



ia-22738-2023.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO.22738 OF 2023
IN
COMM IP SUIT NO.322 OF 2023

Ashim Kumar Bagchi

...Applicant /
Plaintiff

Versus

Balaji Telefilms Ltd. and Ors.

...Defendants

Mr. Priyank Kapadia with Mr. Aniketh Poojari i/b. Legal House for
the Applicant / Plaintiff.

Mr. Rashmin Khandekar, Mr. Rahul Dhote, Ms. Anushree Ravta Mr.
Shwetank Tripathi for the Defendant No. 1.

Mr. Anand Mohan i/b. De Zalmi and Associates for Defendant No. 5.

CORAM : R.I. CHAGLA J.

Reserved on : 16TH DECEMBER, 2024.

Pronounced on : 06TH AUGUST, 2025.

ORDER:

1. By this Interim Application, the Plaintiff has sought an
injunction restraining the Defendants from exploiting the film titled
“DREAM GIRL -2” produced by Defendant No.1 on the grounds of (i)
alleged infringement of the Plaintiffs copyright in its purported
literary work being the script titled “KAL KISNE DEKHA” which

ia-22738-2023.doc

the Plaintiff claims was re-registered under the title “THE SHOW MUST GO ON”; (ii) breach of confidence.

2. The Plaintiff states that he had written and developed an original story in the form of the Plaintiff’s script for the purpose of having it made into a film.

3. The Plaintiff states that the “idea” of the Plaintiff’s work is based on the concept of gender swap comedy. The protagonist, a male, dons the persona and performance of a female and tackles various comedic situations where his identity may get exposed.

4. The Plaintiff states that the arrangement of scenes, the comedic effect of specific situations, the profile of the characters and their development, all of which propels the story narrated in the Plaintiff’s script towards its climax / culmination and that the Plaintiff’s script is an original literary work within the meaning of the Copyright Act, 1957.

5. The Plaintiff states that the contents of the Plaintiff’s script are also confidential and was shared by the Plaintiff with Defendant No.4 under strict conditions of confidence, in pursuit of

the possibility of identifying a producer who would be willing to make a film with the Plaintiff's script.

6. The Plaintiff submits that the Defendants have, in making the film DREAM GIRL 2 ("the Defendants Film"), infringed the Plaintiff's copyright in the literary work initially titled "KAL KISNE DEKHA" subsequently changed to "THE SHOW MUST GO ON" ("the Plaintiff's script").

7. Upon the present Suit being filed, on 18th August, 2023 an Interim Application was taken out in the present Suit, on the basis of the trailer announcing release of the Defendants' Film on 25th August, 2023. This Court by an Order dated 22nd August, 2023 refused to restrain the release of the Defendants' Film without affording the Defendants an opportunity to file their replies, particularly in view of the Plaintiff having approached this Court at the eleventh hour prior to release, despite sufficient notice of the release date.

8. Thereafter, the Defendants Film has been released in theaters, and is being / has been exploited over other mediums.

ia-22738-2023.doc

9. The pleadings were completed in the Interim Application including the Defendant No.1's Affidavit in Reply dated 31st August, 2023, the Plaintiffs Affidavit in Rejoinder thereto dated 10th October, 2023 and Defendant No.1's Affidavit in Sur Rejoinder dated 29th November, 2023. The matter was thereafter argued finally at length and was reserved for orders on 16th December, 2024 granting the parties leave to file their Written Submissions.

10. Mr. Priyank Kapadia, the learned Counsel appearing for the Plaintiff has submitted that the Plaintiff's script is an original literary work and is entitled to protection against infringement under the Copyright Act, 1957.

11. Mr. Kapadia has stated that when a Notice dated 4th August, 2023 alleging infringement with details of the Plaintiff's work / script was sent to the Defendants, the Defendants in their reply dated 10th August, 2023 claimed that it is the Plaintiff who has infringed their copyright. He has in this context referred to paragraph 7 of the Plaintiffs notice dated 5th August, 2023. He has submitted that the response of Defendant No.1 is critical. The Defendant No.1 accepts that the respective works are similar and that the Plaintiff's

work is an infringement of their copyright. He has submitted that now that the record shows that the Plaintiff's work predates the Respondents / Defendants, a specious defence is taken that (i) the Plaintiffs work is not original or novel enough to constitute a copyrightable work; (ii) in any event there is no similarity between the rival works and (iii) similarity, if any, is a scènes à faire.

12. Mr. Kapadia submits that the Plaintiff's work is defined, well fleshed out with copious detail, and follows a certain arrangement of scenes and situations resulting in a composite original and novel work with an underlying motif, theme and climax. The originality of the Plaintiff's work is apparent from the script copy of which is annexed to the Complaint at Exhibit 'A'. The Plaintiff's script has been registered on 25th May, 2007 with the former Film Writer's Association and granted Registration No.127297.

13. Mr. Kapadia has submitted that the genre of the Plaintiff's work is comedy. It tracks the exploits of the protagonist who swaps his gender to take on the persona of a beautiful debutant actress and achieves success. He does this to overcome financial hardship and burden at the instance and instigation of his close

ia-22738-2023.doc

friend. The inter-personal relationships resulting in this unconventional choice, the experiences of the protagonist in interacting with supporting characters (especially his employer who is mesmerized by the protagonist's beauty) during the protagonist's attempt to avoid suspicion and revelation, and the various comedic situations that puts him in are original and copyrightable. He has submitted that there are marked similarities between the Plaintiff's work and that of the Defendants Film.

14. Mr. Kapadia has submitted that the Plaintiffs' work / script was shared in confidence with Defendant No.1 and Defendant No.4. He has submitted that on 18th February, 2009, the synopsis and concept of the Plaintiff's original work was shared over email with one Mr. Abhijeet Bhande working with Defendant No.1. Due to a typographical error in the email, it was not delivered. On 21st February, 2009, on receiving an intimation of non-delivery, the Plaintiff corrected the address and emailed the concept and synopsis to Mr. Abhijeet Bhande working with Defendant No.1. He has submitted that in 2011, the Plaintiff's friend one Mr. Nandlal Lodhi wanted to produce a film using the Plaintiff's script but did not have the financial means at the time to do so. He introduced the Plaintiff

to Mr. Shashank Shekhar, who in turn gave a reference of Defendant No.4, a comedy writer.

15. Mr. Kapadia has further submitted that, in 2012, the Plaintiff narrated the concept and script to Defendant No.4 over a phone call in the presence of Mr. Nandlal Lodhi. He has referred to the Affidavit of Mr. Nandlal Lodhi dated 22nd August, 2023 to this effect. However, this lead did not materialize. He has submitted that Defendant No.4 has not appeared before this Court during final hearing of the Interim Application and is deemed to have accepted the Plaintiff's case. In any event, his denial is bare and lacking in any material particulars. He has submitted that on 29th April, 2013, the Plaintiff got in touch with one Mr. Umesh Ray, Senior Executive working with Defendant No.1 who requested the Plaintiff to email the script. An email was addressed by the Plaintiff to Mr. Umesh Ray working with Defendant No.1. He has further submitted that, the aforementioned facts makes it beyond dispute that the Plaintiff shared his script titled "KAL KISEN DEKHA" name subsequently changed to "THE SHOW MUST GO ON" and that the Defendant Nos.1 and 4 got aware of the Plaintiff's work.

ia-22738-2023.doc

16. Mr. Kapadia has submitted that there is no cogent explanation of the alleged making of Dream Girl 2. He has submitted that neither Defendant No.4 nor Defendant No.5 have demonstrated in any meaningful sense the process by which the script of the impugned film came into being. Till date Defendant No.4 and Defendant No.5 have not produced the alleged script they claim to be basis of the infringed film. He has submitted that this itself casts aspersions on the conduct and integrity of the Defendant Nos.4 and Defendant No.5.

