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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.10431 OF 2022
IN
COMIP SUIT (L) NO.10429 OF 2022

Rajneesh Jaiswal

...Applicant/
Plaintiff

Versus

Dil Raju & Ors.

...Defendants

Mr. Vishal Kanade, Rajesh Singh, Ameet Mehta, Nirav Marjadi, Avani Rathod, Tanaya Patankar, Sanket Tiwari, Jill Rathod, Digisha Modh and Priya Mehra i/b. Solicis Lex for the Applicant / Plaintiff.

Dr. Birendra Saraf, Senior Advocate, Mr. Ameet Naik, Ms. Madhu Gadodia, Mr. Sujoy Mukherji, Ms. Megha Chandra, Mr. Shrikant Pillai i/b. Naik Naik and Co. for the Defendant No.4.

CORAM : R.I. CHAGLA J

DATE : 13TH APRIL, 2022

ORDER :

1. The Affidavit of Service has been tendered by Mr. Vishal Kanade learned Counsel for the Plaintiff which Affidavit is dated 13th April, 2022 and which shows that the Defendants have been served. Other than Defendant No.4 who is represented by Dr. Birendra Saraf,

the other Defendants have not made an appearance. The Affidavit of Service is taken on record.

2. Heard Mr. Vishal Kanade Counsel on behalf of the Applicant / Plaintiff and Dr. Birendra Saraf, Senior Counsel on behalf of Defendant No.4.

3. The necessity for moving this Interim Application is for urgent ad-interim relief in terms of prayer clause (d) which is for the stay of the launch of the Hindi Bollywood movie “Jersey” which is (to be released on 14th April, 2022) in theaters and / or any other platform / electronic media and further refrain from any publicity, promotion and distribution of the motion picture in any form, mode or medium for any broadcast / telecast / screening with any rights created therein for such further distribution, propagation or sale thereof.

4. Mr. Vishal Kanade has submitted that the Plaintiff had obtained registration of script titled “The Wall” on 26th November, 2007. The Plaintiff is stated to be a renowned script writer and has been engaged in the film and television industry in various capacities

for more than two decades. The script titled “The Wall” and the registration receipt thereof has been annexed at Exhibits ‘A’ and ‘B’ to the Plaint.

5. Mr. Vishal Kanade has submitted that the Plaintiff had on 27th December, 2021 come across an article in Bombay Times regarding a Hindi motion film titled “Jersey” and in which article there was a brief description of the film. The Plaintiff had upon reading the article learnt from the summary of the film that it was bearing an uncanny resemblance to the Plaintiff’s film script. It is further learnt that the said film was a remake of a Telugu film which had been released in April, 2019.

6. Mr. Kanade has thereafter referred to the English translation of the script titled “The Wall” which is annexed to an Affidavit on behalf of the Plaintiff dated 12th April, 2022 which has been tendered and is taken on record. He has read the script at Exhibit ‘B’ to the said Affidavit. Mr. Kanade has referred to the comparison between the script “The Wall” and the film titled “Jersey” which is stated to be released on 14th April, 2022. This is set out in paragraph 7 of the Plaint. He has submitted that there is substantial

adoption of the Plaintiff's script in the Defendants film "Jersey". A cease and desist notice was issued by the Plaintiff dated 29th January, 2022 and in which requisition was sought for including the complete data of revenue generated by Telugu Motion Film "Jersey" and also sum of Rs.5,00,00,000/- or 50% of total revenue generated from Telugu film "Jersey" whichever is more as compensation for what has been alleged is a theft of story, concept and ideas which are original and registered literary works of the Plaintiffs. Further, it is stated that the Defendants immediately refrain from advertising, publishing or any kind of acts whatsoever concerning the publicity of the subject film on any platform / theater either being the print or electronic media forthwith.

7. Mr. Kanade has thereafter drawn this Court's attention to the response of the Advocate for the Defendant and in which reference is made to an assignment of rights for remake of the Telugu film "Jersey" in Hindi which has been assigned to Defendant No.3 by Defendant No.2 vide "Hindi" Remake Rights Agreement dated 7th August, 2019 with Defendant No.1 as party to the said agreement. He has submitted that though the said agreement dated 7th August, 2019 has been referred to, there is no mention of the manner in

which Defendant No.2 had obtained the script of the film “Jersey”. He has further submitted that there is only an assertion in the said letter that the Advocates for these Defendants are not privy to the writer agreement entered into by the Defendant NO.2. It is further stated in the said letter that, the Telugu movie ‘Jersey’ has theatrical release in India and overseas on 19th April, 2022 and had thereafter been exploited on various satellite channels and OTT Platforms. Further remake rights were assigned on 19th December, 2021 to Defendant No.4 which has been referred to.

8. Mr. Kanade has submitted that considering a comparison of the Plaintiff’s script with the scene in the Defendants film borne out from paragraph 7 of the Plaint it is clear that from the plethora of facts, circumstances and stated overlap that the motion films produced by the Defendants is nothing but a plagiarized version of the Plaintiff’s script which has been manipulated slightly in order evade the scanner of an uncanny resemblance. Accordingly, in view of the Hindi Bollywood film “Jersey” being stated to be released on 14th April, 2022, a stay of its release has been sought.

9. Mr. Vishal Kanade has relied upon the decision of this

Court in *Kapil Chopra Vs. Kunal Deshmukh & Ors.*¹ wherein this Court had considered the arguments made on behalf of Defendant Nos.3 and 4 therein that they had acquired rights in the distribution of film after paying considerable amount of money and they are bonafide purchasers of the film. Further, they were not aware regarding the alleged plagiarism by Defendant Nos.1 and 2 and if any injunction is granted they will be the sufferers. This Court had found no merits in the submission. It was further held that where the question of monetary consideration is concerned, it will be always open to the concerned Defendant Nos.3 and 4 to pursue their claim against the Defendant No.2 from whom they purchased the rights. The Plaintiff cannot be presented with the fait accompli in this manner. This is in context of his submission that the Defendant Nos.1, 3 and 4 have not disclosed the source of the script for the film “Jersey” which had been obtained by Defendant No.2 but have only referred to subsequent agreements entered into by which the rights were assigned to these Defendants. He has submitted that such non disclosure of the source by Defendant No.2 cannot be relied upon by the other Defendants. He has submitted that in the case of *Kapil Chopra (Supra)* the Defendant No.1 had already discussed the story

¹ 2013 (1) Mh.L.J. 343,

with another actor some time in the year 2009 and that the news was also published in the blog on 14th November, 2009. In spite of which the Plaintiff had been granted the relief in the Notice of Motion.

10. Dr. Birendra Saraf has referred to certain facts which are material in the context of the present ad-interim relief sought for on behalf of the Plaintiff. The facts which he has referred to date back to 2019. On 9th August, 2019, the Defendant No.3 had issued a public notice under which it informed the public that Defendant No.3 had applied for remake rights in the subject Telugu film and invited objections from third parties, if there was any objection. Prior to this date, the subject Telugu film "Jersey" had already theatrical released in India and overseas on 19th April, 2019 and had been exploited on various channels and OTT platforms. On 13th October, 2019, the Telugu film's Hindi dubbed version was made available on www.youtube.com by M/s. Goldmines Telefilms, and has since then garnered approximately 10,25,59,841 views. Further, on 1st November, 2019, the first public announcement of the subject film starring Shahid Kapoor was published in Bombay Times. The release date at that time was declared as 28th August, 2020, which got postponed because of Covid 19. The Suit films promotions

have been continuously going on. On 23rd November, 2021, an official cinematic trailer of the Suit film was uploaded on www.youtube.com and had garnered approximately 6,53,30,502 views.

11. Dr. Saraf has submitted that it is inconceivable that the Plaintiff had only learnt of the subject Hindi film “Jersey” upon coming across an article in Bombay Times on 27th December, 2021 regarding promotion of upcoming Hindi film titled “Jersey” (the Suit film). Further, the Plaintiff has alleged that after coming across this article, the Plaintiff learnt of the similarity between the Plaintiff’s script and that of the subject film. The Plaintiff has issued legal notice to the Defendants on 31st January, 2022 which was posted on 2nd February, 2022. After Defendants had responded and refused to cease the production and of the Suit film on 7th February, 2022, the Plaintiff waited for over one and half months i.e. on 29th March, 2022, to affirm the Plaint and take out the Interim Application.

12. Dr. Saraf has also drawn a comparison between the Plaintiffs “The Wall” and the subject film “Jersey”. He has stated that in a film on cricket, often there is a similarity in scenes

particularly in order to depict a person who has ambition of playing cricket whether for the Indian Cricket Team or Ranji Trophy Cricket Team and ultimately succeeds in his ambition. He has submitted that the Telegu film “Jersey” had already theatrical release in April, 2019 and was exploited extensively on the satellite and OTT platforms. He has submitted that there is a gross delay and laches in seeking ad-interim relief.

