

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
NOTICE OF MOTION NO. 568 OF 2017**

IN

COMIP NO. 665 OF 2017

Shivani Tibrewala, Indian inhabitant,)
aged 39 years, residing at Rungta House,)
Nepean Sea Road, Mumbai – 400 006.)... Applicant

IN THE MATTER OF :

Shivani Tibrewala, Indian inhabitant,)
aged 39 years, residing at Rungta House,)
Nepean Sea Road, Mumbai – 400 006.)... Plaintiff

Versus

1.Rajat Mukherjee,)
Indian inhabitant, having his office at A-501/502,)
Lotus Corporate Park, Off Western Express Highway,))
Goregaon (East), Mumbai 400 053.)

2. Welcome Friends Productions LLP,)
a limited liability partnership registered under the)
Limited Liability Partnership Act, 2008, having its)
office at A-501/502, Lotus Corporate Park,)
Off Western Express Highway, Goregaon (East),)
Mumbai 400 053.)

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3. Rohit Sethia, adult inhabitant, a partner of)
Defendant No. 2 having his office at A-501/502,)
Lotus Corporate Park, Off Western Express Highway,))
Goregaon (East), Mumbai 400 053.)

4. Amrit Ashok Sethia, adult inhabitant, a partner)
of Defendant No. 2, having his office at A-501/502,)
Lotus Corporate Park, Off Western Express Highway,))
Goregaon (East), Mumbai 400 053.)

5. S.O.I.E. Ginza Industries Limited, a company)
incorporated under the Companies Act, 1956 and)
having its office at A-501/502, Lotus Corporate)
Park, Off Western Express Highway, Goregaon)
(East), Mumbai – 400 053.)

...Defendants

Mr.Rashmin Khandekar a/w. Mr. V.D. Shetty i/b. Mr.Bimal Rajasekhar for the
Applicant / Plaintiff.

Dr.Birendra Saraf i/b. Ms. Sutapa Saha appeared for the Defendants.

CORAM : S.J. KATHAWALLA, J.

RESERVED ON : 29TH AUGUST, 2019

PRONOUNCED ON 15TH JANUARY, 2020

JUDGEMENT :

1. The Plaintiff has filed the present suit alleging infringement of copyright by

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the Defendants in the Plaintiff's script of the play 'The Laboratory', the script of a cinematographic film based on the script of the play, the revised script/refined version of the script of the cinematographic film and the Plaintiff's further work towards a screenplay running into 90 pages which has been filed in a sealed cover in the Court. These are hereinafter referred to as "the Plaintiff's work".

2. The case of the Plaintiff as crystalized in the Written Submissions is that the Defendants' film "Umeed" is a substantial reproduction and/or an altered copy of the Plaintiff's works and violates the Plaintiff's copyright in her literary works. It is the Plaintiff's contention that if one were to read the play script and the film story and thereafter watch the Plaintiff's play and the Defendants' film, one would walk away with the unmistakable impression that the Defendants' film is nothing but a substantial and material copy of the Plaintiff's works.

3. The Plaintiff has filed the present Notice of Motion in the Suit seeking restraint on the release of the film produced by the Defendants.

4. The brief facts as set out by the Plaintiff and relevant for the purpose of deciding the present Notice of Motion are as under :

4.1. The Plaintiff is a well-known writer/director who has been actively involved in the film industry since 2000. The Plaintiff has written / directed significant works on topics of public interest such as unethical drug trials, suicide and mental health, breast cancer awareness, and Alzheimer's. The Plaintiff has set out some of the plays

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written and/or directed and/or produced by the Plaintiff, in the Plaintiff. The Plaintiff has also written feature films, documentary films and television serials, which have been set out in the Plaintiff.

4.2. The plays written and/or directed and/or produced by the Plaintiff have been performed all over India and in some prominent theatres and have also featured at numerous performing art festivals.

4.3. The Plaintiff created the script of the play 'The Laboratory' in the year 2007. According to the Plaintiff, the script of the play was original and novel. The salient features of the script of the play are referred to in paragraph 10 of the Plaintiff, which reads as under :

“(i) *The play has the following characters :*

(a) *A young idealistic doctor who is gutted about the fact that she is used as a pawn in the unethical clinical trials racket prevalent in the pharmaceutical industry. She decides to take on a multinational pharmaceutical corporation and mounts a trial against it.*

(b) *A fearless journalist-cum-reporter who is the boyfriend of the protagonist. He helps her to investigate the dark underbelly of unethical clinical trials.*

(c) *A ruthless, corrupt, profit mongering CEO of a multinational pharmaceutical corporation who is behind the unethical drug trials.*

(d) *A mentor of the protagonist who is hand in glove*

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with the multinational pharmaceutical corporation indulging in unethical drug trials.

(e) The protagonist's mother who loses her life in an unethical drug trial in a quest to earn a modest amount of money to sustain the protagonist's education and pay her medical college fees.

(ii) "The Laboratory", with its tagline "What if someone you loved was used as a guinea pig in a drug trial?" is a medical thriller revolving around unethical drug trials carried out on Indians using them as guinea pigs, and the importance of informed consent in a country which is largely illiterate.

(iii) The protagonist comes from a poor family.

(iv) She aspires to become a doctor.

(v) Her mother (who is perfectly healthy) without the knowledge of the protagonist volunteers for a drug trial by a multinational pharmaceutical corporation to earn money to pay for her daughter's medical college fees. The mother develops complications on account of the clinical trial. The mother is not told about the fatal side effects of such drug used at the clinical trials and she ends up losing her life.

(vi) The protagonist is unaware of the reason which caused her mother's death. She subsequently discovers the reason through her uncle who is a CEO of a multinational pharmaceutical company. He informs her that the drug which was being consumed by her mother was not available in the market since it was still at the stage of testing and clearances were awaited.

(vii) The protagonist's boyfriend is a journalist. With his help,

she decides to investigate the dark side of unethical drug trials so as to build a case against the multinational pharmaceutical corporation of which the protagonist's uncle is CEO.

(viii) The CEO of the pharmaceutical company inducts the protagonist's mentor (a senior doctor and eminent pharmacologist) into the said multinational company, making him a stakeholder. This is not known to the protagonist.

(ix) As a doctor, the protagonist volunteers to help a tsunami relief camp by disseminating drugs free of cost. She does not know that the said drugs are also drugs which are banned abroad or are still under testing and have fatal side effects.

(x) The protagonist's boyfriend breaks this news to her that she was being used as a pawn in the system to carry out an unethical drug trial without her knowledge or consent and also without the knowledge or consent of innocent people to whom such drugs were being supplied.

(xi) The protagonist finds out that her mentor is responsible for sanctioning unethical drug trials, and confronts him for violation of the code of ethics of informed consent.

