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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION (L) NO. 1155 OF 2016**  
**IN**  
**SUIT (L) NO. 344 OF 2016**

1. **XYZ FILMS LLC,**  
a limited liability company incorporated in  
USA and having its address at 3103 La  
Cienega Blvd, Los Angeles, CA 90016, USA
2. **PT MERANTAU FILMS**  
having its address at JL. K.H. Fakhruddin  
No. 6, (Depan Hotel Millennium, Tanah  
Abang) Jakarta Pusat, DKI Jakarta,  
Indonesia
3. **SIKHYA ENTERTAINMENT PRIVATE  
LIMITED,**  
a company incorporated under the  
provisions of the Companies Act, 1956, and  
having its address at:
  - i) 2975, Gali No. 3, Shalimar Park,  
Bholenath Nagar, Shahdara, New Delhi  
- 110 032
  - ii) Bungalow No. 129, Aram Nagar No. 1,  
Off Seven Bungalow, Andheri (West),  
Mumbai - 400 061

**...Plaintiffs**

*versus*

1. **UTV MOTION PICTURES / UTV  
SOFTWARE COMMUNICATIONS  
LTD.,**  
The Walt Disney Company, India, 1st Floor,

Building No. 14, Solitaire Corporate Park,  
Guru Hargovindji Marg, Chakala, Andheri  
(East), Mumbai 400 093

2. **NADIADWALA GRANDSON  
ENTERTAINMENT PVT. LTD.,**  
1701 Grandeur, Oshiwara, Veera Desai Road,  
Andheri (West), Mumbai – 400 053  
And Nadiadwala Villa Ocean View, J.P.  
Road, Versova Andheri (West), Mumbai 400  
051

**...Defendants**

**APPEARANCES**

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**For the Plaintiffs**

**Dr. Birendra Saraf, with Mr. Rohan  
Sawant, Mr. Mahesh Mahadgut, &  
Ms. Miloni Gala, i/b Mr. Mahesh  
Mahadgut.**

**For Defendant No. 1**

**Mr. Mustafa Doctor, Senior Advocate,  
with Mr. Neveille Mukerji, i/b Veritas  
Legal.**

**For Defendant No. 2**

**Mr. V.R. Dhond, Senior Advocate, with  
Mr. Ashish Kamath, Mr. Rashmin  
Khandekar, Mr. Ameet Naik & Mr.  
Ravi Suryawanshi, Mr. Vaibhav Bhure  
and Madhu Gadodia, i/b M/s. Naik  
Naik & Co.**

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**CORAM: G.S. PATEL, J**

**DATED: 21st April 2016**

**ORAL JUDGMENT:**

## A. OVERVIEW

1. By consent, the Notice of Motion is taken up for hearing and final disposal.

2. Since the time this Suit was filed, the Plaintiffs' case in this copyright infringement action has changed more than somewhat. This is partly inevitable: much has transpired since the date of the first application for ad-interim reliefs and today. When Dr. Saraf first made his application for ad-interim reliefs on behalf of the Plaintiffs, he said that suit is based on a copyright infringement claim in, as he put it, "everything": his clients' film, its underlying script, screenplay and storyline. As we shall see, this also included a slightly more particularized claim. I will return to that presently.

3. I was given a copy of the Defendants' screenplay. I struggled through it. It was not shared with Dr. Saraf or his team. Much later, I was also given a two-disc DVD copy of the Defendants' work, a film called *Baaghi*, scheduled for release on 29th April 2016. After some initial hesitation, Mr. Dhond for the 2nd Defendant agreed to screen the film last evening for Mr. Mahadgut, the Plaintiffs' Advocate on record, and their counsel. I have heard Dr. Saraf again this morning, Mr. Dhond for the 2nd Defendant and Mr. Doctor for the 1st Defendant.

4. The two works in question are two films. The Plaintiffs' film is one called *The Raid: Redemption*. The Defendants' film is *Baaghi*. Today, after all the intervening skirmishes, Dr. Saraf's case is down

to this: that substantially the whole of the *The Raid: Redemption* has been compressed into the last twenty minutes or so of *Baaghi*. He says the length is immaterial. He is possibly right in that, as a general proposition. He says, though, that *Baaghi* is a complete imitation of *The Raid: Redemption*: should any viewer see the last twenty minutes of *Baaghi*, he or she would undoubtedly conclude that it is a copy of *The Raid: Redemption*. I think he is wrong on facts. *Baaghi*'s actual running time is about two hours and twenty minutes. A necessary *sequitur* to Dr. Saraf's arguments, therefore, is that first two hours of *Baaghi* are a wholly superfluous add on, entirely inconsequential. Necessarily this also means, and this is, I think, the test in law, that these last twenty minutes are key to, and are the kernel of, *Baaghi*. Take out these twenty minutes and nothing remains in that work.

5. I disagree. I have refused the injunction. My reasons follow.

6. On the averments in the Complaint, it is difficult to discern the precise frame of the Plaintiffs' case. I say this because even though there has been an amendment which I permitted, the lack of a precise claim still persists. For the purposes of this judgment, I propose to take the Plaintiffs' case at its best, making additional allowance that might not actually be warranted, and taking the case at its broadest. For instance, there is a serious dispute raised by the Defendants, especially the 2nd Defendant in its Affidavit in Reply, as to the maintainability of the Suit and the claim made on behalf of Plaintiff No. 3. I do not propose to hold against the Plaintiffs for that reason. Mr. Dhond has also pointed out that there are clear errors, ones he calls deliberate misstatements, in the Complaint and in the Affidavits filed by the Plaintiffs as the content of the Plaintiffs' own

film. I will let even these pass. The test to my mind is far more fundamental. If the Plaintiffs cannot satisfy that test, they fail. Conversely, if the Plaintiffs do make out a case of infringement, they cannot possibly be defeated merely because one particular averment is said to be inaccurate or because the Defendants dispute some of their title claims.

## **B. FACTUAL BACKGROUND**

7. The three Plaintiffs are, respectively, an American company, an Indonesian company and an Indian company. The Plaintiffs Nos. 1 and 2 are the producers of *The Raid: Redemption*. They claim to own the copyright in the film and its underlying works including the script, screenplay, storyline and dialogues. The 1st and 2nd Plaintiffs entered into a remake agreement with the 3rd Plaintiff, with worldwide rights to develop, produce and exploit that film, including in remakes and a sequel. The 3rd Plaintiff does not yet seem to have made any progress in that direction.

8. The amendments allowed say that under an agreement dated 1st January 2011, Plaintiff No. 2 employed/commissioned the services of one Mr. Gareth Evans to write a script for *The Raid: Redemption*. He wrote a script, a copy of which is said to be at Exhibit "A". Thereafter, Mr. Evans is said to have assigned and transferred his rights to the 2nd Plaintiff. These Deeds of Assignments are said to be registered.

9. Actually, the history of *The Raid: Redemption* is a little more than complex than this. I am not at all sure that it is correct to say that Mr. Gareth Evans was merely engaged to write the script and then to direct this film. There is material available in the public domain indicating that Mr. Evans was at an earlier time shooting a documentary on the well-known Indonesian martial arts style, 'Pencak Silat'. This is one of several variants of this martial arts combat style known throughout South East Asia. It is said to have many influences, including from China and India. It is during the making of this documentary that Mr. Evans is said to have met Mr. Iko Uwais, the lead star in *The Raid: Redemption*. In fact, they seem to have collaborated on an earlier action film before, *Merantau*, one from which the 2nd Plaintiff seems to have taken its name.

10. On its release in 2011 (2012 in America and India), *The Raid: Redemption* won several accolades and awards at film festivals and elsewhere. Some details are set out in paragraph 3.3 of the Plaintiff. There is no dispute about this. The film's distribution and release rights for America were taken by Sony Classic Pictures.

11. This Suit was filed on 5th April 2016. A trailer of *Baaghi* had just been released. The Plaintiffs say that when they saw the trailer, they were alarmed by the apparent similarities between their film *The Raid: Redemption* and *Baaghi*.<sup>1</sup> They also noticed various media reports and social media comments to the effect that large portions of *Baaghi* were an infringement of and copied from *The Raid: Redemption*. At this stage, given the amount of material now

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1 Plaintiff, paragraph 3.5, p. 11.

available to us, I do not think that any of this media reportage has any relevance whatsoever.

12. Much correspondence that preceded the Suit. On 17th March 2016, the Plaintiffs' Advocates wrote to the Defendants.<sup>2</sup> They claimed that there was reported unauthorized use of the Plaintiffs' script and picture, *The Raid: Redemption*. They offered to view the Defendants' film *Baaghi*, and they required the Defendants to cease and desist from making, promoting, releasing or distributing – this is important – “any film based on the expression of ideas and content in the script, *The Raid: Redemption*” or to assist, enable or authorise such use. The claim, therefore, in correspondence when it began was in relation to the script.

13. The 1st Defendants' Advocates sent a temporary reply on 18th March 2016.<sup>3</sup> On 20th March 2016 a more substantial reply followed from the 2nd Defendants.<sup>4</sup> In this, the 2nd Defendant's attorneys said that *Baaghi* was an authorised and licensed remake of a Telugu film *Varsham*. They denied any infringement of *The Raid: Redemption*. Matters did not rest at that. On 23rd March 2016, the Plaintiffs' Advocates responded, again expressing their apprehension of possible infringement based on what had appeared in the public media.<sup>5</sup> This is clear from paragraphs 1 and 2 of that letter. The Plaintiffs' Advocates demanded to see a copy or a print of the Defendants' film. In paragraph 5 they expressed their concern

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2     Plaint, Exhibit “E”, pp. 146-148.

3     Plaint, Exhibit “F”, p. 149.

4     Plaint, Exhibit “G”, pp. 150-151.

5     Plaint, Exhibit “I”, pp. 154-156.

about the reported unauthorized use of the Plaintiffs' script and film. They thus now claimed copyright both in the film and the script.

14. The 1st Defendants' attorneys responded on 29th March 2016.<sup>6</sup> A more significant reply is the one by the 2nd Defendant's attorneys of 30th March 2016.<sup>7</sup> In this, the 2nd Defendant's attorneys reiterated their stand that there was no infringement and that *Baaghi* was a permitted remake of the Telugu film *Varsham*. They refused to allow an early screening of the film. However, they sent on a comparative chart showing a synopsis of *The Raid: Redemption* and *Baaghi* and, second, a tabulation of a minute-by-minute comparison between the two films. These two documents are also appended to the Plaint. The minute-to-minute comparison is quite lengthy.

### C. THE CASE IN THE PLAINT

15. It is shortly after this that the present Suit was filed. The submission in the Plaint from is that being joint copyright owners in *The Raid: Redemption*, the Plaintiffs are entitled to an injunction since the Defendants' film uses *The Raid: Redemption's* "central/main plot/story/screenplay to build a story".<sup>8</sup> Paragraphs 3.2, 3.7, 3.8, and 4.1 to and 4.4 of the Plaint are central to it. In the

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6 Plaint, Exhibit "J", pp. 157-159.

7 Plaint, Exhibit "K", pp. 160-168.

8 Plaint, paragraph 4, pp. 24-28.



extract that follows, paragraph 3.7 is reproduced separately since it has a tabulation below it.

