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Analysis of Sameer Wadekar & Anr. v. Netflix Entertainment Services Pvt. Ltd & Ors. (2020)

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Introduction

The case is primarily based on an ad-interim order filed by a film writer for the blocking of the release of a film which he believes is his copyrighted work and there has been plagiarism.

The application is based on a “146 second” video clip that was released on the Platform YouTube and the plaintiff believes that there were about 13 similarities between his work and the trailer of the new released film.

The plaintiff hence moved to the court and upon further proceedings of the case, the honorable justice relied primarily on three points.

- First being the fact that the plaintiff states that his work is of fiction and absolute imagination. Then what about the similarities? How can ideas be plagiarized?
- Second being the fact that there was a lot of delay on the part of the plaintiff in filing the application, Information about the web series, as it was available in the public domain for more than 10 months.
- Third being the fact that “Betaal” is a term that originates from Hindu scriptures from the times of King Vikram Aditya’s “Betaal” who used to answer the king’s questions. It’s a well-known story among the Hinduism culture and hence the idea was widespread thus not amounting to plagiarism.

Facts of the Case

The plaintiff is a writer who is also registered with the Screen Writers association and he has authored many stories which are registered with the copyright office and one of them is “VETAAL”. Plaintiff states he authored it in 2013-14 and registered the same in 2015.

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Indexed at **Manupatra**

The Plaintiff came across a YouTube video sent to him by a friend named “Pratik Mesh Ram” and subsequently after watching it the plaintiff was convinced that the 146 seconds of the video of a web series named “BETAAL” is the plaintiff’s copyrighted work.

The plaintiff viewed the video on 7.5.2020, the same day on which trailer was released by the defendant no.1. And he states the clip contained at least 13 similarities with the copyrighted work of the plaintiff. The plaintiff states that it was its original script which had a fictional story created with the help of his imagination.

Plaintiff states that the web series titled “BETAAL” would be released on 24.5.2020 on the OTT platform of defendant no. 1.

Subsequently, Plaintiff states that the defendants have infringed the plaintiff’s registered copyright work “VETAAL ” and therefore should be restrained by an ad-interim order from going ahead with the release and alleges this as a case of copyright infringement and plagiarism.

Issues Raised

- I. *Whether the web series made by the defendant constitutes as a copyright infringement and plagiarism?*
- II. *Whether the release of the web series shall be restrained by an ad-interim order?*

Judgment

The Bombay High Court held that there was no violation of copyright and no plagiarism and hence did not grant any relief as prayed for, by the plaintiff. It was further stated that if the work is fictional and absolutely original then how shall the defendants have the knowledge about it and particularly defendant no. 3., who is the author of the web series about the story. Further, there was a delay in filing of the case as information about the film available in the public domain since 16th and 17th of July 2019. Adding on, the word “BETAAL” originates from the word “VETALAM” which is relevant in Hindu Mythology. There are various stories about Vetaal: which everyone would have read.

Indexed at **Manupatra**

Rationale and Contentions raised in the Judgement

The plaintiff stated that the clip of 146 seconds contained at least 13 similarities with the work of the plaintiff and hence subsequently, Plaintiff states that the defendants have infringed the plaintiff's registered copyright work "VETAAL " and therefore should be restrained by an ad-interim order from going ahead with the release. The plaintiff also stated about sharing the script with many known and established producers, one of them being in contact with the plaintiff. The particular film maker strongly believed in the story and had some contacts in Netflix. According to submissions regarding Mails in the period "Jul 2016". The mails showed no links except the filmmaker mentioning some contacts in Netflix to the plaintiff.

The Court ruled in the favor of the defendant due to the following reasons

1)The matter of fiction and imagination

Justice Shriram questioned the plaintiff that if the work is fictional and absolutely original. Then how shall the defendants have the knowledge about it? Adding on, A lot of similarities were also present.

2)Delay

The defendant produced evidence regarding several print and online publications dated 16th and 17th July 2019 of various popular news sources and sources of general readership regarding release of an original web series "BETAAL" by defendant no.1.The articles also contained a description of the web series.

The press release contained brief details about the web series and the counsel's statement that his client was not aware of this press release/publication does not help his case because these were in public domain.

3)No link in the Netflix claim

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There is nothing else to show any link with the defendant, Hence the court found it difficult to believe that the original story was copied by someone.

This point is against the plaintiff getting any ad-interim relief as prayed for.

Potential Rule

The violation of a copyright and plagiarism shall occur when there is sustainable evidence with the plaintiff regarding the violation and mere similarities in fictional work shall not be held as evidence.

Analysis

The Honorable Bombay High Court arrived at its judgement very methodologically, employing logic and in this case. The judges were very open to listening to the appellants counsel and responded to all the contentions raised by the appellant counsel to the fullest of them capabilities. The court looked into the aspect of confidentiality i.e., that there was a leakage of the original material of the plaintiff but it seems there was none according to the judgment.

The one instance where it seems there shall be a leakage is with the one film director/producer Considering his contacts in Netflix and the contacts between the plaintiff and the director the court did conclude that there was no leakage.

Adding on, another factor that dented the case of the plaintiff was the delay in filing of the prayer for the ad-interim order. As presented by the defendant, an affidavit stated that the information about the web series was present in the public domain for a period of almost 10 months. The court hence took into consideration the long delay in the filing as a point of contention.

Another aspect was that the court held that the term “Betaal” originates from the Hindu scriptures 'Vetalam'. The court in this context made a reference to the well-known stories of King Vikram Aditya and “Vetaal/ Betaal” such as “Vetaal will fly away if he does not know an answer or his head shall explode if he does not answer despite knowing. The Court held that such stories are known to people and that hence no injunction could be granted.

Indexed at **Manupatra**

A point which can be taken in consideration is, that the plaintiff did not watch the whole web-series and came to a conclusion with just the trailer, 13 similarities in 146 seconds that his work was plagiarized and it was the sole contention that he could present. Further, taking the delay in consideration, even after the news of the web series being in the media and public domain for almost 10 months the plaintiff did not act upon it and only filed for the ad-interim order barely a fortnight before the scheduled release, hence making signs of some ulterior motives.

The judge used the evidence presented in a judicious manner and the plaintiff could have had a strong case if he could have presented substantive evidence that his story was plagiarized and there was a copyright infringement on the part of the defendant.

