

**IN THE COURT OF MS. VRINDA KUMARI:
DISTRICT JUDGE (COMMERCIAL COURT)-03,
SOUTH EAST DISTRICT, SAKET COURTS, NEW DELHI.**

CS (COMM) No. : 292/2020

In the matter of :

MR. ARVIND GAUR

DIRECTOR /FOUNDER:

ASMITA THEATRE GROUP, DELHI

R/O 1/5243, GALI NO. 8, SHAHDARA,

NEW DELHI-110032

....Plaintiff

VERSUS

1. MS. SHILPI MARAWAHA

ADDRESS: PLOT NO. 198/12-13,

RAMESH MARKET, EAST OF KAILASH,

NEW DELHI-110065

ALSO AT: BH-498, SHALIMAR BAG

NEW DELHI-110088

....Defendant No. 1

2. SUKHMANCH THEATRE

ADDRESS: PLOT NO. 198/12-13,

RAMESH MARKET, EAST OF KAILASH,

NEW DELHI-110065

....Defendant No. 2

Date of e-filing	:	09.10.2020
Date of Institution	:	19.10.2020
Date when final arguments concluded	:	16.03.2026
Date of Judgment	:	10.04.2026

J U D G M E N T

1. Vide this judgment, I shall dispose of the present suit u/s 55 of the Copyright Act, 1957 of the plaintiff against the defendant for permanent injunction regarding infringement of copyrights, delivery up, rendition of accounts, payment of damages etc.

PLAINT

2. The case of the plaintiff is that he is a theatre director and playwright known for contemporary, thought provoking, innovative and socially and politically relevant plays in India. He has been associated with newspaper, TV serials and various plays. He has directed more than hundreds of stage plays and street plays over past 25 years. He has directed various plays by established theatre personalities like Girish Karnad, Bhisham Sahni, Dharamveer Bharti, Sharad Joshi, Vijay Tendulkar, Munshi Premchand etc. It is the case of the plaintiff that he has also won several awards.

3. It is also the case of the plaintiff that he has written and directed more than 40 street theatre performances/ street plays such as *Dastak, Mard, Aajivika, Pehchaan, Buddhapa, Mausam/ Kudrat, Woh Din / Periods Play, Rakt Daan / Blood Donation / Zindagi, Garbage / Kuda Kachra, Hatke Bachke, Sawaal (election), sapne and street plays on Drugs, Cancer, Education and AIDS*. Therefore, plaintiff owns a valid and subsisting copyright for the said plays.

4. It is submitted that the plaintiff has also developed a unique design and direction for 14 plays i.e. *Hanoosh*, *Rakt Kayan*, *Ramkali*, *Final Solution*, *Ek Mamuli Aadmi*, *30 Days in September*, *Court Martial*, *Chief Ki Dawat*, *Manto Ki Aurtein*, *Kabira Khada Bazaar Main*, *Amritsar Aa Gaya*, *Tafteesh*, *A Woman Alone*, *Lihaff* and, therefore, owns a valid and subsisting copyright to the extent of design and direction for the said plays.

5. It is submitted that plaintiff has also scripted certain plays based on the plays of Bhisham Sahni (such as *Madhavi*), Aruna's Story and Pinki Virani's book (*Bitter Chocolate*) and many street plays. He has also translated and adapted notable works of Rabindra Nath Tagore, '*Unsunī*' by Mallika Sarabhai and *A Woman Alone*. He also designs lights for major productions of eminent theatre groups. Several notable and theatre actors have trained against him.

6. It is submitted that plaintiff is also the author and copyright owner of a book titled as '*Nukkad par Dastak*' published by Vani Prakashan in January 2019. It is a compilation of plays titled as *Dastak*, *Mausam*, *Mard*, *Kuda Kachra*, *Budhapa*, *Pehchaan*, *Bal Vyapar*, *Vo Din*, *Hatke-Bachke*, *Bhrastachar* and *Zindagi*.

7. It is submitted that the plays mentioned in paras 3, 4, 5, 8 and 9 of the plaint along with the book titled as '*Nukkad par Dastak*' constitute 'literary and dramatic works' as defined in Section 2(o) and Section 2(h) of the Copyright Act, 1957 respectively. In para 3, plaintiff has provided the list of plays which have been directed by

him. The plays mentioned in para 4 and 5 have been mentioned above.

8. It is further submitted that the plaintiff has applied for registration of his copyright in the book titled '*Nukkad par Dastak*' vide application no. 11778/2020-CO/L dated 22.08.2020. This application is under process at the Copyright office. It is further submitted that rights of the plaintiff are protected u/s 14 (a)(i)(iii)(iv) and (vi) of the Copyright Act, 1957.

9. It is further averred by the plaintiff that defendant no. 1 joined plaintiff's theatre group in the year 2008 and continued till January 2017. Being a student of the plaintiff and an actor in his theatre group for a period of more than 8 years, she had access to the scripts, design, direction, lyrics, music compositions etc. conceptualized and written by the plaintiff. In January 2017, defendant no. 1 left plaintiff's theatre group and started her own theatre group, namely, '*Sukhmanch theatre*' (defendant no. 2). She was joined by three other students of the plaintiff one of whom left her group after a month.

10. It is alleged by the plaintiff that in March 2017, defendant no. 1 took copies of literature, data, hardware, scripts of various plays, CDs etc from the plaintiff's theatre group with the promise to return them but did not return till date. She also got a defamatory article published in the Times of India on 02.05.2017 against the plaintiff. Plaintiff has filed a criminal complaint for

criminal defamation u/s 200 Cr.P.C. against defendant no. 1 and her accomplices.

