

VICCO LABORATORIES AND ANR.

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ART COMMERCIA ADVERTISING PVT. LTD. AND ORS.

AUGUST 13, 2001

[S. RAJENDRA BABU AND Y.K. SABHARWAL, JJ.]

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*Copyrights Act, 1957—Section 17—Production of television serial for a fixed sum for a manufacturing company—Claim of ownership of copyrights in the serial and its title by the manufacturing company—Justification of—Hold, on facts and evidence on record, claim not justified.*

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*Constitution of India, 1950—Article 136—Appreciation of evidence by Courts below—No important question involved—Not to be interfered with.*

**Petitioners, who are manufactures of ayurvedic pharmaceutical products, employed respondents 1 to 4 as their advertising agents for the purpose of producing a television serial for Doordarshan. The respondents prepared a serial titled 'Yeh Jo Hai Zindagi' for the petitioners for a fixed sum of money. The serial was used by the petitioners to advertise their products exclusively. The petitioners claimed themselves to be the real producers and owners of the copyright in the serial and the exclusive right to use its title. The serial gained popularity and it was decided to increase the number of episodes from 27 to 52. The respondents proposed to the petitioners that some other products should be tied up with the serial for sponsorship as they were incurring loss of Rs. 50,000 to Rs. 75,000 per episode. The petitioners informed the respondents that it was not possible to pay the increased costs of production for the episodes; that the serial is associated with the petitioners; and that, if they wanted to involve another sponsor, they could produce a new serial under a different name.**

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**Apprehending that the respondents intended to produce further episodes under the same title with new sponsors, the petitioners filed a suit before trial court for a declaration that the title and format of the serial belonged to the petitioners and the respondents have no right thereto and for a permanent injunction restraining the respondents from making use of the title or episodes belonging to the petitioners or any episodes hereafter made. The trial court, after examining the facts and evidence, held that the**

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**A** petitioners have not been able to prove that the serial was produced by the respondents as agents in the course of their employment; that the petitioners were not able to prove that the entire serial rights including the exclusive right to use the title thereof belonged to the petitioners; that the respondents are the owners of the copyright of the serial under Section 17 of the Copyright Act, 1957. On appeal by the petitioners, the High Court, after re-examination of the matter, upheld the finding recorded by the trial court.

**B** In appeal to this Court, the petitioners contended that the expenses incurred in the production of the serial by the respondents were fully borne by the petitioners; and that they are the owners of the copyrights of the serial and title under Section 17 of the Copyright Act, 1957.

**C** Dismissing the S.L.P., the Court

**D** HELD : 1.1. From the findings recorded by the Trial Court and the High Court, it clearly indicates that the respondents were not the agents of the petitioners for the purpose of producing the serial. The aggregate amount paid to the respondents is not the amount for cost of production but the fixed price for sponsoring the serial in order to link up their advertisement with the serial and avail substantial benefit of concessional rate under the scheme envisaged by Doordarshan. The respondents were not liable to render accounts to the petitioners who paid them a fixed sum for sponsoring the programme.

**E** If the expenses were less, the petitioners did not ask for a refund and the profit or loss was entirely of the respondents. The bills have been raised only to accommodate the petitioners. It is probable that the respondents had obliged the petitioners by issuing these bills because the bills cannot be read in isolation but with reference to surrounding circumstances. The view taken by the Courts below in this regard appears to be correct.

**F** [464-H; 465-A, B, D]

**G** 1.2. On appreciation of evidence, the Courts below have come to the conclusion that the respondents did not make the serial for valuable consideration at the instance of the petitioners and in view of the findings of fact, the claim of copyright or ownership in respect of the serial under Section 17(b) and (c) of the Act would not arise at all. [465-F]

**H** 2. The petitioners have not made out a case for consideration by this Court. The matter rests purely upon the appreciation of evidence on record and does not give rise to any question of such importance as to be decided by this Court under Article 136 of the Constitution. [463-D]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) A  
No. 6779 of 2000.

From the Judgment and Order dated 23.3.2000 of the Bombay High Court in First Appeal No. 759 of 1990 in SC Suit No. 493 of 1986.

