* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) No. 460/2006**

% **18th August, 2015**

RISHI RAJ ..... Plaintiff

Through: Mr. Harish Malhotra, Sr. Adv. along with Mr. R.K. Modi, Advocate

versus

S.A. LUTHRIA ..... Defendant

Through: Mr. Jatin Zaveri, Advocate with Mr. Neel Kamal Mishra and Mr.Nipun Goel, Advocates

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Plaintiff, Sh. Rishi Raj has filed this suit for recovery of Rs.28 lacs against the defendant, Sh. S.A. Luthria. Out of the sum of Rs.28 lacs, the principal amount is Rs.25 lacs and the amount of Rs.3 lacs is interest @ 12% p.a. from 17.3.2005 till the date of filing of the suit. Plaintiff claims recovery of this amount on account of the amount of Rs.25 lacs being due to the plaintiff from the defendant as the net expenditure incurred by the plaintiff with respect to the production and distribution of the film

'Lashkaara' (name of film subsequently changed to 'Hatya - The Murder'), (hereinafter referred to as the 'subject film'). The defendant has not only defended in the suit, but he has filed a counter claim for rendition of accounts from the plaintiff on the ground that the income and expenditure amounts have not been correctly shown and proved by the plaintiff.

2. The facts of the case are that the defendant was the producer of the subject film. Defendant by September, 1995 is said to have incurred expenditure of around Rs.26,86,000/- + Rs.5.5 lacs (Rs. 1.5 lacs payable to one Mr. Anees Ansari and Rs.4 lacs payable to the Director, Mr. Kadar Kashmiri) for the film in question. Defendant at that stage did not have the finances to complete the film and he therefore approached the plaintiff for financing the film upto an amount of Rs.20 lacs, subject to the subject film being produced by the defendant by 31.12.1995. In case the film was not completed by the defendant by 31.12.1995, then, the plaintiff was entitled to complete the balance film by incurring expenditure and after recovering his expenditure, the plaintiff was to pay the defendant a sum of Rs.6.5 lacs and thereafter the balance income was to be divided 50:50 between the parties. Parties in this regard entered into the admitted Agreement dated 16.09.1995, Ex.PW1/1. Plaintiff in this Agreement is referred to as the World Rights

Controllers and the defendant is referred to as the producer. Some of the relevant clauses of this Agreement are Clauses 3, 5, 6, 8, 10, 11, 12 and sub-Clauses 12(1), 12(2), 12(3), 12(4), 12(5)(c), 12(8) and 12(13), and which read as under:-

> "3. The Producer have already spent on the production of the said picture about a sum of Rs.30,00,000/0 (Rupees thirty lakhs only) which includes the liabilities for various parties and amount received from the Distributors received for the Production of the SAID PICTURE including creditors.
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> xxxxx
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> 5. The PRODUCER have borrowed a sum of Rs.5,00,000/- from one M/s. TRIDEV MOVIES. Bombay, a copy of the terms of arrangement with M/s. Tridev Movies, Bombay has already been handed over to the World Right Controllers by the Producers for their reference and records. Negative is transferred in the name is TRIDEV MOVIES, firstly this amount of five lacs is to be paid to that the Negatives will be transferred and the name of World Right Controller i.e. RAJ RISHI FILMS.
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> 6. Approximately, a sum of Rs.4,50,000/- (Rupees four lakhs fifty thousand only) are liabilities, outstanding and are to be paid by the Producers to Shri Rishi Sunny and Shri Pawan Kumar.
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> xxxxx
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> 8. The Producer have declared to the World Right Controllers that the estimated cost of Production including cost of positive prints required is approximately Rs. 20,00,000/-Lakhs for the completion of films upto Censor and first copy. The Producer also undertakes to complete the film upto 31.12.95. It will be entirely responsibility of Producer for the dates of AKSHAY KUMAR and all other articles for the shooting and dubbing purposes.
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> xxxxx
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> 10. The Producer have approached the World Rights Controllers and negotiated and requested for a sum of Rs. 20,00,000/- (Rupees twenty lakhs only) upon the terms and conditions appearing hereinafter in this agreement for the purposes of completion of the SAID PICTURE.