“3.2 The Suit Film is an Indonesian martial arts action film directed by Gareth Evans, owner of Plaintiff No.2. **The central theme/main plot of the Suit Film is the fight between an elite squad of police officers raiding a 30 floor apartment building, which a major crime lord owns and in which he resides with his gang of criminals. The apartments in the building are also let out to other tenants as well as other criminals under his protection. The story / screenplay revolves around martial arts action sequences, when the elite police squad raids the said building and has to battle their way through each floor with different challenges facing them on each of the floors, which they need to overcome to enable them to capture the crime lord. Each level brings in a newer and more sophisticated challenge and get more and more difficult for the elite police squad to cross. The said concept is unique and novel as the main / central theme, story and screenplay as it expresses an interesting idea of an action film structured like a video game with different levels to cross and different challenges to overcome,** which helped the Suit Film in achieving commercial success as well as huge critical acclaim.

3.8 **The Plaintiff states that the main and central theme of the Suit Film and its novel expression, which comprises of the presence of a large apartment building with criminals posing, challenges on each floor, as they try to reach the crime lord on the 12th floor and the action scenes that follow to overcome the criminals on each of the floors has been completely copied in the Infringing Film.**

The dramatic high point and more unique / novel features and elements of the Suit Film have been slavishly copied by the Defendants in the Infringing Film and the lead actor has already made such a declaration to the media on the same. The overall impression of any member of the audience / viewer who sees both the works would be that the subsequent work of the Defendants is a copy of the original work of Plaintiff Nos.1 and 2. The media reports hereto annexed and marked as Exhibit "D-1 to D-16" comprise viewer comments that the trailer of the Infringing Film is in many ways unmistakably similar to the Suit Film.

4.1 Plaintiff Nos.1 and 2 are the joint copyright owners in the cinematographic work and parts thereof in the Suit Film and in all its underlying works, including its script, screenplay, scenes and sound recordings.

4.2 **The success of the Suit Film lay in its principal story, screenplay plot and theme revolving around an operation where an elite squad raids a building**

**housing gangsters and criminals (amongst other tenants) and eliminates them floor-wise.**

Each level gets more challenging and difficult and therefore brings in more thrills for the audience / viewer.

4.3 The Infringing Film uses the Suit Film's central / main plot / story, screenplay to build its story. The Infringing Film is therefore identical / similar to / based on and is a copy of the Suit Film and its script, screenplay, storyline and its expression of the central theme as well as several scenes in the Suit Film.

4.4 The overall immediate impression and responses of viewers who have seen both the words and have commented online have already been pointed out and provided before. It clearly indicates that these audience / viewers believe and conclude that the subsequent work of the Defendants is a copy of the original work of Plaintiff Nos.1 and 2 (I.e Suit Film). Where the viewers after having seen both the works are clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original, one can safely say that copyright has been infringed."

*(Emphasis added)*

16. Paragraph 3.7 of the Complaint has a tabulation that is of some consequence:<sup>9</sup>

"3.7. The Plaintiff states that the following comparison chart of the Suit Film with the trailer of the Infringing Film clearly shows that there are substantial similarities between the Suit Film and its underlying works, i.e. the script and screenplay by the Defendants in the Infringing Film:

| Sr. | The Raid : | Baaghi Trailer |
|-----|------------|----------------|
|-----|------------|----------------|

| No. | Redemption Film |  |
|-----|-----------------|--|
|-----|-----------------|--|

- |    |   |  |
|----|---|--|
| 1. | It is a martial art action film in which the entire theme / story is an operation where an elite squad raids a 30-floor building from the ground up to reach the war lord on the 12th floor. Each level brings a newer and more sophisticated challenge and therefore gets more difficult as they climb higher and higher into the building with differently choreographed action | In the trailer of Baaghi, it is seen that the crime boss is a major criminal residing in a tall apartment building with many floors, in which each and every floor represents a different challenge of fighters (professional killers, swordsmen, martial artists) which the actor is shown clearing by action and martial arts. |
|----|---|--|

<sup>9</sup> Plaintiff, pp. 12-16.

| <b>Sr.</b> | <b>The Raid :</b>   | <b>Baaghi Trailer</b>   |
|------------|---|---|
| <b>No.</b> | <b>Redemption Film</b>  |   |
|            | sequences on each floor.  |   |
| <b>2.</b>  | The film has an extensive and impressive display of martial arts.   | For most part of the trailer the lead actor is shown training and thereafter fighting, using martial arts specially in his battles on different floors in the building. |
| <b>3.</b>  | The crime lord welcomes/ speaks to the police team on an intercom / central transmission system which can be heard on speakers throughout the building. | The crime lord welcomes / speaks to the hero via an intercom/central transmission system which can be heard on speakers throughout the building.                        |
| <b>4.</b>  | The crime lord gives a welcome address to the police squad when they enter the building.  | The welcome address of the crime lord in the trailer when he finds out that the lead actor had entered the building.  |
| <b>5.</b>  | The number of each floor keeps appearing on screen, covering the entire screen to tell the viewers which floor the team is on.                          | The number of each floor appears on the screen, covering the entire screen.   |

