

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

INTERIM APPLICATION NO. 3347 OF 2024

IN

COMMERCIAL INTELLECTUAL PROPERTY RIGHTS SUIT
NO. 236 OF 2024

Sunil S/o Darshan Saberwal

....*Appellant/Plaintiff*

: *Versus* :

Star India Pvt. Ltd. & Ors.

....*Respondents/Defendants*

Mr. Ashok M. Saraogi with Mr. Siddharth Singh, for the
Applicant/Plaintiff.

Mr. Ashish Kamat, Senior Advocate with Mr. Thomas George,
Ms. Tanvi Sinha, Mr. Navankur Pathak, Ms. Neeti Nihal & Ms. Bhargavi
Baradhwaj i/b Saikrishna & Associates, for Defendant No. 1.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 11 AUGUST 2025

Pronounced on : 18 AUGUST 2025

JUDGMENT :-

1) This is an application filed by the Plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (**the Code**), seeking temporary injunction to restrain Defendant Nos.1 and 2 from producing and/or releasing and/or exploiting the title

'LOOTERE' allegedly owned and registered by the Plaintiff. Plaintiff has filed the present suit seeking a declaration that Defendant Nos. 1 and 2 do not have right to produce any film titled 'LOOTERE' or any other entertainment programme titled 'LOOTERE', which is already registered in Plaintiff's favour with the film producers' associations. Plaintiff has already sought perpetual injunction to restrain Defendant Nos. 1 to 3 from producing, releasing or exhibiting any entertainment programme by utilizing the title 'LOOTERE'.

2) Plaintiff's case, as pleaded in the plaint, is that it carries on business of film production as proprietor in the name and style as Shree Krishna International. Plaintiff claims to be a reputed film producer and a bonafide member of Defendant Nos.3 and 4-Associations. Plaintiff has described Defendant Nos.1 and 2 as companies engaged in the business of production of films and entertainment programmes. Defendant Nos. 3 to 5 are associations of the film producers.

3) Plaintiff claims that he has produced a Hindi feature film titled as 'LOOTERE' starring Sunny Deol, Juhi Chawla, Nasiruddin Shah, Anupam Kher and others, which was directed by Dharmesh Darshan and produced by Plaintiff's proprietary concern-Shree Krishna International. The film received Censor Certificate dated 5 March 1993 from Central Board of Film Certification. Plaintiff has registered the title of the film 'LOOTERE' with Defendant No.4, which is still valid. Plaintiff accordingly claims ownership of title 'LOOTERE'. Plaintiff also relies on registration granted by the Deputy Registrar of Copyrights for the cinematograph film 'LOOTERE' in his name. Upon learning that Defendant Nos.3 and 4

had opened a new category for registration of titles for production of web series to be streamed on Over the Top (OTT) platforms Plaintiff filed necessary applications and has secured registration of the title 'LOOTERE' for Feature Film, TV Serial, Web Series and Web Film. In September 2022, Plaintiff came across the trailer of web series with the name 'LOOTERE' being broadcast on OTT platform 'Disney Hotstar' which was uploaded by Defendant No.1. Plaintiff accordingly issued advocate's notice to Defendant Nos.1 and 2 on 9 September 2022, calling upon them to restrain themselves from releasing the web series with the title 'LOOTERE'. The notice was responded by Defendant Nos.1 and 2. Plaintiff came across news article dated 1 March 2024, where Defendant Nos.1 and 2 advertised the release of web series with the title 'LOOTERE' on 22 March 2024. Plaintiff has accordingly instituted the present suit for the reliefs as indicated above.

4) In his Suit, Plaintiff also filed application for temporary injunction to restrain Defendant Nos. 1 to 3 from producing, releasing, or exploiting the title 'LOOTERE'. Defendant No.1, who is the producer of the web series and operates the OTT platform Disney Hotstar, has filed Affidavit-in-Reply opposing the application for temporary injunction. Plaintiff has filed Rejoinder to the said Affidavit. Since the pleadings in the application for temporary injunction are complete, the same is called out for hearing.

5) Before proceeding further, it must be observed that Defendant No.1 was originally impleaded by name Novi Digital Entertainment Pvt. Ltd. (Novi) and consequent to amalgamation of Novi with Star India, the Plaintiff has amended the plaint by

replacing the name of Defendant No.1 as 'Star India Private Limited'. It appears that the name of Star India Private Limited has further being changed to JioStar India Private Limited vide Certificate of Incorporation dated 8 May 2025. Mr. Saraogi, the learned counsel appearing for the Plaintiff has informed the Court that Plaintiff is in the process of filing application for amendment of the plaint for change in the name of Defendant No.1. However, since the proposed amendment which Plaintiff desires to incorporate envisages mere change in the name of Defendant No.1, in my view, decision of the present application for temporary injunction need not await such formal amendment being carried out. Accordingly, both the learned counsel are heard on Plaintiff's application for temporary injunction.

6) Mr. Saraogi would submit that Plaintiff is the registered owner of copyright of the title 'LOOTERE'. That additionally, Plaintiff has also secured registration of the title with Defendant Nos. 3 and 4. That the very purpose of registration of title with Defendant Nos.3 and 4-Association is to ensure that rights of a person in a title are not unauthorizedly exploited by third parties. That Plaintiff is the owner of copyright in cinematograph film 'LOOTERE', released in the year 1993 and Defendant Nos.1 and 2 cannot make or produce any film or web series by unlawfully exploiting Plaintiff's rights in the said title. That the defence of Defendant Nos.1 and 2 about non-existence of rights in a mere title is belied by the fact that they have relied upon alleged NOC secured from Mr. Bonney Kapoor/BSK Entertainment Pvt. Ltd. for use of the title. That if rights in title were irrelevant, Defendant No.1 would not made an attempt to secure such rights. That the case involves securing the rights in the title through a

wrong source and the defence of non-existence of rights in a title is clearly afterthought.