17. Mr. Kapadia has referred to the Writer Service Agreement dated 26th March, 2021 which has entered into between Defendant No.1 with Defendant No.4 and his Company Thinkink Picturez Ltd. for writing the story, screenplay, and dialogues of the Defendant's Film. He has submitted that in the said Agreement the Defendant No.1 is the producer and in Clause D it is recorded that the producer is the sole and exclusive owner of the concept titled as "Dream Girl 2" which is annexed to the said Agreement as Annexure A. He has referred to Annexure 'A' which is blank and despite repeated requests the Defendants have not produced the same. He has submitted that, further in the said Agreement, Defendant No.4 who is the writer

ia-22738-2023.doc

under the said Agreement under Clause E was engaged for the purpose of developing literary works based on the above concept which means the story, screenplay and dialogues for the audio visual content. In Annexure 2, annexed to the said Agreement, Defendant No.4 has specifically stated that the original work i.e. Dream Girl 2 is authored by him and is submitted in the name of Balaji Telefilms Ltd. for copyright registration. He has submitted that Defendant No.4 has accordingly stated that the work i.e. script and screenplay of the impugned film was originally authored by him. However, Defendant No.5 on the other hand claims to have solely and exclusively authored an original literary work of which the synopsis titled “Dream Girl 2” was registered with the Screenwriters Association under Certificate of Registration dated 15th July, 2021. He has submitted that this is contrary to what is stated in Annexure 2 of the Agreement between Defendant No.1 and Defendant No.4.

18. Mr. Kapadia has referred to the Suit filed by Defendant No.5 which arose from the Defendant No.5 being allegedly aggrieved with the credit i.e. “Written and Directed by” being exclusively given to Defendant No.4 by Defendant No.1 in violation of Clause 8 of the Exclusive Writer Agreement dated 23rd July, 2021 amended by the

ia-22738-2023.doc

understanding recorded over WhatsApp on 29th July, 2023.

Defendant No.5's credit of having written the film was removed.

19. Mr. Kapadia has referred to paragraph 20 of the Plaint, filed in the Commercial IPR Suit (L) No.21883 of 2023 by Defendant No.5 against inter alia Defendant Nos.1 and 4, wherein it is stated that "Defendant No.1, 2 (Balaji Telefilms Ltd., Defendant No.1 in the present Suit) and 7 (Raaj Shaandilyaa i.e. Defendant No.5 in the present Suit) have maliciously, knowingly and intentionally conspired with each other to discredit the Plaintiff of his work in the subsequent works developed pursuant to the Writer Agreement including the Story, Script and Screenplay of the said Film". He has submitted that inspite of this allegation made by Defendant No.5, the Suit was decreed by consent with Defendant Nos.1 and 4 and this shows that Defendant No.4 acted in collusion with Defendant No.5, though at one point of time having tried to usurp Defendant No.5's credit as assured and agreed by Defendant No.4 to Defendant No.5 under the exclusive Writer's Agreement.

20. Mr. Kapadia has submitted that in the Suit filed by Defendant No.5 against, *inter alia* Defendant No.4, and Defendant

No.5 claims that the story of the said film as referred to in the Writer Agreement was solely written and developed by Defendant No.5 based on the original literary work developed by him. He has submitted that the Defendant No.5 has stated that although, the screenplay of the Defendant's Film was developed by Defendant No.5 with inputs from Defendant No.4, Defendant No.4 had no role to play in the development of the story of the film.

21. Mr. Kapadia has submitted that it is obvious that neither Defendant No.4 nor Defendant No.5 authored the script for the film Dream Girl 2 in any meaningful sense. He has submitted that Defendant No.4 had access to the script and synopsis of the Plaintiff's original literary work which is undisputed. Defendant No.4 has not even addressed the Court at the time of hearing of the Interim Application. The Agreement dated 23rd July, 2021 between the Defendant No.4 and Defendant No.5 has absolutely no reference to the Writers Agreement between Defendant No.1 and Defendant No.4. Further, the Agreement neither mentions the name of the film. However, strangely, Defendant No.5 claims to have registered synopsis of Dream Girl 2 on 15th July, 2021 with SWA. He has submitted that Defendant No.5 in the Affidavit in Reply clearly states

ia-22738-2023.doc

that he had independently developed the concept of Dream Girl 2 and that Defendant No.4 subsequently approached him for making a movie out of it, especially when Defendant No.1 holds all rights in respect of the Defendants' Film.

22. Mr. Kapadia has submitted that it is surprising to see that Defendant No.5, who according to Defendant No.1 was further appointed by Defendant No.4 for developing the Defendants' Film based on concept of Defendant No.1, could have independently developed the said concept and claim to have solely and exclusively authored an original literary work of which the synopsis titled "DREAM GIRL 2". He has submitted that this itself is self-destructive and indicative of the fact that Defendant No.5 was subsequently introduced only to aver suspicion away from Defendant No.1 and Defendant No.4 who had access and knowledge of Plaintiff's original literary work.

23. Mr. Kapadia has submitted that the Plaintiff's case that Defendant No.5 was introduced by Defendant No.4 merely as a scapegoat to show that as Plaintiff had no nexus with Defendant No.5 who claims to have solely and exclusively authored an original

literary work of which the synopsis titled “DREAM GIRL 2”. He has submitted that the active collusion between Defendants is thus established from the above act.

24. Mr. Kapadia has submitted that going by the Defendants own plea, there is no proper and definitive author of the concept and script of the infringed film. This infact supports the case of the Plaintiff that Defendants have used Plaintiff’s work as a springboard to prepare the infringed film.

25. Mr. Kapadia has submitted that the test to determine infringement is well settled in several judgments of this Court. The test to determine infringement is to assess the rival works as a whole, and not to dissect individual aspects of the works which may be dissimilar. He has submitted that the rival works establish that there is material similarity between the rival works and that the Defendants have, in making the film DREAM GIRL 2, infringed the Plaintiff’s copyright. He has relied upon annexure ‘A’ to the Written Submissions which is a detailed table which compares the respective works and he has submitted that this shows that the Defendant’s Film infringes the Plaintiffs copyright.

ia-22738-2023.doc

26. Mr. Kapadia has submitted that the Defendant Nos.1 and 5 have submitted that no case is made out by the Plaintiff to demonstrate the originality of the works. He has submitted that the Defendant Nos.1 and 5 incorrectly categorize the Plaintiff's case as claiming monopoly on the idea of gender swap. He has submitted that this is not the case. On the contrary, the Defendants failed to demonstrate that their work was independently conceived and developed without substantial reliance on the Plaintiff's script.

