

Beyond Dreams Entertainment Pvt. Ltd. ... vs Zee Entertainment Enterprises Ltd. And ... on 25 March, 2015

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Bench: S.C. Gupte

sat

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 785 OF 2015
IN
SUIT (L) NO. 251 OF 2015

Beyond Dreams Entertainment Pvt.Ltd. & Ors.

vs.

Zee Entertainment Enterprises Ltd. & Anr.

Mr.Janak Dwarkadas, Senior Advocate with Dr.Birendra Saraf, Mr.Rashmin Khandekar, Mr.Rakesh Reddy with Mr.Tushar Gujjar, Mr.Arun Sharma i/b.

M/s.Solics Lex for Plaintiffs.

Mr.Virag Tulzapurkar, Senior Advocate, Mr.Virendra Tulzapurkar, Senior

Advocate, Mr.Amit Jamsandekar, Senior Advocate with Mr.Ameet Naik, Ms.Madhu Gadodia, Mr.Vaibhav Bhure i/b. M/s.Naik Naik & Co. for Defendant Nos.1 and 2.

ORAL JUDGMENT :

This suit is filed by the Plaintiffs inter alia for preventing misuse of confidential information and also infringement of copyright. The present order disposes of the Plaintiffs' ad-interim application for protection pending the hearing and final disposal of the Notice of Motion.

2 Plaintiff No.1 is a production house engaged in production of entertainment content for television including TV serials. Plaintiff Nos.2 and 3 are, respectively, the Chairman and Managing Director, and Chief Creative Director of Plaintiff No.1.

3 The gist of the Plaintiffs' case is this : In or about March 2011, Plaintiff No.2 developed a concept for a TV show, which was at that time called "Paachva Mausam Pyaar Ka". The concept was reduced to a concept note and was also registered with the Film Writer Association on 11 June 2013. The concept note registered by the Plaintiffs with the Association is reproduced verbatim in the plaint. The Plaintiffs thereafter worked from time to time and sat 2/17 nmsl 785-2015.doc developed the concept and fleshed the same out extensively so as to convert it into a full-fledged TV series to be produced by Plaintiff No.3. The title of the concept note underwent a few changes and eventually became "Badki Bahu" with a tag line "aaude main sabse chhoti.. umar main sabse badi... hai toh gharki chhoti bahu magar kehlaygi-Badki Bahu". The various versions and developments of the concept note are to be found in Exhibits A-1 to A-12, which are all, according to the Plaintiffs, original literary works developed in various forms for a television series planned by the Plaintiffs, and which are themselves copyrighted works. It is the Plaintiffs' case that between 11 June 2013 and about March 2014, the Plaintiffs worked on the various versions and presentations of the concept notes, which are to be found in Exhibits A-1 to A-12, which contain the developed concept, story, pitchline, plot, tracks, family, characters, names, set design, jewellery design, etc. The Plaintiffs from time to time shared the concept notes with Defendant No.1. It is submitted that this sharing was in circumstances of confidence and was on the basis that Defendant No.1 promised the Plaintiffs that the former would telecast a serial based on the Plaintiffs' concept notes and that the production of this serial would be entrusted to Plaintiff No.1. In the course of this period, even a Letter of Intent was executed between Defendant No.1 and the Plaintiffs for production of the serial "Badki Bahu". It is submitted by the Plaintiffs that when the television serial was ready to be launched by Defendant No.1, Defendant No.1 insisted that the Plaintiffs take on board a co-producer and recommended a few names in this regard. The parties discussed the modalities, but the Plaintiffs never accepted the proposal for taking a co-producer on board and instead withdrew the concept notes from Defendant No.1. It is the Plaintiffs' case that at this stage, Defendant No.1 offered to buy the Plaintiffs' concept outright or alternatively, pay the Plaintiffs royalty on a per episode basis. Again, none of these two alternatives was accepted by the Plaintiffs, who insisted on total withdrawal of the concept notes shared with Defendant No.1. It is the Plaintiffs' case that in the course of the correspondence in this behalf between the parties, the Plaintiffs proposed that the Plaintiffs' concept, story, pitchline, plot, tracks, family tree, characters, names, set design, jewellery design, etc., which were developed by the Plaintiffs, and communicated during the talks between the parties for commissioning the serial sat 3/17 nmsl 785-2015.doc titled "Badki Bahu", would not be used by Defendant No.1. On this footing, the Plaintiffs even offered to consider transferring the title (only name of the show) to Defendant

