IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) No.2074/1992

Amar Nath Sehgal ..... Petitioner
! through: Mr.Praveen Anand, Advocate with Ms.Binny Kalra, Advocate.

VERSUS

$ Union of India & Anr. ..... Respondent
^ through: Ms.Jyoti Singh, Advocate.

RESERVED ON : 14.02.2005

% DATE OF DECISION: 21.02.2005

CORAM:
* Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? yes

3. Whether judgment should be reported in Digest? yes

: **PRADEEP NANDRAJOG, J.**

1. Copyright is one of the three main branches of the traditional law of intellectual property, along with patent law and trade mark law. Overshadowed historically by the economic worth of patents and trade marks, the plaintiff who believes that there can be no beauty without a soul, has brought the present action, hoping that the soul (copyright) is given its due place and recognition in the history of law.

2. The Cinderella (Copyright) of the family of intellectual property, long pushed into the chimney seeks, in the present proceedings, to endow herself with the gift of the fairy godmother - the magical pumpkin coach and the mice footmen.

3. Plaintiff's pleadings takes one back to the year 1957. A peep behind the pleadings would take us back to the early fifties.

4. India was a nacent democracy. The world was divided into two camps, the American camp and the Soviet Russia camp. Pt.Jawahar Lal Nehru, the first Prime Minister of this country, a man of vision, realised that to be non-aligned was the best policy. India, under the leadership of Pt.Jawahar Lal Nehru was a pioneer of the non-aligned movement. Fledgling India was asserting itself in the community of nations. International delegations were frequenting the territory of India. Conferences had to be held. Large number of delegates had to be accommodated. A building was conceived to be the hub of international and national conferences. It was named "*Vigyan Bhawan*". In the note to the Cabinet Secretary, V.N.Sukthankar recorded in file No.2 (223)/48-PMS Jawahar Lal Nehru wrote:-

> The Central Government as well as the State Governments are putting up many public buildings. Some of these buildings are big and

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> imposing structures, like the building for the Supreme Court or the Theatre, or the big structure now on the point of completion which is meant for the expansion of the Central Secretariat.
>
> I think that all these major buildings should encourage Indian artists to function in some way. Sculptors, painters, designers, etc. could be asked to cooperate. There might occasionally be woven tapestries. This will cost very little in comparison with the total cost of the building. But it will encourage Indian artists and would be generally welcome, I think, by the public. (Refer selected works of Jawahar Lal Nehru, 2nd series, Vol.-26 1st June, 1954- 30th September, 1954)

5. The brick, mortal and concrete structure named "*Vigyan Bhawan*" may have been an architectural feat, imbibing the science of construction, but the building was too lifeless. It needed a soul.

6. What better soul could a building have other than being endowed with the cultural heritage of India. After all, Vigyan Bhawan was conceived to house international conferences and ought, therefore, to have reflected India's cultural heritage. Plaintiff, Amar Nath Sehgal, received a communication from the Union of India on 16.7.1957, Ex.P-1. It reads as under :-

CENTRAL PUBLIC WORKS DEPARTMENT

no.47/2/57-WI Dated New Delhi,
16 July,1957

(195)

To

Shri A.N.Saigal,
192-193, Constitution House,
Curzon Road, New Delhi.

Sub: Decoration of the Vigyan Bhawan in New Delhi.

Dear Sir,

You are probably aware that the Govt. Of India have set up a Decoration Committee to suggest and advise on the decoration work to be done in important public buildings in this country. The function of that Decoration Committee is to discuss the subjects of decoration sponsored by various Ministries and Govt. Departments and then recommend tentative themes for decoration work and also suggest a few Artists for executing the decoration jobs.

In their sixth meeting held on 26.4.57 the Decoration Committee considered the proposal for the decoration of the Vigyan Bhawan and recommended that on the inside of the external walls of the foyer on the ground floor the decoration work should consist of wire sculpture extending from the staircase right up to the lifts. The Committee recommend your name for the job. Hence, I would request you please to let us know whether you will undertake the job and also give your quotation for doing the work. If it is necessary for you to see the site, you may, by all means, see it. We can arrange for showing you the place by previous appointment.