27. Mr. Kapadia has submitted that prior to Dream Girl 2, Dream Girl 1 with an entirely different premise was made. He has submitted that the Plaintiff in the present Complaint has not made any allegations that the said movie Dream Girl 1 infringes the Plaintiff's original literary work as the plot of the said movie revolves around the protagonist working as a call center employee who is only disguising his voice as a female call center girl to lure other men. He has submitted that in other words, the expression of the idea in Dream Girl 1 is not alleged to be an infringement.

28. Mr. Kapadia has submitted that no attempt is made to cast a wide net and claim copyright in every gender swap idea

expressed in any form. He has submitted that the Defendants have scene by scene copied the Plaintiff's Work and that is the infringement alleged by the Plaintiff. He has submitted that the Defendants contention that the Plaintiff does not disclose which part of the Plaintiff's Work is confidential and which part is not is incorrect. He has submitted that confidentiality is claimed in the scene-by-scene arrangement of the Plaintiff's Work and the trajectory of the story which is copied by the Defendants.

29. Mr. Kapadia has submitted that Defendant No.4 despite being served and having filed Reply to the above Interim Application has failed to appear before this Court at the time of hearing of the above Application. He has submitted that it is settled law that although a number of submissions may be made in pleadings, the Court is only required to consider those submissions made across the bar. He has in this context placed reliance on ***Daman Singh & Ors. Vs. State of Punjab & Ors.***¹ at Paragraph 13.

30. Mr. Kapadia has submitted that the Plaintiff has provided material to show that he had shared his Original Literary work with the Officers of the Defendant No.1 which is not in dispute. He has

¹ (1985) 2 SCC 670

ia-22738-2023.doc

submitted that Defendant No.1 does not claim to have authored the script and screenplay of the infringing film DREAM GIRL 2. This work was given to Defendant No.4 who in turn gave this work to Defendant No.5. There is not an iota of material to show how the Defendants' work was actually authored. As such, he has submitted that prima facie, it appears that the Defendants have not independently and organically created the script and screenplay of the Defendants' Film and have simply recycled the Plaintiff's copyrighted work with cosmetic changes.

31. Mr. Kapadia has submitted that the Plaintiff has discharged the onus of proving as to how his Original Literary Work was developed and its registration which was much prior to the development of the Infringed film. He has submitted that the Defendants have till date, not discharged the onus as to how the infringed Movie was conceptualized. He has submitted that Defendant No.1 simply states that the infringed Movie is a sequel to their earlier Movie i.e. Dream Girl 2019. However, Defendants have not been able to establish any element of continuity between their 2019 movie and the infringing film. All characters in the infringed film are new and a perusal of the Comparison charts prepared and

annexed to the Rejoinders would reveal this. The commonality existing in the infringed film is so substantial that in the event the said common elements are taken off the infringed Movie cannot stand on its own.

32. Mr. Kapadia has submitted that the Plaintiff sets out in detail the common theme and substantial elements in the infringed movie comparable to the Plaintiff's Original literary Work. He has submitted that thus it can be seen that the Defendants have used the Original Literary Work of the Plaintiff in making of the infringed film as a springboard and profited from the hard work of the Plaintiff without his consent and acknowledgment, which is why the prayers in the present Application have to be allowed and exemplary cost be imposed on the Defendants.

33. Mr. Kapadia has submitted that the cases relied upon by the Defendants in support of their contention that the costs must be awarded in the event the Plaintiff fails to make out a case, are cases where the Plaintiffs insisted on ad-interim hearings despite having approached the Court at the 11th hour. He has submitted that the Defendants in those cases established material suppression of facts

ia-22738-2023.doc

and the Court remarked that the claim being pursued was vague and a 'worthless cause'. These cases relied upon by the Defendants are ***Akashaditya Vs. Ashutosh Gowarika***² and ***Dashrath Rathod Vs. Foxstar***³.

34. Mr. Kapadia has submitted that in the present case, even if this Court finds that no case is made out for grant of injunctive reliefs, there has been no suppression of material facts. The Plaintiff has not insisted on a hearing at the 11th hour, but has in fact awaited its turn after completion of pleadings and after the Defendants' Film has been exploited for over 2 years. He has submitted that it is a matter of trial for the Defendants to establish the organic development of the script. Failure to do so would definitely warrant an adverse inference against the Defendants that they have failed to prove that the impugned Film was originally conceptualized into being. He has submitted that there are marked similarities between the rival works. That the similarities are to be ignored because of the common nature of the premise or the 'scènes – à – faire' doctrine which qualifies as a 'worthless cause' to warrant the imposition of costs as was done in ***Akashaditya (supra)*** and ***Dashrath (supra)***.

² 2016 SCC Online Bom 527

³ Order dated 21st March 2017 passed in NML/693/2017

35. Mr. Kapadia has accordingly submitted that the Interim Application be allowed.

36. Mr. Rashmin Khandekar, learned Counsel appearing for Defendant No.1 has submitted that there can be no question of any *prima facie* case for actionable similarity because the Plaintiff's entire case for copyright infringement (as pleaded and placed) is based on seeking monopoly over matters in which *ex-facie* no copyright subsists to begin with – including *inter alia* common themes, ideas, unoriginal / stock / *scenes a faire* matters, and other aspects directly flowing from such elements which are not protectable either by themselves or taken together. He has submitted that it is clear from the record that the Plaintiff's claim of monopoly is nothing but the very "*idea / concept / theme*" of gender disguise, "*the idea / concept / theme*" of someone in need of money for one reason or another, and "*common / stock / unoriginal / scenes a faire*" elements and matters which directly flow from the above. He has referred to the pleadings at Paragraphs 8, 11 and 14 of the Complaint which he has submitted bears this out.

37. Mr. Khandekar has submitted that the Plaintiff has

ia-22738-2023.doc

claimed in Paragraph 8 of the Plaint “elaborately” captures what the Plaintiff terms as the “salient features” of the Plaintiff’s script. He has submitted that it is clear from the most cursory perusal of the said “*salient features*” identified by the Plaintiff that not a single one of the said features are original or capable of protection under the law of copyright. He has submitted that most of them clearly are mere themes / concepts / ideas.

38. Mr. Khandekar has submitted that the dead giveaway in the Plaintiff’s attempt to monopolise the theme of gender disguise (as well as the contradiction fatal to such a claim) is the fact that Paragraph 8(i)(c) terms gender disguise a “*novel idea*” on the one hand while Paragraph 8(i)(e) uses the phrase “*Mrs. Doubtfire Act*” to describe the male lead dressing up as a woman – a reference to Mrs. Doubtfire, one of the best known prior films (from the year 1993) employing gender disguise as a core theme / idea.

