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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) (COMM) 7/2023 & CM APPLs. 2067/2023 AND 2070/2023

GLOBAL MUSIC JUNCTION PVT. LTD. Appellant

Through: Mr. Akhil Sibal, Senior Advocate with
Mr. Yashvardhan, Ms. Rhia Marshall,
Ms. Kritika Nagpal, Ms. Smita Kant, Mr.
Tarun Bhushan, Mr. Pranay Mohan
Govil, Ms. Priyanka Raj and Ms. Sanya
Kumar, Advocates.

versus

SHATRUGHAN KUMAR AKA
KHESARI LAL YADAV & ORS.

..... Respondents

Through: Mr. Pradeep Kumar Arya, Mr. Gaurav
Chaudhry, Mr. Randhir Singh, Mr.
Priyanshu Malik, Mr. Rahul Rana, Mr.
Pulkit Chadha, Mr. Aditya Kumar
Yadav, Mr. Raj Karan Sharma,
Mr. Priyanshu Malik and Mr. Arpit
Bamal, Advocates for R-1.
Mr. Akhand Singh, Mr. Abhinandan
Gautam, Ms. Samridhi Dobhal and Ms.
Deeksha Dwivedi, Advocates for R-5.
Mr. Vihan Dang, Ms. Aditi Umapathy
and Ms. Pragya Jain, Advocates for R-6.

Reserved on : 12th July, 2023

Date of Decision: 05th September, 2023

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE



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J U D G M E N T

MANMOHAN, J:

1. The present appeal has been filed challenging the order/ judgment dated 6th January, 2023 passed by a learned Single Judge of this Court in CS(COMM) No. 715 of 2022, whereby the application of the Respondent No.1/ Defendant No.6 under Order XXXIX Rule 4 of CPC, 1908 has been allowed and the application filed by the Appellant/ Plaintiff under Order XXXIX Rules 1 and 2 CPC, 1908 has been dismissed, thereby vacating the ex-parte ad interim order dated 14th October, 2022 in its entirety.

2. It is pertinent to mention that the Appellant/ Plaintiff has filed a suit being CS(COMM) No. 715 of 2022 seeking the reliefs of permanent injunction, rendition of accounts as well as damages in view of alleged infringement of the copyright owned by the Appellant/ Plaintiff in certain literary works, musical works, cinematographic films and sound recordings by the Respondents/ Defendants.

FACTS

3. It is the case of the Appellant/Plaintiff that pursuant to detailed business negotiations between the Appellant/ Plaintiff (a music company) and the Respondent No.1/ Defendant No.6 (a singer), the parties entered into a production agreement dated 27th May, 2021, effective from 1st June, 2021 (the ‘**Original Agreement**’) for creation and production of two hundred (200) songs within a term of thirty (30) months (i.e. till 30th November, 2023) for a total consideration of Rupees Five Crores only (Rs. 5,00,00,000/-). Under the Original Agreement, all intellectual property in the content/ songs created by Respondent No.1/ Defendant No. 6 vested with the Appellant/ Plaintiff,



thereby granting ownership rights with respect to the content produced by the Respondent. No.1/ Defendant No. 6 during the term of the Original Agreement, with the Appellant/ Plaintiff. Furthermore, in accordance with the terms of the Original Agreement, the Respondent No.1/ Defendant No.6 agreed to exclusively work with the Appellant/ Plaintiff for creation and production of content and agreed to refrain from working with third parties for creation of any new intellectual property or content of any kind during the term of the Original Agreement, except to the extent and on the conditions provided under Annexure D of the Original Agreement. The relevant terms of the Original Agreement are reproduced hereinbelow:-

<i>PRINCIPAL TERMS OF THE AGREEMENT</i>		
<i>S.No.</i>	<i>Particulars</i>	<i>Description</i>
1.	<i>Content</i>	<i>Any and all of the two hundred works of the intellectual property works including without limitation all musical, lyrical, cinematographic, literary, dramatic, pictorial works, images, sound recording, music, underlying works etc. created by the Artists during the Term as commissioned by Global Music Junction</i>
2.	<i>Term</i>	<i>30 (thirty) months from Effective Date</i>
3.	<i>Territory</i>	<i>Worldwide</i>
	<i>xxxx</i>	<i>xxxx</i>
5.	<i>Consideration Payable</i>	<i>a) Global Music Junction shall be liable to pay the Artist a fee of <u>INR 5,00,00,000/- (Rupees Five Crores only)</u> plus taxes (the "Fee") during the Term of this Agreement in the manner and as per the timelines set out in the Payment terms detailed in Annexure B attached herewith.....</i>
6.	<i>Any other Terms</i>	<i>Standard Terms & Conditions as stated in Schedule "A" attached hereto shall apply. In the event of conflict between the Standard Terms & Conditions and the Principal Terms, then the terms as set out in the Principal Terms of the Agreement shall supersede.</i>



This Agreement (hereinafter referred to as "Agreement") is made at Mumbai on this 1st day of June, 2021 ("Effective Date")

xxxx xxxx xxxx xxxx

Schedule "A"-Standard Terms & Conditions

1. *Definitions and Interpretations*

xxxx xxxx xxxx xxxx

1.1.1 *Content – shall mean audio-visual content of various duration including but not limited to images, sound recording, music, underlying works etc. which is produced/under production/to be produced by the Artist as per the clauses 1 and 4 of the Principal Terms of the Agreement.*

xxxx xxxx xxxx xxxx

2. *Term*

This Agreement shall be valid for a period more particularly stated in clause 2 of the Principal Terms of the Agreement ("Term") and the Artist shall not terminate this Agreement for any reason whatsoever for the Term.

3. *Obligation of the Parties*

3.1 *Global Music Junction shall be responsible to pay the consideration and make payments as per the timelines agreed upon.*

3.2 *The Artist shall, work exclusively with the Producer for the production of the Content starting from the 1st of September, 2021 or completion of delivery and publishing of the content provided as per the Limited permitted Entity Obligations as detailed in Annexure D herein and shall be liable to ensure fulfillment of all deliverables to the Global Music Junction, as more particularly as set out in Annexure A annexed hereto.*

xxxx xxxx xxx xxx

3.5 *The Artist shall not work with any third-party whatsoever for creating any new Intellectual Property or content of any kind during the Term. Notwithstanding anything herein, the Parties agree that the Artist may provide content to excluded parties as listed in Annexure D herein, provided that the terms and conditions of the said Annexure D are followed by the Artist.*

3.6 *The Parties agree that in the event that the Artist is found to have breached this Agreement or any part thereof, the Producer shall have the right but not obligation to, without prejudice to any other right or remedy available to it under this Agreement, law or tort, to restrict the Artist from producing and/ or publishing any further content of any kind, including without limitation as per detailed in Annexure D herein, until such time that the breach made by the Artist has been cured in full or damages incurred by the Producer due to such breach have been paid in full.*



4. Representations and Warranties:

Each Party hereby represents and warrants that:

xxxx xxxx xxxx xxxx

4.2 this Agreement creates a binding and legally enforceable Agreement

4.3 it shall not enter into or acquiesce in any other agreement I arrangement which could prevent it from fully complying with the provisions of this Agreement;

xxxx xxxx xxxx xxxx

4.6.13 it shall not work with any third-parties for the production of any content in any manner whatsoever during the Term, unless otherwise detailed in the exclusion schedule as detailed in Annexure D.

5. Intellectual Property Rights:

5.1 The Artist hereby acknowledges that this Agreement is a 'contract of service', and all Content and Artist Deliverables, and any parts thereof and all Song Masters, shall be deemed to be produced and developed by the Artist for Global Music Junction on a 'work for hire' basis, and commissioned by Global Music Junction Any and all rights and Intellectual Property created, developed, delivered or invented thereof and shall vest with Global Music Junction, from the moment they come into existence and Global Music Junction shall be deemed to be the first author and owner of copyright in Content and any part thereof.

5.2 To the extent any such rights do not vest with Global Music Junction, by operation of law or for any other reason, the Artist hereby exclusively, irrevocably and absolutely assigns to Global Music Junction, for the Territory and in perpetuity, and without any limitation, reservation or condition, all Intellectual Property Rights, including the entire copyright, and all other rights, title or interest of whatsoever nature, including the Derivative Rights, to all the Content and Artist Deliverables and any parts thereof.

xxxx xxxx xxxx xxxx

7. Termination:

7.1 The Producer may terminate this Agreement by notice in writing to the Artist if the Artist is in breach of any of its obligations under this Agreement and has failed to remedy such breach within a period of fifteen days of receipt of notice specifying the breach with a request to remedy it. On such termination, Global Music Junction shall be not be liable to pay the Fee or any part thereof to the Artist and the Artist shall provide the Producer with any and all Deliverables and Content and any parts thereof for the work undertaken till such time and refund double the amount of any and all Fees paid to the Artist till the date of such termination or the total Consideration Payable, whichever is higher.

