

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2025

Pronounced on : 28.01.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

A. Nos.6748 and 6750 of 2024

in

C.S. (Comm. Div.) No.251 of 2024

and

O.A. No.958 of 2024

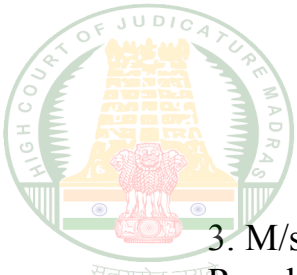
A. No.6748 of 2024:

Los Gatos Production Services India LLP,
(A unit of Netflix),
11th Floor, Godrey BKC, Plot C-68, G-Block,
Bandra Kurla Complex-Bandra East - 400 051 ... Applicant

vs.

1. Wunderbar Films Private Limited,
Represented by its Director Mr.Sreyas Srinivasan,
Having Office at:
Amara Akasha No.5/1165, Flat No.12C,
12th Floor, East Facing, Rajiv Gardhi Road,
OMR, Perungudi, Chennai - 600 096.

2. Tarc Studios LLP,
Rep. by its Partner Mr.Gubendiran Vijayakumar,
No.9, Somasundaram Street,
T.Nagar, Chennai - 600 017.



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3. M/s.Rowdy pictures Private Limited,
Rep. by its Director Mr.Vigneshwar,
Having Office at: No.A-902, Old No.2, New No.3,
Montieth Road, Egmore, Chennai - 600 008.

4. Nayanthara Kurian
5. Vignesh Shivan

.. Respondents

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 of C.P.C. to reject the plaint in C.S. (Comm. Div.) No.251 of 2024.

For applicant : Mr.R. Parthasarathy
Senior Counsel
for Mr.Giridharan P

For Respondents : Mr.P.S. Raman
Senior Counsel
for Gautham S. Raman
for R1

A. No.6750 of 2024:

Los Gatos Production Services India LLP,
(A unit of Netflix),
11th Floor, Godrey BKC, Plot C-68, G-Block,
Bandra Kurla Complex-Bandra East - 400 051 ... Applicant

vs.

1. Wunderbar Films Private Limited,
Represented by its Director Mr.Sreyas Srinivasan,
Having Office at:
Amara Akasha No.5/1165, Flat No.12C,
12th Floor, East Facing, Rajiv Gardhi Road,
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Having Office at: No.A-902, Old No.2, New No.3,
Montieth Road, Egmore, Chennai - 600 008.

4. Nayanthara Kurian

5. Vignesh Shivan

.. Respondents

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Clause XII of the Letters Patent Act read with Order III Rule 1 of O.S. Rules to revoke the leave to sue granted by this Court in A.No.6184 of 2024 on 27.11.2024.

For applicant : Mr.R. Parthasarathy
Senior Counsel
for Mr.Giridharan P

For Respondents : Mr.P.S. Raman
Senior Counsel
for Gautham S. Raman
for R1

COMMON ORDER

A. No.6748 of 2024 has been filed by the fifth defendant for rejection of plaint under Order VII Rule 11 of C.P.C.. A. No.6750 of 2024 has been filed once again by the fifth defendant, seeking to revoke



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the leave to sue granted by this Court on 27.11.2024 in A. No.6184 of

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2. Since both the applications have been filed by the fifth defendant, they are disposed of by this Common Order.

3. The application, seeking revocation of leave, has been filed by the fifth defendant raising the following grounds:

a) Since the suit has been filed under Section 62 of the Copyright Act, the suit cannot be entertained by this Court as the plaintiff is having its office outside the jurisdiction of this Court;

b) No part of cause of action to sue the applicant / fifth defendant arose within the jurisdiction of this Court since the applicant / fifth defendant is having their office only at Mumbai;

c) The plaintiff having chosen to file the suit under Section 62 of the Copyright Act, they are barred from seeking leave to sue the applicant / fifth defendant under Clause 12 of the Letters Patent as the Doctrine of Election comes into play.



