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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 23.11.2016

Coram:

The Hon'ble Mr. Justice M.SUNDAR

C.S.Nos.66 of 2001  
& 47 of 2001

C.S.No.47 of 2001 :

M/s. Asianet Communications Ltd.,  
rep. By its Vice President,  
Mr.Prem Menon

... Plaintiff

-vs-

1.SUN T.V. Network Limited  
rep. By its Managing Director  
Mr.Kalanidhi Maran  
(Amended as per order dt:04.11.2015  
in Appl.No.6859 of 2015)

2.M/s. Shirdhisai Creations,  
A Film producing Company  
rep. By its Proprietor  
Mr.P.K.R.Pillai

3. Mr.Rajeevnath  
Proprietor Rasika Films,  
Karamana Post,  
Trivandrum - 605 002.

... Defendants

Suit filed under Sections 55 & 62 of the Copyright Act, 1957 read with Order IV Rule 1 of O.S.Rules, praying for a permanent injunction restraining the defendants, their agents, men, representatives assigns and anyone whosoever claiming through the defendants from in any manner infringing the Plaintiff's copyright in respect of the exclusive satellite television telecast rights of the Malayam feature film 'AHAM' in whole or reproduction of any part thereto, by exploitation for public or private viewing by broadcasting on the first defendant's channel or on any other channel satellite telecast: directing the first defendant to pay to the plaintiff damages in a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) along with interest at 12% per annum from the date of plaint till the date of realisation and for costs.

**C.S.No.66 of 2001:**

Sun T.V. Network Limited  
rep. By its Programme Coordinator,  
Mr.Humayur Ali Ahmed

(Amended as per order dt:04.11.2015  
passed in Application Nos.6859  
and 6860 of 2015)

... Plaintiff

-Vs-

1.M/s. Asianet Communications Ltd.,  
rep. By its Vice President,  
Mr.Prem Menon

2.M/s. Sree Sankara Arts,  
rep. by its Power Agent,  
Mr.T.Rajeevnath

... Defendants

Suit filed under Sections 55 & 62 of the Indian Copyright Act read with Order VII Rule 1 of Civil Procedure Code, 1908, for declaring that the plaintiff alone is entitled to the copy right in respect of the broadcast of the picture 'AHAM' (Malayalam) through Satellite Television; for a permanent injunction restraining the defendants or their agents or servants or any one claiming under or through them and or authorised by them from in any manner infringing the copyright already vested with the Plaintiff in respect of the broadcast through Satellite Television relating to the picture "AHAM" (Malayam) either by broadcasting the entire picture or scenes or songs or otherwise in the first defendant's channel or in any other channel; directing the defendants to pay to the plaintiff the costs of this Suit and for such other reliefs.

For plaintiff in  
C.S.No.47 of 2001                   ::M/s. Perumbulavil Radhakrishnan  
& for 1<sup>st</sup> defendant in           ::  
C.S.No.66 of 2001

For 1<sup>st</sup> defendant in  
C.S.No. 47 of 2001               :: Mr.Mr.R.Mukundan  
& for plaintiff in  
C.S.No.66 of 2001

**COMMON JUDGEMENT**

C.S.No.47 of 2001 has been filed by Asianet Communications Limited, against Sun T.V. and two others seeking a permanent injunction restraining the defendants from in any manner infringing the Plaintiff's copyright in respect of the exclusive satellite television telecast rights of the Malayam feature film 'AHAM' in whole or reproduction of any part thereto, by exploitation for public or private viewing by broadcasting on the first defendant's channel or on any other channel satellite telecast a direction to the first defendant to pay to the plaintiff damages in a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) along with interest at 12% per annum from the date of plaint till the date of realisation and for costs.

C.S.No.66 of 2001 has been filed by Sun T.V. Network Limited, hereinafter referred as 'Sun T.V.' for brevity against the Asianet Communications Ltd., (hereinafter 'Asianet' for brevity) and another seeking for a declaration that the plaintiff is entitled to the copyright in respect of the picture 'AHAM' through Satellite Television and for a permanent injunction from in any manner infringing their copyright in

the first defendant's channel or in any other channel and to direct the defendants to pay to the plaintiff the costs of this Suit and for other reliefs.

