



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

INTERIM APPLICATION (L) NO. 2143 OF 2025
IN
COMMERCIAL IP SUIT (L) NO. 2130 OF 2025

Sandeep Gangatkar	...	Applicant/
Versus		Plaintiff
Sandeep Kewlani & Ors.	...	Defendants

Mr. Hiren Kamod a/w Mr. Ravindra Suryawanshi, Mr. Anees Patel, Mr. Prem Khullar, Ms. Tanvi Nandgaonkar, Archis Bhatt and Mr. Amogh Prasad Khadye i/by Bar & Brief Attorneys for the Applicant/Plaintiff.

Mr. Venkatesh Dhond, Senior Advocate, a/w Mr. Anand Mohan and Ms. Nirali Atha i/by Dua Associates for Defendant No.1.

Mr. Ravi Kadam, Senior Advocate, and Mr. Ashish Kamath, Senior Advocate, a/w Mr. Ameet Naik, Ms. Madhu Gadodia and Ms. Megha Chandra i/by Anand & Naik for Defendant No.2.

Dr. Birendra Saraf, Senior Advocate, a/w Mr. Ashwin Dave and Ms. Reshma Ranadive i/by A. S. Dayal & Associates for Defendant No.3.

CORAM: MANISH PITALE, J.
DATE : 23rd JANUARY 2025

P.C. :

. The applicant/plaintiff herein is seeking urgent ad-interim relief for restraining the defendants from releasing/broadcasting/exploiting film titled “Sky Force”, which is slated for release on 24th January 2025 (tomorrow).

2. The plaintiff claims that the defendants are infringing upon his copyright in a script titled “Fire Bird”, which is stated to be his original literary work, as the story of the film copies the aforesaid script in which the plaintiff claims copyright. It is the case of the plaintiff that he became aware about the aforesaid attempt on the part of the defendants to infringe his copyright on 8th January 2025, when the trailer of the film “Sky Force” was released. It is further claimed that when the plaintiff approached the defendants, initially they did discuss the issues being raised by the plaintiff, but subsequently on 17th January 2025, they completely denied the claims of the plaintiff, due to which he has rushed to this Court.

3. The application was urgently circulated day before yesterday (21st January 2025). The defendants were represented by counsel and they raised serious objection with regard to the delay on the part of the plaintiff in approaching this Court. They relied upon the settled position of law that when a plaintiff approaches the Court at the eleventh hour in such cases, the Court is not to entertain prayers for urgent ad-interim reliefs. In that light, the learned counsel for the defendants submitted that short affidavits could be tendered before this Court along with relevant documents to show that the necessary details about the proposed film “Sky Force” were in the public domain, atleast since October 2023 about which the plaintiff was admittedly aware, as per the pleadings in the plaint itself. In that light, this Court granted opportunity to the defendants to keep ready such affidavits for

perusal of the Court, along with relevant documents.

4. Since the objections raised on behalf of the defendants could be said to be in the nature of a preliminary objection or an objection raised at the threshold, this Court perused the limited affidavits in reply tendered on behalf of defendant Nos.2 and 3 along with the documents annexed therewith, to first examine the aspect of delay on the part of the plaintiff in approaching this Court. The limited affidavits along with documents were taken across the bar for perusal, considering the urgency in the matter. Since copies were served on the plaintiff, the learned counsel for the plaintiff as well as the defendants were heard on that aspect of the matter. The defendants are permitted to e-file the said limited affidavits in reply within one week from today.

5. Before considering the rival contentions, particularly focused on the aspect of delay and the propensity of plaintiffs in approaching the Court at the eleventh hour when the film is about to be released, it would be appropriate to refer to the approach adopted by this Court in such circumstances.

