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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.937 OF 2023
WITH
INTERIM APPLICATION NO.17298 OF 2023
IN
APPEAL FROM ORDER NO.937 OF 2023

Satya Prakash Choudhry : Appellant/Applicant.

Vs.

Yash Raj Films Private Limited : Respondent.

ALONG WITH
APPEAL FROM ORDER NO.938 OF 2023
WITH
INTERIM APPLICATION NO.17299 OF 2023
IN
APPEAL FROM ORDER NO.938 OF 2023

J. Mukund
Through his Power of Attorney Holder
Satya Prakash Choudhary : Appellant/Applicant.

Vs.

Yash Raj Films Private Limited : Respondent.

Mr. Anirban Roy a/w Advocate Ratnarani Roy, Advocate Rahul Gaikwad, Advocate Aman Jhavar and Advocate Reshma Nari i/by Gravitas Legal for the Appellant/Applicant in AO No.937 of 2023.

Mr. Bhavesh Parmar a/w Advocate Ratnarani Roy, Advocate Rahul Gaikwad, Advocate Aman Jhavar and Advocate Reshma Nari i/by Gravitas Legal for the Appellant/Applicant in AO No.938 of 2023.

Mr. Abhishekh Malhotra a/w Ms. Sapna Chaurasia and Advocate Darshit Jain i/by TMT Law Practice for the Respondent.

CORAM : ARIF S. DOCTOR. J.
DATE : 15th NOVEMBER, 2023.
[VACATION COURT]

COMMON P.C. :

1. The captioned Appeals arise from identical facts and also impugn orders both dated 10th November 2023 (Impugned Orders) which are also identical in terms. Since the facts in both Appeals are identical and the issues which arise for determination are also the same, the Appeals are taken up for hearing together and are being disposed off by this Common Order.

2. The Appellants are the erstwhile employees of Union Carbide India Limited (UCIL) and were in the employment of UCIL in the year 1984 at the time when, what is today known in common parlance as the Bhopal Gas Tragedy occurred. The Appellant in Appeal No. 937 of 2023 was the then in-charge of the MIC Plant as Production Manager of UICL and the Appellant in Appeal No. 938 of 2023 was the then in-charge of the Pesticides Factory as Works Manager of UICL. The Respondent is a production house in the media and entertainment industry and has produced a web series titled "*The Railway Men – The Untold Story of Bhopal*

1984" and is set to release on 18th November 2023. The Appellants claimed to be aggrieved by the web series for the reasons more particularly set out in the respective Suits filed by them. The Appellants have in the said Suits sought the following interim reliefs viz.:-

- a. *Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to temporarily restrain the Defendant from releasing and exhibiting the said Web Series "The Railway Men" on any OTT Platform or any other Medium ;*
- b. *Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to direct the Defendant to withdraw the Official Teaser and the Official Trailer the said Web Series "The Railway Men" released on October 28, 2023 and November 06, 2023 and edit the same to exclude any reference to the causes of the Incident of the Bhopal Gas Tragedy, the circumstances prevailing inside the Pesticides Factory and the MIC Plant shortly before, at the time of and immediately after the occurrence of the MIC Escape and the manner of the MIC Escape;*
- c. *Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to direct the Defendant to grant a pre – streaming screening of the said Web Series "The Railway Men" to the Plaintiff and his Legal counsels so that it can be comprehensively seen to what extent the said Web Series in its present form shows the causes of the Incident of the Bhopal Gas Tragedy, the circumstances prevailing inside the Pesticides Factory and the MIC Plant shortly before, at the time of and immediately, after the occurrence of the MIC Escape and the manner of the MIC Escape;*
 - a. *For ad-interim reliefs in terms of prayers (a) to (c);*
 - b. *For costs of the Notice of Motion;*
 - c. *For such other and further reliefs as the nature and circumstances*

of the case may require.”

3. The Roznama of the Trial Court records that ad-interim relief has been refused and that a copy of the order shall be placed on the file of the Suit. Though the Roznama of the Trial Court records that a copy of the order to be placed on the file of the suit, Learned Counsel for both sides confirm that no such order has been placed on the file of the Suit or made available to them. They however submitted that ad interim reliefs rejected were on the ground of (i) delay and (ii) that the Appellants would be entitled to damages. It is thus that the captioned Appeals came to be filed and were taken up for hearing, basis the urgency expressed by the Appellants since the web series is set for release on the 18th of November 2023.

