



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO.25638 OF 2023
IN
COMMERCIAL IP SUIT (L) NO.25635 OF 2023

Navigns Studios Pvt. Ltd. ... Applicant
Vs.
Sameer Pandharinath Khandekar and others ... Respondents

Mr. Ashish Kamat, Senior Advocate a/w. Ms. Megha Chandra, Ms. Mahalakshmi G., Mr. Tanmay Bhawe and Ms. Ayushi Soni for Applicant / Plaintiff.

Mr. Nirman Sharma, Mr. Ansh Karnawat, Mr. Rohan Munj and Mr. Jayesh Mestry for Defendant Nos.1 and 2.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 15, 2023

P.C. :

1. By this application, the applicant / plaintiff is seeking urgent ad-interim relief in the context of a web-series named 'Devak Kalji', scheduled to be released today at 7:00 p.m. on the YouTube channel of defendant Nos.1 and 2. The present suit and the application for interim reliefs have been filed on the strength of a copyright that the plaintiff claims in respect of a work titled 'Gharat Ganpati' and also specifically in the light of an artist agreement executed between the plaintiff and defendant No.1. It is claimed that by producing and releasing the impugned web-series, defendant Nos.1 and 2 have not only violated the copyright which the plaintiff claims in its creative work but also blatantly violated specific covenants contained in the aforesaid artist agreement dated 22.10.2022. Hence, there is an allegation of violation of copyright coupled with allegation of breach of confidence and the negative covenants contained in the said artist agreement.

2. The hearing on this application was commenced yesterday and

had continued for about one and half hours, well beyond court hours, at which time, this Court thought it appropriate to see the four episodes of impugned web-series of the defendants, so as to test the contention raised on behalf of the plaintiff that it was similar to the film of the plaintiff under production on the basis of the aforesaid work 'Gharat Ganpati', in which the plaintiff claims to hold copyright. The four-episode impugned web-series was made available to this Court in a pen-drive and a copy of the same was also made available to the plaintiff.

3. Today, the hearing was resumed and Mr. Ashish Kamat, learned senior counsel appearing for the plaintiff reiterated the contentions raised on behalf of the plaintiff. He specifically relied upon the script and story of the plaintiff's film, which is under production and compared the same with the impugned web-series and in that process, highlighted the expressions / scenes that could be said to have been bodily lifted by the defendants. The emphasis was on breach of confidence and breach of covenants of the aforesaid artist agreement.

4. In that process, the learned senior counsel appearing for the plaintiff invited attention of this Court to the story synopsis, character briefs and details placed on record by defendant No.1 pertaining to the impugned web-series, claiming that such material came into existence in July, 2022 itself. It was submitted that even if the aforesaid claim of defendant No.1 was to be accepted, a perusal of the character brief would show that the character of a Gujarati girl, specifically stated in the story, said to have been conceived in July 2022, inexplicably changed into a girl of North East India in the impugned web-series. It was emphasized that this character of the north-eastern girl in the impugned web-series is depicted in a scene where she refers to *prasad* of Modak in the context of Ganpati Pooja as *Momo* and this is an absolute copy and lifted from the story / work in which the plaintiff claims copyright and

which is the film under production. According to the learned senior counsel appearing for the plaintiff, there is no explanation as to how this scene suddenly appears in the impugned web-series.

5. Similarly, reference was made to a scene in the impugned web-series where the characters in the said web-series, during *pooja* of Ganpati Bappa are shown as singing *Garahana*. It was emphasized that this is conspicuously absent in the purported story that was conceived in July 2022 and it is also lifted from the story / work in which the plaintiff claims copyright and which is a film under production. It is also claimed that the monologue towards the end of the impugned web-series in which the caretaker of the house in the Konkan village talks to the two main characters i.e. brothers in the said web-series about the importance of Ganpati festival and also refers to the duration of the Ganpati Pooja being, one and half days and / or eleven days, is also nothing but a copy of such a feature, found in the creative work in which the plaintiff holds copyright. Couple of other instances are also highlighted and on this basis, it is submitted that these instances, which suddenly find presence in the impugned web-series are in complete breach of confidence and relevant clauses of the artist agreement dated 22.10.2022. The learned senior counsel for the plaintiffs specifically relied upon clauses 8.2.1, 8.2.3, 8.2.4 and 8.2.14 read with the definitions of the expressions 'role', 'script' and 'works' found in the said agreement. It was submitted that the negative covenants contained in the said clauses sufficiently demonstrate the blatant breach of confidence on the part of the defendants, because they misused the knowledge gained after entering into the said artist agreement and bodily lifted scenes and expressions from the work in which the plaintiff claims copyright to be used in the impugned web-series.

