

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

COMMERCIAL APPEAL No. 59 of 2017

IN

NOTICE OF MOTION No. 1416 of 2013

IN

SUIT NO. 1408 OF 2012

M/s Ikkon Films Pvt Ltd & Anr

... Appellants.

(Org. Defendant 1 & 2)

Vs

M/s Radhakrishna Productions Pvt. Ltd.,

And 19 Others.

... Respondents.

(Org. Plaintiff & D.3 to 22)

Mr. Akash Rebello i/by Karan K. Vyas for the Appellants.

Mr. Bomi Patel a/with Poorva Garg i/by M/s Mulla & Mulla &
Craig Blunt & Caroe for Respondent No.1.

**CORAM : NARESH H. PATIL AND
 SMT. BHARATI H. DANGRE, JJ.**

ORDER RESERVED ON : 23rd JUNE, 2017.

ORDER PRONOUNCED ON : 01st AUGUST, 2017.

P.C. : (Smt. Bharati H. Dangre, J.)

1) The present Appeal is filed by the appellants, challenging the judgment passed by the learned single Judge of this court on 9th April, 2015 in Notice of Motion No. 1416 of 2013 and thereby directing to deposit an amount of Rs. 1.65

crores in the court and permitting the defendant to withdraw the said amount.

2) The present appellants, captioned above, are the defendant Nos. 1 and 2 respectively in a suit instituted by the plaintiff Radhakrishna Productions Private Limited (respondent No.1 in the present appeal) vide suit no. 1408 of 2012.

3) For proper appreciation of facts in hand, it would be necessary to avert to the suit No. 1408 of 2012 and certain other ancillary proceedings between the parties. The plaintiff Radhakrishna Productions Private Limited (respondent in the present appeal) is a Private Company incorporated under the Companies Act, 1956 and is involved in the business of media and entertainment. The defendant No.1 is a private company and is involved in the business of producing and distributing Cinematographic Films. The Defendant No.2 is a Partnership-firm and is also involved in the business of producing and distributing Cinematographic Films. It is the case of the plaintiff that a Term Sheet was entered into between the plaintiff and defendant no.1 on 2nd April,2010 whereby the plaintiff agreed to acquire the worldwide exclusive copyrights in the film for a total consideration of Rs.5.50,00,000/- in tranches upon achievement of milestone events set out in Schedule 2. According to the plaintiff, as per the provisions of Term Sheet, the defendant No.1 was obligated to deliver to the

plaintiff the film on 30th July,2010. It is also the case of the plaintiff that on the same day on which the Term Sheet was entered into between the parties, the defendant no.1 instructed the plaintiff that the payment of consideration be made to defendant No.2 on behalf of defendant No.1 and the details of the bank account in which payment of the said consideration were to be made were sent by messenger. As per the plaintiff, on 17th May, 2010 copyright assignment was executed whereby the defendant No.1 assigned and the plaintiff acquired the worldwide exclusive intellectual property rights of the film. In the copyright assignment, timelines and the Schedules setting out the milestones, remained the same as set out in the Term Sheet. It is the case of the plaintiff that on occurrence of the milestone events, the plaintiff paid/caused to be paid to defendant No.2 on behalf of defendant No.1 various payments in conformity with the Copyright Assignment. According to the plaintiff, all the said payments were made through RTGS and the amounts have been received and accepted by defendant Nos. 1 and 2 as payment under the Copyright Assignment without any demur. According to the plaintiff around June,2010, the defendant No.1 approached the plaintiff for a loan for the production of another film titled "JOKER" and accordingly on behalf of and on instructions of defendant No.1, the plaintiff paid a sum of Rs.1,75,00,000/- under a Film Finance Agreement dated 1st July,2010. The said amount has been duly acknowledged by the defendant No.1. According to

the plaintiff, by the end of 28th January, 2011, the plaintiff had paid to the defendant No.2 on behalf of and on instructions of defendant No.1, a sum aggregating to 3,85,17,829/-. The plaintiff annexed a detail statement giving the details of the amount which have been paid by him under the Copyright Assignment.

4) As per the plaintiff, the defendant No.1 in accordance with the Copyright Assignment, caused the defendant No.4 to confirm to the plaintiff by its letter dated 16th July,2010, that it was holding the picture and sound negatives and other materials pertaining to the film in the joint names and under the joint instructions of the plaintiff and defendant No.1. According to the plaintiff, in spite of sums of money being paid by the plaintiff, the defendant No.1 failed to discharge the obligation under the Copyright Assignment, of delivering to the plaintiff the film on 31st July, 2010 and on enquiry from defendant No.1 he was assured that the shooting of the film is in progress and the film would be delivered at the earliest. However, for some or the other reason there was delay in completion and/or delivery of the film.

