of any judgment or order of a Court, Tribunal or other Judicial Authority shall not constitute infringement of copyright of the Government in these works. It is thus, clear that it is open to everybody to reproduce and publish the government work including the judgment/order of a Court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about the judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act. It is in this background that the Court has to examine as to whether or not: (i) the work produced by the plaintiffs is an original literary work; and (ii) it is entitled to protection under Copyright Act, 1957. In term of section 52(1) (q) of the Act, reproduction of a judgment of the Court is an exception to the infringement of the copyright. The orders and judgments of the Courts are in the public domain and anyone can publish them. Being a Government work, no copyright exists in these orders and judgments but not one can claim copyright in these judgments and orders of the Courts merely on the ground that he had first published them in his book.

After examining the various decisions on this issue, the Court was of the opinion that there cannot be any monopoly in the subject matter which the author has borrowed from public domain. Others are at liberty to use the same material. Every person can take what is useful for them, improve and add so
that the person can claim a copyright for his additions and improvements. Yet, under the guise of copyrights the plaintiff cannot ask the court to restrain the defendants from making the material available to the public. Therefore, the Court observed that the works published in the Law Reports is not an original work and the plaintiffs cannot claim any copyright over the judgments that are published in their Law Reports.

The Division Bench accepting the verdict of the single judge held that the same arrangement has to continue and the defendants were entitled to sell their CD ROMs with the text of the judgments of the Supreme Court along with their own head notes which should not in any way be copy of the head notes and text belonging to the plaintiff's work.

5.5.5  **INDIAN PERFORMING RIGHTS SOCIETY LIMITED CASE**

**Facts of the Case:**

The Indian Performing Right Society Ltd. (hereinafter referred to for the sake of brevity as 'the IPRS'), the appellant before the Court, was incorporated in the State of Maharashtra on August 23, 1959, as a company limited by guarantee, for the purpose of carrying on business in India of issuing or granting licences for performance in public of all existing and future Indian Musical works in which copyright subsists in India. The incorporation of the IPRS was in terms of section 2(r) of the Copyright Act, 1957 (Act 14 of 1957).

The IPRs has amongst its members the composers of musical works, authors of literary and dramatic works and artists. In accordance with the provisions of section 33 of the Act, the IPRS published on September 27, 1969 and November 29, 1969 in the 'Statesman' and the Gazette of India respectively a

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352 Indian Performing Rights Society Ltd. Vs Eastern India Motion Picture Association and Others (1977) 2 SCC 820: AIR 1977 SC 1443.
tariff laying down the fees, charges and royalties that it proposed to collect for the grant of licences for performance in public of works in respect of which it claimed to be an assignee of copyrights and to have authority to grant the aforesaid licences. A number of persons including various associations of producers of cinematograph films who claimed to be the owners of such films including the sound track thereof and the Cinematograph Exhibitors Association of India filed objections in respect of the aforesaid tariff in accordance with the provisions of section 34 of the Act repudiating the claim of the IPRS that it had on behalf of its members authority to grant licences for performance in public of all existing and future musical works which are incorporated in the sound track of cinematograph films in which copyright may subsist in India or the right to collect in relation thereto any fees, charges or royalties.

The association of producers averred *inter alia* that their members engaged composers and sound writers under contracts of service for composing songs to be utilised in their films; that the musical works prepared by the composers of lyric and music under contract of service with their members-producers of the cinematograph films having been utilised and incorporated in the sound track of the cinematograph films produced by the latter, all the rights which subsisted in the composers and their works including the right to perform them in public became the property of the producers of the cinematograph films and no copyright subsisted in the composers which they could assign to and become the basis of the claim of the IPRS under section 33 of the Act; that their members i.e. the producers of cinematograph films being the authors and first owners of the copyright in the cinematograph films produced by them had the exclusive right *inter alia* to cause the said films in so far as the same consisted of sounds (which include musical works) to be heard in public as also the exclusive right to make records embodying the sound track of the films produced by them (including any musical work incorporated therein) and to
cause the said records to be heard in public; that in the making of a cinematograph film as contemplated by the Act a composer composes a lyric or music under a contract of service or for valuable consideration which is substantial a music director sets it to tunes and imparts music to it and a singer sings the same but none of them nor any one of their aforesaid works can and have any separate copyrights; that motion picture is the combination of all arts and music in the sound track which cannot be detached from the film itself; that the purpose of making a motion picture is not only to complete it but also to publicly exhibit it throughout the world; that having regard to the provisions of the Act the copyright in the case of a cinematograph film vests in the owner of the film as defined in section 2(d)(v) of the Act; and that in the premises any assignment purporting to have been made in favour of the IPRS was void and of no effect and was incapable of conferring any rights whatsoever in such musical works on the IPRS. The Cinematograph Exhibitors Association of India also filed objections challenging the right of the IPRS to charge fees and royalties in respect of performance in public of the musical works incorporated in the sound track of the films. Besides raising contentions identical to those raised by various associations of producers they averred that copyright in a cinematograph film which vested in the producers meant copyright in the entirety of the film as an integrated unit including the musical work incorporated in the sound track of the film and the right to perform the work in public; that in accordance with the agreement with the distributors of films the exhibition of cinematograph film includes the right to play in public the music which is an integral part and parcel of the film; that the producers lease out copyrights of public performance of the films vested in them to the distributors who give those rights to the exhibitors an agreement and that when an exhibitor takes a licence for exhibition, it is complete in all respects and a third party like the IPRS cannot claim any licence fee from the exhibitors.
On the aforesaid objections being referred to it for determination under section 35 of the Act, the Copyright Board expressed the view that in the absence of proof to the contrary, the composers of lyrics and music retained the copyright in their musical works incorporated in the sound track of cinematograph films provided such lyrical and musical works were printed or written and that they could assign the performing right in public to the IPRS. The Copyright Board further held that the tariff as published by the IPRS was reasonable and the IPRS had the right to grant licences for the public performance of music in the sound track of copyrighted Indian cinematograph films and it could collect fees, royalties and charges in respect of those films with effect from the date on which the tariff was published in the Gazette of India. Aggrieved by the decision of the Copyright Board, the objectors preferred an appeal under section 72 of the Act to the High Court which allowed the same holding that unless there is a contract to the contrary, a composer who composes a lyric or music for the first time for valuable consideration for a cinematograph film does not acquire any copyright either in respect of film or its sound track which he is capable of assigning and that under proviso. (b) to section 17 of the Act, the owner of the film at whose instance, the composition is made, becomes the first owner of the copyright in the composition. The High Court further held that ‘the composer can claim a copyright in his work only if there is an express agreement between him and the owner of the cinematograph film reserving his copyright’. The High Court also held that ‘though section 18 of the Act confers power to make a contract of assignment, the power can be exercised only when there is an existing or future right to be assigned and that in the circumstances of the present case, assignment, if any, of the copyright in any future work is of no effect’. Dissatisfied with this decision, the IPRS has preferred this appeal to the Supreme Court by certificate granted under Article 133(1) of the Constitution by the High Court of Judicature at Calcutta which is
directed against its judgment dated February 13, 1974, raises the following substantial question of law of general importance:

"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."

Analysis of the Case:

The special feature of this case is that the Supreme Court has examined the rights over musical works and Justice Krishna Iyer has clearly pointed out that it is indeed an un-Indian feature that the Indian Copyright Act has failed to provide rights to the singer and to the artists who have rendered a musical performance and has sought right to a singer for his compositions.

'Musical work', as defined in Section 2(p) is as follows:

S. 2(p) Musical work means any combination of melody and harmony or either of them printed reduced to writing or otherwise graphically produced or reproduced.

In the course of his judgment Justice Krishna Iyer stated that:

"Copyrighted music is not the soulful tune, the superb singing, the glorious voice or the wonderful rendering. It is his melody or harmony reduced to printing, writing or graphic form. The Indian music lovers throng to listen and be enthralled or enchanted by the nada brahma, the sweet concord of sounds, the raga, the bhava, the laya and the sublime or exciting singing printed music is not the glamour or glory of it, by and large, although the content of the poem or the lyric or the song does have appeal. Strangely enough, 'author', as defined in Section 2(d) in relation to a musical work, is only the composer and Section 16 confines copyright to those works which are recognised by the Act. This means that the composer alone has copyright in a musical work. The singer has
none. This disentitlement of the musician or group of musical artists to copyright is un-Indian because the major attraction which lends monetary value to the musical performance is not the music maker, so much as the musician. Perhaps, both deserve to be recognised by the copyright law. I make this observation only because art in one sense depends on the ethos and the aesthetic best of a people, and while universal protection of intellectual and aesthetic property of creators of 'work' is an international obligation, each country in its law must protect such right wherever originally is contributed. So viewed, apart from the music composer, the singer must be conferred a right. Of course lawmaking is the province of Parliament, but the Court must communicate to the lawmaker such infirmities as they exist in the law market.”

The second important issue that was examined in this case relates to the ownership of the rights over a cinematographic film. The copyright Act protects the composite cinematographic film. It also protects the composite cinematograph work that is produced in collaboration with many talents. To begin with, the scheme of the Copyright Act as disclosed under Section 2(d) an author means (ii) in relation to a musical work, the composer, (v) in relation to a cinematograph film or song recording, the producer; and later the Section 2(m), it states that infringing copy means (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form, a cinematographic film; (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means and under section 14(d) the right that is granted to the producer includes (i) right to make a copy of the film; (ii) to sell or give on hire or offer for sale or hire any copy of the film and (iii) of communicate the film to the public.

The above said legal provisions thus clearly state that the producer of a cinematograph film can claim the right of ownership over the film. The
question that arises is whether the producer can defeat the right of the composer of music who has been engaged in composing the music for the film. The answer to this question is found in Section 17 of the Indian Copyright Act wherein Section 17(b) states that when the producer commissions a composer of music for reward or valuable consideration for composing the music or lyrics or for the sound-track associated with the film, he remains the owner over the music and no copyright can subsist in the composer of the lyrics or for the music so composed unless there is a contract to the contrary between the composer or the music director with the producer of the film.

The reason for granting sole rights to the producer has been described in a very significant manner by Justice V.R. Krishna Iyer. In the course of his judgment he elaborated that:

"A cinematograph is a felicitous blend, beautiful totality, a constellation of stars, if I may use these lovely imageries to drive home my point, slurring over the rule against mixed metaphor. Cinema is more than song strips of celluloid, more than miracles in photography, more than song, dance and dialogue and, indeed more than dramatic story, exciting lot, gripping situations and marvelous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities. Copyright in a cinema film exists in law, be Section 13(4) of the Act preserves the separate survival, it its confluence in the film. This persistence of the aesthetic 'Personality' of the intellectual property cannot cut down the copyright of the film qua film"

Justice Iyer further contended that:

"The film producer has the sole right to exercise what is his entitlement under Section 14(1) (c) qua film; but he cannot trench on the composer's copyright which does only if the 'music' is performed or produced or
reproduced separately in violation of Section 14(1) (a). For instance, a film may be caused to be exhibited as a film but the pieces of music cannot be pocked out of the sound track and played in the cinema or other theatre. To do that is the privilege of the composer and that right of his is not drowned in the film copyright except where there is special provision such as in Section 17, proviso (c). So, beyond exhibiting the film as a cinema show if the producer plays the songs separately to attract an audience or for other reason, he infringes the composer’s copyright. Anywhere, in a restaurant or aeroplane or radio station or cinema theatre, if music is played, there comes into play the copyright of the composer or the performing rights society. These are the boundaries of composite creations of art which are at once individual and collective, viewed from different angles. In a cosmic perspective a thing of beauty has not boundary and is humanity’s property but in the materialist plane on which artist thrive, private and exclusive estates in art subsist. Man, the noblest work of the infinite artist, strangely enough, battles for the finite products of his art and the secular law, operating on the temporal level, guard material works possessing spiritual values. The enigmatic smile of Mona Lisa is the timeless heritage of mankind but, till liberated by the prescribed passage of time, the private copyright of the human maker says, ‘hands off’.

The Supreme Court therefore, on an examination of the relevant provisions of the Copyright Act has held that the right of ownership over a film lies with the producer of the film and he can claim exclusive rights over a musical work that is rendered in the film unless there is a contract to the contrary between the composer and the producer.
Facts of the Case:

The appellant-plaintiff is a playwright, dramatist and producer of stage plays. The appellant had written and, produced a number of plays. The subject matter of the appeal however, is the play entitled 'Hum Hindustani'. This play was written by him in the year 1953 and was enacted in the year 1954 and thereafter the play proved to be popular one. In November 1954 the appellant received a letter from the second defendant, Mr. Mohan Sehgal requesting the appellant to supply a copy of the play so that he could consider the desirability of making, a film on it. Thereafter, the appellant and defendant No. 2 met at Delhi and heard the story from the plaintiff and depart with a word that he will inform his decision to the plaintiff after returning to Bombay. In May, 1955 the second defendant announced the production of a motion picture entitled ‘New Delhi’. The picture was released in Delhi in September 1956. The appellant saw the picture and found that it is the production of his play ‘Hum Hindustani’ on screen in substantial form.

The appellant then filed a suit alleging that the film ‘New Delhi’ was entirely based upon the play ‘Hum Hindustani’, that the play was narrated by the appellant to defendant No.2 and he dishonestly imitated the same in his film and thus committed an act of piracy as to result in violation of the copyright of the plaintiff. The appellant, therefore, filed the suit for damages, for decree for accounts of the profits made by the defendant and a decree for permanent injunction against the defendants restraining them from exhibiting the film. The suit was contested by the defendants. The defendants pleaded that defendant No. 2 is a film director and producer and director of Delux Films defendant No.1 that at the instance of a common friend Mr. Gargi the defendant No. 2 met the appellant and saw the script of the play, that the play was inadequate

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R.G. ANAND CASE \(353\)

for the purpose of making of a full length commercial motion picture. The defendants contended that there could be no copyright so far as the subject of provincialism is concerned which can be used or adopted by anybody in his own way. The defendants further contended that the motion picture was quite different from the play both in contents, spirit and climax. The mere fact of some similarities between the films and the play could be explained by the fact that the idea, provincialism was the common source of the play as also of the film. The trial court raised several issues and came to the conclusion that the appellant was the owner of the copyright in 'Hum Hindustani' but there was no violation of copyright of the appellant. Thereafter the appellant filed an appeal in the Delhi High Court. A Division Bench of the Delhi High Court upheld the decree dismissing the appellant’s suit.

This appeal by special leave is directed against the judgment of the Delhi High Court dated 23rd May, 1967 affirming the decree of the District Judge, Delhi and dismissing the plaintiff's suit for damages against the defendants on the ground that they had violated the copyrighted work of the plaintiff which was a drama called 'Hum Hindustani'.

**Analysis of the Case:**

The analysis may be stated with the contentions made by both the parties before the apex court. The counsel for the appellant contended that: (1) the principles enunciated and the legal inference drawn by the courts below are against the settled legal principles laid down by the courts in England, America and India. (2) The two courts have not fully understood the imports of the violation of copyright particularly when the similarities between the play and the film are so close that would lead to the irresistible inference and unmistakable impression that the film is nothing but an imitation of the play. The counsel for the respondents submitted that: (1) the two courts below have applied the law correctly. (2) This Hon'ble Court may not enter into the
merits in view of the concurrent findings of fact given by the two courts. (3) Even on the facts found it is manifest that there is a vast difference both in the spirit and the contents between the play and the film.

In order to appreciate the argument of the parties the court discussed the law on the subject. At the time when the cause of action arose in the present suit, the Indian Parliament had not made any law governing copyright violation and therefore, the court relied on the old law passed by the British Parliament viz., the Copyright Act of 1911. Sec.-1 Sub-Sec.- (2)(d) defines copyright as including in the case of a literary, dramatic or musical work, to make any record, performed roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered. S. 2(i) defines that copyright in a work shall be deemed 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. The play written by the appellant falls within the definition of copyright. It is well settled principle of law that a mere idea cannot be the subject matter of copyright. In the present case the two courts, in fact, having considered the entire evidences, circumstances and materials before them have come to a finding of fact that defendants committed no violation of the copyright. The Supreme Court was slow to disturb the findings of fact arrived at by the courts below particularly when after having gone through the entire evidence the court finds that the judgments of the court below are absolutely correct.

On a careful comparison of the script of the plaintiff's copyright play with the film, although one does not fail to discern a few resemblances and similarities between the play and the film, the said resemblances are not material or substantial and the degree of similarities is not such as to lead one to think that the film taken as a whole constitutes an unfair appropriation of the appellant's copyright work. In fact a large majority of material incidents, episodes and dramatic situations portrayed by defendants 1 and 2 in their aforesaid film are
substantially different from the plaintiff's protected work and the two social evils viz. caste system and dowry system sought to be exposed and eradicated by defendants 1 and 2 by means of motion film, do not figure at all in the appellant's play.