7.2 The Producer may at any time decide to stop the production of the Content and shall provide the Artist with at least seven days' notice for the same. On such termination, the Producer shall pay the Artist on a pro-rata basis for any work undertaken until such time



that the notice for suspension of services was issued, calculated on the basis of the deliverables, indisputably delivered as on the date of termination and the Artist shall provide the Producer with any and all Deliverables and Content and any parts thereof for the work undertaken till such time.

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Annexure A

Detailed Description of the Deliverables of The Artist to Global Music Junction

The engagement of the Artist and Global Music Junction is limited to the production of 200 songs by the Artist.

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Annexure B

Payment Terms:

The Producer shall pay the Artist a total Fee of Rs. 5,00,00,000/- (Rupees Five Crores only) plus taxes for the production and development of the Content, payable as follows:

Sr. No.	Amount	Date/Time of Payment
1.	Rs. 30,00,000/- (Rupees Thirty Lakhs only)	Within fifteen days from the date of the execution of the Agreement and receipt of valid invoice thereof.
2.	Rs. 1,50,00,000/- (Rupees One Crore and Fifty Lakhs only)	Within one month after the completion of Limited Permitted Entity Obligations as per Annexure D herein or the 1 st of September, 2021, whichever is later and receipt of valid invoice thereof.
3.	Rs. 3,20,00,000/- (Rupees Three Crores and Twenty Lakhs only)	After 60 (sixty) days from the payment the second tranche hereinabove and receipt of valid invoice thereof.
	Rs. 5,00,00,000/- (Rupees Five Crores only)	



Payment Details: *The Artist is desirous to appoint KKR Entertainment Private Limited to be the designated entity for generating all valid and necessary invoices and collector of payments on behalf of the Artist against such invoices. The Producer hereby accepts such request provided that KKR Entertainment Private Limited and the Artist shall be solely liable to comply with all statutory compliances including without limitation GST, income tax laws etc...*

Annexure D

Exclusion Schedule

The Artist hereby undertakes that he shall not work with any third-parties for creation of any new content starting from the Effective Date of this Agreement and for the Term, excluding.....”

4. Subsequently, due to disputes having arisen between the parties and after exchange of legal notices, the Appellant/ plaintiff and Respondent No.1/ Defendant No.6, entered into an Addendum dated 07th February, 2022 (executed on the 3rd March, 2022) along with its Hindi version (the ‘**Addendum**’) to the Original Agreement dated 01st June, 2021, vide which, the parties amended and modified certain commercial terms. For instance, the term of the arrangement was extended till 30th September, 2025 subject to further extension, if the total songs delivered by the Respondent No.1/ Defendant No.6 during the term of the Addendum were less than hundred (100). The number of songs to be delivered were changed to eight (8) songs per month during the modified term. The consideration payable was Rupees Two Lakhs Fifty Thousand (Rs. 2,50,000/-) per song along with a 10% profit share to be paid on an annual basis. Consequent to deletions of exclusivity obligations via the Addendum, the Respondent No.1/ Defendant No.6 was allowed to engage with third parties for monetization of songs, subject to the ‘right of first refusal’ being granted in favour of the Appellant/ Plaintiff. It is pertinent to highlight that save and except the above terms, there was no modification, amendment or



alteration of any other terms especially those relating to the ownership of the copyright and intellectual property rights in the content, which continued to be vested in favour of the Appellant/ Plaintiff pursuant to the terms of the Original Agreement. The relevant terms of the Addendum are reproduced hereinbelow:-

“1. Preamble

*1.1. The Parties have entered into an agreement dated 27 May 2021 (“**Original Agreement**”), a copy of which is annexed hereto.*

1.2. The Parties have agreed to enter into this Agreement, to amend, modify and vary the terms of the Original Agreement.

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3. Delivery of Content

*3.1. Subject to the terms and conditions set forth herein, the Artist hereby agrees to deliver to the Producer 8 (eight) original and new songs each calendar month as per the schedule prescribed in Schedule 1 (“**Deliverables**” and each a “**Deliverable**”) for the period commencing on and from the date of this Agreement and ending on September 30, 2025 (“**Term**”). Provided however, if the total Deliverables delivered by September 30, 2025 are less than 100 then the Term shall stand automatically extended until 100 Deliverables are delivered.*

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*3.4. The Producer shall pay an amount as set out in Schedule 2 for each calendar quarter during the Term, as advance towards the delivery of the Deliverables for such calendar quarter (“**Advance**”), calculated at the rate of INR 250,000 per Deliverable (“**Rate**”). The amount shall be paid within [5] days of beginning of each calendar quarter. For the purposes of this Agreement ‘calendar quarter’ shall in any calendar year mean any period of 3 calendar months commencing on January 1, April 1, July 1 and October 1.*

3.5 If, and only if, the Producer refuses to accept delivery of any original and new Deliverable, then the Artist shall be entitled to engage with any other person for the monetization of such song.

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5. Additional Terms

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5.2. Subject to strict compliance with the terms of this Agreement, the Producer agrees to a profit share arrangement whereby by the Artist shall be entitled to a





10% share in the profits generated by the Producer arising directly from the Deliverables. The amounts payable shall be calculated on a financial year basis and shall be paid within 90 days of the end of each financial year ending on March 31.

6. Original Agreement

6.1. Clauses 1, 2, 5 of the Principal Terms of the Original Agreement and Annexure A and Annexure B, of the Original Agreement shall stand amended, modified and varies to the extent amended, modified and varied by Clause 3 and Clause 4 of this Agreement.

6.2. Clauses 3.2, 3.5 and 3.6 and Annexure D of the Original Agreement shall stand suspended and without force, commencing on the date of this Agreement and until this Agreement is terminated pursuant to Clause 8.1.2. Upon such termination provisions of Clause 8.3 of this Agreement shall be applicable. Provided however the restrictions contained in Clauses 3.2, 3.5 and 3.6 and Annexure D of the Original Agreement shall continue to apply in respect of the You tube Channels – and "Bluebeat", on and from April 1, 2022, for such time until each of those channels is brought within the content management system of the Producer.

6.3. Each Party unconditionally and irrevocably withdraws any rescission, termination or repudiation of the Original Agreement, and hereby agrees that the Original Agreement is hereby reinstated in its entirety, save and except as amended, modified and varied by this Agreement and subject to Clause 8.3. The arbitrations proceedings commenced under the Original Agreement shall stand terminated, and all legal notices issued in connection thereto shall stand unconditionally and irrevocably withdrawn.

6.4. This Agreement forms an integral part of the Original Agreement and, shall be read as a whole together with the Original Agreement and constitutes the entire agreement between the Parties with respect to the subject matter hereof to the exclusion of all other prior agreements, or understandings and assurances, relating to such subject matter either written or oral. None of the rights and obligations of any of the Parties shall, except for the modifications or amendments contained in this amendment letter, be deemed to be altered or modified in any manner whatsoever.

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9. Miscellaneous

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9.9. Non-Exclusive Remedies.

9.9.1. *The rights and remedies provided in this Agreement are cumulative and none is exclusive of any other, or of any rights or remedies that any Party may otherwise have at Law or in equity....”*

(emphasis supplied)

5. It is the case of the Appellant/ Plaintiff that the Respondent No.1/ Defendant No. 6 created content and allowed third parties i.e. Respondent Nos. 2 to 5 and 7 to 14 to promote/ monetize the content by uploading the same on Respondent No. 6's platform, and therefore allegedly infringed the copyright vested in the Appellant/Plaintiff. The Appellant/ Plaintiff thus aggrieved, approached the learned Single Judge for appropriate relief by filing suit being CS (COMM) No. 715 of 2022 and sought interim relief.