We will need your preliminary desire for the proposed decoration work for which you will be paid Rs.300/- as token amount to cover your requests etc.

Yours faithfully,
sd/-
for Chief Engineer"

7. Plaintiff readily agreed to the offer contained in the letter dated 16.7.1957 as it was indeed a matter of honour to accomplish the task. Research and untiring work, spanning over half a decade produced a piece of art - a bronze mural sculpture - manifesting itself having 140 ft. span and 40 ft. sweep on one of the wall's of Vigyan Bhawan. The wall was no ordinary wall as it was the lobby of Vigyan Bhawan i.e. the entrance. The mural was a delicate balance between cultural and material aspects in national perspective and science of rural and modern India being its theme.

8. The mural continued to occupy it's place of pride at the lobby of Vigyan Bhawan till it was pulled down and consigned to the store room of the Union of India in the year 1979. This act of destruction of the mural was without the permission, consent or authorization of the plaintiff.

9. According to the plaintiff, the mural acquired the status of a national treasure, representing the essential part of Indian art heritage. According to the plaintiff, the mural became an important part of India's cultural heritage.

10. Unfortunately for the plaintiff, the motivating force behind the mural, late Pt.Jawahar Lal Nehru was no longer in the world of living and those incharge of the country had little

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concern for the cultural heritage of the country. A little sympathy came from a minor functionary in the Government of India. Shri J.Sagar, Joint Secretary, Ministry of Human Resource Development, addressed a letter to the Joint Secretary, Ministry of Urban Development on 22.4.1991. He wrote :-

> "Although it is possible to advise Shri Amar Nath Sehgal to simply go to Court, I do feel that when the Government had commissioned an important work from a well-known artist, it would be appropriate for the Government to try to deal with the artist's work fairly. "

11. Plaintiff ran from pillar to post. No positive action was taken. The mural created by the plaintiff was no longer available for viewing by the public of India. The mural having been put in the godown of the Government of India, the plaintiff was left with no alternative, but to knock at the doors of the Court. Taking shelter of Section 57 of the Copyright Act,1957, the present suit was filed praying for declaration that the plaintiff's special rights under Section 57 of the Copyright Act,1957 were violated by the defendants, for which the defendants should tender an apology. A permanent injunction was prayed for to restrain the defendants from further distorting, mutilating or damaging the plaintiff's mural. Damages in the sum of Rs.50 lacs towards compensation for humiliation, injury, insult and

loss of plaintiff's reputation were prayed for. Lastly, decree for delivery-up directing the defendants to return to the plaintiff the mural for restoration at the cost of defendants was sought.

12. On 29.5.1992, my esteemed brother, Jaspal Singh, J. passed an interim order and while so doing, epitomized issues which required to be considered in the present proceedings. I am but tempted to reproduce the interim order dated 29.5.1992 as the same chartered the course of further proceedings in the suit. The order reads as under :

> Present : Mr.Parveen Anand for plaintiff.
>
> IA.No.8647/92
> Sometimes in the year 1962 the barren walls of Vigyan Bhawan were blessed with a mural . 140 feet in length and 40 feet in height, it was made of bronze and had taken years to complete. Soon enough, it became an essential part of India's best art heritage. And, why not? After all it had been created by the magic hands of eminent sculptor Amar Nath Sehgal, approved by connoisseurs of all that is beautiful like Dr.Mulk Raj Anand and M.S.Randhawa and liked by the poetic eyes of Jawarhal Lal Nehru. For years, it was dance to the discerning eyes and song to the ears who could hear. However, in the year 1979 or so, it was pulled down, removed and dumped in a store house. It is said that improper handling caused immense damage and that bits and pieces have altogether disappeared including the name of its creator. Not that all were cruel. On April 22, 1990 a kindly unnamed Joint Secretary, Ministry of Human Resources Development is reported to have observed :-

"Although it is possible to advise Shri Amar Nath Sehgal to go to Court, I do feel that when the Government had commissioned an important work from a well-known artist, it would be appropriate for the Government to try to deal with the artist's work fairly."

