

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.1252 OF 2019**

IN

COMMERCIAL I.P.SUIT (L) NO.609 OF 2019

Suraj Kumar Mahavir Prasad Jaiswal & Anr.)....Applicants/Plaintiffs

V/s.

M/s.Pragya Films & Ors.

)....Defendants

Mr.Vinduprakash Pandey a/w Mr.Pramodkumar Pandya I/by Legal
Edge LLP for applicants/plaintiffs.

Mr.Rammani Upadhyay a/w Mr.D.T.Tiwari for defendants.

CORAM : K.R.SHRIRAM,J

DATE : 25.6.2019

P.C.:-

1. At the outset, Mr.Upadhyay undertakes to file Vakalatnama on behalf of all defendants within one week from today. Undertaking accepted.

2. On 17.6.2019 an urgent ad-interim application was made on behalf of plaintiffs and a statement was made to this Court that defendants have been served and they have not been responding. Based on that and relying on the statement made by Counsel and relying on the averments in the plaint, this Court was pleased to grant ad-interim order in terms of prayer clauses-(a) and (b).

3. Mr.Upadhyay for defendants states that he has not received a copy of this order but his clients were informed by Indian Motion Pictures Producers Association (IMPPA) that there is an order which has been passed against his clients and they have been so informed by plaintiffs' Advocate. Mr.Upadhyay states that he saw the order on-line.

4. Mr.Upadhyay tenders copy of an undertaking dated 16.3.2019, statement forms signed by plaintiff on 3.2.2019 along with a separate statement of claim attached thereto given by plaintiff to IMPPA. The undertaking has also been signed by 3 defendants apart from plaintiff. In the undertaking, parties have agreed to refer their disputes to arbitration before IMPPA.

5. Mr.Pandey for plaintiffs stated that he has seen these documents only today because his instructions are plaintiffs did not have a copy of this undertaking. Mr.Pandey agrees that though there is a reference to complaint made by plaintiffs to IMPPA, it should have been pointed out in the plaint that parties have agreed to refer and infact referred their dispute to arbitration.

In my view, it is a serious lapse on the part of plaintiffs.

6. Mr.Upadhyay states that there was a hearing fixed on 17.6.2019 on which date plaintiffs first made an ex-parte application and plaintiffs have sent an e-mail on 15.6.2019 at 2.32 p.m. to IMPPA with a copy to defendant no.3 informing IMPPA that plaintiffs will not be able to attend the hearing because he has filed the civil Suit in the High Court and the hearing is scheduled on 17.6.2019 which has also been mentioned in the e-mail sent on 17.6.2019. Therefore, I find it rather difficult to accept what Mr.Pandey has been instructed to state by plaintiffs that he did not know that he has given such an undertaking or dispute has been referred to arbitration by IMPPA.

7. At this stage, Mr.Pandey on instructions from plaintiffs states that plaintiffs will file an application under Section 17 and other provisions in law as advised before IMPPA and seeks leave to withdraw the suit.

Suit dismissed as withdrawn with liberty as prayed for. All rights and contentions of parties are kept open to be raised before the Arbitral Tribunal.

Refund of court fees if any, in accordance with Rules.

8. Notice of Motion accordingly stands disposed. Ad-interim order passed on 17.6.2019 also stands vacated.

(K.R.SHRIRAM,J)