**Sr. The Raid :**

**Baaghi Trailer**

**No. Redemption Film**

- 6.** The body count, being the number of people dead appears on the screen, as the lead actor challenges them and overcomes them on each floor like a video game where opponents are eliminated.
- 7.** A lab is seen on a particular floor where the gang is sorting drugs.
- 8.** A distinct look and uniforms has been given to the squad.
- 9.** The staircase and corridors are given a distinct look.
- 10.** There is a fighting sequence on the table on one of the floors.
- 11.** The tower building used shows a typical, plain facade with multiple windows on each floor.
- 12.** An action sequence
- The body count i.e. the number of people dead appears on the screen on each floor as the lead actor challenges and overcomes them on each floor like a video game where opponents are eliminated.
- A lab is seen on a particular floor where the gang is sorting drugs.
- A distinct look and uniforms has been given to the crime boss' men.
- The staircase and corridors are given a distinct look.
- There is a fighting sequence on the table on one of the floors.
- The trailer also shows a similar type of facade of the tower building.
- Similar action scene

| Sr. | The Raid :  | Baaghi Trailer  |
|-----|---|---|
| No. | <b>Redemption Film</b>  |   |
|     | shows the lead character in the film banging a victim's head against a wall multiple times. | shows the female protagonist banging a victim's head against a wall multiple times.                       |
| 13. | The lead actor has a cut / gash on his left upper cheek.                                    | The lead actor has a cut / gash on his left upper cheek exactly in the same position as in the Suit Film. |

17. I will, for the present, set aside the smaller details in this tabulation. There are some errors in this: for instance, there is no 'displayed body count' in *The Raid: Redemption*. This is pointed out in the Affidavit in Reply, and the Rejoinder, strangely, says only that the Plaintiffs are unaware of this. As Mr. Dhond says, they can hardly be unaware of what their own film contains. There are also misstatements in paragraph 3.2. The comparison with a video game is inappropriate, and there are not, in the film, increasing or newer or more sophisticated levels of 'challenges' or difficulties going up floor by floor to be combatted by the police squadron. But I will let all that pass for now. Paragraphs 3.2, 3.8 and 4.2 seem to me to set out, at the broadest level, the 'novelty' claimed by the Plaintiffs in their film. This is:

- (a) There is a housing tenement block of several floors;
- (b) It is owned by a crime-lord;

- (c) The occupants are criminals;
- (d) The entire block is under closed-circuit monitoring;
- (e) A police squad enters and is trapped inside.
- (f) The police squad has to fight its way to the crime-lord's lair.
- (g) There are martial arts action sequences throughout.

#### **D. THE TWO FILMS**

18. In order to understand the material with which we are dealing, I think it is necessary to at least briefly set out the substance of these two films. I will start with the Plaintiffs' film, *The Raid: Redemption*. Like its predecessor, *Merantau*, also directed by Mr. Evans, *The Raid: Redemption* showcases the traditional Indonesian martial arts fighting style known as Pencak Silat. There is now a sequel to *The Raid: Redemption*, also with the same combat style.

19. The thematic content of *The Raid: Redemption* is this. A SWAT ('Special Weapons and Tactics') team of police officers, an elite squad, is shown entering a large apartment block in one of Jakarta's slums. The team includes a captain and a lieutenant. The ostensible purpose of this raid is to capture a crime lord named Tama. He, along with two henchmen, one of whom is known as 'Mad Dog' run the building. Apparently, Tama owns the building. He lets various people, many of them criminals, rent individual



apartments in it. The police team is at first undetected. Various criminals are subdued but not killed. They continue upwards a few floors. They are spotted by a young child. He passes on a message to another youngster, who raises the alarm and this is sounded throughout the building. Now these are said to be among the key elements of *The Raid: Redemption*, i.e., of a crime lord controlling the entire building, and of an alarm being sounded. The other elements is the fact that the crime lord Tama has the entire building under closed-circuit (CCTV) surveillance. He deploys two of his accomplices who, acting as snipers, manage to kill the police officers outside the building and successfully pin the others inside it. The crime lord then lets loose his criminal contingent and announces over the PA system that the police must be exterminated. It turns out that the police captain has undertaken this mission without authorization as a personal attempt to take over Tama's business. The captain is a corrupt police officer. The hero or protagonist, played by Mr. Iko Uwais, is an elite Special Tactics Officer, and a Pencak Silat adept. After much of his squadron is killed or injured, he and the few that remain must make their way upward. On the way, they encounter various criminals. Rama combats all of them. There is mostly hand to hand combat with very little use of guns, although there are other weapons being used. At one point, Rama has to combat Mad Dog. There is also a character who is supposed to be a henchman of the crime lord Tama but who is sympathetic to the police's cause. At the end of the film, the crime lord is arrested. He himself does not engage in any action. He is killed and the corrupt captain is at the end handed over to the police authorities. Virtually all the action takes place indoors within this building. There is no female lead. There is no other dimension to this story

except the police being trapped in this building and having to fight their way out of it. Their options are limited. Reaching and apprehending the crime lord seems to be the only viable option.

20. This is broadly the trajectory of *The Raid: Redemption*. This may seem a stripped down description, but I should not be misunderstood: there is, perhaps because of the restrictions of physical space in which the film is placed, a certain cohesion or coherence to its progression, whether one is a fan of martial arts action films or not. There is certainly a questioning by the protagonist Rama of the authority of his corrupt superior and a demonstration of his loyalty and fidelity to his cause and to the safety of his fellow team members. Some elements are introduced, but none of these are central: the existence of the drugs laboratory after all is more or less an explanation for why Tama needs to control this building, and in itself is hardly unique. There is also another villainous character armed with a long blade which he repeatedly stabs through a partition wall suspecting Rama is hiding behind it.

