

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

NOTICE OF MOTION NO. 2238 OF 2019
IN
COMMERCIAL IP SUIT NO. 1193 OF 2019

Shamoil Ahmad Khan ...Plaintiff
vs.
Falguni Shah & Ors. ...Defendants

Mr.Rashmin Khandekar with Ms.Kavita Mundkur and Mr. Hemant Thadani
i/b. Krishna and Saurastri Associates LLP for Plaintiff/Applicant.

Mr.Ashish Kamat with Mr.Ravindra Suryawanshi i/b. Ravi Suryawanshi &
Associates for Defendants.

CORAM : S.C. GUPTE, J.

DATE : 26 MAY 2020

JUDGMENT :

This notice of motion, taken out in a copyright infringement suit, seeks a temporary injunction against the Defendants from telecasting or exhibiting their web series by the name of “Singardaan” or publishing or making an adaptation of the Plaintiff’s story bearing the same title, i.e. Singardaan. The Plaintiff also seeks a temporary injunction restraining the Defendants from using the title “Singardaan”, or any other identical or deceptively similar title, for the Defendants’ web series so as to pass off as, and for that of, the Plaintiff’s story titled “Singardaan”.

2 The Plaintiff is a writer, known for his literary work in Urdu and Hindi Languages, having to his credit popular novels and collection of short stories. One of the short stories in his collection goes by the name of “Singardaan” written in Urdu. The story was first published in 1993 in a

literary magazine called “Zahne-Jadid”, published from New Delhi and later, in 1996, in the Plaintiff’s own collection of short stories in Urdu titled “Singardaan” published by Mayar Publication, New Delhi. The story was also translated in Hindi by the Plaintiff himself and published in a collection of Hindi short stories by the same name (i.e Singardaan) by Ayan Publications, New Delhi in 1994. The story has since been re-published in literary magazines, books, etc. and translated in languages such as English, Marathi and Punjabi from time to time. It has also been published on various websites. The story was adapted in the form of a play and staged, and is claimed to have received rave reviews. The Plaintiff’s case is that the Defendants have produced a web series under an identical title, i.e. Singardaan, which has 6 episodes of a total duration of about 1 hour and 54 minutes. The series has been launched or released on an App by the name of “Ullu” and is available on the web platform of YouTube among others. It is the grievance of the Plaintiff that in their own web series the Defendants have not only copied the Plaintiff’s title, Singardaan, but the entire plot, narrative and characters of his story by the same name. The Plaintiff, accordingly, seeks damages as well as injunctive reliefs in the suit and prays for temporary reliefs in the present notice of motion in terms of the perpetual injunctions prayed for in the suit.

3 The motion is opposed by the Defendants, who deny that their web series is a copy or an adaptation of the Plaintiff’s story “Singardaan”. The Defendants submit that though the titles are the same, the Defendants’ work is an entirely original story and creation; the premise, the story line as well as the plot in the two works are materially different.

4 The motion involves two aspects : (i) use of the name

“Singardaan” for the Defendants’ web series; and (ii) copyright infringement by the Defendants’ web series of the Plaintiff’s story by the same name. So far as the use of the name is concerned, as the Supreme Court has held in **Krishika Lulla vs. Shyam Vithalrao Devkatta**¹, no copyright subsists in the title of a literary work *per se* and no case of copyright infringement can be urged against any other user of that title; there may, though, be a case of passing off. The Plaintiff’s case here is indeed of passing off. It is, however, important to note that for passing off, it is not sufficient for a plaintiff to merely show that his defendant has used an identical or a deceptively similar name or title; he has to further show that the title or name of his own work has acquired such reputation (as the name of a literary work) that the reading public are likely to identify it with the Plaintiff alone and none else, and, thus, the defendant’s use would be likely to result into passing off of the title or name as and for that of the Plaintiff’s work by the same name. In most of the cases that would be a matter of proof to be tendered at the trial, though for extremely well-known literary works it may well be possible to grant such injunctive relief simply on affidavits at the interim stage. If Shakespeare, for example, were to claim that a rival dramatist, simply by adopting the name “Merchant of Venice” or “Mid Summer Night’s Dream”, is passing off his (i.e the rival dramatist’s) play as his (i.e. Shakespeare’s) work, conceivably an interim injunction may follow. For the Plaintiff in the present suit, that appears to be too high a bar to satisfy at this interim stage. Any such case on his part must await a full-fledged trial. Only upon adequate proof being tendered of the high reputation for sustaining an injunction against use of the very name or title as an instance of passing off, the Plaintiff may secure such relief.

1 MANU/SC/1774/2015

5 What is really to be considered here is the second aspect, namely, the case of copyright infringement of the Plaintiff's story "Singardaan" in the Defendants' web series by the same name. The highlights of the Plaintiff's story, in his own words (para 13 of the plaint), are the following :

(i) The story of the Plaintiff is narrated in the backdrop of riots.

(ii) The Plaintiff's story is centered around the acquisition of a courtesan's and/or prostitute's ancestral "Singardaan" i.e. 'dressing table and/or make-up box', by the protagonist and the adverse effect and/or influence of the presence of the Singardaan on his wife and daughters and negative transformation in their appearance, behaviour and demeanor. The unique feature of this off-beat story is that a lifeless object such as 'Singardaan' influences human lives by virtue of the various human vibrations and vibes absorbed by it over several generations of its use.

(iii) The main characters of the story are the protagonist, Brijmohan, a Hindu, and a Muslim prostitute, Naseem Jaan whose ancestral 'Singardaan' is stolen by the protagonist during riots. Other key characters of the Plaintiff's story are the protagonist's wife and his three daughters.

(iv) In the Plaintiff's story, prostitutes, among others, are targeted during the riots, and in the pandemonium, the rioters enter the prostitute's brothel.

(v) The protagonist and his companions barge into the quarters of prostitute Naseem Jaan and grab whatever they can. Brijmohan, the protagonist successfully steals and/or forcibly acquires the ancestral singardaan of the prostitute Naseem Jaan in her presence, despite her protest and takes it home to his wife and daughters.

(vi) The protagonist's wife and daughters take an instant liking to the heirloom and/or ancestral singardaan of the prostitute and start using it.

(vii) The protagonist silently witnesses a visible change and/or transformation in the appearance, behavior and body language of his wife and daughters who begin to look and behave like prostitutes by virtue of using Naseem Jaan's ancestral singardaan and/or presence thereof in his house. At times, the protagonist's wife and daughters, even in his presence, indulge in seductive dressing, make-up, appearance and behavior resembling that of a prostitute, which frightens him and reminds him of the wrong he did to Naseem Jaan by stealing her heirloom and convinces him of her influence on his family."

6 The highlights of the Defendants' work, in their own words (para 4 of the reply of Defendant Nos.3 and 4), are as follows :

i. The Said Web-Series begins with displaying a brothel wherein a new young prostitute named Shabnam (the female protagonist), enters the brothel. The head of the brothel allots Shabnam, her own room which was kept vacant for many years after her husband had died.

ii. Shabnam was then introduced her to a young boy named 'Chotu', who does all the work of getting groceries and other things required by prostitutes.

iii. Chotu used to go to a grocery store owned by one Mr.Gupta (the male protagonist). Mr.Gupta is a very straight forward and God fearing man, who would never touch anything associated with the brothel.

iv. Chotu comes to the grocery shop with a list of groceries required for Shabnam. Mr.Gupta asks his servant 'Darshan' to deliver those goods as per the list to the brothel.

v. However, Darshan first goes to deliver the grocery of one Mr.Khan, at which time Mr.Gupta hears on the radio that the area in which Darshan had gone to, has been curfewed by the Police. He therefore calls up Mr.Khan to ask whether Darshan is there or not. When Mr.Khan confirms Darshan is there, Mr.Gupta asks Darshan to stay put there till the curfew is over.

vi. Mr.Gupta then suddenly realizes that, the grocery of Shabnam was pending for delivery. Mr.Gupta reluctantly goes by himself for delivery of the groceries to Shabnam. Mr.Gupta goes to the brothel and waits outside Shabnam's room and delivers the goods but does not enter her room. The delivery of goods was then followed by a brief conversation between the two and Mr.Gupta is impressed by Shabnam's personality, intellect and beauty. He then comes back to the shop but could not stop thinking about Shabnam.