6. In the case of ***Sushila Sharma v/s. Madhur Bhandarkar & Ors.*** (order dated 4th November 2009 passed in Notice of Motion No. 3391 of 2009 in Suit No. 2417 of 2009), this Court while dismissing the Notice of Motion observed as follows :

“17. There is an increasing tendency to file suits and seek reliefs on the eve of release of a film with which big

Production Houses, Directors, Technicians and Artists are associated. Mr. Tulzapurkar has termed this suit as a 'blackmail action'. It is not necessary to go into this aspect in the view that I have taken. However, time has come when a serious view will have to be taken of such actions. If doubts are created about the versions of persons approaching the court, then merely denying them reliefs would not be sufficient. If doubts raised, show complete lack of bonafides on their part, then, proceedings for making false statements on oath, need to be also taken up against such parties. Beyond this, I say nothing more and leave it for the defendants to adopt appropriate proceedings."

7. In the case of ***Sai Paranjpaye v/s. PLA Entertainment Pvt. Ltd. & Ors.*** (order dated 4th April 2013 passed in Notice of Motion No. (L) 764 of 2013 in Suit No. (L) 280 of 2013), this Court took into consideration the delay on the part of the plaintiff in knocking the doors of the Court and thereupon, rejected the prayer for staying the release of the film that was slated to be released on the next day. In the said order, this Court also took into consideration the aspect of the plaintiff crystallizing her claim in monetary terms for violation of her copyrights.

8. In the case of ***Dashrath B. Rathod & Ors. v/s. Fox Star Studios India Pvt. Ltd. & Ors., 2018 (1) Mh.L.J. 474***, this Court dealt with a similar situation where the plaintiffs had prayed for stay of release of film and the question of delay, in the light of the plaintiffs approaching the Court at the eleventh hour, was taken into consideration. While deprecating such practice of plaintiffs in moving the Court for urgent ad-interim reliefs when the film is about to be released, this Court observed as follows :

“5. The effect of granting such a circulation application would be that I would have to set aside all other work, including part-heard and specially fixed matters, only to accommodate the plaintiffs who have chosen to come this late, though they could well have moved earlier. This practice of parties claiming copyright infringement coming to Court at the eleventh hour and expecting Courts to drop all other work to listen to and decide their applications on a priority basis must be discouraged. In a given case, where the plaintiff had no prior knowledge an exception will of course always be made. But where it is shown, and especially where it is admitted, that the plaintiff knew several weeks in advance of the release of the film, I see no reason to grant priority. That would be an unconscionable indulgence.

28. Dr Tulzapurkar for the 1st defendant points out that, apart from the obvious differences, the delay in bringing suit cannot be accidental. On their own showing, the plaintiffs knew about the defendants' film since 24th February, 2017. They knew of the release date of 24th March, 2017. From that date of knowledge, i.e., for the last four weeks, they have chosen to wait, and have not come to Court until a mere three days before the release of the film. They have only served a copy of the plaint and Notice of Motion on the defendants only at 7.00 p.m. last evening and have sought this morning urgent circulation. By this time 800 theatres countrywide have been booked for release. Distribution rights have been created. Third party rights have intervened. There cannot be any question of irreparable injury to the plaintiffs in a situation such as this or of the balance of convenience favouring the plaintiffs even assuming that a prima facie case is made out, which in his submission, it is not. He submits that it is not enough to make out some prima facie case; to get an injunction of this kind, the plaintiffs must make out so overwhelming a prima facie case that all other considerations pale into insignificance. Unless I conclude that the plaintiffs have indeed made out a case of this strength, in his submission, no injunction can or should follow.

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 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."*

9. The aforesaid position of law makes it abundantly clear that in such matters, the aspect of delay on the part of the plaintiff in approaching the Court assumes significance, particularly when it is found that the film is about to be released and the plaintiff has chosen to approach the Court at the eleventh hour. It is obvious that in such circumstances, the Court is necessarily required to take into consideration material that indicates existence of

information in the public domain about the concerned film and as to whether the plaintiff moved with alacrity upon such information coming into the public domain.

