

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 916/2017**

% **Reserved on: 22nd November, 2017**
Pronounced on : 28th November, 2017

ACHLA SABHARWAL Appellant

Through: Mr. Sudhir K. Singh, Advocate.

versus

NATIONAL FILM DEVELOPMENT CORP. LTD. & ANR.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

CM No. 39452/2017 (delay in filing) & CM No. 39451/2017 (delay in re-filing)

For the reasons stated in the applications, delays in filing and re-filing the appeal are condoned.

CMs stand disposed of.

RFA No. 916/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff in the suit impugning the judgment of the trial court dated 22.5.2017 by

which the trial court has dismissed the suit filed by the appellant/plaintiff for damages and injunction. Appellant/plaintiff sought a money decree of Rs.4 lacs against the respondents/defendants for telecasting the film 'COMPANY' on 15.7.2007 without any consent from the appellant/plaintiff and also sought injunction against the respondents/defendants from telecasting the film 'COMPANY' except as per the instructions and payment to the appellant/plaintiff.

2. Appellant/plaintiff pleaded in the plaint that she acquired terrestrial TV rights in respect of the film 'COMPANY' from M/s Spotlight vide agreement dated 21.7.2006. Appellant/plaintiff was carrying on business in the name of M/s Media International. M/s Spotlight had purchased rights in the film from M/s Matrix Entertainment Pvt. Ltd. M/s Matrix Entertainment Pvt. Ltd. had purchased rights in the film from M/s RGV Tele Video. M/s RGV Tele Video had purchased rights in the film from M/s Endeavour in terms of an agreement dated 25.11.2003. M/s Endeavour had purchased rights in the film from original producer M/s Vyjayanthi Movies Verma Corporation Production. In the plaint it was pleaded that the respondent no.1/defendant no.1 had telecasted the subject film

on Doordarshan once on 25.11.2006 and for this telecast paid the telecasting amount to the appellant/plaintiff. It is pleaded in the plaint that the respondent no.1/defendant no.1 however without any further agreement with the appellant/plaintiff again telecasted the film 'COMPANY' on Doordarshan on 15.7.2007. It was pleaded in the plaint that since telecast has been done of the film on 15.7.2007 without any consent from and without making payment to the appellant/plaintiff, the appellant/plaintiff is hence entitled to the amount of Rs.4 lacs and that the respondents/defendants were to be restrained from making payment of the royalty amount to anybody except to the appellant/plaintiff.

3. Written statement was filed by the respondent no.1/defendant no.1 by pleading that M/s Matrix Entertainment Pvt. Ltd. had assigned terrestrial rights of the subject film to M/s Mima Real Estate Advisors Pvt. Ltd. for the period from 1.4.2007 to 31.3.2010. The telecast of the subject film was offered by the appellant/plaintiff to the respondent no.1/defendant no.1 for a single telecast on DD-1 on 25.11.2006 i.e prior to 1.4.2007 to 31.3.2010. The second telecast was offered to respondent no.1/defendant no.1 by M/s

Mima Real Estate Advisors Pvt. Ltd. vide its letter dated 31.5.2007 attaching all the relevant documents i.e the title documents of the assignment rights and consequently the film was re-telecasted on 15.7.2007 on DD-1. The royalty of the film was accordingly released to M/s Mima Real Estate Advisors Pvt. Ltd, and therefore, the appellant/plaintiff is not entitled to the suit amount because no link documents were produced by the appellant/plaintiff to prove her terrestrial rights in spite of the respondent no.1/defendant no.1 asking the appellant/plaintiff to produce the necessary documents. The necessary documents and the requisite link of documents were in fact provided to the respondent no.1/defendant no.1 by M/s Mima Real Estate Advisors Pvt. Ltd. and to whom therefore the telecast royalty amount was paid. The suit was hence prayed to be dismissed as the appellant/plaintiff had failed to provide the requisite link documents to the respondent no.1/defendant no.1 whereas the complete chain of documents were provided by M/s Mima Real Estate Advisors Pvt. Ltd. to whom payment was made.

4. After pleadings were complete, the trial court framed the following issues:-

- “1. Whether the suit in its present form is maintainable?
2. Whether the suit is barred by Section 41(h) (I) & (j) of Specific Relief Act?
3. Whether the suit is bad for mis joinder and non joinder of necessary parties? OPD1
4. Whether terrestrial TV rights of the Film ‘Company’ vests with the plaintiff when same was telecast on doordarshan channel DD-1 on 15.07.07? OPP
5. Whether the plaintiff is entitled to a decree of Rs.4 lacs against the defendants as prayed for?
6. Whether the plaintiff is entitled to a decree of permanent junction as prayed for?
7. Relief.”