11. The World Rights Controllers relying upon the representations and declaration made by the Producer have agreed for a sum of Rs. 20,00,000/- (Rupees twenty lakhs only) for the purpose of completion of film upto Censor subject to proper progress of film. The World right Controller have an absolute discretion to advance such amount as he deem fit and proper for further shooting.

12. The Producer have further represented to the FINANCIERS (World Rights Controllers) that they have good right, title to the said picture and the Producer have full power and absolute authority to enter into this agreement. The parties are desirous of reducing the terms and conditions agreed upon between them in writing NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

> 1) Upon the terms and conditions mentioned in this Agreement, The World Rights Controllers hereby agree to lend and producer agrees and to borrow respectively, the sum of Rs. 20,00,000/- (Rupees twenty lakhs only). The said amount of Rs. 20,00,000/- shall be lent and advanced by the World Rights Controllers to the Producers by instalments in accordance with and depending upon the progress of the said picture. The amount of such instalments shall be determined by the World Rights Controllers and the options of the World Rights Controllers, in this behalf, shall be binding upon the Producers. It is hereby agreed that the said sum of Rs. 20,00,000/- shall be utilized and borrowed by the Producer only after the World Rights Controllers have paid to M/s. Tridev Movies, Bombay a sum of Rs. 5,00,000/- (Rupees five lakhs only) in settlement of their claim of M/s. Tridev Movies, Bombay in full and final. All materials lying with ADLABS will be automatically transferred to M/s. RAJ RISHI FILMS know as World Right Controller.
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> 2) In consideration of the above the World Right Controller has agreed to pay Rs. 1,00,000/- (Rupees one lakh) as signing amount on the day of signing this agreement.
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> 3) In consideration of the World Rights Controllers agreeing to lend and advance the said sum of Rs. 20,00,000/- (Rupees twenty lakhs only) as mentioned hereinabove and the Producer undertakes for completion of the said PICTURE, within twenty lakhs. The Producer shall execute Promissory Notes or Bill of Exchange for the amount so for received and for the balance amount to spend on the progress of film.
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> 4) The World Rights Controller, after receiving Rs.20,00,000/- (Rupees twenty lakhs only) agreed to pay Rs. 6.50 lakhs to S.A.

Luthra to the Producer and thereafter the amount will be shared in the ratio of 50:50 i.e. 50% shall be paid to the producer and the balance 50% shall be retained by the World Rights Controllers from all the recoveries. The Producer have not till date given the distribution, exhibition and exploitation rights of the said picture to anybody except as per Schedule 'A' and hereby agree that, now onward, such Distribution agreement/s that may be entered into shall be done by World Rights Controllers only. Further, the Producer have agreed and undertaken to prominently give the name of the World Rights Controllers i.e. Shri Rishi Raj Presents, in the title of the film as well as posters, photosets and all other publicity campaign of the film. This is also essence of the Agreement.

5 xxx xxx xxx

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) All moneys which may be receivable under all contracts for sale and/or for disposal of the distribution, exhibition and exploitation rights of the said picture in 35mm and all sub-standard and other sizes either on signing or execution of the SAID PICTURE and/or against delivery of Publicity materials and prints of the said picture for all the territories of the world and also on account of Royalty to be earned from sale of gramophone records of songs of the said picture or sale of Audio or Video Cassettes of the said picture shall be received by the World Rights Controllers only.

xxx xxx xxx

8. All such moneys that may be received under all such agreements from the Distributors already appointed or that may be appointed hereafter in respect of the SAID PICTURE on various rights for entire world or any part thereof shall be retained by the World Right Controllers and appropriated in the manner mentioned hereinafter.

(a) Rs. 20,00,000/- to be retained by the World Rights Controllers.

(b) Rs. 5,00,000/- to be paid to M/s. Tridev Movies, Bombay.

(c) Rs.4,50,000/- to be paid to M/s. Rishi Sunny & Pawan Kumar

(d) Rs. 6,50,000/- shall be paid to the Producer.