21. *Baaghi*, on the other hand, has, as Mr. Dhond says, the “usual pot boiler Hindi Film” plot line. It is this. The protagonist played by Mr. Tiger Shroff, named Ronny in the film, is sent off to a martial arts gurukul in Kerala. This teaches the 14th century Indian martial arts style from Kerala, known as Kalaripayattu. The guru of this martial art school has a son named Raghav. He is the villain of the film. The female interest, Siya, or Sia, is played by Ms. Shraddha Kapoor. Her father wishes her to marry Raghav who is apparently by then well-settled in Bangkok. Ronny has been sent to this gurukul by

his father, a friend of the guru, to instill in him some discipline, knock some sense into his head and generally, so to speak, build his character (though not his body; that seems to have been already sufficiently sculpted). Ronny is at first dismissive of the martial arts style. He goes through the usual stock experiences of being made to obey his master, wait on him, sweep floors and so on, all of which we have seen innumerable times before from *The Karate Kid* to *Kung Fu Panda*. Despite his insolence and wayward character, he is much favoured by the guru. In the meantime, both Ronny and Raghav have taken a shine to Ms. Shraddha Kapoor. There is a growing rivalry between them. To cut a long and fairly tiresome story short, Raghav commits patricides: he poisons his father, the guru. Sia is kidnapped and held hostage in Bangkok. Ronny follows. There are some outdoor chase and fight sequences. Sia escapes. She is with Ronny when both are once again caught by Raghav and his henchmen. Ronny is brutally beaten. One of Ronny's henchman purportedly shoots Ronny and throws him off a cliff. It later turns out that this henchman, though one of Raghav's gang, was beholden to Ronny for sparing his wife's life some 20 minutes earlier. Ronny now winds up at Raghav's high rise tower. Here Raghav holds Sia hostage. He too has this building under closed circuit surveillance. He too has one particularly evil martial arts henchman. Ronny fights his way up. There is a drug laboratory here too. His encounter with the martial art henchman though supposed, I presume, to convey awe and amazement, deteriorates into some sort of faux Indo-China chest-thumping contest of martial arts jingoism. At the end of the film there is a martial arts fight between Ronny and Raghav and, of

course, everything ends extremely well for the leading actor and his lady love.<sup>10</sup>

## **E. THE CASE IN INFRINGEMENT & 'DREDD'**

22. Now this last portion of *Baaghi*, about 20 minutes of screen time at least in the version to which I was treated,<sup>11</sup> where Ronny goes up the building is the one that is said to infringe *The Raid: Redemption*. This is a little difficult to understand, because as we have seen, thematically and structurally the two films are very different. Indeed, this last 20 minute sequence of *Baaghi* does not in any sense have the kind of thematic or action cohesion or coherence that one sees in *The Raid: Redemption*.

23. A more particularized claim for infringement is in the tabulation below paragraph 4.7 of the Complaint, and it adds other elements to the general listing or delineation I have set out as drawn from paragraphs 3.2, 3.8 and 4.2 of the Complaint. I find this tabulated listing to be not just dull and unimaginative, given the film itself, but one that has the effect of considerably trivializing the Plaintiffs' work for no apparent reason or benefit. To say that *The Raid:*

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10 After I dictated this portion in open Court, the Defendants requested I not upload the order till the film's release. I understood them as believing that this description of their film might affect its chances at the box office. That strains credulity; but I have acceded to this request.

11 A particularly bizarre pre-production print with chroma key compositing green screens, guy ropes and stays, an over-enthusiastic carpenter with a high-powered drill bit working over the soundtrack, and, most disconcertingly, the words 'FOR LEGAL' stamped over the middle of the screen successfully obliterating all emotive content.

*Redemption* has ‘an extensive and impressive display of martial arts’ means precisely nothing. So do several hundred films going back the last four decades. This is true of much else in that tabulation: ‘The number of each floor keeps appearing on screen, covering the entire screen to tell the viewers which floor the team is on’; ‘a distinct look and uniforms has been given to the squad’; ‘the staircase and corridors are given a distinct look’; ‘there is a fighting sequence on the table on one of the floors’; ‘the tower building used shows a typical, plain facade with multiple windows on each floor’; ‘an action sequence shows the lead character in the film banging a victim’s head against a wall multiple times’; ‘the lead actor has a cut / gash on his left upper cheek’. All these are in generalities in what I think is a somewhat desperate attempt to cull out points of originality. But this is a real danger for the Plaintiffs’ case. If we were to take apart individual elements, as Mr. Dhond earlier attempted to do, we should undoubtedly find points of both distinction and perhaps of similarity. But what does ‘distinct look’ really mean in the context of the uniforms of the police or the staircase and corridors? There are no police in the last 20 minutes of *Baaghi*, the portion to which the claim is now reduced; and there are not the *sort* of corridors and staircases one finds in *The Raid: Redemption*, although and of necessity, this being a building, there are staircases and corridors. ‘A fighting sequence on the table on one of the floors’ is something that could be true of any number of movies featuring Jackie Chan or Jet Li. The matter of a villain being holed up in a building, having henchmen, of there being a drugs lab, of an intercom surveillance systems and of somebody sounding the alarm are also cited as being unique; but I believe this case of specifics is largely abandoned for a more generalized view.

Understandably: there are many other points of distinction, and I have very little doubt that if anyone was of a mind to sit down and tabulate these, he or she should find that the points of distinction are far more than the points of similarity.

24. But I do not think that this is the manner in which we must approach these cases. I put a question to Mr. Dhond and asked him what, according to him, made *The Raid: Redemption* unique. His answer was that it could not be in the concept *per se* but it would have to be in the manner of its presentation and it was for the Plaintiffs to demonstrate that that manner of presentation was substantially or wholly copied. As I said, we must now eliminate any possibility of there being an infringement of the script or storyline simply because the two are so entirely different. In its latest evolution of the case, Dr. Saraf has in fact limited himself to the last 20 minutes of *Baaghi*, though that is not the case pleaded as we have seen.