5. The factum with respect to leading of evidence by the parties is stated in paras 8 to 9.2 of the impugned judgment and these paras read as under:-

“8. PLAINTIFF EVIDENCE:-

8.1 In order to prove her case, the proprietor of the plaintiff herself examined as PW-1, tendered her evidence by way of affidavit Ex.as PW1/A, she has reiterated the averments made in the plaint. During her deposition, she also relied upon the documents exhibited as Ex.PW-1/5(colly) (OSR) i.e. copy of authorization dt.21.07.2006 made by M/s Spotlight in favour of M/s Media International, Ex.PW1/6(OSR) i.e. Copy of letter dt. 15.12.2007, Ex.PW1/7 i.e. copy of legal notice dt. 31.08.2009, Ex.PW1/8 i.e reply on behalf of Defendant no.2 to the legal notice. The documents marked as Ex.PW 1/1, Ex.PW1/2, Ex.PW1/3, Ex.PW1/4 and Ex.PW1/9 were de-exhibited as original of same were not on record and marked as Mark, A,B,C,D & E respectively.

8.2 The matter was fixed for D.E.

9. DEFENDANT EVIDENCE:-

9.1 On the other hand, defendant examined Sh. M.N. A Setty, Manager/AR of National Film Development Corporation Ltd. as DW-1, filed his evidence by way of affidavit Ex.DW1/A. He has placed reliance on document Ex.DW1/1 to DW1/6 and Mark “A” to “G”.

9.2 This is the entire evidence adduced in this matter.”

6. The issue before this Court firstly is that as to whether the

appellant/plaintiff had proved all the chain of documents/link documents to show that it was the appellant/plaintiff who is entitled to telecast rights/royalty charges for the telecast of the film on 15.7.2007. In this regard, it is noted that appellant/plaintiff failed to file the entire chain of original documents to claim to be entitled to rights in the subject film as on the date of telecast on 15.7.2007. Appellant/plaintiff only produced photocopies and these documents were therefore de-exhibited and only marked. If the appellant/plaintiff was the owner of the telecasting rights in the subject film on 15.7.2007 then there was no reason why the original documents of ownership/assignee rights in the subject film would not be in the possession of the appellant/plaintiff and thus for the appellant/plaintiff to have filed and proved the same in the trial court. In fact even before this Court the title chain of documents in originals are not filed. Thus, the appellant/plaintiff failed to prove the title documents of the subject film, and which aspect is recorded in paras 12.8 to 12.10 of the impugned judgment and which paras read as under:-

- “12.8 The other documents i.e (i) Mark ‘A’ assignments of Terrestrial Rights in favour of M/s Endavours by Vyjayanthi Movies Verma Corporation,
(ii) Mark ‘B’ agreement by M/s Endavour to M/s RGV,
(iii) Mark C M/s RGV to M/s Matrix Entertainment

(iv) Mark D M/s Matrix Entertainment Director appointed M/s Spotlight to apply and telecast the film on their behalf

(v) Mark E is a declaration to state that M/s Matrix Entertainment Pvt. Ltd. are the rights holders and/or authorized and telecast the film including company on Doordarshan.

Relied upon by the plaintiff are photocopies of the documents. It is settled position of law the photocopy of a document could be proved and would be admissible only in absence of primary evidence. If the original evidence is not produced on account of failure of the party to file the same and it is not proved to be valid the same party is not entitled to introduce secondary evidence of its contents.

12.9 In **Smt. J.Yashoda v K. Shobha Rani** AIR 2007 SC 1721, the Supreme Court had held that secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or the other of the conditions provided for in Section 65 of the Evidence Act.

12.10. Herein the plaintiff has failed to produce the originals of the said documents. Nothing is coming in the testimony of PW-1 regarding the status of the said original documents. It is not the case of the plaintiff that originals have been destroyed nor any other ground has been made out for the production of the secondary evidence. Neither any witness has been summoned to prove the execution of the document nor to state that the photocopies were copied from the original and compared therewith. Thus, in light of the proposition of law enunciated by the authority stated above the said documents cannot be read upon or read in evidence.”

(underlining added)

7. More importantly, it has to be noted that the trial court has held that the appellant/plaintiff relied upon the agreement Ex.PW1/5 entered into between the appellant/plaintiff/M/s Media International, and M/s Spotlight but this agreement Ex.PW1/5 was not found to be a genuine document because not only there was no seal or stamp of M/s Spotlight but even the name of the person signing the document was not mentioned. Also, there was no Board of Resolution

or Authorization Letter showing as to how the person who signed on behalf of the M/s Spotlight was entitled to sign this agreement Ex.PW1/5. Trial court accordingly in terms of discussion in paras 12.4 to 12.7 has rightly rejected the entitlement of the appellant/plaintiff on the basis of the agreement Ex.PW1/5 as this document was not free from suspicion and legal infirmities.