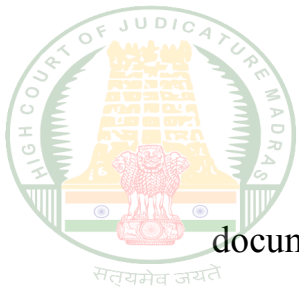
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4. In so far as the application filed by the fifth defendant, seeking

for rejection of plaint is concerned, the applicant / fifth defendant has raised the following grounds:

a) The plaintiff has not instituted pre-suit mediation in compliance with Section 12A of the Commercial Courts Act. The cause of action for the suit claim arose in the year 2020 itself, when the clippings pertaining to “behind the scenes (BTS)” footage from the plaintiff's film "NAANUM ROWDY DHAAN", which is the subject matter of the dispute was made known to the plaintiff, as seen from plaint document No.9. However, the suit along with the application seeking for interim relief was filed by the plaintiff only on 25.11.2024. Therefore, there is no requirement for urgent interim relief as prayed for by the plaintiff in the suit. Hence, the filing of the commercial suit without instituting the pre-suit mediation is barred by law as per the provisions of Section 12A of the Commercial Courts Act.

5. The subject dispute is not a copyright dispute since the plaintiff has neither produced the cinematographic film nor behind the scene footage, which is alleged to have been copied by the defendants as



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documents along with the plaint. Section 16 of the Copyright Act, 1957

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makes it clear that no copyright infringement suit can be filed if there is no copyright violation.

6. However, the contentions of the applicant / fifth defendant have been disputed by the first respondent / plaintiff by contending as follows:

a) The cause of action for the suit arose, when the plaintiff became aware through the behind the scene clipping was shown in the Trailer of the documentary in the YouTube Chennel only on 09.11.2024. Immediately on coming to know of the same, they have issued a notice to the applicant / fifth defendant on the same day i.e., on 09.11.2024, informing the applicant / fifth defendant about the copyright violation. The plaintiff, thereafter, also sent a reply to the applicant / fifth defendant's Lawyer's communication, through a reply sent through their counsel on 12.11.2024, calling upon the applicant / fifth defendant not to release the subject documentary, which contains the behind the scene clippings, which is the subject matter of the dispute. Since the subject documentary was released by Netflix on 18.11.2024, the plaintiff immediately filed the instant suit before this Court on 24.11.2024,



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seeking urgent interim reliefs. Hence, according to the plaintiff, Section

12A of the Commercial Courts Act has been duly complied with by the

plaintiff since there became a necessity for the plaintiff to seek for urgent interim reliefs.

b) The plaintiff contends that the suit has been filed both under Section 62 of the Copyright Act as well as under Order IV of O.S. Rules. Only by virtue of the powers conferred by the Madras High Court Letters Patent, Madras High Court Original Side Rules have been framed. Since Clause 12 of the Letters Patent empowers this Court to grant leave to sue the applicant / fifth defendant, where part of cause of action for the suit claim against the defendants arose at Chennai within the jurisdiction of this Court, the suit filed by the plaintiff is maintainable before this Court as this Court is having the territorial jurisdiction to decide the suit.

c) The suit filed under Clause 12 of the Letters Patent is an additional remedy, that is in addition to the remedy available to the plaintiff under Section 62 of the Copyright Act. In respect of the cause of action as pleaded in the plaint, only one suit has been filed by the



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plaintiff. This Court has rightly granted leave to sue the applicant / fifth

defendant by exercising its power under Clause 12 of the Letters Patent.

The Doctrine of Election has no applicability to the facts of the instant case.

d) The major part of cause of action arose only within the jurisdiction of this Court, since the film produced by the plaintiff named "NAANUM ROWDY DHAAN" was released only at Chennai and some of the scenes in the said film were also filmed only at Chennai. The artist contract entered into between the plaintiff and the third defendant was also entered into at Chennai within the jurisdiction of this Court, where at the relevant point of time, the plaintiff was having its office at No.1, Flat No.6, Appavu Apartments, Venus Colony Second Street, Alwarpet, Chennai - 600 018. The subject documentary "NAYANTHARA: BEYOND THE FAIRY TALE" can also be viewed from Chennai.

7. In support of the applicant / fifth defendant's contentions, the learned senior counsel appearing for the applicant / fifth defendant relied upon the following authorities:



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a) Indian Performing Rights Society Ltd., Vs. Sanjay Dalia and

Another reported in 2015 (10) SCC 161;

b) Nagubai Ammal and Others Vs. B. Shama Rao and Others reported in AIR 1956 SC 593; and

c) T. Arivandandam Vs. T.V. Satyapal and Another reported in 1977 (4) SCC 467.

