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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1505 OF 2013
IN
SUIT NO.820 OF 2013**

Maganlal Savani & Anr.	...Applicants/Plaintiffs
VS	
M/s Kiran Productions & Ors.	...Defendants

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Mr Anoushak Davar a/w Mr Zain Mookh i/b Mr Himanshu Kode for the Applicants/
Plaintiffs.
Mr M.D.Nagle for Defendant Nos.1 and 4A to 4D.

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CORAM : S.C. GUPTE, J.

MARCH 12, 2015

P.C. :

By consent of parties, Notice of Motion is taken up for final hearing.

2 This Motion is taken out by the Plaintiffs in a copyright infringement suit, seeking temporary injunction against exhibition, distribution and exploitation of the films, "Anpadh", "Aaj ki Taaja Khabar", "Paraya Dhan" and "Jungle Main Mangal" by means of any format and by any other means including television or satellite television or cable television or by DVD and/or by video and/or Internet Streaming throughout the territories over which the Plaintiff claims copyright in these four films. The Plaintiffs have given up their claim in so far as the films "Anpadh" and "Paraya Dhan" are concerned. This application is now restricted only to two films "Aaj ki Taaja Khabar" and "Jungle Main Mangal".

3 The Plaintiffs claim to be the assignees of copyright in these two films under two agreements of assignment dated 16 February 1973. These agreements assign the sole, exclusive and perpetual copyright of exploitation, distribution and exhibition in respect of the films to the Plaintiffs for the territories

of east Africa described in the agreement at or for the consideration of Rs.1,45,000/- and Rs.1,60,000/-. The agreements also contain a negative covenant against exploitation or distribution, commercially and non-commercially, in any manner in the contracted territory by the assignors by themselves or through their agents or otherwise. It is the Plaintiffs' case that under a public notice issued in the Trade Journal of 16 March 2013, Defendant No.3 claimed that it was in the process of acquiring the rights in these two films. The Plaintiffs have, accordingly, filed the present suit *inter alia* for restraining Defendant Nos.1 and 2 from exploiting, distributing, broadcasting or allowing exploitation or distribution in any manner of the concerned films in any format or by any means including over television or satellite television or cable television, etc.

4 In the course of the pendency of the suit, Defendant No.1 has expired and as a result, the legal heirs of the deceased Defendant have been brought on record as Defendant Nos.4A to 4D.

5 This Motion is contested by the Defendants merely on two grounds. Firstly, it is submitted that this Court has no jurisdiction to consider grant of any reliefs which have operation beyond the territorial jurisdiction of this Court. Secondly, it is submitted that in the year 1973, when the suit agreements for assignment were executed by the predecessor-in-title of the Defendants in favour of the Plaintiffs, the various technologies including the latest technology for broadcasting of films in the format of satellite television or cable television or high seas/ air or by DVD video or internet screening were not available. In the premises, it is submitted that the protection available to the Plaintiffs under the Copyright Act extends only over the formats which were available for distribution, exploitation and exhibition on the date the suit agreements of assignment were executed and that such protection does not extend to these new technologies and formats which are now available.

6 The objection as to the jurisdiction of this Court on the ground of territorial jurisdiction, has been considered by this Court in the case of the present

Plaintiffs themselves in **Maganlal Savani & Anr. Vs. Rupam Pictures(P) Ltd.**¹. This Court held that merely because the effect of the injunction order to be issued by this Court would extend outside the territorial limits of its jurisdiction, it cannot be said that the Court has no jurisdiction. The Defendants are within the jurisdiction of this Court and are sought to be held to the terms of the bargain as between the parties. Both by virtue of residence of the Defendants and the office of the Plaintiff as also the accrual of the cause of action being within the territorial limits of its jurisdiction, this Court has jurisdiction over the subject matter of the present suit under Clause XII of the Letters Patent and also under Section 62 of the Copyright Act.

7 As regards the Defendants' objection on the ground of non-coverage of the present formats and technologies for exhibition, distribution and exploitation of the films under the assignment of copyright as of the year 1973, similar objections have been considered by this Court in the Plaintiffs' very own case in **Maganlal Savani & Anr. Vs Alankar Chitra**² The clauses of assignment construed in that case were in identical terms as the clauses of assignment in the present case. This Court noted that these very clauses were considered from time to time by various Single Judges and Division Benches of this Court. This Court, particularly, noted a passage from the Judgment of the learned Single Judge of this Court in **Maganlal Savani Vs Uttam Chitra**³, where this Court had noted that no restrictions could be placed on the enjoyment of the copyright vested in the Plaintiffs only on the ground that the mode of exhibition of the film had not been invented at the time when the agreement had been entered into. The case of **Maganlal Savani Vs Uttam Chitra** was decided before Section 18 of the Copyright Act, 1959 was amended by the amending act 27 of 2012. The amendment act 27 of 2012 introduced a proviso to Section 18 of the Copyright Act, 1957. The proviso implied that assignment of copyright claimed in an existing work cannot be applied to any medium or mode of exhibition of the work, which did not exist or was not in commercial use at the time when the assignment was made, **“unless the assignment specifically referred to such medium or**

1 AIR 2000 Bom. 416

2 Notice of Motion No.1510 of 2013 in Suit (I) No.817 of 2013 decided on 28 November 2014

3 NMS 51 – 2008 in Suit 29-2008

mode of exploitation of the work”. This Court construed the proviso in the case of **Maganlal Savani** (supra) and held that the particular clause of the assignment covered the right of exhibition of the film including the right of television which envisaged exhibition on television by means of beaming of a signal; such signal, which was earlier beamed through primary terrestrial channel, was now being beamed through satellite, and this has not changed the mode of exhibition, which is still exhibition on television through beaming of a signal. This Court, accordingly, held that the comprehensive clause such as the one with which we are concerned in the present case would *prima facie* pass muster of the proviso introduced in Section 18 of the Copyright Act. That discussion equally applies to the clauses with which we are concerned in the present case, since the clauses are identical.

8 In that view of the matter, there is no merit in the objections raised by the Defendants to granting of interim relief. The Motion is, accordingly, made absolute in terms of prayer clauses (a) and (b). The injunction granted in terms of prayer clauses (a) and (b) shall be restricted only to two films, namely, “Aaj ki Taaja Khabar” and “Jungle Main Mangal”. It is also clarified that the injunction shall operate only so far as exhibition, distribution or exploitation of the film in the contracted territories is concerned. The contracted territories are set out in the agreements which are **Exhs B & D** to the plaint. The Defendants shall be entitled to exhibit, distribute and exploit the films in any manner whatsoever in the territories other than the contracted territories. The Notice of Motion is disposed of accordingly.

(S.C.GUPTE J.)