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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 380 OF 2016
WITH
NOTICE OF MOTION (L) NO. 1245 OF 2016**

Imran Siddiqui	...Plaintiff
<i>Versus</i>	
Furquan Khan & 4 Others	...Defendants

Mr. Vijendra Kumar Rai, *for the Plaintiff.*
Mr. Vaibhav Bhure, *i/b Ganesh & Co., for Defendants Nos. 1 to 5.*

CORAM: G.S. PATEL, J
DATED: 27th June 2016

PC:-

1. Ad-interim reliefs were first refused on 18th April 2016. The Plaintiff appealed. That Appeal was dismissed on 25th April 2016. The Plaintiff applied again, and once again on 4th May 2016 no ad-interim reliefs were granted. The Plaintiff agreed to an early hearing of the Notice of Motion. I directed the Notice of Motion to be listed today. It has been called out in the afternoon.

2. Mr. Joshi tenders an Additional Affidavit in support of the Notice of Motion. This is taken on record. There is no Affidavit in Reply to the Notice of Motion.

3. The difficulty in this entire plaint and Notice of Motion is the very great (and possibly fatal) discrepancy between what is pleaded and what is annexed. Shortly put, the Plaintiff's case in paragraphs 2, 3, 4, 6 and 15, among others, is that the Plaintiff authored a short story entitled "*A One Night Stand*", and this was later compiled in an anthology of short stories called "*No Love Stories, Please*". Throughout the plaint, the Plaintiff maintains that the short story in which he allegedly has copyright is the one entitled "*One Night Stand*". Paragraph 2 of the plaint references Exhibit "A" as a "copy of the said story, '*One Night Stand*' from the said book". The expression '*the said book*' is a reference to the said anthology entitled "*No Love Stories, Please*".

4. I find no such story with this title. I do not find any anthology entitled "*No Love Stories, Please*" either. There is instead an **anthology** or collection called "*One Night Stand*". In this, there is a story called "*I Was Just Around There*". Nowhere in the Plaint is a story with this title referenced. Nowhere in the Plaint does the Plaintiff claim that this is the copyright-protected work.

5. It is difficult to see how, with pleadings and material as discrepant and inconsistent as this, the Plaintiff can claim any sort of copyright. Indeed, it is difficult to know in what it is that the Plaintiff actually claims copyright. There appears to be no story entitled "*A One Night Stand*" or even "*One Night Stand*". There is certainly no evidence of anthology or collection entitled "*No Love Stories, Please*". What is annexed, as I have noted, is the extract from an *anthology* called "*One Night Stand*", and the story in question is called "*I Was Just Around There*".

6. If the Plaintiff is uncertain about the work in which copyright is said to exist, I do not see how any relief can be granted. At a minimum, the work in which copyright is sought must be clearly and unambiguously identified. It is not open to the Plaintiff to reference one work or one book and to produce proof of another. There is no question of the Plaintiff being able to claim copyright in a title. That is now well-settled.

7. At this stage, it appears to me evident that Mr. Joshi, who is now on record, has more or less inherited this plaint with all its defects from the previous attorney. There is a limit to what he will be able to do in this state of the record. He makes a submission that he be allowed to withdraw the Suit and the Notice of Motion but that he be granted liberty to file a fresh Suit on the same cause of action. That is certainly one possible course of action. The alternative would be to permit an amendment to the plaint. But any such amendment would, in my view, necessarily have the result of completely altering the cause of action.

8. I do realize that this is an extreme indulgence but it seems to me that the Plaintiff's cause has been ill-served by the manner in which this plaint was drawn. I do not think that the Plaintiff could be expected to know better. Accepting Mr. Joshi's suggestion is the only course of action that would not cause prejudice to the Plaintiff for a default or error that is not his. Mr. Joshi's first submission is reasonable.

9. Leave to withdraw the Suit with liberty to file a fresh Suit on the same cause of action. Refund of court fees in accordance with the Rules.

10. The Suit and the Notice of Motion are disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)