13. Dr. Saraf has placed reliance upon certain decisions of this Court, including the decision in *Sameer Wadekar Vs. Netflix Entertainment Services Pvt. Ltd.*² wherein this Court had queried as to how the Defendants would come to know of the Plaintiff’s story which was fictional and absolutely original, particularly Defendant No.3 who is the author of the web series BETAAL. This Court had considered the emails exchanged between Plaintiff and third parties which were prior to the filing of the Suit. These emails did not show any link between the third party and Defendant. Hence, this Court had found it difficult to believe that so called original story written by Plaintiff, can be copied by somebody else. Dr. Saraf has also referred to the decision of this Court in *Sai*

² In I.A. No.1 of 2020, 2 of 2020 and 3 of 2020 Decided on 22nd May, 2020.

*Paranjpaye Vs. PLA Entertainment Pvt. Ltd and Ors.*³ in the context of public notice issued in Trade Journal. This Court has held that the Plaintiff therein being closely associated with the film industry and its working cannot be heard to say that she had not come across the said advertisement issued in the public notice or Trade Journals or that her attention was not drawn by anyone qua the said public notice of the subject film in that case. He has submitted that the Plaintiff cannot feign ignorance of the public notice issued of subject film in the present case, way back in the year 2019. He has also placed reliance upon decisions of this Court with regard to delay and that in the event the Defendant is prejudiced by virtue of such delay, ad-interim relief would not be granted.

14. Having considered the submissions of Mr. Vishal Kanade on behalf of the Plaintiff and Dr. Birendra Saraf on behalf of Defendant No.4, I am of the view that the delay and laches in taking out the ad-interim relief application in the present case, seeking a stay on the launch of the Hindi Bollywood Movie “Jersey” which is to be released not on 14th April, 2022, as stated in the Interim Application but on 22nd April, 2022 would be fatal in this case. I

³ Notice of Motion (L) No.764 of 2013 in Suit (L) No.280 of 2013.

have considered the facts which have been referred to by Dr. Saraf in the present case, including the fact that public notice had been issued of the intention of Defendant No.3 in acquiring remake rights in the Telugu film and invited objections from third parties, if there was any objection. Further the Telugu film Hindi dubbed was made available on www.youtube.com on 13th October, 2019 and has garnered approximately 10,25,59,841 views. The first public announcement of the Suit film was issued on 1st November, 2019 and published in Bombay Times. The release date of the film was declared as 28th August, 2019 but which got postponed because of Covid 19. Further the official cinematic trailer of the suit film was uploaded on www.youtube.com and the official trailer has garnered 6,53,30,502 views. All this cannot be unknown to the Plaintiff who in the Plaint has stated himself to be a renowned script writer and engaged in film and television industry in various capacities for more than two decades.

15. It is further necessary to note that prior to the remake of the Hindi version of the Telugu film “Jersey”, the Telugu film already had theatrical release in India and overseas on 19th April, 2022 and had been exploited on various satellite channels and

OTT. Further, the Plaintiff by way of final prayer has only sought permanent injunction on release of the Hindi Motion picture “Jersey” but has not sought restrain on the Telugu film “Jersey”, considering that the film being one and the same, there being only a remake of the film in the Hindi language.

16. Considering that there has been gross delay and laches in taking out ad-interim relief, I am not going into the comparison of the Plaintiff’s script with the scene in the Suit film “Jersey” being released by Defendant No.4. It is very clear from the settled law laid down by this Court as well as Supreme Court that in the event prejudice is caused to the Defendant by delay of the Plaintiff in seeking ad-interim relief, Courts will not entertain such application and / or grant ad-interim relief. The decision relied upon by Mr. Kanade namely in *Kapil Chopra (Supra)* will not in any way assist the Plaintiff, particularly considering that in that case, the Defendant No.1 had created an atmosphere of friendliness which persuaded the Plaintiff in handing over his script to Defendant No.1 which was used it in complete breach of confidence reposed in him by the Plaintiff. It was in the light of these facts that this Court had come to the finding that ad-interim relief is required to be granted to

the Plaintiff in order to protect, the Plaintiff's script.

17. In view of the above finding on delay and laches, ad-interim relief sought for which is for stay on the launch of the Hindu dubbed "Jersey" which is to be released on 22nd April, 2022 in theaters and / or any other platform / electronic media cannot be granted. The ad-interim relief is accordingly, rejected.

18. The Interim Application shall be placed on 7th June, 2022. The pleadings shall be completed by the Defendants filing their Affidavit in Reply to the Interim Application within a period of three weeks from today.

19. The Applicant / Plaintiff shall file their Affidavit in Rejoinder thereto within a period of two weeks thereafter.

20. Place the Interim Application on 7th June, 2022 after ad-interim matters.

[R.I. CHAGLA J.]