K.S. Cooper, Raj Nanrani, R.N. Karanjawala, Ms. Nandini Gore, Ms. B  
Ruby S. Ahuja, Ms. Jullie and Manik Karanjawala for the petitioners.

R.F. Nariman, M.M. Shakhardande, Nikhil Shakhardande, Ms. Mina Gupta, Ms. Arpita Sharma, Mr. Uday Gupta, Mr. Alok Gupta, Ms. Jaya Srivastava and Mr. Vineet Kumar for the Respondents :

The Judgment of the Court was delivered by / C

**RAJENDRA BABU, J.** A suit was filed in S.C. Suit No. 493 of 1986 in the Bombay City Civil Court, Bombay by Vicco Laboratories, appellant herein, manufactures of ayurvedic pharmaceutical products against defendant Nos. 1 to 4, respondents herein, for a declaration that the title and format of the suit serial "Yeh Jo Hai Zindagi" exclusively belonged to them and respondents D  
Nos. 1 to 4 have no right thereto and for permanent injunction restraining the said respondents from making use of the title or episodes belonging to the petitioners or any episodes hereinafter made.

A number of averments germane to this case as set out in the plaint are set out hereunder. E

The petitioners carried on business as manufacturers of ayurvedic pharmaceuticals products, which were sold under the brand name of "Vicco" and have acquired substantial reputation in the market. The 1st respondent are an advertising agency and have been the advertising agents in respect of the products manufactured by the petitioners as aforesaid for number of F  
years. The 2nd respondent is a Director and/or partner of the 1st respondent and has mainly dealt with the petitioners on behalf of the 1st respondent. Respondents Nos. 3 & 4 are proprietary concerns of respondent No. 2. The 5th respondent is the Union of India and has been joined as the authority G  
concerning Television in India in the name and style of Doordarshan, which is a television media.

The petitioners had employed the respondent Nos. 1 to 4 as their advertising agents through the petitioners' sister concern "M/s. Modern Advertising Agency" and "Uta Advertising Agency" and were dealing with H

A the respondent No. 1 mainly through the petitioners Managing Director, G.K. Pendharkar. In 1984, Doordarshan in order to popularize sponsored serial, undertook the production of a serial by the name "HUMLOG". The petitioners are also pioneers in making use of Doordarshan for advertising their products through the agency of the 1st respondent, approached the 1st respondent to act as their agents for the purpose of producing a serial which would be shown as petitioners' sponsored programme. The petitioners agreed to pay the entire costs of the said production to the said advertising agency and requested it to look into the matter, employed various persons on behalf of the petitioners and prepare a suitable serial for them. Pursuant to the said arrangement, the respondent Nos. 1 to 4 as the agents of the petitioners prepared at the costs and expenses of the petitioners, a serial entitled "Yeh Jo Hai Zindagi". The petitioners claimed that as a result of the employment of the respondent Nos. 1 to 4 and the finances paid by them the petitioners are the owners of the said serial "Yeh Jo Hai Zindagi" and the title thereof. The first and second respondents under the arrangement produced about 60 episodes and the petitioners have spent a crore of rupees for the products and telecast of the said episodes and have also spent large sums of money on advertising to popularize the said programme. "Yeh Jo Hai Zindagi" had gained popularity and had become one of the most exclusive and popular serial. The petitioners claimed that the exclusive right to use the title thereof belonged to them and the 2nd episode of "Yeh Jo Hai Zindagi" was telecast without the name of the petitioners being mentioned as sponsors nor was their advertisement shown. This was due to the negligence of the respondent Nos. 1 to 4. But the respondents recovered the cost of production from the petitioners. Further the said respondents had been recovering the cost of production well in advance of the serial episodes being actually produced. The petitioners claimed that they were the real producers and owners of the said serial "Yeh Jo Hai Zindagi" and the petitioners to the knowledge of the respondents have entered into an agreement assigning the video rights in the said serial to one M/s. Esquire Distributing and Servicing Pvt. Ltd. on 1.1.1985. The petitioners though not required to do so, made an ex gratia payment to respondent Nos. 1 to 4 of a portion of the royalty received by them from the said M/s. Esquire Distributing and Servicing Pvt. Ltd. 1st and 2nd respondents had by their letter dated 14.12.1984 confirmed that the petitioners have all T.V. and video rights of the sponsored programme in Hindi "Yeh Jo Hai Zindagi" and vest with the petitioners.