5) The plaintiff further alleged that defendant No.1 through defendant No.2 filed a bogus and frivolous suit against the plaintiff before the City Civil Court at Dindoshi which was numbered as S.C. Suit (St) No. 1634 of 2011 alleging that the

plaintiff had no rights in the film. However, the Court did not grant any relief as prayed by the defendants. However, from the perusal of the complaint in the aforesaid suit the plaintiff could gather that the film has been admittedly completed in the month of July, 2011. Since the film was completed, the plaintiff assumed that the Copyright in the film stands assigned in his favour and in July, 2011 the plaintiff became the owner of the copyright in the film. The plaintiff thereafter called upon the defendant No.1 to deliver the film and/or to refund the monies paid in terms of the Copyright Assignment through notices and legal notices. However, neither the Film nor the refund was delivered to him.

6) In the meantime, the plaintiff learnt that the defendant No.1 is seeking to release the Film on or around 2nd March, 2012 through the assistance of the defendant No.3. The plaintiff reliably learnt that defendant No.1 had created rights in the film in favour of Defendant No.3 and was attempting to release the film all over the country and worldwide on 2nd March, 2012 through defendant No.3 which is also a Public Limited Company. In order to defeat the claim of the plaintiff, the defendant No.1 became a party to the collusive suit being Title Suit No. 232 of 2011 which was filed before the Court of Munsif, Gopalganj, Bihar and agreed for appointment of a Receiver in respect of negatives and other paraphernalia of the

film. According to the plaintiff, certain orders were passed by the Munsif Court.

7) The plaintiff had filed the suit No. 1408 of 2012 on 28th February, 2012 and though initially sought a permanent injunction restraining the defendants from transferring, alienating, disposing or creating any third party rights of whatsoever nature or releasing the film, “Will You Marry Me” and prayed an alternative declaration that the plaintiff will be entitled to a charge on all Revenues in connection with the movie “Will You Marry Me” and sought a direction against the defendants for maintaining complete account in respect of the same. The Plaintiff also sought an alternate prayer of directing defendant No.1 to pay to the plaintiff a sum of Rs.5,41,51,705/- comprising of Rs.3,85,17,829/- towards refund of the monies paid and interest thereon @ 24% per annum. Subsequently, the plaintiff extensively amended his suit and also sought restraint order against the defendants for creating any third-party rights or alienating, transferring, disposing or releasing the film “Joker” and from creating any telecast rights for the film “Will You Marry Me”. The plaintiff also sought amendment to the suit and impleaded defendant No.5 who had instituted the suit in the Munsif's Court at Gopalganj in Bihar based on a Memorandum of Understanding (MoU) dated 18th August, 2011 and impleaded Defendant No.6 to defendant No.21 as party respondents since the Defendant

No.3 had entered into 16 separate agreements of rights in the film with these defendants. The receiver appointed by the Court of Munsif, Gopal Ganj, Bihar was impleaded as Respondent No.22 in the said suit. The plaintiff relied upon the correspondence exchanged between the parties and the agreement executed between the parties. The plaintiff also produced the joint consent terms signed between Defendant No.5 and M/s Ikkon Films Pvt. Ltd. and also produced the orders of the Munsif Gopal Ganj Court.

8) During the pendency of the suit a group of notices of motion concerning the films namely, “Will You Marry Me” and “Joker” were moved before the learned Single Judge. Notice of Motion No. 1057 of 2012 was moved by the plaintiff in the suit seeking restraint order against the original defendant No. 1 to 4 in respect of creation of third-party rights and also accounting for revenues received from film “Will You Marry Me” out of distribution monies, ticket sales, telecast rights, etc. Notice of Motion No.2488/2012 was moved for seeking a restraint order for creating of third party rights in the film against defendant No.5 to 22 in particular. By Notice of Motion No. 2358/2012 the plaintiff sought an interim restraint against original defendant No. 1 to 4 in respect of creation of third party rights or release of film “Joker” and also maintenance of account. Notice of Motion No.1416/2013 sought a decree on admission against defendant No. 1 and 2 in

respect of a sum of Rs.1.65 Crores claim admitted by defendant No. 1 and 2 as due and payable by them to the plaintiff under Order XII Rule 6 of Code of Civil Procedure.

The learned Single Judge by a detailed order on 9th April, 2015, which is impugned in the present appeal, considered the four Notices of Motion and one Contempt Petition at length in the backdrop of the facts and in respect of the Notice of Motion in relation to the film “Will You Marry Me”, the learned Single Judge held that the rights need to be protected, as there is a case for grant of an order for maintenance of account in respect of that film.

