CASE COMMENT: URMI JUVEKAR CHIANG V. GLOBAL BROADCAST NEWS LTD.

-*Vanshita Jain**

FACTS:

In the present case, the plaintiff was a reputed script writer, who had scripted various films, television serial and shows had created a television programme which goes by the name "work in progress" the plaintiff had been seeking an injunction against CNN-IBN news channel for having broadcasted a programme which went by the name "summer showdown" on the grounds that these defendants were guilty of committing a breach of confidentiality of the plaintiff and infringing the copyright of the plaintiff for the programme "work in progress". [1]

In the year 2005, November, the plaintiff had come up with the idea of a reality television show which would follow the lives of citizens hailing from different parts of the country as they would set out to solve civic problems of their preference in their respective localities, the show would follow the problems that the citizens would face in solving these problems in relation to the bureaucracy, attitude of the people in regard to civic matters and so on. The plaintiff had even prepared a detailed concept note for the same in which they had transformed their idea into a note, this concept note in question was also titled as 'work in progress' and was even registered with the Film Writer's Association Mumbai on 9th of November, 2005.

Thereafter, in March 2006 the plaintiff had a meeting with the defendants, owning the news channel CNN-IBN hand over the meeting they had shared the concept note by the plaintiff, which was found to be very interesting and holding value by the respondents news channel, upon which the plaintiff had come up with the development of a production plan and had even engaged the producer for the same, certain initial discussions over this matter of production took

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[1]Copyright Infringment, (January 11th, 2020, 12:30 A.M.), http://nopr.niscair.res.in/bitstream/123456789/1783/1/JIPR%2013%284%29%20344-350.pdf.

place over which there were certain ambiguities however, the defendants had failed to respond over these.

Considering this, the plaintiff pursued the matter with the defendants seeking for a response till April 2007, whereupon on 19th May, 2007 it was brought to the plaintiff's knowledge that the defendants, CNN-IBN, were already broadcasting a certain deletions programme by the name 'Summer Showdown' which was in broadcast since 14th May, 2007. This particular programme was a "promised to be a captivating account of citizens across the country on the civic conditions of their cities" as per the announcement of Mr. Rajdeep Sardesai, the editor in chief of CNN-IBN. This programme was supposed to be broadcasted daily in the form of three minutes segments as part of the daily news itself.[2]

The plaintiff, considering this had alleged over the respondents that the promotional videos, texts, images and literatures promoting the programme, on the respondent's website indicated that the programme was essentially based on the plaintiff's concept which she had even brought into the form of concept note, however, with certain minor changes prevailing within. It was also asserted by the plaintiff that the concept note created by the plaintiff and the production plan of her television programme 'work in progress' was certain confidential information and was to be treated as such and hence could not have been used without the plaintiff's authority, permission or license.

When the discussion for the broadcasting of the plaintiff's show 'work in progress' was going on, the plaintiff had also shared and submitted her concept note and production plan to the respondents, with the specific understanding that the respondents could either accept those ideas or even reject them. the information provided to the respondent was in strict confidence and instead of using this information in a morally and ethically correct manner, the respondents had misappropriated the concept of the plaintiff and the television programme given by the plaintiff which had resulted in loss and damage to the plaintiff and her television programme considering that this had lured away the potential investors from investing in her televisions programme.

[2]Urmi Juvekar Chiang v. Global Broadcast, (Januray 12th, 2020, 10:34 A.M.), https://spicyip.com/2007/07/urmi-juvekar-chiang-v-global-broadcast.html.

Further, the plaintiff had also asserted that her televisions programme and concept note, being a work of literary nature, was also entitled to the protection of copyright act under section 2(o) of the copyright act, which defined what a 'literary work' and hence the plaintiff alone was had the authority to use, adapt or reproduce it to make a television programme. The plaintiff had claimed that the basic idea and concept of the plaintiff's show had been copied by the defendants in order to form their own show titled 'summer showdown' and that was a form of copyright infringement on the part of the defendants, of the work created by the plaintiff, in the literary work in the form of the concept note of the television programme 'work in progress' under section 51 of the copyright act, which talks about the infringement of copyright and gives in conditions where a literary work's copyright is said to be infringed.

ISSUES:

1. Whether the concept note submitted by the plaintiff would constitute as a literary work.
2. Whether the concept of the respondent's show is similar so as to make the viewer considers them the same.
3. Whether there is infringement on the part of the respondents.