Submissions of Mr. Anirban Roy, on behalf of the Appellant in AO No.937 of 2023.

4. Mr. Roy learned counsel appearing for the Appellant first on the aspect of delay submitted that though release of the web series was originally announced by the Respondent in the year 2021-2022, the same was not released at that time. He submitted that after the initial announcement, the Appellants infact had a few meetings with the Respondent as also certain correspondence ensued between the Parties wherein the Appellants had voiced their objections/reservations to the Respondent about including in the web series the aspect of the depiction of

the causes of the Bhopal Gas Tragedy. He submitted that the Appellants had absolutely no objection to the depiction of the role of those involved in the rescue efforts i.e. the Railway Men but that the Appellants objections/reservations were restricted only to the aspect of the portrayal of the causes/events leading upto the gas leak. He submitted that very fact that Respondent had, after the Appellants' correspondence of 2022, in which the Appellants had expressed their objections/reservations, not proceeded with the release of the said web series, made the Appellants believe that the Respondent would be addressing the same.

5. He submitted that it was only on 26th October 2023 that the Respondent announced that the release of the web series would be on 18th November 2023. He submitted that on 28th October 2023 the teaser campaign for web series was aired, and it was only on 6th November 2023 that the trailer of the web series was released. He submitted that only upon seeing the trailer did the Appellants realize that the Respondent had not addressed the objections/reservations of the Appellants and that the web series was not confined only to the aspect of the efforts of the Railway Men in saving the lives of the people but the same also included depiction of the causes of the said gas leak. He thus submitted that the Suits were filed immediately on 8th November 2023 and therefore there was infact no delay on the part of the Appellants in approaching the Court.

6. Mr. Roy then submitted that the web series had two aspects viz. (i) the part pertaining to the rescue efforts made by the Railway Men and; (ii) the part pertaining to the cause of the Bhopal Gas Tragedy. He submitted that that in so far as the first aspect was concerned i.e., the rescue efforts, the Appellants did not and could not have any objection. However, in so far as depiction of causes/events surrounding the gas leak, Mr. Roy submitted that the same would cause grave prejudice to the Appellants. He submitted that depiction of events in the web series would possibly gravely prejudice the judicial proceedings which were ongoing against the Appellants. He thus submitted that the release should be stayed pending the hearing of the Notices of Motion filed by the Appellants. He submitted that no prejudice could possibly be caused to the Respondent if the release of the web series was differed to after the hearing of the Notices of Motion. He submitted that it was given these circumstances, the Appellants were also entitled to a pre-screening of the web series.

7. He also submitted that the incident in question had taken place in the year 1984 and the present web series was being released after a period of about almost 40 years from the incident itself. He submitted that such web series would only the result in re-opening the old wounds and would serve no useful purpose. Basis this, he submitted that the release of the web series be deferred until after the Trial Court had occasion to hear and dispose of the Notice of Motion on merits. He submitted that no prejudice would be

caused to the Respondent if this was done.

Submissions of Mr. Bhavesh Parmar on behalf of the Appellant in AO No.938 of 2023.

8. Mr. Parmar, learned counsel appearing on behalf of the Appellant in AO No.938 of 2023, first invited my attention to the prayers which were sought for by the Appellants in the Notices of Motion and submitted that no prejudice would be caused to the Respondent if the Appellants were granted an order permitting the Appellants to view the web series prior to its release i.e. pre-screening. He submitted that the original date for release of the web series was December 2022 which date had well passed, and therefore, the release of the web series after the hearing of the Notices of Motion would not affect the Respondent.

9. He then submitted that the impression given by the Respondent in their letter dated 25th November 2022 was that the focus of the web series would be only the unsung heroes of the Railway Department in mitigating the loss of life after the gas leak and not the causes of the gas leak. He submitted that portrayal of events surrounding the gas leak could potentially gravely prejudice the Appellants in their pending legal cases. He submitted that since there was no regulatory mechanism in place, it was all the more incumbent that the Appellants be allowed to view the contents of the said web series prior to its release.

