

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INTERIM APPLICATION NO.1 OF 2019****IN****COMMERCIAL IP SUIT (L) NO.1206 OF 2019**

Vasant Kallola

...Plaintiff

vs.

Fox Star Studios India Pvt. Ltd. & 6 Ors.

...Defendants

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Ms. Saveena T. Bedi, i/b. Lawhive Associates, for the Applicant/Plaintiff.

Mr. Sharan Jagtiani, a/w. Mr. Thomas George, Ms. Tanvi Sinha and Mr. Manas Gaur, i/b. Saikrishna & Associates, for Defendant Nos. 1 and 7.

Mr. Rashmin Khandekar, a/w. Mr. Ravindra Suryawanshi, i/b. Ravi Suryawanshi & Associates, for Defendant Nos. 2 to 6.

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CORAM : S.C. GUPTE, J.**DATE: 22 NOVEMBER 2019****P.C.:**

. Heard learned Counsel for the parties.

2. This Commercial IP Suit complains of infringement of the Plaintiff's copyright by the Defendants. The Plaintiff is an author of a book titled "Its Okay To Fail, My Son". The book was printed and published by Times Group sometime in December 2015. It is the case of the Plaintiff that the book has received both critical and popular acclaims. It is submitted that the book and its contents were extensively written about in articles appearing in newspapers as well as in other publications and the book was even claimed to be one of the top five

best selling books in or around April 2016. The Plaintiff's case is that he was even approached by a director to make a Marathi feature film based on his book. Sometime in October 2017, there was even a contract entered into between the Plaintiff and a producer/film financier for the rights of the Plaintiff's book so as to adapt it for a feature film. This contract, however, did not finally materialise. It is the grievance of the Plaintiff that sometime in September 2019, the Defendants released a film (produced by Defendant Nos. 1 and 2 and released by Defendant No.3) titled "Chhichhore". It is submitted that the film is a literal imitation of the Plaintiff's book and was released without giving any credit to the Plaintiff for his original work. Though the film was released in September 2019, the Plaintiff submits that he could not approach the Court earlier due to his mother's indisposition. It is submitted that since the Plaintiff was attending to his mother in September 2019, he personally could not see the film and assess the similarities between the movie and his book, though he received various calls and messages from his friends about the release of the movie containing offending material. The Plaintiff submits that his mother finally passed away on 29 September 2019 and, after completing her last rights, sometime in November 2019, the Plaintiff watched the movie "Chhichhore" on "Hotstar" and noticed the similarities between the movie and his book "Its Okay To Fail, My Son". The Plaintiff claims to have, thereafter, approached this Court with the present suit complaining of breach of copyright and has now moved an ad-interim application after notice to the Defendants.

3. The Defendants appear and show cause. Defendant No.1

has filed an affidavit-in-reply on behalf of Defendant Nos. 1 and 7. Defendant No.2 has also filed a reply to the interim application. The Defendants also produce e-mails and other communications citing “one liners” circulated by Defendant No.4 from about August 2013 and through October 2014, that is to say, even before the release of the Plaintiff's book, which show the manner in which their film was conceived and developed. The affidavit indicates that the basic storyline, as also a substantial part of the expression, to be found in the film finally produced was already reflected in the circulated material, also in the form of a hard copy, much prior to the release of the Plaintiff's book. On the basis of this material, as also on the basis of the comparison between expressions of the germ or theme of the Plaintiff's book, which was elaborately brought to the notice of this Court by learned Counsel for Defendant No.1, it is submitted that the Defendants' work is an entirely independent work of art; it has not drawn from the Plaintiff's published book.

4. Though there are some elements, which are to be found in common in the Plaintiff's book and the Defendants' film, as indicated by learned Counsel for Defendant No.1, the expression in the film, particularly the unfolding of scenes as well as the focal point of the storyline and its denouement, indicate distinctive dissimilarities and the one may not be seen as a copy of the other in any significant way or, for that matter, even vis-a-vis the so-called distinctive elements of the work. Besides, the material produced before the Court does prima facie indicate that the work of art contained in the Defendants' film has been independently conceived and developed and made into a movie in its

current form, though it must be noted that all this material was not made available to the Plaintiff so far and though the material was referred to in the Defendants' pleadings, it was produced before the Court and disclosed for the first time to the Plaintiff. Anyway, since we are at an ad-interim stage, even before one assesses the material and forms a prima facie opinion, one has to take a tentative view and form a first-blush opinion after comparing the material produced by the parties, and see if there is any case made out for emergent injunctive reliefs.

5. As the record of the case and the rival materials stand, I am of the view that there is no case as of now for an injunctive relief against the Defendants. The film has already been released in theaters and on electronic platforms such as Hotstar and has run for about two months. This application is being made when the satellite rights of the film, which are still to be exploited, though these are to be created by the parties in favour of various entities, and some further bundle of rights, are likely to be dealt with. At this stage, and on these facts, this Court is not inclined to injunct any further exploitation of satellite or other rights by the producers of the film. Besides, if the Plaintiff's case is found to have substance, after the parties are heard at length at the hearing of the interim application and after being allowed to put in their pleadings (the Plaintiff, for example, as noted above, not having had any occasion so far to deal with the material produced by the Defendants to show that the film was independently conceived and developed), the Plaintiff can be adequately compensated in the form of damages.

6. In case the Defendants propose to file any replies to the

interim application, they may do so within a period of four weeks from today. Rejoinder, if any, within two weeks thereafter. The interim application to come up on board for hearing on 6 January 2020.

(S.C.GUPTE, J.)

Smita
Gonsalves

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