

IN THE COURT OF PRESIDING OFFICER, COMMERCIAL COURT, RANCHI

Misc. Civil Application No. 265/2022

CNR :- JHRN01006315-2022

Arising out of Commercial Suit No. 62/2022

Schedule XLII – High Court (J) 9a [Old (M) 164.]

Serial No.	Date of Order of Proceeding	Order with signature of the court.	Office notice taken with date.
1	2	<p>Vishal Singh, aged about 45 years, S/o - Shri Ashok Kumar Singh, R/o - Ashok Bhawan, Ashok Path, Radium Road, P.O + G.P.O + P.S. - Lalpur, District - Ranchi,Plaintiff,</p> <p>Versus</p> <p>1. Dharma Production Pvt. Ltd, having its office at 201 2nd Floor, Supreme Chambers, Off Veera Desai Road, 17/18 Shah Industrial Estate, Andheri (West) Mumbai - 400053, 2. Somen Mishra, Creative Head of Dharma Productions Pvt. Ltd, having its office at 201 2nd Floor, Supreme Chambers, Off Veera Desai Road, 17/18 Shah Industrial Estate, Andheri (West) Mumbai - 400053, , 3. Karan Johar, S/o - Yash Johar, Director of Dharma Productions Pvt. Ltd and Producer of the Film ' Jug Jugg Jeeyo', having its office at 201 2nd Floor, Supreme Chambers, Off Veera Desai Road, 17/18 Shah Industrial Estate, Andheri (West) Mumbai - 400053, 4. Viacom 18 Media Private Limited, having office at Zion Bizworld, Subhash Road - 'A' Vile Parle (East) Mumbai - 400 057,</p>	

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1	2	<p>5. Screen Writers Association, 201 - 204, Richa Building, Plot No. B - 29, Off New Link Road, Opposite Citi Mall, Andheri (West), Mumbai - 400053,</p> <p>.....Defendants,</p> <p>Counsels for the Plaintiff : -</p> <p>Sri Ajit Kumar, Sr. Adv.</p> <p>Sri Saurabh Arun,</p> <p>Sri Kumar Vaibhabh,</p> <p>Sri Abhay Prakash,</p> <p>Sri Rahul Pandey, Advocates</p> <p>Counsels for the Defendants No. 1 & 2 : -</p> <p>Sri Chander M. Lall, Sr. Adv.</p> <p>Sri Indrajit Sinha,</p> <p>Sri Pranaya Goyal,</p> <p>Sri Kundan Kumar Verma,</p> <p>Miss. Sneh Singh,</p> <p>Advocates</p> <p>Counsel for the Defendant No. 3 : -</p> <p>Sri Chitranjan Sinha, Sr. Adv.</p> <p>Sri Indrajit Sinha,</p> <p>Sri Pranaya Goyal,</p> <p>Sri Kundan Kumar Verma,</p> <p>Miss. Sneh Singh,</p>	

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	23/06/2022	<p>Counsel for the Defendant No. 4 :-</p> <p>Mr. Salona Mittal,</p> <p>Mr. Srikant Pillai,</p> <p>M/s. Naik Naik & Co. Advocates</p> <p><u>ORDER</u></p> <p>An application was filed under Order – XXXIX Rule – 1 and 2 of the C.P.C r/w Section – 151 of C.P.C. of behalf of the plaintiff along with the main suit. The reply to this this application was filed by the defendants no.1 to 3 on 18.06.2022 and on behalf of the defendant no. 4 on 20.06.2022. Both sides were heard at length on 22.06.2022. The arguments were concluded on behalf of the plaintiff and the defendant Nos. 1 to 4 on 22.06.2022. The case is fixed for order today. Vakaltan haziri has been filed on behalf of Respondent no. 1 to 4.</p> <p>Initially, the defendant no. 1 to 3 have appeared and filed their reply to the petition under Order -XXXIX Rule 1 and 2 r/w Section – 151 of the C.P.C on 18.06.2022. The learned Senior Advocate Sri Ajit Kumar had argued at length on that day. The learned counsel for the defendant no. 1 to 3 volunteered that movie may be screened for the court. Thereafter, the court instead of going for the screening asked for the copy of script from both sides. The defendant no. 1 to</p>	

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	Contd.....P/2 23/06/2022	<p>3 took strong objections that under the Commercial Courts Act, 2015 they cannot file the script now. But the defendant no. 1 to 3 were ready for screening of the picture. On 20.06.2022, an application was filed on behalf of the defendant no. 1 to 3 that screening will be solely for the court. Although it was not fixed for hearing on 21.06.2022 but both sides appeared. The learned Senior Advocate Sri Chander M. Lall, appearing on behalf of defendant no. 1 to 3, argued that although he has no objection if the picture is screened for the court but he also argued that the screening of movie is not required at all. The learned counsel led the court through detailed argument showing the contours or outer line for deciding the case. Amongst other things, it was argued that plaintiff has come with one brief story written in $\frac{3}{4}$ th (three fourth) of a sheet(page) and after seeing the trailer of picture ‘Jug Jugg Jiyo’ is claiming that this is the same which he has got registered with Screen Writer’s Association. It was vehemently argued that since the plaintiffs claimed is based on less than one page story and the trailer of the ‘Jug Jugg Jiyo’, the comparison is to be in between these two things. In view of this matter and the objection raised by the learned counsels for the defendant no. 1 to 3, it was decided that this ad-interim injunction petition will be heard on the documents, available from both sides, which were on record at 12:00 noon on 18.06.2022.</p>	