10. Before considering the material, upon which the defendants have placed much reliance, it would be appropriate to consider the claim of the plaintiff with regard to his script titled “Fire Bird”, the central theme thereof and his claim about the same having been given to the defendant No.1.

11. It is the case of the plaintiff that his script is based on historical facts pertaining to the 1965 war between India and Pakistan and particularly about an air raid conducted by the Indian Air Force in Sargodha (Pakistan). Amongst the Indian Air Force Pilots, who were part of the team that raided Sargodha, one Squadron Leader Devayya did not return. Another Air Force Pilot, Group Commander Taneja, pursued the said aspect of the matter and eventually, his efforts led to Maha Vir Chakra being posthumously given to the late Squadron Leader Devayya in the year 1988. The plaintiff claims that he had weaved a story around this central theme by substantial creative inputs, which led to the aforesaid script “Fire Bird”. According to the plaintiff, he forwarded the aforesaid script to defendant No.1 in the year 2014. This was in the backdrop of a Memorandum of Understanding executed between the two.

12. It is in the backdrop of such claims that the learned counsel

for the plaintiff submitted that when the trailer of the film “Sky Force” was released by the defendants, he became aware about the resemblance between his script “Fire Bird” and the film “Sky Force” and thereupon, the plaintiff was constrained to file the present suit, particularly because the defendants dishonestly denied his claims, despite the fact that initially they had come down to the negotiating table. The learned counsel for the plaintiff submits that the plaintiff has a very strong case on merits and therefore, this Court may consider directing the defendants to screen the film for the plaintiff in order to further demonstrate the merits of the case of the plaintiff and till such time, the film ought not to be released. It is submitted that there is no question of delay in the present case, as the material in the public domain, upon which the defendants have relied, does not show that the actual story of the film “Sky Force” was in the public domain and it was only when the trailer was released that the plaintiff became aware about the manner in which the defendants had copied the creative elements put into the basic theme by the plaintiff in his original literary work i.e. the script “Fire Bird”. The learned counsel for the plaintiff, in this context, relied upon judgment and order passed by this Court in the case of *Twentieth Century Fox Film Corporation v/s. Sohail Maklai Entertainment Pvt. Ltd. & Anr., 2010 (7) Mh.L.J. 338* and order passed in the case of *Jyoti Kapoor & Anr. v/s. Kunal Kohli & Ors., 2015 SCC OnLine Bom 3373*. But, upon the learned Senior Counsel appearing for the defendants pointing out that the order passed in the case of *Jyoti*

Kapoor & Anr. v/s. Kunal Kohli & Ors. (supra) was set aside by the Division Bench of this Court, the learned counsel for the plaintiff did not rely upon the said order. By relying upon the order passed by this Court in the case of ***Twentieth Century Fox Film Corporation v/s. Sohail Maklai Entertainment Pvt. Ltd. & Anr.*** (supra), the learned counsel for the plaintiff submitted that unless this Court permits screening of the film and actually compares the original literary work of the plaintiff i.e. the script “Fire Bird” with the film “Sky Force”, the film ought not to be released. It is submitted that dishonesty of the defendants ought not to be trump over the rights of the plaintiff, on an erroneous interpretation of the law pertaining to delay in such cases.

13. On the other hand, the learned Senior Counsel appearing for defendant Nos. 1 to 3, relied upon the documents annexed to the limited affidavits in reply of defendant Nos.2 and 3, to submit that atleast since October 2023, the fact that the film “Sky Force” on the stated storyline and subject was being produced was in the public domain. Yet, the plaintiff has chosen to knock the doors of this Court at the eleventh hour, when the film is to be released on 24th January 2025 (tomorrow). Reliance was placed on the aforementioned orders of this Court in the case of ***Sushila Sharma v/s. Madhur Bhandarkar & Ors.*** (supra), ***Sai Paranjpaye v/s. PLA Entertainment Pvt. Ltd. & Ors.*** (supra) and ***Dashrath B. Rathod & Ors. v/s. Fox Star Studios India Pvt. Ltd. & Ors.*** (supra).