After that all income shall be divided as 50:50, Producer, and World Right Controllers.

xxx xxx xxx

13. If the said picture is not completed and the negative and rush prints not delivered to the World Rights Controllers on or before 31st December, 1995, the World Rights Controllers without prejudice to their rights and remedies shall be entitled without being bound to complete the same and get the same censored themselves or through their Agent or Agents at the risk and cost of the Producer and the amount spent by the World Rights Controllers in such completion shall be considered as a further advance to the Producer hereunder and to be secured and to be recovered by or repaid to the World Rights Controllers in the same manner as provided herein for security, recovery and repayment of the said sum of Rs. 25,00,000/- (Rupees twenty five lacs only)." (underlining added)

3. Along with this Agreement dated 16.09.1995, parties annexed Annexure "A", the chart as regards the liabilities and expenditure already incurred by the defendant towards production of the subject film and this Annexure "A" reads as under:-

" **ANNEXURE "A"**

The details of the payment received from different distributors and the total amount for which sold to each distributor.

FILM "LAKSHKAARA"

		Distributors Total amount.	Amount received
1) Hone Video	Bombino	11.25	3.90
2) Overseas	C.A.Corpn.	10.25	3.45
3. Rajasthan	Trimurti Ent.	3.75	1.50
4. E. Punjab	Saajan Movies	2.25	0.90

5. C.I.	H.K. Films	3.00	0.40
6. Bihar/Nepal	Sapna Movies.	6.75	0.80
7. W. Bengal	Swagat Int.	3.50	1.30
8. Assam	Harpreet Ent.	1.50	0.25/30
9) Orrissa	Bhagya Laxmi Movies	1.65	0.40/45
10)Mysore	Noorani Pict.	1.91	0.46
		45.81	13.36

LAB. LETTERS:

1)	E.Punjab-Rishi Sunny Rajasthan-Rishi Sunny Overseas-Pawan Kumar	4.50
4)	Negative Rights Holder Ramesh Mankani.	5.00 Net (FIVE LACS ONLY)
5)	Stock (Lab.) Approx. Inclusive of processing Also positive.	4.00

Sd/- Sd/-

M/S. SWASTIKA PROJECTIONS SHRI RISHI RAJ
MR. S.A. LUTHRIA WORLD RIGHTS CONTROLLERS
PRODUCER. CONTROLLERS."

4. A reading of the aforesaid clauses shows that the plaintiff was to invest in essence a sum of Rs.20 lacs at the first stage and which he was to be repaid with interest. If by 31.12.1995 the film was not complete, then the plaintiff had a right to step into the film production by incurring the complete expenditure. The plaintiff's investment in the subject project by means of expenditure was to be first recovered from the recoveries to be

made from the release of the film, and after paying the other creditors the amounts which were due to them, the net revenue from the release of the film was to be equally divided between the parties.

5. In performance of Ex.PW 1/1, before 31.12.1995, the plaintiff paid an amount of Rs.5 lacs to M/s. Adlabs Films Pvt. Ltd., and which was the firm which had with it the reels of the subject film to the extent the same was already shot. The *factum* with respect to plaintiff making payment of Rs.5 lacs to M/s. Adlabs Films Pvt. Ltd. is clear from the admitted document Ex.P-1 (also Ex.PW1/2) being the letter dated 20.09.1995 written by M/s. Adlabs Films Pvt. Ltd. to the plaintiff. It may also be noted that before M/s. Adlabs Films Pvt. Ltd. wrote this letter dated 20.09.1995 to the plaintiff, the plaintiff had cleared the liability of M/s. Tridev Movies for a sum of Rs.5 lacs as is found to be *inter alia* stated in para 5 of the Agreement dated 16.09.1995. The letter of M/s. Adlabs Films Pvt. Ltd. dated 20.09.1995 also showed that besides the expenditure and liability incurred by the defendant as stated in Annexure "A" to the Agreement dated 16.09.1995, there were two other liabilities of the defendant with respect to the subject film being an amount of Rs.1,50,000/- payable to Mr. Anees Ansari and Rs.4,00,000/- payable to the Director, Mr.Kadar Kashmiri.

6. The subject film admittedly could not be completed by 31.12.1995 and, therefore, the plaintiff stepped in and incurred expenditure towards completion of the film.