8. By relying upon the aforesaid decisions, he would submit that the following propositions emerge:

a) Once a suit has been filed under Section 62 of the Copyright Act, the right to apply under Section 20 C.P.C. gets excluded and as a consequence, Clause 12 of the Letters Patent also gets excluded;

b) Doctrine of Election applies to the case on hand. The plaintiff having exercised the option of filing the suit under Section 62 of the Copyright Act, they are barred from exercising rights under Clause 12 of the Letters Patent;

c) By clever drafting of the plaint, the plaintiff cannot claim jurisdiction of this Court to entertain this suit by introducing an illusory cause of action. Any such attempt has to be nipped in the bud.



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WEB COPY 9. In support of the first respondent / plaintiff's contentions, the learned senior counsel for the first respondent / plaintiff drew the attention of this Court to the following authorities:

a) Indian Performing Rights Society Ltd., Vs. Sanjay Dalia and Another reported in 2015 (10) SCC 161;

b) Decision of a learned Single Judge of this Court dated 20.09.2023 passed in C.S. (Comm. Div.) Dr. No.56111 of 2018 in the case of A. Arjun Vs. Balaji B;

c) Judgment of a Full Bench decision of Madras High Court dated 04.12.2014 in the case of Duro Flex Pvt. Ltd. Vs. Duroflex Sitings System 150 reported in AIR 2015 Mad 30;

d) Judgment of a Division Bench of Madras High Court dated 11.11.2020 in O.S.A.Nos.38, 40 and 42 of 2020 in C.M.P.Nos.1518, 1538 and 1544 of 2020 in the case of Sulphur Mills Ltd. Vs. M/s.Dayal Fertilizers Pvt. Ltd., and Others;

e) Single Bench Judgment of the Bombay High Court in the case on Ultra Media and Entertainment Pvt. Ltd. Vs. Y-Not Films LLP and Another reported in 2024 SCC Online Bom 3085.



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10. Relying upon the aforesaid decisions, the learned senior counsel for the first respondent / plaintiff would submit that the following propositions emerge:

a) The relief under Clause 12 of the Letters Patent, on account of the fact that part of cause of action having arisen within the jurisdiction of this Court, is an additional remedy available to the plaintiff i.e., in addition to the rights conferred under Section 62 of the Copyright Act;

b) Forum conveniens is also a criteria which has to be considered for deciding whether a Court is having jurisdiction or not;

c) In Intellectual Property Rights matters, involving infringement of Trade Mark or Copyright, normally an injunction must follow. Normally, in cases of Intellectual Property Rights, suits involving infringement or passing off action, such suits can ordinarily be instituted without exhausting pre-litigation mediation.

DISCUSSION

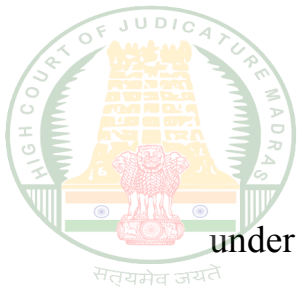
11. Clause 12 of the Letters Patent of the High Court gives the High Court the power to hear certain suits. This Clause is related to the High Court's Ordinary Original Civil Jurisdiction. Clause 12 of the



Letters Patent enables the High Court the following:

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- a) It allows the High Court to allow suits that meet certain conditions such as, the amount of the claim and the location of the defendant;
 - b) It allows the High Court to hear suits even if only part of the cause of action took place within the Court's jurisdiction;
 - c) It allows the High Court to hear suits outside of its local territorial jurisdiction if the Court grants leave;
 - d) The language of Clause 12 of the Letters Patent is clear and unambiguous and the provisions are mandatory.

12. In the case on hand, the first respondent/plaintiff had sought leave to sue the applicant/fifth defendant before this Court under Clause 12 of the Letters Patent since the applicant/fifth defendant is having its office at Mumbai. The cause of action to file the suit by the first respondent/plaintiff before this Court is illustrated in the plaint. The necessity to file a leave to sue application depends only upon the plaintiff's averments. This Court need not evaluate evidence while deciding an application seeking for revocation of leave which was earlier granted



under Clause 12 of the Letters Patent. A roving enquiry on the evidence

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available, the effect of the evidence or the probabilities of the case need not be conducted while considering the application for revocation of leave. The assertion in the plaint must be presumed to be true for the purpose of determining whether the leave is liable to be revoked on the point of demurrer. The cause of action paragraph, i.e. paragraph No.26 of the plaint, gives details as to how the cause of action for filing the suit arose within the jurisdiction of this Court. The gist of the same are given below:

a)The first respondent/plaintiff produced the Cinematographic film, “NAANUM ROWDY DHAAN” including audio tracks, music videos etc., directed by the fourth defendant starring Mr.Vijay Sethupathi and the third defendant as the lead actors of the movie;

b)When the first respondent/plaintiff engaged the services of artists/technicians/art directors and all other persons engaged by the first respondent/plaintiff inclusive of the third and fourth defendants on “works-made-for- hire” basis;

c)When the first respondent/plaintiff and the third defendant executed the Artist Agreement on 27.08.2014 in Chennai within the



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jurisdiction of this Court and other artists before shooting of the
Cinematographic film “NAANUM ROWDY DHAAN”;

d)When the film “NAANUM ROWDY DHAAN” was released on
21.10.2015 in Chennai and in other parts of the State of Tamil Nadu and
India;

e)When the trailer for the documentary “NAYANTHARA:
BEYOND THE FAIRY TALE” was released on 09.11.2024 on YouTube
and Netflix and which is broadcasted across the world and in Chennai
without obtaining prior permission and consent of the first
respondent/plaintiff;

f)When the first respondent/plaintiff issued a notice dated
09.11.2024 at 05.34 p.m. via e-mail to the applicant/fifth defendant;

g)When on 11.11.2024, the applicant/fifth defendant through their
counsel had replied to the first respondent's/plaintiff's e-mail stating that
the said “behind the scenes (BTS)” footage from the film “NAANUM
ROWDY DHAAN” is not owned by the first respondent/ plaintiff
company as the same belonged to persons not commissioned by the first
respondent/plaintiff to shoot the behind-the-scenes footage and the same
was personal in nature;



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h)When the third defendant thereafter uploaded a highly

defamatory open letter in her Instagram page on 16.11.2024 addressed to

Mr. K.Dhanush, the Founder of the first respondent/plaintiff company;

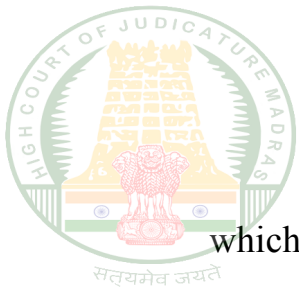
i)When the said documentary was released on Netflix on

18.11.2024 infringing the first respondent's/plaintiff's Copyright over the

Cinematographic work and in breach of Clause 4 of the Artist

Agreement.

13. As seen from the cause of action paragraph of the plaint, it is clear that a major part of cause of action for the suit arose only within the jurisdiction of this Court. At the time of signing the contract dated 27.08.2014 with the third defendant, the first respondent/plaintiff was having its office only at No.1, Flat No.6, Appavu Apartments, Venus Colony Second Street, Alwarpet, Chennai - 600 018 which is within jurisdiction of this Court. The Artist Agreement dated 27.08.2014 also makes it clear that the contract was executed only at Chennai. Excepting for the fact that the applicant/fifth defendant is having its registered office at Mumbai and the subject documentary "NAYANTHARA: BEYOND THE FAIRY TALE" was released worldwide on 18.11.2024,



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which includes Mumbai on 18.11.2024, no other part of cause of action arose at Mumbai. If the entire cause of action arose within the jurisdiction of this Court, but the applicant/fifth defendant is alone located outside the jurisdiction of this Court, there is no necessity to seek leave to institute the suit against the applicant/fifth defendant before this Court as per Clause 12 of the Letters Patent. Only in cases where the part of cause of action arose within the jurisdiction of this Court, there is a necessity for the plaintiff to seek leave to sue from this Court under Clause 12 of the Letters Patent. Only under those circumstances, the first respondent/plaintiff was constrained to seek leave to sue the applicant/fifth defendant before this Court.