14. This Court has already referred to the position of law with

regard to delay on the part of the plaintiff in such cases. The relevant portions have been quoted hereinabove. The said position of law and the test contemplated therein will have to be applied to the present case, on the basis of the material annexed to the limited affidavits of defendant Nos.2 and 3 and the rival submissions made in that regard.

15. A perusal of the documents filed along with the limited affidavits of defendant Nos. 2 and 3, show that a teaser of film “Sky Force” was released as far back as on 2nd October 2023 and this was very much in the public domain. In fact, the plaintiff in paragraph 31 of the plaint itself has stated that the defendants had indeed released the teaser on 2nd October 2023 on the *YouTube* channel of defendant No.3. But, according to the plaintiff, since the teaser of the film “Sky Force” did not disclose any creative elements that were original to the plaintiff’s script, there was no reason for the plaintiff to approach the Court or seek any restraining orders.

16. In order to consider the aforesaid contentions raised on behalf of the plaintiff, this Court has minutely looked at such material in the public domain, as annexed in the form of documents to the limited affidavits of defendant Nos.2 and 3. The said documents are as follows :

- (i) Teaser of the film “Sky Force” dated 2nd October 2023, stating that the said film would be ready for release in

October 2024 and that this fact was shared on the social media. This teaser specifically stated that the film “Sky Force” was an untold story capturing the bravery, the emotion and a patriotism of all the men in uniform involving India’s first and deadliest airstrike against Pakistan. The said teaser specifically stated that the aforesaid film was to be co-directed by defendant No.1 and co-produced by defendant Nos.2 and 3.

- (ii) These claims were reiterated in posts/teasers released on the official *YouTube* channel of the defendant No.3, wherein it was further specifically stated that the film “Sky Force” was not only co-directed by the defendant No.1, but it was written by him.
- (iii) On 11th March 2024, on website *ottplay.com* a specific release referred to the fact that the film “Sky Force” was announced on 2nd October 2023, inspired by India’s 1965 retaliatory attack on Pakistan’s Sargodha airbase. Specific details about the air combat between the Air Forces of India and Pakistan on 6th September 1965, were stated. It was specifically stated that the tale of the air attack by the Indian Air Force in Sargodha in Pakistan, was significant because it was the only instance in which an air fighter i.e. Squadron Leader Devayya was conferred Maha Vir Chakra posthumously. It was further specifically stated in the aforesaid post dated 11th March 2024 that there would be

two main characters in the film “Sky Force”, one being Group Captain-Taneja and the other being Squadron Leader Devayya, the role of the Group Captain being played by a veteran star, while the role of the Squadron Leader being played by a newcomer.

- (iv) On the same day i.e. 11th March 2024, the Times of India published an article regarding the film “Sky Force” based on the 1965 air attack on Sargodha in Pakistan. This article also gave details about the story of the film “Sky Force” being based on Air attack on Sargodha in Pakistan, which led to Maha Vir Chakra being posthumously given to one of the fighters. Specific reference was made to Devayya with his photograph forming part of the article, again making reference to the actors who would be playing the two central characters in the film.
- (v) In an article, which was published on 11th March 2024 on bollywoodlife.com, similar details about the film “Sky Force” were placed in the public domain, with reference to the story of the film and the details of the actors playing the central characters in the said film.
- (vi) Thereafter on 24th July 2024, the defendant No.2 released teaser of the film “Sky Force” on www.sacnilk.com/news/Maddock_Films, regarding film “Sky Force”, specifically stating that the same was being co-directed by defendant

No.1, giving the aforementioned details about the story of the film. It was indicated that the film was scheduled to be released on 2nd October 2024.

