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

\+ I.A. 6351/2020 in CS(COMM) 291/2020

VINAY VATS ..... Plaintiff

Through: Mr. Manu Bakshi, Mr. Shagun Khurana, Mr. Rahul Chandhok, Mr. Nitesh Shokeen and Mr. Mohit Aggarwal, Advs.

versus

FOX STAR STUDIOS INDIA PVT. LTD. & ANR. .... Defendants

Through: Mr. Neeraj Kishan Kaul, Sr. Advocate with Mr. Saikrishna Rajagopal, Mr. Sidharth Chopra, Ms. Sneha Jain, Ms. Asavari Jain, Mr. Devvrat Joshi, Ms. Chanan Parwani and Ms. Prita Suri, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G E M E N T (ORAL)

% 30.07.2020

I.A. 6351/2020 IN CS(COMM.) 291/2020

1. By this application, the plaintiff seeks a restraint from release of a film "Lootcase", slated to be released tomorrow, i.e. 31st July, 2020.

2. The plaintiff claims to be the author and, consequently, the first copyright owner, of a script for a film titled "Tukkaa Fitt". The script was written in 2010-2011, and was registered with the Film Writer's

Association, Mumbai on 14th March, 2011.

3. It is further asserted, in the plaint, that the plaintiff was approached by the Director of M/s. AAP Entertainment Limited, in 2011, for permission to utilize the script of the plaintiff and make a motion picture "Tukkaa Fitt". The plaintiff agreed, whereupon Mr. Premal Goragandhi and Mr. Amitabh Parekh of M/s. AAP Entertainment Limited, took over as producers of the proposed film "Tukkaa Fitt".

4. Thereafter, it appears that disputes arose between the plaintiff and the said producers, which came to be settled by the Disputes Settlement Committee of the Film Writer's Association, Mumbai on 21st September, 2011.

5. It is further averred, in the plaint, that production of the film "Tukkaa Fitt" was completed in November 2012 but that, as the producer of the film, unfortunately, died, the release of the film was halted. That position, it is stated, continues till date and the film "Tukkaa Fitt" is yet to be released.

6. Despite this fact, it is asserted in the plaint that as the trailer of the film "Tukkaa Fitt" was released on YouTube and other public media platforms in March, 2011, the work of the plaintiff has been in the public domain since then.

7. It is further asserted, in the plaint, that on 18th July, 2020, the

plaintiff's assistant informed the plaintiff of the imminent release of the film "Lootcase", tomorrow, i.e. 31st July, 2020. The plaintiff claims, that on getting to know this fact, he viewed the trailer of the film "Lootcase" and was shocked to find substantial similarities between the plot of the said film "Lootcase" and his script. A tabular statement, of the said similarities, has been set out in para 13 of the plaint.

8. It is on this foundation that the plaintiff seeks an interim injunction, restraining release of the film "Lootcase", to be released tomorrow, i.e. 31st July, 2020.

9. I have heard Mr. Mohit Aggarwal, learned counsel for the plaintiff and Mr. Neeraj Kishan Kaul, learned Senior Counsel for the defendants, at length.

10. Mr. Aggarwal submits that there is considerable similarity between his script, as "expressed" in the movie "Lootcase", to be released tomorrow, i.e. 31st July, 2020. He further submits that the trailer of the film "Lootcase" was officially released on 16th July, 2020, but that he came to know of this fact only on 18th July, 2020, whereafter he has moved this Court with due expedition. He exhorts this Court to compare his script with the trailer of the film of "Lootcase". He has placed reliance on the judgment of the Supreme Court in ***R.G. Anand, Vs. M/s Delux Films***[1] as well as the judgment

[1] **1978 (4) SCC 118**

of this Court in ***MRF vs. Metro Tyres Ltd.***[2] and the judgment of High Court of Calcutta in ***Shree Venkatesh Films Pvt. Ltd. Vs. Vipul Amrit Lal Shah***[3].

11. Responding to the submission of Mr. Aggarwal, Mr. Kaul, learned Senior Counsel draws my attention to a document filed by the plaintiff, which reveals that amount of ₹ 1,21,000/- was paid to the plaintiff by Mr. Premal Goragandhi of M/s. AAP Entertainment Limited. Mr. Kaul submits that, therefore, even the ownership of the plaintiff, over the aforesaid script, is disputable. He has also drawn my attention to Section 61 of the Copyright Act, 1957, which requires the producer of the film to be impleaded as a party.

12. Mr. Neeraj Kishan Kaul has also pointed out that the claim of the plaintiff is completely bereft of any foundation as there is nothing to indicate that the script of the plaintiff, on which the plaintiff predicates his claim, was ever in the public domain, till it was filed as an annexure with the present plaint. The plaintiff, he points out that he is seeking to base his claim on a trailer of the film "Tukkaa Fitt", which never metamorphosed into a full blown film. As such, he submits that claim of the plaintiff is, in fact, liable to be dismissed, even on the ground of non-existence of any sustainable cause of action. He points out that the movie of his client, i.e. "Lootcase", was finalised much before filing of the present plaint and, therefore, before the script of the plaintiff became available in the public domain.

[2] **262 (2019) DLT 764**

13. Mr. Kaul has also criticized, severely, the act of the plaintiff in moving this Court at the last minute, obviously with a view to arm-twist the defendants and secure gains to himself. He has drawn my attention to the observation of a learned Single Judge of High Court of Bombay in ***Dashrath D. Rathore vs. Fox Star Studios India***[4].

14. Mr. Kaul also submits that promos of his film have been in the public domain since June, 2019 and that the plaintiff, who claims to be a script writer in the film industry for a number of years, could not profess ignorance thereof. As such, he submits that the plaint itself is liable to be dismissed, as an exercise in adventurism, probably with certain ulterior motives.

15. Having heard learned Counsel at length, I am unable to convince myself that any case for grant of interim relief can be said to exist.

16. The *locus classicus*, regarding copyright claims in the context of cinematograph films, in this country, is generally regarded as ***R.G. Anand***[1], and subsequent decisions on the issue invariably draw sustenance, to one extent or the other, from the said pronouncement. Para 46 of ***R.G. Anand***[1] enumerates the principles to be borne in mind, while examining copyright claims in cinematographic and other such literary works. The said paragraph may, for ready reference, be reproduced thus:

> "**46.** Thus, on a careful consideration and elucidation of the

[3] **2009 SCC OnLine Cal 2113 : 2010 (1) CHN 818 (db)**
[4] **2017 SCC OnLine Bom 345 : MANU/MH/0490/2017**

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 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 ex- pressed 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."
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> (Emphasis Supplied)

17. It is clear, from a reading of very first principle, set out in the aforesaid paragraph, that there is no copyright in any idea, subject matter, theme or plot, and violation of copyright is confined to the form, manner and arrangement and the expression of the idea by the author of the copyright at work. In the present case, there is no earlier film, based on the script of the plaintiff, which could for the basis of a claim to copyright. The plaintiff, as Mr. Neeraj Kishan Kaul correctly points out, bases his cause of action on a script, which never came in the public domain, and public knowledge of which is being sought to be attributed on the basis of a trailer, for a film which never saw the light of day. The cause of action, on the basis whereof the plaintiff premises his case, therefore, essentially remained inchoate. The trailer was not made by the plaintiff and the makers of the trailer have not ventilated any claim for violation of copyright. It is *prima facie* questionable, in the circumstances, whether any claim of copyright can be laid by the present plaintiff at all, in such circumstances.