7) In support of his contention that rights in title can give rise to an actionable claim, Mr. Saraogi would rely upon the judgment of Single Judge of this Court in Karan Johar Versus. India Pride Advisory Private Ltd. and Others¹, as upheld by the Division Bench in Sanjay S/o. Girish Kumar Singh Versus. Karan Johar also known as Rahul Johar and others². He would submit that both the learned Single Judge as well as Appellate Court have recognized enforceable rights in respect of a title.

8) Mr. Saraogi would further submit that there is no delay in either filing the suit or applying for temporary injunction. That parties were in continuous correspondence till filing of the suit. That no party is expected to straightaway file a suit without first exchanging correspondence. So far as release of the web series on OTT platform is concerned, Mr. Saraogi would submit that the cause of action for grant of injunction still continues, as the web series of Defendant No.1 is still available for streaming on the OTT platform and the viewers are watching the same. Therefore, mere release of the web series cannot be a defence for frustrating the lawful claim of the Plaintiff for temporary injunction.

9) The application is opposed by Mr. Kamat, the learned Senior Advocate and Ms. Tanvi Sinha, the learned counsel appearing for Defendant No.1. It is submitted on behalf of Defendant No.1 that

1 Interim Application (L) No. 17865 of 2024, decided on 7 March 2025

2 Commercial Appeal (L) No. 9786 of 2025, decided on 7 May 2025

there can be no copyright in mere title of a film. That Plaintiff has not come up with a case of infringement of copyright in the literary work of his film. That therefore Plaintiff's case of ownership of copyright in title 'LOOTERE' is clearly misplaced and contrary to the provisions of the Copyright Act, 1957. In respect of the contention that there can be no copyright in mere title, reliance is placed on judgment of the Apex Court in Krishika Lulla and Others Versus. Shyam Vithalrao Devkatta and Another³. It is further submitted that mere registration of title with the association of film producers does not create any statutory right in favour of the Plaintiff. Reliance in this regard is placed on judgment of Division Bench of Madras High Court in M/s. Lyca Productions and Another Versus. J. Manimaran and others⁴. That it is permissible as well as consistent practice followed in film industry to produce multiple films with same title and so long as underlying literary works are different, there is no copyright infringement. That therefore mere copy of the title does not amount to infringement of copyright whether in the cinematograph film or of its literary work. It is further submitted that the Plaintiff first noticed the production of web series by Defendant No.1 with the impugned title on 8 September 2022. Plaintiff has not approached this Court with sufficient urgency, as the suit is filed on 15 March 2024. That the web series has already been released in March 2024 and is being streamed on OTT platform. That therefore prayer of the Plaintiff for temporary injunction no longer survives. That in such circumstances, only claim of the Plaintiff would be for damages, which is not claimed in the present suit. On above broad submissions, rejection of Plaintiff's application for temporary injunction is sought by Defendant No.1.

3 (2016) 2 SCC 521

4 2018 SCC Online Mad 597

10) Rival contentions of the parties now fall for my consideration.

11) Plaintiff's Suit seeking declaration and injunction is premised on his claim of ownership in the title 'LOOTERE'. Plaintiff has already produced, released and exhibited a Hindi feature film 'LOOTERE' in the year 1993. Plaintiff believes that no other film or entertainment program can be produced by using the title 'LOOTERE' without his licence/permission. Upon noticing that Defendant Nos.1 and 2 have produced a web series with the title 'LOOTERE' for streaming on OTT platform 'Disney Hotstar', Plaintiff has instituted the present Suit seeking following prayers :-

“a) that it be declared that the Defendants and more particularly, the Defendant No. 1 and 2 have no right to produce any film titled "LOOTERE" and/or any entertainment programme titled "LOOTERE" which is already registered in favour of the Plaintiffs with the respective Association in any manner whatsoever.

b) that this Hon'ble Court be pleased to issue a permanent order and injunction restraining the Defendants No.1 to 3 from in any manner producing and/or releasing and/or exhibiting any such entertainment programme by utilizing the title "LOOTERE" which is already registered in the name of the Plaintiff with the respective Associations in any manner whatsoever.

c) that interim and ad-interim reliefs in terms of prayer (b) above;

d) that cost of this suit be provided for;

e) that for such other and further reliefs as the nature and circumstances of the case may require.”

12) In his suit, Plaintiff has filed application for temporary injunction seeking the following prayer:-

“a) that pending the hearing and final disposal of the present Defendants No.1 to 3 and/or their agents servants and/or any other person or persons claiming through or under them from in any manner restrained

by an order and temporary injunction of this Hon'ble Court from producing and/or releasing and/or exploiting the title "LOOTERE" which is already standing in the name of the Plaintiff in any manner whatsoever."

13) Novi Digital Entertainment Pvt Ltd. who operates the OTT platform 'Disney Hotstar' was sued as the original Defendant No.1 who is the producer of the web series. After amalgamation of Novi Digital Entertainment Pvt Ltd. with Star India Pvt. Ltd (**Star**), Plaintiff has amended the Suit by changing the name of the first Defendant as Star. As observed above, change in name of Star has been approved which has now become Jio Star India Pvt. Ltd. Defendant No.2 claims to have merely provided production related services to Defendant No.1 and is not the producer of the web series.

