

SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1935 OF 2016
IN
SUIT (L) NO. 693 OF 2016

AKASHADITYA HARISHCHANDRA LAMA

An adult Indian Inhabitant, office at 822, Adarsh
Nagar, New Link Road, Andheri (W), Mumbai 400
053

...Plaintiff

Versus

1. **ASHUTOSH GOWARIKAR**
Adult Indian inhabitant, having his Address:
Plot No. 226, Ferndale Annexe, 12th Road,
Khar (W), Mumbai 400 052.
2. **ASHUTOSH GOWARIKAR
PRODUCTIONS PVT. LTD.**
A company registered under the provisions
of the Indian Companies Act 1956, having its
address: Plot No. 226, Ferndale Annexe,
12th Road, Khar (W), Mumbai 400 052.
3. **THE WALT DISNEY COMPANY
(INDIA) PVT. LTD.,**
AKA the Walt Disney Company India, a
company registered under the provisions of
the Indian Companies Act, 1956 and having
its Corporate office at :-Building No. - S14,
Solitaire Corporate Park, Guru Hargovindji
Marg, Chakala, Andheri (East), Mumbai 400
093.

4. **UTV SOFTWARE COMMUNIATIONS**

LTD., a company registered under the provisions of the Indian Companies Act, 1956 and having its Corporate office at :- Building No. - S14, Solitaire Corporate Park, Guru Hargovindji Marg, Chakala, Andheri (East), Mumbai 400 093.

5. **HRITHIK ROSHAN**

an adult Indian inhabitant having his office address at Film Kraft Production (India) Pvt. Ltd. Commerce Centre, Plot No. B-27, off New Link Road, Andheri (West), Mumbai 400 053.

...Defendants

APPEARANCES

FOR THE PLAINTIFF

Mr. Rohaan Cama, with Mr. Gautam Panchal, i/b S.R. Mishra & Gautam Panchal.

FOR THE 1ST AND 2ND DEFENDANTS

Mr. Ravi Kadam, Senior Advocate, with Mr. Ashish Kamat, Mr. Nirmal Sharma, Mr. Parag Sawant, Mr. Gunjan Shah & Mr. Aman Arora, i/b Desai & Diwanji.

FOR DEFENDANTS NOS. 3 & 4

Mr. Cyrus Ardeshir, with Mr. Rahul Dwarkadas & Neville Mukerji, i/b Veritas Legal.

FOR DEFENDANT NO.5

Mr. Ashish Kamat, Mr. Nirmal Sharma, Mr. Parag Sawant, Mr. Gunjan Shah & Mr. Aman Arora, i/b Desai & Diwanji.

CORAM : G.S.Patel, J.

DATED : 2nd August 2016

ORAL JUDGMENT:

1. There is an unfortunate trend in this Court, increasingly frequent. At the eleventh hour, a few days or, at most, a few weeks before a major film's scheduled theatrical release, some party rushes to this Court with a claim that his or her creative work has been plagiarized by the film's director and producers. The present case is but the latest example.

2. What perhaps sets this one apart from others that went before is that this is quite possibly the most egregiously ill-conceived claim that I have yet encountered. As the following narrative will show, it is impossible to discern from the plaint or any of the Affidavits that have been filed by the Plaintiff, what it is that he claims has been infringed. His is an ever shifting stand. He is constant only in his inconstancy, and while I agree that a foolish consistency is often the hobgoblin of little minds, the very least an application for an urgent interim injunction demands is certainty in the claim made.

3. No plaintiff may come to this Court — or, for that matter, any court — and say “I claim my work is infringed. I cannot and will not say precisely what work or when or how; that is something the Court must figure out. But give me a relief it must, and it matters not how it goes about doing this.” We are at a *prima facie* stage. The law says that in the grant of an interim injunction the Court must be

satisfied that the Plaintiff has made out a “sufficient *prima facie* case”. That must mean, in the cold language of both law and logic, that there must exist a case made sufficiency of precision. We use that expression freely, but it means nothing more than this: *on a first impression, at first sight* (literally, ‘at first appearance’ or ‘at first sight’). It is to be carefully distinguished from *ex-facie*, “on the face of it”. When, therefore, we say that a *prima facie* is made out, we mean that upon an initial examination, there is sufficient supporting and corroborative material before a court to support the claimant’s case; that case must be facially evident. Therefore, any case that demands a convoluted, inferential, syllogistic process of reasoning, or proceeds on conjecture, surmise and speculation, is not one that meets the jurisprudentially mandated standard; and no interim injunction can follow. In the language of fiction, cinema and television: *Watson, not Holmes*. What this Plaintiff demands today would defeat even that legendary denizen of 221B, Baker Street.

4. There is a very serious allegation made against the Plaintiff in the Replies. I will turn to these presently. The Defendants say that the document with which this plaint opens is entirely fraudulent and has been got up or, in their words, “reverse engineered” only for the purposes of this Suit. It is not, in my judgment, necessary to arrive at any determinative conclusion on that aspect of the matter. I only need to arrive at a conclusion, which I do, that this is a substantial defence, and that the Plaintiff has not satisfied the first test of establishing a sufficient *prima facie* case. I must note that this is a final order on the Motion by consent of the parties before the hearing began.

5. That is not all. There is, too, the matter of the Plaintiff's conduct. There is the question of delay, for one thing. I also find that the Plaintiff has moved in different Courts before. He has pursued multiple avenues. He filed and withdrew a Suit seeking the same relief in the City Civil Court. There is, as has been pointed out to me very late in the hearing yesterday, an application that the Plaintiff made for amendment in that City Civil Court Suit, the Affidavit in Support of which leaves no manner of doubt as to what the Plaintiff's intentions always were. The Plaintiff has also filed a Criminal Complaint. There again there are statements made and documents annexed that cannot be reconciled with what is now claimed in this Suit.

6. Perhaps the worst aspect of this litigation is that the Plaintiff has literally gone to town publicizing his litigations against these Defendants. There are innumerable articles and news reports vaunting this Plaintiff's claim and making it seem as if it is the Gospel truth. There are reports online that have received comments from the reading public. Almost without exception, these comments are adverse to the Defendants. Plaintiffs must decide what avenue they want to pursue. They are welcome to try their cases in the media. Nothing prevents them from doing that. But if they have chosen to come to Court, the very least that I expect is that they will then keep their distance from the media when it comes to matters that are pending before this Court. If such plaintiffs believe that by giving their causes publicity in the media, their litigations in this Court will gain greater traction, they are very sadly mistaken. To such actions, there will always be consequences. This case is one such.

7. Finally, there is the well settled principle in law that requires a party to be completely candid and to make the fullest disclosure before a Court. False statements or false suggestions are sufficient to invite a dismissal of the entire action at any stage. This has been the law for over three centuries and in this country, the highest Courts have said so for the last 50 years. The Supreme Court has said so repeatedly: *SP Chengalvaraya Naidu v Jagannath & Ors.*¹

7. We have no hesitation to say that a person, whose case is based on falsehood has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8. A litigant who approaches the court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

*Ashok Leyland Ltd. v State of Tamil Nadu and Anr.*²

118. Suppression of a material document would also amount to a fraud on the Court.

*Dalip Singh v State of U.P. and Ors.*³

It is now well established that a litigant, who attempts to pollute the stream of justice or who touches the

1. (1994) 1 SCC 1.

2. (2004) 3 SCC 1.

3. (2010) 2 SCC 114.

pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

*Oswal Fats and Oils Limited v Additional Commissioner (Administration), Bareilly Division, Bareilly and Ors.*⁴

17. This Court and different High Courts have repeatedly invoked and applied the rule that **a person who does not disclose all material facts has no right to be heard on the merits of his grievance.**

Hari Narain v Badri Das,⁵ in the context of an application for special leave:

In dealing with applications for special leave, **the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading.**

Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody:⁶

Exercise of the jurisdiction of the Court under Article 136 of the Constitution is discretionary, it is exercised sparingly and in exceptional cases, when a substantial question of law falls to be determined or where it appears to the Court that interference by this Court is necessary to remedy serious injustice. **A party who approaches this Court invoking the exercise of this**

4. (2010) 4 SCC 728.

5. [1964] 2 SCR 203.

6. [1964] 3 SCR 481.

overriding discretion of the Court must come with clean hands. If there appears on his part any attempt to overreach or mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal.

