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

+ **CS(COMM) 38/2021 & IA 1167/2021 & 1168/2021**

MR. JOHN HART JR. & ANR. Plaintiffs

Through: Mr. Kapil Sankhla, with Ms. Mohini Priya, Mr. Ashutosh Thakur, Ms. Meghna Sankhla and Mr. Abhishek Pandey, Advs.

versus

MR. MUKUL DEORA & ORS. Defendants

Through: Mr Sandeep Sethi, Mr Sanjay Gupta, Mr. Ajay Monga, Mr. Ateev Mathur, Ms. Jagriti Ahuja and Ms. Varsha Kriplani for Defendants Nos. 1,4,5,6 &7

Mr. Saikrishna Rajagopal, Mr. Sidharth Chopra, Mr. Thomas George, Ms. Savni Endlaw, Mr. Yatinder Garg, Ms. Tanvi Sinha and Mr. Mudit Tayal, Advs. for D-2, 3, 8 and 9

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

% **21st January, 2021**

(Heard virtually via Video-Conferencing)

CS(COMM) 38/2021 and IA 1168/2021 (Under Order XI Rule 1(4) of the Commercial Courts Act, r/w Section 151 of CPC) in CS(COMM) 38/2021

1. Issue summons in the suit and notice in the application.
2. Summons in the suit and notice in the application are accepted,

on behalf of Defendant Nos. 1, 4, 5, 6 & 7, by Mr. Sanjay Gupta, learned counsel, and on behalf of Defendant Nos. 2, 3, 8 & 9, by Mr. Sidharth Chopra, learned counsel.

3. Written statement to the plaint and reply to the interlocutory application, if any, be filed by the defendants within a period of four weeks from today accompanied by affidavit of admission/denial of plaintiffs' documents, with advance copy to learned counsel for the plaintiffs. Replication/rejoinder thereto, if any, be filed within two weeks thereof accompanied by affidavit of admission/denial of defendants' documents.

4. List before the Joint Registrar (Judicial) for admission/denial of documents and marking of exhibits on 23rd March, 2021.

5. The Joint Registrar (Judicial) shall list the matter before the Court at the appropriate stage.

IA 1167/2021 (under Order XXXIX Rules 1 & 2 CPC) in CS(COMM) 38/2021

1. The plaintiffs, by this plaint, seek to injunct the release of "The White Tiger", a film produced by Defendant No. 1, slated for release at midnight today, on the Netflix internet platform.

2. An *ad interim* injunction, restraining the release of the film during the pendency of the present suit, is also sought.

3. Mr. Kapil Sankhla, learned Senior Counsel appearing for the plaintiffs, submits that Plaintiff No. 1 was, by virtue of a Literary Option/Purchase Agreement dated 4th March, 2009, vested with exclusive copyright to make a movie adaptation of the book “The White Tiger” authored by Mr. Aravind Adiga. He submits that the right, which devolved on Plaintiff No. 1 by virtue of the aforesaid Literary Option/Purchase Agreement dated 4th March, 2009, continues till date and is unchallenged. According to him, Plaintiff No. 1, who is the producer of several reputed films, wanted “The White Tiger” to be an Oscar-worthy production, to be released in Hollywood. Mr. Sankhla has drawn my attention to the various creditable achievements of Plaintiff No. 1 in the past and submits that, were the plaintiffs’ right emanating from the aforesaid Literary Option/Purchase Agreement dated 4th March, 2009 not infringed by the defendants, the film would have been produced in Hollywood, on a much larger scale, and would have gone on to win laurels. He submits that Plaintiff No. 1 had allowed Plaintiff No. 2 to engage herself in producing the film based on the aforesaid book, but that no such right had ever devolved on Defendant No. 1.

4. Mr. Sankhla further asserts that it was only in October, 2019 that the plaintiffs came to know that Netflix was in the process of making and releasing the subject film on its online platform. This, he points out, resulted in a legal notice, dated 4th October, 2019, being sent by Plaintiff No. 2 to Defendant No. 1 as well as to Netflix, calling on them to cease and desist from any such act. Mr. Sankhla further

submits that his clients were never given the impression that any shooting of the film was taking place even during 2020, when, internationally, such activities were placed on hold, following the COVID pandemic.

