

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 627/2018**

% Reserved on : **6th August, 2018**
Pronounced on : **10th August, 2018**

SANJAY KUAMR GUPTA & ANR. Appellants

Through: Mr. Chander Lall, Sr. Adv. with
Mr. Sachin Gupta and Ms.
Surabhi Grover, Advocates.

versus

SONY PICTURES NETWORKS INDIA P LTD & ORS.

.... Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J

CM No. 31250/2018(Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No.627/2018 & CM No. 31249/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908(CPC) is filed by the plaintiffs in the suit impugning the Judgment of the Trial Court dated 13.7.2018 by which the trial court has dismissed the suit of the appellants/plaintiffs alleging violation by the respondents/defendants of appellant's/plaintiff's copyright and confidentiality in the concept 'Jeeto Unlimited'. 'Jeeto Unlimited' is a play along concept of a live show on TV whereby the home viewers get to simultaneously play along with the contestants on the live show i.e the home viewers are given a chance to answer the same questions on the show by use of phone and are rewarded for a successful answer to a question/quiz.

2(i) The facts of the case are that the appellants/plaintiffs pleaded that they got registered a copyright vide Registration No.L-45361/2013 dated 4.01.2013 with respect to their concept 'Jeeto Unlimited'. The concept of the appellants/plaintiffs has been elaborated by them in para 8 of the plaint the relevant portion of para 8 is reproduced as under:-

“The essential components of the concept Jeeto Unlimited are as under:-

a. The home audience/viewers get to play along with the contestant simultaneously;

- b. The home viewers get to answer the same question, which is posed to the contestant;
- c. The home viewers play along with the contestants using their phone;
- d. The home viewers need to watch the TV Show to play the game;
- e. The home viewers are awarded depending upon the value of the question when answered correctly.”

(ii) The appellants/plaintiffs pleaded that they presented this concept to the respondent no.1/defendant no.1 i.e Sony Pictures Network India Pvt. Ltd which runs a popular game show “Kaun Banega Carorepati” (KBC). Respondent no.4/defendant no.4 is the production company which produces the KBC show. Respondent no.5/defendant no.5 is Reliance Jio Infocomm Ltd. which provides the telecom services in the KBC play along segment with the segment of the live KBC show in the studio. Appellants/Plaintiffs pleaded that respondent no.1/defendant no.1 has copied the concept which was presented by the appellants/plaintiffs in the year of 2010-2011 and hence violated the copyright of the appellants/plaintiffs. Appellants/plaintiffs have also pleaded in para 13 of the plaint that the appellants/plaintiffs were forced to send a consent letter to release the respondent no.1/defendant no.1/ Media Houses from any liability in case they broadcast a content which is similar to the concept note

being presented by the appellants/plaintiffs. This is stated in para 13 of the plaint and which reads as under:-

“13. Sometime in December 2011, the Plaintiffs spoke to Miss Geetika Johri, an employee with Turner Broadcasting System that owned Imagine TV channel and discussed their concept of **Jeeto Unlimited**. Miss Johri showed keen interest and requested the Plaintiff No. 1 for the concept note. The Plaintiff No. 1 vide his email dated Dec 22, 2011 to Miss Johri forwarded the concept note of “**Jeeto Unlimited**”. Miss Johri introduced the Plaintiff No. 1 to Miss Candida Soares, who after exchanging few emails and telephonic conversations arranged a meeting with Miss Tasneem Thingna of Turner Broadcasting System at Mumbai. The Plaintiffs were asked to sign a consent letter. A consent letter in the television industry allegedly releases the media houses from any liability in case they broadcast content that is similar to the concept note that is being presented before them. The Plaintiffs met Miss Thingna at the office of Turner Broadcasting System in Mumbai on February 23, 2012. The Plaintiffs present their “Jeeto Unlimited” concept to her. However, nothing materialized in the said meeting.”

