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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1057 OF 2012

IN

SUIT NO.1408 OF 2012

WITH

CONTEMPT PETITION NO.35 OF 2013

IN

NOTICE OF MOTION NO.1057 OF 2012

IN

SUIT NO.1408 OF 2012

WITH

NOTICE OF MOTION NO.2358 OF 2012

IN

SUIT NO.1408 OF 2012

WITH

NOTICE OF MOTION NO.2488 OF 2012

IN

SUIT NO.1408 OF 2012

WITH

NOTICE OF MOTION NO.1416 OF 2013

IN

SUIT NO.1408 OF 2012

Radhakrishna Productions Pvt. Ltd. ...Plaintiff

vs

IKKON Films Pvt. Ltd. And 3 Ors. ...Defendants.

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Mr. Dinyar Madon, a/w. Mr. Bomi Patel, Mr. Rohan Wagh and Ms. Poorva Garg, i/b. Mulla & Mulla & CBC, for the Plaintiff.

Mr. Yogesh Naidu, i/b. B.V. Phadnis, for Defendant Nos. 1 and 2.

Mr. M.K. Tanna, i/b. P.M. Shah, for Defendant No.5, 6 and 19.

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CORAM : S.C. GUPTE, J.

DATED: 9 APRIL, 2015

P.C.:

. This group of Notices of Motion concerns two films, "**Will You Marry Me**" and "**Joker**", in which certain rights have been claimed by the Plaintiff. The short facts of the case may be stated as follows :-

2. The Plaintiff and Defendant No.1, who is the Producer of the film "**Will You Marry Me**", entered into a Term Sheet on 1 April 2010, whereby Defendant No.1 agreed to assign the Plaintiff in perpetuity, free from all encumbrances, all the existing and future worldwide rights, title and interest in and to the film, including the exclusive right to exhibit, transmit, distribute or otherwise utilize the film or any part thereof, in any manner or media then known or thereafter invented, at or for a consideration of Rs.5.50 crores. The Term Sheet provided various material aspects including the credits of the film and required a definitive agreement to be executed between the parties within 30 days of the signing of the Term Sheet. The terms and conditions included the exclusive ownership of the Plaintiff to the intellectual property rights in and to the film. In pursuance of this Term Sheet, on or about 17 May 2010, Defendant No.1 executed an Assignment of Copyright Agreement ("Copyright Assignment Agreement") assigning the copyright in respect of worldwide distribution, marketing, and release and exploitation of the film "**Will You Marry Me**" in perpetuity to the Plaintiff. The Plaintiff claims to have paid various amounts to Defendant No.2 in pursuance of the Copyright Assignment Agreement aggregating to about Rs.3.84 crores. The Plaintiff, thereafter, on or about 1 July 2010, claims to have

entered into a Film Finance Agreement with Defendant No.1 ("Film Finance Agreement") for another film called "**Joker**". The agreement *inter alia* contemplated a finance of Rs.1.75 crores to be made available by the Plaintiff to Defendant No.1 for production of the film "**Joker**". The Film Finance Agreement provided for a lien in favour of the Plaintiff on all rights of the film "**Joker**", which was to continue till payment of interest and repayment of the entire loan availed of by Defendant No.1 under the Film Finance Agreement. The agreement also contemplated that Defendant No.1 would address a letter to Defendant No.4, who is the Film Processing Laboratory, to notify the lien of the Plaintiff on the said film and requiring Defendant No.4 not to create third party rights regarding the negatives of the film without the written consent of the Plaintiff. It is the case of the Plaintiff that two separate letters, one dated 15 July 2010 and the other dated 9 September 2010, were addressed by Defendant No.1 to Defendant No.4 in response to the Copyright Assignment Agreement and the Film Finance Agreement in respect of the films "**Will You Marry Me**" and "**Joker**", respectively. It is thereafter claimed by the Plaintiff in its plaint that subsequent to the Film Finance Agreement, Defendant No.1 proposed to utilise the sum of Rs.1.75 crores referred to in the Film Finance Agreement towards making of the film "**Will you marry me**" and that at the request of Defendant No.1, it was agreed between the parties that the said sum of Rs.1.75 crores would be treated as payment under the Copyright Assignment Agreement. The Plaintiff has submitted particulars of payment of this amount to Defendant No.2 (on behalf of Defendant No.1) in the plaint. It is the case of the Plaintiff that, contrary to the agreement between the parties (the Copyright Assignment Agreement), Defendant Nos. 1 and 2