5. That apart, submits Mr. Sankhla, in the United States, a copyright holder has no reason to apprehend infringement of her/his copyright, and that any studio, which was endeavouring to make a film based on a novel, exclusive rights in which respect vested in another, would contact the rightful copyright holder, authorized to make such a film, in the interests of due diligence. Plaintiff No. 1, submits Mr Sankhla, had no reason to believe that his copyright would be violated and that a film, based on “The White Tiger”, would be made without following due diligence. No prospective film maker or producer having ever contacted his client, Mr Sankhla submits that Plaintiff No. 1 had no reason to believe that the subject film was being made, or would be released.

6. Mr. Sankhla further submits that several misrepresentations were made by the defendants, to which Plaintiff No.1 succumbed.

7. Mr. Sankhla has also invited my attention to various covenants of the Literary Option/Purchase Agreement dated 4th March, 2009, including, *inter alia*, Clause 10 thereof, which reads thus:

Approvals: Purchaser shall have all approvals and controls and the right to initiate action at any time and in any connection with respect to the Picture. Notwithstanding the

foregoing, provided Owner is not in default hereunder, Owner and Purchaser shall mutually approve (i) any screenplay writer and/or director for the Picture, (ii) any replacement of John Hart as a producer of the Picture, provided that in the event of a conflict Purchaser's decision shall control. Further, the parties agree that Sooni Taraporevala shall not be considered as a screenplay writer, and neither Mira Nair nor Deepa Mehta shall be considered as directors, for the Picture."

8. According to Mr. Sankhla, Plaintiff No. 1 was planning to release the movie, based on Aravind Adiga's "The White Tiger" on a grand scale since 2008, and had expended considerable labour on the enterprise. Allowing the defendants' movie to be released on the Netflix platform tonight, he submits, would result in irreparable injury to the plaintiffs, both financial and emotional. He submits that it would result in the dreams of the plaintiff being shattered and his desire, to make and release a magnum opus, based on the aforesaid novel, being reduced to naught.

9. As against this, submits Mr. Sankhla, if the release of the film is postponed by a few days, it would not result in any serious financial consequences for the defendants, as the movie is not being released in theatres. In this context, Mr Sankhla sought to draw a distinction between "OTT releases", i.e. releases on internet platforms, *vis-a-vis* theatre releases, which the financial and infrastructural ramifications of an injunction being negligible in the latter. What the defendants are indulging in, submits Mr. Sankhla, is the height of piracy, and if allowed to go unchecked, would result in complete evisceration of the plaintiffs' right, emanating from the Literary Option/Purchase Agreement dated 4th March, 2009 *supra*.

10. To a query from the Bench in that regard, Mr. Sankhla submits that though there has been some delay in plaintiffs' approaching the Court, that delay was unavoidable. He submits that the defendants effectively led the plaintiffs up the garden path, without ever making the plaintiffs aware of the fact that they were shooting the film and planning to release it on the Netflix platform. As such, he submits, the prejudice that would result to the plaintiffs being far in excess of that which would be suffered by the defendants, were injunction not to be granted, a clear case for grant of *ad interim* injunction exists.

11. Mr. Sandeep Sethi, learned Senior Counsel appearing for the Defendant Nos. 1, 4, 5, 6 and 7, draws my attention to para 121 of the plaint, to assert that admittedly, the cause of action, for the plaintiffs to approach the Court accrued as far back as in October, 2019. He submits that there is no justification, whatsoever, for the plaintiffs moving the Court seeking to stall the release of the subject film less than 24 hours prior to its scheduled release. He has placed reliance, in this context, on the judgments of this Court in *Kanungo Media (P) Ltd. v. RGV Film Factory*¹, *Biswaroop Roy Choudhary v. Karan Johar*², *Warner Bros. v. Harinder Kohli & Ors.*³ and *Vinay Vats v. Fox Star Studios India Pvt. Ltd. & Ors.*⁴, of which the last was authored by me.

