

Application No.477 of 2019
in O.A.No.1221 of 2018
in C.S.No.888 of 2018

Reserved on	Pronounced on
29.03.2019	17.06.2019

S.VAIDYANATHAN,J.

The Applicant, who is the 2nd Defendant in the suit has come forward with the present Application, seeking to vacate the order of interim injunction dated 21.12.2018 passed in O.A.No.1221 of 2018 in C.S.No.888 of 2018.

2. When the Original Application for interim injunction was listed for hearing on 21.12.2018, upon hearing the learned counsel on either side, this Court had granted an order of interim injunction against the Defendants for two weeks, which was periodically extended. Aggrieved by the order of interim injunction, the Applicant/2nd Defendant is before this Court for vacating the interim order dated 21.12.2018.

3. The foremost contention raised by Mr.S.R.Raghuathan, learned counsel appearing for the Applicant/2nd Defendant is that the Producer of the film (hereinafter referred to as “the Producer”), who is also the Proprietor of M/s.Harshini Movies had intended to produce the film called “Baskar Oru Rascal” (in short 'the Film') and sought to assign the dubbing rights in Hindi and all North Indian languages, excluding Tamil, Telugu, Kannada and Malayam

languages to the Applicant herein. The producer also entered into a Deed of Assignment dated 17.05.2017 with her duly reducing into writing the terms and conditions of it for a total consideration of Rs.1,75,00,000/- and in compliance of the said agreement, a sum of Rs.1,00,00,000/- was immediately transferred to the Producer of the Film by way of RTGS on 17.05.2017 itself. He has further contended that subsequent to the agreement, on request made by the Producer for payment of an advance payment of Rs.25,00,000/-, an Addendum dated 18.07.2017 was executed between the Producer and the Applicant herein by reducing the value of the agreement by Rs.2,00,000/-, viz., Rs.1,73,00,000/- and as per Clause Nos.7, 10, 11 and 12 of the Agreement, the balance amount of Rs.48,00,000/- was to be paid on the Producer handing over the document and material to the Applicant.

4. It was also contended by the Applicant that subsequent to the First Addendum, since the Producer had borrowed Rs.48,00,000/- from one SPM Arts LLP, the Applicant was asked to settle the said sum to the SPM Arts LLP, for which a second Addendum dated 10.05.2018 was executed by the Producer. It was stated that vide subsequent Assignment Deed dated 17.05.2017, the Applicant had assigned the dubbing rights acquired from the Producer in respect of the Film to M/s.Goldmines Telefilms Private Limited (GTPL), in which the Applicant and her husband are the promoters and Directors, for a

consideration of Rs.1,79,75,000/- and the said GTPL in turn assigned the rights to M/s.Star India Pvt. Ltd / 5th Respondent herein by way of a Film Assignment Agreement dated 07.05.2018. When the 5th Respondent had issued a public notice in Magazine "Complete Cinema" dated 19.05.2018, calling for an objection, one Mr.Siddique K.I., Director forwarded an objection, stating that he had acquired the dubbing rights of the film and the said objection was forwarded to GTPL and subsequently, it came to the knowledge of the Applicant.

5. It was further stated that when the Applicant contacted the Producer to get clarification with regard to the objection, there was no response received from the Producer. Subsequently, the said Siddique also obtained an order of interim injunction from the District Court, Ernakulam in I.A.No.2978 of 2018 in O.S.No.17 of 2018 from exploiting the dubbing rights. The Applicant, on coming to know of the genuineness of his claim, approached the said Siddique to perfect his rights and acquired the rights again by paying a consideration of Rs.40,00,000/- plus GST, pursuant to Deed of Assignment dated 17.11.2018 and thereafter, the said Siddique had withdrawn his objection, thereby confirmed that M/s.Star India Private Limited was free to exploit the said rights.

6. It was also stated by the Applicant that on 01.12.2018, there was a Public Notice in Magazine "Complete Cinema", where the 1st Respondent claimed to have acquired the dubbing rights of the Film for Hindi and all North Indian Languages and the alleged rights were claimed based on an agreement dated 29.11.2018, purported to have been entered into between the Applicant and M/s.Sri Dhanalakshmi Pictures and the said Agreement was denied and disputed. It was averred by the Applicant that the signature as found in the Agreement was fabricated one and no consideration has been received by the Applicant in respect of the alleged agreement dated 29.05.2017. It was also averred that during the relevant point of time of the alleged execution, the Applicant was not in the country and contending that several material facts have been suppressed in order to obtain the order of interim injunction; that that prima facie case and the balance of convenience are in favour of the Applicant and that if the injunction is not vacated, the Applicant will suffer huge loss, it was prayed that the interim injunction granted by this Court on 21.12.2018 passed in O.A.No.1221 of 2018 in C.S.No.888 of 2018 has no legs to stand and the same is liable to be vacated.