39. Mr. Khandekar has submitted that Paragraph 11 of the Plaint again only speaks of common / unoriginal / stock / *scenes a faire* matters viz. someone being indebted to creditors, gender disguise as a means to solve a problem, a man falling in love with the

male lead when he is in gender disguise as a woman, and instances of the male lead in gender disguise attempting / managing to get out of the situation without getting caught. He has further submitted that Paragraph 14 of the Plaintiff identifies as the “**substance, foundation and kernel**” of the Plaintiff's Script the following: the “***theme involving a struggling boy who lives with his friend and eventually to pay off his debt,***” the male lead disguising himself as a woman to get break in the film industry, a film producer getting mesmerised by his beauty and giving him a break as a leading lady of the film and starting to fall in love with the male lead in gender disguise, and the story of how the struggling boy manages to get out of the situation without being caught. He has submitted that the Plaintiff has stated in no uncertain words that the Defendant's Film “***is substantially similar in this respect to the Plaintiff's original work.***”

40. Mr. Khandekar has submitted that enough and more prior / public domain material pertaining to other films / works exploring the themes of gender disguise and/or financial difficulties has been placed on record. He has submitted that the Plaintiff in the Rejoinder has failed to deal with these prior works.

ia-22738-2023.doc

41. Mr. Khandekar has submitted that it is *ex-facie* clear that nothing of what is claimed to be either “*novel*” or the “*substance, kernel and foundation*” or “*salient features*” of the Plaintiff’s Script is in any way protectable. He has submitted that it is trite law that no copyright subsists in such matters as above. The very framing of the Plaintiff’s case is contrary to settled copyright law. Consequently, any similarities pertain to purely unprotectable matters (being stock / *scenes a faire* / common / known matters and things flowing directly from such matters), and the dissimilarities in the expression of the rival works clearly lead to an unmistakable conclusion that the two works are completely different.

42. Mr. Khandekar has referred to the Cease & Desist Notice dated 4th August 2023 sent prior to filing of the Suit in order to show that what is pleaded in the Plaint was always the Plaintiff’s understanding about what the protectable elements of his work are. He has in particular referred to Paragraphs 8 and 9 of the Cease & Desist Notice issued by the Plaintiff to the Defendant, in which the claim of copyright / originality is framed. He has submitted that it is *ex-facie* clear from the pleadings contained in the Plaint and correspondence addressed by the Plaintiff, even if are taken to be

true, that they grossly fall short of the test to establish infringement of copyright because the entire case is mounted for violation of matters in which no copyright subsists to begin with.

43. Mr. Khandekar has submitted that there is a clear and dishonest attempt in the Plaint to paint a skewed / misleading picture of the rival works. He has submitted that the Plaintiff has mischaracterised / incorrectly described the rival works in an attempt to contrive similarity where there is none. He has submitted that the Defendants' Film is not about a boy who employs gender to pay off various loans as alleged. It is about the male lead wanting to prove himself to his prospective father in law / girlfriend's father, who has given the boy a challenge / ultimatum to earn INR 25 lakhs within 6 months and so prove his worthiness if he wants to marry the latter's daughter. The male lead employs gender disguise to get a job at a dance bar in order to earn money and win the hand of his lover in marriage.

44. Mr. Khandekar has submitted that there is no "**producer**" in the Defendants' Film as falsely alleged, and the setting of the Defendants' Film does not involve the film industry. Such an

ia-22738-2023.doc

imputation has clearly been made in the Plaintiff in an attempt to make the Defendants' Film appear closer in its narrative to the Plaintiff's Script which revolves around a character trying to break into films (something completely absent in the Defendants' Film).

45. Mr. Khandekar has submitted that it is clear from the comparison tables annexed to the Plaintiff that the Plaintiff has undertaken a piecemeal / dissected / misleading comparison of the rival works, contrary to settled law (and often mischaracterising the rival works). He has submitted that not only does no copyright subsist in such matters as asserted, but the entire approach to comparison of the rival works by the Plaintiff is impermissible, as held in a catena of Judgments. He has submitted that this piecemeal / dissected comparison is evident from the table of comparison produced at Exhibit D to the Plaintiff. He has submitted that there is *"One Liner Comparison"* and *"Detailed Comparison"* at Exhibits A and B to the D1 Rejoinder. He has submitted that a "copy paste" skewed / unreliable comparisons are produced and relied upon by the Plaintiff which is prepared by slicing and dicing the works willy-nilly, and using similar phrases or phraseology in the tables to simply make the rival works appear similar (often by

mischaracterising the works entirely). He has submitted that Defendant No. 1 has elaborately responded to / commented upon the Plaintiff's comparison tables, in the tables annexed at Exhibits A and B to the D1 Sur-Rejoinder. He has submitted that not a single one of these individual elements are original, and there isn't so much as a pleading that their "*sequence*" or "*arrangement*" is novel or original.

46. Mr. Khandekar has submitted that the rival works are in fact and in any event completely dissimilar, and the similarities, if any, are in respect of aspects that are entirely unprotectable. He has submitted that the salient features/highlights of the rival works are totally different and distinct and similarities, if any, pertain to unprotectable matters (such as scenes a faire / unoriginal / stock elements, and matters which directly flow from gender disguise and/or financial challenges of some kind as a common theme).

47. Mr. Khandekar has submitted that the Plaintiff's claim is premised on claiming copyright in unprotectable matters such as a common theme / idea / concept of gender disguise and/or financial challenges (and similarities arising out of commonality in such unprotectable elements can never be actionable). He has relied upon

ia-22738-2023.doc

the ratio from the landmark Judgment of the Supreme Court in ***R.G. Anand v. M/s. Delux Films & Ors.***,⁴ and in particular Paragraph 46 in support of this submission.

48. Mr. Khandekar has also relied upon the Judgment of this Court in ***Mansoor Haider Vs. Yashraj V. Yashraj Films Pvt. Ltd. & Ors.***,⁵ at Paragraphs 18 to 30 and 38.

49. Mr. Khandekar has also placed reliance on the Judgment of this Court in ***Shivani Tibrewala Vs. Rajat Mukherjee & Ors.***,⁶ in support of the proposition that ***“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”***, and that the test for substantial similarity requires identifying the ***“substance or kernel which is copied in the Defendant's work”*** and the seeing then if the Defendant's work can stand / remains in spite of such deletion. He has submitted that the Court has also eschewed the Plaintiff's attempt to ***“to dissect the rival works into fragments of unprotectable elements.”*** He has in particular placed reliance on Paragraphs 21, 23, 26 and 28 of the said judgment.

⁴ (1978) 4 SCC 118

⁵ [2014 SCC Online BOM 652]

⁶ AIR 2020 BOM 32

50. Mr. Khandekar to highlight the difference between “*actionable similarity*” and “*mere similarity*” (and to respond to the belated bid in arguments by the Plaintiff to claim that the unprotectable elements “*taken together*” were protectable) has relied upon the Judgment of this Court in ***Gaurav K. Dave Vs. MX Media & Entertainment Private Limited & Ors.***,⁷ at Paragraphs 16, 17, 19 and 20.