(xii) The protagonist is disillusioned and commits suicide. The trial instituted by the protagonist comes up for hearing after her death."

4.4. The Plaintiff has claimed the script of her play to be original and claimed copyright therein. The Plaintiff registered the script of the play with the Screenwriters Association on 25th June 2008. The play has been performed on numerous occasions at prominent locations by well known actors, between October 2007 and April 2010.

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4.5. The script made into a play was extremely well received by the general public and experts in the industry and has been complimented in reviews in prominent newspapers. The newspaper articles also elucidate what were considered to be the essential and material features of the Plaintiff's play script by the critics and the public at large.

4.6. Given the success of the play, the Plaintiff published it in the form of a book titled 'the Laboratory and Other Plays' ('**the Book**') alongwith two other plays which was released in February 2013. A second launch event for the said Book which was attended by well-known personalities was held at a widely publicized event at a popular bookstore, viz. Kitab Khana at Flora Fountain, Mumbai.

4.7. The Plaintiff wrote a script in 2012-13 for the purpose of a cinematographic film. This is also claimed to be an original and novel work and built upon the unique expression of the idea of unethical medical trials as captured in the play. The script of the cinematographic film was circulated to various people in the film /theatre industry.

4.8. According to the Plaintiff, the script of the Plaintiff's cinematographic film is fundamentally the same as the script of the play, but there are some slight variations. The Plaintiff decided that in the cinematographic film the protagonist would not commit suicide and that, with her boyfriend's help, she would see the court proceedings through successfully and get the CEO of the pharmaceutical company

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sentenced to imprisonment. The Plaintiff claims copyright protection in the script of the cinematographic film, the essence of which is set out by the Plaintiff in paragraph 20 of the Plaint as under :

“(i) In addition to the characters in the play, this story has additional characters of children who die on account of an unethical drug trial and their parents who have suffered on account of the same.

(ii) The story line is largely similar to that of the script of the play apart from certain differences indicated above.

(iii) The script of the movie is dominated by court room drama which shows the protagonist and her boyfriend taking the CEO of the multinational pharmaceutical company to task and ultimately bringing him to the book.

(iv) There are several hearings of the case. The protagonist’s mentor and the CEO of the pharmaceutical corporation are both present in court.

(v) The narrative is interspersed with docudrama-style interviews of poor people helpless against an exploitative system and heartbreaking news reports of helpless villagers being duped by a big pharmaceutical company.

(vi) One of the children who dies is the child of one of the employees at the pharmaceutical corporation responsible for the trial. The child’s father comes forward to provide facts and evidence that turn the case around.

(vii) The protagonist goes from village to village garnering support for her protest movement against big pharma, hospitals,

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local goons and all who are in the nexus.

(viii) The protagonist holds candlelight vigils, and organizes and leads angry marches of poor villagers and city dwellers bearing banners and slogans such as “Leave our children alone”.

(ix) The media take up the protagonist’s cause and start recording the nation-wide protest movement.

(x) The pharmaceutical corporation loses the case and the CEO of the pharmaceutical corporation is sentenced to life imprisonment. The protagonist and the journalist eventually triumph with the truth.”

4.9. The Plaintiff applied to the Screenwriters’ Lab with her story on 5th March 2014 and also pitched the story to people from the film / theatre industry.

4.10. The Plaintiff registered a refined version of the story (to which also the Plaintiff claims copyright) with the Film Writers Association on 29th March 2016 and also shared her work with the film and television industry.

4.11. The Plaintiff claims that she further worked towards a screenplay running into 90 pages in or about June 2016. The Plaintiff has filed the said screenplay in a sealed cover. However, the Plaintiff has declined to make the said screenplay available to the Defendants on the ground that the same is confidential. Even in the course of arguments, no reliance was placed on the said screenplay.

4.12. The Plaintiff chanced upon the trailer of the Defendants’ film “Umeed” on

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28th August 2017 and noticed that the Defendants' film had startling similarities with both the script of the Plaintiff's play as well as her script for the cinematographic film. The Plaintiff immediately wrote to the Film Writers Association raising her grievance in this regard. The Plaintiff also got in touch with Defendant No.1 on the same day i.e. 28th August 2017. Defendant No.1 agreed to arrange a screening for the Plaintiff at the earliest. However, despite the Plaintiff following up with Defendant No.1, the Defendant No.1 failed to screen the Defendants' film for the Plaintiff.

4.13. The Plaintiff therefore filed the present Suit on 16th September 2017. The Plaintiff highlighted the similarities between her works and the trailer of the Defendants' film in the Plaint. The Plaintiff also filed the above application seeking ad-interim / interim reliefs.

5. On 18th September 2017, the Plaintiff was directed to remove all office objections and to give notice to the Defendants. However, the Defendants were not present at the hearing on 21st September, 2017 despite notice. This Court heard the Plaintiff and directed the Defendants to screen the Defendants' film for the Plaintiff. Defendant No.1 screened the Defendants' film for the Plaintiff on 23rd September 2017.

6. On 6th October 2017, the Plaintiff tendered in Court a Chart of purported similarities between the Plaintiff's works and the impugned Film.

7. On 13th October 2017, the Defendants appeared before this Court and

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sought time to file a reply. The Defendants were permitted to file reply but, on considering the Plaintiff's case for ad-interim reliefs, this Court granted an ad-interim order in favour of the Plaintiff restraining the Defendants, inter alia, from making, broadcasting, distributing and telecasting the Impugned Film.

8. The Defendants filed their reply dated 17th November 2017 to the present Notice of Motion and opposed the grant of ad-interim/interim reliefs in favour of the Plaintiff. The Plaintiff thereafter filed her Affidavit in Rejoinder dated 30th November 2017. The matter was thereafter finally heard, from time to time.

9. The learned Advocate appearing for the Plaintiff submitted :

9.1 That the Plaintiff is the author and owner of copyright in the Plaintiff's work which constitute original literary work. The script of the play and the cinematographic film is essentially one single work and that the Plaintiff has merely adapted the script of the play to suit a cinematographic film and has made such changes necessary for the success of a cinematographic film. However, the fundamentals of the play and the film are nearly identical.

9.2 That there are striking and admitted similarities between the rival works as set out in a Chart annexed to the Affidavit filed by the Plaintiff. This cannot be by mere chance. Both the Plaintiff's as well as the Defendants' works deal with a female protagonist who is made a pawn by a large pharmaceutical corporation to conduct unethical drug trials. The female protagonist, on realizing this, launches a legal battle

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against the pharmaceutical corporation and initiates a mass countrywide protest in support of the issue. After several adverse hearings, she eventually wins the case, despite the pharmaceutical corporation's violent attempts to stop her and an initially unsympathetic judge, only because of the change of heart of someone she considered her mentor. This is the substance, foundation and kernel of the Plaintiff's works and the Defendants' film is substantially similar in this respect to the Plaintiff's works.

