

**IN THE COURT OF SH. SANJEEV AGGARWAL,
DISTRICT JUDGE (COMMERCIAL)-02,
PATIALA HOUSE COURTS, NEW DELHI**

**CS (COMM) 395/2023
CNR No. DLND010060572023**

JAGDISH SHARMA & ANR.

...Plaintiffs

Versus

K.K. RADHAMOHAN & ORS.

...Defendants

13.10.2023

ORDER

1. Vide this order, I shall dispose off the present application u/O 39 Rule 1 & 2 CPC moved on behalf of the plaintiffs.

2. Brief facts, which can be taken out from the record are as under :

1. That the Plaintiff no.1 Jagdish Sharma is well known Political Leader, Social Activist and Producer (Producer JK Films) of Original Movie Ruslaan and the Plaintiff No.2 is renowned actor of the Bollywood film industry, Lead Actor of Original Movie Ruslaan and attained a very good reputation in the industry. The Plaintiff No. 2 is recently launched a Music Album Apni Mohabbat which is being well praised by critics.

2. That the Defendant no.1 is the Producer, Defendant no.2 is the Director, Defendant No.3, 4 & 5 are the lead actors in the upcoming movie Ruslaan which is going to be release this month or next month and the teaser of the 10 JU same has already been released worldwide by the Defendants.

3. That the Plaintiff no.1 is the Producer of the Movie Ruslaan which was released in theatres across India on 11" September 2009 and Plaintiff No.2 was the Lead Actor in the opposite of lead actress Megha Chaterjee (Daughter of legend actor Moushmi Chaterjee) along with many legend actors of Bollywood like Shahbaz Khan, Ganesh Yadav, Asrani, Smita Jayakar, Rajendra Sharma, Rajan Sharma, SM Zaheer, Shabnam Kapoor and Prithvi Jyutshi etc.

4. That the songs of this movie Ruslaan were sung by famous singers like Sunidhi Chauhan, Javed Ali, Master Salim, Sadhna Sargam and Hariharan and music was given by Raees. Famous Bollywood choreographer Shabina Khan choreographed the songs of this film.

5. That the music release of the Movie Ruslaan was organized in New Delhi on the presence of the then Chief Minister of Delhi Late Smt. Shiela Dixit and many big actors, cricketers and political veterans like Kapil Dev, Mohammad Azharuddin, Madanlal, Actress Moushumi

Chatterjee, Gurmeet Choudhary, Debina Bonnerjee, Shaleen Bhanot, MS Bitta had attended the release ceremony.

6. That the said Movie Ruslaan did well on box office and the work of the Plaintiff No.2 Shri Raaj Veer Sharma was much appreciated by the critics for his tremendous acting. Plaintiff No.2 is still working in the industry and in next month he is coming with his next project Apni Mohabbat and also planning to launch the said Movie Ruslaan on OTT Platform and talks related to the same are in progress with OTT Platforms.

7. That the Lead Character of Ruslaan played by the Plaintiff No. 2 was much appreciated and this character was so popular that still in Bollywood industry Plaintiff No. 2 is known as Ruslaan. The character of Ruslaan is so central to the entire plot that they constitute the story being told and thus, merit copyright protection. The said character satisfy both the "Especially Distinctive Test" and the "Story being told Test" as pronounced by various courts in India and abroad.

8. That since the Ruslaan was launched in 2009 and the OTT culture developed in India post Covid hence the Plaintiffs has started negotiation with the OTT platforms to launch their Movie Ruslaan on OTT Platform but due to launching of the teaser of the said Ruslaan by the big

brands all OTT platforms have withdrew their consent to launch the Plaintiffs movie on OTT platform.

9. That the Film Ruslaan became a marketable commodity and apart from royalties and traditional modes of exploitation such as satellite, cable, and Social Media Platforms. Plait enjoy lucrative profits from merchandising and also from their shows the name of Ruslaan.

10. That on 21.04.2023 Defendant No 3, the lead Character of the upcoming New Delhi Movie Ruslaan has shared the teaser of the movie and there are news that very soon the defendants going to launch the said movie which is prima facie looks a copy of the original Ruslaan.