entered into an agreement for assignment of music rights in respect of the film **"Will You Marry Me"** with Defendant No.3 as also assignment of distribution rights in favour of Defendant No.5. It is further the case of the Plaintiff that Defendant No.5 filed a suit before Gopalgunj Court in Bihar in respect of the distribution rights relating to the film **"Will You Marry Me"**. It is claimed by the Plaintiff that in an affidavit filed by Defendant No.3, the Defendant asserted that the rights in respect of the film **"Will You Marry Me"** were assigned by Defendant No.5 (Plaintiff in the Gopalgunj suit) in favour of Defendant No.3 and that in pursuance of this agreement, Defendant No.3 had entered into agreements with various parties (15 of them) in respect of the film for release of the same. After this affidavit was disclosed to the Plaintiff, the Plaintiff amended its plaint and impleaded Respondent Nos. 1 to 18 as Defendant Nos. 5 to 22 to the present suit, and applied for a restraint order against the newly added Defendants in respect of creation of further rights concerning the movie **"Will You Marry Me"**. The Plaintiff claims to have learnt thereafter that the Defendants were also attempting to create third party rights in respect of the film **"Joker"**. Accordingly, the Plaintiff sought an amendment of the plaint by seeking a restraint order against creation of third party rights in the film **"Joker"**, as also creation of further telecast rights for the film **"Will You Marry Me"**. The Plaintiff's Chamber Summons was allowed and that is how the dispute concerning the film **"Joker"** was also made a part of the controversy between the parties.

3. There are four Notices of Motion and one Contempt Petition, which form part of this group of matters. Notice of Motion

No.1057 of 2002 is the Plaintiff's Notice of Motion seeking a restraint order against the original Defendants, namely, Defendant Nos. 1 to 4, in respect of creation of third party rights in the film **"Will You Marry Me"** and also for account of all revenues received for the film **"Will You Marry Me"** out of distribution monies, ticket sales, telecast rights, etc. Notice of Motion No.2488 of 2012 also concerns the film **"Will You Marry Me"**. It seeks a restraint order against creation of third party rights in the film **"Will You Marry Me"** against Defendant No. 5 to 22 in particular. (This Notice of Motion was taken out after the Plaintiff amended its suit and impleaded Defendant No.5 to 22 as party Defendants thereto.) Notice of Motion No.2358 of 2012 is in respect of the film **"Joker"**. It seeks an interim restraint against original Defendant Nos. 1 to 4 in respect of creation of third party rights or release of the film **"Joker"** and also maintenance of account of all revenues generated in respect of the film **"Joker"**. Notice of Motion No.1416 of 2013 seeks a decree on admission against Defendant Nos. 1 and 2 in respect of a sum of Rs.1.65 crores claimed to have been admitted by Defendant Nos. 1 and 2 as due and payable by them to the Plaintiff, under Order 12 Rule 6 of the Code of Civil Procedure, 1908. The last of the group of matters is a Contempt Petition, being Contempt Petition No.35 of 2013. The Contempt Petition seeks an order against Defendant No. 3 and its director for allegedly having willfully disobeyed the order dated 1 March 2012 passed by this Court as also an undertaking given by them and recorded in the order of 1 March 2012. The order requires Defendant Nos. 3 and its Director not to enter into any transaction in respect of the film **"Will You Marry Me"** without giving at least two weeks notice to the Plaintiff's Advocate in the suit herein and without orders from the

District Court, i.e. the Gopalgunj Court. It is the grievance of the Plaintiff that despite this undertaking and order, a transaction was entered into in respect of the film by Defendant No.3 and its Director without notice to the Plaintiff's Advocates in the present suit.

4. At the outset, it needs to be noted that, presently, the film "**Will You Marry Me**" has already been released. However, its telecast rights are not yet exploited by the Defendants. As far as the film "**Joker**" is concerned, though Defendant No.3 has been assigned rights to exploit the film by Defendant Nos.1 and 2, so far the rights have not been exploited and there is an ad-interim order passed in respect of maintenance of status-quo.

5. Let me first take up the Notices of Motion of the Plaintiff in respect of the film "**Will You Marry Me**". The case of the Plaintiff is based on assignment of copyright. There is effectively no defence against the claim of copyright by the Plaintiff except that Defendant Nos. 1 and 2 on the one hand and Defendant No.3 on the other assert that the Plaintiff has not made full payment in terms of the Copyright Assignment Agreement and that the rights in respect of the film have been duly assigned by Defendant Nos. 1 and 2 in favour of Defendant No.3. In the facts of the case narrated above, Defendant No.3 cannot be said to have a *prima-facie* case of being a bonafide purchaser for value without notice. In the premises, the Plaintiff's rights in respect of the film "**Will You Marry Me**", i.e. the unexploited rights of the film, need to be protected. So also, there is a case for grant of an order for maintenance of account in respect of that film. It is agreed between the

parties that, apart from the exploitation of rights referred to in the affidavit filed by Defendant Nos.1 and 2 as of 9 March 2012, the other rights can be exploited through a named third party and that the monies received from such exploitation shall abide by the orders that may be passed in the suit.

6. As far as the rights claimed by the Plaintiff in respect of the film “**Joker**” are concerned, which are the subject matter of Notice of Motion No.2358 of 2012, the position is this. The Plaintiff itself has originally stated in the plaint that the Film Finance Agreement was for finance of Rs.1.75 crores for the film “**Joker**”; however, subsequently, Defendant No.1 wanted to utilize the said sum of Rs.1.75 crores towards making of the film “**Will You Marry Me**”, which was agreed by the Plaintiff; and that at the request of Defendant No.1, therefore, the said sum of Rs.1.75 crores was agreed to be treated as payment under the Copyright Assignment Agreement in respect of the film “**Will You Marry Me**”. In view of this categorical assertion by the Plaintiff itself, evidently no relief was claimed in respect of the film “**Joker**” in the plaint, as originally framed. It is, of course, now submitted by Mr. Madon, learned Senior Counsel appearing for the Plaintiff, that this was because originally the Plaintiff did not apprehend any breach of its rights at the hands of Defendant Nos. 1 and 2 concerning the movie “**Joker**”, since the movie was under production at that time. It is submitted by learned Counsel that subsequently when the Plaintiff realised that contrary to its rights under the Film Finance Agreement, Defendant Nos. 1 and 2 proposed to create third party rights in respect of the film “**Joker**” in favour of Defendant No.3, the Plaintiff amended its plaint and sought

various reliefs in respect of the film **“Joker”**. It is submitted by learned Counsel that, in pursuance of the Film Finance Agreement, a letter was duly addressed by Defendant Nos. 1 and 2 to Defendant No.4 recognizing the rights of the Plaintiff in respect of the film **“Joker”** and requiring Defendant No.4 not to deliver the release-prints of the film **“Joker”** to any third party without seeking a no objection letter from the Plaintiff. It is submitted that, having regard to this letter, which clearly admitted the lien of the Plaintiff over the film **“Joker”**, the Defendants cannot seek to release the film and exploit rights in respect thereof without recourse to the Plaintiff. In the facts of the case, the Plaintiff's excuse for not having referred to its rights in respect of the film **“Joker”** earlier seems pretty feeble. Not only the plaint but even the admitted correspondence between the parties, which the Plaintiff itself has produced, clearly shows that whereas it was initially claimed in the Plaintiff's Advocate's notice dated 21 September 2011 that out of the finance of Rs.1.75 crores, the amount of Rs. 75 lacs was to be utilised for the film **"Will You Marry Me"** and the balance sum of Rs.1 crore was to be utilised for the film **“Joker”**, by a subsequent Advocate's notice dated 24 February 2012, it was confirmed that the entire finance was treated as loan under the Copyright Assignment Agreement in respect of the film **"Will You Marry Me"**. There is nothing on record to indicate that the letter of 9 September 2010, purportedly addressed by Defendant Nos. 1 and 2 to Defendant No.4, was actually delivered to, and, if delivered, was to be acted upon by, Defendant No.4. Learned Counsel for the Plaintiff submits that this letter, which, in any case, was addressed by Defendant Nos.1 and 2 to Defendant No.4, is neither disputed by Defendant Nos. 1 and 2 nor by Defendant No.4. It is