7. After the plaintiff took over the production of the film with effect from 01.01.1996 and incurred expenditure, parties entered into a Settlement Deed on 31.05.2003 and which Settlement Deed is an admitted document, Ex. PW1/3 (also Ex.P-3). This Settlement Deed shows that plaintiff had spent till 31.05.2003 a sum of Rs.46 lacs for the subject film and the net recoveries were to be shared 50:50 between the parties after payment of the creditors including those parties who had lien on the prints of the film as also M/s Adlabs Films Pvt. Ltd. which had supplied the raw stock for the shooting of the film. The Settlement Deed dated 31.05.2003 reads as under:-

" **SETTLEMENT DEED**

This settlement deed is made on **31st May, 2003** between **M/S RAJ RISHI FILMS (Known as World Rights controller) and M/S SWASTIKA PROJECTIONS (known as Producers).**

As mutually settled between both the parties, the World Rights controller has invested Rs. 46,00,000/- (forty six lacs only) for the Shooting, Dubbing and payment of Artist and technicians and payment to Tridev Movies, which amount is confirmed by the producer and here-after known as the investment made by World Rights controller. Henceforth all the expenses made by the World Rights controller for the completion of the film "**LASHKARA**" shall be treated as additional investment. The partnership deed signed between S.A. Luthria and Shivam Raj for Swastika Projections shall be treated as cancelled. And Mr. S.A. Luthria shall be the sole proprietor of the Firm. The notices and letters sent by both the parties shall be withdrawn and henceforth the World Rights Controller and Producer has no differences of any nature what-so-even and agree to complete the film "LASHKARA" as early as possible.

As per the Agreement between both the parties, all the recovery/income shall be dispersed in the following manner:

- The Lab letters confirmed to the various parties.
- Dues of the Lab.
- Investment made by the World Rights Controller i.e. Rs. 46,00,000/- (forty six lacs only) plus the additional investment made upto the censor.
- Rs. 6,50,000/- (six lacs and fifty thousand only) shall be paid to the Producer.

After making all the payments above the income shall be divided fifty-fifty i.e. fifty percent of the income shall be retained by World Rights Controller and fifty percent shall be given to the Producer.

Rest all other terms shall be same as per the agreement dated 16/09/1995.

Both the parties have agreed and confirmed the above.

RAJ RISHI FILMS	**S.A. SUTHRIA**
Sd/-	**Sd/-**
(WORLD RIGHTS CONTROLLER)	**(PRODUCER)"**

8. The film could only be completed by October, 2004 and it was released on 15.10.2004. That the date of release of the film is 15.10.2004, is clear from the Legal Notice dated 3.10.2005, Ex.P-4 (also Ex.PW1/8), sent by the defendant to the plaintiff wherein in para 2 the defendant specifically

mentions with respect to release of the subject film on 15.10.2004. By the time of release of the film plaintiff had incurred expenditure much beyond the expected sum of Rs.25 lacs. Immediately after release of the film the case of the plaintiff is that the parties prepared and signed documents dated 29.10.2004, Ex.PW1/5 and Ex.PW1/6 showing the income and expenditure on the release of the film, and the net details of the expenditure and revenue showed that a net amount of Rs.20,78,483/- was still recoverable by the plaintiff. Defendant has not denied his signatures on these documents Ex.PW1/5 and Ex.PW1/6 dated 29.10.2004 but defendant has denied the admissibility of the documents solely on the ground that the documents only contained entries and entries have no value in the eyes of law unless entries are supported by the relevant documents.

9. The next event after 29.10.2004 is the existence of a signed document dated 17.03.2005, Ex.PW1/7. Whereas as per the case of the plaintiff this document dated 17.03.2005 is signed by both the plaintiff and the defendant showing that as on 17.03.2005, the plaintiff is entitled to a final net amount of Rs.25 lacs from the defendant with respect to the project in question. Defendant has vehemently denied this document and stated that this document is a forged and fabricated document.