11. That since the Lead actor Ayush Sharma of the upcoming Ruslaan is Brother in law of famous Actor Salman Khan hence no OTT platforms are ready to talk even about the plaintiffs movie launch on OTT platform.

12. That the Plaintiff are the owners of copyright in various original works that subsist in the Plaintiff's Film including but not limited to the story line, dialogues, theme, concept, plot, script, music, lyrics, character sketches etc. The plaintiff is entitled to copyright protection under Section 14 of the Copyright Act, 1957.

13. That when on 21st April 2023 The Plaintiff's saw

the teaser of a Movie with the name Ruslaan produced by the Defendant no.1 and Directed by the Defendant no.2 and in the teaser one dialog can also be heard "Mai Ruslaan ko bachpan se janti hun." Which is also exactly the same dialog taken from the Plaintiffs original movie Ruslaan. It is pertinent to mention here that from the dialog and teaser it seems that the upcoming movie Ruslaan is a copy of the Plaintiffs original movie Ruslaan.

14. That from the teaser of the said upcoming movie Ruslaan it is quite clear that not only the name of the Plaintiff's movie is being used illegally by the Defendants but the dialogs and stories are also copied from the Plaintiffs original movie Ruslaan which is clear violation of the right of the owner and copyright infringement.

15. That in the original Ruslaan the lead actor name was Ruslaan and from the teaser it is quite clear that the Lead actor name in the upcoming Ruslan movie is also Ruslaan.

16. It is pertinent to mention here that the original Movie Ruslaan was the First Movie of the Plaintiff No. 2 and he is known in the Bollywood industry by his Movie Ruslaan only, and if the said Name and story will be used by such big names Plaintiffs name fame everything will be destroyed and he will suffer for his bread and butter.

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17. That from the teaser of the said upcoming movie Ruslaan it is quite clear that not only the name of Plaintiffs movie is being used illegally by the Defendants but the dialogs and ratories are, also copied from original movie Ruslaan which is clear violation of the right of the owner and copyright infringement. Also if the said movie will be released with the same name Ruslaan for which the plaintiffs have all the legal rights, plaintiffs will be in huge loss as they are in planning to launch their original Movie Ruslaan on OTT platform but if the Movie with this name will be released by the Defendants, Plaintiffs will face a big loss as you all are the big people of the industry and the lead actor is the Brother in law of Salman Khan in the said upcoming movie who has great impact in Bollywood industry.

3. Written statement has been filed on behalf of defendant no. 1, wherein the relevant para(s), it is stated as under :

1. That the defendant no. 1 is eminent film producer known for his contribution in Telugu, Malayalam and Hindi Film Industry. All his movies are well received at the box office and critical acclaim. The defendant no. 2 is acclaimed director who has worked for several

renowned movies in the vernacular language under the Indian film industry. The defendant no. 3 to 5 are well renowned actors and have long standing career in the Indian film industry. This written statement is being filed on behalf of the defendant no. 1 (herein after called answering defendant) in reply to the suit filed by the plaintiffs herein after called answering defendant.

2. That the answering defendant is making a movie which is named as Ruslaan (2023) and is likely to release in September or October of 2023. Defendant no. 1's production house is a member of Indian Motion Picture Producers' Association (IMPPA). Before rolling the production for its movie, Defendant no. I applied for the registration of title "Ruslaan" for movies and web series, at the IMPPA and was allotted the same after thorough verification. After the Defendant no. I received the go ahead to use the title "Ruslaan" and they started shooting for the movie in August of 2022 and up till now have spent a huge amount of money (Approx 30 crores) in the production of the movie. The movie is at its final phase and the answering defendant has made all necessary set up for the timely release of the same.

3. The defendant no. I is the copyright owner of the cinematographic film Ruslaan (2023) and has exclusive right to adapt a literary, dramatic, musical, artistic work

or any other copy rightable rights deriving from the cinematographic film. Any person infringing the copyright in the film without the leave and licence of the of the author/producer shall be liable under the Act, or any other law for the time being in force. That the defendant no. 2 to 5 are artists in the movie have been hired for their services and do not have any right in the defendant no. 1's cinematographic film "Ruslaan" (2023).