14.The averments contained in the affidavit filed in support of the leave to sue application filed by the plaintiff though did not specifically refer to the fact that part of cause of action to sue the applicant / fifth defendant arose at Chennai within the jurisdiction of this Court, the plaintiff averments as well as this Court's order granting leave to sue makes it clear that major part of cause of action to sue the defendants jointly and severally arose only at Chennai within the jurisdiction of this Court. The



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applicant / fifth defendant also does not dispute the fact that a part of cause of action for the suit arose at Chennai, within the jurisdiction of this Court but their only objection is that in the leave to sue application, the plaintiff did not make an averment that part of cause of action to sue the applicant / fifth defendant arose at Chennai within the jurisdiction of this Court. As observed earlier, while deciding a leave to sue application, this Court will have to see only the plaint averments. The plaint averments reveals that part of cause of action to sue all the defendants, which includes the applicant / fifth defendant, arose at Chennai within the jurisdiction of this Court. The following paragraphs will conclusively establish that a part of cause of action to sue all the defendants including the applicant / fifth defendant arose at Chennai within the jurisdiction of this Courts:

a)The Artist Agreement dated 27.08.2014 entered into between the first respondent/plaintiff and the third defendant, which according to the first respondent/plaintiff, has been violated by the third defendant, gives them the cause of action to file the suit since the agreement was entered into only at Chennai and at the relevant point of time, the first



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respondent/plaintiff was having its office only at Chennai within the jurisdiction of this Court i.e. at No.1, Flat No.6, Appavu Apartments, Venus Colony Second Street, Alwarpet, Chennai - 600 018;

b)The trailer for the documentary "NAYANTHARA: BEYOND THE FAIRY TALE", which is the subject matter of dispute, which according to the first respondent/plaintiff, contains “behind the scenes (BTS)” footage from the film “NAANUM ROWDY DHAAN”, is a copy right violation committed by the defendants and is being broadcasted by the applicant / fifth defendant across the world and in Chennai without obtaining prior permission from the first respondent/plaintiff.

c)As seen from the cause title of the plaint, excepting for the applicant/fifth defendant, all the other defendants are having their office only at Chennai within the jurisdiction of this Court. The applicant/fifth defendant is alone having its registered office at Mumbai;

d)The suit has been filed by the first respondent/plaintiff under Sections 55 and 62 of the Indian Copyright Act 1957 read with Order IV Rules 1 and 2 of the Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure, 1908.



WEB COPY 15. Therefore, the suit has been filed by the first respondent/ plaintiff not alone under Section 62 of the Indian Copyright Act, but also under the Madras High Court Original Side Rules. The Madras High Court Original Side Rules has been framed only by virtue of the powers conferred under enactments set out in Madras High Court Original Side Rules which includes the Letters Patent of the High Court at Madras dated 25.12.1965 as amended by the Letters Patent dated 11.03.1990.

16. Clause 12 of the Letters Patent of the Madras High Court empowers this Court to grant leave to institute a suit when a part of cause of action has arisen within the jurisdiction of this Court. As observed earlier, Clause 12 of the Letters Patent also makes it clear that no leave is required to sue the defendant if the entire cause of action arose within the jurisdiction of this Court. Since the first respondent/ plaintiff is seeking relief against the applicant/fifth defendant also, who is having its registered office at Mumbai, outside the jurisdiction of this Court and major part of cause of action having arisen within the jurisdiction of this Court, there became a necessity for the first



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respondent/plaintiff to seek leave to institute the suit against the applicant/fifth defendant.

17. This Court, after giving careful consideration to the averments contained in the plaint, which includes the cause of action paragraph, is of the considered view that the first respondent/plaintiff has rightly sought leave of this Court and has also rightly obtained leave from this Court to institute the suit against the applicant/fifth defendant since they are having their registered office at Mumbai which is outside the jurisdiction of this Court by exercising the right vested with them as per Clause 12 of the Letters Patent.

18. The doctrine of election has no applicability to the facts of the case on hand since even while filing the plaint, the first respondent/plaintiff has chosen to file the suit both under Section 62 of the Indian Copyright Act as well as under Order IV Rule 1 and 2 of the Original Side Rules by way of abundant caution. The doctrine of election will come into play only when statutorily a party who has got two remedies, chooses to exercise the two remedies separately.



