

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1153 OF 2016
IN
SUIT (L) NO. 343 OF 2016

Mahesh Vajjnathrao Doijode ...Plaintiffs
Versus
Yashraj Films Private Limited & 4 Ors. ...Defendants

Mr. Manohar V. Shetty, *with Nasir Ali for the Plaintiffs.*
Dr. Abhinav Chandrachud, *with Mr. Abhay Itagi with Mr. Harsh*
Parte i/b. M.V. Kini & Co. for the Defendants Nos.1 to 5.

CORAM: G.S. PATEL, J
DATED: 11th April 2016

PC:-

1. Heard.

2. This is an ad-interim application in a copyright infringement action. The Plaintiff claims that he has copyright in a registered story script of a Literary work entitled "ABHINETA". This was, the Plaintiff says, registered with the Film Writers' Association on 29th April 1997. The essence of the story line is set out in paragraph 7 of the Plaint. Thematically, this film is about a popular movie star or icon who has a doppelganger, a look-alike. The look-alike aspires to the star's success. There are the usual incidents of

one being mistaken for the other. There is some element of the look-alike taking the place of and masquerading as the superstar.

3. Whether or not this is unique is a separate matter. Certainly the question of two people who almost identically resemble each other, one of whom is a popular star and the other an indigent aspirant, is hardly new. It is entirely possible that the Plaintiff's treatment of this material may be original.

4. What the Plaintiff however alleges that the based on trailers of a forthcoming film starring Shahrukh Khan and entitled "Fan", the Plaintiff is entitled to an injunction because those trailers, according to the Plaintiff, indicate that the Defendants have copied the Plaintiff's literary work or used it without permission and without license or assignment. The Plaintiffs says that he has at various points from 1998 onwards narrated the script to various persons. When asked when exactly the Plaintiff had disclosed the material to the present Defendants, and, specifically, whether the Plaintiff had delivered a physical copy of a script to any of them, the answer from Mr. Shetty was to refer me to paragraph 14 of the Plaintiff, set out below:

"14. The Plaintiff further says that he then met Aditya Chopra the Defendants No.2 and narrated and discussed the story of the Literary work ABHINETA with him; The Plaintiff says that the Defendants No.2 liked the story however he told the Plaintiff that since this was not a simple story of double role but a story which requires the actor to be readily available

and hence it was very difficult to make the Film on the said subject. The Plaintiff says that he still had dropped the 12 pages typed story script of the Literary work ABHINTEA at office of the Defendants No.2."

5. Now the difficulty with this paragraph is that we do not know from what the Plaintiff himself says when precisely or even approximately he met Mr. Aditya Chopra. We do not know whether the Plaintiff merely 'pitched' the concept or narrated the entire script, though the paragraph does say that there was a narration of some kind. There is some mention of a conversation between Mr. Aditya Chopra and the Plaintiff but there is nothing to show this beyond the Plaintiff's say so. This is indeed very odd. I should have expected some follow up, perhaps in an email, an sms or some other form of communication. There is nothing. What is even more peculiar is the Plaintiff's assertion that he "dropped" the 12-page story script, in which he claims copyright, and a copy of which is at Exhibit "B" to the Plaint, at the office of the 2nd Defendant. There is no record of any such delivery. I note that the averment is that the script was delivered to the *office* of Mr. Chopra, and not to him personally. I will presume that this is the office of Yashraj Films. I find it impossible to believe that anybody would deliver a registered script with a production house and not obtain some kind of a formal receipt. Dr. Chandrachud states that in fact Yashraj Films has a well-established protocol of some longevity of using a defined format to acknowledge receipt of material, whether solicited or unsolicited. There is no averment whatsoever about this. There is no receipt. There is nothing to show that the script was ever given to Mr. Chopra.

6. Dr. Chandrachud also points out that the trailers of “Fan” were released on 29th February 2016. The film’s scheduled release date is 15th April 2016, i.e. this Friday, a few days from today. I find no satisfactory explanation at all why the Plaintiff chose to wait till virtually the eve of the film’s release before moving Court. Apart from anything else, this is an intolerable and unacceptable imposition on judicial time. It cannot be forgotten that there are several other cases listed which have waited their turn. There is no reason to make them wait because the Plaintiff has chosen to come late to Court. By his own admission, the Plaintiff is very much entrenched in the industry. He claims to have several scripts and stories to his credit, many of which have been made into films. I do not think that it is reasonable to assume the correctness of the Plaintiff’s statement that he “became aware” of the trailers of “Fan” only in early April 2016. There is nothing to indicate that the trailers were not widely released. In fact, Exhibit “C” to the Plaintiff, *prima facie* indicates to the contrary and shows that the release of this film, one that has been apparently delayed from its earlier scheduled date of 14th August 2015, was known at least two months ago. The trailers and the pre-publicity material were obviously widely available: at least one page of the Plaintiff itself (Page 67) carries the date of 1st March 2016.

7. It will not be possible to grant the Plaintiff ad-interim relief on the extremely cursory material that is placed before me today. Ad-interim reliefs are refused.

8. This is only a *prima facie* view. All contentions are kept open. Affidavit in Reply to be filed and served on or before 29th April 2016. Affidavit in Rejoinder on or before 6th May 2016.
9. Notice of Motion to be listed for directions on 8th June 2016.

(G. S. PATEL, J.)

Bombay High Court