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

COMMERCIAL APPEAL (Lodg.) NO. 322 OF 2019
in
COMM. ARB. PETITION (Lodg.) NO. 659 OF 2019

Jatin Keshruwala … Appellant

V/s.

M/s. DAG Creative Media Pvt. Ltd. & Ors. ... Respondents.

Ms. Kritika Seth a/w. Mr. Aditya Chopra, Ms. Sayali Phansikar, Ms. Dhwani Shah I/b. PSL Advocates & Solicitors for the Appellants.
Dr. Birendra Saraf, Ms. Megha Chandra, Ms. Madhu Godadia, Mr. Nitesh Agarwal, Mr. Rushabh Mehta I/b. Naik Naik & Co. for the Respondent No.2.

CORAM : PRADEEP NANDRAJOG,C.J. &
N.M. JAMDAR, J.

DATE : 3 JULY 2019.

P.C. **:-**

Heard learned Counsel for the Appellant and Respondent No.2.

2. Briefly stated relevant facts would be that on 4 May 2017 the 2nd Respondent entered into a production agreement with the 1st

Respondent. As per the production agreement, the 1st Respondent was charged with various obligations and in a nut shell principally was to play the role of a producer.

3. The agreement envisaged a Serial to be produced under the title "Maha Prabhu Shree Chaitanya". Consideration payable by the 2nd Respondent to the 1st Respondent was ₹ 1,90,000/- per episode plus ₹ 5,00,000/- towards promo.

4. The Appellant entered into an independent agreement with the 1st Respondent and under the agreement paid ₹ 1.3 Crores. Under the said agreement the 1st Respondent was to return said sum of ₹ 1.3 Crores plus ₹ 18,000/- per episode.

5. The agreement between the Appellant and the 1st Respondent envisage money received by the 1st Respondent from the 2nd Respondent to be deposited in an Escrow Account, to be jointly operated by the Appellant and the 1st Respondent.

6. Dispute arose between the Appellant and the 1st Respondent. Their being an arbitration clause in the agreement between the Appellant and the 1st Respondent, an Arbitrator was appointed and in an application filed under Section 17 of the Arbitration and Conciliation Act, 1996, an order was passed

directing the 1st Respondent to deposit ₹ 1.3 Crores in the Escrow Account opened by the Appellant and the 1st Respondent or furnishing a bank guarantee in said sum or offer a security of either movable or immovable property in said sum.

7. It is not in dispute that the 1st Respondent did not complied with the interim measures directed by the learned Arbitrator as per the order dated 4 February 2019.

8. The Appellant filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 against the 1st Respondent seeking an interim measure which is in the nature of a garnishee order.

9. The Appellant prayed that the 2nd Respondent be directed to deposit in the Escrow Account opened by the Appellant and the 1st Respondent the payments payable by the 2nd Respondent to the 1st Respondent.

10. The stand of the 2nd Respondent before the learned Single Judge was that no amount is payable by it to the 1st Respondent and as per the agreement between the parties, the 2nd Respondent is entitled to damages against the 1st Respondent for breach of the agreement between the two.

11. The learned Single Judge has recorded the said stand of Respondent No.2 that no amount shall be paid to Respondent No.1 directly has been accepted by the Court. The learned Single Judge has not terminated the proceedings. While directing the 2nd Respondent to file an affidavit disclosing the amount payable by it to Respondent No.1. Hearing has been deferred to 9 July 2019.

12. As per the Appellant, the 2nd Respondent is making payment to 3rd parties which are to the credit of the 1st Respondent and thus, learned Counsel urges that a security available with the Appellant is being diminished.

13. Learned Counsel for the 2nd Respondent informs that in terms of its obligations in the agreement between the 1st Respondent and the 2nd Respondent to produce the Serial, the 1st Respondent had engaged services of technicians, artists and vendors. Payments to them were not made by Respondent No.1 since the services of these technicians, artists and vendors is utilized by the 2nd Respondent for the production of the Serial in question as also for other works, payment is being made to the three categories of service providers because they have put a condition that unless they are paid their past dues, they would not render any service for future Serials.

14. Now, it needs to be highlighted that there is no privity between the Appellant and the 2nd Respondent. The proceedings initiated by the Appellant before the learned Single Judge is to seek a garnishee order. A garnishee order would not be passed if injury is caused to the person holding money on behalf of another party. On this principle alone the 2nd Respondent would be entitled to clear the dues of the technicians, artists and vendors for their input concerning the Serial which was the subject matter of the agreement between the 1st Respondent and the 2nd Respondent.

15. We speak no further for the reason the learned Single Judge is still seized of the issue and anything more stated by us may prejudice either parties.

16. We find no infirmity in the *pro-tem* ad-interim order dated 25 June 2019.

17. The Appeal is dismissed.

N.M. JAMDAR, J. **CHIEF JUSTICE**