¹ 2007 SCC OnLine Del 314

² 2006 SCC OnLine Del 828

³ 2008 SCC OnLine Del 1081

⁴ MANU/DE/1488/2020

12. Mr. Sethi also submits that Mr. Sankhla has only portrayed one side of the story. He submits that, on receipt of the legal notice, dated 4th October, 2019, addressed by Plaintiff No. 2 to the defendants, the defendants responded on 11th October, 2019, denying the assertions, of Plaintiff No. 1, that he was the sole and exclusive copyright holder, entitled to film “The White Tiger”. According to Mr. Sandeep Sethi, there was a subsequent assignment of the right to film the novel by way of an agreement dated 30th August, 2013, between certain companies of Plaintiff No. 1’s subsidiaries and M/s Particle Media Pvt. Ltd (hereinafter referred to as “PMPL”), which was a company of Defendant No. 1. He further submits that a legal dispute had been raised, by Plaintiff No. 2, in January, 2014, regarding the rights to film “The White Tiger”, which resulted in a settlement *vide* agreement dated 3rd January, 2014 between the Plaintiff No. 2 and M/s Particle Media Pvt. Ltd., whereunder ₹ 53 lakhs was paid to Plaintiff No. 2, consequent to which Plaintiff No. 2 waived all claims against PMPL *qua* “The White Tiger” and the present project. Mr. Sethi submits that all these documents have been concealed by the plaintiffs and that, based on a one-sided story put forth in the plaint, no injunction can be granted in the plaintiffs’ favour.

13. Mr. Sethi has also raised certain formal objections to the plaint, pointing out that the plaint and the statement of truth are unsigned, and that therefore, there is no proper plaint before this Court.

14. Mr. Sethi also draws attention to the fact that a Special Power of Attorney was executed by Plaintiff No. 1 in favour of Plaintiff No. 2,

on 9th December, 2020, to initiate legal action and that therefore, there is no explanation as to why the present suit has been filed less than 24 hours before the film is to be released.

15. Mr. Sethi also refutes the submission of Mr. Sankhla that the stakes of the plaintiffs, in the present case, are much higher than those of the defendants. He submits that making of a film and its release is a protracted and laborious exercise, in which huge finances are involved. The failure of the plaintiffs, to release the subject film on the date when it is scheduled and advertised for release, he submits, is bound to result in irreparable loss of goodwill and reputation to the defendants, which cannot be assuaged by monetary recompense.

16. No case, therefore, according to Mr. Sethi, is made out for grant of *ad interim* injunction.

17. Mr. Saikrishna Rajgopal, learned counsel appearing for Defendant Nos. 2, 3, 8 and 9, while adopting, largely, the submissions of Mr. Sethi, submits that the distinction, being sought to be brought by Mr. Sankhla, between OTT and cinema hall releases, is far divorced from reality. He submits that OTT releases are as serious a matter as cinema hall releases, and also involves huge finances as well as goodwill which cannot be compromised. He echoes the submission of Mr. Sethi that, in the response dated 11th October, 2019, the defendants disputed the plaintiffs' rights as exclusive copyright holders entitled to film "The White Tiger" and had, in fact, taken a stand that the rights were waived by Plaintiff No. 2, pursuant to the

settlement arrived in 2014.

18. He submits that his client had entered into an agreement with Defendant No. 7 which was a subsidiary of a company owned by Defendant No. 1. In any event, submits Mr. Saikrishna Rajagopal, the dispute is highly contested and it is not possible to take any *prima facie* view at this stage, one way or the other. At worst, he submits, the loss to the plaintiff would be monetary, and no case for grant of injunction exists.

19. Mr. Saikrishna Rajagopal has also drawn my attention to the averments in the plaint, which admit the fact that promotional activity, prior to the release of subject of film commenced as far back as in December, 2019. He also submits that the film has in fact been released in theatres in the United States on 11th January, 2021.

20. Mr. Sankhla, arguing in rejoinder, submits that the legal notice, dated 4th October, 2019, had been sent on behalf of Plaintiff No.2 and not on behalf of Plaintiff No. 1. He also denies the submission that PMPL was owned by Defendant No. 1 and submits, on instructions, that it was, in fact, owned by one Raj Lakhani and was one of several shell companies which had been created by the defendants in order to rotate funds. To quote the exact words used by Mr. Sankhla, “once the corporate veil is lifted it would be apparent that the defendants had no right in the book”. He has drawn my attention to paras 37 to 42 of the plaint, in order to establish that there had been no assignment of rights, as would entitle Defendant No.1 to produce or release the subject film on Netflix. In fact, he submits, there was a breach of the

understanding between plaintiffs and Defendant No. 1.

21. I have heard learned counsel for the parties at length and applied myself to the arguments advanced at the Bar.

22. No case, in my view, for grant of any interlocutory injunction, as sought by the plaintiffs, exists, for the following reasons:

i) The plaintiffs were aware of the possibility of the subject film being released on the Netflix platform at least as far back as on 4th October, 2019. There is not a scintilla of material produced on record to justify the plaintiffs approaching this Court less than 24 hours prior to the release of the subject film, seeking stay thereof. Mr. Sethi has rightly drawn my attention to paragraph 121 of the plaint, which may, for ready reference, be reproduced thus:

“The cause of action to institute the present suit has been continuing one and it arose in the following events:

a. The cause of action arose when the shooting of the film “The White Tiger” was first announced in around October, 2019 as the Defendant No. 1 had secretly, without fulfilling the Condition Precedent Producing Agreements with Plaintiff No. 1 and 2, had entered into a contract with Defendant No. 2 and 3 for the production of the movie “The White Tiger”, which is an adaptation of the book by the same name. The copyright in the film “The White Tiger” was never transferred from Rooster Coop to Particle

Media as the Condition Precedent Producing deals of the Plaintiffs was never fulfilled. Also, Plaintiff No.1 had separate from Patrick and was therefore the sole holder of the said copyright alongwith Plaintiff No.2.

b. The cause of action further arose when the principal photography of the motion picture “The White Tiger” was commenced by the Defendant No. 1, Defendant No.2 and Defendant No.3 without having legitimate title over the motion rights of the book “The White Tiger” in pursuance of the non-execution of the Condition Precedent Producing Agreement between Plaintiff No.1, Plaintiff No.2 and Defendant No.1 and in complete disregard to the right of the Plaintiffs as Copyright holders and Producers / Authors of the picture.

c. The cause of action further arose when the Plaintiff No. 2 after becoming aware that the film “The White Tiger” was scheduled to be made illegitimately and shooting was taking place in New Delhi, had addressed a legal notice to Defendant No.2 and 3 on 4th October, 2019. The cause of action further arose when upon the receipt of the said legal notice, the Defendant No.2 and 3 instead of protecting the rights of the Plaintiffs, upon malafide got the copyright of the Film illegally registered on the same date, i.e. 04.10.2019, at the US Copyright Office in the name of Defendant No. 8 and 9 for “*dramatic, music or choreography*” based on the Plaintiffs book rights of “The White Tiger”.

d. The cause of action also arose on 11.10.2019 when Defendant No. 2 and 3

addressed a reply of the legal notice dated 04.10.2019 to Plaintiff No. 2 and blatantly denied the claim of the Plaintiff No. 2 over motion picture copyright and Producing/Authorship rights of "The White Tiger" and instead relied upon a Void Document of Smiling Tree which did not even hold any rights on 03.01.2013 to justify its making of the Film, without doing any background research or due diligence and declined to redress the cause of the Plaintiffs.

e. That the cause of action further arose on 12.11.2019 when the Plaintiff No. 2 addressed an email to the Chief Executive Officer of Defendant No.2, 3, 8 and 9, namely Reed Hastings, requesting to intervene and stop the illegal act for profit and to the liquidators of Smiling Tree, Particle and Transatlantic (Particle's owner) informing them of the web of shell companies being formed and subsequently liquidated by Defendant No. 1 in an attempt to defraud the Plaintiffs of their legitimate rights in the motion picture adaptation of "The White Tiger" and Reed Hastings chose to ignore the same and did not tender any response to the email or take any action in pursuance of the same.

f. The cause of action further arose when Defendant No. 1 denied all the Plaintiffs claims despite the fact that it was Defendant No. 1 who had defrauded the Plaintiffs and is now producing the film in complete disregard of the condition precedent producing deals of the Plaintiffs and the fact that legitimate copyrights vested with the Plaintiffs and not Defendant No.1, 2 3, 6, 7, 8, and 9.

g. The cause of action further arose when the trailer of the movie was released by the Defendant No.2 and Defendant No.3 on various platforms in December, 2019. The movie has

been announced to be releasing on 22.01.2021 on the OTT platform of Netflix.”

