



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

% **Reserved on : 15th March, 2024**
Pronounced on : 6th May, 2024

+ **C.O.(COMM.IPD-CR) 695/2022**
INFORMA MARKETS INDIA PRIVATE LIMITED ... Petitioner
Through: Mr. Manish Kumar Mishra,
Ms. Akansha Singh, Ms.
Saloni Kasliwal and Ms.
Tarushi Aggarwal,
Advocates.

versus

M/S 4PINFOTECH AND ANR Respondents
Through: Ms. Nidhi Raman, CGSC
with Mr. Zubin Singh, Mr.
Akash Mishra, Mr. Deb
Charande, Advocates and
Mr. Hemant Khosla, Deputy
Registrar of Copyright for
UOI/R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed under Section 50 of the Copyright Act, 1957 (“**Copyright Act**”) seeking rectification of copyright and removal of the registration granted by No. L-79443/2018 for the literary work titled “**Virtual Expo**” dated 12th December, 2018 in favour of respondent no.1 (“**impugned copyright registration**”).



2. Respondent no.1 has not appeared in the matter since the commencement of proceedings on 14th July, 2022 and more than a dozen dates thereafter which were scheduled by the Court. Therefore, by order dated 05th July, 2023, the respondent no.1 was proceeded *ex parte*.

3. Submissions were made on behalf of petitioner and the Registrar of Copyrights (“**Respondent no. 2**”)

Factual Background

4. The issue involves the impugned copyright registration in the following document titled “**Virtual Expo**”, which has been extracted hereunder:

VIRTUAL EXPO

The virtual show intends to greenest sustainable solution to target audience in a efficient manner.

Virtual Expo conducting various fields like-Tourism, Job fair, Building Material, Properties etc.

Business available to participants including saving money, travel time, booth construction cost, eliminated logistics problem, less traffic, saving paper and also carbon foot print minimized.

Saving number of paper due to e-broacher.

Customer attend expo from home, office...anywhere from his/her convenient place, with family and friends

Virtual expo is budget-friendly for participating exhibitors and free for attendees.

Product manuals, demos, brochures, posters, videos and other informational material can be conveniently downloaded by visitors.

Virtual Expo is an affordable and convenient way for connecting clients and potential customers across India.

5. The petitioner is a private limited company and an integral part of a multi-national group of companies having operations in various parts of



the world. It claims to be the country's leading exhibition organiser and is also responsible for a portfolio of events, including organizing conferences and seminars.

6. Since 2006, petitioner claims to have grown to hosting multiple large-scale events and conferences across the country every year. These events, conferences, seminars, exhibitions and expositions enable and empower trade and commerce across a variety of industries, including manufacturing, food, hospitality, jewellery, healthcare, transport and logistics etc.

7. In the year 2020, the petitioner, in association with their partner Bologna Fiere, was to organize an event titled "*Cosmoprof India*". However, due to the Covid-19 pandemic and the nation-wide lockdown that followed, petitioner's business came to a standstill and the petitioner, therefore, commenced preparation to organise events and conferences online.

8. Consequently, "*Cosmoprof*" was promoted as a virtual exposition event and the words "*Virtual Expo*" were used as a literal and generic description of the event. The event was conducted on 05th August, 2020 and was a huge success, as per petitioner.

9. Subsequently, various event catalogues, social media posts and social media hashtags describing the event as a "*Virtual Expo*" were disseminated.



10. On 25th October, 2020, petitioner received a legal notice from respondent no.1 claiming to be the owner of the impugned copyright registration.

11. Respondent no.1 was claiming exclusive rights to use the word “*Virtual Expo*” i.e. expo exhibition through virtual means. Damages of Rs. 10,00,000/- (Rupees Ten Lakhs Only) was also demanded by respondent no.1. Therefore, the petitioner claims to be a person aggrieved under Section 50 of the Copyright Act.

12. What needs to be considered is whether the impugned copyright registration is amenable to continue on the register and is copyrightable in the first place. There can be no doubt that the petitioner is a “*person aggrieved*” under Section 50 of the Copyright Act having been sent a legal notice by respondent no.1, who sought restraint and damages for using the word “*Virtual Expo*” as also for conducting any virtual expositions. Clearly, the petitioner has a real and tangible interest in seeking rectification of the copyright register and removal of the impugned registration.

13. A perusal of the impugned copyright registration would make it incontrovertibly clear that it is “*a literary work*” defined under Section 2 (1)(o) of the Copyright Act. Copyright subsists in such work under Section 13 of the Copyright Act and Section 17 of the Act specifies that the author of the work shall be the first owner of the copyright.

14. What has been registered is clearly just a document which seeks to describe the concept of virtual expositions. Essentially, the registered document states that a virtual expo has certain tangible benefits, *inter alia*,



that it is a sustainable solution, is efficient, can be used for various industry fields, saves money, travel time, construction costs, logistics, paper, minimizes carbon footprint, ensures accessibility, is budget friendly, allows downloading of manuals, brochures, videos, and is an affordable and convenient way of connecting clients and customers.