8. In my opinion, in addition to the above reasoning given by the trial court, the trial court was additionally entitled not to place reliance upon Ex.PW1/5 because once there was an issue as to whether at all M/s Spotlight had transferred rights in favour of the appellant/plaintiff/M/s Media International Ltd. as on 15.7.2007, then the appellant/plaintiff had to summon the witness from M/s Spotlight to show that M/s Spotlight had in fact executed the agreement Ex.PW1/5. Simply the appellant/plaintiff stating in his evidence and proving Ex.PW1/5 that there was a transfer from M/s Spotlight to the appellant/plaintiff would not mean that the Court has to believe the contents of Ex.PW1/5 in facts of cases such as the present because the appellant/plaintiff was bound to call the counter-party executant of the document and which the appellant/plaintiff failed to do so. Therefore,

for this additional reasoning, the trial court could have rejected reliance upon Ex.PW1/5 alleged to be entered into between appellant/plaintiff and M/s Spotlight.

9. In my opinion, the trial court has also rightly dismissed the suit by placing reliance upon Section 61 of the Copyright Act, 1957 and the spirit of which provision is that once there are disputes with respect to who was the actual owner of the copyright, then in such a case an owner of the copyright in the film as on 15.7.2007 ought to have been made party to the suit. In the present case, the last owner in the chain from whom the appellant/plaintiff purchased terrestrial rights in the film was M/s Spotlight, and therefore M/s Spotlight or actually M/s Mima Real Estate Advisors Pvt. Ltd. ought to have been made a party but since such entity was not made as a party defendant, the trial court was hence justified in holding the suit to be bad on account of non-joinder of necessary party in accordance with the spirit of Section 61 of the Copyright Act. The relevant observations of the trial court in this regard are contained in paras 11.7 to 11.10 of the impugned judgment and these paras read as under:-

“11.7. Evident to note that the film was telecasted on 15.07.2007 on the offer made by M/s Mima Real Estate Advisors Pvt. Ltd; the film was offered vide letter dated 31.05.2007 by the said firm; all the link and necessary documents are stated to have been provided by M/s Mima Real Estate Advisors Pvt. Ltd. to defendants; the royalty amount against the screening of the film was withheld after coming to know of the claim of the assignment rights by the plaintiff. These facts were well within the knowledge of the plaintiff at the time of filing of the present suit, therefore, when there was *per-se* dispute to the assignment of terrestrial rights between the plaintiff and the M/s Mima Real Estate Advisors Pvt. Ltd. in my considered view, M/s Mima Real Estate Advisors Pvt. Ltd. ought to have been arrayed as a defendant as a necessary party for complete and effective adjudication of the dispute herein. The outcome of the suit would have direct bearing of the legal rights of the M/s Mima Real Estate Advisors Pvt. Ltd on whose offer the film was telecasted on Doordarshan by D-1.

11.8. Herein when the application for impleadment of M/s Mima Real Estate Pvt. Ltd. was moved on behalf of defendant no.1 plaintiff had vehemently opposed the said application. I fail to understand why the plaintiff was shying away to add the M/s Mima Real Estate Pvt. Ltd. in the array of parties when admittedly there was a dispute between them regarding the assignment of terrestrial rights, more the so, when the film was telecasted on an offer not made by the plaintiff but by the M/s Mima Real Estate Pvt. Ltd.

11.9. Further, a reference to Section 61 of the Copy Right Act would also be relevant which states that *“In every civil suit or other proceedings regarding infringement of copyright instituted by an exclusive licensee, the owner of the copyright shall, unless the court otherwise directs, be made a defendant and where such owner is made a defendant, he shall have the right to dispute the claim of the exclusive licensee”*. Plaintiff has neither impleaded the owners of the copy rights nor the assignees in the present case. Nor the leave of the court was taken in this regard.

11.10. Therefore, in light of my above discussion, I am of the view that the suit is bad for non-joinder of necessary parties especially M/s Mima Real Estate Advisors Pvt. Ltd. and accordingly the issue is decided in favour of the defendant and against the plaintiff.” (underlining added)

10. Learned counsel for the appellant/plaintiff argues that since the application to add M/s Mima Real Estate Advisors Pvt. Ltd. was dismissed by the trial court in terms of its order dated 26.4.2012,

and therefore, now it could not be held that the suit is bad for non-joinder of M/s Spotlight or M/s Mima Real Estate Advisors Pvt. Ltd. (now known as Mima Cinevision Pvt. Ltd.), however this argument is misconceived because even if an application under Order I Rule 10 CPC is dismissed, which was moved by the respondents/defendants, the same did not exempt the appellant/plaintiff from the requirement of complying with the spirit of Section 61 of the Copyright Act because after all the appellant/plaintiff has to prove her entitlement, to the royalty charges/telecast rights and such entitlement can only arise in case of a clear cut title of the subject film in favour of the appellant/plaintiff. Trial court rightly discusses this aspect for holding the same against the appellant/plaintiff as per para 11.8 of the impugned judgment and which para 11.8 is reproduced above. Appellant/plaintiff however has failed to do the needful and the trial court was therefore justified in dismissing the suit including on the ground of non-joinder of necessary parties.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

NOVEMBER 28, 2017/ib/godara

VALMIKI J. MEHTA, J