

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

+ **RFA No. 917/2017**

% **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. 39459/2017 (delay in filing) & CM No. 39458/2017 (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. 917/2017

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/plaintiff impugning the judgment of the trial court dated 20.5.2017 by which

the trial court has dismissed the suit for recovery of Rs. 16 lacs on account of defendants telecasting the film “Nehle Pe Dehla” on 5.10.2007 allegedly without any permission as required from the appellant/plaintiff. In the suit injunction was also claimed against respondents/defendants from telecasting the film “Nehle Pe Dehla” on 5.10.2007 or on any other date except upon making necessary payment and taking consent of the appellant/plaintiff.

2. The facts of the case are that appellant/plaintiff filed the subject suit claiming ownership rights in the film “Nehle Pe Dehla” and therefore entitlement to claim the royalty charges on account of telecasting of the film by Doordarshan on DD-1 on 5.10.2007. In the plaint it was pleaded that appellant/plaintiff had received terrestrial TV rights in the subject film from the owner M/s. Dhariwal Films Pvt. Ltd. in terms of an agreement dated 1.10.2007, and that therefore it was only the appellant/plaintiff who was entitled to telecast/royalty rights in the subject film. As per the plaint, the respondent no. 1/defendant no. 1 without obtaining permission/consent from the appellant/plaintiff telecasted the subject film on 5.10.2007. It is also pleaded in the plaint that appellant/plaintiff came to know that one Mr.

Rajesh Jain for and on behalf of M/s. Parchar Communication Ltd. had got published a public notice dated 23.5.2009 in the magazine 'Complete Cinema' claiming terrestrial rights in the subject film, but such claim was refuted by the appellant/plaintiff by issuing a public notice dated 30.5.2009 in the same magazine. Appellant/plaintiff thereafter served a legal notice dated 15.1.2008 upon the respondents/defendants and then filed the subject suit.

3. Respondent no. 1/defendant no. 1 contested the suit by filing a written statement and pleaded that the owner of the film M/s. Dhariwal Films Pvt. Ltd. has signed an agreement with M/s. Parchar Communications Ltd. giving rights in the subject film to M/s. Parchar Communications Ltd. and that M/s. Parchar Communications Ltd. assigned rights in the subject film to M/s. Aarushi Films and who vide its letter dated 14.8.2007 allowed a single telecast of the subject film on DD-1 Channel, and therefore, this telecast took place on 5.10.2007. As per the written statement since M/s. Parchar Communications Ltd. has authorized M/s. Aarushi Films to deal and negotiate with the respondent no. 1/defendant no. 1 in respect of the telecast of the film consequently an agreement was signed between M/s. Aarushi Films

and the respondent no. 1/defendant no. 1 for the terrestrial rights of the subject film and hence the telecast on 5.10.2007. It was further pleaded in the written statement of the respondent no.1/defendant no.1 that appellant/plaintiff failed to provide the requisite link documents showing ownership of the film whereas M/s. Aarushi Films has provided all the linked documents. The suit was hence prayed to be dismissed.

4. After pleadings were completed the following issues were framed in the suit:-

- “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 Hindi Feature Film- ‘Nehle Pe Dehla’ vests with the plaintiff when same was telecast on doordarshan on 05.10.07? OPP
5. Whether the agreement dated 01.10.07 entered into between plaintiff and M/s. Dhariwal Films Pvt. Ltd Mumbai is a forged and fabricated document? OPD1
6. Whether plaintiff is entitled to a decree in the sum of Rs.16 lacs against the defendants as prayed for? OPP
7. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP
8. Relief.”

5. Evidence was then led by the parties and which aspects are recorded 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 plaintiff company 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-1/1 (colly) (running upto 6 pages) (OSR) i.e. Agreement of Terrestrial Rights, Ex. PW1/2(OSR) i.e. copy of letter dated 28.11.2007, Ex. PW1/3 (OSR) i.e. Copy of public notice dt. 23.05.2009, the documents marked Ex.PW1/4 and Ex.PW1/6 i.e. Copy of Public Notice dated 30.05.2009 and Copy of letter dt.28.09.2004 and are de-exhibited as original of the same are not on record and Mark as A and B respectively. Document Ex.PW1/5 is not on record and hence same is de-exhibited.

