

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 572 OF 2017
IN
SUIT (L) NO. 162 OF 2017

Kross Television India Pvt Ltd & Anr

...Plaintiffs

Versus

Vikhyat Chitra Production & Ors

...Defendants

Dr Birendra Saraf, with Ms Pooja Kshirsagar and Ms Ankita Singh i/b ANP Partners
for the Plaintiffs.

CORAM: G.S. PATEL, J

DATED: 23rd March 2017

PC:-

1. Dr Saraf tenders an Affidavit dated 22nd March 2017 of one Mr Daipayan Banerjee, an authorised signatory of the Plaintiff. This shows inter alia that the Plaintiffs were able to contact the Defendants. He says that pursuant to the previous order, the Plaintiffs obtained addresses of the Defendant from the Central Board of Film Certification ("CBFC"). The Plaintiffs then attempted to serve the Defendants at those addresses by courier and hand delivery. They were told that the 1st Defendant had shifted its address. The courier was told that the address of the Defendant was changed solely with an intention to evade or avoid service. The Plaintiffs' Advocates attempted to contact the 1st Defendant, AR Vikhyat, on his mobile number 89516 37695. The Truecaller mobile phone app showed this to be his mobile number. It was also reflected on his WhatsApp contact information. The WhatsApp status shown the name of the infringing Kannada film, Pushpaka Vimana. In subsequent messages exchanged, Vikhyat accepted that he was the producer of the Kannada film Pushpaka Vimana (paragraph 5 of the Affidavit).

2. Copies of the plaint, Notice of Motion and the order of 17th March 2017 were served on Defendant No.1, Vikhyat, and Defendant No. 5, Deepak Krishna, by WhatsApp. This was received. Vikhyat replied. He said 'I dint understand anything. Will check with my legal team and I'll text you back. I am out of station.'

3. The Plaintiffs effected service by email at two addresses: vikhyat.forever@gmail.com and deepakpn99@gmail.com.

4. Then the Plaintiffs' Advocates tried to contact Krishna, Defendant No. 5. It was he who supplied Vikhyat's mobile phone number. There is an email exchange annexed to this Affidavit.

5. The Defendants were informed by email and message that the matter would be listed today in this Court. The message was delivered.

6. I do not see what more can be done for the purposes of this Motion. It cannot be that our rules and procedure are either so ancient or so rigid (or both) that without some antiquated formal service mode through a bailiff or even by beat of drum or pattaki, a party cannot be said to have been 'properly' served. The purpose of service is put the other party to notice and to give him a copy of the papers. The mode is surely irrelevant. We have not formally approved of email and other modes as acceptable simply because there are inherent limitation to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had 'no notice'. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice. They had copies of the papers. They were told of the next date. A copy of the previous order was sent to them. Defendants who avoid and evade service by regular modes cannot be permitted to take advantage of that evasion.

7. The Plaintiffs have given the Defendants every opportunity to appear. The past record shows that the Defendants are only avoiding service. It was extremely difficult to even obtain their addresses. Their addresses were in fact obtained when the Plaintiffs contacted the CBFC in Bengaluru and obtained the addresses from that secretariat. The Defendants' addresses were necessarily with that body since the Defendants obtained certification for their film from that office. The CBFC in fact informed the Plaintiffs that there is only one producer, and it furnished that address. The copy of the communication dated 21st March 2017 from the CBFC is at Exhibit "A" to this Affidavit and it lists Vikhyat's address. If Vikhyat and Krishna believe they can resort to these tactics to avoid service, they are wrong. They may succeed in avoiding a bailiff. They may be able to avoid a courier or a postman. They have reckoned without the invasiveness of information technology. Vikhyat in particular does not seem to have cottoned on to the fact that when somebody calls him and he responds, details can be obtained from in-phone apps and services, and these are very hard to either obscure or disguise. There are email exchanges. There are message exchanges. None of these to my mind establishes that the Defendants are not adequately served.