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	<i>Contd...P/3 23/06/2022</i>	<p>Thus, both sides agreed on this proposition that they will be limiting their case where it stood on the basis of their documents on 18.06.2022 at 12 noon (prior to talk about any screening of picture and filing of scripts by both sides).</p> <p>The learned senior counsels for both sides have completed their argument on 22.06.2022.</p> <p>The learned senior counsel Sri Ajit Kumar had argued that instant application is filed on behalf of the plaintiff in the instant suit seeking urgent interim injunction in the matter during the pendency of the suit. It was stated that the instant suit pertains to claim of the Plaintiff's copyright in 'Bunny Rani' copyright of which has been infringed by the Defendants Nos. 1 to 4 by making the film ' Jug Jugg Jeeyo' in which film the plaintiffs story 'Bunny Rani' has been copied by the concerned defendants without authorization from the plaintiff. It was further submitted that the Defendant No. 1 and 3 have announced that their film 'Jug Jugg Jeeyo' would be released on 24.06.2022. Once the defendants release the said film, the subject matter of the instant suit would be adversely effected to the detriment of plaintiff causing irreparable loss and injury to the plaintiff. Earlier plaintiff approached the statutory</p>	Contd....

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1	2	<p><i>Contd...P/4</i> 23/06/2022</p> <p>authority Central Board of Film Certification (the "CBFC") by making a representation on 30.05.2022 requesting for withholding the certification to 'Jug Jugg Jeeyo'. While plaintiff was awaiting response from the CBFC, the plaintiff on 31.05.2022 was served with an email from the advocates of Dharma denying plaintiff's allegations and also threatening the plaintiff of costs and consequences of any action initiated by plaintiff. It was further submitted that the plaintiff being very much perturbed by the said email from Dharma's advocates, sent a reply to the same vide email on 01.06.2022. It was further stated that once again on 03.06.2022, Dharma's advocates sent another email threatening and making uncharitable remarks against the plaintiff. It is pertinent to note that in this email, Dharma's advocates have admitted that Dharma has received the plaintiff's story vide plaintiff's email dated 17.02.2020. Apart from the said admission, the said email contains vague statements and baseless counter statements to the case of the plaintiff without there being any supporting documents and dates to even ex-facie justify the statements and counterstatements made therein. Further argued that a bare perusal of the aforesaid emails from</p>	<p><i>Contd....</i></p>

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	Contd...P/6 23/06/2022	<p>was pointed out by the plaintiff only when the learned counsel for defendants no. 1 to 3 raised objections that the plaintiff has neither filed the trailer nor the story with application for ad-interim injunction. This pendrive was never referred in course of arguments by the plaintiff. It must be mentioned that even otherwise it is admitted case that the trailer of the film “Jug Jugg Jiyo” has been released and is in public domain available to all and sundry for viewing and watching. So this objection raised by the learned counsel for the defendant no. 1 to 3 is inconsequential.</p> <p>It has been further stated that an additional fact which entitles the plaintiff for interim injunction is that lately it has been widely reported in the print and electronic media that one singer Abrar Ul Haq has also accused the Defendant No.3 of plagiarism for copying one of Abrar Ul Haq's song in the film ' Jug Jugg Jeeyo' thereby demonstrating that the said film ' Jug Jegg Jeeyo' is replete with plagiarism. Further argued that the plaintiff states that the balance of convenience lies in favour of the plaintiff in the facts and circumstances of the instant case. The factum of admission by the defendants of receiving plaintiff's story 'Bunny Rani' on</p>	Contd....

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	Contd...P/7 23/06/2022	<p>email coupled with the fact that the film 'Jug Jugg Jeeyo' is slated to be released on 24.06.2022 tilt the balance of convenience in favour of the plaintiff and against the defendants. It was further argued that once the said film ' Jug Jugg Jeeyo' is released by the defendants on 24.06.2022, irreparable loss and injury would be caused to the plaintiff as the plaintiff's copyright would be infringed by the defendants and the plaintiff would be denuded of any credits in the said film and in turn the defendants would be successful in usurping the intellectual property rights of the plaintiff in 'Bunny Rani'. Further submitted that no corresponding loss and injury would be caused to the defendants if the release of the said film is injuncted during the pendency of the instant suit. It was contended that the facts and circumstances narrated hereinabove and also the facts and circumstances narrated in the plaint entitle the plaintiff to an order of interim injunction restraining the defendants from releasing the film 'Jug Jugg Jeeyo' during the pendency of the instant suit.</p> <p>In course of argument, the learned Senior Advocate Sri Ajit Kumar has drawn attention of the</p>	Contd....