No.1 as desired by the latter. It is the Plaintiffs' case that Defendant No.1, on its part, was prepared to accept this proposal only with the exception of the tag line and the setting of the serial in Kolkata. No agreement could, however, be reached between the parties in this behalf. It is the Plaintiffs' case that despite this correspondence, Defendant No.1 has proceeded to announce a new serial to be launched on its new television channel in the name of "Badi Devrani", which serial, the Plaintiffs submit, is entirely based on the concept notes prepared by the Plaintiffs and shared with Defendant No.1, as noted above. In the premises, the Plaintiffs have applied for an injunction against the telecast of the serial.

4 At the hearing of the application, it is submitted by Mr. Janak Dwarkadas, learned Senior Counsel appearing for the Plaintiffs, that the offending serial is being produced by Defendant No.1 through Defendant No.2, which is a rival production house, with the use of the information shared by the Plaintiffs with Defendant No.1 in the form of the various concept notes, Exhibits A and A-1 to A-12 of the plaint, in circumstances of confidence, which implied an obligation on the part of Defendant No.1 to maintain the same as confidential and not to use it otherwise than under the authority of the Plaintiffs. It is submitted that the serial being produced by Defendant Nos.1 and 2 is made by using the concept notes without the authority of the Plaintiffs. It is submitted that the various concept notes had already reached the stage of being a saleable commodity, namely, material which could be actually used for converting into a TV serial. It is also the case of the Plaintiffs that the concept, developed in Exhibits A and A-1 to A-12 of the plaint, together with its tag line and the various aspects of the TV serial forming part of the concept notes, is copyrighted work belonging to the Plaintiffs and that the Defendants' proposed serial is an infringement of the Plaintiffs' copyright in it. Learned Counsel relies upon the judgments of *Zee Telefilms Ltd. vs. Sundal Communications Pvt. Ltd.*¹, *Anil Gupta vs. Kunal Dasgupta*², and *Urmi Juvekar Chiang vs. Global Broadcast*³ in support.

5 Dr. Virendra Tulzapurkar, learned Senior Counsel appearing for Defendant No.1, whilst opposing the Plaintiffs' application for ad-interim reliefs, submits that, in the first place, the Plaintiffs have not identified what is the confidential material which they seek to protect. It is submitted that anything and everything which forms part of the concept notes, purportedly shared by the Plaintiffs with Defendant No.1, cannot be a subject matter of confidence. Secondly, it is submitted that to claim confidentiality, the Plaintiffs have to make out a case of uniqueness of the material shared by the Plaintiffs with Defendant No.1. It is submitted that the purported material is not unique in any way. Thirdly, it is submitted that the concept notes, which are produced as Exhibits A-1 to A-12, have all been developed in discussions between the Plaintiffs and representatives of Defendant No.1 and are based on inputs given by the latter. As for the case of the alleged infringement of copyright, it is submitted that there is no copyright in an idea or a thought. Learned Counsel for Defendant No.1, in this behalf, relies upon the judgment of the Supreme Court in the case of *R.G. Anand vs. M/s. Delux Films*⁴. Lastly, it is submitted that there is neither a case of breach of confidentiality nor a case of infringement of copyright, since the Defendants have not used any material, which forms part of the Plaintiffs' concept notes, for producing their serial. It is vehemently urged by Dr. Tulzapurkar that to consider whether or not the Defendants have used any material from the concept notes shared by the Plaintiffs, it is imperative for this Court to actually see the ten episodes of the serial produced by the Defendants and find for itself whether or not the spectator or viewer,

after seeing the work, is likely to get an unmistakable impression that the Defendants' work is a copy of the concept notes of the Plaintiffs.