51. Mr. Khandekar has also relied upon the Judgment of this Court in the case of ***Amit R. Kalyanaraman Vs. Gurfateh Films***⁸ in the context of the Plaintiff having sought protection of matters which *directly flow from* the common theme. No actionable similarity was found despite a few commonalities being found to exist between the rival works. This Judgment is particularly relevant in view of the fact that Defendant No. 1 itself has produced the first “*Dream Girl*” movie of which the Defendants’ Film under issue is a sequel / franchise film. He has in particular placed reliance upon Paragraphs 4 to 6 of the said Judgment in this context.

52. Mr. Khandekar has submitted that there is absolutely no

⁷ MANU/MH/23/2022

⁸ 2016 SCC ONLINE BOM 2367

ia-22738-2023.doc

case for copyright infringement made out as the protection sought is in respect of common plots, themes and other unprotectable elements; and on a proper comparison as a whole, the rival works are completely dissimilar. He has submitted an assessment of the case in the Complaint as culled out above (as well as the Defendants' Film, which the Court has had the opportunity to view) on the touchstone of the test laid down by the Supreme Court in *R.G. Anand (supra)*, clearly shows that there is no actionable similarity whatsoever between the two – and the entire claim is based on an attempt to monopolise the theme / idea / concept of gender disguise: [1], the theme / idea / concept of someone facing financial challenges [2], the common / unoriginal idea of someone using situation 1 to solve situation 2. Commonalities, if any, flow in the broadest and most general sense from the choice of the common themes above.

53. Mr. Khandekar has submitted that the rival works are completely dissimilar: the expression / treatment / story / kernel of the Plaintiff's Script on the one hand and the Defendants' Film on the other could not be more different.

54. Mr. Khandekar has submitted that the Plaintiff's case on

‘access’ is extremely tenuous, and access has neither been properly pleaded nor proven through cogent material as required to be done. He has submitted that the Defendant No. 1 has not only denied the said claim, but has accurately and credibly set out the clear and cogent facts pertaining to development of the Defendants’ Film, tracing title back to Defendant No. 5’s synopsis. He has submitted that a clear case of access shown through cogent evidence (and in the face of clear denial of access by the Defendants), the threshold for establishing the substantial similarity is even more stringent, and the Plaintiff has hopelessly failed to meet the same. He has submitted that in any event, it is trite from a review of the law and facts above that the issue of access to the Plaintiff’s Script and/or manner of development of the script for the Defendants’ Film is rendered entirely irrelevant and academic in view of the Plaintiff’s failure to show (1) anything protectable in its own work, and (2) the remotest actionable similarity between the rival works.

55. Mr. Khandekar has submitted that the Plaintiff’s claim must fail in view of (i) the misleading (and in any event dissected / piecemeal manner in which the rival works have been sought to be portrayed in the Plaint and compared in the “*copy-paste*” tables

ia-22738-2023.doc

annexed to the Complaint / Rejoinder *de hors* any context and contrary to settled law; (ii) the manner in which monopolies have been claimed therein in absolutely stock / unoriginal / *scènes à faire* / common matters, and things which directly flow from such elements; (iii) the manner in which access has been sought to be imputed without a shred of clear / cogent evidence; and (iv) in any event the total failure to show any actionable similarity when the rival works are compared as a whole. He has submitted on the strength of the above it is clear that no case for copyright infringement is made out in the present case.

56. Mr. Khandekar has submitted that the Plaintiff being fully aware of the far-fetched nature of its claim for copyright infringement, proceeded to claim breach of confidence as something of a fall back. He has submitted that as is evident from the following, the case for breach of confidence is even more hopelessly without merit in the present case.

57. Mr. Khandekar has submitted that it is settled law that in order to even maintain an action for breach of confidence, the “*confidential information*” must be identified “*precisely and*

accurately” in the Plaintiff. He has submitted that the Plaintiff’s failure to do so is absolutely fatal.

58. Mr. Khandekar has submitted that the Plaintiff’s claim for breach of confidence on the basis of the “*springboard*” / “*germ of the idea*” doctrine is based on an incorrect and incomplete reading of the Judgment of the Ld. Single Judge of this Court (Hon’ble Former Justice S C Gupte) in the *Beyond Dreams* case. He has drawn reference to Paragraphs 8, 9, and 11 of the *Beyond Dreams* Judgment, emphasizing that there are three key elements for maintaining / sustaining a confidentiality claim: first, showing that the information is confidential; second, that it was imparted in circumstances of confidentiality; and third, unauthorised use by the defendant.

59. Mr. Khandekar has submitted that this Court in *Beyond Dreams* then goes on to identify / sub-divide the requirements which must mandatorily be satisfied for the above to be met in a given case. It is in this context that the Court lays down the following two mandatory requirements that must be satisfied in order to maintain (let alone sustain) a claim for breach of confidence: “*The first is*

ia-22738-2023.doc

identification of the confidential information itself. For without identification, it will not be possible to hold the information to be confidential. Secondly, the information shared must be original and not be in public domain.”.

60. Mr. Khandekar has submitted that the Plaintiff has failed to identify its confidential information in the Complaint in the manner required by law. This, coupled with the fact that the rival works are different, renders the issue of access / handing over and /or unauthorized use entirely irrelevant and academic (even though, as noted above, the same is denied).

61. Mr. Khandekar has placed reliance upon the case of ***Tarun Wadhwa v. Saregama India Ltd. & Anr.***⁹ where another Ld. Single Judge of this Court (Hon’ble Former Justice Patel) has built on the *Beyond Dreams* ratio in the specific context of quality of pleadings and the requirement to identify confidential information in Complaint “*precisely and accurately*”. After taking stock of the pleadings in the Complaint in that case, this Court proceeded to apply the *Beyond Dreams* test, to find that a Complaint in a claim of confidence which either vaguely identifies what is sought to be protected, or which

9 2021 SCC OnLine Bom 13993

entirely fails to do so, must result in a rejection of reliefs. This Court held that this is particularly so when the Plaintiff's work / material admittedly includes common / public domain / unprotectable matters as well. He has placed reliance upon paragraphs 14, 15, 20, 21, 25, 27, 28, 35, 37, 40 to 44 of the said judgment.

62. Mr. Khandekar has submitted that the present case falls in the teeth of all the vices expressly prohibited by the *Beyond Dreams* test as elaborated by **Tarun Wadhwa (supra)**, and fails to satisfy the most fundamental requirement for maintaining / sustaining a case for breach of confidence.

63. Mr. Khandekar has submitted that all elements of an action for breach of confidence must be shown to be satisfied. It is not enough for only one or some of them to be pleaded or shown. He has submitted that in the present case, (i) Plaintiff has failed to identify its confidential information with “**precision and accuracy**” in the Plaint; and (ii) has failed to show any actionable similarity / misuse of confidential information in the Defendants' Film. He has submitted that the Plaintiff therefore *prima facie* has no chance of succeeding in a breach of confidence action on such a Plaint.

ia-22738-2023.doc

64. Mr. Khandekar has submitted that the fact that the Plaintiff is lacking in the most fundamental aspects of the claim sought to be agitated; (ii) the fact that the Plaintiff has persisted with its action despite clear and stark dissimilarity between the rival works even after having had a chance to view the Defendants' Film after its release; (iii) the fact that the matter has thereafter naturally consumed significant time and effort / expenses from the Defendants, given that multiple rounds of pleadings were filed; (iv) given the fact that the matter was argued over multiple sessions consuming the valuable time of the Court as well as causing Defendants to spend on counsel fees; and (v) given the regime of costs applicable to Commercial Suits, the present case is a fit one for grant of costs in favor of Defendant No. 1.