9.3 That the dissimilarities introduced by the Defendants in the Defendants' film are of no relevance since, if the aforesaid kernel is removed, those dissimilar elements cannot stand.

9.4 That the Defendants have in fact admitted that the plot lines of the Plaintiff's and the Defendants' work are similar. However, the Defendants have sought to caveat the same by stating that these similarities are 'incidental', 'inevitable', 'indirect', 'co-incidental', 'vague' and 'generic' which are just an attempt to obfuscate the issue.

9.5 That the Defendants have not provided any proof of them having independently worked on their film to prove that the same was an original work. The Plaintiff has submitted that there is no material produced on record to show that the co-authors had allegedly worked on the Defendants' script.

9.6 That the Defendants have not produced any alleged common source which the Defendants have referred to while writing the script and on account of which they

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claim that the rival users contain same similarities. The material produced by the Defendants which is annexed to the Affidavit in Reply are certain internet sources downloaded in 2017 and the Defendants have nowhere averred that these were the materials they relied on.

9.7 That the Defendants' case that they had not come across the Plaintiff's works is inconceivable as the Plaintiff's play has been in public domain since 2007. Since the Plaintiff has circulated the script of the cinematographic film in movie circles, there is a very high chance that the Defendants have come across it. Further, it is submitted that the Defendants have cut various scenes from their film, which was shown to the Plaintiff during the screening and which had been pointed out by the Plaintiff to be similar to the Plaintiff's works. According to the Plaintiff, this conduct of the Defendants is *malafide* and was a misguided attempt to reduce the extent of the similarity.

9.8 That the characters in the Defendants' film are not based on real life personalities as alleged by the Defendants. The character of "Mia", the protagonist in the Defendants' film, cannot be said to be based on Reita Faria Powell. Ms. Powell was at no point of time concerned with unethical drug trials and though she was a beauty contest winner, she went on to become a doctor. The character "Mia" just happens to be a beauty contest winner, who happens to be associated with unethical drug trials but who does not become a doctor. The character of "Eliza Moore", a

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British Journalist in the Defendants' film, has been falsely stated to be based on Zeina Awad. The ethnicity of the character in the Defendants' film is completely different from that of Zeina Awad and the character of Eliza Moore has not been shown to be like Zeina Awad, who was a very accomplished journalist. The character of "Dr.Bali" is falsely stated to be based on Dr. Satinath Sarangi. It is submitted that the Defendants have failed to establish any inspiration for the characters that are part of the Defendants' film.

9.9 That it is sufficient if the Plaintiff proves that the Defendants' film is a substantial and material copy of the Plaintiffs' work and in order to find out the similarity in the works, what is to be seen is the substance, the foundation and the kernel of the work and to see if the rival work can stand if what is copied is deleted from it. In this connection, the observations made in the case of **R.G. Anand vs. M/s. Delux Films & Ors.**¹ (extracted subsequently), **Zee Telefilms Ltd. & Anr. vs. Sundial Communications Pvt. Ltd. & Ors.**² (paragraph 28), **Urmi Juvekar Chiang v. Global Broadcast News Limited**³ and **Twentieth Century for Film Corporation vs. Sohail Maklai Entertainment Pvt. Ltd. and Ors.**⁴ (para 22) were relied upon. The Defendants' case, that the Plaintiff is seeking protection over ideas, is unfounded. The Plaintiff has relied upon the judgments of the House of Lords in the case of

¹ (1978) 4 SCC 18

² 2003 (27) PTC 457

³ 2008 (36) PTC 377 (Bom.)

⁴ MANU/MH/1244/2010

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Designer Guild Limited v. Russell Williams (Textiles) Limited⁵, Jerome Metcalf v. Steven Bochco⁶ and Beyond Dreams Entertainment Pvt. Ltd. and Ors. v. Zee Entertainment Enterprises Ltd. and Ors.⁷ to contend that the Plaintiff's unique expression of her ideas is entitled to copyright protection and even though the subject chosen by both parties is unethical drug trials, the treatment of this idea by the Plaintiff is unique.

9.10. That the appearance of so many similarities, many of which have been admitted, cannot be coincidental and must be presumed to be due to copying. The Plaintiff has relied upon the judgment in the case of **Faber Castell Aktiengesellschaft and Ors. vs. Cello Pens Pvt. Ltd.⁸** (paragraph 15). The Defendants have made trivial variations in their film to make the infringing work an altered copy and the same are irrelevant. Reliance was placed on the judgments in the case of **Designer Guild Limited v. Russell Williams (Textiles) Limited** (supra), **C. Cunniah and Co. v. Balraj and Co.⁹** (paragraph 9) and **R.G. Anand v. M/s Delux Films and Ors.** (Pathak J., concurring) (supra) in this regard.

9.11. That in order to prove infringement of copyright, the Plaintiff need not prove that the entire work of the Plaintiff is copied but it is sufficient if it is proved that there is substantial copying. In this regard, apart from the judgments referred to

⁵ 2000 WL 1720247

⁶ 294 F.3d 1069 (2002)

⁷(2016) 5 Bom C.R. 266

⁸ (2016) 1 Bom. C.R. 129

⁹ AIR 1961 Mad 111

above, the Plaintiff has also relied on the judgments in the case of **Ram Sampath v. Rajesh Roshan & Ors.**¹⁰ and **Twentieth Century for Film Corporation vs. Sohail Maklai Entertainment Pvt. Ltd. and Ors.** (supra) and in particular paragraph 16 thereof.

9.12. That in the Affidavit in Reply the Defendants have admitted to the occurrence of several similarities between the works of the Plaintiff and the Defendants but have not been in a position to explain the reason for the occurrence of such similarities. The Plaintiff has relied upon the judgment in the case of **Herman Pictures N.V. v. Osborne**¹¹, and submitted that in the said case the Court held that the similarities of incidents and situations afforded prima facie evidence of copying and that it is for the Defendants to explain the presence of similarities.

9.13. That in the case of **V. Govindan vs. E.M. Gopalakrishna Kone**¹² it is interalia held that it is for the Defendant to show the common sources which he alleges to be available in the market and that the Defendant in fact utilized the information in these sources. That in the present case, the Defendants have not even contended that they have used the alleged sources which are available in the public domain. The printouts show that the same were taken out in November 2017 and thus could not be the material on the basis of which the Defendants allegedly authored their work. The material produced also does not in great detail deal with the idea of

¹⁰ 2009 (40) PTC 90; 2009 Supp Bom.C.R. 953

¹¹ (1967) 1 W.L.R. 723

¹² AIR 1955 Mad 391

unethical drug trials.

9.14. That in light of the facts of the case and submissions made in the Plaint, the Plaintiff is entitled to the protection of its copyright in the script of the play and the cinematographic film and entitled to reliefs prayed for in the present Notice of Motion.

