

ISSN: 2582-2942



LEXFORTI

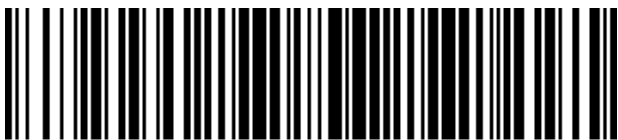
Legal Journal

Vol-II Issue- I

October, 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



EDITORIAL BOARD

Editor in Chief

Rohit Pradhan
Advocate Prime Dispute
rohit@lexforti.com

Editor in Chief

Sridhruti Chitrapu
Member | CiArb
sridhruti@lexforti.com

Editor

Nageshwar Rao
Professor (Banking Law)
47+ years of scholarly experience

Editor

Dr Rajanikanth M
Assistant Professor | Management
Symbiosis International University

Editor

Foram Thakar
Assistant Professor | LJ School of Law



EDITORIAL BOARD

Editor

Nandita Reddy
Advocate Prime Dispute

Editor

Romi Kumari
Student Editor

Editor

Shubhangi Nangunoori
Student Editor



ABOUT US

LexForti Legal News and Journal offer access to a wide array of legal knowledge through the Daily Legal News segment of our Website. It provides the readers with latest case laws in layman terms. Our Legal Journal contains a vast assortment of resources that helps in understanding contemporary legal issues. LexForti Legal News and Journal also offers Certificate courses. Whoever register for the course is provided the access to the state of the art E-portal. On completion of all the module and Test, candidate will be given Certificate of Accomplishment of Course. Be sure to make the most of it. LexForti Legal News and Journal is also proud to announce that we have made India's first Legal News android application which contains Daily Legal News, Legal Journal and Certificate Courses, everything in 4 MB.



Tukkaa Fitt- The Movie Known by its Trailer

Triveni Singal

CASE COMMENT- VINAY VATS VS. FOX STAR STUDIOS INDIA PVT. LTD. AND ORS. (DELHI HIGH COURT, I.A. 6351/2020 IN CS (COMM.) 291/2020): DOES IT AMOUNT TO COPYRIGHT VIOLATION IF ONLY THE TRAILER OF A MOVIE IS IN THE PUBLIC DOMAIN AND NOT THE MOVIE ITSELF?

INTRODUCTION

The cinematographic film ‘Lootcase’, a comedy thriller, directed by Fox Star Studios, was set to be broadcasted on 31st July 2020. But on the eve of its release, the movie was fighting a copyright violation allegation.

The case is another egg in the basket of ‘idea-expression dichotomy’ doctrine under the Copyright Law and upholds the cardinal principle that copyright subsists in expressions, not in ideas. The case interprets the meaning of “expression” for an unreleased film and whether public knowledge of only the trailer of a movie provides sufficient claim on copyright among other core concepts relating to copyright violation.

FACTS

1. The plaintiff, Vinay Vats, claimed to be the author and thus, the first copyright owner of a script for a motion picture titled “Tukka Fitt”. It was enlisted with the Film Writer’s Association on 14th March 2011.
2. The plaintiff was approached by the Director of M/s. AAP Entertainment Limited seeking permission to employ the script and produce the film, to which the plaintiff had agreed.
3. A document was filed by the plaintiff which revealed payment of Rs 1, 21,000/- by the producers of M/s. AAP Entertainment Limited to the plaintiff.
4. Production of the film ‘Tukka Fitt’ was completed in November 2012, but owing to the death of the producer, the films’ publication was halted. (till date it stays unreleased)
5. However, the trailer of the said film was released on YouTube and other public media platforms in March 2011 and has been in the public domain since.
6. The plaintiff, on 18th July 2020, watched the trailer of ‘Lootcase’, after being informed about its release (on 16th July 2020) by his assistant, and unearthed substantial similarities between the plot of the said film and his script.
7. On this foundation the plaintiff filed an application seeking an interim injunction, restraining the release of the film “Lootcase”, which was set to be released the following day (i.e. 31st July 2020)

ISSUES

1. Does the plaintiff have ownership over the above-mentioned script and consecutively a substantial cause of action for instituting the present suit?
2. Has there been a non-joinder of the producers of the film as a party to the suit as per Section 61 of the Copyright Act, 1957?
3. Is there sufficient ground for copyright violation of the said script?

JUDGMENT

An oral judgment was delivered by Justice C. Hari Shankar on 30th July 2020 as follows:

1. The ownership of the plaintiff regarding the script is disputable owing to the payment of Rs. 1, 21,000/- to the plaintiff by producers of M/s. AAP Entertainment Limited. Secondly, there exists no earlier film, based on the plaintiff's script which could form the basis of a claim to copyright. The plaintiff bases his cause of action on a script that never came into the public domain and its public knowledge is dependent on the trailer of the film alone. The cause of action for the present case thus remains inchoate.
2. The trailer was not made by the plaintiff and the makers of the trailer have not ventilated any claim for violation of copyright.

Thus, it is prima facie questionable whether any claim of copyright can be laid by the present plaintiff.