(Throughout, emphasis added.)

8. The present case discloses a consistent pattern of conduct by the Plaintiff of piling one incorrect or false claim on top of another, of constantly taking shifting stands. The Plaintiff's case, stated in a single sentence, is that a film directed by the 1st Defendant infringes something that the Plaintiff says he once wrote. Even after nearly a full day's hearing, it is unclear what document it is that the Plaintiff says was plagiarized: there are, at last count, at least five different documents or versions in which the same right is claimed. Each one has its own back-story; and all of these are attempted now, for the first time, to be fitted to a document of 1995 that has never, till this suit was filed, once seen the light of day.

9. The dispute centres around a film called *Mohenjo Daro* scheduled for release on 12th August 2016. The film's director is the 1st Defendant, Mr. Ashutosh Gowarikar. The joint producers are the 2nd Defendant, his production company, Ashutosh Gowarikar

Productions Pvt Ltd (“AGPPL”) and the 4th Defendant, UTV Software Communications Ltd (“UTV”). The film stars, among others, the 5th Defendant, Mr. Hrithik Roshan, Mr. Kabir Bedi and Ms. Pooja Hegde. The official trailer was released on 20th June 2016.

10. As almost everybody knows, Mohenjo Daro is the site of an ancient city that dates back to 2500 BCE, part of the Indus Valley Civilization. “Mohenjo Daro” literally means mound of the dead. The name of the city itself remains unknown. Its script is as yet to be deciphered. This was said to be one of the world’s earliest major urban settlements and was contemporaneous with others in Egypt, Crete, Mesopotamia and Peru. The Indus Valley or Harappan civilization includes several sites, some in what is now Pakistan in the Sindh Province and others in India (Lothal and Dholavira in Gujarat among them). The Mohenjo Daro site lies about 450 kms north west of Karachi, in the Larkana District of Sindh, Pakistan. The town of Larkana, one of the Pakistan’s major cities, is about 30 kms away. The archaeological site itself was discovered in the early years of the 20th century: it is said to have been undocumented till R. D. Banerji, an officer of the Archaeological Survey of India visited it in 1919–1920. Later, more extensive, excavations followed by K. N. Dikshit in 1925–1925 and John Marshall in 1925–1926. There were further excavations in the mid–1940s, including by Sir Mortimer Wheeler; excavations continued till the mid–1960s. There is an extensive amount of historical and technical writing about the site. Some artefacts survive. The site, the civilization of which it was a part, and some of this site’s artefacts are well-known to every school-going child who has ever had to study history. Prominent

among these artefacts is the small bronze figurine or statuette of a dancing girl, one that is (or till a few years ago was) housed in a small and entirely unremarkable glass-fronted cabinet in one of the rooms at the National Museum in New Delhi. There is another figure known as “the bearded man with a shawl” or “the priest king”, in the National Museum in Karachi.

11. Mr. Gowarikar is a Director of considerable repute in India’s film industry. He has a string of commercially and critically acclaimed films to his credit. Some of these have been set in various historical contexts. The 2nd Defendant is his Production House. The 3rd Defendant is the Walt Disney Company India Private Limited. There is no cogent reason to have joined the 3rd Defendant to these proceedings. This appears to be only on the basis of some comment on the 3rd Defendant’s website. Its joinder is completely irrelevant and unnecessary, especially now that it has filed an Affidavit saying that it has nothing whatever to do with the film in question. Similarly, Mr. Roshan, the 5th Defendant, is the lead star in the film. I do not see how he has anything at all to do with any case in infringement. He too has filed a short Affidavit. The major investment in the film has come from UTV and AGPPL. I have before me Affidavits from UTV and Mr Gowarikar and AGPPL.

12. I will take up the case in the plaint first. The Plaintiff, Mr. Akshayaditya Harishchandra Lama (“Lama”) says that he is a professional writer and has directed a film. He is also a Member of the Film Writers Association (“FWA”) since 2003. This date will turn out to be of some consequence. Paragraph 7 of the plaint puts Mr. Lama’s case in a nutshell. He begins by saying that Mr.

Gowarikar's film infringes Mr. Lama's copyright in "*the work titled Mohenjo Daro (the story)*" and the Plaintiff's copyright in the title *Mohenjo Daro*. The claim as to the copyright in the title is quickly despatched. It is settled law, and has been for a very long time, that there is no copyright in a title.⁷ In fairness, Mr. Lama for the Plaintiff does not press this either.

13. Mr. Lama says while a student in Gwalior in 1995, doing a theatre workshop with the National School of Drama, he came up with the idea of writing a fictional account based on the Indus Valley Civilization. He decided to call this *Mohenjo Daro*. He found the name interesting. He kept the name as his title. He then wrote a love story that he says is based on his personal life experience, i.e., about the life and marriage of his own parents: a story about conflicts — in cultures, love, communities and ideas. All this is said to have used *Mohenjo Daro* as its setting. Mr. Lama says that he found it difficult to come by sufficient research material, a claim that I find hard to believe given that the site itself had by then been documented for nearly a three-quarters of a century years, but we will let that pass. In paragraph 9 of the plaint, he says he knew of the two artefacts that I mentioned earlier, and he says that he used these artefacts to create his fictional characters for his story: the dancing girl was his muse for the female lead, and the priest king provided a male counterpoint. The last sentence of paragraph 9 says that this entire story was handwritten as Mr. Lama had not at that time the means or resources to type and store the manuscript.

7. *Krishika Lulla & Ors. v Shyam Vithalrao Devkatta & Anr.*, (2016) 2 SCC 521; *Francis Day & Hunter Ltd v Twentieth Century Fox Corporation Ltd*, AIR 1940 PC 55.

14. A few years later, in 1997, Mr. Lama says he moved to Mumbai to work in the film and television industry. He says that during this time he narrated several scripts to people he met. One of these was his “script” of *Mohenjo Daro*. Pausing for a moment, this itself sows the first scene of doubt, for I am not clear from this point on as to how many people the Plaintiff disclosed this story, or when and in what circumstances. It is also unclear whether this document called *Mohenjo Daro* was a story, a concept, a script or something else.

15. Mr. Lama then worked on some other films. On the way, he developed acquaintances and contacts in the film industry. One such was a gentleman named Jasvinder Ballu Saluja, apparently a film editor and a person Mr. Gowarikar too knows: Saluja worked on some of Mr. Gowarikar’s previous films such as *Lagaan*, *Swades*, *Jodha Akbar* and so on. As we shall see, Saluja is a most interesting character.

16. I turn now to the Plaintiff’s specific case regarding his so-called story or script. Mr. Cama for the Plaintiff says that his client uses these words interchangeably. Until paragraph 12 of the Plaint, when Mr. Lama speaks of the events of 2002, he does not claim that he registered the 1995 document with any body or authority. There is a conflicting story put up later in the correspondence as we shall see. What Mr. Lama says is that in 2002 he narrated his “script” of *Mohenjo Daro* to Mr. Saluja and asked him to set up a meeting with Mr. Gowarikar. He says that at the end of 2002, Mr. Saluja briefed Mr. Gowarikar on Mr. Lama’s “script” and Mr. Gowarikar expressed an interest in reading the whole of it.

17. Paragraph 13 of the plaint reads thus:

“13. Thereafter in early 2003 the plaintiff sent his handwritten script titled Mohenjodaro to Defendant No. 1 (Mr. Ashutosh Gowarikar) through Mr. Jaswinder Ballu Saluja, and after retaining the entire script for about four days Defendant No. 1 returned it back through Mr. Jaswinder (Ballu) Saluja stating that since he has directed a period film *Lagan*, he did not wish to make another period film immediately. The copy of the handwritten script of MOHENJODARO is herewith annexed and marked as Exhibit A 1. Hereto annexed and marked typed copy of MOHENJODARO script as Exhibit A 2. The English translated copy of script is annexed and marked as Exhibit A 3.”

(Emphasis added)

18. I will pause here for a moment to note that these three documents annexed to the plaint surface in this Suit for the very first time. Mr. Cama has also shown me what he calls ‘the original’, a 21-page handwritten document in Devnagari in a plastic folder, in what appears to be blue ball point ink on paper that he says is evidently old. Exhibit “A1” is a photocopy.⁸ Exhibit “A2”,⁹ is a 10-page Devnagari typed script of Exhibit “A1”. Exhibit “A3”¹⁰ is an English Translation of Exhibits “A1” and “A2”.

19. Mr. Lama then says in paragraph 15 that, in the years that followed, he developed his “script” further and made certain

8. Plaint, pp. 37 to 57.

9. Plaint, pp. 58–68.

10. Plaint, pp. 69–76.

changes to it. He claims that he was afraid that people who wanted to make period films would steal his “script” and “title” and, therefore, he says:

“15. ... Therefore to keep his script (idea of Mohenjodaro) a secret and to prevent the unauthorised copying of his script, Plaintiff changed the title of his script from Mohenjodaro to Saamrajya, for the purpose of registration.”

After the so-called disclosure of 2002, Mr. Lama changed his work title from *Mohenjo Daro* to *Saamrajya*.

20. There follows paragraph 16, which reads:

“16. Plaintiff states that on 1st October 2007, the script of MOHENJODARO, under the title of SAAMRAJYA, was applied for registration under the Copyrights Act with Ministry of Human Resources Development, Department of Secondary Education & Higher Education, and Copyrights office of Government of India. A copy of the acknowledgement issued by Copyrights office of Government of India, dated 1st October 2007 under Diary No. 6058 of 2007, for the script of MOHENJODARO by Title of SAAMRAJYA, is herewith annexed and marked as **Exhibit B.**”

21. Exhibit “B”,¹¹ only features the title and a Diary Entry, nothing more. In paragraph 18, Mr. Lama then says that on 6th February 2010, *after further modifying his work, and rechanging the title back to Mohenjo Daro*, he obtained a registration under the

11. Plaintiff, p. 77.

Copyright Act. He annexes a certificate.¹² I will take his word for it for a moment though this does not have any mention of the title of the work attached to it.

22. We came now to paragraph 19, and this is crucial. It reads:

“19. Plaintiff states that he is a member of the Film Writers Association (FWA) which is a registered Trade Union of the Writers who write for the Films and TV industry. The FWA registers through its office and website – the scripts, lyrics, and stories written by their member Writers. This procedure helps protect the work of the member in case of copyright violations. That on 18th February 2010 Plaintiff also registered his script of MOHENJODARO with the title SAMRAJYA with the Film Writers Association (FWA), Mumbai. The FWA duly acknowledged the same on 18th February 2010 and registered the same under Registration No. 174082 dated 18th February 2010. A copy of the script having acknowledgement of registration bearing No. 174082 dated 18th February 2010 is herewith annexed and marked as **Exhibit D.**”

23. What this tells us is that on 18th February 2010, Mr. Lama registered a document bearing the title *Saamrajya* with the Film Writers Association. According to him, therefore, this was a 2010 reworking of a 2007 reworking of a 1995 document. There is no other way to read the averments in the plaint. In sum and substance, the trajectory of the plaint to this point tells us quite unequivocally that the 1995 document at Exhibit “A1”, Exhibit “A2” and Exhibit

12. Plaint, Exhibit “C”, p. 78.

“A3” with some modifications became a document of 2007 (undisclosed) and this later became a 2010 document registered with the Film Writers Association. Logically, it must, therefore, follow that the 2010 document at Exhibit “D”,¹³ should bear a more than passing resemblance to the 1995 document. It does not. Other than perhaps the setting in the milieu of Mohenjo Daro, the two could not be more different.

24. I also note that in the passages I have extracted above, Mr. Lama claims to have been uncommonly cautious and sensitive to his rights. He took steps, he says, to safeguard them. This, as we shall see, sits ill with his later claims of having no conclusive record at all of the ‘parent’ document of 1995.

25. What Mr. Lama says happened thereafter is even more interesting. He says that in 2010 he was contacted for a possibility of turning the 2010 document or, as he puts it, “*the script of Mohenjo Daro*” (though it is by now totally unclear what this is supposed to reference) into a *play*. In paragraph 21, Mr. Lama says that he staged a play “*on his script Mohenjo Daro*” on 27th May 2011 in Mumbai. This play also received a Certification from the Certification Board. After this certification was obtained, Mr. Lama and his associates began work on theatre shows “*in line with the original certified script*”. This “original certificated script” is not disclosed in its entirety.¹⁴ I will take it, therefore, that since this also emerges from subsequent documents, that Mr. Lama’s play was staged not only in Mumbai

13. *Plaint, pp. 79–103.*

14. There are only three pages from *p. 106 to p. 109* that appear to be some sort of play script; nothing on these pages resembles the suit film.

but in several places in North India. If this is so, then undoubtedly the Plaintiff must have had a full-fledged play script for disclosure. This would include all the necessary ingredients of any 'script of a play', including dialogue, scene settings, directions as to lighting, on-stage action, the entry and exit of various players, set props and so on. I do not think it that it is reasonable for Mr. Lama to assume that none of us are familiar with play writing or the form that it is required to take. Conspicuous by its absence in this entire record so far is any vestige of anything that remotely resembles a script of a play.

26. Mr. Lama says that in August 2010, he learnt that Mr. Gowariker was working on a script that the Plaintiff suspected was close to his own 'work'. He believed then that there were far too many similarities. He says so in paragraph 23 of his plaint. He emailed Mr. Gowariker on 12th August 2010, and I will turn to this email in detail presently, asking for a Reply. There was no response. Mr. Lama then made several attempts to meet Mr. Gowariker. These attempts were also unsuccessful. In the meantime, Mr. Lama and his theatre associates performed the play that Mr. Lama says was based on some "script" in various parts of the country and that all of this was well received. He then says that he decided to produce or convert that "script" into a feature film. He believed that Mr. Gowariker's project was already in pre-production. In paragraph 27, Mr. Lama says that his "script" is the first "script" based on Mohenjo Daro and he cites several authoritative film magazines in support of this contention. I regret I need a little more authority than what some film magazine may have to say on the subject.

27. We come now to the year 2012. Mr. Lama says he made an adaptation of Mohenjo Daro for television. This is, therefore, a 2012 adaptation of a 2010 adaptation of a 2007 adaptation of a 1995 work; or so we are supposed to believe. Mr. Lama says that he sent this by email to some of his producer friends in 2012 and he relies on an email in support of this.¹⁵ This email is controversial. Mr. Kadam for Mr. Gowariker and AGPPL, Mr. Kamat for Mr. Hrithik Roshan and Mr. Ardeshir for UTV, all say that they were never given inspection of the original of this email. All that was shown to them was a copy taken from the Court record which bore the Court Associate's signatures; although there is a copy of some document annexed to the plaint¹⁶ no original was ever shown. Mr. Cama says he has a print out of the original as also a compact disc annexed to the Rejoinder to the Notice of Motion. I do not believe that this much helps Mr. Cama at this *prima facie* stage; the email of 2012 itself makes this clear. Even leaving aside the controversy as to what precisely was the annexure to the email at Exhibit "J" from Mr. Lama to the TV show producer, the context of the email itself, especially the training email, indicates that what was sent was a *concept*. This is obvious because in a response to Mr. Lama, the third party producer says that he would look to Mr. Lama "as a concept writer" and then says "or if U want to right it fully in da long run I am open to that also". Later he also speaks of buying the concept and giving concept credit. It does not seem to me likely, therefore, that what was sent along with this was anything more than a concept

15. Plaint, Exhibit "J", pp. 145-150.

16. Plaint, pp. 146-150.

note. What this concept note was is unclear. The next page¹⁷ is supposedly a replica of Exhibit “A3”. On a side by side comparison, this appears to be incorrect.

28. The other point to be noted before proceeding further is that, according to Mr. Lama himself, he had knowledge of Mr. Gowariker’s forthcoming production as far back as in 2010. This assumes importance because in paragraph 30 of the plaint, Mr. Lama then says that in the year 2014 he was surprised to see newspaper reports that Mr. Gowariker had decided to proceed with his film project entitled *Mohenjo Daro*. On 18th July 2014, Mr. Lama once again sent an email to Mr. Gowariker asserting rights of some kind. He said that he had written “the script” and that this had been sent to Mr. Gowariker in 2001. In paragraph 31, Mr. Lama accuses Mr. Gowariker of having plagiarized some previous works as well. We are not concerned with this since admittedly the Plaintiff never brought Suit for any such infringement.