11. It is submitted that the defendants have full knowledge of the valid and subsisting copyright of the plaintiff in his original dramatic works and also in unique design and direction for the dramatic works.

12. It is alleged that the defendants have blatantly copied the literary and dramatic works of the plaintiff. The dramatic works performed by the defendants are exact copy of the plaintiff's literary and dramatic works for which he owns a valid and subsisting copyright.

13. In August 2020, the plaintiff gained the knowledge that the defendants have been commercially performing the said literary and dramatic works including *Dastak*, *Mard*, *Aajivika*, *Pehchaan*, *Buddhapa*, *Mausam / Kudrat*, *Woh Din / Periods Play*, *Rakt Daan / Blood Donation / Zindagi*, *Garbage / Kuda Kachra*, *Hatke bachke*, *Court Martial*, *Chief Ki Dawat*, *Manto Ki Aurtein*, *Amritsar Aa Gaya*, *Tafteesh*, *A Woman Alone*, *Lihaff & street plays on Drugs*, *Cancer*, *Education and AIDS* without any authorization from the plaintiff. It is also alleged that the defendants infringed his copyright by making minor changes in the dialogs and screenplay and / or merely changing the titles of the said literary and dramatic works.

14. The plaintiff issued a cease and desist legal notice dated 01.09.2020 against the defendants. In their reply dated 08.09.2020, defendants denied the allegations.

15. It is submitted by the plaintiff in para 28 of the plaint that the said works have been performed by the plaintiff and his theatre group numerous times first in India and subsequently in other countries as well, which are admittedly in public domain. Most of the said dramatic works have also been published in India, in the form of a book titled ‘*Nukkad par Dastak*’ by M/s Vani Prakashan in the year 2019.

16. It is alleged that the defendants have performed the said plays for a paying audience, have sold tickets for the shows and most of the events were sponsored and defendants received a consideration for performing the said plays causing financial and reputational loss to the plaintiff.

17. Plaintiff has prayed as follows:

“a) For a decree of Permanent Injunction restraining the Defendants by itself/ themselves as also through his/ their individual proprietors/ partners, agents, representatives, distributors, assigns, heirs, successors, and all others acting for and on their behalf from using, selling, soliciting, performing, displaying, advertising or by any other mode or manner dealing in or using the copyright of the Petitioner and from doing any other acts or deeds amounting to or likely to:-

- i. Infringement of Plaintiff's Copyright;*
- ii. Harm and ride the Reputation or Goodwill of the Plaintiff's rights in the Plaintiff's said copyright.*
- iii. Violation of the Plaintiff's Special Rights;*

b) Restraining the Defendants from disposing off or dealing with their assets including their premises at the addresses mentioned in the Memo of Parties or any other assets as may be brought to the notice of the Hon'ble Court during the course of the proceedings and on the Defendant's disclosure thereof and which the Defendants are called upon to disclose and/or on its ascertainment by the Plaintiff, as the Plaintiff is not aware of the same as per Section 55 of the Copyright Act, 1957 as it could adversely affect the Plaintiff's ability to recover the costs and pecuniary relief thereon;

c) For an order for Delivery-Up of all the infringing finished and unfinished materials bearing the impugned dramatic work which violates the Plaintiff's Copyright and Special Rights of the Plaintiff for the purposes of destruction and erasure;

d) For an order for Rendition of Accounts of Profits earned by the Defendants by its impugned illegal activities and a decree for the amount so found in favour of Plaintiff on such Rendition of Accounts;

e) For an order for Cost/(s) of the proceedings; AND

f) For such other/(s) and further order/(s) as this Hon'ble Court may deem fit and proper in the peculiar facts and circumstances of the present case.”

WRITTEN STATEMENT

18. In their WS, the defendants have controverted the averments of the plaintiff. It is submitted that defendant no. 1 is an eminent theatre personality and holds reputation in theatre and cinema

field. She assisted the plaintiff during her association with Asmita Theatre Group for several years. During this time, several plays were created on social and political issues. The playwrights of these plays were created with the joint efforts of the members of the Asmita Theatre Group.

19. In 2017, defendant no. 1 started a Delhi based theatre group Sukhmanch Theatre (defendant no.2) which is known for thought provoking plays on socially relevant topics and organizes various street and stage plays across the country. All the street plays organized by the defendants with the objective of raising awareness on social issues bring no commercial benefit to the defendants. The defendants have taken permission from the respective copyright holders and paid royalty to them for organizing full length plays like '*Tafteesh*' and '*Court Martial*'. The full length play '*Kabira Khada Bazar Mein*' is available in public domain and permission of plaintiff is not required in any manner. Defendants also organized stage plays inspired from various writings available in public domain like '*Chief Ki Dawat*' and '*Amritsar Aa Gaya*' by Bhisham Sahni, '*Manto Ki Aurtein*' by Saadat Hasan Manto and '*Lihaaf*' by Ismat Chughtai.

20. It is submitted that plaintiff is not an author in terms of Section 2(d) of the Copyright Act, 1957. Plaintiff as a director cannot claim copyright on the works he directed in the sole capacity of director. The right in drama by an author written for a society is vested in the author unless there is a clear agreement to the contrary. It

is submitted that ownership vests in the expression of idea and not in the idea itself.