But then, dead eyes and deaf ears do not respond. They did not respond even to a legal notice. Hence, this suit for damages and injunction restraining any distortion, mutilation or modification of the work. The plaintiff, of course, is Amar Nath Sehgal. However, it is his application under Order 39 of the Code which needs immediate attention. He seeks an ex-parte interim order restraining the defendants from causing further loss and injury to the mural.

In a country rightly proud of its creativity and ingenuity, men who can hardly distinguish the heads of Venus from those of Mars cannot be allowed to decide the fate of artists who create our history and heritage. The cry is "Ils ne passernot pas!" and in such a situation Indian Courts will always be found dynamic and responsive. Section 57 of the Copyright Act provides the light.

Let notice be issued to the defendants for July 22, 1992. Till then they are restrained from causing any further loss and injury to the plaintiff's mural and from doing anything as is prejudicial to his honour or reputation as the author of the work.

Sd/-
Jaspal Singh, J."

13. Union of India defended the suit by urging that it was the owner of the mural and had a right to consign the same to a

store room. Plaintiff was stated to have been paid the price for the work. Defence of limitation was also set up. It was averred that the mural was removed in the year 1979 and the suit being filed in the year 1992 i.e. after 13 years from the date of the offending act, was barred by limitation.

14. Following issues were framed on 1.4.2003 :

1) Whether the suit is barred by limitation?

2) Whether the plaintiff has rights under Section 57 of the Copyright Act,1957 in the impugned work although the copyright in the same has been vested to the defendant?

3) Has the defendant violated the plaintiff's rights under Section 57 of the said Act?

4) Whether the plaintiff has suffered any damage?

5) Relief.

15. Parties have led evidence, both documentary as well as oral. Let me deal with the issues as they have been framed in the same sequence as framed.

Issue No.1.

16. Issue was framed for the reason the mural sculpture was stated in the plaint to have been removed, and in the process damaged and mutilated in the year 1979. Defendants pleaded that cause of action accrued to the plaintiff to file the suit in the year 1979. Being filed in the year 1992, defendants

pleaded that suit was barred by limitation since period of limitation was three years.

17. In the replication, plaintiff pleaded that since suit was one for violation of his moral rights which would last for his lifetime and having not waived the same, suit could not be said to be barred by limitation. Further, it was pleaded that after the mural was removed, plaintiff approached various functionaries of the Government of India for redressal and at no stage the government of India unequivocally refused the claim of the plaintiff of having moral rights in the integrity of the mural. It was non-redressal which led to the filing of the suit.

18. Evidence on record establishes that till as late as 6.6.1991, Government of India acknowledged the fact that the mural needed respect evidenced, by a letter, though proved during trial but not exhibited, being letter dated 6.6.1991 addressed by Ms. Indrani Sen, Joint Secretary, Government of India, Ministry of Urban Development, to the plaintiff. The letter reads as under:-

> "Dear Shri Sehgal,
>
> Kindly recall your discussions with me regarding the bronze mural done by you which had earlier been in the lobby of Vigyan Bhavan and your request that the mural shuld be either appropriately utilised or returned.

2. We have examined the issue and feel that the mural can be re-installed in the Vigyan Bhavan annexe in any location of your choice. As far as its installation in the main Vigyan Bhavan is concerned, nothing definite can be said at this stage as the renovation is under planning.

3. I have also physically seen the dismantled mural. While it is true that at present the mural is merely dumped in a store but the pieces are largely in-tact and are not damaged.

4. If you agree with its installation at the Vigyan Bhavan Annexe, you may kindly let us know when you would like to visit the same for choosing the appropriate location,

With regards,

Yours sincerely,
Sd/-
(Indrani Sen)"

19. Aforesaid letter was written to the plaintiff in response to letter dated 22.4.1991 addressed by Sh. J.Sagar, Joint Secretary, Ministry of Human Resource Development, Government of India, to which I have referred to in para 11 above.