H Though original agreement was to have 27 episodes but having regard to the popularity of the programme the petitioners decided to increase the

said serial to 52 episodes and by a letter dated 22.4.1985 the petitioners informed respondent Nos. 1 and 2 that in the title of the 27th and 28th episodes it has been stated that it is presented by "Oberoi Films". Some time in May 1985, the 1st respondent proposed to the petitioners that some other products should be tied up with the serial "Yeh Jo Hai Zindagi". However, the petitioners were not interested in the same as they wanted the serial to project their products only exclusively and did not agree to any other products being tied up with the said serial. The respondents on 27.12.1985 alleged that they were losing Rs. 50,000 to Rs. 75,000 per episode and indicated that they wanted to get a new sponsor. By their letter dated 2.1.1986 the petitioners informed the 1st and 2nd respondents that it was not possible to increase the costs of production for the episodes and that in the circumstances, the production of the serial may stop. It was also pointed out that the name "Yeh Jo Hai Zindagi" is associated with the "Vicco Laboratories" and that if they wanted to obtain another sponsor they could produce a new serial under a different name. The petitioners apprehended that the respondent Nos. 1 to 3 intended to produce further episodes under the title "Yeh Jo Hai Zindagi" making use of the same format as the earlier serial for and on behalf of the third party. The petitioners reserved their right to sue for damages in terms of Order II, Rule 2 CPC.

The respondent Nos. 1 to 4 in their written statement contested the suit. Apart from raising the question of valuation of the suit and the pecuniary jurisdiction of the court to try the same they also raised question that the petitioners are not the owners of the copyright in the said serial within the meaning of Section 17 of the Copyright Act, 1957 and the copyright in respect of the said serial belongs and vests with the respondent Nos. 1 to 4. Therefore, it was submitted that the suit lacked cause of action. While traversing the case on merit they contended that it was all along agreed between the petitioners and respondents that the copyright in the said serial would rest exclusively in the respondents and not in the petitioners. Thus the respondents' name was shown in the title of the said serial as the producer thereof right from the beginning of the said serial but the petitioners did not protest against the same. Consistently with the said intention further, the master cassette of the said serial at all relevant times remained exclusively with the respondents and not with the petitioners and the petitioners paid to the respondents 50% of the royalty received from M/s Esquire Distributing and Servicing Pvt. Ltd. under the agreement dated 1.1.1985, 4.3.1985 and 16.9.1985. The advertisements issued by the petitioners themselves in various newspapers to give wide publicity to the said serial would indicate that the serial mentioned