14) The declaratory and injunctive reliefs sought by the Plaintiff in the Suit stem out of his claim of ownership in the title 'LOOTERE'. This claim of ownership in the title is apparently premised on ownership of copyright in the cinematograph film 'LOOTERE' as well as grant of registration by the film producers' association in respect of the said title.

15) There is no dispute to the position that Plaintiff could be the owner of copyright in the cinematograph film 'LOOTERE' and Plaintiff has relied on certificate dated 7 September 2010 issued by the Copyright Registrar in this regard. So far as the registration of title is concerned, Plaintiff claims that he has registered the title of the film 'LOOTERE' with Defendant No.4-Western India Film Producers Association. Registration granted in favour of the Plaintiff in respect of the title 'LOOTERE' has been renewed from time to time by Defendant No.4. Plaintiff has also secured a separate registration in

respect of the title on 7 September 2010 for the categories of feature film, TV series, web series and web film with Defendant No.4. It is on these registration documents that the Plaintiff claims rights in respect of the title 'LOOTERE'.

16) So far as Plaintiff's claim for ownership of copyright in cinematograph film 'LOOTERE' is concerned, there appears to be no difficulty as Defendant Nos.1 and 2 do not seriously dispute this aspect. Under Section 13 of the Copyright Act, 1957 (**Copyright Act**) copyright subsist in only three classes of works viz. (i) original literary, dramatic, musical and artistic works, (ii) cinematograph films and (iii) sound recordings. Being producer of the cinematograph film 'LOOTERE', Plaintiff is claiming ownership of copyright in that film. This would mean that Plaintiff alone is entitled to exploit the copyright in that film to the exclusion of others. It is not Plaintiff's case that the Defendant Nos.1 and 2 are streaming Plaintiff's film 'LOOTERE' on the OTT platform of Defendant No.1. Therefore, Plaintiff's claim of ownership of copyright in the cinematograph film 'LOOTERE' is irrelevant for deciding the issue at hand.

17) Though not specifically claimed in the Suit, Plaintiff may also have acquired, by assignment or otherwise, ownership of copyright in the underlying literary work of the film 'LOOTERE'. Based on the claim of ownership of that underlying literary work, Plaintiff can injunct others from producing another film, web series or any other entertainment program using the said literary work i.e. story of the film. Here again, there is no claim by Plaintiff of infringement of copyright in the literary work of the film 'LOOTERE'. It is not claimed by him that the web series of

Defendant No.1 is based on the literary work of his film 'LOOTERE'. Plaintiff's film 'LOOTERE' is a love story whereas the web series of Defendant No.1 explores piracy on Somalian seas. The relevant pleadings in paragraphs 6 and 15 of the Affidavit-in-Reply of Defendant No. 1 are as under :-

“6. The Series ‘Lootere’ is fictional eight-episodic Series which was released on the Disney+Hotstar Service on March 22, 2024. As the name suggests, the Series explores piracy on the Somalian seas through Indian characters. The story of the Series is set in Mogadishu in the year 2016 wherein an Indian ship is hijacked by pirates leading to a battle between innocent lives and precious piece of cargo in the Ship. The title of the Series is therefore coined to reflect the theme of the Series. ...

15. ...At this juncture, it is relevant to state that the storyline of the Film and Series bears no similarity to one another. The cast and scenes of Series is also wholly different from the Film. For the sake of reiteration, the Series explores piracy on the Somalian seas through Indian characters whereas by a perusal of the material available online it is evident that Applicant's storyline is a love story between two characters wherein the male lead is a police officer tasked with the duty to protect a witness.”

18) Thus, except similarity in the title, Plaintiff's cinematograph film 'LOOTERE' admittedly does not have any similarity in terms of story with the web series of Defendant No.1. There is thus no allegation of infringement of Plaintiff's copyright either in the story or in the cinematograph film on the part of Defendant No.1.

19) Having ruled out the case of infringement of copyright in the cinematograph film or literary work therein, I now proceed to examine whether Plaintiff has made out a *prima facie* case of infringement of copyright or any other right in the title 'LOOTERE'. Here again, Plaintiff appears to have claimed two types of rights in

the title (i) copyright in the title under the provisions of the Copyright Act and (ii) an independent right to prevent others from using the title based on registrations with the film producers' association.

20) Plaintiff claims copyright in the title 'LOOTERE' on the strength of ownership of copyright in the cinematograph film. The issue for consideration therefore is whether there can be any copyright in mere title of the film. To paraphrase, if copyright in a cinematograph film is owned by the producer thereof, whether such producer can also claim rights in respect of title of that film ? To claim copyright, the title must constitute a 'work' and then qualify being a literary work. Even if copyright subsist in literary work of a film and also in the film itself, mere title of the film would not qualify to be a work within the meaning section 2(y) of the Copyright Act. The story of a film (literary work) and the entire film comprising of visual and sound recording would constitute 'works' and mere one word therein, even if it is a title, would not constitute a 'work' on a standalone basis. Since title of a book or a film does not constitute a 'work' within the meaning of Section 2(y) of the Copyright Act, no copyright can subsist in a mere title.

21) The issue of non-subsistence of copyright in title of a film is no more *res integra* and is covered by the judgment of the Apex Court in *Krishika Lulla* (supra). The Apex Court was examining correctness of order passed by this Court refusing to quash the criminal complaint filed under Section 63 of the Copyright Act alleging infringement of copyright in title 'Desi Boys' given by the complainant to the synopsis of his story. The Court formulated the question for determination in para-7 of the judgment as under :-

7. The main issue that arises for determination is whether Respondent 1 Devkatta has copyright in the title “Desi Boys” which he has given to the synopsis of a story. Further, if at all a complaint under Section 63 of the Copyright Act is tenable against all the appellants for giving the title “Desi Boyz” to the film released by them?

22) The Apex Court has answered the question formulated for determination by holding in paragraphs 11 to 20 as under :-

11. It must be noted that in India copyright is a statutory right recognised and protected by the Copyright Act, 1957. It must, therefore, be first seen if the title “Desi Boys” can be the subject of copyright. On a plain reading of Section 13, copyright subsists in, inter alia, an original literary work. **In the first place a title does not qualify for being described as “work”.** It is incomplete in itself and refers to the work that follows. Secondly, the combination of the two words “Desi” and “Boys” cannot be said to have anything original in it. They are extremely commonplace words in India. It is obvious, therefore, that the title “Desi Boys”, assuming it to be a work, has nothing original in it in the sense that its origin cannot be attributed to Respondent 1. **In fact, these words do not even qualify for being described as “literary work”.** *Oxford English Dictionary* gives the meaning of the word “literary” as “concerning the writing, study, or content of literature, especially of the kind valued for quality of form”. The mere use of common words, such as those used here, cannot qualify for being described as “literary”. In the present case, the title of a mere synopsis of a story is said to have been used for the title of a film. The title in question cannot, therefore, be considered to be a “literary work” and, hence, no copyright can be said to subsist in it, vide Section 13; nor can a criminal complaint for infringement be said to be tenable on such basis.

12. **The decisions cited on behalf of the appellants show that it is well settled that copyright does not subsist in a title of work.** In *Maxwell v. Hogg* [*Maxwell v. Hogg*, (1867) LR 2 Ch App 307], the question was whether the defendant had infringed the copyright of the plaintiff in the title of a monthly magazine called *Belgravia*. Referring to the title *Belgravia* the Court observed : (LR pp. 317-18)

“... It is quite absurd to suppose that the legislature, in providing for the registration of that which was to be the *indicium* of something outside the registry, in the shape of a volume or part of a volume, meant that, by the registration of one word, copyright in that one word could be obtained, even although that one word should be registered as what was to be the title of a book or of a magazine. ... I apprehend, indeed, that if it were necessary to decide the point, **it must be held that there cannot be what is termed copyright in a single word, although the word should be used as a fitting title for a book.** The copyright contemplated by the Act must be not in a single word, but in some words in the shape of a volume, or part of a volume, which is

communicated to the public, by which the public are benefited, and in return for which a certain protection is given to the author of the work. All arguments, therefore, for the purpose of maintaining this bill on the ground of copyright appear to me to fall to the ground.”

(emphasis in original)

13. In *Francis Day & Hunter Ltd. v. Twentieth Century Fox Corpn. Ltd.* [*Francis Day & Hunter Ltd. v. Twentieth Century Fox Corpn. Ltd.*, 1939 SCC OnLine PC 50 : AIR 1940 PC 55] the Privy Council considered the infringement of copyright in the title of a song by its adoption for the title of a film. The Privy Council observed : (SCC OnLine PC)

“... In the present case the title was originally applied to a musical composition, whereas it has been applied by the respondents to a motion picture or a film. The argument of the appellant Company would be the same, it seems, if the application of the title complained of had been to a picture or a statue. On this reasoning it would be said that the title ‘Adam’ applied to a work of statuary would be infringed if that title were used as that of a novel. **These and other anomalous consequences justify the broad principle that in general a title is not by itself a proper subject-matter of copyright.** As a rule a title does not involve literary composition, and is not sufficiently substantial to justify a claim to protection. That statement does not mean that in particular cases a title may not be on so extensive a scale and of so important a character as to be a proper subject of protection against being copied. As Jessel M.R. said in *Dicks v. Yates* [*Dicks v. Ya*, (1881) LR 18 Ch D 76 (CA)] (which, as Lindley L.J. said in *Licensed Victuallers' Newspaper Co. v. Bingham* [*Licensed Victuallers' Newspaper Co. v. Bingham*, (1888) LR 38 Ch D 139 (CA)] virtually overruled on this point *Weldon v. Dicks* [*Weldon Dicks*, (1878) LR 10 Ch D 247]) there might be copyright in a title ‘as, for instance, in a whole page of title or something of that kind requiring invention’. But this could not be said of the facts in the present case. There may have been a certain amount, though not a high degree, of originality in thinking of the theme of the song, and even in choosing the title though it is of the most obvious. To ‘break the bank’ is a hackneyed expression, and Monte Carlo is or was the most obvious place at which that achievement or accident might take place. The theme of the film is different from that of the song, and Their Lordships see no ground in copyright law to justify the appellants' claim to prevent the use by the respondents of these few obvious words, which are too unsubstantial to constitute an infringement, especially when used in so different a connection.”

14. That case in *Francis Day* [*Francis Day & Hunter Ltd. v. Twentieth Century Fox Corpn. Ltd.*, 1939 SCC OnLine PC 50 : AIR 1940 PC 55] is apposite in the sense that the title of a song was adopted as the title of a film like in the present case the title of the synopsis of a story has been adopted as a title of a film and not another story. Moreover, the title comprised of common words as in the present case and it was held that they were too unsubstantial to constitute an infringement.

