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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-COM-10-2022(O&M)
DECIDED ON: 05.05.2022**

**M/S SEVEN COLOURS MOTION PICTURES
PVT. LTD.**

.....APPELLANT

VERSUS

BANWAIT FILMS AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sumeet Goel, Sr. Advocate with
Mr. Abhishek Sanghi and Mr. Manav Bajaj, Advocates
for the appellant.

Mr. Aakash Singla, Advocate with
Mr. Govind Chauhan, Advocate
for respondents No.3 and 4/caveators.

SANDEEP MOUDGIL, J.

CM-32-FCOM-2022

Prayer in this application is for exemption from filing the true typed copy of the impugned order dated 24.03.2022 passed by the learned Additional District Judge, Commercial Court, Karnal, and also from filing the certified copies of Annexures A-1 to A-12 and for grant of permission to place on record the photocopies thereof.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Exemption sought for is granted.

Annexures A-1 to A-12 are taken on record.

FAO-COM-10-2022

An application under Order 39 Rules 1 and 2 read with Section 151 CPC was preferred before the Special Commercial Court, Karnal (for short 'Commercial Court') by the plaintiff/appellant, in a civil suit for rendition of accounts, seeking ad interim injunction to restrain the defendants/respondents from production, shooting, making, distribution, exhibition, releasing in theaters or any other platform and medium or proceeding in any way or manner with the making or distribution, exhibition, releasing in theatres or any other platform and medium, distribution of the sequel/prequel of the film "Parahuna" titled as "Parahuna-2" and or under any other title, till disposal of main suit pending in this Court.

The Commercial Court has dismissed the application observing that the plaintiff/appellant remained silent to wait for completion of the movie for quite a long time and when its release came nearer, the plaintiff/appellant woke up and made an attempt to stall its release and further has also failed to make out a prima facie case that there is any infringement of Copyright Act.

We deem it appropriate to look into the factual matrix leading to the filing of the present appeal which are put forth as under:-

“ a. That on 23.02.2022, the appellant instituted a suit i.e. Annexure A-1, for permanent, mandatory injunction, rendition of accounts and recovery of damages of Rs. 5,00,000/- against respondents/defendants.

b. That in the year 2018, respondents/defendants No.1&2 Banwait Films and respondents/defendants No.3&4 Dara Films Entertainment were producing a Punjabi

Cinematographic Film "Parahuna". Respondents/Defendants No.1 to 4 offered partnership and share in the said film to the appellant/plaintiff firm and the same was accepted. A 'Producers and Co-Producer agreement' dated 30.04.2018 (Annexure A-2), was executed between respondents/defendants No.1 to 4 and the appellant/plaintiff.

c. The appellant/plaintiff company is one of India's leading film and music production companies engaged in the business of production, procurement, execution, licensing and exploitation of films and audio-visual contents. The respondents knew that association of the name of the appellant company with the film would provide a wide platform to ensure the box office success of the movie and therefore joined hands with the appellant/plaintiff.

d. That in the agreement dated 30.04.2018, it was agreed between the parties that out of total costs of production of Rs. 2,80,00,000/ the appellant/plaintiff company shall make a total contribution of 25% i.e., Rs. 70,00,000/-. It was also agreed that revenue generated from the said film shall be shared jointly between respondents/defendants No.1 to 4 and appellant/plaintiff.

It was further agreed that the parties shall be joint owners of copyrights, all intellectual property rights etc.

e. That realising the potential of the movie and the likelihood of producing sequels to the movie, the appellant's right in the sequels/prequels of the film was specifically included in the agreement. In clause 3.4 of the agreement, it was agreed that in case a sequel/prequel of the movie "Parahuna" is made, the same shall also be jointly produced and owned by respondents/defendants No.1 to 4 and appellant/plaintiff, and only if the appellant refused to join the respondents

in the production of a sequel/prequel, the respondents could go ahead with producing the same. The said clause is reproduced here:

"3.4 Producers, will give co-producer- the first right of refusal for partnership, to the extent of 25% in production of the sequel/prequel of the movie Parahuna."

f. That the movie "Parahuna" was completed and released on 28.09.2018 under the banner "Dara Films Entertainment; Banwait Films and Seven Colors Motion Pictures in association with Roadside Pictures." The Appellant/Plaintiff used all its infrastructure to release the said film, which received huge success at the box-office. The respondents/defendants No.1 to 4 had joined hands with the appellant/plaintiff in order to encash the popularity, reputation and expertise of the plaintiff firm and the association yielded results.