submitted that if both the addresser and the addressee of the letter do not contest the fact of such letter having been addressed, it is not for the Plaintiff to prove the factum of delivery of the letter. Secondly, it is submitted that, at any rate, the Plaintiff is not expected to have any evidence in its possession as regards the delivery of the letter. It is submitted that this letter is clearly contemplated in terms of the Film Finance Agreement between the parties. In the first place, Defendant No.3, who is the assignee of the rights in respect of the film "**Joker**", having contested the factum of delivery of this letter by Defendant Nos. 1 and 2 to Defendant No.4, the onus of proof does lie on the Plaintiff to show that the letter was indeed delivered by Defendant Nos. 1 and 2 to Defendant No.4. There is nothing on record to show that this letter has at any time been referred to by any of the parties in any correspondence between them. For the first time, when the Plaintiff brought the amendment on record, this letter surfaced. Even the pleadings of Defendant No.4 do not indicate that any such letter was either addressed by the Plaintiff to Defendant No.4 or that Defendant No.4 was any time required to act upon such letter. At any rate, even if it is assumed that such a letter was actually addressed by Defendant Nos. 1 and 2 to Defendant No.4 in pursuance of the Film Finance Agreement, in view of the Plaintiff's own case that the entire finance purportedly made available by the Plaintiff to Defendant Nos. 1 and 2 thereunder was to be treated as finance in respect of the film "**Will You Marry Me**" and, therefore, covered by the Copyright Assignment Agreement between the parties in respect of that film, *prima facie* it does appear that the Film Finance Agreement between the parties was not to be acted upon and that the letter, if any, even assuming that the same was addressed, has

no efficacy and was not to be acted upon. In any event, the Plaintiff does not claim any copyright in respect of the film “**Joker**”. At the highest, the rights claimed are of a lien. Interests of justice would be served, if the Defendant is required to keep accounts in respect of the exploitation of rights of the film “**Joker**” and in the event the Plaintiff succeeds at the trial of the suit in establishing its right of lien towards recovery of its dues, appropriate orders towards recovery of dues can always be passed in favour of the Plaintiff. It is a money claim, which can very well be awarded at the trial of the suit. The documents placed on record by the Plaintiff do not inspire confidence at the *prima facie* stage. No *prima facie* case is made out to claim any lien in so far as the film “**Joker**” is concerned. In that view of the matter, besides maintenance of account, no relief needs to be passed in favour of the Plaintiff in Notice of Motion No.2358 of 2012.

7. Notice of Motion No.1416 of 2013 is for a decree on admission. There are three important admissions referred to in this behalf by the Plaintiff. Firstly, it is submitted that in a suit filed by Defendant No.1 in the Bombay City Civil Court at Dindoshi against the Plaintiff and Defendant No.4 herein, Defendant No.1 has admitted having received a total sum of Rs.1.65 crores by RTGS towards the film “**Will You Marry Me**” from the Plaintiff herein. It is submitted in the plaint in that suit that Defendant No.1 was ready and willing to refund the amount received by it from the Plaintiff. The second important document is the MOU between Defendant No.1 and Defendant No.5 herein dated 18 August 2011, which is also an exhibit to the plaint of Defendant No.1 in the City Civil Court at Dindoshi. In this MOU it is

categorically admitted and confirmed by Defendant No.1 that Defendant No.1 has received a sum of Rs.1.65 crores towards the film "**Will You Marry Me**" and that since the Plaintiff is no more interested in the film, the Defendant, i.e. Defendant No.5, would pay the amount directly to the Plaintiff at the time of taking delivery of the release-prints from Defendant No.4. The third important document is the Consent Terms entered into between the parties before the Gopalgunj Court at the time of taking over of the release-prints of the film "**Will You Marry Me**" from Defendant No.4. In keeping with the MOU referred to above, the parties, namely, Defendant Nos. 1 and 2 and Defendant No.5 herein as distributor of the film "**Will You Marry Me**" undertook to the Gopalgunj Court to pay an amount of Rs.1.65 crores on or before release of the film anywhere in the world in any format. Defendant No.5, accordingly, handed over cheques drawn in favour of the Plaintiff herein to the Gopalgunj Court and on the basis of such deposit, procured a permission of that Court to collect the prints and material in respect of the film from Defendant No.4 herein, as also utilised materials lying in the custody of the Receiver appointed by that Court. It is on the basis of this payment of Rs.1.65 crores that Defendant Nos. 1 and 2 as Producers of the film and Defendant No.5 as Distributor of the film got that Court to release the release-prints of the film in favour of the distributor and exploited the rights in respect of that film.

8. Learned Counsel for Defendant Nos. 1 and 2 submits that the payment of Rs.1.65 crores was a matter between Defendant No.5 on the one hand and the Plaintiff on the other and that Defendant Nos. 1 and 2 were not parties to this transaction. It is submitted that the

documents relied upon by the Plaintiff do not contain any admission on the part of Defendant Nos. 1 and 2 that the amount of Rs.1.65 crores was due and payable by the Defendants to the Plaintiff. It is submitted that, at any rate, the admission, if any, is not an unconditional admission and that it implies that the payability of the amount of Rs.1.65 crores was conditional upon the Plaintiff accepting the Defendant's case that, besides Rs.1.65 crores, nothing was payable by the Defendants to the Plaintiff.

