

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT (L) NO. 536 OF 2015
WITH
NOTICE OF MOTION (L) NO. 1450 OF 2015

Sanjay Gupta	...Plaintiff
<i>Versus</i>	
Saundarya Production Pvt. Ltd. & 3 Ors.	...Defendants

Mr. Ashish Kamath, *with Mr. Amit Naik, Madhu Gadodia, Mr. Ravi Suryawanshi, i/b Naik Naik & Co., for the Plaintiffs.*
Mr. Rajiv Narula, *i/b Jhangiani Narula & Associates, for Defendant No. 2.*
Mr. Mahesh Khadilkar, *i/b M/s. MAG Legal, for Defendant No. 3.*
Mr. Snehal Shah, *with Mr. Ashish Mehta, Mr. Nikhil Mallelwar, i/b Purav Jitendra Damania, for Defendant No. 4.*

CORAM: G.S. PATEL, J
DATED: 25th June 2015

PC:-

1. Parties have agreed on minutes of the order. These will dispose of both the Notice of Motion and the Suit. A copy of the minutes tendered, with my handwritten corrections made in Court, are taken on record and marked "X" for identification.

2. The following order is agreed to by consent:

(a) The Plaintiff undertakes to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) (“**The Deposit**”) with the Prothonotary & Senior Master, High Court, Bombay in the following manner:

(i) Rs.5,00,000/- (Rupees Five Lacs only) within one week from the date of this order, i.e., on or before Thursday, 2nd July 2015;

(ii) Rs.5,00,000/- (Rupees Five Lacs only) on or before 23rd July 2015;

(iii) Rs.5,00,000/- (Rupees Five Lacs only) on or before 25th August 2015;

(iv) Rs.5,00,000/- (Rupees Five Lacs only) on or before 23rd September 2015.

The undertaking is accepted as an undertaking to Court. Upon each such deposit being made, the Prothonotary & Senior Master shall invest the amount of the deposit in a Fixed Deposit with any Nationalised Bank at optimal rates but for a term not extending beyond 31st October 2015.

(b) In view of the above:

- (i) Defendant No.4's order and direction dated 27th May 2015 passed by the Defendant No.4 ("**Defendant No. 4's Order**") is hereby stayed and the same shall not be acted upon or enforced against the Plaintiff or any cinematograph films with which he is associated. Defendant No.4 shall communicate this stay of Defendant No.4's Order to all its members and affiliates in express terms. Defendant No.3 shall publish the fact of this stay of Defendant No.4's Order in the same publication with the same prominence as the publication of Defendant No.4's Order was done.
- (ii) Defendants Nos. 3 and 4 shall not entertain any complaint made by Defendant Nos. 1 and 2 against the Plaintiff in relation to their claim for refund of the token sum of Rs.45,90,000/- (Rupees Forty Five Lakhs Ninety Thousand Only) paid to the Plaintiff in accordance with the Confirmation Letter dated 16th April 2015 ("**the Claim**").
- (iii) Defendant Nos. 1 and 2 shall not file or prosecute any complaint/action in relation to the Claim before either Defendant Nos. 3 and 4 or any other similar trade Association.

The existent complaints shall also not be prosecuted and shall stand disposed.

- (iv) Upon deposit of the aforesaid sum of Rs.20,00,000/- (Rupees Twenty Lacs only) by the Plaintiff in court, the Defendant No.4's Order shall stand withdrawn and recalled. Accordingly, Defendant No.4 shall also communicate to its members and affiliates in express terms that the Defendant No.4's Order stands withdrawn and recalled. Defendant No.3 shall publish the withdrawal / recall of Defendant No.4's Order in the same publication and with same prominence as the publication of Defendant No.4's Order was done.
- (v) However, Defendant Nos. 1 and 2 shall be entitled to file a civil suit for and in respect of the Claim before any competent Civil Court. The Plaintiff shall be entitled to file a counter claim or an independent suit raising all his claims against the Defendants including the Claim raised in this suit. Leave and liberty granted in these terms.
- (vi) If the Defendant Nos. 1 and 2 institute such suit in any competent Court, the amount of deposit of Rs.20,00,000/- shall stand

transferred to the credit of such suit and Defendants Nos. 1 and 2 shall be entitled to apply to that Court for retention / withdrawal of such deposit and such application made by Defendant Nos. 1 and 2 shall be considered independently uninfluenced by this order, and on its own merits. Similarly, the Plaintiff shall be entitled to contend that the Deposit is liable to be refunded to him. All rights and contentions in this behalf are kept open.

(vii) If Defendant Nos. 1 and 2 fail to file the suit and secure appropriate reliefs relating to the deposit on or before 31st October 2015 the deposit shall be refunded by the Prothonotary and Senior Master to the Plaintiff with accrued interest. Alternatively, the deposit shall abide by the order passed in the suit filed by the Defendant Nos. 1 and 2.

(c) In case the Plaintiff defaults in depositing any of the above installments, then the stay on Defendant No. 4's Order and directive dated 27th May 2015 shall stand vacated and the Suit shall stand dismissed. All parties shall be entitled to adopt such proceedings as they may be entitled to in law. In the event the Plaintiff defaults in depositing any of the above instalments, the Plaintiff shall not be entitled to a refund of the deposit amount

and the Defendant Nos. 1 and 2 shall be entitled to apply for reliefs in relation to the deposit and such application made by Defendant Nos. 1 and 2 shall be considered independently uninfluenced by this order and on its own merits.

3. Accordingly, the Notice of Motion and Suit stand disposed of in the foregoing terms. All issues, rights and contentions of all parties on merits are expressly kept open. It is clarified that the deposit made by the Plaintiff is in the peculiar facts and circumstances of the case and shall not be a precedent in any circumstances. There shall be no order as to costs.

4. Upon disposal of the Suit as contemplated above, refund of court fees, if any, in accordance with Rules.

5. Learned Advocate for Defendants Nos. 3 and 4 states that it will not be possible to issue the necessary notice in the trade publication by tomorrow as that might already have gone to press. However, learned Advocate for Defendant No. 4 makes a statement on instructions that the 4th Defendant will by the end of the day tomorrow issue an appropriate email communication to all associations/affiliates concerned in accordance with the foregoing terms.

6. I have to record that in this matter I have heard Mr. Kamdar, learned Senior Advocate for the Plaintiff, Mr. Narula for the 2nd Defendant, Mr. Godbole for the 3rd Defendant and Mr. Shah for the 4th Defendant at some length before the parties arrived at this

arrangement. It is made clear that the foregoing order is without any adjudication whatsoever on merits or the rival contentions, including in particular as to the question of jurisdiction of the 3rd and 4th Defendants. All contentions of all sides are expressly kept open.

7. It is clarified that in the foregoing minutes agreed by the Plaintiff, it is the Plaintiff who has come to Court, and who has agreed to make a deposit to show his *bona fides*. This, obviously, is in the peculiar facts and circumstances of this case and cannot and will not constitute a precedent in any other case.

8. It is also clarified that this order does not foreclose either the Plaintiff or the 1st and 2nd Defendant for adopting any proceedings as they may be advised against each other.

(G. S. PATEL, J.)