15. In *E.M. Forster v. A.N. Parasuram* [*E.M. Forster v. A.N. Parasuram*, 1964 SCC OnLine Mad 23 : AIR 1964 Mad 331] the author of *A Passage to India*, E.M. Forster filed a suit against the defendants for alleged infringement of copyright in the title of the book for adopting as a title the name of the defendant's guide written for students, as “*E.M. Forster, A Passage to India, Everyman's guide*”. The Court reviewed the law on the subject [*Dicks v. Yates*, (1881) LR 18 Ch D 76 (CA)] , [(i) *MacMillan v. Suresh Chunder Deb*, ILR (1890) 17 Cal 951, (ii) *Longman v. Winchester*, (1809) 16 Ves Jun 269 : 33 ER 987] , and observed that there was no copyright in respect of title vide p. 231 of the Report. Eventually, the Court held : (*E.M. Forster case* [*E.M. Forster v. A.N. Parasuram*, 1964 SCC OnLine Mad 23 : AIR 1964 Mad 331] , SCC OnLine Mad)

“... As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English. It will be perfectly clear to them, from the words enclosed in brackets as a subtitle, that they were acquiring, not the original work, but a ‘guide for university students’.”

16. The same question arose in *Kanungo Media (P) Ltd. v. RGV Film Factory* [*Kanungo Media (P) Ltd. v. RGV Film Factory*, 2007 SCC OnLine Del 314 : ILR (2007) 1 Del 1122] where the Court declined injunction against the defendant for using the brand name and title “Nishabd” alleging similar to the film of the plaintiff therein. The learned Judge A.K. Sikri, J. (as His Lordship then was) referred to decisions of the American Courts [**Ed.** : It seems that the reference is to *International Film Service Co. Ltd. v. Associated Producers Inc.*, 273 F 585 (DCNY 1921) and *Chappell and Co. Ltd. v. Fields*, 210 F 864 (2d Cir 1914)] and observed that the position is the same as under the copyright law in India : (SCC OnLine Del para 12)

“12. ... What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone.”

The Court then considered the question of protection of title as a trade mark with which we are not concerned in this case.

17. Subsequently, in *R. Radha Krishnan v. A.R. Murugadoss* [*R. Radha Krishnan v. A.R. Murugadoss*, 2013 SCC OnLine Mad 2968 : (2013) 5 LW 429] , the Madras High Court followed the decision of the Delhi High Court in *Kanungo Media case* [*Kanungo Media (P) Ltd. v. RGV Film Factory*, 2007 SCC OnLine Del 314 : ILR (2007) 1 Del 1122] and rejected an injunction for restraining the defendant from using the title of the plaintiff's film “Raja Rani”. The Madras High Court considered various other decisions and held that the words “Raja Rani” are words of common parlance which denote the king or the queen and cannot be protected under the law of copyright. The two judgments [*E.M. Forster v. A.N. Parasuram*, 1964 SCC OnLine Mad 23 : AIR 1964 Mad

331] , [R. Radha Krishnan v. A.R. Murugadoss, 2013 SCC OnLine Mad 2968 : (2013) 5 LW 429] of the Madras High Court cited above and the judgment [Kanungo Media (P) Ltd. v. RGV Film Factory, 2007 SCC OnLine Del 314 : ILR (2007) 1 Del 1122] of the Delhi High Court in our view, lay down the correct law.

18. The learned counsel for the appellants relied on passages from *Copinger and Skone James on Copyright*, 16th Edn. by Kevin Garnett, MA, Gillian Davies, D.L., PhD and Gwilym Harbottle, BA (Oxon) at p. 70:

“Names and titles as literary works.—In the same vein is the reluctance of English courts to confer copyright protection on titles of newspapers, magazines, books and the like. In relation to books in particular, the title normally forms part of a copyright work consisting of the book as a whole and the issue here may be whether the copying of the title amounts to the taking of a substantial part of the whole work. General statements can nevertheless be found in non-copyright cases to the effect that there is no property in a name or title standing alone unless it is the subject of goodwill or a registered trade mark.”

The learned authors observed:

“The courts, have, however, been careful not to rule out the possibility of such protection in appropriate circumstances, although in practice no case has ever gone this far. The only concrete example which has been given judicially is the now archaic practice of the title page of a book consisting of an extended passage of text.”

In relation to copyright in characters and titles, the learned authors observed:

“It is very difficult to protect titles of films by an action for infringement of copyright due to the requirements of originality and that a substantial part of a work be copied. If a well-known title of a film is used without authority, the owner's remedy is likely to lie in passing off. Protection by registration as a trade mark may be available provided the title is sufficiently distinctive.”

19. We are thus, of the view that no copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trade mark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in *Dicks v. Yates* [*Dicks v. Ya*, (1881) LR 18 Ch D 76 (CA)] where Jessel M.R. said “there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention” or as observed by Copinger (supra).

20. In the present case, we find that there is no copyright in the title “Desi Boys” and thus, no question of its infringement arises. The prosecution based on allegations of infringement of copyright in such a title is untenable.

