

IN THE SUPREME COURT OF INDIA
UNDER ORDER XXI, RULE 3 (1)(a)

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION

Under Article 136 of the Constitution of India

SPECIAL LEAVE PETITION (C) NO. _____ OF 2020

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:-

POSITION OF PARTIES

M/s. SUPER CASSETTES
INDUSTRIES PRIVATE LIMITED
(T-SERIES)

An Indian company having its
Registered Office at Golden
Chariot Studio, Plot No. B-32, T-
Series Business Park, New Link
Road, Andheri (West), Mumbai –
400 058

Through the authorised signatory
Mr. Vipin Vij

High Court

**In this
Court**

Appellant
No. 1

Petitioner

VERSUS

1. NANDI CHINNI KUMAR

Respondent
No. 1

Contesting
Respondent
No.1

TO,
THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND THE HON'BLE ASSOCIATE JUSTICES OF
THE SUPREME COURT OF INDIA,

THIS HUMBLE PETITION OF THE
PETITIONER ABOVENAMED,

MOST RESPECTFULLY SHEWETH;

1. This Petition for Special Leave to appeal ("**SLP**") arises from a common final Judgment dated 19 October 2020 ("**Impugned Order**") passed by a Division Bench of the Hon'ble High Court for the State of Telangana at Hyderabad ("**High Court**" / "**Court below**"), rejecting Civil Miscellaneous Appeals No. 356 and 355 of 2020 ("**Appeals**") filed by the Petitioner, both challenging an Order dated 17 September 2020 ("**Order in Original**") of the Learned XV Additional Judge, Rangareddy District, at Kukatpally ("**Trial Court**"), in two Interim Applications (Nos. 829 and 830 of 2020, respectively) taken out by Respondent No. 1 (Original Plaintiff) in Original Suit No. 62 of 2020 ("**Suit**") filed by him.

2. **QUESTIONS PRESENTED:**

The Petitioner submits that the following, substantial questions of law of general importance arise for consideration by this Hon'ble Court in the present Petition:

- (A) Are "*true life events*" of a real person (say, "**A**"), which are already in the public domain, 'property' which can be bought or sold?

- (B) If yes, is the right sold a 'personality right' and/or a 'privacy right' or does the right confer 'copyright protection' over a life story, meaning thereby does it confer 'copyright protection and exclusivity' against the world at large, debarring them from making a film depicting the said life story, in "any form or manner"?
- (C) Does the Copyright Act, 1957 ("**Act**") allow a third-party purchaser/assignee to claim a monopoly over real events that form a part of the lives of real persons, or over their recollections of their own, real lives?
- (D) If yes, does that monopoly extend to a case in which both, the lives and their recollection, are in the public domain?
- (E) Can this monopoly be stretched to restrain the narration of publicly known real events of a different real persons or recollections of *such different real* person(s) (say, "**B**"), merely because *A*'s and *B*'s lives intersected?
- (F) If yes, can the narrator (of *B*'s life), who, out of abundant caution, gives only a fictionalized account of *A*, still be liable on a copyright infringement claim, because, his fictionalization notwithstanding, the real/non-fictionalized lives of *A* and *B* were intertwined?

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- (G) What is the proper test to determine copyright infringement where, admittedly, the defendant had no access to the plaintiff's work?
- (H) In the case of works not "original" within the meaning of the Act, but composed of, or compiled or prepared from materials which are open to all, does the fact that one man may have produced such a work take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him?
- (I) Whether, in the case of works based on fact (i.e. events in the lives of real people), mere similarities in story, character or events in the story may be regarded as relevant to the question whether there is any infringement of the copyright of one by the other?
- (J) Whether there is no distinction between the material upon which one claiming copyright has worked, and the product of the application of his skill, judgment, labour or learning?
- (K) Whether, should the answer to Question (J) be in the affirmative, a copyright in the product extends to the material?
- (L) Whether a *prima facie* case of copyright infringement may be made out absent direct evidence that the defendant had an opportunity of seeing the plaintiff's work and of using it?

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- (M) Even if the answer to Question (L) is in the negative, can such a case be made out merely from intrinsic evidence, to be derived from a comparison of the two works, especially when, by their nature, the two must share common elements and/or when, their respective authors could only have recourse to common authorities or sources of information?
- (N) Where a literary work is intended to be read as a factual / historical event, and the defendant accepts it as fact and does no more than to repeat certain of those facts, may the plaintiff claim a monopoly in those factual / historical events?
- (O) Does the law of copyright preclude another author from writing or creating a work upon the same theme as a previous one?
- (P) What is the significance of "originality" in assessing a claim of copyright infringement, and how is it established?
- (Q) What is a workable and appropriate standard for the exercise of skill and judgment applicable to a case for copyright protection?
- (R) Whether satisfying such a standard does not require a plaintiff to establish that, what has been copied is a substantial part of his work, in a manner which exploits for the defendant's own benefit the plaintiff's skill, judgment and labour in producing it?