There has been no breach on the part of the defendants of the appellant's copyright. It appears from a comparison of the script of the play 'Hum Hindustani' and the script of the film 'New Delhi' that the authors of the film have been influenced to a degree by the salient features of the plot set forth in the play script. There can be little doubt from the evidence that the author of the film script was aware of the scheme of the play. But, the story portrayed by the film travels beyond the plot delineated in the play. The theme of provincial parochialism is illustrated only in the opposition to a relationship by marriage between two families hailing from different parts of the country. In the film the theme is also illustrated by the hostile attitude of proprietors of lodging accommodation towards prospective lodgers who do not belong to the same provincial community. The plot then extends to the evils of the dowry system which is a theme independent of provincial parochialism. There are still other themes embraced within the plot of the film. The question can arise whether there is an infringement of copyright even though the essential features of the play can be said to correspond to a part only of the plot of the film. In the attempt to show that he is not guilty of infringement of copyright it is always possible for a person intending to take advantage of the intellectual efforts and labour of another to so develop his own product that it covers a wider field than the area included within the scope of the earlier product and in the common area covered by the two productions to introduce changes in order to disguise the attempt at plagiarism. If a reappraisal of the facts in the present case were open to this Court, the Court perhaps would have differed from the view taken on the facts by the High Court but in view of the concurrent findings of the two courts below to the effect that the appellant's copyright has not been infringed
this Court is extremely reluctant to interfere with the concurrent findings of fact reached by the Courts below. In another, and perhaps a clearer case for the Apex Court was to interfere and remove the impression which might have gained ground that the copyright belonging to an author can be readily infringed by making immaterial changes, introducing in substantial differences and enlarging the scope of the original theme. So that a veil of apparent dissimilarity is thrown around the work then produced. The Court looked strictly at not only blatant examples of copying but also took reprehensible attempts at colourable imitation.

The facts have been succinctly stated by the District Judge in his judgment and summarised by the High Court, and, therefore, the Supreme Court has not repeated the same all over again, however, a brief resume of some of the striking facts in the case which might be germane for the purpose of deciding the important issues involved in the appeal may not be out of place. It might mentioned here that the High Court as also the District Judge negatived the plaintiff's claim and *prima facie* the appeal appears to be concluded by finding of fact, but it was rightly argued by Mr. Andley, appealing for the appellant, that the principles of violation of copyright in the instant appeal have to be applied on the facts found and the inferences from proved facts drawn by the High Court which is doubtless, a question of law and more particularly, as there is no clear authority of the Court on the subject. The court agreed on the persuasion to go into this question without entering into findings of facts. After hearing counsel for the parties, the court felt that as the case is one of first impression and needs to be decided, as such the court entered into the merits, on the basis of the facts, found and inferences drawn by the High Court and the District Judge. Relying on the fact that both the District Judge and the High Court have relied upon some well established principles to determine whether or not in a particular case a violation of copyright has taken place, but learned
counsel for the appellant has challenged the validity of the principles enunciated by the High Court.

The plaintiff is an architect by profession and is also a playwright, dramatist and producer of stage plays. Even before ‘Hum Hindustani’ the plaintiff had written and produced a number of other plays like ‘Des Hamara’, ‘Azadi’ and ‘Election’ which were staged in Delhi. The subject matter of the appeal, however, is the play entitled ‘Hum Hindustani’. According to the plaintiff, this play was written by him in Hindi in the year 1953 and was enacted by him for the first time on 6th, 7th, 8th and 9th February, 1954 at Wavell Theatre, New Delhi under the auspices of the Indian National Theatre. The play proved to be very popular and received great approbation from the Press and the public as a result of which the play was restaged in February and September, 1954 and also in 1955 and 1956 at Calcutta. In support of his case the plaintiff has referred to a number of comments appearing in the Indian Express, Hindustan Times, Times of India and other papers. Encouraged by the success and popularity of the aforesaid play the plaintiff tried to consider the possibility of filming it. In November, 1954 the plaintiff received a letter dated 19th November, 1954 from the second defendant Mr. Mohan Sehgal wherein the defendant informed the plaintiff that he was supplied with a synopsis of the play by one Mr. Balwant Gargi a common friend of the plaintiff and the defendant. The defendant had requested the plaintiff to supply a copy of the play so that the defendant may consider the desirability of making a film on it. The plaintiff, however, by his letter dated 30th November, 1954 informed the defendant that as the play had been selected out of 17 Hindi plays for National Drama Festival and would be staged on 11th December, 1954, the defendant should take the trouble of visiting Delhi and seeing the play himself in order to examine the potentialities of making a film, and at that time the matter could be discussed by the defendant with the plaintiff. However, some time about January, 1955 the second and the third defendants came to Delhi, met the
plaintiff in his office where the plaintiff read out and explained the entire play to the defendants and also discussed the possibility of filming it. The second defendant did not make any clear commitment but promised the plaintiff that he would inform him about his reaction after reaching Bombay. Thereafter, the plaintiff heard nothing from the defendant. Sometime in May, 1955 the second defendant announced the production of a motion picture entitled ‘New Delhi’. One Mr. Thapa who was one of the artists in the play produced by the plaintiff happened to be in Bombay at the time when the picture ‘New Delhi’ was being produced by the defendant and informed the plaintiff that the picture being produced by the defendant was really based on the plaintiff’s play ‘Hum Hindustani’. The plaintiff thereupon by his letter dated 30th May, 1955 wrote to the second defendant expressing serious concern over the adaptation of his play into a motion picture called ‘New Delhi’. The defendant, however, by his letter dated 9th June, 1955 informed the plaintiff that his doubts were without any foundation and assured the plaintiff that the story treatment, dramatic construction, characters etc. were quite different and bore not the remotest connection or resemblance with the play written by the plaintiff.

The picture was released in Delhi in September, 1956 and the plaintiff read some comments in the papers which gave the impression that the picture was very much like the play ‘Hum Hindustani’ written by the plaintiff. The plaintiff himself saw the picture on the 9th September, 1956 and he found that the film was entirely based upon the said play and was, therefore, convinced that the defendant after having heard the play narrated to him by the plaintiff dishonestly imitated the same in his film and thus, committed an act of piracy so as to result in violation of the copyright of the plaintiff. The plaintiff accordingly filed the suit for damages, for decree for accounts of the profits made by the defendants and a decree for permanent injunction against the defendants restraining them from exhibiting the film ‘New Delhi’.
The defendants, *inter alia*, pleaded that they neither were aware that the plaintiff was the author of the play 'Hum Hindustani' nor were they aware that the play was very well received at Delhi. Defendant No. 2 is a film Director and is also the proprietor of defendant No. 1 Delux Films. The defendants averred that in November, 1954 the second defendant was discussing some ideas for his new picture with Mr. Balwant Gargi who is a playwright of some repute. In the course of the discussion, the second defendant informed Mr. Gargi that the second defendant was interested in producing a motion film based on 'provincialism' as its central theme. In the context of these discussions Mr. Gargi enquired of defendant No. 2 if the latter was interested in hearing the play called 'Hum Hindustani' produced by the plaintiff, which also had the same theme of provincialism in which the second defendant was interested. It was, therefore, at the instance of Mr. Gargi that the second defendant wrote to the plaintiff and requested him to send a copy of the script of the play. The defendant goes on to state that the plaintiff read out the play to the second defendant in the presence of Rajinder Bhatia and Mohan Kumar, Assistant Directors of the second defendant when they had come to Delhi in connection with the release of their film 'Adhikar'. The second defendant has taken a clear stand that after having heard the play he informed the plaintiff that though the play might have been all right for the amateur stage, it was too inadequate for the purpose of making a full length commercial motion picture. The defendants denied the allegation of the plaintiff that it was after hearing the play written by the plaintiff that the defendants decided to make a film based on the play and entitled it as 'New Delhi'.

The defendant thus submitted that there could be no copyright so far as the subject of provincialism is concerned which can be used or adopted by anybody in his own way. He further averred that the motion picture was quite different from the play 'Hum Hindustani' both in contents, spirit and climax. The mere fact that there were some similarities between the film and the play
could be explained by the fact that the idea, viz., provincialism was the common source of the play as also of the film. The defendant thus denied that there was any violation of the copyright.

On the basis of the pleadings of the parties, the learned trial Judge framed the following issues:

1. Is the plaintiff owner of the copyright in the play 'Hum Hindustani'?
2. Is the film 'New Delhi' an infringement of the plaintiff's copyright in the play 'Hum Hindustani'?
3. Have defendants or any of them infringed the plaintiff's copyright by producing, or distributing or exhibiting the film 'New Delhi'?
4. Is the suit bad for mis-joinder of defendants and cause of action?
5. To what relief is the plaintiff entitled and against whom?

Issue No. 1 was decided against the defendants and it was held by the trial Judge that the plaintiff was the owner of the copyright in the play 'Hum Hindustani'. Issue No. 4 was not pressed by the defendants and was accordingly decided against them. The main case however turned upon the decision on issues No. 2 and 3 which were however decided against the plaintiff as the learned Judge held that there was no violation of the copyright of the plaintiff. The plaintiff then went up in appeal to the Delhi High Court where a Division Bench of that Court affirmed the decision of the District Judge and upheld the decree dismissing the plaintiff's suit. The findings of fact arrived at by the learned trial Judge and the High Court have not been assailed before the Supreme Court. The only argument advanced by the appellant was that the principles enunciated and the legal inferences drawn by the courts below are against the settled legal principles laid down by the courts in England, America and India. It was also submitted by Mr. Andley that the two courts have not fully understood the import of the violation of copyright
particularly when the similarities between the play and the film are so close and sundry that would lead to the irresistible inference and unmistakable impression that the film is nothing but an imitation of the play. On the other hand, it was argued by Mr. Hardy counsel for the respondents that the two courts below have applied the law correctly and it is not necessary for this Court to enter into merits in view of the concurrent findings of fact given by the two courts. He further submitted that even on the facts found it is manifest that there is a vast difference both in the spirit and the content between the play 'Hum Hindustani' and the film 'New Delhi' and no question of violation of the copyright arises.

Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the single but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo Juliet, Julius Caesar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, and full of poetic exuberance, elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great play-writer. In fact, throughout his original thinking, ability and incessant labour
Shakespeare has converted an old idea into a new one, so that each of the dramas constitutes a master piece of English literature.

It has been rightly said that 'every drama of Shakespeare is an extended metaphor'. Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, and different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright.

Thus, on a careful consideration and elucidation of the various authorities and the decided cases in various countries viz. England, America and India etc., on the subject discussed above, the Apex Court emerged with the following propositions:

1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression
adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

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.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental, no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by decided case laws.

7. Where however the question is of the violation of the copyright of a stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in
which the copyrighted work has expressed the Idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

Following are some of the cases which have been analysed and found helpful in setting the abovementioned remarkable points. *Hanfstaengl Vs W. H. Singh & Sons*, 354 *Bobbs-Merill Co. Vs Isdor Straus and Nathan Straus*, 355 *Ladbroke (Football) Ltd. Vs William Hill (Football) Ltd.*, 356 *N. T. Ragllunathan & Anr. Vs All India Reporter Ltd., Bombay*, 357 *Mohini Mohan Singh & Others Vs Sita Nath Basak*. 358

The Supreme Court then endeavoured to apply the principles enunciated above and the tests laid down by it to the facts of the present case in order to determine whether or not the plaintiff has been able to prove the charge of plagiarism and violation of copyright levelled against the dependant by the plaintiff. The learned trial Judge who had also had the advantage of seeing the picture was of the opinion that the film taken as a whole is quite different from the play written by the plaintiff. In order to test the correctness of the finding of the trial Court, the Supreme Court also got the play read to it by the plaintiff in presence of counsel for the parties and has also seen the film which was screened at C.P.W.D. Auditorium, Mahadev Road, New Delhi. This was done merely to appreciate the judgment of the trial Court and the evidence led by the parties and was not at all meant to be just a substitute for the evidence led by the parties. Bearing in mind the well recognised principles and tests to determine whether there has been an infringement of the law relating to copyright in, a particular case which were brought to the notice of the Supreme

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354 [1905] 1 Chancery Division 519.
355 210 US 339; West Francis, (1822) 1 B & Ald. 737, 743.
356 (1964) 1 All. E.R. 465.
357 AIR 1971 Bom. 48.
358 AIR 1931 Cal. 238.
Court by the counsel on both sides and which have been elaborately considered and discussed by learned justice Murtaza Fazal Ali in the course of the judgment prepared by him, the Court proceeded at the request of the counsel to hear the script of the play ‘Hum Hindustani’ which as read out to it by the plaintiff himself in a dramatic style and to see the film ‘New Delhi’ produced by defendants 1 and 2, the exhibition of which was arranged by the defendants themselves. On a careful comparison of the script of the plaintiff’s copyrighted play with the aforesaid film, although one does not fail to discern a few resemblances and similarities between the play and the film, the said resemblances are not material or substantial and the degree of similarities is not such as to lead one to think that the film taken as a whole constitutes an unfair appropriation of the plaintiff’s copyrighted work. In fact, a large majority of material incidents, episodes and situations portrayed by defendants 1 and 2 in their aforesaid film are substantially different from the plaintiff’s protected work and the two social evils viz. caste system and dowry system sought to be exposed and eradicated by defendants 1 and 2 by means of their aforesaid film do not figure at all in the plaintiff’s play.

After going through the script of the play and the film the Court was inclined to agree with the opinion of the Courts below. It has already pointed out that mere similarities by themselves are not sufficient to raise inference of colourable imitation on the other hand there are quite a number of dissimilarities also. As such the Court was of complete agreement with the conclusions arrived at by learned Justice Murtaza Fazal Ali that there has been no breach on the part of the defendants of the plaintiff’s copyright and concur with the judgment proposed to be delivered by him.

It appears from a comparison of the script of the stage play ‘Hum Hindustani’ and the script of the film ‘New Delhi’ that the authors of the film script have been inclined to some extend by the salient features of the plot set forth in the play script. There would be no doubt from the evidence that the authors of the
film script had the knowledge of the scheme of the play. But on the other hand, the story depicted in the film was not the direct copy of the play as it travels beyond the plot outlined in the play, though, the theme of provincialism and relationship by inter regional marriage was similar. The film is based on the theme aggressiveness and attitude of two families who are not from the same place, cast, province and community. Though, both the plots representing the same social evils like dowry system, provincialism and regionalism but apart from these facts other indifferent aspects are also clinched within the theme in the film.

Nonetheless, the question can arise whether there is an infringement of copyright even though the essential features of the play can be said to correspond to a part only of the plot of the film. This can arise even where changes are effected while planning the film so that certain immaterial features in the film differ from what is seen in the stage play. The relative position in which the principal actors stand may be exchanged or extended and embellishments may be introduced in the attempt to show that the plot in the film is entirely original and bear no resemblance whatever to the stage plays. All such matters fell for consideration in relation to the question whether the relevant part of the plot in the film is merely a colourable imitation of the essential structure of the stage play. If the treatment of the theme in the stage play has been made the basic of one of the themes in the film story and the essential structure of that treatment is clearly and distinctly identifiable in the film story, the court might not necessarily examine all the several themes embraced within the plot of the film in order to decide whether infringement has been established. In the attempt to show that one is not guilty of infringement of copyright, it is always possible for a person intending to take advantage of the intellectual effort and labours of another to develop his own product that it covers a wider field than the area included within the scope of the earlier product, and in the common area covered by the two productions to
introduce changes in order to disguise the attempt at plagiarism. If a reappraisal of the facts in the present case had been open, the Court surely would not have differed from the view taken on the facts by the High Court, but as the matter stands, the trial Court as well as the High Court have concurred in the finding that such similarities as exist between the stage play 'Hum Hindustani' and the film 'New Delhi' do not make out a case of infringement. The dissimilarities, in their opinion, are so material that it is not possible to say that the appellant's copyright has been infringed.

Thus, applying the principles enunciated above and the various tests laid down to determine whether in a particular case there has been a violation of the copyright the Supreme Court opined that the film produced by the defendants cannot be said to be a substantial or material copy of the play written by the plaintiff. The Supreme Court also found that the treatment of the film and the manner of its presentation on the screen is quite different from the one written by the plaintiff at the stage. The Court was also satisfied that after seeing the play and the film no prudent person can get an impression that the film appears to be a copy of the original play nor is there anything to show that the film is a substantial and material copy of the play. At the most the central idea of the play, namely, provincialism is undoubtedly the subject matter of the film along with other ideas also but it is well settled that a mere idea cannot be the subject matter of copyright. Thus, the present case does not fulfill the conditions laid down for holding that the defendants have made a colourable imitation of the play. On a close and careful comparison of the play and the picture for the central idea (provincialism which is not protected by copyright), from scene to scene, situation to situation, in climax to anti-climax, pathos, bathos, in texture and treatment and purport and presentation, it is clear that the picture is materially different from the play. As already indicated above, applying the various tests outlined above the Court was unable to hold that the defendants have committed an act of piracy in violating the copyright of the play.
Apart from this the two courts of fact, having considered the entire evidence, circumstances and materials before them have come to a finding of fact that the defendants committed no violation of the copyright. The Apex Court would also reluctant to disturb the findings of fact arrived at by the courts below particularly when after having gone through the entire evidence, it felt that the judgment of the courts below are absolutely correct. The result is that the appeal fails and is accordingly dismissed without any order as to costs.

5.5.7 GRAMOPHONE COMPANY OF INDIA LIMITED CASE 359

Special features of this case are that it deals with the rights of the owner of copyrights to stop the infringing copies from being transmitted to another country.

Facts of the Case:

The Gramophone Company of India Limited is a well known manufacture of musical records and cassettes. It receives information from the customs authorities at Calcutta that a consignment of re-recorded cassettes sent by the Universal Overseas Pvt. Ltd., Singapore to M/s. Sungawa Enterprise, Kathmandu, Nepal had arrived at Calcutta Port by ship and was awaiting dispatch to Nepal. The gramophone company was informed that these cassettes were pirated works and they claimed the rights over the consignment. They approached to the Registrar of Copyrights to take action under Section 53 of the Copyright Act, 1957. This provision enables the Registrar after making necessary enquiries as he deems fit to order that copies made out of India of a work which if made in India would infringe copyright, shall not be imported. The section also enable the Registrar to enter any ship, dock or premised where such copies may be found and to examine such copies.

All copies in respect of which an order is made prohibited or restricted under Section 11 of the Customs Act of 1962. The provisions of the Customs Act are to the effect in respect of those copies. All copies confiscated under the provisions of the said Act are not to vest in the Government but have to be delivered to the owner of the copyright in the work. As the Registrar was not taken expeditious action on the application of the Gramophone Company, the gramophone company apprehending that the pirated cassettes would then be transported to Nepal, filed a writ of mandamus to compel the Registrar to pass an appropriate order under Section 53 of the Copyright Act and to prevent release of the cassettes from the custody of the Customs Authorities. The learned Single Judge of the Calcutta High Court issued a rule nisi and made an interim order permitting the appellant to inspect the consignment of cassettes and if any of the cassettes were found to infringe the Gramophone's copyrights they were to be kept apart until further orders of the Registrar. After causing the necessary inspection to be made the Registrar was directed to deal with the application under Section 53 of the Copyright Act in accordance with law after hearing the interested parties. The Registrar was directed to deal with the application within 8 weeks from the date of the High Court's order. In the event of any of the cassettes being held back by the Gramophone Company, which was not an infringement of any rights under the Copyright Act. The Gramophone Co. was to pay damages as assessed by the Courts. The consignee filed an appeal against this order made by the single judge.

**Analysis of the Case:**

The division Bench of the Calcutta High Court examined this case under various provisions of the Copyright Act and on the established rules of international law viz. The Convention on Transit Trade of Landlocked States, 1965: Art. 11: Treaty of Trade with Nepal, Art 10: Treaty of transit with Nepal; Art. 9: International Convention for the protection of literary and artistic works, 1971. Article 16 of the Universal Copyright Convention has already laid down
the principle that the States shall endeavour to grant maximum facilities and undertake all necessary measures for the free and unhampered flow of goods from one country to the other.

However, the States also have a duty to co-operate effectively with each other to prevent infringement and circumvention of laws, rules and regulations of individuals’ literary or artistic property and prevent any form of unfair competition. Special mention was made in relation to Article 16 of the Berne Convention which provides as follows:

"Infringing copies of a work shall be liable to seizure in any country of the union where the work enjoys legal protection".

India is a party to the Berne Convention. Applying these international norms the Court then referred to the relevant sections of the Copyright Act. The first issue relates to whether the pirated cassettes that are in transit, amount to infringing copies and it was then examined whether the Registrar has power to deal with the importation of the infringing copies under Section 53 of the India Copyright Act. Section 52 of the Copyright Act states that a copyright in a work shall be deemed to be infringed 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 (ii) distributes either for the purpose of trade or to such an extent as to effect prejudicially the owner of the copyright or (iii) by way of trade exhibits in public or (iv) imports (except for the private and domestic use of the importer) into India any infringing copies of the work.

The Court then directed its attention to Section 53 as it deals with importation of infringing copies. Section 53 states: (i) The Registrar of copyrights on supplication by the owner of the copyrights in any work or by his duly authorised agent and on payment of the prescribed fees may order making such inquiry as he deems fit, order that copies made out of India of the work which is made in India would infringe copyright shall not be imported. (ii) Subject to
any rules made under this Act, the Registrar of copyrights or any person authorised by him in his behalf may enter into any ship, dock or premises where any such copies as are referred to in sub-section(1) may be found and may examine such copies. (iii) All copies to which any order made under sub-section(1) applied shall be deemed to be goods of which the import has been prohibited or restricted under Section 11 of Customs Act, 1962 and all the provisions of that Act shall have effect accordingly:

Provided that all such copies confiscated under the provisions of this Act shall not vest in the Government but shall be delivered to the owner of the copyright in the work.

Section 53 of the Indian Copyright Act, thus empowers the Registrar of the Copyrights to make an order that the copies of the work which infringes the copyright shall not be imported and the effect of the order is that it attracts the provisions of the Customs Act including the liability to confiscate and the confiscated copies are then delivered to the owner of the copyrights. The subject of dispute relates to the word 'import' that is mentioned in Section 53 of the Copyright Act. In this case the goods were not brought into the country for commerce and trademark but for onward transmission to another country. The question then can they be said to the imported into the country for which an action arise under Indian Copyright Act.

The object of the Copyright Act is to prevent unauthorised reproduction of work or unauthorised exploitation of the works and the object of this Act would be frustrated if infringing copies of the work are allowed to transit across the country. If goods are brought in only to go out they are in import in technical terms. The Court, however did not accept any narrow interpretation to the word ‘import’ and rose to the occasion to stop that trafficking in industrial, literary and artistic property and it did not hesitate to conclude that the word ‘import’ means bringing into India from outside India and it cannot be limited
to importation for commerce only. It includes importation for transit across the
country. Such interpretation was held not to be inconsistent with any principle
of international law and as such pass an order for an examination by the
Registrar in accordance with Section 53 of the Indian Copyright Act. It directed
the Registrar to examine the issues whether the copies infringed the Copyright
of the complainant and conduct a quasi-judicial enquiry to determine the rights
over the goods.

5.5.8 **GRAMOPHONE COMPANY OF INDIA LIMITED CASE**

**Facts of the Case:**

The Gramophone Company of India Limited which is the plaintiff in this case
had produced audio records titled 'Hum Aapke Hain Kaun' under rights
alleged to have been assigned to it by Rajashree Production Pvt. Ltd. who
happen to be copyright owners of the Cinematographic work? The plaintiff
claims that it has already sold 55 lakh audio cassettes and 40,000 compacts disc
titled 'Hum Aapke Hain Kaun' and hope to sell an equal number of additional
audio cassettes and compact discs with the result that the title 'Hum Aapke
Hain Kaun', when used on a record, has come to be associated with the
plaintiff alone. Its grievance is that the defendants too have launched an audio
cassette by adopting ‘Hum Aapke Hain Kaun’ as its title with its design,
colour scheme, get up and lay-out deceptively and confusingly similar to that
of the plaintiff's and have even used a photograph of Salman Khan and
Madhuri Dixit on the inlay cards. Both of them, it may be noticed, have acted
in the film ‘Hum Aapke Hain Kaun’. Hence the suit of the plaintiff for
permanent injunction restraining the defendants form manufacturing, selling, or
passing of audio cassettes under the said title or from manufacturing, selling, or

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PTR 64: 1996 PTC (16) 252 DEL.
passing of audio cassettes under the said title or from using a carton or inlay card identical or deceptively or confusingly used by the plaintiff. Along with the suit, the plaintiff company also moved an application under Order 39 Rules 1 and 2 for grant of ad-interim injunction.

Analysis of the Case:

Version Recording: A version recording is a sound recording made of already published songs by using another voice or voices and with different musicians and arrangers. Version recording in this regard neither copying nor reproduction of the original recording. A version recording is protected under clause (j) of sub-section (1) of Section 52 of the Act. It runs as under:

"Certain acts not to be infringement of copyright, the following acts shall not constitute an infringement of copyright namely,

(j) the making of records in respect of any literary, dramatic or musical work, if

(i) records recording that work have previously been made by, or with the licence or consent of, the owner of the copyright in the work; and

(ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that in making the records such person shall not make any alterations in, or omissions from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the records in question;
On an examination of the facts of the case it was decided by the Courts that the injunction that was awarded in favour of the plaintiffs should be set aside as the Act permits version recording and the defendants were permitted to record the music subject to the condition that it should not use the cartoon or inlay card or any other packaging material similar to that of the plaintiffs and an alternate title must be given with a declaration in sufficiently bold letters that the record is not the original sound track but only a version record with voices of different artists, the word that it is not the original work should be clearly underlined.

5.5.9 AMBIENCE SPACE SELLERS LIMITED CASE

The significance of this case is that an action was claimed not only under the Copyright Act but also under the Law of Tort claiming an action under various other heads *viz.* inducing a breach of contract, passing off and for conversion.

**Facts of the case:**

The 2nd plaintiffs were owner of copyrights in various programmes that were produced in India. They had given the exclusive licences to the third plaintiff to broadcast these programmes on the TV channel known as 'Zee TV'. The first plaintiff was the sole agent who procured for the third plaintiff's advertisements in India. Thus the arrangement was that the 3rd plaintiff was receiving the programme from the owner (2nd plaintiff) and the advertisement from the 1st plaintiff would combine the two and broadcast the programme on Zee TV channel. The advertiser would choose the programme in which to advertise according to the timing of the programme and to the popularity of the programme. The defendants were the two companies' owner controlled and operated the Cable TV networks in several cities. Most of the viewers in cities like Bombay were connected to the Cable TV network. The cable TV networks had sophisticated equipments by which it was possible to blank out/switch off

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361 Ambience Space Sellers Ltd. Vs Asia Industrial Technology Pvt. Ltd., 1998(1) RAJ 319 (Bom.).
the signals sent by various broadcasters and interpose/substitute their own programme of materials.

The main allegation of the plaintiffs was that the defendants had blanked out the plaintiff’s advertisement and substituted the defendant’s advertisement during the period that the plaintiffs are broadcasting their advertisement. This was admitted by the defendants. The defendants claimed that they had a right to do so and they were entitled to do so.

The plaintiffs based their action on various ground. It alleged that the defendants had committed the torts of (a) inducing a breach of contract; (b) passing off; (c) conversion. It also claimed an action for violation of copyright and broadcast reproduction rights.

**Analysis of the Case and Principles Evolved:**

**Tort of Inducing Breach of Contract and Copyright:** This tort has been recognised by the English Courts as well as the Indian Courts. Basically tortuous liability arises from a breach of duty primarily fixed by law. The Courts in general has developed this law and it is founded and structured on morality that is no one has a right to injure or harm others intentionally or ever innocently. The Supreme Court and various High Courts have assisted in the expansion of the rights under the Law of Torts so as to provide legal rights for social development and cultural refineness. The tort of inducing breach of contract has been well established. The first major decision in the English Court that has clearly laid down the elements of this tort is case of *Quinn Vs Leatham.* 362 The case has clearly established that any wrongful interference with contractual relations without legal justification can give rise to an action under the Law of Torts. In this case the plaintiff used to regularly supply meat to a butcher. The plaintiff had employed certain persons who were not members of a particular union. The union asked the plaintiff not to employ

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362 [1901] AC 495; [195 U.S. 194, 1901], A. C. 495, 514; Reported in 1901 Appeal Cases p. 495.
non-members and to only employ their members. The plaintiffs refused to do so. Then the union convinced the employees of the butcher to boycott the work of the butcher, if plaintiff's meat was accepted by the butcher. As the butcher's employees threatened to boycott their work the butcher refused to take meat from the plaintiff. Thus, the plaintiff was not permitted to sell his meat and thereby there was a clear interference in the contractual relationship between the plaintiff and the butcher due to the interference of the union. Such action is not acceptable under the Law of Torts and the third party who has induced a breach of a subsisting contract can be sued for inducing a breach of contract and when it cannot justify its action the third party can be sued under the Law of Torts.

Similarly various other cases have accepted the principle laid down in *Quinn Vs Leatham Case*\(^{363}\). For instance, in the case of *GWK Ltd. and Others Vs Dunlop Rubber Co. Ltd*,\(^{364}\) the action was brought by two plaintiffs against the Dunlop Rubber Company. The first plaintiff was the manufacturer of motor cars who had a contract with the second plaintiff for the tyres to be installed for their cars. An agreement was made between the two plaintiffs that the tyres for the cars of first plaintiff should be fitted with tyres of the second plaintiff. When the cars were sent to an exhibition the defendants, who were the Dunlop Rubber Company, substituted their tyres on the night before the opening of the exhibition. They were aware of the agreement between the 1\(^{st}\) and 2\(^{nd}\) plaintiffs. Thus, the plaintiffs filed a suit against the defendant for knowingly interfering with the contractual rights and inducing a breach of a contract between the first and the second plaintiffs.

Various other cases have been cited by the plaintiff in this case to establish that the defendants have committed the tort of inducing a breach of contract. The various elements of this torts are (i) there must be a direct invasion of a

\(^{363}\) Ibid.

\(^{364}\) (1926) 42 TLR 376;
subsisting contract; (ii) the unlawful act committed by a third party should prevent the performance of the subsisting contract; (iii) a third party should commit an unlawful act of inducing a breach of a subsisting contract.

The plaintiffs held that this case was similar to the facts of the case cited above in GKW’s case wherein the tyres were changed without the knowledge and the consent of both the contracting parties and this was held to be a wrongful act. Similarly, in this case the defendants have switched off the signals of the plaintiffs and did not permit the broadcast of the advertisement that was to be relayed in a particular programme. The defendants admitted that they had knowledge of the fact that the third plaintiff had a subsisting contract with the advertisers. The action of blanking out the signals in effect had prevented the contract between the plaintiffs whereby the third plaintiff was affected as he had to lose his contract of advertisements. This clearly is an actionable wrong as it was proved that the intention in switching off/blanking out the plaintiff’s advertisement and putting their own advertisement proceed that the defendants had deliberately interfered with a subsisting contract to capitalize the popularity of the plaintiff’s programme.

Tort of Passing Off: The second cause of action was based on the tort of passing off. The plaintiffs relied upon the earlier cases to establish their claim under the tort of passing off. In earlier cases Illustrated Newspapers Ltd. Vs The Illustrated London News and Sketch Ltd. and The Sporting and Dramatic Publishing Co. Ltd. Vs Publicity Services(London) Ltd, the plaintiffs were publishers of news papers. The defendants inserted supplements carrying their own advertisements and then bound the papers together and then deliver it to the readers. The chancery division held that such an action by the defendants amounts to a tort of passing off for the defendants were trying to pass off their supplements as if the supplements belong to the plaintiffs. People in general

would mistake that the supplements are the parts of the paper belonging to the plaintiffs and the affect of it would be that the advertisers would go to the defendants for their advertisements and not to the plaintiffs, and passed order for restraining the defendants from inserting any supplement into the plaintiff’s paper.

Citing the above said case the plaintiffs claimed in the instant case that the defendants should be restrained from showing their advertisements. The defendants in turn submitted that they were willing to display on the screen notice that the advertisements were not that of the plaintiffs so as to avoid the action of passing off. Such disclaimer cannot be sufficient in this case as the defendant had displayed their advertisements for the sole purpose to capitalize on the popularity of the plaintiff’s programme. If the defendants wished to display their own advertisements they were always at liberty to display their advertisements in various other programmes and therefore the advertisement with an improper motive to deliberately use the slot that was allotted for the plaintiffs clearly established the tort of passing off.

An Action for Violation of Copyright and Broadcast Reproduction Rights:
Under section 2(g) of the Cable Television Networks (Regulation) Act, 1995, a programme is defined as ‘any television broadcast and includes any exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players’. Under Section 6 no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code. Proviso however, stated that this section would not apply to programmes of foreign satellite channels which can be received without the use of any specialized gadgets or decoder. The contention of the defendants was that the broadcast of the third plaintiff need not be in conformity with the advertisement code on the grounds that it was relayed from a foreign satellite channel. However, the plaintiffs submitted that the programme that was broadcast was a composite
programme containing the original programme that was supplied by the second plaintiff along with the advertisements supplied by the plaintiffs and thus when it is broadcasted through a free to air programme the defendants were aware that the second plaintiffs have given an exclusive license to the third plaintiff and transmitted the signals to their subscribers. The claim made by the defendants is that the contractual agreement between the plaintiffs is not binding on them and that they are free to ignore the contract, was not accepted by the Court. When a person claims a copyright the right to broadcast and communicate to the public is granted under the Copyright Act.

Section 2(dd) of the Copyright Act defines a broadcast. A broadcast also means communication to the public *inter alia* by means of wireless diffusion and includes a re-broadcast. Section 2(f) of the Copyright Act, 1957 provides that a cinematograph film includes any work of visual recording on any medium produced through a process form which a moving image may be produced by any means and includes a sound recording accompanying such visual recording.

