

ITEM NO.9

COURT NO.1

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5239/2024

(Arising out of impugned final judgment and order dated 15-01-2024 in WP(C) No. 522/2024 passed by the High Court Of Delhi At New Delhi)

NIPUN MALHOTRA

Petitioner(s)

VERSUS

SONY PICTURES FILMS INDIA PRIVATE LIMITED & ORS. Respondent(s)

(IA No.51708/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 11-03-2024 This petition was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Sanjoy Ghose, Sr. Adv.
Mr. Jai Anant Dehadrai, Adv.
Mr. Pulkit Agarwal, AOR
Mr. Sudhanshu Kaushesh, Adv.
Mr. Siddharth Sharma, Adv.
Mr. Md Tasnimul Hassan, Adv.
Mr. Martin G George, Adv.
Mr. Vibhu Tandon, Adv.
Mr. Prashant Kumar Yadav, Adv.

For Respondent(s) Mr. Parag Tripathi, Sr. Adv.
Mr. Ritin Rai, Sr. Adv.
Mr. Alipak Banerjee, Adv.
Ms. Karishma Karthik, Adv.
Mr. Salvador Santosh Rebello, AOR
Ms. Kritika Grover, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 The cause which led to the institution of the petition under Article 226 of the Constitution before the High Court of Delhi was the “U” certification granted to the film “Aankh Micholi” by the Central Board of Film Certification.
- 2 The grievance of the petitioner is that the trailer of the film and indeed the film contained deprecatory references to persons who are differently abled.
- 3 On the other hand, the respondents who are the producer of the film argued that the object of the film maker was not to deprecate but to dwell on disabilities in finding a path forward for such persons to live their lives with dignity.
- 4 During the course of hearing, the High Court was informed on behalf of the petitioner that the petitioner does not intend to challenge the certificate or to impede the exhibition and screening of the film.
- 5 Mr Sanjoy Ghose, senior counsel appears on behalf of the petitioner while Mr Parag P Tripathi, senior counsel appears on behalf of the producer.
- 6 Mr Parag P Tripathi states that a disclaimer has been introduced by the respondents in the following terms :

“FILM DISCLAIMER (03 SECS)

“This film is a fictitious situational comedy and the portrayal of any character in the film as a specially abled person / person with disability(ies) is not intended to insult, disparage, ridicule, mock, deride, disrespect or otherwise hurt the sentiments of specially abled persons and/or persons with disabilities of any kind or nature, in any manner whatsoever.

This film is a work of fiction, all characters in the film are

fictitious, and the film and its characters are created purely for entertainment and are not intended to hurt the sentiments or feelings of any region, country, individual, community, caste, creed, sect or religion in any way whatsoever. Names, characters, places and incidents are either products of the author's imagination or are used fictitiously. All characters appearing in this film are fictitious. The resemblance to actual persons, living or dead, and/or actual events, and/or organizations, and/or institutions is purely coincidental and unintentional.

The makers, producers, exhibitors, digital partners and/or broadcasters of the film do not intent to disrespect, impair or disparage the beliefs, sentiments of any person(s), community(ies) and their culture, custom(s), practice(s) and traditions(s). The use of certain expressions in the film are purely for dramatizing the performances and incidents portrayed in the film, and the makers of the Film and any other persons associated with the film do not support the use of such expressions by any person.

Warning: The following film features stunts performed either by professionals or under the supervision of professionals. Accordingly, it is advised that no one attempts to recreate or re-enact any stunt or activity performed on this film. Stunts depicting visually impaired person(s) in the film have been performed by person(s) with normal vision."

- 7 Section 5(1) of the Cinematograph Act provides for the constitution of Advisory Panels by the Central Government to judge the effect of films on the public. Sub-section (4) of Section 5 stipulates that it shall be the duty of every such Advisory Panel to examine a film and to make its recommendations to the Board.
- 8 The issue which would arise in the framework of the present case is the impact of the provisions of Sections 3 and 6 of the Rights of Persons with Disabilities Act 2016 on the statutory power to certify films. The guidelines for certification of films for public exhibition, inter alia, provide that the Board while exercising the

power for film certification shall ensure that scenes showing abuse or ridicule of physically and mentally handicapped persons are not presented needlessly. The film in question is portrayed to be a comedy. The Petitioner who also made a brief submission in person urged that there is a distinction between making a comedy of a situation (which is permissible) and making a comedy of a condition of disability.

- 9 Issue notice to the Union Government limited to the above aspects since they have a bearing on the proper construction of the provisions of the statute particularly when films involving differently abled persons are sought to be exhibited.
- 10 We request the Solicitor General of India to assist us in the matter.
- 11 We clarify that the challenge in these proceedings is not either to the certification or to the exhibition of the film
- 12 List the Special Leave Petition 05 April 2024.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR