

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

% **Date of decision: 12th November, 2018.**

+ **CS(OS)No. 1156/2007**

RISHI RAJ

..... Plaintiff

Through: Mr. Rajender Agarwal, Adv.

Versus

GIRDHAR AGGARWAL & ORS.

....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit, pleading that (i) the plaintiff is carrying on business of distribution, exhibition and production of cinematographic films, as sole proprietor of M/s Raj Rishi Films; (ii) the defendant no.1 Girdhar Aggarwal is also carrying on business of distribution and exhibition of films as a sole proprietor under the name and style of M/s Sharad Trading Co.; (iii) the defendant no.2 Chandrakant Gor is a film producer and has produced several films including Balram Shri Krishna, Bajrangbali, Har Har Mahadev, Bolo He Chakradhari, Veer Bhimsen, Kabhi Dhoop Kabhi Chaaon, Zingaro and is the original copyright holder of the said films; (iv) the defendant no.3 Shree Navchitra Distributors P. Ltd. is carrying on business of film distribution; (v) defendant no.4 Ramnord Research Laboratories Pvt. Ltd. is the laboratory where negatives of various films produced by various producers are kept and from which lab release prints of the same are taken out; (vi) the defendant no.2, vide letter of arrangement dated 24th March, 1989, granted dubbing rights of films Balram Shri Krishna, Bajrangbali, Har Har Madadev, Bolo He Chakradhari and Veer Bhimsen to the plaintiff and the

plaintiff has dubbed video of the said films in various languages including Rajasthani; (vii) the defendant no.2, vide Agreement dated 6th May, 2005 entered into with the defendant no.1, assigned all his rights including copyright as well as dubbing rights in all languages including in the films dubbing rights whereof vide arrangement dated 24th March, 1989, had been granted to the plaintiff; (viii) at the time of Agreement dated 6th May, 2005 between defendant no.2 and the defendant no.1, the negative of the film “Balram Shri Krishna” which was lying with defendant no.4, was transferred in the name of defendant no.3, for delivery instructions for reissue of 35 mm release prints for theatrical purpose; (ix) the defendant no.1 in turn assigned all rights acquired from the defendant no.2 in favour of the plaintiff vide Agreement dated 15th February, 2007; (x) thus, now the plaintiff is the sole, absolute and exclusive owner of all copyrights in the seven films viz. Har Har Mahadev, Bajrangbali, Bolo He Chakradhari, Shri Krishna Shasnam, Veer Bhimsen, Kabhi Dhoop Kabhi Chhaon and Zingaro; (xi) the plaintiff in turn granted various rights in the said films to others; (xii) the defendant no.3, who had been transferred the negative of the film “Balram Shri Krishna” only for the purpose of issuing delivery instructions for release prints of 35 mm, illegally claimed other rights therein against the persons to whom the plaintiff had assigned the same; (xiii) when the plaintiff went to the defendant no.4 for preparing a beta tape and to utilize the negative of the film Balram Shri Krishna, the defendant no.4 refused the plaintiff on the pretext that unless the defendant no.3 issued a letter of instructions in this regard, the defendant no.4 could not do so; (xiv) the defendant no.3 has also been writing letters to other customers of the plaintiff claiming rights which were never assigned to him; (xv) the

defendant no.3, on the basis of the letter dated 11th September, 1984 of the defendant no.2 in his favour cannot claim other rights which he has been claiming.

On the aforesaid averments, the plaintiff in this suit seeks to restrain the defendants no.3 and 4 from interfering in the rights of the plaintiff in the film “Balram Shri Krishna” and from in any manner infringing the copyright held by the plaintiff therein and seeks a mandatory injunction directing the defendants no.3 and 4 to deliver the negative of the film “Balram Shri Krishna” to the plaintiff, for transferring it on beta tapes and for preparing the release prints of dubbed version.