65. Mr. Khandekar has in support of his submission relied upon the judgment of this Court in *Dashrath B. Rathod v. Fox Star Studios India Pvt. Ltd. & Ors.*¹⁰ at paragraphs 32 to 37.

66. Mr. Khandekar has submitted that it is clear that from the conduct of the parties in the context of suppression etc. in that case was only one among several factors which weighed with the

¹⁰ (2018) 1 Mh.LJ. 474

Court while granting an order of costs; the remaining factors (being the frivolous nature of the claim, the total failure to make out any case, the consuming of the Court's time and parties' expenses despite having viewed the starkly different works, the scheme of the Commercial Courts Act etc.) apply with full force to the present case.

67. Mr. Khandekar has also placed reliance upon the judgment of this Court in the case of ***Akashaditya Harishchandra Lama v. Ashutosh Gowarikar & Ors.***¹¹ at paragraph 71.

68. Mr. Khandekar has submitted that the Interim Application is accordingly, liable to be dismissed with an order of substantial costs being imposed on the Plaintiff.

69. Mr. Anand Mohan the learned Counsel for the Defendant No. 5 has submitted that the Defendant No. 5 is an established writer and has authored numerous scripts (including for films having gender disguise as a central theme) in the past. He has submitted that the Defendant No. 5 is the sole author of the original literary work "*Dream Girl 2*", which synopsis was registered on 15th July 2021 by Defendant No. 5 with the Screenwriters Association ("SWA")

¹¹ 2016 SCC OnLine Bom 5207

ia-22738-2023.doc

(under Certificate of Registration No. 110214286243). He has submitted that the Plaintiff has never pleaded or argued that the kernel / core-story of the Defendants' Film is different from Defendant No. 5's original synopsis; which was further developed by Defendant No. 5 (with others) into the story / script / screenplay for the Defendants' Film pursuant to a Writer Agreement dated 23rd July 2021. He has submitted that all this material is placed on record.

70. Mr. Mohan has submitted that there is no allegation in the Plaint that the Plaintiff's Script / work was ever shared with Defendant No. 5. Even during arguments and the submissions tendered, the Plaintiff only claims "*script shared in confidence with Defendant No. 1 and Defendant No. 4*". He has submitted that in the Plaintiff's rejoinder, a case is belatedly raised of Defendant No. 5 having "*indirect access*" through Defendant No. 1 / Defendant No. 4, which is an afterthought based on mere *ipse dixit* / conjectures / surmises, and Defendant No. 5 has categorically denied such allegations in its Affidavits.

71. Mr. Mohan has supported the submission of Mr. Khandekar viz. that the Plaintiff bases its own pleadings and

arguments has failed to raise even a *prima facie* case of actionable similarity between the Plaintiff's script and the Defendants' film (whether under copyright or under law of confidence).

72. Mr. Mohan has submitted that the Plaintiff's case for copyright infringement is *ex-facie* dishonest, inconsistent, and contrary to law. He has submitted that the Plaintiff has not identified anything protectable / original in the Plaintiff's Script. He has submitted that the Plaintiff has tried to mislead the Court by dishonestly cloaking admittedly unoriginal / public domain elements in the Plaintiff's Script. He has submitted that no interim reliefs can be granted on such a Complaint, and the Interim Application is liable to be dismissed on this ground alone.

73. Mr. Mohan has supported the submission of Mr. Khandekar that the Plaintiff's entire claim is premised on asserting a monopoly on the theme of gender disguise *per se* and has sought to make out a false and misleading case with respect to the "Mrs. Doubtfire Act" reference in its pleadings. He has referred to the pleadings in that context. He has submitted that another clear instance of the Plaintiff's case being dishonest, dubious and

ia-22738-2023.doc

inconsistent pertains to the conveniently shifting the story of genesis / creation of the Plaintiff's own work.

74. Mr. Mohan has referred to the Plaintiff's Rejoinder to the Reply of Defendant No. 5 where the Plaintiff for the very first time states that it had come up with a new timeline / story about how the Plaintiff's Script was in fact created in "2004" and has claimed that the idea, concept and theme was originated to the Plaintiff first in 2004 when his friend Mr. Upendra Sahai narrated an incident whereby Miss Australia contest of 1997 was won by a contestant who was actually a male dressed up and styled for the said show. He has submitted that this claim is *ex facie* an afterthought and cooked-up, as evident from the fact that the story of a "2004" creation / origin has never been pleaded anywhere in the Plaint or in any pre-suit correspondence. He has submitted that nothing prior to 2007 is ever pleaded in this regard. He has submitted that the entirely new story of a 2004 creation is contrary to all contemporaneous material / pleadings on record and the Plaintiff's shifting stances as regards its own work betray the absolute lack of credibility / honesty with regard to the Plaintiff's pleadings / case. He has referred to the Sur-Rejoinder of Defendant No. 5 where Defendant No. 5 has pointed out

the falsity in the Plaintiff's 2004 story, which is apparent from the fact that even the claim as to the Miss Australia contest of 1997 having been won by a man dressed as a woman is incorrect, false and cooked up. Defendant No. 5 has annexed material to show that the 1997 Miss Australia pageant was won by a woman / female model named Laura Csotán and there was no incident whatsoever involving gender disguise at the said pageant event.

75. Mr. Mohan has submitted that a review of the Plaintiff's script as well as the Plaintiff's table in the Rejoinder reveals that the characters are *ex-facie* unoriginal, lightly sketched and lacking in any description. He has submitted that relevant test has been succinctly formulated by the US Court of Appeal for the 9th Circuit in the decision of ***DC Comics Vs. Mark Towle***¹², at pages 12, 14 and 15. He has submitted that the character in the Plaintiff's Script do not even remotely satisfy the test laid down by the US Court of Appeal since they are "*stock characters*", which are not "*especially distinctive*", contain no "*unique elements of expression*", and are not "*sufficiently delineated*" and do not display any physical or conceptual traits / persistent identifiable attributes.

¹² 989 F. Supp. 2d 948 (C.D. Cal. 2013)

ia-22738-2023.doc

76. Mr. Mohan has submitted that there is no actionable similarity between the rival works, when tested in accordance with settled law, and that the two works are completely / materially different. He has placed reliance upon the judgment of the Delhi High Court in **BIKRAMJEET SINGH BHULLAR V. YASH RAJ FILMS PVT. LTD. & ORS.**¹³, where the Court found no case for infringement in respect of the impugned film “*Shamshera*”. He has submitted that the similarity of that case with the present one is that case was also a script Vs. film copyright infringement case. The Delhi High Court took special note of / applied the principles laid down in the Supreme Court’s decision in *R.G. Anand Vs Deluxe* (supra), as well as this Court’s judgments in *Mansoor Haider* (supra) and *Shivani Tibrewala* (supra) relied upon by Defendant No. 1. The injunction had been refused despite the Plaintiff in that case being on a relatively far stronger footing than the present case because (a) access to the Plaintiff’s work was admittedly / undisputedly in that case, and a large number of peculiar similarities were shown to exist between the rival works in a copy-paste table similar to the present case. He has in particular placed reliance upon paragraphs 36, 49 and 50 of the said judgment.