29. By end-February 2015, Mr. Gowariker had completed shooting large portions of his film. Again, Mr. Lama admits in paragraph 33 that he obtained details of the shooting script and of the portions filmed. He sent a legal notice dated 22nd March 2015.¹⁸ AGPPL responded to the notice on 18th April 2015.¹⁹ UTV responded by its letter dated 11th June 2015.²⁰

17. From Plaint, pp. 146–150.

18. Plaint, Exhibit “L”, pp. 155–162.

19. Plaint, Exhibit “M”, pp. 163–168.

20. Plaint, Exhibit “P”, pp. 175–179.

30. On 4th June 2015, the Mumbai Mirror newspaper apparently published a leaked story of Mr. Gowarikar's film. A copy of this newspaper edition is annexed.²¹

31. The plaint, I find, carefully skips over an intervening event (introduced only much later in the Plaint), and that is the fact that on 30th November 2015 (although affirmed on 30th September 2015) Mr. Lama filed Suit No. 3321 of 2015 in the City Civil Court at Dindoshi. In that Suit an amendment application came to be made in December 2015. The terms of that application and the wording of its Affidavit in Support will turn out to be of some significance. For the present, it is sufficient to note that Mr. Lama withdrew that Suit on 17th March 2016 with liberty to institute a fresh proceeding before an appropriate forum. The Plaintiff did not file the present Suit immediately. It was filed on 28th June 2016. By this time, and this is admitted in paragraph 44 of the plaint, the official trailer of Mr. Gowarikar's film *Mohenjo Daro* had already been released on 20th June 2016.

32. Mr. Lama in paragraph 44 of the plaint draws a comparison between his 1995 work and the trailer and tabulates this:

MOHENJODARO SOME OF THE SIMILARITIES			
Original Plaintiff's scene		Ashutosh Gowarikar's scene	
1.	Story is based in Indus Valley Civilisation 2500BC with the title Mohenjodaro.	1.	Story is based in Indus Valley Civilisation 2016 BC with the title Mohenjodaro.

21. Plaint, Exhibit "Q", p. 180.

MOHENJODARO SOME OF THE SIMILARITIES			
Original Plaintiff's scene		Ashutosh Gowarikar's scene	
2.	Main protagonist is introduced while fighting with a tiger.	2.	Main protagonist is introduced while fighting with a crocodile.
3.	Protagonist falls in love with the daughter of the Priest, who is head of the Ruling Council of Mohenjodaro.	3.	Protagonist falls in love with the daughter of the Priest, who is Head of Ruling Council of Mohenjodaro.
4.	Enemy is present head (Priest/King) of Mohenjodaro.	4.	Enemy is of present head (Priest/King) of Mohenjodaro.
5.	In Plaintiff's script protagonist's late father was head of Mohenjodaro who was killed by his close confidant later on who captures his position too.	5.	In Plaintiff's case protagonist's late father was head of Mohenjodaro who was killed by his close confidant later on who captures his position too. Again according to media reports it seems that one that antagonist (Kabir Bedi) killed protagonist's father.
6.	The Heroine is engaged to the son of the person (enemy king) responsible for the death of Hero's father.	6.	The Heroine is engaged to the son of the person (enemy king) responsible for the death of Hero's father.
7.	The main protagonist (Hero) meets the Heroine in a fair. Hero impresses her with things from different culture, which she has not scene before.	7.	The main protagonist (Hero) meets the Heroin in a fair. Hero impresses her with things from different culture, which she has not scene before.
8.	Protagonist's late father was head of Mohenjodaro who was killed by heroine's father.	8.	Protagonist's late father was head of Mohenjodaro who was killed by heroine's father.
9.	In the poster of our play hero is holding a weapon standing alone.	9.	In the poster Hero is holding a trident standing alone.
10.	At the end Hero takes revenge from the enemy who eventually had killed his father.	10.	At the end Hero takes revenge from the enemy who eventually had killed his father.

MOHENJODARO SOME OF THE SIMILARITIES			
Original Plaintiff's scene		Ashutosh Gowarikar's scene	
11.	Also in plaintiff's play, according to his imagination, end of MOHENJODARO happens due to natural calamities like drought and flood.	11.	Also in Plaintiff's play, according to his imagination, end of MOHENJODARO happens due to natural calamities like drought and flood.

33. There are several problems with this. To begin with, it is unclear what Mr. Lama is comparing. The official trailer is nothing at all like Exhibit "D", the 2010 reworking and entitled *Saamrajya*. The left column makes mention of a poster of play; no such full play script is disclosed. Some of the elements are generic: *hero fighting [insert name of wild animal of choice]*. Fighting with lions,²² tigers (Russell Crowe in *The Gladiator*), bears (Leonardo diCaprio being mauled by a bear in *The Revenant*), strange monsters from the deep (Kevin Costner in *Waterworld*), and so on are nothing new. Mr. Gowarikar's crocodile is possibly unique: if the trailer is anything to go by, his is a thoroughly confused reptile with pronounced avian ambitions. Item 11 has nothing at all to do with Mr. Lama's imagination: I very seriously doubt that he can take the credit for a discourse within the historical and archaeological fraternity about the reasons for the decline of the Indus Valley Civilization. Natural calamities and environmental factors have long been suggested as possible causes. There is even material on record to show that this theory forms part of that technical debate. Making such wild claims is telling; and it lends heft to Mr. Gowarikar's case, viz., that he developed his script and movie after long years of research and

22. A particular favourite of Telugu cinema; Nandamuri Balakrishna supposedly battles one in his new film.

discussion with experts, and this so-called 1995 document has been generated after seeing the trailer that hints at almost every single one of the elements in this tabulation.

34. The entire basis of this plaint is, therefore, that Mr. Lama has had since 1995 a unique work, sufficiently complete in all respects, disclosed in circumstances of confidence to Mr. Gowarikar in 2003 and which is now been made into a film that very closely resembles Mr. Lama's work. This is the entirety of Mr. Lama's case. But this entire case is founded on one single assumption, viz., that the work in question and of which Mr. Lama claims infringement is an identifiable work called *Mohenjo Daro*. To get to this position, Mr. Lama must establish that his 2012 work on which he staged plays was sufficiently close to his 2010 adaptation, and that, in turn, was sufficiently close to his 2007 adaptation, and which, in turn, mirrored his 1995 work. Unless this complete chain is shown in its entirety, the case must necessarily fail for the simple reason that Mr. Lama claims that the infringement is between his originating work of 1995 and Mr. Gowarikar's film scheduled for release on 12th August 2016. If, therefore, there is any doubt about the existence of the 1995 work, or its disclosure, or the circumstances of its disclosure, or of its very existence, no injunction can possibly be issued at this *prima facie* stage.

35. Before turning to what the Defendants have to say, let me consider very briefly two critical documents. The first is the bunch, what I will call the 1995 bunch, Exhibits "A1", "A2" and "A3". The primary amongst this is the document at Exhibit "A1", the 21-page handwritten document. This is to be set against Exhibit "D", being

the document which is said to be an adaptation or some modifications but with a different title (“*Saamrajya*”). I have considered the two closely. While it is possible to contend that Exhibit “D”, the *Saamrajya* document, is sufficiently fleshed out, the document at Exhibit “A1” is not. Exhibit “D” contains scene settings, dialogues, introduction of characters and many of the elements that might serve as a spring board or a kernel for further development. The 1995 document, Exhibit “A1”, even assuming its existence is established, has none of these elements. It seems to be little more than a concept note and this concept note is, in my view, incapable of being treated as protected under the Copyright Act.

36. I came now to the Affidavits in Reply. The Affidavits of Defendant No. 3 (the Walt Disney Company) and Defendant No. 5 (Mr. Roshan) need not be considered in any detail. Both of them have been needlessly joined to this suit. UTV’s Affidavit in Reply sets out that it has invested a considerable amount in the film. This speaks to the question of balance of convenience, a matter best left to the end. Mr. Gowarikar and AGPPL have, however, put in an Affidavit in Reply that runs into three volumes and nearly 600 pages. I have seldom seen this level of details in matters such as these. I will pass over the initial paragraphs that serve as an introduction to Mr. Gowarikar and his works. I think this is sufficiently well-known.