4. That in the month of April 2023, answering defendant released the teaser for its movie on social media platform which has been well received by the audience. The teaser alone has received more than million views till date which has been well received by the audience. The movie has an ensemble cast of well renowned actors and artists. That the answering defendant have invested a huge amount for the production of the movie and have been patiently waiting for commercialisation of the same, to enjoy the fruit of their labour. Not only the answering defendant but the livelihood of all other artist associated with the movie are contingent on the same.

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5. That the plaintiffs' claim of copyright, in the title of the movie is completely misguided on facts as well as law. Plaintiffs through this suit is seeking protection of

rights in the title of the movie under the Act, which is contrary to the settled provision of the law, i.e., title/name of any literary work (cinematographic films, novels, stories, poem etc) cannot be protected under copyright law. The title alone, and not the plots, characterization, dialogues, songs, etc. is not a subject of copy right law, therefore would not include exclusive right to use the title on any other work. Supreme Court of India in *Krishika Lulla & Ors. V Shyam Vithalrao Devkatta and Anr.* (Criminal Appeal No. 258 of 2013). In the absence of any right the present suit is not maintainable and liable to be dismissed.

6. That under section 13 of the Act, copyrights subsist only in original literary, dramatic, musical and artistic works; cinematograph films, and sound recording. Whereas the word *Ruslaan* is common name which means "lion" and is a prevalent name in Asian and European countries. It is proper noun used to indicate a person; therefore, it does not merit any protection under the Act. Mere use of common words as title cannot be considered as literary work hence no copyright can be said to subsist u/s 13 of the Act.

7. That the use of the word "*Ruslaan*" as movie and character name has been prevalent practice in the entertainment and literary industry. In the year 2009,

movie "Drive to Kill", the protagonist's was named 'Ruslan' which was played by Steven Segal famous Hollywood Actor. In the October of 2014, Movie released by the name of Ruslan was based on the story of child facing emotional hardship: Apart from cinematographic films, other literary works also exist by similar name or character; (i) Ruslan and Ludmila-1820 poem by Alexander Pushkin about a 11th Century legendary hero Ruslan, (ii) Faithful Ruslan 1975 novel by Georgi - Vladimov, (iii) Yeruslan Lazarevich, Russian Folk tale hero of Tartar origin. There are several other famous Politicians, Celebrities, Sportsmen and people belonging to other eminent domain who are recognised by this proper noun. Therefore, plaintiff cannot claim any copyright on the name as it is not an original literary work.

8. That the plaintiffs' claim that the movie title Ruslaan and the character has acquired secondary meaning and reputation, however, they have failed to provide any potent evidence in order to support its claims as to on what grounds has the same acquired secondary meaning and reputation. It is pertinent to note that the plaintiffs' movie failed to perform tremendously in the market. Not only the movie but even the actors, writers and director of the movie were not well received by the public and

movie critiques. The plaintiffs' movie performed so miserably that the artist associated with the same were passed over for other projects in the industry. The claims of the movie title and the character acquiring secondary meaning and reputation are outrightly based on false and frivolous grounds.

9. That neither the plaintiffs' movie nor any other literary work associated with movie has any prominent presence in the online/offline media to create any reputation associated with the same. Plaintiffs in order to further its lies has made false claim that they were in communication with OTT platforms to launch their movie digitally. Plaintiff's claim that its movie has been denied release on OTT platform because of the defendant's movie is based on false and misleading averment.

4. Similar common written statement have also been filed on behalf of defendant nos. 2, 3, 4 and 5, contents of which are similar in sum and substance to the written statement filed on behalf of defendant no. 1. Therefore, for the sake of brevity the same are not reproduced herein again.

5. I have heard Sh. Rudra Vikram Singh along with Sh. Manish Kumar, Ld. Counsels for the plaintiff, Sh. Anil Kumar Sahu along with

Sh. Sreejan Pankaj, Ld. Counsels for defendant nos. 1 to 5, Sh. B. C. Bhatt, Ld. Counsel for defendant no. 6. and perused the record. I have also gone through the written arguments filed on behalf of the plaintiffs as well as defendant nos. 1 to 5.