10. In response, the learned Advocate appearing for the Defendants submitted :

10.1 That before adverting to the facts of the present case, it may be appropriate to consider the law and test to be applied to a case of copyright infringement. The Defendants relied upon the judgments in the case of **Amit Kalyanaram v. M/s Gurfateh Films & Ors.**¹³ and **Mansoob Haider v. Yashraj Films**¹⁴ apart from the judgment in the case of **R. G. Anand** (supra).

10.2 That the Plaintiff claims that the Defendants' film "Umeed" infringes the copyright of the Plaintiff in a script for a play and in the script of a cinematographic film, which was developed from the script of the play. It is the Plaintiff's case that thereafter the script of the cinematographic film was further evolved which is at Exhibit N, page 277 of the Plaint. The Plaintiff also claims that the script of the cinematographic film was further developed in June 2016 into a screenplay of about 90 pages, which is not furnished to the Defendants by the Plaintiff

¹³ (2015) 1 Bom CR 460

¹⁴ 2014 (2015) 1 BOM CR 460

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on the ground that the same is confidential. The Plaintiff claims copyright in all these four works and alleges that the Defendants' film infringes the copyright of the Plaintiff in these four works.

10.3 That paragraphs 10 and 20 of the Plaintiff shows the Plaintiff's own understanding of the essence of the script of the play as opposed to the essence of the script of the cinematographic film. The statements of the Plaintiff in the Plaintiff demonstrates that the Plaintiff has strained to show similarity between the script of the Plaintiff's own play and the cinematographic film.

10.4 That what is important is what the Plaintiff understood as the essence of her story, much prior to the filing of the suit. In support, an attention of the Court is drawn to the substance of the story as narrated by the Plaintiff when the Plaintiff applied to a Screenwriters' Lab with her story on 5th March 2014 (Exhibit L, page 257 of the Plaintiff) ; the brief synopsis of the play and the film which the Plaintiff claims to have shared with various people from the film industry (page 266 of the Plaintiff) ; and also the emails dated 20th June 2014 (page 271 of the Plaintiff) and 2nd April, 2018.

10.5 That from the material produced by the Plaintiff herself, it is apparent that the essence of the Plaintiff's script is a story of a little girl having a drunkard father and a very troubled background, who grows up to become a doctor and avenges the death of her mother, who was used as a guinea pig in a clinical trial. The protagonist is a girl named "Joy" whose father is a drunkard and the family has no

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money for her education. Her mother goes to Joy's uncle (her father's brother) – Ralph who is the CEO of a leading pharmaceutical company for help. Ralph introduces Joy's mother to Dr. Pereira who subjects her to clinical trials for money. In the meanwhile, Joy's father tries to steal the money which her mother earns and is thrown out of the house by his wife to be taken in later against threats. With the money that the mother earns, she pays for the medical education of Joy. Dr. Pereira becomes Joy's mentor and she also falls in love with a journalist Arjun. Joy's mother finally dies because of clinical trial and Joy subsequently comes to know how her mother was subjected to an illegal clinical trial by her uncle and her mentor. Joy files a case against her uncle and his company. In the play she dies pending the court case. This is where the play ends. In the script of the cinematographic film, it is further shown that the decision of the Court goes against Joy and she battles right till the Supreme Court, where she succeeds. In the midst, there is a lot of drama. In the initial script for the film, both Ralph and Dr. Pereira are put behind the bars and the plant of the pharmaceutical corporation is shut down. The same is said to have been developed later to a situation where Dr. Pereira takes a bullet to save an attack on Joy. There are car chases with attempted hit and run etc. Thus, the entire story is a story of revenge by a daughter for her mother's death, who underwent illegal clinical trial to earn money for her daughter's education. It is a story of a girl who and whose family have been cheated and let down by her uncle and her mentor and how she battles against

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them to have them finally delivered to justice. The case has very complex nuances of relationships including a drunkard father and a devious uncle. This is in effect the essence of the story.

10.6 That as against the above, the Defendants' story is essentially that of a protagonist who with her sister had a happy go lucky life without any family complications. They lived in a small town and the protagonist Mia always aspires to go to a big city. When her sister, Trisha gets a job in an NGO in Mumbai, Trisha insists that their father permit Mia to come to Mumbai with her. In Mumbai, Mia's dreams unfold and she ends up winning the Miss India contest. There is a parallel story running about the same time with intercuts about one Eliza Moore (character based on a real life journalist Zeina Awad) who is an out spoken humanitarian journalist shown to be in London and who wants to go to New York to complete her report about a white collar mafia. When Eliza is close to uncovering the malpractices of an influential and powerful US based pharmaceutical company, she and her key informants including one Dr. Bali (based on real life character, Dr. Satinath Sarangi) are murdered. One of Eliza's well-wishers contacts a friend in FBI to investigate the matter, who finds out that the pharmaceutical company has been testing its drugs on poor Indians. Dhruv, the right hand of Dr. Bali meets the FBI's forensic expert. He comes to know that the pharmaceutical company is sponsoring the Miss World India competition which is won by Mia. When Mia attends a camp as a part of her duties as

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Miss World India, Dhruv scoffs at her for being a party to a criminal act of the pharmaceutical company. This is when Mia, her sister and Dhruv get-together and battle against the powerful and rich opponent. The pharmaceutical company files a case against Mia for breach of contract which is later withdrawn by it.

10.7. That in the Defendants' story there is no case of any troubled background of any child or the protagonist in any manner being personally affected by the clinical trials or any of her family members being subjected to the clinical trial, nor is there any story of revenge as in the Plaintiff's case. There is no court case filed by the protagonist against the pharmaceutical company or its CEO for having them arrested. There is only a case of breach of contract filed against the protagonist which she defends successfully. That there is no similarity whatsoever between the Plaintiff's work and the Defendants' film. The entire storyline, its characters and its essence are completely distinct and different. There is no copying leave alone a substantial copy. There is no appropriation whatsoever of any part of the Plaintiff's works leave alone any appropriation of any substantial or material part of the protected work. The chain of events, the storyline and the characters are materially and demonstrably different.

10.8. That the Defendants' script has been independently written and developed by Defendant No.1 and Sanyukta Roy after referring to extensive material on the subject of clinical trials, which is available in the public domain including the

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reports of the Rajya Sabha as well as news articles and the June 2010 issue of Asian Bioethics Review.

10.9. That there can be no monopoly of copyright in the idea or subject of a film based on the theme /subject of clinical trial which is a part of public domain.

10.10. The characters in the Defendants' film are inspired from real persons, details of which along with photographs form a part of the Affidavit in Reply as under :

Character	Person	Exhibit /Page
Mia Banerjee	Reita Faria Powell	D3, Pg. 88
Dr. Bali	Dr. Satinath Sarangi	D4, Pg. 87
Ms. Eliza Moore	Zeina Awad	D6, Pg. 95

10.11 That the character of Dr. Bali has been even made to look like Dr. Satinath Sarangi in real life.

10.12. That the characters of the two films are completely different which would be apparent from the following :

(a) The protagonist Joy, in the Plaintiff's script of the film is a doctor and the protagonist Mia, in the Defendants' film is a model.

(b) Joy has a lover, Arjun with whom Joy has a romantic relationship in the Plaintiff's script of the film. There is no such romantic relationship between Mia and Dhruv. While Arjun is a journalist who gathers specific facts against the CEO, Ralph and his company for the case, Dhruv is a lawyer who argues in the Court using data available in the public domain.

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(c) There is a mentor in the Plaintiff's script of the film, Dr. Pereira who betrays Joy which results in Joy committing suicide in the play. Whereas, in the Plaintiff's script of the film, he subsequently takes a bullet for her and saves her life. His betrayal is a very important facet of the Plaintiff's script of the film. In the Defendants' film, Mia does not have any mentor. There is no such betrayal. Dr. Bali is based on a real-life character. The Plaintiff has wrongly stated that Mr. Irani and at some place Mr. Rahul Sharma is the mentor of Mia. Mr. Irani is a legal Counsel representing a pharmaceutical company, Times of Hindustan newspaper, etc. on a case to case basis. Mr. Rahul Sharma owns a newspaper called Times of Hindustan who signs Mia for a brand endorsement deal involving his newspaper, an ad agency and a pharma company. He has no direct interest in any clinical trials or their outcomes. Both these characters are not mentors of Mia.

(d) Joy's mother was an illiterate housewife who had to offer herself for clinical trials to earn money. She is betrayed by her brother in law Ralph/his company. She is a very important character and the story revolves around Joy's revenge for her mother's death, which is the kernel of the Plaintiff's film and play. Mia's mother was a social and highly educated lady from a well to do family. Her character is shown in the film only for 30 seconds. She was a social worker who dies due to depression. Her death has nothing to do with the future course of events.

(e) The character of the father of Joy and Mia are completely different.

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Mia's father is an alcoholic who troubles his children. He is a prominent character whereas Mia's father has no effective role and is shown as a loving and caring father.

(f) In the Defendants' film there is no character of the devious uncle of Mia who uses his own sister in law for a clinical trial.

(g) In the Defendants' film there is a very important character of a journalist, Ms. Eliza Moore who is based on a real life journalist Zeina Awad. She has more than 10 scenes in the film and her investigation is an important facet of the film. In the Plaintiff's script of the film, the character is of a news reporter who is unimportant and almost used as a prop. There is also the character of Dr. Bali, which is based on the real life character of Dr. Satinath Sarangi.

(h) There is a glamour element involved in the Defendants' film which involves models etc. which according to the Plaintiff also is absent in the Plaintiff's script of the film.

10.13. That the Plaintiff approached this Court in haste only after viewing the trailer of the Defendants' film. There was no warrant for the Plaintiff to have approached this Court based on a trailer when the Defendant had offered the Plaintiff a viewing of the film to allay the fears of the Plaintiff immediately when the Plaintiff approached the Defendants on 28th August 2017 with a request for screening. That the chart served on 11th October 2017, after viewing the film, reflects an exercise which is impermissible in the consideration of a matter of infringement of copyright. The

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Plaintiff has sought to compare and draw similarities in dissected portions. The similarities drawn by the Plaintiff are non-existent and in any case do not constitute an infringement of copyright as the same relate to scenes commonly occurring in films especially of the nature authored by the Defendants. The learned Advocate for the Defendants has relied upon some of the comparisons drawn by the Plaintiff to argue that the same are completely absurd and cannot be the basis of a case for copyright infringement. For example, in item 7 at page 31, the Plaintiff has relied on an alleged similarity by pointing out that when the mother of the protagonist dies, she cries sitting on the floor and that in the Defendants' film also when a child dies, her mother too is shown sitting on the floor and crying. That such instances can never be the basis of the copyright infringement case.

10.14. That there is neither any allegation nor proof for the fact that the Defendants had access to the Plaintiff's works. The Plaintiff's case that the play was extensively performed would not in any manner prove access as it is an admitted position that the script for cinematographic film has been evolved after the play and that the entire sequence relating to the court trial and the developments thereafter were absent in the play. To all these further developments in the script of the film, the Defendants could not have any access and nor is there an allegation to this effect.

10.15. That on 4th January 2018, the Plaintiff made an incorrect statement in court that the Defendants' film had already been released and in support of the same,

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the Plaintiff relied upon purported reviews of the Defendants' film given by 14 individuals purportedly on mouthshut.com. Though the Plaintiff was directed to file an affidavit setting out these facts forthwith and the Defendants were given two days time to file a reply, the Plaintiff filed an affidavit only on 11th January 2018. It is submitted that the purported reviews are false and if the reviews are taken to be true, then the film can be said to be released in more than 10 cities across 7 States. The viewers in the reviews falsely claimed to have watched the film in PVR and Inox Cinemas. By email dated 6th January 2018, the Programming Head of PVR has confirmed that the film has not been released in any PVR screens throughout the country. It is submitted that the reviews are false and fabricated. The Plaintiff took no steps to verify whether the film was released. The Plaintiff has addressed emails and letters to persons not in-charge of responding to queries of the nature raised by the Plaintiff. For example, the email addressed to PVR has been addressed to the Company Secretary's office of PVR Group. The letter addressed to the Central Board of Film Certification is addressed to its Chairman when the website clearly mentions the name of their Chief Information Officer Mr. Sanjay Jaiswal's contact details. The Plaintiff has not made any enquiries with Inox cinemas. The Plaintiff had made a positive statement before this Court on 4th January 2018 that the Defendants' film has been released, whereas in the affidavit, the Plaintiff has made guarded statements like "*...the reviews seem to suggest that the movie was released ...*", "*...if the movie has indeed*

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been released”.

10.16. That the contention of the Plaintiff that the Defendants have in any manner admitted in the Affidavit in Reply that there are similarities between the works is completely erroneous and a misreading of the Defendants' Affidavit. The Defendants have categorically stated that Defendant No.1 along with one Sunyukta Roy has written the story which is their original work. The Defendants have in the reply shown a series of differences between the works of the Plaintiff and the Defendants and that there is no admission of any similarity as suggested by the Plaintiff.

11. I have considered the submissions made by the parties and perused the documents relied upon by the parties. I have seen the film of the Defendants, which was furnished to the Court. I have also seen the video recording of the play which was provided by the Plaintiff. I have also gone through the scripts submitted by both the parties.

