

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2716 OF 2007

Rajkumar Santoshi, Mumbai, Indian Inhabitant,)
 residing at 4-B, Arshie Complex, Off Yari Road,)
 Versova, Andheri (W), Mumbai-400 081)... Plaintiff

vs.

1. DMS Films Pvt. Ltd.)
 a Company duly registered under the provisions)
 of the Companies Act, 1956, having its office at)
 Maharaja Surajmal 'C' Block, Ground floor,)
 New Juhu Versova Link Road, Mumbai-400 053)
2. A.B.Corp. Limited, a company duly registered)
 under the provisions of the Companies Act, 1956,)
 having its office at Janak, 13th North South Road,)
 Juhu, Mumbai-400 049)
3. Keshu Ramsay of Mumbai, Indian Inhabitant,)
 carrying on business in the firm name and style fo)
 DMS Films at Maharaja Surajmal 'C' Block,)
 Ground floor, New Juhu Versova Link Road,)
 Mumbai-400 053)..Defendants

Mr. Ashish Kamat, along with Mr. Vishal Kanade, instructed by M/s. Ranjit & Co., for the Plaintiff.

Plaintiff -- Mr. Rajkumar Santoshi, present.

None for the Defendants

CORAM : S.J. KATHAWALLA, J.

DATE : 7TH JULY 2015

ORAL JUDGMENT:

1. This suit is filed by the Plaintiff seeking: (i) a declaration that no amount is due or payable by the Plaintiff to Defendant Nos.1 and 3 and that Defendant Nos.1 and 3

are not entitled to make any claim or demand whatsoever against the Plaintiff in respect of any of the pictures viz. 'Ranveer' re-titled as 'Family', 'Insaan', 'Production No.1' and 'Khakhee' directed by the Plaintiff and produced by Defendant Nos.1 and 3; and (ii) a decree against Defendant Nos.1 and 3 to pay a sum of Rs.1 crore being the balance remuneration in respect of the picture originally titled 'Ranveer' and thereafter re-titled as 'Family' as per the particulars of claim at Exhibit 'L' to the Plaint together with interest thereon at the rate of 18% per annum from the date of the suit till payment and costs of the suit. No reliefs have been claimed against Defendant No.2.

2. After the suit was filed, the Defendants had filed their Written Statements inter alia raising their respective defences. Defendant Nos.1 and 3 had filed Notice of Motion No.4331 of 2007 under Section 8 of the Arbitration and Conciliation Act, 1996 seeking dismissal of the suit on the ground that there was an arbitration agreement and seeking a reference to arbitration. Notice of Motion No.4331 of 2007 was dismissed by an order dated 25th January 2008.
3. On 21st October 2013, the advocate appearing for Defendant Nos.1 and 3 informed this court that Defendant No.3 had expired and that they would forward the names of the legal heirs of Defendant No.3 to the advocate for the Plaintiff. Thereafter, the advocate for Defendant Nos.1 and 3 failed to provide details of the legal heirs of Defendant No.3, and on 9th December 2013, sought discharge from appearing on behalf of Defendant Nos. 1 and 3 in the matter. This court vide order dated 9th December 2013 granted discharge to the then advocate of Defendant Nos.1 and 3. By the said order, this court has also considered the

submissions made on behalf of the Plaintiff to invoke the provisions of Order XXII Rule 4 sub-rule 4 of the Code of Civil Procedure, 1908. The said provision is reproduced hereunder :

“(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

The above provision contemplates a situation whereby the court, if it thinks fit, may exempt the Plaintiff from the necessity of substituting the legal heirs of any defendant having failed to file written statement or who having filed it has failed to appear and contest the suit at the stage of hearing. The said provision further provides that the court can pronounce a judgement against such a defendant notwithstanding the death of such defendant and the judgement pronounced under this provision would be deemed to have the force and effect as if it had been pronounced before the death of the concerned defendant took place. After having considered the submissions made on behalf of the Plaintiff, this court vide its order dated 9th December 2013 invoked the provisions of Order XXII Rule 4 sub-rule (4) and directed that the suit shall proceed against Defendant No.3 as more particularly set out in the said order. It must be noted that Defendant No.1 being a private limited company, has failed to appear in the present matter after filing of the Written Statement and after the disposal of its Notice of Motion

No.4331 of 2007. The suit subsequently appeared on 17th February 2014 and even on this date none appeared for the Defendant Nos. 1 and 3. This court framed the following issues :

- “(1) Whether the Plaintiff proves that he is entitled to receive an amount of Rs.1,00,00,000/ (Rupees One crore only) from Defendant No.1 and/or Defendant No.3, being the balance remuneration for the film “Ranveer” which has thereafter been retitled as “Family”?*
- (2) Whether Defendant Nos. 1 and 3 prove that : (a) they are entitled to recover any monies from the Plaintiff; (b) that the films “Ranveer” and “Family” are two separate projects and they have shelved the film “Ranveer”; and (c) the present suit is liable to be referred to arbitration?*
- (3) What reliefs and order as to cost ?”*

By the said order, the Plaintiff was directed to file his affidavit of evidence, affidavit of documents and the compilation of documents. The Defendants were also permitted to file their affidavit of documents and compilation of documents.

