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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT (L) NO. 3510 OF 2021
WITH
INTERIM APPLICATION (L) NO. 3514 OF 2021**

Sakshi Malik ...Plaintiff
Versus
Venkateshwara Creations Pvt Ltd & Ors ...Defendants

Mr Alankar Kirpekar, *with Saveena Tejpal Bedi, & Shekhar Bhagat, i/b Saveena Tejpal Bedi, for the Plaintiff.*
Mr Akash Menon, *for Defendants Nos. 1 and 2.*
Mr Thomas George, *with Nikhil Sonker, i/b Saikrishna & Associates, for Defendant No. 3.*

CORAM: G.S. PATEL, J
DATED: 4th March 2021

PC:-

1. The matter is called at 2.30 pm. Ms Saveena Tejpal Bedi who has filed vakalatnama for the Plaintiff, Ms Sakshi Malik, has joined the hearing online on the video-conferencing link. Ms Malik herself is also online on the same link. At her request, I have allowed Ms Malik to address the Court directly. I will return to that a little later in this order.

2. The 1st and 2nd Defendants have, after my order of 2nd March 2021, deleted the offending portion of their film “V”, viz., the portion that illicitly featured a privately commissioned photograph of Ms Malik. Mr Kirpekar, Ms Bedi and Ms Malik have all confirmed that the deletion is satisfactory.

3. The prohibition on release of the film can thus now be lifted. Amazon Prime is permitted to re-release the film, but only in the version after my order of 2nd March 2021, that is to say with the offending portion removed or deleted.

4. I also accept the further undertaking offered by Defendants Nos. 1 and 2 that they will not in any further edit of this film (whether for airlines, hotel or other cuts) or in any other production of their own, use any material pertaining to Ms Malik without her express written and signed consent.

5. Ms Bedi has sought leave to allow Ms Malik to address the Court. This is an unusual request since Ms Malik is represented. I have nonetheless granted it. I have allowed Ms Malik to express herself, though briefly. I imagine she has rather a lot more she feels the need to say. However, I believe it would be inappropriate to record today at this very early ad-interim stage the very many things that she has recounted to me about the difficulties, trauma, trials and tribulations that she has suffered since September 2020 on account of the 1st and 2nd Defendants’ illicit use of her image in this defamatory and demeaning manner. I have also personally explained to Ms Malik — again briefly — what inevitably lies ahead

in regard to the final hearing and further progress in the suit, that is to say, the pre-trial work, the trial itself, cross-examination and then, inevitably, a statutorily permissible first appeal by either side. All this is unavoidable, and follows the trajectory dictated by our Rules of procedure. At best, I may be able to expedite somewhat the trial of the suit itself. The rest must follow the usual course in such matters. Ms Malik has agreed to consult with her lawyers and reflect on what she proposes to do.

6. Mr Kirpekar's only request on her behalf is that the suit itself be placed for directions after a few weeks so that the parties can use the intervening time to perhaps negotiate a mutually acceptable solution. That is a reasonable suggestion and I will list the Suit itself for this purpose on 19th April 2021.

7. But Mr Kirpekar has another submission to make. He puts it like this. Ms Malik is, he says, perhaps only the latest, and sadly and almost certainly not the last, of a long list of women who have constantly been objectified. They have been taken for granted. Their whose reputation, standing, personal dignity and privacy have all been considered in the most misogynistic and patriarchal manner as counting for precisely nothing. This, he submits, has to stop some day, and there is no way to do this but to send a signal to the wrongdoers that they cannot escape the consequences of so egregious an action with a mere slap on the wrist, or the deletion of this or that offending portion. The present action is framed as an intellectual property suit, an action in copyright; but that is not all it is. There are wider issues raised, and this must necessarily be considered even at the interim stage.

