

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.126 OF 2017
IN
NOTICE OF MOTION (L) NO.693 OF 2017
IN
SUIT (L) NO.196 OF 2017
WITH
NOTICE OF MOTION (APPEALS) (L) NO.816 OF 2017
IN
APPEAL (L) NO.126 OF 2017**

Dashrath B. Rathod and Others

...Appellants

vs.

Fox Star Studios India Private Limited
and Others

...Respondents

Mr. A.M. Saraogi for Appellants.

Mr. S.V. Kadam a/w. Ms. Apeksha Sharma, Mr. Sanjeel Kadam, Ms Saylee Rajapurkar i/b. Kadam & Co., for Respondent No. 1.

Mr. Rohan Kadam a/w. Ms. F.A. Dhanani i/b. M/s. Dhruve Liladhar & Co., for Respondent Nos. 2 to 5.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.**

DATE : JUNE 19, 2017

P.C.:

. Heard learned counsel for the parties.

2] With their consent and at their request, the matter is taken up for final disposal at this stage itself.

3] Mr. Saraogi, learned counsel for the Appellants, at the very outset submits that the Appellants do not question the impugned order dated 21st

March 2017, to the extent the same denies the Appellants any ad interim reliefs. In fact, Mr. Saraogi points out that the film in question has already been released and therefore, even the Notice of Motion (L) No. 693 of 2017 is rendered infructuous and may be disposed of by the Appeal Court itself. He however points out that learned counsel who appeared for the Appellants before the learned Single Judge, was a junior Advocate having experience of not more than ten months in legal practice. He submits that this aspect may be taken into consideration and some leniency be shown, in the matter of costs of Rupees Five Lakhs which have been imposed upon the Appellants by the impugned order dated 21st March 2017. Mr. Saraogi, on basis of instructions submits that the Appellants, are ready and willing to pay costs of Rupees One Lakh without demur, particularly since the amount of costs have been directed to be paid over to Legal Aid Cell and the Tata Memorial Hospital, in equal proportions.

4] Learned counsel for the Respondents leaves the matter of costs to the Appeal Court. However, they point out that there was nothing bonafide about the Notice of Motion taken out by the Appellants, seeking restraint on the release of the movie and this is a matter where the judicial process was attempted to be abused. Learned counsel point out that the Notice of Motion before the learned Single Judge has now been rendered infructuous and even they join Mr. Saraogi's request that the Motion be

taken up by the Appeal Court and disposed of as infructuous.

5] On perusal of the impugned order, we find that there is no reason whatsoever to disturb the *prima facie* findings or the reasonings recorded in the order. There are reasons recorded by the learned Single Judge, in support of the order for exemplary costs. The learned Single Judge has observed that the impugned order is studiously and determinedly meant to be an indicator not only to the Appellants (Plaintiffs), but also to future litigants not to attempt to take the Courts for granted. This is because 'time' is a scarcest resource, which cannot be squandered to indulge fanciful claims. The learned Single Judge has observed that this is a matter, which attracts the provisions of the Commercial Courts Act and therefore costs must normally follow the event and if the losing party has to be spared of costs, then reasons are required to be recorded. After noting the conduct of the Appellants, the learned Single Judge has observed that non imposition of costs upon the Appellants, in the facts and circumstances of the present case, would only encourage frivolity in litigation.

6] As noted earlier, we see no reason to disagree with the reasoning in the impugned order. However, inexperience of the Appellants Advocate, which has been candidly expressed, coupled with the offer to pay costs of

Rupees One Lakh within a period of four weeks from today, persuades us to reduce the quantum of costs from Rupees Five Lakhs to Rupees One Lakh. Besides, the Appellants, perhaps by way of mitigation, have admitted that the Notice of Motion (L) No. 693 of 2017 before the learned Single Judge has become infructuous and the same may be disposed of, without, requiring the learned Single Judge to once again expend judicial time for its disposal.

7] Upon cumulative consideration of the aforesaid, we dispose of this Appeal and the pending Motions in the Appeal, with the following order :

- (A) The findings and reasoning in the impugned order is specifically approved;
- (B) The quantum of costs, is however reduced from Rupees Five Lakhs to Rupees One Lakh;
- (C) The undertaking of the Appellants that an amount of Rupees One Lakh i.e. Rupees Fifty Thousand to Legal Aid Cell and Rupees Fifty Thousand to Tata Memorial Hospital, Parel, will be paid within a period of four weeks from today, is accepted as an undertaking to this Court. The Appellants shall file affidavit of compliance together with evidence of payment within a period of two weeks thereafter;

(D) By consent, Notice of Motion (L) No. 693 of 2017 pending before the learned Single Judge, is taken up for consideration and disposed of as infructuous.

(E) In view of the aforesaid, Notice of Motion (Appeals) (L) No. 816 of 2016 does not survive and is disposed of.

(F) There shall be no separate order as to costs in this Appeal.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)

Chandka