vii. Mr.Gupta had a wife and one daughter and he had ensured that, both of them are respectable and follow good values, tradition and culture and do all the religious rituals at home.

viii. Mr.Gupta could not stop thinking about Shabnam all the time and he starts visiting the brothel to meet Shabnam and one day both of them express their love for each other and become intimate.

ix. Mr.Gupta's wife notices his disturbance and asks him whether he is alright. Mr.Gupta does not reply to her properly and continues his affair with Shabnam.

x. One day, while he was in the shop, one of his cop friends, informs him that the riots have spread and it may start any time in the area of his shop and residence. Mr.Gupta accordingly shuts his shop and goes home. After he arrives at home, he overhears two men talking outside his house's window that the rioters had attached the brothel as well. After hearing this conversation, Mr.Gupta gets disturbed and was constantly thinking about the well-being of Shabnam due to the riots and decides to go to the brothel. However, his wife stops him from stepping out of the house but he tells her that he is going to check the shop. His wife still tries to stop him but he doesn't listen to her.

xi. Mr.Gupta then reaches the brothel and as he enters he is shocked to see everyone lying in a pool of blood after which he rushes straight to Shabnam's room. Mr.Gupta is shocked to see Shabnam lying in a pool of blood but alive. He goes near her and takes her head on his lap and offers to take her to the hospital. However, she refuses saying that she does not have much time left. Before dying, Shabnam tells Mr.Gupta her last wish that the vanity box (singardaan) should be taken and destroyed and she dies

thereafter. Mr.Gupta, considering the vanity box as Shabnam's last memory, does not destroy it and takes it home with him.

xii. From that day onwards, he observes sudden change in the behavior of his wife and daughter. Mr.Gupta's wife, who is otherwise conservatively draped in a saree, starts wearing revealing clothes. Same becomes the case with his daughter. Mr.Gupta observes the sudden boldness in his wife's behavior and one day he and his wife, while they enter the house quarreling on the dressing of his wife, catch their daughter red handed in their kitchen with Darshan in an intimate position. At that very moment, Mr.Gupta is devastated and he suddenly remembers the last conversation he had with Shabnam about burying the vanity box.

xiii. Mr.Gupta then picks up the vanity box and runs out of his home, till he finds a suitable place to bury the vanity box and then buries it. The story ends here."

7 The above quoted highlights of their respective literary or artistic works claimed by the parties are broadly correct and do not admit of much controversy. The question is, on this more or less admitted position, is any *prima facie* case of copyright infringement made out. The Plaintiff, who is, no doubt, the owner of the copyright in the story "Singardaan", would have us believe that the Defendants have, in their web series by the same name, substantially reproduced or adopted his story, including its plot, key elements and characters. The Defendants, on the other hand, claim that save and except the central idea, namely, a man taking away a dressing table, during the course of riots, from a brothel to his home, and its use leading to changes in the behaviour of the womenfolk at home, which idea, by itself, is not entitled to any copyright protection; besides this idea, there is no similarity between the two works of art. It is submitted that depiction of this central idea in the Defendants' web series, scene to scene, situation to situation, in-climax to anti-climax, including the

pathos, texture, treatment, purport and presentation, are materially different from the Plaintiff's story. The Defendants set out an extensive comparative chart of diverse elements in the two works so as to bring out as many as thirty distinctions or dissimilarities between them.

8 Before we assess these rival cases, let us outline the contours of judicial scrutiny at an interlocutory stage, when a copyright infringement case is brought before the court. As Goff J, in the well-known case of **Harman Pictures vs. Osborne**², after noting English authorities on the subject, has observed, the plaintiff in every such case must first establish a strong *prima facie* case for the existence of the right on which he sues, that is to say, the copyright protection he claims. And there, he must at least show that he is likely to succeed. If he does that, however, or if his right is not disputed, then although he must go on to show a *prima case* case of its infringement, yet for that purpose he does not have to show that he is likely to be successful or more likely to be so than the defendant, but only that he has a case which is reasonably capable of succeeding. Though, even after he shows that, the remedy is still discretionary and in exercising that discretion, the court has regard to the twin principles of balance of convenience and irreparable prejudice.