- (S) Whether, in deciding whether copying is substantial, there must not be an examination of;
- (i) The volume of the material taken (also bearing in mind that quality is more important than quantity);
 - (ii) How much of such material is the subject-matter of copyright and how much is not;
 - (iii) Whether there has been an *animus furandi* (i.e. a defendant's intention to take for the purpose of saving himself labour); and
 - (iv) The extent to which the plaintiff's and the defendant's works (here, respectively, a script from the point of view of Respondent No. 2, and a cinematograph film from the point of view of Respondent No. 3) "competing" works?
- (T) Whether the Act prevents the use of the information, thoughts or emotions expressed in a literary work, to produce a cinematograph film that is similar, but made by the film-maker's own, independent efforts?
- (U) Whether there can be an infringement of copyright in the absence of a direct or indirect causal link between the copyright work and the alleged copy?
- (V) Whether a *prima facie* case of infringement be made out merely because of a similarity of stock incidents, or of incidents which are to be found in historical, semi-historical, biographical or even fictional accounts of real people?
- (W) Whether the script of a cinematograph film, and the film itself, which are the main issues in a copyright

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infringement suit, the production whereof shall remove any and all clouds of doubt over the case, may not be produced after the hearing of an appeal but before the passing of the judgment?

- (X) Whether the High Court did not erroneously ignore material lacunae in the Order in Original, inasmuch as the Trial Court failed to recognize that Respondent No. 1 was only vested with privacy rights of Respondent No. 2 and the same did not constitute copyright under the Act?
- (Y) Whether the High Court did not err in failing to appreciate the settled law that privacy rights cannot be exercised against persons having Fundamental Rights as these cannot be bartered or assigned?
- (Z) Whether the High Court did not also err in failing to recognize that an assignment of life rights allegedly made in favour of Respondent No. 1 by Respondent No. 2 could not be specifically enforced, and Respondent No. 1 could at best have claimed damages as against Respondent No. 2, and not an injunction (for that would require a showing of "irreparable" injury)?
- (AA) Whether the Order in Original and the Impugned Order do not freeze the Petitioner's and Respondents No. 4 to 11, and Respondent No. 14's fundamental rights to equality; the freedom of speech and expression; and the right to personal liberty?

- (BB) Whether the High Court did not err in refusing to reverse the legally perverse finding of the Trial Court that, based on a mere teaser trailer of a cinematograph film, similarities in the plot of the film and the literary work of Respondent No. 1 were made out (and more particularly when Petitioner requested the Hon'ble High Court to view their film "JHUND")?
- (CC) Whether Respondent No. 1's claim to copyright in the character of Respondent No. 2 is not distinct and separate from a claim to copyright in his alleged "Screen Story"?
- (DD) Whether absent any showing of infringement of the said, alleged "Screen Story", Respondent No. 1 was entitled to interim reliefs as claimed (or as granted) merely on a claim to rights in "*the concept, thought, characterization/image/identity and expression...in respect of the true life story events*" of Respondent No.2?
- (EE) Whether the High Court did not err in failing to adequately consider the Memo dated 30 September 2020, filed by the Petitioner, for producing the script of the film JHUND and further to exhibit the said film to the Hon'ble High Court?
- (FF) Whether Respondent No. 1 even pleaded, let alone made out, a case of breach of confidentiality and/or infringement of copyright in his alleged "Screen Story"?

(GG) Whether the High Court did not err in affirming that there was suppression of material and relevant facts by the Petitioner, especially where, on the pleadings and affidavits filed in the Trial Court, not even the semblance of a *prima facie* case of infringement was made out by Respondent No. 1?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other petition seeking leave to appeal, has been filed by them against the common impugned final Judgment and Order dated 19.10.2020 passed by the High Court for the State of Telangana at Hyderabad in Civil Miscellaneous Appeal Nos. 355 of 2020 and 356 of 2020.

4. **DECLARATION IN TERMS OF RULE 5:**

The Annexures P-1 to P-28 produced along with the special leave petition are true copies of the pleadings and documents, which form part of the record of the case in the Court below, against whose order the leave to appeal is sought for in this Petition. Annexures P-29 to P-40 are additional document and did not form part of the record of the court below for which separate application for placing additional documents is being filed

5. **GROUND:**

Leave to Appeal to this Hon'ble Court is sought on the following Grounds, amongst others, each of which is taken in the alternative and/or without prejudice to any others.

- (A) For that, the High Court ought to have vacated and set aside the Order in Original. It did not, and therefore, it erred.
- (B) For that, further to such vacating, the High Court ought to have dismissed Respondent No. 1's Interim Applications (Nos. 829 and 830 of 2020, respectively) in Original Suit No. 62 of 2020 which is now pending in the Trial Court. It did not do so. Hence, it again erred.
- (C) For that, the High Court and the Trial Court failed to appreciate that, Respondent No. 1 claims to be "*copyright holder in the concept, thought, characterization/image/identity and expression...in respect of the true life story events*" of Respondent No. 2 (a soccer player hereinafter referred to as "the Pupil"); and that there can, in law, be no copyright in the life of a real person.
- (D) For that, the High Court and the Trial Court failed to appreciate that Respondent No. 1's only case is that the Petitioner and others have made a film (**JHUND**) "*based on the real life incidents of*" Respondent No. 3 (a soccer coach hereinafter referred to as "the Coach"), and which film "*shows/depicts his (the Coach's) real life pupils/students including (Respondent No. 2) as various characters in the film*". This cannot, in law, amount to the infringement of copyright.

