

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**IN ITS COMMERCIAL DIVISION**  
**NOTICE OF MOTION NO.1542 OF 2019**  
**IN**  
**COMIP NO.898 OF 2019**

Kamal Kant Chandra ... Plaintiff  
V/s  
Ayushmann Khurana and Ors. ... Defendants

Mr. Fredun E. De Vitre, Senior Advocate with Mr. Simil Purohit, Mr. Rohan Cama, Ms. Shyamli Hajela, Mr. Saeed A. Khan, Mr. Fraser M. Alexander i/by H & M Legal Associates, for Plaintiff.

Mr. Shyam Kapadia with Mr. Ativ Patel i/by AVP Partners, for Defendant No.1.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Vevek Memon, Mr. Rashmin Khandekar, Ms. Shaneen Parikh, Mr. Purav Shah i/by Cyril Amarchand Mangaldas, for Defendant Nos.2 and 3.

**CORAM: S.J. KATHAWALLA, J.**

**DATE: 7<sup>th</sup> NOVEMBER, 2019**

**P.C.:**

1. The learned Senior Advocate appearing for the Plaintiff has moved this Court for urgent ad-interim relief i.e. to restrain Defendant Nos.2 and 3 from releasing the film 'BALA' on 8<sup>th</sup> November, 2019.

2. According to the Plaintiff, he has written a story named “WIG”, which pertains to the social ridicule faced by a person experiencing premature balding and the undue importance placed by the society in assessing the worth of a person. The Plaintiff has alleged that, based on the said story written by him, the Defendants have made a film named ‘Bala’. The Defendants have therefore infringed his copyright in the said story.

3. The Plaintiff has therefore, filed the above Suit for the following reliefs :

“(A) That the permanent injunction be passed against the Defendants, restraining them to use whole or any part of the story written and owned by the Plaintiff;

(B) To declare that the story Defendants want to exploit belongs and owned by the Plaintiff;

(C) The Defendants shall be directed to pay the costs of the Suit;”

The Plaintiff has categorically stated in the Plaint that he is not claiming any damages.

4. The Plaintiff has also taken out Notice of Motion No.1542 of 2019 for the following relief :

“(a) The Plaintiff request this Hon’ble Court that during the pendency of hearing and final disposal of the present suit, by an order of this Hon’ble Court the defendants or their agents be restrained for using whole or any part of the story written by the Plaintiff;

5. The Plaintiff moved this Court on 19<sup>th</sup> March, 2019 for the above ad-interim relief, when the Advocate appearing for Defendant Nos.2 and 3 informed the Court

that the shooting of the suit film 'Bala' is scheduled to commence after two months. In view thereof, time was granted to the Defendants to file their Affidavit in Reply by 29<sup>th</sup> March, 2019 and it was clarified that no equities will be claimed by the Defendants on the ground that they have in the meantime, worked on the suit film and have thereby incurred costs. There was no opposition from the Plaintiff for the matter being adjourned to 29<sup>th</sup> March, 2019.

6. On 9<sup>th</sup> April, 2019 when the matter was called out, the learned Advocate appearing for the Defendants informed the Court that their script is not finalized till date and even the shooting of the film 'Bala' will take time. Since there was no opposition from the Plaintiff, the matter was placed for hearing and final disposal on 10<sup>th</sup> June, 2019.

7. On 29<sup>th</sup> May, 2019 i.e. during the Court vacations, the Plaintiff took out a fresh Notice of Motion being No.1546 of 2019 and moved the learned Vacation Judge for the following urgent ad-interim reliefs :

“(a) The Plaintiff prays that this Court restrain the Defendants, their agents and or any other person acting on their behalf from continuing further shoot of the Suit film “Bala” pending the final hearing and disposal of the present Suit.

