

Madras High Court

Ghanshyam Hemdev vs Bharathi Raja on 16 June, 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.03.2023

PRONOUNCED ON : .03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.97 of 2021

Ghanshyam Hemdev

vs

Bharathi Raja

Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side 1956 and order VII Rule 1 of CPC r/w Section 55 and 62 of the Indian Copyright Act 1957 r/w Section 2(1) (c) (xvii) first proviso to Section Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, praying to,

(i) Declaring that the plaintiff is the absolute owner of a and digital copyright as set out in the agreement dated 16.06.2014 and Addendum agreement dated 16.06.2014 in the plaint schedule mentioned cinematograph films;

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<https://www.mhc.tn.gov.in/judis>

(ii) For a permanent injunction restraining the defendants, agents, servants or persons acting on their behalf or claiming through from in any manner infringing or interfering with the plaintiff's Inte digital copyright exploitation in the plaint sch cinematograph films;

(ii) costs of the suit;

(iii) Passing such other order or orders as this Court may the circumstances of the case.

For Plaintiff : Mr.K.Harishankar

For Respondent : Mr.R.Prabhakaran

JUDG MENT The present suit is filed by the plaintiff seeking declaration that he is the absolute owner of the Internet and Digital copyrights of the plaint schedule cinematograph films as set out in the agreement and the addendum agreement dated 16.06.2014 and for permanent injunction restraining the defendant from any manner infringing or interfering with the plaintiff's Internet and digital copyright exploitation of the plaint schedule films. <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 Plaintiff Averments:

2.1 The plaintiff is in the business of acquiring, distributing and exploiting the copyrights in cinematograph films. The defendant is a popular Tamil film Producer and Director. The plaintiff entered into an agreement and addendum agreement dated 16.06.2014 with the defendant and acquired exclusive Internet rights including rights of exploitation of all mobile and portable media devices digital copyrights in 19 cinematograph films as mentioned in the schedule to the plaint.

2.2. Thus, plaintiff claimed to have acquired Internet and digital copyrights of the 19 films set out in the schedule to the plaint by paying valuable consideration. It was also stated by the plaintiff from the date of agreement, he had been exploiting the Internet rights of the film in various Internet platform including Amazon OTT platform by exhibiting the audio/video covered under the agreement. It was further averred by the plaintiff that the defendant violating the copyright assignment agreement <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 dated 16.06.2014 made an objection with Amazon India OTT platform with regard to the execution of schedule films and the same was informed to the plaintiff by Amazon. The act of defendant in making objection with Amazon would amount to infringement of the plaintiff's copyrights, which he acquired under the agreement mentioned above.

2.3. Thereafter, the plaintiff sent an email to defendant underlining the rights acquired by him under the above said agreement and called upon the defendant to withdraw his objections. However, the defendant has not withdrawn the objections till date and the movies in respect of which the plaintiff has got assignment of copyright have been blocked by the Amazon. In view of the objections raised by the defendant it caused serious loss and damage to the plaintiff. The plaintiff also issued a cease and desist notice dated 08.01.2021 to defendant calling upon him to cease and desist from the activities of infringement against the plaintiff. The notice sent by the plaintiff was returned with an endorsement "door locked". The plaintiff also sent the very same notice by email on 11.01.2021 to the defendant and the same was delivered. Subsequently, another notice was <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 issued by the plaintiff to the alternative address of the defendant and the same had been delivered on 21.01.2021. But the defendant has not sent any reply to the plaintiff. In these circumstances, the plaintiff was constrained to file the above suit seeking the aforesaid relief.

Averments contained in the written statement:

3.1 The defendant filed a written statement and resisted the claim made by the plaintiff on various grounds. The defendant mainly contended that his signature in the agreement relied on by the plaintiff was obtained when he was under influence of liquor and his consent to the agreement was obtained when the defendant was in a state of unsound mind due to intoxication. Later, when the defendant viewed the movies streaming on Internet platforms such as Amazon Prime, shocked by such exploitation, issued a legal notice to Amazon, Google and other OTT platforms. It was further contended by the defendant by relying on Section 19(5) of the copyright act, 1957, that any assignment of copyright under the agreement was valid only for a period of 5 years from the date of agreement and hence even assuming copyrights were validly assigned in favour of plaintiff, by <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 virtue of operation of law it ceased to exist on 16.06.2019. The defendant also contended that under the agreement relied on by the plaintiff, the copyrights of 19 films were said to be assigned in favour of the plaintiff for inadequate consideration without any royalty for the defendant.