21. It is contended that the plaintiff has wrongly appropriated the works like '*Kabira Khada Bazaar Mein*', '*Chief Ki Dawat*', '*Amritsar Aa Gaya*' and '*Manto Ki Auratien*' to himself. These works are already available in public domain. '*A Woman Alone*' is a play written by Dario Fo and Franca Rame. Hindi translation of this play was done jointly by defendant no. 1 and the plaintiff. Its playwright is, therefore, jointly owned by the defendant no. 1 and the plaintiff.

22. It is further submitted that defendant's actions are saved under the fair use / fair dealing criteria as the defendant does not perform street plays for commercial purpose and the performance is in pursuit of spreading awareness amongst public.

23. It is submitted that the plaintiff has not served any proof of having a copyright in any of the plays except a book named '*Nukkad Par Dastak*' which has still to receive copyright certificate. It is alleged that the plaintiff in this book has inserted lines of various lyrics and dialogues from various movies, short stories, poems and rhymes which are not in public domain. It is further alleged that the plaintiff never gave due credit to defendant no. 1 for her authorship / co-authorship in various plays or in translation of '*A Woman Alone*' or as a performer in various plays / acts.

24. It has also been contended that defendant no. 1 was not working as a student but has worked as an actor, street play incharge, assistant director and workshop incharge at Asmita Theatre Group for

a period of 9 years. Defendant no. 1 has also registered a criminal case against the plaintiff u/s 354 A/ 509 IPC vide FIR No. 388/2020 PS Shakarpur.

25. It is submitted that the plaintiff has suppressed material facts from this Court and has filed the present suit only to create unlawful pressure upon defendant no. 1 to withdraw the above mentioned criminal case. The defendants have prayed for dismissal of the present suit with cost.

REPLICATION

26. No replication was filed by the plaintiff.

ISSUES

27. On completion of pleadings, vide Order dated 18.07.2024, following issues were framed by my Ld. Predecessor :

1. Whether or not the defendants have infringed the registered copyright of the plaintiff ? OPP

2. Whether or not a permanent injunction shall be granted against the defendants and in favour of the plaintiff ? OPP

3. Whether or not the plaintiff is entitled for damages for the infringement of his copyright?

4. Relief.

PLAINTIFF'S EVIDENCE

28. Plaintiff examined three witnesses in his favour.

29. Sh. Arvind Gaur, plaintiff examined himself as PW1. His affidavit in evidence is Ex.PW1/1. He relied upon certain documents. Application of plaintiff/PW1 for registration of copyright in his book “*Nukkad Par Dastak*” is Ex.PW1/A. Printout of social media posts of the defendant no. 1 while she was a part of Asmita Theatre Group is Ex.PW1/B. Printout of social media posts of defendant no. 1 after she started defendant no. 2 theatre group is Ex.PW1/C. Copy of Legal Notice along with an email dated 01.09.2020 is Ex.PW1/D. Reply dated 08.09.2020 vide email dated 08.09.2020 is Ex.PW1/E. Certificate u/s 65B of the Indian Evidence Act, 1872 dated 28.09.2020 is Ex.PW1/F.

30. Sh. Prabhakar Pandey, a Trainee Actor associated with Asmita Theatre Group was examined as PW2. His affidavit in evidence is Ex.PW2/1. He has relied upon copy of the copyright registration application (Ex.PW1/A), social media posts showing Sh. Arvind Gaur as author and director (Ex.PW1/B) and the social media posts (Ex.PW1/C).

31. Sh. Sahil Mukhi, a Trainee Actor associated with Asmita Theatre Group was examined as PW3. His affidavit in evidence is Ex.PW3/1. He has relied upon copy of the copyright registration application (Ex.PW1/A), the social media posts showing Sh. Arvind

Gaur as author and director (Ex.PW1/B) and the social media posts (Ex.PW1/C).

32. Plaintiff closed its PE on 03.10.2024.

DEFENDANT'S EVIDENCE

33. Defendants examined two witnesses in their favour.

34. Ms. Shilpi Marwaha, defendant no. 1 was examined as DW1. Her affidavit in evidence is Ex.DW1/A. She relied upon certain documents. Photographs of the awards, facilitation, contribution in theatres and cinema are Ex.DW1/1 (colly). List of major organizations and institutions with whom Defendants have worked with are Ex.DW1/2 (colly). Material available in public domain which establishes that defendant no. 1 was working as Act, Faculty Workshop In-charge, Assistant Director and Street Play In-charge at Asmita Theatre Group are Ex.DW1/3 (colly). List of street plays is Mark A. List of street plays is Mark B. Proof of permission given to the defendants to stage plays 'Court Martial' and 'Taftesh' by the copyright holder are Ex.DW1/4 (colly). Copy of FIR No. 388/2020 U/s 354-A/509 of IPC is Ex.DW1/5. Copy of screenshots of complaints and accusations against the plaintiff by other individuals available on social media and other platforms are Ex.DW1/6 (colly). Copy of original handwritten translation (in defendant no. 1's handwriting of the play "A Women Alone" is Mark C. Additional

affidavit u/s 65A and 65B of the Evidence Act, 1872 r/w Section 63 of BSA is Ex.DW1/8 (colly).