2. The brief averments made in the plaint are as follows :

It is the case of the Asianet that they had acquired the exclusive rights of satellite telecast of the Malayalam feature film 'AHAM' directed by Rajeevnath and starring Mohanlal-Urvasi for over a period of five years from the producer and negative right holder M/s. Shirdhisai Creations, who has been arrayed as second defendant in C.S. No.47 of 2001. An agreement had also been entered into between themselves on 07.09.1993 for a sale consideration of Rs.40,000/- and the five years period will expired only on 06.09.1998. Thereafter, another agreement of extension had also been entered between the parties on 06.01.2000 assigning the right of the said feature film for over a period of 25 years further. In and by the said agreement, Asianet has got the exclusive right to transmit, broadcast, re-broadcast multiple time or any portion thereof by either direct broadcast satellite or point to point broadcasting system. When the aforesaid agreement was in force the second

defendant had assigned the right of the said feature film 'AHAM' along with other films on non-exclusive basis for a further period of five years and Agreement of Extension was also entered into between the parties on 28.02.1998. Asianet had also paid the consideration for the said extension.

3. While so, the first defendant (Sun T.V.) had made an advertisement on 23.07.2000 in 'THE HINDU' a leading newspaper that the said film would be telecast on the said date in 'SURYA TV' (A channel owned and controlled by the first defendant). Thereafter, the second defendant had issued a notice to the first defendant on 14.10.2000 calling for an explanation as how the said feature film was telecast in SURYA TV without obtaining any right from the original owner. Even before issuance of such notice, the second defendant had sent a letter to the first defendant containing the details of list of feature films in which the rights were vested in them. It is the further case of Asianet that the first defendant had acquired the right of telecasting the feature film from the third defendant who has got no right over the same. Hence, the plaintiff has preferred the present suit.

4. The defence raised in the written statement runs as follows:

It is stated that the first defendant got the telecast rights from M/s.Shirdhisai Creations, by an agreement dated 07.09.1993, for a valuable consideration and the same was extended upto 06.09.2003 and thereafter to 05.09.2028 by agreements dated 28.02.1998 and 06.01.2000 respectively. Rajeevnath is the director of the said film and not the producer. Consequent on the aforementioned agreements, the said film had been telecast in Asianet Channel in the years 1994, 1995, 1996, 1999 and 1998. The second defendant had not chosen to object the same at that point of time. The transfer of telecast rights in respect of the said film by the second defendant to M/s.Colonia Communications on 03.06.2000 and by M/s.Colonia Communications to the plaintiff is piracy in copyright and is a sham transfer. The transfer of such rights between the second defendant and the M/s.Colonia Communications and the plaintiff allegedly took place in the month of June 2000. The said transactions are in conflict with Section 19 of the Copyright Act, 1957. Hence, the said transfer is non-est in law. It is also stated that the first

defendant had acquired the copyright of the film and broadcast it on five occasions, before the plaintiff came into picture. The damages claimed to the tune of Rs.3,00,000/- have not been substantiated sufficiently and hence, suit deserves to be dismissed.

5. Based on the pleadings, after hearing both sides, the issues that were framed in both the suits are as follows :

Issues framed in C.S.No.47 of 2001 are as follows:

"1. Whether the plaintiff is the exclusive owner of the Copyright in respect of the suit film 'AHAM' till September 5, 2028 ?

2. Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants from infringing the plaintiff's copyright in respect of the suit film 'AHAM' ?

3. Whether the plaintiff is entitled for the claim for damages amounting to Rs.3,00,000/- along with interest at 12% from the 1<sup>st</sup> defendant ?

4. To what other relief is the plaintiff entitled ?



The issues framed in C.S.No.66 of 2001 are as follows:

"1. Whether the plaintiff is entitled for a declaration of the copyright namely satellite television rights in respect of the suit picture 'AHAM' ?

2. Whether the plaintiff is entitled for a permanent injunction restraining the defendants from broadcasting the said picture through satellite television ?

3. To what reliefs the plaintiffs are entitled ?

6. The subject matter of the two suits are one and the same.

Though separate sets of issues were framed by this Court, it was joint trial of the two suits. The two suits are in the nature of cross suits. Therefore, I propose to dispose off the two suits by a common judgement. The subject matter of the two suits is the Malayalam feature film titled 'AHAM' directed by Rajeevnath and starring Mohanlal, Urvasi and others.

7. Incidentally and ironically 'AHAM' is the soul of the matter here. The sole issue between the two broadcasters is regarding the

broadcasting rights for the above said Malayalm feature film 'AHAM', which is hereinafter referred to as the said film. For the sake of brevity and clarity, C.S.No.47 of 2001 is referred to as the earlier suit and C.S.No.66 of 2001 is referred as the latter suit. Plaintiff in the earlier suit which is also the first defendant in the latter suit, is referred to as 'Asianet'. Plaintiff in the latter suit, which is the first defendant in the earlier suit, is referred to as 'Sun T.V.'. Such references are for the sake of brevity, convenience and clarity.

8. Shirdhisai Creations and the Director Rajeevnath, from whom Asianet claims that it got the broadcasting rights of the said film, have been arrayed as defendants 2 and 3 respectively in the earlier suit. Sree Sankara Arts, from whom Sun T.V. claims that its rights originate and percolated has been arrayed as the second defendant in the latter suit.

9. The conflict and contest for the said film is between 'Asianet' and 'Sun T.V.'. Asianet claims that it has acquired the broadcasting rights from the above said Shirdhisai Creations vide Ex.P2,

Agreement dated 07.09.1993 originally for period of 5 years and that the same was extended on 28.02.1998 vide Ex.P5. It is also the case of the Asianet that ever since it acquired such broadcasting rights, it has broadcast the said film any number of times in its satellite broadcasting network commencing from 06.11.1994. While so, the rival claim of Sun T.V. is that it acquired the broadcasting rights of the said film from Sree Sankara Arts vide Ex.D3, which is an agreement dated 03.06.2000. This is almost 7 years latter. It is the further case of Sun T.V. that one M/s. Colonia Communications purchased the satellite rights from Sree Sankara Arts and that M/s.Colonia Communications inturn assigned the rights in favour of Sun T.V., vide Ex.D5, which is an agreement dated 28.06.2000.

10. In short, Asianet claims to have got the broadcasting rights of the said film 07.09.1992 under Ex.P2, dated 07.09.1992 and Sun T.V. claims to have got the same broadcasting rights vide Ex.D5, dated 28.06.2000, almost 7 years latter.

11. When Sun T.V. telecast the said film on 23.07.2000 for the first time, Asianet claims that it was surprised to see that the film

over which it has rights for over seven years is being telecast. ASIANET immediately took up the matter with Sridhisai films (Shirdhisai Creations) from which it got the rights under Ex.P2. Sridhisai films issued a notice to Sun T.V. vide Ex.P11, dated 14.10.2000. A copy of this notice was sent by Sridisai Films under cover of a letter dated 17.10.2000 to Asianet. This letter is Ex.P12. Subsequently, Asianet issued a legal notice to Sun T.V.. This legal notice is dated 31.10.2000 and this legal notice, acknowledgement cards etc., are marked as Ex.P13 and Ex.P.14. Intriguingly Sun T.V. did not respond. The above scenario led to the above two suits being filed with directly opposing and rival claims for broadcasting rights of the said film.

12. It is noticed that all the documents have been marked by consent.

13. The rival television broadcasters namely, Asianet and Sun T.V. have admittedly not got the broadcasting rights from the same source as would be evident from the narration of facts above. While Sun T.V. claims to have purchased the rights from M/s.Colonia

Communications, Asianet claims to have got the rights from Sridhisai Creations.