A reading of para 121 of the plaint makes it apparent that, since October, 2019, the plaintiffs have been acutely aware of the possibility of release of the film, of which injunction is sought in the present plaint/application. It is no answer, to the delay in moving this Court, to say that, owing to intervention of COVID pandemic, the plaintiffs were under the impression that no shooting would take place or that the film would not be released. Neither can it be the stand of the plaintiffs, in the wake of the aforesaid legal notice, that they expected due diligence on the part of any person seeking to produce a film based on “The White Tiger” and to be informed of any such proposal, prior thereto. There are several authorities for the proposition that a plaintiff who approaches the court at the eleventh hour, seeking interlocutory injunction against the release of a cinematographic film, is disentitled to any such relief. The relevant passages, from *Biswaroop Roy Choudhary*², *Kanungo Media (P) Ltd.*¹, *Warner Bros. Entertainment Inc.*³ and *Vinay Vats*⁴ may, in this context, be reproduced:

“13. *Delay in approaching the Court, so far as grant of equitable relief is concerned, is always fatal. If the plaintiff is a serious producer of film, he ought not to have ignored gossip within his trade, whether it was in the form of Press reports or exchange of communication to the Guild or Association claiming the same title. At this present moment I am unable to find any plausible reason for not filing the present case at least upon the defendants performing its Mahoorat. The plaintiff has waited for the defendants to*

expend large sums of money and energy in the completion of the film with the same title, thereby shifting the balance of convenience in favour of the defendant. The situation that is arrived at is that the likelihood of passing off is almost wholly eradicated. The subsisting claim may, at the highest, be the use of a title which the plaintiff has itself failed to use. The right as well as the loss can only be determined after the Trial.”

(Emphasis supplied)

(from *Biswaroop Roy Choudhary*²)

“34. In *International Film Service Co. Ltd. v. Associated producers Inc.* 273 F. 585 (D.C.N.Y. 1921), it was held that “The plaintiff succeeds as soon as he shows an audience educated to understand that the title means his play”. I am conscious of the argument of the learned counsel for the plaintiff that only because the plaintiff is a small time producer and, therefore, could not commercially release the film earlier, though he intends to do it now, title of his film should not be hijacked by those who consider themselves mighty and have reach in the film industry. There is a lot of substance in this argument. *However, it is stated at the cost of repetition that such an argument would have been worth its weight had the plaintiff approached the court earlier and taken action to nip in the bud the attempt of the defendants in choosing this title for their film.* In fact, knowing his limitations viz. if he allows the defendants to publicise their film with title ‘Nishabd’ he would lose out, should have made him more vigilant in promptly approaching the court. By delay it has allowed the damage to be caused to itself inasmuch as, today overwhelming section of public associate this title with the defendants' film.

35. In this context, it would be apt to quote from the judgment of the Supreme Court in the case of *Ramdev Food Products (P) Ltd. v. Arvindbhai Rambhai Patel* (2006) 8 SCC 726 where it is held as under:—

“103. Acquiescence is a facet of delay. The principle of acquiescence would apply where: (i) sitting by or allowing another to invade the rights and spending money on it; (ii) it is a course of conduct inconsistent with the claim for exclusive rights for trade mark, trade name, etc.”