4. Accordingly, the Plaintiff filed his affidavit of evidence; the affidavit of documents; and compilation of documents all dated 15th April 2014.
5. The above case appeared on board on 7th July 2015 under the caption of “ex-parte decree”. Mr. Kamat, learned counsel for the Plaintiff submitted that the Plaintiff was present in court in order to be examined in furtherance of his affidavit of evidence. The Plaintiff was administered oath and he has deposed as to the correctness of the contents of the affidavit of evidence and identified his signature appearing thereon. Mr. Kamat, learned counsel for the Plaintiff invited my

attention to the pleadings in the Plaint; the affidavit of evidence; and the compilation of original documents.

6. Mr. Kamat, submits that the Plaintiff is a well known film director by profession with several successful pictures at box office to his credit. He submitted that Defendant No.3 was personally known to the Plaintiff for the past several years, and under a letter of appointment dated 11th January 2003 addressed by Defendant Nos.1 and 3 to the Plaintiff, Defendant No.3 engaged the services of the Plaintiff as a director for the picture 'Ranveer' and agreed to pay a sum of Rs.3.50 crores as his remuneration on the terms and conditions mentioned therein. The witness has produced the original letter of appointment and has identified the signatures appearing thereon. Mr. Kamat then submits that the Plaintiff worked on the said picture 'Ranveer'; finalized the story, script/schedule of the said picture; and a sum of Rs.1.50 crores was paid between 1st January 2005 and 26th March 2004 (after deduction of TDS of Rs.8,25,000/-). Between 20th April 2004 and 20th June 2004, the Plaintiff received a further sum of Rs.1 crore after deduction of TDS of Rs.5.50 lakhs. The witness has produced in the compilation of documents the original bank statement showing entries of the amount of Rs.2.50 crores received by him.
7. Thereafter, Defendant Nos.1 and 3 instead of producing and completing the said film 'Ranveer', decided to re-title the same as 'Family'. The said picture 'Family' was directed by the Plaintiff and produced by Defendant Nos.1 and 3. It was agreed between the Plaintiff and Defendant Nos.1 and 3 in the beginning of November 2004 that the amount of Rs.3.50 crores which was the remuneration receivable by the Plaintiff for the picture 'Ranveer' under the letter of appointment

dated 1st November 2003, would be the remuneration for the picture 'Family' and the sum of Rs.2.50 crores received by the Plaintiff as stated hereinabove was to be treated for the picture 'Family'. The witness deposed in paragraph 6 of his affidavit of evidence that the letter of appointment 1st November 2003 was accordingly treated and acted upon as the letter of appointment for the picture 'Family', and a sum of Rs.3.50 crores was payable to him for directing the said picture 'Family'. Mr. Kamat submits that the mahurat of the picture 'Family' was done on 14th November 2004 in J.W. Marriot Hotel, Juhu. As the director, the Plaintiff participated in the shooting schedule of the film 'Family' as well as in dubbing, editing and completing the production of the said picture. The film 'Family' was ultimately released on 12th January 2006.

8. Mr. Kamat submits that the balance sum of Rs.1 crore payable to the Plaintiff towards remuneration for directing the said family was however not paid by Defendant Nos.1 and 3 who were the main producers of the said picture. Defendant Nos.1 and 3 were facing financial shortfall at the time of release of the said picture. He pointed out the deposition of the witness and the pleadings wherein the witness has deposed that due to cordial relationship between the Plaintiff and Defendant No.3, the Plaintiff temporarily accommodated Defendant Nos.1 and 3 for payment of the said sum of Rs.1 crore.
9. It is submitted on behalf of the Plaintiff that payment of Rs.2.50 crores which was paid to the Plaintiff initially for the picture 'Ranveer' and thereafter transferred / adjusted qua the film 'Family' was paid by Defendant No.2. However, it was Defendant Nos.1 and 3, who were the main producers of the said film 'Family'.

