

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: November 25, 2011
Judgment Delivered On: December 13, 2011

+ RFA(OS) 48/2011

MEENA CHAWLA Appellant
Through: Mr.D.K.Malhotra, Advocate with
Mr.Rajesh Kumar Malhotra, Advocate

versus

PRISM ENTERTAINMENT PVT. LTD.
& ORS. Respondents
Through: Mr.Ravi Gupta, Sr.Advocate with
Mr.Gaurav Gupta, Advocate for R-1
and R-4
Mr.Kirti Uppal, Sr.Advocate with
Mr.Puneet Bhatnagar, Advocate for R-
2 and R-6
Mr.Suyodhan Byrapaneni, Advocate
for Mr.G.Ramakrishna Prasad,
Advocate for R-5

RFA(OS) 59/2011

NITU SAINI & ANR. Appellants
Through: Mr.Kirti Uppal, Sr.Advocate with
Mr.Puneet Bhatnagar and Ms.Richa,
Advocates
versus

MEENA CHAWLA & CO. Respondents
Through: Mr.D.K.Malhotra, Advocate with
Mr.Rajesh Kumar Malhotra, Advocate
for R-1
Mr.Ravi Gupta, Sr.Advocate with
Mr.Gaurav Gupta, Advocate for R-2
and R-4

Mr.Suyodhan Byrapaneni, Advocate
for Mr.G.Ramakrishna Prasad,
Advocate for R-5

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

PRADEEP NANDRAJOG, J.

1. The above captioned appeals arise out of a judgment and decree dated 09.02.2011 passed by the learned Single Judge whereunder the suit for recovery in sum of ₹43,31,250/- and permanent injunction filed by Mrs.Meena Chawla, appellant in RFA(OS) No.48/2011, has been decreed against Mrs.Nitu S.Saini and her husband Sh.Sunil Saini, the appellants in RFA(OS) No.59/2011. The suit has been dismissed against the other defendants i.e. M/s.Prism Entertainment (P) Ltd, Ritu Parna Sengupta, Anjana Dalmia and M/s.Prasad Film Laboratories.

2. For the sake of convenience, we shall be referring to the parties by their nomenclature in the suit i.e. the plaintiff and defendants.

3. Briefly stated, the facts pleaded in the plaint are that the plaintiff Meena Chawla was approached by the Directors of the defendant No.1 company M/s.Prism Entertainment Pvt. Ltd. to finance a film which the company was producing by the name 'Eai Ki Sanskar'. She agreed to advance loan in sum of ₹35,00,000/- to the defendant No.1 company and as per agreement, she was to be returned the said sum with interest @ 30% per annum on or before August 06, 2004. At that time, the negatives of the films were being

processed and were lying with the defendant No.5 laboratory i.e. M/s.Prasad Film Laboratory. It was agreed that defendant No.1 shall pledge the distribution, exhibition and exploitation rights of the film with the plaintiff by way of security for repaying the loan. Alleging that neither was the principal sum repaid nor any interest was paid, decree claimed against the company and defendants No.2 to 4 i.e. Nitu S.Saini, Ritu Perna Sengupta and Anjana Dalmia, describing all of them as the Directors of defendant No.1, was in sum of ₹43,31,250/-. Alleging that the plaintiff apprehended collusion of defendant No.5 in delivering the prints of the film to third parties, injunction was claimed against said defendant from delivering the prints to the other defendants. Injunction was also prayed to restrain the defendants from dealing with the negatives of the film.

4. The defendants Nos.1, 3 and 4 filed a joint written statement stating that in the year 2002, the defendant No.2 and her husband Sunil Saini approached defendant No.3 and represented to her that they wanted to produce films in association with her and that they had surplus financial resources at their disposal. Based on said representations the defendant No.3 joined hands with the defendant No.2 and her husband and incorporated the defendant No.1 company of which defendants Nos.2, 3 and 4 were appointed as directors and husband of defendant No.2 i.e. Sunil Saini was appointed as the Chief Executive Officer of the company: In the year 2003 a meeting was held by the directors of the defendant No.1 wherein it was decided that the defendant No.2 and her husband would make financial

contribution to the defendant No.1 company for the purposes of production of the film 'Ek Kai Sansar', being produced by the defendant No.1 company. Thereafter on 03.06.2003, Mr.Rajat Dalmia, the President of the defendant No.1 company, sent an e-mail to Sunil Saini informing him that he and defendant No.2 should make financial contribution in the defendant No.1 company at the earliest. In reply to which, Sunil Saini sent an e-mail to Rajat Dalmia informing him that he would do the needful at the earliest. On 05.08.2003 Sunil Saini sent an email to Rajat Dalmia informing him that he had arranged a sum of ₹35,00,000/- and that the said amount would be credited in the account of the defendant No.1 in the near future. Sometime thereafter cheques totaling ₹35,00,000/-, issued by the plaintiff, were credited in the account of the defendant No.1 company and when Rajat Dalmia made enquiries from Sunil Saini about the same, he told him that the plaintiff had made financial contribution in the defendant No.1 company on his and defendant No.2's behalf. The said sum of ₹35,00,000/- was utilized by the defendant No.1 company for the production of film 'Ek Kai Sansar'. The financial contribution of ₹35,00,000/- was made by the plaintiff in the defendant No.1 company on behalf of the defendant No.2 and her husband Sunil Saini and the defendant No.1 company was not liable to make repayment of the said sum to the plaintiff. With respect to the agreement dated 01.08.2003 entered into between the plaintiff and defendant No.2, it was pleaded that the same is illegal for the reason the Memorandum and Articles of Association of defendant

No.1 company prohibited the director of the company from taking a loan on behalf of the company from a third party without prior consent of all the directors of the company and that the needful was not done by the defendant No.2 before taking the loan from the plaintiff.

5. After the written statement was filed by the defendants Nos.1, 3 and 4 the plaintiff impleaded Sunil Saini as defendant No.6.

6. In their respective written statements, the defendants Nos.2 and 6 pleaded that the defendant No.2 had entered into the agreement dated 01.08.2003 with the plaintiff on behalf of the defendant No.1 company and thus the company was responsible to repay ₹35,00,000/- to the plaintiff together with the stipulated rate of interest.

7. In the written statement filed by defendant No.5 it pleaded that the defendant No.1 had entrusted the negatives of the film 'Ek Kai Sansar' to it for development and without receipt of consideration towards the developed prints, it had a lien on the negatives as well as the developed prints.

8. On the basis of the pleading of the parties, following issues were framed by the learned Single Judge:-

“(i) Whether this Hon’ble Court has the territorial jurisdiction to entertain and try the suit”? OPD

(ii) Whether the alleged agreement dated 1.8.2003 is not valid and legally binding upon the Defendant No. 1, 3 and 4? OPD

(iii) Whether on a pure and simple money claim of the Plaintiff, any perpetual injunction restraining the Defendants can be granted, as prayed for? OPD

(iv) Whether the Plaintiff is entitled to decree for recovery of money, as prayed, against which of the Defendants and for what amount? OPP

(v) Whether the Plaintiff is entitled to any interest? If so, at what rate and for what period? OPP

(vi) Relief.”

9. In support of her case, the plaintiff examined herself and her husband Ramesh Chawla as PW-1 and PW-2 respectively and deposed facts in harmony with the pleadings in the plaint. But, it is relevant to note the following portion of the cross-examination of the plaintiff:-

“I do not know, if defendant had requested the plaintiff in writing to advance any money to defendant no.1, however, my husband may be aware. All discussions in respect of the production of the film Eai Ki Sansar were with my husband.

....

Question: Were you given any document which gave you details about defendant no.1, its list of directors, its shareholders, its share capital before 01.08.2003?

Answer: I have already said that all the discussions were with my husband.

....

Question: Did you ask for Board Resolution from the defendant no.1 authorizing defendant no.2 to enter into an agreement in question?

Answer: I have not asked from defendant No.2 as my husband was dealing with it."
(Emphasis Supplied)

10. In support of their case, the defendants Nos.1, 3 and 4 examined Ritu Parna Sengupta, defendant No.3, Anita Dalmia, defendant No.4 and Rajat Dalmia as DW-1, DW-2 and DW-3 respectively. In their examination-in-chief, the said witnesses reiterated the stand taken by them in the written statement filed by them.

11. In support of her case, the defendant No.2 examined herself as D2-W1. In her examination-in-chief, the defendant No.2 reiterated the stand taken by her in the written statement filed by her. It is relevant to note following portion of the cross-examination of defendant No.2:-

"Q. Did you have any authority from defendant no.1 for signing this agreement Ex.DW-3/X7?

A. My husband told me that he had instructions from Mr. Rajat Dalmiya that I had to go to Delhi for signing the said agreement.

I did not ask my husband to show or give me copy of resolution of defendant no.1 authorizing me to sign the agreement Ex.DW-3/X7.

I have not seen any such resolution of defendant no.1 even till today."

12. In support of his case, the defendant No.6 examined himself as DW6-W1. In his examination-in-chief, the defendant No.6 reiterated the stand taken by him in the written statement filed by him. It is relevant to note the following portion of the cross-examination of defendant No.6:-

"I have seen the document already put as Ex.DW3/X9 and the same is the e.mail sent by me to defendant No.1.

Q. The various e. mails sent to you by the defendant No.1 were normally sent by whom?

Ans. They were all sent by Rajat Dalmia from the Kolkata office defendant No.1.

....

I have seen the document dated 14.08.2003 which is a copy of printout of e. mail sent by defendant No.1 to me. The document is now put as Ex.DW6/X2. But I do not remember the same.

....

Q. Whether any board resolution was passed authorizing defendant no.2 to enter into the agreement in question with the plaintiff?

A. There must have been a board resolution.

I do not remember whether any such board resolution was filed by us on record.

I cannot admit or deny the suggestion that there was no such board resolution to enter into such agreement with the plaintiff but there was a general resolution authorizing the directors to borrow on behalf of the defendant no. 1 company. No copy of any such general resolution has been filed by us on the court record. (Vol.) But the same is the part of share holders agreement entered into between the directors.

Q. I put it to you that there was no such general resolution?

A. Such a resolution was not necessary when there is a share holders agreement between the directors of company? (*Emphasis Supplied*)

13. As regards documentary evidence, amongst other documents, the plaintiff proved Ex.DW3/X-7 i.e. the agreement dated 01.08.2003.

14. On behalf of defendants Nos.1, 3 and 4, the copies of the print-outs of the e-mail dated 14.08.2003 sent by Rajat Dalmia to the defendant No.6 and the e-mail dated 14.01.2004 sent by the defendant No.6 to Rajat Dalmia were proved as Ex.DW6/X-2 and Ex.DW3/X-9 respectively. (Be it noted here that the defendant No.6 had admitted in his cross-examination that the email Ex.DW6/X-2 was sent to him by the defendant No.1 company and that the e-mail Ex.DW3/X-9 was sent by him to the defendant No.1 company).

15. It is relevant to note the following portion of the e-mail Ex.DW6/X-2 dated 14.08.2003:-

“Dear Sunil,

....

In respect to your email dated 12th August 2003 in which you have sent me the Draft Agreement which you would like to sign with Ms.Chawla, as per your suggestion and advise I had shown it to Mr.Tiwari and he totally disagreed. He feels entering into such an agreement would complicate issues. He still feels that whatever contribution you have to bring on your account into PRISM should be brought in through your Books of Accounts. Even it means that you have to take a loan/advance from any outside 3rd party you should do it in your Books of Accounts and then through your Books of Accounts you must put the money into PRISM.

As a last and unwanted resort, you could take the money into PRISM directly from the 3rd party but simultaneously you should give a letter to PRISM indemnifying the other directors and shareholders of PRISM from any litigation, complications or any liability which might arise on account of this sum of money. This would be as per the draft letter which Mr. Tiwari has already given to you.

In lieu of the above I would think that you should not sign the agreement with Ms. Chawla at all per the draft which you have sent to me.

....”

16. It is also relevant to note the following portion of the e-mail Ex.DW3/X-9 dated 14.01.2004:-

“Dear Rajat,

....

As I had mentioned on fone as well as in the last joint meeting we have had with all the Directors and shareholders on 5th instant, that I am all out to give in my best efforts to complete and release the second film as well as exploit the first film AALO to the maximum and I stand by the amounts that I have already contributed in the company to the extent of ₹18 Lacs and this amount of ₹35 Lacs was brought in from outside financiers to help the progress of the film which was clarified again and again. However, as per the last meeting, I once again ensure you that I will try to clear this loan on the company with my own efforts in distributing the film and if there is a slight shortfall at the time of release I request you and sanjay once again to stand by me to ensure a smooth and successful release.

.....” (*Emphasis Supplied*)

17. Evidenced from the impugned decision, issues No.1 and 3 were not pressed seriously and hence have been answered in favour of the plaintiff.