25. I find it difficult to accept the proposition, one that I think is overbroad, that the preceding two hours of *Baaghi* are all irrelevant, and that the Court must ignore them totally. There are all manner of problems in accepting this approach. Even at this late stage it remained unclear just what it was over which the Plaintiff claims proprietary rights. The Complaint is unhelpful. The first sentences of paragraph 3.2 and paragraph 3.8 are stated in such generalities that it is almost impossible to accept that there could ever be any infringement. Again, if the Plaintiffs prefer to do an itemized tabulation and a juxtaposed comparison, then they must stand or fail by a rival comparison which shows points of distinction.

26. But let us take the key elements is stated in paragraphs 3.2 and 3.8, because we are all today constrained by what is pleaded and what the Plaintiffs themselves perceived their case to be. In these paragraphs, the Plaintiffs say that the key novelty lies in the presence of a large crime-lord-controlled building under assault from the police, who find themselves under attack and have to fight their way out, and the only way out is by going up. *En route*, the hero encounters various evil sorts, all of whom he despatches with his martial arts moves. This is said to be the 'main and central' theme.

27. The real problem is with the description in paragraph 3.2, extracted earlier. In the Affidavit in Reply, it is pointed out that should one be of a mind to accept individualized points of distinction, then the concept of a crime lord or a gangster or a villain owning a building and forcing a protagonist to capture and 'sanitize' each floor before ascending to the gangster's lair on an upper (or the uppermost) floor is not new. Paragraph 3.4.3 of the Affidavit in Reply of the 2nd Defendant<sup>12</sup> lists as many as six different films that have this thematic content in one form or the other. One of these is of 2007. If we accept that this 'dominant theme' is of a particular kind or style of fight sequences, and that fight sequences in *Baaghi* are said to be similar, then we must consider that there are other films before and since that also have that same theme. If *The Raid: Redemption* is likened to a video game then that raises a multitude of problems of its own.

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12 Notice of Motion paperback, p. 38.

28. Another issue raised by the Defendants, and one that may possibly be determinative, is about another Hollywood film named *Dredd*. This is a film based on a comic book character. There is some debate about whether *Dredd* was released before or after *The Raid: Redemption*, but as we shall see this makes no difference at least to the Defendants. Many of the items or matters that Dr. Saraf says are 'unique' and 'novel' to *The Raid: Redemption* exist almost exactly in *Dredd*. Here too there is a demented crime lord – actually a female crime lord, Madeline Madrigal, nicknamed Ma-Ma perhaps following the modern predilection for abbreviating names of popular figures in movies and politics. The protagonist, played by Mr. Karl Urban, is something of a hybrid: a combination police officer and judge, jury and executioner all rolled into one. He has a 'rookie' assistant trainee, a female named Judge Anderson. This word judge – the irony is inescapable – is a most strange creature. It is his duty, apparently legal in this futuristic post-apocalyptic world, to track down criminals, determine their guilt *in situ*, pass sentence and then to carry out that sentence forthwith. The Judge's methods are extreme and terminal when the sentence is death: the criminal is either perforated, incinerated or dealt with in some other equally catastrophic fashion. There is, of course, no question of any appeal, review or revision. These two Judges, Dredd and Anderson, find themselves in a 200-storey apartment block called Peach Trees. This is controlled by Ma-Ma. When the two Judges are found within, the block is sealed off. The judges are trapped inside. Their only escape is to go from floor to floor till they reach the crime lord and either kill her (or worse: she is ultimately just thrown off the 200th floor). It is true that the characters in this film do not use



martial arts, but use instead a variety of weaponry to achieve their ends. But the similarities with *The Raid: Redemption* are inescapable.

29. The points of similarity that the Plaintiffs claim as their central novel them all exist in *Dredd* (including the drugs laboratory and the alarm sounding). If *Dredd* was released after *The Raid: Redemption*, and the Plaintiffs took no action, I do not see how they can be heard to complain of copyright infringement in *Baaghi*. If on the other hand *Dredd* was released before *The Raid: Redemption*, then there is simply no originality in the Plaintiffs' work and the application for injunction must fail.

30. In either case, whether or not this creates any problem for the Plaintiffs, it certainly presents a solution for the Defendants. This is not answered in the least in the Affidavit in Rejoinder although I note that annexed to the Affidavit in Reply of the 2nd Defendant are several synopses and short write ups on each of the films that are mentioned in the body of the Affidavit in Reply, *Dredd* amongst them. I do not think that it is any answer at all to now say that the Plaintiffs' film won accolades and awards but that *Dredd* did not. It could equally be said that *Dredd* made four times as much money at the box office than did *The Raid: Redemption*. What of it? This is hardly relevant. The test must be of the degree of similarity and whether the copying is such that it constitutes the essence of the rival work: take that out and there is nothing left, the rival work is eviscerated. Is this test satisfied by the Plaintiffs?

## F. COPYRIGHT INFRINGEMENT TESTS IN LAW

31. Dr. Saraf relies on a decision of the Federal Court in Australia.<sup>13</sup> This is a very interesting decision. It came up in Appeal from a judgment of the Supreme Court of Victoria granting interlocutory injunctions restraining the Appellants from infringing the respondents' copyright in a novel, screenplay and film. The appeal was dismissed. Of the two films in question one was the well known film *Jaws*. The other film was called *Great White*. The argument was that both were genre films based on the idea of a monster menacing a community, in this case a killer shark. There are some portions of this decision that merit extraction.

Counsel for the appellants submitted that both films, 'Jaws' and 'Great White' are genre films based upon the idea of a savage monster menacing a community. Each is a film about a killer shark terrorizing human beings and it was said that neither film was entitled to protection as there is no copyright in that general idea.

