



C.S.No.30 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2023

PRONOUNCED ON : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.30 of 2021
(Comm.Suits)

C.Prakash,
Proprietor of M/s Sri Kumaran
CD Collections and Electronics,
New No 3, Old No 8,
AR Cauvery Enclave, F2,
1st Floor, NGO Colony, 3rd Street,
Vadapalni, Chennai-600026

... Plaintiff

VS

1.M/s S.N. Media,
No 13 C Clemens Road,
Purasawakkam,
Chennai – 600007.

2.B.Mahadev,
Proprietor of M/s Mahashaila Cine Sankula,
No 352, 2nd Main, 8th Cross, Annapoorneshwari Nagar,
Nagarbhavi II Stage,
Bangalore – 560091.

3.M.S Manu Gowda
Proprietor of M/s Mahashaila Cinebandha,
No 352, 2nd Main, 8th Cross, Annapoorneshwari Nagar,
Nagarbhavi II Stage,
Bangalore-560091.

... Defendants



Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908 read with Sections 17, 51, 55 and 62 of the Copyright Act, 1957,

(a) Declaring that the Plaintiff is the sole and absolute owner of all the intellectual property rights, interest and title including but not limited to, the visual recording and sound recording in the underlying story, screenplay, dialogues, musical and lyrical works of the dubbed cinematograph film “Chingari” and “Shrikanta” in Tamil and Malayalam and connected internet and non-theatrical rights and all other underlying works for the purposes of Section 17 of the Copyright Act, 1957.

(b) A perpetual injunction restraining the 1st Defendant, 2nd Defendant and 3rd Defendant, its men, agents, successors-in-business, assigns, representatives or any person claiming through or under them from in any manner exploiting and/or infringing any of the copyrights, including but not limited to, the visual recording and sound recording in the underlying story, screenplay, dialogues, musical and lyrical works of the dubbed cinematograph films “Chingari” and “Shrikanta” in Tamil and Malayalam and all other underlying works for the purposes of Section 17 of the Copyright Act, 1957 in online and offline mode including in internet and non-theatrical modes.

(c) Directing the 1st Defendant, 2nd Defendant and 3rd Defendant, its men, agents, successors-in-business, assigns, representatives or any person claiming through or under them, to remove any infringing content of the Copyrights including but not limited to, the visual recording and sound recording in the underlying story, screenplay, dialogues, musical and lyrical



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works of the dubbed cinematograph Film “Chingari” and “Shrikanta” in Tamil and Malayam and all other underlying works for the purposes of Section 17 of the Copyright Act, 1957 in all online and offline mode.

(d) Directing the Defendant to pay total damages of Rs.1,20,000/- (Rupees One Lakhs Twenty Thousand Only) for damages towards infringement.

(e) Directing the Defendant to pay the costs of this suit.

For Plaintiff : Mr.M.V.Swaroop

For 1st Defendants : Mr.B.Arvind Srevatsa

J U D G E M E N T

The plaintiff herein filed the present suit seeking declaration that he is the sole and absolute owner of all the intellectual property rights in respect of dubbed cinematograph film 'Chingari' and 'Shrikanta' in Tamil and Malayalam and connected internet and non-theatrical rights. He also sought for a perpetual injunction restraining the defendants from any manner infringing his copyright in respect of the above said films in Tamil and Malayalam. He also sought for a direction to the defendants to remove the infringing content of the copyrights protected film in Tamil and Malayalam. In addition to the same, the plaintiff sought for damages of Rs.1,20,000/- from the defendants.



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WEB COPY Plaint Averments:-

2 (i). According to the plaintiff, the 2nd defendant is the producer of the Kannada cinematograph film 'Chingari' and he acquired dubbing rights in Tamil and Malayalam languages along with internet and non-theatrical rights of the said film and another film not connected with the suit 'Shishira' vide an Assignment Deed dated 29.05.2020 for a consideration of Rs.30,000/-. The plaintiff also acquired from the 3rd defendant dubbing rights in Tamil and Malayalam languages along with internet and non-theatrical rights of the Kannada film 'Shrikanta' vide an Assignment Deed dated 29.05.2020 for a consideration of Rs.25,000/-.