10. The following issues were framed in this suit on 27.02.2007:

> "1. Whether Clause 22 of the Agreement dated 16.9.95 filed by the plaintiff alongwith the plaint (at page 16) was deleted at the time of execution of the said agreement as alleged by the plaintiff para 7 of the plaint? OPP
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> 2. If issue no. 1 is answered in negative, whether this Hon'ble Court has jurisdiction to try and entertain the present suit? OPD
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> 3. Whether the document dated 17.3.2005 filed by the plaintiff alongwith the plaint (at page 32) bears genuine signature of the defendant? OPP
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> 4. Whether the plaintiff is entitled to the decree for a sum of Rs. 28,00,000/- and pendent lite interest as prayed for by him? OPP
>
> 5. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for by him? OPP
>
> 6. Whether the accounts between the plaintiff and the defendant has been settled? OPP
>
> 7. If the issue no. 6 is decided in the negative, whether the plaintiff is liable to render to the defendant truthful and correct account of expenses incurred as also the income received by him duly supported by the bills, vouchers and receipts? OPD
>
> 8. Whether the defendant is entitled to the decree for a sum found to be due upon rendition of accounts together with interest thereon? OPD
>
> 9. Whether the defendant is entitled to a declaration that the plaintiff has no right, title or interest in the movie 'Hatya-The Murder' and that he is not entitled to deal with the same? OPD

10. Whether the plaintiff is liable to return to the defendant the negatives of the movie 'Hatya-The Murder'? OPD

11. Relief."

11. The plaintiff in support of his case stepped into the witness box and filed his affidavit by way of evidence. The plaintiff deposed as PW1. The plaintiff proved various documents in support of his case and was cross-examined by the defendant. The defendant also stepped into the witness box and filed his affidavit by way of evidence. Defendant deposed as DW1 and he was cross-examined by the plaintiff.

12. Let me now take up each of the issues and decide the same as per the arguments urged by the parties and the evidence led by the parties. I may note that issue nos.1 and 2 with respect to whether this Court has territorial jurisdiction was not pressed by the defendant and it is conceded that this Court should decide the suit on merits.

Issues No. 3 to 5

13. Issue nos. 3 to 5 are being taken up together for disposal inasmuch as the determination of these issues will show as to whether the accounts between the parties were finally settled as on 17.03.2005 and as to whether the defendant had executed the document dated 17.03.2005 as per

which the plaintiff was entitled to the final net amount of Rs.25 lacs. Under these issues the earlier documents dated 29.10.2004 including the aspect as to their validity will also be discussed. Another aspect which will be considered will be whether the defendant in view of the Settlement Deed dated 31.05.2003 can question the figure of investment of Rs.46 lacs of the plaintiff as stated in the Settlement Deed dated 31.05.2003.

14. This fact is not in dispute between the parties that the defendant till 31.12.1995 could not complete the film and hence plaintiff stepped in for completing of the film by incurring expenditure for the same. The admitted document/Settlement Deed, Ex. P-3 (also Ex.PW1/3) dated 31.05.2003 which has been reproduced above shows that by 31.05.2003, the plaintiff had incurred expenditure of Rs.46 lacs on the subject film. In my opinion, the stand of the defendant in his letter dated 05.05.2003 (this document is now exhibited as Ex-DX-I as per the consent of the parties) that the plaintiff had got various papers and receipts signed in good faith from the defendant and on blank documents, would no longer be available to the defendant in support of his defence once the subsequent document being the Settlement Deed dated 31.05.2003 is an admitted document between the parties and this Settlement Deed dated 31.05.2003 shows that defendant accepted that

plaintiff had invested and incurred an expenditure of Rs.46 lacs for the subject film till 31.05.2003

15. From the year 2003 till October, 2004 there is no other document between the parties and the first document thereafter is the Legal Notice dated 3.10.2005, Ex.P-4 (also Ex.PW1/8). This Legal Notice dated 3.10.2005 sent by the defendant to the plaintiff states that plaintiff is liable to render complete accounts till 3.10.2005 to the defendant. As stated above though this notice Ex.P-4 in para 2 questions the figure of Rs.46 lacs written in the Settlement Deed dated 31.05.2003, such a stand does not in any manner benefit the defendant because not only the defendant cannot question the admitted terms in an admitted document by virtue of Sections 91 and 92 of the Indian Evidence Act, 1872, but also it is noted that it is for the first time after 31.05.2003 only much later in October, 2005 (viz after around two years and four months) that the defendant questioned the expenditure of Rs.46 lacs incurred by the plaintiff for the subject film and as already agreed upon and stated in the Settlement Deed dated 31.05.2003. So far as the aspect that whether plaintiff has or has not rendered accounts as demanded by the defendant in Legal Notice dated 03.10.2005 sent on behalf of the defendant, the decision of this issue will revolve upon whether or not