(emphasis added)

23) Relying on the judgment of the Apex Court in *Krishika Lulla*, a Single Judge of this Court in *Zee Entertainment Enterprises Limited Versus. Ameya Vinod Khopkar Entertainment and others*⁵ has held in para-23 as under :-

23. Dr. Tulzapurkar then submitted that in any event by using the title “De Dhakka-2” (for the impugned film), the Plaintiffs have a cause of action against the Defendants for passing off and hence the Defendants ought to be restrained from using the title “De Dhakka-2”. I do not think that this argument also holds any force. **Firstly, it is now well settled that a party cannot claim any copyright in the title.** The works in which copyright subsist has been set out in Section 13(1) of the Copyright Act, 1957 and which consists of the original literary, dramatic, musical and artistic work; cinematographic film; and sound recording. **From the aforesaid, it is quite clear that a title of a work cannot be considered to be the subject-matter of copyright law because a title by itself is in the nature of a name of a work and is not complete by itself, without the work.** This, in fact, has been so held by the Supreme Court in the case of *Krishika Lulla* (supra) and more particularly in Paragraphs 8 to 11 thereof. Therefore, there is no question of claiming any copyright in the title “De Dhakka”. Though the Plaintiff may be able to claim a relief of passing off, I do not think that a case for passing off is made out in the instant case. In a case of passing off and as I understand it is, when one party seeks to pass off its own goods or services as that of another. That is clearly not the case here. Here what the Defendants are doing is making a sequel to the original film “De Dhakka” and who were also the Producers of the Original Film. What they have assigned to the Plaintiff is only the Original film and nothing more. This being the case, there is no question of passing off the impugned film as that of the original film. This is more so, when one takes into consideration the Affidavit-in-Reply filed by the Defendants wherein they have specifically Stated that the impugned film “De Dhakka-2” is neither a remake nor a copy in any manner similar to the Original Film “De Dhakka”. It is further stated that the music is also different and not a single dialogue or music is copied from the original film “De Dhakka”. I, therefore, find that even the argument of passing off is of no avail to the Plaintiff.

(emphasis added)

24) The position is thus fairly well settled that there cannot be a copyright in mere title of a film. Therefore, Plaintiff cannot claim any rights in mere title of the film 'LOOTERE'. *Prima facie* therefore no injunction can be granted in Plaintiff's favour on the basis of his copyright infringement claim.

25) Having *prima facie* repelled Plaintiff's case of copyright infringement in the title 'LOOTERE', the next issue that needs determination is whether Plaintiff's registration of the title 'LOOTERE' with the Associations would create any right in his favour to prevent third parties from using the same title. As observed above, Plaintiff has secured registration from Western Indian Films Producers Association (*Defendant No.4*) in respect of the title 'LOOTERE'. Letter dated 28 October 2022 issued by Defendant No.4 is filed alongwith the plaint, which evidences registration of the title 'LOOTERE' in favour of the Plaintiff. Plaintiff has also relied upon several other correspondence with Defendant No.4 in support of his claim of registration of title. Plaintiff claims that registration with Defendant No.4-Association is not only in respect of use of the title in a film but also for feature film, TV serials, web series and web films.

26) The associations formed by film producers and registrations granted by such associations are nothing but an internal contractual arrangement between the members. The Associations or grant of registrations by them do not have any sanctity in law. No statute confers right on associations of film producers to grant registration in respect of titles or any other copyrightable works. It is Plaintiff's case that the objective of registration of titles, literary

works, etc. with the associations is to ensure that the individuals and entitles in the film fraternity do not end up using titles and works of others. It is contended that such registration ensures that other producers can locate if particular title has already been used for another film and if the producer still desires to use the same tittle, he can approach the owner of the title for seeking his licence/permission. In my view this is purely a private arrangement having no sanctity in law. If the members of the Film Producers Association have contractually agreed not to use each others registered titles, violation of such agreement may give rise to an action in contract. However, violation of registration granted by any Association would not give rise to any statutory right. The contractual right created by internal arrangement between the Association and its members can be enforced only *qua* the members of the Association. Such contractual right cannot be enforced against an entity which is a not a member of the Association. In the present case, Defendant No.1 is not the member of Defendant No.4- Association. Therefore, the alleged contractual right created by registrations granted by the Association(s) cannot be enforced against Defendant No.1 who is the producer of the web series.

27) The above principle is recognized by Division Bench of Madras High Court in *M/s. Lyca Productions* (supra) in which it is held in paras-60 and 61 as under :-

60. Admittedly, there is no statute, rule or regulation which at all requires the registration of a title for production of a film. Had the appellant/first defendant and the plaintiff/respondent No. 1 been members of the same organisation, they may have contractually been bound by the internal rules and regulations of the organisation. However, the plaintiff/respondent No. 1 is not bound by the rules of the second defendant/respondent and the appellant/first defendant is not bound by the rules of the third defendant/respondent.

61. The earlier registration by the plaintiff/respondent No. 1 of the title "KARU" with the third defendant/respondent does not confer any right to the plaintiff/respondent No. 1 to exclusive use of the title so registered, to the exclusion of other producers. Whether or not there is any dispute with regard to the dates of registration of the respective titles of the plaintiff/respondent No. 1 and the appellant/first defendant, is in our view, not material.

