

S.H.HADAP

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

**APPEAL (LODGING) NO.322 OF 2012
IN
NOTICE OF MOTION (LODGING) NO.1490 OF 2012
IN
SUIT (L) NO.1182 OF 2012**

**WITH
NOTICE OF MOTION (LODGING) NO.1490 OF 2012
IN
SUIT (L) NO.1182 OF 2012**

Kapil Chopra
Adult, Indian Inhabitant
Residing at Jai Narayan No.5
Mangalam Apartments,
Thakur Complex, Kandivali (East),
Mumbai 400 101.

... Appellant
(Plaintiff)

V/s

1. Mr.Kunal Deshmukh
Adult, Indian Inhabitant,
residing at Hill & Sea,
Opp.Sea View Palace,
Next to St.Annes, Bandra (W),
Mumbai 400 050.
2. Vishesh Films India Pvt.Ltd.,
A Company incorporated under the
Companies Act, 1956,
having its office at 402, 4th Floor,
Durga Chambers, V.Patel Road,
Khar, Mumbai 400 052,

Through its Chairman and
Managing Director, Mr.Mukesh Bhatt

3. Fox Star Studios Private Limited,
A Company incorporated under the
Companies Act, 1956,
having its office at 6th Floor,
Star House Off.Dr.E.Moses Road,
Mahalakshmi, Mumbai 400 011,
Through its CEO, Mr.Vijay Singh

... Respondents
(Respondents)

Mr.Shiraz Rustomjee, Senior Advocate with R.S.Khandekar,
Sharmila Nair and Priti Deshpande i/by Sanket Sethia for
appellant/plaintiff

Mr.Phiroze Palkhiwala i/by Munir Merchant for Respondent
/Defendant No.1.

Mr.Virag Tulzapurkar, Senior Advocate with Mr.Ashish Kamat,
Mr.Vaibhav Bhure, Mr.Ameet Naik i/by M/s.Naik Naik & Co.for
Respondent / Defendant No.2.

Mr.Ravi Kadam, Senior Advocate with Mr.Sanjay V.Kadam and
Apeksha Sharma i/by Kadam & Co.for Respondent /Defendant
No.3.

**CORAM: MOHIT S.SHAH, C.J. &
N.M.JAMDAR, J.**

DATE: 6 SEPTEMBER 2012

JUDGMENT: (PER CHIEF JUSTICE)

Greed and deceit are two human traits which are very often
part of the stories of Hindi films. These traits also seem to be writ

large on the defence of Respondents 1 and 2, (director and producer of film “Jannat-2”) in the action taken out by the appellant plaintiff for infringement of copy right and for breach of confidence, wherein it is the case of the appellant-plaintiff that the plaintiff had given to Respondent/Defendant No.1 and Defendant No.1 accepts that the plaintiff had given to Defendant No.1 the story for a film.

2. The plaintiff has filed Suit (Lodging) No.1182 of 2012 and also filed Notice of Motion (Lodging) No.1490 of 2012 for injunction against the release of the film “Jannat-2” directed by Defendant No.1 and produced by Defendant No.2. It is the case of the plaintiff that the plaintiff had registered his script “Zero” with the Film Writers Association on 12 November, 2007 and that the film 'Jannat 2' was in clear infringement of plaintiff's script. It is the case of the plaintiff that the plaintiff had discussed the story with Defendant No.1 and had personally met Defendant No.1 several times discussing the story. Reference is made to the text messages exchanged between the plaintiff and Defendant No.1 and also to the email messages. There is no dispute about the fact that the plaintiff had given recitation of the story in December 2009 and thereafter by August 2010 the plaintiff had given full script of the story to Defendant No.1 and in January 2011 the plaintiff had given script flow to Defendant No.1. When the plaintiff came to learn from promos of the film that the Defendant Nos.1 and 2 have made a film on the story about the police and informer, the plaintiff had approached Defendant No.1 and inquired whether the film is based on the same story and the Defendant No.1 denied the

same and informed the plaintiff that it was based on some other story of film “infernal affairs”.

3. The plaintiff filed suit on 2 May 2012. The learned Single Judge declined to grant ad-interim injunction against release of the film on the ground that there are several films made in the past on the broad concept of police and informer. Learned Single Judge accepted the case of the Defendants that there is no commonality and that the script of the story in the film to be released in essence depicts a love story and how there is transformation of the protagonist after the criminal activities are noted by him and reported to police. The learned Single Judge also held that at that stage before release of the film, merely on the basis of the contents of the emails and the identical scene chart, it was not possible to hold that there was any breach of the confidentiality or that there was a breach of copyright in the plaintiffs work. The learned Single Judge held that the plaintiff had based his story on the broad outline and theme of criminals and their being a cop who is not protecting the interest of the society but is assisting and helping the criminal in the garb of performing his duty, but that may be a common factor in the concept or idea of the film and in the script of the plaintiff but it is not proper to hold before release of the film that there are complete similarities and that there is a complete copy of plaintiffs work. The learned Single Judge also held that since the film was to be released on 4 May 2012, on the grounds of balance of convenience also it was not a fit case for grant of ad-interim relief of injunction restraining theatrical release of the film.

4. When this appeal was listed for first hearing on 3 May 2012 we passed the following order: -

Having heard the learned counsel for the parties for some time, we adjourn the further hearing of the appeal and draft Notice of Motion to 22 June 2012 with a clarification that release of the impugned film i.e. "Jannat-2" shall be subject to any further ad-interim / interim / final orders which may be passed against all or any one or more of the respondents (defendants) in this Notice of Motion / Appeal.

2. A copy of the script of the film 'Jannat-2' will be given to the learned counsel for the appellant on 5 May 2012.

3. It is clarified that pendency of this appeal does not preclude the Film Writers Association from forming any opinion about the similarity or otherwise, between the film "Jannat-2" and the appellant's script 'Zero' as indicated in their letter dated 26 April 2012 at Exhibit 'G'. The appellant shall pursue his representation before the said Association, and the said Association shall consider the appellant's representation.

S.O to 22 June 2012."

5. Thereafter when the matter was listed for hearing on 9 July 2012, in view of the arguments of learned counsel for Respondents that all that the plaintiff had claimed was an injunction against the satellite release of the film, we had passed the following order:-

"Stand over to 18 July 2012.

In the meantime we are inclined to grant ad interim injunction against satellite release of the film 'Jannat-2', but in case respondents or any purchaser of satellite rights from

the respondents, propose to make a satellite release of the movie before the next date of hearing, they may do so only after first depositing a sum of Rs.10 lakhs with the Prothonotary and Senior Master of this Court.”

6. Plaintiff had thereafter pursued his complaint before the Film Writers Association pursuant to the liberty granted by this Court on 3 May 2012. The Dispute Settlement Committee of the Film Writers Association heard the plaintiff and Defendant No.1 and the experts nominated by it. After considering the plaintiff's story registered with the Film Writers Association and after watching the film “Jannat-2”, the Dispute Settlement Committee came to the conclusion as under:-

“In conclusion, the Dispute Settlement Committee has observed that there are striking similarities between the film Jannat-2 and the script written by Mr.Kapil Chopra and the DSC has come to an opinion that the film is not an original creation. There has been a blatant infringement of Copyright by the Director and the producers of the film. Mr.Kapil Chopra should have got due credits in the said film for his contribution and creation, but a production house of such repute not only cheated him of the fame and due recognition that he could have gained through the said film but also failed to pay him any remuneration for his script and for the years of his non-stop creative assistance and inputs that he kept infusing in the script and story sessions with the director. It is undeniable that finally a film was made which has become a box office hit film and the film is based, to a large extent, on the script written by Mr.Kapil Chopra. The producers definitely have earned their share of profit.”

The Dispute Settlement Committee also indicated that the amount of compensation to be paid to Mr.Kapil Chopra should be

on the basis of the rules of minimum wages of the Film Writers' Association and the said amount due would be a sum of Rs.9,62,066.70.