9 The parameters of our scrutiny being thus outlined, let us now focus our attention on whether the Plaintiff in our case has made out a strong *prima facie* case for the existence of his protectable copyright. It is not in dispute that the Plaintiff is the original author of the story "Singardaan", which was published much before the making of the Defendants' web series, such publication being wide and extensive. He

2 (1967) 2 All.E.R. Ch.D. 324

undoubtedly has a copyright in the story. There is no difficulty there. The real question is what is meant by his copyright in the story – does he have a copyright in the plot or the story line or the characters of his story? And what about the central theme or the central idea? That is a much more difficult and complex question, and requires us to examine the content and contours of the well-known idea vs expression dichotomy, which is fundamental to the copyright doctrine formulated by courts.

10 One of the earliest formulations of this dichotomy by English Courts is to be found in the case of **Hollinrake vs. Truswell**³, where Lindley, L.J. expressed it thus :

“ Copyright does not extend to ideas, or schemes, or systems, or methods; it is confined to their expression; and if their expression is not copied the copyright is not infringed.”

This maxim has been often repeated in later copyright cases and finds expression even in the celebrated case of **R.G. Anand vs. Delux Films**⁴ decided by our Supreme Court.

11 As in England and India, even in the US., the courts have recognized this dichotomy as fundamental to the doctrine of copyright. The US Supreme Court in **Mazer vs. stein**⁵ put the matter thus :

“ Unlike a patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea - not the idea itself.”

12 Though general meaning of this dichotomy is theoretically

3 (1894) 3 Ch.420

4 MANU/SC/0256/1978

5 (1954) US SC 36

comprehensible, it is by no means easy to apply the distinction in practice. That is, in a large measure, due to an inherent difficulty in seeing the two as different from each other. Every idea, when communicated, is expressed in words or form; it is impossible to conceive of an idea (i.e. idea which is communicable) without such expression. It is meaningless to talk of an expressionless idea. And yet courts have to distinguish between a mere idea and its expression for practical purposes, that is to say, for determining what is protected by copyright and what is not. The courts have to perform the delicate task of finding out at what point plagiarism ceases to copy an author's ideas and steals the expression of his ideas. Courts have approached this subject in different ways. One of the most satisfactory ways of approaching it has been by applying the notion of "extraction", as I shall presently explain.

13 In a written work of art, such as the story with which we are concerned here, a germ of an idea is developed into a theme and then into a plot and then final story with the help of characters and settings. It is a combination of all these elements which give a body to the work or a substance to it. If one goes on stripping the final work of these various elements, one may finally come to the bare idea or abstraction which no longer enjoys copyright protection. The task before the court is essentially to find out at what point such stripping lays bare the unprotectable idea. This was expressed succinctly in the US case of **Nichols vs. Universal Pictures Corp.**⁶ in the following words :

“Upon any work, and especially upon a play, a great number of patterns of increasing generality fit equally well, as more and more of the incident is left out. The last may perhaps be no

6 45 F.2d 119 (1930)

more than the most general statement of what the play is about, and at times might consist of only its title; but there is a point in this series of abstractions where they are no longer protected, since otherwise the playwright could prevent the use of his “ideas,” to which, apart from their expression, his property is never extended.”

Where to stop or draw a line in this “series of abstractions” is, of course, for the individual court to decide and in doing so, it must perforce impose its own value judgment, by applying its knowledge of a subject matter to a specific expression of that subject. Everything above this line is a matter of expression capable of copyright protection and everything below unprotectable.