8. His submission is that the Interim Application itself, even if it is being worked out on the basis that the deletion is sufficient, must be disposed only with an accompanying order of costs; and the costs must be commensurate having regard to the facts of the case and the fact that this is a commercial IP Suit in the Commercial Division and, therefore, governed by the Commercial Courts Act. Whether those costs are directed to be deposited in Court, paid to some charity, or paid to the Plaintiff are matters of detail that may be addressed on the next date. He readily accepts that on the matter of costs, the Defendants must be entitled to put in a Reply and be heard and put forward whatever explanation they may have as to how this state of affairs came to pass.

9. Mr Kirpekar does point out that coming to Court was very much Ms Malik's last resort. She never wanted to. She was driven to it. She has a sizable fan following on social media. The moment her attention was drawn by her fans to the use of her image in the 1st and 2nd Defendants' movie, she approached these Defendants for a correction and ameliorative steps. There is some correspondence in the form of WhatsApp messages with the production manager of 1st and 2nd Defendants. All that this indicates was that the 1st and 2nd Defendants contracted with one Syed Mohiuddin Mufeed of an enterprise called Capricorn Event Management in Hyderabad and he gave the 1st and 2nd Defendants this image of Ms Malik.

10. Frankly, that makes matters only worse. If this is true, then Mr Mohiuddin and Capricorn Event Management Co have a corresponding liability and Mr Kirpekar reserves his rights to take appropriate proceedings. He may do so. But this at least prima facie

furnishes very little by way of explanation, let alone expiation, to the 1st and 2nd Defendants.

11. Indeed, it seems to me to underscore precisely Mr Kirpekar's opening submission, that the entire approach is casual and cavalier in the extreme with no thought spared to the very real consequences, fall out or adverse outcome on the person whose image is used in this manner. There is the matter of copyright violation and infringement, itself sufficient foundation for a claim in damages. There is the question of defamation. There is also a possible tortious cause of action in negligence for there is surely a duty of care owed to those whose images or property are to be used for commercial gain.

12. But it is not only the use of the image. As paragraph 17 at page 12 of the plaint points out, that image is only one integer or element in the work. There is an accompanying conversation between two actors that makes it plain that the intention was to denigrate the person whose image was shown.

13. None should be misunderstood in this, including Ms Malik herself. Her plaint and Mr Kirpekar's submissions cast no aspersions on the personal integrity or dignity of commercial sex workers as a class. Quite the reverse. The allegation made is about the *1st and 2nd Defendants'* portrayal and perception of commercial sex workers and how demeaning and degrading that perception is. It is the portrayal on screen of this perception that gives rise to the other cause of action in defamation.

14. I have noted this at some length only because I do not want the slightest misunderstanding on the part of the 1st and 2nd Defendants as to what it is to which they must address themselves in their Affidavit in Reply to this Interim Application.

15. I have no interest whatsoever in knowing about the greatness or otherwise of their film. I do not intend to embark on a needlessly prolonged hearing about the outer limits of the freedom of artistic expression, a freedom that everybody readily accepts. But whatever be the other Constitutional limitations, it has been settled for centuries that any artistic expression is always subject to the rights of the individual, including the right to dignity, the right to privacy and the right not to be defamed. There is no fixed formula to assess this, and every case must be adjudged on its own merits. Just because we are dealing with digital media does not mean that the ordinary laws cease to apply. They apply with their full weight and authority, and they will be implemented in the same fashion.

16. The Affidavit in Reply on behalf of Defendants Nos. 1 and 2 is to be filed and served on or before 22nd March 2021.

17. I am not proposing to hold the 3rd Defendant, Amazon Prime, responsible for the payment of any costs. It need not file an Affidavit in Reply at this stage and I do not propose to make any further order against Defendant No. 3.

18. List the Interim Application itself specifically for a decision on the question of costs on 25th March 2021 at 2.30 pm.

19. I would request Ms Bedi to be in Mumbai and in Court on that day in case instructions are needed and if possible and her health permits Ms Malik also to be in Court.

20. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)