- (E) For that, the High Court and the Trial Court failed to appreciate that, Respondent No. 1 claims to have filed the suit "*apprehending that in guise of making the film...the Defendant(s)...are infringing upon the Plaintiff's copyright over the real life incidents of the (Pupil) by making use of the name of the (Pupil), his image, likeness, life story and/or identity*". This, it is submitted, does not and cannot constitute a reason to grant an interlocutory injunction staying the release of a film.
- (F) For that, the High Court and the Trial Court failed to recognise the undisputed position that;
- (i) *JHUND* is based on the life of Respondent No. 3, who was in reality, Respondent No. 2's Coach;
 - (ii) The source of both the Petitioner's, and Respondent No. 1's, knowledge of the (real) lives of Respondents No. 3 (the Coach) and 2 (his Pupil) is common (in the words of the plaint, the same were "*aired on Satyameva Jayate, a very famous TV show...readily available in the internet / media vide URL link https://www.youtube.com/watch?v=8R3JVVIPPM_A*");
 - (iii) Every alleged "*similarity*" pointed out by Respondent No. 1 between his alleged work and the Petitioner's works is a matter of "fact" (i.e. real events) in the lives of real, living persons;

- (iv) The only "*original work*" within the meaning of Sections 13 and 14 of the Act, in respect of which Respondent No. 1 may claim infringement is an alleged "*Screen Story*", i.e. a literary work;
- (v) At no point either in his pleadings, or in any affidavit, has Respondent No. 1 claimed that the said, alleged "*Screen Story*" was either handed over to the Petitioner, or that they had access to the same at any time whilst making their own, cinematograph film, viz. *JHUND*;
- (vi) The only allegation of infringement in this case, in its entirety, is that; the "*overall display and the storyline*" of *JHUND*, "*as shown in*" an audio-visual "*teaser*" of the film, "*indicates that Defendant No. 3 to 12 have created characters and scenes/sequences, the key incidents, shades, values, actions, reactions, beliefs and choices clearly resemble with that of*" a real (i.e. non-fictional) person (Respondent No. 2); and that "*this alone shows the infringement of the Defendant no.3 to 12 over the rights of the Plaintiff over his screen story...which in turn is based on the true life story events of* (Respondent No. 2)"; and
- (vii) Neither Respondent No. 1, nor the Trial Court, nor even the Appellate Court, actually saw *JHUND*, or that film's screenplay / script [notwithstanding that a proffer to this effect was made, in keeping with

the provisions of Order XLI, Rule 27(1)(b) of the Code of Civil Procedure, 1908 ("CPC").

(G) In other words, both the High Court and the Trial Court failed to see that no cause of action for infringement of copyright (as understood by prior decisions of this Hon'ble Court) was disclosed.

(H) For that, the High Court and the Trial Court failed to appreciate that it was Respondent No. 1's own, pleaded case that;

- (i) His rights arose out of an agreement with Respondent No. 2, dated 19.11.2017;
- (ii) Respondent No. 2 had, allegedly, addressed a cease and desist notice to the makers of *JHUND* (including the Petitioner) on 22.11.2017;
- (iii) Respondent No. 1/Original Plaintiff first had knowledge of the making of *JHUND*, and of its subject matter, in April 2018;
- (iv) His own, alleged "*Screen Story*" was allegedly registered in July 2018;
- (v) He brought his alleged rights to the notice of *JHUND*'s makers between July 2018 and September 2019, with no satisfactory response from them;
- (vi) He issued legal notices and registered a FIR in October 2019; and
- (vii) He knew of the proposed release of *JHUND* on 20.01.2020.

Respondent No. 1 yet filed his suit only on 13 May 2020, i.e. after gross and unexplained delay.

- (I) For that, the High Court and the Trial Court failed to appreciate that Respondent No. 1, thus, did not make out any *prima facie* case. He was also guilty of gross delay, and/or of laches. Given that *JHUND* was ready for release; had been publicized widely and at immense cost; and with full notice to / knowledge of Respondent No. 1 at least since April 2018, the balance of convenience clearly favoured *not* granting an injunction. One was nevertheless granted. This was patently erroneous and, it is respectfully submitted, an abuse of discretion. The Hon'ble High Court ought to have vacated the same. It did not. This only perpetuated the working of manifest injustice upon the Petitioner and supporting Respondents. Both the Hon'ble Courts below, therefore, deserve to be reversed by this Hon'ble Court.

- (J) For that, both the Hon'ble Courts below failed to appreciate that "*true life events*" of a real person are incapable of being bought or sold by contract.

- (K) For that, both the Hon'ble Courts below failed to appreciate that even were such events so capable, even upon a sale, the person concerned did not lose the right to make use of those events inasmuch as they formed (and shall always form) parts of his innate personality, personhood or privacy.

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- (L) For that, both the Hon'ble Courts below failed to appreciate that, the Copyright Act, 1957 ("**Act**") does not allow a third party to claim a monopoly right over "*true life events*".
- (M) For that, both the Hon'ble Courts below failed to appreciate that no copyright subsists over real persons, or over their recollections of their own, real lives.
- (N) For that, even were such a monopoly / copyright possible, the same would not extend to a case in which both the events and their narration (or real lives and recollections) were in the public domain.
- (O) For that, such monopoly / right also would not extend to a narration of publicly known, true life events of a distinct and separate person (as, say, person *A* is to person *B*), merely because the two lives are intertwined.
- (P) For that, both the Hon'ble Courts below failed to appreciate that, should a narrator of *A*'s life, out of abundant caution, give only a fictionalized account of *B*, no copyright infringement claim may yet lie because, in reality, the lives of *A* and *B* intersected.
- (Q) For that, both the Hon'ble Courts below failed to appreciate that, in the case of works not "original"

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within the meaning of the Act, but composed of, or compiled or prepared from materials which are open to all, the fact that one man may have produced such a work does not take away from anyone else the right to produce another work of the same kind, and in doing so to use all the materials open to him.