6. Ld. Counsel(s) for the plaintiffs have relied upon the following judgments in support of their contentions :

- a) ***R.G. Anand Vs. Delux Films (1978) 4 Supreme Court Cases 118;***
- b) ***Sholay Media and Entertainment Pvt. Ltd. & Anr. Vs. Parag Sanghvi 2015 SCC OnLine Del 11644: (2015) 223 DLT 152: (2016) 5 RCR (Civil) 483: (2015) 64 PTC 546***

On the other hand, Ld. Counsel(s) for defendant nos. 1 to 5 have relied upon the following judgments in support of their contentions :

- a) ***E. M. Forster & Anr. Vs. A. N. Parasuram 1964 SCC Online Mad 23;***
- b) ***Kanungo Media Pvt Ltd Vs. RGV Film Factory & Ors, ILR (2007) I Delhi 1122;***
- c) ***Krishika Lulla And Ors Vs. Shyam Vithalrao Devkattta and Anr, (2016) SCC 521;***
- d) ***Anil Kapoor Film Co. Pvt. Ltd Vs. Make my Day Entertainment and Anr, [2017 SCC Online Bom 8119;***
- e) ***M/s. Lyca Productions Vs. J. Manimaran and Ors, O.S.A No. 63 of 2018 of Madras High Court;***

- f) Mr. K. Balaji Kumar Vs. M/s Star Polaris Anr, O.S.A. no. 154 of 2019 of Madras High Court;**
- g) Vishal Pipes Limited vs Bhavya Pipe Industry 2022 SCC Online Del 1730;**
- h) M/s Patil Automation Private Limited and Ors. V Rakheja Engineers Pvt. Ltd. SLP(C) No. 14697 Of 2021;**
- i) Sholay Media and Entertainment Pvt. Ltd. And Anr. V Parag Sanghavi and Ors. 2015 SCC Online Del 11644;**
- j) Venus World Entertainment Pvt. Ltd. V Popular Entertainment Network (PEN) Pvt. Ltd 2023:DHC:5804;**
- k) Shri K. Jayaram & Ors. V Bangalore Development Authority & Ors. Civil Appeal No(s). 7550-7553 of 2021 of Supreme Court.**

7. In the judgment **Krishika Lulla & Ors. Vs. Shyam Vithalrao Devkatta & Anr. Criminal Appeal No. 258 of 2013 decided on 15.10.2015**, the Hon'ble Supreme Court in the following para(s) has held as under :

8. Section 13 of the Copyright Act, lays down works in which copyright subsists. Section 13(1) reads as follows:-

“13(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, this is to say,-

original literary, dramatic, musical and artistic works;

cinematograph films; and [sound recording]

9. It is obvious that what is claimed by Respondent No.1- Devkatta is only copyright in the title “Desi Boys”. It is, therefore, not necessary to examine if a mere synopsis or a note

of a story amounts to a literary work. Admittedly, Devkatta has not made any film by the name “Desi Boys” and his only grievance is about the infringement of copyright in the title which according to him is the soul of his story and copying it takes away everything from his story.

10. The question that arises is whether copyright exists in the title “Desi Boys”. A title of a work has been considered to be not fit to be the subject of copyright law as will be apparent from the cases considered later. A title by itself is in the nature of a name of a work and is not complete by itself, without the work. No instance of a title having been held to be the subject of copyright has been pointed out to us.

11. It must be noted that in India copyright is a statutory right recognized and protected by The Copyright Act, 1957. It must therefore be first seen if the title “Desi Boys” can be the subject of copyright. On a plain reading of Section 13, copyright subsists in inter-alia an original literary work. In the first place a title does not qualify for being described as “work”. It is incomplete in itself and refers to the work that follows. Secondly, the combination of the two words “Desi” and “Boys” cannot be said to have anything original in it. They are extremely common place words in India. It is obvious, therefore, that the title “Desi Boys”, assuming it to be a work, has nothing original in it in the sense that its origin cannot be attributed to the respondent No.1. In fact these words do not even qualify for being described as ‘literary work’. The Oxford English Dictionary gives the meaning of the word ‘literary’ as “concerning the writing, study, or content of literature, especially of the kind valued for quality of form”. The mere use of common words, such as those used here, cannot qualify for being described as ‘literary’. In the present case, the title of a mere synopsis of a story is said to have been used for the title of a film. The title in question cannot therefore be considered to be a ‘literary work’ and, hence, no copyright can be said to subsist in it, vide Section 13; nor can a criminal complaint for infringement be said to be tenable on such basis.

