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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 13th June, 2024***
+ **CS(COMM) 524/2024, I.A. 31732/2024, I.A. 31734/2024**

POCKET FM PRIVATE LIMITED Plaintiff

Through: Mr. Darpan Wadhwa, Senior
Advocate with Mr. Shantanu Sahay,
Mr. Nishchal Anand and Ms.
Vareesha Irfan, Advocates.

versus

NOVI DIGITAL ENTERTAINMENT PRIVATE LIMITED & ANR.
..... Defendants

Through: Mr. Sidharth Chopra, Ms. Sneha Jain,
Ms. Snehima Jauhari and Mr. Vivek
Kumar, Advocates for D1.
Mr. Aditya Gupta, Advocate for D2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

**I.A. 31731/2024 (under Order XXXIX Rules 1 and 2 read with Section 151
CPC on behalf of the plaintiff seeking Ad-interim Injunction)**

1. By way of this application the plaintiff has sought ad interim temporary injunction for restraining the defendant No.1, its Directors, Proprietors, Partners, Officers, Servants, Agents, Contractors, Subsidiaries, holding Companies, sister concerns, franchises, family members and all others acting for and on their behalf, from publishing, making available,



advertising, selling, offering for sale, marketing, promoting, etc. of the video adaptation in the Television Series “Yakshini” on their website or on any other audio, video adaptation based substantially similar to the plaintiff’s work “Yakshini” on any other third party Media websites. It has further sought directions to be issued for removing of the impugned Trailer video from the website of defendant No.2 or any other website.

2. It is submitted in the application that the plaintiff Pocket FM Private Limited is engaged in providing an online platform by the name of ‘Pocket FM’ through which it offers audio works such as audio series and audiobooks, to its users. This platform is available through its website “**www.pocketfm.com**” as well as mobile application “**Pocket FM: Audio Series**” which is available on the Google Play store and Apple Store. The plaintiff offers audio series and audiobooks across various genres such as romance, religion and spirituality, suspense and thriller, crime, biography, history, horror, society and culture, etc. The primary focus of the plaintiff is specifically episodic, serialized, long format content in audio form. It has more than 1 lakh hours of long format audio content, primarily in the form of audio series in English and seven other Indian languages including Hindi, Tamil, Telugu, Malayalam, Bengali, Kannada and Marathi. It has garnered a community of over 2,50,000 writer, creators and voice artists and has 2000 plus audio series.

3. The plaintiff licenses its original literary work from copyright owners/ authorized licensors and thereafter, adapts the same into audio works which are published on its platform. One such Agreement dated 18.07.2023 was executed between the plaintiff and Mr. Anand Usha Borkar who assigned his exclusive rights to his work titled “Yakshini” of which the plaintiff



became the owner and he adapted and published the same as “audio series”. It has exclusive right to commercially exploit this work. At the time of creation of “Yakshini” audio series in 2021, plaintiff’s content team identified “Yakshini” as a potential lead character in the series. Accordingly, “Yakshini” series was developed and was officially launched on plaintiff’s platform on 30.05.2021. It now has more than 225 hours of run time (1001 episodes) and is one of the most popular shows launched by the plaintiff who is the exclusive owner having right, title, interest including the licensing rights to third party platform.

4. The plaintiff has claimed that defendant No.1 which operates OTT/online streaming platform, available at “**www.hotstar.com**” offers content such as movies, television series, podcasts, live streams etc. The contents of defendant No.1 are also available on mobile application “**Disney+Hotstar**” on Google Play Store and Apple Store.

5. The plaintiff has submitted that in the first week of June, 2024 the representative of the plaintiff came across a Trailer on defendant No.2’s website of a television series titled “Yakshini” on defendant No.1’s official youtube Channel “**Disney+Hotstar**”. From a preliminary viewing of the impugned Trailer video along with the comments in the Comment Section, it appears that defendant No.1 has made an unauthorized adaptation of plaintiff’s audio series “Yakshini”. It is also indicated that the impugned Television series is set to be released on 14.06.2024 on defendant No.1’s website www.hotstar.com.

