

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION LOD.NO.1490 OF 2012
IN
SUIT LOD.NO.1182 OF 2012

Kapil Chopra .. Plaintiff
Versus
Kunal Deshmukh & Ors. .. Defendants

Mr.J.PSen with Mr.R.S.Khandekar, Priti Deshpande, Sharmila Nair,
Karthik Somasundarem, Vivek Patil, Yogendra Pagare, Mangesh Gad i/b.
Sanket Sethia for plaintiff

Mr.Ravi Kadam, Senior Advocate with Dr.Birendra Saraf, Mr.Sanjay
Kadam, Apeksha Sharma i/b. Kadam & Co. for Defendant No.3

Mr.Virag Tulzapurkar, Senior Advocate with Ameet Naik, Lavin Mirani,
Dhanashree Deoskar i/b. Naik Naik & Co. for defendant No.2

Mr.Phiroze Palkhiwala with Sandeep Parikh i/b. Munir Merchant for
defendant No.1

CORAM : S.C.DHARMADHIKARI, J.
3rd MAY 2012.

P.C.:

1] This suit was filed yesterday and an application was made for
urgent ad-interim reliefs and that is how it is stated that it could not be
numbered and registered. The plaintiffs Advocate states that the office
objections would be removed and due compliance will be made with the
Rules within two (2) weeks from today. Needless to therefore state that
non-compliance would result in the consequences provided by the Rules.

2] When the application was made yesterday post recess, some of the defendants complained that they did not have copy of the plaint and the annexures and that is how at the joint request of parties, the matter was taken up today urgently at 11.00 am.

3] Today as well as yesterday, I was informed that the movie, "Jannat – 2" is scheduled for release tomorrow on 4th May 2012 on 4th May 2012 and that once there is theatrical release, the plaintiff would have no protection and the application for injunction will be rendered infructuous.

4] It is stated that the plaintiff has been professionally working as a Free Lance Writer working in the film and TV Industry and over the years, he has written and/or authored several scripts which are in the process of being crystalised in a cinematographic film and/or TV serials. The first defendant is a film director and he is director of the film Jannat-2. That movie is based on the plaintiffs' original literary work. The first defendant is accused of breach of confidence and/or infringement of copy right in this work. Defendant Nos.2 and 3 are companies engaged in the business of production and distribution of cinematographic films and that

is how they have acquired rights in the film “Jannat 2” scheduled for release tomorrow.

5] The suit is for a permanent injunction restraining the defendants from releasing the film in theaters or distributing it in any manner, including the format stated in prayer (a) of the plaint.

6] It is the case of the plaintiff that he has worked on the script of his film entitled “ZERO” for the last 8 – 9 years. The film was born with an idea which was further developed into a concrete concept and was, thereafter, scripted in a script running into 147 pages with meticulous details. It is a novel and original literary work. The plaintiff is author and owner of the same and the copyright subsisting therein. Therefore, so as to safeguard his rights, he registered the script of the film with Film Writers Association as early as in November 2007.

7] It is stated that from December 2009, the plaintiffs had several meetings with defendant No.1 during the Course of which the plaintiff discussed the script of the same and its use in the cinematographic film which defendant No.1 intended to direct, make/ assist in making. The

broad contours of the script were disclosed to defendant No.1 and the defendant No.1 called upon the plaintiffs to divulge more information and that is how the e-mails and SMS were exchanged and on 14th August 2010, a complete script of the film “ZERO” was forwarded to defendant No.1. That was on an understanding that it would be crystalised and/or transformed and/or adopted into a full-fledged cinematographic film. On 17th January 2011, the screen play flow of the two scripts were forwarded and it was made clear that it was confidential and not to be used or exploited in any manner to prejudice the rights of the plaintiffs.

8] Thereafter, what is referred in paras 9 and 10 of the plaint is some exchanges of e-mails and information and some broad understanding between the plaintiffs and defendant No.1. That is how even paras 10 and 11 would read. However, what is thereafter alleged is that defendant No.1 in breach of this confidentiality agreement has divulged the work and based on it a film is being directed by him, the main ingredients of the script and film of the plaintiff are that it is on a low life criminal grown up in the streets of crime, he being hired by a cop to be an informer. The relationship between the cop and him transforms from hatred to respect and the entire journey into the world of crime is looked

at from the perspective of the informer. The informer protagonist puts his life in danger for the larger good of the society and the chief cop is ultimately revealed as the villain. Now it is alleged that the said ingredients of the plaintiff's film ZERO are identical to the one the first defendant has directed and second defendant has produced so also distributed by the third defendant as distributor.

