

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO. OF 2013****IN****SUIT (L) NO. 967 OF 2013**

Uday Singh Deshraj Rajput

...Applicant

In the matter between:

Uday Singh Deshraj Rajput

... Plaintiff

Vs.

Filmkraft Productions (India) Pvt. Ltd. and others

...Defendants

Mr. V.Y. Sanglikar, instructed by Rekha K. Mehta, for the Plaintiff.

Mr. Ravi Kadam, Senior Advocate, along with Mr. V.R. Dhond, Senior Advocate, instructed by M/s. Thakore Jariwala & Associates, for the Defendants.

CORAM: S.J. KATHAWALLA, J.**DATE: 29th October, 2013.****PC.:**

1. The above Suit is filed by the Plaintiff for a decree and order that the Plaintiff is the owner of the script and screen play of the film - Krrish – 3 and that the Defendants are not entitled to use the script and the screen play for Krrish – 3 or any other film. The Plaintiff has also sought a permanent injunction restraining the Defendants from exhibiting in any manner the film Krrish – 3 or any part thereof, the story of which is allegedly infringed by Defendant No.2. The Plaintiff has also sought damages for infringement of his

alleged rights and for passing of his story in the sum of Rs. 2 crores.

2. The Defendant No. 1 is a reputed Film Production Company carrying on business of production, distribution and marketing of cinematographic films, including feature films, motion pictures, etc. Defendant No.2 is a well known actor, director and producer. The Defendant No.1 has produced several films like Koi Mil Gaya, Krrish, Koyla, Karan Arjun, Kaho Naa Pyar Hai, etc.

3. According to the Plaintiff, he is a Science Graduate and has completed his Post Graduation in M.Sc. Biology and he has the requisite and good knowledge of various science faculties including Chemistry, Physics, Nuclear Science, Biology, etc. The Plaintiff is also the Secretary (Sachiv) in Gram-Panchayat Basahari, Tehsil Khurai, Dist.Sagar, Madhya Pradesh. According to the Plaintiff, he had written the script titled Krrish – 2 and had got the same registered with the Film Writers Association, Mumbai, on 28th July, 2008. According to him, after writing the script Krrish – 2 and registering with the Film Writers Association, he started looking for a suitable director and film producer for making the film, and whilst on the lookout for the same in Mumbai, on 30th July, 2008, he met Defendant No.2 (Shri Rakesh Roshan) through one Shri Musad. Defendant No.2 gave some suggestions to him for making a film. The Plaintiff as per the suggestions made necessary changes in the script and sent a copy of the original registered script to Defendant No.2

by registered post on 30th July, 2008, which was received and acknowledged by Defendant No.2. The Plaintiff has craved leave to refer to and rely upon the documents as and when produced. According to the Plaintiff, Defendant No.2 promised to pay to the Plaintiff a sum of Rs. 2 Crores for the Plaintiff's script and story. Defendant No. 2 agreed to pay Rs. 50,00,000/- towards the first installment and Rs. 1.5 crores after release of the film. According to the Plaintiff, Defendant No. 2 through his Company, Defendant No.1, in August 2009 contacted him and told him that he is signing his own son - Hrithik Roshan who would be the lead actor, alongwith the other performers who had acted in his previous feature film. Defendant Nos. 1 and 2 informed him that they will sign a contract with the terms and conditions, remuneration and commission mentioned therein, alongwith the signing amounts for exhibition and distribution of worldwide rights for the film, and also promised to pay him Rs. 2 crores for his original work. Defendant No. 2 also told the Plaintiff that he would shortly send through e-mail, the contract confirming his rates and forward the terms and conditions for approval.

4. According to the Plaintiff, the Defendants have without paying any consideration to him used his story and have made a film named Krrish – 3 based on his story and have thereby violated his intellectual property rights. He therefore, by his Advocate's letter dated 7th October, 2013, addressed to Defendant no. 2, interalia recorded that his story has been used by the

Defendant no. 2 for his film titled Krish-3, by deceiving him, and therefore the Plaintiff has decided to take legal action against the Defendant no. 2 in a court of law. In response, the Advocates for Defendant no. 2, by their letter dated 12th October, 2013, refuted the claim of the Plaintiff as being bogus and fabricated. The Plaintiff thereafter filed the present Suit on 25th October, 2013 and moved this Court for ad-interim reliefs today i.e. 29th October, 2013.

5. Prior to the filing of the above Suit by the Plaintiff against the Defendants, the Defendants have filed a Suit against the Plaintiff on 15th October, 2013, seeking a declaration that the said feature film which is produced by the Defendants is not based on the Plaintiff's alleged script and does not constitute infringement of the Plaintiff's alleged work in the script, and for a perpetual order and injunction restraining the Plaintiff from in any manner preventing and/or interfering with the release of the Defendants feature film Krrish – 3 in any manner whatsoever and/or making groundless threats and/or continuing the threats as made by the Plaintiff.

6. I have heard the learned Advocate appearing for the Plaintiff and perused the pleadings. The Plaintiff has through his Advocate's letter dated 7th October, 2013, inter alia addressed to the Defendant No.1, recorded that after the registration of his script (i.e. on 28th July, 2008), Defendant No. 1 and Defendant No. 2 (Shri Rakesh Roshan) approached him and had

discussions for making a film based on the story of the Plaintiff and gave certain suggestions to the Plaintiff. Subsequently the Plaintiff sent his story by registered post to the Defendants on 30th July, 2008 and after receiving the story, Defendant No.1 promised to pay to the Plaintiff Rs. 2 crores for his story. This story of the Plaintiff in his Advocate's notice dated 7th October, 2013, more particularly his allegation that Defendant No. 2 Shri Rakesh Roshan approached him and had a discussion with him for making a film based on his story, is changed in paragraph 7 of the plaint filed on 25th October, 2013, wherein the Plaintiff has stated that after registering his story (i.e. on 28th July, 2008) he started looking for a suitable Director and Film Producer for making the film and whilst on a look out for the same in Mumbai, on 30th July, 2008 he met the Defendant No.2 Shri Rakesh Roshan through Shri Musad and Defendant No. 2 gave his suggestions for making a film.

7. Mr. Kadam, the Learned Senior Advocate appearing for the Defendants has drawn my attention to the reply dated 12th October, 2013, sent to the Plaintiff's Advocate by the Defendants wherein they have clearly stated that the claim of the Plaintiff is bogus and fabricated. Mr. Kadam informed the Court that on 30th July, 2008, Shri Rakesh Roshan, Defendant No. 2, was not in India and he also produced the particulars of his travel abroad. When the Plaintiff was confronted with the fact that the Defendant No. 2 was not in India on 30th July, 2008 and therefore the Plaintiff could not have met him on

30th July, 2008 as alleged by him, the Plaintiff informed the Court that he had not met the Defendant No.2 on 30th July, 2008 and in fact he had met him in June, 2008 and that he had as per the suggestions of Defendant No.2 forwarded his story to him on 30th July, 2008. When this Court enquired as to where the acknowledgement of Defendant No.2 relied upon by the Plaintiff in paragraph 7 of the Plaint is, the Plaintiff informed the Court that he had lost the same. It is pertinent to note that the Plaintiff has craved leave to refer to and rely upon the same in paragraph 7 of the Plaint.

8. At least at this *prima facie* stage I am of the view that the Plaintiff has approached this Court with a completely bogus case. He has in his Advocate's notice dated 7th October, 2013 alleged that after the registration of his story on 28th July, 2008, Shri Rakesh Roshan had approached him and had discussions with him to make a film based on his story. However, in paragraph 7 of the Plaint he has stated that after registering the said story he had started looking for a suitable director for making a film and on 30th July, 2008, he met Shri Rakesh Roshan through one Shri Musad, when Mr. Rakesh Rohan gave him certain suggestions for making a film. As set out earlier, when Mr. Kadam pointed out that Mr. Rakesh Roshan was not even in India on 30th July, 2008, he immediately changed his stand and informed the Court that he had met Shri Rakesh Roshan in June, 2008, with a story, i.e. when his story was not even registered. The bona fides of the Plaintiff's case is therefore seriously in

doubt and no ad-interim relief can be granted to him more so when the movie Krrish – 3 is scheduled to be released on Friday, 1st November, 2013 and the Defendants have informed the Court that they have spent an amount of Rs. 140 crores for the purpose of production of the said film and theatres have been booked across the world for a worldwide release of the said film. The said film is in the news since the last one and a half years and every month some sort of publicity/news has been published in the print and television media. The Defendants have entered into contracts with various distributors for distribution of the said film in India and abroad. The balance of convenience is therefore completely in favour of the Defendants. In the event of the Plaintiff establishing his claim at the time of the hearing of the Notice of Motion and/or the Suit, the Court can always pass appropriate orders and can also consider the case of the Plaintiff for damages against the Defendants, which is estimated by the Plaintiff in the sum of Rs. 2 crores. The Defendants to file their affidavits in reply on or before 13th November, 2013, Rejoinder, if any shall be filed on or before 18th November, 2013. Place the Notice of Motion for hearing and final disposal on 20th November, 2013. High on Board.

(S.J. KATHAWALLA, J.)