- (R) For that both the Hon'ble Courts below failed to appreciate the distinction between the material upon which one claiming copyright has worked, and the product of the application of his skill, judgment, labour or learning; and that whilst copyright subsists in the latter, it does not extend to the former.
- (S) For that, both the Hon'ble Courts below failed to appreciate that, a *prima facie* case of copyright infringement cannot be made out absent direct evidence that the defendant had an opportunity of seeing the plaintiff's work and of using it.
- (T) For that, both the Hon'ble Courts below also failed to appreciate that such a case cannot be made out merely from intrinsic evidence, to be derived from a comparison of the two works, especially when, by their nature, the two must share common elements and/or when, their respective authors could only have recourse to common authorities or sources of information.

- (U) For that, both the Hon'ble Courts below failed to appreciate that, in the case of works based on fact (i.e. events in the lives of real people), mere similarities in story, character or events in the story may not be regarded as relevant to the question whether there is any infringement of the copyright of one by the other.
- (V) For that, both the Hon'ble Courts below failed to appreciate that, where a literary work is intended to be read as a factual / historical event, and the defendant accepts it as fact and does no more than to repeat certain of those facts, the plaintiff cannot claim a monopoly in those factual / historical events.
- (W) For that, both the Hon'ble Courts below failed to appreciate that, the law of copyright does not preclude another author from writing or creating a work upon the same theme as a previous one.
- (X) For that, both the Hon'ble Courts below failed to appreciate the significance of "originality" in assessing a claim of copyright infringement, and how the same is established.
- (Y) For that, both the Hon'ble Courts below failed to apply any workable or appropriate standard for the exercise of skill and judgment applicable to a case for copyright protection.

(Z) For that, both the Hon'ble Courts below failed to appreciate that, satisfying such a standard requires a plaintiff to establish that, what has been copied is a substantial part of his work, in a manner which exploits for the defendant's own benefit the plaintiff's skill, judgment and labour in producing it.

(AA) For that, in deciding whether copying is substantial, there must be an examination of;

- (i) The volume of the material taken (also bearing in mind that quality is more important than quantity);
- (ii) How much of such material is the subject-matter of copyright and how much is not;
- (iii) Whether there has been an *animus furnadi* (i.e. a defendant's intention to take for the purpose of saving himself labour); and
- (iv) The extent to which the plaintiff's and the defendant's works (here, respectively, a script from the point of view of Respondent No. 2, and a cinematograph film from the point of view of Respondent No. 3) "competing" works.

(BB) For that, both the Hon'ble Courts below failed to appreciate that, the Act does not prevent the use of the information, thoughts or emotions expressed in a literary work, to produce a cinematograph film that is similar, but made by the film-maker's own, independent efforts.

- (CC) For that, both the Hon'ble Courts below failed to appreciate that, there can be no infringement of copyright in the absence of a direct or indirect causal link between the copyright work and the alleged copy.
- (DD) For that, both the Hon'ble Courts below failed to appreciate that, a *prima facie* case of infringement cannot be made out merely because of a similarity of stock incidents, or of incidents which are to be found in historical, semi-historical, biographical or even fictional accounts of real people.
- (EE) For that, the script of a cinematograph film, and the film itself, which are the main issues in a copyright infringement suit, the production whereof shall remove any and all clouds of doubt over the case, ought to be permitted to be produced even after the hearing of an appeal, so long as it enables the Appellate Court to pass the correct judgment in the facts and circumstances of a case.
- (FF) For that, the High Court erred in law by dismissing the Civil Miscellaneous Appeals No. 355, 356, 357 and 358 of 2020, thereby refusing to vacate the Order in Original.
- (GG) For that, the High Court erroneously ignored material lacunae in the Order in Original, inasmuch as the Trial Court failed to recognize that Respondent No.

1 was only vested with privacy rights of Respondent No. 2 and the same did not constitute copyright under the Act.

(HH) For that, the High Court erred by failing to appreciate the settled law that privacy rights cannot be exercised against persons having Fundamental Rights, as these cannot be bartered or assigned.

(II) For that, the High Court erred in failing to recognize that an assignment of life rights allegedly made in favour of Respondent No. 1 by Respondent No. 2 could not be specifically enforced, and Respondent No. 1 could at best have claimed damages as against Respondent No. 2, and not an injunction (for that would require a showing of "irreparable" injury).

(JJ) For that, both the Order in Original and the Impugned Order freeze the Petitioner and Respondents No. 4 to 11 and Respondent No. 14's fundamental rights to equality; the freedom of speech and expression; and the right to personal liberty.

(KK) For that, the High Court erred in refusing to reverse the legally perverse finding of the Trial Court that, based on a mere teaser trailer of a cinematograph film, similarities in the plot of the film and the literary work of Respondent No. 1 were made out.