Hence, Defendant No.2 requested the Plaintiff to return the sum of Rs.2.50 crores upon Defendant Nos.1 and 3 making payment of the said amount as part of his remuneration. Accordingly Defendant Nos.1 and 3 between the period of 12th January 2005 and 20th April 2005 paid a sum of Rs.1.50 crores to the Plaintiff. The witness has produced the original bank statement which reveals a total amount of Rs.1.50 crores was received by the Plaintiff. This is at Annexure 'C' to the compilation of documents. The said amount of Rs.1.50 crores was in turn returned to Defendant No.2 as per the statement annexed at Annexure 'D' being true copy of the bank statement.

10. Defendant Nos.1 and 3 thereafter, directly paid an amount of Rs.1 crore to Defendant No.2. Mr. Kamat submits that in these circumstances the payment of Rs.2.50 crores which was received by the Plaintiff from Defendant No.2 on behalf of Defendant Nos.1 and 3 on account of the said picture 'Ranveer' was returned by the Plaintiff as stated above. After having received Rs.2.50 cores towards his remuneration of the picture 'Family', the balance amount of Rs.1 crore remained due and payable by Defendant Nos.1 and 3 to the Plaintiff which till date has not been paid despite repeated requests and demand being made by the Plaintiff. It was submitted on behalf of the Plaintiff that with reference to the picture 'Khakhee', Defendant No.3 had produced the said picture under the banner DMS Pictures and agreed to pay a total remuneration of Rs.2.50 crores as per the letter of arrangement dated 28th August 2002 whereby the Plaintiff's services were engaged to direct the said picture. However, Defendant No.3 paid only an amount of Rs.2 crores (including TDS) leaving a balance of Rs.50 lakhs and even that amount is still due and payable by Defendant No.3. The witness has

produced a true copy of the statement showing the amount of Rs.2 crores received by him for the picture 'Khakhee' which is at Annexure 'E' in the compilation of documents along with the original letter of arrangement dated 28th August 2002.

11. Mr. Kamat submits that Defendant Nos.1 and 3 wanted to produce another picture 'Insaan' and requested the Plaintiff as a director having good contacts with leading studios as well as other technical persons connected with the film industry to make entire set-up for the said picture. The Plaintiff made the entire set-up of the picture 'Insaan' and also brought in a director for that movie. The Plaintiff was also had various sittings with Mr. K. Subhash for finalizing the story and script of the said picture over a period of 8 months. The Plaintiff also visiting the shooting of the said picture at the request of Defendant No.3 at Ramojee Rao City in Hyderabad and had finalized the story and script thereof. In respect of the aforesaid services, the Plaintiff was paid an amount of Rs.50 lakhs from 2004 to May 2006. It is submitted on behalf of the Plaintiff that Defendant Nos.1 and 3 were desirous of producing another picture tentatively titled 'Production No.1' and were desirous of launching the son of Defendant No.3 as an actor in the said movie. The Plaintiff's remuneration was fixed at Rs.2.50 crores as per the letter of appointment dated 28th October 2003. The witness has produced the original letter of appointment dated 28th October 2003 which is at Annexure 'H' in the compilation of documents. It was submitted that however, due to financial constraints, Defendant Nos.1 and 3 informed that they were not able to proceed with the production of the said picture.
12. However, the transaction qua the other films "Khakee", "Insaan" and "Production No.1" were independent and unrelated to the suit claim and as such had no

bearing qua the same. However, even in relation to these transactions it is Defendant No.3 who had outstanding obligations and not the Plaintiff. As such, the Plaintiff is entitled to seek a declaration that Defendant No.1 and 3 had no claims against the Plaintiff.

13. It is submitted that in the aforesaid factual background, the Plaintiff was shocked and surprised to receive a letter dated 5th August 2007 from Defendant No.1 alleging that Defendant No.3 as the Managing Director/ Chairman of Defendant No.1 who had spoken to the Plaintiff's accountant; it was the Plaintiff who owed monies to Defendant Nos.1 and 3; and called upon the Plaintiff to pay the alleged outstanding dues failing which Defendant Nos.1 and 3 will seek legal redressal in court of law. The Plaintiff by his reply dated 10th August 2007 denied the allegations of Defendant Nos.1 and 3 contained in the aforesaid letter and mentioned that it was Defendant Nos.1 and 3 who had to pay an amount of Rs.1 crore as the Plaintiff's balance remuneration for directing the film 'Family'. The witness has produced the original letter dated 6th August 2003 and a copy of letter dated 10th August 2007 addressed to Defendant Nos.1 and 3. Mr. Kamat submits that Defendant Nos.1 and 3 in order to avoid the liability to pay Rs.1 crore had resorted to making false and baseless allegations vide their letters annexed to the compilation of documents to bring undue pressure and coercion on the Plaintiff from claiming his rightful dues. Mr. Kamat submits that Defendant Nos. 1 and 3 are clearly liable to pay the balance directorial remuneration of Rs.1 crore to the Plaintiff for his services for the movie 'Family'. In support of his claim Plaintiff has appeared to lead his oral testimony in terms of his affidavit of evidence and

established his claim on documentary and oral evidence. He submits that in facts and circumstances, the suit be decreed as prayed.