6 Mr. Virag Tulzapurkar, learned Senior Counsel appearing for Defendant No.2, adopts the submissions of the learned Counsel for Defendant No.1 and in addition, submits that it is not possible merely on the basis of the 3 MANU/MH/0315/2007 4 AIR 1978 SC 1613 sat 5/17 nmsl 785-2015.doc material placed before this Court to determine either breach of confidentiality or copyright. Relying on the American judgment of Livia MILANO vs. NBC UNIVERSAL, INC.⁵, it is submitted by Mr. Tulzapurkar that for ascertaining the similarities between the two works, the Court must only consider the articulable similarities, that is to say, the actual concrete elements that make up the total sequence of events and relationships between major characters. It is submitted that unprotectable elements, which include general plot / ideas as also scenes that flow naturally from such unprotectable basic plot premises, cannot be considered for comparing the two works both from the point of view of breach of confidentiality and infringement of copyright.

Let me first consider the Plaintiffs' claim of breach of confidence, which, according to me, is the main plank of the Plaintiffs' case at this stage. It is now well known that the law of confidence is different from the law of copyright. In fact, as observed by various reputed international authors, as also held in various pronouncements by Courts in India and abroad, that publication of a work can very well be restrained on the basis of a breach of trust or confidence; that protection of confidence is in fact a broader right than the proprietary right of a copyright. Whereas there can be no copyright in an idea or information per se, if the idea or information has been sufficiently formed and has been acquired by a person under such circumstances that it would be a breach of good faith to publish or use the same without authority from the person from whom it has been so acquired, the Court may in an appropriate case protect the idea or information by granting an injunction. The two rights naturally have different incidents. Whereas the copyright is good against the world at large, sharing of confidence casts a duty only on the recipient of the information or idea to maintain confidentiality and not publish or use the same without the authority of the originator.

8 There are three important elements of such a claim for protection of confidence. Firstly, it must be shown that the information itself is of a confidential nature. Secondly, it must be shown that it is communicated or imparted to the 5 584 F.Supp.2d 1288 sat 6/17 nmsl 785-2015.doc defendant under circumstances which cast an obligation of confidence on him. In other words, there is a relationship of confidence between the parties. Thirdly, it must be shown that the information shared is actually used or threatened to be used unauthorizedly by the Defendants, that is to say, without the licence of the Plaintiff. Each of these three basic elements involve their own peculiarities and sub-elements, which shall be noted presently.

9 As far as the first element is concerned, namely, confidentiality of the information, there are at least three sub-elements, which need to be considered. The first is identification of the confidential information itself. For without identification, it will not be possible to hold the information to be confidential. Secondly, the information shared must be original and not be in public domain. The originality itself has some nuances to be considered. Firstly, the idea, to claim protection, must be sufficiently developed so that it is capable of being realised as an actuality. Our Court in the case of

Zee Telefilms Ltd. (supra) noted in this behalf the observations of the English Court in the case of Fraser vs. Thames Television Ltd.⁶ These observations are quoted below :

"I accept that to be capable of protection the idea must be sufficiently developed, so that it would be seen to be a concept which has at least some attractiveness for a television programme and which is capable of being realized as an actuality (see per Harris) in Talbot's case (1981) RPC 1 at 9).

But I do not think this requirement necessitates in every case a full synopsis. In some cases the nature of the idea may require extensive development of this kind in order to meet the criteria. But in others the criteria may be met by a short unelaborated statement of an idea. In Talbot's case itself I do not think the detailed submission (at 5) added very much of substance to the idea which is set out in one sentence (also at 5).

Unquestionably, of course, the idea must have some significant element of originality nor already in the realm of public knowledge. The originality may consist in a significant twist or slant to a well-known concept (see Talbot's case). This, I think, by analogy, consistent with the statements in Saltman's case and Coco's case that novelty in the industrial field can be derived from the application of human ingenuity to well-known concepts."

