

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

**NOTICE OF MOTION NO. 1502 OF 2018
IN
COMMERCIAL SUIT NO. 912 OF 2018**

M/s.Padma Ispat Pvt.Ltd. ...Applicant/Plaintiff
Vs.
KriArj Entertainemnt Pvt.Ltd. & Ors. ...Defendants

Mr.Zal Andhyarujina with Ms.Akanksha Agarwal and Ms.Pooja Karadia I/b. Nahush Shah Legal for Applicant/Plaintiff.

Ms.Mahek Bookwala with Ms.Dhvani Krishnan I/b. Mr.Satish Kumar for Defendant Nos.1 and 2.

Mr.Sharan Jagtiani with Mr.Nirman Sharma I/b. Mr.Prasanna Bhangale for Defendant No.4.

Mr.Rohaam Cama with Ms.Madhu Gadodia and Mr.Krunal Mehta I/b. Naik Naik and Co. for Defendant No.5.

Dr.Birendra Saraf with Mr.Rohan Savant, Ms.Monisha Mane Bhangale, Ms.Shradha Achliya I/b. Juris Corp for Defendant Nos.6 and 7.

CORAM : S.C. GUPTE, J.

DATE : 14 AUGUST 2019

ORDER :

This notice of motion seeks appointment of Court Receiver in respect of digital rights of four films, 'Fanne Khan', 'Kedarnath', 'Batti Gul Meter Chalu' and 'Rani (Sapana Didi)' as also all rights of Defendant No.1 in each of these four films. Defendant No.1 is said to have its share in 50% worldwide theatrical, satellite and music rights in three out of these four films, namely, 'Fanne Khan', 'Batti Gul Meter Chalu' and 'Rani (Sapana Didi)' and 50% worldwide theatrical and music rights in respect of the film 'Kedarnath'. Receiver is also sought in respect of the Defendant's share of revenue accruing from exploitation of rights of each of these four films.

Alternatively, the motion prays for an injunction order concerning alienation of these rights/share of Defendant No.1.

2 The Plaintiff has filed the present suit for recovery of a sum of Rs.16.35 crores with interest. This amount is said to be admitted by Defendant Nos.1 to 3 to be due and payable to the Plaintiff under various agreements executed between the parties. The Plaintiff also seeks a mandatory injunction against Defendant No.1 to secure various rights undertaken to be granted in favour of the Plaintiff under these agreements. The Plaintiff's allegations in the suit are broadly as follows :

(a) The Plaintiff executed two agreements, both dated 8 December 2017, with Defendant No.1 to finance the acquisition of worldwide theatrical and music rights in two of these four films, namely, 'Fanne Khan' and 'Kedarnath'. The agreements record a lien/charge on the digital and all other rights to the films to the extent the share of Defendant No.1 in them, in favour of the Plaintiff. The agreements also grant and assign unto the Plaintiff a continuing first priority security interest over the share of revenue of Defendant No.1 accruing from exploitation of rights in the respective films. Two lien letters towards music rights of the respective films were simultaneously executed by Defendant No.1 recording 50% lien/charge on the rights in favour of the Plaintiff. On 8 December 2017, the Plaintiff, at the request of Defendant Nos.1 and 3, paid a sum of Rs.5 crores to Defendant No.1 towards the agreement in respect of the film 'Kedarnath'.

(b) The Plaintiff also advanced a sum of Rs.2.5 crores to

Defendant No.1 as a short term loan to enable the latter to complete an outstanding transaction with one Maruti International. Prior to disbursement of this loan, Defendant No.1 executed and delivered to the Plaintiff a letter dated 28 December 2017 acknowledging its liability to repay the principal amount of Rs.2.5 crores along with interest in the sum of Rs.20 lakhs by 12 January 2018. As a security towards repayment of this amount, Defendant No.1 issued a postdated cheque dated 12 January 2018 in the sum of Rs.2.70 crores. Sometime on or about 4 January 2018, Defendant No.1 paid through RTGS a sum of Rs.3 crores to the Plaintiff. The Plaintiff appropriated a sum of Rs.2.70 crores from out of this payment towards the repayment of the aforesaid short term loan with interest and remaining Rs.30 lakhs towards accrued and subsequent interest on the amount of Rs.5 crores advanced towards acquisition of rights in the film 'Kedarnath'.

(c) Two more agreements, both dated 4 January 2018, were entered into by the Plaintiff with Defendant No.1 to fund the latter's investment in the acquisition of the worldwide theatrical and music rights in the other two films, namely, 'Batti Gul Meter Chalu' and 'Rani (Sapana Didi)'. These agreements also recorded a lien/charge along with a continuing first priority security interest in favour of the Plaintiff followed by two lien letters on the same lines as in the case of finance towards the film 'Kedarnath' and 'Fanne Khan'. In accordance with these agreements, the Plaintiff further advanced a sum of Rs.11.35 crores to Defendant No.1 in several tranches as per its requests. These payments were advanced towards acquisition of rights in the film 'Fanne Khan' as

well as the film 'Batti Gul Meter Chalu' and a sum of Rs.1.35 crores towards acquisition of the rights of 'Rani (Sapana Didi)'.

(d) Defendant No.1 handed over several postdated cheques to the Plaintiff in pursuance of all these agreements. The cheques aggregated to a sum of about Rs.23.12 crores.

(e) Sometime later, i.e. around the third week of February 2018, the Plaintiff learnt about disputes between Defendant No.1, on the one hand, and the director and co-producer of the film 'Kedarnath', on the other. On making further inquiries, the Plaintiff learnt that industry players were reluctant to work with Defendant No.1 on account of several disputes.

(f) The Plaintiff, in the premises, towards the end of February 2018, sought refund of its entire investment in all four films citing its loss of faith and trust in the ability of Defendant Nos.1 to 3 to ensure production and release of the films.

(g) Defendant Nos.1 to 3 informed the Plaintiff that their three cheques, namely, one dated 12 January 2018 for Rs.2.70 crores, the second dated 8 January 2018 for Rs.12.50 lakhs and the third dated 7 March 2018 for Rs.25 lakhs, which were lying with the Plaintiff could be deposited in the bank towards recovery of the Plaintiff's dues. Accordingly, the Plaintiff claims to have deposited the two cheques of Rs.12.50 lakhs and Rs.25 lakhs. Both were, however, dishonoured on presentation and returned with the remark "Drawer stop payment". In view of these

developments, the Plaintiff refrained itself from depositing the third cheque dated 12 February 2018 in the sum of Rs.2.70 crores.

(h) Defendant No.1 thereafter approached the Plaintiff with a request to refrain from any legal action, assuring the Plaintiff repayment of its money soon. Defendant Nos.1 to 3, towards such repayment, executed an undated undertaking on 4 April 2018. The undertaking was issued by Defendant Nos.2 and 3 in their personal capacity as also on behalf of Defendant No.3 in her capacity of Chief Executive Director of Defendant No.1. Defendant No.1 also issued three postdated cheques for a total sum of Rs.5 crores. Each of these cheques was dishonoured upon presentation for payment.

(i) It is the case of the Plaintiff that as a result of failure of Defendant Nos.1 to 3 to make payment in accordance with the terms of the undertaking-cum-indemnity, the entire outstanding amount has now become due and payable by Defendant Nos.1 to 3 to the Plaintiff.

(j) It is the grievance of the Plaintiff that sometime in April 2018, the Plaintiff learnt that Defendant No.1 was in the process of selling all its rights in the film 'Kedarnath'; that Defendant No.1, through Defendant No.3, was negotiating with Defendant No.4 in that behalf.

3 In the premises, the Plaintiff has approached this court seeking a money decree and various protective reliefs in the interregnum as

claimed in the notice of motion, as stated above.

4 The Defendants contest the suit and the notice of motion. Affidavits in reply have been filed on behalf of Defendant Nos.1 and 2, Defendant No.4, Defendant No.5, and Defendant Nos.6 and 7.

5 The case of Defendant Nos.1 and 2, broadly, is that the transaction between the Plaintiff and Defendant No.1 is purely a finance transaction and that no rights in specie of whatsoever nature have been created in favour of the Plaintiff so far as the films and the rights in them are concerned. It is submitted that the claim at best is a money claim and no injunctive reliefs should be granted in respect of such money claim. So far as the merits of the Plaintiff's money claim are concerned, objections have been mainly raised to the amount of interest claimed. The agreements of 8 December 2017 and 4 January 2018 for the four movies are said to have been signed under duress on the same day and not on different days as alleged by the Plaintiff. Veracity of the alleged lien letters is also a matter of dispute raised by Defendant Nos.1 and 2. These letters are said to be fabricated. It is submitted that the Defendants were compelled to sign on blank sheets of paper. So far as the film 'Kedarnath' is concerned, it is submitted that the film commenced production in about 2015 in pursuance of an understanding between one Balaji Motion Pictures Ltd. and Defendant No.6. It is submitted that since Balaji Motion Pictures were unable to produce the film, Defendant Nos.1 and 6 started negotiating for the production of the film in May 2017 and finally entered into a letter of confirmation dated 5 August 2017. It is submitted that the responsibility of the entire production and delivery of the film was with Defendant No.6. It is submitted that due to several factors, which were not taken into account