g. That the appellant/plaintiff firm came to know that the respondents/defendants No.1 to 4 have joined hands with respondents /defendants No.5 to 8 to produce a sequel of the movie "Parahuna" titled as "Parahuna-2" without joining the appellant/plaintiff, who had a vested right as per the aforementioned clause 3.4 of Agreement dated 30.04.2018. A copy of the media post (Annexure A-3) by respondent no.2 on the social media platform Instagram. The message reads as, "Parahuna 2, Sequel of our much-loved movie Parahuna is finally releasing on 25th March 2022...."

h. That the appellant was shocked to see the production of the sequel being undertaken in direct violation of the agreement dated 30.04.2018. The representatives of the appellant/plaintiff firm immediately approached the respondents/defendants requesting them to immediately cease production, shooting, making, or proceeding in any

way or in any manner with the making of film "Parahuna-2" and further to render complete accounts of the amount spent so far on the production of said film and to pay to the appellant/plaintiff share in the profits/earnings alongwith sum of 2,00,00,000/- for the loss caused to the appellant/plaintiff due to illegal act of the respondents/defendants. But the respondents/defendants failed to accede to the request of the plaintiff.

i. That the appellant/plaintiff sent a legal notice dated 18.01.2022 (Annexure A-4), to the respondents /defendants to immediately stop production of film "Parahuna-2" and further to render complete accounts, surrender footage and all material concerning the shooting and also to pay sum of 2,00,00,000/- for the loss caused due to illegal act of respondents/defendants.

j. That the respondents/defendants No.1&2 Banwait Films sent a reply dated 01.02.2022 (Annexure A-5), stating therein that they had not denied rights of the appellant/plaintiff in the sequel/prequel of the film "Parahuna. They further claimed that since the appellant had failed to comply with the legal requirements of the contract dated 30.4.2018 by illegally retaining Rs. 32,50,000/-, the subsequent rights of the appellant had been forfeited.

k. That the appellant then instituted the suit (Annexure A-1), for permanent, mandatory injunction, rendition of accounts and recovery of damages of Rs. 5,00,000/- against respondents/ defendants. While agitating the right conferred by clause 3.4 and asking for an injunction on the production of the sequel, the appellant has specifically pleaded that it is ready and willing to make its contribution of the share of costs of production after a rendition of accounts by the respondents/defendants.

1. That the respondents had issued "No objection certificates" (Annexure A-6), to the appellant mentioning therein that appellant had satisfied all its commercial and non-commercial obligations, towards the movie "Parahuna" and no claim was pending against it.

The Commercial Court dismissed the said application vide order dated 24.03.2022, which has been impugned before this Court in the present appeal.

Mr. Sumeet Goel, learned Senior counsel for the appellant has contended on facts that the Agreement dated 30.04.2018 (Annexure A-2) is admitted wherein Clause 3.4 specifically recognizes the right of the appellant in sequels/prequels to be produced and, therefore, the production of the sequel and the rights of the appellant therein stem from the said Agreement and its Clause itself and not merely through a general claim of seeking copyrights over a sequel. It is further averred by relying on a message posted by respondent No.2 on the social media platform *Instagram*, which reads as “Parahuna-2, sequel of our much-loved movie Parahuna is finally releasing on 25.03.2022.....” and as such the subsequent denial of the movie not being a sequel is false and baseless. It is further submitted that similarity in the title and the concept, along with the admission of continuity, clearly depict the desire of the respondents to capitalise on the popularity of the earlier movie.

Learned Senior counsel has also stated to counter the claim of the defendants/respondents with the averment that the sequels/prequels are thematically consistent films or set of films and by any stretch of imagination, the respondents cannot claim that “Parahuna-2” is not a sequel

movie of the earlier movie “Parahuna”.

Learned Senior counsel vehemently lays much stress on the point of respondents’ plea of alternative claim on account of compliance of Clause 3.4 of the Agreement by sending an e-mail dated 17.05.2021 (Annexure A-8), to raise an argument that the said e-mail was not mentioned by the respondents in their reply to the appellant’s legal notice and that e-mail too has been sent purposely to a defunct e-mail address legal.sevencolors@gmail.com, pointing out that this e-mail account is ineffective and inoperative and has never been used to exchange communication between the parties. The findings returned by the Commercial Court below have been alleged to be manifestly perverse inasmuch as the plaintiff has specifically shown willingness to invest in the second movie as pleaded in para 12 of the plaint as well, still, an adverse inference has been drawn holding that the appellant has not invested anything in “Parahuna-2”.

Finally, the submissions are concluded by the learned Senior Counsel for the appellant with the submission that the Commercial Court below has erred in denying the injunction with the finding that an equal and efficacious remedy has been available to the appellant, to establish the loss or damages, if any, and claim compensation. Though the plaintiff/appellant has established a prima facie case on the basis of admitted document, particularly Agreement dated 30.04.2018 (Annexure A-2) and Clause 3.4 thereof, and successfully demonstrated the e-mail dated 17.05.2021 (Annexure A-8) to be highly doubtful and the malicious.

Learned Senior counsel for the appellant places reliance upon a

case law titled as ***“Time Warner Entertainment Co., L.P. and other Vs. RPG Netcom and Others”, 2007 AIR (Delhi) 226***, to argue, on the strength of Sections 17(2)(d)(5) and 55 of the Copyright Act, 1957, that the law of copyright does not protect ideas, but only material expression of ideas i.e. the work and films, which have not been conceived or after being conceived are under production, cannot become the subject matter of infringement action.

On the other hand, Mr. Aakash Singla, Advocate for defendants/respondents No.3 and 4 (who are on caveat also) submitted that there is no infringement of copyright as claimed by the plaintiff/appellant with the categorical stand that the “Parahuna-2” movie in dispute was not a sequel of the earlier movie “Parahuna”, which was released long back on 28.09.2018. To the question of e-mail dated 17.05.2021, the defendants/respondents No.3 and 4 referred to Annexure A-8, in support of the averment that the e-mail was sent to the official website of the plaintiff/appellant; and also on the ground of delay itself, the relief of injunction cannot be granted, are falsified stand of the plaintiff/appellant of suffering irreparable loss.

Learned counsel for respondents No.3 and 4/Caveators has also denied the case as set up by the plaintiff/appellant while submitting that the Agreement dated 30.04.2018 (Annexure A-2) does not confer any right on the plaintiff/appellant, as alleged, what to talk of the Copyright Act inasmuch as it was only for the limited purpose, by virtue of which the plaintiff/appellant vested 25% in the first project i.e. “Parahuna” movie only and the second project “Parahuna-2” is neither a sequel of the first project

nor any element of piracy was involved, because the story and actors of both the movies are entirely different.

Having heard the learned counsel for the parties and on perusal of the record, we can easily culminate to say that there is no dispute between the parties to the effect that producers and co-producer agreement dated 30.04.2018 (Annexure A-2) containing 15 clauses was executed between defendants No.1 and 2 Benwait Films, defendants No.3 and 4 Dara Films, known as producers and plaintiff/appellant Seven Colors Motion Picture as co-producer, Punjabi Film “Parahuna”. Clause 1.1 of the said agreement makes it obligatory for the appellant-co-producer to contribute 25% of the costs of total project, which came to be around Rs.70 lacs, whereas Clause 3 relates to revenue sharing rights only of the appellant/co-producer to the extent of 25% and of defendants/respondents No.1 to 4 producers to the extent of 75%. The movie “Parahuna” was completed and released on 28.09.2018, whereas the production of “Parahuna-2” movie commenced much later, the shooting for which started on 14.09.2021. Now the production of “Parahuna-2” movie is complete and the movie was scheduled to be released on 25.03.2022, in reference to which the conversations alleged to have been made by the plaintiff/appellant with the defendants/respondents through electronic mode i.e. WhatsApp etc., a perusal whereof clearly establishes that the said conversation pertains to the period prior to the release of first project “Parahuna” movie.

Defendants/respondents also relied upon communication sent through email dated 17.05.2021 (Annexure A-8) in support of their assertion that they had made an offer to the plaintiff/appellant to contribute 25% in the

second project of "Parahuna-2". As per plaintiff/appellant, although it had made oral requests to the defendants/respondents to join them in the second project but due to their failure in this regard, legal notice was sent on 18.01.2022 (Annexure A-4). Defendants/respondents No.1 & 2 sent a reply dated 01.02.2022 (Annexure A-5) against the said notice. Defendants/respondents pointed out that the plaintiff/appellant had at the time of production of movie "Parahuna" i.e., the first project, received Rs.32.50 Lakhs and as per agreement dated 30.04.2018, plaintiff/appellant was legally bound to spend the said amount as its respective share on the promotion, advertising and marketing of the first project "Parahuna" but plaintiff/appellant had not given account of spending such amount and plaintiff/appellant rather came up with lame excuses and, thus, plaintiff/appellant was under legal obligation/liability to invest Rs.32.50 Lakhs. In the reply to the legal notice, it was also communicated that failure on the part of the plaintiff/appellant ceases their rights and the claim so raised in the legal notice.

In view of the discussion, after considering the submissions and going through the record before us, we are completely in consonance with the plaintiff/appellant that the plaintiff/appellant was well aware with regard to the commencement of production for movie "Parahuna-2", the posters for which were published on 11.06.2021 and shooting started on 14.09.2021, however, the plaintiff/appellant kept mum. The plaintiff/appellant has failed to show the bona fides as well, with regard to the contribution of 25% amount, absolutely contrary to its own stand towards the costs of second project "Parahuna-2" movie. The legal notice dated 18.01.2022 is much later than the completion of production of the said project "Parahuna-2". A

careful reading of the said legal notice dated 18.01.2022 (Annexure A-4) also creates a serious doubt to the bona fides of the applicant/appellant, wherein there is no recital in any manner whatsoever that the plaintiff/appellant has to contribute 25% of the costs of the second project “Parahuna-2” movie except the only assertion that it being a co-owner of the copyright had a right of offer in the production of this project. It is further evident from the record that the said legal notice was duly replied by respondents No.1 and 2 on 01.02.2022 (Annexure A-5), specifically clarifying that amount of Rs.32.50 lacs has not been given by the plaintiff/appellant, which was received by them at the time of production of the first project “Parahuna” to which the appellant has, admittedly, not countered in any manner. It is also an admitted position that the plaintiff/appellant has not made any investment in second project “Parahuna-2”, who has only asserted its right vide Clause 3.4 of the Agreement dated 30.04.2018 (Annexure A-2). As such, there is no binding contract between the parties to produce the sequel of film “Parahuna” to establish a prima facie case, at this stage. In any case, if there is any breach of terms of the Agreement dated 30.04.2018 (Annexure A-2), it is to be established by way of evidence during the trial in the main suit and to claim loss or damages, if any in terms of Section 73 of the Indian Contract Act, 1872.

The averments made on behalf of the appellant-plaintiff do not inspire confidence of this Court to seek ad interim injunction for not having any prima facie cogent evidence to corroborate the claim. Even otherwise, the intent of the legislation as envisaged under Section 73 of the Indian Contract Act, 1872, which reads as under:-

“73. Compensation for loss or damage caused by breach of contract.-*When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*

Compensation for failure to discharge obligation resembling those created by contract:-*When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

Explanation:-*In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.*

the loss, if any, is yet to be assessed in the civil suit by the Court below. The relief, as claimed, is not maintainable in application under Order 39 Rules 1 and 2 CPC, because the factum as regards breach of contract is yet to be established, in suit.

The Commercial Court below has rightly dismissed the application under Order 39 Rules 1 and 2 CPC, while observing that in the light of Section 41(e) of the Specific Relief Act, 1963, injunction cannot be

granted to prevent a breach of contract, the performance of which would not be specifically enforced as is evident from the bare reading of the aforesaid statutory provision as reproduced hereinbelow:-

41. Injunction when refused.—An injunction cannot be granted—

(e) to prevent the breach of a contract the performance of which would not be specifically enforced

Hence, this Court is of the considered view that the plaintiff/appellant has failed to make out a prima facie case, to show the balance of convenience in its favour, and the possibility of suffering any irreparable loss on the basis of material on record.

However, without commenting on the merits, we decline to interfere with the order dated 24.03.2022 passed by the Court below, which is well reasoned.

Accordingly, the appeal is dismissed. It is, however, made clear that nothing stated hereinabove shall be construed as an opinion of expression on the merits of the civil suit to be decided by the Commercial Court.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

05.05.2022
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No