7. When the appeal was heard on 21 August 2012 learned counsel for Respondents submitted that the Respondent Nos.1 & 2 would like to file replies within one week, and hence, after hearing learned counsel for the parties for some time, we granted ad-interim injunction against the satellite release of the film "Jannat-2" till 10 September 2012. We had also made it clear that Notice of Motion (Lodging) No.1490 of 2012 pending before the learned Single Judge in the suit, shall also be heard alongwith the appeal and the orders would be passed after hearing learned counsel for the parties. Accordingly, the appeal as well as the Notice of Motion (Lodging) No.1490 of 2012 in the suit have been heard for final disposal. Hearing commenced yesterday and the hearing continued today for about four hours.

8. Learned counsel for the parties have been heard at length and the pleadings of the parties as well as documents placed on record have been taken into consideration.

9. Mr.Rustomjee, learned counsel for appellant-plaintiff submitted that the plaintiff's story was registered with the Film Writers Association in November 2007 and thereafter the plaintiff had given the said story to Defendant No.1, who had in turn had shown a considerable interest in the story and thereafter several meetings were held where the said story was discussed between

them. Learned counsel invited our attention to the copies of the various text messages exchanged between the plaintiff and Defendant No.1, as also the emails between them. Relying on the same, learned counsel submitted that the Defendant No.1 had shown interest in the story given by the plaintiff and the case now being pleaded by Defendant No.1 that the story was written by the writer engaged by Defendant No.2, cannot be accepted. The agreement between Defendant No.2 and Ms.Shagufta Rafique was entered into on 31 January 2011, after the plaintiff had given his story to Defendant No.1 in August 2010 and the full script flow given in January 2011. Our attention is also invited to the comparative chart giving gist of the plaintiff's story and the gist of the story in the film "Jannat-2" directed by Defendant No.1 and produced by Defendant No.2. It is submitted by learned counsel that in view of the striking similarities between two stories, clear case of infringement of plaintiff's copy right is made out.

10. Learned counsel for plaintiff has also invoked the doctrine of breach of confidentiality and relied upon the decision of the Division Bench of this Court in **Zee Telefilms Ltd.and Another V/s.Sundial Communication Pvt.Ltd.& Others, 2003 (5) Bom.C.R.404**. It is contented that since the plaintiff's story was admittedly received by defendant No.1 and it was acquired by Defendant No.1, under such circumstances it would be breach of good faith to make use of the said story by making the film on that basis. Learned counsel submits thus the Defendants have committed breach of confidentiality.

11. On the other hand learned counsel for Defendant No.1 contended that Defendant No.1 had already discussed the story with another actor Sanjay Dutt some time in the year 2009 and after the story was discussed actor Sanjay Dutt had initially agreed to act in the said film, but subsequently declined to act, and the said news was also published in the blog on 14 November 2009.

12. Learned counsel for Defendant No.2 - producer of the film, submitted that the story was written by Ms. Shagufta Rafique on the basis of an agreement between the said writer and Defendant No.2, and that thereafter dialogues were written by Mr. Masood. He submitted that there are no similarities between the plaintiff's story and the story of the film in question, except the broad theme of the story revolving around the police and the informer. He submitted that several movies are made with such broad theme but there is no copy right of such broad ideas or themes. Learned counsel for Defendant No.2-producer of the film also submitted that unless evidence is led at the trial and the Court comes to the definite conclusion that the stories are identical or strikingly similar, there can be no finding about infringement of copy right. Referring to the comparison between the two stories as perceived by Defendant No.2, the learned counsel submitted that there are various differences in the two stories. Relying on the decision of the Supreme Court in R.G.Anand V/s.M/s.Delux Films and Others, (1978) 4 SCC 118, learned counsel submitted that the tests laid down in the said decision are not satisfied by the plaintiff

and that no case is made out for grant of any injunction much less against further release of the film. It is submitted that since the plaintiff has claimed damages of Rs.10 lakhs only, at the most, the Defendants may be put to a condition of depositing a sum of Rs.10 lakhs, which the plaintiff cannot be permitted to withdraw.

13. Learned counsel for Defendant No.3 has vehemently submitted that Defendant No.3 had bonafide purchased the telecast rights in the film "Jannat-2" on 7 February 2011 after paying substantial amounts to Defendant No.2; both for theatrical release and for all other rights including the satellite release. It is submitted that before the suit was filed, the Defendant No.3 had also entered into a contract with other parties giving them licence for releasing the film in theaters and for satellite release. It is therefore submitted that any such belated claim of the plaintiff cannot be allowed so as to take away the rights of the third parties which are created prior to filing of the suit by the plaintiff.