- A these respondents' are the owners of the copyright in respect of the said serial and the petitioners claim in that behalf is devoid of any substance. The respondents also contended that even assuming but without admitting that even if the petitioners are the owners of the copyright in respect of the said serial as on the date of the suit they ceased to be such owners in view of the fact that these rights vested in them before the institution of the suit and
- B they have acquiesced in the exercise of the said right by these respondents by their conduct as referred to earlier. It was also contended that the 2nd respondent is an artist and a film maker and has been in the field of film making for the past 20 years. In the course of his business the 2nd respondent has developed contacts and connections with important and renowned personalities, artists, technicians etc. in the film industry. In the year 1967, the 2nd respondent's wife Mrs. Sunanda S. Oberoi started the proprietary business of advertising agency in the name and style of Art Commercial and the 2nd respondent used to work in various capacities for the said firm. In the year 1983, the said proprietary firm was converted into a private limited company which is the 1st respondent in the present suit and the 2nd respondent
- D constituted respondent Nos. 3 and 4 as his proprietary firm. About 18 years ago before filing of the suit, the respondents came into contact with the petitioners initially as clients in connection with the job of advertisement of their products on All India Radio, theatre and films and later, on television. These ad-films and jingles fetched handsome returns for the petitioners and boosted their sales beyond their own expectations. In course of time, the 2nd respondent and partners of the petitioners especially G.K. Pendharkar came very close to each other and developed very intimate relations. Either at the end of 1983 or early part of 1984, the 5th respondent through the said Doordarshan decided to introduce the production of films or serials especially for exhibitions on TV instead of exhibiting/telecasting films produced by the professional film producers on payment of exorbitant royalty to them, partly as an economy measure and partly to provide avenues to and exposure to new talents. The 5th respondent thereafter decided to entertain/welcome and/or encourage the proposals from the private producers to produce such serials or films at their own cost and responsibility and under the said scheme
- F the advertisers desirous of linking up their advertisements with such films or serials were required to negotiate and settle directly with the producers of such films and/or serials, the royalty or consideration payable to such producers for linking up their advertisements and commercials with their film/serial and under the said scheme further, such advertisements were offered handsome concessions in the rates of advertisements for display of their ads of TV. As
- G against the regular rates/charge of Rs. 3,24,000 for display of advertisements
- H

of TV of such advertisers for 120 seconds per telecast, the relevant time, at the rate of Rs. 35,000 only for 120 seconds in addition to the royalty or consideration payable to the producers of such films or serials which invariably was far less than the difference between the usual rates and concession rates of advertisements. The 2nd respondent undertook the preliminary project work on his own without loss of any time. The 2nd respondent made extensive study and research and prepared a format of the proposed serial. The said team of the 2nd respondent responded to his appeal and took great pains and put in hard work in the said project and presented to him an exclusive and ingenious format of the proposed serial. The 2nd respondent then approached the 5th respondent through Doordarshan with his proposal to produce the said serial then proposed to be entitled "Mussibat Hai". After a number of meetings between the 2nd respondent and the concerned officers and the authorities of the respondents at Delhi in connection with the said proposal approved a pilot [i.e. the first episode as sample] on 19.9.1984 to produce a TV serial comprising 52 episodes subject of course to the 5th respondent discretion to discontinue the same if the same proved a flop before the expiry of the stipulated period. The entire cost of the spade work and the cost of the title song was borne exclusively by the respondents and nothing was contributed by the petitioners in this regard. The 5th respondent registered the respondent Nos. 1 and 2 as the producers of the said serial. After finalizing the proposal by the TV authorities, respondent No. 2 asked the petitioners as to whether they were interested in the linking up their ads with the said serial. Petitioners agreed to link up their ads with 26 episodes of the said serial. The petitioners agreed to pay fixed amount to these respondents per episode for linking up their commercials with the said serial and not on the basis of the actual cost of production of each episode so that if the cost of production exceeded the said fixed amount the respondents had to bear the same. In these circumstances, the respondents contended that by entering into the said agreement of sponsorship, neither the petitioners nor the respondents created nor did they ever intend to create any relationship of employer and employee and/or master and servant or principal and agent between the petitioners on the one hand and the respondents No.1 to 4 on the other. Nor did the parties intend that the respondents should produce the said serial for the petitioners or at the instance of the petitioners and the respondents intended to embark on the production of the said serial on their own. The petitioners by their letter dated 2.1.1987 turned down the respondents' demand and informed the respondents that they had no objection if the respondents went ahead with the production of the said serial and merely requested the respondents that the title of the said serial "Yeh Jo Hai

A Zindagi" may not be used by the respondents. In the meanwhile, the respondents contended that M/s Brook Bond Ltd. who wanted to link up their commercial with 13 episodes and agreed to pay and paid the ruling market price. On these grounds, the respondents contended that the suit of the petitioners is misconceived, malicious and baseless and is liable to be dismissed.

B The respondents contended that on no occasion the petitioners acted as a producer and even the contract was signed by the petitioners as an Advertiser and by the respondent No. 1 as an approved agent. The respondents strongly contended that the serial "Hum Log" was produced by the petitioners in collaboration with M/s. Concept Advertisers.