37. Mr. Gowarikar opens his Affidavit in paragraph 2.5 by disputing the question of disclosure in the first place. He agrees that he knew Saluja and that he had worked with him. He agrees that an attempt was made in 2003 to send something to Mr. Gowarikar

through his secretarial office staff. There is an annexure to this Affidavit,²³ of an employee who says that whatever Saluja received was not in fact given to AGPPL as there was no instruction to receive any script. Whether this is true and whether this is borne out by any email or is contrary to it is a matter that must surely await a trial.

38. I will note at this stage what Saluja himself says, for he has, to my very great surprise, provided Mr. Lama with not one but two Affidavits which we find at pages 597 and 599 of the Affidavit in Rejoinder. These Affidavits are apparently dated 30th March 2016 and 27th July 2016. The second is, therefore, clearly after the Affidavits in Reply were filed. Why the first Affidavit was not disclosed in the plaint is unclear. Saluja says in his first Affidavit of 30th March 2016 that in 2002 Mr. Lama narrated to him — and this is important — “the **script** of his **play** *Mohenjo Daro*”. This can only be understood to mean that in 2003, i.e., at the time of the alleged disclosure to Mr. Gowarikar, Mr. Lama had ready a play script sufficient for the staging of a play. This is now Mr. Lama’s own case because he cites Saluja’s Affidavit in support and this is what Saluja’s Affidavit says. If there was any doubt about this, it is put to rest by paragraph 2 of this very Affidavit because here Saluja says that in August or September 2003, Mr. Lama gave Saluja — and this is also important — “a *handwritten script* of his **play** titled *Mohenjo Daro*” and that Saluja in turn gave this to Mr. Gowarikar. He, Mr. Gowarikar, is supposed to have returned this after four days saying that after his previous film *Lagaan*, he was not interested in making

23. Notice of Motion paperbook, Annexure “F”, pp. 139–140.

another period (Saluja says 'periodic') film immediately. Saluja then returned this to Mr. Lama. This is immediately in conflict with the Plaintiff's case in the plaint. Mr. Lama does not say that in 2003 he had a play script ready or that it was his play script that was disclosed to Saluja for forwarding to Mr. Gowarikar. Undaunted by obvious and patent inconsistencies, Saluja presses on regardless. He is happy to give Mr. Lama yet another Affidavit dated 27th July 2016. There are other contradictions as well which I will let pass for the moment. For example, the plaint says that the alleged disclosure was early-2003 but Saluja, who otherwise seems to have an indefatigable memory, puts this at August-September 2003 in his first Affidavit, only to revert back, again undeterred by any inconsistency, to simply 2003 in his next Affidavit. In the subsequent Affidavit, however, Saluja now casts his mind back a full 13 years, and recalls with quite uncommon luminosity that to the best of his knowledge, the handwritten document at Exhibit "A" is "the same script" that he gave to Mr. Gowarikar in 2003. Unfortunately, for both Mr. Lama and Mr. Saluja, the handwritten document is not a "script" at all. It is most certainly not a script of a play. In fact, as we shall see, one does not even know whether it ever existed.

39. But what is Mr. Gowarikar's positive case about his own film? Mr. Gowarikar's Affidavit does not stop at a denial of disclosure. It goes much further. He says from paragraph 2.6 of his Reply that, given his penchant for historical or period films, he considered a film based on Mohenjo Daro in 2007. Paragraph 2.6 is particularly important. Mr. Gowarikar does not say that he merely had this idea and did nothing about it. He went to press. He publicly announced

his project. He obtained title registrations. He annexes media reports of August 2007 showing this. This is important for another reason. It puts the Plaintiff's date of knowledge or deemed knowledge three years prior to his admitted date of first knowledge, i.e., 2010. Being in the same industry, the Plaintiff could hardly have been unaware of Mr. Gowarikar's project.

40. It seems that Mr. Gowarikar was then working on some other projects but continued to work on his storyline and script in the meantime in parallel. He began research in 2008, and this is where the Affidavit in Reply becomes truly astonishing. There are several well-regarded books and treatises on Mohenjo Daro. There are works by Sir Mortimer Wheeler, B.B. Lal, Shireen Ratnagar, and others. An acknowledged authority is Professor Jonnathan Mark Kenoyer, a trained archaeologist and presently Professor of Anthropology at the University of Wisconsin-Madison, U.S.A. He has three publications on Mohenjo Daro to his credit. I find that in Volume-II of this Affidavit in Reply, from pages 145 to 400 of the Motion Paper-book, there are copies of other texts, writings, studies and books on Mohenjo Daro. Correspondence between Mr. Gowarikar and Professor Kenoyer is also disclosed and this goes on from pages 401 to 427 and spans a period of nearly six years. There is material also to indicate that Mr. Gowarikar spent considerable time with Mr. Kenoyer both in India and overseas. He consulted Mr. Kenoyer on small and minute details. The correspondence indicates that Mr. Kenoyer frequently corrected Mr. Gowarikar and set him right as to what was likely to have existed in Mohenjo Daro. There is a certain amount of debate about what actually existed at the time based on archaeological findings. For instance, certain excavations

have found the remains of skeletons and there is a debate amongst experts as to whether this was a result of war or natural calamity (with one person, predictably, suggested the detonation of a nuclear or atomic device). What actually happened is unknown. The architectural features of the city are well-known. In the plaint itself Mr. Lama is quite clear that he does not claim any kind of proprietary rights over any depictions or descriptions of those architectural or urban features.

41. Mr. Gowarikar went further. He consulted archaeological experts. He held meetings with them. There are copies of his correspondence to be found in Volume-III. There are photographs of the seminars from pages 458 to 463. There is also evidence of presentation being made by archaeologists working on site as far back as on 13th March 2011. These presentations included not only the Mohenjo Daro site but material that applied to the entire Indus Valley Civilization including the sites at Bagasera, Sanauli, Dholavira, Harappa and so on. The discussions ranged about seals, jewellery, metals, weapons, food and food grain, fruits, diet, health, construction and so on. I mention all of these because it is impossible to believe that had Mr. Gowarikar in his hands a ready-made fully-fleshed out work of the kind that Mr. Lama claims, that he would have had to do as much as this to develop his own script. The Affidavit mentions individual archaeologists, excavators, scientists and scholars by name in paragraph 2.12 at page 57. All this expert material was collated and then exchanged with Professor Kenoyer. AGPPL spent a very great deal of money on all of this. Finally, all of this came to fruition in a storyline and a script that Mr. Gowarikar registered on 23rd March 2012 and 27th March 2012

with the Writer's Guild of America and the FWA.²⁴ In paragraph 2.18, Mr. Gowarikar completely denies ever having seen or read any work relating to Mohenjo Daro by the Plaintiff. Mr. Gowarikar sets out that the expenditure on this project has crossed Rs. 150 crores. This is not in fact disputed.

42. Apart from the questions of delay and balance of convenience relating to costs, Mr. Gowarikar puts up an affirmative case that the Plaintiff has, as he puts it, "reverse engineered" the 1995 documents for the purposes of this shoot. I have already noted earlier that for the Plaintiff to sustain his claim, he must show a sufficient similarity between the 2010 document at Exhibit "D" and the 1995 work. Paragraphs 3.6 to 3.9 of the Affidavit in Reply read thus:

3.6 Shortly put, the storyline of the Plaintiff's impugned 1995 story is as follows:

3.6.1 Varun and Kurav are step brothers. Out of them, Varun at the instance of Manthar, is chosen by the council of Mohenjo Daro as the head of 'Mohenjo Daro'. Varun has a wife Mahamaaya and a 10-year-old son Indra.

3.6.2 Varun's election as Mohenjo Daro's head causes resentment in the mind of Kurav. Kurav therefore sends a message to the traditional

24. Notice of Motion paperbook, Affidavit in Reply of Defendants Nos. 1 and 2, Annexure "Q", p. 470.

Aryan Enemy Chief Mitra to invade Mohenjo Daro at the time of celebrations. Mitra invades and is defeated by Varun. In view of the auspicious occasion, Mitra is pardoned and becomes Varun's friend. However, before Mitra can reveal Kurav's involvement in the plot; Kurav assassinates Varun by deceit; and usurps power. Varun's wife Mahaamaya dies of shock and Indra's nanny viz. Dhari takes Indra and flees to her native Harappa. The said Dhari raises Indra and/or now renamed as "Shivam". Indra grows up unaware of his past.

3.6.3

A chance visit to Mohenjo Daro and clash with Mitra reveals partial memory of his past to Indra.

3.6.4

In the meantime, Kurav taking advantage of his ascent to power and position as Mohenjo Daro's head announced his son Akshat as his successor and a compulsive betrothal with Manthar's daughter Sugandha.

3.6.5

Indra meets Sugandha and falls in love. Sugandha does not initially reciprocate. After sometime, Indra saves Sugandha from a tiger and they fall in love. Kurav and Akshat are informed of this. They therefore, planned to remove Indra from their

way. However, Indra escapes. In the meantime, Manthar learns about Indra's past; Kurav's conspiracy; and plans to expose Kurav. Before he can do so, Kurav assassinates Manthar.

3.6.6 Indra learns of his entire past and his father Varun's assassination. Indra therefore, seeks Mitra's help. In the meantime, Kurav sentences Sunganda to death for treason.

3.6.7 In the climax, Indra takes on Kurav and Akshat's army. This is with the help of Mitra's army. During the course of the fight, there is a challenge duel between Indra and Akshat where, Indra defeats Akshat.

3.6.8 Kurav flees Mohenjo Daro. Thereafter, Kurav opens the dam gates of the Sindh river; causing 'Mohenjo Daro to submerge. Indra saves many lives, and leaves Mohenjo Daro towards the river Ganga to create a new civilization.

3.7 **As against this, the 2010 script (which is the stated basis of the play) and is alleged to be premised on the impugned story, discloses the following completely distinct and dissimilar storyline.**

3.7.1. At the outset, this script is titled "Samrajya" and not Mohenjo Daro. Even the impugned 1995 story is not

titled 'Mohenjo Daro', and as such, the claim to title is false. In this script there is no sibling rivalry and/or personal vendetta. The entire theme is different and based on the personal sacrifice and valour of general 'Akshat'.

3.7.2 Indra is an Aryan Chief and the traditional enemy of Mohenjo Daro whose chief is Kurav and his daughter Sugandha. Indra, who has lost an earlier battle with Mohenjo Daro makes an uninstigated attack on Mohenjo Daro. Indra is defeated, essentially, by Mohenjo Daro's capable general Akshat. Indra is defeated; despondent; and blames his uncle Ishaan for multiple defeats on account of intelligence failure on Mohenjo Daro's strength of arms and animals used in warfare.

3.7.3. A chance meeting between Indra and Sugandha (who is Kurav's daughter) leads to Indra falling love. Indra offers Sugandha a horse ride. Sugandha realizing that Indra is an Aryan initially refuses. Indra takes her on a ride, and thereafter, impregnates her.

3.7.4. Around the same time, Kurav wants Akshat to be his son in law. Akshat also likes Sunganda. However, Sugandha's pregnancy is

discovered by Kurav. Kurav and Mohenjo Daro's Council sentences Sugandha to death. However, Akshat wants to save Sugandha; unite with her Indra; and allow her to conceive her child. When Akshat is about to facilitate Sugandha's escape Kurav and Manthar enter and attempt to prevent Akshat from assisting Sugandha to flee. However, Akshat overcomes them and assists Sugandha to freedom and unites her with Indra. Akshat thereafter, surrenders himself.

3.7.5. Kurav wants to sentence Akshat to death. However, Manthar argues Akshat's case. The Council agrees with Manthar. Hence, Akshat's life is spared. However, he is exiled from Mohenjo Daro. Many years' elapse. Indra and Sugandha have a son called Varun. Indra dies in a horse fall. Varun is about to ascend to the position of the Aryan chief. However, an objection is raised on the issue of his unquestioned loyalty to the Aryan race, in view of the fact that his mother Sugandha is from Mohenjo Daro. A challenge is put before Varun that he should attack Mohenjo Daro which is ruled by his grandfather Kurav and win the war. Varun accepts this challenge.

3.7.6. Sugandha is extremely upset with Varun's decision to attack Mohenjo Daro. She attempts to persuade him to give up this challenge. However, Varun does not listen to her. Sugandha therefore, also approaches Akshat and calls upon him to assist Mohenjo Daro to overcome the difficult time.

3.7.7. At this time, Mohenjo Daro is facing a situation of drought; its army is depleted; and there is no effective military leadership. Mohenjo Daro is conscious that it cannot face the Aryan's army. Mohenjo Daro looks to Akshat for help. Akshat being a loyal and patriotic general returns to lead the Mohenjo Daro forces. A war ensues between the Aryan and Mohenjo Daro's armies led by Varun and Akshat respectively. There is a storm, causing losses on both sides. These leads to an agreement that there would be a duel between Akshat and Varun. During the course of duel, when Akshat is about to win and just then, Sugandha shouts. This leads to Akshat's attention being diverted and Varun giving him the fatal blow. Akshat is wounded and eventually expires.

3.7.8. At this time, Varun realizes that it is Akshat who had saved his life whilst

he was still in his mother's womb. Akshat repents and refuses to be the Aryan Chief. He rather, seeks to be with Mohenjo Daro; help it overcome the crisis and floods faced; and as such, do his penance for his wrong decision to attack Mohenjo Daro and leading upto the unfortunate demise of Akshat.

3.8 The aforesaid unequivocally demonstrates that the impugned 1995 story (which has now emerged) and the 2010 script (the basis of the claim) are completely different, distinct and dissimilar. There is no similarity in either of them or storyline thereof, except the fact that they are set in Mohenjo Daro a city in the Indus Valley. Whilst the impugned 1995 story is based on sibling rivalry; vendetta; and a love interest. On the other hand, the subsequent 2010 script is based on a challenge taken for the purposes of securing the throne and the personal sacrifice of Akshat. Even the inter - se relationship between the characters; the situations; and the entire theme and concept of the rival works are completely different. There can be no conceivable basis on which the Plaintiff's subsequent script has been premised on the impugned 1995 story.

3.9 The aforesaid makes it apparent that the impugned story is fabricated; ante-dated; and /or fraudulently engineered to premise the suit claim. Clearly, after seeing the promos and making enquiries the Plaintiff has sought to engineer the impugned story by using only the

character names to give it a semblance of respectability and create an artificial relationship between the impugned 1995 story and the 2010 script. The Plaintiff has thus, misconducted himself; resorted to fraud; and the suit is nothing but an abuse of process of this Hon'ble Court. Both the Notice of Motion and the Suit deserves to be dismissed with exemplary costs and strictures against the Plaintiff.

(Emphasis added)

43. The Affidavit in Rejoinder does not have a traverse by paragraph. These paragraphs demonstrating the differences between 2010 and the 1995 works were critical. I find they have not been addressed at all.

44. What Mr. Kadam says is that we till date do not know what is the work in which Mr. Lama claims rights and in which he claims infringement. As we have seen, the differences between the 2010 and 1995 works are too stark for one to be glibly stated later to be a modification of the other.

45. I understand Mr. Cama to say that the words 'script', 'story' and 'script of the play' are all used interchangeably. This cannot be. Any such argument is felled by Saluja's Affidavit, that in 2003 Mr. Lama sent on a 'script' at Exhibit "A1". As Mr. Kadam points out, this is not a script at all, of either a play or a movie or anything else. It is not a script of the play that was staged thereafter. Even in the documents that are annexed to the Plaint such as Mr. Lama's own

email at page 107, the Plaintiff writing to Mr. Gowarikar speaks of a 'Natak' and his script of that 'Natak'. He says in Exhibit "G" at pages 109 to 111 at page 109 that he narrated 'the script of the play' to Saluja in September 2001. Saluja was entranced, apparently no very difficult thing. Mr. Lama then makes a astonishing assertion at page 110 where he says that he had registered his 'script' in 1999 and then made changes in 2005 and 2010. Now this is the Plaintiff's own document. It is problematic at so many levels that it is hard to know where to begin. In 1999, Mr. Lama was not even a member of the Film Writers' Association. Second, his Plaintiff does not claim that he registered anything with the Film Writers' Association in 1999. It says that he made modifications in 2007 and 2010 but the email speaks of 2005 and 2010. What is Mr. Lama's explanation for not having a registration certificate of 1999 if that is indeed what he did? He says that his registration certificate got lost in the rains and floods of 2005. Miraculously, Exhibit "A1" survived. This is very doubtful because, as Mr. Kamat somewhat tersely points out, the Film Writers' Association does not issue a separate "certificate"; it endorses the certification on the front page and thereafter on every page of the document sent to it for registration. Exhibit "D", Mr. Lama's own work of 2010 has just such a certification. Why, therefore, the so-called 'certified' script of 1999 is not produced remains unexplained. Nobody suggests that the 1995 script allegedly registered in 1999 was also lost due to a Mohenjo Daro-like natural calamity. It is not just produced. But this email refers constantly to 'a play'; no such play is produced. The only certified document is the one at Exhibit "D" at page 79, and it is a play not called "*Mohenjo Daro*" but called "*Samrajya*". As I have said, and as Mr.

Gowarikar's Affidavit points out, Exhibit "D" is in no sense parallel to Exhibit "A1" or to Mr. Gowarikar's film.

46. If there was any doubt about what the Plaintiff meant, it is I imagine put to rest by his subsequent mail dated 12th August 2010.²⁵ This asserts that the play was performed in 1995-96. This is directly contrary to the averments and assertions in the Plaintiff, which indicate that no performance was staged before 2011. The only document that the Plaintiff has registered is Exhibit "D" which is of 18th February 2010. There is also some material from the records of the Film Writers' Association to indicate that there is no other registered work called "Mohenjo Daro" ever registered to the Plaintiff.

47. If there was any doubt about any of this, it is put to rest by Mr. Lama's Advocate's notice dated 22nd March 2015.²⁶ Here in paragraph 2 at the very head of the letter, the Plaintiff claims through his lawyer that one of the 'scripts' that Mr. Lama wrote is a 'play' based upon 'Mohenjo Daro'. Throughout this notice speaks of a 'script'. In paragraph 3, it says that this 'script' is the one that was registered on 18th February 2010. That can only be a reference to the document at Exhibit "D" and never to the document at Exhibit "A1". Paragraph 5 then speaks of an alleged disclosure of the handwritten original of "the said script" to Mr. Gowarikar in 2001/2003. This can only, therefore, be a reference to a pre-registration handwritten draft of Exhibit "D". This, according to

25. Plaintiff, Exhibit "K", pp. 151-154.

26. Plaintiff, Exhibit "L", pp. 155-162.

Mr. Cama is Exhibit "A1". If that is so, then Exhibit "A1" and Exhibit "D" should parallel each other in terms of content, characters, plot-lines and so on. I find none of this.

48. The three documents, Exhibits "A1", "A2" and "A3" are decidedly suspicious. They do not find place as an annexure in the Plaintiff's Suit in the City Civil Court. They do not find place in a police complaint that the Plaintiff lodged through his Advocate on 20th January 2016. Here again in the police complaint there is a reference to the 18th February 2010's "*Samrajya*" document (Exhibit "D" to the current Plaintiff). I would assume that at the time of the City Civil Court Suit and certainly at the time of the police complaint in early 2016 the Plaintiff had with him Exhibit "A1". Why this has not been disclosed remains unexplained. Mr. Cama insists that the reference to it in the narrative is sufficient. I disagree. The reference in the narrative is clearly, as we have seen, to a previous draft or working of Exhibit "D". Exhibit "A1" is not that document. Exhibit "A1" is something else entirely.

49. What is even more peculiar is what the Plaintiff did in the City Civil Court. For reasons that I cannot understand, the Plaintiff moved a Chamber Summons dated 21st December 2015 seeking to amend his Suit. The prayers are very interesting. By this Chamber Summons, the Plaintiff sought to delete from his City Civil Court Suit all references to infringement. Specifically, he sought to remove the words

"in any manner whatsoever so as to infringe the Plaintiff's copyright in the copyrighted work in any

manner, conduct, shooting and post production work thereof”.

50. What remained in the Complaint, therefore,²⁷ was a relief that sought to restrain the Defendants from in any manner making, producing etc. or publicizing or adopting the impugned film. All references to infringement were removed. The Affidavit in Support of this Chamber Summons says in paragraph 1 that

“however inadvertently while drafting the Complaint it is made out as if the Plaintiff is seeking reliefs under Copyright Act when in fact the Plaintiff is only concerned to protect his script of a film titled “Mohenjo Daro”.

(Emphasis added)

51. Thus, very like one of the strange plays by Ionesco, we have yet another peculiar beast coming on stage. This is now a *script of a film*. None of this helps Mr. Lama. It makes matter significantly worse. He begins with what he calls a story. In other places, it is called a concept. He then calls it a script. He then speaks of an adaptation, and an adaptation of that adaptation. He then tells us that there was a script of a play. We now have a script of a film.

52. This is the constantly shape-shifting nature of the Plaintiff’s claim to which I referred at the beginning of this judgment.

27. Notice of Motion paperbook, Affidavit in Reply of Defendants Nos. 1 and 2, Annexure “D”, pp. 489–518.

53. Mr. Gowarikar's case in his Affidavit in Reply from paragraph 39 onwards is that the Plaintiff has reverse engineered the document at Exhibit "A1" after having seen after the official trailer of Mr. Gowarikar's film. This is not only borne out by the differences between Exhibit "A1" and Exhibit "D" but it is also established, *inter alia*, by a comparative chart that Mr. Gowarikar produces in his Reply.²⁸ This references in column 1 the English typed version of Exhibit "A1", i.e., Exhibit "A3"; in column 2, the Plaintiff's registered document of 18th February 2010, Exhibit "D" to the Plaintiff; and the Defendants' film of 2016. Exhibit "A1", allegedly of 1995, which has, as I have noted, never seen the light of day till now and emerges only in this Suit late on 28th June 2016 is uncannily modelled on the trailer of Mr. Gowarikar's film. The registered document of 2010, Exhibit "D" to the Plaintiff, is nothing at all like the suit film. Hence, Mr. Gowarikar's assertion.

54. Mr. Cama submits that there is no case of reverse engineering because of the disclosure made in the email at Exhibit "J" to the Plaintiff when the Plaintiff allegedly sent his script to some TV producers. But we have already seen the difficulties with that particular document, which is in any case addressed to a third party. Besides, the annexure to that email, even if taken at face value, is not Exhibit "A1". There are stray sentences in common, but paragraph after paragraph (from the first paragraph onward) is materially different. The so-called 2012 document mentions, for instance, Kalibangan, an Indus Valley Civilization-era site in Rajasthan; the

28. Notice of Motion paperbook, Affidavit in Reply of Defendants Nos. 1 and 2, Annexure "V", pp. 523-524.

Exhibits “A1-A3” bunch does not. There are characters in one that do not find place in the other and *vice versa*. In fact, I am unable to find any two paragraphs between the 1995 and the 2012 document that tally or match in any meaningful respect.

55. Mr. Cama asks me to take far too much on faith. I am asked to assume quite explicitly that the 1995 document *must be* the source of the quite different 2010 document; that there intervened some 2007 variant; that there was some undisclosed play script; and now from the Chamber Summons in the City Civil Court that there is some undisclosed film script and that all of this is somehow tied to the 1995 document which must therefore be held to be authentic. This is about as far from a *prima facie* case as it is possible to get.

56. What is, however, not in doubt is this that on 15th January 2015, i.e., 18 months ago or more, Mr. Gowarikar announced the release date of his film, 12th August 2016, and this was widely reported in the press.²⁹ This date was, therefore, known in advance. The entire timing of this action starting from December 2015 is, therefore, most peculiar. It is not also insignificant that the Plaintiff affirmed his plaint on 30th September 2015 but waited till November 2015 to file the Suit. In December 2015, he sought to amend his plaint and to remove the only cause of action that he might have had, i.e., in infringement, and made a claim for yet another type of document, viz., a script of a film.

²⁹ Notice of Motion paperbook, p. 471, at p. 473.

57. It is impossible in these circumstances to tell what it is that the Plaintiff claims rights in. This entire case seems to have been put up only in order to gain some mileage from the release of this film. There is no doubt that the Plaintiff did in fact have certain stage productions with Mohenjo Daro as a contextual setting. I very seriously doubt whether that can in and of itself sustain a claim like this. It is not possible to conclude that any of the necessary requirements are met. In order to succeed the Plaintiff must be able to establish unequivocally that there was in fact a disclosure. That is already doubtful. Saluja's Affidavits do not help. They make matters worse. That disclosure must also be shown to have been in circumstances of confidence. That is not done either. Most material of all, a Court must know and must know with precision and certainty what it is over which the Plaintiff claims rights and in what fashion. This can never be a matter of speculation or left to guess work, or something to be arrived by a process of elimination, which is what Mr. Cama is left to do with the material that is placed in his hands.