6. On 14th October, 2022, a learned Single Judge of this Court, on being *prima facie* satisfied about the infringement of the copyright of the Appellant/ plaintiff under the aforementioned agreements, restrained the Respondents Nos. 2 to 5 and Respondent Nos. 7 to 14 from showing, releasing, launching, airing or monetizing all contents created by Respondent No.1/ Defendant No. 6, which are in breach of the copyrights and intellectual property rights of the Appellant/ Plaintiff granted under the aforementioned agreements on platforms like YouTube, Spotify, Jio Saavan, Wynk etc. The Respondent No.1/ Defendant No.6 was further restrained from creating any third-party rights in contravention of the Original Agreement read with the Addendum. Relevant portion of the order dated 14th October, 2022 is reproduced herein:

“26. Accordingly, Defendants No. 1 to 4 and Defendants No. 7 to 14 are restrained from showing, releasing, launching, airing or monetizing all contents created by Respondent No.1, which are in breach of the copyrights and Intellectual Property Rights of the Plaintiff granted under the aforementioned Agreement entered into with the Plaintiff, on platforms like YouTube and other media platforms like Spotify, Jio Saavan, Wynk etc., and





Respondent No. 1 will also not create any third party right in breach of the Original Agreement and the Addendum entered into with the Plaintiff, till the next date of hearing.”

7. However, the learned Single Judge by way of the impugned order vacated the interim order dated 14th October, 2022 in its entirety including the directions passed against the Respondent Nos. 2 to 5. The learned Single Judge observed in the impugned order that the Original Agreement being a ‘contract of service’ was dependent on the personal qualifications of the Respondent No.1/ Defendant No.6 and the Original Agreement fell within the category of contracts which are not specifically enforceable in terms of Section 14(c) of the Specific Relief Act, 1963 (‘Act, 1963’). Further, relying upon ***Infinity Optimal Solutions Pvt. Ltd. (IOS) vs. Vijender Singh & Ors., MANU/DE/2856/2009*** and ***Rajasthan Breweries Limited v. The Stroh Brewery Company, 2000 SCC OnLine Del 481***, the learned Single Judge held that the Original Agreement being a commercial contract between two private parties for mutual gain and benefit, can be terminated by the Respondent No.1/ Defendant No.6. without assigning any reason and by giving a reasonable notice, even in the absence of a specific termination right. Therefore, the contract being determinable in nature was not enforceable in view of Section 14(d) of the Act, 1963. The learned Single Judge also placed reliance upon ***Percept D’Mark (India) (P) Ltd. v. Zaheer Khan and Anr. (2006)4 SCC 227***, to hold that the exclusivity clauses in the Original Agreement and the ‘right of first refusal’ under the Addendum in favour of the Appellant/ Plaintiff were clearly hit by the bar contained under Section 27 of the Indian Contract Act, 1872 as in the present case, the Appellant/ Plaintiff had sought an injunction *qua* operation of restrictive covenant beyond the termination of the Original Agreement by





Respondent No.1/ Defendant No.6. The relevant portion of the impugned order is reproduced hereinbelow:-

“25. Applying the aforesaid legal principles to the facts of the present case, in my considered view, no case for grant of an interim injunction is made out in favour of the plaintiff company. The contract in the present case was a ‘contract of service’ as acknowledged in Clause 5.1 of the Original Agreement and was dependent on the personal qualifications of the Artist. Therefore, the contract falls within the category of contracts that are not specifically enforceable in terms of Section 14(c) of the Specific Relief Act, 1963.

26. There is no provision in the contract for the Artist to terminate the contract, the right of termination has been provided only to the plaintiff company. However, the contract being a commercial contract between the two private parties for mutual gain and benefit, it cannot be stated that the Artist could not terminate the aforesaid contract. Once the parties have lost mutual trust and confidence in each other, the court cannot grant an injunction compelling the Artist to continue with its contractual obligations with the plaintiff company. Therefore, the contract being determinable in nature, is not enforceable in view of Section 14(d) of the Specific Relief Act, 1963.

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28. As per the dicta in Rajasthan Breweries (supra), in such cases, the contract can be terminated even in the absence of a specific clause authorising the Artist to terminate the contract without assigning any reason and by giving a reasonable notice. Ultimately, if it is found that the termination by the Artist was invalid, the remedy available with the plaintiff company would be to claim damages for wrongful termination. In fact, the plaintiff company has itself claimed damages of Rs 5,00,00,000/- in the plaint. However, the plaintiff company cannot seek an injunction to specifically enforce the contract, which is barred under section 14 (c) and (d) of the Specific Relief Act, 1963.

29. It was vehemently contended by the senior counsel appearing on behalf of the plaintiff company that the present suit is not a suit seeking specific performance of the contract, but rather a suit for injunction against the defendants from infringing the copyright of the plaintiff company. I do not find merit in the aforesaid submission. Though, the prayers in the suit have been framed in a manner to give an impression that the suit has been filed for copyright infringement, in real terms, it is a suit for specific performance of a ‘contract of service’, which is barred under section 14(c) and (d) of the Specific Relief Act, 1963. Clause 5.1 of the Agreement specifically states that the plaintiff shall become the owner of the copyright only upon the same being created in the future. Therefore, the plaintiff cannot claim any copyright in the songs/content that are yet to come into being. Therefore, in my considered



view, the present suit is nothing but a suit for specific performance of the contract, though guised as a suit seeking injunction for infringement of copyright.

30. Even otherwise, the exclusivity clauses in the Original Agreement and the 'right of first refusal' in favour of the plaintiff under the Addendum are clearly hit by the bar contained in Section 27 of the Indian Contract Act, 1872. The Supreme Court in Zaheer Khan (supra) has categorically observed that neither the test of reasonableness, nor the principle of restraint being partial, is applicable in the case of post-contractual covenants. The mandate of Section 27 of the Indian Contract Act, 1872 is clear that a restrictive covenant that extends beyond the term of the contract cannot be enforced and the aforesaid doctrine is applicable not only to contracts of employment but to all other kinds of contracts. An artist cannot be compelled to deal with another party against his own wish in perpetuity. Grant of injunction in favour of the plaintiff company would cause irreparable injury to the Artist which cannot be compensated in monetary terms as he would be forced to continue with the contract of personal service even though mutual trust has been lost between parties. Therefore, the balance of convenience is not in favour of the plaintiff company for grant of injunction."

ARGUMENTS BY LEARNED COUNSEL FOR THE APPELLANT/ PLAINTIFF

8. Learned senior counsel for Appellant/ Plaintiff stated that Respondent No.1/ Defendant No.6 is a singer, dancer and actor in the Bhojpuri Film Industry, who also appears on various reality TV shows. He stated that the Original Agreement was executed between the Appellant/ Plaintiff and the Respondent No.1/ Defendant No.6 after detailed negotiations during COVID-19 pandemic, when the world had come to a standstill and there was no work particularly for artists such as Respondent No.1/ Defendant No.6.

9. He pointed out that upon breach by the Respondent No.1/ Defendant No.6 of his obligations under the Original Agreement and at his request as well as with the active involvement of his manager and legal advisers, the Addendum was executed, whereby certain commercial terms in the Original Agreement were modified. He stated that pursuant to the Addendum, the term



was extended to end to 30th November, 2025, subject to further extension, if the total songs delivered by Respondent No.1/ Defendant No.6 were less than one hundred (100) during the modified term instead of two hundred (200) songs as originally contemplated under the Original Agreement. He emphasised that under the Addendum, the number of songs to be delivered were modified to eight (8) songs per month and consideration payable per song basis was Rupees Two Lakhs and Fifty Thousands (Rs.2,50,000/-) per deliverable along with additional consideration by way of ten per cent (10%) profit share was to be paid on an annual basis and the Respondent No.1/ Defendant No.6 was allowed to engage with third parties, subject to 'right to first refusal' being available to the Appellant/ Plaintiff. Thus, according to him, though there was no modification to the ownership of the copyright in the content, which continued to be vested in the Appellant/ Plaintiff, yet the artist was allowed to work with the third parties, subject to certain conditions.

10. Learned senior counsel for the Appellant/ Plaintiff stated that the contractual period in the instant case is till 30th September, 2025 which is still subsisting and the Appellant/ Plaintiff is seeking to enforce the negative covenant in the Addendum till the said contractual period and not beyond 30th September, 2025.

11. He submitted that Section 14 of the Act, 1963 is not applicable to the present case as the Appellant/ Plaintiff is not seeking specific performance of the contract but an injunction to perform a negative covenant. He submitted that nothing precludes the Court from granting an injunction to enforce the negative covenant in a contract of personal service thereby restraining a party from working elsewhere. He submitted that in *Lumley V. Wagner (1852) 1 De G.M. & G.604*, *Warner Brothers Pictures V. Nelson 1937 (1) KB 209*,



Niranjan Shankar Golikari Vs. Century Spinning and Manufacturing Co. Ltd. (1967) 2 SCR 378, Gujarat Bottling Co. Ltd. & Ors. V. Coca Cola Co. & Ors. (1995) 5 SCC 545, Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr. (supra) as well as in Makhanlal Natta V. Tridib Ghosh & Anr. AIR 1993 Cal 289, the Court granted injunction restraining the defendants from rendering their services to third parties and hence enforced negative covenant of a contract of personal service.

12. According to learned senior counsel for the Appellant/ Plaintiff, the learned Single Judge erred in equating “unilateral termination of contract” with “end of contract” and therefore, incorrectly applied Section 27 of the Indian Contract Act, 1872 which applies to restrictions for post contractual period. He submitted that the Supreme Court and various High Courts have rightfully enjoined a party from joining/ performing elsewhere in breach of the agreement with the aggrieved party during the original tenure of the agreement i.e. during the term mentioned in the agreement even though the said party had resigned from the services of the aggrieved party or terminated the agreement. Section 27 of the Indian Contract Act, 1872 is reproduced hereinbelow:-

“27. Agreement in restraint of trade, void.—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.....”

13. He further submitted that the impugned judgment wrongly relied upon *Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr. (supra)* which is completely distinguishable as in that case, the contract had ended i.e. expired by efflux of time and the performance of the contract was complete.

14. He contended that the impugned judgment erred in holding that the Appellant/ Plaintiff can be adequately compensated by damages. He stated that



under the Addendum, Respondent No.1/ Defendant No.6 was entitled to a sum of Rupees Two Lakhs Fifty Thousand (Rs.2,50,000/-) per song and also a share of ten per cent (10%) in the profits earned from the deliverables. According to him, the revenue from the songs which was the consideration for the Appellant/ Plaintiff under the Addendum cannot be ascertained by any means as different songs have different views on different platforms which is an ongoing and ever continuing process since as long as the song is available on any platform, the same can be viewed and therefore, no definite amount of revenue earned from the songs can be ascertained as the same will keep on changing and consequently, damages for loss of such revenue cannot be ascertained. He submitted that Section 38(3) of the Act, 1963 enables the Court to grant injunction where no standard exists for ascertaining the actual damage caused, or likely to be caused, by the invasion.

15. He also submitted that the impugned judgment was completely contrary to the law of contract extant in Indian jurisprudence as it gave complete exoneration from contractual stipulations/ obligations to a contracting party on wholly unsustainable ground that the parties had lost trust in each other and hence, the breaching party cannot be held bound to the terms thereof.

16. He contended that the learned Single Judge completely misunderstood the intent of the interim order dated 14th October, 2022 which had been passed only to protect the Appellant/ Plaintiff's copyright under the Original Agreement and the Addendum. He repeatedly emphasised that the order dated 14th October, 2022 did not provide any direction to the Respondent No.1/ Defendant No.6 to perform the agreement i.e., to provide songs as per the agreements and therefore, the question of specific performance of the agreements or the same being barred under Section 14 of the Act, 1963 did not



arise. He stated that the restraint on Respondent No.1/ Defendant No.6 in the Original Agreement and the Addendum not to create rights in favour of third parties was only a consequential and a necessary relief to protect the Appellant/ Plaintiff's copyright without which the Appellant/ Plaintiff's copyright cannot be protected.

17. He pointed out that the impugned judgment erroneously vacated the interim order dated 14th October, 2022 in its entirety without proper application of mind qua even the existing songs (eleven according to Respondent No.1/ Defendant No.6 and twelve according to Appellant/ Plaintiff) which were admittedly produced in terms of the Original Agreement and Addendum prior to the purported termination and which are admittedly owned by the Appellant/ Plaintiff.

18. He lastly stated that the defence that Respondent No.1/ Defendant No.6 had entered into the agreements under misrepresentation from the Appellant/ Plaintiff as he is not well versed with English is false. He pointed out that Respondent No.1/ Defendant No.6 had entered into similar agreements with the Respondent No.2 and Respondent No.5 which were not disputed by him before the learned Single Judge. In fact, Respondent No.2 and Respondent No.5 had filed applications for vacation of order dated 14th October, 2022 on the ground that they had similar agreements with Respondent No.1/ Defendant No.6, which were not filed with the applications. The said fact about non-filing of the alleged agreements between Respondent No.2 and Respondent No.5 on one hand and Respondent No.1/ Defendant No.6 on the other hand was pointed out by the Appellant/ Plaintiff during the course of the arguments before the learned Single Judge. He contended that from a bare perusal of the said agreements and to the naked eyes, it is apparent that the signatures of



Respondent No.1/ Defendant No.6 on the said agreements were forged as they do not match with the signatures on the Original Agreement and the Addendum. He emphasised that the date of execution of the alleged Assignment Agreement dated 01st June, 2021 between Respondent No.1/ Defendant No.6 and Respondent No.2, which is same as the Original Agreement with the Appellant/ Plaintiff raises question on the authenticity of the alleged Assignment Agreement. According to him, Respondent No.1/ Defendant No.6 could not have been in two different cities on the same day for execution of these two agreements. He also stated that the official records of Annapurna Film Studio LLP as available on the official website of the Ministry of Corporate Affairs shows that it was incorporated on 06th October, 2021. Therefore, on the date of the alleged Assignment Agreement i.e. 01st June, 2021, Respondent No.2 was not even existing. Thus, he contended that Respondent No.1/ Defendant No.6 in collusion with Respondent No.2 and Respondent No.5 had perpetrated fraud upon this Court in order to defeat the just rights of the Appellant/ Plaintiff.

ARGUMENTS BY LEARNED COUNSEL FOR THE RESPONDENT NO.1/ DEFENDANT NO.6

19. *Per contra*, learned counsel for the Respondent No.1/ Defendant No.6 submitted the reliefs claimed in the suit were barred as the agreement is a contract of service and work for hire basis and therefore, the Appellant/Plaintiff cannot seek specific performance of either the Original Agreement or the Addendum in terms of Section 14(c) of the Act, 1963.

20. He stated that the agreements executed between the Appellant/ Plaintiff and the Respondent No.1/ Defendant No.6 were determinable contracts, whose breaches can be compensated in terms of money. He stated that the agreements



so relied upon by the Appellant/ Plaintiff themselves quantify the damages in case of any breach of the said agreements and therefore, at the most, the Appellant/ Plaintiff can claim the said damages as per the terms stipulated in the agreements. Therefore, according to him, the relief sought by the Appellant/ Plaintiff is barred under Section 14(d) of the Act, 1963.

21. Learned counsel for the Respondent No.1/ Defendant No.6 submitted that the Agreement dated 27th May, 2021 relied upon by the Appellant/ Plaintiff contains a dispute resolution Clause 9.8 as it incorporates a reference to arbitration. Consequently, according to him, the suit filed by the Appellant/ Plaintiff is barred under Section 8 of the Arbitration and Conciliation Act, 1996.

22. He further submitted that in view of the abovesaid Clause 9.9 of the alleged agreement, this Court lacks the territorial jurisdiction to adjudicate the dispute arising out of the agreement. He stated that no part of cause of action involved in the suit filed by the Appellant/Plaintiff arose in the territory of this Court and none of the Respondents as well as the Appellant/Plaintiff reside, carry on business or work for personal gain within the territory of this Court.

23. He stated that the Respondent No.1/ Defendant No.6 does not know how to write and read the English language in which the Original Agreement was drafted and had in utmost good faith and honesty signed the agreement and was not aware of the terms of the contract and the liabilities which they imposed. According to him, the Appellant/ Plaintiff misrepresented the terms of the agreements thereby fraudulently trapped the Respondent No.1/ Defendant No.6 in bondage. He contended that there was complete mistrust between the parties since inception of the agreements and the Addendum had never been acted upon by the Respondent No.1/ Defendant No.6.



24. He further submitted that on bare reading of the Original Agreement and Addendum, it is apparent that they were excessively one-sided and cast no obligation on the Appellant/ Plaintiff, while at the same time imposed an unreasonable, unfair and unjustified restraint on the Respondent No.1/ Defendant No.6's right to exercise any lawful profession, carry on business or trade of any kind. He contended that the Original Agreement and Addendum imposed a "bondage" on the Respondent No.1/ Defendant No.6 by way of exclusivity clause as it restrained the said Respondent from working and singing for any other company other than the Appellant/ Plaintiff. He contended that if any relief is granted to the Appellant/ Plaintiff in the present proceedings, then the Respondent No.1/ Defendant No.6 will be rendered idle – a situation which the Act, 1963 does not contenance. In support of his submission, he relied on ***ABP Network Private Limited vs. Malika Malhotra, 2021 (6) R.A.J. 628 (Del), Simran Music Company vs. Prit Brar & Ors., MANU/DE/9846/2007, Infinity Optimal Solutions Pvt. Ltd. (IOS) vs. Vijender Singh & Ors., (supra) and Warren vs. Mendy and Anr. [1989] 1 W.L.R. 853.***

25. He submitted that the Appellant/ Plaintiff cannot by way of securing an injunction, bar the answering Respondent from exercising his right to profess trade/ business of any kind. According to him, both the agreements were in clear violation of Section 27 of the Indian Contract Act, 1872 and were therefore void.

26. He stated that the answering Respondent by giving a notice had already terminated the Original Agreement with the Appellant/ Plaintiff much before the alleged infringement of the copyright in the suit filed by the Appellant/ Plaintiff and therefore, the Original Agreement was not binding in any sense on



the Respondent No.1/ Defendant No.6. He pointed out that the termination of the agreements had not been challenged by the Appellant/ Plaintiff in the present proceedings. He repeatedly emphasised that the negative covenant cannot be enforced post the termination of the contract.

27. He submitted that in catena of cases including ***Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh & Ors.*** (supra) and ***Rajasthan Breweries Limited v. The Stroh Brewery Company*** (supra), it has been held that even when the power of terminating the contract is not provided for in the agreement, any commercial transaction can be terminated by giving a reasonable notice and once the parties had lost mutual trust and confidence in each other, the Court by virtue of Section 14(d) of the Act, 1963 cannot grant an injunction compelling the Respondent No.1/ Defendant No.6 to continue with its contractual obligations. The relevant portion of the judgment in ***Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh & Ors.*** (supra) is reproduced hereinbelow:-

“...7. The contract of representation and services is based on mutual trust and if the trust is lost between the parties, one party cannot be compelled by the Court to keep the contract alive. I also consider that in view of Section 27 of Indian Contract Act, the restrictions cannot be put on a player from terminating the contract of an agency of one company and giving it to some other company. Section 27 disapproves and negates the restrain or restriction on the trade and business or profession. In Rajasthan Breweries Limited v. Stroh Brewery Company AIR 2000 Delhi 450, the Division Bench of this Court had observed that even in absence of specific clause authorizing and enabling either party to terminate an agreement in the event of happening of events specified therein, a commercial transaction could be terminated even without assigning a reason by serving a reasonable notice and ultimately if it is found that the termination was bad in law or contravening any terms or the agreement, the remedy of the appellant would be to seek a compensation for such wrongful termination but not claim for specific performance.”





28. He repeatedly emphasised that the Courts have wide discretion while dealing with specific performance cases. Consequently, he submitted that as a general rule, Courts award damages with specific performance of a contract being an exception.

COURT'S REASONING

AMENDMENT ACT 2018 HAS MADE SPECIFIC PERFORMANCE OF A CONTRACT A GENERAL RULE RATHER THAN AN EXCEPTION. THE LEGISLATIVE SHIFT IS TOWARDS STRONGER ENFORCEMENT OF CONTRACTS.

29. Specific performance is an equitable relief given by the Court to enforce against a defendant the duty of doing what he agreed by the contract to do. It was in the process of a search for effective remedial action that Specific Relief emanated from the Equity Courts in England. Sir Edward Fry in his, *A Treatise on the Specific Performance of Contracts*, 6th Edn. states “*The only remedy at common law for the non-performance of a contract was in damages.... The common law treats as universal a proposition which is for the most part, but not universally true, namely, that money is a measure of every loss. The defeat of justice which arose from this universality of the common law principle was met and remedied in certain cases by the jurisdiction of Courts of Equity to compel specific performance.*”

30. The principles built up by successive Chancellors of England in this branch of law were borrowed by the Indian Courts and served to enrich the Indian Law. The Specific Relief Act of 1877 was modelled on the draft New York Civil Code of 1862 and embodied in it the relevant doctrines evolved by the Courts of Equity in England. The Act of 1877 was not exhaustive. For decades this Act was subjected to judicial interpretations which revealed many deficiencies and lacunae.



31. On the recommendations of the Law Commission's Ninth Report, the Specific Relief Act, 1963 was brought into force. The Act, 1963 as originally enacted, conferred wide discretionary powers upon the Courts to decree specific performance and to refuse injunction etc. As a result of wide discretionary powers, the Courts in majority of cases awarded damages as a general rule and granted specific performance as an exception.

32. However, it was recently felt that the Act, 1963 is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that were needed for the overall development of the country. India also did not fare well in the international rankings in 'Enforcement of Contracts' and 'Ease of Doing Business'. The World Bank in its 'Ease of Doing Business' 2018 report ranked India at 100 out of 190 countries. In 'Enforcement of Contracts', India was ranked at 164 out of 190 countries as per World Bank Doing Business indicators.

33. Accordingly, with the intent of promoting public interest, 'Ease of Doing Business' and to provide an effective remedy to parties who have suffered loss due to breach or non fulfilment of a contract, the Government of India appointed an Expert Committee under the Chairmanship of Mr. Anand Desai.

34. Acting on the recommendations of the said Committee, the Government of India decided to amend the Act, 1963 prospectively (See: ***Katta Sujatha Reddy and Another Vs. Siddamsetty Infra Projects Private Limited and Others, (2023) 1 SCC 355***). The Statement of Objects and Reasons of the Specific Relief (Amendment) Act, 2018 (hereinafter be referred to as '**Amendment Act, 2018**') is reproduced hereinbelow:-



“STATEMENT OF OBJECTS AND REASONS

The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.

2. The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.

3. In view of the above, it is proposed to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general rule than exception subject to certain limited grounds. Further, it is proposed to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract. This would be an alternative remedy at the option of the party who suffers the broken contract. It is also proposed to enable the courts to engage experts on specific issues and to secure their attendance, etc.

4. A new section 20A is proposed for infrastructure project contracts which provides that the court shall not grant injunction in any suit, where it appears to it that granting injunction would cause hindrance or delay in the continuance or completion of the infrastructure project. The Department of Economic Affairs is the nodal agency for specifying various categories of projects and infrastructure sub-sectors, which is provided as Schedule to the Bill and it is proposed that the said Department may amend the Schedule relating to any such category or sub-sectors.

5. Special courts are proposed to be designated to try suits in respect of contracts relating to infrastructure projects and to dispose of such suits within a period of twelve months from the date of service of summons to the defendant and also to extend the said period for another six months in aggregate, after recordings reasons therefor. The Bill seeks to achieve the above objectives...”

35. It is settled law that a speech made by a mover of the bill explaining the reasons for introducing the bill can certainly be referred to for ascertaining the



mischief sought to be remedied and the object and the purpose of the legislation in question. In ***Kalpna Mehta v. Union of India, (2018) 7 SCC 1 : 2018 SCC OnLine SC 512***, the Supreme Court has held as under:-

“125. In K.P. Varghese v. CIT, (1981) 4 SCC 173 : 1981 SCC (Tax) 293, the Court, while referring to the Budget Speech of the Minister, ruled that speeches made by Members of legislatures on the floor of the House where a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision. But the Court made it clear that the speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. Such a view, as per the Court, was in consonance with the juristic thought not only in the western countries but also in India as in the exercise of interpretation of a statute, everything which is logically relevant should be admitted. Thereafter, the Court acknowledged a few decisions of this Court where speeches made by the Finance Minister were relied upon by the Court for the purpose of ascertaining the reason for introducing a particular clause.

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134. From the aforesaid, it clear as day that the Court can take aid of the report of the Parliamentary Committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment.

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144. It is worthy to note here that there is an intrinsic difference between parliamentary proceedings which are in the nature of statement of a Minister or of a Mover of a Bill made in Parliament for highlighting the purpose of an enactment or, for that matter, a Parliamentary Committee report that had come into existence prior to the enactment of a law and a contestable/conflicting matter of “fact” stated in the Parliamentary Committee report. It is the parliamentary proceedings falling within the former category of which courts are enjoined under Section 57, clause (4) to take judicial notice of, whereas, for the latter category of parliamentary proceedings, the truthfulness of the contestable matter of fact stated during such proceedings has to be proved in the manner known to law.”

36. The then Minister of Law and Justice and the Minister of Electronics and Information Technology, Sh. Ravi Shankar Prasad while moving the Amendment Act, 2018 explained its rationale as under:-



“Shri Ravi Shankar Prasad: Sir, may I just explain the rationale for this Bill? The Specific Relief Act was enacted in the year 1963. And, the Act clearly stated that damages and monetary compensation shall be the norm and a specific relief shall be an exception. So much so that under Section 41 of the Act, no injunction could be granted in the event an errant party tries to run away. You take damages. Now, Sir, with the passage of time, infrastructure has become a big issue in India. A lot of money is coming and investment is coming. And, many of them ultimately partake of the contracts which are relevant as far as the Specific Relief Act is concerned. Now, Sir, in many cases, errant parties or deviant parties, they are creating problems. Whenever the parties used to go to the court, they say, “No specific performance, you take money”. It was also impacting our standing in the Ease of the Doing Business. Therefore, ultimately, it was thought that this matter requires to be addressed. And, ultimately, a three-member Committee of eminent people was formed and that Committee recommended – there were people from the law firms; there were people from the industry – that this requires proper amendment. And, therefore, we came with an amendment. What is the purport of the amendment which we are seeking to move today? It is basically three-fold. First and foremost, now, a specific performance shall be the rule and damages has been exception. So, we have reversed the entire focus of the Bill from 1963 to 2017-18....”

37. From the aforesaid, it is apparent that the primary intent behind the Amendment Act, 2018 is to introduce greater certainty in the enforcement of contracts and consequently improve India’s ranking in ‘Enforcement of Contracts’ and ‘Ease of Doing Business’.

38. This Court is of the view that the Amendment Act, 2018 introduces a paradigm shift in law regarding contractual enforcement in India. A glaring instance of the legislative shift is the amendment of Section 14 of Act, 1963 which deletes the earlier sub-clause (a) which prescribed that the contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced, meaning thereby that the plea that a party could be compensated in monetary terms as damages for breach of the contract and resultant refusal of interim injunction on the said ground, is no longer a ground to refuse specific performance of the contract. Consequently, the



Amendment Act, 2018 does away with the primacy given to damages as a relief over specific performance. It shifts the focus from the previous default remedy of award of damages for breach of contract to enforcing specific performance of contracts. To highlight the change some of the provisions of the Act, 1963 and the Amendment Act, 2018 are contrasted hereinbelow:-

<i>Section</i>	<i>Act of 1963</i>	<i>Act as amended, effective on 01.10.2018</i>
<i>Section 10</i>	10. Cases in which specific performance of contract enforceable- <i>Except as otherwise provided in this Chapter, the specific performance of any contract <u>may</u>, in the discretion of the court, be enforced-</i> <i>(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or</i> <i>(b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.</i> Explanation: <i>Unless and until the contrary is proved, the court shall presume-</i> <i>(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and</i> <i>(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:</i> <i>(a) where the property is not an ordinary article of commerce, or</i>	10. Specific performance in respect of contracts. <i>The specific performance of a contract <u>shall</u> be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.</i>



	<i>is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;</i> <i>(b) where the property is held by the defendant as the agent or trustee of the plaintiff.</i>	
Section 14	14. Contracts not specifically enforceable.- <i>(1) The following contracts cannot be specifically enforced, namely,-</i> <i>(a) <u>a contract for the non-performance of which compensation is an adequate relief;</u></i> <i>(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;</i> <i>(c) a contract which is in its nature determinable;</i> <i>(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.</i>	14. Contracts not specifically enforceable.— <i>The following contracts cannot be specifically enforced, namely:-</i> <i>(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;</i> <i>(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;</i> <i>(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and</i> <i>(d) a contract which is in its nature determinable.</i>



	(2) <i>Save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.</i> (3) <i>Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:</i> (a) <i>where the suit is for the enforcement of a contract,-</i> (i) <i>to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once;</i> PROVIDED <i>that where only a part of the loan has been advanced the vendor is willing to advance the remaining part of the loan in terms of the contract; or</i> (ii) <i>to take up and pay for any debentures of a company;</i> (b) <i>where the suit is for,-</i> (i) <i>the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or</i> (ii) <i>the purchase of a share of a partner in a firm;</i> (c) <i>where the suit is for the enforcement of a contract for the</i>	
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	<i>construction of any building or the execution of any other work on land:</i> <i>PROVIDED</i> that the following conditions are fulfilled, namely,- (i) <i>the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;</i> (ii) <i>the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and</i> (iii) <i>the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.</i>	
Section 16	<i>16. Personal bars to relief.—</i> <i>Specific performance of a contract cannot be enforced in favor of a person—</i> <i>(a) who would not be entitled to recover compensation for its breach; or</i> <i>(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or</i>	<i>16. Personal bars to relief.—</i> <i>Specific performance of a contract cannot be enforced in favour of a person—</i> <i>(a) who has obtained substituted performance of contract under section 20; or</i> <i>(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or</i>





	<i>(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.</i> Explanation : <i>For the purposes of clause (c),-</i> <i>(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;</i> <i>(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.</i>	<i>(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.</i> Explanation.—<i>For the purposes of clause (c),—</i> <i>(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;</i> <i>(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.</i>
Section 20	20. Discretion as to decreeing specific performance.- <i><u>(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.</u></i>	20. Substituted performance of contract.— <i>(1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872 (9 of 1872), and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred,</i>





	<i>(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:</i> <i>(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or</i> <i>(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or</i> <i>(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.</i> Explanation 1 : <i>Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).</i>	<i>spent or suffered by him, from the party committing such breach.</i> <i>(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency: Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.</i>
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	Explanation 2: <i>The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.</i> (3) <i>The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.</i> (4) <i>The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.</i>	(3) <i>Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.</i> (4) <i>Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.</i>
Section 21	21. Power to award compensation in certain cases— (1) <i>In a suit for a specific performance of a contract, the plaintiff may also claim compensation for its breach, either <u>in addition to, or in substitution of,</u> such performance.</i> (2) <i>If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that</i>	21. Power to award compensation in certain cases.— (1) <i>In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach <u>in addition to</u> such performance.</i> (2) <i>If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff</i>



	<i>breach, it shall award him such compensation accordingly.</i> <i>(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.</i> <i>(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.</i> <i>(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:</i> <i>PROVIDED</i> <i>that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.</i> <i>Explanation:</i> <i>The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.</i>	<i>is entitled to compensation for that breach, it shall award him such compensation accordingly.</i> <i>(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.</i> <i>(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).</i> <i>(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:</i> <i>Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.</i> <i>Explanation.—</i><i>The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.</i>
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39. This Court is of the view that by virtue of the changes brought about by the Amendment Act, 2018, the Courts will now grant specific performance unless the claim for relief is barred under limited grounds prescribed in the statute. This change is aimed at providing greater protection of contractual expectations by ensuring that a non-defaulting party can obtain the performance it bargained for. The Amendment Act, 2018 intends to discourage errant parties who may deem it more viable to breach a contract than perform it, as the cost of damages may still be less than the cost of the performance.

40. The Amendment Act, 2018 has also brought the Indian Specific Performance Act in line with the UNIDROIT Principles of International Commercial Contracts, as it aspires to achieve harmonization in international law governing commercial contracts.

41. In a recent article on “The Specific Relief (Amendment) Act, 2018”, Saharshrarchi Uma Pandey of National Law University, Nagpur, Maharashtra has by way of a chart illustrated the overall change in intent and approach between Act, 1963 and Amendment Act, 2018 as under :-

<i>Specific Relief Act, 1963</i>	<i>Amendment Act, 2018</i>
<i>Specific performance of the contract was dependent on the discretion of the court.</i>	<i>Grant of specific performance of contracts has been made compulsory.</i>
<i>No such provision was present to enforce the contract on the part of the defaulter.</i>	<i>Provision for the Substituted Performance of the contract by a third party.</i>
<i>No such provision was present at the disposal of the judges.</i>	<i>Court is empowered to get expert opinion from one or more than one experts in Infrastructure and related matters.</i>



<i>The suits had no particular time period in which they had to be disposed of further leading to years of impediment and delay in enforcing contractual liabilities.</i>	<i>A suit filed under the Specific Relief Act would have to be disposed off within twelve months from the date of service of summons to the defendant. This period can be extended by six months after the recording of written reasons by the court.</i>
<i>There was no demarcation of any Court as a special one and the routine civil courts had the jurisdiction over such matters and dealt with them accordingly.</i>	<i>Certain civil courts are proposed to be designated as Special Courts by the state government that will deal specifically with the cases pertaining to the infrastructure related disputes.</i>

42. Consequently, the Amendment Act, 2018 has changed the nature of specific relief from an equitable, discretionary remedy to a statutory remedy. It has made specific performance of a contract a general rule rather than an exception.

THE ORIGINAL AGREEMENT & ADDENDUM ARE NOT DETERMINABLE

43. The agreements in question are not determinable, as there is a negative covenant and the Respondent No.1/ Defendant No.6 has no right to terminate them. Schedule A Clause 2 of the original agreement stipulates that “*the artist (Respondent No.1/ Defendant No.6) shall not terminate this agreement for any reason whatsoever for the term.*”

44. In ***Rajasthan Breweries Limited v. The Stroh Brewery Company*** (supra), the termination of the agreement was upheld primarily due to absence of a negative covenant in that agreement. The relevant portion of the said judgment is reproduced hereinbelow:-

“15... We were taken through various clauses and it is not disputed and has also rightly been pointed out by learned Single Judge that there is no negative covenant in the agreements in question. As there was no negative covenant, it was observed by learned Single Judge that agreements could be terminated by the respondent on the happening of any of the events mentioned in clause 8 of



the Technical Assistance Agreement and under similar corresponding clause in Technical Know-how Agreement. Accordingly, learned Single Judge held that since agreement was determinable at the behest of respondent, therefore, the same was determinable in nature and is revocable at the option of both the parties at the happening of any of the events mentioned therein....”

45. Moreover, as the legislative shift is towards stronger enforcement of contracts, this Court is of the opinion that the judgments of this Court in similar lines of *Infinity Optimal Solution Pvt. Ltd. (IOS) v. Vijender Singh* (supra) to the extent they hold that there is a presumption that any commercial transaction can be terminated in the absence of a termination clause by giving a reasonable notice and/or contracts for the non-performance of which compensation in money was an adequate relief would not be specifically enforced are no longer good law.

SECTION 14 OF ACT, 1963 IS INAPPLICABLE AS THE APPELLANT IS ENFORCING A NEGATIVE COVENANT ONLY.

46. While Sections 14 and 41 of the Act, 1963 prescribes contracts which are not specifically enforceable, Section 42 of the Act, 1963 provides for enforcement of a negative covenant. The said Sections are reproduced hereinbelow:-

“14. Contracts not specifically enforceable.—*The following contracts cannot be specifically enforced, namely:—*

- (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;*
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;*
- (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and*
- (d) a contract which is in its nature determinable.*

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

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

42. Injunction to perform negative agreement.— *Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:*

Provided that the plaintiff has not failed to perform the contract so far as it is binding on him.”

47. From the aforesaid provisions, it is apparent that there is a distinction between a relief of specific performance of the agreement and an injunction to perform a negative covenant in the agreement.

48. Keeping in view the aforesaid distinction, this Court is of the view that the Appellant/ Plaintiff need not and has rightfully not challenged the alleged termination of the agreements by Respondent No.1/ Defendant No.6.

49. In the present case there is a negative covenant (Clause 3.5) in the Addendum executed between the parties and the Appellant/ Plaintiff by way of the present appeal seeks to enforce the said negative covenant alone. Accordingly, Section 14 is inapplicable to the present case as the Appellant/ Plaintiff is not seeking specific performance of any agreement, as erroneously assumed by the learned Single Judge, but is only seeking to enforce a negative covenant.

50. Consequently, the basic fallacy underlying the impugned judgment is that the learned Single Judge took the Appellant/ Plaintiff's case to be for specific performance of either the Original Agreement or the Addendum.



THE UNIFORM AND CONSISTENT PRACTICE OF COURTS HAS BEEN TO ENFORCE A NEGATIVE COVENANT IN AN AGREEMENT.

51. The uniform and consistent practice of Courts in India and England has been to enforce negative covenants in an agreement.

52. In ***Lumley Vs. Wagner*** (supra) the defendant had agreed with Lumley to sing at the Dury Lane theatre on two (2) nights a week for a period of three (3) months, and not to use her talents at any other theatre during that period without Lumley's written consent. She then agreed for a larger payment to sing during the three months for Gye at Covent Garden, and to abandon the agreement with Lumley. Lord St. Leonards L.C. granted an injunction, restraining her from singing for Gye, and observed:

“It is true that I have not the means of compelling her to sing, but she has no cause of complaint if I compel her to abstain from the commission of an act, which she has bound herself not to do.”

(emphasis supplied)

53. On the same principle, it was held in ***Warner Bros vs. Nelson*** (supra) that breach of negative stipulation against performing services as an actor for anyone except the employer may be restrained by injunction. Such an injunction may provide an inducement to perform the positive obligation, but it falls short of indirectly compelling the singer or actor or employee to do the agreed work.

54. In fact, the judgment in ***Warner Brothers Pictures vs. Nelson*** (supra), was applied in ***Niranjan Shankar Golikari vs. Century Spinning and Manufacturing Co. Ltd.*** (supra) wherein Niranjan Golikari, the employee had resigned from the services of the employer during the contractual period of five (5) years and joined another company, yet the Supreme Court upheld the injunction granted against him restraining him from getting employment or



being engaged as a shift supervisor in the manufacture of tyre cord yarn or as an employee under any title discharging substantially the same duties as a shift supervisor in Rajasthan Rayon, Kotah or any other company or firm or individual in any part of India for the term ending 15th March, 1968 (term as mentioned in the agreement).

55. The said judgment has been consistently followed in **Gujarat Bottling Co. Ltd. & Ors. V. Coca Cola Co. & Ors.** (supra) and **Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr.** (supra). The relevant portion of all the aforesaid judgments are reproduced hereinbelow:

A. Warner Brothers Pictures, Incorporated V. Nelson, (1937) 1 K.B. 209

".....The practice of the Court of Chancery in relation to the enforcement of negative covenants is stated on the highest authority by Lord Cairns in the House of Lords in Doherty v. Allman, 3 App. Cas. 709, 719. His Lordship says: "My Lords, if there had been a negative covenant, I apprehend, according to well-settled practice, a Court of Equity would have had no discretion to exercise. If parties, for valuable consideration, with their eyes open, contract that a particular thing shall not be done, all that a Court of Equity has to do is to say, by way of injunction, that which the parties have already said by way of covenant, that the thing shall not be done; and in such case the injunction does nothing more than give the sanction of the process of the Court to that which already is the contract between the parties. It is not then a question of the balance of convenience or inconvenience, or of the amount of damage or of injury — it is the specific performance, by the Court, of that negative bargain which the parties have made, with their eyes open, between themselves....."

The conclusion to be drawn from the authorities is that, where a contract of personal service contains negative covenants the enforcement of which will not amount either to a decree of specific performance of the positive covenants of the contract or to the giving of a decree under which the defendant must either remain idle or perform those positive covenants, the Court will enforce those negative covenants; but this is subject to a further consideration. An injunction is a discretionary remedy, and the Court in granting it may limit it to what the Court considers reasonable in all the circumstances of the case.

B. Niranjan Shankar Golkari Vs. Century Spinning and Manufacturing Co. Ltd., (1967) 2 SCR 378

".....On November 7, 1964, he informed the respondent company that he had resigned from October 31, 1964. The respondent company by its letter of



November 23, 1964 asked him to resume work stating that his said resignation had not been accepted....

*A similar distinction has also been drawn by courts in India and a restraint by which a person binds himself during the term of his agreement directly or indirectly not to take service with any other employer or be engaged by a third party has been held not to be void and not against Section 27 of the Contract Act. In *Brahmaputra Tea Co. Ltd. v. Scarth* [ILR (XI) Cal 545] the condition under which the covenantee was partially restrained from competing after the term of his engagement was over with his former employer was held to be bad but the condition by which he bound himself during the term of his agreement, not, directly or indirectly, to compete with his employer was held good. At page 550 of the report the court observed that an agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, or directly or indirectly take part in, promote or aid any business in direct competition with that of his employer was not hit by Section 27. The Court observed:*

“An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force.”

*[See also *Pragji v. Pranjivan* [5 Bom. L.R. 872] and *Lalbhai Dalpathbhai & Co. v. Chittaranjan Chandulal Pandya* [AIR 1966 Guj 189]]. In *Deshpande v. Arbind Mills Co.* [48 Bom LR 90] an agreement of service contained both a positive covenant viz. that the employee shall devote his whole-time attention to the service of the employers and also a negative covenant preventing the employee from working elsewhere during the term of the agreement. Relying on *Pragji V. Pranjivan*, *Charlesworth v. MacDonald* [ILR 23 Bom 103], *Madras Railway Company v. Rust* [ILR 14 Mad 18], *Subba Naidu v. Haji Badsha Sahib* [ILR 26 Mad 168] and *Burn & Co. v. MacDonald* [ILR 36 Cal 354] as instances where such a negative covenant was enforced, the learned Judges observed that Illustrations (c) and (d) to Section 57 of the Specific Relief Act in terms recognised such contracts and the existence of negative covenants therein and that therefore the contention that the existence of such a negative covenant in a service agreement made the agreement void on the ground that it was in restraint of trade and contrary to Section 27 of the Contract Act had no validity.....*

The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract. Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant





that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one sided as in the case of W.H. Milsted & Son Ltd., (1927) W.N.233. Both the Trial Court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent Company was reasonable and necessary for the protection of the company's interests and not such as the court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and was therefore against public policy."