by Defendant No.6, the costs of production kept increasing and as a consequence, the film got repeatedly delayed due to financial constraints of Defendant No.1. It is submitted that, in the premises, Defendant No.1 was left with no other alternative but to permit Defendant No.6 to take over all rights of Defendant No.1 in this film vide a Settlement Deed dated 5 April 2018. It is submitted that the film is still under production; Defendant No.1 has no right in the film.

6 So far as Defendant No.4 is concerned, it is claimed that it, along with Defendant No.6, is the rightful owner of all rights (including all intellectual property rights), title and interest in the film 'Kedarnath' and the Plaintiff has no right, title and/or interest in any manner whatsoever in the film. It is submitted that prior to entering into the alleged agreement of 8 December 2017 for this film, the Plaintiff failed to carry out any due diligence to verify the title of Defendant Nos.1 to 3 or their right or interest in the film. In any event, it is submitted that this agreement was entered into by Defendant Nos.1 to 3 with the Plaintiff at their own risk and peril and the same is not binding on Defendant No.4. It is submitted that the so-called rights claimed by the Plaintiff through Defendant No.1 are contrary to the agreements in the MOU / letter of confirmation dated 5 August 2017 entered into between Defendant No.1 and Defendant No.6 and that neither Defendant No.6 nor Defendant No.4 was bound by the terms of the alleged agreement dated 8 December 2017 between the Plaintiff and Defendant No.1. It is submitted that the undertaking-cum-indemnity of 4 April 2018 executed by Defendant Nos.2 and 3 indemnifies the Plaintiff towards repayment of the purported investment made by it under the alleged agreements with Defendant No.1 and that no reliefs could be claimed thereunder as against Defendant No.4.

7 So far as Defendant No.5 is concerned, it has dealt with, particularly, the films 'Batti Gul Meter Chalu' and 'Kedarnath'. It is submitted that the Plaintiff is guilty of gross delay and laches insofar as the alleged reliefs pertaining to these two films are concerned. It is submitted that the suit was filed on 22 April 2018; Defendant No.5 was made a party to the suit as far back as on 24 May 2018; but no reliefs were pressed and no averments were originally made against Defendant No.5. Insofar as the film 'Batti Gul Meter Chalu' is concerned, it is submitted that on 28 July 2017, deal terms were executed between Defendant No.1 and Defendant No.5, wherein various rights in the film were sought to be shared between the two on account of infusion of funds by Defendant No.5. It is submitted that subsequent thereto, by a Long Form and Co-production Agreement dated 10 August 2017, Defendant No.1 and Defendant No.5 agreed to various terms in respect of the film. These particularly gave a right to Defendant No.5 to terminate the agreement in the event Defendant No.1 failed to commence the film or abandoned the same or was unable to complete the same within the time schedule contemplated under the agreement. Upon such event occurring, Defendant No.5 was entitled to take over the rights to complete the film and commercially exploit all rights in the film. These terms prevented Defendant No.1 from dealing with the rights under the agreement as well as the aforesaid deal terms with any third party without the consent of Defendant No.5. Any such agreement, if entered into, would have to be treated as *void ab initio* and not binding on Defendant No.5. It is submitted that, in the premises, no rights can be claimed by the Plaintiff under the agreements between it and Defendant No.1 in respect of the films. It is submitted that the Plaintiff's so called rights under these agreements flow from Defendant No.1, who had, prior

thereto, entered into an agreement with Defendant No.5, as noted above, under which the latter had taken over the film and was entitled to exploit the rights in it in the manner it deemed fit. Defendant No.5 has set out various expenses incurred by it for the film. So far as the film 'Fanne Khan' is concerned, it is submitted that an MOU dated 25 May 2017 followed by a co-production agreement dated 28 July 2017 between Defendant Nos.1 and 5 had preceded the alleged agreements between Defendant No.1 and the Plaintiff. Defendant No.1, being unable to comply with its commitments under this MOU and co-production agreement, in accordance with their provisions, had executed a letter on 19 April 2018 vesting Defendant No.5 with its rights in the film including the right of exploitation. It is submitted that the Plaintiff's case is *ex-facie* false for various reasons recounted in the affidavit of Defendant No.5.