3.2. It was averred by the defendant, in the absence of any royalty for assignment of copyrights, the same is invalid by virtue of Section 19(3) of copyright Act. It was also contended by the defendant that broadcasting or performance of a literary or musical and sound recording can be done only by issuing a prior notice of the intention to the broadcast the work and by paying royalty to the right holder and the same had not been done in the present case.

4. This Court, after considering the averments in the plaint and written statement and draft issues submitted by both the parties framed the following issues for consideration by order dated 03.12.2021:

(i) Whether the agreement dated 16.06.2014 executed by the defendant in favour of the plaintiff is valid or it is vitiated on the ground of undue influence as alleged by <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 the defendant?;

(ii) Whether the suit is not maintainable on the ground that the plaintiff did not approach the Copyright Board before instituting the suit?;

(iii) Whether the agreement dated 16.06.2014 suffers from inadequacy of consideration as alleged by the defendant and hence, the plaintiff is not entitled to seek for any remedy against the defendant?;

(iv) Whether Section 31D of the Copyright Act, 1999 will apply to the facts of the present case?;

(v) Whether Section 19(3) of the Copyright Act, 1999, will mandate that every assignment must have royalty and consideration separately in order to enforce the same?;

(vi) Whether the plaintiff is entitled to the relief of declaration and injunction as sought for in the suit?;

(vii) To what other reliefs are the parties entitled?.

5. During trial, the plaintiff was examined as PW.1 and nine documents were marked on his behalf as Ex.P1 to P9. The defendant who <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 participated in the trial up to cross examination of the plaintiff's side witness failed to appear before the Court thereafter. Hence, he was set ex-parte and the arguments of the learned counsel for the plaintiff was heard.

Issue No.(1):

6. The learned counsel for the plaintiff mainly submitted that when employment of undue influence by intoxication had been pleaded by the defendant it is for him to prove the same. But in the case on hand, the defendant failed to prove the plea raised by him. The learned counsel further submitted the very plea of undue influence by the defendant would amount to admission of the execution of the agreement. The learned counsel further submitted that when plaintiff sent emails and pre-suit notice to the defendant complaining of infringement of rights assigned in favour of the plaintiff by him, the defendant failed to give any reply and only at the time of filing written statement, he raised the plea of undue influence by intoxication. Therefore, the same is certainly an afterthought. <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021

7. In support of his contention, the learned counsel for the plaintiff relied on the following judgments:

(i) Subhas Chandr Das Mushib Vs Ganga Prasad Das Mushib reported in AIR 1967 SC 878;

(ii) Ladli Prashad Jaiswal Vs. The Karnal Distillery Company Ltd., Karnal and others reported in AIR 1963 SC 1279;

(iii) Yogender Singh Vs. Prem Lata and another reported in 2013 SCC online Del 3899;

8. In support of the plaint averments, the plaintiff was examined as PW.1 and he deposed about the agreement entered between the plaintiff and defendant, whereunder, the digital copyrights of the 19 suit schedule films were assigned in favour of the plaintiff. The agreement and addendum agreement dated 16.06.2014 were marked as Ex.P1 series. A perusal of the said documents series would make it clear that following copyrights, in respect of the suit schedule films were assigned by the defendant in favour of plaintiff for consideration of 1,05,000/-. The list of copyrights assigned in <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 favour of the plaintiff were described under clause (1) (a) of agreement which reads as follows:

Now this memorandum of agreement witnesseth:

1. The Vendors hereby absolutely assign

Purchaser the below mentioned copyright

exclusively. The listed copyright stand assigned as well as defined:

DIGITAL COPYRIGHTS:

“The Exclusive copyright including but not limited to sell, distribute, exploit, imbed and deliver content (of films listed in schedule) through digital downloads interactive and non interactive streaming either by means of dedicated application for download or/and to be accessed by Mobile/fixed line phone sets, digital devices and all portable media/Entertainment devices and appliances (monitos/TV sets etc), for recording, storing and playback the delivered content vide present and future web based applications, or through wire/wireless access service providers, by uploading to servers, distributing through cellular networks, cable TV networks, local area networks, wide area networks, using all radio transmission frequencies technologies, all analog/digital cellular/PCS technologies with present and future level of compression of content/data.” To communicate to the public on land, air, rail and sea based transport vehicles. It will also cover and mean <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 exploitation on mobile TV/IPTv, as popularly known and through Wimax/Wi-Fi applications. The assignment will also include exploitation on Blue ray/Hdd hard disc or any other developing digital disc technologies.

The assignment will cover present generation of technology or emerging generation of technology to do the same as above. It will cover CDMA, GSM and any other service present or being developed.

9. Clause 1(a) (iii) (iv) defines period and territory, in respect of which the terms of the agreement are valid. The relevant clause of the agreement reads as follows:

DEFINITIONS:

(iii) PERIOD: Means the period for which the rights assigned in this agreement will subsist which in this case is full term of copyright, from the date of this agreement;

(iv) TERRITORY: Means the geographical areas for which the right under this agreement have been assigned and more specifically mentioned in Schedule-B attached herewith. The territory in this case is entire world including India.

All the above defined/listed shall be hereinafter referred to as the 'SAID COPYRIGHTS'. And hereby stand <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 assigned exclusively to the purchaser for the area of entire world including India for a full term of copyright.

10. A Perusal of above said clauses of Ex.P1 series would make it clear that the plaintiff got

assignment of the digital copyrights of 19 suit schedule films. The defendant in his written statement raised a specific plea that his consent to the suit agreement was obtained, when he was under the influence of liquor. Hence, he pleaded that his consent was obtained by employing undue influence. Therefore, there is no dispute with regard to the signature of the defendant found in the agreement.

11. It is settled law, whenever, plea of undue influence is raised by a person by contending that his consent for agreement was vitiated by flaw in consent, the burden is on him to prove the employment of undue influence. The burden of proof in case of undue influence was very well explained by the Hon'ble Apex Court in Subhas Chandr Das Mushib Vs Ganga Prasad Das Mushib reported in AIR 1967 SC 878, wherein, the Hon'ble Apex Court observed as follows:

4. Under s. 16(1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor ?

5. Sub-section (2) of the section is illustrative as to when a person is to be considered to be in a position to dominate the will of another. These are inter alia (a) where the donee holds a real or apparent authority over the donor or where he stands in a fiduciary relation to the donor or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

6. Sub-section (3) of the section throws the burden of proving that a contract was not induced by undue influence on the person benefiting by it when two factors are found against him, namely that he is in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable.

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7. The three stages for consideration of a case of undue influence were expounded in the case of Ragunath Prasad v. Sarju Prasad and others 51 I.A. 101 in the following words :-

"In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached - namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to be upon the person who was in a position to dominate the will of the other.

Error is almost sure to arise if the order of these propositions be changed. The unconscionableness of the bargain is not the first thing to be considered. The first thing to be considered is the relations of these parties. Were they such as to put one in a position to dominate the will of the other ?"

8. It must also be noted that merely because the parties were nearly related to each other no presumption of undue influence <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 can arise. As was pointed out by the Judicial Committee of the Privy Council in *Poosathurai v. Kappanna Chettiar and others* 47 I.A. p. 1 :-

"It is a mistake (of which there are a good many traces in these proceedings) to treat undue influence as having been established by a proof of the relations of the parties having been such that the one naturally relied upon the other for advice, and the other was in a position to dominate the will of the first in giving it. Up to that point "influence" alone has been made out. Such influence may be used wisely, judiciously and helpfully. But whether by the law of India or the law of England, more than mere influence must be proved so as to render influence, in the language of the law, "undue".

9. The law in India as to undue influence as embodied in s. 16 of the Contract Act is based on the English Common Law as noted in the judgments of this Court in *Ladli Prasad Jaiswal v. Karnal Distillery Co. Ltd. and ors* MANU/SC/0061/1962 : [1964]1SCR270 . According to Halsbury's Laws of England, Third Edition, Vol. 17 p. 673, Art. 1298, "where there is no relationship shown to exist from which undue influence is presumed, that influence must be proved". Article 1299, P. 674 of the same volume shows that "there is no presumption of imposition or fraud merely because a donor is old or of weak <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 character". The nature of relations from the existence of which undue influence is presumed is considered at pages 678 to 681 of the same volume. The learned author notes at p. 679 that "there is no presumption of undue influence in the case of a gift to a son, grandson, or son-in-law, although made during the donor's illness and a few days before his death". Generally speaking the relation of solicitor and client, trustee and cestui que trust, spiritual adviser and devotee, medical attendant and patient, parent and child are those in which such a presumption arises. Section 16(2) of the Contract Act shows that such a situation can arise wherever the donee stands in a fiduciary relationship to the donor or holds a real or apparent authority over him.