C The trial court raised as many as 12 issues and they are as follows :-

1. "Is it proved that this Court has no pecuniary jurisdiction to entertain and try this suit ?
- D 2. Do the plaintiffs prove that the T.V. serial entitled "Yeh Jo Hai Zindagi" was produced by the defendant Nos. 1 to 4 as agents and (the said serial made by defendant Nos. 1 to 4) in the course of their employment with the plaintiffs as alleged ?
- E 3. Do the plaintiffs prove that the entire serial rights including the excluding the exclusive right to use the title thereof, belong to the plaintiffs as alleged ?
4. Are defendant Nos. 1 to 4 entitled to deny the ownership of the plaintiffs of the Film "Yeh Jo Hai Zindagi" in view of Exhibits a, B and E (colly) to the plaint ?
- F 5. Do the defendants prove that the plaintiffs are not the owners of the copyright of the TV serial/film, viz., "Yeh Jo Hai Zindagi", within the meaning of Section 17 of the Copyright Act ?
- G 6. Do the defendant Nos. 1 to 4 prove that it was intended between the parties that copyrights in respect of the said film should vest exclusively with the defendants or that the right of ownership was waived by the plaintiffs ?
7. Does the suit suffer from non-joinder of necessary parties ?
8. Is the suit not maintainable against defendant No. 5 for failure to give notice u/s 80 of CPC ?
- H 9. Are the plaintiffs entitled to the declaration sought?



10. Are the plaintiffs entitled to permanent injunction as prayed for? A
11. To what relief, if any, are the plaintiffs entitled ?
12. What order ?

The trial court found that the petitioners have not been able to prove that the TV serial "Yeh Jo Hai Zindagi" was produced by defendants Nos. 1 to 4 as agents in the course of their employment as the agent of the petitioners as contended in the suit. The petitioners were also not able to prove that the entire serial rights including the exclusive right to use the title thereof belonged to the petitioners as alleged. It was also held that the respondents Nos. 1 to 4 are entitled to deny the ownership of the petitioners of the film "Yeh Jo Hai Zindagi" in view of Exhibits A, B and E produced in the case. It was also held that the respondents proved that the petitioners are not the owners of the copy right of the TV serial/film viz., "Yeh Jo Hai Zindagi" within the meaning of Section 17 of the Copy Right Act and it was intended between the parties that copy rights in respect of the said film should vest exclusively with the respondents or that the rights of ownership was waived by the petitioners. After examining the oral and documentary evidence on record it is disclosed that prior to letter sent on 11.7.1984 the petitioners were acquainted even with the format of the suit serial, they did not have any connection with the suit serial till that date and relied upon the wording used therein to the effect that "you and Mr. G.K. Pendharkar are requested to join Mr. Oberoi and his creative team when the format of the proposed half an hour sponsored programme shall be presented to you." That was the first occasion when the format was presented to the petitioners. It was also on record that the Shri G.K. Pendharkar of the petitioners and respondent No. 2 had long standing relations with each other and they had already done a lot of advertising works for the petitioners before the production of the suit serial. Exhibit G-1 (which is Exhibit 27-A in the petitioners' compilation) is a letter written by Shri S.P. Agarwal, Controller of Programmes of Doordarshan to respondent No. 1, M/s Art Commercia with reference to the format for the proposed serial of half an hour duration tentatively titled "Musibat Hai" serial sent to them on 13.7.1984. Since the letter was addressed to M/s. Art Commercia in which the proposal was accepted for production of the serial and the first episode was to be sent for preview and approval which would be given only after seeing the recording of the first episode. That letter had been addressed to respondent No. 1, M/s Art Commercia. The trial court felt that it was addressed not to the petitioners but to the respondents alone. The trial court also relied on Exhibit C-1 which indicated that the