18. That apart, this Court had an opportunity to view the trailer of

the film "Lootcase", slated to be released tomorrow, i.e. 31st July, 2020 and a conspectus of the scenes, in the said trailer, may be presented, thus:

> "The trailer commences the voice of Vijay Raaz, asking, "To phir kya mila?" (What, then, did you get?). An unidentified voice answers "this", and Vijay Raaz is shown holding up one broken wheel of a suitcase.
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> The second scene shows a suitcase stacked with cash, and a suitcase (with all 4 wheels intact) being pulled.
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> The third scene reverts to Vijay Raaz who, holding up the broken wheel, asks "baaki ka suitcase kidhar hai?" (Where is the rest of the suitcase?)
>
> Thereafter, a gentleman is shown, asking two wounded youths, as to how it all happened.
>
> The next scene has a voice-over, saying "for a common man, his name is also "aam" (common), and so is his work". Kunal Khemu is then shown, revealing that his name is Nandan. He is then shown entering his home, where a lady chides him that, when there is no money to meet the needs of the house, he is outside, distributing charity.
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> Kunal Khemu is then shown with his son, who tells him that he is aware of the financial difficulties that the house is facing, but requests him not to cancel his waterpark trip, for that reason. Kunal Khemu slaps him and pushes him away.
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> Kunal Khemu is next shown at the railway station, where he comes across an unclaimed bag. On opening the bag, at home, he finds it stacked with cash, and is overjoyed.
>
> The scene switches back to "X", who asks another character (played by Ranvir Shorey) to trace the suitcase. Vijay Raaz is also shown, stating that he needs the suitcase, at any cost, and assigning the job to his henchmen.
>
> Kunal Khemu's wife is shown, next, asking him to the money belongs to. It is then revealed that she is referring to an amount of ₹ 150, and not to the money in the bag.

> Ranvir Shorey is next shown, stating that a sketch would have to be prepared, whereafter an artist is shown having prepared an amateur sketch, which resembles Shah Rukh Khan, a well-known actor. Ranvir Shorey slaps the sketch artist.
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> Vijay Raaz is next shown, asking one of his henchmen whether he has subscribed to "National Geographic". One of his aides brings it up, and informs him that he has instructed the cable supplier, who has agreed to start the channel from Monday. This infuriates Vijay Raaz.
>
> Ranvir Shorey is next shown, holding a pistol, whereafter an unidentified person is shown, threatening Kunal Khemu at gunpoint, asking him the whereabouts of the suitcase. Kunal Khemu is, thereafter, shown fleeing.
>
> A montage of scenes follows, showing various persons running, an unidentified goon threatening Kunal Khemu at gunpoint, and one of Vijay Raaz's aides informing him that he has subscribed to National Geographic.
>
> An unidentified voice is heard, in the background, asking "for the last time, whose suitcase is it?" "

19. On its face, the plot essentially revolves around a suitcase, carrying money, being lost, and various persons, including gangsters, chasing to get hold of it. The plot idea is as old as the hills, and, without meaning any disrespect to the ingenuity of the plaintiff as a scriptwriter, it can hardly be said, *prima facie*, that the script of the plaintiff's screenplay – which has been placed on record but the details of which this Court, for obvious reasons, deems it appropriate not to reveal – can lay claim to any such novelty as could be said to have been filched by the defendant. In fact, a comparison of the salient features of upcoming "Lootcase", as manifested from the aforesaid trailer, vis-a-vis plaintiff's script, reveal that there are considerable features in the plaintiff's script, which are missing in the

trailer, and there are certain elements of the story as reflected in the trailer, which are not to be found in the script of the plaintiff. The mere fact that certain plot points, between the plaintiff's script and the story of the upcoming film "Lootcase" as reflected in the trailer, released on YouTube, may be common, cannot be the basis to lay a claim to copyright, as the plaintiff has chosen to do. The plot points, on which the plaintiff relies, such as persons losing bags of money, claiming the same and such bags being sought by members of the underworld, are plot points, which may figure in more than one cinematographic film and cannot, therefore, be said to be the exclusive province of the plaintiff. That apart, no copyright exists, in a mere idea, plot or theme, as authoritatively held in ***R. G. Anand***[1].