10. Before, however, a court is called upon to examine whether undue influence was exercised or not, it must scrutinise the pleadings to find out that such a case has been made out and that full particulars of undue influence have been given as in the case of fraud. See Order 6, Rule 4 of the Code of Civil Procedure. This aspect of the pleading was also given great stress in the case of (*Ladli Prasad Jaiswal* MANU/SC/0061/1962 : [1964]1SCR270 above referred to."

12. A careful reading of the above said judgment would make it clear, in order to presume undue influence, firstly, there must be a dominant <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 and weaker party relationship between the parties to the agreement and the dominant party namely the person, who is in a position to dominate the Will of the another (weaker party) should have used the position to take unfair advantage over the weaker party. Section (2) (16) of Contract Act also gives

an illustration when a person is said to be in a position to dominate the Will of an another, which reads as follows:

(i) Where he holds real or apparent authority over the other or where he stands in a fiduciary capacity in relation to the other person or where he contracts with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, mental or bodily distress.

Here, apparently, there is no dominant and weaker party relationship between the plaintiff and defendant. Even as per the pleadings of the defendant, the plaintiff and defendant were friends. The defendant tried to establish dominant weaker party relationship by pleading intoxication. There is no plea by the defendant that the plaintiff intoxicated the defendant. Further, when defendant pleads that at the relevant point of time his mental capacity was not sound enough to form a rational judgment about the impact of terms of <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 agreement, upon his interest, it is incumbent on him to prove that at the time of execution of agreement, he was under intoxication. Though a plea was raised by the defendant, he failed to appear before this Court, after cross examination of the plaintiff and lead any evidence of his own. In such circumstances, the plea raised by the defendant remains unproved and therefore, the undue influence pleaded by the defendant is not at all proved when there is no evidence for alleged intoxication pleaded by the defendant.

13. Therefore, when the defendant pleaded undue influence and failed to prove the same, this Court has no difficulty in coming to the conclusion that Ex.P1-series namely agreement and addendum agreement relied on by the plaintiff stands proved by the evidence of P.W.1 especially in the absence of any contra evidence. Issue No.(1) is answered in favour of the plaintiff.

Issue No.(3):

14. The defendant raised inadequacy of the consideration as a ground to challenge the agreement relied on by the plaintiff. Contract is a <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 result of consensus ad idem between the parties to the agreement. When the consent of the parties to the agreement is free, the agreement cannot be invalidated merely because the consideration is inadequate. However, inadequacy of the consideration may be taken into account by the Court while determining the question, whether the consent of the party was freely given for the contract. The said proposition of law can be gathered from explanation 2 to Section 25 of Contract Act, which reads as follows:

Explanation 2: An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

15. In the case on hand, the defendant pleaded that his consent to contract was not out of free will and it was obtained when he was under the influence of intoxication. As discussed earlier, when he

pleads he was influenced by intoxication it is for him to prove the same. For the reasons best known to him, he failed to enter box and lead any evidence. However, the plaintiff entered the box and deposed in favour of agreement between the <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 parties.

16. In the case on hand, when the defendant failed to enter box and depose about inadequacy of consideration or in favour of his plea of undue influence, inadequacy of the consideration cannot be readily presumed in the absence of any evidence. Therefore, Issue No.3 is answered in favour of the plaintiff and against the defendant.

Issue No.(4):

17. The defendant in his written statement by relying on Section 31 (d) of the Copyright Act, pleaded broadcasting or performance of copyright work can be done only by issuing prior notice of intention to broadcast the work and by paying the royalty to the rights holder. When the defendant himself entered into an agreement with the plaintiff and assigned the digital copyright of the films in favour of the plaintiff, it is not open to him to say that the assignee of the copyright shall still give a prior notice and obtain licence. Section 31(d) deals with licence for broadcasting of literary and musical works or sound recording by broadcasting organization. The <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 broadcasting organization are not assignees of the digital copyright, therefore, they have to follow the procedure contemplated under Section 31(d) of Copyright Act. As far as the case on hand is concerned, the plaintiff is armed with an agreement, whereunder, the defendant assigned the digital copyright in favour of the plaintiff. Therefore, the provisions of Section 31(d) do not get attracted to the case on hand. Accordingly, issue No.(4) is answered in favour of the plaintiff and against the defendant.