37. Learned counsel for the plaintiff had referred to the judgment of the Supreme Court in the case of *Midas Hygiene Industries (P) Ltd. v. Sudhir Bhatia*, (2004) 3 SCC 90 and of this court in *Glaxo Group Ltd. v. Vipin Gupta*, (2006) 7 AD (Delhi) 688 to contend that injunction could not be refused only on the ground of delay and laches. It has to be borne in mind, in the first place, that it would be a principle applicable in the case of registered trade mark. Secondly and more important, is the distinction between the cases of passing off action in goods/trading and passing off action in literary works. In the former case one product is competing with the other and there are two competitors. However, as far as literary work is concerned, as has been pointed out above, it is a specific, separate and unique commercial item and not as one product among many competing products. Each book, movie, play or record is an economic market in and of itself, not in competition with other similar literary works. Thus, in fact, this is the genesis for the adoption of the test of secondary meaning of title of a literary work. Therefore, it would be difficult to hold that delay is not fatal in such cases.

38. *Consequently, I am therefore, of the view that injunction of the nature pressed by the plaintiff cannot be granted to the plaintiff at this stage when it approached the court barely 10 days before the proposed release of the defendants' film with the same title. This injunction application is, therefore, dismissed. It is made clear that entire discussion in the order is on the prima facie view of the mater and observations made in this order are only tentative."*

(Emphasis supplied)
(from *Kanungo Media (P) Ltd.*¹)

“34. Viewed from any angle, the plaintiffs have failed to establish a prima facie case for the grant of an ad interim injunction in their favour. *The balance of convenience also tilts heavily in favour of the defendants, who have invested huge sums of money, apart from entering into copious agreements and business tie ups with various third parties, including Britania, McDonalds, etc. In a manner of speaking, the plaintiffs have sat on the garden fence and allowed the*

defendants to traverse the whole of the garden path, before attempting to throw a spanner in the release of the film at the eleventh hour. If the plaintiffs were so keen and so wary of protecting their rights, it was incumbent upon them to vigilantly guard the same. This, the plaintiffs have failed to do and, as a matter of fact, the conclusion to the contrary clearly emerges from a reading of the documentary evidence on record. The plaintiffs have equally failed to establish that any irreparable loss or injury will result to them on the release of the film”

(Emphasis supplied)
(from *Warner Bros. Entertainment Inc.*³)

“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 v. Fox Star Studios India MANU/MH/0490/2017*, 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.

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.

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." "

(Emphasis supplied)
(from *Vinay Vats*⁴)

Even on the sole ground of unconscionable delay in approaching this Court, therefore, the plaintiffs stand disentitled from seeking any interlocutory injunction against release of the film.

ii) Paragraphs 37 to 42 of the plaint, to which Mr. Sankhla himself drew my attention, reads thus:-

"37. As per the mutual agreement of the 3 Producers that fought for two years between September, 2011 and November, 2013 against Patrick Milling Smith for the rights, Plaintiff No. 1's lead Producing deal would reflect his original "irreplaceable against his will" position alongwith full reimbursement of his legal costs for "The White Tiger" in his separation with Patrick Milling Smith plus a generous Producing Fee and Profit Participation that cannot be lesser than the terms he already had originally (and/or the terms Patrick Milling Smith was offering him to exit the picture), and Plaintiff No. 2's Producing deal would reflect Plaintiff No. 2 and Defendant No. 1's original 50/50 equity, profits,

credit and control partnership entered into in October, 2010 based on which she allowed Defendant No. 1 participation on her Hollywood project "The White Tiger". This is clearly outlined in Plaintiff No. 2's email dated 16.02.2012 to her attorney Paul Almond below when Plaintiff No. 1 and herself and Archie Cox were making the deal between themselves and she sent this email to Paul Almond to base an MOU to be made with Patrick Milling Smith based on the Steps 1 through 6 outlined below:

"Archie! Just got off the phone with John. Can John, Paul, you and I do a con call tomo afternoon to put a number on what Story Fund and John and Ascension's backend will be as a % of the 100% of overflow (after all investors have recovered their investment plus an 8% return)?"