- (LL) For that, both the Hon'ble Courts below failed to recognize that Respondent No. 1's claim to copyright in the character of Respondent No. 2 was distinct and separate from a claim to copyright in his alleged "*Screen Story*"; and that, absent any showing of infringement of the said, alleged "*Screen Story*", Respondent No. 1 was not entitled to interim reliefs as claimed (or as granted) merely on a claim to rights in "*the concept, thought, characterization/image/identity and expression...in respect of the true life story events*" of Respondent No. 2.
- (MM) For that, the High Court erred in failing to adequately consider the Memo dated 30 September 2020, filed by the Petitioner, for producing the script of the film *JHUND* and further to exhibit the said film to the Hon'ble High Court.
- (NN) For that, the both the Hon'ble Courts below failed to appreciate that Respondent No. 1 had not even pleaded, let alone made out, a case of breach of confidentiality and/or infringement of copyright in his alleged "*Screen Story*".
- (OO) For that, the High Court erred in affirming that there was suppression of material and relevant facts by the Petitioner, especially when, on the pleadings and affidavits filed in the Trial Court, not even the semblance of a *prima facie* case of infringement was made out by Respondent No. 1.

(PP) For that, the High Court, it is most respectfully submitted, committed seven fundamental errors of law:

- (i) It held that Indian law permitted the sale / assignment "*exclusively for ever*" of motion picture rights to film an individual's "*true life story events*";
- (ii) It held that a purchaser / assignee of such rights was entitled to enforce the same against third parties;
- (iii) It held that when a person ("A") whose "*true life story*" admittedly is in the public domain, purports to "*sell*" the same to person "X", and then recounts such "*true life story*" to person "Y", there is a "*sharing in confidence*" (as long understood in the law of confidential information), or "*a probability of the ideas, expression, manner, arrangement, additions or embellishments made by* (person "X") *to the life story events of (A) coming to the knowledge of* (person "Y")" and that, "(t)hus (person "Y") *could violate* (person "X")'s *copyright*;
- (iv) It so held without there being any showing (or even an allegation) that such "*ideas, expression, manner, arrangement, additions or embellishments*" were known / made known to X (let alone to person "Y");
- (v) It then held that, merely because A was (allegedly) a "*celebrity sportsperson*", a person

making a movie not about A, but about his real-life teacher would incorporate in that movie the (true) life of A; that this would be in order to ride on the “marketability” of A; and that even were all of this to be done, there would be an infringement of copyright not of any original literary work of a person, but of his alleged “rights” in the “*true life story*” of A;

- (vi) It equated such “rights” in a “*true life story*” to a “*publicity right*”, citing decisions (in paragraphs 93 and 94 of the Impugned Order) in support which were demonstrably inapplicable to the case actually before it; and
- (vii) It conflated the sharing of a real person’s real life facts with “*his personality right of publicity*”, and held that a person using the former to make independent, original literary and cinematograph works was “*trading on*” the latter, or that he was exploiting such real person’s “*name or appearance*”.

Each of the High Court’s subsequently narrated errors flows directly from those listed above; and for all these reasons, the Impugned Order is, it is respectfully submitted, perverse and entirely contrary to settled law.

- (QQ) For that, the High Court erred in holding that the Petitioner’s case, that *JHUND* was based only on the

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life story of Respondent No. 2, was not supported by the pleadings, or by their affidavits.

(RR) For that, the High Court erred in holding that Respondent No. 14 "*by implication*" admitted that there was a character in *JHUND*, based on Respondent No. 2, or that Respondent No. 7 too had made such an admission.

(SS) For that, without prejudice to the above, and only for the sake of argument, if it were to be assumed that there was, in fact, a character in *JHUND* based on Respondent No. 2, that in no way amounted to an infringement of copyright, inasmuch as Respondent No. 2 is a real person; his life and events therein, are all matters of fact; and no copyright subsists in such facts.

(TT) For that, the High Court erred in holding that there were any evasive denials in Affidavits filed by or on behalf of the Petitioner / the Supporting Respondents, or that there was absence of specific denials about any alleged conversations between Respondent No. 1 and the Petitioner / Supporting Respondents.

(UU) For that, even assuming (strictly *arguendo*) that there were no specific denials of such conversations, the High Court clearly erred in holding the same to be "*an important circumstance against*" the Petitioner / Supporting Respondents. The alleged conversations

made not an iota of difference to the case, inasmuch as the same did not, even *prima facie*, show the infringement of copyright, or even of a likelihood thereof.

(VV) For that, the High Court erred in applying the provisions of Order VIII, Rule 3, of the CPC to affidavits in an application for interlocutory relief.

(WW) For that, in particular, the High Court erred in so applying those provisions by reference to the provisions of Section 141 of the CPC, and the decisions of this Hon'ble Court which are cited in paragraph 66 of the Impugned Order. Neither that Section, nor those decisions, had any application to the case.

(XX) For that, the High Court erred in holding that the absence of specific denials about any Exhibits to the Plaint, in a "*counter affidavit*" to an application for interim relief, would amount to an admission of the allegations made in the plaint in terms of Order VIII, Rule 5 of the CPC regarding the occurrence of the said, alleged conversations.