14. We may note here that before the arguments commenced yesterday, it was made clear to the learned counsel for the parties that we have seen the movie as the DVDs were already placed on record by learned counsel for Defendant No.2. We have also gone through the script placed on record by the plaintiff and compared the story with the said script as well as the story as unfolded in the movie which we have seen.

15. Learned counsel for the plaintiff thus sought injunction on two grounds. Firstly on account of breach of confidence and

secondly for infringement of the copy right. Learned counsel contended that admittedly the plaintiff had handed over script of the film to Defendant No.1 and while doing so, the plaintiff had reposed confidence in Defendant No.1 that he will not use it in any manner without the permission of the plaintiff. The action of the Defendants is thus in blatant breach of the confidence reposed by the plaintiff in Defendant No.1. Learned counsel further contended that the plaintiff's work is original and is covered by section 13 of the Copy Rights Act, 1957 and an unauthorized use thereof is liable to be enjoined by the Court.

16. An objection has been raised by learned counsel on behalf of Defendants that the plaintiff cannot raise combined challenge on the above mentioned two grounds and the appellant must choose either of the grounds. According to learned counsel when the plaintiff registered his script with Film Writers Association, the script entered in public domain and thereafter no question of confidentiality arises. It has been however pointed out by learned counsel for plaintiff that when the film is registered with Film Writers Association, the association merely makes a note of the script in its register and the script is returned back to the writer with stamp on it. Thus the script does not remain in the public domain.

17. Be that as it may, we do not feel that merely because the plaintiff has raised a challenge on these two grounds together, that he is not entitled to the order of injunction. In the case of Zee Telefilms Ltd (supra) the appellant therein also had sought an

order of injunction on breach of confidence as well as infringement of copy right. This Court considered both these challenges together. The order of injunction is granted on equitable principles. If the well settled principles of grant of injunction i.e.prima-facie case and balance of convenience are shown to be in favour of the appellant, then the grant of injunction cannot be declined on hyper-technical pleas.

18. Before we consider the challenge on merits, we may advert to the passage in the judgment of the Apex Court in R.G.Anand (supra). In the said judgment, Justice R.S.Pathak (as His Lordship then was) while coming to a conclusion that the judgment of the High Court in that case was not to be interfered with as the Apex Court does not normally interfere with the concurrent finding of facts, went on to sound a note of caution as under:-

“In another, and perhaps a clearer case, it may be necessary for this Court to interfere and remove the impression which may have gained ground that the copyright belonging to an author can be readily infringed by making immaterial changes, introducing insubstantial differences and enlarging the scope of the original theme so that a veil of apparent dissimilarity is thrown around the work now produced. The court will look strictly at not only blatant examples of copyright but also at reprehensible attempts at colourable imitation.”
(emphasis supplied)

It is this anxiety expressed by the Apex Court that we must keep in mind when we consider the controversy that is being brought before us.

19. For sustaining the challenge on both the grounds namely breach of confidentiality and infringement of copy right, the plaintiff must first show that the film in question is based on the script written by the plaintiff. As we have noted earlier, the copy of the film on DVD was supplied to us and we saw the film and compared it with the script produced by the plaintiff in the suit. The genesis of the script written by the plaintiff is that it is story of an informer. The special feature of the script is that the story is written from the perspective of informer. As the learned counsel for Defendants have urged, there have been films made in respect of informers in the past. However, the script of the plaintiff does not look at the story from the perspective of police officer or a third person. The story is portrayed through the eyes of the informer. It is not only the story about the informer which is important, but the way the script moves and the way the story unfolds and develops, which is of importance.