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	Contd...P/8 23/06/2022	<p>court to paras – 6, 7, 8, 9, 10 and 11 of the plaint. It was argued that plaintiff has written a story ‘Bunny Rani’ which was registered with Screen Writers Association on 24.01.2020 with the reference No. 1579887291. It was stated that the plaintiff has discussion with defendant no.2 Somen Mishra, Creative Head of Dharma Production in respect of the story. The plaintiff has discussed plaintiff’s desire of co-production of movies and also disclosed about the story of the ‘Bunny Rani’ with Somen Mishra. Accordingly, the entire story was narrated to Somen Mishra and in turn to Dharma Production. The learned counsel further argued that plaintiff was verbally informed by Somen Mishra that ‘Bunny Rani’ was examined by Dharma’s team but they did not deem it to be conducive to be turned into a feature film. The plaintiff was assured by Somen Mishra and his team that the story was discarded by Dharma and are deleted from the records and are not put to any use by Dharma. The plaintiff was under the impression that stories of ‘Bunny Rani’ did not appeal to Dharma Production. Subsequently, on 16.11.2020 defendant no.3 Somen Mishra announced production of film title “Jug Jugg Jiyo’ which film was to be solely produced by the</p>	Contd....

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	Contd...P/10 23/06/2022	<p>Products Private Limited Vrs. Tirumala Daairy Limited [2022 SCC Online Mad. 461]; Jyoti Kapoor and Another Vrs. Kunal Kohli and Ors. [2015 SCC Online Bom. 3373]; and Jyoti Kapoor case Vrs. Bombay Film Company and others Etc. [Civil Appeal Nos. 5434 – 5435 of 2015].</p> <p>The learned counsel for the plaintiff heavily relied on the case Kapil Chopra Vrs. Kunal Deshmukh and others[SCC 2013 (1) Mh.LJ – 343]. The learned counsel led the court through almost whole judgment in minute detail referring almost all the paras of the case. It was further argued that the plaintiff’s case is the same as that dealt in the judgment by the Division Bench of Hon’ble Bombay High Court.</p> <p>The learned counsel referred para – 28 to 42 of Sanjay Soya Pvt. Ltd. Vrs. Narayani Trading Company Ltd. [2021 SCC Online Bom. 407].</p> <p>In para – 53 of this case, the Hon’ble High Court of Bombay held :-</p> <p>“53. <i>This section does not, per se, demand prior registration. It does not say so anywhere; and this has to be read with Section 45(1), which says that the owner of copyright may apply for registration. Importantly,</i></p>	

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	Contd...P/11 23/06/2022	<p><i>copyright infringement lies in the unlicensed use of original works, in which the author has a spectrum of exclusive rights. Copyright theft or infringement lies in taking another's original work and claiming it as a work of one's own originality, and thus availing illicitly of those exclusive rights. One of the tests is how much of the claimed original work has been taken up in the later work. There is always the slight escape of the fair use doctrine, but the underlying principle is that no author may claim as his or her own the original authorship work of another. That is the essence of copyright protection. It is unlike the incidents of trade mark law where there is, in fact, a possibility of concurrent users, joint proprietors or two or more registered proprietors of very similar marks. Not every case by a registered proprietor of a trade mark yields a decree in infringement Very distinct and different considerations obtain in trade mark law, and these cannot be put on the same pedestal or subjected to the same considerations as copyright law.”</i></p> <p>The learned counsel much emphasized ratio of <i>Midas Hygiene Industries (P) Ltd And Another Vrs. Sudhir Bhatia And Others (2004) 3 SCC 90.</i> In this</p>	Contd....

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	<p>Contd...P/12 23/06/2022</p>	<p>case the learned counsel referred to para 5. The Hon'ble Supreme Court in para – 5 held : -</p> <p align="center"><i>“ (5) The law on the subject is well settled. In cases of infringement either of trade mark or of copyright, normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark was itself dishonest.”</i></p> <p>The learned counsel referred to Tirumala Milk Products Private Limited Vrs. Tirumala Daairy Limited [2022 SCC Online Mad. 461]. This is judgment of Hon'ble High Court of Madras on matter other than Order – XXXIX Rule 1 and 2 r/w Section 151 of C.P.C particularly order -XI of Commercial Court Act. This was being referred in respect of the plaintiff petition under Order -XI of the C.P.C which has been posted for separate hearing.</p> <p>Another judgment referred by the learned counsel for the plaintiff is Radha Krishna Sinha and another Vrs. State of Bihar and another [1978 SCC Online Pat. 147]. The learned counsel referred to para – 9 of the judgment wherein the Hon'ble Patna High Court has</p>	<p align="right">Contd....</p>

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	Contd...P/13 23/06/2022	<p>held : -</p> <p><i>“9. If I may say so, I am in respectful agreement with the reasoning and the views expressed by the Calcutta High Court in the case of Satsang (supra) and by the Madras High Court in the case of Manojah Cine Productions (supra), and, for the same reasons, I am of the view that registration of copyright under the Act is not compulsory, nor it is sine-qua non or a condition precedent to the subsistence of copyright or acquisition of ownership thereof or relief for infraction of copyright. Therefore, there is no merit in the point raised by Mr. Braj Kishore Prasad No. II, appearing for the petitioners, that no cognizance of the offence under section 63 of the Act could have been taken by the Chief Judicial Magistrate against the petitioners in the absence of registration of copyright in favour of the complainant under section 40 of the Act in respect of his compilation of the book-The Bihar Service Code.”</i></p> <p>with due respect it is stated that this application was under section 482 of the Code of Criminal Procedure, 1973 for quashing the proceeding. So this case is not on the point with which this court is involved at this moment.</p>	<p>Contd....</p>