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19. In the case on hand, the first respondent/plaintiff is having its

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right to file a suit both under Section 62 of the Copyright Act as well as under Clause 12 of the Letters Patent. The right to file a suit under Clause 12 of the Letters Pattern is in addition to the right to file a suit under Section 62 of the Copyright Act. Since the first respondent/plaintiff has filed only one suit against the defendants in respect of the cause of action by disclosing in the plaint that the suit has been filed under Sections 55 and 62 of the Copyright Act read with Order IV Rule 1 and 2 of the Original Side Rules, the suit filed by the first respondent/plaintiff before this Court against all the defendants is maintainable as this Court has got the territorial jurisdiction to decide the dispute against all the defendants since the major part of cause of action arose only at Chennai, within the jurisdiction of this Court. Even while granting leave to institute the suit against the applicant/fifth defendant, this Court, by its order dated 27.11.2024 has observed that the major part of cause of action arose only at Chennai within the jurisdiction of this Court. Only based upon the said observation, this Court had granted leave for the first respondent/plaintiff to institute the suit against the applicant/fifth defendant.



WEB COPY 20. Therefore, it is not correct on the part of applicant / fifth defendant to allege that the first respondent/ plaintiff did not seek leave to sue against the applicant/fifth defendant on the ground that a part of cause of action arose at Chennai within the jurisdiction of this Court. The plaint averments would alone determine as to whether a part of cause of action for suing the applicant/fifth defendant arose at Chennai within the jurisdiction of this Court or not. As observed earlier, the plaint averments unequivocally reveals that part of cause of action for the first respondent/plaintiff to sue the applicant/fifth defendant arose at Chennai within the jurisdiction of this Court.

21. Forum conveniens is also a criteria to be considered while adjudicating a revoke leave application. Apart from holding that major part of cause of action for the suit arose only within the jurisdiction of this Court, this Court also comes to the conclusion that Forum Conveniens for filing the suit is only before this Court for the following reasons:

a)The major part of the evidence pertaining to the dispute on hand



is procurable only at Chennai;

WEB COPY b)The defendants 1 to 4 are also having their office only at Chennai, within the jurisdiction of this Court;

c)The third defendant, who is the principal player in the subject matter of the dispute and who according to the first respondent/plaintiff has committed breach of Artist Agreement dated 27.08.2014 by including the behind the scenes from the film “NAANUM ROWDY DHAAN” in her documentary "NAYANTHARA: BEYOND THE FAIRY TALE", is also having her office only at Chennai within the jurisdiction of this Court;

d)The first respondent/plaintiff is also having its office at Chennai though beyond the limits of this Court's jurisdiction as the plaintiff's office is located in an area neighbouring to this Court's ordinary original civil jurisdiction.

22. The judgment of the Hon'ble Supreme Court in the case of **Indian Performing Rights Society Limited vs. Sanjay Dalia and another reported in 2015 (10) SCC 161**, relied upon by the learned counsel for the applicant/fifth defendant does not aid the applicant/fifth



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defendant in these applications. In the said decision, the Hon'ble

Supreme Court has made it clear in paragraph No.14 that the expression

notwithstanding anything contained in the Code of Civil Procedure, 1908

in Section 62(2) of the Copyright Act 1957 does not oust the

applicability of the provisions of Section 20 of Code of Civil Procedure,

which enables the first respondent/plaintiff to file a suit where the

defendant resides or where cause of action wholly or in part arises.

Paragraph No.14 of the decision rendered by the Hon'ble Supreme Court

in **Indian Performing Rights Society Limited vs. Sanjay Dalia and**

another reported in 2015 (10) SCC 161 is extracted hereunder:

'14. Considering the very language of section 62 of the Copyright Act and section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression “notwithstanding anything contained in the Code of Civil Procedure” does not oust the applicability of the provisions of section 20 of the



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Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business etc., as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.'

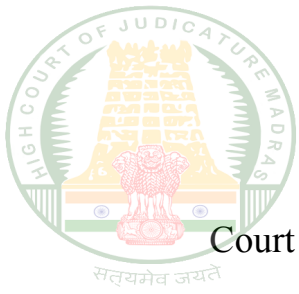
23. In so far as the Madras High Court is concerned which exercises Ordinary Original Civil Jurisdiction, Clause 12 of the Letters Patent instead of Section 20 of Civil Procedure Code applies. Clause 12 of the Letters Patent empowers this Court to grant leave to institute a suit if a part of cause of action arose within the jurisdiction of this Court.



