

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1700 OF 2015
IN
SUIT NO.1408 OF 2012

Radhakrishna Productions Private Limited ...Applicant
/Plaintiff

Versus

Ikkon Films Private Limited and others ... Defendants

**Mr. Bomi Patel, with Ms. Poorva Garg, i/b Mulla and Mulla & Craige
Blunt and Caroe for the Plaintiff.**

**Mr. B.V. Phadnis, with Karan Vyas, i/b B.V. Phadnis and S.P.
Khawase for Defendants Nos.1 and 2.**

Mr. Pinag Contractor, i/b Sanjay Yadav for Defendant No.3.

CORAM: G.S. PATEL, J

DATED: 28th July 2016

PC:-

1. This Notice of Motion seeks that the defence of Defendant Nos.1 and 2 be struck off, invoking Order 39 Rule 11, since those Defendants have failed to comply with specific directions and orders of this Court.

2. By an order dated 9th April 2015, a learned Single Judge of this Court (S. C. Gupte J) disposed of five Notices of Motion.

Among these was the Plaintiffs' Notice of Motion No.1416 of 2013. In his order, Mr. Justice Gupte disposed of that Motion by directing Defendant Nos.1 and 2 to deposit a sum of Rs.1.65 Crores in this Court within a period of six weeks. The Plaintiff was at liberty to withdraw that amount when deposited. There was no stay of that portion of the order.

3. On 6th May 2015, an application appears to have been made to Mr. Justice Gupte to continue the status quo. That was granted, and, in addition, further time was granted to the 1st and 2nd Defendants until 10th June 2015 to deposit the sum of Rs.1.65 Crores in terms of the order dated 9th April 2015.

4. No deposit has been made at any time. It seems that on 11th June 2015 Defendants Nos. 1 and 2 filed Appeal (L) No.484 of 2015. The fact that the Appeal was lodged only as a dilatory tactic is evident from the fact that it has not even been served on the Plaintiffs till date, i.e., for more than a year after its filing. That appeal is also still on a lodging number. No attempts seem to have been made to have any order obtained in the appeal staying the order of deposit.

5. All of this constitutes direct disobedience of an unambiguous order of this Court. The Plaintiffs filed the present Notice of Motion in September 2015. It was served shortly thereafter on 9th October 2015. There is no dispute about this. In the meantime the Suit has progressed to the stage of marking of the Plaintiffs' documents but that is a matter to be considered separately. As far as

the present Notice of Motion is concerned, from 9th October 2015 till date no reply has been filed. Time was taken repeatedly. On 13th July 2016, I extended time till 21st July 2016 to accommodate counsel for Defendants Nos. 1 and 2. In my order I made it explicitly clear that there would be no extension of this deadline nor would any Affidavit be accepted after that date (there is typographical error in the order; the word “before” should be read as “after”).

6. We are now on the 28th July 2016, one week beyond that final deadline. There is still no reply. Instead I am told that I should give “one final chance”. I see no reason why I should. These are Defendants who have directly disobeyed an order of this Court. I am then told “an appeal has been filed” as if that is a complete answer to everything. It is not. As I have noted, that appeal is still on lodging number, has not even been served and no attempt seems to have been made to move the appeal Court for a stay of the order of the deposit.

7. I am now told that time should be given because the principal officers of Defendants Nos. 1 and 2 have decided to make some sort of pilgrimage to Delhi. This is no answer either.

8. I will not allow parties to play fast and loose with the orders of the Court in this fashion. There is no cause shown to me why this Notice of Motion ought not to be granted. It is time that such parties learnt that our orders are precisely that; orders, and not suggestions or recommendations, and that they are to be followed to

the letter, failing which there will be consequences. In this matter, those consequences must now follow.

9. Order 39 Rule 11 is a Maharashtra Amendment to Order 39. It reads thus :

11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court. (1)

Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the Plaintiff or the Applicant, or strike out the defences, if the default or contravention or breach is committed by the Defendant or the opponent.

(2) The Court may, on sufficient cause being shown and on such terms and conditions as it may deem fit to impose, restore the suit or proceeding or may hear the party in defence, as the case may be, if the party that has been responsible for the default or contravention or breach as aforesaid makes amends for the default or contravention or breach to the satisfaction of the Court.

Provided that before passing any order under this sub-rule notice shall be given to the parties likely to be affected by the order to be passed.

10. There is no doubt in my mind that the Defendant has committed a breach of Mr. Justice Gupte's order. Even now no statement is made that the Defendants will make amends for the default, contravention or breach. The only application that is made is for "a final opportunity". I understand this to mean a final opportunity to file a reply, not a final opportunity to make the deposit. That this is in fact a correct understanding is not disputed by Mr. Phadnis for the Defendants.

11. In view thereof the Notice of Motion is made absolute in terms of prayer clauses (a) and (b). The Written Statement filed by Defendants Nos. 1 and 2 and their defence are struck off.

12. The Plaintiff will be entitled to file a Notice of Motion under Rule 90 for a Judgement for want of written statement against the 1st and 2nd Defendants.

13. Mr. Phadnis applies for stay of the order. In the facts of the case the stay is refused.

(G. S. PATEL, J.)