(iii) The appellants/plaintiffs have further pleaded that the respondents/defendants have violated the copyright of the appellants/plaintiffs in their concept 'Jeeto Unlimited' and how there is similarity between the concept of 'Jeeto Unlimited' of the appellants/plaintiffs and KBC show of the respondents/defendants is as is stated in para 19 of the plaint, and the relevant portion of para 19 reads as under:-

	Jeeto Unlimited	Jio KBC Play Along-Darshak Banenga Khilaadi
Time of Participation	Game will be played simultaneously with the contestant and the home	Game will be played simultaneously with the contestant and the home

	audience	audience.
Questions	Home audience answers the same question that has been asked to the contestant	Home audience answers the same question that has been asked to the contestant.
Mode of participation	Home viewer can participate by watching the television for questions and giving the answer through SMS/email	Home Viewer can participate by watching the television for questions and giving the answer through JioChat
Basis of reward	Reward depends on the amount of money for which the question is being played	Reward depends on the amount of money for which the question is being played
Selection of winner	Home Viewer will be selected through digital mode programming by the channel's technical team	Home Viewer will be selected through digital mode programming by the channel's technical team.

(iv) Appellants/plaintiffs further plead breach of confidentiality inasmuch as the concept of 'Jeeto Unlimited' was in confidentiality given by the appellants/plaintiffs to the respondents/defendants, and the respondents/defendants were not to use the said confidential information of the concept 'Jeeto Unlimited', but the respondents/defendants have done so.

3. The respondents/defendants contested the suit and prayed for dismissal of the suit. It was pleaded by the respondents/defendants that the appellants/plaintiffs had no copyright in the concept which

they are/were claiming, and in fact the show of the respondents/defendants is substantially different from the show/concept 'Jeeto Unlimited' of the appellants/plaintiffs whereby there is no violation of alleged copyright of appellants/plaintiffs.

4. After pleadings were complete, trial court framed the issues and parties led evidence. These aspects are recorded in paras 17 to 21 of the impugned judgment, and which paras read as under:-

“17. From the pleadings of the parties, following issues were framed vide order dated 12.12.2017:-

- 1. Whether the present court lacks the territorial jurisdiction to entertain the present suit? OPD*
- 2. Whether the suit is liable to be dismissed for non- joinder / mis-joinder of the necessary parties? OPD*
- 3. Whether the suit fails for improper verification of pleadings as required in terms of Order VI Rule 15 CPC and for non filing of affidavit by plaintiff no.2?OPD*
- 4 Whether the copyrights claimed by the plaintiff in the concept of "Jeeto Unlimited" is an original work for the purpose of the Copyright Act, 1957? OPP*
- 5 Whether the plaintiffs entitled to a decree for infringement of his copyright work in terms of prayer clause (a) of the plaint? OPP.*
- 6 Whether the plaintiff prove their case of breach of confidence in terms of the prayer clause (b) of the suit? OPP*
- 7 Whether the plaintiff is entitled to rendition of accounts / profits in terms of prayer clause (c) of the suit? If so, to what effect? OPP*

8 *Relief? Any other.*

Evidence:-

18. Thereafter, the matter was fixed for plaintiff evidence. On 09.01.2018 plaintiff no. 1 himself examined as PW-1 and tendered his evidence and proved documents exhibited as Ex. PW-1/1 to Ex. PW- 1/44. Plaintiff closed his evidence and matter was fixed for DE.

19. In the defence evidence, Sh. Ajay Bhalwankar, Chief Creative Director, Central Content Organization, Channel Sony Entertainment Television, is examined as DW-1 and tendered his evidence and proved document exhibited as Ex. DW-1/1.

20. Sh. Prathamesh Ramesh Mestry, posted as Deputy General Manager-Legal, at defendant no. 4 company is examined as DW-2 and tendered his evidence and proved documents already on record filed with WS of defendant no. 4 as annexure A & Annexure B as exhibited as Ex. DW- 4/1 to Ex. DW4/3.

21. Sh. Amogh Dusad, posted as Senior Vice President and Head- Insights and Programming Strategy, Sony Entertainment Television Channel at defendant no. 1 is examined as DW-3 and tendered his evidence and proved document, i.e. Authority letter, exhibited along with evidence by way of affidavit of DW-1 as DW-1/1. Thereafter, on submissions of Ld. Counsel for defendant, DE stands closed.”

5 (i) The main issues are issue nos. 4 and 5 and the trial court has held these issues in favour of the respondents/defendants and consequently dismissed the suit. Trial court has held that as per the judgment of the Supreme Court in the case of *R.G.Anand Vs. M/s Delux Films & Others. (1978) 4 SCC 118* there can be no copyright in an idea, principle, subject-matter, themes, plots etc. This Court

additionally notes that in law what is copyrightable is not an idea, principle, subject-matter, theme, plot etc but how such aspects are brought into a form of literary work or dramatic work or artistic work or musical work or cinematographic film or sound recording or actual live shows/performers rights or broadcasting rights (Chapter VIII Sections 37 to 39A) and only which are then copyrightable issues as per the Copyright Act, 1957. Trial court has referred to the fact that PW-1/plaintiff no.1 himself in his cross-examination admitted that the concept of audience/viewer engagement has been earlier used in various television programmes though PW-1 contended that however such earlier television programmes were not similar to the concept 'Jeeto Unlimited' of the appellants/plaintiffs. Trial court has held that it would be a fallacy to contend that respondents/defendants had copied the substantial and fundamental aspects of copyright works of the appellants/plaintiffs. Trial court has referred to the points of distinction given by the respondent no.1/defendant no.1 in his written statement to hold that both the issues are not completely identical. This relevant chart of para 18 of the written statement reads as under:-

Sr. No.	Answering Defendant's show, KBC	Plaintiffs' concept
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		Jeeto Unlimited
1.	A question is made public on Television and serves as an audition for aspiring contestants. The viewers can answer the question. A pool of individuals giving the correct answer is selected. During the broadcast of the episode, the chosen pool of individuals are given a question whoever answers first, through a feature called 'Fastest Finger First', is selected as a contestant.	Entries are called in for participation and are shortlisted to ten individuals through lottery. The name of the contestants is then captured in ten white balls which are kept in a big jar and shuffled with air pressure, and one ball is selected by electronic system by pushing the jar. The name inside the ball is the chosen contestant.
2.	There is no overlap of play between the contestant playing the show, and the home viewers playing along on the Jio Chat App. This is especially apparent since even if the contestant's game on the show ends, the home viewer's game continues and does not end.	The home viewers are invited to answer the questions posed to the contestant. The five quickest SMS responses and five e-mail responses are chosen, in which three SMS and three email responses are correct, and two SMS and email responses are incorrect. If the contestant is unable to answer a question, he can avail of a lifeline and choose to unveil any one of the selected 5 SMS' or email responses.
3.	The contestant playing with the host is a pre-recorded event. The home viewers get to watch the pre-recorded episode and play along on their Jio Chat App	The contestant and the home viewer are playing simultaneously.

<p>4.</p>	<p>The games played by the contestant and the home viewers are separate, and their rewards are different as well</p> <p>The contestant is rewarded with monetary award for every right answer.</p> <p>The home viewer, in contrast, is given 'points'. When these points hit a certain benchmark, they are converted into rewards such as Trips to a foreign nation, etc.</p> <p>There is no splitting or overlap of awards to the contestant and the home viewer.</p>	<p>If the contestant chooses the correct response from the responses sent in by home viewers and displayed to him, the contestant is awarded by increasing the monetary amounts s/he has won. The home viewer whose response was chosen is rewarded by splitting the increase of monetary amount between the contestant and the home viewer.</p>
<p>5.</p>	<p>The contestant is provided only one opportunity to answer the question. If he answers incorrectly, the game ends for him</p>	<p>The contestant is negatively marked for the first wrong answer, and the game ends on the second wrong answer. The contestant is given in total two opportunities to answer incorrectly before the game ends for him.</p>

(ii) Trial court has further held that once the issue involves home audience engagement there is bound to be some similarities in the components/segments of the concept, and the concept of a quiz show is a concept which is otherwise well known. This is observed by

the trial court in paras 48 to 50 of the impugned judgment and which paras read as under:

“48. In the present case, since both the concept involve home audience engagement, similarities as to mode of communication is bound to happen via fixed telephone, mobile smartphones, internet or presently in vogue computer designed mobile software commonly known as 'app'. Since the two concept notes relates to TV Quiz, similarities are bound to occur in the questions asked to the home audience, which may or may not be same as that asked to the contestant. The rewards for correct answer will also be limited in terms of monetary benefits or something which could be expressed in monetary terms. The two game shows however as averred by the defendant no.1 differs in ways as stated in para 18 of the written statement.

49. The KBC show selects home audience on the basis of 'Fastest Finger Test', whereas the plaintiff's concept selects individuals on lottery system. The former then allows an individual game to the home audience, the game of the latter on the other hand is dependent on the contestant on the TV. The KBC show keeps the contestant's and home audience's game separate which can be run with a pre-recorded event, whereas the 'Jeeto Unlimited' provides for a live show whereby the home audience plays simultaneously with the contestant. The rewards system is also remarkably different, wherein the KBC Show the home audience earns points for each answer and they earn points throughout the season which can later be converted into awards, the plaintiff's rewards is only money value which is shared by the home contestant from the prize money of the contestant on the show. The prize money in for the plaintiff concept's home audience is dependent on the help sought by the contestant of the show, on the other hand, the KBC show allows the home audience to earn their own points irrespective of the game of the contestant on the show.