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WEB COPY This Court granted leave for the first respondent/plaintiff to institute a suit against the applicant/fifth defendant only by exercising its powers under Clause 12 of the Letters Patent since major part of cause of action for the suit arose only at Chennai, within the jurisdiction of this Court.

24. Infact, the first respondent/plaintiff has filed the suit both under Section 62 of the Copyright Act as well as under Order IV of the Original Side Rules and therefore, the contention of the applicant/fifth defendant that only the District Court at Kancheepuram has the jurisdiction is untenable in law. The law provides for two remedies in so far as the cause of action for filing the instant suit, i.e. one under Section 62 of the Copyright Act and the other under Clause 12 of the Letters Patent and only under those circumstances, the first respondent / plaintiff has filed the suit before this Court under Clause 12 of the Letters Patent. The doctrine of election comes into play when the plaintiff has filed two suits on the same cause of action i.e., one under Section 62 of the Copyright Act and the other under Clause 12 of the Letters Patent. In the case on hand, only one suit has been filed though by quoting both Section 62 of the Copyrights Act as well as Order IV of the Madras High



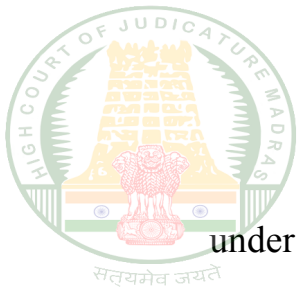
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Court Original Side Rules. Hence, the Doctrine of Election has no applicability for the facts of the instant case. For the very same reason, the decision relied upon by the learned counsel for the applicant/fifth defendant, namely, **Nagubai Ammal & others vs. B.Shama Rao and others reported in 1956 SCC Online SC 14** has no bearing to the facts of the instant case.

25. In Nagubai Ammal's case, relied upon by the learned counsel for the applicant/fifth defendant, it was a case where a person had the right to claim one of the two reliefs and with full knowledge he elects to claim one and obtains it but it is not open to him thereafter to go back on his election and claim the alternative relief. The case on hand is not one of that sort as observed supra. Therefore, the question of approbation and reprobation by the first respondent/plaintiff as held in the decision of Nagubai Ammal does not arise to the facts of the instant case.

26. Section 12A of the Commercial Courts Act, namely, non-institution of pre-suit mediation by the first respondent/plaintiff is also a ground raised by the applicant/fifth defendant for rejection of plaint



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under Order VII Rule 11 of C.P.C. The said contention of the applicant/

WEB CO fifth defendant is unsustainable for the following reasons:

a)The trailer for the documentary "NAYANTHARA: BEYOND THE FAIRY TALE" was released only on 09.11.2024 on YouTube and Netflix;

b)The first respondent/plaintiff issued a notice dated 09.11.2024 via email to the applicant/fifth defendant stating that they have violated the copyright by utilising the "behind the scenes (BTS)" footage from the film "NAANUM ROWDY DHAAN" for the third defendant's documentary "NAYANTHARA: BEYOND THE FAIRY TALE";

c)On 11.11.2024, the first and fifth defendants through their counsel, had replied to the first respondent's/plaintiff's email stating that the said "behind the scenes (BTS)" from the film "NAANUM ROWDY DHAAN" is not owned by the first respondent/plaintiff company as the same belonged to persons not commissioned by the first respondent/plaintiff to shoot the behind-the-scenes footage and the same was personal in nature;

d)When the third defendant thereafter uploaded an open letter in her Instagram page on 16.11.2024 addressed to Mr.K.Dhanush, the



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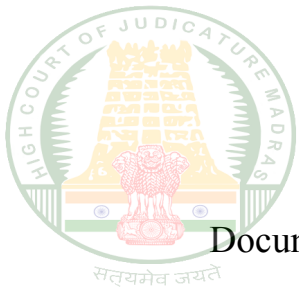
Founder of the first respondent/plaintiff company, which according to the

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e)When the documentary "NAYANTHARA: BEYOND THE FAIRY TALE" was released on Netflix on 18.11.2024, which according to the first respondent/plaintiff amounts to infringement of the first respondent's/plaintiff's copyright over the cinematographic work and is in breach of Clause 4 of the Artist Agreement dated 27.08.2024.

