

Dispute Resolution Hotline

April 20, 2009

BOMBAY HIGH COURT HOLDS NATIONAL BROADCASTER 'DOORDARSHAN' GUILTY OF INFRINGEMENT OF COPYRIGHT AND IMPOSES SUBSTANTIAL DAMAGES

It's not often that one finds a state-run television channel like *Doordarshan* held guilty of infringement of copyright. It's downright rare that one finds a court imposing 'substantive damages' upon

Doordarshan! In its order dated March 31, 2009¹, the Bombay High Court ("Court") has *inter alia* ordered the Directorate General of *Doordarshan* and the other Defendants ("Defendants") to pay well-known documentary film-maker *Anand Patwardhan* ("Plaintiff") Rs. 1,000,000 as damages for the infringement of his copyright in the 1975 film "*Waves of Revolution*" ("**Suit Film**"). Ironically, the telecast rights for the Suit Film were acquired by *Doordarshan* from the Plaintiff in 1975 for a Rs. 500!

FACTS OF THE CASE:

In 1975, the Plaintiff made the Suit Film on the *Bihar Movement* led by *Jay Prakash Narayan*, a freedom fighter, depicting the students' revolt in the Indian state of Bihar which led to and is stated to have been repressed by the Declaration of Emergency in 1975 ("**Emergency**"). Telecast rights for the Suit Film were sold to *Doordarshan* for Rs. 500 (per telecast). The Suit Film was telecast in 1977.

In 2003, the Defendant No. 4, acting on behalf of the Defendant Nos. 1 to 3, made a documentary film entitled "*26th June 1975*" ("**Impugned Film**"). The Impugned Film depicted interviews of various political figures who stated their roles at the time of and before the Emergency. As the *Bihar Movement* was the necessary and essential catalyst for the Emergency, it formed part of the Impugned Film. The Defendant No. 4 took admittedly shots of the Suit Film from the *Doordarshan Kendra* archives. The Impugned film was telecast on June 26, 2003.

The Plaintiff, suing for an injunction restraining the Defendants from screening the Impugned Film and damages, alleged that whilst he followed a *secular democratic ideology*, as was brought out in the Suit Film, the ideology of the persons shown in the Impugned Film was the "*Hindutva Ideology*" and therefore, the act of infringement additionally constituted defamation as the Plaintiff's friends and acquaintances believed that he had renounced his ideology resulting in lowering of his status and tarnishing of his public image leading to public loss of face and mental trauma.

JUDGMENT:

As part of the proceedings and on the request of the parties, the Court viewed both, the Suit Film and the Impugned Film, in its entirety as also specific parts thereof.

The Court *inter alia* found that portion of the Impugned Film depicting the *Bihar Movement* had entirely been copied by the Defendant No. 4 from the Suit Film. The Defendant No. 4 was aided by the Defendant Nos. 1 to 3. Even though this part formed only 86 seconds of an approximately one hour long film, the Court, held that the Defendants had, though not willfully but callously, infringed the Plaintiff's copyright.

The Court found, based on the documents produced before it, that the only right granted to the Defendants was the right to telecast the Suit Film on payment of royalty for each telecast. As use of the Suit Film by the Defendants was contrary to the written agreement between the parties, the Court held that the Defendants had distorted and mutilated the Suit Film and broadcast the same by breach of trust.

However, the Court found that whilst the Plaintiff had been able to establish infringement of copyright, he had failed to show how such infringement had damaged his reputation and therefore held that the Plaintiff had not suffered any trauma or mental anguish and therefore, the Defendants were not guilty of defamation.

Interestingly, when it came to the extent of damages, the Court, whilst appreciating that both the Suit Film and the Impugned Film were not commercial films, noted that exemplary damages as claimed by

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the Plaintiff ought not to be granted. However, as the Plaintiff was the only film-maker and photographer who had cinematographically captured the *Bihar Movement*, the Court held the Plaintiff entitled to 'substantive damages'.

ANALYSIS AND IMPLICATIONS:

In this matter, the Court has delved deep into the realm of copyright law including judgments set forth by various foreign courts. The right as granted by the owner of a copyright is sacrosanct and this judgment upholds this right even when more than 30 years have elapsed after the creation of such copyright. The fact that such right was upheld against no less than a state-run television channel such as *Doordarshan* reassures the owner of a copyright of that no one can be permitted to infringe on his rights in any manner whatsoever, howsoever minimal such infringement is.

The extent of the impact of such judgment can be seen when one considers that in fact, the Court not only upheld the unregistered copyright of the Plaintiff but also imposed substantive damages on the Defendants including *Doordarshan*.

- Sahil Kanuga & Vyapak Desai

1. In Suit No. 2259 of 2004

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