**The difficulties involved in severing films into parts which are capable of characterization as original works and other parts that are not is obvious.** Indeed, it is the subject of only limited exploration by the laws of this country and the United Kingdom. We were referred to certain decisions of United States' courts where this question has been considered from time to time and we have found those cases helpful in resolving the questions before us. **In**

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13 *Giovanni Zeccola & Ors. v Universal City Studios Inc.*, (1982) FCA 271

**general, there is no copyright in the central idea or theme of a story or play however original it may be; copyright subsists in the combination of situations, events and scenes which constitute the particular working out or expression of the idea or theme. If these are totally different the taking of the idea or theme does not constitute an infringement of copyright.**

**Of necessity certain events, incidents or characters are found in many books and plays. Originality, when dealing with incidents and characters familiar in life or fiction, lies in the association, grouping and arrangement of those incidents and characters in such a manner that presents a new concept or a novel arrangement of those events and characters. We accept that where a story is written based on various incidents which in themselves are commonplace a claim for copyright must be confined closely to the story which has been composed by the author. Another author who materially varies the incidents and characters and materially changes the story is not an infringer of the copyright. If a literary or dramatic work is not wholly original there is no copyright in the unoriginal part so as to prevent its use. Additional factors may fall for consideration where the alleged infringement is by cinematograph film.**

... ..

**The primary Judge correctly realised that two questions were involved in the resolution of what is the major issue; namely, the degree of objective similarity between the appellants' film and the respondent's novel and screen-play and, given sufficient objective similarity, whether copying was established.**

In relation to the question of copying, the appellants sought to show that the inspiration for the film 'Great White' came partly from the imagination of its producer, Dr. Tucci, and partly from a book by one Ramon Bravo called 'Carnada' which is published only in Spanish.

... ..

The comparative exercise which his Honour undertook was central to his decision. He considered that there was such a marked degree of similarity between the two films that there was an inescapable inference of copying and that the respondent had an excellent chance of success at the trial. The strength of his views in relation to the similarity between the two films influenced the attitude which he took to much of the evidence, including expert evidence, and to the appellant's denial of copying, most of which was held to be inadmissible.

Much criticism was levelled by the appellants at the approach which his Honour took to such evidence and at the inference of copying which he drew. Whilst our own viewing of the films did not instill in us the same degree of conviction that his Honour felt, we are not persuaded that his Honour was wrong.

Further it seems to us that it was not only open to his Honour to place the emphasis which he did upon his view of the similarities between the two films but was the appropriate course for him to take in the particular circumstances in which he was placed with an application for interlocutory relief. Similarly it was appropriate for him to adopt the attitude which he did to the evidence upon which he placed no reliance whether or not such evidence is admissible or may be accepted at the trial.

His Honour's findings in respect of these matters to which we have referred have not been shown to be incorrect. **Similarly we are of the view that the attempt by the appellants to dissect the films and to exclude from consideration stock scenes and banal events were of little value to the proceedings before his Honour in the circumstances as he found them. He faced a broader question which was not to be resolved by the drawing of fine distinctions.**

No doubt numerous factors, including differences of sequence and of dialogue, aspects of idea or theme which lack originality and various other matters were all properly to be considered, at least subconsciously but only as part of a process of forming an overall impression as to the originality of the respondent's novel, screen-play and film, the originality of the appellants' film, the extent of similarity or dissimilarity and whether or not there was copying.

It is no part of this Court's function to seek to identify isolated points in the expression of his Honour's reasons in respect of which minds might differ in order to substitute some other view for that which was clearly open to the primary Judge.

**32.** In my view, these quoted portions do not actually assist Dr. Saraf at all. To the contrary, they seem to be against him. The Plaintiffs' copyright does not subsist in any so-called 'central' theme or concept. It subsists only in a particular realization of it; and if that is not copied, and the rival work is wholly different, there is no infringement. I must agree with this view that there is, generally speaking, no copyright in the central idea or theme of a story or a play. It subsists in a combination of situations, events and scenes which, working together, form the realization or expression of that idea or theme. If this combination is totally different and yields a completely different result, the taking of the idea or the theme is not copyright infringement. To my mind this would seem to apply almost exactly to the case at hand. As the Australian Court said another author who materially varies the incidents and character and materially changes the story is not an infringer of copyright.

**33.** I would venture to put it thus: while copying, i.e., infringement necessarily implies similarity, the converse is not true: mere similarity does not always and in and of itself imply or impute copying; at least not always sufficient to support a finding of infringement.

34. Dr. Saraf also relies on the decision of the House of Lords.<sup>14</sup> This was not a copyright infringement action, as Dr. Saraf readily concedes, but even that matters little. This decision too seems to me to be against Dr. Saraf. The test is, as the House of Lords said, whether the copying is of a substantial part. It depends much more on quality than on quantity. Is what is taken novel and striking? Or is it merely commonplace or, in the context of cinema copyright infringement law, merely *scènes-à-faire*. The House of Lords also found that if one begins by dissecting the plaintiffs' work, a wrong result could often follow. I believe what Dr. Saraf is trying to attempt to show by this is that even there are points of distinction between the two works, if one looks at the work as a whole, there is still copyright infringement. To my mind this is a complete retreat from the position as stated in the Complaint when it was first brought, particularly in paragraphs 3.2, 3.8 and 4 of the Complaint. This claim has been subsequently narrowed; but it is even yet on an unsure footing, for the Plaintiffs' claim is that 'the whole of *The Raid: Redemption* has been copied in the last 20 minutes of *Baaghi*.' But that cannot be, for the two works are so materially different, and the last 20 minutes of *Baaghi* can be said to share as much with *The Raid: Redemption* as they do with *Dredd* and a host of other films including those mentioned by the Defendants. All this is considerably complicated by the claim of originality in *The Raid: Redemption* as an overall work, without any answer as to how that claim can subsist without any explanation at all about the other film, *Dredd*, to which I have referred earlier.