27. The suit was filed before this Court on 24.11.2024 and in paragraph No.24 of the plaint, the first respondent/plaintiff has submitted that the suit has been filed on an urgent basis since every day the infringed footage is being broadcasted, which has resulted in loss to the first respondent/plaintiff and a delusion of its copyright.

28. It is settled law that as long as any infringing material remains on air and for each moment that the material continues to be screened will dilute the rights of the copyright holder and is a continuous cause of action. Though the applicant/fifth defendant contends that the cause of action for the suit arose in the year 2020 itself as seen from the plaint



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Document No.9, which is a screenshot, the said contention cannot be accepted by this Court at this stage when admittedly the documentary "NAYANTHARA: BEYOND THE FAIRY TALE" was released by Netflix only on 18.11.2024. It is clear from the plaint averments that only due to the urgent necessity to seek interim reliefs, the first respondent/plaintiff did not go for pre-suit mediation under Section 12A of the Commercial Courts Act, 2015.

29. Sufficient cause has been shown by the first respondent/plaintiff for not exercising the pre-suit mediation. In the decisions relied upon by the learned Senior Counsel appearing for the first respondent/plaintiff, the following propositions emerge:

a) Court must be cautious and circumspect in intellectual property suits in rejecting the plaint for non-compliance of Section 12A of the Commercial Courts Act since in intellectual property rights matter not only the first respondent's/plaintiff's economic interest but also public interest of safeguarding the members of the public from deception and confusion are required to be considered;

b) In Intellectual property rights matters, principles of forum



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conveniens or analogous principles apply while considering application

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for leave to sue under Clause 12 of Letters Patent in cases where a part of cause of action arises at a particular place;

c)Section 62 of the Copyright Act is only in addition to the provisions of Section 20 C.P.C. and Clause 12 of the Letters Patent. If it is not so, then the jurisdiction as contemplated under Section 20 C.P.C. would stand ousted. The intention of the legislature for introducing Section 62(2) of the Copyright Act is only to give an additional jurisdiction to a party for instituting a suit on infringement.

30. This Court is in agreement with the legal propositions referred to supra. For the foregoing reasons, this Court is of the considered view that since a part of cause of action arose within the jurisdiction of this Court, this Court had rightly granted leave to the first respondent/plaintiff to institute the suit against the applicant/fifth defendant by exercising its power under Clause 12 of the Letters Patent. Since adequate averments have been made in the plaint for seeking urgent interim reliefs by the first respondent/ plaintiff without exercising pre-suit mediation, this Court, at this preliminary stage, cannot reject the



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plaint for non-compliance of pre-suit mediation by the first respondent/plaintiff.

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31. In the decision rendered by the Hon'ble Supreme Court while analysing Section 12A of the Commercial Courts Act in **Yamini Manohar vs. T.K.D.Keerthi reported in 2024 (5) SCC 815**, it has been made clear that non grant of interim relief post arguments on merits and on examination of three principles viz., a) prima facie case (b) irreparable harm and injury and (c) balance of convenience, will not also empower the Court to reject the plaint under Order VII Rule 11 C.P.C.

32. At this preliminary stage, when the first respondent/plaintiff has prima facie satisfied this Court that there is an urgent need for obtaining interim reliefs, the question of rejecting the plaint for non compliance of pre-suit mediation does not arise.

33. In the result, this Court does not find any merit in both these applications filed by the applicant/fifth defendant as this Court has come to the categorical conclusion that this Court is having the territorial



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jurisdiction to adjudicate the suit by exercising its powers under Clause
WEB COPY 12 of the Letters Patent since part of cause of action for filing the suit has
arisen only at Chennai within the jurisdiction of this Court. Accordingly,
A. Nos.6748 and 6750 of 2024 are dismissed. No costs.

34. Any observation made by this Court in this order is only for
the purpose of adjudicating these applications. It is made clear that those
observations will not have any bearing for deciding the other
interlocutory application and the main suit.

28.01.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes
ab/vga

Note: 1. Post O.A. No.958 of 2024 in C.S. (Comm. Div.) No.251 of 2024
for arguments on 05.02.2025.

2. Issue Order Copy Today (i.e., on 28.01.2025)



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ABDUL QUDDHOSE, J.

ab/vga

**pre-delivery order in A. Nos.6748 and 6750 of 2024
in C.S. (Comm. Div.) No.251 of 2024**

28.01.2025