14. This leads us to the question as to who is the producer of the said film and which one of the two had the rights to assign. Pausing here for a moment, it is necessary to remind ourselves that Shirdhisai Creations does not claim that it is the producer. It has made the assignment only in its capacity as negative right holders. When we say producer in Cinema Industry parlance, legally, we are essentially looking at the narration within the meaning of Section 2(uu) of the Copy Right Act. Section 2 (uu) of the Copy Right Act can be usefully extracted hereunder and the same reads as under:

'producer', in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work;

15. In this context Section 17 of the Copy Right Act can also be usefully referred to and Section 17 reads as follows:

17. First owner of copyright.-Subject to the provisions of this Act, the author of a work shall be the first owner of the

copyright therein Provided that- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work; (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein; (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence

of any agreement to the contrary, be the first owner of the copyright therein; [(cc) 52 in the case of any address or speech delivered in public, the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of any other person, such other person shall be the first owner of the copyright therein notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or premises such address or speech is delivered;] (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein; [(dd) 53 in the case of a work made or first published by or under the direction or control of any public undertaking, such public undertaking shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein."

16. In joint trial one witness on behalf of Asianet was examined as P.W.1 and one witness was examined on behalf of Sun T.V. as D.W.1. Effectively, two witnesses were examined. Exs.P1 to P14 and

D1 to D7 were marked. Both, P.W.1 and D.W.1 are legal resources of the respective broadcasters. While P.W.1 is the Manager-Legal of Asianet, D.W.1 is the Manager-Legal of Sun T.V..

17. As only the legal resources of the rival broadcasters have been examined, the deposition does not emit signals regarding production of suit film. Deposition regarding production of said film on behalf of the two broadcasters namely, P.W.1 and D.W.1, do not throw much light on who is the producer of the said film within the meaning of Section 2(uu) read with Section 17 of the Copy Right Act. However, the documents marked through them are of some assistance in the endeavor and effort to find an answer to the question as to who is the producer who has the rights of production of the said film, who has got the right of assignment of copy right. Ex.D1 is the certificate dated 28.04.1992, issued by the Central Board of Film Certification for the said film. This shows the name of the applicant as one Sreekumari, M/s. Sree Sankara Arts has been shows as her address. In the above context one has to necessarily take into account the prevailing industry practice that there are no organized records or system of maintaining records for



ascertaining the name of the producer of a given cinematography film. Under such circumstances, at the Bar, both the learned counsel while admitting the short fall and inadequacies in the prevailing industry practice, would admit that Ex.D1 being the certificate of the Central Board of Film Certification can be looked into to ascertain the producer. Therefore, one has to infer and conclude that the producer is one Sreekumari.

18. A perusal of Ex.D3 reveals that the constitution of Sree Sankara Arts has not been given. Ex.D3 has been signed by Rajeevnath describing himself as Power of Attorney holder of M/s.Sree Sankara Arts. On the strength of Ex.D3, as stated above Colonia Communications has inturn, transferred the right to Sun T.V. under Ex.D5. A perusal of Ex.D3 further reveals that there is no mention about Sreekumari anywhere in the agreement. Assuming that Sreekumari had something to do with Sree Sankara Arts, there is nothing on record to show that. Interestingly, the lab which holds the negatives for the said film has released the negatives in favour of Asianet in 1993 itself or atleast in 1994, as the first telecast was on 06.09.1993 and Ex.P2 is dated

07.09.1993. It is clear that unless Sridisai Creations, who as the negative right holder had obtained its rights from the producer, the lab would not have released the negatives.