20. On the issue of proof of letter dated 6.6.1991 written by Ms.Indrani Sen, it may be noted that the letter was annexed as Annexure P.4 by the plaintiff alongwith his affidavit by way of evidence, in which affidavit, plaintiff deposed that he kept on contacting various officials in the government for redressal of his

grievance and the letter in question was received by him. Witness of the defendant Mr.S.K. Jain, Executive Engineer, Vigyan Bhavan when cross-examined on the letter stated that it appears to have been written by Ms.Indrani Sen, Joint Secretary, Ministry of Urban Development but stated that he did not recognize her signatures. On this issue, it is also relevant to note that on 1.9.1991, plaintiff caused to be served on the defendants a legal notice through his counsel Mr.Rajiv Dhawan, which notice was proved as Annexure P.5 by the plaintiff in his affidavit by way of evidence. Witness of the defendants when confronted with the legal notice, admitted receipt thereof. It is of relevance to note that letter dated 6.6.1991 has been referred to in the legal notice dated 1.9.1991. Defendants have not proved that they rebutted the notice dated 1.9.1991. Factual contents of the notice being never refuted by the defendants, I hold that the plaintiff has successfully established that letter dated 6.6.1991 was received by him on being issued to him by Ms.Indrani Sen, Joint Secretary, Ministry of Urban Development, Government of India. Limitation would accordingly run after 6.6.1991 as till that date, defendants expressed willingness to restore the mural but did not put to action there commitment.

21. Issue No.1 is accordingly decided in favour of the plaintiff and against the defendants. It is held that the suit is within limitation.

Issue No.2 & 3

22. Before dealing with the legal issues, let me briefly note the evidence on record. That the mural sculpture was authored by the plaintiff was not denied by the defendants. Plaintiff's statement in the affidavit by way of evidence that his resume appearing in the Marquis "Who's Who in the World" (17th Edition, 2000) annexure P-1A has gone unrebutted. The resume reveals that the plaintiff is a sculptor of international repute and fame. His work has been displayed internationally in over 20 countries. He is the recipient of Lalit Kala Academy Award and the President of India Award for excellence in Art and Culture. The international eminence of the plaintiff could be gauged by the fact that the Government of India commissioned him to install the mural on the walls of Vigyan Bhavan for the reason that International Conferences were and are continued to be held in Vigyan Bhavan. Who does not know Amarnath Sehgal in India? I am sure that if a survey was carried out, every literate person in India would respond that he has heard about the plaintiff and

his works. The website of the President of India has displayed on the website the contributions of the plaintiff. His Excellency APJ Abdul Kalam, the President of India in his address on 6.10.2004 at the inauguration of paintings and exhibition of the plaintiff informed the audience that the imagination and creativity of the plaintiff has influenced human lives. Plaintiff's works have been recognized by leaders of the world all over. Government of India gifted his sculpture to Mr.Jimmy Carter, President of United States of America. It was the creation of the plaintiff. He named it "Rising Spirits". Mr.Jimmy Carter had the following to say when he received the gift :- "*Sehgal's impressive bronze inspires optimism that we can continue to improve the lives of all our people.*" Plaintiff had gifted another sculpture to President Richard Nixon called "Landing on the Moon" on the success of Apollo Mission. It was acknowledged by the White House as not only a splendid gift but a deeply impressive tribute to the accomplishment of the men of the Apollo XI Mission.

23. Evidence on record clearly brings out the celebrity status of eminence enjoyed by the plaintiff in the field of art and culture. What would be the relevance thereof and in what manner it influences the copyright law in India takes me to the core area of the problem. The moral rights of an author as

flowing from Section 57 of the Copyright Act, 1957, and legal consequences thereof.

24. In the material world, laws are geared to protect the right to equitable remuneration. But life is beyond the material. It is temporal as well. Many of us believe in the soul. Moral rights of the author are the soul of his works. The author has a right to preserve, protect and nurture his creations through his moral rights.