28) Also, in the interlocutory order passed by this Court in *Fish Eye Network Pvt. Ltd. Versus. Association of Motion Pictures and T.V. Programme Producers and others*⁶, following observations are made in paras-3 and 4 :-

3. The film industry basically operates through three associations the Association of Motion Pictures and T.V. Programme Producers (the First Defendant), Film Makers Combine (the Second Defendant) and the Indian Motion Pictures Producers Association (the Third Defendant). The Plaintiff has relied on a custom or trade practice under which a title is registered with one of the associations of which the registrant is a member. Before registering the title the association verifies with the other associations as to whether the same or deceptively similar title has been registered with another association. In the present case, it is contended by the Plaintiff that the title "THANK YOU" was registered by it with the First Defendant in 2005. On this basis, it has been contended that when an attempt was made by the Fifth Defendant to use the same title, objections were lodged by the Plaintiff with its own association, the First Defendant.

4. No statutory basis has been set up for the trade practice or custom which forms the foundation of the suit. Prima facie, there is no copyright as such in a mere title. The Plaintiff has not come before the Court with a case that it has acquired a goodwill or reputation in the use of the title or secondary rights in association with the title. The Court is not inclined to accede to the prayer for the grant of an ad interim injunction since the balance of convenience must weigh against the grant of an injunction at this stage. The Plaintiff was aware as far back as on 5 May 2010 that the Fifth Defendant was using the title THANK YOU which is evident from a letter addressed by the Plaintiff to its own association, the First Defendant. The Court has been informed that the film which has been produced by the Fifth Defendant is due to premiere on 7 April 2011 and is slated for a worldwide release on 8 April 2011. The learned senior counsel for the Fifth Defendant has stated that

6 Notice of Motion in Suit (L) No. 901 of 2011 dated 5 April 2011.

an amount of Rs.60 Crores has been spent on the making of the film. The music release took place well over a month and a half ago. In this view of the matter, particularly having regard to the fact that there is *prima facie* no copyright as such in a title, the Court would not be inclined to grant an ad interim injunction especially at this stage. The Plaintiff has an alternate claim in damages. Ad interim relief is accordingly refused.

29) In my view therefore, mere registration of title with Defendant No.4-Association or by any other Association does not create any statutory right in favour of the Plaintiff to restrain Defendant Nos.1 and 2 from using the title 'LOOTERE' for making of their web series. Therefore, no *prima-facie* case exists in favour of the Plaintiff for seeking any interlocutory injunction against Defendant Nos.1 and 2.

30) Mr. Saraogi has strenuously relied on judgment of Single Judge of this Court in ***Karan Johar*** (supra) in support of his contention that unauthorised use of title can also create a cause for seeking injunction against Defendant No.1. In that case, the Defendant therein was proposing to use the title 'Shaadi Ke Director Karan Aur Johar' for its film. Plaintiff's claim was about use of his name 'Karan Johar' in the title, as well as in the story of Defendant's film. The suit was filed to restrain the Defendants from commercially exploiting Plaintiff's brand name as he alone claimed economical rights to commercially exploit his own brand name. In addition to inclusion of Plaintiff's name in the title of the film, it was also alleged that the script made references to Plaintiff's Production House, as well as to his personal life events. In my view, the issue before the learned Single Judge in ***Karan Johar*** was entirely different. The case did not involve the issue of existence of any right in mere title of a film. What Plaintiff was seeking to enforce in ***Karan Johar*** was personality and publicity rights. The judgment therefore would have

no application to the facts of the present case. It appears that the judgment of the Single Judge of this Court in *Karan Johar* has been upheld by the Division Bench in *Sanjay S/o Girish Kumar Singh* (supra). The Division Bench also considered the issue of enforcement of personality rights and publicity rights of public figures including celebrities. The judgments of the learned Single Judge and of the Division Bench, in my view, cannot be cited in support of an absolute proposition that an actionable claim in respect of registration secured in a title of a film can be maintained.

31) Mr. Saraogi has placed strenuous reliance on the conduct of Defendant No.2 in making enquiries with the Film Producers' Association in respect of the title 'LOOTERE'. He has submitted that the very factum of Defendant No.2 making such enquiry would indicate that it is impermissible to use the title without securing license from the owner thereof. While responding to Plaintiff's legal notice dated 9 September 2022, the advocate for Defendant No.2 had stated in reply dated 21 October 2022 as under :-

2. Paragraph 2 of your letter states that you had registered the title 'Lootere' with Film Makers Combine (FMC), Indian Motion Picture's Producers Association (IMPAA), and Western India Films Producer's Association (WIFPA). However, IMPAA by its letter dated 2nd September 2022 has informed my clients in writing that the title "Lootere" is registered in favor of BSK Entertainment Private Limited. My clients, therefore, telephonically sought an NOC from Mr. Bonney Kapoor of BSK Entertainment Private Limited to use the title "lootere". As Mr. Bonney Kapoor was traveling he informed my client that if the title as per IMPAA is with BSK Entertainment Private Limited he has no objection to the use of the same for the web Series being produced by Novi Digital Entertainment Pvt. Ltd ("Novi"). However, my client was surprised to receive your letter under reference stating that the said title "Lootere" was registered in your favor. I am enclosing the said letter dated 2 September 2022 from IMPAA to my clients. You are also called upon to send me copies of your title registration documents with FMC, IMPAA and WIFPA to clear the doubts created by the letter from IMPAA.

32) Defendant No.2 is not the entity at whose instance the web-series is being produced. The producer of the web-series is Defendant No.1. As clarified in the reply dated 21 October 2022, Defendant No.2 was engaged by Defendant No.1 merely for providing production services for making of the web-series. Therefore, any correspondence made by Defendant No.2 with an Association enquiring about the title 'LOOTERE' would not bind the producer of the web-series, which is Defendant No.1. Defendant No.1 has never enquired with any Association for seeking license to use the title 'LOOTERE'. Therefore, the stand taken by Defendant No.2 about making enquiries with Indian Motion Picture's Producers Association about registration of the title 'LOOTERE' with B.S.K. Entertainment Pvt. Ltd. cannot be a reason enough to infer that Defendant No.1 is under legal obligation to seek license from the Plaintiff or from the Association for use of the title.

33) The Defendant No.1 has also contended that the film industry consistently follows the practice of making different films with same titles. The illustrations given are in respect of the following films, HERA PHERI, AANKHEN, DILWALE, DOSTANA, SHANDAAR and DOSTI. Thus, mere similarity in the title is not the key and what needs to be established is similarity in the literary works of the two films. Since copyright subsists in a cinematographic film itself, as well as in its literary work, so long as the story of the two films is different, mere similarity in the title would not give rise to an actionable claim under the provisions of Copyright Act.

34) Another reason for declining the discretionary relief of temporary injunction in favour of the Plaintiff is the alacrity with which he has acted in the facts of the present case. The plaint

discloses that Plaintiff came across the official trailer of web series 'LOOTERE' on an OTT platform and addressed first communication to the broadcasting channel and associations on 9 September 2022. Despite noticing the act of Defendant No.1 in producing and proposing to release web-series using the title 'LOOTERE', Plaintiff did not file the present suit and permitted Defendant No.1 to go ahead and complete production of the web-series and also to release the same. Defendant No.1 has contended in the Affidavit that web-series 'LOOTERE' commenced streaming on OTT platform DISNEY HOTSTAR since 22 March 2024. Thus, the Plaintiff waited for the web-series to be streamed on the platform and did not take necessary steps for injuncting the Defendant No.1 from doing so. Plaintiff has whiled away substantial time of about two years despite acquiring knowledge of plans of Defendant No.1 to produce and stream web-series using the title 'LOOTERE'. The last communication sent on behalf of the Plaintiff was as on 30 November 2022. It does appear that Plaintiff did not take steps to stop Defendant No.1 from making and releasing the web-series by using the title 'LOOTERE' for one and half years. The Plaintiff has not acted in the present case with the requisite dispatch. The delay on the part of the Plaintiff in filing the suit is fatal and is a reason enough for declining the discretionary relief of temporary injunction.

35) Even otherwise, Plaintiff's prayer for temporarily restraining Defendant Nos.1 and 2 from producing, releasing or exploiting the title 'LOOTERE' has become infructuous since the web series has already been produced and has been streaming on the OTT platform DISNEY HOTSTAR since 22 March 2024. Mr. Saraogi has submitted that streaming of a web series on OTT platform cannot be confused with theatrical release of a film. He has

further contended that the web-series is still available for viewing on the OTT platform and that therefore Plaintiff is entitled to seek temporary injunction for discontinuation of such streaming. However, despite noticing the stand taken by Defendant No.1 in its Affidavit-in-Reply filed on 18 July 2024 that the web-series commenced streaming from 22 March 2024, Plaintiff has not amended the plaint and as of now there is no prayer for removal of the web-series from the OTT platform. In that sense, Plaintiff's prayer for restraining Defendant Nos.1 and 2 from producing, releasing or exploiting the title 'LOOTERE' has become infructuous as the acts of 'production' and 'release' are already completed and the act of 'exploitation' has been going on for the last one and half years.

36) Plaintiff's suit is neither for infringement of the word mark 'LOOTERE' nor for the tort of passing off. Para-6 of the plaint makes it clear that the suit is purely for copyright infringement. Plaintiff is not the owner of trademark 'LOOTERE' and therefore there is no question of infringement of the mark. Even the common law remedy of passing off is exercised by claiming prior user. Therefore, it is not really necessary to enquire into the similarity between the artistic work and expression in the titles of rival parties. Suffice it to observe that the title 'LOOTERE' otherwise lacks any form of originality as the same is a common word used to describe robbers. Plaintiff therefore cannot claim any monopoly in the said word 'LOOTERE'. Defendant No.1 who has produced the web series based on story of hijacking of vessel by Somalian pirates, is entitled to use the commonly used word '*lootere*' for describing thieves or robbers for its web series. The art work of the title in Plaintiff's film also appears to be substantially different than the art work used for web-series of Defendant No.1. As observed above, there is no

similarity in the literary works between Plaintiff's film and the web-series of the first Defendant. While Plaintiff's film 'LOOTERE' is based on love story, the web-series of Defendant No.1 is about hijacking of Indian ship leading to battle between the pirates and crew of the ship.

37) Plaintiff has thus failed to satisfy the triple tests of *prima-facie* case, irreparable loss and balance of convenience. He does not have any statutory right in use of the title. In absence of Defendant No.1 being member of any Association, Plaintiff is unable to exhibit even a contractual actionable right in the title 'LOOTERE' against Defendant No.1. Therefore, there no *prima-facie* case is made in favour of the Plaintiff. Plaintiff has virtually slept over his claim despite noticing release of trailer of web-series in September 2022. The web-series is already released in March 2024. The balance of convenience is thus clearly tilted against the Plaintiff. There is no question of cause of any irreparable loss to the Plaintiff as the web-series is already being streamed since March 2024. Plaintiff can claim damages for the alleged loss caused to him. As of now, there is no prayer for damages in the suit.

38) Plaintiff has thus failed to make out any case for grant of temporary injunction in its favour. The Interim Application is accordingly **dismissed**.

[SANDEEP V. MARNE, J.]

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