this Court accepts the rough accounts dated 29.10.2004 which are admittedly signed between the parties, and have been exhibited as Ex. PW1/5 and Ex. PW1/6. The defendant questions these documents not on the ground that they are not signed by the defendant but on the ground that these documents are not admissible in evidence, inasmuch as these documents reflect the entries of accounts, and hence have to be proved as per the defendant by the vouchers and documents of the entries, and since plaintiff has not filed and proved the documents/vouchers of the entries, the documents Ex.PW 1/5 and Ex.PW 1/6 dated 29.10.2004 will not show settlement of accounts and that consequently the net liability towards the plaintiff of the sum of Rs.20,78,483/- with respect to the subject project. The case of the defendant as per his written statement is that the signatures of the defendant on Ex. PW 1/5 and Ex.PW 1/6 are only for the purposes of noting the figures and cannot be said to be in any manner reflective of the final settlement of accounts between the parties. The question is, is the stand of the defendant correct as is being argued. The defendant in support of his this argument places reliance upon the judgment of the Supreme Court in the case of ***Ishwar Dass Jain (Dead) Through LRs Vs. Sohan Lal (Dead) by LRs, 2000 (1) SCC 434*** that entries of books of accounts are of no use unless and until the entries are supported by the documents and vouchers of the transactions contained in the entries.

16. In my opinion, the argument of the defendant in this regard does not merit acceptance because once the defendant admits to have signed Ex.PW 1/5 and Ex. PW 1/6 dated 29.10.2004, and which documents show the entries of the total revenue and expenditure till 29.10.2004 with respect to the subject film, in my opinion, defendant cannot now contend that his signatures on these documents are only for noting the entries and not with respect to the documents being the settlement of accounts as on 29.10.2004. The documents Ex. PW 1/5 and Ex. PW 1/6 contain each and every entry with respect to the revenue received on the release of the subject film and the expenditure incurred till that date, and hence, these documents in my opinion would show a settled account between the parties as on 29.10.2004. I may note that the defendant has not put a suggestion to the plaintiff/PW1 in his cross-examination that the documents Ex. PW 1/5 and Ex. PW 1/6 are forged and fabricated documents, and the issue is only that whether these documents are admissible on the ground that these documents are only entries without any supporting vouchers to prove the same. In my opinion, once there is a settled account in the form of various figures and entries duly signed by both the parties, there is no requirement in law that the vouchers

of the entries have to be proved with respect to the entries. Reliance by the defendant on the judgment of ***Ishwar Dass Jain's*** case ***(supra)*** is misplaced because the said case was not dealing with a signed document evidencing settlement of accounts between both the parties. No doubt in law, entries in books of accounts have to be proved by vouchers of the transactions, but, that is only when the entries are not admitted by the other side in terms of a settlement account. Once the entries are admitted and there is a document showing the revenue entries and the expenditure entries, and consequently the net amount due and payable, there does not arise any scope for application of the principle contained in Section 34 of the Indian Evidence Act, 1872, inasmuch as, Section 34 of the Indian Evidence Act operates in a totally different field where one party relies upon his document being an unsettled statement of accounts and which statement of accounts contains entries which are not proved by the documents of the entries/transactions. Section 34 of the Indian Evidence Act, 1872 and ***Ishwar Dass Jain's*** case ***(supra)*** will have no application in the facts of the present case where there is a settled account document duly signed by both the parties.

17. I therefore reject the arguments with respect to non-admissibility of the documents Ex. PW1/5 and Ex. PW1/6 dated 29.10.2004

and hold that in terms of these documents, a sum of Rs.20,78,483/- became due and payable to the plaintiff as on 29.10.2004 and which is a date after the release of the film on 15.10.2004.

18. The next aspect to be examined is whether the sum of Rs.20,78,483/- would stand enhanced to Rs.25 lacs as a settled figure as on 17.03.2005 or whether this figure would stand reduced by a sum of Rs.4,75,000/-, inasmuch as, plaintiff in para 15 of the plaint admits that after 29.10.2004, Asian satellite rights and Indian Television Rights of the subject film were sold to M/s Sharad Trading Company on 28.02.2005 for a sum of Rs.4,75,000/-. The issue really boils down to whether the document dated 17.03.2005, and which is sought to be proved and exhibited by the plaintiff as Ex. PW1/7, (denied by the defendant), can be said to have been proved by the plaintiff for being looked into by this Court, and consequently for plaintiff being held entitled to a sum of Rs.25 lacs as stated in this document dated 17.03.2005.