12. As far as the aspect of the matter concerning delayed screening of the film and release of the film in breach of orders is concerned, the emails exchanged between the parties especially the email dated 28th August 2017 addressed by the Defendants does show that the Defendants were willing to provide screening of the film. Since the Plaintiff filed a complaint with the Screenwriters Association on 1st September 2017, a date was fixed by Screenwriters Association for the screening on

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19th September 2017 and the Plaintiff approached this Court on 18th September 2017 before the said screening. Considering the facts and non-appearance of the Defendants, an Order dated 21st September 2017 for screening was passed. As far as the allegation of release of the film, the Plaintiff has relied upon reviews of certain persons from mouthshut.com. These reviews do not appear to be genuine as they relate to the release of the film in more than 10 cities across 7 States. Even the Censor Certificate has been issued subsequent to the Affidavit and the ad interim order and as such the question of it having been released in theatres earlier does not arise. In these circumstances, it cannot be held that the Defendants' film was released.

13. I shall now deal with the submissions made by the parties on the merits of the matter.

14. The Plaintiff had written the script of the Plaintiff's play "the laboratory" in 2007 and registered the same with the Screenwriters Association under Registration No. 140915 dated 25th June 2008.

15. The theme of the Plaintiff's play pertains to unethical drug trials and how the poor and needy fall prey to agreeing to the same for little money. Pharmaceutical companies are shown to be villainous and exploitative of the underprivileged. The Plaintiff's play revolves around one such case of exploitation where the mother of the protagonist agrees to drug trials being conducted on her without being informed of the harmful and fatal side effects of intake of such drugs.

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The mother of the protagonist volunteers for these drug trials to earn money to pay for the protagonist's medical college fees. The protagonist is not informed by her mother that she would be undergoing drug trials. The mother develops complications and dies due to the drug trials. The protagonist, who is an idealistic doctor, is unaware of the reason of her mother's death and subsequently discovers that it is her uncle, who is the CEO of the multinational pharmaceutical company. On becoming aware of the reason, the protagonist, together with her boyfriend who is a journalist, decides to investigate into the dark side of unethical drug trials and build a case against the multinational pharmaceutical company. The protagonist initiates a court case against the company. The protagonist's uncle in the meanwhile inducts her mentor who is a senior and eminent pharmacologist into the said company, making him a stakeholder. This is not known to the protagonist. The protagonist volunteers to help at a tsunami relief camp by disseminating drugs free of costs. The protagonist learns through her boyfriend that the drugs distributed were banned abroad or under testing and the distribution was a ploy to carry out unethical drug testing without the knowledge or consent of the innocent victims who were consuming the drugs. The protagonist realizes that she was used as a pawn in this ploy. The protagonist also becomes aware that her own mentor is responsible for sanctioning unethical drug trials and confronts him. The protagonist is completely disillusioned and commits suicide. The trial instituted by the protagonist comes up for hearing after her death.

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16. The Plaintiff's script for the play ended here. The script of the cinematographic film does not end with the death of the protagonist prior to the commencement of the trial. The script of the cinematographic film contains a detailed courtroom drama, with several hearings of the case where the protagonist's mentor and the CEO of the pharmaceutical company are present in Court. The protagonist is shown to take active steps to spread awareness of the drug trials and visit villages. The protagonist holds candlelight vigils, organizes and leads angry marches and garners support from people. Additionally, there are characters of children who die on account of unethical drug trials and their parents who are shown to suffer on account of the same. There are documentary style narratives and news reports of poor people and the exploitative system. The media also takes interest and records and reports these events. Ultimately, the protagonist and her boyfriend are successful in winning the case against the CEO of the multinational pharmaceutical company in the Supreme Court and he is sentenced to life imprisonment.

17. The events described in the previous paragraph are stated by the Plaintiff in paragraph 20 of the Plaint to be the essence of the script of the cinematographic film. However, what is pertinent is the Plaintiff's own understanding of the essence of the Plaintiff's works before she filed the Suit. This is apparent from her application to the Screenwriters Lab on 5th March, 2014 and emails dated 4th January, 2014, 20th January, 2014 and 2nd April, 2014 which she addressed to third

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parties. When these are perused, it is apparent that the Plaintiff's own understanding of the essence of her works was much different from what she seeks to portray in the Plaintiff.

18. The Plaintiff's script for the play is a personal story, which revolves around a girl, who suffers, who aspires to be a doctor, does become one and eventually commits suicide because of the death of her mother on account of unethical drug trials. The mother of the protagonist undergoes an illegal drug trial to raise funds for the education of her daughter. Interspersed with this is the drunkard father of the Plaintiff who adds to her problems. There is emphasis on the unhappy domestic life of the protagonist. The protagonist feels betrayed when she finds that her uncle and her mentor were directly involved in conducting drug trials on the protagonist's mother and though she files a case against her uncle and the doctor, she is overwhelmed with emotions and commits suicide. The play is targeted to this emotional journey of the protagonist.

19. The Plaintiff's film on the other hand focuses on her fight to defeat the drug companies and how she and her boyfriend are successful in winning the Court case because of their relentless efforts. There are various twists added where her father also joins the fight in some way or her mentor sacrifices his life to save hers. The Plaintiff's script of the cinematographic film shows that initially the protagonist loses the Court battle against her uncle and his company but finally she succeeds in

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the Supreme Court and her uncle is brought to justice. In every narration of the Plaintiff, there is a great emphasis on the sacrifice of her mother and the deceit by her uncle and mentor.

20. In the Defendants' script of the film there are characters of two sisters, Mia and her adopted sister Trisha who hail from a small town. Mia loses her mother at a very young age. Trisha writes several articles and blogs on "consented treatment" and eventually gets an opportunity to work with an NGO in Mumbai headed by Dr. Bali. Trisha feels that Mia would be left alone and insists that their father permit Mia to come to Mumbai with Trisha. Trisha meets a lawyer, Dhruv in Mumbai who is associated with Dr. Bali and who informs Trisha that they would be leaving the city after submitting some important paper work in the Bombay High Court. In the meanwhile, Mia is shown to become a beauty contest winner and has a number of camps to visit and social appearances to make for causes of which she has no clue. There is also a character of a journalist, Eliza who raised issues about malpractices of pharmaceutical companies. When Eliza gets too close to uncovering the truth, Eliza, Dr. Bali and Dr. Nisha are murdered. Eliza's well-wisher, Trehan, who is an FBI forensic psychology expert decides to uncover the cause of Eliza's death and comes across information with respect to fraudulent testing of a drug on poor Indian subjects without them being informed about the full nature of the harmful side effects. Trehan supplies this information to Dhruv and informs him that the pharmaceutical company

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is coming to India and the new drug will be announced during the unveiling of Miss World India, when Mia would be crowned as such. Dhruv and Trisha inform Mia of the intent of the pharmaceutical company and how she was being used in their entire agenda. Mia together with Trisha and Dhruv decides to battle against the company. Mia decides to terminate her endorsement contract with respect to the harmful drug and a case is filed by the ad agency handling the marketing of the company against Mia for breach of contract and defamation for rescinding the endorsement contract. This case is withdrawn by the company in the court of first instance.

