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

COMMERCIAL APPEAL (L) No. 30 OF 2017
IN
NOTICE OF MOTION No. 152 OF 2017
IN
COMMERCIAL SUIT No. 203 OF 2017
WITH
NOTICE OF MOTION (L) No. 18 OF 2017

Narendra Hirawat & Co. ... Appellants / Applicants
Vs.
M/s. Alumbra Entertainment
& Media Pvt. Ltd. & Ors. ... Respondents

Mr. Ahmad Abdi a/w Satya Prakash Sharma, Rajiv Talasikar, Ashok
Asthana, Shrikant Ingale, for the Appellants / Applicants.

Mr. Venkatesh Dhond, Sr. Counsel a/w Sameer Jain, Anu Sura i/b M/s.
Zunjarrao & Co., for Respondent No. 1,

and i/b M/s. Pamasis Law Chambers, for Respondent No. 2.

Mr. Akshay Patil i/b R. M. Azim, for Respondent Nos. 3 and 6.

Mr. Ashish Kamat a/w Ravi Suryawanshi i/b Naik Naik & Co. for
Respondent No. 7.

Dr. Birendra Saraf i/b Mona Vora, for Respondent No. 9.

CORAM : V. M. KANADE, &
C. V. BHADANG, JJ.

DATE : MAY 4, 2017

PC.

1. Heard the learned counsel appearing on behalf of the Appellants and the learned counsel appearing on behalf of the Respondents. The Appellants are aggrieved by an order dated 29th March, 2017 passed by the learned Single Judge in Notice of Motion No. 152 of 2017 filed in Commercial Suit No. 203 of 2017, rejecting an ad-interim relief, sought by the Appellants on various grounds.

2. Brief facts which are relevant for the purpose of deciding the appeal are as under:

2.1. A film known as “Sarkar” was released in the year 2005. The producers of the said film were M/s. K Sera Sera Productions Ltd., and the director of the film was Mr. Ramgopal Varma.

2.2. Thereafter in the year 2008 an agreement of assignment was executed on 31st March, 2008 between M/s. K Sera Sera Productions Ltd. (for short “KSS”) and M/s. RGV Film Factory Ltd. (for short “RGV”) and M/s. Z Picture Company (for short “ZPC”). By the said agreement all intellectual property rights including copy rights pertaining to the film “Sarkar Raj” which was produced by ZPC were

assigned and thereafter the film “Sarkar Raj” was released in 2009.

2.3. An agreement of assignment was executed between M/s. KSS and the Appellants / original plaintiffs – Narendra Hirawat & Co. It is the case of the original plaintiffs that all rights in respect of film “Sarkar” including sequel of film in scope, versions including the copyrights and performing rights in the script and the music of the film including its songs as well as the copyrights were assigned to the plaintiffs.

3. It is the case of the Appellants / original plaintiffs that in violation of the said rights which were assigned to the Plaintiffs, Respondent No. 1 have now produced and they are about to release the film “Sarkar-3”. It is submitted that production and release of the film is in complete violation of the rights which are assigned in favour of the Appellants. The learned counsel Mr. Ahmad Abdi submitted that by producing the said film, the rights which are assigned to the Plaintiffs are violated, and therefore, they are entitled to seek an order of injunction restraining Respondent No. 1 from releasing the film, which is to be released on 12th May, 2017. The learned counsel appearing on behalf of the Appellants invited our attention to the

agreement, which was executed between KSS and RGV and ZPC dated 31st March, 2008 and submitted that what was assigned to Respondent No. 1 was only intellectual property rights, including copyrights pertaining to film “Sarkar Raj”, and as such therefore, the right was restricted in respect of original film and not for the purpose of making sequel.

4. He further submitted that the learned Single Judge has without taking into consideration these aspects refused to grant ad-interim relief. He has invited our attention to the order passed by the learned Single Judge.

5. On the other hand, the learned senior counsel Mr. Dhond appearing for Respondent No. 1, learned counsel Dr. Birendra Saraf appearing for Respondent No. 9 and the learned counsel Mr. Ashish Kamat appearing for Respondent No. 7 submitted that what was assigned to the plaintiffs by the agreement was only right in respect of original film and not the sequel.

6. They have also invited our attention to the various clauses in both the agreement and have submitted that the clauses in the said

agreements are very clear and on the plain reading and construction of the said clauses of these agreements, it is apparent that what was assigned to the Plaintiffs was only rights of the film “Sarkar”.

7. Secondly, it is submitted that there was delay in applying for an ad-interim relief on the part of the plaintiffs. It is submitted that the plaintiffs were very well aware that defendant No. 1 was producing the film from newspaper report and from the fact that the producer has approached the plaintiffs to understand the rights which were assigned to them in October, 2016. He submitted that suit was filed only in March, 2017 and the appeal was filed after the order of ad-interim relief was not granted. It is submitted that if there is delay caused in approaching the Court, this Court has taken a consistent view that Plaintiffs are not entitled to seek ad-interim relief.

8. After having heard counsel appearing for both the parties, we are of the view that no case is made out for interfering with the order passed by the learned Single Judge. Though it is true that the order passed by the learned Single Judge is not happily worded and practically no reasons have been assigned as to why no case is made out for grant of ad-interim relief, we are of the view that for the

reasons mentioned hereinafter the learned Single Judge was justified in refusing to grant ad-interim relief.

9. In order to examine whether a case is made out for grant of an ad-interim relief, it is necessary to decide the rights of the parties. It is not in dispute that the original film “Sarkar” was produced in 2005 and the film “Sarkar Raj” was produced in 2008. Before the film was produced, an agreement was executed between KSS and RGV and ZPC on 31st March, 2008. It will be relevant to reproduce some of the clauses in the agreement since the said clauses describe the rights between the parties. Clauses 6, 10, 15 and 16 of the said agreement are reproduced hereinbelow:

“6. *The parties hereto agree and confirm that all the Copyrights envisaged in the film 'Sarkar Raj' shall be registered in the name of ZPC and the Copyrights in cinematographic work of the film 'Sarkar' shall vest with KSS alone. For the purpose of registration of Copyrights as provided under the Copyrights Act 1957 KSS irrevocably grants their No objection on a separate letter.*”

“10. *KSS is the producer and the negative right holder of the motion picture titled “Sarkar” in Hindi Language, 35mm format, colour, directed by Ramgopal Varma*

and having principal cast of Amitabh Bachchan, and others and the said motion picture has been released and exhibited theatrically and on various other formats through various media and mediums on or from.

ZPC is the producer and the negative right holder of the motion picture titled “Sarkar Raj” in Hindi language, 35 mm format, colour, directed by Ramgopal Varma and having the principle cast of Amitabh Bachchan and others and the said motion picture may be referred to as a sequel to the motion picture “Sarkar” and therefore, in this context, for the sake of brevity, it is expressly understood and agreed between KSS, RGV and ZPC that no claims objections, notices and / or liabilities of any nature and / or manner whatsoever whether monetary or otherwise whether raised, existing or may be raised hereinafter from / by any person shall be raised and / or deemed to be raised against the motion picture “Sarkar Raj” or ZPC or any other third parties with whom any aspect of “Sarkar Raj” may have been / will be transacted and all claims, objections, notices and / or liabilities of “Sarkar” whether raised and existing or may be raised at anytime hereinafter shall be solely and exclusively discharged or otherwise be settled by KSS to the absolute and complete exclusion of “Sarkar Raj”, ZPC and / or any third parties with

who any aspect of “Sarkar Raj” may have been / will be transacted for any purpose.

In this context KSS, RGV and ZPC have agreed to issue a public notice in relevant trade papers of the Hindi Motion picture trade as also send the copy of such public notice to all relevant trade associations of the Hindi Motion Picture trade, a draft of which is Annexed hereto at Annexure – 2.”

“15. Subject to compliance of clause No. 14 above, in consideration of the acknowledgement by KSS of all the aforesaid rights RGV and ZPC with respect to the film “Sarkar Raj” and in consideration of the specific representation from KSS that it shall not claim any right / title / interest or claim with respect to any of the rights of the film “Sarkar Raj” through any right emanating from the film “Sarkar”, RGV and ZPC have irrevocably agreed to grant credits to KSS in perpetual manner as per Annexure-3.”

