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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 101 OF 2017
IN
SUIT (L) NO. 26 OF 2017**

Watergate Motion Pictures Pvt Ltd ...Plaintiff
Versus
Sanjeev Dutta ...Dutta

**Dr Birendra Saraf, with Pooja Kshirsagar, Vaibhav Bhure, & Ms
Ankita Singh, i/b ANP Partners, for the Plaintiffs.**
**Mr Ravi Kadam, Senior Advocate, with Akshay Patil, Rohan
Kadam, & Vikrant Zunjarrao, i/b Zunjarrao & Co, for the
Dutta.**

**CORAM: G.S. PATEL, J
DATED: 22nd March 2017**

PC:-

1. This is a Notice of Motion in a copyright infringement action relating to a forthcoming motion picture. For the purposes of this judgment, I will take it that the film under challenge is entitled or to be entitled *Munna Michael*, although, given the nature of these things, that might not be its final release title at all. That makes very little difference to the outcome of this action.

2. I have heard Dr Saraf for the Plaintiff (“**Watergate**”) at some length and briefly Mr Kadam for the sole Dutta (“**Dutta**”). Some weeks ago, Watergate’s advocates furnished me in two sealed covers a copy of the script, and a transcript of an audio recording with its companion compact disc. I will consider these materials shortly.

3. Watergate says it contracted Dutta to write a film script about a young boy named Munna who is a fan of Michael Jackson. The actual trajectory of the film after this point does not really matter very much. What is in controversy is whether or not Dutta did in fact himself prepare a script for Watergate, and whether there is a *prima facie* case made out that he did, sufficient to warrant the grant of an injunction even in a form somewhat more modest than what Watergate seeks in the Motion.

4. Watergate says it knew one Shabbir Khan, a film director. He introduced Dutta to Watergate. Watergate was given to understand that Dutta was a script writer for a number of films that had been well received in the past. There is no dispute that Watergate and Shabbir Khan entered into a Director’s Agreement. This was said to be some time in October 2015, but again this is inconsequential because this Agreement was admittedly terminated later.

5. The document that is supposed to bind Watergate and Dutta is dated 8th November 2015 and this at Exhibit “B” to the plaint from pages 45 to 62. The narrative after this point is that Watergate already had a concept of a Michael Jackson-inspired dancing street urchin, and that Dutta was to write up a film script or story around

this. It is also said there was a tentative title for this film: *The Last Dance*. The so-called Writer's Agreement at Exhibit "B" has no date. There is some controversy about this but I will take this to be 8th November 2015. Recital "B" at page 47 does not mention the title: this is left blank. I will assume that even this has some sort of an explanation since the Agreement itself says that any title mentioned in the Agreement is only tentative. Recital "C" speaks of Watergate commissioning Dutta to author the story, screenplay and dialogue of this film — and there is only one work in question — according to Watergate's directions. Now the peculiar thing about this Agreement is that it does not give us any indication at all of the thematic content of the film. Read on its own, this document does not tell us whether the contract was for Dutta to write this particular script, i.e., the one about a Michael Jackson-inspired street urchin or some other film. It is clear that the Agreement is not exclusive — Dutta was always at liberty to work on other material for others but was required to render the services as defined in the Agreement on a priority basis to Watergate. There is a consideration stated in the Agreement in Clause 4.

6. This is where Watergate's difficulty really begins. Had there been an agreed position that Dutta did in fact deliver a script pursuant to this Agreement, I should have been inclined to grant the injunction at least in some form. What Watergate puts forward is quite different. Following this Agreement we have as the next immediate document in sequence at Exhibit "C" in a sealed cover a copy of the script in question. This is said to have been written for

Watergate by Dutta.¹ The document has no date or signature. It is a simple typescript from beginning to end. There is nothing to indicate that Dutta ever gave this to Watergate: we have no covering email, letter or other document, and the plaint is unclear about when and where this delivery took place. Dutta wholly denies ever giving this to Watergate. He says instead that in circumstances that followed, Watergate has concocted this document, or, in his words, ‘reverse engineered’ it. Dutta altogether denies authorship of this document at Exhibit “C”.

7. The next document at Exhibit “D” is supposedly a letter dated 11th November 2015, i.e., a mere three or four days after the contract at Exhibit “B” on 8th November 2015. By this letter, Dutta supposedly refers to the Agreement, this time providing a date but wrongly describing it as a “Rights Acquisition Agreement”. The documents only says that the work to be done under the Agreement will be deemed to be a commissioned work. Then in paragraph 3 Dutta is supposed to have received full consideration under the Agreement. This does not in fact seem to be a covering letter or forwarding letter in respect of the script at Exhibit “C” at all. It does not indicate that it has any enclosure. It requires confirmation from Watergate and there is no confirmation signature. Dutta has denied this document too. He says it is a forgery, although there is a signature in original on the document. I am shown the original. Dr Saraf would have it that the signature on the original exactly matches the signature on Dutta’s Affidavit and on the original of the Writer’s Agreement at Exhibit “B”. I do not think that is entirely

1 What I have is a photocopy of some original. The copy put into Court is on green ledger foolscap paper.

correct; at least, I cannot say so with any conviction. There are marked differences between the two signatures especially towards the trailing end. Dr Saraf would have had that the starting or opening letters in Devnagari are unique and smoothly effected, and no forgery could be so seamless. This is not something I can determine at the interlocutory stage.

8. The events that follow are even more peculiar. But let me pause here for a moment and consider the implications in either direction. If Watergate is to be believed, then within three days of the Writer's Agreement Dutta handed in to Watergate the work he was commissioned to do under that Agreement. This seems to me extremely unlikely. There is also the matter of the sheer look of the letter dated 11th November 2016. It seems to have been prepared by Watergate and matches very closely the print quality of the Writer's Agreement. If that is so, I find no explanation yet in the plaint as to when Dutta signed it and where. It is only in the Rejoinder that it is said it was signed at Watergate's office. Even if this is to be accepted, as I have noted, the document at Exhibit "C" does not on its own indicate that the work was ready and was being tendered on that date. It only says that what Dutta was contracted to do would be a commissioned work of which Watergate would be the first owner. The letter does not prove even the existence of the script let alone its authorship.

9. On 26th March 2016 Watergate's Abhinav Shukla, Rohit Chaudhary, and the film director Shabbir Khan met Dutta apparently at Watergate's office. Dutta here is supposed to have narrated a story in a dramatic (and if the transcript is anything to go

by, quite colourful) manner. It is this narrative that actually forms the heart of this case. Dutta says Watergate recorded this narration without authorization, and that the recording is illicit. But he does not deny having made that narration. What he then says is that this was his narration of a script that his wife Vimmi wrote, and which, according to him, she had by then already registered with the Script Writers' Association under the title "*The Last Dance*" on 4th June 2013.

10. What Dutta says therefore is this: that he did enter into Writer's Agreement and that he did receive some consideration under it but he did no work under that Agreement. He never wrote a script. He never sent a screenplay. The narration that he gave Watergate and Shabbir Khan on 26th March 2016 was his wife's screenplay or perhaps even some variant of it.

11. Dr Saraf argues that Vimmi Dutta is a wholly unknown writer with no demonstrated track record. He submits that it is inconceivable that Dutta would narrate his wife's script to Watergate. It is his submission that the narration given by Dutta must be and could only have been of the *Munna Michael* film that Watergate contracted Dutta to work on. According to him there is no other possibility. Vimmi Dutta's script is entirely different. Several differences have been pointed out. These have never been explained. As I understand it, Watergate arrives at its case by a process of deductive or reductive elimination: "when one has eliminated the impossible, whatever remains, however improbable, must be the truth."

12. What the submission does demand is that I must necessarily at this *prima facie* stage by a process of conjecture and surmise extrapolate from the transcript of a partially recording of an oral narration that the narration was of a script that must have been written by Dutta for Watergate under a contract. In arriving at this conclusion, I might as well ignore Exhibit “B”, the unsigned and undated typed script that is provided to me in a sealed cover, and ignore too, the so-called covering letter of 11th November 2015, Exhibit “D” to the plaint.

13. All this is an exceptionally tall order. I am unable to tell how from the transcript of the narrative recording I could safely conclude, even *prima facie*, that Dutta delivered the script at Exhibit “C”, or that he is its author, or that it ever even existed. I do not believe it begins to approach the kind of strength of a *prima facie* case that a Court requires for grant of ad-interim or interim injunctive relief. I do not think Dr Saraf is entirely correct in his submission that in every case dishonest defendants will get away like this. Indeed it seldom happens that work on a script is so very silent. Usually there are email exchanges, and drafts go and back between the parties with additions, changes and deletions along the way. What we have here instead is a situation where, after the Agreement, there is *nothing at all* that is accepted or admitted till 26th March 2016 when Dutta made a dramatized narration of some story to various persons including Watergate. Indeed it is not even at all clear nor it is demonstrated to be agreed that the narration was of a work that was the subject matter of the contract. For, as we have seen, the contract in question does not sufficiently outline the work that was to be done. Again this is left to speculation and conjecture

by my being told that since there was only one story narrated, it 'must have been' or 'had to be' the one that is the subject matter of the contract.

14. I do not think that this meets the standards for grant of interlocutory injunction at all. I am unable to grant any relief.

15. The Notice of Motion is dismissed. Since Dutta is an individual I will not make an order of costs. He will however deposit the amount that he has received under the contract in Court within a period of three weeks from today.

16. I am returning to Dr Saraf the originals of letter dated 11th November 2015, the Writer's Agreement, the compact disc and the transcript and the story said to be at Exhibit "C". I am also returning the copy of Vimmi Dutta's film script.

17. As regards the copy of Vimmi Dutta's script, Dr Saraf makes a statement that Watergate will only use it for the purpose of litigation.

18. I believe the Suit will need to be registered in the Commercial Division of the High Court being a copyright action. The Registry will take necessary steps in that behalf.

19. Dutta waives service of the Writ of Summons. Written Statement to be filed and served on or before 28th April 2017.

20. List the Suit for framing issues on 4th May 2017.

(G. S. PATEL, J.)