21. Before considering the aspect of infringement, it would be appropriate to advert to judgments cited by both the learned Advocates appearing for the parties on the tests to be applied while comparing the rival works in an action for infringement of copyright. On a perusal of the judgments, it is clear that in an action for copyright infringement, the Plaintiff is required to prove substantial copying of its work. The Plaintiff need not prove that the entire work is copied. If it is proved that the substance or kernel of the Plaintiff's work is copied, the same would amount to infringement of copyright. What is to be considered is, if this substance or kernel which is copied in the Defendants' work is deleted, whether the Defendants' work can stand. The rival works are to be compared as a whole and not dissected into small fractions bearing no originality on their own. In a situation like the present one, where the rival works are based upon a common theme/ subject, what is to be remembered is

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that there are bound to be similarities to some extent when works dealing with the same subject/theme are compared. However, what is to be considered is the treatment of the subject/theme, the manner in which the idea is expressed and not the idea itself. The protectable story elements in the rival works must be considered, which do not necessarily flow from the subject/theme and which as such are unique. It is the quality of the work copied and not the quantity that would determine infringement of the work or a substantial part thereof. The dissimilarities introduced in the infringing work should not be deliberate, introduced by an intelligent copier only to create a farce of an independent work, which are trivial in nature and are inconsequential to the determination of copying and/or substantial copying.

22. Following test laid down in the case of **R.G. Anand vs. Delux Film** (supra) is relevant :

R.G. Anand v. Delux Films, (1978) 4 SCC 118 at page 140 of the copyright infringement in film related matters.

“46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge :

- 1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.*
- 2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to*

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occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest

that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved. (emphasis supplied)”

23. Keeping the aforesaid principles in mind and on considering the works of the Plaintiff and the Defendants, in my view, a finding that the Defendants’ work is a substantial copy of the Plaintiff’s script of the cinematographic film as originally written and developed from time to time cannot be arrived at. Though both stories are based on the common theme of unethical drug testing and the malpractices followed by large pharmaceutical corporations where harmful drugs are tested on poor and needy individuals without obtaining their informed consent, the treatment of the subject and the fleshing out of the story and characters is very different in the rival works. On comparing the scripts as a whole, there does not appear to be substantial similarity between the two works. The entire plot of the two films and the story line is very different.

24. The crucial points of distinction between the two films is that the story of the Plaintiff revolves around the personal struggle of the protagonist who and

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whose family are victim of an illegal drug trial. The story revolves around the death of the mother of the protagonist being caused due to drug testing, a drunkard father and the family problems, which are absent in the Defendants' film. The character of the uncle and the mentor and their deceitful actions of enticing the mother of the protagonist to undergo drug trials and the shock and the emotional distress that the protagonist faces on account of the betrayal of her trusted persons i.e. mentor and her uncle are also absent in the Defendants' film. This is one of the main reasons that the protagonist in the Plaintiff's film becomes determined to take on the pharmaceutical company and it is to a great extent a personal fight for the protagonist in the Plaintiff's film. This storyline is the substance of the Plaintiff's play and is extremely crucial in the Plaintiff's film. This entire story line is absent in the Defendants' film. The Defendants' film is about the journey of a small town girl who had a very happy childhood. Her journey is from being a small town girl with dreams and aspiration to becoming a very successful model in Mumbai. This transition is also emphasized. The entire glamour element and the character of a beauty contest winner, who is one of the protagonists, and the manner of her association with the pharmaceutical company because of her obligation to endorse the drug as a beauty contest winner, is completely different. Though there is a character of a journalist in the Plaintiff's film, the character is shown as the boyfriend of the protagonist and is completely different from the character of the journalist based in England in the Defendants' film who is

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unrelated to any of the protagonists and is on a mission to bring out the truth about malpractices of pharmaceutical corporations before the world and is eventually murdered in this pursuit. The court case in the Plaintiff's film is very dramatic with the uncle and mentor of the protagonist being a part of the Court room drama, there are sequences of attempted hit and run and eventually the protagonist and her boyfriend Arjun are successful in putting the CEO of the pharmaceutical corporation, the uncle of the protagonist behind bars, before the Hon'ble Supreme Court. As against this, in the Defendants' film, the Court case is not initiated by the protagonist but by the ad-agency of the pharmaceutical corporation for defamation and breach of contract, which the protagonist successfully defends, and the company withdraws the case in the Court of first instance.

25. I have seen the pictures of some characters in the Defendants' film particularly Dr. Bali who is said to be based on the real life person Dr. Satinath Sarangi and find that there is a striking similarity. The Defendants have produced material like photographs to substantiate that the crucial characters of their film Mia Banerjee, Dr. Bali and Ms. Eliza Moore are inspired from real life characters of Reita Powell, Dr. Satinath Sarangi and Ms. Zeina Awad respectively. The portrayal and manner of appearance of these characters in the Defendants' film do *prima facie* show that these characters are inspired on real life persons. The Plaintiff has criticized this contention by stating differences in the real life person and the character in the film. If a character

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of a film is inspired by a real life person, it is not necessary that the entirety of that person's personality should be reproduced.

26. The differences between the rival works cannot be said to be trivial or inconsequential or deliberate as an attempt to escape an allegation of copying as sought to be contended by the Plaintiff. The differences are material and change the nature of the rival works. The comparisons drawn by the Plaintiff and the reliance placed by the Plaintiff on the Affidavit in Reply as an alleged admission of similarities does not advance the case of the Plaintiff any further. The Plaintiff has sought to dissect the rival works into fragments of unprotectable elements. The presence of common elements like a common plot line of unethical drug testing, a Court case, nationwide movements against the illegalities committed by the pharmaceutical company, the depiction of death of children as a result of drug testing, do not by themselves individually or taken together establish substantial copying. The comparisons drawn by the Plaintiff are extremely strained and, in some cases, not correct, like the allegation of presence of a mentor in the Defendants' film. At some places, the Plaintiff alleges that Dr. Bali is the mentor of Mia in the Defendants' film and at other places, Mr. Rahul Sharma, who owns a newspaper is claimed to be the mentor. Then again, one Sharon is alleged to be the other mentor. Scenes of people crying on the happening of an unfortunate event like death are claimed to be similar. In my view, the comparisons drawn are extremely strained by dissecting the rival

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works into a series of unprotectable elements. On this basis, I am not dealing in detail with the charts of similarities/dissimilarities presented by the parties. This is not permissible in determining infringement of copyright and the Plaintiff has failed to *prima facie* prove any similarities in the substance or protectable elements in the rival works. In the Written Submissions, the Plaintiff has sought to cull out the essential features from the various reviews printed. I do not find that the same is a correct analysis of the reports. In any case, I have reached the view taken by me after seeing the film and play and also considering the scripts.