ANALYSIS:

The fact of the case at hand surrounds the infamous debate existing under the copyright regime, known popularly as the *idea/expression dichotomy*. The question put up via this debate is that, whether the copyright laws grant protection to ideas or only the expression of ideas. The focal point of this issue is that whether idea can be considered to be a literary work for it to fall under the protection granted under the copyright laws.

According to the Copyright Rules, the present question basically surrounds sections of the Indian Copyright Act, 1957 (hereinafter referred to as 'The Act').

Firstly, section 14 of The Act, states that protection shall be granted to 'literary work'. *Secondly*, through the combined reading of section 2(m) and explanation to section 51 of The Act, it can be

concluded that the sections contradict each other. Thus, both dramatic and cinematographic reproduction of a literary work shall be considered to be infringement under the meaning of the present act. Section 2(m) clearly excludes cinematographic reproduction to be called an infringing copy. However, explanation to section 51 clearly negates it by including this aspect as well.

Through the above analysis of the three sections of The Act, we can clearly deduce that literary work shall be considered to be infringed if an unauthorized reproduction of it has been made in any form, whether it is dramatic representation of it, or it is cinematographic reproduction of it. This is relevant to the present factual matrix because in the present case also, a 'concept note' was adapted as a show, thereby giving rise to the claim of copyright infringement from the authors of the said work.

Now, since this has been established, the question of whether or not a 'concept note' is to be considered a literary work within the meaning of section 14 of The Act. For this, the court was needed to rely on various precedents which have been set on the question of law arising in this particular matter at hand.

The court relied on the case of *Mr. Anil Gupta and Anr. v. Mr. Kunal Dasgupta and Ors. IA 8883/2001 in Suit No. 1970 of 2001*,[3] which is popularly known as the 'Swayamwar Case'. The facts of the said case are very much on the same line as the Urmi Juvekar Chiang's case. The Swayamwar Case is called so, because with this show revolved around the age old tradition of conducting of Swayamwar, wherein, the princesses/brides would choose their own grooms from the bachelors/princes who used to come to participate in this event.

The creators, i.e., the plaintiff in the present case wanted to bring this concept to television. Herein, the actress would have a Swayamwar of her own wherein she would choose a groom of her own choice from the available participants. This ides was made into a form of concept note by the plaintiff. He further had full intention of giving this concept a face of reality. Therefore, he hosted various meetings on the same wherein the ideas were discussed at a great length among various producers, including the defendant.

[3] A.I.R. 2002 Delhi 379.

The issue occurred when the producers from Sony TV created their own show on the same concept, with the title 'Shubh Vivah'. This was before anything forward was done on the idea of the plaintiff. Thus, the plaintiff filed a suit for infringement on the action of the producers of Shubh Vivah and Mr. Kunal Dasgupta who was the one to communicate this idea to the producers at Sony TV.

Justice V Jain of the Delhi High Court, who pronounced this judgment, observed that,

> *"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."*[4]

Thus, had the plaintiff of the Swayamwar case, had the idea kept to himself, without producing it in the form of a note, and without holding any discussion with the other members of the fraternity, i.e., without making the work public, his claim against infringement would not have held much water. The claim was very easily deniable otherwise. It is the fact that there were people who were made aware of the idea, which was itself reduced in the written form, played a huge role in keeping the claim standing before the eyes of the law.

The observation by the bench were further made on the fact that television or screen media has a different level of outreach and it therefore requires an altogether different line of approach reading various ideas of creation. The bench observed this on a very pragmatic outlook that a television has a lot better avenues for capitalizing the idea into a resource than the radios, newspapers or any other mass communication media ever did. This means that the creators are in a big rush to get their hands on the best possible ideas to make them into reality. Thus, they often derive ideas from various individuals and make them into high earning reality shows which publish the original media, without giving the visionary their due credit in any monetary or moral form whatsoever.

The bench made the above observation in light of the fact that in making significant contributions to the IPR regime, it is important that the visionaries, who come up with new ideas

[4] *Id.*

which ultimately lead to formation of expression, which should ideally give them their due worth, should be rewarded and recognized. This is because if this is not done, the visionaries would lose their interest in the activity, which ultimately will lead to stagnation in creation and revolution in our existing databases. Also, they will be deferred to see that the credits are given to someone else for their mental hard work, thereby robbing them of their dues.

Here, many critics have pointed out that such an observation that recognizing such a work as protected is almost as close as protecting ideas under the IPR regime. This judgment stands as an exception to the general rule that has been laid down under the section 14 of The Act, i.e., not the ideas, but the expression of the ideas as protected as literary work. This can be said to have been done in light of the circumstances being of a special nature, arguendo, the small screen industry.

This case comes in direct contravention of the obiter laid down in the judgment of *R.G. Anand v. M/s Delux Films & Others,*[5] which is a ruling given by the Hon'ble Supreme Court of India, thereby holding a more binding effect then what has been laid down in the Swayamwar case, as well as, the Urmi Juvekar judgment. The case of R. G. Anand clearly laid down the ruling as it has been stated under section 14 of The Act. Thus, the court clearly stated that the expression of the idea is what stands protected under the law, and not the idea.

This was observed more cautiously in the light of dramatic work and cinematograph work because, there is a high possibility that the themes of these two categories of work might collide. What matters is that the similar theme is expressed in a very distinct way from each other. This was said to be needed to be like this so that productivity of the creators is not locked in just because a very broad theme, which might be interpreted in various different ways, stands protected in the name of a visionary.

The court, in the Swayamwar case, laid a major emphasis of on the communication of the idea. It was said in the judgment that, only if the 'concept' or 'idea',

> *"...has been developed to a stage that it could be seen to be a concept which has some attractiveness so as to get an audience on a television programme and could*

[5] 1979 S.C.R. (1) 218.

> *be realized as an actuality then the concept is capable of being the subject of confidential communication."*[6]

Thus, any confidential communication, if communicated in such a form that it can be seen as being made into a reality, or an actual expression, it shall be protected. This is again because the television industry is competitive that way. If a programme, taken from any original idea is made into a show, the audiences view it, and then it can be picked up as a concept by any person. This will totally loose the resale value of the original idea. The question here is more pressing because then the original conceiver of the idea does not get any credit for it.

Thus, keeping the points as stated above, i.e., *firstly*, the idea was made as a concept note, *secondly*, the idea was publicized in such a way that it could very much into a real expression, *thirdly*, the idea was regarding television wherein broadcasting platform is very broad, so much so that, once the idea is publicized, the visionary who originally gave the idea will never get due credits, and *finally*, the idea was created in the first instance by the plaintiff author in this case, the court decided that the plaintiff's claim was substantial and he should be compensated for the infringement of his literary work.

The court laid strong emphasis that the concept of both Swayamwar and Shubh Vivah was essentially the derivatives of the same brain child. Thus, all the other factors, like who anchors the programme, whether or not gifts are given, etc, would stand irrelevant so far stating that these facets of presentation might differ. However, since the basic theme, i.e., of bride selecting her groom among various participants is undeniably same; the show Shubh Vivah is infringement of the literary work of Swayamwar. Thus, the claim of plaintiff was granted rightfully.

Thus, keeping the above stated view point in hand; the High Court of Bombay in the present case of Urmi Juvekar observed that, for the theme of 'Citizen Activism' a copyright claim cannot be given. It was further observed that the claim would suffice only if,

> *"…treatment, format, structure, expression and presentation of the programme were materially dissimilar and do not resemble the literary work of the plaintiff."*[7]

[6] *Supra* Note 1.

The line of reasoning adopted by the High Courts in both the above cases is aligned with each other and can be easily deciphered. This decision has been taken so that a justified and fair ruling can be given in the favor of those who actually come up with ideas which are later on turned into real expression, making a source of income for the ultimate producers. This encourages even the ordinary people to put up what their ideas are before the production houses and other such creative houses and be able to gain some income out of it. Had it not been put this way, it would have been a huge deterring point for those who can think of the ideas, but lack the resources to turn them into reality. They would not have felt okay to give their ideas to people otherwise.

This should specially be done with respect to the TV industry where the broadcasting portal is so wide, and which has the capacity to entertain various new ideas. This can be a huge avenue for revenue generation if factors like these may be recognised is worked upon accordingly. However, it still lies upon the courts to draw a line between idea and expression.

CONCLUSION:

Thus, in the present case of *Urmi Juvekar Chiang v. Global Broadcast News Ltd.* and Anr, the Bombay High Court allowed protection to the concept note as it was of such a nature that it could be easily realized as a reality, i.e., it was very much conceivable as a TV Programme, which in itself holds protection under Section 14 of the Indian Copyright Regime.

However, we are of the opinion that this is a very fine line to read upon when protection of this kind is concerned. The fact that over protection on the IPR regime has been the issue in lot many debates shows as to what people want. Nobody wants to pay a price for merely an idea that might be similar to someone else's. Especially when TV and Cinema works are concerned, the spectrum of themes though has a lot of elements, the base is still limited. Thus over protection might lead to creation of a more deterring factor in enhancing the growth of existing IPR database.

[7] 2008 (2) Bom.C.R. 400.