

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

APPEAL (L) NO.284 OF 2016

Akashaditya Harishchandra Lama **Appellant**

V/s

Ashutosh Gowarikar & Ors. **Respondents**

Mr. Rohan Cama a/w Mr. Shanay & Ms. Sheetal i/b Mr. S.R. Mishra for the Appellant.

Mr. Ravi Kadam, Senior Counsel a/w Mr. Nirman Sharma, Mr. Parag Sawant, Mr. Gunjan Shah i/b M/s. Desai & Diwanji for the Respondent Nos.1, 2 and 5.

Mr. Cyrus Ardeshir a/w Mr. Rahul Dwarkadas & Mr. Neveille Mukerji i/b M/s. Veritas Legal for the Respondent Nos.3 and 4.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 08 AUGUST 2016

ORDER:

1 Papers of this Appeal were produced on the request made by the learned Counsel appearing for the Appellant on 5 August 2016 for considering the prayer for ad-interim relief. As time was not sufficient on that day the Appeal was ordered to be placed today for considering the prayer of the Appellant for grant of ad-interim relief as a statement was made that the concerned Respondents are likely to release the film subject matter of Appeal on 12 August 2016.

2 The substantive prayers made in the present suit filed before the learned Single Judge on 28 June 2016 which are relevant are prayers (a) and (b) which read thus:

“(a) That the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming under or by them and/or otherwise howsoever be restrained by an order of permanent injunction of this Hon'ble Court from in any manner infringing the Plaintiff's copyright and Plaintiff's rights under the law of confidence either individually or collectively in the story titled “Mohenjodaro or Mohenjo-daro” or any adaptation thereof.

(b) That the Defendants, by themselves, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and/or otherwise howsoever be permanently restrained by an order and injunction of this Hon'ble Court, from in any manner whatsoever making, producing, conducting shooting, doing post-production work, editing, distributing, broadcasting, exhibiting, exploiting, publicizing or telecasting to the public, adapting, creating third Party Rights of the impugned film “Mohenjodaro or Mohenjo-daro” so as to infringe the Plaintiff's copyright in the copyrighted work/s and Plaintiff's rights under the law of confidence either individually or collectively.”

3 The prayer clause (c) is for damages in the sum of Rs.50,00,000/-. We may note here that a Notice of Motion was taken out in the suit for temporary injunction in terms of prayer clauses (a) and (b) of the Plaint. By the impugned order, the said Notice of Motion has been dismissed by the learned Single Judge by directing the Appellant to pay costs of Rs.1,50,000/- to a Charitable Organization. One of the findings recorded by the learned Single Judge is of a delay in approaching this Court.

4 Prior to the institution of the present Suit, the Appellant filed a Suit No.3324 of 2015 in the City Civil Court in the subject matter of the present Suit for permanent injunction restraining infringement of copyright, damages, rendition of accounts etc. The said suit was filed on 30 September 2015. In paragraph 54 of the said suit, it was contended that in November 2014 the Appellant definitely learnt that the Respondents were co-producing the film based on copyrighted story of the Appellant under the name "Mohenjo daro". The prayer clauses (a) and (b) of the Plaint in the said suit read thus:

“(a) That the Defendants, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and/or otherwise howsoever be permanently restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever making, producing, conduct shooting and post production, distributing, broadcasting, exhibiting, exploiting, publicizing or

adapting, the impugned film "Mohenjodaro or Mohenjo-daro" 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.

- (b) *That pending the hearing and final disposal of the suit, the Defendants, their servants, agents, licensees, franchisees, partners, proprietors or anyone claiming through, under or by them and/or otherwise howsoever be permanently restrained by an order and injunction of this Hon'ble Court from in any manner whatsoever making, producing, conduct shooting and post-production, distributing, broadcasting, exhibiting, exploiting, publicizing or adapting, the impugned film "Mohenjodaro or Mohenjo-daro" in any manner whatsoever so as to infringe the Plaintiff's copyright in the copyrighted work or in any manner conducting shooting and post production work of thereof."*

