

Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1623 OF 2010
IN
SUIT NO. 1579 OF 2010

Spice Team Entertainment Pvt.Ltd.	...Plaintiff
<i>Versus</i>	
Damani Pictures Pvt.Ltd.	...Defendant

None for the Plaintiff.

Mr. Ashish Kamat, *a/w Ms. Aditya Shiralkar, i/b Ranjit & Co., for the Defendant.*

CORAM: G.S. PATEL, J
DATED: 1st September 2015

PC:-

1. A preliminary issue on limitation was framed on 9th October 2013. The matter was placed for arguments on 27th November 2013. At that time, the Plaintiff indicated through its Counsel that it did not desire to lead evidence. On 13th August 2015, i.e., about two years later, a statement was made that the Plaintiff did in fact wish to lead evidence, even though till then no Evidence Affidavit had been filed. The Court (*S.J. Kathawalla J.*) gave the Plaintiff a final opportunity and extended time to 21st August 2015 to file that

Evidence Affidavit along with a compilation of documents. The witness was directed to remain present in Court on that date. It was clarified that if the Evidence Affidavit and compilation were not filed by then, the parties would be required to proceed to arguments.

2. No Evidence Affidavit has been filed. No compilation of documents has been filed. The Plaintiff and its Advocates are absent even though this Notice of Motion was shown on the weekly board at Sr. No. 210 along with connected Notice of Motion No. 1622 of 2010 in Suit No. 1580 of 2010, and this weekly board was published at least 10 days ago.

3. Given that this is a very old Motion of 2010, I am not inclined to adjourn this matter. I have heard Mr. Kamat for the Defendant.

4. The Suit claims rights in respect of a film entitled '*Chocolate*'. The Plaintiff's case is that it holds the copyright and negative rights in respect of this films, and that by an agreement dated 9th December 2004, it assigned these rights to the Defendant for a period of only seven years. The Plaintiff claims that the cause of action arose in March 2010. This is on the basis of the averments in paragraph 12. However, that paragraph does not mention the precise date of the Plaintiff's knowledge; it only refers to the Plaintiff's legal notice dated 20th March 2010. The reliefs sought are *inter alia* for a declaration that the agreement dated 9th December 2004 was restricted in time to a term of seven years and that the Plaintiff has a right to deal with the film beyond that period.

The allegations in the Complaint included allegations of forgery and fabrication.

5. The Defendant has filed a Written Statement. Annexed to the Written Statement is an Affidavit affirmed by one Ragini Sona, the Managing Director of the Plaintiff, which *inter alia* confirms that the assignment of copyright is perpetual. This Affidavit is dated 31st July 2006 and it confirms the assignment in question under an Agreement dated 9th December 2004. Yet it is this same Ragini Sona who has verified the Complaint claiming exactly the converse. Leaving aside the obvious contradiction that this presents, there is no manner of doubt at all that the Plaintiff had knowledge of the Agreement on 9th December 2004 and, at any rate, on 31st July 2006. The Suit is brought on 7th April 2010. Under Article 58 of the Limitation Act, 1963, the period of limitation is three years from the date when the cause of action accrues; under Article 56, the limitation for a suit to declare the forgery of an instrument issued or registered is three years from the date of knowledge. Thus, even accepting either date, i.e. the date of the Agreement or the date of the Affidavit of 31st July 2006, the Suit is completely barred by limitation.

6. The preliminary issue is answered in the affirmative. The Suit is dismissed. Consequently, the Notice of Motion does not survive and it is disposed of as such.

(G. S. PATEL, J.)

“I certify that this Judgment /Order uploaded is a true and correct copy of original signed Judgment/Order.”

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