A respondents were submitting a format for the serial which was to be registered on behalf of the client M/s Vicco Laboratories. The learned Judge of the trial court took the view that this letter nowhere mentioned that the respondents wanted to register their format on behalf of their producers which is consistent with the modern norms of advertising. The trial court ultimately came to the conclusion that the spade work on the production of the suit serial had already started before 11.7.1984 and on that day for the first time film was presented to the petitioners. It was, therefore, found that there was no copy right attached to any idea, but copy right is attached to the work and what is important is that not only the idea of producing the suit serial on TV came to the mind of respondent No. 2 but he had already started working on it in advance and forwarded it to Doordarshan for its approval. The trial court, after examining Exhibits C-1, E-1, F-1, P-1 found that the proposal was for 52 episodes and was accepted by the Doordarshan, while the case put forth on behalf of the appellants is that the original agreement was to have 27 episodes and having regard to the popularity of the programme the petitioners decided to increase the said serial to 52 episodes. The evidence was found to be inconsistent with the theory put forth by the petitioners that they are producers of the suit serial and, if it were to hold otherwise, the agreement or arrangement with the respondents was only for 26 episodes, whereas the sponsorship was for 52 episodes. The trial court examined in detail the letter dated 19.7.1984 (Exhibit F-1) written by Shri G.K. Pendharkar of the petitioners and concluded that averments made in the plaint stated that the original agreement was to have 27 episodes but having regard to the popularity of the serial programme the petitioners decided to increase the said serial to 52 episodes. In one of the contracts (Exhibit H-1) the wording used is as under :—

F "Sponsorship of programme of 25 mts. duration produced by sponsor entitled "Yeh Jo Hai Zindagi" including 2 mts free commercial time".

G Relying upon this letter emphasis was laid on the words "produced by sponsors". Whether two capacities "sponsor" and "producer" can co-exist in one and the same person or not has been examined and the trial court noted that the wording had been borrowed from the Tariff Card and Tariff Card also indicated what are the categories of the advertisers and rates thereof. It is held that words "produced by sponsors" would not mean that the sponsors themselves are the producers of the said programmes, as is clear from the Tariff Card. The trial court proceeded thereafter to examine the payments made in regard to production of the serial. Thus it was found that the first 26 H episodes the amount per episode paid by the petitioners was Rs. 1,20,000 and

each bill contained the expression "service charges" which was stated by the appellants that the respondents acted as agents of the petitioners for production of suit serial. On proper construction of the bills the trial court rejected the contention that these bills and payments as showing that they had borne the costs of production of the suit serial and, therefore, they are the producers. Inasmuch as the respondents could not claim any amount at random, details regarding expenditure were included in the bills and therefore it is the sponsor's price for sponsoring the suit serial. Strong reliance was placed upon certain circumstances, namely, that the format had been approved by the petitioners only on 11.7.1984 and PW-1 admitted that in view of the bill the entry claiming deduction made by the petitioners in their accounts in the financial year ending on 30.3.1984; that the amount was not to be paid for all 26 episodes or even thereafter in lump sum and the bill for 26 episodes enabled petitioners to claim deduction for the entire amount without actual payment in financial year 1983-84; that the entry made for the financial year 1983-84 was beneficial to the petitioners that there was no ceiling on advertising expenditure and it was introduced from 1.4.1984 onwards, the plaintiff did not produce the account books to show if the deduction in respect of the entire amount was claimed or not though they were repeatedly called upon to produce them. The trial court was conscious enough not to enter into the controversy whether during the particular account year ending on 31.3.1984 the advertising expenditure was fully exempted from tax or that there was disallowance of 20 percent on that point and the decision regarding income tax deductions is not necessary as there is enough other material to show that the said bill was ante-date. The change in the title from 55th episode "for Vicco Laboratories" was introduced. Their contention was that there was a protest from the petitioners and as a result thereof this change took place. The 55th episode was telecast sometime at the end of November or beginning of December 1985 and thus there was a time gap of 7/8 months between the protest and the telecast of the 55th episode. Therefore, it cannot be said that there is any communication between the same. The trial court also noticed that in respect of both the advertisements and also in respect of suit serial the petitioners paid to the respondent Nos. 5 and 6 amount which was to be maximum amount. Thus the profits or loss was of the respondents and there is element of liability to render account was missing and thus there was no question of respondents being the agents of the petitioners within the meaning of Section 182 of the Indian Contract Act. The suit serial was produced by the respondents as agents of the petitioners was false. The facts emerging in the case indicate that the petitioners had joined the production of the suit serial after some concrete beginning had been made like recording of the title song, the