25. When an author creates a work of art or a literary work, it is possible to conceive of many rights which may flow. The first and foremost right which comes to one's mind is the "*Paternity Right*" in the work, i.e. the right to have his name on the work. It may also be called the '*identification right*' or '*attribution right*'. The second right which one thinks of is the right to disseminate his work i.e. the *divulgation or dissemination right*'. It would embrace the economic right to sell the work for valuable consideration. Linked to the paternity right, a third right, being the right to maintain purity in the work can be thought of. There can be no purity without integrity. It may be a matter of opinion, but certainly, treatment of a work which is derogatory to the reputation of the author, or in some way degrades the work as conceived by the author can be

objected to by the author. This would be the moral right of "*integrity*". Lastly, one can conceive of a right to withdraw from publication ones work, if author feels that due to passage of time and changed opinion it is advisable to withdraw the work. This would be the authors right to "*retraction*".

26. Except for the 'divulgation or dissemination right' which perhaps is guided by commercial considerations, the other three rights originate from the fact that *the creative individual is uniquely invested with the power and mystique of original genius, creating a privileged relationship between a creative author and his work.* As I understand, this is the source of the last three rights noted in para 25 above and, therefore, could be captioned under the banner "*The Authors Moral Rights*".

27. The community of nations set the International Standards for moral rights protection of the author under the '*Berne Convention For the Protection of Literary & Artistic Works*'. Since its inception in 1886, the Berne Convention has been the primary instrument of International Copyright Law. Article 6bis of the Berne Convention enjoins the members of the Berne Union to provide legal recognition for the moral rights of attribution and integrity in a work in which copyright exits. Article 6bis of Berne Convention reads :-

"(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed."

28. Should right to assert authorship in a work, include a right to object to distortion, mutilation or modification in a work? Why not, if it is prejudicial to the honour or reputation of the author. The contours, the hue and the colours of the original work, if tinkered, may distort the ethos of the work. Distorted and displayed, the viewer may form a poor impression of the author. A good name is worth more than good riches.

(Shakespear's Othello, Act-II, Scene III, pp.167) :-

> Good name in man and woman, dear my Lord
> Is the immediate jewel of their souls;
> Who steals my purse, steals trash;
> Its something nothing;
> Twas mine, t'is, and has been slave to thousands;
> But he that filches from me my good name,
> Robs me of that which not enriches him
> And makes me poor indeed.

29. Under Article 6bis of the Berne Convention, the moral right of integrity enables the author to seek appropriate legal remedies if the moral right of attribution and integrity in his work is violated. The moral rights set out in the Berne Convention are significant because they continue to be vested in the author even after he has parted with his economic rights in his work.

30. The right of the author under Article 6bis of the Berne Convention provides that an author may '*object to any distortion, mutilation or modification*' of his work which is deemed to be '*prejudicial to his honour or reputation*'.

31. As formulated in the Berne Convention, vindication of moral rights, being hedged with the precondition of proof of negative impact on the authors reputation, somewhat restricts the span and sweep of the moral right. It is argued by some that where a work is destroyed, since it no longer exists and cannot

therefore be viewed by anyone, where is the occasion for prejudice to the authors reputation. Per contra, it could be argued as indeed was the submission made by Shri Praveen Anand, learned counsel for the plaintiff, that destruction of a work can prejudice an author's reputation by reducing the volume of his creative corpus. The proponents of the narrow view argue that derogatory treatment of a creative work would mean deletion to, distortion, mutilation or modification to, or use of the work in a setting which is entirely inappropriate. The opponents of the narrow view would argue that deletion to, or mutilation is after all '*a treatment of a work*' and so is '*destruction*'. It is the extreme and ultimate form of mutilation. They argue that mutilation is nothing but destruction so as to render the work imperfect.