Issue No.(5):

18. The defendant in his written statement had raised a plea that the assignment agreement must be supported by royalty and consideration and in the present case, though consideration for assignment was mentioned, the agreement was silent about royalty and hence the agreement was invalid as it violated Section 19(3) of Copyright Act.

19. Section 19(3) of Copyright Act reads as follows: (3) The assignment of copyright in any work shall also specify the amount of 3[royalty and any other consideration payable], to the author or his legal heirs during the currency of the <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

20. Therefore, one of the conditions for valid assignment is payment of royalty and any other consideration. The word 'royalty' is not defined under the Copyright Act. Therefore, this Court adhere to the literal meaning of the word royalty by referring to the dictionary. The word royalty is defined by "Oxford dictionary" as an amount of money that is paid to the person who wrote a book, piece of music etc., every time, his/her work is sold or performed. The statute uses the word royalty

and any other consideration payable. Therefore, the draftsman in his wisdom treated royalty also a consideration for the assignment. The defendant assigned the digital rights to the plaintiff for the full term of copyright. Under Section 26 of the Copyright Act, 60 years is the term of copyright for a cinematograph film. The 60 years term will begin from the calendar year next following the year in which the film is published. At the time of entering into the agreement, the defendant was aware, he was assigning the digital rights to the plaintiff for a <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 term of 60 years and consciously he agreed to receive a lump sum instead of receiving a specified amount every time his work is exhibited. When a lump sum is mentioned as a consideration for assignment it should be presumed the said sum includes royalty. Therefore, it cannot be said that Section 19(3) of copyright Act was not complied in the present case owing to non mentioning of royalty.

Issue Nos.(2) and (6):

21. The defendant in his written statement also raised a plea that the assignment of copyrights in favour of plaintiff got expired on expiry of 5 years from the date of agreement, in view of Section 19 (5) of Copyright Act. Section 19(5) of Copyright Act reads as follows:

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

22. The reading of above provision would make it clear that if the period of assignment is not mentioned in the agreement to assign, it shall be deemed to be for a period of five years. In the case on hand, it is clearly <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 mentioned in the agreement Ex.P1-series, the period of assignment is for the full term of the copyright. As mentioned above, as per Section 26 of copyright Act, the term of copyright for a cinematograph film is 60 years. Therefore, under the terms of the agreement copyright was assigned in favour of the plaintiff for 60 years and consequently, it is not open to the defendant to take shelter under Section 19(5) of copyright Act and restrict the assignment period to 5 years in view of contract to the contrary. Though, the defendant in his written statement averred that the suit was a premature one as the plaintiff failed to approach the Appellate Board for the dispute with respect to assignment of copyright. The said averment cannot be taken into consideration, in view of Section 55 of copyright Act, which recognizes the right of the owner of the copyright to file a civil suit seeking remedies of injunction, damages, accounts etc. In the case on hand, the plaintiff as the assignee of the digital copyright is entitled to maintain a Civil Suit under Section 55 of the copyright Act. Further, it is also pertinent to note that the powers available to the Appellate Board under Section 19 (A) of copyright Act are now available to the Commercial Courts Act by virtue of amendment to Section 19(A) by Act, 33 of 2021 with effect from 04.04.2021. <https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 Therefore, the said averment made by the defendant does not merit any consideration by this Court.

23. Ex.P2-email sent by Amazon to plaintiff makes it clear that the defendant made an objection to Amazon violating Ex.P1-agreement. When plaintiff sent emails and notice to the respondent complaining infringement of digital copyright by him, the respondent for the reasons best known to

him failed to give any reply. In such circumstances, the cause of action alleged by the plaintiff as against the respondent stands proved. A perusal of Ex.P1-agreement and Ex.P8-Bank statement of the plaintiff would make it clear that the cheque issued by the plaintiff for payment of consideration as agreed was encashed by the defendant. When defendant encashed the cheque issued by the plaintiff in pursuance of the agreement, the plea of alleged undue influence by intoxications pales into insignificance. Therefore, issue Nos.2 and 6 are answered in favour of the plaintiff and against the defendant.

<https://www.mhc.tn.gov.in/judis> C.S.No.97 of 2021 S.SOUNTHAR, J.

ub Issue No.(7):

24. In view of conclusion reached by this Court to Issue Nos.2, 6 and 7, the plaintiff is entitled to declaration and injunction as prayed for. In the facts and circumstances, there will be no order as to costs.

25. In fine:

(i) The suit is decreed by granting declaration and permanent injunction as prayed for:

(ii) There will be no order as to costs.

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