9] From para 9 to 12 of the plaint, what has been attempted is to point out the similarity between the plaintiff's work and the film directed by defendant No.1.

10] What has been then alleged is that various portions of the screen play of the film are nearly identical and/or deceptively similar or nothing but a substantial portion of the screen play of the plaintiff. Those excerpts are also annexed as Exh.C to the plaint and from para 13 onwards what is attempted to be shown is that the plaintiff became aware of the contents of the film and that it would be released after the promos of "Jannat -2" were shown in April 2012. It is stated in para 13 that the plaintiff had been informed by the defendant No.1 that the film based on plaintiff's script would be launched in future and that he would

get in touch with the plaintiff once this process was started. The plaintiff believed the same and was waiting for the defendant No.1 to get back to him. The sms exchanges referred to above clearly establish the persistent follow up by the plaintiff and the repeated assurances of the defendant No.1 so also denial of defendant No.1 that the plaintiff's story was being used in making the film of defendant No.1.

11] What the plaintiff then attempts to show that from promos it would be possible for me to conclusively held that the story line of the film is identical with that of his script or the screen play and, therefore, he refers to an exercise which was undertaken by him of comparing the work and that was completed on 17th April 2012. On completion of the same, the plaintiff moved the Film Writers' Association with a complaint on 18th April 2012. That complaint was taken cognisance of and first defendant appeared before the Film Writers Association. The first defendant asserted that the film does not use any material or idea from the film "Zero" registered by plaintiffs but states that he had several discussions with the plaintiff for the film Zero but the proposal did not work out and the association with plaintiff ended.

12] Upon this stand of the parties what the Film Writers Association communicated is that it will have to await theatrical release of the film and it will not be in a position to compare the work and arrive at a conclusion and particularly of the nature that was sought by the plaintiff.

13] It is, thereafter, the plaintiff decided to approach this Court and has filed instant suit for permanent injunction, alternate relief including for depicting his name in the credits of the film and claim for damages in the sum of Rs.10 lakhs.

14] It is in furtherance of such a claim, the application for interim injunction has been made and what Mr.Sen appearing for plaintiff has contended is that if what is narrated as part of the script or the essential story-line and the basis of the work directed by defendant No.1 would indicate that it is a clear case of breach of confidentiality agreement and the copyright of plaintiff in the work. My attention is invited to this aspect in some details and the e.mail communication, a copy of which is at page 181 of the paperback.

15] It is submitted by Mr.Sen that when on 31st May 2011 plaintiff

confronted the first defendant with a news item about a movie being made on the story of an informer with a popular actor being cast as hero, what the first defendant responded is that it is not plaintiff's story and it is a cop and mole story and nothing has been taken from plaintiff's story. Mr.Sen submits that the plaintiff proceeded to accept this version of the first defendant and thought that nothing that is detrimental to his interest would be done by the first defendant. He had no reason to suspect the first defendant. However, when the promos showed that the storyline of the work of the first defendant and which is a film under his direction and which was produced by the second defendant is identical and there is nothing but some cosmetic changes and difference, then, on the basis of the central theme being copied and admittedly being common that the plaintiff has moved this Court. Mr.Sen submits that this is not a case of a person approaching the Court with a view to stall or delay the release of a movie with some vested interest. This is a case of a writer who is seeking to protect his expression of and not the idea itself. This is not a question whether a central theme or idea being common that a court would be in a position to conclusively hold that there is no breach of confidentiality agreement or copyright. This is a clear case where not only the broad outline but specific scenes which are common in both

works. For all these reasons, it is submitted that ad-interim reliefs and interim reliefs as prayed be granted. He relies upon a judgement of the Division Bench in the case of Zee Telefilms Vs. Sundial Communication Pvt. Ltd. reported in 2003(5) Bom.C.R. 404.

