

Trademark | Case Law Update

Privacy rights are uninheritable; disclaimers in films asserting no connection with real-life incidents must be true: Delhi High Court

By Anooja Padhee



On June 14, 2020, the Indian film industry lost a talented actor, Sushant Singh Rajput (SSR). SSR's death, an apparent suicide, led to several controversies, which were widely reported in newspapers, television, and social media.

Less than a year into his death, his father Krishna Kishore Singh (KKS), the plaintiff in this case, sued four individuals (the filmmakers) who sought to produce a film based on the life of SSR, without taking permission from any of his legal representatives, including KKS. KKS claimed damages in the suit filed before the Delhi High Court and alleged that the filmmakers would infringe SSR's personality rights.

Since the film was yet to be released, a Single Judge denied any relief to KKS and directed that KKS could always re-apply for an injunction if there is

a change in circumstances after the film's release. The Court further noted that if KKS could prove in trial that the celebrity/publicity rights of SSR were inheritable and inured to him exclusively, then he could be compensated by an award of damages. On appeal, the appellate court remitted the matter to the Single Judge to decide once the film is released. Meanwhile, KKS amended the plaint to allege that the film is based on unverified and unauthenticated news reports, that were defamatory to SSR, and that there is damage to SSR's reputation.

While the main contention of KKS was that there is an unauthorized misappropriation of the celebrity rights of SSR, which has been unjustly enriching the filmmakers, and since these rights are inheritable, an injunction must ensue. He also alleged that several parts of the film portray SSR in a negative light.

The filmmakers, on the contrary advanced the following main arguments:

- There is a disclaimer at the beginning of the film that the incidents in the film have no connection or relationship with real life or real persons. This, according to the filmmakers, was sufficient to dispel any confusion among the viewing public whether the movie depicted SSR's real life; and
- KKS is incompetent to maintain the suit, as the rights to privacy, publicity, and protection against defamation are all personal rights, which do not survive the death of the person concerned. In short, these rights are not heritable.

Having heard the parties, the Court rejected KKS's claims and held as follows:

- **Issue of Disclaimer** - The Court held that the issue of the existence of any relationship between characters and events depicted in a film and real-life persons must be decided by a comparison of the film with the real-life events. A mere disclaimer inserted in the film cannot decide that. Having compared the real-life events and the conspectus of the film, the Court held that the disclaimer inserted was untrue.
- **Are celebrity rights heritable?** - The Court held that these are personal to the individual concerned and as such not heritable. It further

held that the right to privacy cannot be canvassed by one person on behalf of another without due authorization.

- Publicity rights recognized the commercial value of the image or the persona of a person and protected his proprietary interest in the profitability of his public reputation.
- Proprietary interest in the image and persona of the person concerned, leading to an enforceable right in the identity of such persona is essential to maintain a claim predicated on personality rights. Reputation, personality, privacy, and personality rights that emanate therefrom, are not heritable