**A** conceiving of the title and format of the suit serial, etc. The trial court summed up the position that the two capacities "sponsor" and "producer" cannot co-exist in one and the same person. If the documents are interpreted that the petitioners are the sponsors as well as the producers it would lead to absurd results. Thus the trial court proceeded to uphold the contentions raised on behalf of the respondents to dismiss the suit.

**B** On appeal, the High Court re-examined the matter and on examination of the pleadings, the contentions, put forth before the court, the evidence on record and the findings recorded by the trial court, concluded that the findings recorded by the trial court are proper. In doing so, the High Court noticed that the admitted position in the pleadings and the oral evidence is that the

**C** petitioners agreed to sponsor only 26 episodes whereas the respondents had agreed to produce 52 episodes and had made firm commitment to Doordarshan to that effect and this circumstance militates against the respondents having undertaken the production at the behest or at the request of the petitioners. The High Court observed that the petitioners had no knowledge of the

**D** Doordarshan scheme regarding the sponsored programme and linking of 2 minutes advertisement and agreed with the findings of the trial court that it is improbable for the respondents to have agreed to reduce its income in the form of commission and undertake the responsible job of production of the serial. It was stated that certain bills had been given to the petitioners to suit their convenience in tax matters and there was no such bill submitted to the

**E** petitioners by the respondents when the petitioner had agreed to extend the sponsorship from episodes Nos. 27 to 52 and not, the system of accounting maintained by them and held that the petitioners had got deductions in respect of the entire amount of the bill in the year which ended on March 31, 1984. The High Court also noticed the circumstance of respondent No. 2's

**F** name appearing as 'producer' in the titles of the suit serial and the petitioners did not do anything by way of protest or other objection or take steps to withhold payment of the respondents which in the normal course would have been done and, therefore, the explanation now sought to be offered by the petitioners in the form of a written protest was devoid of any substance. The explanation given by the petitioners that they were busy in the shootings did

**G** not carry much weight with the High Court. The High Court also examined the scope of Section 17 of the Copyright Act and the ingredients thereof not having been established the High Court held that no claim could be based on the same and thus agreed with the findings recorded by the trial court and dismissed the appeal.

**H** In this special leave petition under Article 136 of the Constitution, the

contentions raised before the High Court are reiterated particularly as to the effect of Section 17 of the Copyright Act and whether the correspondence on record would not indicate that they were entitled to ownership and copyright in respect of the TV programme "Yeh Jo Hai Zindagi". The learned counsel for the petitioners strongly relied upon the following documents:—

1. The cost estimate.
2. The bills of cost of production.
3. Letters dated 14.12.1984 and 15.11.1985.
4. Contract with Doordarshan.
5. Contracts with Esquire Distributing & Servicing Pvt. Ltd.

We have carefully considered the contentions urged on behalf of the petitioners. We are not satisfied that the petitioners have made out a case for consideration by this Court. The matter rests purely upon the appreciation of evidence on record and does not give rise to any question of such importance as to be decided by this Court under Article 136 of the Constitution. It is clear from the findings recorded by the trial court and the appellate court:

1. That the respondents have not undertaken the production of the said serial at the instance of the petitioners. G.K. Pendharkar, the Managing Director of petitioner No. 1 was asked to come to view the format of the programme and the petitioners were not even acquainted with the format of the serial while the respondents had taken concrete steps in this regard prior to the letter dated 11.7.1984.
2. That the petitioners had agreed to sponsor only 26 episodes whereas the respondents had agreed to produce 52 episodes and had given a firm commitment to that effect to Doordarshan as is clear from the letter dated 12.7.1984 sent by the respondents to Doordarshan. The trial court thus rightly noted that there was no agency between the parties.
3. That the titles of each episode indicated that respondent No. 2 is the producer of the said serial and the petitioners are only the sponsors. As late as on 22.4.1985, the petitioners communicated their displeasure on this display in the episodes as to the titles. However, the titles continued to show Mr. S.S. Oberoi as the producer of the serial and the petitioners did not withhold

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payments.

