


MHAH050010052022 	R.C.S. No. 338/2022 Suresh Patil Vs. Yashraj Films Lmt.
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**ORDER BELOW EXH.5**

1. Plaintiff filed present suit for perpetual injunction. The present application filed by plaintiff under order 39 Rule 1 and 2 for grant of temporary injunction to restrained the defendants from publishing, teaser, trailer, song, seen and advertisement, holding, posters over the You Tube without U.A. certificate.
2. Defendants appeared and filed reply at Exh.21 and denied the material contentions raised by the plaintiff. Heard Ld. advocate for the plaintiff and defendants. Perused the documents and case paper.
3. Following points emerged for my consideration for which I have given answer with reasons are as follows:-

<b><u>Points</u></b>	<b><u>Findings</u></b>
1) Whether the plaintiffs have prima facie case?	No.
2) Whether the balance of convenience lies in favour of plaintiff?	No.
3) Whether the plaintiffs will suffer irreparable loss if injunction is refused?	No.
4) What order?	Application is rejected.

**REASONS**

**As to point nos.1 to 3 :-**

4. As per the plaintiff he is social worker. He is having Read Me-9 Android Phone in which he subscribed You Tube and Google app. Plaintiff

has seen teaser and Besharm Rung song of Pathan Movie over the You Tube but U.A. certificate of Sensor Board is not shown before publishing the teaser and song. Therefore, plaintiff get confused. Therefore, he filed present application to restrained the defendants.

5. Ld. advocate for the plaintiff argued that as per the rule of Sensor Board before publishing advertisement in newspaper, holding, poster, trailer and teaser it is necessary to show U/A Certificate. But before publishing teaser and Beshram Rang song of Pathan movie on You Tube said certificate is not shown. Therefore, loss is caused to the plaintiff and society at large. To support his contentions Ld. advocate for the plaintiff filed Aadhar Card of plaintiff, copy of advertisement shows in Google, copy of W.P., Wikipedia Pathan film xerox copy, press release informant of C.B.F.C., letter issued by Ministry of information and broad casting dated 18/08/2021, OTT plat form list dated 18/08/2021, certificate issued by C.B.F.C. and Mobile of plaintiff etc. He argued as per rule 38 of the Cinematography Act there is mandate to show certificate. He further argued that plaintiff is having prima facie case in his favour. If defendants are not restrained plaintiff will suffer irreparable loss. He lastly requested to allow the application.

6. Defendant raised preliminary objection with respect to maintainability of the present suit and application also. He submitted with the suit an application is based on misleading facts. No cause of action is mentioned to file present suit and application. Hence in absence of cause of action he prayed to reject the plaint. Plaintiff is social worker therefore, he has no locus-standy to institute the present suit with the present application. There is no need to show the certificate while publishing the advertisement on any OTT plat form. The requirement of certification in accordance with Cinematography Act 1953 is limited to theatrical description of film and the video description via DVDS. There is no requirement of certification to display the advertisement over Internet

platforms such as You Tube. It is regulated by Information Technology Rules 2021. Ld. advocate for the defendants further argued that defendants are the creator. They are not publishers, You tube is publisher.

*I. Ld. advocate for plaintiff relied on the judgment Hon'ble Aandra Pradesh High Court in Dr. Chegadi Ashokbabu Alis Vs. Karunakal Suguna (Writ Petition (PIL)) No.80 Of 2019).*

*II. He relied on the judgment Hon'ble Delhi High Court in Dr. Mr. Abhinav Gupta Vs. JCB India Lmt. and others (FAO(OS) Nos. 488/2008 & 489/2008)*

*III. He relied on the judgment Hon'ble Kerala High Court in Dr. Jose Vs. Union Of India (Writ Petition (c)24067/2022).*

08. The facts of the above mentioned case laws and case in hands are totally different hence the present judgment is not applicable in case in hands.

09. Ld. advocate for the defendant further argued that relief claim by the plaintiff is of such a type that if relief is granted then without evidence entire suit will decreed i.e. temporary relief is as good as final relief. such relief cannot be granted. Ld. advocate for the the defendant lastly, argued that no prima-facie case is made out by plaintiff. No irreparable loss will cause to plaintiff and balance of convenience is loss not lies in the favour of the plaintiff. Hence, he prayed to reject the application.

10. The issue of an interim injunction is a discretionary remedy. While granting temporary injunction it is necessary to consider that firstly, whether the person seeking temporary injunction has made out a prima facie case. The second consideration is whether the balance of convenience is in his favour i.e., whether it would cause greater inconvenience to him if the injunction would not be granted that the inconvenience which the other side is put to in case the injunction is

granted. And the third consideration is whether the person seeking temporary injunction would suffer irreparable injury. A mere proof of one of the three conditions does not entitle a person to obtain a temporary injunction.

11. Here the burden of proof lies on the plaintiff to prove the prima facie case. On perusal of plaint and documents filed on record it shows that plaintiff claiming temporary injunction to restrain the defendants from showing teaser and Bheshram Rang Song of Pathan Movie without showing U/A certificate. From the contentions of the plaintiff it appears that he has seen the Bheshram Rang Song and teaser of Pathan Movie on the You Tube he also noticed that U/A certificate is not shown driving the advertisement. Therefore he get confused. Plaintiff himself stated the meaning of U/A certificate i.e. (un- restricted public exhibition subject to parental guidance for children below the age of twelve). No injury is caused to the plaintiff. On perusal of record it shows that the main relief claim by the plaintiff in present suit is same as the relief claim for Exh.5. If the said relief is granted it is as good as the final relief. Hence, the said relief can not be granted. Moreover from the contentions of plaintiff no prima facie case is made out. Plaintiff must come of with something to show foundation for his claim. Hence, plaintiff failed to prove prima facie case. No. loss will cause to the plaintiff if application is rejected. Plaintiff is having another remedy. Balance of convenience is also not lies in favour of plaintiff. Hence, I pass following order.

### **ORDER**

1. Application below Ex. 5 is rejected.
2. Cost be in main cause.

Date :-08.02.2023

( P.A. Patel)  
4<sup>th</sup> Jt. Civil Judge, J.D.,  
Shrirampur.