6. Apart from this, it was submitted that the central theme of the

story or the creative work of the plaintiff, barring a few details, has also been copied by the defendants and this is evident from the fact that a family suffering from discord and dissension, with its main characters reaching the village in Konkan, reconcile in the backdrop of Ganpati festival. It was submitted that, therefore, not only have the defendants infringed the copyright but also violated and committed breach of the aforesaid artist agreement, necessitating stay of release of the impugned web-series. It was emphasized that defendant No.3 has played a character in the story / creative work of the plaintiff and she has acted in the impugned web-series, playing a similar character, thereby further highlighting the manner in which the copyright has been infringed and defendant No.1 has breached the confidence reposed by the plaintiff and manifested in the artist agreement.

7. The learned senior counsel for the plaintiff placed reliance on judgement of the Division Bench of this Court in the case of *Zee Telefilms Limited Vs. Sundial Communications Pvt. Ltd.*, **2003 (3) Mh.L.J. 695**, particularly paragraphs 18 and 25 thereof. Reliance was also placed on judgement of learned Single Judge of this Court in the case of *XYZ Films LLC Vs. UTV Motion Pictures*, **2016 SCC OnLine Bom 3970**, particularly paragraphs 32 to 36 thereof. It is submitted that if the impugned web-series is released, the plaintiff will suffer grave and irreparable loss, for the reason that the film of the plaintiff based on its own creative work, is in post production stage and it is likely to be released in December, 2023 and it is submitted that, therefore, the balance of convenience is in favour of the plaintiff.

8. On the other hand, Mr. Nirman Sharma, learned counsel appearing for the defendants submitted that a perusal of the e-mail dated 21.07.2022 placed on record at exhibit F with the affidavit in reply and the documents attached therewith would show that, the story on the basis

of which the impugned web-series has been produced and created was conceived in July, 2022 itself. This was much prior to the artist agreement. It was vehemently submitted that the central theme of family members going back to their village homes during Ganpati festival cannot be the proprietary right of any person, much less the plaintiff. It was submitted that defendant No.1 had released, in public domain on his YouTube channel, documentaries since the year 2001, about the manner in which family members gather in their village homes in Konkan region and the rituals and practices that they follow at such annual gatherings. On this basis, it was submitted that there is no question of infringement of any copyright, quite apart from the fact that the story of the defendants was itself conceived in July, 2022.

9. It is further submitted that the clauses of the artist agreement need to be interpreted properly and if the material on record is appreciated in the correct perspective, it cannot be said that defendant No.1 has, in any manner, committed breach of confidence reposed by the plaintiff in defendant No.1.

10. The learned counsel appearing for the defendants further referred to each of the instances of alleged copying or lifting of scenes and expressions by the defendants in the impugned web-series, as compared to the script of the work in which the plaintiff claims copyright. It is submitted that the treatment of the characters is completely different and that the plaintiff cannot claim monopoly on the concept of family members reaching their village homes during the Ganpati festival and performing *pooja* and *aarti* and singing *Garahanas*. It was submitted that the story of the impugned web-series concerns only two brothers, their estranged relationship, the depiction of their coincidentally reaching the village home in Konkan during Ganpati festival as being completely different from the three siblings in the story / script of the

plaintiff, three generations being depicted therein and the manner in which the characters in the story interact. It was submitted that merely because there is a scene involving defendant No.3, who is a person from North East of India and the use of the word *momo* in the context of *modak*, cannot lead to issuance of ad-interim stay of the release of the impugned web-series.

11. The learned counsel appearing for the defendants relied upon the judgement in the case of **Zee Telefilms Limited Vs. Sundial Communications Pvt. Ltd.** (*supra*) and **XYZ Films LLC Vs. UTV Motion Pictures** (*supra*), particularly paragraphs 34 and 35 thereof. It was submitted that in the said case when the last 20 minutes of the impugned movie were said to be a copy of the earlier movie, this Court proceeded to examine the same and reached a conclusion that no case was made out for grant of interim injunctions. Reliance was also placed on order dated **22.11.2019** passed by the learned Single Judge of this Court in the case of *Vasant Kallola Vs. Fox Star Studios India Pvt. Ltd.* [**Interim Application No.1 of 2019 in Commercial IP Suit (L) No.1206 of 2019**]. It was further submitted that the balance of convenience is clearly in favour of the defendants, for the reason that they have invested considerable amounts and that the impugned web-series is on the verge of being released at 7:00 p.m. today in the evening. Nonetheless, it was fairly stated on behalf of the defendants that in the facts and circumstances of the present case, it cannot be said that the plaintiff has approached this Court belatedly.