(b) That by an order of this Court, the Defendants, their agents and or any other person acting on their behalf be restrained from using whole or any part of the story written by the Plaintiff being the subject matter of the Suit;”

8. No urgent ad-interim relief was granted and the Notice of Motion was adjourned to 10<sup>th</sup> June, 2019 i.e. after reopening of the Court. Thereafter, the Plaintiff did not move any application for urgent ad-interim reliefs for more than two months. Instead on 20<sup>th</sup> August, 2019, when the Notice of Motion No.1546 of 2019 was called out, the Plaintiff sought withdrawal of the Notice of Motion. Notice of Motion No.1546 of 2019 was therefore dismissed as withdrawn and the earlier Notice of Motion No.1542 of 2019 was directed to be placed for ad-interim reliefs on 17<sup>th</sup> September, 2019.

9. On 17<sup>th</sup> September, 2019 the learned Single Judge removed the matter from his board. The Plaintiff instead of forthwith moving the alternate Bench seeking urgent ad-interim reliefs, moved the alternate Bench only after 22 days i.e. on 9<sup>th</sup> October, 2019. The Defendants had by this time filed their detailed Affidavits pointing out, how according to them they have not committed breach of the alleged copyright of the Plaintiff. Defendant No.2 had disclosed that he/his production house had assigned all his/its distribution / release rights qua the film “Bala” in favour of Reliance. The Plaintiff sought permission of the Court to carry out amendments to the Plaint. The amendments sought by the Plaintiff included joining of Reliance Industries Limited / Jio Studios (Reliance) as party Defendant to the Suit as well as the Notice of Motion and an interim prayer seeking interim relief interalia restraining Reliance from releasing the film “Bala”. In view thereof, the Court granted time to

the Defendants to file their Affidavits in Reply by 14<sup>th</sup> October, 2019 and the matter was adjourned to 16<sup>th</sup> October, 2019. On 16<sup>th</sup> October, 2019, the mater was adjourned to 17<sup>th</sup> October, 2019 and thereafter, on 18<sup>th</sup> October, 2019.

10. On 22<sup>nd</sup> October, 2019, the learned Senior Advocate appearing for Defendant Nos.2 and 3 made a statement that Defendant Nos.2 and 3 are not involved with the release of the film “Bala”. Despite such statement the application of the Plaintiff seeking amendments was withdrawn. The Court was informed that an additional Affidavit dated 16<sup>th</sup> October, 2019 has been filed. Consequently, Reliance was not joined as a party Defendant to the Suit or to the Notice of Motion. The interim relief seeking a restraint order against Reliance qua the release of the film “Bala” was also not incorporated in the prayers in the Suit/Notice of Motion.

11. By an order dated 28<sup>th</sup> October, 2019 the matter was adjourned to 4<sup>th</sup> November, 2019.

12. On 4<sup>th</sup> November, 2019 this Court was informed that the Plaintiff has filed an SLP impugning the order passed by this Court dated 19<sup>th</sup> March, 2019 adjourning the matter to 29<sup>th</sup> March, 2019 and the said SLP was listed before the Supreme Court on that very day i.e. on 4<sup>th</sup> November, 2019. On 5<sup>th</sup> November, 2019 the Advocate for the Plaintiff informed this Court that since the date of release of the impugned film was scheduled on 8<sup>th</sup> November, 2019, the Supreme Court has requested this Court to hear the application seeking ad-interim reliefs on or before 8<sup>th</sup> November, 2019. This

Court therefore, allowed the Plaintiff to move his application seeking ad-interim reliefs on 7<sup>th</sup> November, 2019 i.e. today.

