

INDIA
Copyright Act and Patent Law
Selected decisions from India
1986-1990

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**Floral Design - Originator.
Copyright Act, 1957
Sections 13(1) (a), 2(i).**

The question whether the use of word "National Elora" on cartons of defendants gives any cause of action to the plaintiffs for infringement of their copyright or trade mark "Camlin flora" was discussed in a Delhi case. The plaintiff's claim was that he was the owner of copyright in the floral design that appeared on his printed cartons/boxes and that the defendant's cartons bearing the word "National Elora" in connection with their pencils were passing off their goods as goods of the plaintiff. The plaintiff's trade mark was in respect of fountain pens, pencils etc. in terms of certificate of registration in two words "Camlin Flora" and the carton was a machine printed carton made of some kind of paperboard.

It was held that the suit for infringement of alleged copyright or the trade mark or for the alleged passing off cannot be maintained. The use by the defendants of the word "National Elora" on the cartons of the defendants did not give any cause of action to the plaintiffs as they did not infringe the alleged trade mark "Camlin Flora".

In order to be covered by the copyright law, any work in which copyright is claimed, must originate from the author, who must have expended his skill and labour and the work must be something which has not been copied by the author from anyone else. It is only then, that it can be said that it has "originated" from the author.¹

1. **Camlin Private Ltd. v. National Pencil Industries**, A.I.R. 1986 Delhi 444 (Mahinder Narain, J.).

Case No. 2

**Films (Incomplete) : Sales tax.
Copyright Act, 1957, Section 13.**

For the purpose of the Tamil Nadu General Sales Tax Act (1 of 1959), sections 2(j) and 3, incomplete film is "goods". Whether copyright is acquired in respect of an incomplete film is not relevant. There was transfer of title in the film and the assessee parted with the same in favour of the purchaser. Provisions of the Copyright Act are not relevant for the determination of the question whether the transaction constitutes a sale of goods giving rise to tax liability under the Sales Tax Act. An incomplete film is certainly goods for the purpose of the Act in terms of the definition of the word "goods" in the Act. And whether copyright is acquired in respect of an incomplete film is not the appropriate basis for resolving this dispute.¹

1. **State of Tamil Nadu v. Thiru Murugan Brothers**, A.I.R. 1988 S.C. 336 (Raganath Misra and G.L. Oza, JJ.).

Case No. 3

**Patents Act (39 of 1970).
Sections 104, proviso, 107(i), 64.**

Defendant pleaded that the patent set up by the plaintiff was invalid. This plea amounted only to the defendants raising a ground for the court declining relief sought by the plaintiff. It cannot be taken as "counter-claim" for revocation. Jurisdiction of the District Court was therefore not ousted. Suit cannot be transferred to the High Court for decision as contemplated under proviso to section 104.

It is only when there is a counter-claim seeking revocation of the patent, that the jurisdiction of the District Court is ousted. the proviso to section 104, Patents Act is being in the nature of an exception to the general rule, and has to be strictly construed. There was no express claim on the part of the defendant for revocation of the decree whereof infringement was alleged by the plaintiff. Objection to the relief sought by the plaintiff did not mean necessarily that the defendant also sought by way of a counter-claim that the patent be revoked.¹

1. **Fabcon, Corporation Incorporated in U.S.A. v. Industrial Engineering Corporation, Ghaziabad**, A.I.R. 1987 All. 338 (B.D.Agarwal, J.).

Case No. 4

**Cable Television : Video Films.
Copyright Act, 1957,
Sections 2(dd), 2(ff), 12(1), 14(1) (c) and 51.**

Showing video films over Cable T.V. network to subscribers, amounts to infringing copyright, by broadcasting film or communicating it to a section of the public. The viewers of a Cable T.V. network are either residents of apartments in a building which has such a network or residents of a locality covered by this facility. It is true that the network operates through the connection of a cable to all the various apartments or houses. The viewers are not members of one family or their guests. They do not have even the homogeneity of a club membership. And even club members have been held to be members of the public. The viewers are residents in different apartments or houses who are in no way connected with each other except by cable. It may be that in some homes, members of the household will watch the film together. But the entire audience taken together, are not members of a common household, or members of a family. They can only be viewed as a portion of public. They must be considered as members of the public.¹

1. **Garware Plastics and Polyster Ltd., Bombay v. M/s Telelink, A.I.R. 1989 Bom. 331**
(Mrs. Sujata Manohar, J.).

Case No. 5

**Injunction : Cassettes.
Copyright Act, 1957, Section 55.**

Two cassettes were brought into the market during a period when the artist could not legally have made out any other contract for recording his voice with any other company. Contract had ceased to be in force. It was held that balance of convenience did not lie in favour of granting injunction at such a late stage for restraining the respondents from selling the cassettes. The plaintiffs could be adequately compensated by damages, in case they succeeded in the suit. Respondents were directed to keep separate accounts of sale proceeds of the two cassettes.¹

1. **Gramophone Company of India Limited v. Baleswar**, A.I.R. 1990 Cal. 5 (Shyamal Kumar Sen, J.).

**Floral Design - Originator.
Copyright Act, 1957
Sections 13(1) (a), 2(i).**

The question whether the use of word "National Elora" on cartons of defendants gives any cause of action to the plaintiffs for infringement of their copyright or trade mark "Camlin flora" was discussed in a Delhi case. The plaintiff's claim was that he was the owner of copyright in the floral design that appeared on his printed cartons/boxes and that the defendant's cartons bearing the word "National Elora" in connection with their pencils were passing off their goods as goods of the plaintiff. The plaintiff's trade mark was in respect of fountain pens, pencils etc. in terms of certificate of registration in two words "Camlin Flora" and the carton was a machine printed carton made of some kind of paperboard.

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In order to be covered by the copyright law, any work in which copyright is claimed, must originate from the author, who must have expended his skill and labour and the work must be something which has not been copied by the author from anyone else. It is only then, that it can be said that it has "originated" from the author.¹

1. **Camlin Private Ltd. v. National Pencil Industries**, A.I.R. 1986 Delhi 444 (Mahinder Narain, J.).

Case No. 7

**Author's Rights
Section 57
(Author's Moral Right)**

The hallmark of any culture is excellence of arts and literature. Quality of creative genius of artists and authors determine the maturity and validity of any culture. Enrichment of culture is of vital interest to each society. Law protects this social interest. Section 57, Copyright Act lifts the author's status beyond the material gains of copyright and gives it a special status. Under section 57, the author has a right to claim the authorship of the work. These rights are independent of the author's copyright and the remedies open to the author under section 55. In other words, section 57 confers additional rights on the **author of a literary work**, as compared with **the owner of a general copyright**. The special protection of the intellectual property is emphasised by the fact that the remedies of a restraint order or damages can be claimed "even after the assignment either wholly or partially of the said copyright". Section 57 thus clearly overrides the terms of the contract or assignment of the copyright.¹

1. **Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd.**, A.I.R. 1987 Delhi 13 (S.B.Wad, J.).

Case No. 8

**Moral Right : Distortion.
Copyright Act, 1957, Section 57**

Author's right to restrain distortion etc. of his work is not limited to a literary reproduction of his work. He can obtain injunction, even when a film is produced, based on his work. The restraint order in the nature of injunction under section 57, Copyright Act can be passed even where a film is produced, based on the novel of the author. Restraint order under section 57 is not limited only to cases of literary reproduction of the author's work. Section 57 is a special provision for the protection of the special rights of the authors. The language of section 57 is of the widest amplitude. It cannot be restricted to 'literary' expression only. Visual and audio manifestations are directly covered.¹

1. **Manu Bhandari v. Kala Vikas Pictures Pvt. Ltd., A.I.R. 1987 Delhi 13 (S.B.Wad, J.).**

Case No. 9

**Cause of Action
Coyright Act, 1957, Section 40**

Application was made for interim injunction restraining the defendants from manufacturing etc. their products and dealing in machines that were substantial imitation of drawings of plaintiff's unit. Specific plea in plaint was that plaintiff was owner of copyrights in the said drawings. Applicability of section 40 of the Copyright Act was pleaded by referring to order published in official Gazette to that effect. Plaint was held to disclose cause of action and strong prima facie case against the defendants for the trial of copyright claimed by the plaintiff in his drawings.¹

1. **John Richard Brady v. Chemical Process Equipments Pvt. Ltd.**, A.I.R. 1987 Delhi 372 (Arun B.Saharya, J.).

**Confidentiality : Machine Drawing.
Copyright Act, 1957, Section 55.**

Application for injunction restraining defendants from dealing in the machines which were substantial imitation of plaintiff's unit, was made. Striking general similarity between defendant's machine and drawings of plaintiff was obvious to the eye. It was held (on the evidence) that the plaintiff had established prima facie case of infringement of copyright. Injunction was granted.

It was held that the inference was inescapable that the plaintiff had established a prima facie case of infringement of copyright, which the defendant would have to answer in the suit. Infringement of copyright would have to be tested on visual appearance of the drawing and the object in question. The purpose, functional utility, efficacy of different parts and components of the object or the material of which they were made were irrelevant for the purpose of copyright, and in the instant case, there was striking general similarity between the defendant's machine and the drawings of the plaintiff which was obvious to the eye, though the defendants claimed that there were some functional differences between their machines and the plaintiff's unit. The alleged differences were of functional nature and would have no impact on visual comparison of the object with the drawings for the purpose of testing infringement of copyright. In such a case, balance of convenience was clearly in favour of grant of injunction to the plaintiffs.¹

1. **John Richard Brady v. Chemical Process Equipments Pvt. Ltd.**, A.I.R. 1987 Delhi 372 (Arun B.Saharya, J.).

Case No. 11

**Appeal : Forum.
Patents Act, 1970, Sections
116, 117, 25, 2(1) (j).**

Application for the grant of patent was rejected by the Deputy Controller of Patents and Designs, Bombay. It was held that appeal against rejection could be filed only in Bombay High Court and not in any other High Court. Once the application for patent is filed, as prescribed under section 7, the jurisdiction of the High Court to which an appeal would lie is fixed. It would be that High Court of the State or the Union Territory where the patent office, where the application is filed, is situate in terms of section 2(1) (j). Provisions of the Act clearly show that appeal cannot be filed against an order of the controller passed under sub-section (2) of section 116 of any High Court of the choice of the appellant.¹

1. **Scooters India Ltd., v. Jaya Hind Industries Ltd., A.I.R. 1988 Delhi 82**
(D.P. Wadhwa, J.).

Case No. 12

**Process of Manufacture
Patents Act, 1970, Sections 2(1) (j) and 5.**

Patent can be claimed for new process of manufacture. Section 2(1) (j), Patents Act, 1970 shows that even “any new and useful art, process, method or manner of manufacture” qualifies as an invention, for the purpose of the grant of patent. Such a “process of manufacture” is independent of the substance produced by the manufacture and has a distinct identity of its own. The principal requirement for a claim of patent in respect of a process of manufacture under the Act is that even where the substance may not admit of a patent, yet the method of process of its manufacture shall be patentable.¹

1. **Thomson Brandt v. Controller of Patents and Designs**, A.I.R. 1989 Delhi 249 (Mahesh Chandra, J.).

Case No. 13

**Application of Mind : Administrative Law.
Patents Act, 1970, Sections 2(1) (j),
3, 5 and 6.**

Application for the grant of a patent was rejected without applying mind to the required aspects. Order was quashed. Case was remanded for fresh disposal. If the claim for grant of patent in the light of sections 2(1) (j), 5 and 6 of the Patents Act, 1970 qualifies as an 'invention' and is not hit by section 3 of the Act, it is entitled to be patented in accordance with the Act. Where, in respect of an application for the grant of patent for a process of specification of a gaseous medium in the optical and infrared bands of the electromagnetic spectrum, the controller has not enquired into the truth, correctness or usefulness of the claim and has further gone wrong in assuming that a process of manufacture unconnected with the product of manufacture cannot be patented, his rejection of the claim is bad for non-application of mind to the case and requires fresh disposal by the Controller.¹

1. **Thomson Brandt v. Controller of Patents and Designs**, A.I.R. 1989 Delhi 249 (Mahesh Chandra, J.).

Case No. 14

Joint Authorship
Copyright Act, 1957, Sections
2(d), 55(2).

Where pursuant to preconcerted joint design, there is intellectual contribution by two or more persons to the composition of a literary work, they are joint authors.

A literary work consists of matter of material or subject which is expressed in a language and is written down. Both the subject matter and the language are important. It is difficult to comprehend, or to accept, that when two persons agree to produce a work where one provides the materials, on his own, and the other expresses the same in a language which is presentable to the public, then the entire credit for such an undertaking or literary work should go to the person who has transcribed the thoughts of another. If pursuant to a pre-concerted joint design there is intellectual contribution by two or more persons to the composition of a literary work, then those persons have to be regarded as joint authors.¹

1. **Najma Heptulla v. Orient Longman Ltd.**, A.I.R. 1989 Delhi 63 (B.N.Kirpal, J.).

Case No. 15

**Assignment
Copyright Act, 1957, Section 55.**

Both plaintiff and the defendant acquired copyright to publish two different books from the same assignor. In the suit for infringement of copyright, the plaintiff did not implead the assignor's right to assign copyright of a particular book in the manner he had done it. It was held that it would not be open to the plaintiff to restrain the defendant-assignee from reproducing or republishing that book, so long as the defendant did so within the framework of the assignment agreement.¹

1. **Bharat Law House v. Wadhwa & Co. Pvt. Ltd.**, A.I.R. 1988 Delhi 68 (Mahesh Chandra, J.).

Case No. 16

**Injunction
Copyright Act, 1957, Section 55.**

In granting injunction for infringement of copyright and passing off (ad interim), three factors contemplated under order 39, rule 1, C.P.C. must be kept in view. These three factors are-

- (i) the establishment of a prima facie case;
- (ii) the balance of convenience between the parties; and
- (iii) whether, if the interim injunction is not issued, it will cause irreparable injury to the applicant.

The position would not be different in cases of infringement of copyright and passing off.¹

1. **Bharat Law House v. Wadhwa & Co. Pvt. Ltd.**, A.I.R. 1988 Delhi 68 (Mahesh Chandra, J.).

Case No. 17

**Book - Size of.
Copyright Act, 1957, Section 55.**

When the agreement assigning copyright included the right to revise or enlarge the book etc. and left the matters relating to the use of paper, printing, reprinting, advertisement etc., no complaint could be entertained as to the change of the size of the book from demi to royal or as to the raising of its price. It could not be said that only the plaintiff had right to publish the book in royal size. In view of the material on record, it could not be said that the original Students Edition of the I.P.C. was intended for only the students. Mere mention in the advertisement and on the jacket of the book that it was a legal classic etc. or that it was read by judges, lawyers etc. would not lead to the inference that it infringed the plaintiff's copyright.¹

1. **Bharat Law House v. Wadhwa & Co. Pvt. Ltd., A.I.R. 1988 Delhi 68 (Mahesh Chandra, J.).**

Passing off : Originator.
Copyright Act, 1957, Section 13(1) (a).

In order to succeed in an infringement of copyright, or passing off action, a party has to show that he is the originator, in the sense that the concept emanated from him, and further, that given design or get up or style had become distinctive of his goods to the extent that the trading public associated his goods exclusively with the given design or get up. The moment this is established even prima facie, the courts have stopped the opposite party, shown to have adopted by imitation or other deceptive means, the design or get up of the first party, from continuing with the mischief, because that is treated to be a rank instance of dishonesty by the second party. But the crucial factor is always a question of fact. Where the first party himself is shown to have adopted or imitated a trade mark or copyright of a third party, then courts can resolutely decline to step in aid of this party, because honesty of action is the crux of the matter, and court's protection is extended only on the principle that damage to a party who has acquired goodwill or reputation in certain trade mark or design or trading style for marketing his goods, should not be allowed to be affected by the dishonest use of the same by another.¹

1. **Prem Singh v. Ceeam Auto Industries**, A.I.R. 1990 Delhi 233 (Mrs. Santosh Duggal, J.).

Case No. 19

**Forum
Copyright Act, 1957, Sections 62,
54(a), 2(j) and (m).**

A suit was filed against author for injunction, on the ground that exclusive right of publication vested in the plaintiff under a contract with the author. It was held that the suit was for infringement of copyright and not for violation of term in contract. District Court only had jurisdiction. The plaintiff filed a suit for an order of injunction restraining the author from supplying bromides of children's picture stories to other persons for publication, and for an order of mandatory injunction directing the author to supply the bromides to the plaintiff for publication, and for a further injunction restraining the other defendants from publishing any of the bromides of the said children's picture stories owned and edited by the author on the ground that exclusive right of its publication vested in the plaintiff under a contract with the author. The suit was instituted before the Munsiff's Court.

It was held that the Munsiff's Court had no jurisdiction to try the suit. In view of section 62 of the Copyright Act, the District Court only held jurisdiction to try the same. The plaintiff was claiming exclusive rights, to the exclusion of all others, to reproduce the pictures. Such a right fell within the definition of 'exclusive licence' as defined in section 2(j) of the Act and not the violation of a term in a contract. As such, the ordinary civil court had no jurisdiction to try such suit and only District Court had jurisdiction to try the same.¹

1. **K.J. George v. C. Chcriyan**, A.I.R. 1986 Ker. 12 (K. John Mathew, J.).

Copyright : Registration.
Copyright Act, 1957, Sections 44, 45.

Registration of the work under the Copyright Act is not compulsory and registration is not a condition precedent for maintaining a suit for damages for infringement of copyright. Sections 44 and 45 of the Copyright Act, 1957 are only enabling provisions and do not affect the common law right to sue for infringement of the copyright.

However, on an examination of the alleged common features found in the plaintiff's work Alayazhi (on the one side) and film "Avalute Revukal", the script of the film and also the manuscript copy of the novel **Mukthi** on which the screenplay was based (on the other side), it was found that there was no material to hold that there was any infringement of copyright of the plaintiff.¹

1. **R.Madhavan v. S.K. Nayar**, A.I.R. 1988 Ker. 39 (Balakrishna Menon and P.K.Shamsuddin, JJ.).

Case No. 21

Cartoonist
Copyright Act, 1957, Sections 55, 17, 14.

In an appeal by the defendants against an *ad interim ex parte* order in favour of the plaintiff, granting an injunction against the defendants (the Cartoonist, the printer and publisher, editor and the publication company - Kala Kaumudi Publications Pvt. Ltd), the High Court, after hearing both the sides, granted interim stay by an elaborate order in respect of the cartoon "Boban and Molly". After final hearing of the appeal, the high Court directed the maintenance of the status quo as on today (i.e. date of final hearing) and ordered an expeditious disposal of the copyright suit, when the scope of the suit and the interim petition was substantially the same and the controversy was in a narrow compass.¹

1. **V.T. Thomas alias Toms v. Malayala Manorama Co. Ltd., A.I.R. 1988 Ker. 291 (K. Sukumaran, J.).**

Case No. 22

Employment

Copyright Act, 1957, Sections 17(a),(c), Proviso, 2(d).

Copyright of the author, after cessation of employment in newspaper, has been considered in a Kerala case. A cartoonist was employed for a magazine. After retirement, his cartoons were published in other magazines. It was held that former employer had no copyright for his subsequent work. The understanding regarding provisions in section 17(a) and (c), Copyright Act, 1957 is that prima facie, in relation to such productions, the employer has a statutorily recognised copyright in these productions made during his employment. The term "author", occurring in section 17(c), is defined in section 2(d). That term had to be understood in relation to "work". Two different entities are visualised in the sub-section, namely, the "author" and the "employer". It is impossible to imagine that in relation to any artistic work, the same person would simultaneously be the author and the employer. As regards the cartoons and caricature, it cannot be contended that the publisher (employer) is the author. The Cartoonist is the person who clothes ideas in form. He is not a mere shorthand writer, transcribing an author's stenographed words. He is the person who impregnates an idea, who actually executes a design. Therefore, his "authorship" of the content and form of the cartoon series when he was not the employee of the magazine, ordinarily entitles him to the copyright. Consequently, the former employer had no copyright for the subsequent cartoons of the Cartoonist, if they are published in another magazine after retirement of the Cartoonist.¹

1. **V.T. Thomas alias Toms v. Malayala Manorama Co. Ltd.**, A.I.R. 1989 Ker. 49 (Sukumaran, J.).

Case No. 23

Copyright Act, 1957, Sections 13, 17, 55.

Student obtained Master's Degree on the basis of dissertation submitted by him. His guide submitted thesis for Ph.D. Thesis reproduced verbatim some paras from the said dissertation. Temporary injunction against University from conferring Ph.D. on the said guide was held justified.

The word "original" from section 13 does not mean that the work must be the expression of original or invented thought. The originality in literary work which is required by section 13 relates to the expression of thought. Much depends on the skill, labour, knowledge and the capacity to digest and utilise the raw materials contributed by others in imparting to the product, the quality and the character which those materials did not possess and which differentiate the product from the materials used. The compiler of a work in which absolute originality is of necessity excluded is entitled, without exposing himself to a charge of piracy, to make use of preceding work upon what he has taken, and subjects it to such revision and correction as to produce an original result. The question whether there has been an infringement of copyright depends on whether colourable imitation has been made.¹

1. **Fateh Singh Mehta v. O.P.Singhal**, A.I.R. 1990 Raj. 8 (Navin Chandra Sharma, J.).