3. The plot of the movie "Lootcase" revolves around a bag of money being lost and various people running behind it. The plot idea is very old and it can hardly be said, prima facie, that the plaintiff's screenplay (placed on record but not revealed) can lay any claim to any novelty as could be said to have been filched by the defendant.

Secondly, on comparing the salient features of the trailer of "Lootcase" and the plaintiff's script, considerable features of the script were missing from the trailer, and conversely, certain elements of the trailer were not found in the script. The mere fact that there are certain similarities between the two can't be the basis of claim to copyright, as done by the plaintiff.

Thirdly, the said script involves a story that has been featured in many cinematographic films and thus, can't be said to be the exclusive province of the plaintiff. Relying on the

precedent laid down in R.G. Anand¹, that is, no copyright exists in a mere idea, plot, or theme, the court held that there lies no claim of copyright and thus, no violation of it.

The counsel for the defendant had also contended that the movie of his client “Lootcase” had been finalized much before the filing of the present plaint and therefore before the script of the plaintiff became available in the public domain. Promos of his clients’ film have been in the public domain since June 2019 and the story of the film had been covered in print and electronic media since September 2019. The plaintiff claiming to be a scriptwriter in the film industry for many years, could not profess ignorance thereof. The court also held that there is no justification for the plaintiff to approach the court on the eve of the release of the film “Lootcase” and seek an injunction order against such release, under these facts and circumstances.

The application was thus dismissed.

CASE ANALYSIS

The “author” of a cinematograph film is the producer². The “producer” is the person responsible for taking initiative and responsibility for making the film³. The author of a work is considered the first owner of the copyright.

In the present case, the plaintiff is the author of the script, a literary work, which was to be used by the producers of M/s. AAP Entertainment Limited to produce a film after they acquired permission from the plaintiff. Thus, there are two kinds of work involved. The first being the literary work of the plaintiff, the script, and second the cinematograph film. Though the plaintiff can claim the copyright in literary work, he can’t do so on the cinematograph film completely, especially when the film is at a premature stage to date.

Also, the plaintiff had received a royalty for his work from the producers of M/s. AAP Entertainment Limited as thus it can be perceived that he assigned this copyright therein to them. The trailer too had been made by the producers and not the plaintiff and they were the owners of copyright therein. They had not been joined as a party to the present suit.

There is definitely a debate as to whether he can at all claim copyright. The judgment given in this respect thus very well establishes a solid ground regarding who is entitled to claim copyright and institute proceedings for its violation.

¹ R.G.Anand v. Delux Films. AIR 1978 SC 1613.

² Section 2(d)(v) The Copyright Act, 1957.

³ Section 2(uu) The Copyright Act, 1957.

A more important question which arises in this case is whether there is any copyright at all in the film “Tukkaa Fitt”. The idea-expression dichotomy and some of the leading cases on the matter give us a steady decision.

Copyright subsists in expression, not in ideas. In *Donoghue v. Allied Newspaper Ltd.*⁴, it was held that, until an idea is reduced to a tangible form or writing, no right to copyright exists, or in the case of a picture, the information or idea is conveyed to those who are intended to look at it. The audience never saw the movie, *Tukkaa Fitt*. The trailer of a movie can’t be construed to be enough to claim copyright on a complete film.

If mere plots and characters were to be protected by copyright, a time would come when an author could not create anything “original” at all, on similar plots or characters. The copyright law intends to promote creativity rather than stop it altogether.

The plot of the *Tukkaa Fitt* and *Lootcase* exhibit similarity, but that very plot is not something we have not seen before. The idea of people chasing a bag full of money is very old and has been adapted several times in different ways.

The rules laid down in *R.G. Anand*⁵, provides that where the same idea is being developed in a different manner, similarities will be there between the works. If the defendant’s work is a literal imitation with colorable variations, it constitutes a violation of copyright. Where there are broad differences between the works, it negatives the intention of copying the original and coincidences occurring in the works is incidental and no infringement of copyright exists.

Relying on the judgment mentioned above, it can be rightly conjectured that in the present case, there has been no violation of copyright.

Firstly, copyright does not exist in ideas, plots, or themes. The mere fact that there is a correspondence of plots is no ground for violation of copyright.

Secondly, substantial differences can be seen between the works, thus, pointing to the fact that expression of the plot is distinct in them, and no infringement endures.

The judgment pronounced in this case espoused the idea-expression dichotomy while answering questions as to ownership on copyrighted work. The judgment was comprehensive and the reasons recorded therein have very well vindicated it.

The principle of natural justice has also been indorsed owing to the fact that there was a squander of the judicial process, in an endeavor to coerce the defendants and achieve an unfair advantage by taking such last minute action.

⁴ *Donoghue v. Allied Newspaper Ltd.*, (1973) 3 Ch. D. 503

⁵ *R.G. Anand v. Delux Films*. AIR 1978 SC 1613.

A plaintiff who waits till the last-minute must face the consequences of a failed gambit⁶.

⁶ Dashrath B. Rathore and Ors. vs. Fox Star Studios India Pvt. Ltd. and Ors., C.S. 196 of 2017 (Bom).