¹³ 2023 SCC OnLine Del 8212

77. Mr. Mohan has submitted that when the rival works are compared / tested in line with these settled principles, there is no question of the Plaintiff succeeding in its claim for copyright infringement.

78. Mr. Mohan has supported the submission of Mr. Khandekar with regard to the case of access to the Plaintiff's Script being based on *ipse dixit*, surmises and conjectures and in any event entirely irrelevant. He has submitted that in the context of Defendant No. 5, it is only in the Rejoinder for the first time, as an afterthought, that the Plaintiff raised a new story of "*indirect access*" by Defendant No. 5 through Defendant No. 1 / Defendant No. 4. He has submitted that Defendant No. 5 had entered into a Writer's Agreement with Defendant No. 4 (which was after having authored and registered the synopsis of Dream Girl 2, reproduced at Annex. 1 to the Written Submissions). He has submitted that even taking the Plaintiff's claim at its highest – the Plaintiff itself claims to have only shared the synopsis with Defendant No. 1 / Defendant No. 4 in writing, and the Plaintiff claims he "*narrated the entire script and concept of the Plaintiff's original work to Defendant No. 4 over a phone call*". He has submitted that not only is this claim entirely devoid of any

ia-22738-2023.doc

particulars / credibility, but even at its highest, cannot conceivably make out a case for access by Defendant No. 5. He has submitted that the claim of access is based on nothing but *ipse dixit*, surmises and conjectures, which is contrary to the law of copyright which demands cogent evidence and precision in such matters. He has submitted that the threshold for establishing infringement / actionable similarity is even higher when there is no access, which is not met. He has accordingly, submitted that there is no question of copyright infringement in the present case.

79. Mr. Mohan has supported the submission of Mr. Khandekar on there being no case of breach of confidence by placing reliance on the Beyond Dreams test.

80. Mr. Mohan has submitted that the Plaintiff fails the Beyond Dreams test as applied / explained by this Court in the case of *Inception Media LLP Vs. Star India Pvt. Ltd. & Anr.*¹⁴ He has submitted that the Beyond Dreams test was explained in the above decision of the learned Single Judge of this Court (Hon'ble Former Justice G.S. Patel). He has in particular placed reliance upon paragraphs 25, 35, 39, 40 and 42 of the said decision. He has

¹⁴ 2015 SCC OnLine Bom 5046

submitted that it is clear from the *Beyond Dreams / Inception Media* test for breach of confidence which is in fact sequential and cumulative. He has submitted that all the ingredients of the *Beyond Dreams / Inception Media* test must be satisfied in order to sustain a claim for breach of confidence. He has submitted that failure to satisfy even one ingredient under the *Beyond Dreams / Inception Media* test is fatal.

81. Mr. Mohan has submitted that the Plaintiff has admittedly pleaded nothing other than an alleged circumstance of confidentiality in which the Plaintiff's Script was handed over to Defendant No. 1 / Defendant No. 4, which by itself can take the case nowhere without the other ingredients being shown.

82. Mr. Mohan has submitted that the Plaintiff's Script was admittedly never shared with Defendant No. 5, and there is no case of access at all in the Plaint. He has submitted that allegations of "indirect access" belatedly raised in rejoinder are based on surmises / conjectures / *ipse dixit*. He has submitted that in fact, there are fatal defects in the pleadings which rendered the whole case of access dubious / unreliable.

ia-22738-2023.doc

83. Mr. Mohan has submitted that there is no question of grant of any interim reliefs for either copyright infringement or breach of confidence, and the Interim Application is liable to be rejected with costs, particularly in view of (i) consuming of the Court's time / Defendants' costs over numerous hearings on a defective Complaint / case; and (ii) the Plaintiff's deliberate / unexplained failure to amend the Complaint despite having specifically obtained an order to do so *vide* Order dated 22nd August 2023.

84. Having considered the rival submissions, I am of the prima facie view that the Plaintiff by alleging copyright infringement of the Plaintiff's script by the Defendants' Film is seeking a monopoly over matters in which *ex-facie* no copyright subsists to begin with. This includes common themes, ideas, unoriginal / stock / scenes a faire matters, and other aspects directly flowing from such elements which are not protectable either by themselves or taken together.

85. Upon a perusal of the Complaint, in particular Paragraphs 8, 11 and 14, which are relied upon by Defendant No.1, the Plaintiff has claimed monopoly in the aforementioned matters which are unprotectable. The Plaintiff has referred to "***salient features***" of the

Plaintiff's Script in the said paragraphs. However, upon perusal of the same, I find that these features are neither original nor capable of protection under the law of copyright. These are mere themes / concepts / ideas.

86. The Plaintiff has attempted to monopolise the theme of gender disguise and though on the one hand in Paragraph 8(i)(c) has termed gender disguise a “novel idea”, on the other hand in Paragraph 8(i)(e) has used the phrase “**Mrs. Doubtfire Act**” to describe the male lead in the Plaintiffs’ script dressing up as a woman. This is nothing but a reference to the film “Mrs. Doubtfire”, a hollywood film and one of the best known prior films (from the year 1993) employing gender disguise as a core theme / idea. Further, from Paragraphs 11 and 14 of the Plaint, the Plaintiff has only spoken of common theme viz. someone indebted to creditors, gender disguise as a means to solve a problem, a man falling in love with the male lead when he in a gender disguise as a woman, and instances of the male lead in gender disguise attempting / managing to set out of a situation without being caught. The Plaintiff having so referred to these common themes has stated in no uncertain words that the Defendant’s Film “*is substantially similar in this respect to*

ia-22738-2023.doc

the Plaintiff's original work." The Plaintiff's script which is based on such common themes cannot be considered to be either "*novel*" or the "*substance, kernel and foundation*" or "*salient features*" which are in any way protectable. The Plaintiff's claim is further elaborated in its Cease & Desist Notice dated 4th August 2023 where the Plaintiffs have once again re-iterated their script which is neither original nor capable of protection under the law of copyright.

87. I am of the considered view that from comparison tables annexed to the Plaint, the Plaintiff has undertaken a piecemeal / dissected / misleading comparison of the rival works. Copyright does not subsist in such matters as asserted, and it is settled law that piecemeal / dissected comparison is impermissible. This Court in *Shivani Tibrewala (supra)* relied upon by Defendant No.1 had upon viewing the rival works, rejected the dissected comparison table of the Plaintiff entirely. I have also had the opportunity of viewing the rival works and I find no reason to depart from the view taken by this Court in *Shivani Tibrewala (supra)*, wherein it was held that "*In my view, the comparisons drawn are extremely strained by dissecting the rival 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.”