4. That the courts below have refuted the claim of the petitioners that the bill dated 19.3.1984 establishes the fact that the production work had been started by the respondents at the behest of the petitioners. It has been proved that the said bill was ante-dated and raised by the respondents in July, 1984 ostensibly for the purpose of benefiting the petitioners for their obtaining tax concessions.

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5. That the Doordarshan, which have been impleaded as a party, in their written statement stated that they recognize the respondents as producers of the said serial and recognize the petitioners as sponsors only.

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6. That the evidence of Mr. S.S. Gill, who gave evidence on behalf of the Information & Broadcasting Ministry that he was not acquainted with Mr. Pendharkar and that Doordarshan had no direct connection with the petitioners but only with the respondents as producers or the Director stood un-impeached. In his further evidence, Mr. Gill stated that some time in the month of May/June, 1984 he had met Kundan Shah and requested to make a comedy serial for Doordarshan which clearly indicated that it is only the respondents who were dealing with Doordarshan.

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7. That the video rights were assigned to Esquire Distributing & Servicing Pvt. Ltd. by the respondents pursuant to letters dated 14.12.1984 and 15.11.1985 and had received royalty for the video rights and the original U-matic cassettes were returned to them by Esquire Distributing & Servicing Pvt. Ltd. as their property.

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8. That there was no transfer of rights in favour of the petitioners by the respondents in the aforesaid letters and no consideration whatsoever was paid to the respondents for issuing the said letters which have no legal consequences and it was after the petitioners received the letter dated 19.10.1985 from Esquire Distributing & Servicing Pvt. Ltd. that the respondents were asked by the petitioners to issue another letter in this regard.

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Thus the pleadings and the evidence on record clearly indicated that the respondents were not the agents of the petitioners for the purpose of producing the said serial. The aggregate amount of Rs. 76.50 lakhs which was

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paid to the respondents for 60 episodes is not the amount for cost of production but the fixed price for sponsoring the said serial in order to link up their advertisement with the serial and avail substantial benefit of concessional rate under the scheme envisaged by Doordarshan. The respondents were not liable to render accounts to the petitioners who paid them a fixed sum for sponsoring the programme. If the expenses were less, the petitioners did not ask for a refund and the profit or loss was entirely of the respondents. It is clear that the bills that have been raised were only to accommodate the petitioners from the circumstances narrated above. However, the learned counsel for the petitioners made elaborate reference to the Income Tax Act, 1961 and the provisions whether such avilment of benefit could be taken or not pursuant to the amendment effected to the provisions relating to computation of business income at different stages may not be very germane to the present case. It is probable that the respondents had obliged the petitioners by issuing these bills because the bills cannot be read in isolation but with reference to surrounding circumstances. Therefore, the view taken by the courts below in this regard appears to be correct.

So far as the contentions raised on the basis of Section 17 of the Copyright Act is concerned, it is clear that the petitioners were not able to establish that the respondent Nos. 1 to 4 produced the said serial (1) as the agents of the petitioners; (2) in the course of their employment with the petitioners; (3) for valuable consideration paid by the petitioners to them; and (4) at the instance of the petitioners. When these factors had not been established and the suit is itself not dependent on the interpretation of Section 17 of the Copyright Act, pleadings and issues raised did not attract the same. On appreciation of evidence, the courts below have come to the conclusion that the respondents did not make the said serial for valuable consideration at the instance of the petitioners and in view of the findings of fact, the claim of copyright or ownership in respect of the serial under Section 17(b) and (c) would not arise at all.

Thus we find absolutely no merit in this petition. We decline to interfere with the order made by the High Court affirming the decree of the trial court. The petition, therefore, stands dismissed. No costs.

B.S.

Petition dismissed.