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

% *Judgement Reserved on: 30.01.2019*

Judgment Pronounced on: 25 .03.2019

+ **FAO 40/2017 & CM NO. 2669/2017**

ACHLA SABHARWAL Appellant
Through: Mr.N.K. Bhardwaj & Mr.Bikash
Ghorai, Advocates.

Versus

A. SAPTRISHI FILMS & ORS. Respondent
Through: Mr. Tahir Ashraf Siddique, Adv. for
R-1. Mr. Vikram Mehta and
Mr. Saurobroto dutta, Adv. for R-2
& 3

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J:

1. The present appeal has been filed under Section 104 read with Order 43 Rule 1 and Section 151 of the Code of Civil Procedure, 1908 ('CPC') challenging the impugned order dated 22.12.2016 passed in Suit No.888/2016 by the court of Ld. Additional District Judge-3, Central District, Tis Hazari Court, Delhi ('ADJ') by which the plaint was ordered to be returned to the appellant/plaintiff to be presented before the court of competent jurisdiction.

2. The facts leading up to the filing of the Plaint are that the respondent no.1 being the producer of the film 'BETI No.1' assigned its' copyright to the appellant under the "Articles of Agreement of Transfer" dated 16.01.2004. The said agreement provides that no person other than the appellant shall be entitled to do any act in respect of the said film. The appellant claims to have become the exclusive owner of the copyright of the said film in terms of Section 18 of the Copyright Act, 1957.

3. A public notice was issued in 'Complete Cinema' on 05.11.2016 by the respondent no.2/defendant no.2 informing the general public that it had acquired the exclusive rights regarding the said film from the respondent no.1. The appellant sent a letter dated 08.11.2016 informing the respondent no.2 that he is the sole owner of all rights in respect of the said film in terms of the "Articles of Agreement of Transfer" dated 16.01.2004 and that the Respondent no.2 should not acquire or deal with any right qua the said film. In its' reply, the respondent no.3 stated that the said notice dated 05.11.2016 was issued by the respondent no.2 on behalf of the respondent no.3 and vide Deed of Assignment dated 02.11.2016, the respondent no.1 had assigned its rights in the said film.

4. The learned counsel for the appellant had contended that the impugned order was not based on the correct appreciation of facts and law. He argued that the agreement dated 16.01.2004 has already been implemented and there is nothing left to be done under the agreement

and the appellant has become the exclusive owner of the copyright of the said film and clause 12 of the agreement restricting the jurisdiction to the Mumbai Courts is no more relevant.

5. He contended that the right to file a suit for infringement of the copyrights is conferred under section 62 of the Copyrights Act, 1957 which entitles the plaintiff to file a suit where he resides or works for gain and not by Section 20 of the 'CPC'.

6. He relied upon a decision of the Hon'ble Supreme Court in **Indian Performing Rights Society Ltd. vs. Sanjay Dalia and others (2015) 10 SCC 161** and this court in **International Film Distributors vs. Shri Rishi Raj ILR (2009) 2 Del 652**.

7. *Per contra*, the learned counsel for the respondents submitted that there is no infirmity in the impugned order and the same is based on the correct appreciation of facts and law.

8. I have heard the learned counsel for the parties.

9. The thrust of the arguments made by the respondents was based on Clause 12 of the Article of Agreement of Transfer dated 16.01.2004 between the Appellant and the Respondent no.1, which prescribes "*in the event of disputes arising between parties hereto in connection with any of the clauses or covenants herein the Courts in Mumbai alone shall have the jurisdiction to entertain and try such disputes.*"

10. Here, it would be prudent to refer to Section 62 of the Copyright Act, 1957:

“62. Jurisdiction of court over matters arising under this Chapter –

(1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub section (1), a "district court having jurisdiction" shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction , at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain.”

11. The scope and ambit of Section 62 of the Copyright Act, 1957 has been laid down by the Hon’ble Supreme Court in ***Exphar Sa v. Eupharma Laboratories Ltd.***, (2004) 3 SCC 688, (para 13) “.....it prescribes an additional ground for attracting the jurisdiction of a court over and above the “normal” grounds as laid down in Section 20 of the Code.”