9) As regards Notice of Motion No.1416 of 2013 i.e. decree on admission, the learned Single Judge in detail, dealt with modus operandi if the defendant Nos. 1 and 2 and observed that the parties after having obtained an admission in respect of the subject-matter of the suit on the basis of an express undertaking to pay Rs.1.65 Crores to the plaintiff and having followed it up by actually drawing up a cheque in favour of the plaintiff, cannot be now permitted to resile from this position. The defendant No. 1 and 2 was therefore directed to deposit a sum of Rs.1.65 Crores in the Court and the plaintiff was permitted to withdraw the said amount. The learned Single Judge also issued directions in respect of deposit of monies received out of the exploitation of the film “Will You Marry Me” through Mr. Harish Gadodia and directed said

amount to be invested through the Prothonotary and Senior Master of this Court in a Nationalized Bank for a period of two years.

10) The present appeal challenges the said order. We have heard learned counsel appearing for the parties. The counsel for the appellants contended that the order passed on 9th April, 2015 in Notice of Motion No.1416 of 2013 is beyond the scope of the prayers made in the notice of motion and the learned Judge has erred in not appreciating that what was prayed in the motion, was a decree on admission and no directions were sought in regard to the deposit of the amount. On the other hand the counsel for the respondents prayed for upholding the said impugned order.

In the backdrop of the factual scenario which is narrated above, it can be seen that in the Notice of Motion No. 1416 of 2013, which was filed by the plaintiffs for grant of a decree on admission, the decree on admission was sought on the basis of three admissions, Firstly, in the suit filed by the defendant no. 1 in a Bombay City Civil Court at Dindoshi against the plaintiffs where the defendant no.1 had admitted the receipt consideration of total sum of Rs. 1.65 crores by R.T.T.S. towards the film "Will You Marry Me" from the plaintiffs. The defendant no.1 has also shown his willingness to refund the amount received by it. Another document relied upon, is the MOU entered between the defendant no.1 and

defendant no. 5 dated 18.08.2011, which was also exhibited to the plaint in the suit in City Civil Court at Dindoshi, in which it was categorically admitted and confirmed by the defendant no.1 that he had received sum of Rs. 1.65 crores and since the plaintiffs have no more interest in the film, the defendant no. 5 would pay the amount directly to the plaintiffs at the time of taking delivery of the release of film print from the defendant no. 4. Another document which was relied upon for seeking relief is the consent terms entered into between the parties before the Gopalganj Court at the time of taking over released prints of the film from defendant no.4.

11) Learned single Judge has referred to the three documents and was pleased to observe that the release of the film was procured by the defendant nos. 1 and 2 as the producer and defendant no.5- distributor had undertaken to the court that the amount of Rs. 1.65 crores, which was due and payable by defendant nos.1 and 2 to the plaintiffs in respect of the film, would be actually paid by the defendant no.5 and even cheques were drawn in favour of the plaintiffs. However, by adopting dubious means the plaintiff was prevented from en-cashing the cheques. The learned single Judge, therefore, recorded a finding that the parties having obtained advantage in respect of the subject matter of the suit on the basis of the expressed undertaking given to pay the amount, the plaintiffs cannot now be permitted to rescind

from their position after having accepted the advantage that was secured from the court. In this backdrop, by the impugned order, a direction was issued to the defendant nos. 1 and 2 to deposit the sum of Rs. 1.65 crores in the court and the plaintiff was permitted to withdraw the amount.

Perusal of the consent terms before the Gopalganj Court shows that the Consent Terms were drawn between the defendant no.5 and defendant no.1. Defendant No. 1 agreed to pay an amount of Rs. 1.65 crores to the defendant no. 3 (present plaintiff) on or before release of the said film anywhere in the world in any format. The said consent terms were placed before the Munisif Gopalganj Court in suit no.232 of 2011 and the said court on 22.06.2012 recorded that the time limit of the cheque was to expire after three months. However, another cheque came to be deposited. The further proceedings also revealed that the plaintiff in the said suit (present defendant no. 5) was directed to remain present before the court and inform the court as to when the cash amount would be made available in his account against the said cheques, in view of the argument advanced before the court after release of the film no income was generated and there was no sufficient cash to honour the said cheques. The subject order came to be passed on an application moved by the plaintiff, who was impleaded as defendant no. 3 in the said suit. The learned single Judge, therefore, was perfectly

justified in directing to deposit the said amount of Rs.1.65 crores.

12) Though, as conceptualized under Order 12, Rule 6 of the Code of Civil Procedure, we are conscious of the fact that the decree by consent cannot be sought by way of a right but it is the discretionary relief which the court may grant, after considering the facts and circumstances of the case. The learned single Judge, taking into consideration the unequivocal admissions, was perfectly justified in directing the deposit of the said amount and withdrawal of the said amount by the plaintiff since receipt of the said amount was admitted by defendant nos. 1 and 2.

13) In the aforesaid circumstances, there is no merit in the present appeal and the same deserves to be dismissed. It is accordingly dismissed.

(SMT. BHARATI H. DANGRE,J.)

(NARESH H. PATIL,J.)

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