15. This obviously is, at best, an expression or documentation of an idea. Whether an idea expressed on paper in this way can be granted registration is the issue before the Court. However innocuous the impugned copyright registration seems and notwithstanding that respondent no.1 has been proceeded *ex parte*, this Court thought it important to flesh out certain aspects relatable to the impugned copyright registration.

16. **Firstly**, the Court will examine the relevant judicial precedents; **secondly**, the Court will examine whether the Registrar of Copyrights is required to follow a mandatory procedure before registration of a copyright; **thirdly**, whether the registration process includes application of mind so that frivolous registrations are not secured by persons; **fourthly**, the Court will examine the impact that such registrations have on other implementers of the same idea in public in general.

17. This is in the broader context that the impugned copyright registration is, incontrovertibly and undeniably, documentation of a generic idea by respondent no.1. It seems absurd, at first blush, to allow a generic idea such as the one contained in the impugned copyright registration to be registered simply because it was been reduced to writing on paper, and *ex facie* involves no effort, no sweat of the brow, no labour,



no creativity – the various tests that have been employed for testing copyrightability.

Relevant Judicial Precedents

18. In this context, the decision of the Hon’ble Supreme Court in **R. G. Anand v. M/s Deluxe Films and Others**, (1978) 4 SCC 118, is of overarching relevance. The issue before the Court was the petitioner’s claim for having authored a play, “*Hum Hindustani*” in the year 1953, enacted thereafter at Wavell Theatre, New Delhi. The play proved to be popular and received accolades. Subsequently, the play was adapted into a motion picture called “*New Delhi*” which was released in September 1956. Petitioner claimed that it was entirely based upon the play and filed a suit for damages and other attendant relief. The matter travelled to the Hon’ble Supreme Court, on the issue of infringement of copyright. The Hon’ble Supreme Court traversed the law as was available from various international jurisdictions and reached the following conclusion in paragraph 45 and 46, which are extracted as under:

“45. Thus, the position appears to be that an idea, principle, theme, or subject-matter or historical or legendary facts being common property cannot be the subject-matter of copyright of a particular person. It is always open to any person to choose an idea as a subject-matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the same but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or



legendary stories like Merchant of Venice, Hamlet, Romeo and Juliet, Julius Ceasar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, so full of poetic exuberance elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great playwright. In fact, throughout his original thinking, ability and incessant labour Shakespeare has converted an old idea into a new one, so that each of his dramas constitute a masterpiece of English literature. It has

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which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright.

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:



1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after



applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.”

(emphasis added)

19. While this exposition and articulation by the Hon’ble Supreme Court is self-explanatory, it must be reiterated that the conclusion was that there subsists no copyright in an idea, subject matter, theme, plot or historical and legendary fact, and that copyright is confined to the form, manner, arrangement and expression of the idea. If the same idea has been developed in a different manner albeit with some fundamental or substantial similarities in the mode of expression adopted, then the issue of infringement of copyright arises. However, if the same idea has been presented differently, such that the subsequent work transforms into a completely new work, there is no violation of copyright.

20. A Coordinate Bench of this Court in **Anil Gupta v. Kunal Dasgupta**, 2002 SCC OnLine Del 250, considered the petitioner’s claim of having conceived the idea of a reality television programme “Swayamvar”, involving a process of actual spouse selection which was disclosed to the respondents in confidence. Respondents therein proposed



to launch a big budget reality show “Shubh Vivah” for match making, which was alleged by the petitioner to be infringement of their copyright.

21. The question before the Court in the said decision was whether the idea conceived by the petitioner was conceptually novel and could be protected, and also whether the information on the concept as imparted by petitioner was confidential, and whether the respondent could be allowed to launch its programme based on the concept developed by petitioner. The Court reiterated the principle that an idea *per se* has no copyright. However, the Court chose to flesh out the issue a bit further in paragraphs extracted below:

“29. An idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of registration under the Copyright Act. The novelty and innovation of the concept of the plaintiff resides in combining of a reality TV show with a subject like match making for the purpose of marriage. The Swayamvar quoted, in Indian mythology was not a routine practice. In mythology, we have come across broadly understood only two swayamvars, one in Mahabharata where the choice was not left on the bride but on the act of chivalry to be performed by any prince and whosoever succeeded in such performance got the hand of Draupdi. Similarly, in Ramayana choice was not left to the bride but again on performance of chivalrous act by a prince who could break the mighty Dhanusha (bow). Therefore, originality lies in programme of match making and spouse selection by transposing mythological swayamvar to give prerogative to woman to select a groom from variety of suitors and making it presentable to audience and to explore it for commercial marketing. Therefore, the very concept of matchmaking in view of concept of the plaintiff giving choice to the bride was a



novel concept in original thought capable of being protected.”

(emphasis added)

22. While relying upon **R.G. Anand** (*supra*) the Court observed as under:

“43. From the bare reading of parameters laid down by the Supreme Court it is evident that when the idea is developed and even if there are similarities, substantial fundamental aspect of the mode of expression adopted in the copyright work and the defendants work is literal imitation to the copyright work with some variations, it would amount to violation of the copyright. Although the stand of the defendants before me is that they do not want to disclose as to what is the concept and the format and the structure of Shubh Vivah, the TV reality show which they are planning to televise and of which several episodes have been shot.”

(emphasis added)

23. The Court reached a *prima facie* conclusion that respondents were aware of the concept and an injunction ought to be granted to prevent them from infringing the petitioner’s work.

24. The decision in **Mattel, INC & Ors v Mr. Jayant Agarwalla & Ors.**, (2008) SCC OnLine Del 1059, is also instructive on this subject. The said decision was rendered by a Coordinate Bench of this Court in the context of petitioner’s board game popularized by the name “Scrabble”, and the grievance being against defendants who had launched an online version of the board game under the mark “Scrabulous”. While quoting **R.G. Anand**, (*supra*), the Court noted that the essential element of copyright law is that it does not grant the author of a literary work protection on ideas and facts. The Court further articulated the concept in paragraph 22, which is extracted asunder:



“22. In the realm of copyright law the doctrine of merger postulates that where the idea and expression are inextricably connected, it would not be possible to distinguish between the two. In other words, the expression should be such that it is the idea, and vice-versa, ! ! ! ! ! ! ! ! ! ! Applying this doctrine courts have refused to protect (through copyright) the expression of an idea, which can be expressed only in a very limited manner, because doing so would confer monopoly on the idea itself. The decision in Herbert Rosenthal Jewelry Corporation v. Kalpakian, 446 F.2d 738 (1971) is illustrative in this regard. The plaintiffs there sued the defendants asking them to refrain from manufacturing bee shaped jewel pins. The Court held that the jewel shaped bee pin was an idea that anyone was free to copy, the expression of which could be possible only in a few ways; therefore, no copyright could subsist in it. In Nichols, Judge Learned Hand spoke about the ! ! which the courts must follow, when confronted with the idea/expression dichotomy:

Upon any work, and especially upon a play, a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about, and at times might consist only of its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of ! ! ! -! ! ! ! -! ! property is never extended. ”

(emphasis added)

25. On this basis, the Court concluded *prima facie* that the copyright claim of the petitioner cannot be granted, since the element of creativity was not shown to measure to the test of “originality”.



26. In *Sanjay Kuamr Gupta & Anr v Sony Pictures Networks India P. Ltd and Others*, (2018) SCC OnLine Del 10476, petitioners alleged violation of their copyright and confidentiality in “*Jeeto Unlimited*”, which was a concept relating to a live show on television. A Coordinate Bench of this Court concluded that copyright could not have been claimed by petitioner as the concept was not original and was based on a concept already in the public domain. Reliance by the petitioner on *Anil Gupta* (*supra*) was rejected stating that the law declared by the Supreme Court in *R.G. Anand* (*supra*) would hold good. The Court held that unless the idea or subject matter of a theme or a plot is converted into a literary work/dramatic work/musical work/artistic work, a concept on its own with its essential components cannot be the subject matter of copyright.

27. In this regard, the decision rendered by a Single Judge of the Bombay High Court in *Sanjay Soya Pvt. Limited. v. Narayani Trading Company*, (2021) SCC OnLine Bom 407, in the context of a claim in copyright in the artistic work comprising in a label/trademark, is also relevant. The Court noted that there is a difference between the rights granted under the Trademarks Act, 1999 and the Copyright Act, in that while under the Trademarks Act, distinct rights are available to a registered proprietor including the right to sue for infringement, registration is not necessary under the Copyright Act. In fact, copyright registration would have been in the teeth of the Berne Convention of 1886 (“**the Berne Convention**”), which postulated the principle of automatic protection (*i.e. protection must not be conditional upon compliance with any formality*). Action for infringement of copyright, therefore, can be initiated by an unlicensed author.

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platforms. While the parties were enjoined from using each other's commissioned photographs, original pieces, manner of presentation of stories, etc., the running of the platform itself was not restrained.

30. It is apposite to refer also to the decision in ***Hulm Entertainment Pvt. Ltd and Others v Fantasy Sports Myfab11 Pvt. Ltd. And Others***, (2023) SCC OnLine Del 6591. This decision, rendered by a Single Judge of this Court, arose in the context of the plaintiffs therein being developers and operators of a fantasy sports mobile application using certain unique features. The grievance was against the defendants who had introduced a new mobile app and had copied not only the concept but also its working, features, and execution of plaintiff's buy/sell interface. Placing reliance on the decision in ***R.G. Anand*** (*supra*), the Court was unable to come to a *prima facie* conclusion in favour of the plaintiff and held that while there were similarities between the rival mobile applications, the dissimilarities outweighed the same.

31. The decision in ***Eastern Book Company*** (*supra*), is also landmark on this subject. The issue before the Hon'ble Supreme Court was whether the law reports "*Supreme Court Cases*" which required the preparation of head notes, involved skill, labour, and expertise and therefore, constituted an original literary work and whether the respondents copied the same in their legal search software. In dealing with this, the Hon'ble Supreme Court reiterated the law on the subject in the following paras:

"57. The Copyright Act is not concerned with the original idea but with the expression of thought. Copyright has nothing to do with originality or literary merit. Copyrighted material is that what is created by the author by his own skill, labour and investment of



capital, maybe it is a derivative work which gives a flavour of creativity. The copyright work which comes into being should be original in the sense that by virtue of selection, coordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author. On the face of the provisions of the Copyright Act, 1957, we think that the principle laid down by the Canadian Court would be applicable in copyright of the judgments of the Apex Court. We make it clear that the decision of ours would be confined to the judgments of the courts which are in the public domain as by virtue of Section 52 of the Act there is no copyright in the original text of the judgments. To claim copyright in a compilation, the author must produce the material with exercise of his skill and judgment which may not be creativity in the sense that it is novel or non-obvious, but at the same time it is not a product of merely labour and capital. The derivative work produced by the author must have some distinguishable features and flavour to raw text of the judgments delivered by the court. The trivial variation or inputs put in the judgment would not satisfy the test of copyright of an author.

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59. The aforesaid inputs put by the appellants in the judgments would have had a copyright had we accepted the principle that anyone who by his or her own skill and labour creates an original work of whatever character, shall enjoy an exclusive right to copy that work and no one else would be permitted to reap the crop what the copyright owner had sown. No doubt the appellants have collected the material and improved the readability of the judgment by putting inputs in the original text of the judgment by considerable labour and



flavour of minimum requirement of creativity. The exercise of the skill and judgment required to produce the work is trivial and is on account of the labour and the capital invested and could be characterised as purely a work which has been brought about by putting some amount of labour by the appellants.

60. Although for establishing a copyright, the creativity standard applies is not that something must be novel or non-obvious, but some amount of creativity in the work to claim a copyright is required. It does require a minimal degree of creativity. Arrangement of the facts or data or the case law is already included in the judgment of the Court. Therefore, creativity of SCC would only be addition of certain facts or material already published, case law published in another law report and its own arrangement and presentation of the judgment of the Court in its own style to make it more user-friendly. The selection and arrangement can be viewed as typical and at best result of the labour, skill and investment of capital lacking even minimal creativity. It does not as a whole display sufficient originality so as to amount to an original work of the author. To support copyright, there must be some substantive variation and not merely a trivial variation, not the variation of the type where limited ways/unique of expression are available and an author selects one of them which can be said to be a garden variety. Novelty or invention or innovative idea is not the requirement for protection of copyright but it does require minimal degree of creativity. In our view, the aforesaid inputs put by the appellants in the copy-edited judgments do not touch the standard of creativity required for the copyright.”

(emphasis added)



Procedure for registration under the Copyright Act and the Copyright Rules, 2013

32. The provision for registration of copyright is provided under the Chapter X of the Copyright Act. Section 44 mandates that the Register of Copyrights be maintained at the Copyright Office, while Section 45 permits an author or publisher or person interested in copyright of a work to make an application in the prescribed form accompanied by the prescribed fee. The rules in this regard are resident in Chapter XIII of the Copyright Rules, 2013 (“**the Copyright Rules**”).

33. Rule 70, which is relevant, provides various procedures which are required to be followed when filing an application for registration of a copyright. For convenience, Rule 70 of the Copyright Rules is extracted as under:

“70. Application for Registration of Copyright. — (1)
Every application for registration of copyright shall be made in Form-XIV and every application for registration of changes in the particulars of copyright entered in the Register of Copyright shall be made in Form-XV.

(2) Every such application shall be in respect of one work only, and shall be accompanied by the fee specified in the Second Schedule in this behalf.

(3) Every application should be signed only by the applicant, who may be an author or owner of right. If the application is submitted by the owner of copyright, it shall be enclosed with an original copy of no objection certificate issued by the author in his favour.

(4) Every application for registration of an unpublished work shall be accompanied by two copies of the work.



(5) Every application for registration of a computer programme shall be accompanied by the source and object code.

(6) Every application for registration in respect of an artistic work which is used or is capable of being used¹ [in relation to any goods or services], such application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in section 3 of the Trade Marks Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.

(7) Every application for registration in respect of an artistic work which is capable of being registered as a design under the Designs Act, 2000, such application shall be accompanied by a statement in the form of an affidavit containing the following, namely:-

(a) it has not been registered under the Designs Act, 2000; and

(b) it has not been applied to an article through industrial process and reproduced more than fifty times.

(8) Every such application can be filed in the Copyright Office by person or by post or by online filing facility as provided on the website of the Copyright Office.

(9) The person applying for registration shall give notice of his application to every person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it

(10) If no objection to such registration is received by the Registrar of Copyrights within thirty days of the receipt of the application, the Registrar of Copyrights



shall, if satisfied about the correctness of the particulars given in the application, enter such particulars in the Register of Copyrights.

(11) If the Registrar of Copyrights receives any objections for such registration within the time specified in ¹[sub-rule (10)], or, if he or she is not satisfied about the correctness of the particulars given in the application, he or she may, after holding such inquiry as he or she deems fit, enter such particulars of the work in the Register of Copyrights as he or she considers necessary.

(12) The Registrar of Copyrights shall give an opportunity of hearing before rejecting the any application filed for registration of any work.

(13) The process of registration is deemed to be completed only when a copy of the entries made in the Register of Copyrights is signed and issued by Registrar of Copyrights or by Deputy Registrar of Copyrights, to whom such authority is delegated.

(14) The Registrar of Copyrights shall, as soon as may be, send, wherever practicable, a copy of the entries made in the Register of Copyrights to the parties concerned.”

34. The relevant Form XIV, besides other particulars of the petitioner, only seeks the details as contained in the “Statement of Particulars” and the “Statement of Further Particulars” appended to the said Form, which are produced hereunder:

“Statement of Particulars

1. Registration number (To be filled in the Copyright Office)
2. Name, address and nationality of the applicant



27/! ! ! ! ! ! ! !capable of being registered as a design under the Designs Act, 2000, whether it has been applied to an article though an industrial process and, if yes, the number of times it is reproduced.

17. Remarks, if any.

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(Signature)

Statement of Further Particulars

(For Literary, including Software, Dramatic, Musical and Artistic Works only)

1. Is the work to be registered

(a) an original work?

(b) a translation of a work in the public domain?

(c) a translation of a work in which copyright subsists?

(d) an adaptation of a work in the public domain?

(e) an adaptation of a work in which copyright subsists?

2. If the work is a translation or adaptation of a work in which copyright subsists:

(a) Title of the original work.

(b) Language of the original work.

(c) Name, address and nationality of the author of the original work and, if the author is deceased, the date of his decease.

(d) Name, address and nationality of the publisher, if any, of the original work.

(e) Particulars of the authorization for a translation or adaptation including the name, address and nationality of the party authorising.

3. Remarks, if any. [...]"



35. As per Rule 70(9) of the Copyright Rules, an applicant is mandated to give notice of application to every person who claims or has interest in the subject matter of the Copyright or disputes the same.

36. Rules 70(11) of the Copyright Rules stipulates that if the Registrar of Copyrights receives an objection, or if she is not “*satisfied about the correctness of the particulars given in the application*”, she may, after holding such enquiry as she deems fit, enter the particulars of the work in the Register of Copyrights as she considers necessary.

37. Rule 70(11) of the Copyright Rules provides that if any objections are received within the time specified or if the satisfaction about the correctness of particulars is not achieved, then an enquiry may be held by the Registrar, only after which particulars of the work may be entered in the Register of Copyrights. Essentially, there is some discretion given to the Registrar of Copyrights to *firstly*, satisfy herself about the correctness of particulars given in the application; and *secondly*, to hold an enquiry in case such satisfaction is not achieved. The particulars, therefore, are the ones which are extracted in Form XIV noted above and involve a basic filtration. There is yet another mandate on the Registrar under Rule 70(12) of the Copyright Rules to give an opportunity of hearing to an applicant before rejecting the application for registration.

38. It has been stated by counsel for respondent no.2 (*Registrar of Copyright*) that checking of correctness of particulars is an administrative exercise and there is no application of mind on the nature of the copyright sought to be registered and that the Registrar of Copyright merely follows the principle of automatic protection.



39. Essentially it is suggested that the Registrar is not obliged to consider whether a certain work sought to be registered is in fact copyrightable. In this scenario, the concern of the Court was whether the Register of Copyright would, therefore, have the potential to be inundated with expressions of abstract, common well-known ideas merely recorded on a piece of paper (*as seems to be in the instant case*), and if the particulars provided are correct, whether the Registrar would be obliged to register the same.

40. Even publication on the website would not have any use since only the title of the copyright sought to be registered is published on the website and the viewer of the same can have no sense of what is actually being registered. Any filter, if at all, seems to be in the proviso to Section 45 of the Copyright Act where a certificate from the Registrar of Trademarks is required giving a search report relating to trademarks which are identical or deceptively similar to the artistic work sought to be copyrighted.

41. To assist the Court in this enquiry, the Practice and Procedure Manual issued by the Copyright Office, Government of India (“**the Manual**”) was presented. The Manual “*reflects the general practices and procedures of the Copyright Office for Examination and Registration of Literary Works*”. For ease of reference, it would be useful to extract Para 1 as under:

“1.Introduction

This document reflects the general practices and procedures of Copyright Office for examination and registration of literary works. It explains the process for examination of literary work application(s), documentation of ownership; provides guidelines on



how to identify the originality of authorship, copyrightable subject matter and discusses the grounds on which a discrepancy letter may be issued.

This document does not cover every principle of copyright law, the practice and procedure set forth in the document do not in themselves have the force and effect of law. Matters of concern are set forth to explain the practice and procedure of the Office, in consistency with the provisions of the Act and the Rules; and in case of ambiguity pertaining to various issues, reference have been made to case laws, in order to ease the understanding of provisions.”

(emphasis added)

42. Section 2 of the Manual reproduces the definitions of literary work as defined in the Act. Section 3 articulates the issue of adaptation, Section 4 that of translation. Clearly these Sections are instructive to various examiners. What is important for this inquiry is Section 5 of the Manual which is titled as “*Protection Prerequisites*” and summarizes the concept of “originality”, “copyrightable authorship and subject matter” and “publication”. As part of “originality”, the Manual states “*the copyright Office will examine the work for determining whether it satisfied the originality requirement and this should not be interpreted in a manner that the work should be novel, distinctive, innovative or unique. Each case would be scrutinized on its individual merits to establish originality as per the current approach*”.

43. Section 5(b) of the Manual which provides for “copyrightable authorship and subject matter” is as under:

“b) Copyrightable Authorship and Subject Matter



For a work to qualify as a copyrightable subject matter under literary class, it must have de minimis literary expression in the form of text, notes or symbols. It can be expressed in the form of a book, novel, magazine, catalogue, computer programmes, tables, compilation, translation or adaptation of a preexisting work etc.

Copyright office examines the work to determine whether it constitutes copyrightable subject matter and examine the information provided in the application and also the work enclosed with the application, to ascertain whether the work qualify as literary work.”

44. While Section 6 provides for “*Registration Prerequisites*” which are essentially registration formalities, Section 9 discusses what may qualify as a “*copyrightable subject matter*”, and includes books, e-books, new editions of books, novels, story, plays, poem, song lyrics, concept note and letters. This said Section attempts to define a “*concept note*” in the following terms extracted below:

“CONCEPT NOTE

If a concept note is definitive and not just an idea, but there is an expression and is reduced in writing, it is eligible for copyright protection. In Anil Gupta vs. Kunal Dasgupta, the Delhi High Court held that, an idea per se has no copyright. But if the idea is developed into a concept note fledged with adequate details then the same is capable of registration under the Copyright Act.”

45. The Manual, although not mandatory in nature, provides general guidelines for the examiner to identify relevant aspects. Therefore, some basic filtration is envisaged by the Manual itself. This is in contradistinction to the assertion that registration of copyright is a mechanical and administrative process and involves no filtration



whatsoever. The Court finds the said proposition difficult to digest, considering that no register which has an impact in *rem* can be populated and crowded with unfiltered abstractions and non-registrable material.

46. For this, Ms. Nidhi Raman, CGSC for respondent no. 2, has provided considerable assistance in assessing the international position.

International Perspective

47. It is stated that the law of copyright is developed on the premise that “*copyright in a work exists the moment it is made*”, provided it is within the statutory framework of the country’s law.

48. Before the Berne Convention, every country had a set of distinct rules and procedures governing copyright registration and authors had to seek protection in every jurisdiction which hindered creativity and made the process of seeking protection arduous.

49. The Berne Convention of 1886, adopted by India, is based on three basic principles: **national treatment** (*the signatory state agrees to give foreign works the same protection as the works originating in their own country*); **automatic protection** (*the protection set out in the signatory legislation does not require any formalities*); **independence of protection** (*when used in another country, works are not limited to the copyright legislation in effect in their country of origin*).

50. It was stated that as a general rule, copyright arises automatically upon the creation of an original work with no need to complete any formalities such as registration or deposit, this principle is laid down in Article 5(2) of the Berne Convention, which is extracted as under:



“(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.”

51. While traversing the copyright registration system around the world, it was stated that an extensive survey was conducted by the World Intellectual Property Organization (“**WIPO**”), and it was found that 68 countries have a copyright registration system which includes a copyright or an IP Office. 95 of the 109 responding countries stated they have a legal system for copyright registration. While some countries like India require applicants to submit a copy of the work during the filing process, other countries require some kind of submission in a physical or digital format. The examination process in many countries varied from a simple formality check to more extensive examination.

52. In countries like Canada, the application was reviewed to ensure the formality requirements are complied with. In Mexico and Paraguay, in addition to a formal examination, a substantive examination is carried out to establish whether the work falls within the categories of protectable works and is not subject to registration restrictions. The originality of the work, however, is not reviewed. The Republic of Korea and Thailand do not perform a full substantive examination, but do check if a work submitted reflected some level of creativity.