19. It takes us to the next issue as to whether Sree Sakara Arts also had the right to assign in favour of Sun T.V. seven years latter on the strength of Ex.D5 and may be Ex.D3. Co-defendant of Asianet and Sun TV in both suits are of no help. The above scenario leaves us with the option of falling back the principle of preponderance of probabilities. Preponderance of probabilities is that Asianet got the rights from the negative right holder and the letter from the producer ought to have been produced to the lab way back in the year 1993 for the release of the negatives. It is also the accepted position that the negative right holder has/gets all rights with regard to broadcasting to the exclusion of all others. The other buttressing aspect is that the Ex.P2 was made in the year 1993 and the first telecast was in the year 1994. Thereafter, it has been telecast any number of times. It has not been disputed that there has been any number of telecast. No producer who had not assigned his rights would have kept quite without initiating

any action if his movie is being repeatedly telecast any number of times by a broadcaster over a period of seven years. Further buttressing factor is that Sun T.V. has not chosen to send any reply to Ex.P11, notice as well as legal notice marked as Exs.P13 and P14. In applying the theory of Preponderance of Probabilities to Ex.D6 which is the letter given by the M/s.Colonia Communications to ViJaya Colour Lab assumes significance. This is dated 07.06.2000(Ex.D6). In this letter, M/s.Colonia Communications merely states that they have assigned and transferred the world wide satellite telecast rights of the said film to Sun T.V., but it is completely silent about any letter from the producer.

20. In this context, the judgement of this Court reported in **2015(3) LW 43** (Mrs.M.Padmani & Others vs. Raj Television Network Ltd.) may be usefully referred to. In this judgement, the question regarding the rights of the producer qua assigner of the copy right/broadcasters was put on issue. After referring to several judgements on this issue, this Court in paragraph 25 held as follows:

**25.** But, in my considered opinion, as contended by the learned counsel for the defendant, negative right is not a specific right; but it includes within it the right of the owner

of such negative right to exclude everyone else from using the negatives of the picture. Without the negatives of the picture, no digital version can also be prepared. Therefore, in that sense, the plaintiffs cannot make any digital version of the picture as the control of the negatives in the laboratory is with the defendant. Further, by way of Assignment Deed dated 21.09.1981 executed by the producer M/s. Premalaya in favour of M/s. Kumar Pictures, the producer M/s. Premalaya has only reserved to itself the rights of re-take and dubbing alone and no other reservation of rights was made after assigning the entire ownership of the picture. Therefore, I am not inclined to accept the submission made by the learned counsel for the plaintiff that what was assigned to the M/s. Kumar Pictures is only a negative right and therefore, the word 'entire copyright' mentioned in the assignment deed dated 21.09.1981 would mean all forms of right to exploit the negative rights alone and it cannot be construed to include some other copyright from the bundle, as each right in the bundle is a separate copyright, cannot be accepted.

21. While Paragraph 25 as extracted supra is clinching as far as the film makers case is concerned, Paragraph 26 & 27 can also be usefully extracted and the same runs as follows:

**26.** It is yet another submission of the learned counsel for the plaintiffs that in view of the amendment to Section 18(1) of Copyrights Act, if a copyright was not in existence at the time of assignment, if in future due to advancement of scientific and technology any copyright came into existence, then the said right only vests with the

producer and after his demise, it will devolve upon his legal heirs. In view of the said submission of the learned counsel for the plaintiff, it would be appropriate to extract Section 18(1) of Copyrights Act.

“18. Assignment of copyrights (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof;

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence;

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work;

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copy right society for collection and distribution and any agreement to contrary shall be void;

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.”

**27.** In this regard, a reference could be placed in the judgment reported in 1991-1 LW 220 [*P. Thulasidas v. K. Vasanthakumari*], wherein it has been held as follows—

"7. It is seen from the above exhibits marked and proved by P.W. 1 that the plaintiff has been all along dealing with the picture - "Bhaga Pirivinai" as an absolute owner. Per contra, it is contended by the learned counsel for the defendant that the plaintiff is not having the absolute exploitation right and exclusive copyright and that the plaintiff is having only the exploitation rights of 35 mm films. It is further contended that the defendant released the cassettes of the picture only in their right to exploit their rights acquired under the agreement dated 20.08.1987 entered into with the legal heirs of G.N. Velumani, the producer of the picture. The defendant has not committed any act of infringement or caused any loss or damage to the plaintiff or made unlawful gains as stated in the plaint and also in the evidence of P.W. 1.