18. As already noted hereinabove, vide impugned judgment and decree dated 09.02.2011, the learned Single Judge has decreed the suit filed by the plaintiff against defendants Nos.2 and 6 and has dismissed the same against the other defendants i.e. the defendants Nos. 1, 3, 4 and 5. It has been held by the learned Single Judge that the plaintiff is entitled to recover a sum of ₹43,31,250/- together with interest @8% per annum from defendants Nos.2 and 6 only. In reaching the said conclusion, it has been held by the learned Single Judge that:- (i) since no resolution was passed by the defendant No.1 company authorizing the defendant No.2 to obtain a loan on behalf of the company from the plaintiff as is clear from the evidence of the plaintiff and defendant No.2, the agreement dated 01.08.2003 executed between the plaintiff and defendant No.2 does not bind the defendant No.1 company in view of the provisions of Section 292 of the Companies Act, which prescribes that no director can take a loan or advance on behalf of the company without a Board resolution having been passed by the company in said regards; and (ii) alternatively, a reading of the communication(s) exchanged between the defendant No.6 and Rajat Dalmia, particularly the e-mails Ex.DW6/X-2 and Ex.DW3/X-9 dated 14.08.2003 and 14.01.2004 respectively, evidence that the amount in question was not a loan taken by company from the plaintiff, but was the share of contribution of defendant No.6

which he had to bring for the company to produce the film 'Ek Kai Sansar'.

19. Aggrieved by the judgment and decree dated 09.02.2011 insofar it has dismissed the suit against defendants Nos.1, 3, 4 and 5, plaintiff Meena Chawla has filed RFA (OS) No.48/2011. On the other hand, defendants Nos.2 and 6 i.e. Neetu Saini and her husband Sunil Saini have filed RFA (OS) No.59/2011 challenging the impugned judgment and decree insofar it has held that defendant No.1 company is not liable to make any payment to the plaintiff and that they are liable to repay the said amount.

20. The appellants in both the above captioned appeals have challenged the findings returned by the learned Single Judge that the defendant No.1 company is not liable to repay any amount to the plaintiff since the Board of Directors of the company had never passed a resolution as contemplated by Section 292 of the Companies Act.

21. In support of the appeals, following submissions were advanced on behalf of the appellants in both the appeals:-

A. That the learned Single Judge failed to appreciate that a creditor dealing with a company is required by the law to be conversant with the terms of the Memorandum and Articles of Association of the company and no more. If it is found that the transaction of loan into which the creditor enters with the company is not barred by the Memorandum or Articles of the Association of the company, and could be entered into on behalf of the company by the person

negotiating for the company, the creditor is entitled to presume that all the formalities required in connection therewith have been complied with by the company. It was urged that a loan transaction where-under a company receives the money cannot be defeated on the ground that a resolution contemplated by Section 292 of the Companies Act was not passed. Being an outsider, it was urged, that a creditor does not know nor is he supposed to know what happens within the closed doors of a company. Reliance was placed on the decisions of the Allahabad and the Calcutta High Courts reported as AIR 1957 All 311 Lakshmi Rattan Cotton Mills Co Ltd, Kanpur v J.K. Jute Mills Co., Ltd and AIR 1967 Cal 75 Shri Kishan Rathi v Mondal Brothers & Co. (Pvt) Ltd & Anr respectively.

B. That the learned Single Judge failed to take note of the settled legal position, that even if the borrowing of a loan by the agent of a company is unauthorized, the company would still be liable to pay, if it is shown that the money had flown into the coffers of the company. In support of the said submission, reliance was placed upon the decisions of Allahabad and Patna High Courts reported as AIR 1957 All 311 Lakshmi Rattan Cotton Mills Co Ltd, Kanpur v J.K. Jute Mills Co., Ltd and 1978 (50) CC 722 Kumar Krishna Rohtagi & Ors v State Bank of India & Ors. respectively.

22. The submissions are based upon the doctrine of indoor or internal management. What is the doctrine of indoor or internal management?

23. The doctrine of indoor or internal management was first enunciated by the Courts in England in the decision reported as (1856) 6 E & B 327 Royal British Bank v Turquand. The facts of the said case were that Turquand was the official manager of the company. A bond under the seal of the company, signed by two directors and the secretary, was given by the company to the Royal British Bank to secure drawings on its current account. In an action based on the bond the company defended pleading that under the terms of the registered deed of settlement, the directors had power to borrow only such sums as had been authorized by general resolution of the company and since no sufficiently specific resolution had been passed by the company, it was not liable to make payment to the Bank. The Court of Exchequer Chamber overruled the objection and held that the bond was binding on the company. The relevant portion of the said decision reads as under:-

“The deed allows the directors to borrow on bond such sum or sums of money as shall from time to time, by a resolution passed at a general meeting of the company, be authorised to be borrowed : and the replication shows a resolution passed at a general meeting, authorising the directors to borrow on bond such sums for such periods and at such rates of interest as they might deem expedient, in accordance with the deed of settlement and Act of Parliament; but the resolution does not define the amount to be borrowed. That seems to me enough.....We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more.

And the party here on reading the deed of settlement, would find, not a prohibition from borrowing but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorising that which on the face of the document appear to be legitimately done." (*Emphasis Supplied*)

24. In a nutshell, the gist of the doctrine is that persons dealing with limited liability companies are not bound to enquire into their indoor management and will not be affected by irregularities of which they had no notice. This doctrine, which is based on general presumption of law, is eminently practical, for business could not be carried on if a person dealing with the company is compelled to call for the evidence that all internal regulations had been duly observed by the company before entering into a transaction. But, the doctrine self limits itself in view of the portions underlined while quoting the relevant paragraph from the decision, as reproduced in para 23 above, i.e. the non-obligation to make an inquiry would not extend to 'Statutes' and 'The Deed of Settlement' i.e. 'The Articles of Association and the Memorandum of a Company'.

25. The doctrine of indoor management, as enunciated in Turquand's case (supra), has been followed by the Kerela High Court in the decision reported as AIR 1957 Ker 97 Varkey Souriar v. Keralaleeya Banking Co. Ltd., in the following terms:-

"Coming to the alternative ground, it is no doubt true that where a company is regulated by a memorandum and articles registered in some public office, persons dealing with the company

are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith but they are not bound to do more. They need not enquire into the regularity of the internal proceedings what--Lord Hatherley called 'indoor management'. See Royal British Bank v. Turquand [1856] 6 E&B 327, Ram Buran Singh v. Mufassil Bank Ltd., AIR 1925 All 206(2), Dehra Dun Mussoorie Electric Tramway Co. Ltd. v. Jagmandar Das [1931] 1 Comp Cas 227; AIR 1932 All 141, T. R. Pratt (Bombay) Ltd. v. E. D. Sassoon and Co. Ltd. [1936] 6 Comp Cas 90 ; AIR 1936 Bom 62."
(Emphasis Supplied)

26. Applying the doctrine in the instant case we need to note sub-section 1 of Section 292 of the Companies Act and its relevant sub-clauses. It reads as under:-

"S. 292 Certain powers to be exercised by Board only at meeting – (1) The Board of Directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at the meetings of the Board :-

- (a) the power to make calls on shareholders in respect of money unpaid on their shares;
- (b) the power to issue debentures;
- (c) the power to borrow money otherwise than on debentures;
- (d) the power to invest the funds of the company;
- (e) the power to make loans;

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of that company or in the case of a branch office of the company, a principal officer of the branch office,

the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions as the Board may prescribe.”

27. Section 292 of the Companies Act enjoins that the board of directors of a company should exercise the power to borrow money otherwise than on debenture only by means of resolutions passed in said regards at the meetings of the board of directors.

28. It is settled legal position that every person is presumed to know the law. A creditor dealing with company shall be presumed to know the requirement of Section 292 of the Companies Act that no director or other officer of a company is authorized to borrow money on behalf of the company unless the board of directors of the company has passed a resolution authorizing him in said regards. Such being the position, before advancing loan to a company the creditor must make necessary enquiries and satisfy himself that the board of directors of the company has passed a resolution authorizing all or any of its directors or its agent to borrow money on behalf of the company. If he fails to do so, the doctrine of indoor management would not come to his rescue. The decision in Turquand's case (supra) also recognizes that a person dealing with the companies is bound to read the statute. The doctrine of indoor management would come into play in situations where before advancing loan to the company the creditor had satisfied himself that the board of directors of the company had passed a resolution authorizing the person negotiating with him to borrow money on behalf of the company but

subsequently it transpires that the resolution in question was illegal due to procedures internal to the management of the company not being followed.

29. In the instant case, the plaintiff has stated in her cross-examination that she did not ask the defendant No.2 to show her the resolution passed by the board of directors of the defendant No.1 company authorizing defendant No.2 to borrow money on behalf of the company, before executing the agreement dated 01.08.2003 stating that she did not do so since her husband was dealing with the matter. Ramesh Chawla PW-2, the husband of the plaintiff, is completely silent on this vital aspect of the matter. The defendant No.2 stated in her cross-examination that he had not seen any resolution passed by the defendant No.1 company authorizing her to borrow money on behalf of the company. When questioned about such a resolution, the defendant No.6 had given most vague and evasive answers.