35. Sh. Nishant Aggarwal was examined as DW2. He was associated with Asmita Theatre Group during the period from October 2013 till January 2017. His affidavit in evidence is Ex.DW2/A. He relied upon certain documents. Affidavits u/s 63 BSA, 2023 are Ex.DW2/B, Ex.DW2/C, Ex.DW2/D, Ex.DW2/E, Ex.DW2/F, Ex.DW2/G and Ex.DW2/H respectively. Email from gmail account dated 23.05.2011 collected on 04.12.2024 is Mark DW2/1. Screenshot of Facebook page related to “Budhapa” is Mark DW2/2. Screenshot of Facebook page related to “Mausam” is Mark DW2/3. Screenshot of Facebook page related to “Wo” is Mark DW2/4. Screenshot of Facebook page related to “Pehchan” is Mark DW2/5. Screenshot of Facebook page related to “Mard” is Mark DW2/6. Original photographs of theatrical performances taken by Nishant Aggarwal, compared to unauthorized reproductions in “Nukkad Par Dastak” is Mark DW2/7. The above said photographs pertaining to street plays of the plaintiff were posted on Facebook in the years 2014 to 2016. Their screenshots are Mark DW2/2 to Mark DW2/6. The comparisons showing unauthorized use of images by the plaintiff in his book *Nukkad Par Dastak* are Mark DW2/7. In his cross-examination, he deposed that he also worked in Sukhmanch Theatre Group (Defendant no. 2) on need basis. During his cross-examination, a whatsapp message shared by defendant no. 1 on a whatsapp group of actors (Ex.DW2/DX1) was put to him. In this whatsapp message, defendant

no. 1 has informed the actors that she had left the theatre group of the plaintiff and requested her co-actors not to speculate anything and also requested them to avoid going to her home without her knowledge. DW2 admitted that he had posted this message on behalf of defendant no. 1 on the whatsapp group of actors. It is noted that neither of the parties have referred to the testimony of DW2 during the course of final arguments.

36. Defendant closed its DE on 03.01.2025.

37. I have heard the detailed final arguments on behalf of both the parties and have perused the record carefully including the written submissions and as well as case laws.

DISCUSSION

38. During the course of arguments, the defendant has relied upon following case laws:

**1. R.G. Anand VS. M/s Delux Films & Ors
1978 4 SCC 118;**

2. Rediff.Com India Ltd Vs. E-Eighteen.Com Ltd. (2013) 202 DLT 657 wherein it has been held by Hon'ble High Court of Delhi as follows:

“51. The judgment relied upon by the defendant in Eastern Book Company (supra) and R.G. Anand (supra) leave no manner of doubt that the claim of exclusive right to use the Dial, to represent the strength of the recommendation for sale/purchase of stock and mutual fund is wholly misplaced. As observed in R.G. Anand (supra), where the same idea has been developed in a different

manner, it is manifest that the source being common, similarities are bound to occur. Therefore, if the plaintiff and defendant are both using the mechanism of a Dial for the same purpose i.e. to convey their respective recommendation for sale/purchase of stock and mutual fund, they are bound to be similar, as the Dial is common to both. In such cases, the Courts are required to determine whether, or not, the similarities are in the 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. The Supreme Court held in *R.G. Anand (supra)* that one of the surest and the safest test to determine whether, or not, there has been a violation of a 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. 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. Where, however, apart from the similarities appearing in the two works, there are also material and broad dissimilarities which negate the intention to copy the original and the similarities in the two works are clearly incidental, no infringement comes into existence. The Supreme Court further held that as violation of copyright amounts to an act of piracy, it must be proved with clear and cogent evidence after applying the various tests laid down by the Supreme Court.”

3. Eastern Book Company & Ors. Vs. D.B. Modak & Ors. 101 (2002) DLT 205 wherein Hon'ble High Court of Delhi dealt with the

issue in copyright in copies-editing of judgment of Hon'ble Supreme Court of India. The expression 'original literary work' was discussed. It was held that the appellant cannot claim any copyright in the text of the judgment and by adopting such a course, the appellant cannot drive the respondents out of the said trade.

4. Judgment dated 16.09.2016 of Hon'ble High Court of Delhi in CS(OS) 2439/2012, I.As. No. 14632/2012 (of the plaintiffs u/O 39 R-1&2 CPC), 430/2013 (of D-2 u/O 39 R-4 CPC) & 3455/2013 (of D-3 u/O 39 R-4 CPC) titled as The Chancellor, Masters & Scholars of the University of Oxford & Ors. Vs. Rameshwari Photocopy Services & Anr. wherein it has been held as follows:

“80. Copyright, specially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public. For this reason only, Section 14(a)(ii) as aforesaid, applies the principle of 'exhaustion' to literary works and which, this court in Warner Bros. Entertainment Inc. Vs. Mr. Santosh V.G. MANU/DE/0406/2009 has held, to be not applicable to copyright in an artistic work or in a sound recording or in a cinematographic film. Once it is found that the doctrine of exhaustion applies to literary work as the works with which we are concerned are, it has but to be held that it is permissible for the defendant No.2 University to on purchasing book(s) and stocking the same in its library, issue the same to different students each day or even several times in a day. ...”

5. Judgment dated 27.02.1996 of Hon'ble High Court of Kerala in CMA No. 329/95 titled as Civic Chandran and Others Vs. C. Ammini Amma and Others wherein the judgment of Hon'ble Supreme Court of India in *R.G. Anand's* case has been relied upon. Regarding fair dealing, it has been held as follows:

"13. ... It is impossible to define what is "fair dealing". It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, that may be unfair. Next you must consider the proportions. To take long extracts and attach short comments may be unfair. But, short extracts and long comments may be fair. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression. As with fair comment in the law of libel so with fair dealing in the law of copyright. ..."

39. My issue wise findings are as follows:

ISSUE NO. 1.