20. There is yet another reason, as to why I am not inclined to accede to the prayer of the plaintiff for grant of *ad interim* injunction. Mr. Aggarwal has acknowledged that, at the very least, the trailer of the film "Lootcase" was released on 16th July, 2020. I may note, in this context, that Mr. Neeraj Kishan Kaul contests this statement and submits that the promos of his client's film "Lootcase" had been in the public domain since June, 2019. Either which way, there is no justification for the plaintiff having approached this Court on the eve of the release of the film "Lootcase", which is slated to be released tomorrow, i.e. 31st July, 2020 and seeking injunction against such release. It is further submitted, by Mr Kaul, that the story of the film has been covered in the print as well as electronic media since September, 2019.

21. This case, therefore, appears, *prima facie*, to constitute yet another example of the misuse of the judicial process, regarding which Patel, J., has so trenchantly commented, in the following passages from ***Dashrath D. Rathore***[4], on which Mr Kaul places reliance:

> "**6.** Let me outline what granting such an application involves. If allowed, there will be an urgent hearing two days from now, on Thursday at the earliest, the day before the defendants' film releases. That hearing will take the better part of the day; most certainly a couple of hours. Both sides will want to argue the matter fully. Then I must dictate a judgment in Court. This must be transcribed that very evening. My staff, which work long hours — some commute two hours in one direction — must work late into the night to complete the transcription to deliver it to me for correction. Assuming I carry out those corrections in soft copy myself, as is my usual practice, that will take another several hours. All this only so that these plaintiffs, who chose to come late though they could have come earlier, can have in their hands by 11:00 am on Friday morning a judgment complete in all respects. As I said, in a given case, with demonstrated urgency, yes, we do this, and we do. But to allow this in a case where the plaintiffs have deliberately waited till the last minute is grossly unfair not only to the Court's infrastructure and hard-pressed staff but to other litigants waiting their turn. The attempt is, clearly, to pressure the defendants into making a statement of some kind or, worse yet, to pressure the Court into passing some hurried pro tem order for want of time with little or no assessment on merits, a wholly unfair advantage. A plaintiff who waits till the last minute must face the consequences of a failed gambit of this kind.
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> **28.** Dr Tulzapurkar for the 1st defendant points out that, apart from the obvious differences, the delay in bringing suit cannot be accidental. On their own showing, the plaintiffs knew about the defendants' film since 24th February, 2017. They knew of the release date of 24th March, 2017. From that date of knowledge, i.e., for the last four weeks, they have chosen to wait, and have not come to Court until a mere three

> days before the release of the film. They have only served a copy of the plaint and Notice of Motion on the defendants only at 7.00 p.m. last evening and have sought this morning urgent circulation. By this time 800 theatres countrywide have been booked for release. Distribution rights have been created. Third party rights have intervened. There cannot be any question of irreparable injury to the plaintiffs in a situation such as this or of the balance of convenience favouring the plaintiffs even assuming that a prima facie case is made out, which in his submission, it is not. He submits that it is not enough to make out some prima facie case; to get an injunction of this kind, the plaintiffs must make out so overwhelming a prima facie case that all other considerations pale into insignificance. Unless I conclude that the plaintiffs have indeed made out a case of this strength, in his submission, no injunction can or should follow.
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> **29.** I agree with Dr Tulzapurkar on all counts. I see no vestige of a prima facie case for the grant of ad-interim relief. Certainly, the balance of convenience can in no sense be said to be favour the plaintiffs. It is clearly with the defendants. As to the question of irretrievable injury, I notice that at no point did Mr. Saboo or Mr. D'Costa offer or volunteer to provide sufficient security — or indeed any kind of security — should the plaintiffs' Motion ultimately fail to secure the defendants against loss."

22. In view of the above discussions, there is no case, whatsoever, for grant of any interim injunction, staying the release of the film "Lootcase", twenty-four hours before it is due for release.

23. The application is dismissed.

C. HARI SHANKAR, J.

JULY 30, 2020
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