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# **CASE COMMENTARY: R.G. ANAND V. M/S. DELUX FILMS**

AUTHORED BY - SHIVANI. A<sup>1</sup>

## **INTRODUCTION:**

The case *R.G. Anand v. M/s. Delux Films*<sup>2</sup> is one of the landmark judgements pertaining to copyright law in India. The main issue of the case revolves around the question as to whether the movie 'New Delhi' infringes the copyright of a play named 'Hum Hindustani' as the theme of the both the works is the same and the movie was made without the permission of the author of the play. The case serves as a precedent for cases involving copyright infringement of literary and dramatic works as the Supreme Court lays down certain principles which can be used to determine infringement. These principles laid down by the court are relevant even in the recent times.

## **FACTS OF THE CASE:**

In this case, the appellant, R.G. Anand is a playwright, dramatist and also the producer of several plays. The present case is pertaining to a play titled 'Hum Hindustani' which is claimed to be written by the appellant in or about 1953. This play was enacted in the year 1954 after which it gained immense popularity. As a result, one of the respondents of the instant case approached the appellant and requested him to provide a copy of the play so that he could make a movie on it. The appellant responded by asking the respondent to attend the screening of the play at the National Film Festival as it was going to be screened at the festival.

The respondent attended the screening and had a discussion with the appellant as to the potentialities of turning the play into a movie. The respondent also told the appellant that he would inform him if the respondent would make a movie on the play. However, the appellant never heard from the respondent thereafter.

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<sup>2</sup> R.G. Anand v. M/s. Delux Films, AIR 1978 SC 1613.

In 1955, the respondent began filming a movie titled 'New Delhi' which the appellant claims, was based on his play 'Hum Hindustani'. However, the respondents denied this contention. The film was released in the year 1956 and after watching it, the appellant filed a suit of copyright infringement and contested that the theme of the play as well as the movie was the same, i.e, about 'provincialism'. The trial court gave the judgement in favour of the respondent due to which an appeal was filed by the appellant in the Delhi High Court which also upheld the judgement of the trial court. Therefore, an appeal was filed before the Supreme Court.

### **ISSUES OF THE CASE:**

1. Whether the appellant is the owner of the copyright in the play 'Hum Hindustani'?
2. Whether the film 'New Delhi' can be considered as a violation of the copyright of the appellant's play 'Hum Hindustani'?
3. Whether the respondents violated the appellants copyright?
4. To what relief is the appellant entitled and against whom?

### **LAW INVOLVED:**

#### **The Copyrights Act, 1957:**

##### **Section 13(1):**

This Section<sup>3</sup> provides for the kinds of work that can be subject to copyright. It states that a copyright may be granted to:

- Original literary, dramatic, musical, and artistic works;
- Cinematograph films; and
- Sound recording.

##### **Section 14:**

This Section<sup>4</sup> defines the term copyright. It states that, the word 'copyright' refers to the exclusive right which is given to a person to produce work in any form that he wants, grant a copy of the work produced by him to the public, make any cinematographic film, make an adaptation of the work, etc.

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<sup>3</sup> The Copyrights Act, 1957, s.13(1).

<sup>4</sup> The Copyrights Act, 1957, s.14.

**Section 51:**

This Section<sup>5</sup> defines the term ‘copyright infringement’. It states that ‘copyright infringement’ is said to occur when:

- A person uses a copyrighted work without taking prior permission of the owner or exercises any right which rests with the owner of the copyright,
- Permits to use any place for communication of a work for profit and such communication amounts to infringement of a copyright. However, the person will not be liable if he has no knowledge or no reason to believe that that his act might amount to infringement.
- If a person imports infringing copies of a copyrighted work and produces them as his own.
- If a person portrays a replica of a copyrighted work as his own without the permission of the true owner of the work.

**JUDGEMENT:**

The Supreme Court in this case, upheld the decision of the Delhi High Court that the movie ‘New Delhi’ did not violate the copyright of the play ‘Hum Hindustani’. To arrive at this conclusion, the court made a detailed analysis on the story of the play as well as the movie. Upon such analysis, the court observed that the similarity between the two works was mainly based on their theme which was pertaining to ‘provincialism’. However, the manner in which the theme was presented was completely different.

The court also observed the arguments stated by the appellants in their plaint as to why they believe that the movie was similar to their play and thereby infringed their copyright. However, the court then made a list of dissimilarities between the two works and observed that the number of dissimilarities listed were more than the similarities which were pointed out by the appellants in their plaint. Also, the court observed that the similarities pointed out by the appellant were very trivial and didn’t comprise any substantial aspects of the play.

The court also relied upon the fact that a copyright can only be provided to an expression of an idea and to the idea itself. Therefore, by considering all these points, the court in this case held that the respondents in the instant case were not liable for copyright infringement.

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<sup>5</sup> The Copyrights Act, 1957, s.51.