50. From the above discussion, this court is of the considered view that the 'Jio KBC Play Along - Darshak Banenge Khilaadi' has fundamental and substantial difference from the 'Jeeto Unlimited'. The former cannot be termed as copyright infringement of the latter. Therefore the question of use of the plaintiff's work as a "spring board" does not arise at all.” (underlining added)

6(i) I completely agree with the discussion, reasoning and conclusions of the trial court inasmuch as a concept or a view or an

idea is not and cannot in itself be a subject matter of a copyright. Under the Copyright Act it is only a literary work or dramatic work or artistic work or musical work or sound recording or cinematographic film or live shows/performers' rights which are the subject matter of a copyright. The expression 'work' with respect to which copyright is granted is defined in Section 2(y) of the Copyright Act and this Section reads as under:-

“Section 2(y) "work" means any of the following works, namely:-

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a sound recording”

(ii) Besides the above works, the other works in which copyright can exist are live shows or performers rights and broadcasting rights as provided in Chapter VIII Sections 37 to 39A of the Copyright Act. Except such copyrights, statutorily no copyright can exist. Section 16 of the Copyright Act makes this very clear that there cannot be copyright except as provided in this Act, and this Section 16 reads as under:-

“**16. No copyright except as provided in this Act.**— No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for

the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.” (underlining added)

7. Not only what is a copyright work is provided in Copyright Act, but what is the maximum entitlement of a copyright holder to exploit the copyright work and in which manner is also provided in Copyright Act, 1957, and this is stated in Section 14 of the Copyright Act which reads as under:-

“Section 14. Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,—

(i) to do any of the acts specified in clause (a);

[(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme: Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental].

(c) in the case of an artistic work,—

2 (i) to reproduce the work in any material form including—

(A) the storing of it in any medium by electronic or other means; or

(B) depiction in three-dimensions of a two-dimensional work; or

(C) depiction in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

(iii) to issue copies of the work to the public not being copies already in circulation;

(iv) to include the work in any cinematograph film;

(v) to make any adaptation of the work;

(vi) to do in relation to adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;

(iii) to communicate the film to the public;

(e) in the case of a sound recording,—

(i) to make any other sound recording embodying it 1 including storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;

(iii) to communicate the sound recording to the public.”

Explanation—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.” (underlining added)

8. Therefore it is seen that what is subject matter of copyright, what is the effect of having a copyright and the right and extent and the manner to exploit the copyright, are all issues which are exhaustively provided in the Copyright Act. Concept is not a copyright work as provided in the definition of work in Section 2(y) or Sections 37 to 39A of the Copyright Act. A concept obviously cannot be a subject matter of copyright because a concept has to be brought into the form of a literary work or dramatic work or musical work or artistic work or cinematographic work or sound recording or a performance/performer’s right or live show and only where after there will exist a copyright in the work.

9. When we look at the concept of 'Jeeto Unlimited', with its sub-parts as stated in para 8 of the plaint, it is seen that the parts/components of the concept 'Jeeto Unlimited' would naturally be parts of every show where a home audience/viewers get to play along with the contestant in the studio. The portion of para 8 of the plaint

which has been reproduced above in this judgment cannot be said to be a literary work or dramatic work or artistic work or musical work or cinematographic work or sound recording or live show/performance right as per the Copyright Act and consequently appellants/plaintiffs have rightly been denied the entitlement/claim of copyright in its concept of 'Jeeto Unlimited' by the trial court, and the relevant paras of the trial court in this regard have already been reproduced above.