- (vii) On 23rd September 2024, the Times of India further published an article about the film “Sky Force”, its story and the actors playing the central roles.
- (viii) On 21st October 2024, the Statesman published an article concerning the film “Sky Force” and the possibility of the film clashing with the release of another film. This article also refers to the air strike by India in the 1965 War with Pakistan.
- (ix) On 17th December 2024, News18 published an article about the film “Sky Force”, referring to the theme of the film, the actors in the said film and also stating that it was co-directed by the defendant No.1.

17. This Court is of the opinion that there is substance in the contention raised on behalf of the defendants that as per the pleadings of the plaintiff himself in the plaint, he cannot claim ignorance of such material in the public domain pertaining to the film “Sky Force”, atleast since October 2023. It is relevant to note that in paragraph 1 of the plaint the plaintiff has claimed to be an accomplished and well-reputed creative professional, working as a creative director, executive producer, an animator and COO and

CEO in a career spanning two decades. He has also claimed to be a seasoned scriptwriter and creative professional with extensive experience in the animation and entertainment industry for two decades, having expertise in creating original content from conceptualizing storylines to overseeing pre-production processes. He has also referred to his tenure at Adlabs and production of high-profile projects and he claims to have co-produced and line produced several cinematographic films, television and web-series. Considering the said credentials of the plaintiff, it cannot lie in his mouth that he was not aware about the aforementioned material in the public domain about the film “Sky Force” from October 2023 and therefore, it becomes sufficiently clear that the plaintiff waited for the film to be produced and when it reached the stage of being released, he rushed to the Court raising claims on the basis of copyright in the original script.

18. As noted hereinabove, in paragraph 31 of the plaint, the plaintiff himself has stated that he was aware about the defendant No.3 having released the teaser of the film “Sky Force” on its *YouTube* channel as far back as on 2nd October 2023. It is the case of the plaintiff himself that he had written the script “Fire Bird” on the aforementioned theme available in the public domain about the 1965 air raid, wherein one of the pilots was lost and how he was posthumously awarded Maha Vir Chakra. The plaintiff claims to have given the original work and script “Fire Bird” to defendant No.1 as far back as in the year 2014. The aforesaid material

available in the public domain, starting with the teaser released on 2nd October 2023, stated unambiguously that the film “Sky Force” was written by defendant No.1 and it was also being co-directed by him.

19. In such a situation, this Court is unable to accept the contention of the plaintiff that although the film “Sky Force” was based on the very story in respect of which he had prepared the script “Fire Bird” and given it to the defendant No.1 way back in the year 2014, it did not occur to him after noticing such material in the public domain, starting from 2nd October 2023, that his original work could have been used for the film “Sky Force”. Being a person entrenched in the entertainment and film industry, even as per his own pleadings, it cannot lie in the mouth of the plaintiff that he was not aware about such material on websites concerning the said industry or even the print media, including well circulated newspapers like Times of India and the Statesman.

20. The explanation sought to be given by the plaintiff is that he did not believe that the teaser released on 2nd October 2023 gave rise to an actionable cause because the teaser did not disclose any creative elements forming part of the original and unique script of the plaintiff. A bare reading of the plaint would show that even according to the plaintiff, his script was indeed based on the air strike conducted by the Indian Air Force, during the 1965 India-Pakistan War at Sargodha in Pakistan and the manner in which Squadron Leader Devayya disappeared and how he was eventually

awarded the Maha Vir Chakra posthumously. This Court is of the opinion that the pleadings in the plaint itself demonstrate that the plaintiff cannot feign ignorance about the aforesaid elaborate material in the public domain about the film “Sky Force” from October 2023 onwards or that he could not have any grievance till the trailer was released in January 2025.

21. This Court is of the opinion that the plaintiff waited during the aforesaid period of time from October 2023 till the film “Sky Force” was completed and he has chosen to approach this Court to seek stay on release of the film at the eleventh hour, only a couple of days before the release date of 24th January 2025. In the meanwhile, defendant Nos. 2 and 3 have invested substantial sums of money. In fact, in the limited affidavits filed on their behalf, it is indicated that an amount of about Rs.250 crores has been invested in the film and that the domestic and overseas theatrical rights have been licensed to specific parties with more than 2500 domestic theatrical screens being booked. The music rights of the film have been assigned to a company and advance bookings for the theater screens have already begun with the deliveries of the film material for theatrical exhibition having been completed.