2. The suit came up first before this Court on 25th June, 2007 when, while issuing summons thereof, vide *ex parte* order the defendants no.3 and 4 were restrained from preparing and / or circulating any beta tapes or VCD, DVD or video cassettes from the negative of the film “Balram Shri Krishna” and circulating the same.

3. None appeared for the defendants no.2 and 3 despite service and the defendants no.2 and 3, vide order dated 25th July, 2007, were proceeded against *ex parte*. The defendant no.3 thereafter applied for setting aside of the *ex parte* and which was allowed on 27th August, 2007. The counsel for the defendant no.4, on 5th May, 2008 stated that no written statement was required to be filed. The defendant no.2 also applied for setting aside of the *ex arte* and which was allowed on 22nd August, 2008 and written statement permitted to be filed.

4. The defendant no.1, in his written statement has supported the plaintiff and given no objection to the reliefs claimed being granted to the plaintiff. The defendant no.2 also in his written statement has supported the plaintiff and given no objection to the reliefs claimed being granted to the plaintiff. The defendant no.4 has not filed any written statement.

5. Only the defendant no.3 in its written statement has contested the suit, pleading that (i) the plaintiff admits having sold video rights of the film “Balram Shri Krishna” to another and thus has no cause of action for the suit and no *locus standi* to maintain the suit; (ii) the suit is bad for non-joinder of M/s Modern Video Centre, to whom the plaintiff claims to have sold the video rights of the film “Balram Shri Krishna”; (iii) this Court does not have territorial jurisdiction to entertain the suit; (iv) the plaintiff has not pleaded how the defendants no.3 and 4 have infringed the copyright of the film “Balram Shri Krishna”; (v) under the Agreement dated 15th February, 2007 of the plaintiff with the defendant no.1, the defendant no.1 was to make available negatives of the film “Balram Shri Krishna” to the plaintiff and upon failure of the defendant no.1, the plaintiff was to become entitled to claim refund of money; the only remedy of the plaintiff was thus to claim refund from the defendant no.1 and the plaintiff is not entitled to the relief claimed from defendant no.3; (vi) the defendant no.2 raised a loan of Rs.3 lacs from the defendant no.3 to complete the production of his film “Abhimanyu Vivah”; (vii) the defendant no.2, vide letter dated 11th September, 1984 irrevocably agreed and undertook to repay the said loan on or before 30th February, 1985 and as a security for repayment of the said loan, authorized the defendant no.4 not to deliver the prints of the film

“Balram Shri Krishna” for Rajasthan to any party without instructions in writing from the defendant no.3 and till the payment of Rs.3 lacs along with interest at 18% per annum was made; (viii) the defendant no.2, vide letter dated 11th September, 1984 to the defendant no.4 authorized the defendant no.4 to transfer the negatives of the film “Balram Shri Krishna” to the defendant no.3; (ix) the defendant no.4 also undertook to abide by the said instructions; (x) the defendant no.2, vide letter dated 16th October, 1984 confirmed the factum of having taken loan from the defendant no.3 and creation of rights in the film aforesaid in favour of defendant no.3; (xi) as on 1st October, 2007, a sum of Rs.1,35,02,197/- was due to the defendant no.3 and which had not been paid; and, (xii) the defendant no.2 could not have entered into any agreements with respect to the rights created in favour of defendant no.3 in the film “Balram Shri Krishna” with any other person.

6. The plaintiff, in replication to the written statement of defendant no.3 has pleaded, (i) that it is the plaintiff who has to ensure that the rights which the plaintiff had given to M/s Modern Video Centre are not encroached upon by anyone; (ii) the plaintiff had even otherwise assigned only limited rights in four films including rights in the film “Balram Shri Krishna” to M/s Modern Video Centre and all other rights in the film remain with the plaintiff; (iii) the plaintiff is thus entitled to maintain the suit and M/s Modern Video Centre is not a necessary party thereto; (iv) that this Court has territorial jurisdiction to entertain the suit by virtue of Section 62 of the Copyright Act, 1957; (v) that the claims of the defendant no.3 with respect to the film “Balram Shri Krishna” made to M/s Modern Video Centre

amount to infringement of copyright; (vi) the defendant no.3 did not advance the entire loan amount of Rs.3 lac to the defendant no.2 and paid a sum of Rs.1 lac only; (vii) the defendant no.3 has misused the blank documents got signed from the defendant no.2; and, (viii) the defendant no.2, vide letter dated 11th September, 1984 only gave defendant no.3 the authority to issue delivery instructions for reissue rights of the film “Balram Shri Krishna” in future and authorized defendant no.4 to only transfer the negatives of the aforesaid film to defendant no.3 and did not assign all his rights in the film “Balram Shri Krishna” to the defendant no.3.

7. On the pleadings aforesaid, the following issues were framed in the suit on 21st February, 2011:

- “1. Whether the suit is bad for non-joinder of the purchaser from the plaintiff? (OPD-3).
2. Whether this Court has territorial jurisdiction to try the present suit? (OPP).
3. Whether the defendant No.3 holds lien on the negatives of the film ‘BALRAM SHRI KRISHNA’ as alleged in para 4 of his written statement? (OPD-3).
4. Whether the plaintiff is entitled to the injunction claimed by him?
5. Relief.”

and the parties relegated to leading evidence.

8. Vide order dated 21st December, 2015, on change in minimum pecuniary jurisdiction of this Court, the suit was transferred to the District Courts but in view of the Circular dated 28th April, 2016, recalled to this Court.

9. The counsel for the sole contesting defendant no.3 was appearing, till the suit was pending in this Court, but did not appear while the suit was pending before the District Court and did not appear when the suit was recalled to this Court, despite court notice and was, vide order dated 31st July, 2017, proceeded against *ex parte*.

10. The plaintiff has filed his affidavit by way of examination-in-chief and which was tendered in evidence on 8th August, 2014 before the suit was transferred to the District Court and the plaintiff was also partly cross-examined by the counsel for the defendant no.3. However, thereafter as aforesaid, the defendant no.3 stopped appearing and resultantly did not cross-examine the plaintiff any further and after the defendant no.3 was proceeded against *ex parte*, the counsel for the plaintiff on 16th January, 2018 stated that he did not want to lead any evidence and closed his evidence.

11. The counsel for the plaintiff has been heard and the record perused.

12. Since the suit was contested only by the defendant no.3, who also has now been proceeded against *ex parte*, it is not necessary to return issue-wise findings. The plaintiff has proved the issues, onus whereof was on the plaintiff and the defendant no.3 has failed to cross-examine the plaintiff and / or to lead any evidence and / or to prove the issues onus whereof was on the defendant no.3.

13. The plaintiff, on the basis his *ex parte* evidence, is entitled to the relief claimed.

14. A decree is passed, a) in favour of the plaintiff and against the defendant no.3 M/s Shree Navchitra Distributors P. Ltd. and defendant no.4 M/s Ramnord Research Laboratories P. Ltd., of permanent injunction restraining the defendants no.3&4 from, in any manner interfering in the copyright of the plaintiff in the film “Balram Shri Krishna” and from infringing the copyright in the said film in any manner whatsoever; and, b) of mandatory injunction, in favour of the plaintiff and directing the defendant no.3 M/s Shree Navchitra Distributors P. Ltd. and defendant no.4 M/s Ramnord Research Laboratories P. Ltd. to forthwith deliver the negatives of the film “Balram Shri Krishna” to the plaintiff without insisting on any payment and without imposing any conditions.

15. The defendant no.3 having delayed the disposal of the suit by initially contesting it and thereafter having stopped appearing in the suit, is also burdened with costs of this suit payable to the plaintiff. Professional fee assessed at Rs.1.5 lacs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 12, 2018

‘gsr’..