12. No doubt section 28 of the Indian Contract Act, 1872 provides that “every agreement by which any party thereto is restricted

*absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights” is void to that extent. This implies that the parties cannot generally oust the ordinary courts from their jurisdiction. After considering the issue, the Hon’ble Supreme Court in **A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163** held that where more than one Court has jurisdiction to adjudicate the subject matter, the parties can legally confer jurisdiction on any one Court having jurisdiction to the exclusion of the other Courts. Para 16 reads as under:-*

“16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy.”

13. Similarly, the Hon’ble Supreme Court in **Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32** held that “Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that

an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

14. This Court in **Nariman Films vs. Dilip R. Mehta & Anr. (2005) 124 DLT 506** considering section 62 of the Copyright Act and the clause in the agreement restricting jurisdiction to one place only held that “17... *there can be no doubt about the proposition that where more than one Court has jurisdiction in the subject matter, the parties can confer exclusive jurisdiction on any one Court having jurisdiction and oust the jurisdiction of the other Courts. There is not even a dispute about this proposition. This principle would not be diluted by reason of the provisions of Sub-section (2) of Section 62 of the said Act which only gives the right to the plaintiff to sue on the basis of his residence or carrying business contrary to the provisions of Section 20 of the Code whereby jurisdiction should be based on the residence or the business of the defendant or cause of action.*”

15. This is re-iterated in **Saregama India Limited v. Eros Digital FZ LLC & Anr. 2017 SCC OnLine Del 10996** “9. *Without delving into the controversy if any part of cause of action arose in Delhi due to the alleged infringement of plaintiff's work under the Copyright Act or Trademark Act, it is well-settled that where there are two or more*

competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. This cannot be understood as the parties contracting against the statute. The said agreement would not be contrary to public policy or in contravention of Section 28 or 23 of the Indian Contract Act.

12. In the instant case Clause 29 of the agreement is clear and unambiguous. The parties by this clause have bound themselves that in any matter arising between them under the said agreement, it is the court in Kolkata alone which will have jurisdiction. Once parties bound themselves as such, it is not open for them to choose a different jurisdiction as such as suit would be in violation of the said agreement.”

16. The judgment in **International Film Distributors vs. Shri Rishi Raj ILR (2009) 2 Del 652** in para 12 mentions the contentions of the counsel of the Defendant that *“the plaintiff is claiming the alleged rights in respect of picture under agreement dated 20th December, 2000 which provides that only the courts in Bombay will have jurisdiction to entertain the matter.”* but this contention has not been dealt with by the Court in light of the law laid down by the Hon’ble Supreme Court in **A.B.C Laminart’s case (supra)** and hence this judgment does not come to the aid of the appellant. The judgment of the Hon’ble Supreme Court in **A.B.C Laminart’s case**

(supra) and **Exphar Sa's case (supra)** apply to the present case. **Sanjay Dalia (supra)** instead supports the respondent.

17. Therefore, in view of the cases cited above, there can no doubt that an agreement conferring exclusive jurisdiction will not be in violation of Section 28 of the Indian Contract Act, 1872 or Section 62 of the Copyright Act, 1957. The only condition that is to be seen is whether such an agreement is clear and unambiguous and the intention of the parties to submit to one court having jurisdiction to adjudicate the subject matter while excluding the jurisdiction of another is clearly discernible from the agreement itself. Clause 12 reproduced above in paragraph 9 very clearly implies the intention of the parties to submit to the jurisdiction of courts at Mumbai alone where the Article of Agreement of Transfer was executed to the exclusion of all other courts.

18. In view of the facts and circumstances of the case and the case law discussed, this courts finds no reason to interfere with the impugned order of the trial court dated 22.12 2016. The Appeal along with CM No.2669/2017 is dismissed accordingly with no order as to costs.

(VINOD GOEL)
JUDGE

MARCH 25, 2019