Once we agree on the above numbers over the call then we can sign an LOI the same day or next day stating our verbal agreement based upon which AFTER Smuggler assigns all rights to us under Step 1 below, we can go after either extending or exercising the option right away while the lawyers are working on all the other following 2-6 steps/agreements as outlined in our LOI in order to save time:

- 1. Smugglers assignment of all current agreements to watchtower*
- 2. Todd Field's script assignment and pay or play and backend waiver to watchtower*
- 3. John's producing deal with watchtower*
- 4. Story Fund's investment deal with watchtower*
- 5. Ascension's deal with watchtower*
- 6. Mukul and my producing deals with watchtower.*

Let me know what you think and look forward to speaking with you and resolving this one last issue tomo!"

(Plaintiff no 2 to Archie Cox, Paul Almond and Plaintiff no 1 in email dated 16.02.2012.)

38. As can be seen from the above, the 3 Producer's Condition Precedent Producer deals are clearly outlined and were the only ones remaining post the November, 2013 Patrick Milling Smith Separation Agreements for the transfer of rights to actually take place, before Defendant No. 1 got the wrong impression that he can get away by not fulfilling the Condition Precedent Producing deals of Plaintiff No. 1 and Plaintiff No. 2 and still have a competed transaction.

39. The Story Fund Release to release John Hart from his Non-Compete from Producing "The White Tiger" with Plaintiff No. 2 and Defendant No. 1 was an essential Condition Precedent of the Separation Agreements from Patrick Milling Smith under the Paragraph (i)Patrick Milling Smith Assignment and Assumption Agreement, proves that Plaintiff No. 1's Condition Precedent Producing Deal was to follow as the next step, post the first set of Agreements executed with Patrick Milling Smith in November, 2013:

"A fully executed release by Story Fund of any non-compete agreement with John Hart, also acknowledging that Hart is under no obligation to Story Fund that would prohibit him from acting as a producer on the Picture (or any sequel, remake or subsequent production) or otherwise providing services relating to the Property, in form and substance satisfactory to all parties hereto; and (ii) a fully executed release by Story Fund Management Company, LLC (and its affiliates) of any non-compete agreement with Hart, also acknowledging that Hart is under no obligation to Story Fund Management Company, LLC (or related or affiliated entities or persons) that would prohibit him from acting as a producer on the Picture (or any sequel, remake or subsequent production) or otherwise providing services relating to the Property, in form and substance satisfactory to all parties hereto (the "Hart Release")

40. Defendant No.4's email dated 12.04.13 to Plaintiff No. 2 asking if the Condition Precedent of John being released from the Non-Compete and allowed to Produce "The White Tiger" with Plaintiff No.2 and Defendant No. I after his separation from Patrick Milling Smith (proves Plaintiff No.1's Condition Precedent Producing deal was to follow, apart from the requirement to satisfy and not be in breach of Clause 10 of the Literary Option Agreement):

"Dear Sonia, Please refer to Point no. 3 of your trailing mail and let us know whether the "Released" has been obtained or not? Thanks, Sharad"

46.(sic) In this manner not executing Plaintiff No. 1's Condition Precedent Producing deal for the motion picture adaptation of the "White Tiger" does not allow the motion picture adaptation rights to be assigned to Particle in two different ways, one it is in direct breach of the Chain of Title Literary Option Purchase Agreement of 03.04.2009 which protects and locks in Plaintiff No.1 from being replaced as a Producer against his own will and second he was promised his Producing deal is a Condition Precedent to any such rights transfer into any new entity, post his separation from Patrick Milling Smith, by Plaintiff No.2 and her 50/50 equity partner and development financier, Defendant No.1, and that Condition Precedent has not been met till date.

47.(sic) It does not require a lot of intelligence or common sense to guess from the author Aravinda Adiga's Clause 10 that he would not even approve established Indian Hollywood Producers and Directors like Mira Nair and Sooni Taraporevala to produce the motion picture adaptation based on his Booker Prize winning bestselling book as he wanted it to be at the prestige and scale of "Revolutionary Road" and "Slumdog Millionaire", so he would definitely not agree in November, 2013 to mutually approve Raj Lakhani, someone not from the film industry and never

having produced any movie before, as a replacement for Oscar winning movies' Hollywood Producer Plaintiff No. 1, and Plaintiff No. 1 would also not agree to go again (*sic*) his own interests and passion to Produce "The White Tiger" and mutually agree with the Author, Aravinda Adiga to replace himself as a Producer of his own motion picture adaptation rights of which he was the legitimate owner and single largest and mutually controlling shareholder, after fighting a 2 year battle with his partner Patrick Milling Smith for the ownership and control of the same rights."