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15. In E.M. Forster and Anr. v. A.N. Parasuram reported in

AIR 1964 Madras 331 the author of “A passage to India” E.M. Forster filed a suit against the defendants for alleged infringement of copyright in the title of the book for adopting as a title the name of the defendants guide written for students, as “E M Forster, A Passage to India, Everyman’s guide”. The Court reviewed the law on the subject[1], and observed that there was no copyright in respect of title vide page 231 of the report. Eventually the Court held :-

“As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English. It will be perfectly clear to them, from the words enclosed in brackets as a sub-title, that they were acquiring, not the original work, but a “guide for University students.....”

16. The same question arose in Kanungo Media (P) Ltd. v RGV Film Factory & Ors. reported in (2007) ILR 1 Delhi 1122 where the Court declined injunction against the defendant for using the brand name and title “Nishabd” alleging similar to the film of the plaintiff therein. The learned Judge A.K. Sikri, J. (as His Lordship then was) referred to decisions of the American Courts and observed that the position is the same as under the copyright law in India:-

“12..... What, therefore, follows is that if a junior user uses the senior user’s literary title as the title of a work that by itself does not infringe the copyright of a senior user’s work since there is no copyright infringement merely from the identity or similarity of the titles alone.” The Court then considered the question of protection of title as a trademark with which we are not concerned in this case.

17. Subsequently, in R. Radha Krishnan v. Mr. A.R. Murugadoss & Ors. reported in 2013-5-L.W. 429, the Madras High Court followed the decision of the Delhi High Court in the Kanungo Media Case and rejected an injunction for restraining the defendant from using the title of the plaintiff’s film ‘Raja Rani’. The Madras High Court considered various other decisions and held that the words ‘Raja Rani’ are words of common parlance which denote the king or the queen and cannot be protected under the law of copyright. The two judgments of the Madras High Court cited above and the

judgment of the Delhi High Court in our view, lay down the correct law.

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19. We are thus, of the view, that no copyright subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trademark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in Dicks v Yates where Jessel M.R said “there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention” or as observed by Copinger (supra).

20. In the present case we find that there is no copyright in the title “Desi Boys” and thus no question of its infringement arises. The prosecution based on allegations of infringement of copyright in such a title is untenable.

8. As per Wikipedia, the name Ruslan is primarily a male name of Russian Origin that means Lion-like.

Further Ruslan is a masculine given name popular among Turkish Azerbaijani, North Caucasian and some East Slavic people.

The name is an old Azeri / Caucasian Albanian variant of the Turkic word Arslan or Aslan – meaning Lion.

9. In this case the Title Ruslaan does not qualify to be described as a ‘work’ it refers to the work that follows, in this case the movie of the plaintiff by the name of Ruslaan is not original word, whose origin can be attributed to the plaintiff, as it is not a coined word. Therefore, Ruslaan does qualify to be described as a original literary work.

Common use of the word cannot be described as a literary work. Further here title of the film is stated to have been used for the title

of other film. Therefore, title cannot be considered as a literary work in view of the afore referred judgment named ***Krishika Lulla (supra)***, which is directly applicable to the facts of the present case.

10. The plaintiff has admittedly not seen the film of the defendant and had only seen the teaser of the film and he is not aware about the contents or the story line of the same, on the basis of which he can claim injunction stalling the film of the defendant to a total standstill.

Admittedly during the course of the arguments, the plaintiff had admitted that the plaintiff is not the registered proprietor of the trade mark Ruslaan, as the same is not registered as a trademark with the Registrar of Trade Marks.