Whether or not the defendants have infringed the registered copyright of the plaintiff? OPP

40. Onus to prove this issue was on the plaintiff.

41. Before examining whether the plaintiff has discharged the onus cast upon it, I shall consider two submissions of the

defendants in respect of validity of copyright granted to the plaintiff and also in respect of Section 52(1) of the Copyright Act. Ld. Counsel for defendants has submitted in his written submissions that copyright could not have been granted in respect of the collection of 11 plays of the plaintiff under the title “*Nukkad Par Dastak*”. This issue is not the subject matter of present case. During the course of final arguments, it has been conceded that the case of the defendant no. 1 challenging plaintiff’s copyright (CO(COMM) IPD-CR169/22) is pending before Hon’ble High Court of Delhi. The defendant has also relied upon Section 52 (1)(a) and (l) of the Copyright Act, 1957 which provides as follows:

“52. Certain acts not to be infringement of copyright.—(1) *The following acts shall not constitute an infringement of copyright, namely,—*

[(a) a fair dealing with any work, not being a computer programme, for the purpose of—

(i) private or personal use, including research;

(ii) criticism or review, whether of that work or of any other work;

(iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public;

Explanation.—The storing of any work in any electronic medium for the purposes mentioned in this clause, including the incidental storage of any computer programme which is not itself in infringing copy for the said purposes, shall not constitute infringement of copyright.]

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(l) the performance of a literary, dramatic or musical work by an amateur club or society, if

the performance is given to a non-paying audience, or for the benefit of a religious institution.

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42. The present case does not fall under the ‘fair dealing’ clause. It is nobody’s case that the parts of plays in the book “*Nukkad Par Dastak*” written by the plaintiff were used by defendant no. 1 for comment, criticism or review purpose. Further, it is not the case of the defendants anywhere that defendant no. 2 is an amateur club or society. Section 52 (1)(a) and (l), therefore, would not apply to the present case.

43. Ex.PW1/A is the acknowledgment slip dated 21.08.2020 issued by Copyright Office, Govt. of India regarding the application bearing Diary No. 11778/2020-CO/L received online for copyright registration of literary / dramatic work titled as ‘*Nukkad Par Dastak*’. Print out of application form XIV of the plaintiff for copyright registration of his collection of contemporary street plays titled as ‘*Nukkad Par Dastak*’ is also annexed with it. Plaintiff later placed on record a photocopy of the copyright registration certificate dated 19.10.2020 bearing registration no. L-95889/2020 issued by Copyright Office, Govt. of India in favour of the plaintiff in respect of his literary / dramatic work ‘*Nukkad Par Dastak*’ first published by Vani Prakashan, New Delhi in the year 2019 in Hindi. This document

has not been exhibited. The original of the same has also not been produced. However, there is no serious objection to its genuineness.

44. The above said book comprises of 11 plays which are as follows:

(i) *Dastak*, (ii) *Mausam*, (iii) *Mard*, (iv) *Kuda Kachra*, (v) *Budhapa*, (vi) *Pehchaan*, (vii) *Bal Vyapar*, (viii) *Vo Din*, (ix) *Hatke-Bachke*, (x) *Bhrastachar* and (xi) *Zindagi*.

45. I shall now come to the specific allegation of the plaintiff in the plaint. It is alleged that the dramatic works performed by the defendants are the exact copy of the plaintiff's literary and dramatic works. It is further alleged that in August 2020, plaintiff came to know that the defendants had been commercially performing the said literary and dramatic works including *Dastak*, *Mard*, *Aajivika*, *Pehchaan*, *Buddhapa*, *Mausam / Kudrat*, *Woh Din / Periods Play*, *Rakt Daan / Blood Donation / Zindagi*, *Garbage / Kuda Kachra*, *Hatke bachke*, *Court Martial*, *Chief Ki Dawat*, *Manto Ki Aurtein*, *Amritsar Aa Gaya*, *Tafteesh*, *A Woman Alone*, *Lihaff & street plays on Drugs, Cancer, Education and AIDS*.

46. Admittedly, out of the above plays, *Court Martial*, *Chief Ki Dawat*, *Manto Ki Aurtein*, *Amritsar Aa Gaya*, *Tafteesh*, *A Woman Alone*, *Lihaff* are not the plays written by the plaintiff. Plaintiff has submitted in the plaint that he has developed a unique design and direction for these plays. The remaining plays mentioned in the preceding para are the 11 plays which constitute the registered copyrighted literary work of the plaintiff "*Nukkad Par Dastak*".

47. The issue under consideration pertains to the allegation of infringement of the registered literary work of the plaintiff by the defendants.

48. Before considering the evidence led by the plaintiff, I shall consider how infringement of copyright can be proved.

49. In **R.G. Anand Vs. M/s Deluxe Films & Ors. (1978) 4 SCC 118** it has been held as follows:

“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 Caesar 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 master-piece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact 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 a 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 copyright 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 negate 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, a 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.”

50. In **Judgment dated 06.05.2024 of Hon’ble High Court of Delhi in C.O. (COMM.IPD-CR) 695/2022 titled as Informa Markets India Private Limited Vs. M/s 4PInfotech and Anr**, it has been held by Hon’ble High Court of Delhi as follows:

“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.”