8.2 The matter was fixed for DE.

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. In my opinion, the trial court was justified in dismissing the suit inasmuch as M/s. Aarushi Films was rightly held to be a necessary and proper party for adjudication of the disputes but M/s. Aarushi Films was not made a party to the suit. It is noted that whereas an agreement which is relied upon by the appellant/plaintiff in its favour with respect to the subject film from M/s. Dhariwal Films Pvt. Ltd. is dated 1.10.2007, the agreement which was relied upon by M/s. Parchar Communications Ltd. and M/s. Aarushi Films is an earlier one dated 9.3.2005. Once in terms of an agreement dated 9.3.2005 entered into between M/s. Dhariwal Films Pvt. Ltd. and M/s.

Parchar Communications Ltd. it was M/s. Parchar Communications Ltd. who had become owner of the film then consequently M/s. Dhariwal Films Pvt. Ltd. has no right to enter into the subsequent agreement dated 1.10.2007/Ex. PW1/1 with the appellant/plaintiff. It is also noted that the subject film was telecasted as per the offer made by M/s. Aarushi Films and appellant/plaintiff was nowhere in the picture with respect to the telecast which was made of the subject film on DD-1 on 5.10.2007. Appellant/plaintiff therefore had to add M/s. Parchar Communications Ltd. and M/s. Aarushi Films as parties to the suit so that it becomes clear that whether it was M/s. Parchar Communications Ltd. or M/s. Aarushi Films who was the owner or whether was it the appellant/plaintiff. Since the appellant/plaintiff has failed to implead M/s. Parchar Communications Ltd. and M/s. Aarushi Films hence the suit was rightly dismissed.

7. Trial court was also justified in not relying upon the agreement Ex. PW1/1 entered into between M/s. Dhariwal Films Pvt. Ltd. and the appellant/plaintiff, and the trial court has rightly held that the agreement Ex. PW1/1 dated 1.10.2007 is not free from suspicion and legal infirmities because the agreement does not contain any

seal/stamp or signatures by M/s. Dhariwal Films Pvt. Ltd. Similarly, the name of the person who has signed the document Ex. PW1/1 is not mentioned in this document and nor is the document accompanied by any Board Resolution authorizing the signing of the agreement Ex. PW1/1 on behalf of M/s. Dhariwal Films Pvt. Ltd./owner. Trial court has also rightly held that it is not shown as to how the so called consideration of Rs.5,50,000/- is paid to M/s. Dhariwal Films Pvt. Ltd. by the appellant/plaintiff. The relevant observations of the trial court in this regard and with which I agree, are paras 12.2 to 12.13 and these paras read as under:-

“12.2 It is the case of the plaintiff that plaintiff is the absolute holder/owner of terrestrial rights of the film “Nehle Pe Dehla” vide an agreement dated 01.10.2007 executed by M/s Dhariwal Films Pvt. Ltd. the same is Ex.PW-1/1. The film was telecasted the said film on Doordarshan Channel DD-1 on 05.01.2007. And vide letter dated 28.11.2007 plaintiff had informed the defendants about their telecast rights and had requested the defendant not to release the royalty amount to any third party.

12.3 Strong reliance in support of the case is placed by the plaintiff on the documents Ex.PW-1/1, which is countered by the defendant that the said documents is forged, fabricated and/or false document prepared after the telecast of the film.

12.4 Evidently the agreement Ex.PW-1/1 is not free from suspicion and legal infirmities. Bare perusal would show that it does not contain any seal/stamp of the M/s Dhariwal Films Pvt. Ltd. Nor the name of the person who has allegedly signed the document is mentioned thereon. Even the board resolution authorizing the person to sign on behalf of the company is placed on record. The agreement is alleged to be witnesseth two persons whose name and addresses are conspicuously absent therefrom, not mentioned.