5 Thus, in November 2014, the Appellant was aware that the Respondents were co-producing the impugned film based on alleged copyrighted story of the Appellant under the name of Mohenjo daro. In paragraph 23 of the present suit filed in this Court, the Appellant has stated that in August 2010, he became aware of the fact that the first Respondent's team was working on a script which is similar to the work of the Appellant. The earlier suit in the City Civil Court was filed on 30

September 2015. In the Suit filed in the City Civil Court, on 21 December 2015, a Chamber Summons No.2 of 2016 was taken out by the present Appellant for amendment of the Plaint. We have perused the said Chamber Summons. The prayer was for deleting those portions of the prayer clauses (a) and (b) of the Plaint which were based on alleged infringement of the Appellant's copyright in the copyrighted work. In fact in paragraph 1 of the Affidavit in support of the Chamber Summons, the Appellant stated that inadvertently while drafting the Plaint it is made out as if the Plaintiff is seeking reliefs under the Copyright Act when in fact he is only concerned to protect his script of film titled "Mohenjo daro". It is not in dispute that the Chamber Summons was argued before the learned Judge of the City Civil Court for half a day and the order on the Chamber Summons was reserved. After the order on the Chamber Summons was reserved, it appears that on 17 March 2016, the Appellant filed an Application for withdrawal of the Suit at Exhibit 12 before the learned Judge of the City Civil Court. Order passed on the said Application reads thus:

*"17/03/2016 CORAM:- H.H.J. SHRI D.K. BHENDE (C.R.NO.2)
SU-3324/15 (By precipe)*

Adv. Mr. A.S. Pandey for plaintiff present. Adv. Mr. Parag Sawant for defendant nos.1 and 2 present. Adv. Ms. Janki for defendant nos.3 and 4 present. Adv. Yadav for deft. no.5 present. K.B. L.O. Again called out. Exh.12 withdrawal application filed by adv. for plff. It is t.o.r. Deft. nos.1 to 5 has no objection. Suit is hereby

disposed of as withdrawn, with a liberty to file fresh suit subject to limitation. N/M no.3440/15 and Ch/s. no.2/16 are also disposed of accordingly.

(underline added)

6 A copy of Application at Exhibit-12 is not produced by the Appellant. On plain reading of the said order, it appears to us that there was no liberty granted to file a fresh suit based on copyright infringement in this Court. We must note here that it is not the case of the Appellant that the said Chamber Summons which was already argued for deletion of certain portions in prayer clauses (a) and (b) was withdrawn. It was disposed of in view of withdrawal of the Suit. In fact the order of withdrawal was sought after the Chamber Summons was fully argued and the order on the Chamber Summons was reserved. On the basis of purported liberty granted under the order dated 17 March 2016, by the learned Judge of the City Civil Court, after more than three months thereafter, the present suit was lodged by the Appellant in this Court in which there is a specific prayer based on the alleged infringement of copyright in the alleged copyrighted work of the Appellant. In the plaint there is absolutely no explanation as to why there was a delay of more than three months in filing a fresh suit on the basis of purported liberty granted by the City Civil Court. The learned Counsel appearing for the Appellant says that there is some explanation in the Rejoinder to the Notice of Motion. There is no attempt made by the Appellant to amend

the Plaintiff for incorporating the said explanation in spite of objection raised by the Respondents on the basis of delay. Thus, atleast from November 2014, the Appellant was aware that the film was being produced by the concerned Respondents. The learned Single Judge has noted in paragraph 31 of the impugned order that the official trailer of the film by the Respondents was already released on 20 June 2016 and eight days thereafter (on 28 June 2016), the present suit was filed by the Appellant in this Court. Hence, the Appellant is guilty of delay at every stage.

7 Thus, apart from findings on merits, one of the findings recorded by the learned Single Judge is based on the conduct of the Appellant as well as gross delay. By detailed impugned judgment running 49 pages, the learned Single Judge has declined to grant equitable relief of temporary injunction to the Appellant.

8 Considering the conduct of the Appellant which is reflected from the discussion made above, no case is made for grant of any ad-interim relief. The prayer for ad-interim relief is rejected. After the Appeal is registered, the same shall be listed for 'Admission'.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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