10. He then submitted that from the trailer it was apparent that the web series infact showed the events preceding the rescue operation which pertained to the causes of the said gas leak. He submitted that what the Appellants would be aggrieved by is the wrong and/or incorrect portrayal of facts which caused the gas leak. He therefore submitted that the assurances contained in the letter dated 25th November 2022 that web series was entirely false and it was thus on realising this, that the Suits were filed.

11. Mr. Parmar then submitted that in the facts of the present case the balance of convenience lay entirely in favour of the Appellants and not the Respondent. He submitted that the Respondent was an entity which was seeking to exploit the Bhopal Gas Tragedy for commercial gain whereas the Appellants were private citizens who were contesting legal proceedings which had stemmed from the gas leak. He submitted that given these competing rights, the balance of convenience was entirely in favour of the Appellants and that the release of web series could easily await the outcome of the Notice of Motion.

Submissions of Mr. Abhishek Malhotra on behalf of the Respondent in both the Appeals.

12. At very outset and without prejudice to the rest of his submission, Mr. Malhotra learned counsel appearing on behalf of the Appellants submitted that the said web series was a fictional work which

was only inspired by real events. He took pains to point out that the web series was neither a documentary or a narration of true events. In support of his contention he placed reliance upon the disclaimer which would precede the start of each episode and which specifically caveated *inter alia* that, “*This series is a work of fiction, inspired by real events*”. Basis this he submitted that the Appellants’ contention that the said web series would in any manner affect and/or prejudice them was entirely misconceived and without substance.

13. Mr. Malhotra then submitted that the Appellants were disentitled to any reliefs on the ground of delay alone. He submitted that it was very well settled that those who approach the Court at the eleventh hour to stay release of a film, in this case, a web series, were disentitled to relief on this ground alone. He submitted that in the facts of the present case, the Appellants despite having ample opportunity to approach the Court earlier, chose not to do so. In support of his contention, he first invited my attention to an article/publication dated 2nd December 2021 titled “*The Railway Men : YRF’s First OTT Series, Starring R Madhavan, Is Based on Bhopal Gas Tragedy*”. He pointed out that the said article/publication made clear that the said web series was being made to mark the 37th Anniversary of the Bhopal Gas Tragedy. Mr. Malhotra therefore submitted that it was in the year 2021 itself that the Respondent announced to the public the release

of its OTT project which was based on the Bhopal Gas Tragedy. He therefore submitted that had the Appellants been aggrieved by this web series, it was incumbent upon the Appellants to have approached the Court much earlier.

14. He then submitted that the Appellants' contention that the web series had not been proceeded with in view of the objection and/or reservations expressed by the Appellants was itself *ex-facie* fallacious. He invited my attention to another article/press release dated 7th November 2022 and pointed out that the reasons for postponing the web series to 2023 was on account of the 'remaining VFX work' which was to be done. He took pains to point out that this was well before any correspondence was addressed by the Appellants to the Respondent. He submitted that the Appellants had thus not approached the Court earlier for reasons best known to them but the consequence of which had now disentitled to Appellants to any ad interim relief.

15. Mr. Malhotra then submitted that it was not even the case of the Appellants that the Appellants were in any manner defamed and/or had been portrayed in a negative light in the said web series / trailer. He submitted that what the Appellants seemed to be aggrieved by, was the cause for the said gas leak as was portrayed in the web series. He submitted that it was this portrayal which was contrary to the Appellants defense/case in the

criminal proceedings which had been instituted against the Appellants in connection with the said Bhopal Gas Tragedy. He submitted that this was plain from the reading of the plaint where the entire thrust of the Appellants was the Appellants' theory for what caused the said gas leak which was distinct from what was shown in the trailer. Mr. Malhotra then submitted, on instructions, that in the web series the Appellants were neither named nor identified and nor blamed for gas leak. He then took pains to point out that the said web series was not centered on what caused the gas leak and depiction of the same was only as a precursor to the main story i.e. the valiant efforts of the Railway Men in saving the lives of the people in Bhopal at that time. He submitted that the web series was in four parts totaling to about 240 minutes out of which only about 10 minutes was dedicated to the actual gas leak. He therefore submitted that the Appellants' apprehensions were entirely baseless, misconceived and devoid of merit.