(YY) For that, the Court below erred in holding that "*the conduct*" of Respondent No. 2 in initially assuring plaintiff that he did not assign his true life story events nor did he permit the Petitioner / Supporting Respondents to exploit the same, but subsequently

revealing his alleged transactions with them also was
“a factor in accepting the plaintiff’s case *prima-facie*.”

(ZZ) For that, the High Court erred in holding that any material presented to the Trial Court, or to the High Court itself, made out a case, or even remotely supported a finding of “*collusion between the defendant no.1 and the defendants 3, 5, 6 and 7.*”

..(AAA) For that, the High Court erred in holding that there was *prima facie* material on record in the form of Exs. “P-17” and/or “P-19” to show that the character of Respondent No. 2 existed in the film *JHUND*; or that Respondent No. 2, after he entered into the 1st and/or 2nd R2 LRAs with Respondent No. 1 exclusively selling his life story events to him, also sold his life story rights to the Petitioner / Supporting Respondents.

(BBB) For that, even assuming that Respondent No. 1 did sell his life story to the Petitioner / Supporting Respondents after having executed the 1st and 2nd R2 LRAs, the High Court erred in failing to appreciate that those two Agreements could not lawfully grant Respondent No. 1 a monopoly right in “true life events” or the “life story” of a real person (viz. Respondent No. 2), such that he could not have sold his own, personal recollections of such events / story to third parties.

- (CCC) For that, the High Court erred in finding, *prima facie*, that the case set up by Respondent No. 1 in the plaint / IAs appeared to be true and the case set up by the Petitioner / Supporting Respondents in their counter-affidavit(s) appeared to be not true.
- (DDD) For that, the High Court erred in holding that, when there was *prima facie* material to show that the film being made by the Petitioner / Supporting Respondents had a character of Respondent No. 2, and/or that the role of the said character was substantial, it was the duty of the Petitioner / Supporting Respondents to dispel the said view and place material before the trial court to prove their plea that the film being made by them had no role of Respondent No. 2.
- (EEE) For that, the High Court most fundamentally erred in holding that the presence of a character of Respondent No. 2 (a real, living person); or even the substantiality or otherwise of that character, were matters which, absent a showing of substantial reproduction of any copyrighted work, was relevant to the question whether an infringement of copyright had occurred.
- (FFF) For that, the High Court erred in finding that Respondents No. 4 to 7 and Respondent No. 14, or the Petitioner, suppressed any material or relevant fact, deed, matter or thing from the Trial Court, or

that they could not contend that Respondent No. 1 had the burden to prove his case.

(GGG) For that, the High Court erred in holding that the facts before it justified the drawing of any adverse inference against the Petitioner or the Supporting Respondents, under Section 114 Illustration (g), of the Indian Evidence Act, 1872.

(HHH) For that, for the above reasons, the High Court erred in its application to the present case, of that provision and the decisions of this Hon'ble Court which are cited in paragraph 75 of the Impugned Order. Neither that provision, or those decisions had any application to the case.

(III) For that, given what is stated hereinabove, the High Court erred in drawing a *prima facie* adverse inference against the Petitioner and/or the Supporting Respondents, that the film *JHUND* not only contains the character of Respondent No. 2, but also that he has a substantial role in the movie; that it infringes the copyright of Respondent No. 1; and that if they had produced before the Trial Court, the alleged agreement entered into by them with Respondent No. 3, the copy of the story and script of the movie or the DVD of the movie, such material would have not supported their case.

(JJJ) For that, the High Court erred when, notwithstanding its finding that *“the plaintiff has only some publicity material such as press interviews, reports and articles, and a teaser about the movie ‘Jhund’ and he had no access to the story and script or the movie made by defendants 3, 5, 6 and 7”*; and that, *“(e)ven the Court below had only the said material to go by”*, it yet gave credence to the alleged similarities mentioned in the Table at paragraph 41 of the plaint *“between the screenplay SLUM SOCCER prepared by (Respondent No. 1) and the ‘teaser’ of the film ‘Jhund’ released on 20.1.2020 by the defendants.”*

(KKK) For that, first and foremost, the High Court failed entirely to appreciate that the only allegation of infringement in this case, in its entirety, is that; the *“overall display and the storyline”* of JHUND, *“as shown in”* an audio-visual *“teaser”* of the film, *“indicates that Defendant No. 3 to 12 have created characters and scenes/sequences, the key incidents, shades, values, actions, reactions, beliefs and choices clearly resemble with that of”* a real (i.e. non-fictional) person (Respondent No. 2); and that *“this alone shows the infringement of the Defendant no.3 to 12 over the rights of the Plaintiff over his screen story...which in turn is based on the true life story events of (Respondent No. 2).”* It is respectfully submitted that neither in fact, nor in law, may this submission, or any part of the Table of alleged

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similarities given in the plaint, make out even a *prima facie* case of infringement.

(LLL) For that, the High Court failed to appreciate that, in order to find a *prima facie* case of infringement, even before a comparison of “both *the copyrights work of the plaintiff and the work of the defendants 3, 5, 6 and 7*”, the Courts below had to decipher exactly what work the plaintiff in this case claimed to have a copyright in, and what it was that he alleged was infringed. Whilst the plaintiff may well have a copyright in the alleged script he registered, he had no right (let alone a “copyright”) in “true life events” of any person. There was no allegation that the work of the Petitioner / Supporting Respondents substantially infringed the alleged script of the Plaintiff. Indeed, plaintiff did not even show that that script was known to (much less in the possession of) any defendant. For that reason, no case was made out for either the production of the Defendants’ work, or to even conduct a comparison of any competing works.