Section 2(ff) defines communication to the public. It means making any work available for being seen or heard or otherwise enjoyed by the public directly by means of display or diffusion other than by issuing copies of such work. Ultimately what was broadcast was one composite programme which includes the entertainment portion and the advertisement portion and the defendants had no right to infringe the copyright over this programme.

Moreover, Section 37 of the Copyright Act also confers the right known as broadcast reproduction rights. That was introduced in 1994. With the advent of many foreign broadcasting stations being available in India, Section 37 has incorporated new rights known as 'broadcast reproduction rights' whereby no one can re-broadcast the broadcast or cause of broadcast to be seen or heard by the public on payment of any charges without a licence from the owner. Thus,
the defendant had no right to broadcast the programme without the licence from the plaintiffs. By inserting their own advertisements the defendants had violated the provisions of the Section 37 of the Copyright Act, 1957.

The next cause of action was based on the tort of conversion. The tort of conversion is said to have been committed when a person deals with goods in a manner inconsistent with the right of the owner. The elements of this tort are based on two conditions: (i) it is necessary to establish the right over the goods; and (ii) it should be established that the defendants have committed an act which is inconsistent with the owner’s rights. Several cases have been cited by the plaintiffs to establish their rights. The first questions relates to ownership over the signals and to claim the signals constitute as ownership of chattels and goods. The defendants in their counter submitted that the plaintiffs were only transmitting signals and that signals do not constitute as goods. They further stated that they had not distorted or affected the plaintiff’s signals. The question therefore arose whether signals can be considered as goods or chattels under the Sale of Goods Act 1930. Goods means any moveable property other that an actionable claim and money. In an earlier Supreme Court case of The Commissioner of Sale Tax, Madhya Pradesh, Indore Vs M.P. Electricity board, Jabalpur366, the Supreme Court held that the term ‘movable property’ cannot be construed in a narrow sense. The Supreme Court held that merely because electric energy is not tangible and cannot be removed or touched, for instance, like a book or piece of wood does not mean that it ceases to be movable property. The Supreme Court held that electric energy has all the attributes of movable property in as much as it can be transmitted, transferred, delivered, stored and possessed in the same way as in case of other movable property. Signals that are transmitted by the third plaintiff can also be transmitted, transferred, delivered, stored and possessed and they were in fact

communicated by the defendants. As such signals can be considered as movable property within the meaning of the Sale of Goods Act, 1930.

The next issue is therefore, whether the plaintiffs can claim that the defendants had committed the tort of conversion. The programme in it's entirely included the entertainment and the advertisement. The defendants had shut out a portion of the programme by deleting the advertisement and substituting their own advertisement. This action amounted to a tort of conversion as they had denied the right of the plaintiffs who were entitled to advertise during the particular time and this right was denied by the defendants who had asserted their right contrary to the right of the plaintiffs. Thus, the plaintiffs have made out a prima facie case establishing a cause of action under the tort of conversion. The willful and intentional act of defendants which has affected the plaintiffs right amounted to a tort of inducing a breach of contract and unlawful interference with the contract, a tort of passing off, a tort of conversion as well as violation of copyrights and right of broadcast for which an injunction was accorded against the defendants restraining them from showing their own advertisements during the time slot that was given to the plaintiffs to advertise during a particular programme and this action was claimed under various heading under Law of Torts, as well as the statutory remedy the is granted under the Copyright Act 1957.

The defendants filed a petition in appeal and the Division bench dismissed the petition and the defendants' application for leave to appeal to the Supreme Court was also denied. The defendants' special leave petition was denied by the Supreme Court. Special provisions have been inserted by Copyright (Amendment) 1999 i.e. 15.01.2000, wherein the Central Government is given the power to apply Chapter-VIII to broadcasting organisations and performers in certain other countries. Section 40-A stated that it the Central Government is satisfied that a foreign country has made or has undertaken to make such provisions for the protection of broadcasting organisations and performers in
that foreign country, these rights will be available under this Act and as such directs that the provisions of Chapter-VIII shall apply to broadcasting organisations whose headquarters is situated in a country to which the order related of the broadcast has been transmitted from a transmitter situated in a country to which the order relates as if the headquarters of such organisation were situated in India or such broadcast were made from India. This section provides protection to performance and sound recording that was made in another country as per Section 40-A (1) (b), (c), (d) of the Copyright Act, 1957. Similarly, the Central Government is empowered under Section 42-A of the Act to restrict the rights of foreign broadcasting organisations and performers.

5.5.10 **THE GRAMOPHONE COMPANY OF INDIA LIMITED CASE**

Facts of the Case:

The plaintiff was the owner of a copyright in the sound recording of an audio cassette. He was also the owner of the copyright in lyrics embodied in the sound recording and had also designed a unique inlay card with distinctive design, colour combination, layout and get up for the said audio cassette which constituted as an artistic work under the provisions of the Copyright Act. The inlay card contained the photo of Lord Ganesh with photos of two singers Lata Mangeshkar and Usha Mangeshkar. This audio cassette was well received by the public. Later, the defendants launched an audio cassette in the market with the title ‘Ganapati Aarti Ashtavinayak Geete’ which was identical to plaintiff’s audio cassette. The design, the colour scheme, the get up, and layout of the defendant’s audio cassette was deceptively similar to that of the plaintiff. Further the songs also were in an identical sequence as that of the plaintiffs. However, the singer in the defendant’s audio cassette was Anuradha Podwal.

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367 Gramophone Company of India Ltd. Vs Super Cassette Industries Ltd., decided on 04.12.1998 Delhi High Court, reported in 1999 PTC (19) 2 (DEL.).
The plaintiffs filed a suit against the defendants on the grounds that the defendants was passing off its goods as that of the goods of the plaintiff and sought an action for restraining the defendants from issuing its sound recordings and from using the inlay card that was deceptively and confusingly similar to the inlay cards used by the plaintiff and from packaging or using labels which would infringe the copyright of the plaintiff.

Analysis of the Case:

Primarily, the Copyright Act provides protection to the three broad categories of Section 2 of the Act which defines copyright work as (i) a literary, dramatic, musical or artistic work, (ii) a cinematographic film; (iii) a sound recording. Musical work is defined in sub-section (p) of Section 2 which means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music. Clause(xx) of sub-section of Section 2 defines sound recording as recording of sounds from which such sounds may be produced regardless of the medium, on which such recording is the method, by which the sounds are produced and clause (m) defines an infringing copy as: (i) in relation to a literary, dramatic, musical or artistic work or reproduction thereof otherwise than in the form of a cinematograph film; (ii) in relation to a cinematograph film, a copy of the film made on any medium by any means, (iii) in relation to a sound recording or any other recording embodying the same recording made by any means; (iv) in relation to a programme or performance in which such a broadcast, reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, performance, if such a reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.
The scheme of the Act includes the rights that are conferred to the copyright holder and also deals with the method of transfer of copyrights made by the copyright owners with their consent. However, there are certain acts permitted under the statute which cannot be considered as infringement of copyrights and the act authorises the use of the copyrighted works in special circumstances. Special provisions are made with regard to version recording. Following acts shall not constitute an infringement of copyright namely:

(j) The making of records in respect of any literary, dramatic or musical work, if

(i) records recording that work have previously been made by, or with the licence or consent of, the owner of the copyright in the work; and

(ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Copyright Board in this behalf.

The special feature of this case was that the defendants have not denied the title claimed by the plaintiff for the original works. However, their submission was that they had sent necessary information to the plaintiff that they were using the original works for recording the songs to be rendered by another singer and had also enclosed a cheque for Rs. 2,230 by way of royalty to make 5000 cassettes. They claimed that they were entitled to indulge in version recording under Section 52(1)(j) after payment of the necessary fees to the plaintiff. The fact was that they returned the cheque and they had informed the defendants not to
make version recording. However, this section has to be read in harmony with other sections which confers exclusive rights over the original works to the copyright owners. The version recording cannot be considered as an infringement of the copyright within the meaning of Section 51 as the singers are different.

The Court however, consider that the fact that the plaintiff had returned the cheque and given clear instruction that it does not permit the version recording, gave the plaintiff the right to seek an injunction restraining the defendants from any further sound recording which would infringe the copyrights of the plaintiff. On the various factors placed before it, the Court was in favour of the plaintiff as all the three elements necessary for the grant of injunction were present and as it was seen that the plaintiff would suffer irreparable injury if the injunction is not granted, the Court gave necessary direction to restrain the defendant form issuing any sound recording of the audio cassettes which would infringe the rights of the plaintiff.

5.5.11 *PEPSI CO. INC. CASE* 370

In this case the issue of copyright protection for advertising slogans was considered. The Delhi High Court held in this case that the slogans are not *prima facie* protectable under the Copyright Act. They may be protected under the Law of Passing Off. Here the plaintiff makes out such a case.

**Facts of the Case:**

The plaintiffs alleged to have infringed upon their registered trade mark by using the words that are deceptively similar to the mark of the plaintiffs and also sought to restrain the defendants from infringing upon their slogan ‘Yeh Dil Mange More’. The plaintiffs claimed to be the registered owners of the

370 Pepsi Co. Inc. and Another Vs Hindustan Coca Cola and Other, 2001 PTC 699(DEL);2001(3) RAJ 458 DEL.: (2001)94 DLT 1172.
mark Pepsi, Pepsi Cola and Globe Device. They were also the registered owners of the copyright in the words ‘Yeh Dil Mange More’ and also registered the slogan under the Trade Mark Act. Huge publicity was based on this slogan and the plaintiffs alleged that the defendants had infringed upon the trade mark and copyright in relation to the phrase ‘Yeh Dil Mange More’. In turn the defendants counter claimed that the advertisement of the defendants was nothing more than a parody and was aimed at poking fun at the advertisement of the plaintiffs. This case has for the first time taken up the issue of comparative advertisement per se amounts to infringement of their rights. The defendants have used the word ‘Pappi’ which the defendants claim was neither visually nor phonetically similar to the word ‘Pepsi’. The plaintiffs had registered the words ‘Yeh Dil Mange More’. It claimed this phrase is an original literary work that has become distinct with the plaintiffs and that it had the rights of exploitation of the distinctive element. The word original does not mean that the work must be the expression of an inventive thought. The originality which is required under the Copyright Act relates to the thought but the Act does not require that the expression must be in an original or novel form. But the work must not be copied from another work. It should originate from the author. The plaintiffs also relied upon the passage form MacCarthy on Trade Marks and unfair competition to the effect that however, the theme of an advertisement is copyrightable if it embodies some definite concrete elements beyond the mere idea or concept. Similarly, the plaintiffs also relied on Nimmer to this effect. Thus, it is arguable that the exclusively of the copyright in the words as a literary work is not lost by merging the words with music into a collective work compilation known as a musical work.

Thus, the plaintiffs contented that it had the copyright over the phrase ‘Yeh Dil Mange More’. In turn, the defendant submitted that there was no presumption

on the ownership of the Globe Device in favour of the plaintiffs merely because the work is neither registered mark nor can the plaintiffs claim any copyright over the device to the effect that on the grounds of triviality there can be no copyright in the advertisement slogans, youthful appearances are social necessities, neither luxuries nor in the stringing together for advertisement purposes of a number of common law sentences.

The Court then referred to Section 2(o) of the Copyright Act which defines literary work. Section 2(o) stated literary work includes copyright programmes, table and compilations including copyright data bases.

**Analysis of the Case:**

In this regard P. Narayanan\(^{373}\) stated that advertisement slogans are not literary works whose statement was supported by Iyengar who also voted favourably by saying that\(^{374}\) in common place or trivial works there is no literary merit even as understood in this fact and mere advertising slogans are not literary works.

Considering the recent trends it was held that on a mere reading on the definition it is doubtful whether slogans are subject of works and can be covered under the said definition or not. *Copinger and Skone James*\(^{375}\) consider this and stated that no copyright on titles. It further contended that a mere advertising slogan is not a literary work within the meaning of the Copyright Act and therefore cannot claim any protection and the reliance was placed on remarkable case.\(^{376}\) The titles of books, newspapers, periodicals and other copyright works are not generally in themselves the subject of copyrights. The reason is that there is usually no original literary work in the formation of

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\(^{376}\) Sinanide Vs La. Maison Kosneo, (1928) 139 I.T 365; (1928) 44 TLR 574; Also referred in para 2-10 of *Copinger and Skone James on Copyrights* 13th ed., 2001, p-23.
several ordinary words into a title. The words or phrases chosen may be
original in their application to produce the subject matter of the work which
required much skilled and judgment. However, that skill and judgment is
generally employed in choosing and selecting from common words and phrases
and not in putting together words in an original for or in affording to others
information instruction or pleasure. Whereas, it will usually be the case, the
title forms part of a larger work or compilation, the copying of the title will
rarely amount to the taking of a substantial part.

Although the task of devising, advertising slogans often requires a high level of
skill and judgment as with titles, they will usually not qualify for copyright
protection as original literary works. However, the value of an advertising
slogan lies in its role in generating additional good will for a product or service
and in acting as a badge for vehicle for the good will and in appropriate
circumstances; a slogan may be protected as part of that good will. Thus,
passing off is not limited to names, but is wide enough to encompass other
descriptive materials such as slogans, or visual images. The radio, television or
newspaper advertising campaigns can lead the market to associate with the
plaintiff's product, provided always that such descriptive material has become
part of the good will of the product. The test is whether the product has derived
from advertising a distinctive character which the market recognises. In most of
the cases plaintiffs have failed to establish that their slogan is distinctive. It
may be of course that the defendant's advertisement as a whole is deceptive.
The mere fact that the words were registered does not create any statutory right
and therefore to claim that the copyright of this kind falls under a literary work,
it must be established independent of any registration.

In Camlin Pvt. Ltd. Vs National Pencil Industries, the certificate of
registration under the Copyright Act is only prima facie evidence of entries in

\[^{377}\text{2}^{nd} \text{ 1985(I) DEL. 813; 1986(6) PTC 1(DEL.); AIR 1988 Delhi 393.}\]
the copyright register. It does not however establish that what was registered is in fact and in law copyrightable subject matter. On the basis of the above decisions the Delhi High Court in this instant case held that the advertising slogans are *prima facie* not protectable under the Copyright Act. They may be protective under the law of passing off in case the plaintiffs makes out such a case. However, it is admitted that the defendants had used the slogan in a mocking way only in the course of comparative advertising. This itself would not *prima facie* amount to infringement of copyrights.

In the television commercial of the defendants the advertisement was aimed at showing that the kids preferred Pepsi and described it as ‘Cuchomvali Drink’ and that ‘Thums Up’ is for grown up. These were shown in advertisement-I and in advertisement-II, the Pepsi and the phrase ‘Yeh Dil Mange More’ was used in a mocking manner, a covered drink was described as a sweet drink and it revealed the Glove Device with the mark Pappy. In advertisement-III and IV, the drink which resembled Pepsi was referred to as Pappy and termed as buchomvali while ‘Thumps Ups’ was referred to as ‘Bado Ke Liye’ and ‘Damdar Hai’. The commercials were evident that the defendants was comparing with the plaintiff’s cola. The question was whether the act was disparagement of the plaintiff’s products and thus, the case was viewed from the angle of false advertisement rather than the case of infringement of copyrights.

5.5.12 ΒΙCcΟ LAbΟRATΟRIΕS ΑΝΟΤΗΕr CASe

Facts of the Case:

The petitioners carried on business as manufacturers of Ayurvedic Pharmaceutical products which was sold under the brand name of ‘Vicco’ and

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378 Vice Laboratories and Another Vs Art Commercial Advertising Pvt. Ltd. and Others, 2001(2) CTMR 1180; Supreme Court decision given on 13.08.2001.
had acquired substantial reputation in the market. The first defendant was an advertising agency and has been the advertising agents in respect of the products manufactured by the petitioners. The second respondent is the Director and partner of the first respondent and was dealing with the petitioners on behalf of the first respondent. The other respondents are the proprietary concern and the concerned authority in charge of television in India in the name and style of ‘Doordarshan’ which is a television media. The petitioners had agreed to pay the entire costs of the production of a TV serial entitled ‘Yehan Jo Hai Zindagi’. They claimed that the defendants were under their employment and that they were the owners of the said serial. Under the arrangement made between the plaintiffs and the defendants sixty episodes were produced and the petitioners had spent a crore of rupees for the products and the telecast of the said episodes and had also spent large sum of money on advertising to popularize the TV serial and it had become one of the most exclusive and popular serial. The petitioners claimed the exclusive right to use the title ad claimed that the serial cannot be telecasted without the name of the petitioners as sponsors of the serial. They claimed to be the real producers and owners of the serial. The defendants however, denied the rights claimed by the plaintiffs. In their counter they have contested the suit on the grounds that it was agreed between the petitioners and the defendants that the copyright in the serial would rest exclusively with the defendants and not with the petitioners. The defendant’s name was shown in the title of the said serial as the producer right from the beginning of the first serial and the petitioners had not protested against the same. The advertisement issued by the petitioners themselves in various newspapers to give wide publicity to the serial also indicates that the copyright over the serial lies with the defendants. They further contented that even assuming that the petitioners are the owners of the copyrights they had ceased to be such owners as they have acquiesced in the exercise of the rights by the defendants by their conduct. On an examination of the facts the question
that arose was whether the two capacities of a sponsor and a producer can co-exist in one person. It was found that for the first twenty six episodes the amount per episode paid by the petitioners was Rs.1,20,000/- and it also contained the expression 'service charges'. However, the trial Court rejected the contention of the plaintiffs that having borne the cost of production of the serial they should be considered as producers of the serial. There was no element of liability to render the account and nor was it established that the defendants were the agents of the petitioners within the meaning of Section 182 of the India Contract Act, 1872 and the trial Court summed up the position of the plaintiffs by stating that they were mere sponsors and not the producers of the serial. On appeal the High Court also notice the fact that the defendant's name appeared as producer in the titles of the serial and this was not protested nor objected to by the petitioners. This cash was examined in the light of Section 17 of the Copyright Act.