## ANALYSIS:

After considering the arguments of both the parties and also the decision of the High Court, the Supreme Court laid down the following guidelines to determine if a copyright infringement has taken place:

### **1. Idea- expression dichotomy:**

The principle of idea- expression dichotomy is an essential principle of copyright law. Though it has been criticized several times for being vague, fictitious and imprecise, it is still considered as a pertinent principle of copyright law and is also a part of the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS)<sup>6</sup>. The same principle is also given under the World Intellectual Property Organization (WIPO) Copyright Treaty<sup>7</sup>. The underlying premise of this principle is that ideas must be distinguished from expression while granting a copyright. It states that it is the expression of an idea and not the idea itself which can be copyrighted<sup>8</sup>.

Even in the instant case, the Supreme Court observed that a copyright cannot be granted to an idea, subject matter, theme, narrative, etc. However, when an idea or a theme is reduced to a tangible form, then, a copyright may be granted to the tangible form of the idea. Therefore, this principle states that it is not always necessary for a work to have an original idea in order to be granted a copyright. The novelty with which the idea is presented should be considered while granting a copyright.

This principle acknowledges the fact that ideas are abstract and are common to everyone. Therefore, while granting a copyright, the manner in which such ideas are presented must be considered. In order to better understand this point, the Supreme Court relies on the example of Shakespeare. The court observed that most of the plays written by Shakespeare were based on Greek roman and British mythology. However, the nature and elegance with which he expresses each of his works is so novel that the end product becomes an original work in itself. This is the reason in which none of Shakespeare's works can be considered to be an infringement of a copyright.

In the instant case, the plaintiff claims that the defendant should be charged with copyright

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<sup>6</sup> Trade Related Aspects of Intellectual Property Rights, Art. 9(2).

<sup>7</sup> WIPO Copyright Treaty, Art. 2.

<sup>8</sup> Narell v. Freeman, 872 F.2d 907 (9th Cir. 1989); Warner Bros. v. American Broadcasting Cos., 654 F.2d 204 (2d Cir. 1981).

infringement as both the play as well as the movie are based on the same theme, i.e, 'provincialism'. However, as per this test, it cannot be considered as an infringement of copyright as mere idea or theme cannot be copyrighted.

## 2. Substantial similarity between the works:

A copyright is not said to be infringed by mere copying of a copyrighted work. In order to bring an action against a person for copyright infringement, the owner has to prove that the 'protected elements' of the work have been infringed<sup>9</sup>. Here can be no direct evidence that the owner can produce to prove that there has been a copyright infringement. Therefore, it is enough that the owner of the copyright proves that the accused work is substantially similar to the original copyrighted work to prove infringement.

This principle rests on the premise that, if the idea or the theme of two or more works is the same, there will be some similarity between the two works. These similarities per se do not amount to copyright infringement. The courts in such cases must check if the similarity of the work alleged to be copied is pertaining to the substantial aspects of the copyrighted work. If a person imitates the copyrighted works and just makes some changes to it here and there, it would amount to copyright infringement.

Therefore, to check if there is substantial similarity between two works, it is important to check if the 'core copyrightable material' has been infringed<sup>10</sup>. This core copyrightable material is obtained by removing the following from a work:

- Ideas
- Facts
- Substances from the public domain
- Substances which are under the doctrine of merger, i.e, the idea and the expression are so intertwined with each other that they cannot be separated and thus can only be expressed in a single way.

After removing all these from the work that is alleged to infringe a copyright, it is check if it is similar to the original work. If the works appear to be substantially similar, then, it is said to be a case of copyright infringement.

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<sup>9</sup> Nichols v. Universal Pictures Corp., 45 F.2d 119 (2d Cir. 1930).

<sup>10</sup> Modhura Roy, *Substantial Similarity in Copyright Law*, Available at SSRN: <https://ssrn.com/abstract=1666910> or <http://dx.doi.org/10.2139/ssrn.1666910>

In the instant case, the court held that there was no infringement as the similarity between the play and the movie was mainly based on the theme and the rest of the similarities were trivial and were not substantially similar to each other.

### **3. Audience test/ Lay observer's test:**

This is a traditional test used to determine copyright infringement. It states that a work is said to infringe a copyright if an ordinary person who sees a work can associate it with a copyrighted work and can recognize this it is a copy of a copyrighted work<sup>11</sup>. This 'ordinary observer' is considered as a benchmark to determine whether a copyright infringement has taken place or not.

In the case of *Atari, Inc. v. North American Philips Consumer Elecs. Corp*<sup>12</sup>, it was held that a copyright is said to be violated when “*the accused work is so similar to the plaintiff's work that an ordinary reasonable person would conclude that the defendant unlawfully appropriated the plaintiff's protectable expression by taking material of substance and value*”. Therefore, the test which must be used to determine the infringement is overall similarity between the two works and not minute similarities<sup>13</sup>.

In the instant case, the court considered the totality of the movie and held that it was different from the play and therefore, didn't amount to copyright infringement.

### **4. Same theme, presented differently doesn't violate copyright:**

T.S.Eliot said: “*Immature poets imitate, mature poets steal. Bad poets deface what they take from great poets and transform it into something better, or at least different*”. This line essentially explains the difference between inspiration and imitation. Taking inspiration from somebody else's work and creating a new work altogether is allowed and doesn't infringe the copyright of a person. However, imitating the copyrighted work of a person as it is and not creating anything new from it definitely leads to infringement.

There can be some similarities between the accused work and the original work. Substantial similarity is allowed under the copyright law. In this case, the court held that if the theme of an

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<sup>11</sup> *Ideal Toy Corp. v. Fab-Lu Ltd.*, 360 F.2d 1021 (2d Cir. 1966).

<sup>12</sup> *Atari, Inc. v. North American Philips Consumer Elecs. Corp.*, 672 F.2d 607 (7th Cir. 1982).

<sup>13</sup> *Ibid.*

accused work is similar to that of a copyrighted work, it doesn't in itself violate the copyright if it is presented in a different way. This is because, ideas, information, national phenomena and events are considered to be common property and are not eligible for copyright protection<sup>14</sup>.

Therefore, even in the instant case, there is no violation of copyright as the movie was just based on the idea which was portrayed in the play but the way in which it was expressed was completely different from the play.

### **5. If there are broad dissimilarities along with similarities, there is no violation of copyright:**

A copyright infringement is said to have taken place when the accused work is strikingly similar<sup>15</sup> to the copyrighted work. However, if there are a few similarities, but there are also broad dissimilarities between the two works and an intention to not copy the original work can be ascertained from the accused work, then, there can be no infringement. If the plaintiff is successful in proving that the accused work is strikingly similar to the copyrighted work, the court can infer that the defendant had access to the copyrighted work and therefore, has infringed the copyright<sup>16</sup>.

Most of the courts have not yet defined when a work becomes strikingly similar. However, there are several factors which are considered by the court to determine if the two works are strikingly similar:

- The uniqueness, complexity and intricacies of the both the works are carefully examined.
- The court checks if the original work includes any sort of unexpected events or idiosyncrasies in it and if the same are repeated in the accused work.
- The courts can check if any mistakes or errors which were present in the original work are also present in the accused work to determine striking similarity.
- If the accused work contains the same fictitious elements which are used in the original work like fake names, places, etc, the court may believe that there is a violation of copyright.

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<sup>14</sup> Indian Express newspaper (Bombay) Pvt. Ltd. v. Jagmohan Mundhara, AIR 1985 Bom 229.

<sup>15</sup> McRae v. Smith, 968 F. Supp. 559 (D. Colo. 1997).

<sup>16</sup> Selle v. Gibb, 741 F.2d 896 (1984).

- The court may also check if the accused work contains any unwanted or unworked elements in it which the infringer has added just to make it look like original.

If these elements are proved, the court can hold that the works are strikingly similar to each other and that there is a violation of a copyright. However, in the instant case, the court observed that the play and the movie were very different from each other and had a very few similarities. Therefore, there was no infringement.

#### **6. Clear and cogent evidence:**

In this case, the Supreme Court held that, copyright infringement leads to piracy. Therefore, before coming to a conclusion that a particular work amounts to copyright infringement, the court has to apply various tests which are mentioned above. Only after applying the tests and obtaining clear and cogent evidence, the court should decide if the copyright has been infringed or not.

In the instant case, even after applying all the tests the appellants couldn't produce any clear evidence that the respondents had violated their copyright. Hence, the court held that there was no copyright infringement.

#### **7. Totality of the work should be considered:**

The Supreme Court also observed that in cases where a copyright of a play has been infringed by a film, it can be difficult for the author of the play to prove that there is substantial similarity and thereby his copyright has been violated. This is because, unlike a stage play, movies have a wider field and a bigger background which can be used by the defendants to express the same ideas and incidents of the copyrighted play in a different complexion. Even then, the court states that, if the viewer gets an impression that the total film is by and large a copy of the original play, it can amount to violation of a copyright.

In the instant case, the court analysed the story of the play as well the story of the movie and based on this they found that both the works were completely different from each other and the similarities pointed out were trivial. They also observed that an ordinary person watching the film will not have an indication that the film is copied from the play. Hence, they held that there was no violation of copyright.

### CONCLUSION:

The judgement given by the Supreme Court in the case of *R.G. Anand v. M/s. Delux Films* holds relevance even in the contemporary period. The court held that though there are certain similarities between the two works, they are not substantially similar to each other. The court also brought a distinction between the terms imitation and inspiration and held that a copyright cannot be granted to mere ideas, rather, it granted to the manner in which such ideas are presented. By giving these principles, the Supreme Court laid a foundation for determining copyright infringement which can serve as a guiding light to decide future cases of copyright infringement.