51. In **Judgment dated 20.12.2023 of Hon’ble High Court of Delhi in CS (COMM) 483/2022 titled as Bikramjeet Singh Bhullar Vs. Yash Raj Films Pvt Ltd and Ors**, it was held that a theme cannot

*be accorded copyright protection as per the settled law. Relying upon R.G. Anand's case, it was reiterated that in order to be actionable, copy must be a substantial and material one, which at once leads to the conclusion that defendant is guilty of piracy and the surest and safest test to determine violation of copyright is to see if a reader, spectator or 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. It was also reiterated that works must be compared as a whole and not by picking or choosing parts of one to compare with parts of another. Hon'ble High Court of Delhi also noted that in R.G. Anand's case, Hon'ble Supreme Court of India referred to an earlier Judgment in **K.R. Venugopala Sarma Vs. Sangu Ganesan 1972 Cri LJ 1098** which was a case of infringement of copyright in a picture and it was held that the degree of resemblance between two pictures, which is to be judged by the eye, must be such that the person looking at the Respondent's picture gets a suggestion that it is Appellant's work and one picture can be said to be copy of another only if substantial part of the former picture finds place in the reproduction. The Supreme Court then observed that an idea, principle, theme, subject matter or historical or legendary facts being common property cannot be subject matter of copyright. 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.*

52. I shall now consider whether plaintiff has been able to prove violation of copyright in terms of the propositions laid down by Hon'ble Supreme Court of India in *R.G. Anand's case*.

53. To prove his case, the plaintiff should have first proved that defendant's work is nothing but a literal imitation of the copyrighted work with some variation here and there. No evidence has been placed on record for such comparison.

54. Plaintiff has relied upon the social media posts issued under the name of his theatre group i.e. Asmita Theatre Group wherein he has been mentioned as the Director of plays such as *30 Days in September* (Mahesh Dattani's play), *Court Martial* (Swadesh Deepak's play), *Ramkali* (Bertolt Brecht's play), *Ambedkar aur Gandhi* (Rajesh Kumar's play), *A Woman Alone* (Solo Play by Shilpi Marwaha; playwright: Franca Rame and Dario Fo), *Amritsar Aa Gaya* (Bhishm Sahni's Stories), Street play *Dastak*, *Mote Ram Ka Satyagrah* (based on Munshi Prem Chand's story and adapted by Habib Tanveer and Safdar Hashmi), *Can't Pay Won't Pay / Chukayenge ? Nahi !* (Dario Fo's play), *Aruna's Story* (Pinki Virani's book), *Sardar Ji* (based on stories by Anton Chekhov, Swadesh Deepak, Khwaja Ahmed Abbas and Shilpi Marwaha), *Last Salute* (Rajesh Kumar's play), *Hindu Code Bill* (play by Rajesh Kumar), *Ajeevika* (street play), *Sawaal*. In some posts by third parties, the work of defendant no. 1 as an actor in these plays and as an upcoming theatre personality has been hailed. Tweets of defendant no.1 for the period from 2015 to October 2016 also constitute part of Ex.PW1/B

wherein defendant no. 1 has mentioned plaintiff as director of plays/ street plays *Dastak*, *Amritsar Aa Gaya*, *Hanoosh*, *A Woman Alone*, *Court Martial*.

55. Plaintiff has also placed on record the Tweets (Ex.PW1/C) of defendant no. 1 wherein she has mentioned about street play #*Dastak* apart from plays like *Kaal Kothri*, *Court Martial*, *Taftesh*, *Kabira Khada Bazar Mein*, *A Woman Alone*, *Dilli Bol -1* (dramatic reading of *Asghar Wajahad Stories*), *Ajeevika*, *Manto Ke Afsane*, *Manto Ki Aurtein*, *Kudrat* and other street plays on women issues, LGBTQ issues, environment issues. These tweets are for the period from May 2017 onwards and includes re-tweeted tweets of others regarding performances by the defendants.

56. Out of these Tweets, only the title mentioned *Dastak* matches the title of one of the plays in the copyrighted book of the plaintiff. The tweets (Ex.PW1/C) show that *Dastak* is a street play on the issue of atrocities / violence on women. The photocopy of the book of the plaintiff also shows that the play *Dastak* in the copyrighted book of the plaintiff also pertains to the issues such as eve teasing and sexual violence upon women. There is no evidence on record that would show that the street play *Dastak* staged by the defendants is a scene by scene or literal copy of the plaintiff's play. As has been held by Hon'ble Supreme Court of India in *R.G. Anand's case*, there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts. Plaintiff has not brought anything on record to show that the defendant no. 1 has copied the

form, manner, arrangement and expression of idea of the author of the copyrighted work. It would be apt to observe that a street play is staged in similar fashion everywhere.

57. Plaintiff does not have copyright over the title '*Dastak*' itself. It is also well settled that title of a work cannot be copyrighted.

58. It has been held by ***Hon'ble Supreme Court of India in Judgment dated 15.10.2015 in Crl. Appeal No. 258 of 2013 titled as Krishika Lulla & Ors Vs. Shyam Vithalrao Devkatta & Anr*** as follows:

“19. We are thus, of the view, that no copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trademark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in Dicks v Yates where Jessel M.R said “there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention” or as observed by Copinger (supra).”

59. Use of title *Dastak* for her own street play on the same theme does not constitute copyright infringement. There is no evidence at all that the defendant no.1 has passed off her own street play *Dastak* as a play written by the plaintiff.

60. It has been argued on behalf of plaintiff that since the defendant no. 1 was part of his theatre group i.e. Asmita Theatre Group from 2008 till January 2017 and also acted in various plays

staged by him, she had access to the scripts of the plays of the plaintiff which were later got published by him as a collection of plays under the title *Nukkad Par Dastak*. It is submitted that the defendant has also not placed on record the scripts of her plays.