Analysis of the Case:

Section 17 of the Indian Copyright Act deals with the first owner of copyrights and subject to the provisions of this Act, the author of a work shall be the first owner of the copyrights therein provided that:

(a) in case if 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 a work in so far as the copyright relates to the publication of a work in any newspaper, magazine or similar periodical or to the reproduction of the work for the purpose of its being so published bit in all other respects the author shall be the first owner of a copyright.
(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 cinematographic 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.

(c) in 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.

(cc) in case of any address or speech delivered in public, the person who has delivered such speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech or as the case may be, the person who delivers such address or speech or as the case may be, the person on whose behalf such address or speech is delivered is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered.

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

(dd) in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement, to the contrary be the first owner of the copyright therein.

The facts also clearly showed that an aggregate amount of money was paid to the defendants which was in fact a fixed price for sponsoring the said serial in order to link up their advertisement with the said serial and the defendants were not liable to render accounts to the petitioners for the expenditure that was incurred by them to produce the serial. Section 17 clearly states that unless and
until the petitioners are able to establish that the defendants had produced the serial either: (a) as agents or the petitioners; or (b) in the course of their employment with the petitioners; (c) for valuable consideration paid by the petitioners to them; (d) at the instance of the petitioner they cannot claim the right ownership the order made but the High Courts and the petition was dismissed by establishing the rights to the defendants as owners of the serial.

5.5.13 GEE PEE FILMS PRIVATE LIMITED CASE

Facts of the Case:

Plaintiff is a music company engaged in the business of music recording and deal with recordings of audio-video and film and non-film songs, having head office at Ballygunj, Circular Road, Kolkata. The defendant No. 1 is a singer of Bengali songs and defendant No. 2 is engaged in the business of manufacture and sale of cassettes, compact disk and other song recoding systems. The defendant No.3 is the song lyricist and music composer, and defendant No.4 is a relative of defendant No.3 and claimed to be a lyricist, defendant No.5 is also a lyricists and music composer. In 1999 the plaintiff commissioned defendant N.3 and 5 to compose Bengali non film lyrics and music proposed to be sung by defendant No.1 and proposed to release those by way of cassettes and other sound recording systems. On payment by the plaintiff defendant No.3 wrote the lyrics and composed the song titled ‘Tanche Jakhan’ and defendant No 5 wrote the lyrics for another song ‘Tomar Chhoante’ which also sung by defendant No.1. The tapes containing two songs were prepared and retained by the plaintiff and he claimed ownership for having paid adequate consideration to defendant No.2 and No. 5. Subsequently the plaintiff came to know that defendant No.1 and 2 had released a music cassette containing the similar songs with few marginal cosmetic changes to the lyrics and made of fraudulent

379 Gee Pee Films Private Limited Vs Pratik Choudhury and Others (2002) 24 PTC 392 CAL.
attempts to pass off the said two songs as different numbers by purporting to alter the titles of the said 2 numbers. The plaintiffs claim to be the owner of the two songs and in addition owner of the sound recording thereof. The Court granted and ex-party injunction in favour of the plaintiff. The defendants filed an appeal. The main contention of the defendants was that the copyright act provided ownership to the composer of the music.

Analysis of the Case:

According section 2(d) author means (ii) in relation to a musical work, the composer according to defendants even if it is accepted that the songs were written on the basis of commission given by the plaintiff or that these were composed on the bases of such payment, copyright remains with the lyricist and the composer. As per defendants unless it is alleged and established that those songs were written and composed in the course of plaintiffs employment under a contract of service or apprenticeship as provided in Section 17(c) of the Act., the plaintiff cannot have any copyright over the said songs. In terms of Section 17 of the Copyright Act, the first owner of the copyright subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein provided that (c) In the case of a work made in the course of the authors employment under a contract of service or apprenticeship, to which clause (a or b) does not apply, the employer shall, in the absence of any agreement to contrary, be the first owner of the copyright therein. The defendants further contended that the plaintiff couldn’t claim any copyright even over the sound recording based on Section 2(uu) states producer in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work.

The plaintiff opposed the above contentions of the defendant and stated that the songs having been written and composed on the basis of payment of the commission it should be presumed that the defendants wrote and composed
those songs in the course of employment, under a contract of service and as such the plaintiff should be held to be the owner of the copyright on the lyrics and music as provided in Section 17(c) of the Act. The plaintiffs had taken the initiative of the recordings and borne all expenses by making payment of hire charges of the studios and remuneration to the musicians. The relevant passage from *Copinger and Skone James* on copyrights, referred earlier, was taken to prove that when a person makes necessary arrangements for recording a work he should be presumed to be the producer of the work. It is a fact that defendant No.3 and 5 being the lyricist and composer of the disputed songs was the owner of the copyright over the songs. It is for the plaintiff to prove that these works were made in the course of employment under a contract of service and that there was no agreement to the contrary relating to the owner of the copyrights. The plaintiffs stated that it had commissioned the defendants to compose the songs. The word commissioned means according to oxford advanced learners dictionary means ‘give somebody the job of making something, for example: He commissioned an artist to paint a statue of his wife, on payment. It also means to give an order. The case cited in this connection was the decision of the Supreme Court of Bangladesh.

*Suraiya Rahman Vs Skill Development for Under Privileged Women* in this case the plaintiff was under a contract of service to produce artistic works and designs that she had produced before entering into the service of the defendants, as their works were clearly set out that unless and until it is proved that the work has been conducted during the course of employment the master cannot claim ownership over the work. Base on the above cases and on examining the facts of the case of the High Court of Calcutta held that the plaintiff cannot misinterpret the definition of producer as given in Section 2(uu) of the Act. In order to be a producer a person must take initiative as well as the responsibility of the recording. In addition to paying the expenses of

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recording including hire charges of the studio and remuneration of the musician, a person must also take the consequential legal liability for such recording. The court therefore came to the conclusion that the plaintiff did not prove a *prim facie* case of copyrights in his favour and the plea for injunction was not granted and the earlier decision was vacated.

5.5.14 *ANIL GUPTA AND ANOTHER CASE* 381

Facts of the Case:
The Delhi High Court has recently decided this case on the issue of copyright for an idea that was conceived for producing a TV serial based on match-making. In this case the plaintiffs conceived an idea to produce a TV programme and decided to name the concept ‘Swayamvaram’. The plaintiffs claimed that they had devised a unique and novel concept of a woman selecting a groom in the public forum. The copyright was claimed for some essential elements of the programme which was based on the following concepts:

   a) It was a real life entertainment programme taking a real life situation;
   
   b) It was half an hour long TV show that was even shot outdoors;
   
   c) It provided the thrill of match making;
   
   d) It provided a platform for unmarried girls to select a spouse from a long list of suitors;
   
   e) The parents of the girls and the boys were also associated in the process of match making;
   
   f) The participants for the show were selected and short listed by the producers prior to the show;

g) The producers ensured that there should not be any foul play or duplicity; and

h) The mediation between the parties is made by a mature, articulate, vibrant woman anchor.

Thus, it seeks to promote secular and progressive method of selection of the spouse and in way help in the empowerment of women. This was actually the basic concept for which the plaintiff claimed copyright protection. The defendant had asked for the details of the programme that was made by the plaintiffs. The highlights of this concept were explained to the defendants. This was a novel idea and the plaintiffs had approached to the Doordarshan. Late, the plaintiffs saw an article in the Financial Express that the Sony TV was launching a serial with the title ‘Subh Vivah’. In response to the plaintiff’s letter to clarify the contents of the defendant TV show, the defendants replied that they were not making a copy of the ‘Swayamvaram’. The main contention of the plaintiffs was as follows:

a) They contended that there was misappropriation of the concept of the plaintiffs programme; and

b) When the defendants announced their plans to make a similar programme it had inflicted huge loss and damage to the commercial potential of the plaintiff’s programme by luring away their advertising sponsors;

c) The plaintiffs contended that there was prima facie evidence for claiming a grant of injunction as it was a clear case of breach of confidence on the part of the defendants;

d) It was claimed that the action of the defendant is a clear case of a breach of trust or confidence which gives a broader right to the plaintiff, far wider that of a breach of copyright. As the idea and
information have been acquired by the defendant under confidentiality the plaintiff sought the remedy of injunctions to restrain the defendants from making a similar serial on the basis of the concept and format supplied by the plaintiff;

c) They further contended that the law of confidential communication includes written and oral communications;

d) Another contention is that there are no requirements that the idea should always be developed to its fullest extent. In certain cases, as seen in the present case, the mere fact that the concept was disclosed to the defendants does not permit the defendants to use it nor claim that the information has now fallen into public domain.

g) Next it was alleged that, it is not proper to claim that there were other people who knew of the concept or the format besides the defendants. The issue was that the doctrine of ‘Spring Board’ is applied in such situations and as the concept of ‘Swayamvaram’ was first initiated by the plaintiffs, they claimed ownership over the concept seeking a restrain order to stop the defendants from misappropriating their theme and claim unjust enrichment by using the same to the detriment to the plaintiff who had first conceived, evolved, presented and made the format and the concept for the first time as TV show. Thus, the plaintiff filed the suit to restrain the defendants from showing the TV serial ‘Subh Vivah’ based on the concept and format of the plaintiffs.

In their counter the defendants claim that the concept of ‘Swayamvaram’ was already in the public domain. (i) It was further contended that the narration of the plaintiffs that was given to the defendants was very vague with a very rough preliminary note and no presentation was give to the defendants. (ii) It was further stated that the onus was on the plaintiffs to identify the information that was supplied to the defendants and prove that it was confidential
information and that the defendants were guilty of breach of confidentiality.

(iii) The plaintiffs cannot be allowed to monopolies a concept which was in the public domain. It claimed that there cannot be a copyright on a subject matter or theme that is based on historical mythological believe. The defendants pointed at the difference between their show and the plaintiff’s programme. It stated that the following points were missing in the plaintiffs programme (i) providing platform to young women to chose a spouse from a short list of potential suitors; (ii) involvement of the parents of the girl and the suitors; (iii) enabling selection of the spouses through various devises; (iv) rewarding the couple after the ‘Swayamvaram’ is concluded; (v) selection process through matrimonial bureau, etc. (vi) empowerment of women by giving her power of selection; and (vii) giving gifts to the engaged couple as stridhan.

Thus, the defendants concluded that their show was different from the plaintiff’s concept, and that this idea was already in the public domain even prior to 1996 as there were several similar shows in existence in various countries outside India for example, ‘Mr and Mrs.’ was shown on ATV between 1964 and 1988, and broadcast on UK during the 1990’s ‘Love at first sight’ was broadcast on Sky since 1990. ‘Blind Date’ was broadcasted on ITV since 1995. This striking feature of the defendant’s serial was as follows:

a) the applicants for the show sent their photos, CVs, and personal information like their preferences, likes, dislikes etc.;

b) the applicants are then shortlisted by producers;

c) each segment has one girl who has to choose from five boys;

d) she ask a few questions to the five boys’

e) their answers are shown to the girl and she short list three of them;

f) she and her family then meet the three boys and their families;
g) there is an interaction and the girl shortlist one boy. Lastly the boy and girl meet and take the final decision to marry or not to marry and if they marry within a year, their honeymoon is sponsored by the producers of the serial and are given the prizes.

Analysis of the Case:

The main thirst of this case was on the legal rights for a concept or an idea and the protection and enforcement of these rights. It is a fact that this concept was shown on the small screen which has become an effective media of mass communication like radio and has a wide potentiality of gaining revenue, therefore, needs to be thoroughly examined. When a person creates an idea or a concept or a theme which is original, law must ensure that the people who created these ideas should be rewarded for their labour. The creators provide the raw materials which are vital for the entertainment industry. When these ideas are developed into concepts in more detailed manner and registered, it gives a greater right to the copyright holder. ‘Swayamvaram’ is a concept based on Indian mythology which was seen in the ‘Mahabharat’ and ‘Ramayana’. However, the concept in these Indian mythologies was not a choice left on the bride but was based on the act of chivalry that was performed by any prince to seek the hands of the princes. The concept that was visualized by the plaintiff was totally different. A concept like the present one was given legal protection in various cases as seen in the case of Talbott Vs Television Corporation^{382}, where the court given the concept a special right and held that:

“I am satisfied that what was called the ‘commercial twist’ or the particular slant of the plaintiff's concept or idea does give it a quality which takes it out of the public knowledge. In my opinion the situation then was that the plaintiff had ‘a saleable proposition’ which had as its kernel the valuable concept of a programme which had the intent of

^{382} 1981, RPC, 1.
exposing the lives of successful people. In my opinion not only was the text of the submission made available in confidence but the kernel of the concept whether it was conveyed in writing or orally was also made available in confidence."

And such confidential information has to be protected. The fact that a bare outline also can be protected is seen in the case of Fraser Vs Thames Television,383 wherein it was held that:

"I do not think this requirement necessitates in every case a full synopsis. In some case the nature of the idea may require extensive development of this kind in order to make the criterion. But in other the criterion may be made by a short unelaborated statement of an idea".

And further in Franchie and Others Vs Franchie and Others,384 it was stated:

"clearly a claim that the disclosure of some information would be a breach of confidence is not to be defeated simply by proving that there are other people in the world who know the fact in question beside the man as to whom it is said that his disclosure would be a breach of confidence and to those to whom he has disclosed them."

The court after considering all the abovesaid facts and on the legal mind given on this issue came to the conclusion that it is not proper to except the views of the defendant that once a concept is registered; under the copyright Act the same comes under the public domain. In fact, when the concept is registered it can claim protection from the public as the very purpose of the copyright Act is to grant monopoly interest and a right to restrain others from using the copyrighted work and the right of exploitation and communication to the public is given solely to the copyright owner. The concept of the proposed TV programme of the defendants with the title ‘Subh Vivah’ contain the basic salient features of the plaintiff’s programme and it is based on the thrill of the

384 1967, RPC 149.
match making as real life situation. The defendants therefore, cannot reap the fruits of the labour put in by the plaintiff in this regard. The plaintiffs had proved all the elements required for claiming an injunction as it *prima facie* proved that if the order of injunction is not granted to restrain the defendants it would give a premium to the defendants to rob and misappropriate the right of the plaintiff over his work. The injury that would be sustained by the plaintiffs was difficult to be measured in term of money and therefore an order was passed to restrain the defendants from transmitting or enabling the transmission by the television its programme entitle ‘Subh Vivah’. However, it also stated that if the plaintiffs do not transmit their programme entitles ‘Swayamvaram’ within a period of four months; the defendants will be at liberty to transmit its programme ‘Subh Vivah’ after expiry of four months.

5.5.15 **STAR INDIA PRIVATE LTD. CASE** 385

**Facts of the Case:**

The Plaintiffs were carrying on business acquiring copyright in films, TV serials, and programmes. They also produced and commissioned the production of these programmes. They had entered into an agreement with the defendants to create, compose and produce 262 episodes of the TV serial entitled ‘Kyon Ki Saas Bhi Kabhi Bahu Thi’. This serial gained tremendous popularity and goodwill. A television commercial advertisement for a consumer product ‘Tide Detergent’ produced by the defendants use the words ‘Kyon Ki Bahu Bhi Kabhi Saas Banegi’ with identical characters of the original serial of the plaintiffs. The contention of the plaintiffs was that the defendants had not obtained proper consent or permission from the plaintiffs and that the defendants attracted patronage of the viewers of the plaintiffs’ serial. It was

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385 Star India Private Ltd. Vs Leo Burnett (India) Private Ltd., 2003(27) PTC 81 (BOM) 86-87; 2003 (2) BOM. CR 655.
alleged that the defendants made a false and deliberate misrepresentation of a connection with the plaintiffs' business and with the plaintiffs' TV serial thereby committing/attempt to commit a tort of passing off and mis-representing that they were authorised by plaintiffs' popular serial.