58. It is not possible to say, either, that the Plaintiff's work was the 'springboard' or 'kernel' of Mr. Gowarikar's film. In fact, Mr. Gowarikar's film seems to have served as the springboard or kernel of this lawsuit, a very different thing in law.

59. There is one aspect to which Mr. Cama can have no possible answer. The Plaintiff alleges that Mr. Gowarikar is some sort of serial plagiarist. Mr. Lama makes allegations against Mr. Gowarikar for previous films, including *Jodha Akbar*. All of that is pointless now, and meant only to prejudice; for Mr. Lama took no action at any

time about these grievances. What all this overlooks, however, and to which there is no response in the Rejoinder either, is that Mr. Gowarikar has often collaborated with others on the scripts for his films. In his Affidavit in Reply, he gives instances. These persons with whom he collaborated have always received credit. There was no reason, Mr. Kadam points out, for Mr. Gowarikar to suddenly decide to steal from Mr. Lama. Collaboration has never been an issue in the past. Now this is actually more fundamental than it seems, for it speaks to the credibility of Mr. Lama's claim.

60. I find, too, that the tendency these days is to blithely accuse anyone of 'copying' and 'plagiarising', and the online trolls are particularly adept at this; for these allegations need no proof and have no consequence. Yet, fling about enough mud and some of it will stick. Coincidence, happenstance, shared common and public sources are not the stuff of infringement. Even in copyright law there is a permissible degree of fair use that does not constitute infringement; I only say this to dispel the notion that infringement is some sort of absolute that covers all overlaps. Infringement requires something more than accident. It is a positive act and above all it requires a plaintiff alleging infringement or plagiarism to establish that the defendant knew, had knowledge or could not possibly have been unaware of the plaintiff's work and his rights in it. This may be shown in a variety of ways; for instance, by a large degree of very similar overlapping or commonality. But the original work of which infringement is alleged must be shown to have existed and to have been know. In this case, the 1995 document is unpublished, so the question of it being in public knowledge is ruled out. Therefore, the Plaintiff must show with precision and cogent evidence knowledge

on the part of the Defendants *of that particular work*. It will not do to show some later derivative or modified work and to urge that the Defendants must be 'deemed to have had knowledge of and seen' the previous work, the disclosure of which is not proved (even *prima facie*). It will also not do to suggest that because one later iteration of some work has been registered with some body or agency, that the Defendants should have, or must be deemed to have, knowledge and notice of the alleged parent work. When, in fact, it is shown that the later derivative or modified work (of 2010, Exhibit "D") is wholly different from the alleged original source work of 1995, then each one of these documents is exacerbated.

61. I do not think that there is a slightest vestige of substance in a thing that this Plaintiff has said in support of his claim for a copyright infringement. This is an entirely false suit, based on suppression, speculation, contradictions, prevarication and evasion. There is, too, wilful suppression: the 1995 document was carefully kept from disclosure in previous actions and proceedings. It emerged only after the release of the official trailer to Mr. Gowariker's film, to which it then bore an unholy resemblance. There are mis-statements in the Plaintiff's own correspondence about what he registered and when. There are claims made to a script of a play that is even now not disclosed. There is mention in other proceedings in the City Civil Court of a script of a film; that never finds place in this suit. The fact that the Plaintiff sought to drop his claim in infringement in the City Civil Court finds no mention in the present Plaint. There is gross and unexplained delay. The entire suggestion in the Plaint, the single premise on which the suit is founded, is utterly false, viz., that the Plaintiff had a 'script'

of 1995, one that he saved from flood, rain and all other natural calamity, but never disclosed till 28th June 2016, a few short weeks before Mr. Gowariker's film's release. There is no explanation for the repeated assertions of a script of a *play* made in the Plaintiff's own email and later in his Advocate's notice; and the suggestion that the 1995 documents are a script of a play is rank nonsense: there is simply no 'play' in the 1995 document at all. It is not even a script as we know it. What the Plaintiff does have is a 2010 or 2012 play (not fully disclosed; only three pages are shown as noted earlier), said to have been based on the script of 2010 registered with the FWA. But this is called *Samrajya*, not *Mohenjo Daro*, and even in the Plaintiff no attempt is made to show any similarity between this document and the film. Given Mr. Gowariker's tabulation, one that shows the differences between the 2010 document registered with the FWA and the film, it necessarily follows that there is no case made out in infringement at all. There is nothing to infringe. This is the kind of suit that falls squarely within the frame of the *Chengalvaraya Naidu* principle.

62. There remain the questions of the balance of convenience and irretrievable prejudice. That certainly favours the Defendants. The producers have spent over Rs.150 crores on this project. Third party rights have been created. As against this, the Plaintiff has utterly nothing to show to shore up his claim. On every necessary factor or aspect governing the grant of an interim injunction, the Plaintiff fails. How best to preserve the parties in status quo, as the law would have a court do, seems to me to be self-evident: the Motion must be dismissed.

63. This matter has been argued for the better part of the day yesterday in the midst of a week designated for testamentary matters. This judgement, pronounced in open Court, has taken two hours today in open Court. All of this consumption of scarce judicial time, on the eve of a film's release, is to what end is a question that every Court must ask itself in these matters. When we spend time on plaintiffs who come with cases like this, we send out every conceivable wrong message to litigants who are otherwise before us, many of them old, many infirm, many aged; and many grown aged waiting for their cases to reach. We do ourselves and our system a manifest disservice by pandering to the egos and fancies of a plaintiff such as this one.

64. I now come to the question of costs. Mr. Kadam has pressed for these. Yesterday there was some discussion about withdrawal of the Motion. Even that was opposed by Mr. Kadam unless accompanied by an order of costs. He pointed out that what is at stake here is Mr. Gowarikar's credibility as a film maker. He goes to international distributors and financiers. They do not want to be seen to be associated with somebody against whom allegations of plagiarism are made. Perhaps none of us can do anything about allegations made in the media and online. That is the cross that Mr. Gowarikar must bear, perhaps as a price of his success. But idle chatter is no substitute for proof — even if it is online, and far too many seem to believe that because something is online therefore it must be true. Usually, it is the reverse. Loose talk does not a legal case make. What this Plaintiff has done here is something far more serious. Mr. Kadam says that there have been not one but multiple news report and even interviews by the Plaintiff in the media

promoting his cause. I deprecate that. The consequences to Mr. Gowarikar are potentially most grave for future productions and for continued associations. I must also indicate that it is time that all litigants learnt that this kind of conduct — and there is no other way to put it, so I will state it bluntly — is tantamount to using the judicial system for blackmail. That must stop. This is not the kind of frivolity that should occupy a Court's time. These are my reasons and I will use these as sufficient reasons to award what I think are exemplary or punitive costs against this particular Plaintiff.

65. Mr. Kadam, at this stage, requests that I do not award an amount payable to the Defendants. These costs, he says, ought to be paid to a worthwhile cause. I agree. Since this is an action in the film industry, I believe the Naam Foundation, 15 & 16, Ajay Shopping Centre, T. H. Katariya Marg, Matunga (W), Mumbai 400016, set up by Mr. Nana Patekar and Mr. Makarand Anaspure would be a worthy recipient. The Foundation does yeoman work in drought relief in the State.

66. The Notice of Motion is dismissed with costs quantified at Rs. 1,50,000/- to be paid by the Plaintiff to the Naam Foundation. These costs are to be paid within four weeks from today.

67. The original handwritten document said to be the '1995 story' or '1995 script' will be required at the trial of the suit. Given the allegations made in the Affidavit in Reply by Mr. Gowarikar, and which will undoubtedly find place in the Written Statements too, this document will form an important part of the evidence at the

trial. It must be preserved. Too many documents already are said to be missing or lost. For these reasons, the handwritten document handed in by Mr. Cama in a plastic folder is to be retained by the Prothonotary & Senior Master in a sealed cover, not to be accessed or used without an order of the Court.

68. List the Suit on 19th August 2016 for directions.

(G. S. PATEL, J.)