22. This Court is of the opinion that the above referred law pertaining to the manner in which the Court is expected to deal with such proceedings initiated at the eleventh hour, applies in full force to the facts and circumstances of the present case. It can be said that the present proceedings, in view of the aforesaid position

of law, are not only delayed, but can be treated as litigation strategy on the part of the plaintiff to claim urgent circulation and to seek ad-interim reliefs at the eleventh hour when the film is about to be released.

23. Apart from this, it is relevant to note that in the plaint at paragraph 46, the plaintiff has referred to an amount of Rs.10 crores in the backdrop of the discussions with the defendants. Although the prayer clause of the plaint does not specifically quantify an amount as regards the copyright claimed by the plaintiff, a direction is sought from the defendants to disclose the profits and revenue earned from the film “Sky Force”, thereby indicating that ultimately the plaintiff would indeed be pressing for monetary relief.

24. In this context, the observations of this Court in the case of *Sai Paranjpaye v/s. PLA Entertainment Pvt. Ltd. & Ors.* (supra) become relevant, wherein this Court held that the plaintiff therein was not entitled to get any relief under the provisions of Order XXXVIII Rule 5 of the Civil Procedure Code, 1908 and that the balance of convenience was clearly in favour of the defendants.

25. This Court is of the opinion that in the facts and circumstances of the present case, the balance of convenience is clearly in favour of the defendants, in the light of the fact that they would suffer immense loss, if ad-interim stay of release of the film is granted, particularly when the plaintiff has approached this

Court at the eleventh hour and just before release of the film. By failing to take any steps between the period October 2023 till January 2025, despite the aforesaid material in the public domain, the plaintiff allowed the film to be completed with substantial amounts being invested by defendant Nos.2 and 3. Therefore, it cannot lie in his mouth that he is entitled for a screening of the film at this stage and for a direction to restrain the defendants from broadcasting/ releasing the film “Sky Force”.

26. As regards the order of this Court passed in the case of *Twentieth Century Fox Film Corporation v/s. Sohail Maklai Entertainment Pvt. Ltd. & Anr.* (supra), upon which the learned counsel for the plaintiff places much reliance, suffice it to say that the said order was passed in the facts of the said case. In the said case, the plaintiff had received notice about the film of the defendants in or about August 2010 and there was exchange of correspondence between the parties. Thereupon, the plaintiff approached the Court. But, there is nothing to indicate that in the said case material pertaining to the film was in the public domain much prior to the release of the film. It is also relevant to note that the facts and circumstances of the said case are distinguishable from the present case, because the plaintiff herein had himself given the script, in which he claims copyright, to defendant No.1 as far back as in the year 2014. The plaintiff very well knew about the story contained in his own script given to defendant No.1 and when the features of the said story concerning film “Sky Force”

were in the public domain in October 2023, showing the defendant No.1 as a writer and a co-director, the plaintiff ought to have moved with alacrity. Therefore, reliance placed on order in the case of *Twentieth Century Fox Film Corporation v/s. Sohail Maklai Entertainment Pvt. Ltd. & Anr.* (supra) can be of no consequence. As noted hereinabove, the order passed in the case of *Jyoti Kapoor & Anr. v/s. Kunal Kohli & Ors.* (supra) was set aside by the Division Bench of this Court and hence, the plaintiff is not entitled to rely upon the same.

27. In view of the above, the prayer for ad-interim reliefs is rejected.

28. The defendants shall file their reply affidavits in the interim application within four weeks from today. The plaintiff shall file rejoinder affidavit, if any, within two weeks thereafter.

29. List the application for further consideration on 17th March 2025.

MANISH PITALE, J.