

**HON'BLE SMT JUSTICE P.SREE SUDHA****C.M.A.No.100 OF 2022****JUDGMENT:**

This Civil Miscellaneous Appeal is preferred against the order dated 23.02.2022 passed in I.A. No. 272 of 2022 in OS No. 84/2022 by the XI Addl. Chief Judge, City Civil Court, Hyderabad.

2. Alt Digital Media Entertainment Limited (Alt Balaji) represented by its Chief Executive Officer, filed this appeal contending that the impugned order was passed without recording the reasons and without serving a notice to them and depriving an opportunity of being heard and it is in violation of Order XXXIX Rule 3CPC. Respondent No.1 has not served the copy of document on which it relied and thus, failed to discharge their duties under Order XXXIX Rule 3 (a and b) CPC. It is further contended that respondent No.1 filed IA No.272 of 2022 at the eleventh hour in spite of the public being aware of the release of reality show "Lockupp reality show" from 01.02.2022. As 3<sup>rd</sup> party rights are created regarding the release of reality show, the balance of convenience is in their favour. It is further

stated that the 'The Jail' was registered with Screen Writers Association, but not with the Copy Right Board of India. Moreover, respondent No.1 was not a party in whose name the 'The Jail' was registered with the Association and thus, he has no *locus standi* to seek relief against them and finally stated that the impugned order is prejudicial to them and is liable to be set aside.

3. In fact, the suit was filed by Pride Media proprietary Firm represented by its proprietor Abdul Haleem Baig for declaration and permanent injunction under section 62 of the Copy Rights Act in which he stated that the proprietary Firm was registered under the Telangana Shops & Establishment Act, 1988 on 10.03.2021 and the proprietor also became a member of "Indian Motion Pictures Association", in the process of producing a reality TV show, he contacted the Writer and Director by name Shantanu Re, a reputed director and come up with the story by name the 'The Jail' and prepared script with 22 celebrities. The concept story is the reality show for 100 days and the story was registered in "Screen Writers' Association." They could not produce the same due to lock down and COVID -19 when they are gearing up to mobilize production, they came to know about

the release of “Lockupp reality show” reality show on 27.02.2022. On seeing the promo, they found that it is not only similar to the concept of the ‘The Jail’ but also totally copied the concept as “Lockupp reality show”, and thus, they infringed the Copyright of the plaintiff and liable for the consequences as per Sections 51 and 52 of the Copy Rights Act. As such, they invoked the jurisdiction of this Court under Section 62 of the Copy Rights Act. The cause of action arose when they prepared the script on 07.03.2018 and registered it in the name of ‘The Jail’ and also on 19.02.2022 when the defendants released promo in the name of “Lockupp reality show” reality show with a proposal to screen it on 27.02.2022. The suit was filed on 22.02.2022 along with IA No. 272/2022 for ad interim injunction against the defendants from releasing, exhibiting, publishing the series in the name of “Lockupp reality show” in theaters, OTT platforms, Youtube, and electronic social media.

4. The ad interim injunction was granted by the XI Addl. Chief Judge by an order dated 23.02.2022, and aggrieved by the said order, this CMA is preferred.

5. Learned counsel the appellant argued that reasons were not assigned by the Addl. Chief Judge while dispensing with urgent

notice as required under Order XXXIX Rule 3 CPC and he further contended that the appellant was marketing the “reality show Lockupp” since 02.02.2022. Press conference was held on 03.02.2022. First poster was put out on 10.02.2022, first teaser was released on 11.02.2022, trailer was released on 16.02.2022 and the release of show/ live streaming show was scheduled on 27.02.2022 and thus, the public were aware of the “Lockupp reality show” since 01.01.2022 as per the news clippings, but they approached the Court at the eleventh hour and obtained injunction order even without issuing notice to them. He relied on the decision of the High Court of Bombay in Dashrath B. Rathod and Ors. Vs. Fox Star Studios India Pvt. Ltd., and Ors<sup>1</sup>., wherein it is held as under:

“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

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<sup>1</sup> 2017 (3) BomCR 664

advance of the release of the film, I see no reason to grant priority that would be an unconscionable indulgence.”

He relied upon the decision of the Apex Court reported in *John Hart and Ors. Vs. Mukul Deora and Ors*<sup>2</sup>, wherein it is held as under:

“Delay in approaching the Court, so far as grant of equitable relief is concerned, is always fatal. If the plaintiff is a serious producer of film, he ought not to have ignored gossip within his trade, whether it was in the form of press reports or exchange of communication to the Guild or Association claiming the same title. At this present moment I am unable to find any plausible reason for not filing the present case at least upon the defendants performing its Mahoorat. The plaintiff has waited for the defendants to expend large sums of money and energy in the completion of the film with the same title, thereby shifting the balance of convenience in favour of the defendant. The situation that is arrived at is that the likelihood of passing off is almost wholly eradicated. The subsisting claim may, at the highest, be the use of a title which the plaintiff has itself failed to

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<sup>2</sup> AIR 2021 Delhi 79

use. The right as well as the loss can only be determined after the trial.”