19. No doubt, the defendant in his written statement has denied the existence of this document dated 17.03.2005 and has pleaded that this document is a forged and fabricated document, however, there is a difference between pleadings and proof and by a mere pleading, the

defendant cannot be said to have proved this document to be a forged and fabricated document. The plaintiff has discharged the onus of proving this document as Ex.PW1/7 and this document is deposed by the plaintiff to be signed both by the plaintiff and the defendant. Once the plaintiff deposed so, in the facts of the present case, it was mandatory and incumbent upon the defendant to put a specific suggestion to the plaintiff/PW1 in his cross-examination that the document Ex. PW1/7 is a forged and fabricated document. I have specifically put a query to the counsel for the defendant to show me a suggestion put by the defendant in the cross-examination of plaintiff/PW1 that Ex. PW1/7 is a forged and fabricated document, but the counsel for the defendant had no option but to concede that no suggestion has been put by the defendant to PW1/plaintiff that Ex. PW1/7 dated 17.03.2005 is a forged and fabricated document. At this stage, let me reproduce the document Ex.PW1/7 dated 17.03.2005 and the same reads as under:-

> "   17.3.05
> B.F. HATYA FINAL A/C
> Rs. 25,00,000=00
> Total Balance of RISHI
> RAJ Till Today is
> (Twenty Five Lacs only)
> Sd.   Sd.
> Rishi Raj   S.A. Luthria/17/3/05
> 17.3.05"

20(i). This Court in the absence of any expert evidence which is led by both the parties is entitled under the provision of Section 73 of the Indian Evidence Act, 1872 to compare the disputed signatures with the admitted signatures. Taking up this responsibility, a comparison of the signatures of the defendant on the disputed document Ex.PW1/7 with the admitted signatures appearing on admitted documents Ex.PW1/1, Ex.PW1/3 (Settlement Deed dated 31.05.2003), Ex.PW1/5 and Ex.PW1/6 dated 29.10.2004 shows that there is an uncanny similarity between the disputed signatures of the defendant on the document, Ex.PW1/7 and the signatures of defendant on the documents, Ex.PW1/1, Ex.PW1/3, Ex.PW1/5 and Ex.PW1/6. In my opinion, the fact that no specific suggestion was given by the defendant to the plaintiff in cross-examination of the plaintiff as PW1 that this document Ex.PW1/7 is a forged and fabricated document, would turn the table in the present case against the defendant and in favour of the plaintiff for holding that the document dated 17.03.2005, Ex.PW1/7 is a document which is signed by the defendant and that the same is not a forged and fabricated document.

(ii) The signatures which appear of the defendant on the disputed document Ex. PW1/7 dated 17.3.2005 are smooth and have an even flow.

Therefore, taken with other aspects of the document of the plaintiff Ex. PW1/9 (Ex. P-5) dated 27.10.2005 mentions about the amount due of Rs. 25 lacs to the plaintiff and the unacceptable/unbelievable stand of the defendant of signing blank papers in the letter of the defendant's advocate dated 17.1.2006, Ex. PW1/10 (also Ex. P-6), this Court has no hesitation to come to the conclusion that the document Ex. PW1/7 is not a forged and fabricated document set up by the plaintiff but that the same contains genuine signatures of the defendant and was signed by the defendant with respect to the final position of the accounts being that a sum of Rs. 25 lacs was due and payable to the plaintiff as on 17.3.2005.

(iii) I may also note that the guilty conscience of the defendant becomes clear from his Legal Notice dated 03.10.2005 Ex.PW1/8 (also Ex.P-4) inasmuch as the defendant knowing that he had signed this document Ex. PW1/7 dated 17.03.2005 mentioned much later in the Legal Notice dated 3.10.2005 that accounts have not been settled and that the defendant is entitled to rendition of accounts, and this was obviously so stated for the reason that defendant knew that accounts have been settled in terms of the document dated 17.03.2005, Ex. PW1/7 and he had to wriggle out of the document dated 17.3.2005. Whatever doubt which remains in this regard is cleared from the letter dated 27.10.2005 Ex. PW1/9 (also Ex. P-5), and which is a letter written by the plaintiff to the advocate of the defendant. Receipt of this letter has been admitted by the defendant, though the defendant had conveniently denied the contents thereof. A reading of the second and third paragraphs of this letter dated 27.10.2005 clearly shows that the plaintiff had specifically and in so many words written in this letter of October, 2005 that the amount of Rs.25 lacs is payable to the plaintiff by the defendant and it has been confirmed in writing by the defendant to the plaintiff.