8. It is useful to refer the following two Dictionaries to understand and to appreciate the arguments of the learned counsel for the plaintiff in regard to the word 'Absolute':

i) Biswas: *An Encyclopedic Law Dictionary 1979 Edition*, defines the word "ABSOLUTELY" in the following terms:

"ABSOLUTELY. If any independent meaning can be given to "absolutely" it must be 'unconditionally'. *Re Pickworth*, 68 LJCh 328. The ordinary meaning is "without condition or limitation". And it is commonly used with regard to vesting as meaning "indefeasibly". *Re Thompson, Rhoden v. Wicking*, 1947 W.L.R. 60 (67).

ii) Legal Thesurus by William C. Burton defines the word 'Absolute' as under

"ABSOLUTE (Complete), adjective, absolutus, blanket, comprehensive, downright, entire, exhaustive, final, finished, full sheer, total unbounded, unconditional, unconstrained, unlimited, unqualified, unreserved unrestrained, unrestricted, unstinted, utter, whole, without qualification."

22. Learned counsel for Asianet pressed into service AIR 1968

SC 1413 (Gopal Krishnaji Ketkar vs. Mohamed Haji Latif and Others) and argued that adverse inference has to be drawn against SUN TV as best evidence has not been produced by it even though one may not be on it. This ratio may not have any relevance to factual matrix of present cases as SUN TV is a plaintiff in one of the suits and therefore, burden itself (leave aside 'owns') is on SUN TV conceded factual position is that Asianet got rights on 07.09.1993 vide Ex.P2, first telecast by Asianet was on 06.11.1994 and that it has exploited its rights, by telecast any number of times thereafter. This has not been objected to by SUN TV's assignor or its predecessors. Further, conceded position is that SUN TV claims to have got its rights sever years later only on 28.06.2000 vide Ex.D3 and its first telecast was only on 23.07.2000. Interestingly, Asianet through assignor caused Exs.P11, dated 19.10.2000 to be issued to SUN TV followed by legal notice dated 31.10.2000, both at which did not even a reply. Moreover, in the instant case too Asianek sent is a prior suit. See these indisputable facts also tell the porponderance of probabilities in favour of Asianet.

23. Therefore, it can be safely inferred that M/s Sree

Sankara Creations which admittedly had the negative rights for the said film, as the owner of the said negative rights, can exclude anyone from using the negatives of the pictures. Applying the theory of preponderance of probabilities to the instant factual matrix and also relying on the law laid down by this Court in the above cited judgement with regard to negative right holders, this Court is inclined to conclude that Asianet has obtained the Copy right of the said film in a manner which is most acceptable in law and highly possible in facts taking preponderance of probabilities principle in terms of Asianet. It is axiomatic that Sun T.V. which has got the right after multiple telecasts by Asianet in a seven years span period, cannot be held to have obtained a valid telecasting rights of the said film.

24. Issue No.1 in both the suits, which touch upon the question as to who is the exclusive owner of the copy right of the Malayam feature film 'AHAM', this Court holds that it is Asianet.

25. With regard to issue No.2 in both the suits as framed,



which touch upon the question of permanent injunction restraining the rival claimant from infringing the Copy Right, this Court answers the same in favour of Asianet and holds that Sun T.V. will be restrained by an order of permanent injunction from broadcasting the Malayam feature film 'AHAM'.

26. Issue No.3 as framed in the earlier suit pertaining to the claim of damages amounting to Rs.3 lakhs along with 12% interest, it is held as follows:

26.1. Counsel for Asianet pressed into service Delhi High Court judgement in Microsoft Corporation's case reported in 2013(54) PTC 282 (Del.) in support of his plea for damages without further probe. On facts, Microsoft case is one where Plaintiff's claim went unrebutted and is therefore of no help to Asianet in the instant case with regard to damages, though the said judgement deals with positive damages too.

26.2. Learned counsel for Asianet on damages also relied on 2013 (4)PTC 288(Del.) in (Perfetti Van Melle S.P. & Another vs Om Prakash Khushwant & Another) that was again a case where there was no

representation for the defendants and the claims went on rebutted.

26.3. On damages learned counsel for Asianet also relied on a judgement of Supreme Court of Singapore dated 23.05.2014 reported in 2014 SGHCR 11 in (Converse Inc vs. Ramesh Ramchandani and another). My attention was drawn to paras 28 to 31 of the said judgement which reads as follows:

I therefore, turned to consider the factors set out at Section 31(6) of the Trade Marks Act, in this regard, I first considered the factors of loss suffered by the plaintiff and benefit accrued to the defendants by reason of the infringement. Loss suffered by plaintiff and benefit accrued to defendants.

29. The plaintiff's heads of damages could be broadly summarised as follows:

- (a) Loss of royalties;
- (b) Loss of reputation and other 'intangible' losses (such as damage to commercial value of the trade mark) and
- (c) Benefit which could have accrued to the defendants.

30. Taking each in turn, I accepted the plaintiff's

submissions in respect of loss of royalties. To recap, the plaintiff's potential loss of royalties was submitted to be S\$46,634.40, which was derived by multiplying the retail price of the Chuck Taylor All Star shoes of an estimated S\$68 by 13,716 pairs of shoes, and taking five percent of that (i.e., the amount of royalties to be paid by a hypothetical licensee). However, the correct figure to be considered ought then to be S\$46,226,40 rather than S\$46,634.40. This was because, at the first hearing before me, the parties did not agree on the number of pairs of shoes constituting the Third Batch of Counterfeit Goods. Counsel for the plaintiff had eventually accepted the figure of 13,596 (which was Mr. Ramchandani's position) rather than 13,716 pairs of shoes.

31. As for loss of reputation, there was no real evidence adduced by the plaintiff to show this—only bare assertions were made. It would be apposite to note counsel's submissions in this regard:

In the present Suit, it is undeniable that the plaintiff has invested extensively in marketing on a long term basis in order to promote the plaintiff's brand and have (sic) consequently established a great distinctive character. This contention is also recognised in various jurisdictions wherein the plaintiff had successfully protected and/or enforced its rights in numerous legal proceedings.

27. When a plethora of citations of Indian Courts on the point are available, ideally this court would refrain from falling back on a

foreign court judgement which in any case has only persuasive value. Be that as it may, this is a case of statutory damages and therefore does not further the case of Asianet for damages without further probe/enquiry into quantification/computation preceded by actual damages proof.

28. Though, learned counsel of Asianet submitted at the Bar that with regard to Copy Right the moment Copy right and its infringement is established, he would be entitled to damages without proving actual loss and damages suffered, considering the factual matrix of the instant case, such a preposition would be too specious to adopt. However, as this Court has answered the Copy Right issue in favour of Asianet and has also inherited Sun T.V. from telecasting, it holds that Asianet is entitled to damages but the question has to be established by letting in evidence. It is open to Asianet to take out a suitable application in this regard for establishing the quantum of damages.

29. Issue No.4 in the earlier suit and issue No.3 in the latter suit are residuary issues. No issues have been framed with regard to

costs. Therefore, without framing any separate issue regarding costs, this Court chooses to answer the question of costs the residuary issues being issue No.4 in the earlier suit and issue No.3 in the latter suit. Considering the factual matrix and considering the position that preponderance of probability theory has been applied to arrive at the findings/conclusions, parties are left to bear their respective costs. C.S.No.47 of 2000 is decreed on above terms and C.S.No.66 of 2000 is dismissed.

**23.11.2016**

Index : Yes  
Internet : Yes  
smi

**M. SUNDAR, J.**

smi

**Pre-delivery  
Common Judgement in  
C.S.Nos.66 of 2001  
& 47 of 2001**

**23.11.2016**