

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.719 OF 2017
IN
COMMERCIAL IP SUIT NO.795 OF 2017**

Pentagram Films Private LimitedApplicant/Plaintiff
V/s.

Arjun Rampal and Ors.Defendants

Mr. Aditya Pratap for plaintiff.
Mr. Akash Rebello i/b. SSP Legal for defendant nos.1 to 3.

**CORAM : K.R.SHRIRAM, J.
DATED : 31st MARCH 2021**

P.C. :

1 Mr. Pratap states that today he is pressing for prayer clauses –
(a), (b), (e), (h) and (i) of the notice of motion and is not pressing for the
other prayers. Prayer clauses – (a), (b), (e), (h) and (i) read as under :

(a) That pending the final hearing and disposal of the suit the defendant no.1, 2 and 3 singly or jointly, be ordered to deposit to this Hon'ble Court a sum of Rs.1,50,00,000/- (Rs. One Crore and Fifty Lakhs only);

(b) That pending the final hearing and disposal of the suit, all the incomes which have accrued and will accrue at any time in future in relation to the film from all sources including Theatrical, Television and Digital platforms, be ordered to be attached and to be disposed of save with the orders of this Hon'ble Court;

(e) That pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to attach any payments from the licensing of the television rights, that may have been received by defendant nos.1, 2 and 3 and/or 4 or the same be placed under the custody of the Court Receiver;

(h) That pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to attach any payments from the licensing of the digital video on demand rights, that may have been received by defendant nos.1, 2 and 3 and/or 4 or the same be placed under the custody of the Court Receiver;

(i) That pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to order the defendant nos.1, 2 and 3 and 4 singly or jointly be ordered to produce statement all incomes received and/or receivable from the exploitation of the film in any/all manner including the licensing agreements already executed for any/all mediums.

Mr. Pratap also agreed that prayer clauses – (a), (b), (e) and (h) are akin seeking attachment before judgment.

2 Attachment of property before judgment is for the primary objective of preventing defendants attempt to defeat the realisation of decree that will be passed in favour of plaintiff. The power under Order 38 Rule 5 of the Code of Civil Procedure is drastic and extraordinary power and cannot be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the rules and an unsecured debt cannot be converted into a secured debt unless plaintiff *prima facie* shows that the claim is bonafide and valid and also satisfy the Court that defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him.

3 I repeatedly asked Mr. Pratap to show the averments in the plaint where it is alleged by plaintiff that defendants have disposed of or

disposing their assets or attempting to defeat the right of plaintiff or that defendants, by the time the suit is decreed, will be in so much difficulty that even if plaintiff succeeds, it will not recover any amount from defendants. Mr. Pratap was unable to show and Mr. Rebello stated that there are no such averments in the plaint.

Admittedly, no application for ad-interim also has been made.

No further affidavit also is filed to show as to how the situation has changed from the date on which the suit and notice of motion were lodged and today that plaintiff is entitled to the interim reliefs as prayed for.

As regards prayer clause – (i), as that is also linked to the reliefs prayed for today, and since no case has been made out for grant of prayer clauses – (a), (b), (e) and (h), the question of granting prayer clause - (i) also would not arise.

4 In the circumstances, notice of motion is dismissed. It is open to plaintiff to lead evidence and prove its claim against defendants.

5 Mr. Pratap is unable to answer whether writ of summons has been served on defendants. Mr. Rebello for want of instructions is also unable to answer whether writ of summons has been served or not or whether the written statement has been filed. I do not find the written statement in the records and proceedings. Mr. Pratap again is unable to state whether he has been served with copy of any written statement.

6 The Court, without assistance from any of the counsel, went through the order sheets and found an order dated 15th July 2019 which reads as under :

COMMERCIAL CHAMBER SUMMONS NO.182 OF 2018

1. Plaintiff has relied upon certain documents of which inspection is being sought by defendants. I see no prejudice if plaintiff is directed to give inspection of the documents relied upon in the plaint as well as in the notice of motion.

2. I am not for a moment saying that plaintiff is deliberately not giving inspection but the fact is it will be in plaintiff's interest if inspection is given so that the suit can proceed expeditiously.

3. In the circumstances, plaintiff is directed to give inspection within two weeks from today. Inspection shall be given of the original documents and if documents are not available, then plaintiff will state who has those documents. If inspection of photocopy is given, then plaintiff will explain why inspection of original documents cannot be given. Within one week of taking inspection, defendants shall also give their statement of admission and denial with reasons for denial.

4. Mr. Kantawala and Mr. Rebello state that writ of summons has not been served. The counsel for plaintiff is unable to answer because he states that he has not taken instructions and he has to check the records. I would have expected plaintiff to be ready with these answers. Mr. Kantawala and Mr. Rebello waive service of the writ of summons.

5. Written statement to be filed and copy served within 30 days of taking inspection of the documents from plaintiff.

6. Chamber summons accordingly stands disposed.

7. Suit to be listed for directions on 30th August 2019.

7 I have to express my displeasure for the lack of assistance from the advocates appearing for plaintiff and defendant nos.1, 2 and 3. It will not be out of place to expect counsel to read what are the orders passed earlier and be ready in all respects.

8 In the circumstances, since no written statement has been filed and this being a commercial suit, defendant nos.1, 2 and 3 have forfeited their right to file any written statement.

 As regards defendant no.4, it does not appear that the writ of summons has been served. Therefore, the suit stands dismissed for want of prosecution against defendant no.4.

Suit be listed for directions on 9th June 2021.

(K.R. SHRIRAM, J.)