
DISTINCTION BETWEEN LITERARY AND DRAMATIC WORKS AND THE APPLICATION OF SECTION 52 OF COPYRIGHT ACT: AN ANALYSIS OF ACADEMY OF GENERAL EDU., MANIPAL AND ORS. V. B. MALINI MALLYA AIR 2009 SC 198

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ABSTRACT

In, Academy of General Edu., Manipal and ors. v. B. Malini Mallya AIR 2009 SC 198 the supreme court ordered that even dramatic literature exists, dramatic works cannot be similar to literary works. They ordered that mere application of skill, labour, and intellect is the object for ‘originality’ in holding a copyright. But it has to be distinct and not a replica of the same.

The facts were that one Dr. Karanth had developed a new form of dance ‘Yaksha Ragna’ including 7 written ‘parasangs’ which is a more creative and dramatic form of ‘Yakshagana’, a form of ballet dance. Before his death in 1997 he had transferred all his literary work and residual belonging to the Respondent by executing a registered will.

The Appellants, the institute where Dr. Karanth was a director performed the dance in New Delhi in his memory in 2001, for which the respondent claimed infringement and injunction. The Court by a series of definition of dramatic works came to the conclusion that dramatic works are built upon the texts of the literary work, they become a part of the dramatic literature but the form of ‘dance’ cannot be called a ‘literary work.’ They further announced that one can take the shelter of exemption under section 52 of the copyright act that protects institutions from infringement within the ambit of research and education.

Keywords: Copyright Act, 1957 ; Literary Works ; Dramatic Works ; Yakshagana ; Fair dealing.

FACTS

Dr. Shivaram Karanth was the director of the Institute the Academy of General Edu., Manipal. He was an extremely talented artist, gaining excellence in many fields such as play writing, novel writing and in being an environmentalist. Being a 'Jnanapeeth awardee' he was one of the most loved and admired people in the era. Following his passions, he developed a new form of 'Yakshagana' a form of ballet dance that already has its own heritage and was reputed at many places.

Dr. Karanth in 1994 executed a will against Ms. Malini Mallya, the Respondent and in 1997, Dr. Karanth passed away. In the Will, he allegedly transferred to her the copyright to the dance form 'Yaksha Ranga' which is an "creative extension of traditional Yakshagana" which encapsulated this distinctive dance and undertakes a more dramatic and theatrical system than traditional Yakshagana. Dr. Karanth had composed 7 verses of this new form apart from the changes he had done in terms of "Raga, Tala, Scenic arrangement, costumes etc."

The dispute emerged when this ballet dance form was performed in New Delhi in 2001 by the Appellants. The Respondent filed a suit alleging infringement of the copyright on this form and demanded declaration, injunctions and damages against the violator for performing the same without her prior permission.

LEGAL ISSUES

At the Trial Court the Respondent claimed the said copyright for the dance form in 'literary and artistic works' in her favour as per the clauses 11 and 12 of the will.

Clause 11 mentioned that all the literary work of Dr. Karanth will be vested in the respondent and she will be entitled to all the royalty revenue. And that no one else shall have any rights or claims for the same. Clause 12 mentioned that all the cash, money, car or objects in his house 'Manasa' will be the respondents and only hers.

The respondent thus pleaded to the court to grant her as an exclusive right holder of the copyright in respect to the ballet form and the verses. A permanent injunction restraining the appellants from performing or staging any of these 7 'prasangas' or any other part. And damages worth Rs 15,000 for the infringements of the copyright for performing one of the verses in 2001 in New Delhi. Along with further interest and future interest.

However, the Appellants, disputed in their written statement that all the work that Dr. Karanth had done was in the course of his employment as a director of the institute. He had been supported by the finance, staff from the Organisation of mahatma Gandhi memorial college trust and that he also was the president for the 'Yakshagana' Kendra, holding which Dr. Karanth Passed away.

The **District Court** relying on the said Will, decreed exclusive copyright towards the respondent and passed an injunction restraining the appellants from performing the same in any capacity of the distinctive from developed by Dr. Karanth.

The Appellant aggrieved from the judgment appealed to the **Karnataka High court** where in on 5.12.2007 the appeal was dismissed.

Following which they applied to the Hon'ble Supreme Court of India.

Mr. Rajiv Dhavan, the appellant's council conceded that although the respondent has gained a copyright in term of literary works in the great feat of Dr. Karanth's 'originality' in transforming the dance form, with the clauses of the Will. But there can be no action against the appellants as firstly, as per the finding of the trial judge the performance was done as a memoir of Dr. Karanth without charging any fee and secondly, that the decision by the high court of taking dramatic work as same as literary work is not correct and lastly, the injunction issued against the respondent is not as per Section 52(1)(a), (i), (l) of the Copyright Act, 1957¹.

The legal issues that were faced by the court were:

- 1) Whether Dr. Karanth had acquired the copyright in respect of 'Yaksha Ragna' and its 7 'parasangs'?
- 2) That whether the respondent had been granted the copyright of dance form 'Yaksha Ranga' developed by Dr. Karanth?
- 3) Whether the respondent's right in the copyright was infringed?

ANALYSIS

I. THAT LITERARY WORKS ARE DISSIMILAR TO DRAMATIC WORKS

¹ The Copyright Act, 1957 § 52 (1)(a), 52(1)(i), 52(1)(l). No. 14., Acts of Parliament, 1957 (India).

Literary works are works as defined by Section 2(o)² those that are written in print or writing. Whereas Dramatic works as per Section (h)³ is any work having some sort of theatrical aspect, some synchronized performance.

As per the High court, referring to the “Encyclopedia Britannica and Halsbury’s Laws of England”⁴ stating that a literary work having any dramatic effect can still be a literary work, and pronounced that literally works has part to play in dramatic works, that the literary work is the text the reader reads and the dramatic work is the play upon on that text. And both of them as borne by the creative imagination of authors. The new Encyclopedia Britannica (Vol-IV) 15th Edition⁵ reads that dramatic works can under the purview of literary work when they are a part of dramatic literature.

But the provisions of the Copyright Act, 1957 clearly defines ‘literary work’ and ‘dramatic work’ differently and certainly the form of ‘dance’ cannot be under the purview of literary works.

They explain that the text of Shakespeare is a literary text and the play that is built upon it is the dramatic text. The subsequent is a part and parcel of the first and will be therefore a part of the literary text.

But the Supreme court pronounced that as the The Copyright Act, 1957 provides for distinct meanings of literary works and dramatic works. The form of ‘dance’ cannot be within the meaning of literary works but only dramatic works. In this case, as the 7 parasangs were literary texts and the dances that were performed, were on these parasangs but the dance cannot be copyrighted as a literary works.

II. WHETHER THE RESPONDENT IS ENTITLED TO THE COPYRIGHT?

a. Whether Dr. Karanth Had a Copyright For ‘Yakshagana’?

In “*R.G. Anand vs. M/s Delux Films & ors*”⁶ it was held that there is no copyright in idea and only the expressions of idea can attract the infringements of copyrights. If there are 2 works that are being built at different places with a common source there are bound to be

² The Copyright Act, 1957 § 2(h), No. 14., Acts of Parliament, 1957 (India).

³ The Copyright Act, 1957 § 2(o), No. 14., Acts of Parliament, 1957 (India).

⁴ BRITANNICA AND HALSBURY’S LAWS OF ENGLAND.

⁵ IV, ENCYCLOPAEDIA BRITANNICA 15TH EDITION.

⁶ *R.G. Anand v M/s Delux Films & ors*, (1978) 4 S.C.C. 118 (India).

similarities. In these cases, the court will look at substantial and the fundamental aspect of them and if it is found to be the exact replica with some changes then it could be held infringing. It should prove that the defendant has infringed on the copyright.

To determine a violation of any copyrights, the Hon'ble supreme court came up with a test that when a reader/spectator who has read the text, views the performance and has the opinion that both are unmistakably a copy of each other then it has to be infringing.

And when although the idea is similar but the subsequent work in itself is completely new then it would not attract any violation.

In "*Easter Book Company & Ors. Vs. D.B. Modak & Anr.*"⁷ They stated that the copyright is concerned with the expression of thought and not the idea itself. Any work which uses labour, skill, investment of time can be credited as a copyrighted work. It does not have anything to do with originality. The original aspect should come from the fact that it has been consolidated from pre-existing data and has the author's distinctive touch to it. The copyright would be granted if it has skills, labour and also something that is distinct to his creativity.

b. Respondent's Entitlement to The Copyrights

As per the clause 12 of the will, all the residue bequest was to belong to the Respondent. The High court's Contention as per similarity of Literary works and dramatic works was negated and thus as no part of Dr. Karanth's estate should be undeclared, it was interpreted that the 7 'parasangs' were indeed the respondents.

III. APPLICATION OF SECTION 52 OF THE COPYRIGHT ACT, 1957

The Hon'ble Supreme Court proclaimed that Section 52 deals with acts that may not be violative of copyrights. These acts are called fair dealing. When any literary work or dramatic work is utilised for the purpose of research, criticism, or education then it will not be held as infringing on the copyright.

⁷ *Easter Book Company & Ors. Vs. D.B. Modak & Anr.*, (2008) 1 S.C.C. 1 (India).

Any person acting within the purview of this section as an amateur club or a society would get the benefit of the same. The appellants should have taken the benefits of the Provisions of Section 52(1)(a), (i), (l) of the Act⁸.

The Institute had conducted the dance performance being an educational institution and as per Section 52(1)(i) in front of a non-paying audience, in the capacity of an “amateur club or society”, the same would not constitute any violation of the order of injunction.

CONCLUSION

In conclusion the court declared that Dr. Karanth by the virtue of his skills, labour had developed a copyright for ‘Yaksha Ranga’ and that had bequeathed the same to the Respondent as per the registered will. The Respondent had gained her copyright in the dance form of ‘Yaksha Ranga’ as opined by the court for it to be a part of the residual bequest.

They ordered a permanent injunction and held that the Appellants could perform the dance form as per Section 52 of the copyright. The said appeal was this dismissed with some modifications in the injunction order and ordered no costs.

The application of this case law is in the sense that no dramatic acts that has been developed out of a literary text will be copyrighted as part of a literary work. The dramatic work has its own definition as per the provisions of the copyright act.

They expanded and cleared the application of Section 52 of the copyright Act, 1957 and declared that any institute who performs the copyrighted dramatic and artistic work for research, education will not be held infringing as be dealt as a fair dealing of the copyright.

⁸ Copyright Act, Supra note 2.