The contention of the defendants was that they had depicted the age-old custom of the Saas handing over the keys and the responsibility of the house to the Bahu cannot be considered as an original artistic work. It was also averred that even assuming that there are some features in the defendants commercial that were similar to the serial of the plaintiffs, it did not amount to a reproduction or substantial reproduction of the serial and hence does not amount to infringement. The defendants in their counter pleaded that the plaintiffs cannot claim personal rights over the serials, more so in the law of trademark. The rights claimed were in relation to certain scenes in a serial, they cannot be identified and be equated to goods nor is it possible to establish the goodwill that is associated with movable item. The issue was then shifted to the regime of copyrights.

**Analysis of the Case:**

The first question that was considered is whether the defendant's commercial is a copy of the plaintiffs' TV serial. Section 14(d)(1) of the Indian Copyright Act gives the owner of the copyrights, the exclusive right to make a copy of the film including a photograph of an image forming a part thereof. Unlike the UK and Australian Copyright Acts the word copy is too defined in the Indian Copyright Act and therefore, the word copy has to be referred from the dictionaries of the English language. Imitating or making a film which bears likeness or striking resemblance to a copyrighted films would amount to making a cop of the film and therefore, infringement of the copyright in the film. The test of 'substantiality' has to comply with the guidelines set out by the Courts. The judgment of the apex court in *R.G. Anand Vs M/S Delux Films*
and Others\textsuperscript{386} provided the guidelines to test the infringement of copyrights. The word ‘copy’ has been discussed in \textit{Cosigner and Skone James Copyrights} as follows:

\begin{quote}
"It has been stated that skill labour and judgment merely in the process of copying cannot confer originality and the mere copyist cannot have protection of his copy. Particularly therefore, where the reproduction is in the same medium as the original, there must be more than an exact reproduction to secure copyrights, there must be some element of material alteration or embellishment which suffices to make the totality of the work an original work. If the original, in the case of a painting is use merely as a model to give the idea of the new work or, in the case of a photograph merely as a basis to be network may be entitled to protection, but if the result is simply a slavish copy it will not be protected."	extsuperscript{387}
\end{quote}

Narrow copyright protection is accorded to a film/sound recording when compared to the literary, dramatic or artistic works. The reason perhaps could be that in case of literary, dramatic, or artistic works a copyright protection is granted only on the proof of originality, while in the case of films and sound recordings a copy of the theme does not amount to infringement and if it is proved that there are some dissimilar features, the producer can escape liability. In the instant case, the defendants were merely promoting their own product that is the ‘Tide Detergent’. There was no material or real likelihood of any damage being cause to the plaintiffs by the acts of the defendants. The mere act of a TV advertisement by the defendants cannot prejudice respect of the characters in the serial because while the TV serial of plaintiffs were carried over for 262 episodes of over 87 hours with each episode of 30 minutes, the

\textsuperscript{386} AIR 1978 SC 1613; PTC (Supp.) (1) 802 (SC).
defendant’s TV commercial advertisement was for 30 seconds only. Moreover, the fields of activity of the plaintiffs and of the defendants are totally different. When the fields of activity are different, it bears strong evidence that the act does not establish misrepresentation and the real likelihood of damage. The case does not fall within the realm of character merchandising, as the plaintiffs could not establish character merchandising in respect to the characters in the serial. On the contrary the general public on viewing the TV commercial advertisements would infer that the defendants were promoting their own products and not to cause any misrepresentation relating to the plaintiffs. In the absence of likelihood to damage the interests of the plaintiffs, the court was of the opinion that the remedy of injunctions is not available to the plaintiffs, as the actions of the defendants do not amount to passing off or of character merchandising. The plaintiffs were however, allowed to a separate action to claim damages on proof of any injury caused to them.

5.5.16 ZEE TELEFILMS LTD. CASE

Facts of the Case:

This case is of special relevance as it seeks to provide copyrights on concepts which carry a special value especially when they form a basis for TV serial and short plays. The facts of the case were that the plaintiff was engaged in the business of television programming, video programmes, multi-media programmes, feature films, TV serials etc. The concepts that were generated by the group of entrepreneurs who worked in different televisions network would create these concepts and register them with the film writers association along with the titles which in turn were registered with the Indian motion picture producers association. The concepts including notes, character sketches,

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388 Zee Telefilms Ltd. & Anr. Vs Sundial Communications Pvt. Ltd. & Ors, 2003 (27) PTC 457(Bom.) 472; 2003(5) BOM CR 404; 2003(3) MAH LJ 695.
detailed plots, episodes etc., main story lines were included in these concepts which were registered. These concepts were also translated into pilot projects which contained the audio visual representation produces on video tapes and were ready for telecasting. The concept in issue was based on a family where ‘Kanhaiyya’ who was an avatar of Lord Krishna appears as a child and is a succor to them and helps them. He plays with the family members performs skill miracles and adds joy and happiness to the entire family. Based on this concept the details of the serial were worked out and ten episodes were sent to the defendant’s office. In fact, the plaintiffs had asked whether to draw a non-disclosure agreement as the contents were confidential and not to be used or exploited in any manner without the consent of the plaintiff. The plaintiffs categorically stated that the ideas, concepts, thoughts and expressions expressed in these episodes were original and they claimed a right based on Section 13 of the Indian Copyright Act, 1957. When the director of the defendant company, Ms. Vinitha Nanda accepted the concepts and showed a positive response, the plaintiffs produced the pilot programmes and sent to the defendants.

The pilot programme was structured in the following ways:

“A rich dysfunctional family; Internal feuds (within the family); Affected family member crisis and asks God for help. Lord Krishna appears in a human (child) form (of ‘Kanhaiyya’) in front of the family member who prays for help; ‘Kanhaiyya’ enters the house, posing as ‘Krish’ relative of the family member; ‘Kanhaiyya’ then proceeds to weave his magic and miracles around the family that is on the verge of breaking apart; ‘Kanhaiyya’ brings happiness to all.”

Later, when there was no response from the defendants the plaintiffs approached the Sony Entertainment Television to telecast their serial and it agreed to produce this concepts. However, the plaintiffs later learned that the
defendants were producing a similar serial based on their concepts. Later on, the Sony Television of the defendants was also producing a similar serial. The serial of the defendants was based on the same theme wherein there is a large family with internal quarrels and ‘Kanhaiyya’ coming down to help them in handling their problems. The defendants in answer to the suit filed by the plaintiffs restraining the defendants from infringing their copyright counterclaimed that their serial was conceived on the basis of the theory of ‘Karma’ which is the essence of Bhagwat Gita. It was emphatically stated that the theme of the defendants’ serial is different and distinct from that of the plaintiffs. In the defendants’ serial there was an orphan child who is blessed with sagacity and wisdom beyond his age. He is not God not was he supernatural or divine. He never appeared as Lord Krishna and the advice that the child offers is very casual and in the course of normal conversation. The defendants therefore state that the emphasis of his serial is on the natural rather than supernatural. In a way that it seeks to convey the message that one should do one’s deeds act by him and not to look for divine help. In fact the plaintiff’s pilot and concept was exactly the reverse. The three main claims in this case were as follows:

a) It claimed an infringement of their copyright for their works titled ‘Krishna Kanhaiyya’;
b) The issue also relates to breach of confidentiality that was reposed on the defendant;
c) The plaintiffs claim that the defendants had committed a wrongful act in the form of reverse passing off of the plaintiff’s work

Analysis of the Case:

The primary premise of the law of copyright is that there can be no copyright over an idea or a mere concept. This has been clearly stated by various Courts in India.
In the case of *Indian Express Newspaper (Bom.) Pvt. Ltd. Vs Jagmohan*,\(^{389}\) where Justice Jamdar observed that:

"No doubt the contras theme of the articles published by the second plaintiff and that of the drama and movie is the same, though the emphasis in the drama and the movie is more on human bondage, particularly of Indian women. The articles published by Ashwini Sarin also contain an autobiographical account of the part actually played by him in the affair. He has presented the whole affair in his own style, but that at the most would give the plaintiffs copyright in respect of these articles. There cannot, however, be a copyright in an event which has actually taken place. There is a distinction between the materials upon which one claiming copyright has worked and the product of the application of his skill, judgment, labours and literary talent of these materials. Ideas, information, natural phenomena and events on which an author expends his skill, labour, capital, judgment and literary talent are common property and are not the subject of copyright."

Supreme Court also has laid down certain guidelines to determine whether the defendants had copied the special features of the copyrighted work of the defendants. The following rules were enunciated by the Supreme Court in the case of *R.G. Anand Vs M/S. Delux Films and Ors.*,\(^{390}\)

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author or the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to

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\(^{389}\) AIR 1958 Bom. 229.

occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant’s work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be substantial and material one for which the defendant is guilty of an act of piracy.

3. One of the surest and the sagest 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 words is clearly of the opinion and gets an unmistakable impression that the subsequent work appear to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however, apart from the similarities appearing in the two words there are also material and broad dissimilarities which negative the intention to copy the original and the coincidence appearing in two words are clearly identical no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the decided case laws.

7. Where, however, the question is of the violation of the copyright of stage-play by a film producer or a Director the task of the plaintiff becomes more difficult to prove privy. It is manifest that unlike a stage play film has a much broader perspective, wider field and a
bigger background where the defendants can by introducing a variety of incidents give a colour, a complexion distinct from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

An earlier decision given in the case of Harman Pictures NV Vs Osborne,\(^\text{391}\) was also referred in this case wherein the observations given by Justice Golf, were also considered. He stated that the whole of the script must be read carefully and compared with the book to find out the similarity between the works. Thus, the question is whether the substantial portion of the work has been taken or not. Slight modifications are not sufficient. Concept as such was also accepted as a legally protected interest under the copyright laws in the case of Anil Gupta and Another Vs Kunal Das Gupta and Others,\(^\text{392}\) as the concept and the theme of the serial belonging to the plaintiffs was original the Delhi High Court accepted it as a form of work that can claim copyright protection and restrain others who seek to use it. The second issue in this case relates to confidential information in confidence. This is a broad equitable doctrine wherein no person who receives information in confidence should take unfair advantage of it or profit from the wrongful use of publication of it. It is different from the law of copyrights and even if a person is not permitted to claim copyright over ideas or information is given only to material that has been reduced to permanent form the law of confidence protects all forms of confidential communication whether oral or written. While copyright is available against the whole world confidential information is a right that can be claimed against persons who receives this information with the note that it would not further be disclosed. The case in issue clearly shows that the concept

\(^{391}\) 1967 (1) WLR 723.

\(^{392}\) (2002) DEL. LT 257.
and the theme of their serials were disclosed under great confidentiality. This information should not be used by the recipient in contradiction to the trust that was reposed when the concerned information was related to the other party. An action for a breach of confidence involves the following four elements:

a) the plaintiff must identify clearly the information which he considers as confidential;

b) he should prove that this information was handed over not to be revealed;

c) this information should be treated as confidential; and

d) the information has been used without seeking prior permission of the plaintiff.

On examination of the facts the Court held that the communication of the idea for the serial had been made in confidence and the idea was distinct having sufficient originality, commercial attractiveness and likelihood of realisation so as to fix the defendants with the obligation of utmost confidence which the defendants has clearly violated when they used the idea as a basis for their own television serials. The Court observed that the concept can be protected by restraining the defendants from using it.

The third issue relates to the claim of reverse passing off. In this case the claim of the plaintiffs was that the defendants had indulged in an action of reverse passing off. That is the defendants has attempted to misrepresent that the concept of the plaintiffs was actually belonging to them, that is, when an original idea or a concept that belongs to one person is used by another as if it belongs to him it gives rise to an action of reversing passing off. This was clearly seen in recent case of Bristal Conservatories Ltd. Vs Conservatories Custom Built India, wherein the plaintiffs filed a complaint that the

393 1989 RPC 455.
defendants were showing the photographs and designs belonged to the defendants. The customers were thereby misled into believing that the defendants were actually producing the said conservatories. The Apex Court held that the action of the defendants amounted to an act of reverse passing off also. This claim was not dealt in detail in this case as there was proof that the defendants had committed a breach of confidence and had violated the copyright that was subsisting on the concept and as such no opinion was expressed on the issue of reverse passing off resulting the dismissal of the present appeal.

5.5.17 EASTERN BOOK COMPANY AND OTHERS CASE

Facts of the case:

The appellants are involved in the printing and publishing of various books relating to the field of law. One of the well known publications of Appellant No.1, Eastern Book Company, is the law report ‘Supreme Court Cases’ (SCC). The appellant publishes all reportable judgments along with non-reportable judgments of the Supreme Court of India in SCC. Yet another category included in SCC is short judgments, orders, practice directions and records of proceedings. The law report SCC was commenced in the year 1969 and had been in continuous publication ever since. The name ‘Supreme Court Cases’ had been coined by the appellants and they had been using the same continuously, exclusively and extensively in relation to the law reports published by them.

For the purpose of publishing the judgments, orders and proceedings of the Supreme Court, the copies of judgments, orders and proceedings are procured directly from the office of the Registrar of the Supreme Court of India. After

the initial procurement of the judgments, orders and proceedings for publication, the appellants make copy-editing inputs wherein the judgments, orders and records of proceedings procured, which is the raw source, are copy-edited by a team of editorial staff and various inputs are put in the judgments and orders to make them user-friendly by making an addition of cross-references, standardisation or formatting of the text, paragraph numbering, verification and by putting other inputs. The appellants also prepare headnotes comprising two portions, the short note consisting of catch/lead words written in bold; and the long note, comprised of a brief discussion of the facts and the relevant extracts from the judgments and orders of the Court. Headnotes are prepared by Appellant No. 3, Surendra Malik. As per the Appellant No.3 (Plaintiff No. 3 in the suits filed in the High Court), the preparation of the headnotes and putting of the various inputs in the raw text of the judgments and orders received from the Supreme Court Registry requires considerable amounts of skill, labour and expertise and for the said work a substantial amount of capital expenditure on the infrastructure, such as offices, equipments, computers and for maintaining extensive library, besides recurring expenditure on both the management of human resources and infrastructural maintenance, are incurred by the appellants-plaintiffs. As per the appellants, SCC is a law report which carries case reports comprising of the appellants' version or presentation of those judgments and orders of the Supreme Court after putting various inputs in the raw text and it constitutes an 'original literary work' of the appellants in which copyright subsists under Section 13 of the Copyright Act, 1957 and thus, the appellants alone have the exclusive right to make printed as well as electronic copies of the same under Section 14 of the Act. Any scanning or copying or reproduction done of or from the reports or pages or paragraphs or portions of any volume of SCC by any other person, is an infringement of the copyright in SCC within the meaning of Section 51 of the Act.
Respondent No. 2, *i.e.* Defendant, Spectrum Business Support Ltd. in Civil Appeal No. 6472 of 2004, had brought out a software called 'Grand Jurix' published on CD-ROMs and Defendant, Regent Data Tech Pvt. Ltd. in Civil Appeal No. 6905 of 2004, had brought out a software package called 'The Laws' published on CD-ROMs. As per the appellants, all the modules in the respondent-defendants' softwares packages had been lifted from the appellants' work. The respondents had copied the appellants' sequencing, selection and arrangement of the cases coupled with the text of the copy-edited judgments as published in the appellant-plaintiffs' law report SCC including the copy-editing, paragraph numbers, footnote numbers, cross-references, etc.; and that such acts of the respondent-defendants constituted infringement of the appellant-plaintiffs' exclusive right to the same.

The appellant-plaintiffs moved to the High Court for temporary injunction against both the parties filing applications in Suit No. 758 of 2000 against Spectrum Business Support Ltd. and in Suit No. 624 of 2000 against Regent Data Tech Pvt. Ltd. before a Single Judge. The interim orders of injunction were passed in the suits from time to time. However, the respondent-defendants filed application for vacation of the stay order. By a common judgment dated 17-1-2001, the Single Judge of the High Court dismissed the appellants' applications for interim injunction and allowed the respondents' application for vacation of stay. However, before the Single Judge, the respondents conceded that the appellants have copyright in the headnotes and as such they undertook not to copy these headnotes in their CD-ROMs.

Aggrieved by the said order dated 17-1-2001 refusing to grant interim injunction, the appellants preferred appeals before a Division Bench of the Delhi High Court and the applications praying for interim relief were also filed in both the appeals. The applications praying for the interim relief were disposed of by a Division Bench on 9-3-2001 directing that during the pendency of the appeals the respondents will be entitled to sell their CD-ROMs.
with the text of the judgment of the Supreme Court along with their own headnotes which should not in any way be a copy of the headnotes and the text of the appellant-plaintiffs. On filing of contempt petitions for non-compliance with the above said order of the Division Bench dated 9-3-2001, another Division Bench of the High Court heard the interim appeals and by the impugned order dated 27-9-2002 held that the appellants could not claim copyright in the text of the judgment by merely putting certain inputs to make it user-friendly. The Division Bench of the High Court, however, held that there is originality and creativity in preparation of the headnotes, and, therefore, there would be copyright in the headnotes to the judgments prepared by the appellants. The Division Bench also held that so far as footnotes and editorial notes are concerned, it could not be denied that these are the publisher's own creations and based on the publisher's own research and thus, the appellants had copyright over them. By the impugned order, the Division Bench modified the judgment of the Single Judge in favour of the appellants by directing that the respondents would be entitled to sell their CD-ROMs with the text of the judgments of the Supreme Court along with their own headnotes, editorial notes, if any, which should not in any way be the copy of the headnotes of the appellants. It also directed that that the respondents shall also not copy the foot notes and editorial notes appearing in the journal of the appellants. However, the Division Bench did not grant injunction protecting the copy-edited text of the appellants. Hence, they filed these appeals by special leave.