6. It is claimed that the representatives of the plaintiff after browsing through the website, found stark similarities in terms of theme and storyline between the work of defendant No.1 titled “Yakshini” and that of the



plaintiff. It is being played under the same name; “Yakshini”, the main character is indicated as supernatural being. Some of the similarities noted are as under :

- (i.) *Both series are conceptually similar i.e. a series centred around a female supernatural being;*
- (ii) *In both series, the female supernatural being chosen is a Yakshini;*
- (iii) *The basic framework of expression of the chosen concept is identical in both cases i.e. the Yakshini is cursed to stay on earth to seduce men and kill them;*
- (iv) *Both series begin with Yakshini’s entry from another world;*
- (v) *Both series focus on Yakshini killing men by first having sexual intercourse with them;*
- (vi) *In both series Yakshini falls in love with the male protagonist but needs to kill him in order to return to her world;*
- (vii) *Both series refer to an aghori who is out to get Yakshini for her powers;*
- (viii) *Both series focus on Yakshini’s captivating beauty; and*
- (ix) *The Aghori and Yakshini in Plaintiff’s Yakshini audio series are devotees of Lord Shiva and the Aghori and Yakshini in the defendant No.1’s trailer is also a devotee of Lord Shiva.”*

7. Moreover, members of general public which are common audience of plaintiff and defendant No.1, have commented on defendant No.2’s platform as well as on other third party social media web pages that the impugned work is an adaptation of the plaintiff’s work “Yakshini”.

8. The plaintiff has explained his past engagement with defendant No.1. It is submitted that the representatives of both plaintiff and defendant No.1 were in discussion with each other over a possible business engagement



which involved adaptation of various works of the plaintiff including “Yakshini” audio series. In month of **June, 2022** the plaintiff approached the parent Company of defendant No.1 i.e. Star India Private Limited vide an email and negotiations took place in January, 2023, but the negotiations did not reach any fruitful conclusion. The plaintiff had shared substantial proprietary information with defendant No.1 and the parent Company i.e. Star India Private Limited. The plaintiff attempted to have signed a Non-Disclosure Agreement with defendant, which the defendant refused to sign. Thereafter, in response to the issue of Non-Disclosure Agreement, the defendant No.1 shared a “Release-Form” with the plaintiff, which relieved them of any liability with respect to any content that was shared by the plaintiff during the negotiation period. The plaintiff signed the same in good faith.

9. The plaintiff has claimed that the overall conduct and prior correspondence of the plaintiff with defendant No.1, establishes that it is aware of the rights of the plaintiff and has wilfully and clearly attempted to misrepresent that it has connection or affiliation to the plaintiff’s mark “Yakshini”. It is a clear attempt to “**passing off**” its content as having some sort of connection, association, affiliation or having been authorized by the plaintiff in some manner.

10. It is submitted that defendant No.1 is trying to misappropriate and freeride on the immense goodwill and reputation of the plaintiff which it has built in relation to the same. To safeguard its rights, the plaintiff has also filed trademark application for “Yakshini” and reserves its rights to make a claim of Trademark Infringement as and when the injunction is granted.

11. The quantum of damages and costs have been assessed by the plaintiff



to be at least Rs.2,00,01,000/-. By way of present application, it is asserted that the plaintiff has a strong prima facie case. The balance of convenience also lies in favour of the plaintiff as it is holding the exclusive copyrights including its right to make adaption of the work. By imitating the plaintiff's work in an unauthorized manner it shall cause irreparable loss to the plaintiff which cannot be compensated in monetary terms. Hence, the plaintiff has sought the interim protection by way of injunction.

12. **Learned counsel for the defendant No. 1** has vehemently opposed the grant of *ex parte* injunction to stay the release of the video series of the plaintiff on www.hotstar.com and has sought time to file a detailed Reply.

13. It is submitted that the defendants had first published about the release of the said series on 10.05.2024 on Twitter (formerly now 'X') and then also took out the advertisement on 123Telugu.com. Thereafter, a formal Trailer has been released on 27.05.2024 about the release of the video series on the midnight of 13.06.2024. Despite this information of impending release being put in the public domain since 10.05.2024, the plaintiff has chosen to sit tight till the eleventh hour. In such circumstances, it cannot be said that the plaintiff has a *prima facie* case to seek the pre-publication prohibitory injunction.

14. It is further submitted that Yakshini is an old mythological character; for which reference may be made to the Wikipedia which describes this character in detail. It also states that this character finds mention in Buddhism, Hinduism, South India, Jainism and even beyond the Indian Sub-continent.

15. Furthermore, reference has been made to the Article of "*Yakshi Unplugged: Interrogating Malayalee Masculinity in the Popular Culture of*



Kerala” by Nila Rajeev, Research Scholar who described the character ‘Yakshini’ as existing in the myths; mentions the Novel written in 1967 and huge number of movies which had been made around this character since 1960s; the latest being released is *Akam*, directed by Shalini Usha Nair in the year, 2011.