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1	2	<p>The learned counsel also referred to Jyoti Kapoor and Another Vrs. Kunal Kohli and Ors. (2015 SCC Online Bom. 3373) and Jyoti Kapoor case Vrs. Bombay Film Company and others Etc (Civil Appeal Nos. 5434 – 5435 of 2015). <i>In Jyoti Kapoor’s Case the order of Single judge of Hon’ble High Court of Bombay was overruled by Divsion Bench of the Hon’ble High Court of Bombay. When the appeal was filed before the Hon’ble Supreme Court, it resulted in compromise wherein it was held that the respondent shall show with a reasonable prominent in the credit of film i.e. “Phir Se” by stating “story and Idea by Jyoti Kapoor”. In Jyoti Kapoor case Vrs. Bombay Film Company and others Etc. (Civil Appeal Nos. 5434 – 5435 of 2015), the Hon’ble Supreme Court held :-</i></p> <p>“ (a) The contesting respondent Nos.1 to 4 agree that they shall show with reasonable prominence in the credits of the film, that is, “Phir Se” by stating “Story/Idea by Jyoti Kapoor”.</p> <p>Hence, it was argued that the plaintiff has got a prima facie case and the balance of convenience lies in favour of the plaintiff. It was further submitted that if stay is not granted the plaintiff will suffer irreparable</p>	Contd...

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	<i>Contd...P/15</i> 23/06/2022	<p>loss. Hence the prayer for interim injunction in favour of plaintiff and for restraining the defendants from releasing the film ‘Jug Jugg Jiyo’ of 24.06.2022.</p> <p><u>Arguments on behalf of Defendant No. 1 to 3 :</u></p> <p>The learned Senior Advocate Sri Chander Lall supported by other learned counsels argued at length on the petition. Firstly, it was mentioned that the plaintiff has no where mentioned that their application Order – XXXIX Rule – 1 and 2 R/w section 151 of C.P.C be read along with the plaint. Thus, the conclusion is that the plaintiff cannot refer to the plaint. In their petition filed under Order – XXXIX Rule – 1 and 2 r/w Section 151 of C.P.C., there is no reference to para – 8 , 9 of the plaint. Further the story of Bunny Rani is not mentioned nor it is annexure in the application filed for interim injunction. It has been further argued that there is no mention of breach of confidentiality in the injunction petition filed under Order – XXXIX of the C.P.C.</p> <p>Thereafter, the learned Senior Advocate Sri Chander M.Lall led the court through the facts of the case. It was argued that their cases is based on the story registered with the screen writer association on</p>	Contd....

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	Contd...P/16 23/06/2022	<p>08.06.2019 with reference no. 108599838380. The story was title ‘Golden Jubilee’ written by Sumit Batheja. Thus, argued that if any thing their story precede the story of the plaintiff. If there is any violation of Copy Right, it is the plaintiff who has violated the copy right if the time line is seen. The plaintiff’s story was registered on 24th January, 2020 with title ‘Bunny Rani’ written by Vishal Singh.</p> <p>It was further argued that mere one page story cannot be said to be an story for the picturization. In many of the cases, it has been held that mere Idea does not provide rights for Copyright. It was further argued that mere some coincidence here and there cannot be a ground for Copyrights Violation. The learned counsel led the court through the similarities or the dissimilarities mentioned in their story line and story of the plaintiff.</p> <p>In explaining the thing and contents of copyright the learned counsel for the defendant heavily relied on Kapil Chopra Vrs. Kunal Deshmukh and others [2013 (1) Mh. L.J.]; R.G. Anand Vrs. M/s. Delux Films and Others [(1976) 4 Supreme Court Cases 118]; Akashaditya Harishchandra Lama vrs</p>	Contd....

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	<i>Contd...P/17 23/06/2022</i>	<p>Ashutosh Gowarikar [2016 SCC OnLine Bom 5207]; Radha Bharadwaj Vrs. Ellipsis Entertainment Media LLP and Ors. [MANU/MH/2464/2019].</p> <p>The learned counsel heavily relied on R.G. Anand's Case. The learned counsel referred to paras – 3, 6, 12, 15, 16, 18, 21, 45 and 46 of the judgment. In that case there was a play right 'Hum Hindustani' and it was staged for years. The case of the Play writer was that encouraged by success and popularity of play, a picture was produced. The allegation was put that the defendant's film is a colourable imitation and infringement of the copyright of the author in his play and Hon'ble Supreme Court provided tests for determining whether there is such infringement. In para – 15, [R.G. Anand Vrs. M/s. Delux Films and Others [(1976) 4 Supreme Court Cases 118] the Hon'ble Supreme Court expressed amongst other things</p> <p><i>"Various definitions of copy have been suggested, but it is submitted that the true view of the matter is that, where the court is satisfied that a defendant has, in producing the alleged infringement, made a substantial use of those features of the plaintiffs work in which copyright subsists, an infringement will</i></p>	

Contd....