6 (1983) 2 ALL E.R. 101 sat 7/17 nmsl 785-2015.doc 10 It is to be immediately noted that sufficiency of development itself is not a matter of precise definition. There may well be cases, as noted by the English Court in Fraser case, where considering the nature of the idea and the use to which it is to be put, in a given case, an extensive development of the idea may be necessary to meet the criteria, whilst in another case, a short unelaborated statement of the idea may itself meet the criteria of sufficiency.

11 Unquestionably, of course, as noted by the Court, the idea must have an element of originality. It should not be an idea in the realm of public knowledge. But this originality may not be in the sense that it is not derived from what is already available as public knowledge. What makes an idea unique so as to make out a case of confidentiality is the fact that the maker of the work has used his brain and, even whilst using what was already in the public domain, has produced a result which can be produced by somebody who goes through such process. The case of Delhi High Court in Anil Gupta (supra) , popularly known as the Swayamvar case, and the case of Zee Telefilms Ltd. (supra) are cases in point. In the case of Anil Gupta (supra), the idea was of producing a reality TV programme of match making to the point of an actual spouse selection, in which real everyday ordinary persons would participate before a TV audience. The programme was titled as "Swayamvar", since a large number of people would associate the name with the idea of a woman selecting a groom in public fora, recalling mythological Swayamvar. In this case, this idea per se with its minimalistic details was sufficient to make the same unique and confidential. This is what the Delhi High Court said in paragraphs 27 and 29.

"27. In the modern day, when the small screen has taken over the earlier means of mass communication like radio, idea/concept/script of a broadcaster has wider potentiality of capitalizing revenue and if that idea/concept or script is not protected then in a given case, a person who has conceived an idea to be translated into the reality TV show which could be key to its success with audience then channels with their enormous resources could always be in a better position to take the idea/theme/concept from any author and then develop at their own end and the original author of the concept will be left high and dry, in appropriate cases interlocutory injunction may be issued restraining such breach of confidentiality of the theme, concept or scripts otherwise it would be catastrophic for the sat 8/17 nmsl 785-2015.doc television industry. One has to bear in mind that persons who create an idea/concept or theme which is original, laws must ensure that such like people are rewarded for their labour. A concept for reality show on television was given to the company, which in this case is the defendants. Creator provides raw material to the entertainment industry, themes or concepts, originates from the person who has conceived the same, protection is vital for the functioning of the industry. Otherwise authors of the idea who are individuals, their ideas can be taken by the broadcasting companies or channels owning companies and the persons who have conceived the same, would be robbed of its labour.

29. An idea per se has no copyright. But if the idea is developed into a concept fledged with adequate details, then the same is capable of registration under the Copyright Act. The novelty and innovation of the concept of the plaintiff resides in combining of a reality TV show with a subject like match making for the purpose of marriage. The Swayamvar quoted in Indian mythology was not a routine practice. In mythology, we have come across broadly understood only two Swayamvars, one in Mahabharat where the choice was not left to the bride but on the act of chivalry to be performed by any prince and whosoever succeeded in such performance got the hand of Draupdi. Similarly, in Ramayana choice was not left to the bride but again on performance of chivalrous act by a prince who could break the mighty Dhanusha (Bow). Therefore, originality lies in the concept of plaintiff by conceiving a reality TV programme of match making and spouse selection by transposing mythological Swayamvar to give prerogative to woman to select a groom from variety of suitors and making it presentable to audience and to explore it for commercial marketing. Therefore the very concept of matchmaking in view of concept of the plaintiff giving choice to the bride was a novel concept in original thought capable of being protected."

In the case of Zee Telefilms (supra), however, it was not the idea which was sufficient per se. That was a case, where a unique programme was conceived by the name of "Kanhaiyya" which was renamed by the Defendants as "Krish Kanhaiyya", which showed a young child "Bal Krishna" residing in a family whose life was disturbed, and proceeding to solve all troubles. This idea, though novel, was not per se sufficient to lend uniqueness and confidentiality. What was important, however, was that it was developed in details as set out in Exhibits and C of the plaint in that case. The idea was developed into an expression. There were various concept notes, character sketches,

detailed plot of the first episode and ten episodes. Based on this material, which was shared with the sat 9/17 nmsl 785-2015.doc Defendants, it was held that the material was both unique and confidential, and was entitled to the protection of the Court.

12 The next question is of handing over of the information in circumstances of confidence or in a relationship of confidence between the parties. Not much elaboration is necessary for this particular element. It would always be a question of fact whether or not it is so.

13 The next important question is, whether the material shared by the plaintiff with the defendant is actually being used or threatened to be used by the defendant unauthorisedly, i.e. without the licence of the plaintiff. Even here a couple of difficulties present themselves in most cases. There is ordinarily no difficulty if one has to compare two completed artistic works or literary works. It is for the Court then to find out whether the form, manner of presentation or expression of the two works display a sufficient and substantial similarity so as to form an impression that the offending work is a copy of the original work. The difficulty arises when it is not two completed works of art or literary works that we need to compare. If we were to compare, let us say, a story and a play or movie which is said to use or plagiarises the story disclosed in confidence, these difficulties would ordinarily be presented. For in that case, there will be several distinguishing features which set apart a completed work of art, namely, a play or a movie, from the story used to create it, which would be dissimilar or which would be different from the story per se. There will be different scenes, different characters or elements introduced, different dialogues, and yet the play or the film may be a complete rip off or a close adaptation of the story. The Courts have grappled with such cases in various ways. One of the well known doctrines used for the purpose is the "spring board" doctrine. It may well be that the defendant uses the plaintiff's idea as a spring board and then devises some additional material to produce a work. If the original idea was conveyed by the plaintiff to the defendant as a matter of confidence and the defendant uses it as a spring board to develop his own work, in an appropriate case, the defendant may still be liable for breach of confidence. This was explained by our Court in Zee Telefilms (supra), as follows :

sat 10/17 nmsl 785-2015.doc "12. With regard to the requirement of form and degree of development of information or ideas, learned counsel for the plaintiffs placed strong reliance on Seager v. Copydex Ltd., (1967) 2 All ER 415. In this case the plaintiff, in the course of discussion with the defendants of a carpet grip described as 'the germ of the idea' for a different form of carpet grip which the plaintiff had devised. Later the defendants developed and marketed the carpet grip which was unwittingly based on the plaintiff's alternate type of grip. The Court of Appeal concluded that the plaintiff's idea was 'the springboard' which enabled the defendants to devise their own grip and held that the defendants were liable for breach of confidence. The learned counsel also referred to a judgment of Megarry J in Coco v.

A.N. Clark (Engineering) Ltd. (1969) RPC 41 where springboard doctrine was elaborately discussed. He also referred to a judgment in Franchy v. Franchy (Extension Ch D), (1967) 5 Reports of Patent and Design and Trade Mark Cases 149 where Cross J. observed:-

"Clearly a claim that the disclosure of some information would be a breach of confidence is not to be defeated simply by proving that there are other people in the world who know the facts in question besides the man as to whom it is said that his disclosure would be a breach of confidence and those to whom he has disclosed them." "

14 Lastly, it must be noted that at the prima facie stage, the Plaintiff is not required to prove these matters. What he needs is to address them and show that he has a seriously arguable case in relation to each of them.

15 Let us now see how this law is to be applied to the facts of our case. In the first place, it is clear from the averments of the Plaintiffs in paragraphs 11 and 78 of the plaint that the confidential information, which was shared by the Plaintiffs with the representatives of Defendant No.1, was in terms of the concept notes being Exhibits A-1 to A-12, and this information was shared in circumstances of confidence, particularly having regard to the Defendants' promise that the television series would be produced by Plaintiff No.1 and telecast by Defendant No.1, based on the Plaintiffs' concept notes. Each of the emails, by which the concept notes forming part of Exhibits A-1 to A-12 were shared by the Plaintiffs in confidence from time to time in view of the launching of sat 11/17 nmsl 785-2015.doc the television series "Badki Bahu", has been produced by the Plaintiffs along with the plaint. The averments in the plaint and the material produced therewith sufficiently establish the first two aspects of confidentiality for the purposes of this ad-interim application. There is an identification of the information claimed to be confidential and this information was conveyed in circumstances of confidence to Defendant No.1. Let us now consider whether the information was unique or novel and not forming part of the public domain. The information in the form of Exhibit A, which was the original bare concept note, and further developments of this concept note into different versions and materials in the form of Exhibits A-1 to A-12, prima facie indicate that this information or material is new and not already in public domain. Learned Counsel for the Defendants submits that there is nothing new about an older girl marrying a younger boy and the resultant difficulties faced by them in their family during the marriage. Learned Counsel would also have us compare this material with the Defendants' own TV serial called "Astitva", where a much older girl marries a younger boy and some problems ensue as a result. Whilst there is nothing new in this idea or thought or indeed in the idea of the Defendants' own TV serial "Astitva", it is the setting in which the story is cast, the characteristics and backdrop of the family, the characterization of the protagonists and other important characters, the trigger points leading to different dramatic situations and the handling of these situations by the two protagonists with its accompanying dramatic elements are all matters, which lend a certain uniqueness to the material. It is these elements, as may be seen from the material produced with the plaint, which are peculiar to the Plaintiffs' concept and make it both unique and subject matter of confidence. On the other hand, a broad comparison with the Defendants' serial "Astitva" with the Plaintiffs' concept notes makes it abundantly clear that the various essential elements of the two works, namely, the serial "Astitva" and the concept notes of the Plaintiffs, are materially different. All elements of confidentiality of the information are, in my opinion, thus, adequately satisfied at least at this prima facie stage. There is identification of the confidential material; and this material is shown to be original and not already forming part of public domain; and having potential uniqueness and attractiveness from the point of

view of a new TV serial.

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In this behalf, the Defendants' contention made throu

of one Ms.Dorris Day also needs to be considered. It is submitted by the Defendants through this affidavit that the various important elements forming part of the purported concept notes of the Plaintiffs were actually developed through inputs given by the Defendants. At this prima facie stage, it is not possible to believe this statement. As indicated by me above, each of the concept notes forming part of Exhibits A-1 to A-12 has been submitted by the Plaintiffs to Defendant Nos.1 and there has always been a one-way traffic in this behalf. There is nothing on record to suggest that the Defendants had at any time before the disputes arose between the parties actually took the position or claimed that any of this material was in fact generated by the Defendants. In fact, the admitted fact that Defendant No.1 went as far as to place an offer before the Plaintiffs to either buy the concept outright or pay a per episode royalty puts paid to the Defendants' case that the material was actually generated by the Defendants.

17 The circumstances of the case, noted above, and particularly indicated in paragraphs 11 and 78 of the plaint, clearly imply that the information was parted with by the Plaintiffs in circumstances of confidence, which cast an obligation on the Defendants to maintain confidentiality and not use the material without the licence of the Plaintiffs.

18 That brings us to the important topic of whether or not the information is actually used or threatened to be used by the Defendants. Dr.Tulzapurkar, as noted above, submitted that it was not possible for this Court to arrive at any conclusion as to the breach of either confidentiality or copyright without first actually seeing the Defendants' material, which is available in the form of the first 10 episodes of the serial expected to run about 780 episodes. Just as Dr.Tulzapurkar vehemently submitted that I must actually see the episodes, I have steadfastly refused to do so. And there is a good reason for doing so. We are not, as noted above, comparing here two completed artistic or literary works. In the case of two completed works, as noted by me above, what we have to see is the form and the manner of presentation or expression, and the various actual dramatic features forming part of the two works, to make up our sat 13/17 nmsl 785-2015.doc mind as to whether or not the offending work is a copy of the original. In such a case, we essentially deal with the form of expression and the various nuances respectively used by the two works to bring out and develop the theme, but in this case, we are concerned, on the one hand, with a concept note in the form of the concept or theme of the serial, the broad story line, pitchline, the plots, tracks, family tree, characters, set design, jewellery design, etc. which are all matters of concept, yet sufficiently developed to lend a certain uniqueness and confidentiality to them and on the other, with the completed work of the Defendants in the form of first ten episodes of the serial. The elements of the concept notes cannot be appropriately compared against the various nuances and elements of detail

developed by the Defendants to portray the material. In fact, if at all, the Defendants' material will have to be stripped of all these nuances and embellishments and seen as a conceptual material so far as the theme, the story, the plots, the characters etc. go and then to compare the two works to see if the offending material in fact copies the Plaintiffs' concept notes. And for this exercise, there is already adequate material before this Court, placed by both the parties. Even if we consider the common material emanating from both the versions, namely, the version of the Plaintiffs and that of the Defendants, it is possible to make out a case that the Defendants' work is an imitation or a rip off of the Plaintiffs' concept notes. The Defendants no doubt have shown that there are several characters in the Defendants' serial, which do not exist in the Plaintiffs' work. So also, there are various elements and embellishments, which are not to be found in the Plaintiffs' concept notes. For example, it is claimed that the characters of the great grandfather or his elder brother, the great grandmother, the third son or the third son's daughter-in-law, which exist in the Plaintiffs' concept notes of "Badki Bahu", are not there in the Defendants' story of "Badi Devrani". So also there are some characters, which are not to be found in the Plaintiffs' concept such as the elder son, his son, elder son's daughter-in-law, etc. These are insignificant matters. So long as the Defendants' work portrays the Plaintiffs' concept notes, additions or deletions of a few characters here and there do not really matter. So also, the Defendants tried to make out a case that even the characterization of the two protagonists and the other characters in the two works are dissimilar. For example, the Defendants point out that whereas the sat 14/17 nmsl 785-2015.doc male protagonist of the Plaintiffs' concept notes is a fun loving person, pleasant and full of energy, but directionless, though joking and playing around, yet undecided about what he wants to do in life. The Defendants' male protagonist is actually mature and sensitive, though his ways are immature. He is very chilled out and is not aimless and has new ideas but at his age, his ideas are not crisp and clear. The Plaintiffs' protagonist respects his elders a lot, but lives as per his norms and believes in trying out new things and explores new avenues as he is still discovering what he wants to do so in life, whilst not taking any responsibilities. The Defendants' protagonist believes in change and accepts the new ways of living, but would also keep the family values in mind. We can go on endlessly in this fashion. What is important and clearly emerges is this : The two characters are essentially similar and portray an identical personality. Not only just the male protagonist, but all other important characters including the female protagonist in the works exhibit uncanny similarities of characteristics and mannerisms. So also, if one goes by the essence of the first ten episodes, which is described by the Plaintiffs (and even if one were to go by the Defendants' overall version of the episodes), what emerges is that the essence of the Defendants' material is clearly taken from the Plaintiffs' concept notes. Based on the material, which is produced by both the parties before the Court, I have come to a prima facie conclusion that all the important elements from the Plaintiffs' concept notes are copied in the Defendants' work. The following makes it clear:

(i) The Defendants introduce the older woman (female protagonist) and a younger man (male protagonist) in a setting of a Marwari family based in Kolkata (same as the Plaintiffs' literary work at pages 48, 56, 108 and 109 of the plaint);

(ii) The male protagonist introduced is a 22 year old, fun-loving son of the family, who is modern in his approach with no interest in his family business, but trying out new things and exploring new avenues. He is sensitive and good natured and rooted, yet hasn't assumed his responsibilities (same

as in the Plaintiffs' concept notes at pages 52, 68, 69, 74, 82, 90, 107, 111 of the plaint);

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(iii) The character of the female protagonist introduced

old MBA graduate, matured, positive, unmarried girl, carrying the burden of a past rejection which happened some years back from a prospective groom, and as a result of which, parents of the protagonist are eager to get her married without even minding to hide her real age so as to settle her in her life (same as the Plaintiffs' work at pages 68, 69, 88, 109);

(iv) The male protagonist's family shown to be an old traditional family, whilst the defendant is comparatively

comparatively progressive, influential affluent family, yet deeply rooted to tradition, with the father being very influential in the Marwari community (same as Plaintiffs' literary work at pages 76, 88, 108);

(v) A prospective alliance suggested by a close relative and such meeting to happen at a common wedding to be attended by both families (same as the Plaintiffs' literary work at pages 89 and 110);

(vi) The business troubles of the male protagonist's family around the same time (same as the Plaintiffs' work at page 111);

(vii) Coming of face to face of the two protagonists, at a common wedding, where the female protagonist is slated to meet a male chauvinist natured prospective groom (same as the Plaintiffs' literary work at Pages 89, 110);

(viii) Insulting of the female protagonist at the same venue by a close family member of the male protagonist, leading to so much bitterness as to make the female protagonist's father announce that he would get his daughter wedded in the next 10 days (same as the Plaintiffs' literary work at pages 89, 111).

There is enough evidence at this prima facie stage to show that the Defendants sat 16/17 nmsl 785-2015.doc are actually using the Plaintiffs' concept notes whilst making their new TV serial "Badi Devrani".

19 We also cannot lose sight of the fact that all this is in the backdrop of the sharing of the concept notes, the joint proposal of making a TV serial, the LOI and finally the offer to purchase the concept outright or pay per episode royalty. Even as entirely independent original works it would be too much to believe that these uncanny similarities between the two works are a matter of pure chance, but with the backdrop of events, it is well nigh impossible to believe so.

Though the main case of the Plaintiffs, which I have considered for the purposes of this ad-interim application, is the case of breach of confidentiality, there is also an arguable case of there being a copyright in the material of the Plaintiffs. Having regard to the particular character sketches in the concept notes, the detailed setting of the dramatic material, the overall tracks, plots, family tree, etc., the material is sufficiently developed into a concrete literary work capable of having its own life as a copyrighted material. It is arguable that the elements of expression in the Plaintiffs' concept notes which are protectable under copyright law are copied into the Defendants' work, and it is not the basic plot idea of the story, but actual concrete elements that make up the total sequence of events and relationships between major characters that are plagiarized, within the meaning of the law as expounded in *Livia MILANO's* case (*supra*). It is also possible to contend that even as a matter of copyright violation the matter would fall within the dicta of *R.G. Anand's* case (*supra*). It is possible to say that notwithstanding the variety of incidents which give a certain different colour and complexion to the Defendants' work than the Plaintiffs' copyrighted work, a totality of impression to be gathered is that by and large the former work is a copy of the latter. These aspects though will be considered in greater details later, when the parties put in their full pleadings and the matter is heard at the interim stage at greater length. At this moment, it is sufficient to note that the Plaintiffs have a statable case even of a breach of copyright and that at the ad-interim stage, the material in which they claim such copyright ought to be protected.

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Let us now consider the case of balance of convenience

Plaintiffs have not only prepared the first concept note and got the same registered, but have proceeded to develop this concept note into various character sketches, plots and other material, which are reflected in Exhibits A-1 to A-12, over about a year. Whilst it is the case of the Defendants that the material actually belongs to them, the Plaintiffs cannot be prevented with a *fait accompli* by letting the Defendants exploit the entire material. The value of the material as a novel TV serial material will be completely lost and the Plaintiffs will be effectively rendered unable to use the material for their own sake. On the other hand, the Defendants are not likely to suffer any irretrievable damages if the telecast of the serial is held up for a few days till the Court hears the application at a greater length and after allowing the parties to bring in their complete pleadings. And for the damages suffered by the Defendants in the interregnum, there is adequate machinery available within the Code of Civil Procedure for compensating the Defendants.

22 In that view of the matter, there is a clear case made out for grant of ad-interim injunction. There shall be ad-interim injunction in terms of prayer clauses (b) and (c), pending the hearing and final disposal of the Notice of Motion.

23 Replies, if any, to the Notice of Motion to be filed within a period of three weeks from today. Rejoinder, if any, within two weeks thereafter. Place the Notice of Motion for hearing on 5 May 2015.

24 Learned Counsel for the Defendants applies for stay of this order. Considering the fact that this order grants preventive reliefs to the Plaintiffs after a detailed hearing, such as is permissible at the ad-interim stage, I am not inclined to consider any stay of the order. The application for stay is refused.

(S.C. Gupte, J.)