16. It is argued that even the “*idea*” has not been picked up from the Audio series of the plaintiff inasmuch as it is a mythological character about which there is an abundant literature available which has been adapted in the present video series.

17. It is further submitted that the plaintiff has not approached the Court with clean hands. It has already signed a “*Release Form*” categorically stating that it shall not be claiming any proprietary rights in all the works that have been earlier submitted by it to defendant No. 1, while negotiating the deal for further collaboration. The plaintiff cannot now take a U-Turn and assert that it has a copyright in ‘Yakshini’.

18. Further, there cannot be any copyright in an “*idea*”. It is the **visual adaptation** of an idea which is a round the mythological character and no infringement can be asserted.

19. Moreover, the video series is already slated to be released and any Injunction at this stage, would result in irreparable loss and injury to the defendant No. 1.

20. In the end, it is argued that the stage seeking injunction is of pre-publication. It cannot be said that the work of the defendant No. 1 is in copyright violation of the work of audio series of the plaintiff. No such pre-publication injunction can, therefore, be granted.

21. Reliance has been placed on the decisions in *Sushil Ansal vs. Endemol*



India Private Limited and Others, 2023 SCC OnLine Del 121, HT Media Ltd. vs. UTV News Ltd. & Anr., 2010 SCC OnLine Cal 2072 and Vinay Vats vs. Fox Star Studios India Pvt. Ltd. & Anr., decided on 30.07.2020 by the Co-ordinate Bench of this Court *vide* I.A. 6351/2020 in CS(COMM) 291/2020 .

22. **Learned Senior Advocate on behalf of the plaintiff** in Rejoinder arguments has stated that if no Injunction is given, it would result in huge monetary loss to the plaintiff which cannot be compensated in terms of money.

23. It is denied that it is “*an idea*” which has been picked up, but, in fact, it is the “*expression of idea*” which has been copied in violation of the rights of the plaintiff. Moreover, the characters, namely, *Aghori*, the Blue Sun and such other characters, which are unique to plaintiff, have been copied in the series by the defendant No. 1.

24. In the end, it is submitted that if the injunction is granted, no monetary loss would be caused to defendant No. 1 as the video series is intended to be launched on an OTT and not in the Cinema Halls.

25. Learned Senior Advocate for the plaintiff has relied on the decisions in the case of Shamoil Ahmad Khan vs. Falguni Shah and Others, 2020 SCC OnLine Bom 665; Macmillan and Company Limited vs. K. and J. Cooper, 1923 SCC OnLine PC 59; Anil Gupta and Anr. vs Kunal Dasgupta and Ors, 2002 SCC OnLine Del 250 and N. T. Raghunathan and Anr. vs. All India Reported Ltd, Bombay, with Branch Office at Congress Nagar, Nagpur, 1957 SCC OnLine Bom 162.

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26. **Submissions heard.**



27. The first aspect which is blatantly evident from the plaint and the submissions made on behalf of the parties, is that the present injunction is a pre-release *ad-interim injunction*, which is sought by the plaintiff. There is no denial that the first information about the release of the video-series was published on Twitter on 10.05.2024, followed by a tele-news on another website i.e., 123telugu.com on 21.05.2024. This has been followed by the release of a Trailer on Youtube, on 27.05.2024, declaring that the series shall be launched on 13.06.2024 at 12:00 midnight. Though the plaintiff has submitted that it has come to know about the video series only in the first week of June, 2024 but it cannot be discounted at the outset that the plaintiff is in the same business and for him to say that he was not aware of what was happening in their business till just a few days before filing of the Suit, is *prima facie* not tenable. Now that the series is sought to be launched tonight at 12:00 midnight, it would not be equitable for any injunction to be granted, especially when there is no concrete evidence to show that the contents of the series are the same as that of the work of the plaintiff.

28. In *Dashrath D. Rathore*, I.A. 6351/2020 in CS(COMM) 291/2020, it was observed that such last minute “pre-release injunctions” are not merited.

29. In the present case, considering that this Suit has been filed just a day prior to the slated release of the video series with no concrete facts to establish that there is a *prima facie* case of infringement of the rights of the plaintiff, there is no case is made out in favour of the plaintiff for granting of an ad-interim injunction at this stage.