20. In the plaintiff's script the informer knows the underworld well. He is recruited by the Assistant Commissioner of Police who treats the informer with contempt. But as the film develops this relationship changes. Informer who looks at this activity from purely mercenary point of view, undertakes it for doing a social good. This change is accelerates more sharply, when close friend of the informer dies. The Assistant Commissioner of Police who treats the informer as merely a tool to be used for the purpose of achieving his object, starts treating the informer as human being. Towards the end, real villain is revealed who turns out to be a high ranking officer in the police department itself. In the final scene,

informer dies and the Assistant Commissioner of Police goes to the family members of the informer to give them the note written by the informer before his death. The Assistant Commissioner of Police informs the family members that the informer actually helped to burst the crime syndicate and was a hero, so as to enable the parents to move with life. There are certain features in the story where the informer can identify the maker of a gun by merely looking at the picture of the gun, the information is supplied through the police officers through the antique pieces, mobile phone tracking devices are used to detect the chain of people in the crime syndicate.

21. When we viewed the film keeping in mind the plaintiff's script we could not, but resist an initial impression that the film did appear to correspond with the script of the plaintiff. Obviously the film's script and the plaintiff's script was not line to line same, but the genesis of the plaintiff's script or "seed of idea" was apparent in the film. The film also revolved around the informer. Not only that, that it was also written through the perspective of the informer. In the opening scenes the character of informer is introduced. He appears to be confident, light hearted and street savy individual. He knows the underworld well and can weave his way through the police and criminals. In one of the scenes, he identifies the gun by merely looking to it which impresses the gangster and through his confident demeanor, the informer defuses a stressful situation. Mind immediately went back to the character of the informer in the plaintiff's script, especially the ability to recognize the make of a gun by merely looking at it, as if

something is borrowed from the script. This ability of the informer has a special significance. By doing so, informer assures the criminals with whom he associates that he is part of them and knows weapons very well. The film also goes through the same relationship changes between the police officer and the informer of initial loathing and contempt to that of mutual respect. In the film also there is a change in the informer from giving information to police as source of livelihood to do so as social service. In the film also the change occurs sharply when the informer's close friend dies. In the film also tracing the members of the gang through mobile phone tracking devices is used. Towards the end the film reveals that the actual villain is a high ranking police officer, and the film ends soon after the informer's death. Though the love interest in the form of informer's girl friend is introduced, it is merely an adjunct to the main story. The story is not about the relationship of informer and his girl friend. Both the plaintiff's script and the film is about the mental turbulations that the informer goes through when he has to live life of deceit and constant danger. The informer in both the film as well as the plaintiff's script has to face the police authorities, the underworld and the family members (in the film, the girl friend) and the constant pulls and pushes of several roles that he has to perform. This predicament of the informer living a life of lie as told through the eyes of informer, is the genesis of both; the plaintiff's script and the script of the film. Thus even by applying the test of a reasonable man comparing both; the plaintiff's script as well as the script of the film, we have no hesitation in holding that there is very close similarity between the script and the film.

22. It is an admitted position before us that the Defendant No.1 first had synopsis of a script from the plaintiff and later on he received the entire script from the plaintiff. The learned counsel for Defendant No.1 has advanced broadly three submissions. Firstly the Defendant No.1 never asked for the copy of the script from the plaintiff and it was the plaintiff who tried to thrust himself on Defendant No.1 to make him somehow use his script in which Defendant No.1 was not interested. Secondly it was submitted that much before 17 January 2011 when the plaintiff sent the draft screen play, Ms.Shagufta Rafique had already finished the work on the story and the screen play and the Defendant No.1 had met actor Sanjay Dutt in December 2010 and had requested him to play the role of protagonist in the film, which he subsequently could not accept due to some reasons.

23. The second defence is that even assuming that the film and the script has similarities, the similarities are merely general. The idea of informer is nothing new and the script was already ready even before the plaintiff sent his script. Thirdly it was submitted that there is no originality in the plaintiff's script, and in fact the film is inspired from a Korean film titled as "Bloody Ties".

24. As far as the first defence that it was the plaintiff who tried to thrust himself on Defendant No.1 is required to be stated to be rejected. The text messages which have been placed on record and which are undisputed, clearly show that it was Defendant No.1 who was showing keen interest in receiving the script from the

plaintiff. The Defendant No.1 was willing to change his meeting schedule to accommodate the plaintiff to discuss the story, over a cup of coffee and a dinner. These communications are far from being dismissive. In fact they suggest that the Defendant No.1 was luring the plaintiff to hand over the copy of the script. It was the plaintiff who was giving guarded responses by not handing over the entire script immediately. It is unfortunate that the plaintiff is being portrayed by Defendant No.1 as a pushy desperate individual when Defendant No.1's own responses show that both of them had cordial relations. In fact, from the responses of Defendant No.1 one gets an impression that the Defendant No.1 was trying to create an atmosphere of confidence so that the plaintiff will part with his script.

25. The next argument that the script was ready even before the plaintiff sent his script to Defendant No.1. For that purpose, it is pleaded in the affidavit in reply of Defendant No.1 as under:-

“ (j) Simultaneously, in and around December, 2009 I shared with the plaintiff that I was desirous of making a film tentatively titled “Informer” on the idea of a cop and informer. The Plaintiff told me that he had developed a script on the cop and informer storyline under the title “Zero” and could share the same with me. On 18th July, 2010, the Plaintiff sent me a synopsis of his script “Zero” and said that he would be polishing the script before sending the same to me. Hereto annexed and marked Exhibit “N” is copy of email dated 18th July, 2010 along with synopsis sent by Plaintiff to me.

(k) On 14th August, 2010 the Plaintiff sent me a rough draft script of “Zero” by email for my perusal with the clear

understanding that the script was merely a draft and the Plaintiff would develop the same further if I approved the draft. Hereto annexed and marked Exhibit "O" is copy of email dated 14th August, 2010 along with rough draft of the script "Zero".

(l) Subsequently, on 17th January, 2011, the Plaintiff sent me draft screenplay of both film projects titled "Aa Bhi Jao" and "Zero" by email. Hereto annexed and marked Exhibit "P" is copy of email dated 17th January, 2011.

(m) Thereafter, in end of January, 2011, I communicated to the Plaintiff that I did not approve the scripts/ screenplays of "Aa Bhi Jao" and "Zero" received from him and also told him that he could take the same forward with other actors and directors.

(n) As set out above, Shagufta was already working on the story and screenplay of the said film (titled as "Informer" at the relevant time) for Defendant No.2. In December, 2010, I had met reputed actor Mr.Sanjay Dutt on the set of his film "Rascals" and pitched to him the story as developed by Shagufta for the said film (titled as "Informer" at the relevant time). I requested Mr.Dutt to indicate if he would play the role of protagonist in the said film. After almost a one hour narration and discussion on the concept and storyline, Mr.Dutt agreed to be the main lead in the said film. However, subsequently due to some issues on his availability/ dates, Mr.Dutt could not be a part of the film."

A stand is thus taken that the film was ready in December 2010 itself and Ms.Shagufta Rafique was working on the film much prior to that. period. For this purpose reliance is place on a print-out from a website dated 14 November 2009. Placing heavy reliance on the said website extract, the entire case of the appellant was sought to be falsified. It was urged that in December

2010 itself Respondent No.1 met Mr.Sanjay Dutt in respect of the film and the script was ready by then. Learned counsel for plaintiff however drew our attention to the fact that the website lists the films which the actor Sanjay Dutt could not take up due to his busy schedule, but it refers to the films released much thereafter and even to the films of the year 2012. Upon confronted, learned counsel for Defendant No.1 had to admit this position, but submitted that the Defendant No.1 had merely relied upon the website extract, which according to him was published on 14 November 2009. It is not that only during the oral arguments the document was relied upon. A specific assertion on affidavit is made by Defendant No.1 that in December 2010 he met actor Sanjay Dutt and the said print out from the website was relied upon as the only piece of evidence. If we had relied upon the extract of the website, we would have accepted the position that the film was ready before the plaintiff gave his script and on this ground alone the plaintiff's case would have been dismissed. Thus the document relied upon by the Defendant No.1 was not an innocuous document. We are of the opinion that annexing these documents was an attempt on the part of Defendant No.1 to mislead the Court. We place on record our strong disapproval at the conduct of Defendant No.1. Though such conduct may warrant an action for perjury, in view of the appeals made by the learned counsel, we refrain ourselves from doing so.

26. Since it is the case of Defendant No.2 that Defendant No.2 had engaged Ms.Shagufta Rafique to write a story for "Jannat-2", we called upon learned counsel for Defendant No.2 to produce the

said agreement before us. To our shock we find that the agreement is dated 31 January 2011. Clause 2 of the agreement dated 31 January 2011 specifically state as under;

“2. Services:

Producer hereby engages the services of the “WRITER” to write, and the WRITER hereby agrees to write, in connection with a proposed motion picture tentatively titled “Jannat-2” (the “Picture”) by delivering the desired material (the “Committed Material”), which shall be based on, as and to the extent instructed by Producer. Writing includes – screenplay and dialogues (Hereinafter referred as Script).”

Learned counsel for plaintiff has also drawn our attention to the agreement executed between Defendant No.2 and Ms.Shagufta Rafique for availing the services of Ms.Shagufta Rafique as writer for the film “Jannat-2”. This agreement is dated 31 January 2011. It is inexplicable as to how Ms.Shagufta Rafique would have completed the film before December 2010 when she was hired to write the script on 31 January 2011. There is no explanation coming forth on this count. Thus, this ground taken by Defendant No.1 is also without any substance and in fact an utter lie.

27. Learned counsel for Defendant No.1 has argued at great length that the work of the plaintiff is not original and there have been films on this theme in the past. Learned counsel has submitted that the inspiration for the film came from the Korean film titled as “Bloody Ties”. It has to be noticed that when the plaintiff confronted Defendant No.1 on 31 May 2011 as to whether the film which is being released is based on the story written by the plaintiff, the first reaction of Defendant No.1 was that it was

based on the lines of the movie “Infernal Affairs”. Neither in the communications nor before the Film Writers Association the Defendant No.1 ever took a ground that the film is based on the Korean film “Bloody Ties”. Learned counsel for plaintiff has placed on record an extract from the website providing synopsis of both films i.e. “Infernal Affairs” and the “Bloody Ties”. These extracts read as under:-

“Infernal Affairs

Chan Wing Yan, a young police officer, has been sent undercover as a mole in the local mafia. Lau Kin Ming, a young mafia member, infiltrates the police force. Years later, their older counterparts, Chen Wing Yan and Inspector Lau Kin Ming, respectively, race against time to expose the mole within their midst.

The setting is the never-ending war between the police and the Triads of Hong Kong. Chan is a cop who's been assigned to undercover work inside the Triads for so long that he's been able to rise through the ranks to a position of some authority. Lau, meanwhile, is a secret member of the Triads who has infiltrated the police force with an equal level of success. As they feed their bosses information on the plans and counter-plans of the organizations they pretend to serve, they both begin to feel the stresses of their double lives as they become torn between the oppressive obligations they owe to their superiors and the growing camaraderie they share with the foot soldiers around them. As the two organizations become increasingly aware of the moles in their midsts, the race is on for Chan and Lau to try and get out of the game alive.”

“Bloody Ties

The underworld of pushers, addicts, cops, and mobsters in Buson. Sang-do is a pusher, selling meth, abstaining from using it, living the high life, and, passing on information to the police. He enters into a special one-year deal with Lieutenant Doh, a loose canon on the force, seeking revenge against a mob boss who killed his partner and fled to China. Word is he's back, and Doh wants Sang-do's help. Perhaps Sang-do's uncle, a meth manufacturer, can help. Along the way, Sang-do tries to rescue an old girlfriend from the depths of addiction and prostitution, but she may be unable to stay straight. Doh's

nemesis is slippery. Can there be any victors on Buson's docks? “

From the synopsis reproduced above, it is clear that the film in question shows hardly any resemblance to the above two films. The film surely does not show any resemblance to the film “Infernal Affairs”. We have not doubt that the response of Defendant No.1 to the plaintiff that the film is on the lines of Infernal Affairs is to deceive the plaintiff and stop him from taking any action for seeking injunction.

28. Thus the narration of facts clearly show that Defendant No.1 created an atmosphere of friendly-ness which persuaded the plaintiff in handing over his script to Defendant No.1, who then used it in complete breach of confidence reposed in him by the plaintiff. This Court in the case of Zee Telefilms (supra) has held that when there is breach of confidence an injunction can be issued. The plaintiff had registered his film with the Film Writers Association on 12 November 2007. The work of the plaintiff had the protection of section 13 of the Copy Rights Act. Once we come to the above conclusion that on comparison of the script of the film and the script of the plaintiff that the genesis of the idea was the same, clear case for grant of injunction is made out.

29. The Defendant No.1 was called at the hearing before the Film Writers Association. Defendant No.1 attended the hearing and at no point of time, the Defendant No.1 raised any objection regarding the jurisdiction of the Committee. The Committee heard both; Defendant No.1 as well as the plaintiff. Nothing stopped the

Defendant No.1 from taking his writers with him to explain the situation. The Association, after comparing the material on record came to the conclusion that both the scripts are similar. Though the Film Writers Association is not a tribunal and its decision may not have force of law, it has a persuasive value when we consider grant of interim relief. Ultimately the Association comprises of the writers who being in the profession itself are equipped to ascertain whether there is any plagiarism.

30. An argument was made on behalf of Defendant Nos.3 and 4 that they have acquired rights in the distribution of the film, after paying a considerable amount of money and they are bonafide purchasers for value. It is argued that these Defendants were not aware regarding the alleged plagiarism by Defendant Nos.1 and 2 and if any injunction is granted they will be the sufferers. We do not find any merit in this submission. In the suit the plaintiff has prayed that not only the defendants but any person claiming through the defendants be restrained from in any manner dealing with the film. As far as the question of monetary consideration is concerned, it will be always open to the concerned Defendant Nos.3 & 4 to pursue their claim against the Defendant No.2 from whom they purchased the rights. The plaintiff cannot be presented with the fait accompli in this manner. If the defence is permitted, it will create systematic engine of deceit.

31. The films are released amongst great secrecy and after release, or even before release, the producers quickly assign their rights to third parties. Injunction sought before the release of the

film is rarely granted as Courts at that time do not have benefit of examining the script. In this scenario, if there is case of plagiarism, the writer is left with no remedy at all. We cannot help but observe that, atleast from the arguments presented before us in this case, that the writers of the film are not treated with the same dignity and respect which he/she deserves. The facts of the present case show that the plaintiff was clearly deceived and exploited by Defendant No.1. As warned by the Apex Court way back in the year 1978, such tendencies are on the rise and the artists are carrying an impression that there is no respect for artistic work and there are no means of protecting their rights in this Country. The resultant situation is embolding unscrupulous elements from exploiting the artists. It is necessary to send a strong message that creations of story writers need to be treated with dignity and respect and cannot always be made subservient to commercial interest of distributors and producers.

32. We may also place on record that by an order passed earlier, we had directed that any party wishing to broadcast the film on satellite television, can do so after deposit of Rs.10 lakhs. During the hearing before us we suggested to the Defendants that the same order may be continued with the modification that the plaintiff be permitted to withdraw the amount deposited after furnishing the security to the satisfaction of the Registry, subject to the final outcome of the suit. This request was opposed by the Defendants that the plaintiff should be allowed to withdraw the amount only after furnishing the bank guarantee. Learned counsel for plaintiff after taking instructions, submitted that the

plaintiff being a young professional, is not in a position to furnish a bank guarantee. The attempt of Defendant Nos.1 and 2 was thus to deprive the plaintiff of any monetary compensation for his literary work. As we have noted in the beginning itself, the greed and deceit which often form plot of a bollywood film, are manifest in the real life conduct of the Defendant Nos.1 and 2 themselves. We do not wish to say anything more.

33. In view of the above discussion we allow the appeal and set aside the order dated 3 May 2012 passed by learned Single Judge in the Notice of Motion (Lodging) No.1490 of 2012. We allow the Notice of Motion (Lodging) No.1490 of 2012 in terms of prayer clauses (a) and (b).

34. We do however note the contention of Defendant No.3 that the film was released in theaters on 4 May 2012.

35. At this stage, learned counsel for Defendants pray for stay of this order for some time in order to have further recourse in accordance with law. In the facts and circumstances of the case and for the reasons already recorded, we do not find that this is a fit case for grant of stay to the above order. Hence the prayer for stay is rejected.

CHIEF JUSTICE

(N.M.JAMDAR, J.)