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**2020 SCC OnLine Bom 659**

**In the High Court of Bombay**

(BEFORE K.R. SHRIRAM, J.)

**Sameer Wadekar** and Another ... Plaintiffs;

*Versus*

Netflix Entertainment Services Pvt. Ltd. ... Defendants.

LD-VC-Interim Application No. 1 of 2020, LD-VC-Interim Application No. 2 of 2020, LD-VC-Interim Application No. 3 of 2020 and LD-VC-70 of 2020

Decided on May 22, 2020

Advocates who appeared in this case:

Mr. Viraj Kadam for plaintiffs.

Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Thomas George, Ms. Tanvi Sinha and Mr. Manas Gaur i/by Saikrishna & Advocates for defendant nos. 1 & 3.

Mr. Hiren Kamod a/w Ms. Ami Desai and Ms. Surekha Srinivasan i/by Desai & Partners for defendant nos. 2 & 4.

P.C.

**K.R. SHRIRAM, J.:**— Plaintiff states that plaintiff is a writer registered with Screen Writers Association with a dream like any other writer to make it big as a story writer in an entertainment industry. Plaintiff has written many stories which are registered with copyright office and with Screen Writers Association and one such literary work of plaintiff is "VETAAL". Plaintiff states that he had penned VETAAL way back in 2013-2014 and got it registered in 2015. According to plaintiff he came upon a Youtube video which was sent to him by a friend one Pratik Meshram which when plaintiff saw convinced him that in the 146 seconds of Youtube video of a web series titled BETAAL, it was a copy of plaintiff's copyright. This Youtube video was received by plaintiff only on 7.5.2020 and which is the date on which trailer was also released by defendant no. 1. According to plaintiff in the 146 seconds of the video trailer, there were atleast 13 similarities with the copyright work of plaintiff. Plaintiff states that his information is, on 24.5.2020, defendant no. 1 is releasing world wide the web series "BETAAL" on Over the Top (OTT) platform of defendant no. 1. Plaintiff states that defendants have infringed their registered copyright work VETAAL and therefore, should be restrained by an ad-interim order from going ahead with the release on 24.5.2020.

2. The counsel for plaintiff submitted that the story VETAAL was an original script of plaintiff which was based on a fictional story created with the imagination of plaintiff which included characters, locations, props etc. According to plaintiff, defendants have depicted in many different manners plaintiff's work but the defendants' projection is similar to copyright of plaintiff. Plaintiff alleges that it is a case of infringement of copyright and plagiarism. Defendant no. 1 is distributor, defendant no. 2 is producer, defendant no. 3 is writer of the story BETAAL and defendant no. 4 is the director of the Web series BETAAL.

3. I asked the counsel for plaintiff that if plaintiffs' story was fictional and absolutely original, how would the defendants have come to know particularly defendant no. 3 who is the author of the webseries BETAAL, about this story and that too have so many similarities according to plaintiff. Mr. Kadam brought to the Court's attention paragraph no. 3.2 in which it is averred that since 2015 plaintiff no. 1 has shared his copyright work with many known and established producers one of whom was a film maker/director Wilson Louis with whom plaintiff no. 1 was in regular touch. According to plaintiff, Wilson Louis strongly believed in the story and was determined

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to make the film happen and he had few contacts in Netflix and elsewhere. Mr. Kadam relied on Exh.B to the plaint. Exh.B are e-mails exchanged between plaintiff no. 1 and Wilson Louis way back in July-2016. These emails do not show any link between Wilson Louis and Netflix. Except for plaintiff saying that Wilson Louis told plaintiff no. 1 that he has some contacts in Netflix, there is nothing else to show any link with defendant. Therefore, I find it difficult to believe that so called original story written by plaintiff, can be copied by somebody else. This is one point which is against plaintiff getting any ad-interim relief as prayed for.

4. The 2<sup>nd</sup> point is delay and latches. Defendant no. 1 has in an affidavit of one Priyanka Choudhary affirmed on 21.5.2020 has not only averred but also produced evidence to the fact that several print and online publications dated 16<sup>th</sup> & 17<sup>th</sup> July 2019 of general readership and popular to the trade and business of movies and general entertainment, carried reports of defendant no. 1 airing an original web-series called BETAAL with a description of a web-series in those articles. The Press Release described the story line as:

“A remote village becomes the theatre of a breathless battle when a two-century old Betaal, a British Indian Army officer, and his battalion of zombie redcoats are unleashed. With Indian police pitted against the undead army, hapless villagers are trapped in a horrific, edge-of-your-seat conflict”.

5. Mr. Kadam's statement that his client was not aware of this press release/publication does not help his case because these were in public domain.

6. The 3<sup>rd</sup> point which is not in favour of plaintiff for granting an ad-interim relief as prayed for is word 'Betaal' originates from 'Vetalam' relevant in Hindu Methodology. Everybody would have read the stories of Vikramaditya where a Vetaal would ask him a question and also tell him if he opens his mouth to speak, VETAAL will fly away and that if he does not answer despite knowing the answer, his head will explode. The beliefs associated with VETAAL is that it has super natural powers with great prowess.

7. In view of these above points, I am not inclined to grant any relief as prayed for.

8. In view of the above order, nothing survives in the Interim Application. Interim Application dismissed.

9. At this stage, Mr. Kadam seeks leave of the Court to take out an application for amending the plaint to include claim and damages. Liberty is granted and the application when heard, will be disposed on merits.

10. Mr. Jagtiani and Mr. Kamod waive service of the writ of summons.

11. In view of the lock down, period of 8 weeks is granted to file written statement, and it starts today.

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