

## IP Hotline

September 12, 2012

### DELHI HC: ASSIGNMENT OF AUTHOR'S COPYRIGHT NOT AN IMPEDIMENT TO ENFORCE AUTHOR'S MORAL RIGHTS IN THE WORK

In a recent judgment of the High Court of Delhi in the case of *Arun Chadha v. OCA Productions Private Limited*<sup>1</sup>, the court held that the moral rights of the producer of a television serial was breached (even though he had assigned his rights in the serial to another party) by the defendant's act of telecasting certain episodes of the serial without authorization and without giving credit to the producer of the serial.

#### FACTS OF THE CASE

Arun Chadha, the plaintiff in the instant case ("**Plaintiff**") is a documentary film maker who directs and produces films through his production house 'Cine Pulse'. The first defendant in the instant case is OCA Productions Private Limited ("**Defendant 1**"), the second defendant is the director and principal shareholder of Defendant 1 ("**Defendant 2**") and the third defendant is the managing director of Defendant 1 ("**Defendant 3**") (collectively "**Defendants**").

The Plaintiff had acquired rights from an author of a book titled 'Kasturi Kundal Bassey' by agreement dated January 1, 2007, to make a television serial based on the book and to use the exact title of the book as that of the serial's title ("**Television Serial**"). Subsequently the Plaintiff assigned the rights in Television Serial to the Department of Adult Education, Government of India ("**DAE**") vide an agreement dated September 1, 2007 in consideration for DAE's funding of Plaintiff's proposed Television Serial venture ("**DAE Agreement**"). However, the assignment of these rights was to come into effect upon completion of the serial and delivery of the master tapes of the same to the DAE.

The Plaintiff commenced the filming of the Television Serial with the funds obtained from DAE and his own funds. Upon completion of the serial, the editing was carried out at studio 'Optimum' owned by Defendant 2. Once the editing work was completed and the necessary payments for use of the studio was also made by June 7, 2008, the Plaintiff requested Defendant 2 and Adil Watson (a video editor and a friend of Defendant 2) to delete all the software and material related to the Television Serial that was stored in the computers of Optimum.

Thereafter, in April 2009 it came to the knowledge of the Plaintiff that three episodes of a serial ("**Doordarshan Serial**") broadcast by Doordarshan Kendra, Bhopal ("**Doordarshan**") was similar to episodes 5, 6 and 7 of the Plaintiff's Television Serial. Doordarshan is the channel operated by the government owned company called Prasar Bharati. The Plaintiff and DAE observed that though the impugned episodes were similar to the episodes of the Plaintiff's Television Serial, the credits appearing in the impugned episodes had no reference to the Plaintiff's name. The name of the book's author and the cast of the Doordarshan Serial however were not changed. Consequently, the Plaintiff filed the present suit praying for an order restraining the Defendants from telecasting the Doordarshan Serial and asking for punitive damages and rendition of accounts.

The Plaintiff argued in the pleading that the Defendant's had breached on the special rights conferred on authors under Section 57 of the Copyright Act, 1957 ("**Act**"). Based on the arguments put forth by the Plaintiff in the pleadings the court granted an ex parte interim injunction in favour of the Plaintiff and restrained the Defendants from telecasting the impugned Doordarshan Serial. The Defendants failed to file written statements and to cross-examine the Plaintiff who produced himself as the first witness on several occasions. Consequently the court closed the rights of the Defendants to file the written statement and the right to cross-examine the Plaintiff. Therefore, the Plaintiff argued before the court that the Defendants were deliberately causing delay and hence prayed that a decree under Order 8 Rule 10<sup>1</sup> of the Civil Procedure Code be passed. In the present case the court was of the opinion that there was complete inaction on the part of the Defendants and hence a fit case for passing a judgment under Order 8 Rule 10.

#### ISSUE BEFORE THE COURT

The issue before the court was whether the Defendants had infringed the copyright of the Plaintiff and had breached upon the special rights of authorship of the Plaintiff provided for in Section 57 of Act.

#### ARGUMENTS PUT FORTH BY THE PLAINTIFF

The Plaintiff argued that the Plaintiff being the producer of the Television Serial is the author of the cinematographic work. It was the Plaintiff's case that even though the Plaintiff had assigned the rights in the cinematographic work to the DAE, the Plaintiff continued to be the author of the work by virtue of Section 57 of the Act. Moreover, the Plaintiff contended that the Defendants have not attributed the work of the Plaintiff to the Plaintiff and have also distorted, mutilated and modified the Plaintiff's Television Serial to create the impugned Doordarshan Serial.

Further, the Plaintiff had stated in the pleadings that on enquiring with Doordarshan, the Plaintiff came to know that the Defendants had represented to Doordarshan that Defendant 1 and Defendant 2 are the producers of the impugned Doordarshan Serial and have exclusive copyrights in the same.

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Additionally, the Plaintiff argued that the Defendants had breached the Plaintiff's trust and confidence and misappropriated the Plaintiff's property. The Plaintiff also claimed that the acts of the Defendants have prejudiced the reputation and future business prospects of the Plaintiff. In fact the Plaintiff had stated how the DAE were contemplating terminating Agreement 2 once the infringement of the Plaintiff's Television Serial came to the knowledge of DAE.

As stated earlier, the Defendants did not present their side of the case.

JUDGMENT OF THE COURT

The court before deciding on the case examined Section 57 of the Act. The erstwhile Section 57 prior to the recent amendment is reproduced below:

- 1. *Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right--*
  - 1. *to claim authorship of the work; and*
  - 2. *to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation: -*
  - 3. *Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.*
  - 4. *Explanation.--Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement" of the rights conferred by this section.*
- 2. *The right conferred upon an author of a work by sub-section (1), may be exercised by the legal representatives of the author.*

Thus it will be seen that Section 57 essentially bestows upon authors two distinctive rights:

- 1. The right of paternity/ authorship and
- 2. The right to claim damages for distortion, mutilation, modification of the work.

The judgment of the court in this matter can be summarized as follows:

- **Whether the Plaintiff is the author of the Television Serial :** As detailed above, in the instant case it is the claim of the Plaintiff that he is the author of the episodes of the Television Serial which was adopted and telecast in Doordarshan by the Defendants. Since there was no evidence to suggest the contrary, the court came to the conclusion that the Plaintiff claiming to be the author was an admitted position.
- **Whether the Defendant's breached the Plaintiff's right of under Section 57(1) of the Act :** The court opined that the special rights enumerated in Section 57 are independent of the economic rights of the author that may have been transferred or assigned to another party. Accordingly, the court held that the Defendants had breached the Plaintiff's paternity/ authorship right as no acknowledgement of the Plaintiff was provided in the Doordarshan Serial. It appears that the court took the view that when the credits of the Doordarshan Serial were modified such that the Plaintiff's name was not included, such modification was akin to modification under Section 57(1) (b). Therefore, the court granted a decree of permanent injunction restraining the Defendant, their partners, affiliates, directors, officers, employees, representatives from exhibiting the impugned serial or any other film work that is identical or substantially similar to the Plaintiff's Television Serial or parts thereof. The Defendants are also restrained from distorting, mutilating, modifying, or committing any other act in relation to the said serial /film work which would be prejudicial to the Plaintiff's honour or reputation.

From the discussion in relation to the remedies for breach of Section 57, it appears that the remedy available under Section 57(1)(a) for breach of paternity/ authorship rights is in the nature of a declaratory relief (that is, holding that the author is in fact the author of the work) and in relation to Section 57(1)(b) is either injunction or damages. In the present case, the court granted injunction but did not grant damages as discussed below.

- **Whether the Plaintiff was entitled to damages :** The wording of Section 57 is clear that damages may only be claimed and awarded where there has been distortion, mutilation and modification of the work. The court upheld the position that an author can approach the court even after assigning his rights in the work if any serious injury is caused to the work. However the court observed that the Plaintiff has not proved damages and therefore, did not grant the same but awarded costs of INR 1,00,000.
- **Whether there has been infringement of the copyright in the Television Serial :** The court did not directly consider this issue; it held that since the copyright in the Television Serial had been assigned to a third party, any copyright infringement action could only be instituted by such third party.

ANALYSIS

Apart from emphasizing the established principle that an author's economic rights are independent of the author's moral rights, the present case is relevant in that it brings out the two important aspects of moral rights. In the instant case, as can be observed, it was the paternity right of the author that was in question and which the court upheld. However, even though the court did observe that the credits of the Television Serial were modified, such fact did not appear to be adequate to warrant damages under Section 57(1)(b) of the Act. Had there been any distortion or mutilation of the actual content of the Television Series, the Plaintiff would likely have been entitled to damages under Section 57(1)(b) of the Act for such distortion or mutilation.

Separately, in the recent amendment to the Act, there has been a change with respect to the special rights available to the legal representatives' of an author. The details of the same can be accessed .

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<sup>1</sup> CS(OS) 1096/2009

<sup>2</sup> Order 8 Rule 10: Procedure when party fails to present written statement called for by Court Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order relating to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

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