12. Heard learned counsel for the parties and perused the material on record. Before considering rival submissions and analyzing the material on record to examine as to whether a case for grant of ad-interim reliefs is made out, it would be appropriate to consider the position of law brought to the notice of this Court. In the case of *R. G. Anand Vs. M/s.*

Delux Films and others, AIR 1978 SC 1613, the Supreme Court recognized the following propositions:-

“1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case, the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly identical no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

7. Where, however, the question is of the violation of the copyright of stage play by a film producer or a Director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage plays film has a much broader perspective, wider field and a bigger background where the defendants can be introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that

the film is by and large a copy of the original play, violation of the copyright may be said to be proved.”

13. It is significant that proposition Nos.4 and 5 indicate that where a theme is same but is presented and treated differently so that the subsequent work appears to be a new work, there cannot be any question of violation of copyright.

14. In the case of **XYZ Films LLC Vs. UTV Motion Pictures (supra)**, while examining copyright infringement, this Court held that in general, there is no copyright in the central idea or theme of the story, but copyright subsists in combination of situations, events and scenes, which constitute the particular expression of the idea or theme. In paragraph 32 of the said judgement, this Court has held as follows:-

“32. In my view, these quoted portions do not actually assist Dr. Saraf at all. To the contrary, they seem to be against him. The Plaintiffs' copyright does not subsist in any so-called 'central' theme or concept. It subsists only in a particular realization of it; and if that is not copied, and the rival work is wholly different, there is no infringement. I must agree with this view that there is, generally speaking, no copyright in the central idea or theme of a story or a play. It subsists in a combination of situations, events and scenes which, working together, form the realization or expression of that idea or theme. If this combination is totally different and yields a completely different result, the taking of the idea or the theme is not copyright infringement. To my mind this would seem to apply almost exactly to the case at hand. As the Australian Court said another author who materially varies the incidents and character and materially changes the story is not an infringer of copyright.”

15. In the said case, this Court saw both the scripts and also the films and after applying the aforementioned tests, came to a conclusion in the facts of that case that no case was made out for grant of injuncton.

16. In the case of **Vasant Kallola Vs. Fox Star Studios India Pvt. Ltd. (supra)**, while examining the allegation that a particular film was based on a book of the plaintiff author, this Court held as follows:-

“4. Though there are some elements, which are to be found

in common in the Plaintiff's book and the Defendants' film, as indicated by learned Counsel for Defendant No.1, the expression in the film, particularly the unfolding of scenes as well as the focal point of the storyline and its denouement, indicate distinctive dissimilarities and the one may not be seen as a copy of the other in any significant way or, for that matter, even vis-a-vis the so-called distinctive elements of the work. Besides, the material produced before the Court does prima facie indicate that the work of art contained in the Defendants' film has been independently conceived and developed and made into a movie in its current form, though it must be noted that all this material was not made available to the Plaintiff so far and though the material was referred to in the Defendants' pleadings, it was produced before the Court and disclosed for the first time to the Plaintiff. Anyway, since we are at an ad-interim stage, even before one assesses the material and forms a prima facie opinion, one has to take a tentative view and form a first-blush opinion after comparing the material produced by the parties, and see if there is any case made out for emergent injunctive reliefs.”

17. In the backdrop of the above position of law and the approach adopted by this Court in such cases involving allegations of violation of copyright, the specific allegations made on behalf of the plaintiff need to be analyzed, at this stage for considering grant / refusal of ad-interim reliefs.

18. This Court finds that the work in which the plaintiff claims copyright and the impugned web-series, both, pertain to the movement of family members towards their ancestral village in Konkan during the Ganpati festival. There can be no copyright in such general theme or central idea, for the reason that in the State of Maharashtra, family members do visit their ancestral places during Ganpati festival. The plaintiff's claim that not just the idea but expressions have also been blatantly copied by the defendants, *prima facie*, cannot be said to be made out at this stage. There is some substance in the contention raised on behalf of the defendants that while the impugned web-series depicting the story of two brothers and their wives reaching the ancestral

village where a caretaker resides in the ancestral house and that they reach the village home coincidentally on the same day, is different from the three branches and three generations of one family reaching the village home in the story / creative work in which the plaintiff claims copyright. The detailing of the characters, their *inter se* dynamics *prima facie* appear to be different and it cannot be said at this stage that the defendants in the impugned web-series have copied the basic idea and the detailing of the story / creative work of the plaintiff.

19. This Court cannot be ignore the fact that the defendants have placed on record with their reply affidavit, copy of e-mail dated 21.07.2022 whereby YouTube channel of defendant Nos.1 and 2 has forwarded to certain entities a document containing the story synopsis, character briefs and detailing of episodes, in order to explore the possibility of production of such a web-series. There is *prima facie* material to indicate that the story of the impugned web-series was conceived in July, 2022 or prior thereto. A perusal of the aforesaid document annexed to the e-mail shows the episode-wise story line of the proposed web-series of the defendants. The impugned web-series finally produced by the defendants does have changes in its detailing, but the story appears to be loyal to the document annexed to the aforesaid material.

20. This Court perused the four-episode web-series, of which perhaps the fourth episode was still to be finalized, but having seen the impugned web-series, this Court could appreciate the story, the characterization, scenes and expressions and the entire drift of the web-series. Since the script of the work in which the plaintiff claims copyright has been annexed to the plaint, this Court perused the relevant portions with the assistance of the learned senior counsel appearing for the plaintiff to examine the specific allegations made against the defendants that they

have lifted or copied at least six scenes or expressions that indicate not only infringement of copyright, but also violation of artist agreement and breach of confidence.

21. On testing the said contention raised on behalf of the plaintiff, this Court finds that the scene pertaining to *Garahana* being performed in the impugned web-series, at this stage, *prima facie* cannot be said to be a case of bodily lifting or copying of expressions from the script of the plaintiff, for the reason that the document pertaining to July 2022 of the defendants gives the episode-wise progression of the story of the web-series showing that all family members come together in the village house and perform *pooja* and *arti* of Ganpati during the festival. The other instances *prima facie* also do not appear to be a case of blatant copying of scenes or expressions. It was argued with some measure of vehemence on behalf of the plaintiff that a scene or expression involving *prasad* of *modak*, being described as *momo* was a complete copy of the script of the plaintiff and that it was conspicuous by its absence in the story of the web-series of July, 2022, as placed on record on behalf of the defendants. This Court finds that the aforesaid scene or expression, on a *prima facie* appreciation, in the impugned web-series is relatable to the character of a girl, who is shown to be the wife of one of the brothers, as belonging to the north east i.e. State of Manipur, having been brought up in Mumbai. Use of the expression *momo* for *modak* has a context and if it is compared with the use of that expression in the script of the plaintiff, it is attributable to a character, who is from North India. Defendant No.3 has a very small role in the story / work of the plaintiff. Even if there are some scenes that may appear to be the similar, this Court finds that the manner in which the characters are treated and the story is developed in the impugned web-series, it can be *prima facie* said that even if the central theme can be said to be comparable, the treatment is different and hence, the plaintiff has not been able to make

out a strong *prima facie* case of infringement of copyright.

22. Insofar as the clauses of artist agreement are concerned, this Court finds that the specific instances highlighted on behalf of the plaintiff cannot be said to be proof of a *prima facie* case of breach of confidence. This Court is unable to reach to a conclusion that the defendants, particularly defendant No.1 misused the knowledge about the script of the plaintiff for its proposed film to utilize instances or scenes or expressions, in a dishonest manner, indicating violation or breach of covenants of the artist agreement.

23. In this situation, it cannot be said that the plaintiff has made out a strong *prima facie* case for stay of release of the impugned web-series. Since this Court has returned *prima facie* findings as regards the difference in treatment of characters and story line in the impugned web-series, it cannot be said that the release of the impugned web-series would be to the detriment of the film of the plaintiff, which is in post-production stage. On the other hand, the defendants having invested in their project and the impugned web-series being on the verge of release when the Ganpati festival is around the corner, the scales of balance of convenience do tilt against the plaintiff and in favour of the defendants.

24. In view of the above, this Court is of the opinion that no case is made out for grant of ad-interim reliefs.

25. Considering the urgency of the matter, this Court has perused the affidavit of defendant No.1 along with the documents tendered in Court. The same is returned to the defendants for being e-filed within two weeks from today.

26. Further affidavit, if any, be filed within three weeks from today.

27. Rejoinder affidavit, if any, be filed within two weeks thereafter.

28. List the application for further consideration on 25.10.2023.

(MANISH PITALE, J.)

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