16] On the other hand, Mr.Palkhiwala learned Counsel appearing for first defendant submits that the plaintiff has approached this Court deliberately to stall release of a movie directed by the first defendant. This is not a case where any of the work of the plaintiff has been patently copied or lifted as alleged. It is a case of being a professional engaged by defendant No.2 to direct a film. That film has a central theme of a mole and the cop. That a hero is from the world of crime and that there is a mole amongst a cop is a common theme, which has been utilised in several films released in the past two decades. It is not as if any film or no work was ever based on such an idea. That a person in the world of crime, even an informer or friend of a cop or police force has been shown and depicted in several feature films. That this informer gets a real picture not only of the crime world but of even the police force has been noticed and seen in several films. This is not a film based on plaintiff's work but an independent writer was engaged by defendnt No.2. There is

a distinct agreement executed. It is based on that work and the script that the film is directed by defendant No.1. Defendant No.1 has made it clear to the plaintiff in May 2011 itself that the work or the film is not based on his story and if he is not convinced, yet, the plaintiff does nothing in the matter particularly when he is aware of a film being made. He is aware of the contents is also apparent, if one peruses annexure C to the plaint. This is something which the plaintiff himself has placed before the Court. If a cursory glance is taken at the same, what would be revealed is that the content of the movie Jannat-2 and the script of Zero, has nothing in common right from the opening scene. If the plaintiff was aware of not only this but of also the fact that the promos are being shown from 9th March 2012 and he himself has referred to the story line, then, nothing prevented him from approaching this Court earlier. He was aware that the Film Writers Association would not be in a position to offer any compensation, much less, prevent release of the film. For all these reasons, it is submitted by Mr.Palkhiwala that no interim injunction be granted.

17] Mr.Tulzapurkar and Mr.Saraf both appearing for defendant Nos. 2 and 3 essentially argue on the point of delay and by submitting that the

work of the second defendant is based on a script of Ms.Shagufta Rafique, with whom an agreement is executed by defendant No.1 for consideration. That Ms.Rafique prepared the script and submitted a story and based on which the film “Jannat -2” was produced and directed by defendant No.1. That film is completely ready and in fact its promos are telecast and even theatrical release in some of the countries has taken place. Today both asserted the fact that third party rights have intervened. The film in question has been passed on to distributors and from there to some sub-distributors and when theatrical release is scheduled for tomorrow, granting any restraint against this release would seriously prejudice and jeopardise the rights of all those who are not before this Court. For all these reasons and by distinguishing the law laid down in the judgement of the Division Bench in Zee Telefilms (supra) it is prayed that no ad-interim reliefs be granted.

18] With the assistance of learned Counsel appearing for parties, I have perused the plaint and annexures and have also perused the relevant documents, copies of which were placed before me during the course of arguments.

19] As far back in the year 1978 in the case of R.G.Anand Vs. M/s.Delux films and Ors., reported in A.I.R. 1978 S.C. 1613, a three Judge bench of the Supreme Court has laid down principles and which principles and tests have been followed till date. What these broad principles indicate is that there is no copyright in an idea, subject matter, themes, plot or historical or legendary facts and violation of copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author of the copy righted work. There could be a development of the same idea in different manner, although source can be common and some similarities are bound to occur. In such cases whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work, if defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

20] The test is as well from the point of view of a writer, spectator or viewer who after having seen or read both works is clearly of the opinion

that he gets an unmistakable impression that the subsequent work appears to be a copy of the original. However, apart from the similarity appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental, then, no infringement of the copyright takes place.

21] What the Division Bench had before it in Zee Telefilms case (supra) is a concept or an idea conceived by the plaintiff and whose agreement in confidence with the first defendant was stated to have been breached and violated. He, therefore, filed a suit and the Court was approached for granting an ad-interim injunction. That ad-interim injunction was granted and an appeal was preferred by the defendants who were restrained from publishing and exhibiting the work, before the Division Bench. During the course of deciding the appeal, what the Division Bench adverted to was that the plaintiffs' work was titled "Kishan Kanhaiya". That work and its content was adverted to from paras 2 to 4 and in fact there was some arrangement between original defendant No.1 and plaintiffs at one time to make a serial on the basis of this concept but what the defendant thereafter did was that the said concept or work was

utilised for making a serial and that was stated to be completely identical. That is how, the Division Bench considered both aspects and the paragraphs that are relied upon by Mr.Sen must be seen in the backdrop of what the Court essentially arrived at even as a prima facie conclusion. In para 19 on which reliance was placed, what the argument before the Division Bench was that the plaintiffs' plea of confidentiality is not supported in law. That this idea or concept of the plot conceived in that case is neither original nor novel. Reliance was placed upon some work which was stated to have been on life of Lord Krishna. However, learned Judges felt that merely because some of the components of the story are common or in public domain, the concept or idea does not become incapable of protection and in that behalf the Division Bench relied upon the judgement of English Court reported in 1978(3) ALL.E.R. 193 (Thomas Marshal (Exports) Ltd. Vs. Guinel)

22] Thereafter in para 20 on the factual aspect, the Division Bench once again asserted and accepted the case of the plaintiff that the concept developed is indeed novel. How it is novel and how based on the same the serial of the first defendant is made, is then, referred to.