16. Mr. Malhotra then invited my attention to the e-mail dated 25th November 2022 addressed by the Respondent to the Appellants' advocate and pointed out specifically therefrom that the Respondent had clearly informed the Appellants that the web series was based upon a story that had been created and inspired from material that was available in public domain including accounts of events that unfolded during the 1984 gas leak. In support of his contention that the events pertaining to all aspects of the

Bhopal Gas Leak were in the public domain including various theories on the causes of the said gas leak, he tendered a compilation of documents from which he pointed out that the Bhopal Gas Tragedy had formed basis of various documentaries, films, books and videos clips all of which were in the public domain. He then placed reliance upon a judgment of the Hon'ble Delhi High Court in the case of *Sushil Ansal Vs. Endemol India Pvt. Ltd & ors.*¹ which held that where the material which is likely to be broadcast or published already exists in the public domain and has existed as such for considerable period of time without an objection having been raised, that fact would also detract from the right of the Plaintiff to seek ad-interim injunctive relief. He submitted that the facts pertaining to the Bhopal Gas Tragedy were not only in the public domain but had formed the subject matter of the several documentary news articles, movies and video clips made specifically on the incident causing the said gas leak.

17. He then submitted that the Appellants' contention that the telecast of the web series could affect the pending proceedings against the Appellants was also not only entirely misplaced and devoid of merit but was also legally untenable. He submitted that it was not in dispute that the Appellants were infact convicted qua their role in the Bhopal Gas Tragedy and that the trial stood concluded in the year 2010. He placed reliance on a judgment of the Hon'ble Supreme in the case of *Vidya Dhar and others Vs.*

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*Multi Screen Media Private Limited*² to submit that once the trial has been completed and a person was convicted, there was no further possibility of any bias against them at the time of hearing of the Appeal. He submitted that the contents of the trial and the judgment of conviction and sentence were now in the public domain and available for anyone to see. Basis this he submitted that the Appellants could not be prejudiced as had been contended by them, by the release of the said web series.

18. Insofar as the Appellants' submission that the Appellants given the facts of the present case were entitled to a pre-screening of the web series in order for the Appellants to ascertain as to whether the web series was prejudicial to the Appellants' interest, he submitted that the Appellants had no such right given the web series was the property of the Respondent. He then reiterated that the web series was a work of fiction which was only inspired by true events. He submitted that the web series was not a documentary or a narration of true events, hence the Appellants had no such right to a pre-screening thereof. He submitted that the Appellants were neither named and/or identified in the said web series nor were the Appellants attributed with the blame of causing the gas leak. Crucially he submitted that to permit a pre-screening would lay down a dangerous precedent as in every work of fiction any party who claimed to be affected by such work would then similarly demand a pre-screening. Mr. Malhotra

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in support of his contention that the prayer for a pre-screening in the facts of the present case was wholly misconceived, placed reliance upon a judgment of the Hon'ble Delhi High Court in the case of ***Ruba Ahmed & Ors. Vs. Hansal Mehta & Ors.***³ in which the Hon'ble Delhi High Court held thus:-

"83. Much has been argued about the adamancy of the defendants to not give a pre-screening of the movie to the plaintiffs. It is argued that such adamancy only confirms the apprehensions of the plaintiffs of the movie being derogatory and defamatory towards two daughters of the plaintiffs. However, this argument again does not hold any merit for the simple reason that if any aspect of the movie despite the assurances and the disclaimer given by the defendants is found to be defamatory, the remedy can still be sought by the plaintiffs after the movie is released. No balance of convenience is made out in favour of the Plaintiffs."

Basis this he submitted that the question of granting any pre-screening did not arise. Basis the above, he submitted the present Appeals ought to be dismissed.

19. After having heard learned counsel for the parties as also considering the case law cited, I have no hesitation in dismissing both Appeals for the following reasons viz.