(MMM) For that, for the aforesaid reasons, the High Court erred in finding that there was any “suppression” by the Petitioner / Supporting Respondents of any alleged agreements with Respondents No. 2 and/or 3; or the “story”; “script”; or DVD of the film *JHUND*, which “disabled the Court below from looking into

the aspects of similarities between their work and the copyrighted work of the plaintiff.”

(NNN) For that the High Court erred in finding that the Petitioner / Supporting Respondents were taking advantage of any “wrong”, by not placing material evidence exclusively available with them for consideration of the Court below.

(OOO) For that, for all the aforesaid reasons, the High Court’s reliance on the decision in *R. G. Anand* was entirely erroneous. If anything, a careful and considered reading of that decision would show that no case (not even a *prima facie* one) of the infringement of copyright was made out by Respondent No. 1.

(PPP) For that, the High Court also erred in failing to accept the Petitioner’s proffer under Order XLI, Rule 27. Had it accepted the same it would have, once and for all, found that there was no infringement whatsoever in the case. Instead, its failure to do so shall only lead to a multiplicity of proceedings, and a immeasurable waste of judicial time and effort.

(QQQ) For that, the High Court erred in finding that any of the conditions requisite for the grant of interim reliefs in a *quia timet* action were fulfilled in the instant case.

(RRR) For that, the High Court erred in holding that "*the (alleged) inaction of defendants 3, 5, 6 and 7 from October 2019 till May, 2020*" was "*deliberate*" or gave "*an impression that they intended to lull the plaintiff into a false sense of security, complete the film in the meantime, and then plead equities thereafter.*"

(SSS) For that, the above holding of the High Court effectively condones willful delay by a plaintiff (here, Respondent No. 1) on the ground that, in the meantime, the defendants (here, Petitioner and the Supporting Respondents) acted in furtherance of their unquestioned rights. This turns the maxim *vigilantibus et non dormientibus jura subveniunt*, on its head.

(TTT) For that, the onus to approach the courts upon an allegation of the infringement of legal rights, is on the movant (i.e. plaintiff). The same cannot be made to depend on any act or omission of the non-movant (defendant).

(UUU) For that, the High Court also erred in holding that the "*advent of COVID-19 and the disruption of proceedings caused by it...*" is "*a valid reason to explain the reason for filing the suit on 13.5.2020.*"

(VVV) For that, in so holding, the High Court failed to note that Respondent No. 1 had notice (admittedly) of the making of *JHUND* since April 2018. He (on his own

showing) was in contact with the defendants throughout the year 2019. He even saw the “teaser” of the film on 20-21 January, 2020. In those circumstances, the delay in the filing of the suit, on the facts of this case, disentitled Respondent No. 1 from seeking, and ought to have prevented the Courts below from granting, an injunction.

(WWW) For that, the High Court, thus, gravely erred in holding that the defendants (i.e. Petitioner / Supporting Respondents) were “*not entitled to contend that there were...laches on the part of the plaintiff (i.e. Respondent No. 1) in approaching the Court for appropriate relief.*”

(XXX) For that the Court below erred in relying upon the decision of the Bombay High Court in ***Jyoti Kapoor & Anr.***, inasmuch as no case of “*breach of confidentiality*” was pleaded, or was made out. The Court failed to note that neither was there an allegation of “*confidentiality*” / “*confidential information*” (as there had been before the Bombay High Court in that case), or one of the use of any “*confidential information*” properly so-called (under the decisions of the English Courts, as adopted in India). There also were no “*circumstances to show that it was unlikely that the defendant could have, around the time he did, on his own come to the same combination of key elements or similarities*”, either alleged by Respondent No. 1, or actually made out

before the Courts below. No matters in which “confidentiality” may lawfully be claimed, are the subject of a charge of infringement / violation / breach by Respondent No. 1. Accordingly, the High Court could not have, as it did, found either “*imparting of confidential information to the defendant*”, or “*its infringement by the defendant*”; and it also erred in agreeing with the view of the Trial Court that;

- (i) The teaser of the film *JHUND*, from its contents, showed “*that there are distinct similarities in the plot, depiction and the life and story of the protagonist of the film as with the registered script of ‘SLUM SOCCER’ of the plaintiff*”; or
- (ii) “*though such specific similarities are mentioned by the plaintiff, there is no specific denial regarding them by the contesting defendants*”;
or
- (iii) “*the (alleged) mobile conversations Exs.P17 to P19 support the plaintiff’s case and they tilt the case in favour of the plaintiff*”; or
- (iv) the plaintiff, in the facts and circumstances of the instant case, had shown a strong *prima facie* case as to the existence of a right; or
- (v) he had also shown a *prima facie* case as regards infringement; or

(vi) he had reasonable likelihood of success at the trial; or

(vii) if the defendants were permitted to exhibit and distribute their film, whatever novelty there is in the plaintiff's screenplay and script would be lost, and it would be difficult to compensate him by way of damages.