32. Plaintiff, Amar Nath Sehgal, propounds the wider view. Union of India urges to the contrary.

33. While granting interim relief to the plaintiff, Jaspal Singh, J. observed that Section 57 of the Copyright Act, 1957 would be the key to open the door of the dispute raised in the present suit. Section 57 as originally enacted reads as under:-

> "Author's special rights. -(1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said

copyright, the author of a work shall have the right to claim the authorship of the work as well as the right to restrain, or claim damages in respect of-

(a) any distortion, mutilation or other modification of the said work; or

(b) any other action in relation to the said work which would be prejudicial to his honour or reputation.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author.

34. The words *'prejudicial to his honour or reputation'* found place in sub clause (b) of sub section (1) of section 57. Legislature thought that the existing provisions, whereby even distortion, mutilation and modification of the work which are not prejudicial to the author's honour or reputation would violate the author's special rights may have anomalous unintended consequences and were, incidentally, in excess of the requirement of Berne Convention. The section was amended to read:

"57. Author's special rights. -(1) Independently of the author's copyright, and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right -

(a) to claim the authorship of the work; and

(b) to restrain, or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub Section (1) of Section 52 applies.

Explanation - Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.

(2) The right conferred upon an author of a work by sub-section (1), other than the right to claim authorship of the work, may be exercised by the legal representatives of the author."

35. Copyright law in India was thus brought at par with the Berne Convention. In conformity with the Berne Convention, Section 57 of The Copyright Act 1957 protects the author's right of paternity as also the right of integrity. Distortion, mutilation or modification if established to be prejudicial to the author's reputation or honour are actionable.

36. Shri Praveen Anand urged that an action under Section 57 need not be restricted to injunction or damages. The action could well be to preserve the ethic of the work. As noted above, he urged that mutilation would also mean destruction.

37. The mural sculpture decorating Vigyan Bhawan, is the result of plaintiff's creative effort. It has not only enhanced plaintiff's celebrity, but has also attained the status of a modern national treasure of India.

38. Authorship is a matter of fact. It is history. Knowledge about authorship not only identifies the creator, it also identifies his contribution to national culture. It also makes possible to understand the course of cultural development in a country. Linked to each other, one flowing out from the other, *right of integrity* ultimately contributes to the overall integrity of the cultural domain of a nation. Language of Section 57 does not exclude the right of integrity in relation to cultural heritage. The cultural heritage would include the artist whose creativity and ingenuity is amongst the valuable cultural resources of a nation. Through the telescope of section 57 it is possible to legally protect the cultural heritage of India through the moral rights of the artist.

39. As observed by Jaspal Singh, J. in his interim order, India is *"rightly proud of its creativity and ingenuity"*. Artists play an important social role by contributing to cultural heritage thereby also elucidating history.

40. Why do patents and copyrights go into the public domain after a lapse of time? (duration governed by municipal legislation). The answer is simple. Intellectual property and knowledge are interconnected. Intellectual property embodies traditional thought and knowledge with value addition. Thus, physical destruction or loss of intellectual property has far reaching social consequence. Knowledge which has grown with it is also lost.

41. As opined by Mira T.Sundara Rajan in an article published in the International Journal of Cultural Property. Vol.10. No.1, 2001 pp. 79-94 *Moral Rights and the Protection of Cultural Heritage:*

> "The rights of attribution and integrity are particularly apposite to the cultural domain. Apart from the interests of individual authors in maintaining their standing and reputation, these moral rights are closely linked to a public interest in the maintenance of historical truth and cultural knowledge. Moral rights also promote the development of a social attitude of respect toward individual creativity. While authors must accept the responsibilities which accompany the privileges of creative work, it is incumbent upon both the public and the state to acknowledge the value of artists' contributions to cultural heritage."