27. As regards the screenplay of the cinematographic film, which the Plaintiff claims to have worked on in or about June 2016, the same was filed in a sealed cover in this Court. However, the Plaintiff did not provide a copy of the same to the Defendants on the ground that the same is confidential. In any case, apart from filing the script in Court, no reference was made to the same in the course of arguments except stating that the Plaintiff worked on the screenplay. In any case, the Plaintiff claims to have worked on the screenplay in or about June 2016 which is much subsequent. In such circumstances, it is not open to the Plaintiff to rely on the same. In any case, I have seen the screenplay and in light of my observations hereinabove, the same does not advance the case of the Plaintiff.

28. The learned Advocate for the Plaintiff strongly contended that the Defendants have admitted to several similarities and has even sought to analyze the

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said response in the said Written Submissions. The said Chart does not tantamount to any admission and in fact when the chart is read in its entirety, it is apparent that the Defendants have denied similarities and highlighted differences. In any case, such a dissected analysis as sought to be done by the Plaintiff is not the test to be applied in a case for infringement of a copyright.

29. It is also contended by the Plaintiff that the Defendants have not shown any evidence of the Defendants having put in any labour and that there is no evidence having consulted any common source. In the Affidavit in Reply filed by the Defendants, it is categorically stated by Defendant No.1 that the story, script, screenplay and dialogues of the film were written by Defendant No.1 and one Sanyukta Roy after years of laborious research and labour. It is also contended that Defendant No.1 has interviewed several activists, doctors, victims etc. and tried making the Defendants film as close to reality as possible. It is also the contention of the Defendants that the Defendants have also based some of the characters in the film based on real life personalities. Merely because various material had been printed in 2017 for production in court does not mean that the same could not have been accessed earlier. Thus, this contention of the Plaintiff is clearly devoid of merits.

30. The Plaintiff has relied upon the judgments in the case of **Osbrone and Govindan** (supra) to contend that the Defendants have failed to provide any explanation for the presence of similarities and the burden is on the Defendants to

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prove that they have referred to independent sources and expended independent labour and skill to arrive at their work. Firstly, *prima facie* the rival works do not contain any substantial similarities or similarities in protectable elements. Secondly, the Defendants have in the present case produced material like Rajya Sabha reports and recommendations on the alleged irregularities in the conduct of studies using HIV virus, news articles on the internet with reference to a specific scene and the June 2010 issue of Asian Bioethics Review which records that Tsunami victims have been experimented upon. The Defendants have stated that the authors have referred to these materials while working on the script. There appears to be material in the public domain on the theme/plot of the rival works. In any case, there cannot be a monopoly on a theme of illegal drug trial or big pharmaceutical companies indulging in it. The works are not substantially similar. Having seen the film, the video recording of the play and having read the scripts, I do not get an impression that the Defendants' work is a reproduction of the Plaintiff's work, leave alone a substantial reproduction. The treatment and presentation and the storyline and plot of the two stories are very distinct and different. I do not find on reading the scripts and watching the play and film that one would walk away with an unmistakable impression that the Defendants' film is substantially and materially a copy of the Plaintiff's work. In my view the Defendants have *prima facie* proved that their work is original and has been independently arrived at.

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31. As far as the Plaintiff's contention of deletion of a scene, it has been contended that in the Plaintiff's film Dr. Pereira and the uncle of the protagonist Ralph Fernandes drink together, whereas in the Defendants' film also some people are sitting and drinking together. The Defendants have explained that the scene in the Defendants' film is where a media baron, who filed a case against Mia along with his legal counsel, and the Judge are sitting together and having a drink while the case is pending. It is stated by the Defendants that this scene was deleted pursuant to objections being taken by the Censor Board which was apparently because it showed an inappropriate interaction between a lawyer and a judge. In my view, these scenes cannot be said to be similar and in any case are not protectable elements in any work. Scenes of devious persons sitting together to plot against the protagonist is not uncommon. The deletion of the scene has been explained by the Defendants and their explanation cannot be brushed aside. The mere deletion of the scene even when taken in conjunction with the other factors argued by the Plaintiff, do not take the case of the Plaintiff much further.

32. The Defendants' reliance on the judgment in the case of **Mansoor Haider v. Yashraj Films** (supra) is also apposite. Though access by the Defendants to the Plaintiff's work is not necessary for grant of reliefs in an action for copyright infringement, it is one of the factors that the court must take into consideration while granting reliefs. Without access to the Plaintiff's work the degree of proof required to

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establish an allegation of copying is much higher on the Plaintiff. In the present case, the Plaintiff has contended that the script of the film was shared with some people from the film industry, however, the Plaintiff has been unable to show access of the same qua the Defendants. In fact, there is no direct allegation to that effect. The last evolution of the script of the film has not even been shared by the Plaintiff or produced before the court as the same is claimed to be confidential.

33. As far as the allegation that the script of the play has been substantially copied in the Defendants' film, it is true that the play has been publicly performed on several occasions since 2007. However, the script of the play is all the more different from the Defendants' film. In fact, the Plaintiff herself recognizes that the script of the Plaintiff's play is different from the script of the Plaintiff's film with respect to certain key elements, which form a major portion of the Plaintiff's film. In the play, the protagonist commits suicide and the entire court room drama, events surrounding the same, change of heart of the uncle who takes a bullet for the protagonist are absent. The Plaintiff's play and film have a common genesis but are quite apart. The Defendants' film is that much further away from the Plaintiff's play. The common theme of unethical drug testing remains. But, as stated above there cannot be copyright in an idea. The expression of the idea is completely different in the Plaintiff's play and the Defendants' film. The Plaintiff has failed to make out a *prima facie* case of infringement of copyright by the Defendants in the script of the Plaintiff's

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play.

34. In light of the aforesaid, the balance of convenience is strongly in favour of the Defendants. The Defendants' film has been ready for release for a long time and any continuation of ad interim reliefs will cause grave prejudice to the Defendants.

For the reasons stated above, the present Notice of Motion filed by the Plaintiff is dismissed. There shall be no order as to costs.

(S.J.KATHAWALLA, J.)

After the above judgment is pronounced, the Advocate appearing for the Applicant / Plaintiff has requested that the judgment and order be stayed since the Applicant / Plaintiff may want to test the judgment and order in appeal. Advocate S.K. Jain i/b. S.K. Jain and Associates appearing for the Defendants has opposed the application for stay. As stated hereinabove, the Defendants' film has been ready for a long time and any continuation of ad-interim reliefs will cause grave prejudice to the Defendants. However, the Defendants shall release the movie on or after 31st January, 2020.

(S.J.KATHAWALLA, J.)

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