2 (ii). The plaintiff claimed that the consideration of Rs.30,000/- and Rs.25,000/- had been paid to the defendants 2 and 3 respectively through one Rajendra Kumar, who brokered the deal. According to the plaintiff, on 31.05.2020, he paid Rs.55,000/- vide NEFT transaction to said Rajendra Kumar. He also issued a receipt for the same confirming the payment. The



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said Rajendra Kumar inturn paid Rs.50,000/- to defendants 2 and 3 on 01.06.2020 after deducting Rs.5,000/- which was payable to him by them.

The 2nd defendant is the producer of the Kannada film 'Chingari' and 'Shishira'. The 3rd defendant is the producer of the Kannada film 'Shrikanta'. Both of them issued receipts acknowledging receipt of consideration in respect of the above said Assignment Deeds from Rajendra Kumar. Thus, the plaintiff claimed that he is the exclusive copyright owner of dubbing rights of the film 'Chingari' and 'Shrikanta' in Tamil and Malayalam Languages along with internet and non-theatrical rights.

2 (iii). It was averred by the plaintiff that later on, it came to his knowledge that the 3rd defendant had assigned exclusive dubbing rights of the films 'Chingari' and 'Shrikanta' in other South Indian Languages in favour of 1st defendant. The plaintiff issued a communication to the 1st defendant informing his copyright over the above said films. The 1st defendant replied that he got assignment of the copyright from the 3rd defendant. The plaintiff further averred that after assigning dubbing rights to the plaintiff in respect of the film 'Shrikanta', the 3rd defendant had no right to assign the said rights in



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favour of the 1st defendant. It was further averred in respect of the other film 'Chingari', the 2nd defendant is the producer and plaintiff got assignment of the dubbing rights and consequently, the 3rd defendant had no right to assign the said rights to 1st defendant.

2 (iv). It is further averred that a legal notice was issued by the plaintiff on 10.09.2020 to the defendants. The defendants 2 and 3 had issued a reply on 29.09.2020 stating that they had not received any consideration from the plaintiff in respect of the Assignment Deed in his favour and consequently, they assigned rights in respect of the above said films in favour of the 1st defendant. The plaintiff claiming that consideration already paid to defendants 2 and 3 through Rajendra Kumar, has come up with the present suit seeking aforesaid reliefs.

The averments found in the written statement:-

3 (i). The defendants 2 and 3 remained *exparte* and the suit was contested only by the 1st defendant by filing written statement.



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WEB COPY 3 (ii). The 1st defendant in his written statement contended that during January-2020, the defendants 2 and 3 approached him by representing that they were the producers of the feature films titled "Shrikanta" and "Chingari" (Kannada) and furnished copy of certificate issued by the Central Board of Film Certification issued in their favour. After negotiation, the defendants 2 and 3 handed over a letter dated 06.02.2020 agreeing to assign the Negative, Satellite and digital rights of the movies 'Chingari' and 'Shrikanta' to the 1st defendant. It was further contended that the 2nd defendant executed a Deed of Assignment dated 10.07.2020 assigning 'World Negative, Satellite, Digital and Electronic Exclusive Rights of South Indian Languages' concerning dubbed version of film 'Chingari' (Kannada) in South Indian languages.

3 (iii). Likewise, the 3rd defendant also executed a Deed of Assignment dated 10.07.2020 in respect of the above said rights concerning dubbed version of film 'Shrikanta' in South Indian languages. It was further averred that under Assignment Deed entered into between the 1st defendant and defendants 2 and 3, the consideration for assignment was fixed as



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Rs.3,75,000/- + GST at Rs.4,20,000/- in respect of each film. The 1st defendant paid the entire sum of Rs.7,83,750/- after deducting applicable TDS to 3rd defendant. Thus, the 1st defendant claimed right over two films 'Chingari' and 'Shrikanta' under Assignment Deeds dated 10.07.2020 entered into with defendants 2 and 3 respectively. The 1st defendant further contended that defendants 2 and 3 approached him for assignment of rights in respect of the above said films during January-2020 itself, but formal Assignment Deed could be entered into only on 10.07.2020 due to Covid-19 pandemic situation.