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Arising out of Commercial Suit No. 62/2022

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1	2	<p><i>be held to have been committed; if he has made such use, he has exercised unlawfully the sole right which is conferred upon the plaintiff."</i></p> <p>In para – 18, [R.G. Anand Vrs. M/s. Delux Films and Others [(1976) 4 Supreme Court Cases 118] the Hon'ble Supreme Court has explained the Copy Right. In para – 18 :-</p> <p><i>"18. In the American Jurisprudence also it is pointed out that the law does not recognize property rights in abstract ideas, nor is an idea protected by a copyright and it becomes a copyrighted work only when the idea is given embodiment in a tangible form. In this connection the following observations are made:-</i></p> <p><i>"Generally speaking, the law does not recognize property rights in abstract ideas and does not accord the author or proprietor, the protection of his ideas, which the law does accord to the proprietor of personal property."</i></p> <p><i>"In cases involving motion pictures or radio or television broadcasts, it is frequently stated that an idea is not protected by a copyright or under the common law, or that there is no property right in an idea, apart from the manner in which it is expressed."</i></p>	Contd....

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1	2		
	Contd...P/19 23/06/2022	<p><i>"When an idea is given embodiment in a tangible form, it becomes the subject of common-law property rights which are protected by the courts, at least when it can be said to be novel and new."</i></p> <p><i>It was also pointed out in this book as to what constitutes colourable imitation. In this connection, the following observations have been made:-</i></p> <p><i>"Infringement involves a copying, in whole or in part, either in haeca verba or by colourable variation..</i></p> <p><i>A copy as used in copyright cases, signifies a tangible object which is a reproduction of the original work.</i></p> <p><i>The question is not whether the alleged infringer could have obtained the same information by going to the same source used by the plaintiff in his work, but whether he did in fact go to the same source and do his own independent research. In other words, the test is whether one charged with the infringement made an independent production, or made a substantial and unfair use of the plaintiffs work."</i></p> <p><i>"Intention to plagiarize is not essential to establish liability for infringement of a copyright or for plagiarism of literary property in unpublished books, manuscripts, or plays. One may be held liable for</i></p>	

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1	2		
	Contd...P/20 23/06/2022	<p><i>infringement which is unintentional or which was done unconsciously."</i></p> <p><i>"Similarity of the alleged infringing work to the authors or proprietors copy- righted work does not of itself establish copyright infringement, if the similarity results from the fact that both works deal with the same subject or have the same common source Nevertheless, it is the unfair appropriation of the labor of the author whose work has been infringed that constitutes legal infringement, and while identity of language will often prove that the offence was committed, it is not necessarily the sole proof; on the other hand, relief will be afforded, irrespective of the existence or nonexistence of any similarity of language, if infringement in fact can be proved."</i></p> <p><i>"The appropriation must be of a substantial or material part of the protected work The test is whether the one charged with the infringement has made a substantial and unfair use of the complainants work. Infringement exists when a study of two writings indicates plainly that the defendants work is a transparent rephrasing to produce essentially the story of the other writing, but where there is no textual</i></p>	<p>Contd....</p>

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1	2		
	Contd...P/21 23/06/2022	<p><i>copying and there are differences in literary style, the fact that there is sameness in the tricks of spinning out the yarn so as to sustain the readers suspense, and similarities of the same general nature in a narrative of a long, complicated search for a lost article of fabulous value, does not indicate infringement."</i></p> <p>After dealing elaborately in para – 21, 45 of the case, the Hon’ble Supreme court held that on a careful consideration and elucidation of the various authorities and case law on the subject discussed above the following proposition emerges :-</p> <p><i>“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 :</i></p> <p><i>1. There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.</i></p> <p><i>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</i></p>	

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1	2		
	Contd...P/22 23/06/2022	<p><i>courts should determine whether or not the similarities are fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted, work with some variations here and there it would amount to violation of the copy-right. 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.</i></p> <p><i>3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.</i></p> <p><i>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.</i></p> <p><i>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</i></p>	Contd....

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1	2		
	Contd...P/23 23/06/2022	<p><i>original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.</i></p> <p><i>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.</i></p> <p><i>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 perspective, 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.”</i></p> <p>This case of R.G. Anand (supra) was also referred in Kapil Chopra Vrs. Kunal Deshmukh.</p>	

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1	2		
	Contd...P/24 23/06/2022	<p>The learned counsel also referred para – 16 and 19 of Radha Bharadwaj Vrs. Ellipsis Entertainment Media LLP and Ors. In para – 16, the Hon’ble Bombay High Court has pointed out the delay in filing the case although the plaintiff was aware of the facts much before the filing of the case. In para – 19, of the said judgment the Hon’ble Bombay High Court held :-</p> <p><i>“19. If the plaintiff’s case is only on the basis of teaser/trailer and any comparative analysis on the basis of this material is being made out nmcd534_2019.doc without the Court looking at the actual works (script) to reach even to a prima facie conclusion to a copyright infringement, it would trading on a dangerous path. The Court granting injunctory reliefs on such considerations is unacceptable and would lead to serious consequences. Certainly the Court cannot overlook that during all these times from the filing of the suit, the plaintiff permitted the defendants to proceed on the basis of their script, complete their production of the film, create third party rights and take all possible steps to release the film on 15 th August, 2019. Any injunction which would be granted would result in a serious prejudice being caused to defendant nos. 2 to 4.</i></p> <p>The learned counsel also referred to Akashaditya Harishchandra Lama and others vrs Ashutosh</p>	