42. The 10th Five Year Plan 2002-07 of the Government of India outlines India's Vision for Art and Culture. In Chapter

2.12. It records:

> "2.12.1 India's culture is characterised by a unique pluralistic ethos that has evolved over 5,000 years. At the same time, it is constantly evolving through a process of assimilation, providing creative expression, value systems and belief patterns to society."
>
> "2.12.2 There are three broad dimensions of culture: National Identity, Mass Media and Tangible and Intangible Heritage. National Identity revolves around questions like: Who are we? What is our national identity as Indians? What is our shared perception or history, lifestyles, values and beliefs? These are not questions of purely academic interest alone but serious questions having a bearing on the well being of the nation and its people. Mass Media comprises cinema, radio, television and print media. Tangible and Intangible Heritage includes, among other things, monuments, sites and archaeology; anthropology and ethnology; folk and tribal art; dance and drama; and visual arts in the form of painting, sculpture and graphics. (Emphasis supplied)
>
> "2.12.5 The main concentration in the early Five Year Plans, from the First to the Seventh Plan, was the establishment of cultural institutions in the field of archaeology, anthropology, and ethnography, archives, libraries, museums, academies etc. Central conservation laboratories were also established. Serious efforts were made in the Sixth Plan to recognise culture as one of the basic concepts to be integrated with all development activities particularly at all levels in the education sector so as to make it more relevant to day-to-day life. During the Seventh Plan, an added thrust was given to contemporary creativity, preservation, documentation and conservation of the cultural heritage and to established cultural institutions"

43. The National Cultural Fund (NCF) was constituted in 1996 in order to mobilise funds to preserve and promote Indian art, culture and heritage.

44. Cultural property from developing countries is the focus of a highly lucrative international trade in art. It's negative feature is illicit export from countries of origin. *The Convention on the Means of Prohibiting & Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* adopted by 102 States Parties on 14th November 1970, India being a signatory, in its Preamble records, inter alia:

> "Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,
>
> Considering that as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles",

45. Article 1 and 4 of the Convention read:

> "Article 1
>
> For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

a. .....
b. .....
c. .....
d. .....
e. .....
f. .....
g. property of artistic interest, such as:

i. pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactures articles decorated by hand);

ii. original work of statuary art and sculpture in any material;

iii. original engravings, prints and lithographs;

"Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

a. Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;"

46. *The Declaration of the Principles of International Cultural Co-operation* proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its 14th session on 4.11.1966, vide Article 4, set

out 5 aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal. The 4th aim being:

> "To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and *to contribute to the enrichment of cultural life;*

47. The General Conference of the United Nations Educational, Scientific and Cultural Organization meeting in Paris, on 16.11.1972 adopted the *'Convention Concerning the Protection of the World Cultural and Natural Heritage.'* Article 1 defined cultural heritage to mean:

> 'architectural works, works of monumental sculpture and painting, elements of structures of an archaeological nature, inscriptions, cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art or science;'

48. Article 5(d) of the convention enjoins on the member States to:

> "Take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage;"

49. Convinced of the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the

dissemination of culture for the well being of humanity and the progress of civilization, the *'UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects'* was adopted in Rome on 24.6.1995. It enjoined upon the contracting States to return cultural objects removed from the territory of a Contracting State contrary to its laws regulating the export of cultural objects for the purpose of protecting its cultural heritage. (Article 1).

50. The *'International Covenant on Economic, Social and Cultural Rights'* adopted by the General Assembly of the United Nations on 16.1.1966, vide Article 15(1) requires 'The State Parties' to recognise the right of everyone:

> "To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

51. Article 15(2) states that the right under Article 15(1) would include the development and diffusion of science and culture.

52. Each one of the Conventions above noted impose three obligations on States:

(i) to respect the cultural right,
(ii) to protect the cultural right,
(iii) to preserve the cultural right.

53. In the decision reported as (1997) 6 SCC 241, *Vishaka & Ors. V. State of Rajasthan & Ors*, the Supreme Court read international conventions not being inconsistent with our laws to interpret the guarantee of gender equality under our constitution and in the absence of domestic law occupying the field, formulated guidelines.