7. On the contrary, the learned counsel for the Plaintiff has submitted that the original right holder of the film is one Mr.K.I.Siddique, who entered into an agreement with the Tamil version producer Mr.Murugan, Proprietor of

M/s.Harshini Movies on 05.07.2017 and there was an agreement between the Applicant and the 1st respondent dated 29.05.2017 for a total consideration of Rs.45 laksh for a period of 10 years and the said agreement was signed by the husband of the Applicant on her behalf. It was further submitted that when the Plaintiff called for objections, the Applicant, without raising any objection thereon, colluded with the 1st Defendant and illegally started telecasting the film in Hind version on the Christmas Day of 2018 on the basis of the interim injunction granted by this Court.

8. It was reiterated by the Plaintiff that the agreements dated 29.05.2017 and 17.11.2018 were duly signed by the husband of the Applicant , as she had given the signing authority to her husband and though the Applicant has stated in Paragraph No.11 of the affidavit that the document produced by the Plaintiff was forged and fabricated, in Paragraph No.3, the Applicant has taken a contrary stand stating that the rights were acquired from M/s.Harshini Movies. Thus, it was pleaded that the interim injunction granted by this Court need not be vacated, as the Plaintiff had duly established the prima facie case and balance of convenience in his favour.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. A careful analysis of the entire facts unravels that the film titled “Baskar Oru Rascal” was proposed to be shot in Malayalam language and according to the Applicant, the dubbing rights in respect of Hindi and all North Indian Languages of the film, excepting Southern Regional Languages were acquired by her and by an Assignment Deed dated 29.05.2017, the said rights were subsequently transferred to the 1st Defendant, who, in turn has agreed to give the rights to the Plaintiff by way of another Deed dated 29.11.2018. According to the Applicant, when she was out of India at the time of purported execution of the subsequent deed, the execution of such deed was not believable and no proof has been produced regarding payment of consideration. It was added that when there was an agreement between two parties, namely, Defendants, it is not known as to why the signature of the Plaintiff with full particulars is incorporated therein and it is also quite astonishing as to what necessitated to incorporate the following Clause No.13 in the Agreement dated 29.05.2018 alleged to have been executed between the Defendants 1 and 2:

“13. the Original Agreement will be kept with the ASSIGNOR and it will be handed over to the ASSIGNEE after fulfilling the balance payment.”

11. The Applicant has further drawn the attention of this Court to the Passport and ticket particulars to show that she left India on 19.05.2017 and returned only on 04.06.2017. Apart from that, in the additional affidavit, the Applicant has categorically stated that she had neither signed any agreement

nor authorized her husband to sign it.

12. To reciprocate the above contention, the Plaintiff has contended that even though the Applicant was aware of the public notice dated 01.12.2018 caused by the 1st Respondent/1st Defendant, the Applicant, at no point of time, had taken steps to make objections to the notice. It was further contended that since the Plaintiff had already paid huge sum, his rights cannot be deprived and the points canvassed by the Applicant on technical grounds should not be allowed to defeat the claim of the Plaintiff, as this Court, finding prima facie case in favour of the Plaintiff, had granted interim injunction.

13. It is not in dispute that there are two agreements dated 29.05.2017 and 29.11.2018 and the authenticity of those two agreements has to be testified only in the Civil Suit. The Applicant, namely, Ulka Shah has filed an affidavit to establish that at the time of purported execution of the agreements, she and her husband were out of India and though it was contended on the side of the Plaintiff that the Passport of the Applicant was cancelled, the reason for such cancellation cannot be appraised in the present vacate stay application, as, according to the Applicant, her Passport stood cancelled for the purpose of issuance of a fresh passport in her name. In any

event, the endorsement made in the Passport shows that her Passport was cancelled in October, 2017 itself and there is also an evidence to reveal that a foreign trip was undertaken by her along with her husband in May, 2017 and they were out of India till June, 2018. I also find force in the contention raised by the Applicant that there is no necessity at all for the Plaintiff to sign the agreement.

14. In view of numerous intricacies involved in the facts and circumstances of the case, which need to be unfolded only in the Civil Suit, this Court is of the considered opinion that the interim injunction that is operating against the Applicant will cause much prejudice to her interest and therefore, being convinced with the submissions made on the side of the Applicant and finding prima facie case and balance of convenience in favour of the Applicant, ***the Vacate Stay Application is allowed and the order of interim injunction dated 21.12.2018 passed in O.A.No.1221 of 2018 in C.S.No.888 of 2018 is hereby vacated, thereby dismissing the Original Application No.1221 of 2018.***

15. Both the parties are directed to produce necessary documents, if required with the prior of permission of this Court, subject to its admission and denial by the parties, to substantiate their respective cases. The original

agreements need to be produced at the time of evidence by the Plaintiff and the correctness of the Passport particulars furnished by the Applicant has to be corroborated before the learned Master by filing the original of it and it is open to the Master to mark the self-attested colour copy of the said document, duly counter signed by a Notary Public / Commissioner of Oath in all pages, as an exhibit for the purpose of deciding the main issue and hand over the Original Passport to the Applicant, as the same may be required for further travel. However, it is made clear that as and when the Passport is demanded for verification, it has to be produced without fail.

List the main suit for hearing in the usual course.

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Index: Yes / No
Internet: Yes / No
Speaking Order: Yes / No
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