

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

**NOTICE OF MOTION NO.2470 OF 2019
IN
COMMERCIAL IP SUIT NO.1314 OF 2019**

Sunil Darshan	...	Plaintiff/Applicant
Versus		
Saregama India Limited	...	Defendant

.....

Mr. Shyam Kapadia i/b H.K. Law Associates for the Plaintiff.
Dr. Veerendra Tulzapurkar, Senior Advocate a/w Mr. Amey Nargolkar
a/w Ms. Smriti Yadav and Mr. Shwetank Tripathi i/b Khaitan & Co.
for the Defendant.

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CORAM : S.C. GUPTE, J.

DATE : 27 JANUARY 2020

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This Notice of Motion has been taken out by the Plaintiff in a commercial IP suit. It seeks inspection of originals and photocopies of five documents listed in prayer clause -(a) of the notice of motion.

3 The suit is for a perpetual injunction restraining the Defendant from infringing upon the Plaintiff's registered copyright in songs forming part of films which the Plaintiff has produced and in which

he claims copyright. The Plaintiff claims to have an assignment through his predecessor-in-title, one Shree Krishna Pictures, to all rights in these movies. The Plaintiff relies on agreements of assignment executed by his predecessor in respect of these movies. In his narration in the plaint, the Plaintiff has referred to correspondence between the parties, i.e. between the Plaintiff and the Defendant, in which, the Defendant has claimed title as a perpetual world assignee of the copyright in songs forming part of these films. The Plaintiff has required the Defendant to desist from claiming any such right. It is the Plaintiff's grievance that instead of complying with his requisitions, the Defendant has proceeded to file a suit before Delhi High Court, being Commercial IP Suit No.327 of 2019, under Section 60 of the Copyright Act, 1967 *inter alia* seeking a perpetual injunction against the Plaintiff herein from issuing any threat of legal proceedings against the Defendant or to any of its licensees in respect of the song recordings and underlying musical and literary work in the subject movies. It is the Plaintiff's grievance that despite repeated requests to the Defendant to produce complete copies of the alleged agreements, under which, the latter claims rights to the songs, the Defendant has refused to grant inspection or produce photocopies of documents referred to in this behalf by it as the source of its rights to the songs. The Plaintiff, accordingly, seeks inspection and production of photocopies of the relevant agreements.

4 Mr. Kapadia, learned Counsel appearing for the Plaintiff, submits that at this stage, as indeed at any stage after filing of his suit, the

Plaintiff is entitled to seek discovery on oath and inspection not only under Order 13 Rule 1, but even under Order 11 Rule 12 of the Code of Civil procedure 1908 (“Code”), of “documents which are and have been in possession or power, relating to any matter in question therein”. Learned Counsel submits that his client is, accordingly, entitled to inspection of documents, whether or not the Defendant relies on them and whether or not they may be said to merely bring out the Defendant’s title relating to the rights involved in the suit. Learned Counsel relies on the cases of **Gobinda Mohun Roy Vs. Magneram Bangur & Co.**¹ and **M.L. Shethi Vs. R.P. Kapur**² decided, respectively, by Calcutta High Court and the Supreme Court.

5 Order 11 of the Code provides for discovery and inspection of documents in the course of a trial of a suit. Rule 12 of Order 11 envisages an application by any party to a suit for an order directing the other party to the suit to make discovery on oath of documents which are or have been in its possession or power, relating to any matter in question therein. Such discovery is ordered usually from a defendant to a suit after he files his written statement contesting the plaintiff’s case. This is not to say that at any interior stage, the court does not have the power to order discovery of documents, but it is just that ordinarily a party is entitled to discovery of documents by his opponent when the opponent makes his case known to him. If one were to depart from this ordinary rule, surely there must be special reasons to do so. In the present case, after the Defendant files

1 AIR 1940 Calcutta 331

2 (1972) 2 SCC 427

its written statement (and that stage has not been reached as yet), the Defendant may rely on documents. The Plaintiff would be entitled to seek inspection of those documents. The Plaintiff would also be entitled to seek discovery of documents, which the Defendant does not rely upon; these may simply reflect on the title of the Defendant; but the Plaintiff is not thereby prevented from seeking discovery of these documents so long as they are relevant from the standpoint of the matter in question in the suit. The Defendant having not disclosed its case in its written statement as yet, there is no reason here why this court should order discovery of documents by the Defendant, followed by inspection of such documents, before even knowing the rival cases of the parties. This is a case where we must go by the ordinary rule; there is no special reason to depart from it.