6. Learned counsel of respondent further contended that at the best the appellant is entitled for damages if at all there is any infringement of Copyright Act, 1957. It is further contended that the appellant spent Rs.6,28,43,050/- on various marketing initiatives including print media, TV, Social Media, Press reports and it will be live streamed for 72 days and thus, the delay in launching will have massive and irretrievable cascading effect on viewership. The appellant further contended that they will also suffer significant monetary loss of Rs.17.5 lakh per day if the show is not aired.

7. Learned counsel for the respondents contended that the scope of the appeal is extremely limited. The trial Court assigned reasons in para Nos. 3 and 4 of the order. *“ In fact, the trial judge has gone through the video clippings regarding trailer of “Lockupp reality show” played in the open Court and clearly held that the concept of story that was registered by the petitioner under the copy of Synopsis of the story along with registration certificate and the official promo “Lockupp*

*reality show” appears similar. As the “Lockupp reality show” is going to be released on 27.02.2022 on OTT platforms and the petitioner therein has made out a prima facie case, granted ad interim injunction by dispensing with the urgent notice and also directed them to comply with Order XXXIX Rule 3 CPC by 5.00 p.m. on the next working day and ordered notice by 9.3.2022.”*

Learned counsel further contended that the scheduled release date of 27.02.2022 can be postponed and the order of the trial Court needs no interference. He also relied upon the decision of the Apex Court in *A. Venkatasubbaiah Naidu Vs. S. Chelappan and others*<sup>3</sup> and submitted that aggrieved party is entitled to file vacate stay petition before the trial Court as he has other alternative remedy, he ought not to have invoked the jurisdiction of the High Court.

8. The appellant filed an application under the Copyrights Act, 1957 for registration of copyright for “Lockupp reality show” by providing detailed description/concept note of the show and receipt was given on 15.11.2021, but no formal objection was raised against the said application. Later,

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<sup>3</sup> (2000)7 SCC 695

another application was filed before the 'Indian Film and TV Producers Council' for registration of the title of "Lockupp reality show" and it was registered for confirmation of title dt. 26.11.2021 and 14.02.2022. Even as per the cause of action in the suit, the script of the 'The Jail' was registered on 07.03.2018 itself and they came to know about the promo of "Lockupp reality show" only on 19.02.2022 and also regarding screening of it on 27.02.2022, but they approached the Court on 22.02.2022 and they have not explained the reasons as to why they could not approach the Court immediately after the knowledge on 19.02.2022. The said fact was not ascertained by the trial Court.

9. Learned counsel for the respondents contended that the appellant totally copied their concept and infringed their copyright and thus, liable for consequences as per Sections 51 and 52 of the Copyright Act. In *R.G. Anand Vs. Deluxe Films*<sup>4</sup>, it was held as under:

"It is not necessary that the alleged infringement should be an exact or verbatim copy of the original but it resembles with the original in a large measure is sufficient to indicate that it is a copied."

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<sup>4</sup> AIR 1978 SC 1613

The trial court held that they perused the document placed by the petitioner and also video clippings regarding trailer of “Lockupp reality show” and they appears to be similar.

10. Admittedly, the “Lockupp reality show” was also registered under Copyright Act on 15.11.2021 and the title was confirmed on 26.11.2021 and 14.02.2022 and thus, the appellant made out prima facie case. The appellant contended that public were aware of the release of “Lockupp reality show” since 01.03.2022 through various news clippings. Even as per the respondents, they know about the release of promo on 19.02.2022 and they further stated that after seeing promo, they contacted the defendants and requested them not to infringe their copyright as already they registered the concept with Screen Writers’ Association and also sent the certificate of registration along with synopsis, but the defendants contended that they have every right to screen it on 27.02.2022 and thus, they invoked the jurisdiction of the Court under section 62 of the Copyright Act.

11. As per Order XXXIX Rule 3 CPC, *“The Court shall in all cases except where it appears the object of granting*

*injunction would be defeated by delay before granting an injunction, direct notice of the application for the same to be given to the opposite party. In case of dispensing the notice, the Court shall record reasons for its opinion.”*

12. It is not the case of the respondents that they have no knowledge of the release of “Lockupp reality show” till 22.02.2022, they specifically stated that they made some correspondence, but it was not considered. No doubt, the concept of ‘The Jail’ and the concept of “Lockupp reality show” were registered by both the parties and both of them spent huge amounts. When it is the case of the respondents that their concept was copied by the appellant, it is for the respondents to invoke the appropriate jurisdiction immediately so as to afford an opportunity of hearing to the other side before granting injunction. As per the averments, the concept of ‘The Jail’ was registered way back in the year 2018 but could not produce the film due to the lockdown and COVID situation, but the team of “reality show of Lockupp” is already produced the show and also spent huge amount on marketing in the month of February, 2022 and intended to live streaming the show on 27.02.2022 and

thus, the balance of convenience is in their favour. Unless and until it is established that the concept of both shows is similar, and in fact, the concept of “Lockupp reality show” was copied from the story of the concept of ‘The Jail’, it cannot be said that it will prejudice the rights of the respondents.

13. Thus, the ad interim injunction granted by the trial Court on 23.02.2022 regarding releasing, exhibiting and publishing the series, is set aside and the Civil Miscellaneous Appeal is allowed accordingly. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

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**JUSTICE P.SREE SUDHA**

Date: 26.02.2022

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