9. This Court would like to reiterate the fact that even for the sake of arguments if existence of a concept is to be taken as a copyright work under the Copyright Act, and which cannot be unless the concept is transformed into literary work or dramatic work or artistic work or musical work etc, the concept floated by the appellants/plaintiffs of a play along audience sitting at home was a concept already in public domain and as admitted by plaintiff no.1/PW-1 in his cross-examination and as noted in para 39 of the impugned judgment. Once the concept propounded by the appellants/plaintiffs, assuming it can be granted a copyright although it cannot be in law, yet since the concept was otherwise in public domain, hence the appellants/plaintiffs could not have succeeded in

the suit claiming that the concept 'Jeeto Unlimited' is an original work which is essentially a well known play along concept of audience sitting at home. A copyright is claimed for an original work or original creation in view of Section 13(1) of the Copyright Act. It is noted that in the plaint there is no averment that appellants/plaintiffs are first in the world who have innovated such a concept of play along audience sitting at home, and also as conceded before this Court that from a reading of the plaint filed by the appellants/plaintiffs no such averment exists in the plaint.

10. I cannot agree with the arguments urged on behalf of the appellants/plaintiffs by placing reliance upon a judgment of a learned Single Judge of this Court in the case of *Mr. Anil Gupta and Anr. Vs. Mr. Kunal Dasgupta and Ors.* (2002) ILR 1 Delhi 250 ,2002(25)PTC1(Del) that a concept can be a subject matter of copyright. In the said judgment the concept of 'Swayamvar' on television was held to have a copyright as a concept, however, in my opinion, not only on facts the said judgment would not be applicable, but also that there cannot be any law against the law declared by the Supreme Court in the case of *R.G.Anand (supra)* which holds that

there cannot be a copyright in an idea or subject matter or theme or plot etc, with the fact that every idea or subject matter or theme or plot etc necessarily would have some common or basic features. It is the law declared by the Supreme Court in *R.G.Anand's* case (*supra*) that will prevail and not that which is declared by a judgment of a learned Single Judge of a High Court. Unless and until however the idea or subject matter of theme or plot etc is converted into a literary work or dramatic work or musical work or artistic work etc, the concept on its own with its essential components, cannot be a subject matter of copyright, as already discussed above especially with reference to the provisions of Sections 2(y), 14 and 16 of the Copyright Act. I therefore reject the argument urged on behalf of appellants/plaintiffs by placing reliance upon the judgment in the case of *Mr. Anil Gupta*. (*supra*).

11(i) Learned senior counsel for the appellants/plaintiffs then argued that the respondents/defendants should be held guilty of breach of confidentiality and for which purpose reliance is placed upon the judgment in the case of *Zee Telefilms Ltd. and Film and Shot and Anr. Vs. Sundial Communications Pvt. Ltd. and Ors.*

MANU/MH/0243/2003, however there is no issue of confidentiality in the present case inasmuch as and as already stated above the appellants/plaintiffs have conceded in the cross-examination of plaintiff no.1/PW-1 that the concept of play along audience sitting at home is otherwise well known existing prior to the concept 'Jeeto Unlimited' of the appellants/plaintiffs.

(ii) In any case, the issue of confidentiality in favour of the appellants/plaintiffs in the facts of the present case will not exist, in view of the appellants/plaintiffs admitting in para 13 of its plaint that they had given the consent letters that they were not to hold the media houses responsible in case the contents of their concept is broadcasted by a programme similar to the concept note of the appellants/plaintiffs called as 'Jeeto Unlimited'. This aspect has been appropriately considered and dealt with by the trial court in paras 53 and 58 of the impugned judgment and which paras read as under:-

“53. The Plaintiffs also alleged that the said concept note was discussed in a meeting with the defendant no.1 in Mumbai in which representative of Defendant no.1 were present and also present were the two plaintiffs and Ms. Gunjan Kawatra (friend of plaintiff). The plaintiffs alleged that before this meeting they were asked to sign consent letter which out of compulsion they had to sign.

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58. The plaintiffs have twice alleged that he was made to sign the consent letter when he met the officials of defendant no.1 and 4. The Plaintiffs in their own pleadings under Para 13 of the Plaint have stated the effects of signing a consent letter that 'a consent letter in the television industry allegedly releases the media houses from any liability in case they broadcast content that is similar to the concept note that is being presented before them'. Despite knowing the consequences of the consent letter, the plaintiff claimed to have been rendered helpless for signing the consent letter twice. Yet, the plaintiff failed to produce the contents of consent letter alongwith his plaint. And not to say no effort was ever made by the plaintiff to call for the production of said consent letters from the defendants,if it were in their custody.”

12. This Court therefore rejects the claim of the appellants/plaintiffs based on alleged confidentiality as regards the concept of 'Jeeto Unlimited'.

13. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

10th AUGUST,2018/ib

VALMIKI J. MEHTA, J