(YYY) For that, the Impugned Order ought to be set aside on any other Ground/s as may be urged in the course of hearing.

6. **GROUND FOR INTERIM RELIEF:**

That the Impugned Order is erroneous in law and contrary to facts on record. Both Courts below have rendered decisions which are contrary to settled law; the Decisions of this Hon'ble Court and the Hon'ble High Courts, which were binding on them; and to the very basis of Copyright Law. The Impugned Order is also fundamentally contrary to the letter and spirit of the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. What is worse, the impugned Order is also contrary to the first principles of the law of pleadings and proof, and generally, to the spirit of Section 151 and Order XXXIX, Rules 1 and 2, of the Code of Civil Procedure, 1908.

Moreover, and is set out hereinabove, Respondent No. 1 not only failed to make out any *prima facie* case, but was also guilty of gross delay, and/or laches. Given that the Petitioner's film is ready for release; has been publicized

widely and at immense cost; and with full notice to / knowledge of Respondent No. 1 at least since April 2018, the balance of convenience clearly favours immediate vacating of the injunction granted. That injunction, as also noted earlier, allows Respondent No. 1 to hold Petitioner's fundamental rights (including those to free speech and expression) to ransom.

The film is due to be released on the OTT platform "Amazon Prime" in November, 2020 and the marketing and publicity of the film needs to commence by the first week of November, 2020. The film "JHUND" was scheduled to be released on 08th May, 2020 in theatres. However, due to the global pandemic, lockdown and closure of theatres, the film could not be released on theatres in May, 2020. The Petitioner was therefore compelled to postpone the release of the film. Due to continuance of global pandemic and the delay in opening up of theatres as a consequence thereof, the Petitioner is compelled to release the film worldwide directly on Over The Top (OTT) platform in November, 2020 and subsequently on satellite and other modes and media of exploitation. The Petitioner needs to commence publicity and marketing of the film atleast three weeks before the scheduled release i.e no later than 05th November, 2020. If the injunction on release and exploitation of the film is not vacated / set-aside on or before 05th November, 2020, the Petitioner will not be able to release the film on OTT Platform in November, 2020 and the release of the same will be indefinitely postponed causing irreparable harm and injury to the Petitioner.

Petitioner has invested significant sum of money production, distribution, marketing, promotion and advertising of the film. The Petitioners have also created third party rights on the film, which is to be broadcast on a wide scale both nationally and internationally. A cinematograph film is a perishable commodity and halting of the complex process that leads up to the release of the film, at such a belated stage, could prove to be fiscally ruinous for the Petitioners, and make the entire project financially unviable.

Additionally, the post-Impugned Order conduct of Respondent No. 1 (narrated at length in the Synopsis and List of Dates) clearly shows that his suit is nothing but a blackmail action, made because he is aware that the release of the Petitioner's film is already delayed and its timely release in November 2020, is an imperative for them. That film is a perishable commodity and may lose its entire commercial value if not released in November, 2020 [which is typically a critical time period for the industry, and is more so this year, with the Covid-19 pandemic and the resultant, exponential increase in demand, *inter alia*, by home streaming services like those of Respondent No. 13, viz. Amazon]. Should the injunction presently in place be not lifted, therefore, grave and irreparable harm, injury, loss and prejudice (apart from manifest injustice) shall be caused to the Petitioner and Supporting Respondents.

In the circumstances, the Petitioner most respectfully submit that they have a strong, *prima facie* case. Petitioner

are also confident of success before this Hon'ble Court. The balance of convenience too tilts decisively in their favour.

It would, thus, be not just fit and proper, but it shall also be in the interest of justice that, during the pendency of this SLP, this Hon'ble Court be pleased to;

- (a) Lift the injunction / direction granted in the Order in Original;
- (b) Stay any and all further proceedings in Original Suit No. 62 of 2020, pending on the file of the Learned XV Additional Judge, Rangareddy District, at Kukatpally; and
- (c) Pass such further orders as may be deemed fit and proper in the circumstances of the case as in the interest of justice.

7. **MAIN PRAYER:**

In the premises aforesaid, in the interest of justice, it is most humbly prayed that this Hon'ble Court be graciously pleased to:

- (a) Grant special leave to appeal against the common impugned final Judgment and order dated 19.10.2020 passed by the Division of the Hon'ble High Court for the State of Telangana at Hyderabad in Civil Miscellaneous Appeals No. 356 of 2020 and 355 of 2020; and
- (b) Pass such further / other orders / directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

8. **PRAYER FOR INTERIM RELIEF:**

In the premises aforesaid, in the interest of justice, it is most humbly prayed that this Hon'ble Court be graciously pleased to:

(a) Grant stay of operation of the common impugned final Judgment and order dated 19.10.2020 passed by the Division of the Hon'ble High Court for the State of Telangana at Hyderabad in Civil Miscellaneous Appeals No. 356 of 2020 and 355 of 2020; and

(b) Lift the injunction / direction granted in the Order in Original; and

(c) Stay any and all further proceedings in Original Suit No. 62 of 2020, pending on the file of the Learned XV Additional Judge, Rangareddy District, at Kukatpally; and

(d) Pass such further / other orders / directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)
ADVOCATE FOR THE PETITIONER

DRAWN ON: 26.10.2020
FILED ON: 27.10.2020
NEW DELHI