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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1052 OF 2016
IN
SUIT (L) NO. 303 OF 2016**

Eros International Media Limited & Anr. ...Plaintiffs
Versus
Bharath Sanchar Nigam Ltd. ...Defendants

**Mr. Shailesh Mendon, with Mr. N.S. Rodrigues, i/b M/s. R.M.
Partners, for the Plaintiffs.**

**CORAM: G.S. PATEL, J
DATED: 30th March 2016**

PC:-

1. Heard.

2. The present application seeks ad-interim reliefs in the nature of what is known as “a John Doe” order. The reliefs are sought not only against the named Defendants but also against persons unknown represented by Defendant Nos. 37 to 39. An Affidavit of Service will be filed by Monday, 4th April 2016.

3. The apprehension of the Plaintiff is that there is a likelihood of breach of the copyright that vests in the Plaintiff in a film titled

“Ki & Ka”. This is a film in Hindi starring Mr. Arjun Kapoor and Ms. Kareena Kapoor directed by Mr. R. Balki. It is supposedly a romantic comedy which depicts a young couple whose respective roles in the marriage are reversed. The Plaintiffs are the co-producers of the film and also claim to hold copyright in the film. Rights are vested in the Plaintiff under a Co-Production Agreement dated 6th February 2016.

4. Defendants Nos. 1 to 36 are various Internet Service Providers (“ISP”). They are all intermediaries within the meaning of Information Technology Act, 2000 as periodically amended.

5. The present Suit is a combined or a hybrid action. It seeks orders based on the provisions of Order 1 Rule 8 read with Section 151 of the Code of Civil Procedure, 1908 as well as on the principle governing the issue of such John Doe orders. In similar cases in the past such orders have been granted.¹

6. It is also stated across the bar that the injunction sought does not relate to any internal dispute regarding production of the film. It only seeks to restrain potential damage and the loss that the Plaintiff is likely to suffer if pirated and illicit copies are made available over various Internet-based links and websites. The present action is, therefore, a *quia timet* action.

¹ Red Chillies Entertainments Private Limited v. Hathway Cable & Datacom Limited & Ors., in Notice of Motion (L) No. 2366 of 2014 in Suit (L) No. 993 of 2014, dated 14th October 2014; TAI Television Limited v. Rajan Mandan, 2003 FSR 22; Viacom18 Motion Pictures v. Sonali Cable Vision Private Limited & Ors, order dated 15th June 2012

7. My attention is drawn to a set of recent search results on the Internet. These make it clear that the apprehension expressed by the Plaintiff is not without foundation. Exhibit "B" at page 54 shows the trailer of the film on YouTube. That may be innocuous. However, a subsequent Google search result at Exhibit "C" at page 55 shows several links redirecting website visitors to other sites that offer a full download of this film in a variety of formats. The next page of this exhibit is even more alarming, for it shows a direct link to a download of this movie and in at least five different formats. Clearly, the apprehension expressed by the Plaintiff is justified.

8. The scheduled release date of the film in theatrical format is 1st April 2016.

9. Having regard to the statements in the plaint, to the nature of reliefs sought and the material shown to support the apprehension expressed, I am satisfied that a *prima facie* case is made out for the grant of urgent ad-interim reliefs. The balance of convenience is certainly with the Plaintiff.

10. There will, therefore, be an ad-interim injunction in terms of prayer clauses f(i) to f(iii), which read as follows:

"f) That pending the final hearing and disposal of the Suit, this Hon'ble Court, be pleased to restrain

I) that the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever be

restrained by an order of mandatory injunction of this Hon'ble Court from exhibiting/disseminating/communicating to the public via the internet, telecasting/ broadcasting/ distributing/ reproducing or otherwise making available to the public via the internet or any other means for the said Film and said Work.

(ii) that the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever be restrained by an order of mandatory injunction of this Hon'ble Court from (I) making a copy of the said Film and said Work, including a photograph of any image forming part thereof, (ii) to sell or give on hire, or offer for sale or hire, any copy of the said Film and said Work, regardless of whether such copy has been sold or given on hire on earlier occasions, (iii) to communicate the said Film and said Work to the public in any manner whatsoever including by way of but not limited to exhibiting/disseminating/communicating to the public via the internet, telecasting/ broadcasting/distributing/reproducing or otherwise making available to the public via the internet or any other means for the said Film and said Work;

(iii) Grant an order of temporary injunction restraining the Defendants from facilitating access to web pages/

web links thereby blocking all or any of the contents that relate to the said Film and said Work, in any manner, thereby restraining the unauthorized copying, transmission, communication or make available or display or exhibit or play and/or in any manner communicate in and/or through the internet services provided by them, immediately upon receipt of details of such infringing websites/webpages in writing from the Plaintiffs or its authorized representatives;"

11. Where necessary, the local Police Authorities are directed to render all possible assistance to the Plaintiff in the enforcement of this order.
12. In addition, the Plaintiff is at liberty to publicize in all available media an authenticated copy or the substance of this order. This may also be prominently displayed in on-line advertising, television, cimenas, hoardings and in newspapers.
13. Should the Plaintiff find any actual instance of piracy or infringement, the Plaintiff will be at liberty to immediately take action without having to move Court once again. For this purpose, the Plaintiff will be entitled to take assistance of the Police Authorities in the area(s) concerned. These Authorities shall act on production of an authenticated copy of this order.

14. Affidavits in Reply, if any, to be filed and served on or before 15th April 2016. Affidavits in Rejoinder, if any, to be filed and served on or before 22nd April 2016.

15. Liberty to the Plaintiff to apply thereafter to have the Notice of Motion placed for hearing and final disposal.

(G. S. PATEL, J.)

Bombay High Court