53. The report filed by Ms. Raman extracted a study on registration systems in USA and China. In USA, the Copyright Office determines whether the legal and formal requirements of the law were met, including whether work submitted for registration constitutes copyrightable subject matter. The United States Copyright Office is required to determine that *“the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements have been met”*. Registration would be refused if it did not constitute copyrightable subject matter. During the examination process, the US Copyright Office considers questions such as: a) is the work eligible for copyright protection in the United States; b) has the work been fixed in a tangible medium of expression; c) was the work created by a human author; d) does the work constitute copyrightable subject matter; e) is the work sufficiently original and; f) was the work independently created. The process of appeal against a refusal to register is provided for, as also the option to institute a civil suit for copyright infringement.

54. China, on the other hand, provides automatic protection of copyright. Countries like Singapore, Germany and United Kingdom do not have a registration system and there is automatic protection of copyright in favour of the author of work.

55. Ms. Raman stressed that in India the Copyright Act and the Copyright Rules do not contemplate or cast a duty on the Registrar to conduct a full-fledged substantive investigation as to the nature and extent of originality of the work based on the principle of automatic protection endorsed by the Berne Convention and that there was no robust search mechanism in place to examine the originality of a work. The Registrar



would conduct a substantive examination only if an objection was received by a third party as contemplated in Rule 70(10) of the Copyright Rules.

Analysis

56. The purpose of making such an expansive assessment of the regime in India and other countries is to provide us guidance and instruction on whether procedures have to evolve in order to avoid registrations of the sort which are impugned in this case. Let us examine the impugned registration a bit closely for this purpose. **Firstly**, at best it can be considered a concept; **secondly**, the concept has been presented in a written form with a title; **thirdly**, as per the declaration, respondent no.1 claims to be the original author of this work. Having received this kind of an application, was it incumbent upon the examiner to look at the applicant's work and enter into some kind of basic determination on whether it was copyrightable or not? The only window of examination is provided under the statute and the rules is, as noted above in Rule 70(10) and (11) of the Copyright Rules. While examining "*correctness of particulars*", the elements which are prescribed in Form XIV will necessarily have to be perused by the examiner.

57. In a case like this, even if the applicant states that the work sought to be registered is an original work, it would be difficult to accept that the examiner would be completely agnostic or impervious to what is being presented for registration. Even though, as per the Berne Convention, the principle of automatic protection may apply, as evident from the note given by Ms. Raman, countries across the world do provide for some kind



of basic filtration process, particularly in the US. This basic filtration requires the Copyright Office to see whether, at the minimum, “*the material deposited constitutes copyrightable subject matter*”.

58. For India, guidance for assessing whether something constitutes copyrightable subject matter is in any event provided by the Practice and Procedure Manual which was last issued in 2018, 6 years back. Section 5 of the Manual provided protection pre-requisites and, more specifically, Section 9 of the Manual provided guidance on what would be copyrightable subject matter. While this may not be a part of the substantive rules, it bears out that the Copyright Office is not totally agnostic or, impervious to what is being presented for registration. The Manual is a reflection and repository of what one may term “*best practices*”. The Manual provides necessary education, awareness and instruction to an examiner to see what is before them, issue a discrepancy note, or reject a work on the basis that the particulars are not correct or follow it up with an enquiry if need be.

59. The issue, however, is to keep the Manual updated and ensure that it is current, and reflects the recent law of the land. As an illustration, the para on Concept Notes in Section 9 of the Manual (*reproduced in para 44 above*), refers to the decision in **Anil Gupta** (*supra*), articulating that an idea developed into a concept note, fleshed with adequate details is capable of registration. The impugned copyright registration was defended on this basis by the Copyright Office. However, as noted above, the decision in **Anil Gupta** (*supra*) did not lay down a universal principle and in fact had been differed by another Single Judge in **Sanjay Kumar Gupta** (*supra*). To extract a particular aspect from one decision of one of



the courts of the country may not be best practice for a Guidance Manual and could lead to errors, inaccuracies and misinterpretations. If at all, the more determinative principle is what has been cited in **R.G. Anand** (*supra*) by the Hon'ble Supreme Court and, therefore, is immutable till overruled by a larger bench of the Hon'ble Supreme Court.

60. There could be an argument that the Copyright Office would not like to enter into this thicket. However, at the very minimum, a pure idea, when presented for copyright, ought to undergo *basic filtration* by the Registrar's Office. In other cases before this Court relating to copyright, it has been noted that the Copyright Office does issue a discrepancy note, which reflects some application of mind.

61. One of the arguments stated on behalf of the Registrar is under Section 48 of the Copyright Act, which provides as under:

“48. Register of Copyrights to be prima facie evidence of particulars entered therein. The Register of Copyrights shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein, or extracts therefrom certified by the Registrar of Copyrights and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof or production of the original.”