13. Today, the learned Senior Advocate appearing for the Plaintiff has submitted that he has instructions to press for injunction restraining the Defendant Nos.2 and 3 from releasing the film “Bala” on 8<sup>th</sup> November, 2019. This Court pointed out to the learned Senior Advocate appearing for the Plaintiff that since the distribution / release rights are to the knowledge of the Plaintiff already assigned by Defendant Nos.2 and 3 in favour of Reliance for valuable consideration, how is the Court expected to grant an urgent ad-interim injunction restraining the release of the film in absence of Reliance, more so when the amendment application which was moved by the Plaintiff before this Court interalia seeking to join Reliance as a party Defendant to the Suit and also seeking a restraint order interalia against Reliance from releasing the said film “Bala”, was withdrawn on 22<sup>nd</sup> October, 2019. The learned Senior Advocate appearing for the Plaintiff informed the Court that they have already given notice to Reliance of today’s hearing. Though in my view, such notice to Reliance is not enough and they ought to have been a party Defendant before this Court, interestingly on perusal of the notice, it was observed that the notice given to Reliance pertains to the matter being shown on board on 4<sup>th</sup> November, 2019. As recorded earlier, on that day, no orders were passed since the Court was informed that the SLP filed by the Plaintiff was listed before the Supreme Court on that very day. However, more interestingly is the fact that even in

that notice, Reliance is informed by the Advocate for the Plaintiff that the Plaintiff will be moving for interim reliefs **against “the Defendants”**. It is nowhere mentioned that any reliefs will be sought against Reliance. Faced with this problem, the learned Senior Advocate appearing for the Plaintiff submitted that the order restraining the release of the impugned film can still be passed, since, in the agreement between the Defendant Nos.2 and Reliance, it is agreed that the date of release of the film will be mutually decided. It is obvious that the Defendant No.2 and Reliance have provided in their agreement that the date of release will be mutually decided by them only because the release of the film “Bala” should not clash with the release of any other film of Defendant No.2. Thus the Agreement between Reliance and Defendant No.2, pointed out by the Advocate for the Plaintiff, in my view, does not assist the Plaintiff in any manner.

14. As stated earlier, Defendant No.2 has assigned all his/its distribution / release rights in favour of Reliance for valuable consideration and as recorded in the order dated 22<sup>nd</sup> October, 2019 clearly stated in court that they are no longer involved with regard to the release of the film “Bala”. Despite the said facts being known to the Plaintiff, the Plaintiff on that very day i.e. 22<sup>nd</sup> October, 2019 withdrew the Application inter alia seeking amendments to join Reliance as a party Defendant to the suit and incorporating a prayer seeking an injunction inter alia against Reliance from releasing the film “Bala”. Under the circumstances, the party who admittedly will be most

affected by any restraint order passed qua the release of the film “Bala” is not joined as party Defendant to the suit or to the Notice of Motion and consequently is not present in Court. The question therefore of granting urgent relief restraining the release of the film ‘Bala’, scheduled on 8<sup>th</sup> November, 2019, in the absence of Reliance, in my view, cannot be granted, and the Application stands rejected.

15. The learned Senior Advocate appearing for the Plaintiff now seeks liberty to amend the Plaint and claim damages. He is allowed to amend the Plaint to the extent of claiming damages.

16. Before parting with the order, I must record that when the matter was being heard, one Mr. Sejal Taliyan @ Vikas Taliyan has appeared before the Court and has sought to intervene in the matter on the ground that the first comedy film named ‘Hair is Falling’ was released on 7<sup>th</sup> August, 2011, which film was based on the story written by him. He has also handed over a DVD of his film which he states was released through out India including Mumbai in the year 2011. He states that the Plaintiff has copied his story. He also states that the story was further improved and titled ‘Darta Hai Kuon’ and at the muhurat of the said film, the Plaintiff himself was present. He has also produced a photograph of the Plaintiff showing that the Plaintiff was present at the muhurat. Mr. Taliyan has also alleged that the Defendants have by using his story made the film “Bala” and have thereby infringed his copyright.

17. The Plaintiff shall be at liberty to move this Court for placing the Notice of





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Motion for final hearing after carrying out the amendment as sought and allowed in paragraph 14 above.

**( S.J.KATHAWALLA, J. )**