14 Let us now apply this process of abstraction to the Plaintiff’s story “Singardaan”. When we strip the story of its embellishments, its description of the mood, the motivations and the tribulations of its characters and their actual actions, we get the plot and the story line. The main characters of the Plaintiff’s story, as we have noted above, are Brijmohan, a Hindu, and Naseem Jaan, a Muslim courtesan or prostitute. The other key characters are Brijmohan’s wife and three daughters. The setting is of a town where riots take place. The protagonist, Brijmohan, and his companions barge into the quarters of Naseem Jaan and grab whatever they can. Brijmohan manages to forcibly take away an ancestral Singardaan (vanity box) of Naseem Jaan. He takes it to his wife and daughters, who take an instant liking to it. Their use of it brings about a visible change or transformation in their appearance, body language and behaviour; they begin to look and behave like prostitutes. The above narration is the life and blood of the Plaintiff’s story. It is, of course, an abstraction. We have already stripped off the story a lot. We have omitted

the details of how Brijmohan actually goes about ransacking the prostitute's quarters, how she pleads and remonstrates and implores him not to take away the vanity box, how she describes the vanity box as her family hairloom inherited from her mother, who in turn did so from her mother, how Brijmohan's wife and daughters actually dress up, how they tease their prospective suitors and how their appearance and behaviour affects Brijmohan. Those are embellishments - the details which have no essential bearing on the theme, plot and story line of the Plaintiff work. Can it, however, be said that the Plaintiff only has copyright in these details of expression and not in the theme, plot and story line which is the life and blood of his work. If someone steals this theme, plot and story line, is he not thereby plagiarising the expression of the Plaintiff's work? Can the above theme, plot and story line be simply dismissed as non-protectable ideas of the Plaintiff's work and not its expression. I think not. We have not yet reached that level of extraction where the work can be said to be stripped to its non-protectable idea.

15 Let us strip the work further and go to the next level of abstraction. We may strip off the characters of their religious or professional identities, the setting of a riot, the act of taking away of the vanity box, or even the vanity box itself, the presence of wife, daughters of the protagonist. We may then possibly come to the extraction which may not be copyrightable. We may, for example, then come to an idea that a thing or artefact belonging to someone brings out in its user, by its use, a change in appearance or behaviour in line with the one to whom the thing or artefact originally belonged. This can certainly be described as a non-protectable idea. If someone were to write a story or make a play or other adaptation of this idea by using a different setting, different characters, a

different theme, plot or story line, surely no charge of actionable plagiarism can be laid at his door. But the plaintiff's theme, plot or story line narrated in the foregoing paragraphs surely cannot be described as a mere idea; it is in fact an expression of an idea. It is sufficiently fleshed or developed to make it copyrightable. The Plaintiff has copyright protection in respect of it. He is likely to succeed in preventing a copy if someone were to plagiarize it.

16 Let us now take up the second part of our inquiry, namely, whether the Defendants have copied the abovementioned copyrightable work of the Plaintiff. We must also be mindful, as we have noted above, that here the Plaintiff has merely to show that he has a case reasonably capable of succeeding and not that he is likely to be successful or more likely to be so than the Defendants. The Defendants' web series has all the essential elements of the Plaintiff's theme, plot and story line described above. In the Defendants' web series, their protagonist, Guptaji, a Hindu shop-keeper, is in love with a Muslim prostitute by the name of Shabnam. The story starts with a flash back. Guptaji is shown to be slowly attracted to the prostitute. After his initial reservations about her and her damned profession, he notices her fine manners, pure beauty and noble mind, and falls in love with her. The story then cuts to riots and Shabnam dying in the riots. Guptaji then takes her vanity box home and retains it as her memory. (He was earlier introduced to the vanity box by Shabnam herself as her family heirloom, handed down to her by generations of ladies in the house.) Guptaji's wife and daughter (he has one daughter and not three) are naturally attracted to the vanity box and start using it. This use brings about a change in their appearance, mannerisms and behaviour. They start behaving like prostitutes, appearing more amorous and looking every now

and then for ways to cast a spell on their would-be suitors. The later half of the Defendants' web series, i.e. from the point where Guptaji brings home the prostitute's vanity box after the riots, is very clearly a copy of the Plaintiff's theme, plot and story line. If one, who has read the Plaintiff's story, sees the web series, from that point on, it very clearly appears to be an adaptation of the Plaintiff's story.