The afore-extracted paragraphs from the plaint indicate, *prima facie*, that Defendant No.1 was not a stranger to the entire transaction of producing the film based on "The White Tiger". There is, in fact, reference, in the afore-extracted passages, to various agreements, including "producing deals" between "Mukul", i.e. Defendant No. 1 and "Watch Tower" which, Mr. Sankhla acknowledges, is a company of Plaintiff No. 2. None of these documents are on record. Mr. Sankhla seeks to submit that many of these documents are in the custody of various International Law firms, and that, given the constraints of time under which his clients were operating, it was not practically feasible to place all the documents on record. Be that as it may, the averments in the afore-extracted passages, even as contained in the plaint, show that there is more to the case than meets the eye. Without having, before it, the aforesaid agreements and a chance to peruse the covenants thereof, even a *prima facie* finding, that the defendants in producing and releasing the several films, have infringed the copyright of the plaintiffs cannot be returned by the Court. Interestingly, Mr. Sankhla

himself acknowledges that “once the corporate veil was lifted” it would become apparent that the defendants had no right over the book. Lifting of the corporate veil is an involved exercise, which necessitates incisive scrutiny of the facts. It is not possible, on the material on record, for this Court, to come to any *prima facie* conclusion that, by producing or releasing the subject film, the defendants have indulged in illegal copyright infringement, or transgressed the right of Plaintiff No. 1, emanating from the Literary Option Agreement dated 4th March, 2009 *supra*.

iii) In a case such as this, it is also not possible to hold, *prima facie*, that the prejudice that would result to the plaintiffs, were interlocutory injunction, as sought, not granted, is greater than that which would result to the defendants, were such injunction to be granted. The financial stakes, on both sides, are considerable. In case the defendants, as they assert, have been acting on the basis of rights validly assigned to them, there can obviously be no ground to injunct the release of the film. The release of a film is merely the culmination of a protracted exercise involving production, promotion and publicity, and I am, *prima facie*, inclined to agree with Mr. Sethi that if, at this point of time, release of the film is stayed, it will result in serious and irreparable repercussions to the defendants.

iv) Further, it is a well-settled principle that, where the loss occasioned to the plaintiff is capable of being adequately compensated in monetary terms, an injunction, especially of

release of a cinematographic film, ought not to be granted.⁵ Plaintiff No. 1 is, admittedly, not the original creator of the artistic work “The White Tiger”. He, even as per his own showing, claim to have been assigned the right to film the said novel, under a Literary Option Agreement dated 4th March, 2009. In view thereof, even if the defendants are allowed to release the film, and the plaintiffs ultimately succeed in the suit, I am of the opinion that it would be possible to recompense them monetarily, even in respect of the emotional trauma, which, according to Mr. Sankhla, Plaintiff No.1 would suffer, as a result of his not being able to be the first to film “The White Tiger”.

23. On a holistic consideration of the facts, the extant legal position and especially as the plaintiffs have chosen to move this Court less than 24 hours before the release of the subject film, I am of the opinion that the plaintiffs are not entitled to any interim injunction, staying the release of the film. The prayer for interim injunction is, therefore, rejected.

24. Having said that, the defendants, even while they would be permitted to release the film, are directed to keep detailed accounts of the earnings made from the film so that, at any later stage, were the plaintiffs to succeed, award of damages or monetary compensation, should the Court so deem, is facilitated.

⁵ Reliance Big Entertainment v. Percept Ltd. 2009 SCC OnLine Del 111; Gaurav Dayal v. Rabbi Shergil, 2008 SCC OnLine Del 1284; Pooja Films Pvt. Ltd. v. Motion Pictures Association. 1995 SCC OnLine Del 509

25. As nothing survives for adjudication in this application, the application is dismissed.

JANUARY 21, 2021

dsn/r.bararia

C. HARI SHANKAR, J



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