3 (iv). It was also contended by the 1st defendant that he got the copyright under Assignment Deed by paying a consideration of Rs.3,75,000/- per film and whereas, plaintiff claimed to have got the rights for a sum of Rs.25,000/- and Rs.30,000/-. It was specifically contended by the 1st defendant that the Assignment Deeds in favour of the plaintiff were created for the purpose of the case and the said documents should be treated as invalid, as it were not attested by witnesses. The 1st defendant also pointed out blanks in Assignment Deed relied on by the plaintiff in respect of details of payment made under the Assignment Deed. On these pleadings, the 1st



defendant sought for dismissal of the suit.

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Issues:-

4. This Court on considering the pleadings and submissions of the learned counsel framed the following issues:-

“(i) Whether the plaintiff is entitled for a declaration to declare that he is the absolute owner of the intellectual property rights, interest and title of the cinematograph films “Chingari” and “Shrikanta” in Tamil and Malayalam languages based on the two assignment deeds dated 29.05.2020 executed by the 2nd and 3rd defendants?”

“(ii) Whether there was a collusion between the plaintiff and defendants 2 and 3 and thereby the 1st defendant has been mislead to enter into an agreement whereby the 1st defendant was assigned with rights of the movie “Chingari” and “Shrikanta” in Tamil, Telugu and Malayalam?”

“(iii) Whether the two assignment deeds dated 10.07.2020, executed by the 2nd and 3rd defendants in favour of the 1st defendant will bind the rights of the plaintiff, who is claiming the copyright by virtue of two assignment deeds each dated 29.05.2020?”

“(iv) To what other reliefs the plaintiff is entitled to?”



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WEB COPY **Evidence:-**

5. On behalf of plaintiff, he was examined as PW.1. One Rajendra Kumar, who said to have brokered the deal between the plaintiff and defendants 2 and 3 was examined as PW.2 and 12 documents were marked on behalf of the plaintiff as Exs.P1 to P12. The Proprietor of the 1st defendant was examined as DW.1 and 8 documents were marked on behalf of 1st defendant as Exs.D1 to D8.

Arguments of learned counsel for the plaintiff:-

6. The learned counsel for the plaintiff by taking this Court to the oral evidence of PW.1 and PW.2 and Exs.P4 to P9 submitted that the assignment of dubbing rights of the films 'Chingari' and 'Shrikanta' were validly assigned in favour of the plaintiff. The learned counsel further submitted that the evidence available on record clearly established that consideration for the assignment was paid by the plaintiff to PW.2 and he inturn paid the same to the defendants 2 and 3. The learned counsel also relied on Ex.P12 reply issued by the defendants 2 and 3 for the pre-suit notice of the plaintiff and

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submitted that the execution of Exs.P4 and P5 were admitted by Assignor of the plaintiff namely defendants 2 and 3. Therefore, it is the contention of the learned counsel for the plaintiff that the plaintiff proved assignment in his favour and consequently, he is entitled to declaration and injunction and other relief as prayed for.

Arguments of learned counsel for the 1st defendant:-

7. The learned counsel for the 1st defendant mainly submitted that the plaintiff miserably failed to prove the due execution of Assignment Deed in his favour. The learned counsel further submitted that plaintiff failed to produce the original Assignment Deed in his favour and he only produced the xerox copies which were marked subject to the objection by the 1st defendant. In the absence of original Assignment Deed, the plaintiff is not entitled to claim any rights under alleged assignment. The learned counsel by pointing out blanks in the xerox copies of assignment deeds produced by the plaintiff in clauses concerning the payment of consideration and in the witness column submitted that execution of Assignment Deeds in favour of the plaintiff is highly doubtful. The learned counsel by taking this Court to the oral evidence of



PW.1 and PW.2, pointed out that there were material contradiction in their version and consequently, submitted that the plaintiff failed to prove the due execution of the Assignment Deeds. The learned counsel for the 1st defendant relied on the following decisions in support of his arguments,