61. The perusal of record shows that there is no material on record at all that would suggest that the defendant no.1 staged plays through her group (defendant no. 2) based on the copyrighted plays i.e. *Mausam, Mard, Kuda Kachra, Budhapa, Pehchaan, Bal Vyapar, Vo Din, Hatke-Bachke, Bhrastachar and Zindagi* written by the plaintiff. The controversy now boils down to the street play *Dastak*. The play *Dastak* is part of the copyrighted book of plays *Nukkad Par Dastak*. This work was published in the year 2019. Plaintiff has been staging this street play from a period much prior to that. Plaintiff has not shown how the script of this play has evolved from initial days till publication of this play.

62. It is correct that the defendant no. 1 did not file the script of her own street play *Dastak* along with her written statement. She has only placed on record photocopy of her script of the play *A Woman Alone*. During her cross-examination as DW1, following questions were put to her:

“Q 12. I put it to you that you have not filed any original script, writings etc. of any play, performance of any kind belonging to you in the present suit. What do you have to say?”

Ans. Street plays that I have performed are my own and direction as well. Stage plays that I have performed are either my own or materials taken from copyright holder. I have

not performed Arvind Gaur's plays. Therefore, the question of submitting scripts does not arise.

It is wrong to suggest that I am answering wrongly to my knowledge purposefully and giving evasive answers of questions of which I have no answer.

(At this stage the witness is shown the entire record and asked to show any of her original scripts from the record and put the following question)

Q 13. Please show me your original script, if any, filed on the court record?

Ans. No. (Vol.) I am willing to file my original scripts as per requirement of court. The case in question here is not about the scripts that I have written. This was the reason for not filing them till now.

It is wrong to suggest that my volunteered portion is afterthought, evasive and vague.”

The ‘copyright holder’ in answer of DW1 to Q No. 12 is in reference to the authors other than the plaintiff. It is pertinent to note that in the above said questions, names of the plays have not been specified by the plaintiff. The response of DW1 to the above questions show that she was willing to file her original scripts, however, the plaintiff did not challenge her to produce the script of her play *Dastak* or any other specific play. As noted above, the present controversy has boiled down to staging of her own street play *Dastak* by the defendant no. 1 as there is absolutely no evidence regarding staging of other plays mentioned in the copyrighted book.

63. I shall also refer to the relevant part of the cross examination of PW1 which reads as follows:

“Q 16. How the Defendants have infringed the copyright of “Nukkad Par Dastak”?

Ans. The Defendant performed my copyrighted play under “Nukkad Par Dastak” as well as other plays as a commercial without permission.

Q 17. Have you produced any receipt or ticket before the Hon’ble Court, which demonstrate that the Defendants had used your copyright materials commercially?

Ans. I do not want to give the answer to this question as I felt it is irrelevant.

***Objected to** by the Ld. Counsel for Plaintiff that the question asked by the Ld. Counsel for Defendant is a matter of record.”*

In the above testimony also, plaintiff has shied away from specifying which play(s) out of the *Nukkad Par Dastak* has been copied and staged by defendant no. 1 and also when and where, they were so staged. PW1 has also avoided to answer the question regarding production of any receipt or ticket to demonstrate staging of his copyrighted plays by defendant no. 1 commercially.

64. In light of deficient evidence, it cannot be held that the street play *Dastak* staged by the defendants infringes the copyright of the plaintiff.

65. I shall now come to the issue whether the street play *Dastak* was played before a paying audience. It has been considered in the preceding para that PW1 could not produce any documentary evidence regarding commercial staging of his plays by defendant no.

1. I shall also consider the testimonies of PW2 and PW3 in this regard.

66. In his affidavit in evidence (Ex.PW2/1), PW2 has deposed as follows:

*“11. That Ms. Shilpi Marwaha in January 2017, left the Asmita Theatre Group and started her own theatre group namely, “Sukhmanch Theatre”, Furthermore, Ms. Shilpi Marwaha after starting her own theatre group approached most of the originators namely Azad Foundation, Break Through NGO, Apex Public School etc and asked them to give her an opportunity to perform certain plays instead of Asmita Theatre Group. These organisers use to regularly engage Asmita Theatre Group for various performances and that’s how Ms. Shilpi Marwaha came in contact with them. It is known to me that Ms. Shilpi Marwaha has been charging money from these organisations, for performing the plays written by Sh. Arvind Gaur. Ms. Shilpi Marwaha has exactly copied the title of most famous plays like Dastak, Hatke-Bachke, Who Din, etc. the photographs of her such performances also show that she has exactly copy the design from the plays written by Sh. Arvind Gaur. The said social media posts are already a part of the record and have already been marked as **Exhibit PW1/C.**”*

67. Para 10 of the affidavit in evidence (Ex.PW3/1) of PW3 Sh. Sahil Mukhi is exact copy of the above para. In fact, affidavits in evidence of PW2 and 3 are same. Neither PW2 nor PW3 have given any ground or proof in favour of their assertion that defendant no. 1 had copied the title of most famous plays like Dastak, Hatke-Bachke,

Woh Din etc. In fact, this assertion is limited to copying of the title of the plays by the defendant. They are silent about the script of the plays. Nevertheless, there is no specific assertion that they themselves had watched the allegedly infringing plays of defendant no. 1. No such details as to the place, date and time of staging of the above mentioned plays by the defendants have been provided. A question was put to PW2 during his cross-examination as follows:

*“Q 3. Please name the street plays, written by Sh. Arvind Gaur, which have been performed by Ms. Shilpi Marwaha for the mentioned NGOs. Also explain the basis of said plays. What do you have to say?
Ans. Dastak (based on women atrocities).
Ajeevika (based on women employment and empowerment).
Hatke Bachke (based on road accident).”*

68. The above testimony of PW2 does not make it clear whether defendant no. 1 performed the above said plays prior to her leaving Asmita Theatre Group or thereafter. In his further testimony, PW2 has referred to defendant no. 1 as his co-actor. As already discussed above, it has not been asserted either by PW2 or by PW3 that they themselves watched the plays of the plaintiff having been staged by defendant no. 1 after January 2017.

69. PW2 and PW3 have further asserted regarding copying of the design of the plays written by the plaintiff that *the photographs of her such performances also show that she has exactly copied the design from the plays written by Sh. Arvind Gaur*. The photographs referred to in this testimony are Ex.PW1/C which are social media

posts. Copying of design and direction of the plays cannot be inferred from these posts. No comparison of scenes directed by the plaintiff and those directed by defendant have been shown. It is noted that in Ex.PW1/C, no play of the plaintiff is mentioned except the name 'Dastak'. As already discussed above, adopting the same title of the street play does not constitute infringement of copyright of the plaintiff. Further, all street plays are staged similarly throughout.

70. PW2 and PW3 have also asserted in the above reproduced testimony that it is known to them that Ms. Shilpi Marwaha had been charging money from the organizations such as Azad Foundation, Apex Public School etc for performing the plays written by Sh. Arvind Gaur. They both have not explained as to how did it come to their knowledge that defendant no. 1 had been charging money from the organizers like Azad Foundation and Apex Public School for performing the plays written by Sh. Arvind Gaur. During his cross-examination, PW2 has deposed as follows:

“Q 2. Do you have any proof that the defendant Ms. Shilpi charged money from Azad Foundation and Apex Public School for performing the street plays written by the defendant Mr. Arvind Gaur?”

Ans. No documentary proof. (Vol.) I have also worked with Breakthrough NGO as a commercial actor in 2019. This NGO is foreign funded organization. The NGO members told me that Ms. Shilpi Marwaha had also worked with NGO earlier. This NGO used to pay the remuneration to the actors. I had not worked with Breakthrough NGO during the period of 2011 to 2017. I had given my first performance with this NGO for 15

days in November 2019 and they paid me a sum of Rs. 32,000/- as my remuneration. No receipt was issued for the said payment.”

71. The above said testimony in respect of Breakthrough NGO is hearsay. PW2 was informed by some member of the NGO that defendant no. 1 had worked with it earlier. No time period when defendant no. 1 worked with it or specific nature of work or play has been provided by PW2.

72. During his cross-examination PW3 has deposed as follows:

“Q 2. Have you performed for Azad Foundation and Apex Public School?

Ans. Yes I have performed many street plays for Azad Foundation and also went to Apex Public Shcool, Sant Nagar, Burari for the workshop of children from class 1 to 6.

Q 3. Can you name the plays performed by you for Azad Foundation?

Ans. Ajeevika.

Q 4. How much amount you have earned from Azad Foundation and Apex Public School?

Ans. I have not earned any amount personally from Azad Foundation and Apex Public School.

Q 5. Is it in your knowledge that Sh. Arvind Gaur used to charge money fro the aforesaid organizations?

Ans. It is not in my knowledge.

Q 6. Do you have any proof that the defendant Ms. Shilpi charged money from Azad Foundation and Apex Public School for

*performing the street plays written by the defendant Mrs. Arvind Gaur?
Ans. I do not have any proof.”*

73. The testimonies as discussed in preceding paras make it amply clear that there is no proof that any money was being charged by the defendant no. 1 for staging street plays, specially, street play *Dastak*. DW1 has also deposed in her cross-examination as following:

*“Q 47. Is Sukhmanch Theatre Group a non-profit organisation or is it performing plays for a professional fees/ performance fees?
Ans. Sukhmanch Theatre is a sole proprietorship concern, we perform street plays for free. Stage plays are at time ticketed and at time non-ticketed/ invitation basis.”*

74. Apart from the book itself containing 11 plays, the plaintiff has not placed on record any of his own scripts or adaptation of the plays directed by him.

75. I will now refer to the plays *Court Martial, Chief Ki Dawat, Manto Ki Aurtein, Amritsar Aa Gaya, Taftesh, A Woman Alone and Lihaaf* in respect of which plaintiff has claimed that he has developed a unique design and direction. There is no explanation or demonstration as to what this unique design or direction is. No evidence has been led or any material placed on record to establish the uniqueness in design and direction of these plays and how did the defendant infringe plaintiff's unique style.

76. In view of above discussion, the Court is convinced that the plaintiff has failed to discharge the onus cast upon him. The issue is decided against the plaintiff.

ISSUE No. 2.

Whether or not a permanent injunction shall be granted against the defendants and in favour of the plaintiff? OPP

77. The onus to prove this issue was on the plaintiff.

78. Since issue no. 1 has been decided against the plaintiff, he is not entitled to grant of permanent injunction. The issue is decided against the plaintiff.

ISSUE No. 3

Whether or not the plaintiff is entitled for damages for the infringement of his copyright?

79. Since the plaintiff has failed to prove violation of his copyright by the defendants, he is not entitled to any damages. The issue is decided against the plaintiff.

RELIEF

80. In view of above discussion, the suit of the plaintiff is dismissed. Parties shall bear their own costs.

81. Decree sheet be prepared.

82. File be consigned to Record Room after due compliance.

**PRONOUNCED IN OPEN COURT ON THIS 10th DAY OF
APRIL 2026**

**(VRINDA KUMARI)
District Judge(Commercial Courts)-03,
SED/Saket Courts/Delhi ^(R)**