6 Besides, as Mr. Tulzapurkar, learned Senior Counsel appearing for the Defendant, points out, and as the Plaintiff himself has admitted in his plaint, the Defendant herein (who is a plaintiff in the Delhi suit) has already given inspection of the very same documents in Delhi suit at the bidding of the Plaintiff herein (who is a defendant to that suit) albeit in a redacted form. What is redacted is the statement of price and other commercial terms, on which the Defendant herein has obtained assignment in respect of the relevant rights to the subject songs. *Prima facie*, at this stage, the Plaintiff is not entitled to know what were the commercial terms, on which the assignment was obtained by the Defendant. At the most, what he would be interested in knowing and what might affect his case in the

suit, is what kind of rights the Defendant could claim in the songs by virtue of the purported assignment and not what price it paid or what commercial terms were offered for obtaining such rights.

7 The judgment of Calcutta High Court in **Gobinda Mohun Roy** (supra) cited by Mr. Kapadia does not in any way alter the position noted above. As noted above, Order 11 of the Code provides for discovery and inspection. The provisions deal with interrogatories for the examination of the opposite party or any one or more of such parties, and also with discovery of documents. It is apparent from Rule 12 of Order 11 that whilst hearing an application for discovery of documents, the court has three options. It may refuse the application if it finds that the discovery is not necessary. As the proviso to the rule indicates, such necessity has to be assessed from the stand-point of fair and economic disposal of the suit. In other words, the discovery must be either for disposing of the suit fairly or for saving of costs. The other option is to allow the discovery, if such discovery is found necessary. The third option is to adjourn the application, if the court deems such discovery as not necessary at the particular stage of the suit. What this implies is that on an application made under Order 11 Rule 12, the court has to consider, whether such discovery is necessary for disposing of the suit fairly or for saving costs and having particular regard to the stage of the suit. The judgment of the **Gobind Mohun Roy** (supra), considered the scope of Order 11 Rule 12, and compared the same with Order 13 Rule 1. Under the latter provision, the parties are obliged, at the very first

hearing of the suit, to produce all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been already filed in court. Order 11 Rule 12, on the other hand, requires the party against whom discovery has been ordered to discover on oath documents, whether or not he intends to rely on them. The court held that this provision was to afford facilities to a party to the suit in proper cases to establish his own case by having access to his opponent's documents relating to the case unless such documents are legally exempted from production. The court also made it clear that though, in a suitable case, the defendant might object to the production of a document on the ground that it related solely to his title, if that document may have some bearing in support of the plaintiff's title, such objection could not be validly raised. If, on the other hand, the defendant considers that he is entitled to protection in respect of production of any particular document, which he may be required to discover in an affidavit filed under Order 11 Rule 13 of the Code, he would be at liberty to raise such objection at the proper stage of the proceedings, if and when he is ordered to produce such document under Order 11 Rule 14 of the Code or to give its inspection under Order 11 Rule 18. The law stated in **Gobinda Mohun Roy** (supra) does not detract from the requirement of considering the necessity of the document from the stand-point of fair and economic trial and with special reference to the stage of the suit as discussed above before ordering its discovery.

8 The case of **M.L. Sethi** (supra), cited by Mr. Kapadia, also does not state the law otherwise. In that case, what the Supreme Court has laid down is that it is not necessary that the document should be admissible in evidence for it to be disclosed under Rule 12 of Order 11; it is sufficient to show that it is relevant for the purpose of throwing light on the matter in controversy. The reason for this is very clear. The stage of raising an objection on the ground of want of admissibility or otherwise comes not when discovery is ordered under Order 11 Rule 12, but when production of the discovered document or its inspection is sought, respectively, under Order 11 Rule 14 or Order 11 Rule 18.

9 Accordingly, there is no merit in the notice of motion. The Notice of Motion is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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by Rajesh V.
Chittewan
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