(iv) Though the defendant has tried to explain away the signatures on Ex. PW1/7 in his Advocate's letter dated 17.1.2006, Ex. PW1/10 (also Ex. P-6) written to the plaintiff wherein in para 5 defendant has talked of handing over of blank signed papers to the plaintiff and which are allegedly used by the plaintiff to make the document, Ex. PW1/7 of Rs. 25 lacs, however, one finds the theory of "blank documents" really hard to believe in commercial relationships between the parties such as the present one and more so because there was no reason whatsoever why blank signed documents would have been given by the defendant to the plaintiff. Further, the defendant while in this document, Ex. PW1/10 (also Ex.P-6) dated

17.1.2006 took up a case of plaintiff being given blank signed papers which have been misused with respect to the amount of Rs. 25 lacs being due to the plaintiff as per Ex. PW1/7 ie Ex.PW1/7 is signed by defendant but signatures were taken on blank papers, however, in his written statement the defendant in fact has taken up a wholly divergent/different stand that the document Ex.PW1/7 is a forged and fabricated document containing forged signatures of the defendant and not that signatures of defendant on blank papers were taken. Really, therefore, defendant's cases set up differently at different points of time lack credibility for this Court to accept the same.

In my opinion therefore on the preponderance of probabilities, and as per the evidence led in the present case, I hold that the document being letter dated 17.03.2005, Ex. PW1/7 is not a forged and fabricated document as alleged by the defendant, and this document is proved and accordingly, defendant is liable to pay a sum of Rs.25 lacs to the plaintiff as per this final position which emerged between the parties as on 17.03.2005.

21. Issue nos.3 to 5 are accordingly decided holding that the plaintiff is entitled to the principal amount of Rs.25 lacs and that document dated 17.03.2005, Ex.PW1/7 bears the genuine signatures of the defendant and plaintiff is entitled besides recovery of Rs.25 lacs to the injunction as

prayed by him that the defendant will not in any manner interfere with the exercise of rights by the plaintiff with respect to the subject film as an owner thereof.

<u>Issue Nos.6 to 10</u>

22. These issues were the counter issues to issue nos. 3 to 5 and once issue nos.3 to 5 have been decided in favour of the plaintiff and against the defendant, defendant obviously is not entitled to any rendition of accounts or for the relief of injunction or any money decree as prayed for, inasmuch as the defendant is in fact liable to pay a sum of Rs.25 lacs and as confirmed by the defendant to the plaintiff in terms of the document, Ex. PW1/7 dated 17.03.2005. These issues are therefore decided in favour of the plaintiff and against the defendant.

<u>Relief</u>

23. Accordingly, the suit of the plaintiff is decreed against the defendant for a sum of Rs.25 lacs as the principal amount. Plaintiff is also entitled to interest @ 12% p.a. simple from 17.03.2005 till the date of filing of the suit inasmuch as plaintiff has claimed interest from the defendant in plaintiff's reply dated 27.10.2005, Ex.PW1/9 (also Ex.P-5). Though the

plaintiff has claimed interest @ 24% p.a. in this document, Ex.PW1/9 (also Ex.P-5) dated 27.10.2005, but in my opinion plaintiff is held entitled to interest only @ 12% p.a. simple and at which rate plaintiff has restricted his claim of interest in this suit. Plaintiff will also be entitled to *pendente lite* and future interest @ 12% p.a. simple till payment by the defendant to the plaintiff of the decretal amount. Plaintiff is also entitled to a decree of permanent injunction that the defendant will not in any manner interfere with the exercise of the ownership rights of the plaintiff with respect to the subject film "Hatya - The Murder".

Parties are left to bear their own costs. Decree sheet be drawn accordingly.

AUGUST 18, 2015 **VALMIKI J. MEHTA, J.**
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