9. Leaving aside the question of a decree on admission against the Defendants on the basis of the three documents referred to by the Plaintiff, it is clear to my mind that the release of the film "**Will You Marry Me**" was procured by Defendant Nos. 1 and 2 as Producer and Defendant No.5 as their Distributor by undertaking to the Court that the amount of Rs.1.65 crores, which was due and payable by Defendant Nos. 1 and 2 to the Plaintiff in respect of that film, would actually be paid by Defendant No.5 and to that end, even cheques drawn in favour of the Plaintiff aggregating to Rs.1.65 crores were deposited with the Gopalgunj Court. Subsequently, it appears that by dubious means the parties saw to it that the Plaintiff was prevented from encashing these cheques. By the time the Plaintiff was handed over these cheques in the Gopalgunj suit, the cheques had already expired and could not have been encashed. The parties having obtained an advantage in respect of the subject matter of the suit on the basis of an express undertaking to pay Rs.1.65 crores to the Plaintiff and also having followed it up by actually drawing up cheques in favour of the Plaintiff, cannot now be permitted to rescile from this position after having exploited the

advantage secured from the Court. In that view of the matter, it is in the interest of justice that Defendant Nos. 1 and 2 be directed to deposit a sum of Rs.1.65 crores in this Court and the Plaintiff be permitted to withdraw that amount.

10. In so far as Contempt Petition No.35 of 2013 is concerned, the only grievance is that the notice, as was contemplated under the order dated 1 March 2012, was not given to the Advocates of the Plaintiff appearing in the present suit. What emerges from the record of the Gopalgunj Court, which is placed by the parties before this Court, is that the Plaintiff was aware of the proposed transaction complained of in the present Contempt Petition when its Advocates in the Gopalgunj Suit were notified of the same. The Plaintiff even appeared through its Advocates before the Gopalgunj Court in the proceedings during which the Consent Terms were arrived at between the parties. In that view of the matter, the breach of the order, if any, is technical and it can be safely said that the Plaintiff was put to notice of whatever was happening between the parties in respect of transfer of rights in the film **"Will You Marry Me"**. In that view of the matter, no order in the contempt jurisdiction of this Court is necessary to be passed against Defendant No.3 or its Director, as claimed in the Petition.

11. Accordingly, the following order is passed :-

(i) Such rights in respect of the film **"Will You Marry Me"**, as are unexploited, having regard to the affidavit of Defendant No. 3 dated 9 March 2012, shall be exploited through Mr. Harish Gadodia.

(ii) The monies received out of such exploitation shall be deposited with the Court and shall be invested by the Prothonotary & Senior Master of this Court in Fixed Deposits of Nationalised Bank initially for a period of two years and, thereafter, renewable from time to time, until further orders, and shall abide by further orders that may be passed in the suit.

(iii) Defendant Nos. 1 to 3 and 5 shall maintain accounts in respect of all the exploitation of rights in respect of the film "**Will You Marry Me**".

(iv) Notices of Motion Nos.1057 of 2012 and 2488 of 2012 are disposed of in terms of the orders noted above.

(v) Defendant No.3 shall maintain an account in respect of all receipts from exploitation of rights concerning the film "**Joker**", which is now titled as "**Little Star**", and furnish the same to this Court, as and when required.

(vi) In the event Defendant No. 3 creates any third party rights in respect of the film "**Joker**", the same shall be notified to the Plaintiff.

(vii) Besides maintenance of account, no other order is passed on Notice of Motion No.2358 of 2012, and the same is disposed of.

(viii) Notice of Motion No.1416 of 2013 is disposed of by directing Defendant Nos. 1 and 2 to deposit a sum of Rs.1.65 cores in

this Court within a period of six weeks from today. The Plaintiff shall be at liberty to withdraw the amount as and when it is deposited by Defendant Nos. 1 and 2 in this Court.

(ix) Contempt Petition No.35 of 2015 is dismissed.

(x) No order as to costs.

12. On the application of the Plaintiff, the status-quo order passed as of 24 July 2012 in respect of the film “**Joker**” shall be continued for a period of four weeks from today.

(S.C. GUPTE, J.)