12.6 Persual of the Para 3 of the second page of the agreement extracted herein:-

“In pursuance of the said agreement between the ASSIGNOR and the ASSIGNEE for the value of the Terrestrial Television Rights “The sole & Exclusive broadcasting Rights” for telecasting on any Doordarshan Channel by means L.d via satellite and/or terrestrial (Exclusive Telecasting Rights on all Doordarshan Channels) of the film and in consideration total price Rs.11,00,000/-.”

would show that the terrestrial rights were assigned to the plaintiff for a consideration for a sum of Rs.11 lacs for a period of 99 years. A receipt for a sum of Rs.5,50,000/- in favour of M/s Dhariwal Films Pvt. Ltd. has been filed to show the payment made by the plaintiff.

12.7 No evidence is adduced to show that the total consideration was ever paid by the plaintiff to the M/s Dhariwal Films Pvt. Ltd. The transaction, bank statements, cheques, vide which the amount was paid are not produced to substantiate the payment of the consideration amount. The receipt of Rs.5,50,000/- is an undated receipt, neither it has any revenue stamp affixed on it nor it states by whom it was executed on behalf M/s Dhariwal Films Pvt. Ltd.

12.8 Clause 11 of the document contains an undertaking to the effect that in case.

“In case any one else shall file any claim against the telecasting of said film assignor shall get the same clear & if the assignor fails to do so the Assignor shall be liable to pay damages to the tune of Rs.22,00,000/- (Twenty Two lacs Only). The Assignee shall be entitled to claim the said amount against any of the films produce by Assignor”

12.9. PW-1 in her cross-examination states that no litigation is instituted against the M/s Dhariwal Films Pvt. Ltd. Plaintiff has not issued any notice or communications to the assignors with regard to the dispute of Assignment rights. During the cross examination specific suggestion was put by the defendant to the PW-1 that plaintiff has not impleaded M/s Dhariwal Films a party in the suit as they have no rights to telecast qua the film ‘Nehle Pe Dehla’

12.10. Admittedly, as argued by the Ld. Counsel for the plaintiff, the assignments of Copy Rights in terms of section 18 of the Copy Right Act, read with Sec. 18 Clause (d) of the Registration Act, is not compulsory registrable but the fact remains, when the very execution of the document was under cloud and suspicion, it was incumbent on the plaintiff to lead all the best evidence available in support of her case which the plaintiff has miserably failed to do so. No person or witness from M/s Dhariwal Films Pvt. Ltd. was examined, or even thought prudent to summon as a witness. None of the witnesses to the assignment deed were similarly examined or for that matter summoned to depose for the reason best known to the plaintiff. No reason whatsoever is forthcoming for their non-examination.

12.11 In view of the above discussion, the document Ex.PW-1/1 i.e assignment deed remains not proved and cannot be relied upon to substantiate the case of the plaintiff.

12.12 The other document i.e (i) Public notice by plaintiff Mark 'A' and (ii) a letter dated 28/29-04-2008 by Deputy Director Programmes (Prasar Bharti) Mark 'B' relied upon by the plaintiff are photocopies of the documents. It is settled position of law the photocopy of the alleged documents 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.

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.

12.13 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 authority stated above the said documents have no evidentiary value” (underlining added)

8. In addition to the aforesaid reasoning of the trial court I would like to state that in a case like the present the agreement Ex. PW1/1 dated 1.10.2007 cannot be said to be proved unless the other party to the document M/s. Dhariwal Films Pvt. Ltd. was summoned and the agreement Ex. PW1/1 was got proved through the witness from M/s. Dhariwal Films Pvt. Ltd. For this additional reason the trial court would have been justified in not relying upon the Ex. PW1/1 because a self-serving statement of a person of having entered into an agreement with another person i.e. M/s. Dhariwal Films Pvt. Ltd., in

the facts of this case, is not sufficient for a court to hold that there was in fact an agreement Ex. PW1/1 of the appellant/plaintiff with M/s. Dhariwal Films Pvt. Ltd.

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

NOVEMBER 28, 2017
godara/ib

VALMIKI J. MEHTA, J