17 The Defendants have drawn an elaborate table of so-called distinguishing features of the Defendants' work. Mr.Kamat, learned Counsel for the Defendants, at the hearing, focuses on the following distinctions. He submits that the moral character of the protagonist and the circumstances in which he acquires the vanity box in the Plaintiff's story are different from the Defendants' web series. (In the Plaintiff's story, the protagonist is actually a rioter, who steals the vanity box against the prostitute's will; in the Defendant's story, he is a god fearing devout, who actually falls in love with the prostitute and does not steal the vanity box but takes it away at her bidding and keeps it as her memory); in the plaintiff's story the vanity box appears to the protagonist to be a haunted article, exhibiting at times the spirit of the prostitute or the courtesan; the actual behaviour of the wife and three daughters in the Plaintiff's story and that of the wife and daughter in the web series are different (the daughters in the Plaintiff's story solicit men from the balcony, whereas in the web series the lone daughter actually has sex with a vendor boy.) One can go on and on. The web series is obviously an adaptation of a short story and it runs well over 1 hour and 50 minutes. It definitely has more characters, more content; there is a love affair thrown in between the protagonist and the courtesan; the moral character of the protagonist is different; he does not go to the prostitute's quarters voluntarily, but by accident; he falls in

love with her; and he does keep the vanity box after finding the prostitute dead; and actual behaviour of womenfolk and incidents shown in the series after the vanity box is brought home are different from the Plaintiff's story. But these are mere embellishments; the web series is not about love between the protagonist and the courtesan, which is not so in the Defendants' web series; that is just the setting. The series is about the protagonist coming into possession of a prostitute's vanity box and bringing it home and noticing perceptible changes as a result of its use in the appearance, mannerism and behaviour of his wife and daughter, which have become more like a prostitute's. That is why the web series is called "Singardaan", i.e. vanity box. That is the life and blood of the web series. At any rate, a very substantial part of the web series, i.e. after the point when the protagonist picks up the vanity box post riots from the courtesan's quarters, is exclusively devoted to, and is a copy of, what may be described as the Plaintiff's theme, plot and story line. It is but an actionable copy of the Plaintiff's work.

18 There is no doubt that the theme, plot and story line of the Plaintiff have been developed in a different manner by the Defendants. The affidavit of Defendant Nos.3 and 4 makes it clear that what was narrated to Defendant No.3 was the following brief story, which then was developed with modifications into a web-series for a digital platform, by commissioning Defendant No.1 (the producer) and hiring Defendant No.2 (the writer) :

“There is a prostitute in a brothel, who dies during Hindu-Muslim riots and one man steals her dressing table from the brothel and takes it to his home. The dressing table had some strange effect, due to which his wife, daughter and son, all elope with their respective boyfriends/girlfriends and the man is left with no one at

his home, except him.”

This story undoubtedly has a close similarity to the Plaintiff’s story. One may even say that practically it is the same story or idea as the Plaintiff’s story. The Defendants have admittedly adapted it to a different format, namely, a web series. If that be the case, what the Court has to do in a copyright infringement action is stated by the Supreme Court in **R.G. Anand’s** case (supra) as follows :-

“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 limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

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

19 The Defendants’ work does *prima facie* seem to me to be having similarities of a fundamental or substantial nature in respect of the mode of expression adopted in the copyrighted work of the Plaintiff. These fundamental or substantial aspects are (i) the protagonist being a Hindu, whilst the prostitute a Muslim; (ii) the prostitute prizing her “Singardaan”, i.e. vanity box or dressing table, as her family heirloom passed on to her by her ancestry; (iii) the protagonist coming into possession of the ‘Singardaan’ during communal riots; (iv) the protagonist bringing it home;

(v) his wife and daughter being attracted to it and using it; (vi) the appearance, the mannerisms and behaviour of the womenfolk becoming more amorous, enticing and inviting in a manner which befits a prostitute. There may be some dissimilarities between the two works, but so far as these fundamental or substantial aspects are concerned (and these can only be described as matters of expression), they are clearly copied by the Defendants. The copy is a substantial and material one. The spectator or viewer of the later work (i.e. the Defendant's web series), having read the Plaintiff's story, is likely to be of an opinion, nay, an unmistakable impression, that the later work (i.e. the Defendants' work) appears to be a copy of the original (i.e. the Plaintiff's work). There is an arguable case of piracy and it has a reasonable prospect of succeeding.

20 Mr.Kamat relies on the statement of law in **R.G. Anand** (supra) as well as copyright infringement tests discussed in the decision of the learned Single Judge of our Court in **XYZ Films Vs. UTV Motion Pictures**⁷. He submits that in general, there is no copyright in the central idea or theme of a story or play, however original it may be; the theme, plot and story line of the Plaintiff's work extracted above cannot be called bare "central" theme or concept in the sense in which the Supreme Court in **R.G. Anand** and the learned Judge in **XYZ Films** have meant. As we have seen above, the theme, plot and story line quoted above are clearly expressions of the 'central' theme or concept. They contain sufficiently developed elements of expression or realization so as to have a life of their own for copyright protection. And these elements are essential or fundamental to the story and are its life and blood. Without them, the story would be robbed of its meaningful content. If they are copied, there is a case of

7 2016 SCC OnLine Bom 3970

actionable plagiarism.

21 Having thus found a *prima facie* case of infringement of copyright in favour of the Plaintiff, I must move on to the relief aspect, which, as we have noted above, is a matter of discretion of the court. The main indices to be considered for exercising such discretion are (i) whether the Plaintiff would suffer irreparable prejudice, if injunctive relief were not granted or whether damages would be an adequate remedy, and (ii) which way lies the balance of convenience. The Plaintiff's copyright here, as we have noticed above, consists in a story; that story has been already adapted and made into a web series and published. That is the Plaintiff's own case. Even though I accept *prima facie* merits of that case, I cannot be unmindful of the fact that the Defendants' work is not only a completed work (and not a work in process), but a work which has been sufficiently published. The web series was released on the digital platform on 20 January 2019. No doubt, soon enough, the Plaintiff complained (his legal notice being of 6 February 2019) and in that sense, there may be no question of the Defendants claiming any equity on the basis of the series' exhibition thereafter. But then, it is equally a matter of fact that the series has been on the net for over one full year. It is not the Plaintiff's case that he was intending to make any film or television or web series on his story. His work has been illegitimately, i.e. without his consent, used; the use is complete; and the damage done. No doubt the Defendants cannot be permitted to make any further adaptation, by changing the format or otherwise, of their web series, but, surely, so far as the exhibition of the web series in its present form is concerned, should monetary compensation not be an adequate relief for the Plaintiff. The Defendants' profits from the web series may very well be ascertained at the trial; the Defendants may

even be asked to render an account of such profits. The Plaintiff may then be compensated in terms of an adequate remuneration or a share of such profits. The prejudice suffered by the Plaintiff can surely be redressed by a decree of damages; it cannot, under the circumstances, be described as irreparable. Besides, the balance of convenience also weighs in favour of the Defendants. Their work has not only been fully made, but published for a sufficiently long period. If the work has now to be withdrawn, greater harm would be caused to them than to the Plaintiff if it is not so withdrawn.

22 Considering the totality of circumstances, this court is of the view that instead of granting a temporary injunction against exhibition of the web series, interests of justice would be served better if the suit itself is set down for trial and the Defendants are asked to maintain accounts of the profits made from the web series in the meantime, i.e. from the date of publication of the web series and till date and during the pendency of the suit and render them to the court as and when demanded in the course of the trial. In the meantime, however, further adaptation or use of the web series in a different format may be restrained.

23 The notice of motion is, accordingly, disposed of in terms of the following order :

(i) Pending hearing and final disposal of the suit, the Defendants, by themselves and through their servants and agents, are restrained from making any further adaptation or use in a different format of their web series by the name of “Singardaan” save and except as in its present form and on the digital platforms or apps of its present

publication;

(ii) The hearing of the suit is expedited. The suit to come up for directions immediately upon the reopening of courts in June 2020, when the schedule of hearings and date-lines would be fixed.

(iii) In the meantime, the Defendants are directed to keep and maintain an account of the revenues made from their web series by the name of “Singardaan” from inception and till the disposal of the suit.

(iv) Costs to be costs in the cause.

(S.C. GUPTE, J.)