“16. The arrangements as mentioned in this agreement are irrevocably and strictly binding on the parties and are the ESSENCE of this agreement.”

10. Perusal of the said clauses clearly indicate that the copyrights pertaining to the film “Sarkar Raj” including the trade mark right / title of the film “Sarkar Raj” would vest in ZPC alone and KSS

would have no claims whatsoever in this regard. The following sentence clearly discloses that a right in the title, remake / sequel were also assigned to ZPC. The said sentence reads thus:

“KSS has further represented to RGV and ZPC that KSS hereby quits all its rights / title / interest / claims, if any, in the title , remake / sequel rights, etc. of the film titled “Sarkar Raj”....”

11. From the aforesaid clause, it is clear that for the purpose of remake of “Sarkar Raj”, rights were assigned to ZPC. When we examined the agreement entered into by KSS and the plaintiffs, it is seen that what was assigned was only the rights of remake of film “Sarkar” and not its sequel rights. The words “sequel rights” therefore, appear in the agreement entered between KSS and ZPC. This is further clarified in clause 6 of the agreement as under:

“The parties hereto agree and confirm that all the Copyrights envisaged in the film “Sarkar Raj” shall be registered in the name of ZPC and the Copyrights in cinematographic work of the work shall vest with KSS alone.”

12. It would be relevant to refer the Deed of Assignment which was entered into between the plaintiffs and the KSS. The said agreement was executed on 30th March, 2009 after the film “Sarkar

Raj” was released in 2008. The plaintiffs therefore, were aware that some rights were assigned to ZPC by KSS. Knowing that fully well, the Deed of Assignment dated 30th March, 2009 was executed. Clause 3 of the said Deed is very relevant, which reads as under:

“3. *The Assignor hereby assigns, assures and conveys unto the said Assignee/s free from all encumbrances, charges and liens, the rights, titles and interest vested in the said films hereto including all the rights vested therein namely : copyrights, negative, positive, sound, playing, performing, screening, video, satellite, TV distribution, exhibition and exploitation of 35 mm and a reduced or enlarged versions, theatrical and non theatrical rights which include all conceivable electronic media rights for all the territories of the world and the income, recoveries and realizations there from and as well as all other rights whatsoever which may accrue in favour of the Assignee/s in future, including the copyrights and performing rights in the script and music of the said films including its songs as well as the copyrights and all other works comprised in or in relation to the said films including the rights of re-making, including duping, dubbing, reducing etc. of the said films in length, language/s, scope, versions, and property and the rights perpetually and forever. However, the Assignee hereby*

acknowledges that the rights as aforesaid are being transferred and assigned hereunder subject to the Third Party Rights details whereof are mentioned in Annexure "C" hereto."

13. It is relevant to note that the words "sequel rights" nowhere appear in the said clause and clause 3 if read with the other clauses clearly reveals that what has been assigned to the plaintiffs is only rights in respect of the film "Sarkar". It is a matter of common knowledge that even after the film is released, it is broad caste on TV and in other media and if the said film also earns money, all that was assigned prima facie appears to be rights of remake and not the rights to make sequel. The said rights prima facie appear to have been assigned to ZPC. It is, therefore, not possible to accept the submissions made by the plaintiffs, and therefore, we are not inclined to grant ad-interim relief in favour of the plaintiffs. It is clarified that the observations made by this Court are prima-facie in nature and they are made only for the purpose of deciding whether ad-interim relief can be granted or not. The second ground raised is the delay on the part of the plaintiffs caused in approaching the Court. It is well settled that if prompt steps are not taken by the plaintiffs to approach the

Court, the Court will not be inclined to grant ad-interim relief, particularly when film is about to be released in a couple of days. The order passed by the learned Single Judge is therefore, confirmed, and the appeal is dismissed. Hearing of motion is expedited.

14. In view of disposal of the appeal, Notice of Motion (L) No. 18 of 2017 filed therein does not survive and is accordingly disposed of.

Sd/-
[C. V. BHADANG, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemth