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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO. 25 OF 2008**

1. Ashwin Savani s/o Late Maganlal	)	
Savani, the sole executor of the Estate of	)	
Late Shri Maganlal Savani, of Mumbai	)	
Indian Inhabitant, having his office at 5-B	)	
Felthan House, J. N. Heredia Road,	)	
Bellard Estate, Mumbai – 400 038	)	
2. International Film Distributors (India) Pvt Ltd.	)	
A company incorporated and/or existing under	)	
the Companies Act, 1956 having its address at	)	
5/B, Feltham House, J. N. Heredia Road,	)	
Ballard Estate, Mumbai 400 038	)	..Plaintiffs

Versus

1. M/s Seven Art Pictures	)	
A concern / firm having its address at Famous	)	
Cine Building, 20, Dr. E. Moses Road, Mumbai	)	
400 011	)	
1(a) Shrestha Madan Mohla	)	
of Mumbai Indian Inhabitant	)	
having address at 301, Kings Apartment,	)	
Juhu, Mumbai 400 049	)	
1(b) Ankush Madan Mohla	)	
1(c) Ashutosh Madan Mohla	)	
both of Mumbai Indian Inhabitants	)	
having their common address at	)	
C-42, North Bombay Society,	)	
Opp. J. W. Marriott. Juhu Tara Road, Juhu,	)	
Mumbai 400 049, all being the legal heirs and	)	
representatives of late Mr. Madan Mohla,	)	
the sole proprietor of defendant no.1	)	
2. M/s Mehmood Productions	)	
A concern / firm having its address at	)	
Ranjeet Studio, Dadar, Mumbai 400014	)	

3. M/s Emkay Productions)
 a concern/firm having its address at Famous)
 Cine Building, Mahalaxmi, Bombay 400 011)
4. Essel Vision)
 A firm/concern having its address at Fun)
 Republic, 5th floor, Plot No.844/4, Opp Laxmi)
 Industrial Estate, Off. New Link Road, Andheri,)
 (West), Mumbai 400 053)
5. Zee Telefilms Ltd.)
 A company incorporated under the provisions)
 of the Companies Act, 1956 having its office at)
 Essel Vision, Bungalow No.3, 2nd floor, Pen)
 House, Asha Colony, Juhu Tara Road, Juhu)
 Santacruz (West) Mumbai 400 056.)
6. Rajshree Pictures Pvt Ltd.)
 A company incorporated under the provisions)
 of the Companies At, 1956 having its office at)
 Bhavana Building, 1st floor, 422, Veer Savarkar)
 Road, Prabhadevi, Mumbai 400 025) ..Defendants

Mr. Vishal Kanade a/w Mr. Gauraj and Mr. Faran Khan, Mr. Rubin Vakil and
 Mr. Manish Doshi i/b Vimadalal and Co. for Plaintiff.
 Mr. Sumit Raghani i/b PDS Legal for Defendant Nos. 4 and 5.

CORAM : K.R.SHRIRAM, J.
DATED : 25th FEBRUARY 2021

ORAL JUDGMENT :

1 When the suit was filed, there was one plaintiff and six defendants.
 Original Plaintiff No. 1 (as sole proprietor of M/s. International Film Distributors) was claiming to be the assignee of the sole, exclusive and perpetual copyright of exploitation, distribution, exhibition, commercial as well as non-commercial, in 35 MM as well as any reduced size / sizes including the rights of Television and all other rights attached to such exploitation, distribution and exhibition for the territories of complete

overseas circuit, *inter alia*, in respect of Hindi films “Sharafat”, “Bombay to Goa”, “Padosan” and “Ajanana” (the said films).

2 Plaintiff no.2 is a company that has taken over the business of Plaintiff no.1 M/s. International Film Distributors and entitled to all assets thereof.

Defendant No.1 is the producer of the feature film “Sharafat”; defendant No. 2 is the producer of the feature film “Bombay to Goa” and “Padosan”, defendant No. 3 is the producer of the feature film “Anjana”; defendant nos. 4 and 5 are part of the Zee Television Network which telecast the said films. Defendant No.6 claims to be a negative-rights holder of the said films. This suit was filed in respect of the said four films.

Over a period of time, this suit has been compromised or settled with defendant no. 2 in respect of the films “Bombay to Goa” and “Padosan” and with defendant no.3 in respect of “Anjana”. This suit has been withdrawn against defendant nos.2 and 3. The suit has also been settled and withdrawn against defendant no.6. Thus, this suit is now restricted only in respect of the Film “Sharafat” against defendant nos.1, 4 and 5.

3 At the hearing of this suit, Mr. Raghani appearing for defendant nos.4 and 5 stated that defendant nos.4 and 5 are not contesting the suit any more since the license they had for telecasting the film “Sharafat” expired on 2011. Hence we are dealing with only the dispute between plaintiffs and defendant nos. 1.

4 The facts, according to plaintiffs are as under:

(a) Under an agreement dated 12th August 1968 (Exhibit P-2), plaintiff no.1 acquired the sole, exclusive and perpetual copyright of exploitation, distribution, exhibition, commercial as well as non-commercial, in respect of the film “Sharafat” in 35 MM as well as any reduced size / sizes including the rights of Television and all other rights attached to such exploitation, distribution and exhibition for the territories of complete overseas circuit (i.e., the entire world including high seas and air but excluding India, Pakistan, Burma and Aden).

(b) Under the agreement at Exhibit P-2, plaintiff no.1 paid a sum of Rs.7,00,000/- as consideration to defendant no.1 for acquiring the aforesaid rights in respect of the film “Sharafat”. Though the agreement mentions the consideration as Rs.8,00,000/-, by a letter dated 28th May 1970, a further arrangement was arrived at between plaintiff no.1 and defendant no.1 whereby the price was reduced to Rs.7,00,000/-. Under the said agreement (Exhibit P-2), defendant no.1 received the entire consideration and the assignment in favour of plaintiff no.1 was complete. By the said Agreement (Exhibit P-2), defendant no.1 has divested all rights in the film “Sharafat” in favour of plaintiffs.

(c) On 1st September 1999, plaintiff no.2 was incorporated (Exhibit P-1). Plaintiff no.2 took over the business of plaintiff no.1 as

a going concern with all its properties and assets.

(d) On 28th October 2005, Deed of Assignment (Exhibit D5-2) was executed between defendant no.1 and defendant no.5 whereby, defendant no.5 was assigned till 14th May 2011, exclusive rights of satellite broadcasting including PayTV, Pay Per View, DTH rights, *inter alia*, for the film “Sharafat” for the entire world including India.

(e) On 14th November 2005, defendant no.1 wrote to plaintiff no.2 (Exhibit P-5) and stated that they had not assigned any rights in the film “Sharafat” in favour of plaintiff no.1.

(f) On 16th November 2005, plaintiff no.2 wrote to defendant No. 1 (Exhibit P-6) and stated that the sole, exclusive and perpetual copyrights in respect of the film “Sharafat” are assigned in its favour by defendant no.1 under the said agreement dated 12th August 1968 (Exhibit P-2) and further called upon defendant no.1 not to infringe plaintiffs’ rights.

(g) On 24th November 2005, defendant no.1 once again wrote to plaintiff no.1 (Exhibit P-7) and denied the rights of plaintiffs qua the film “Sharafat”.

(h) On 24th November 2005, defendant no.4 addressed a letter (Exhibit P-9) to plaintiff no.2 calling upon plaintiffs to provide documents under which plaintiffs claim rights in respect of the film “Sharafat”.

(i) Defendant No. 5 began telecasting the film “Sharafat” and

infringing the rights of plaintiffs in view of the right it acquired under the agreement dated 28th October 2005 from defendant no.1.

(j) The suit was lodged on 30th November 2007.

5 Defendant no.1 filed written statement dated 22nd July 2010. The written statement contains only denials. In fact, in the written statement, defendant no.1 has even denied the agreement (Exhibit P-2) and also that he received the entire consideration. Defendant no.1 also denied that plaintiff no.1 had perpetual rights to exploit the film “Sharafat” or that plaintiff no.1 alone is entitled to exploit and/or distribute, and/or exhibit, and/or broadcast the film “Sharafat”.

The sole proprietor of defendant no.1 Mr. Madan Mohla died and legal heirs of said Madan Mohla were added as defendant nos.1(a) to 1(c) and the plaint was accordingly amended pursuant to an order dated 20th September 2019. Defendant nos.1(a) to 1(c) have not appeared. Plaintiffs have also filed affidavit of service of Mr. Sandeep S. Dhondge affirmed on 4th February 2021, proving service on defendant nos.1(a) to 1(c)

6 On 26th February 2013, issues were settled as under:

1) Whether the plaintiffs’ suit is barred by limitation?	No
2) Whether the plaintiffs prove that the agreement being Exhibit A-1 in respect of the film “Sharafat” is valid, subsisting and binding upon defendant nos.1, 4 and 5 as claimed in paragraph 5 of the plaint ?	Yes
3) Whether the plaintiffs prove that the plaintiff	Yes

no.1 is the sole, exclusive and perpetual owner of copy rights in respect of film “Sharafat” as claimed?	
4) Whether the plaintiffs are entitled to any reliefs and if so, to what ?	Yes, See order below
5) Whether the defendant nos.1, 4 and 5 prove that the suit of the plaintiffs is bad-in-law, misconceived and not maintainable ?	No
6) Whether the defendant nos.4 and 5 prove that the plaintiffs are guilty of delay and/or laches and/or of acquiescence as alleged in paragraph 5 of their written statement ?	No
7) What order ? What relief ?”	See order below

7 Plaintiff led evidence of two witnesses namely Maganlal N. Savani (P.W.-1) and Ashvin M. Savani (P.W.-2). The sole proprietor of defendant no.1 Madan Mohla’s (D.W.-1) evidence was also recorded and he was cross-examined before he died. Defendant no.5 also led evidence of one S. J. Kanakia (D.W.-2), who was also cross-examined by plaintiffs. That evidence is irrelevant today for two reasons; a) defendant no.5 does not wish to contest the suit any further and, b) they only relate to rights defendant no.5 acquired from defendant no.1. The subject matter of this suit is, whether in view of the agreement at Exhibit P-2, defendant no.1 could have assigned any rights to any party including defendant no.5.

With the assistance of Mr. Kanade, I have considered the pleadings and the oral and documentary evidence.

8 As regards issue no.1, on limitation, from Exhibit P-5, it appears that plaintiffs came to know about the infringement of its rights and addressed its first communication to defendant no.4 on 9th November 2005. The agreement between defendant no.1 and defendant no.5 is also dated 28th October 2005. The suit was lodged on 30th November 2007. Hence, I would hold that the suit is not barred by limitation. Therefore, answer to issue no.1 is – No.

9 As regards issue no.2, P.W.-1, who was the original defendant, in his examination-in-chief, admits that he had entered into Deed of Assignment dated 12th August 1968 with plaintiff no.1. Hence, the answer to issue no.2 is - Yes.

10 As regards issue nos.5 and 6, no evidence was led by defendant nos.1, 4 or 5 and in any event, no submissions were also made. Therefore, answer to issue nos.5 and 6 is – No.

That would leave issue nos.3, 4 and 7, which can be answered together.

11 Issue nos.3, 4 and 7 can be split into two parts, viz., a) what were the rights that plaintiffs acquired by the agreement dated 12th August 1968 (Exhibit P-2) and (b) whether plaintiffs were entitled to those rights since defendant no.1 alleges that plaintiffs did not pay the entire consideration.

Answering the second part first, the agreement (Exhibit P-2) says Rs.8,00,000/- is the consideration to be paid. Admittedly, only

Rs.7,00,000/- has been paid. It is plaintiff's case that originally it was agreed at Rs.8,00,000/- but was later reduced to Rs.7,00,000/- in full and final settlement. For that, the evidence of PW-2 has to be looked into. PW-2 in his testimony has stated that he was aware that the agreement dated 12th August 1968 (Exhibit P-2) in respect of the film "Sharafat" was executed between his father, i.e., Original PW-1 and the sole proprietor of defendant no.1 Madan Mohla for valuable consideration and plaintiffs had paid from time to time an aggregate sum of Rs.7,00,000/- to defendant no.1 between 12th August 1968 till 20th October 1970 being full consideration as mentioned under Exhibit P-2. In cross-examination of PW-2, question nos.7, 8, 9, 10, 11 and 12 and answers thereto and the re-examination relate to this payment. It will be useful to reproduce the same:

Q.7. In your affidavit you have mentioned that you have paid aggregate sum of R.7,00,000/- towards full and final settlement, whereas in Exhibit P-2 in clause 1 the sum mentioned is Rs.8,00,000/- which of the contents is correct?

Ans: I have to verify from my books of account for the difference in the amount why I have mentioned figure Rs.7,00,000/- in my affidavit of evidence.

Q.8 Does your affidavit of evidence prepared without verifying your accounts ?

Ans: I have verified my books of accounts and then I prepared my affidavit of evidence.

Q.9 I put it to you that according to your books of account, amount paid in pursuance to the agreement dated 12.8.1968 was Rs.7,00,000/- and not Rs.8,00,000/- which is mentioned in the agreement ?

Ans: It is not correct.

Q.10 Whether the ledgers as mentioned in paragraph 3

were maintained only for office purpose or outsiders were shown the same ?

Ans: I do not understand the question. The ledger is maintained for regular accounting purpose.

Q.11 All the amounts paid by M/s International Film Distributor to an outsider are entered into ledger account ?

Ans: Normally the entries are reflected in the ledger account.

Q.12 Whether the person in whose name such entries are made in the ledger account can see the said ledger account of M/s International Film Distributor ?

Ans: He cannot see the ledger but the said person can ask for the ledger account.

Question in re-examination:

Q. Have you verified why you have mentioned Rs.7 lakhs in your evidence affidavit ?

Ans: I have verified my books. By a letter dated 28th May 1970, a further arrangement was made between the producers and ourselves whereby the price was reduced to Rs.7 lakhs. That is why I have mentioned the figure of Rs.7 lakhs in my evidence affidavit.

No further re-examination.

No further cross-examination.

Witness is discharged.

P.W.-2 was not cross-examined on his answer in re-examination and also was not called upon to produce the letter dated 28th May 1970.

12 In the written statement as noted earlier, defendant no.1 has only denied all averments in the plaint. In the written statement, D.W.-1 has denied that he has received the entire consideration / monies under the agreement. In his testimony, D.W.-1 only says International Films Distribution have not paid the entire amount under the deed of assignment. He does not say how much was received and how much was outstanding.

Moreover, this is a witness who in his written statement has denied entering into the agreement (Exhibit P-2), instructs the advocate to cross-examine P.W.-1 to disprove plaintiffs' assertions that the agreement (Exhibit P-2) was ever entered into between plaintiff no.1 and defendant no.1 (Q.46 and 47) and in his testimony admits the agreement. How can any reliance be placed on the testimony of such a person who has denied on oath Exhibit P-2. Further, in the cross-examination of P.W.-2, though suggestions were made regarding non-payment of entire consideration, it is not the pleaded case of defendant no.1 that due to non- payment of entire consideration, no assignment took place. In my view, it was for this reason, no issue also has been framed to be answered.

13 Coming to the moot point, i.e., what were the rights assigned to plaintiffs under Exhibit P-2, it is plaintiff's pleaded case that all rights whatsoever the film "Sharafat" for the territories as mentioned in Exhibit P-2 has been assigned to plaintiffs for perpetual exploitation, distribution and exhibition. D.W.-1 in his examination-in-chief also states that the agreement (Exhibit P-2) is self-explanatory and no other rights whatsoever, save and except, stated therein was ever assigned to plaintiffs.

It will be useful to reproduce Clause Nos.1, 2 and 5 of the agreement (Exhibit-P2) and the same read as under:

"1. The Assignors hereby agree to assign to the Assignees and the Assignees hereby agree to take on assignment from the Assignors the sole, exclusive and perpetual copy rights of exploitation, distribution and exhibition, commercial as well as non-commercial, in

respect of the said picture in 35 mm as well as any reduced size or sizes, including the rights of Television and all other rights attached to such exploitation, distribution and exhibition of the said Picture at or for the price payable as mentioned below to the territories of complete OVERSEAS circuit (Comprising the areas specified in clause No. 2 hereof) which territories are hereinafter referred to as the "Contracted Territory".

2. Complete Overseas circuit, i.e., Entire world including High Seas and AIR but excluding INDIA, PAKISTAN, BURMA & ADEN.....

5. The Assignors hereby agree and undertake that the said Picture shall not be exploited or distributed or exhibited commercially, non-commercially or in any other manner whatsoever, in the Contracted Territory either by themselves, their servants or agents or otherwise and hereby agree to indemnify and keep indemnified the Assignees against such unauthorized distribution or exploitation or exhibitor of the said Picture in the Contracted Territory. Any breach in this connection will make the Assignors liable to damages which in no case shall be less than twice the amount of the price."

14 Mr. Kanade submitted as under:

- a) That the aforesaid clause (1) make it abundantly clear that all copy rights in the film "Sharafat" had been assigned to plaintiffs in perpetuity without any restrictions.
- b) Interpretation of clause (1) also is supported by the negative covenant in clause (5).
- c) Inspite of this agreement, defendant no.1 acted in the manner calculated to infringe plaintiff's copy right.
- d) In view of development in technology after the agreement (Exhibit P-2) was entered into, defendant no.1, and before the suit was filed

defendant nos.4 and 5, were representing to the world at large that they had the right to broadcast the film over Pay TV, Pay per view and DTH (Direct to Home) and what was assigned to plaintiffs was only rights over 35mm film and television. Defendant no.1 had entered into a number of agreements with third parties, seeking to assign Satellite and cable rights to them.