8. The Defendants must now face the consequences.

9. There is no reply to the Notice of Motion. There is no appearance either.

10. The Suit seeks an injunction in respect of the Kannada film Pushpaka Vimana, one that has already been released. The case of the Plaintiff is that the Kannada film is a plagiarised copy of the Korean film called Miracle In Cell No. 7 released on 23rd January 2013 first in Korean and then in English on YouTube in 2014. The 2nd Plaintiff approached the original producers of Korean film for rights to a Hindi remake, and obtained an assignment on 10th June 2016. The 2nd Plaintiff obtained an exclusive license on 1st December 2016 to produce a theatrical motion picture. The 2nd Plaintiff then assigned its rights to the 1st Plaintiff. The 1st Plaintiff started researching the remake. In February 2017, the 1st Plaintiff found the infringing Kannada film. On checking with their assignors, the Plaintiffs learnt that the original producers had not assigned or transferred any rights to the Defendants.

11. There is material prima facie to show that the Kannada film is a copy of the original Korean film. Paragraph 3.12 of the plaint has details. It quotes, inter alia, Vikhyat as admitting that he 'adapted' the screenplay of the Korean film for the Kannada film. There are fifteen separate instances of such admissions and corroborating material set out in that paragraph. Prima facie, Dr Saraf is correct in saying that the Kannada film is a colourable imitation of the Korean original. The Kannada film has been released and there is also a possibility that the Defendants have even made a telecast.

12. Therefore Dr Saraf submits that all further exhibition, distribution and telecasts must be prevented as a prima facie case has been made out. He submits that the balance of convenience is with the Plaintiffs and that if an injunction as sought is not granted the Plaintiffs will suffer irreparable injury. It is in these circumstances that various injunctive orders are sought. I agree with these submissions.

13. In my view, there is absolutely no reason whatsoever why an ad-interim order in terms of prayer clause a(i), (ii), (iii) and (iv) and prayer clause b(i),(ii) and (iii) should not be granted today. There will, therefore, be an ad-interim order in these terms:

“ (a) pending the hearing and final disposal of the present Suit this Hon' ble Court:—

i. grant temporary and interim injunction restraining the Defendants, their agents, servants, nominees, assigns and / or any persons claiming through or under them from in any manner, showing, exhibiting, communicating to public, making available for viewing and / or in any manner showing the Kannada Film on any medium, including but not restricted to, cinema theatres, television, internet, making and releasing CDS/DVs;

ii. grant temporary and interim injunction restraining the Defendants, their agents, servants, nominees, assigns and / or any persons claiming through or under them from in any

manner entering into any agreement / arrangement with third parties for grant of satellite rights (by whatever name) for the purposes of showing / exhibiting the Kannada Film on Television or internet;

iii. grant temporary injunction against the Defendants, their agents, servants, nominees, assigns and / or any persons claiming through or under them and against any party thereby restraining them from releasing the Kannada Film on Television or internet;

iv. injunction against the Defendant, their servants, employees, assigns and / or nominees thereby restraining him / them from in any manner entering into any agreements / arrangements with any person or interse to create any rights in the Kannada Film, including right to make copy of the film, use the screenplay and script for remake, prequel and / or sequel or dub the Kannada Film in any other language.

(b) Defendants thus be directed to disclose on oath:

(i) Agreements, arrangements and / or contacts executed, if any, with Actors, Artists, writers, Lyricist, cast, crew etc. in relation to the said Kannada film;

(ii) Agreements, arrangements and / or contacts executed, if any, with third parties with respect to and / or in relation to granting negative rights, exploitation rights and / or satellite rights in respect to the said Kannada film;

(iii) If the Defendants have received any amounts inter se and / or from the third parties with respect to and / or in relation to the said Kannada film and give account of the said amounts, if any."

14. List the Notice of Motion for hearing and final disposal on 12th April 2017.

(G. S. PATEL, J.)