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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 9th October, 2013

+ **W.P.(C) 6384/2013**

RASHTTTRAVADI SHIV SENA

..... Petitioner

Through: Mr. Sanjeev Narula along with Mr.
Manish Kumar Vikkey, Advs.

versus

SANJAY LEELA BHANSALI

FILMS PVT. LTD. & ORS.

..... Respondents

Through: Mr. Rajeeve Mehra, ASG along with
Mr. Sumeet Pushkarna, Mr. Gaurav
Sharma, Advs.

Mr. Amit Sibbal along with Mr.
Anshu Bhanot and Mr. Prateek Kr.
Srivastava, Advs. for R-2.

Mr. Amiet Andlay, Adv. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

MANMOHAN, J (Oral)

CM No.13940/2013

Exemption is allowed, subject to just exceptions.

CM stands disposed of.

W.P.(C) 6384/2013 & CM No.13941/2013

1. By the present writ petition, the petitioner organization seeks a ban on the film *Ramleela*.
2. Learned counsel for the petitioner states that the expression *Ramleela* is understood by Hindus as enactment of the life and story of Lord Rama. He contends that the film *Ramleela* has got nothing to do with the life of

Lord Rama, the Maryada Purshottam, but is filled with violence, sex and vulgarity. According to him, title of the film is a deliberate attempt to hurt the religious sentiments/religious feelings of Hindus at large.

3. In support of his submission, learned counsel for the petitioner relied upon the judgment of United States Court of Appeal in ***Ginger Rogers Vs. Alberto Grimaldi***, 875 F.2d 994, wherein it has been held as under:

“18.Rogers contends that First Amendment concerns are implicated only where a title is so intimately related to the subject matter of a work that the author has no alternative means of expressing what the work is about. This “no alternative avenues of communication” standard derives from Lloyd Corp. V. Tanner, 407 U.S. 551, 566, 67, 92 S.Ct. 2219, 2227-28, 33 L.Ed.2d 131 (1972), and has been applied by several courts in the trademark context. See, e.g., Mutual of Omaha Insurance Co. V. Novak, 936 F.2d 344 (1988); Reddy Communications, Inc. V. Environmental Action Foundation, 199 U.S.P.Q. (BNA) 630, 634 (D.D.C.1977) (“We do not see how defendant’s First Amendment rights will be severely hampered if this one arrow is removed from its quiver.”).

19.In the context of titles, this “no alternative” standard provides insufficient leeway for literary expression. In Lloyd, the issue was whether the First Amendment provided war protesters with the right to distribute leaflets on a shopping center owner’s property. The Supreme Court held that it did not. But a restriction on the location of a speech is different from a restriction on the words the speaker may use. See Denicola, supra, at 197. As the Supreme Court has noted, albeit in a different context, “we cannot indulge the facile assumption that one can forbid particular words without running a substantial risk of suppressing ideas in the process.” Cohen v. California, 403 U.S. 15, 26, 91 S.Ct. 1780, 1788, 29 L.ED. 2d 284 (1971).

20.Thus, the “no alternative avenues” test does not sufficient

accommodate the public's interest in free expression, while the District Court's rule-that the Lanham Act is inapplicable to all titles that can be considered artistic expression-does not sufficiently protect the public against flagrant deception. We believe that in general the Act should be construed to apply to artistic works only where the public Interest in avoiding consumer confusion outweighs the public interest in free expression. In the context of allegedly misleading titles using a celebrity's name, that balance will normally not support application of the Act unless the title has no artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of work."

4. This Court is of the opinion that no organization leave alone the petitioner can claim to be sole proprietor of names of Hindu Gods. Hinduism is a religion which promotes tolerance and catholicity of outlook.

5. One of us in ***Rakeysh Omprakash Mehra & Anr .Vs. Govt of NCT of Delhi & Anr.***, W.P. (Crl.) No.1188/2009, decided on 2nd January, 2013, has observed that freedom of expression is of inestimable value in a democratic society based on the rule of law. Our written Constitution guarantees not only freedom of speech but also freedom after speech. Though censorship of films constituting prior restraint is justified under the Indian Constitution, yet the censors have to make a substantial allowance in favour of freedom, thereby leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good. Consequently, the film being a piece of art, is entitled to protection of Article 19(1)(a) of the Constitution of India.

6. The admitted position is that the petitioner has not viewed the film *Ramleela* as it has not been commercially released. In any event, the effect

of the words, title and scenes will have to be judged from the standards of a reasonable, strong minded, firm and courageous man and not from that of a weak and vacillating mind.

7. The judgment of the United States Court of Appeal in ***Ginger Rogers*** (supra) is inapplicable to the facts of the present case as the said judgment dealt with the conflict between an individual's right to protect her celebrated name and right of others to express themselves freely in their own artistic work.

8. This Court may mention that previously in a Public Interest Litigation, some other individuals had challenged the title of another film *Dhobi Ghat*. This Court by a detailed order in ***Vinod Kumar Kanojia Vs. UOI & Ors.*** (in W.P.(C) No.6302/2010) after referring to the judgment of the Supreme Court in ***Ashok Kumar Pandey Vs. State of West Bengal, (2004) 3 SCC 349*** had held that *“the present litigation, styled as a public interest litigation, has been initiated just to satisfy one's own egoism or megalomania. It is to be borne in mind that a public cause is required to be espoused in a public interest litigation. It must have some kind of nexus with the public interest. We are not oblivious of the fact that if the Censor Board grants a certificate in violation of the Act, Rules, Regulations and the Guidelines, the same can be assailed in a court of law regard being had to the other provisions but definitely christening of a movie as “Dhobi Ghat” would not come in the said realm or sphere. We have no hesitation in holding that this is an abuse of the process of the Court and defeats the basic concept of public interest litigation for public good. The present litigation has only exhibited ostentatious proclivity of a personality who intended to occupy the centre stage as a protagonist harbouring the notion*

that the Court is a laboratory and he can come to play at his own whim and fancy. This is not permissible and not to be countenanced. In view of our preceding analysis, the present writ petition stands dismissed with costs of Rs.25,000/-.....”

9. Consequently, the present writ petition being devoid of merit is dismissed with costs of Rs.50,000/- to be paid to Delhi High Court Legal Services Committee within four weeks.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 09, 2013

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