14. I have considered the submissions made by the learned counsel for the Plaintiff and examined the documents on record. The witness has deposed in the present proceedings and a perusal of the affidavit of evidence dated 15th April 2014 read with the compilation of the original documents, prove the Plaintiff's documents. Accordingly the said documents are taken on record and marked as exhibits. Accordingly, the documents at Sr. Nos.1 to 13 of the compilation of documents being Annexures 'A' to 'M' are taken on record and marked as Exhibits 'P-1' to 'P-13' respectively. A perusal of the pleadings filed in the present suit further reveal that the cause of action for the Plaintiff to claim his balance remuneration has arisen after the release of the movie 'Family' in January 2006 and further when Defendant Nos.1 and 3 in August 2007 vide their letter dated 6th August 2007 inter alia claimed that it was the Plaintiff who owed monies to the Defendants. Hence, I hold that the present suit has been filed within limitation.

15. The documents on record indicate that the total remuneration payable to the Plaintiff for directing the said film was Rs.3.50 crores out of which, an amount of Rs.2.50 crores paid to the Plaintiff. Defendant Nos.1 and 3 have not paid the balance amount of Rs.1 crore as was agreed at the time of appointment of the Plaintiff as a director for the said movie 'Family'. Defendant Nos.1 and 3 have failed to controvert the case made out by the Plaintiff. I see no reason to disbelieve the case of the Plaintiff especially considering the statements made in his affidavit of evidence and the documents filed on record. There is no evidence

on record to demonstrate that there are any monies due and payable by the Plaintiff to Defendant Nos.1 and 3. The Plaintiff has proved his case by leading oral and documentary evidence. In my opinion, the above claim deserves to be allowed as prayed.

16. Furthermore, the contention of Defendant Nos.1 and 3 that the present suit is liable to be referred to arbitration cannot be countenanced since the said Defendants' Notice of Motion under Section 8 of the Arbitration and Conciliation Act, 1996 has already been rejected vide order dated 25th January 2008 in the above suit. I am informed that the said order still hold the field.
17. Accordingly, I hold that the Plaintiff is entitled to his contractual balance remuneration of Rs. 1 crore as set out in Exhibit 'P-1' read with the deposition and the other documents on record. The issues framed are answered as under :

Issue No.1 :

Whether the Plaintiff proves that he is entitled to receive an amount of Rs.1,00,00,000/ (Rupees One crore only) from Defendant No.1 and/or Defendant No.3, being the balance remuneration for the film "Ranveer" which has thereafter been retitled as "Family"?

In the affirmative

Issue No.2 :

Whether Defendant Nos. 1 and 3 prove that : (a) they are entitled to recover any monies from the Plaintiff; (b) that the films

“Ranveer” and “Family” are two separate projects and they have shelved the film “Ranveer”; and (c) the present suit is liable to be referred to arbitration?

In the negative

Issue No.3 :

What reliefs and order as to cost ?

As below

18. In view of the above, the suit is decreed in terms of prayers (a) and (b) which are reproduced hereunder:

- "(a) That it may be declared by this Hon'ble Court that no amount is due or payable by the Plaintiff to the Defendant Nos. 1 and 3 and the Defendant Nos. 1 and 3 are not entitled to make any claim or demand whatsoever against the Plaintiff in respect of any of the pictures "RANVEER" re-titled as "FAMILY", "INSSAN", "Production No. 1" and "KHAKEE" directed by the Plaintiff and produced by the Defendant Nos. 1 and 3;
- (b) that this Hon'ble Court will be pleased to pass order and decree in favour of the Plaintiff against the Defendant No. 1 and 3 for sum of Rs. 1,00,00,000/- (Rupees One Crore only) being the balance remuneration in respect of the picture originally titled "Ranveer" and thereafter re-titled as "FAMILY" as per particulars of claim mentioned in Exhibit "L" to the Plaint together with interest thereon at the rate of 18% per annum from the date of the suit till payment and cost of the suit."

19. The suit is accordingly disposed off. Refund of court fee, if any, as per rules.

20. The office shall return the original documents to the Advocates for the Plaintiff upon the Advocates for the Plaintiff handing over photostat copies of the said documents duly certified by them as true copies.

(S.J. KATHAWALLA, J.)