62. It was contended that the Register is only “*prima facie*” evidence of particulars entered into it and copies of the Register would be admissible in evidence without further proof of production of the original. It is articulated that the Register is merely *prima facie* evidence and not substantive evidence and therefore, does not clothe the Registrant with an automatic declaration that he or she is an author of the work. However, in



the opinion of this Court Section 48 is purely a provision relating to admissibility of evidence and will not provide any guidance in this regard. Even otherwise, only because the register is *prima facie* evidence of particulars entered into it, does not mean that there can be no basic filtration before populating the Register with any and every application. Section 44, in fact, defines the Register as one in which names or titles of works, along with names and addresses of authors, publishers and “owners of copyright” are to be entered. The Register cannot possibly have entries of material which does not even amount to copyrightable material, on first principles.

63. In the opinion of this Court therefore, a *basic filtration* process must be done at the stage of examination of the copyright application, informed by guidance in the Practice and Procedure Manual. The Manual itself ought to be updated on an intelligent and accurate basis. There is no reason why copyright registration needs to be a distant country cousin of trademark registration or otherwise completely orphaned from any *basic filtration*. Practice and Procedure Manual issued by the Copyright Office, Government of India therefore, be maintained and followed, to ensure that best practices from around the world are implemented in the India, a nation which seeks to be a leader in protection of intellectual property.

64. Insofar as the particulars of the present case are concerned, the petitioner has pleaded that the impugned copyright registration has sought to register an expression of a generic idea which *ex facie* lacks originality. Since respondent no. 1 has chosen not to appear since the commencement of proceedings on 14th July, 2022 and more than a dozen dates thereafter



which were scheduled by the Court, this contention has gone unrebutted and, therefore, will have to be taken into consideration.

65. As per Section 13(1)(a) of the Copyright Act, copyright subsists *inter alia* in an “original” literary work. Aside from the petitioner’s contention that stands unrebutted, it is *ex facie* clear and obvious that the impugned registration is at best a *precis* of a concept of a *virtual expo*, available in the public domain, utilised by numerous persons who seek to conduct expositions through the virtual medium. In fact, the virtual medium forms the bulwark of most transactions in today’s technologically advanced world. Even though, as per **R. G. Anand** (*supra*), there can be no copyright in an idea, assuming for the sake of argument, that this idea was expressed in the form of a literary work, it would have to, for the sake of being recognised as copyrightable material, pass muster of all the tests which have been articulated in various court decisions - in that, there should have been treatment of the idea with adequate detail, and there should have been a minimal degree of creativity. The impugned registration is merely a short narration without any adequate detail, without any investment, creativity, labour and sweat, plucked out of the public domain, and expressed on a piece of paper.

66. This formulation cannot, by any means whatsoever, be considered copyrightable and, therefore, cannot be sustained, on the Register of Copyright. While these tests, as articulated in **R.G. Anand** (*supra*) and other decisions, are in context of infringement actions, they do address the heart of the issue. The observation, therefore, in **Sanjay Kumar Gupta** (*supra*), at para 18 that “*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” is the correct view.

67. As has been stated by the petitioner, the impugned copyright registration, in any case, cannot be described as a ‘’ ! nor can it be considered a description of any concept as claimed by respondent no.1 in its legal notice dated 25th October, 2020. The contents of the impugned copyright registration are nothing more than a generic description of the advantages and benefits of conducting a *Virtual Expo*, and do not explain or describe any ‘*concept*’ of conducting a *Virtual Expo*. No sentence in the impugned copyright can be considered a ‘’ ! or ‘*concept*’.

68. The word ‘*concept*’ is defined as meaning ‘*a principle or an*’. The impugned copyright registration does not disclose any principle or idea of conducting a *Virtual Expo* nor does it provide any step-by-step instructions on the requirements or preparations needed for conducting a *Virtual Expo*. Instead, the impugned copyright registration merely lists the various benefits of conducting a *Virtual Expo* and such description cannot give the registered proprietor any exclusive right over the idea or concept of conducting a *Virtual Expo*.

Conclusion

69. Therefore, in the opinion of this Court, the impugned copyright registration is to be removed since it is purely an idea, available in public



domain, without any detail, abstract in its treatment, and extremely generic in nature. This would not form copyrightable material.

70. In any event, the averments of the petitioner stand un rebutted due to the absence of respondent no1.

71. Accordingly, the impugned copyright registration be removed and the Register be accordingly rectified, within a period of four weeks.

72. Registry to supply a copy of the present order to the Registrar of Copyright for compliance and the Office of CGSC may also communicate the same to ensure timely compliance.

73. The Court expresses its appreciation for the comprehensive research presented by Ms. Nidhi Raman, CGSC, which was invaluable.

74. The instant petition is allowed and disposed of in the above terms. Pending applications, if any, are rendered infructuous.

75. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 06, 2024/RK