

## **BEYOND AUTHORSHIP: ENFORCING PROMISSORY ESTOPPEL AND UNLOCKING MORAL RECOGNITION IN *FOX STAR STUDIOS V. APARNA BHAT***

*Authors: - Rajlatha Kotni (Partner), Swagita Pandey (Associate) and -Sourabh Sahu (Intern)*

### **INTRODUCTION**

In early 2020, just as the much-anticipated film '*Chhapaak*' hit Indian cinemas, a lesser-known but deeply significant legal battle emerged off-screen. At the heart of this dispute was Ms. Aparna Bhat, a practicing advocate who had represented Laxmi Agarwal, the acid attack survivor whose story inspired the film. The case, *Fox Star Studios v. Aparna Bhat & Ors.*<sup>1</sup>, brought to the surface crucial questions around credit, recognition, and moral rights, particularly whether contributors to creative works, even without formal authorship, can claim a right to attribution. While the law often relies on contractual obligations and defined Intellectual Property Rights, this case took a slightly unconventional turn. The Delhi High Court's judgment seems to rest not just on legal doctrine but also on notions of fairness, morality, and professional ethics, making it a rich subject for scrutiny.

### **BACKGROUND**

The film '*Chhapaak*', directed and produced by Ms. Meghna Gulzar and released on 10<sup>th</sup> January 2020, portrayed the journey of acid attack survivor Ms. Laxmi Agarwal through the fictional character Malti. The Respondent, Ms. Aparna Bhat, was a practicing advocate specializing in women's rights who had represented Ms. Laxmi Agarwal in various courts, including the criminal trial, High Court proceedings, and Public Interest Litigation (PIL) in the Supreme Court spanning from year 2005 to 2015.

- In the year 2016, Ms. Meghna Gulzar approached Ms. Bhat seeking her assistance and guidance for making the film. Ms. Bhat provided extensive help including consultation, necessary input, documents, explanations of legal nuances, editing of the script, and facilitating visits to courts to provide authentic understanding of the legal proceedings. Crucially, all this assistance was provided *pro-bono* without any monetary consideration.
- The draft screenplay shared by Ms. Gulzar via e-mail dated 17<sup>th</sup> November 2018, explicitly acknowledged Ms. Bhat's contribution with the line: "*Aparna Bhat continues to fight cases of sexual and physical violence against women*".
- When Ms. Bhat attended a special screening on 07<sup>th</sup> January 2020, she discovered that her contribution had been entirely omitted from the film's credits.

### **ISSUES**

The case revolved around the following legal questions:

1. Whether a contributor to a film, without any formal contract, is entitled to moral or paternity rights under copyright law?
2. Whether the Doctrine of promissory estoppel could be invoked to seek acknowledgment in a creative work?
3. Whether the Trial Court's *ex parte* ad-interim mandatory injunction ordering credit for the respondent was valid in law?

<sup>1</sup> *Fox Star Studios v. Aparna Bhat & Ors.*, AIR online 2020 DEL 20.

4. Whether acknowledging a Lawyer's contribution would violate Bar Council Rules prohibiting advertisement?

### ARGUMENTS BY THE PETITIONER

- The Trial court overstepped its authority by granting a mandatory injunction at an *ex parte* stage, especially when such relief was not even explicitly sought by the respondent.
- The credit granted amounted to a new state of affairs and not the restoration of *status quo ante*, something typically not allowed in interim relief.
- Rule 36<sup>2</sup> of the Bar Council of India prohibits lawyers from advertising their work, and public acknowledgment in a film might amount to promotion, thus violating professional conduct rules.
- The Counsel for the Director of the movie, Ms. Meghana Gulzar, argued that there was no written contract, formal agreement, or even a clear legal promise ensuring such credit, hence there was no enforceable right that had been infringed. Additionally, mere assistance did not create legal entitlement to credit.

### ARGUMENTS BY THE RESPONDENT

- The Respondent argued that her legal guidance and involvement in the making of the film through consultations, inputs on court procedures, and script suggestions warranted recognition. She had provided *pro-bon* legal services for over ten years and trusted the Plaintiff with her extensive inputs.
- Multiple e-mail exchanges and messages were produced, showing that the filmmakers acknowledged her role and even intended to include her name in the credits.
- The principle of promissory estoppel was invoked contending that she had relied upon those assurances and altered her position by continuing to offer support without remuneration.
- Ms. Bhat also pointed to inconsistencies in how other contributors, like NGO activist Alok Dixit, were credited while she was left out.
- Various precedents were cited, including *Deoraj v. State of Maharashtra*, *Saregama India Ltd. v. Balaji Motion Pictures*, and *Sajeew Pillai v. Venu Kunnapalli*, to support the argument that relief akin to final relief can be granted at an interim stage.

### WHAT ARE MORAL RIGHTS?

- Before diving further into the implications of this case, it is crucial to understand what moral rights are. Under Section 57<sup>3</sup> of the Indian Copyright Act, 1957, which draws from Article 6bis<sup>4</sup> of the Berne Convention, authors are granted certain special rights which includes-

<sup>2</sup> Rule 36 of the Bar Council of India (BCI) Rules prohibits lawyers from advertising or soliciting work, either directly or indirectly, through various means. This includes using circulars, advertisements, touts, personal communications, or even inspiring newspaper comments or photographs related to their cases. The rule aims to maintain the dignity and ethical standards of the legal profession by preventing it from becoming a commercial enterprise.