30. It may be observed that aside from the averments that there is similarity of the character ‘Yakshini’, character of ‘Aghori’, and the similarity in description of the scenario, at this stage, there is nothing from



where it can be inferred that there is a copyright violation of the “expression of idea” by defendant No. 1.

31. In the case of *R.G. Anand vs. Delux Films & Ors.*, (1978) 4SCC 118, laid down the Tests for copyright violation. It was observed that firstly, there can be **no copyright in an idea**, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner, arrangement and expression of the idea by the author of the copyrighted work. The **second test**, which has been stated is that where the source is common, the similarities are bound to happen. The Court should determine whether or not these similarities are fundamental to the substantial aspects of mode of expression. It is only if the work of the defendant is a literal imitation of the copyrighted work with some variations here and there, it would amount to violation of the copyright. **The safest test** to determine the violation of copyright is to see if the readers, spectators or the viewers after reading or seeing the same, are clearly of the opinion and get an unmistakable impression that subsequent work appears to be a copy of the original. Where only “theme” is similar but presented and treated differently, no violation of copyright arises.

32. In the present case, applying the aforesaid tests, it is evident that though it may be “an idea” of the plaintiff but it finds its roots in mythological stories not only within India but also beyond the Indian boundaries. It is a character which has been existing since ages and finds mention in various scriptures as well, details of which are available on Wikipedia.

33. The plaintiff may have prepared audio series on this work, but there is nothing at this stage to say that the adaption of the character of ‘Yakshini’,



in the video web-series is almost similar or identical to the work of the plaintiff. The similarity of name cannot be the sole criteria, especially because it is a mythological character on which admittedly various works, movies and books are already available. *Prima facie*, there is nothing to reflect that there is copyright violation of expression of idea as is asserted by the plaintiff. Once, the web series has already been slated to be released today itself, no *prima facie* case is made out.

34. Since the video series is slated to be released tonight i.e. after about a few hours, it cannot be said that the **balance of convenience** lies in favour of the plaintiff especially when the advertising about the series commenced way back from 10.05.2024.

35. If at all at any stage it is found that there is some violation, then it is not of the nature which cannot be compensated in terms of money. No irreparable loss would be caused by the release of the series especially when no *prima facie* case is made out.

36. Pertinently, plaintiff has admitted that it had submitted its works with the defendant No. 1 over which they had negotiated from June 2022 till January 2023 though it could not materialise into a successful contract. The plaintiff itself has disclosed in the Plaint that after the negotiations did not yield any result, the defendant No. 1 sought signatures on the Release Form of the plaintiff and furnished a Release Form which was duly signed by the plaintiff. The relevant Clauses of the Release Form dated 04.01.2023, read as under:-

“2. There is no agreement between us, express or implied, relating to your use or failure to use the Project.

3. I / We will not assert against you, your affiliates, licensees,



assigns, officers, agents or employees any claim of any nature arising out of any alleged use by you of the Project.”

37. A perusal of the above Clauses shows that in the said Release Form, it is clearly mentioned that there is no Agreement between the parties **express or implied** relating to the use or failure to use of the Project by the defendant No. 1. Further, it is stated that plaintiff shall not assert any claim of any nature arising out of any alleged use by the defendant No. 1 of the Project.

38. However, the plaintiff had clarified that pursuant to this Release Form, when defendant No. 1 took up two of the Projects of the plaintiff, separate correspondence and Agreement was signed between the parties; therefore, from the Release Form, it cannot be concluded that there was an absolute disclaimer given by the plaintiff in respect of the entire Project.

39. From the submitting of the Project, which included the audio series of ‘Yakshini’, it cannot be observed at the outset that the plaintiff had given an Undertaking of not taking any action in respect of any of the work submitted with defendant No. 1 in future. However, as already discussed, there is no prima facie evidence to show that there is any apparent copyright violation of the “expression of idea” of the plaintiff by the defendant No. 1.

40. The judgments namely, Shamoil Ahmad Khan (Supra); Macmillan and Company Limited (Supra); Anil Gupta and Anr. (Supra) and N. T. Raghunathan and Anr. (Supra) relied upon by the plaintiff also reiterate that there can be no copyright in respect of an idea.

41. Thus, from the above discussion it is clear that there cannot be an interim injunction granted at this stage.



42. The application of the plaintiff is dismissed.

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43. List on 10.07.2024.

**(NEENA BANSAL KRISHNA)
VACATION JUDGE**

JUNE 13, 2024
Va/S.Sharma/Rs