- i. It is well settled that those seeking to injunct the release of a film or work of a like kind must necessarily approach the Court with expedition and not at the eleventh hour. It is also important to note that in the present case, the Appellants are seeking to stay the

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release of the web series not on the basis of any action in copyright etc. but solely on the ground that airing such web series could potentially cause grave prejudice to the Appellants in pending legal proceedings. In this context it is crucial to note that the Appellants were clearly aware as far back as 25th November 2022 that the Respondent was producing and releasing the web series titled “The Railway Men – The Untold Story of Bhopal 1984”. The Respondent in terms in its letter dated 25th November 2022 specifically informed the Appellants as follows, viz.

“3. We state that we have produced the web series – The Railway Men– The Untold Story of Bhopal 1984, we have produced this Series based upon a story that has been created and inspired/derived from material that is available in the public domain. Such material contains accounts of events that unfolded during the Bhopal Gas Tragedy of 1984. (Incident). In creating the Series YRF has taken due care in portraying the Incident based on the factual material available in the public domain. YRF has collated and reviewed multiple non-proprietary and non-confidential resources such as articles, papers, books, etc., of Indian and foreign origin/publication to create the Series, all of which form a part of the public domain and are already readily available to the public at large over the last 3 decades.”

The Appellants were thus put to notice that the web series would contain accounts of the events that unfolded during 1984 gas leak. Therefore, the Appellants contention that it was only upon viewing the trailer of the web series that the Appellants became

aware that the same contained a depiction of events/cause leading upto the gas leak is plainly untenable. The Appellants were aware of and thus ought to have moved earlier, if they were likely to be so aggrieved by such portrayal of events. The did not.

- ii. Additionally, the entire premise for seeking a stay of the release of the said web series is the same may adversely affect the Appellants' legal proceedings. This is *prima facie* untenable for three reasons, (a) that the Appellant already stand convicted in connection with the Bhopal Gas Tragedy (b) the Trial having come to an end in the year 2010, the contents of the trial and judgement were available in the public domain and (c) the Learned Counsel for the Respondent has produced the disclaimer which will precede the airing of each episode which specifically caveats "*This series is a work of fiction, inspired by real events*". Given this, I find that the Appellants have, in my view at this stage, not satisfied the very high threshold test required to stay the release of the said web series.
- iii. Also no case ever suggesting any harm or prejudice is likely to be caused to the Appellants has been made out. Also I must note here that for the Appellant to be entitled to an injunction at this stage, it was incumbent upon the Appellants to have apart from acting

expeditiously to have also made out a very strong and compelling prima facie case that the web series contains defamatory, slanderous, or libelous material. In the present case, it was not even the contention of the Learned Counsel that the web series was in any manner defamatory etc., of the Appellants the only submission was that the portrayal of the cause/events surrounding the gas leak would adversely affect the Appellants in their legal proceedings. Such a contention for the reasons noted above, is plainly untenable. It cannot be disputed that the Bhopal Gas Tragedy was a most terrible and unfortunate event which made headlines and continued to remain in the news not only Nationally but also Internationally for several years. The gas leak and the events that surrounded it have been discussed and examined over the years and form the basis of a host of material which includes documentaries, books, article, films, videos etc. all of which are in the public domain. Hence even assuming that the web series touches upon this aspect in passing, the Appellants can have no right to an injunction staying the release of the web series on this count.

- iv. Also, the Appellants insistence on a pre-screening of what is stated to be a “*a work of fiction, inspired by real events*” is untenable. The web series is neither a documentary or narration of true facts. It is

simply stated to be inspired by true events which I have noted above, are all in the public domain. The right to the Appellants to have pre-screening of a fictional work belonging exclusively to the Respondent is indeed untenable. In the event the Appellant is in any manner aggrieved by the web series or feels defamed etc, after it is aired the Appellants have their remedies in law to seek damages etc.

20. Hence, for the aforesaid reasons, the Appeals are dismissed. I make it clear that the above observations are only made for the purposes of deciding the issues that fell for consideration in the present Appeals. The observations made in this order shall not come in the way of the hearing of the notices of motion, which shall both be heard and disposed of on their own merits.

21. In view of the dismissal of the Appeals, Interim Application Nos.17298 of 2023 and 17299 of 2023 do not survive and the same are accordingly disposed of.

(ARIF S. DOCTOR, J.)