- (i) ***Union of India vs. Vasavi Cooperative Housing Society Limited and others*** reported in **(2014) 2 SCC 269** for the proposition that in a suit for declaration, the plaintiff must succeed on the basis of his own strength and he cannot rely on the weakness on the defence.
- (ii) ***Rangammal vs. Kuppuswami and another*** reported in **(2011) 12 SCC 220** for the proposition that burden of proof always lies upon the person who asserts a fact.
- (iii) ***Subhra Mukherjee and another vs. Bharat Coking Coal Limited and others*** reported in **(2000) 3 SCC 312** for the proposition that when a person relies on a transaction, failed to prove it was a *bona fide* and genuine transaction, the question of proving plea of sham transaction would not shift to the other side.

Issue No.1:-



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8. The plaintiff herein claims that he obtained assignment of exclusive right to dub the Kannada film 'Shrikanta' into Tamil and Malayalam languages and all other internet and non-theatrical rights of the dubbed film under Assignment Deed dated 29.05.2020 entered with 3rd defendant. Likewise, he claims above said rights in respect of the Kannada films 'Chingari' and 'Shishira' under Ex.P4 dated 29.05.2020 entered with 2nd defendant. In this suit, we are only concerned with the plaintiff's assigned rights in respect of film 'Chingari' and there is no dispute with regard to other film 'Shishira' covered by Ex.P4.

9. The original producers of the films 'Chingari' and 'Shrikanta' namely defendants 2 and 3 respectively, who said to have assigned the above said rights in favour of plaintiff remained *exparte*. However, in their reply to the pre-suit notice Ex.P12, they admitted Assignment Deeds Exs.P4 and P5 but claimed that plaintiff failed to pay the consideration under the Deed of Assignment and consequently, they intimated cancellation of the Assignment Deed through phone to the plaintiff and thereafter, assigned the rights to the 1st defendant. They also denied the payment of consideration by the plaintiff



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through Rajendra Kumar namely PW.2.

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10. The Assignment Deeds under which the plaintiff is claiming rights were marked as Exs.P4 and P5. On behalf of plaintiff, he was examined as PW.1, he had spoken about the assignment and Rajendra Kumar, who said to have brokered the deal between the plaintiff and defendants 2 and 3 was examined as PW.2. He had spoken about the negotiations between the plaintiff and defendants 2 and 3 and payment of consideration by the plaintiff to the defendants 2 and 3 through him. The print out of the proof of payment made by the plaintiff to PW.2 dated 31.05.2020 was marked as Ex.P6. The receipt of entire sale consideration of Rs.55,000/- under Exs.P4 and P5 was acknowledged by PW.2 in his letter addressed to the plaintiff marked as Ex.P7. The print out of the proof of payment of Rs.50,005.90/- by PW.2 to 2nd defendant was marked as Ex.P8. The original receipt issued by the 2nd defendant for having received the consideration for assignment deed executed in favour of plaintiff was marked as Ex.P9. The original receipt issued by 3rd defendant for having received the consideration for the assignment deed executed in favour of the plaintiff was marked as Ex.P10. The learned counsel



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for the plaintiff by relying on the oral evidence of PW.1 and PW.2 and Exs.P4 to P10 submitted that the assignment in favour of plaintiff on 29.05.2020 was proved by the plaintiff.

11. The Exs.P4 and P5 were seriously objected by the contesting 1st defendant. It is a specific case that there is a collusion between the plaintiff and defendants 2 and 3. The defendants 2 and 3, who admitted Exs.P4 and P5 and pleaded non-payment of consideration failed to appear before this Court and remained *exparte*. A look at Exs.P4 and P5 would make it clear that the witness column is blank and the document was not attested by any person. The main purpose of getting attestation in a document is to prove execution if one of the party to the document denies the same and pleads against the document. In the case on hand, the assignors though admitted the execution in their reply to pre-suit notice failed to appear before this Court and support the case of the plaintiff. Had they appeared before this Court, the 1st defendant would have had an opportunity to cross examine them.

12. Ofcourse, assignment deed concerning rights in a cinematograph



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film is not a document which requires compulsory attestation.

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Notwithstanding the same, when there is a cloud over the due execution of the document, attestors evidence assumes significance. In the case on hand, the contesting 1st defendant pleaded collusion between the plaintiff and the defendants 2 and 3. In view of stand taken by the 1st defendant, a cloud is created over due execution of assignment deed. Therefore, it is incumbent on the plaintiff to cure the cloud by proving due execution of the assignment deed. Unfortunately, the witness column in the assignment deeds are blank and therefore, there is no attesor to examine. The plaintiff tried to lead independent evidence in support of the execution by examining PW.2. According to them, PW.2 was the one who brokered the deal between the plaintiff and defendants 2 and 3. PW.2 during his cross examination deposed that he was present when Ex.P4 was executed. According to him, Ex.P4 was executed in the residence of 2nd defendant and plaintiff was present then. However, the plaintiff in his cross examination deposed that Exs.P4 and P5 were signed by D2 and D3 at Bangalore and thereafter, it was sent to him through courier and he signed it at Chennai. Therefore, there is a material contradiction with regard to the presence of plaintiff at the time of execution



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of Exs.P4 and P5. As per the version of PW.1, he was not present at the time of execution. But as per the version of PW.2, the plaintiff was present. When this contradiction pointed out to PW.2 during his cross examination, later on, he deposed plaintiff was not present. Therefore, the evidence of PW.2 with regard to execution of Exs.P4 and P5 cannot be taken into consideration in the light of material contradictions mentioned above.

13. Further, in Exs.P4 and P5 there are blanks in Clause-I relating to payment of consideration. The Reference/UTR Number, Payee Name etc., are left blank in the payment of consideration column of the assignment deeds. It creates a serious doubt over the genuineness of the documents. Further, as rightly contended by the learned counsel for the 1st defendant, the plaintiff only produced xerox copies of Exs.P4 and P5/Assignment Deeds. Those documents were marked with the objection of the 1st defendant. The plaintiff seeks declaration of it's dubbing rights over the films in question under Assignment Deeds/Exs.P4 and P5. However, he failed to produce the original assignment deeds but produced only the photocopies. The witness column in the assignment deed is blank. In the clause relating to the payment of



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consideration, payment reference number and payee name were all left blank.

The independent witness who was examined to prove due execution namely PW.2 deposed plaintiff was present in the residence of 2nd defendant at the time of execution but plaintiff as PW.1 had deposed the assignment deeds were signed by the defendants 2 and 3 at Bangalore and the same were couriered to him for his signature at Chennai. In these circumstances, this Court is unable to accept the contention of the learned counsel for the plaintiff that plaintiff proved due execution of Exs.P4 and P5.

14. The learned counsel for the plaintiff by relying on the order by the Division Bench of this Court in O.S.A.(CAD).No.68 of 2021 submitted that when there is a written assignment deed, assignee would acquire rights dealt with by the assignment deeds notwithstanding non-payment of consideration. Mere non-payment of consideration would not vitiate the assignment because even a promise to pay consideration can be treated as a sufficient consideration. In India future consideration is also recognised and hence, the promise to pay consideration is treated as a sufficient consideration. Therefore, non-payment of consideration *per se* would not vitiate the



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assignment deed and assignor has remedy to recover the consideration amount. However, in the case on hand, the very execution of assignment deeds namely Exs.P4 and P5 was not proved by the plaintiff by leading an acceptable evidence. When very execution of assignment deeds are not proved, the plaintiff cannot take advantage of the order passed by the Division Bench in O.S.A.(CAD).No.68 of 2021 referred above.

15. The plaintiff in order to prove payment of consideration, relied on Exs.P6 to P10. In Ex.P6 whereunder Rs.55,000/- was paid to the PW.2, in the remarks column, it was mentioned as 'Salary'. If the payment made under Ex.P6 is really a consideration mentioned under the assignment deed, the plaintiff should have mentioned it as consideration 'in the remarks column'. However, while making payment to PW.2, he treated it as a 'Salary'. Therefore, the contention of the plaintiff that he paid Rs.55,000/- to defendants 2 and 3 through PW.2 cannot be accepted. In any event, already this Court has come to the conclusion that due execution of Exs.P4 and P5 was not proved by leading any acceptable evidence. In this circumstances, the plaintiff is not entitled to declaration as prayed for.



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WEB COPY **Issue No.2:-**

16. This Court has come to the conclusion that the plaintiff failed to prove due execution of Exs.P4 and P5 by leading acceptable evidence. If really Exs.P4 and P5 were executed by defendants 2 and 3 respectively, they should have appeared before this Court. The defendants 2 and 3 in order to help the plaintiff and avoid cross examination failed to appear before this Court and remained *exparte*. The conduct of defendants 2 and 3 in their failure to appear before this Court and participate in the proceedings creates a suspicion that there is a collusion between the plaintiff and defendants 2 and 3. Therefore, the Issue No.2 is answered accordingly.

Issue No.3:-

17. This Court in Issue No.1 answered that the plaintiff failed to prove the two assignment deeds in his favour. Therefore, the two assignment deeds executed by defendants 2 and 3 in favour of 1st defendant would bind the



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plaintiff and the Issue No.3 is answered accordingly.

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Issue No.4:-

18. In view of the finding of this Court in Issue No.1, the plaintiff is not entitled to any other relief. The Issue No.4 is answered accordingly.

Conclusion:-

19. In view of the discussions made above, the Civil Suit is dismissed and in the facts and circumstances of the case, there will be no order as to costs.

06.06.2023

Index : Yes
NCC : Yes
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List of witnesses examined on the side of the plaintiff:-

1. P.W.1-Mr.C.Prakash - Proprietor of the Plaintiff
2. P.W.2-Mr.K.Rajendra Kumar – Mediator between assignor and assignee

List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBITS	DATE	DESCRIPTION
1.	P1	19.02.2010	Censor Film Certificate for the Film “Shishira”
2.	P2	26.03.2012	Censor Film Certificate for the Film “Chingari”
3.	P3	31.12.2016	Censor Film Certificate for the Film “Shrikanta”
4.	P4	29.05.2020	Assignment agreement between 2 nd Defendant and the Plaintiff for the Film “Chingari” and “Shishira”
5.	P5	29.05.2020	Assignment agreement between 2 nd Defendant and the Plaintiff for the Film “Shishira”
6.	P6	31.05.2020	Proof of payment made by the Plaintiff to Rajendra Kumar
7.	P7	31.05.2020	Letter and receipt issued by Rajendra Kumar to the Plaintiff
8.	P8	01.06.2020	Proof of Payment made by Rajendra Kumar to the 2 nd Defendant
9.	P9	01.06.2020	Receipt issued by the 2 nd Defendant
10.	P10	01.06.2020	Receipt issued by the 3 rd Defendant
11.	P11	10.09.2020	Legal Notice issued to the 1 st , 2 nd and 3 rd Defendant
12.	P12	29.09.2020	Common reply to legal notice by the 2 nd and 3 rd Defendant

List of witness examined on the side of the 1st Defendant:-

1. D.W.1-Mr.Sanjay Kumar Lalwani - Proprietor of the 1st Defendant

List of documents marked on the side of the 1st Defendant:-



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Sl. No.	EXHIBITS	DATE	DESCRIPTION
1.	D1	27.01.2012	Film Certificate of the film “Chingari”
2.	D2	06.02.2020	Letter given by the 2 nd Defendant to the 1 st Defendant
3.	D3	06.02.2020	Letter given by the 3 ^d Defendant to the 1 st Defendant
4.	D4	10.07.2020	Deed of Assignment entered between the 2 nd Defendant and 1 st Defendant
5.	D5	10.07.2020	Deed of Assignment entered between the 3 rd Defendant and the 1 st Defendant
6.	D6	13.07.2020	Invoice issued by the 3 rd Defendant in respect of the Film “Chingari”
7.	D7	13.07.2020	Invoice issued by the 3 rd Defendant in respect of the Film “Shrikanta”
8.	D8		Bank statement of the 1 st Defendant Reflecting payments made to the 3 rd Defendant under the deeds of Assignment dated 10.07.2020 towards consideration for the films “Chingari” and “Shrikanta”



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S.SOUNTHAR, J.

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Pre-delivery Judgment in
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06.06.2023