88. The Judgment of the Supreme Court in ***R.G. Anand (supra)*** as well as of the judgments of this Court in ***Mansoor Haider (supra)***, ***Shivani Tibrewala (supra)***, ***Gaurav K. Dave (supra)*** and ***Amit R. Kalyanaraman (supra)*** relied upon by Defendant No.1 have laid down that copyright cannot be claimed in unprotectable matters such as a common theme / ideas / concept of gender disguise and/or financial challenges. In ***R.G. Anand (supra)*** at Paragraph 46, the Supreme Court has held as under:

“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 copyright 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

ia-22738-2023.doc

*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 seeing 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, a 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”)

89. Considering the settled law as laid down by the aforementioned Judgments, I prima facie find that the Plaintiff has failed to make out a case for copyright protection of its script, particularly since protection is being sought of common plots, themes and other unprotectable elements apart from the fact that on a comparison of the Plaintiff's script with the Defendants' Film, the rival works are dissimilar.

90. I have had the opportunity of viewing the Defendant's Film and perusing the Plaintiff's script. I find that there are differences / dissimilarities between the Plaintiff's script and Defendants' film. These differences / dissimilarities have also been set out in the written submissions of Defendant No.1 at Pages 30 to 32 which are reproduced as under:

- i. The Plaintiff's Script, being set around Bollywood, takes place in Mumbai – a large metro city. The Defendants' Film plays out in the small town of Mathura.

ia-22738-2023.doc

ii. The Plaintiff's Script is based mainly around film sets / shoot locations / film functions and other places connected with films / Bollywood. The Defendants' Film has nothing to do with the film industry / film sets, and takes place in the residences of various characters, the bar where the protagonist takes up a job etc.

iii. The primary motivation of the protagonist driving the plot in the Plaintiff's Script is to get a break in Bollywood and achieve success as an actor. The primary motivation of the protagonist driving the plot of the Defendants' Film is his desire to marry his girlfriend – in order to do which he needs to meet the condition / ultimatum placed by his prospective father in law of earning INR 25 lakhs in 6 months.

iv. In the Defendants' Film, there is also an important sub-plot involving the protagonist's friend which has no parallel in the Plaintiff's Script *viz.* the protagonist's friend (smiley) who loves a girl (Sakeena) who he is unable to marry because her brother Shahrukh is in depression due to a break up; and their marriage wouldn't be possible till Shahrukh gets married. The protagonist's friend introduces the protagonist as a psychiatrist capable of curing Shahrukh, so that he could get married to Sakeena sooner. Shahrukh's father and grandfather believe that if the protagonist (Pooja), who they believe is a psychiatrist marries Shahrukh, he will

be cured. Shahrukh's grandfather lures the protagonist to marry Shahrukh for money. The protagonist (Pooja) marries Shahrukh. Simultaneously multiple characters fall in love with the protagonist (Pooja / Karam) and confusion ensues.

v. The rival climaxes could not be more different. In the Plaintiff's Script, the lead wins the award for male as well as female actor at a film award show, and reveals his identity. In the Defendants' Film, in keeping with the romantic angle, the gender disguise is revealed at the female lead's marriage ceremony / wedding to another boy – when the male protagonist comes clean and explains his motivations / reasons, and the female lead asks the male lead to marry her because she realises his actions were motivated by love for her.

Thus, I prima facie find that the rival works are entirely different and distinct.

91. The Plaintiff has also alleged breach of confidence. In that context, I find much merit in the submission on behalf of Defendant Nos.1 and 5 that the Plaintiff has fallen back on its claim for breach of confidence being aware of the far-fetched nature of its claim for copyright infringement. I further find much merit in the submission of Defenant Nos. 1 and 5 that the test for determining

ia-22738-2023.doc

breach of confidence has been laid down in the *Beyond Dreams* case i.e. The Judgment of learned Single Judge of this Court (Hon'ble Former Justice S.C. Gupte) read with the judgments of this Court in *Tarun Wadhwa (Supra)* and *Inception Media LLP (Supra)* following the *Beyond Dreams* case. The test laid down therein is that there are three key elements for maintaining / sustaining a confidentiality claim: (1) showing that the information is confidential; (2) that it was imparted in circumstances of confidentiality; and (3) unauthorised use by the Defendant. All three elements are required to be satisfied.

92. In the preset case, I find that the Plaintiff has failed to satisfy any of these elements. Firstly, there is no identification of the confidential information with “precision and accuracy” and without such identification, it will not be possible to hold the information to be confidential. Secondly, the Plaintiff has not been able to show that the information shared is original and not in public domain. Thirdly, the Plaintiff has failed to show any actionable similarity / misuse of confidential information in the Defendants Film.

93. In view thereof, the elements as per the aforementioned

Judgments, the Plaintiff's claim for breach of confidence cannot be sustained.

94. The Plaintiff's contention that the prior Suit filed by Defendant No.5 has a bearing on the present Suit is an entirely misconceived contention. The claim in the Suit filed by Defendant No.5 against Defendant No.1 and Defendant No.4 had nothing to do with the contents of the Defendants' film. The Suit was with regard to the credit which had been given to Defendant No.4 and which Defendant No.5 had claimed that he was entitled to be given the credit. The Suit culminated into Consent Terms being filed and a decree passed in terms thereof, the basis of which is in the manner of displaying credits agreed to between the parties. The Plaintiff despite having knowledge that the said Suit has nothing to do with the present Suit has relied upon the said Suit in yet another manner to seek a claim on copyright infringement or breach of confidence when it has none. Hence, there is no merit in such contention of the Plaintiff.

95. I find much merit in the submissions of Defendant Nos.1 and 5 that this being a Commercial Suit, the Commercial Courts Act

ia-22738-2023.doc

applies and costs follow the event. The Plaintiff has failed in his pleading to make out the fundamental aspects of the claim. Further, the Plaintiff has persisted with his action despite clear and stark dissimilarity between the rival works even after having had a chance to view the Defendants' Film after its release. Significant time has also been expended in this hearing given that multiple rounds of pleadings were filed and arguments over multiple sessions. Hence, costs are required to be imposed on the Plaintiff in favour of Defendant Nos. 1 and 5 who are the contesting parties who have had to spend on legal fees.

96. The Judgments relied upon by Mr. Khandekar and Mr. Mohan in support of their arguments on costs are apposite. It has been held that this Court's scarce resources cannot be allowed to be squandered to indulge in fanciful claims. The conduct of the parties is relevant, including the frivolous nature of the claim. Further, the cap on compensatory costs has been removed. Accordingly, I find this to be a fit case to award costs to Defendant Nos. 1 and 5 which shall be borne by the Plaintiff.

97. In that view of the matter, the present Interim

ia-22738-2023.doc

Application is dismissed with costs awarded to Defendant Nos. 1 and 5 in a sum of Rs.2 Lakh (Rs.1 lakh each) which shall be paid by the Plaintiff within a period of four weeks from the date of uploading of this order.

[R.I. CHAGLA J.]