8 Insofar as Defendant Nos.6 and 7 are concerned, their reply pertains to the film 'Kedarnath'. It is submitted that the alleged agreement dated 8 December 2017 executed between the Plaintiff and Defendant Nos.1 to 3 was in breach of the terms and conditions of the MOU dated 5 August 2017 entered into between Defendant Nos.1 and 6 and therefore, the alleged agreement was *void ab initio* and unenforceable against Defendant no.6.

9 On these facts, the question to be considered in the present notice of motion is whether the Plaintiff has a *prima facie* case for recovery of money against Defendant Nos.1 to 3 and whether, as an alleged holder of lien over 50% of production rights, the Plaintiff is entitled to any receiver or injunctive reliefs in respect of the individual films. The pleadings of the parties and the stands adopted by respective Counsel in

court do indicate that there may well be a good case for recovery of money by the Plaintiff against Defendant Nos.1 to 3. The Defendants do not dispute the case of financing urged by the Plaintiff. So far as the merits of the money claim are concerned, the objection is mainly in respect of interest purportedly payable towards the finance. There is no claim of refund of any money by Defendant Nos.1 to 3 to the Plaintiff beyond what is urged by the Plaintiff in its plaint, and which is noted above.

10 When one comes to the rights in specie claimed by the Plaintiff against Defendant Nos.1 to 3 particularly in respect of the films, which are the subject matter of dispute in the present suit, the Plaintiff's case encounters various difficulties. In the first place, the agreements including the term sheet of Balaji Motion Pictures Ltd. and Defendant No.6 and 7, the deal terms between Defendant Nos.1 and 5, the confirmation letter between Defendant Nos.1 and 6, etc. all precede the agreements between the Plaintiff and Defendant Nos.1 to 3. All these prior agreements have restrictive covenants so far as creation of third party rights by Defendant No.1 is concerned. Though learned Counsel for the Plaintiff impugns each of these prior transactions on the ground that these were created after the agreements between the Plaintiff and Defendant No.1 and pre-dated with a view to defeat those agreements, there is no overwhelming *prima facie* case for appointment of a Court Receiver or even good *prima facie* case for grant of injunctive reliefs that these are either fabricated or backdated. Monies have been actually advanced under these documents. Merely because some of these documents have been referred to in the later correspondence between the parties or no inspection was granted to the Plaintiff's advocates or for want of reference to these documents in the agreements executed subsequently, they cannot be termed as fabricated or backdated

with any assurance even from a *prima facie* stand point. In other words, it is doubtful if by reason of the documents between Defendant No.1, on the one hand, and Defendant Nos.4, 5 and 6, on the other, and the failure of Defendant No.1 to comply with its commitments thereunder, Defendant No.1 had any authority to deal with the Plaintiff or create any rights in its favour unilaterally and without reference to Defendant Nos.4, 5, 6 and 7.

11 It is also arguable that the transaction between the Plaintiff and Defendant No.1 was a simple loan transaction and the Plaintiff's right thereunder is for recovery of a money claim simplicitor; it is doubtful, if any rights have been lawfully created in favour of the Plaintiff in respect of the films *per se*.

12 Mr.Andhyarujina, learned Counsel appearing for the Plaintiff, submits that Defendant No.1 has been guilty of cheating; it has breached the undertaking to the court and even obstructed attempts of settlement by going in appeal after offering to settle the dues before the learned Single Judge. There is some substance in the submission of the Plaintiff in this behalf. But that does not by itself translate into the reliefs to be granted to the Plaintiff on the present notice of motion. As I have noted above, Defendant No.1 has created rights in favour of the other Defendants and *prima facie* these appear to be prior to the rights created in favour of the Plaintiff. It is obvious that Defendant No.1 has suppressed all these agreements and writings. There is a *prima facie* case of the Plaintiff being cheated into agreeing to these documents and writings. But then, Defendant No.1 has also defaulted in its commitment made under previously executed agreements and writings as between itself and the other Defendants and as a result, rights in specie concerning the subject

films have accrued to these other Defendants. It is *prima facie* not possible to say that the agreements between the Plaintiff and Defendant No.1 can bind these other Defendants. The rights of exploitation in respect of the individual films now *prima facie* belong to these other Defendants and the Plaintiff cannot be granted any injunctive relief so far as that exploitation is concerned.

13 There is, accordingly, no merit in the notice of motion. The notice of motion is dismissed.

(S.C. GUPTE, J.)