54. It has to be noted that as originally enacted, Section 57 of the Copyright Act, 1957 was very widely worded because of the fact that the words "*would be prejudicial to his honour or reputation*" which found mention in sub Clause (b) of sub Section (1) of Section 57 were not qualifying sub Clause (a) of sub Section (1) of Section 57. Further, the words "*any other action*" which found mention in sub Clause (b) implied that the action could be other than a claim for damages or a claim for injunction. Post amendment, as the section stands effective from 10.5.1995, the legislature has restricted the right of the author to claim damages or to seek an order of restrain. Further, proof of prejudice to the author's honour or reputation has been made the sine qua non for claiming damages.

55. However, the various declarations by the international community in the conventions noted above, lift the moral rights in works of Art if the same acquire the status of cultural heritage

of a nation. India is a signatory to the conventions and it would be the obligation of the State to honour it's declarations.

56. There would therefore be urgent need to interpret Section 57 of the Copyright Act, 1957 in its wider amplitude to include destruction of a work of art, being the extreme form of mutilation, since by reducing the volume of the authors creative corpus it affects his reputation prejudicially as being actionable under said section. Further, in relation to the work of an author, subject to the work attaining the status of a modern national treasure, the right would include an action to protect the integrity of the work in relation to the cultural heritage of the nation.

57. Under orders passed by this Court, physical condition of the mural in question was directed to be reported. Shri B.C.Sanyal, an artist of international repute and professor P.N.Mago reported that various parts were missing. Their report reveals a massive destruction of the mural. Ms.Kapila Vatsyayan, Academic Director, Indira Gandhi National Center for the Arts reported that she was pained to see an outstanding artistic composition dismembered in fragments which could not be put together even in parts.

58. In view of the evidence on record, Ms.Jyoti Singh, learned counsel for the defendants did not even attempt to urge that the destruction and damage to the mural was debatable.

59. Issues No.2 and 3 are accordingly decided in favour of the plaintiff and against the defendants. It is held that the plaintiff has a cause to maintain an action under Section 57 of the Copyright Act, 1957 notwithstanding that the copyright in the mural stands vested in the defendants. It is further held that the defendants have not only violated the plaintiff's moral right of integrity in the mural but have also violated the integrity of the work in relation to the cultural heritage of the nation.

ISSUES 4 & 5

60. At the hearing held on 14.2.2005, Shri Praveen Anand, learned counsel for the plaintiff prayed for a decree directing the defendants to return to the plaintiff the remanents of the mural with further declaration that the defendants would have no right in the same as also a declaration that the plaintiff would have a right to recreate the mural at any other place anywhere in the world including the right to sell the same. Alternatively, damages were sought.

61. I am of the opinion that the mural, whatever be it's form today is too precious to be reduced to scrap and languish in

the warehouse of the Government of India. It is only the plaintiff who has a right to recreate his work and, therefore, has a right to receive that the broken down mural. Plaintiff also has a right to be compensated for loss of reputation, honour and mental injury due to the offending acts of the defendants.

62. Suit is accordingly decreed in favour of the plaintiff and against the defendants as under :-

(a) A mandatory injunction directing the defendants to return to the plaintiff the remanents of the mural within 2 weeks from today.

(b) Declaration is granted in favour of the plaintiff and against the defendants that all rights in the mural shall henceforth vest in the plaintiff and the defendants would have no right whatsoever in the mural.

(c) Declaration is granted in favour of the plaintiff that he would have an absolute right to recreate the mural at any place and would have the right to sell the same.

(d) Damages in the sum of Rs.5 lacs are awarded in favour of the plaintiff and against the defendants. If not paid within one month from today, the damages shall carry simple interest @ 9% p.a. from today till date of payment.

(c) Costs shall follow in favour of the plaintiff and against the defendants.

63. I would be failing if I do not put on record the assistance rendered to the court by Shri Praveen Anand, learned counsel for the plaintiff who argued the matter virtually on first principles and enriched the court with material to understand the profound issue raised in the suit which required a synthesis of personal rights vis-a-viz the cultural rights of the nation.

February 21st, 2005
n/sk

P.N. Nandrajog
(PRADEEP NANDRAJOG)
JUDGE

fr tomorrow