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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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FAO 135/2018

ESSEL VISION PRODUCTIONS LTD.

..... Appellant

Through: Mr. Parag P. Tripathi, Senior Advocate
with Mr. Sudhir Mishra, Ms. Ritwika
Nanda, Ms. Petal Chandhok and
Mr. Srinivasan, Advocates.

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FAO 137/2018

RAVI JADAV

..... Appellant

Through: Mr. Sanjeev Sindhvani, Senior Advocate
with Mr. Suyash Singh and Ms. Shilpi
Chowdhary, Advocates.

Versus

MANISHA KULSHRESHTHA & ORS.

..... Respondents

Through: Mr. Neeraj Grover, Mr. Yatin Chadha and
Mr. Mayank Chadha, Advocates for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **13.04.2018**

Caveat Nos.316 & 317/2018

Mr. Neeraj Grover, the learned counsel appears on behalf of the
caveator/respondent No.1. The caveats stand discharged.

C.M.No.14409 & 14503 of 2018 (for exemption)

Allowed, subject to all just exceptions.

The applications stand disposed off.

**FAO 135/2018 & C.M.Nos.14407-08/2018 & FAO 137/2018 &
C.M.No.14502/2018**

Issue notice.

Mr. Neeraj Grover, the learned counsel accepts notice on behalf of the respondent No.1.

With consent of the parties, the appeals are taken up for disposal.

The respondent No.1/plaintiff had filed a suit for rendition of accounts, and not for damages, for what she claims to be an infringement of her copyrights in a Hindi short story 'Kalindi', written by her in 2007, which was first published in the Hindi Journal 'Vartman Sahitya'. Later, it was published in a book named 'Gandharv Gatha'; it was also translated into an English and published in a collection of short stories, called 'River of Flesh'. It is her case that her short story had been adopted into a Marathi Film called 'Nude: Chitra' without her permission. Therefore, she seeks protection of her copyrights.

The appellants are aggrieved by and have impugned the *ex parte* order of 05.04.2018, which has restrained them from releasing their movie 'Nude: Chitra' or making its publication in any manner.

Mr. Parag Tripathi, the learned Senior Counsel for the appellant contends that insofar as the impugned order does not disclose (i) whether a *prima facie* case has been made out or (ii) whether the plaintiff is likely to suffer an irreparable loss (in a case seeking only rendition of accounts) prior to release of the film or (iii) whether balance of convenience lies in her favour in injuncting the release of the film; it errs in law. He states that neither of these three aspects are discussed, even in passing, the impugned order, It only records:-

"Heard. Perused. Till the next date of hearing, the defendants are restrained from releasing the movie 'Nude: Chitra' or making its publication in any manner. Plaintiffs shall comply with the Order 39 Rule 3 CPC."

The learned Senior Counsel further contends that the film is scheduled to be released on 27th March, 2018; advance booking of the theatres for screening has been done at some expense; monies have also been expended towards pre-release advertisements and promotions including the release of the film's trailer and some songs. He submits that all this will be seriously jeopardized if pre-release publication is injuncted, especially if ultimately the release is permitted by the Court. He also stresses that at the end of the day, the respondent/plaintiff seeks only rendition of accounts and not damages. The accounts can always be rendered without the injunction coming in the way of the release of the film.

He further submits that the viewers of Marathi films are limited and are not comparable to the large audience of regular Hindustani feature films. Therefore, like all regional language films, the release of this Marathi film will have to be carefully calibrated, concerted and focused, especially since the film can be released only in selected theatres. It is argued that the theatre owners would not take bookings for screening of the movie if there obtains a Court injunction against the release. He states that, assuming that the appellant books the theatre and the film is not released, they would not only suffer irreparable financial loss but would also irreparable loss to their reputation and goodwill in the market. There is obviously no guarantee that the respondent No.1/plaintiff could possibly compensate the appellant for such losses, as may be incurred or suffered by them.

Mr. Grover, the learned counsel for the plaintiff/respondent No.1 submits that the plaintiff has not even been shown the film, nor has any worthwhile correspondence been entered into with her despite her repeated

requests to the appellants, especially Mr. Ravi Jadhav, the Script-Writer-Director and Co-Producer of the film - respondent No.3 (in FAO No. 135/2018) and appellant (in FAO No. 137/2018). He submits that the appellants should have shown the film to her so that she could discern whether there was any similarity in the two stories/scripts.

The learned Senior Counsel for the appellant submits that they would have no objection to the respondent No.1/plaintiff being shown the film itself.

In view of the aforesaid, the film shall be shown to the plaintiff alongwith her counsel or any other person of her choice on Sunday i.e. 15th March, at a time and place convenient to her. There shall be no recording of the film in any form by her. She may take notes, if she so desires.

Insofar the impugned order does not disclose whether a *prima facie* case was made out, and the balance of convenience lay in favour of the plaintiff for grant of the injunction, failing which irreparable injury would be caused to her, it errs. Therefore, it would have to be stayed. Accordingly, there shall be a stay of the impugned order till 19.04.2018, when the case is next listed before Trial Court.

The parties shall appear before the Trial Court on the aforementioned date to argue the application. The learned counsel for the parties assure the Court that they will assist the Trial Court promptly in the early disposal of the case and shall not seek any adjournment on any account whatsoever.

The learned counsel for the respondent states that he will request the Trial Court to dispose-off the application for interim injunction on or before 27.04.2018. The learned counsel for the appellant state that they cannot possibly have any objection to an expeditious disposal of the applications

and indeed of the suit itself.

Nothing stated in this order shall be deemed to be an expression on the merits of the case.

The appeal and the pending applications are disposed-off in the above terms.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

APRIL 13, 2018

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Hedim Sns
13/04/2018
Court Master
High Court of Delhi
New Delhi

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NAJMI WAZIRI, J.