15 I have considered the pleadings, evidence, the agreement (Exhibit P-2) and in particular Clauses (1) and (5) and submissions made by Mr. Kanade. A perusal of clause (1) of the agreement (Exhibit P-2) shows that plaintiffs had been granted the sole, exclusive and perpetual copy rights of exploitation, distribution and exhibition, commercial as well as non-commercial, in respect of the film "Sharafat" in 35 mm as well as any reduced size or sizes including the rights of Television and all other rights attached to such exploitation, distribution and exhibition. These rights have been assigned to plaintiff for Rs.8,00,000/- later reduced to Rs.7,00,000/-. The Overseas territories are mentioned in clause (2), i.e., entire world including High Seas and Air but excluding India, Pakistan, Burma and Aden. In my view, the most natural meaning that could be given to clause (1) is that plaintiffs have been given perpetual copyrights of exploitation, distribution and exhibition of the film "Sharafat", commercially as well as non-commercially, in respect of the film "Sharafat" in 35 mm as well as any reduced size or sizes. These rights would include the rights of Television and all other rights attached to such exploitation, distribution and exhibition of

the film “Sharafat”. The phrase “all other rights attached to such exploitation, distribution and exhibition” cannot be read to mean that the other rights referred only to Television rights. Clause (1) clearly shows that the intention of the parties was, all rights were given to plaintiffs to do what they want with the film “Sharafat” in the Overseas circuit mentioned in the agreement. Clause (1) clearly shows plaintiff is the sole, exclusive and perpetual copyright holder for exploitation of the film “Sharafat”. The mention of size 35mm or reduced size or sizes or Television cannot be read to mean that all other rights where the film is exhibited through the medium of video cassettes and DVD or DTH or Pay TV or Pay Per view are all excluded. Ultimately what was assigned to plaintiff was the right to exploit, distribute and exhibit the film “Sharafat” in the contracted territory. DTH, Pay Per view etc., are only improved versions of exploiting and exhibiting the film. Technical advancement does not mean that plaintiffs who had been assigned the sole, exclusive and perpetual copy rights of the exploitation, distribution and exhibition, would lose their copy rights to exploit, distribute or exhibit. By showing the film via Pay Per view or DTH or satellite tv or Pay tv or broadcasting etc. also amounts exhibiting or exploiting the film and that cannot be excluded from the rights given to plaintiffs. The clause clearly indicates that all rights whatsoever for exploiting the film and exhibiting the film in the contracted territory has been assigned to plaintiffs. In fact, clause (5) also reiterates what has been explained above because it says *“The assignors, (i.e., defendant no.1)*

hereby agree and undertake that the said picture shall not be exploited or distributed or exhibited commercially, non- commercially or in any other manner whatsoever, in the contracted territory either by themselves, their servants or agents or otherwise". This also means that the film "Sharafat" could not have been exhibited or exploited by showing it in DTH, Pay Per view or Pay TV or in any other manner whatsoever. This court is of the view that as per the agreement (Exhibit P-2) no restrictions can be placed on the enjoyment of the copyrights of the film "Sharafat", for exploitation, distribution and exhibition, which is vested in plaintiffs, only on the ground that the mode of exhibition of the film had not been invented at the time when the agreement has been entered into. Therefore, I have no hesitation to conclude that defendant no.1 has acted in infringement of the rights of plaintiffs and particularly, the negative covenant contained in clause (5) of the agreement.

16 Suit accordingly decreed as under:

- (a) It is declared that plaintiffs are the sole exclusive and perpetual owner of copyright in respect of the suit film "Sharafat" and solely and exclusively entitled to exploit and/or exhibit and/or broadcast the film "Sharafat" in any manner throughout the contracted territory including over Television including Satellite Television, Cable Television or DTH or Pay TV or Pay per view etc., and is alone entitled to allow exploitation, exhibition and/or broadcast of the film, "Sharafat" by use of any format and by any means whatsoever.

- (b) It is further declared that defendants herein are not in any manner entitled to exploit and/or exhibit and/or broadcast and/or distribute and/or broadcast the film “Sharafat” and/or allow in any manner whatsoever exploitation and/or exhibition and/or broadcast and/or distribution of the film “Sharafat” in any manner by any means howsoever, and for any purpose by any format throughout the contracted territory.
- (c) There will be a perpetual order and injunction against defendants restraining defendants by themselves, their servants and agents from in any manner representing that defendants or any of them are entitled to exhibit and/or exploit and/or broadcast and/or distribute and/or broadcast and/or allow exploitation and/or exhibition and/or broadcast and/or distribution of the said film “Sharafat” by any means over any format or otherwise however throughout the contracted territory.

17 Drawn up decree dispensed with. No order as to costs.

(K.R. SHRIRAM, J.)