Before the Supreme Court the appellants claimed that the copyright subsists in SCC as a law report, as a whole based cumulatively and compendiously on all the substantial contributions of skill, labour and capital in the creation of various parts of SCC i.e. headnotes, editorial notes, footnotes, the version of the copy-edited text of judgments as published in the appellants' law report, the selection of cases as published, the sequence and arrangement of cases as published and the index, table of cases, etc. which are published in each
volume of SCC, that give the SCC volumes and thereby the complete SCC set, its character as a work as a whole. The appellants also claimed that the copyright subsists in the copy-edited version. The appellants did not claim copyright in the raw text of the judgments, certified copies of which are obtained from the Registry of the Supreme Court. The appellants did not claim a monopoly in publishing judgments of the Supreme Court; they were being published by other publishers also without copying from each other's publications. The appellants claimed copyright in the copy-edited version of the text of judgments as published in SCC which is a creation of the appellants' skill, labour and capital and there are contributions(inputs/additions of the appellants in creating their version of the text of judgments as published in SCC.

The appellants placed before the Court their contributions(inputs to the text of the judgments received by them from the Registry of the Supreme Court. The appellants asserted that originality inheres in such aspects of its editorial process which are selected, coordinated and arranged in such a way that the resulting work as a whole constitutes an original work of the appellants. Thus, the questions that arose before the Supreme Court were:

1) What shall be the standard of originality in the copy-edited judgments of the Supreme Court which is a derivative work and what would be required in a derivative work to treat it the original work of an author and thereby giving a protected right under the Copyright Act, 1957 to the author of the derivative work?

2) Whether the entire version of the copy-edited text of the judgments published in the appellants' law report SCC would be entitled for a copyright as an original literary work, the copy-edited judgments having been claimed as a result of inextricable and inseparable admixture of the copy-editing inputs and the raw text, taken together,
as a result of insertion of all SCC copy-editing inputs into the raw text, or whether the appellants would be entitled to the copyright in some of the inputs which have been put in the raw text? And

(3) That is, whether by introducing certain inputs in a judgment delivered by a court it becomes ‘original copy-edited judgment’ and the person or authority or company who did so could claim to have embodied the originality in the said judgment and the judgment takes the colour of original judgment having a copyright therein of its publisher?

Analysis of the Case:

It is clear that the decision of the Supreme Court would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Copyright Act 1957; there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavours to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.

On this touchstone, the Court take into consideration the inputs put by the appellants in their journal ‘SCC’. The appellants have added in the copy-edited version the cross-citations to the citation(s) already given in the original text; added names of cases and cross-citations where only the citation of the case is given; added citation and cross-citations where only name of the case is given; inserted citation in case history where only the title and year of the impugned/earlier order is given; presented in their own style of the cases when they are cited/ repeated in the judgment; provided precise references to the
quoted matter in the judgment by giving exact page and paragraph number as in the original case source/treatise/reference material; added margin headings to quoted extracts from statutes/rules, etc., when they are missing from the original text of the judgment; added the number of the Section/Rule/Article/paragraph to the extract quoted in the original text; added the names of Judges on whose behalf opinion given by giving expressions, viz. for himself and Pathak, C.J. etc.; done verification of first word of the quoted extract and supplied emphasis on such verification; added ellipsis to indicate breaks in quoted extract; provided and supplied the matter inadvertently missed in quoted extracts in the original text of the judgment; completed/corrected the incomplete/incorrect case names or citations; renumbered correctly the clauses/sub-clauses in terms of the questions framed which were numbered in terms of answers to questions framed by learned Judge; changed the text as per corrigenda issued, which has been issued upon SCC editors request and suggestions; done compressing/simplification of information relating to the case history; followed certain norms at 'SCC' for giving case names; omitted the words like Section, Sec., Rule, etc. and given only the number of the Section/ rule at the beginning of the quoted extract; made margin heading and the first clause/sub-section or initial matter of section/rule etc. to run-on instead of being let to start from a fresh line; done compressing of unquoted reference and use of substantive parts; replaced the series of dots in the raw text with ellipsis; removed abbreviations such as sec., R., cl. and substituted them with full word, i.e. Section, Rule, clause; added hyphenation after the section/rule numbers which have alphabets suffixed to them; applied indentation of quoted extracts; removed full stops or word number and given full forms of abbreviations to enhance readability and clarity. In addition to the above, capitalization and italicization is also made wherever necessary in the raw text; and punctuation, articles, spellings and compound words are also checked and corrected, if required, in the original text.
The aforesaid inputs put by the appellants in the judgments would have had a copyright, had the Court accepted the principle that anyone who by his or her own skill and labour creates an original work of whatever character, shall enjoy an exclusive right to copy that work and no one else would be permitted to reap the crop which the copyright owner had sown. No doubt the appellants have collected the material and improved the readability of the judgment by putting inputs in the original text of the judgments by considerable labour and arranged it in their own style, but that does not give the flavour of minimum requirement of creativity. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterized as purely a work which has been brought about by putting some amount of labour by the appellants.

Although for establishing a copyright, the creativity standard applicable is not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgments of the court. Therefore, creativity of ‘SCC’ would only be addition of certain facts or material already published, case laws published in another law report and its own arrangement and presentation of the judgments of the court in its own style to make it more user-friendly. The selection and arrangement can be viewed as typical and at best result of the labour, skill and investment of capital lacking even minimal creativity. It does not as a whole display sufficient originality so as to amount to an original work of the author. To support copyright, there must be some substantive variation and not merely a trivial variation, not the variation of the type where limited ways of expression is available and an author selects one of them which can be said to be a garden variety. Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity. The Court opined that the aforesaid inputs put by the appellants in
the copy-edited judgments do not touch the standard of creativity required for
the copyright.

However, the inputs put in the original text by the appellants in (i) segregating
the existing paragraphs in the original text by breaking them into separate
paragraphs; (ii) adding internal paragraph numbering within a judgment after
providing uniform paragraph numbering to the multiple judgments; and (iii)
indicating in the judgment the Judges who have dissented or concurred by
introducing the phrases like ‘concurring’, ‘partly concurring’, ‘partly
dissenting’, ‘dissenting’, ‘supplementing’, ‘majority’ ‘expressing no opinion’,
etc., have to be viewed in a different light. The task of paragraph numbering
and internal referencing requires skill and judgment in great measure. The
editor who inserts para numbering must know how legal argumentation and
legal discourse is conducted and how a judgment of a court of law must read.

Often legal arguments or conclusions are either clubbed into one paragraph in
the original judgment or parts of the same argument are given in separate
paragraphs. It requires judgment and the capacity for discernment for
determining whether to carve out a separate paragraph from an existing
paragraph in the original judgment or to club together separate paragraphs in
the original judgment of the court. Setting of paragraphs by the appellants of
their own in the judgment entailed the exercise of the brain work, reading and
understanding of subject of disputes, different issues involved, statutory
provisions applicable and interpretation of the same and then dividing them in
different paragraphs so that chain of thoughts and process of statement of facts
and the application of law relevant to the topic discussed is not disturbed,
would require full understanding of the entire subject of the judgment. Making
paragraphs in a judgment could not be called a mechanical process. It requires
careful consideration, discernment and choice and thus, it can be called as a
work of an author. Creation of paragraphs would obviously require extensive
reading, careful study of subject and the exercise of judgment to make
paragraph which has dealt with particular aspect of the case, and separating intermixing of a different subject. Creation of paragraphs by separating them from the passage would require knowledge, sound judgment and legal skill. In our opinion, this exercise and creation thereof has a flavour of minimum amount of creativity. The said principle would also apply when the editor has put an input whereby different Judge's opinion has been shown to have been dissenting or partly dissenting or concurring, etc. It also requires reading of the whole judgment and understanding the questions involved and thereafter, finding out whether the Judges have disagreed or have the dissenting opinion or they are partially disagreeing and partially agreeing to the view on a particular law point or even on facts. In these inputs put in by the appellants in the judgments reported in 'SCC', the appellants have a copyright and nobody is permitted to utilize the same.

For the reasons stated in the aforesaid discussion, the appeals are partly allowed. The High Court has already granted interim relief to the plaintiff-appellants by directing that though the respondent-defendants shall be entitled to sell their CD-ROMs with the text of the judgments of the Supreme Court along with their own head notes, editorial notes, if any, they should not in any way copy the head notes of the plaintiff-appellants; and that the defendant-respondents shall also not copy the footnotes and editorial notes appearing in the journal of the plaintiff-appellants. It is further directed by the Court that the defendant-respondents shall not use the paragraphs made by the appellants in their copy-edited version for internal references and their editors judgment regarding the opinions expressed by the Judges by using phrases like 'concurring', 'partly dissenting' etc. on the basis of reported judgments in SCC. The judgment of the High Court is modified to the extent that in addition to the interim relief already granted by the High Court, the Court have also granted the above-mentioned additional relief to the appellants and in view of the decision rendered by the Court in the civil appeals, the Supreme Court
meaningfully passed an order on the contempt petition and thus, the contempt petition was disposed of accordingly.

**Principles evolved in this Case:**

From the decision of the Supreme Court in the instant case it can be said that partly allowing the appeals, the Supreme Court held that copyright protection finds its justification in fair play. When a person produces something with his skill and labour, it normally belongs to him and the other person would not be permitted to make a profit out of the skill and labour of the original author and it is for this reason that the Copyright Act, 1957 gives to the authors certain exclusive rights in relation to the certain works referred in the Act. The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. Copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. A copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. One of the key requirements is that of originality which contributes, and has a direct nexus, in maintaining the interests of the author as well as that of public in protecting the matters in public domain. It is a well accepted principle of copyright law that there is no copyright in the facts *per se*, as the facts are not created nor have they originated with the author of any work which embodies these facts. The issue of copyright is closely connected to that of commercial viability, and commercial consequences and implications. Copyright is purely a creation of the statute under the 1957 Act. What rights the author has in his work by virtue of his creation, are defined in Sections 14 and 17 of the Act. These are exclusive rights, but subject to the other provisions of the Act. In the first place, the work should qualify under the provisions of Section 13, for the subsistence of copyright. Although the rights have been referred to as exclusive rights, there are various exceptions to them which are listed in Section 52 of the Act.
For copyright protection, all literary works have to be original as per Section 13 of the Act. Broadly speaking, there would be two classes of literary works:

(a) **Primary or Prior Works**: These are the literary works not based on existing subject-matter and, therefore, would be called primary or prior works; and

(b) **Secondary or Derivative Works**: These are literary works based on existing subject-matter. Since such works are based on existing subject-matter, they are called derivative works or secondary works. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is what is created by the author by his own skill, labour and investment of capital, may be it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital.

The Canadian Supreme Court in *CCH Canadian case*,\(^{395}\) held that:

"to be original under the Copyright Act the work must originate from an author, not be copied from another work, and must be the product of an author's exercise of skill and judgment. The exercise of skill and judgment required to produce the work must not be so trivial that it could be characterised as a purely mechanical exercise. Creative works by definition are original"

and are protected by copyright, but creativity is not required in order to render a work original. The original work should be the product of an exercise of skill and judgment and it is a workable yet fair standard’.

The ‘sweat of the brow’ approach to originality is too low a standard which shifts the balance of copyright protection too far in favour of the owner’s right, and fails to allow copyright to protect the public’s interest in maximising the production and dissemination of intellectual works. On the other hand, the creativity standard of originality is too high. A creative standard implies that something must be novel or non-obvious concepts more properly associated with patent law than copyright law. By way of contrast, a standard requiring the exercise of skill and judgment in the production of a work avoids these difficulties and provides a workable and appropriate standard for copyright protection that is consistent with the policy of the objectives of the Copyright Act. Thus, the Canadian Supreme Court is of the view that to claim copyright in a compilation, the author must produce a material with exercise of his skill and judgment which may not be creativity in the sense that it is not novel or non-obvious, but at the same time it is not the product of merely labour and capital.

On the face of the provisions of the Copyright Act, 1957 the principle laid down by the Canadian Supreme Court in CCH Canadian case would be applicable to copyright in the judgments of the Supreme Court. As provided for under Section 52(1)(q)(iv) the judicial pronouncements of the Supreme Court would be in the public domain and their reproduction or publication by any number of persons would not be infringement of the copyright of the first owner thereof, namely, the Government, unless it is prohibited. This being the position, the copy-edited judgments would not satisfy the copyright merely by establishing amount of skill, labour and capital put in the inputs of the copy-edited judgments and the original or innovative thoughts for the creativity are
completely excluded. Accordingly, original or innovative thoughts are necessary to establish copyright in the author’s work. To secure a copyright for the judgments delivered by the court, it is necessary that the labour, skill and capital invested should be sufficient to communicate or impart to the judgment some quality or character which the original judgment does not possess and which differentiates the original judgment from the printed one. The derivative work produced by the author must have some distinguishable features and flavours to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgments would not satisfy the test of copyright of an author. On this touchstone, the inputs put by the appellants in their journal ‘SCC’ shall be considered. The principle where there is common source the person relying on it must prove that he actually went to the common source from where he borrowed the material, employing his own skill, labour and brain and he did not copy, would not apply to the judgments of the courts because there is no copyright in the judgments of the courts, unless so made by the court itself.

It is made clear that this decision would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments but on the other hand any inputs put in the judgments of the SC and reported in any journal has a copyright because it require special skills, labour, investment etc. and using this matter without consent of the creators is the infringement of the copyright of the creator.
Facts of the Case:

‘Yakshagana’ is a form of ballet dance. It has its own heritage. Indisputably, Dr. Kota Shivarama Karanth (‘Dr. Karanth’), a Jnanapeeth awardee, who was a Novelist, Play Writer, Essayist, Encyclopediationist, Cultural Anthropologist, Artist, Writer of Science, Environmentalist. He was a director of the appellant institute. He developed a new form of ‘Yakshagana’ named as ‘Yaksharanga. On or about 18.6.1994, he executed a Will in favour of the respondent. He expired on 9.12.1997.

‘Yaksharanga’ ballet dance as developed by Dr. Karanth was performed in New Delhi on or about 18.9.2001. Respondent filed a suit for declaration, injunction and damages alleging violation of the copyright in respect of the said dance vested in her in terms of the said Will stating that Dr. Karanth developed a new distinctive dance, drama troop or theatrical system which was named by him as ‘Yaksharanga’ which in his own words mean ‘creative extension of traditional Yakshagana’ and thus, the appellants infringed the copyright thereof by performing the same at New Delhi without obtaining her prior permission. It was stated that Dr. Karanth had composed seven verses or prasangas for staging ‘Yaksharanga’ ballet apart from bringing in changes in the traditional form thereof on its relevant aspects, namely, Raga, Tala, Scenic arrangement, Costumes etc. These prasangas are: (i) Bhishma Vijaya; (ii) Nala Damayanthi; (iii) Kanakangi or Kanakangi Kalyana; (iv) Abhimanyu or Abhimanyu Vada; (v) Chitrangadha or Babruvahana Kalaga; (vi) Panchavati; and (vii) Ganga Charitha. Plaintiff-Respondent admittedly claimed copyright in respect of ‘literary and artistic works’ in her favour in terms of clauses 11 and 12 of the said Will dated 18.6.1994, which read as under:

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"Since I left the house 'Suhasa' I have been living in a specially built house 'Manasa' of Smt. Malini Mallya, who has built it with borrowed money at her cost. She had joined my service as Copyist and later, she secured an employment in Life Insurance Corporation of India. Ever since 1974 till now in my old age she has been serving me with exemplary devotion and sincerity. And in this occasion I must also acknowledge with gratitude that she diligently cared and nursed my wife Leela Karanth during her prolonged illness till her last day. And she has cared and looked after me also during my illness which at times had been quite serious, enfeebling me for long period. In recognition of her devotion and sincere affection towards me in 1986 I have dedicated one of my novels namely, 'Antida Aparanji' to her. I have also placed on record her invaluable services to me in my memoirs, 'Hunchu Mansina Hathu Mukhagalu', 1991 edition. In my opinion, very long enduring and a signal service she has done to me and to my literary works is, in writing a bibliography of all my books, a highly meritorious and scholarly work involving so much of pains taking research, that it has been acclaimed and rated as the first of its kind in Kannada and highly appreciated by Critics and Scholars. Apart from this, she has collected and edited all my stray writings from 1924 onwards, upto date in eight sumptuous volumes which are being published by Mangalore University. This work also has brought her deserving fame and appreciation of scholars. Such painstaking service in this direction has brought to light several of my hitherto untraced, forgotten and unknown writings and thereby giving them extended or renewed lease of life. For all these services, I hereby declare that after my death copyrights in respect of all my literary works shall vest with Smt. Malini Mallya and she alone shall be entitled to receive royalties of all my books and she shall be entitled to print, publish and republish and market the same.
Whatever she may earn thereby shall be her exclusive income and property. No one else shall have any right or claims for the same. From time to time I have distributed among my children all gold and silver jewels and ornaments and other valuables, which were gifted to me by my friends and admirers. And I have distributed all copper and bronze vessels and utensils among my children while leaving my former home ‘Suhasa’ keeping only bare essential and necessary things and articles. Whatever movable properties, books, fittings, furniture, utensils etc. belonging to me into this house ‘Manasa’ and my car and cash money in hand after my death shall go to Smt. Malini Malya only. No one else shall have any claim or right over the same. Any outstanding due to me and Bank Deposits and whatever assets or properties not mentioned above, that is, residuary after my death shall belong to Smt. Malini Mallya alone.”

Plaintiff-Respondent, \textit{inter alia}, prayed for passing a judgment and decree against the defendants-appellants granting the following reliefs:

1. A declaration that the plaintiff is the exclusive copyright holder in respect of ‘Yaksharanga’ Ballets, namely, Bhishma Vijaya, Kanakangi, Nala Damayanthi, Panchavati, Gaya Charitha, Chitrangadha, Abhimanyu Vadha, and for consequential permanent injunction restraining the Defendants, their agents, employees etc. From staging or performing any of the above said 7 Ballets or Prasangas or any parts thereof;

2. Directing the Defendants to pay to the plaintiff damages of Rs.15000/- towards infringement of her copyright on account of staging or performing Abhimanyu Vadha on 18-9-2001 at New Delhi;

3. Directing the Defendants to pay to the plaintiff interest on Rs.15000/- at 15% p.a. from 18-9-2001 till now which is Rs. 9500/-; and
4. Directing the Defendants to pay future interest on Rs.15000/- at 15% p.a. till payment of the entire amount.

Appellants in their written statement, however, denied and disputed any copyright of the said dance in Dr. Karanth alleging that whatever work he had done was in the capacity of a Director of the Yaksharanga Kendra with the assistance, finance and staff provided by the Organization of Mahatma Gandhi Memorial College Trust in respect whereof a Committee was formed under him by the Board of Trustees. It was furthermore contended that Dr. Karanth was appointed as the President of the Executive Committee of Yaksharanga Kendra for a period of three years by the appellant and while holding the said post only he expired.

By reason of a judgment and decree dated 14.11.2003, the District Judge, Udupi decreed the said suit declaring the plaintiff-respondent as a person having the exclusive copyright in respect of seven Prasangas and that she had acquired the same by reason of a Will as a residuary legatee and the defendants-appellants or their employees or agents were restrained from performing the said seven Ballets or Prasangas or any parts thereof in any manner as evolved distinctively by Dr. Karanth.

Appellants aggrieved thereby and dissatisfied therewith preferred an appeal before the Karnataka High Court which was marked as R.F.A. No. 271 of 2004. By reason of the impugned judgment and order dated 5.12.2007, the said appeal has been dismissed. The appellant then moved before the Supreme Court.

**Analysis of the Case:**

The Copyright Act, 1957 was enacted to amend and consolidate the law relating to copyright. Section 2 is the interpretation section. Section 2(c) defines ‘artistic work’ to mean,
(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) a work of architecture; and

(iii) any other work of artistic craftsmanship.

The word 'author' is defined in Section 2(d) to mean,

(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 or sound recording, the producer;

and

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

The term 'communication to the public' as defined in Section 2(ff) reads as under:

'communication to the public' means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation: For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.
Section 2(ffa) defines the word ‘composer’, in relation to a musical work, to mean the person who composes the music regardless of whether he records it in any form of graphical notation. Section 2(h) defines “dramatic work” to include any piece of recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film.

Section 2(o) defines ‘literary work’ to include computer programmes, tables and compilations including computer databases.

Section 2(qq) defines ‘performer’ to include an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

Section 2(y) defines ‘work’ to mean any of the following works, namely:

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording.

Section 13 which occurs in Chapter III of the Act provides that subject to the provisions thereof and the other provisions of the said Act, copyright shall subsists 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.

Section 17 of the Act deals with ‘First owner of copyright’, in terms whereof, subject to the provisions of the Act, the author of a work shall be the owner of the copyright therein. Proviso (d) appended thereto states that 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. Sections 22, 23 and 52(1) (a), (i) and (l) of the Act, which are relevant for our purpose read as under:

Section 22: Term of copyright in published literary, dramatic, musical and artistic works, except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the life time of the author until fifty years from the beginning of the calendar year following the year in which the author dies.

Explanation: In this section, the reference to the author shall in the case of a work of joint authorship, be construed as a reference to the author who dies last.

Section 23(1): In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the copyrighted period, copyright shall subsist until sixty years from the beginning of the calendar year following the year in which the author dies.

Section 23(2): In sub-section(1), references to the author shall, in the case of an anonymous work of joint authorship, be construed, (a) where the identity of the authors is disclosed, as references to that author; (b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.

Section 23(3): In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed, (a)
where the names of one or more (but not all) of the authors are pseudonymous and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, if the names of two or more of the authors are not pseudonyms, as references to such of those authors who dies last; (b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed; and (c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or if the identity of two or more of such authors is disclosed, as references to such of those authors who dies last.

Explanation: For the purposes of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Copyright Board by that author.

Certain acts not to be infringement of copyright- As per section 52(1): The following acts shall not constitute an infringement of copyright, namely:

(1) a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purpose of: (a) Private use including research; (b) criticism or review, whether of that work or of any other work; (i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and student of the institution, or of a cinematograph film or a sound recording, if the audience is limited to such staff and students, the
parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording. (ii) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.

Before entering to the submissions made by the learned counsel for the parties, the Court noticed the issues framed in the suit by the lower courts, which are:

1. Does plaintiff prove that late Dr. Shivaramaji Karanth had acquired copyright in respect of seven ‘Yakshagana’ Prasangas and also in respect of ‘Yakshagana’ dramatic or theatrical form i.e., Bhishma Vijaya, Nala Damayanthi, Kanakaangti or Kanakangi Kalyana, Abhimanyu or Abhimanyu Vadha, Chitrangadha or Babruvahana Kalaga, Panchavati Chritha followed in the plaint?
2. Has the plaintiff became entitled to the said right under the Registered Will dated 18.06.1994?
3. Does the plaintiff prove that her right under the said Will was infringed by the defendants?
4. Does the plaintiff liable for the actual loss or damage suffered, if any, by the defendants?

The Court opined that indisputably, in view of the submissions made at the bar, respondent had acquired copyright in respect of seven ‘Yakshagana’ Prasangas as also in respect of ‘Yakshagana’ dramatic or theatrical form as a residuary legatee in terms of clause 12 of the Will dated 18.6.1994. However, the Court noticed that whereas the trial court has proceeded on the basis that clause 12 of the Will shall apply in the instant case, the High Court opined that clause 11 thereof is attracted, stating:
"No doubt, by reading para-2 of the 'Will' in isolation, one can certainly arrive at the conclusion that the bequest made in favour of the plaintiff is in the nature of residuary bequest. But, that is not at all, in the 'Will' Ex. P-1, I have already referred to para No. 11 of the 'Will' while dealing with the topic dramatic works vis-a-vis literary work and therefore if the 'Will' is read in its entirety and if we take into account, the benefits that flow from the bequest made by Dr. Karanth in favour of the plaintiff, it is not as if the plaintiff received the bequest only in respect of the things which form the residuary as mentioned in para-12 of the 'Will' but the plaintiff also was given the copyrights in respect of literary works and all books as well as the right to print, republished and mark the literary works as well as the books."

Referring to the new Encyclopaedia Britannica and Halsbury's Laws of England, that a literary work with dramatic elements in it would also be literary work, the High Court observed:

"Dramatic works also could contain in its, passages of great literary taste, as in the case of great plays of William Shakespear. Therefore, the main classification as literary work and dramatic work cannot be construed to mean that dramatic work has nothing to do with literary work. The only difference I see in them is that the dramatic work (Plays) forms the text upon which the performance of the plays rests whereas a 'literary work' enables one to read the printed words. Neither of the two can be produced without the imaginative skill of the author."397

It was furthermore held by the court that:

"all the above changes brought about by Dr. Karanth in respect of Yakshagana Ballet leads to the inference that the imaginative faculties of Dr. Karanth permeated the entire Yakshagana Prasangas and thus a

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new look was given to the Yakshagana Ballets. I, therefore, hold that the bequest of copyright in literary works and books in favour of the plaintiff by Dr. Karanth will have to be treated as the bequest covering the dramatic works also since I have also drawn the conclusion that the dramatic works is also a form of literature. Therefore, necessity of mentioning copyright separately in respect of dramatic works does not arise. The plaintiff, therefore, is entitled to copyright even in respect of the dramatic works namely the seven prasangas, by virtue of bequest made in her favour in respect of copyrights and books.”

Broadly speaking, a dramatic work may also come within the purview of literary work being a part of dramatic literature. The new Encyclopaedia Britannica (Vol-IV) 15th Edition provides the following information about ‘Dramatic Literature’. ‘Dramatic Literature means the texts of plays that can be read, as distinct from being seen and heard in performance.’

The Supreme Court, however, noticed that the provisions of the Act make a distinction between the ‘literary work’ and ‘dramatic work’. Keeping in view the statutory provisions, there cannot be any doubt whatsoever that copyright in respect of performance of ‘dance’ would not come within the purview of the literary work but would come within the purview of the definition of ‘dramatic work’. The Court, however, do not mean to suggest that any act of literary work will be outside the purview of the Will dated 18.6.1994. The Court, thus, performed its duty only for the purpose of clarifying the provisions of the Act with reference to the findings arrived at by the High Court.

For the aforementioned reasons, the Court agreed with Dr. Dhavan, learned counsel for respondent, that paragraph 12 of the Will, namely, residuary clause shall apply in the instant case apart from the areas which are otherwise covered by paragraph 11 of the Will. The residuary clause will apply because it is well
settled that no part of the stay lies in limbo. It was also not a case where respondent in any manner whatsoever waived her right.

The learned trial judge on issue No. 4 opined that plaintiff had not been able to prove actual loss or damage particularly having regard to the fact that Dr. Karanth had associated himself with the appellants for a long time. The learned trial judge recognized the equitable interest vested in the plaintiff-respondent. A declaratory decree, therefore, was passed.

The Supreme Court noticed at this stage that the form of injunction granted both by the learned trial judge as also by the High Court in favour of the plaintiff-respondent. The operative part of the judgment of the trial court reads as under:

"Defendants or their employees or agents are restrained from performing the above said Ballets or Prasangas or in parts thereof in any manner as evolved distinctively by Dr. Karanth by way of permanent injunction."

The High Court, however, directed:

"As far as the restraint order passed by the Trial Court by granting permanent injunction to the plaintiff is concerned, the same is modified by ordering that if the appellants desire to stage any of the seven Yaksharanga Prasangas in the manner and form as conceived in all respects viz., costumes, choreography and direction by Dr. Karanth, the appellants can do so only in accordance with the provisions of the Copyrights Act, 1957 in view of copyright in seven prasangas vesting with the plaintiff."

Decree for injunction is an equitable relief. The courts while passing a decree for permanent injunction would avoid multiplicity of proceedings. The court while passing such a decree is obligated to consider the statutory provisions governing the same. For the said purpose, it must be noticed as to what is a copyright and in respect of the matters the same cannot be claimed or otherwise
the same is lodged by conditions and subject to statutory limitation. In this regard renowned of the case *R.G. Anand Vs M/s Delux Films & Ors.*\(^{398}\), may be referred where the Supreme Court after a careful consideration and elucidation of the various authorities and the case laws on the subject emerged the following propositions:

1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant’s work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

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.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

\(^{398}\) *(1978) 4 SCC 118.*
5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the decided case-laws.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

Yet again in Eastern Book Company & Ors. Vs D.B. Modak & Another,\textsuperscript{399} Apex Court held that:

"Section 57: The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of capital, may be it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a

\textsuperscript{399} (2008) 1 SCC 1.
work somewhat different in character is produced by the author. On the face of the provisions of the Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author."

The High Court, in the opinion of Supreme Court, should have clarified that the appellants can also take the statutory benefit of the provisions contained in clauses (a), (i) and (l) of sub-section (1) of Section 52 of the Act. Section 52 of the Act provides for certain acts which would not constitute an infringement of copyright. When a fair dealing is made, inter alia, of a literary or dramatic work for the purpose of private use including research and criticism or review, whether of that work or of any other work, the right in terms of the provisions of the said Act cannot be claimed. Thus, if some performance or dance is carried out within the purview of the said clause, the order of injunction shall not be applicable.

Similarly, appellant being an educational institution, if the dance is performed within the meaning of provisions of clause (i) of sub-section (1) of Section 52 of the Act strictly, the order of injunction shall not apply thereto also. Yet again, if such performance is conducted before a non-paying audience by the appellant, which is an institution if it comes within the purview of amateur club
or society, the same would not constitute any violation of the said order of injunction. Thus, the appeal was thus dismissed with aforementioned modification in the order of injunction.

The discussion made in the abovementioned cases and the opinion of different Courts show that the copyright protection from the traditional modes of infringement in India has some roots to take care of the copyright of the person concerned, though not strong and effective enough, but electronic or digital modes of the infringement in this electronic age is a real problem for the copyright creations in India. The protection extends only to the copyright as understood in the traditional or manual aspects not in modern aspects. Thus, on-line copyright issues also need to be adequately protected. To meet the ever-increasing challenges, as posed by the changed circumstances and latest technology, the existing laws are required to be so interpreted that all facets of copyright are adequately covered or a new law should be enacted, as required. This can be achieved by applying the ‘purposive interpretation’ technique, which requires the existing laws to be interpreted in such a manner as justice is done in the fact and circumstances of the case. Alternatively, existing laws should be amended as per the requirement of the situation. The existing laws can also be supplemented with newer ones, specifically for dealing with the contemporary issues and problems. The Information Technology Act, 2000 necessitates a new outlook and orientation, which can be effectively used to meet the challenges posed by the copyright regime in this age of information technology. Till date, the country has no sound and strong legal base for the protection of copyrights in economic perspective, the judiciary should play an active role in the protection of this right. The situation is, however, really alarming one and the existing legal system should be made more equipped so that it can effectively take care of any problem associated with copyright infringements.
The Courts while considering the question of grant of reliefs (where parameters are not laid down), supplanted the statutory provisions by the norms accepted by the international community and would be justified in seeking guidance from the treaties and conventions on the subject so long they are not inconsistent with the municipal laws. The courts undoubtedly will be bound by the constitutional mandates and the laws. It will have to strike a delicate balance between public welfare and private interests so that an atmosphere conducive, to respect, for the copyright of the nationals and the member states are created which would help to increase international trade and encourage the citizens to strive for excellence to produce intellectual property which will be recognized and enforced by all courts of the member States.

In India, there is a highly matured and developed legal system firmly embedded in the rule of law. The approach of judiciary in safeguarding the basic human rights and the majesty of law is amply reflected in the various decisions of the Apex Court and the High Courts. The courts have frowned upon arbitrary actions of the administrative authorities or unfair and arbitrary approach of the authorities in their decision making process. There is judicial insistence on the application of the principles of natural justice and fair play by the authorities who make orders that may have an adverse impact on the rights of a person. As a safeguard against arbitrariness, the authorities are required to make reasoned orders and their decisions are required to be communicated to the concerned parties. The proceedings of courts are normally held in the open. With its independence secured against any arm twisting by outside forces, the role that the Indian Judiciary can play in safeguarding the legally recognized rights like the copyright can put to envy any enlightened judicial system of any developed country. The fairness of the procedures reflected in our laws and recognition of equal rights of even aliens by virtue of Article 14 as fundamental rights should generate sufficient confidence in our legal system to encourage the entrepreneurs to be sure of the protection of their copyright which is
recognized by the municipal laws. How far the judiciary can be instrumental in protection of private and other rights like copyright will ultimately depend upon the perceptions of those who have to pay for use. It is therefore, important that they thoroughly understand the nature of the rights recognized by law, the need of their protection, the steps required to be taken as also the urgency of the matter. The establishment of Judicial Academy for providing periodic training and refreshers can keep the decision makers abreast of the needs of time and situations and make them responsive of the important role that they have to play.

Thus, Indian Judiciary has to play a very significant role in protecting the infringement of copyright in India. The main problem in this regard is to find out the modes of infringement and ways for its protection because in this electronic age the modes of infringing the copyright are so easy that it is quite difficult to find out the cases of the infringement of copyright. More and more careful consideration on the part of judiciary is required to take the cognizance of the modern infringement. The prime task for which the researcher has undertaken this job is to find out the cases which are infringing the copyrights in one hand and the areas injuring the national economy of the country on the other.