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14 *Ladbroke (Football) Ltd. v William Hill (Football) Ltd.*, (1964) 1 WLR 274

35. Dr. Saraf then refers to the decision of a learned Single Judge of this Court in *Twentieth Century for Film Corporation v Sohail Maklai Entertainment Pvt. Ltd.*<sup>15</sup> Paragraph 19 of this decision makes it clear I think that what has to be looked at is the work as a whole. The Court must determine what is the crucial element of the two works, without which the integrity of each would be lost. If there was any doubt about this, I imagine it is put to rest by the observations of the Division Bench of this Court in *Zee Telefilms Ltd. & Another v Sundial Communication Pvt. Ltd. & Ors.*<sup>16</sup> Paragraph 32 of this decision will be my guide. It reads thus:

“32. Having considered two works involved in this case not hypercritically and with meticulous scrutiny but by the observations and impressions of the average viewer, we find that striking similarities in two works cannot in the light of the material placed on record be said to constitute mere chance. We feel that the only inference that can be drawn from the material available on record is unlawful copying of the Plaintiffs’ original work. The learned Counsel for the Plaintiffs submitted and not without sufficient force that if the concept of Lord Krishna in child form is removed from the serial of the Defendants, their programmes would become meaningless. In order to find out similarity in the two concepts, what is to be seen is the substance, the foundation, the kernel and the test as to whether the reproduction is substantial is to see if the rest can stand without it. If it cannot, then even if many dissimilarities exist in the rest, it would nonetheless be a

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15 2011 (1) Bom.C.R. 750

16 2003 (5) Bom.C.R. 404



substantial reproduction liable to be restrained. In view of the foregoing discussion, we have no hesitation in holding that the Plaintiffs have established that there has been infringement of their copyright.”

## **G. CONCLUSION**

36. I have seen both scripts. I have seen both films. I am not inclined to get into a minute dissection of, as the Appeal Court in *Zee Telefilms*, and, before it, the House of Lords in *Ladbroke* said, hypercriticality and a meticulous scrutiny. I must look at both works as they stand, and as a whole. I also find it very difficult to feed in, as it were, for the purposes of this judgment the obvious shortcomings and lacuane in the *Plaint*. Principal amongst these is a lack of sufficient precision in identifying what it is precisely over which the Plaintiffs claim copyright. It is no answer I think in such cases to say “everything”, when one actually means “something” or “some specific thing”; and it is worsened when one finds that though the claim is over “everything”, it extends to nothing. How else am I supposed to view the Plaintiffs’ case when the Defendants make an exact parallel with another film and to which the Plaintiffs have no answer? I do not think that I am being ‘hypercritical’ in pointing out that there is absolutely no elements of police action in *Baaghi*. The last 20 minutes are about the protagonist either taking revenge or rescuing his lady love, or both. There is no element of the hero being deceived in getting into the building in the first place. The fact that the villain is at some altitude is hardly unique. As Mr. Dhond says, in a tall building that is usually where one finds a villain.

37. There is also no question that Mr. Shroff had very little option in the kind of combat that he was expected to do, since his character, Ronny, had after all just graduated from a South Indian martial arts school. If one takes out all these other elements one by one, the case of the Plaintiffs at its most generous appears to be this: that any film which shows any person having to fight his way to an upper floor where there is a villain in a secured area and who has some sort of a monitoring system is a work that is completely protected. I find this to be altogether too broadly stated. I do not think anything is capable of protection in this form. There will be variations. It is impossible to say with any conviction that the fight sequence at the end is the 'kernel' of *Baaghi*. It is not. That fighting sequence is meant to showcase a particular martial arts style and perhaps Mr. Shroff's physique, one that is, in any case, on resplendent display throughout. The 'kernel' of *Baaghi*, if one is forced to it, is one of filial duty, of fighting for one's love against all odds. Everything else is secondary, and none of this is even remotely suggested in *The Raid: Redemption*.

38. What troubled me throughout was the suggestion, always faintly hinted at, never taken head-on, yet always present like Banquo's ghost, that the Plaintiffs' claim really lies in the manner in which martial arts are used, i.e., a particular type of fighting sequence. To be fair, Dr. Saraf never went quite this far, and rightly so. That is untenable for it would mean, for instance, that no film could feature a car chase sequences of driving into oncoming traffic, or cars being driven off ramps, of a particular type of hand-to-hand combat or use of weapons and so on. But if it is not in this, then it is

nothing, because it certainly does not lie in the 'concept' of a hero fighting his way through a villain's building to the upper floors.

39. There is not, in my view, any justification for the grant of an injunction. The Notice of Motion is dismissed. There will be no order as to costs.

40. At the request of the learned Advocates for the Defendants Nos. 1 and 2, the order is not to be uploaded till 29th April 2016. Authenticated copies will be made available till then to the Advocates for the parties. Mr. Mahadgut fairly states that having received a copy of this order, he will ensure that it is not released into the public domain or on media to the news networks. This, of course, does not apply to any steps taken by the Plaintiffs in carrying the matter in *appeal*.

41. In view of disposal of the Notice of Motion, the screenplay and the DVD (two discs) given to me previously by M/s. Naik Naik & Co. are returned to Advocate Mr. Ravi Suryawanshi on behalf of M/s. Naik Naik & Co. He is to acknowledge the return of these.

**(G. S. PATEL, J.)**