<sup>3</sup> Section 57 of the Indian Copyright Act, 1957, deals with an Author's "special rights" or "moral rights". These rights are distinct from economic rights (like the right to reproduce or sell copies) and protect the author's personal and reputational interests in their work. Even after assigning their copyright, an author retains these special rights. Read more at: <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

<sup>4</sup> Article 6bis of the Berne Convention addresses moral rights of authors, specifically the right to claim authorship and the right to object to modifications that would prejudice their honor or reputation. This article ensures these rights are maintained even after the transfer of economic rights and, in many countries, continue to be protected even after the author's death. Read more at: <https://www.wipo.int/wipolex/en/text/283698>

- A. **Right to Paternity:** This is the author's right to be credited as the creator of their work, regardless of who owns the copyright.
- B. **Right to Integrity:** The author can object to any distortion, mutilation, or modification of their work that might damage their honour or reputation.
- The Copyright (Amendment) Act, 2012, restored perpetual protection for moral rights, distinguishing them from economic rights which have limited duration. This dualistic approach recognizes that moral rights protect the author's personality and reputation, which remain relevant beyond the commercial life of the work.
  - Although these rights are generally reserved for creators, the broader question in this case was whether such rights could be extended to individuals who contribute meaningfully, though not as authors to the creative process.

## JUDGMENT

The Delhi High Court upheld the Trial Court's ruling with some modifications, recognising the Respondent's right to be given due credit. The Court's reasoning included several key findings:

1. The Court found ample evidence, from emails to screenplay edits, suggesting that Ms. Bhat had indeed made valuable contributions to the film.
2. It held that even in the absence of a formal contract or monetary consideration, the Plaintiff's moral and equitable right to be acknowledged stood established. The Court observed that it is a well-settled position in law that in order for any person's paternity rights in any work to be recognized, a written contract is not required. The right of paternity is an integral part of the moral rights of a person who makes any contribution
3. Relying on the doctrine of promissory estoppel, the Court reasoned that the filmmaker's prior communications had created a legitimate expectation which was unfairly denied.
4. The Court ordered that the film cannot be released on streaming platforms or further screened in theatres without inserting the acknowledgment:

*"Inputs by Ms. Aparna Bhat, the lawyer who represented Laxmi Agarwal are acknowledged."*

## RATIO DECIDENDI

The Court's reasoning leaned heavily on equitable principles. One of the central doctrines applied was that of promissory estoppel, which, as held in *Monnet Ispat and Energy Limited v. Union of India*<sup>5</sup>, requires the following-

- A clear promise intending legal relations;
- Reliance by the promisee, leading to a change in position.

The court leaned on the Supreme Court precedent stating that, to invoke promissory estoppel, the key requirement is that the promisee must have acted on the promise in a way that altered their position. That shift in position, acting on what was promised, is the *sine qua non* of the doctrine. It is not required to demonstrate any actual damage, detriment or prejudice resulting from the alteration of position.

---

<sup>5</sup> *Monnet Ispat and Energy Limited v. Union of India*, (2012) 11 SCC 1.

Another supporting leg of the judgment was moral rights. Drawing from *Neha Bhasin v. Anand Raaj Anand*<sup>6</sup>, the Court reiterated that attribution can be demanded even in the absence of a written contract. Moreover, in *Suresh Jindal v. Rizoli Corriere Della Sera Prodzioni T.V. Spa*<sup>7</sup>, the Supreme Court had acknowledged a contributor's role and granted relief when recognition was unfairly withheld, a precedent that informed the present decision.

## CONTEMPT PETITION

Despite the court's direction, Ms. Bhat later filed a contempt petition, alleging that her name was omitted from *Chhapaak*'s international screenings. Initially, the matter saw a hiccup due to conflict of interest with the judge, but another bench ultimately took over. The filmmakers claimed they had misunderstood the court's order and agreed to comply in full, leading to an amicable closure.

## LEXPORT'S ANALYSIS

1. **Significance of the Promissory Estoppel Application-** The Court's finding that clear communications and draft screenplays created legitimate expectations marks an important precedent for informal collaborative relationships in the creative industry. The decision emphasizes that promissory estoppel can serve as both a defense and a cause of action.
2. **Moral Rights Evolution in Indian Cinema-** The judgment significantly expands the understanding of moral rights in cinematographic works. While *Section 57* of the Copyright Act, 1957, grants moral rights to authors, this case extends paternity rights to contributors who are not primary authors but provide substantial creative input.

## CONCLUSION

The *Fox Star Studios v. Aparna Bhat* case is a landmark in recognising promissory estoppel and moral rights in creative collaborations. The Delhi High Court held that despite the absence of a written contract or monetary consideration, Aparna Bhat, a lawyer who extensively assisted in the making of the film *Chhapaak*, had a legitimate expectation to be credited, based on clear prior representations. The decision also reminds us that sometimes, in creative ecosystems, contributors fall between the cracks of authorship and ownership. This judgment nudges the boundaries of moral rights, hinting that paternity right i.e. the right to be credited, might extend to non-author contributors whose efforts are significant. Though Indian law traditionally confines moral rights to creators, this case signals potential expansion of that protective scope.

<sup>6</sup> *Neha Bhasin v. Anand Raaj Anand*, (2006) 132 DLT 196.

<sup>7</sup> *Suresh Jindal v. Rizoli Corriere Della Sera Prodzioni T.V. Spa*, 1991 Supp (2) SCC 3.