

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COMMERCIAL IP SUIT (L) NO. 3510 OF 2021  
WITH  
INTERIM APPLICATION (L) NO. 3514 OF 2021**

Sakshi Malik ...Plaintiff  
*Versus*  
Venkateshwara Creations Pvt Ltd & Ors ...Respondents

---

**Mr Alankar Kirpekar**, *with Saveena T Bedi, & Sumitra Radhika, i/b Lawhive Associate, for the Plaintiff.*  
**Mr Akash Menon**, *for Defendant No. 2.*  
**Mr Thomas George**, *with Nikhil Sonker, i/b Saikrishna & Associates, for Defendant No. 3.*

---

**CORAM: G.S. PATEL, J**  
**DATED: 25th March 2021**

**PC:-**

1. I kept the matter today because, on the last occasion, Mr Kirpekar for the Petitioner, Sakshi Malik, made a plea for an order of costs.
2. There is an Affidavit in Reply from the Defendants. I will not examine the rival merits at this stage. I have briefly heard counsel for Defendants Nos. 1 and 2 on the question of costs and why the

provisions of Section 35 of the Commercial Courts Act 2015 should not apply. I have pointed out to the Counsel for the Defendants that there are two distinct yet connected issues here. The first is the question of the use by the 1st and 2nd Defendants of material in which the Plaintiff has copyright, viz., her photograph or image. That is a cause of action in copyright infringement. The second question follows from the first and relates to the *manner* of use of that copyright-protected material, i.e., its use in a manner that the Plaintiff says is per se defamatory. This is an action for damages in defamation, which is an action in tort, seeking a remedy for a civil wrong.

3. Mr Kirpekar's submission is that, at any stage, the Plaintiff who obtains a successful order is entitled to costs. These would include the Plaintiff's actual litigation costs. He also seeks exemplary costs, separately in copyright infringement and separately for defamation.

4. At this stage, Mr Kirpekar shows me the two amounts that were suggested by each side for a complete and overall settlement of the disputes, one that would bring an end to the entire suit, with no additional amount being required, whether in damages or costs. This would also, evidently, save each side the time, cost and trouble of going through a protracted civil litigation including a trial.

5. The difference is not very much at all; the gap can be quite easily bridged. While Ms Malik, who is in Court, has left the matter of final figure to the discretion of the Court, Counsel for Defendants

Nos. 1 and 2 does not have instructions to make that statement. I will need the Defendants' counsel to obtain specific written instructions one way or the other. This is equally for the protection of Advocates at the Bar, to ensure there is absolutely no misunderstanding at a later stage. I will not permit the Advocate for Defendants Nos.1 and 2 to volunteer any such statement without specific written instructions. These instructions may be conveyed by email or in hard copy.

6. This order is not to be construed or misunderstood to be an order *requiring* the Defendants to leave the difference in the figures suggested by the two sides to the discretion of the Court. No party can be compelled to agree to any such thing. It is entirely the option of Defendants Nos.1 and 2. Should they choose not to leave the matter of the final figure to the discretion of the Court, this will cause them no prejudice and will not be read against them at any stage of the proceedings. The matter will then simply proceed in accordance with law, following our regular procedure.

7. The Defendants Nos.1 and 2 must note however, that Mr Kirpekar is holding in abeyance his prayer for costs only on account of this suggestion for an overall settlement. In other words, if the entire dispute is not brought amicably to a close — either by the parties agreeing on a number, or, within the range indicated, leaving it to the Court — then I will have to consider Mr Kirpekar's application for costs on merits.

8. List the matter on 1st April 2021.

9. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

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