23] To my mind, ultimately, the question will have to be decided on the basis of facts and circumstances in each case. It is not as if at this stage in the absence of affidavits and further materials that the Court can conclusively hold that there is breach of confidence that was reposed in defendant No.1 by the plaintiff or that the work of defendant No.2 which is produced on the basis of a script of a distinct writer and directed by defendant No.1 can be said to be a breach of the copyright of the plaintiff's work. That would have to be gone into in details at a subsequent stage. Essentially, whether on the basis of what has been argued by the plaintiff, can he seek any protection and that too of preventing release of the film "Jannat-2" is the real issue before me today.

24] It is in this behalf, I have perused the plaint in some details.

25] While it is true that the plaintiff states that he had prepared a script and that script was forwarded to defendant No.1, on which discussions were held from December 2009, but what the defendant No.1 informed him was that he would advert to him after looking into the entire work or script. Therefore, what has been projected before me is that the main ingredients of the plot of the script are based on the life of a criminal who

has been brought up in a street of crime. He becomes informer of the police and there is relationship between a cop and him, which is initially that of hatred but later on of respect and from the informer's point of view, the world of crime is depicted and later on it turns out that the real villain is a cop. There is denial of the fact that this work of the plaintiff has been taken and copied in all details as alleged by him. What is sought to be projected is that there are several films made in the past on this broad concept and it is not unknown when the hero is an informer and a friend of police and though starting his life as a criminal, there is transformation in him during the course of informing the police about criminal activities. Further, there are several works in which the cop is seen to be exploiting such informers for his own selfish motives and these are ones, which are depicted as real villains. There are several works based on this theme and central idea. My attention is invited to the fact that there is no commonality and in fact from the documents that are annexed by the plaintiff that would be apparent. What the plaintiff stated is that this is his own work which is being made into a film whereas defendant No.1 stated that this is a cop and mole story. That the plaintiff's work has not been copied and what the plaintiff then refers to as identical scenes from 185 onwards would depict what he himself says

at several places that the essence is identical. While it is stated that the central character in the plaintiff's script is based in Mumbai and the crime scene of Mumbai is depicted what the director and producer of the film have stated is that the film "Jannat-2" is based on a distinct work depicting life of criminals and their activities in Delhi. That there may be some reference to the cop and the informer yet what the work of the first defendant produced for second defendant and based on a script of one Shagufta Rafique is in essence depicts is a love story and how there is transformation of the protagonist after the criminal activities are noted by him and reported to police. I am of the opinion that at this stage merely on the basis of the contents of the e-mails and what is annexed as the identical scene chart, it will not be possible to hold that there is any breach of the confidentiality or that there is a breach of copyright in the plaintiff's work. The plaintiff has based his story on the broad outline and theme of criminals and their being a cop who is not protecting the interest of society but is assisting and helping the criminals in the garb of performing his duty. That may be a common factor in the concept or idea of the film and in the script of the plaintiff but from these annexures, it is not proper for me to hold at this stage that there are complete similarities and that there is a complete copy of plaintiff's work and that too of such

nature as would satisfy the tests indicated in the decisions rendered by the Supreme Court and Division Bench. The tests that have been indicated as broad principles cannot be said to be satisfied by having a mere look at the stated similarities between the two works. Once the defendant No.2 has produced a film and stated to be on the script of a script writer engaged on professional basis and that having already made into a film and which film is stated to be released tomorrow, then, all the more even on the grounds of balance of convenience, irreparable harm and injury, this is not a fit case for grant of ad-interim reliefs, much less an injunction restraining theatrical release of the film. Therefore, there will be no ad-interim reliefs. Notice of Motion is made returnable in due course. Defendants waive service.

(S.C.DHARMADHIKARI, J)