30. From the aforesaid, it is clearly apparent that no resolution was passed by the defendant No.1 company authorizing the defendant No.2 to borrow money on behalf of the company and that the plaintiff did not make any enquiries regarding passing of such resolution by the defendant No.1 company before entering into the agreement dated 01.08.2003 with the defendant No.2. Such factual position when seen in the light of legal discussion contained in the foregoing paras results in the conclusion that the doctrine of indoor management would not come to the rescue of the plaintiff.

31. Before proceeding further, we proceed to deal with the decisions relied upon by the appellants in said regards.

32. In Lakshmi Rattan's case (supra), the respondent company had advanced a loan in sum of ₹1,50,000/- to the appellant company on the understanding that the loan advanced would carry interest 1 per cent higher than the current Bank rate and would be repaid together with interest within six months. After the expiry of stipulated period of six months, the appellant company failed to repay the loan in spite of reminders sent to it and hence the suit was filed. One of the defence taken by the appellant company was that it was not liable to repay no money as there was no Board resolution authorizing anybody to obtain loan on behalf of the company. Negating the plea the Court held that the doctrine of indoor management would come to the aid of the creditor of the company. A view with which we cannot concur inasmuch as the Court overlooked Section 292 of the Companies Act and the specific exclusionary observations in Turquand's case (supra) which we have noted while laying down the rules pertaining to the doctrine of indoor management.

33. Likewise, the observations made by Calcutta High Court in Kishan Rath's case (supra) that *'it is exactly here that the Full Bench of the Small Cause Court went wrong in not realizing that a bona fide creditor-stranger who lent money on a hundi or a bill of exchange has a right to assume as against the company that all requirements of the indoor management have been duly complied with, such as,*

necessary resolutions are there on the directors book to make them regular and that the directors have acted according to the procedure enjoined in their board meeting' are also in the teeth of the limited span of the doctrine of indoor management.

34. This takes us to the second submission advanced by the appellants.

35. It is settled legal principle that no statutory provision should be left meaningless. (See the decision of Supreme Court reported as *Makhan Singh v State of Punjab* AIR 1964 SC 381). Furthermore, what cannot be achieved directly cannot be achieved indirectly. Thus, in the teeth of Section 292 of the Companies Act, it cannot be held that since the money was ultimately utilized by the company, it would be liable to repay the same.

36. Thus, we agree with the reasoning of the learned Single Judge that the defendant No.1 company is not liable to pay any money to the plaintiff and that the money was the personal contribution to be brought for production of the film by defendants No.2 and 6 respectively.

37. However, the matter does not rest here. There is one important aspect of the matter which has escaped the attention of the learned Single Judge.

38. It is a principle of law that if the whole or any part of a loan taken unauthorizedly by a director or agent of the company can be traced as existing in the company's hands or as specific investments or in specific shape, the lender

can recover the same by obtaining from the Court a 'tracing order'. (See the decision reported as (1932) 4 E & B 426) *R v Alexander Investment Company*.

39. In the instant case, admittedly the amount advanced by the plaintiff pursuant to the agreement dated 01.08.2003 was credited in the account of the defendant No.1 company and that the said amount was utilized by the defendant No.1 for the production of film 'Ek Kai Sansar'. This being the position, the plaintiff is entitled to recover the amount advanced by her pursuant to the agreement dated 01.08.2003 by tracing her money to the film 'Ek Kai Sansar'.

40. The sum and substance of the above discussion is that in addition to the decree which the plaintiff has obtained against defendant No.2 and 6 she would be entitled to a tracing order declaring that she has a lien on the negatives as also the developed prints of the film 'Ek Kai Sansar' and upon her paying the development charges to defendant No.5 she would be entitled to the custody thereof and further that she can exploit the same till she recompenses herself as per the decree impugned.

41. The impugned judgment and decree dated 09.02.2011 passed by the learned Single Judge is upheld with additions as above.

42. The suit filed by the plaintiff is decreed in sum of ₹43,31,250/- against defendants No.2 and 6 together with interest at such rate granted by the learned Single Judge till repayment. Defendant No.5 is restrained from handing over

the negatives and the developed prints of the movie 'Ek Kai Sansar' to any third party. It is decreed that upon plaintiff paying the processing and developing charges to defendant No.5 it would hand over the negatives and the developed prints of the movie 'Ek Kai Sansar' to the plaintiff who would be entitled to exploit the same till she recoups the decretal amount.

43. Parties shall bear their own costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

DECEMBER 13, 2011
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