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1	2	<p>Gowarikar and others [2016 SCC OnLine Bom 5207]. In that case the Hon’ble High Court of Bombay held that in order to succeed, the plaintiff must be able to establish unequivocally that there was in fact a disclosure and the disclosure must also show to have been in circumstances of confidence. It was further held that court must know with precision and certainty what is over which the plaintiff claims right and in what fashion. It was further held that infringement of copy right cannot be said to be coincidence, happenstance, shared common public sources are not the stuff of infringement. In para – 67, the Hon’ble Bombay High Court held :-</p> <p align="center"><i>“I find, too, that the tendency these days is to blithely accuse anyone of ‘copying’ and ‘plagiarising’, and the online trolls are particularly adept at this; for these allegations need no proof and have no consequence. Yet, fling about enough mud and some of it will stick. Coincidence, happenstance, shared common and public sources are not the stuff of infringement. Even in copyright law there is a permissible degree of fair use that does not constitute infringement; I only say this to dispel the notion that</i></p>	

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1	2	<p><i>infringement is some sort of absolute that covers all overlaps. Infringement requires something more than accident. It is a positive act and above all it requires a plaintiff alleging infringement or plagiarism to establish that the defendant knew, had knowledge or could not possibly have been unaware of the plaintiff's work and his rights in it. This may be shown in a variety of ways; for instance, by a large degree of very similar overlapping or commonality. But the original work of which infringement is alleged must be shown to have existed and to have been know. In this case, the 1995 document is unpublished, so the question of it being in public knowledge is ruled out. Therefore, the Plaintiff must show with precision and cogent evidence knowledge on the part of the Defendants of that particular work. It will not do to show some later derivative or modified work and to urge that the Defendants must be 'deemed to have had knowledge of and seen' the previous work, the disclosure of which is not proved (even prima facie). It will also not do to suggest that because one later iteration of some work has been registered with some body or agency, that the Defendants should have, or must be deemed to have,</i></p>	

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1	2		
	Contd...P/27 23/06/2022	<p><i>knowledge and notice of the alleged parent work. When, in fact, it is shown that the later derivative or modified work (of 2010, Exhibit “D”) is wholly different from the alleged original source work of 1995, then each one of these documents is exacerbated.”</i></p> <p>It was further stated in para – 69 of the above mentioned judgment :-</p> <p><i>“ 69. There remain the questions of the balance of convenience and irretrievable prejudice. That certainly favours the Defendants. The producers have spent over Rs. 150 crores on this project. Third party rights have been created. As against this, the Plaintiff has utterly nothing to show to shore up his claim. On every necessary factor or aspect governing the grant of an interim injunction, the Plaintiff fails. How best to preserve the parties in status quo, as the law would have a court do, seems to me to be self-evident : the Motion must be dismissed.</i></p> <p>After citing all these case laws, it was argued that the plaintiff has got no <i>prima-facie</i> case. The defendants have spent crores of rupees on the production of movie. The plaintiff has valued his suit for Rs. 1.5 crore which they will get at best if the suit is decided in the favour of</p>	Contd....

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1	2		
	<i>Contd...P/28 23/06/2022</i>	<p>plaintiff. Thus, balance of convenience is in favour of the defendant. The defendants will suffer irreparable loss if the movie is stayed from being released on 24.06.2022. Hence, the prayer to dismiss the petition with heavy cost</p> <p><u>Arguments On behalf of defendant no.4.</u></p> <p>On behalf of defendant no.4, the learned counsel Sri Salona Mittal appeared and argued. The learned counsel led the court through the reply on behalf of defendant no.4. It was argued that they adopt the arguments put forward on behalf of defendant no. 1 to 3. In addition to those arguments, the learned counsel submitted that there is no balance of convenience in favour of the plaintiff. It was submitted that the suit and interim application has been filed with malicious intent to extort money from the defendant. It was argued that defendant no.4 has executed and acquisition agreement with defendant no.1 whereby exploitation rights of the Suit Film were assigned to defendant no.4 which is mentioned in para – 16 of their reply. The learned counsel further drew attention towards an email written to the lawyer of defendant no. 1 to 3 wherein the</p>	Contd....

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1	2	<p>plaintiff himself states that the defendant no.4 “should not suffer”. (page – 13 of Misc. Case no. 265/2022). Further argued that defendant no.4 has created a large body of third party rights for the purposes of exploitation of Suit Film and any interference with the suit film is bound to affect such third party and their respective rights in the Suit Film. They have given detailed about the third party rights in para – 16 of their reply.</p> <p>They have relied on the case of Dashrath B. Rathod Vrs. Fox Star Studios P. Ltd.[2018 (1) Mh.L.J. 474 paras 28 and 30]. They have stated that this case has got similarity wherein the parties in the referred case have waited for long and approached the court on few days before the release of the film. The Hon’ble Judge in para 28,29 and 30 explained the matter-</p> <p><i>“28. Dr Tulzapurkar for the 1st Defendant points out that, apart from the obvious differences, the delay in bringing suit cannot be accidental. On their own showing, the Plaintiffs knew about the Defendants’ film since 24th February 2017. They knew of the release date of 24th March 2017. From that date of knowledge,</i></p>	Contd....

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1	2	<p><i>i.e., for the last four weeks, they have chosen to wait, and have not come to court until a mere three days before the release of the film. They have only served a copy of the plaint and Notice of Motion on the Defendants only at 7.00 p.m. last evening and have sought this morning urgent circulation. By this time 800 theatres countrywide have been booked for release. Distribution rights have been created. Third party rights have intervened. There cannot be any question of irreparable injury to the Plaintiffs in a situation such as this or of the balance of convenience favouring the Plaintiffs even assuming that a prima facie case is made out, which in his submission, it is not. He submits that it is not enough to make out some prima facie case; to get an injunction of this kind, the Plaintiffs must make out so overwhelming a prima facie case that all other considerations pale into insignificance. Unless I conclude that the Plaintiffs have indeed made out a case of this strength, in his submission, no injunction can or should follow.</i></p> <p><i>29. I agree with Dr Tulzapurkar on all counts. I see no vestige of a prima facie case for the grant of ad-interim relief. Certainly, the balance of convenience can in no</i></p>	Contd....

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1	2		
	Contd...P/31 23/06/2022	<p><i>sense be said to be favour the Plaintiffs. It is clearly with the Defendants. As to the question of irretrievable injury, I notice that at no point did Mr Saboo or Mr D’Costa offer or volunteer to provide sufficient security - or indeed any kind of security - should the Plaintiffs’ Motion ultimately fail to secure the Defendants against loss.</i></p> <p><i>30. I also have, as I said in the beginning, a far more fundamental issue with this approach and this so-called litigation strategy or courtroom gambit. I am now making it clear once and for all that these attempts at snatching last- minute injunctions, unfairly prejudicing the other side, and putting other litigants to real hardship (not mere inconvenience), let alone putting Courts and their infrastructure under pressure, will not be tolerated. Our Courts are not meant for these frivolities. They are not meant as playgrounds where any person with a fanciful notion can come at the last minute and demand as of right that all other work be set aside and all other concerns be relegated to second place. I have even today before me a courtroom packed with lawyers and litigants. Parties in other actions are patiently waiting their turn. There are as many as three</i></p>	Contd....

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1	2		
	Contd...P/32 23/06/2022	<p><i>separate listings today, each in double digits. While Mr D’Costa, Mr Saboo and their clients take liberties with judicial time, this comes at the cost of others who have done nothing wrong. I have no means of compensating any of the others who have waited their turn, having come to court today in the reasonable expectation that their cases will be taken up. I can only apologize to these many others; and I must do so because I hear no hint of apology or regret from Mr D’Costa or Mr Saboo. There is not much more I can do. But I can certainly make it clear to the Plaintiffs that having gambled with the court’s time, and having ‘taken their chances’, they will also now take the consequences. I made this clear to Mr Saboo when, despite everything I told him, and told him again and again, he insisted on being given an early hearing.”</i></p> <p>It has been further argued that if interim relief is granted the defendant no.4 will be put to maximum losses as it has incurred substantial cost in respect of suit film around 13.95 crores on marketing / promotion and Rs.6.05 crores on distribution. In this respect they have relied on the case Star India Pvt. Ltd Vrs. Reliance Big Entertainment, [2018 SCC Online Bom.</p>	

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1	2		
	Contd...P/33 23/06/2022	<p>11505]. In that case in para – 13 the Hon’ble High Court of Bombay held -</p> <p><i>“13. Since Respondent No. 2 - Netflix has undertaken immense efforts and incurred enormous costs to ensure the worldwide release of the series as more particularly set out in paragraphs 28 onwards in their affidavit, in my view, the balance of convenience is also in favour of Respondent No. 2.”</i></p> <p>It was further argued that the information about the film and its story line and release date were already in public domain from the year 2021 itself. Plaintiff conduct is demonstrative of gross inordinate and unexplained delay and latches. It was argued that plaintiff’s intention is to harass the defendant no.4 with a view to extort money. Further submitted that CBFC has issued a certificate dated 3rd June – 2022 to defendant no.1 i.e after the date of the plaintiff’s complaint dated 30.05.2022. Thus, <i>prima facie</i> his complaint is deemed to have been rejected by CBFC and hence the CBFC is necessary party.</p> <p>It was further submitted that defendant no.4 is Viacom 18 Media Private Limited who has purchased the different rights for distribution and other thing. The</p>	

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1	2		
	Contd...P/34 23/06/2022	<p>plaintiff drew attention to the fact that they have created third party rights in respect of digital rights, satellite rights, music rights, theatrical rights, including several distribution agreement entered in between 14.06.2022 to 15.06.2022 and detailed has been mentioned in para – 16 of their reply. The thrust of their argument is that crores of rupees are involved in expenditure and they have mentioned some figure in para – 19 about part of expenditure. It was further argued that even if it is presumed that the plaintiff do have <i>prima facie</i> case which they do not, still the balance of convenience is in favour of the defendants including defendant no.4. It was argued that the plaintiff has put his loss/damages for Rs.1.5 crores and presuming that they get the suit decided in their favour they will be getting Rs. 1.5 crores only. But if the stay is granted the defendant will suffer huge loss may be in 100 of crores. This cost will be much more than the claim of plaintiff. The catch line in the argument on behalf of defendant no.4 is that the plaintiff has quantified the loss meaning thereby the loss is not irreparable. So it was argued that plaintiff has neither the balance of convenience in his favour nor he will be suffering irreparable loss.</p>	Contd....

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1	2	<p>The learned counsel referred Best Sellers Retail (India) (P) Ltd. Vrs. Aditya Birla Nuvo Ltd. [(2012) 6 SCC 792]. The learned counsel drew attention towards paras – 29, 31, 35, 36 and 37 of the case referred. The final outcome in that case was that the temporary injunction passed by the trial court as well as the impugned judgment was set aside by the Hon’ble High Court. In that case the Hon’ble Supreme Court has stated about the factors to be considered while passing order under Order – XXXIX Rule – 1 and 2 r/w Sec. 151 of CPC for temporary injunction. The Hon’ble court has also elaborated and held that there should be irreparable loss, <i>prima facie</i> case in favour of party seeking relief is not enough. It was held that it must be shown <i>prima facie</i> that injury suffered by plaintiff on refusal of temporary injunction would be irreparable.</p> <p><u>Findings of the Court :-</u></p> <p>After having heard the parties, perused the plaint as also the petition filed under Order -XXXIX Rule – 1 and 2 r/w Section 151 of the C.P.C, reply filed by the defendant Nos. 1 to 3 and separate reply by defendant</p>	Contd....

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1	2	<p data-bbox="209 611 427 689"><i>Contd...P/36</i> 23/06/2022</p> <p data-bbox="427 611 1281 1686">no.4 and other documents filed by both sides few things emerges admitted by both sides. The admitted position is that this case was filed by the plaintiff on the basis of his less than one page story 'Bunny Rani' registered with the Screen Writer's Association and subsequent production of Film 'Jug Jugg Jiyo'. The plaintiff have come up with the case just after seeing the trailer of the film 'Jug Jugg Jiyo'. It is not possible for any person to reach a conclusion about the similarity merely on the basis of one page story with the few minutes trailer of the film. The film, as has been stated on behalf of defendants, is of about 150 minutes. So admittedly the 150 minutes story and picturization when compared with less than one page story will not be proper. In course of argument, it was cited that no court can reach a conclusion only on the basis of trailer and one page story for granting injunction in favour of the plaintiff.</p> <p data-bbox="427 1776 1281 2080">Another point which has been raised on behalf of defendants and which merits consideration is the fact that defendants no. 1 to 4 in collaboration with one and another have spent a huge amount on the production of movie and third party rights have also been created who</p>	<p data-bbox="1281 2022 1453 2080">Contd....</p>

IN THE COURT OF PRESIDING OFFICER, COMMERCIAL COURT, RANCHI

Misc. Civil Application No. 265/2022

CNR :- JHRN01006315-2022

Arising out of Commercial Suit No. 62/2022

Schedule XLII – High Court (J) 9a [Old (M) 164.]

Serial No.	Date of Order of Proceeding	Order with signature of the court.	Office notice taken with date.
1	2	<p>are not a party here. It has been argued on behalf of defendant no.4, when the loss/damages has been quantified by the plaintiff in his plaint to be Rs. 1.5 crores, it cannot be stated to be an irreparable loss. So considering the amount spent by the defendants on the production and the claim of plaintiff for loss or damages, the balance of convenience still lies with the defendants.</p> <p>It was argued that as regards <i>prima facie</i> case, the defendants have better case. The plaintiff is not likely to succeed but presuming that even if they are still, the order for injunction is tilted in favour of the defendants considering the balances of convenience and irreparable loss.</p> <p>Thus, on the basis of above discussion it is held that the plaintiff is not entitled for ad-interim injunction for stay of release of movie "Jug Jugg Jiyo". Accordingly, prayer to stay the release of movie "Jug Jugg Jiyo" is hereby rejected. The petition of plaintiff filed under Order - XXXIX Rule - 1 and 2 r/w section 151 of the C.P.C is dismissed.</p>	Contd..

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	Contd...P/38 23/06/2022	<p>There is no order as to cost. As regards cost, the parties will be at liberty to agitate the matter at the time of final hearing of suit. At the time final hearing it will be decided whether the application was vexatious .</p> <p>Let a copy of this order be given to the plaintiff and the appearing defendants.</p> <p>Accordingly, this Misc. Civil Application No.265/2022 stands disposed off.</p> <p>Let the order be uploaded in the CIS with immediate affect.</p> <p style="text-align: center;">(Dictated) Sd/- (Manoj Chandra Jha) P.O. Commercial Court, Ranchi</p>	