11. Regarding the plea of passing off, the counsel for the defendant nos. 1 to 5 have argued that the same has not been pleaded anywhere in the plaint of the plaintiff, therefore, the plaintiff cannot be allowed to address arguments on the said aspect. Even otherwise, they have argued that no passing off action has been made out by the plaintiff, as plaintiff has failed to show that his film had acquired goodwill and distinctiveness, which the defendant is getting benefit of by way of his misrepresentation and was passing off his film as film of the plaintiff, thereby it can be said there was any likelihood of confusion in the mind of the public so that they would perceive the movie of the defendant, so that it is the same movie which the plaintiff had produced.

12. On the contrary, Ld. Counsel for the plaintiff has argued that the name Ruslaan has acquired distinctiveness and the title has acquired secondary meaning, as his movie generated sufficient goodwill and impression upon the audiences at the time of its release and it had done very well on the Box Office, so an viewer would identify the word Ruslaan with his movie, therefore, the use of the said title by the defendant i.e. Ruslaan would amount to confusion with regard to source / affiliation, therefore, it would amount to passing off action in common law.

13. In this regard, in the judgment cited as *Kanungo Media(P) Ltd. (supra)*, it has been held as under :

However, it is not necessary to go into this debate inasmuch as the plaintiff's title 'Nisshabd' for its film is not registered as a trademark. The case at hand is, therefore, while applying the legal protection given to such titles under the [Trade Marks Act](#) is to be considered on the principle applicable in the cases of passing off of such trademarks. In passing off, necessary ingredient to be established is the likelihood of confusion and for establishing this ingredient it becomes necessary to prove that the title has acquired secondary meaning. Thus, in case of unregistered title following ingredients are to be proved in order to triumph in an injunction suit:

*i) Title has acquired the secondary meaning;
ii) There is likelihood of confusion of source, affiliation, sponsorship or connection of potential buyers/ audience/viewers.*

Further, it has been held in para 27 of the above judgment as

under :

27. ...It is also not in dispute that this film has not been commercially exploited..... The question is whether on this basis it can be said that the title of the plaintiff's film has acquired secondary meaning, i.e. whether the audience would associate the title 'Nisshabd' to mean that it refers to the plaintiff's movie. Another question is as to whether there is likelihood of confusion in the mind of public, namely, with the defendants' movie 'Nishabd' people would perceive that it is the same movie which the plaintiff produced. ...

Further, it has been held in para 33 of the above judgment as under :

33. Prima facie, as of today the claim of the plaintiff's movie's title 'Nisshabd' appears to be blurred in comparison with the defendants' movie's title 'Nishabd'. For the same reason, as the defendants' forthcoming movie has acquired much publicity, there is hardly any question of confusion.....

14. Further in the judgment cited as ***Venus World Entertainment Pvt. Ltd. (supra)***, relied upon by Ld. Counsel for defendant nos.1 to 5, it has been held as under :

2. As per the averments in the plaint, Plaintiff is a Company incorporated in 1988 under the Companies Act, 1956 and is a large production house engaged in producing and distributing cinematographic films/movies across India. Plaintiff claims to have produced several blockbuster movies under its banner for over 30 years which include iconic films such as Baazigar, Main Hoon Na, Dhadkan etc.

3. It is averred that the first film produced by the Plaintiff was a film titled 'KHILADI' in the year 1992, which was the first hit movie of Mr. Akshay Kumar and which gave him the epithet 'Khiladi'. The movie is remembered over the years for its immense

success since it broke all traditional barriers of Indian film making, being one of its kind in the genre of 'action thriller' and 'murder mystery'.

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5. It is averred that Plaintiff is the registered proprietor of the trademark 'KHILADI' and its formative trademarks. Registrations are across Classes 9 and 41 and are valid and subsisting. It is stated that trademark 'KHILADI' has acquired a secondary meaning and any reference to or use of the mark by a third party, without Plaintiff's license or consent, would result in confusion as to the source of origin of goods and services. The secondary meaning garnered by the said trademark is a result of various factors such as: (a) immense popularity of the film released in 1992, which achieved cult status;

(b) film had a worldwide collection of Rs. 6 Crores despite the budget being Rs. 1.8 Crores and was the 10th highest grossing film of 1992; and

(c) film led to a series of subsequent movies adopting the word 'KHILADI'.

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7. It is averred that Defendant No. 1 is an Indian Film and Distribution Company established in the year 1987 and is involved in production and distribution of cinematographic films in Hindi, Telugu and Tamil languages while Defendant No. 2 appears to be a producer of the forthcoming film 'Khiladi' in Telugu along with Defendant No. 1, as is apparent from its name appearing on the promotional banner available in public domain.

8. It is stated that the present suit was triggered by the fact that on 07.02.2022, Plaintiff learnt of the forthcoming release of the film titled 'Khiladi' (hereinafter referred to as the 'impugned film') by the Defendants on 11.02.2022, in Telugu language, purportedly an action- thriller albeit it was likely to be available in Hindi language also.

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65. Applying the observations and principles laid down in the aforesaid judgments, in my prima facie view, Plaintiff has been unable to make out a case for passing off. The plot of the two movies, the lead cast, difference in the language leading to a different class of viewers etc. are distinguishing factors and it is difficult to accept that merely on account of commonality of the word 'KHILADI', the moviegoers are likely to be deceived or

confused. Confusion and deception caused by misrepresentation are vital elements in a passing off action. As rightly canvassed by the Defendants, Plaintiff has not made a movie with the title 'KHILADI' post 1994 and nor it is the case of the Plaintiff that it intends to do so in the near future. This Court also agrees with the Defendants that the movie is out of theatres and is only on the OTT/Satellite platforms and any viewer would first carefully look through the entire poster of the film, including actors, film Title, storyline, director etc. before making a choice to watch the film and in this context, the pictures of the actors would be enough to enable the viewer to make a choice and understand that Defendants' film has no relation to the Plaintiff's 'KHILADI'. It was observed by this Court in Biswaroop Roy Choudhary (supra) that when words or phrases are used which are in the common parlance, the risk is inevitable and normally, proprietary or exclusive use of a common word should not be given jural imprimatur.

15. Ld. Counsel for defendant nos. 1 to 5 have filed certain documents, as per which the movie Ruslaan of the plaintiff had only generated a single star on the movie rating and the Economic Times gave it very bad review in its publication. The plaintiff's movie had admittedly been released in the year 2009, whereas the defendant is seeking to release his movie now in the end of the year 2023.

16. The question which arises is whether on the basis of above, it can be said that the title of the plaintiff's film Ruslaan has acquired secondary meaning i.e. whether the audience would associate the title Ruslaan to mean that it refers to the plaintiff's movie ? Another question is whether there is likelihood or confusion in the mind of the public namely that they would perceive the defendants movie Ruslaan that it was the same movie, which the plaintiff produced ?

On the overall consideration of the facts, rather it appears that the defendant's forthcoming movie is generating much more publicity than the plaintiff's movie. The memory of the plaintiff's movie can be said to have faded in the public memory, so that due to the long lapse of time, it could be said that they would associate the movie of the defendant with that of the plaintiff's movie produced in the year 2009. Therefore, in these overall facts and circumstances, there does not appear to be of any likelihood of confusion or source, affiliation, sponsorship or connection of potential buyers/audience/viewers.

Further any viewer would first carefully look through the entire poster of the film, including actors, film Title, storyline, director etc. before making a choice to watch the film. Therefore, there is no question of any confusion or likelihood of confusion in the mind of any viewer.

17. Therefore, in today's context in so far as the question of granting temporary injunction is concerned, the plaintiff has not been able to meet the above requirements. Therefore, the plaintiff has failed to make out a case for grant of temporary injunction in his favour nor the balance of convenience lies in favour of the plaintiff, rather it *prima facie* lies in favour of the defendants, nor the plaintiff shall suffer irreparable loss or injury. Therefore, the plaintiff has failed to make out all the three parameters which are necessary for grant of interim injunction u/O 39 Rule 1 & 2 CPC.

18. As a consequence, the application of the plaintiff u/O 39 Rule 1 & 2 CPC has no merits, same stands dismissed.

Nothing expressed herein above shall have any bearing on the merits of the case during trial.

Announced in the open Court today on 13.10.2023.

**(Sanjeev Aggarwal)
District Judge (Commercial Court)-02
Patiala House Courts, New Delhi
13.10.2023**