C. Gujarat Bottling Co. Ltd. And Others Vs. Coca Cola Co. And Others, (1995) 5 SCC 545

34. Since the negative stipulation in paragraph 14 of the 1993 Agreement is confined in its application to the period of subsistence of the agreement and the restriction imposed therein is operative only during the period the 1993 Agreement is subsisting, the said stipulation cannot be held to be in restraint of trade so as to attract the bar of Section 27 of the Contract Act. We are, therefore, unable to uphold the contention of Shri Shanti Bhushan that the negative stipulation contained in paragraph 14 of the 1993 Agreement, being in restraint of trade, is void under Section 27 of the Contract Act.....

42. In the matter of grant of injunction, the practice in England is that where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction and injunction is normally granted as a matter of course, even though the remedy is equitable and thus in principle a discretionary one and a defendant cannot resist an injunction simply on the ground that observance of the contract is burdensome to him and its breach would cause little or no prejudice to the plaintiff and that breach of an express negative stipulation can be restrained even though the plaintiff cannot show that the breach will cause him any loss. [See: Chitty on Contracts, 27th Edn., Vol. I, General Principles, paragraph 27-040 at p. 1310; Halsbury's Laws of England, 4th Edn., Vol. 24, paragraph 992.] In India Section 42 of the Specific Relief Act, 1963 prescribes that notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. This is subject to the proviso that the plaintiff has not failed to perform the contract so far as it is binding on him. The Court is, however, not bound to grant an injunction in every case and





an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer. [See: Ehrman v. Bartholomew [(1898) 1 Ch 671 : (1895-99) All ER Rep Ext 1680] ; N.S. Golikari [(1967) 2 SCR 378 : AIR 1967 SC 1098 : (1967) 1 LLJ 740] at p. 389.]

D. Percept D' Mark (India) (P) Ltd. Vs. Zaheer Khan And Another, (2006) 4 SCC 227

44.the appellants are seeking at the interlocutory stage to question the interpretation of restraint of trade during the post-contractual period, which interpretation has been uniform, consistent and unchanged for the past several years since the judgment of Sir Richard Couch, C.J. in Madhup Chunder v. Rajcoomar Doss [(1874) 14 Beng LR 76] . The interpretation of Section 27 of the Contract Act which found prima facie favour with the Division Bench is one which has been uniformly and consistently followed from 1874 till 2006 by all the High Courts in India, and which has expressly been approved by this Court in Niranjana Shankar Golikari [(1967) 2 SCR 378 : AIR 1967 SC 1098] , Superintendence Co. of India [(1981) 2 SCC 246] and Gujarat Bottling [(1995) 5 SCC 545]. Even if there were a case for reconsideration of this 132 years old interpretation, though none is made out by the appellant, such an exercise ought not to be undertaken in the present interlocutory proceedings.....

56. The legal position with regard to post-contractual covenants or restrictions has been consistent, unchanging and completely settled in our country. The legal position clearly crystallised in our country is that while construing the provisions of Section 27 of the Contract Act, neither the test of reasonableness nor the principle of restraint being partial is applicable, unless it falls within express exception engrafted in Section 27.....

60. We have perused the contract in detail. The terms of the contract were expressly limited to 3 years from 30-10-2000 to 29-10-2003, unless extended by mutual agreement, and all obligations and services under the contract were to be performed during the term.

61. Clause 31(b) was also to operate only during the term i.e. from the conclusion of the first negotiation period under clause 31(a) on 29-7-2003 till 29-10-2003. This Respondent 1 has scrupulously complied with. So long as clause 31(b) is read as being operative during the term of the agreement i.e. during the period from 29-7-2003 till 29-10-2003, it may be valid and enforceable. However, the moment it is sought to be enforced beyond the term and expiry of the agreement, it becomes prima facie void, as rightly held by the Division Bench.

62. If the negative covenant or obligation under clause 31(b) is sought to be enforced beyond the term i.e. if it is enforced as against a contract entered into on 20-11-2003 which came into effect on 1-12-2003, then it constitutes an





unlawful restriction on Respondent 1's freedom to enter into fiduciary relationships with persons of his choice, and a compulsion on him to forcibly enter into a fresh contract with the appellant even though he has fully performed the previous contract, and is, therefore, a restraint of trade which is void under Section 27 of the Contract Act.

63. Under Section 27 of the Contract Act: (a) a restrictive covenant extending beyond the term of the contract is void and not enforceable, (b) the doctrine of restraint of trade does not apply during the continuance of the contract for employment and it applies only when the contract comes to an end, (c) as held by this Court in Gujarat Bottling v. Coca-Cola [(1995) 5 SCC 545] this doctrine is not confined only to contracts of employment, but is also applicable to all other contracts.....”

56. Consequently, nothing precludes the Court from granting an injunction to enforce the negative covenant in a contract of personal service.

SECTION 27 APPLIES ONLY TO RESTRICTIONS IN POST CONTRACT PERIOD.

57. This Court is of the view that neither the Agreement nor the Addendum between the Appellant/ Plaintiff and Respondent No.1/ Defendant No.6 is barred by Section 27 of the Indian Contract Act, 1872 as the said Section applies to restrictions in post contract period i.e. in the present case the period after the promised term (till 30th September, 2025) of the Addendum and not after unilateral termination of a contract by one of the parties. Section 42 of Act, 1963 will be rendered nugatory if it is held that because a party has unilaterally terminated a contract prematurely, Courts cannot enforce a negative covenant.

58. This Court is of the view that the learned Single Judge has incorrectly held that the judgment in *Niranjan Shankar Golikari Vs. Century Spinning and Manufacturing Co. Ltd.* (supra) is not applicable to the present case as the contract was still subsisting therein. On the contrary, as pointed out hereinabove, in *Niranjan Shankar Golikari Vs. Century Spinning and*



Manufacturing Co. Ltd. (supra) the Supreme Court enforced the negative covenant despite termination of the contract by the employee.

59. The reliance by the learned Single Judge in the impugned order on the judgment of the Supreme Court in *Percept D' Mark (India) (P) Ltd. V. Zaheer Khan & Anr* (supra) is also misplaced, as in the said case, the cricketer's agreement with the plaintiff therein for availing its services as an agent had ended i.e. expired by efflux of time and what was sought therein was an injunction against the cricketer not to contract with different agencies after the performance of the contract was over. In such circumstances, it was held that the plaintiff therein cannot compel the cricketer to appoint the plaintiff therein as his agent in perpetuity.

60. Consequently, this Court is of the view that the learned Single Judge has erred in holding that since the Respondent No.1/ Defendant No.6 had terminated the contract, the negative covenant cannot be enforced.

61. Moreover, in the present case, the Respondent No.1/ Defendant No.6, without performing the terms of the Addendum, has started creating third party rights during the term of the Addendum, which is till 30th September, 2025. Therefore, the Appellant/ Plaintiff herein has sought interim injunction against Respondent No.1/ Defendant No.6 seeking to restrain him from creating third party rights only during the tenure of the agreement i.e., till 30th September, 2025.

DAMAGES ARE NOT AN ADEQUATE REMEDY

62. This Court is in agreement with learned Senior counsel for the Appellant/ Plaintiff that it is difficult, if not impossible, to determine the revenue from the songs that were to be sung by the Respondent No.1/



Defendant No.6 under the Addendum. One song may be a super hit, whereas the other may not do well at all. Consequently, no definite amount of revenue earned from the songs can be readily ascertained. Thus rendering it impossible for this Court to ascertain the quantum of damages.

63. Reliance by the learned counsel for the Respondent No.1/ Defendant No.6 on clause 7.1 of the Original Agreement providing liquidated damages is misplaced as the said clause only deals with the eventuality when the contract is terminated by the Appellant/ Plaintiff alone and not by Respondent No.1/ Defendant No.6. In fact Schedule A Clause 2 of the Agreement specifically states that, *“the Artist (Respondent No.1/ Defendant No.6) shall not terminate this Agreement for any reason whatsoever for the Term.”*

64. Additionally, the Addendum which substitutes the termination clause of the Original Agreement does not provide for a clause pertaining to predetermined damages. On the contrary, Clause 9.8 of the Addendum acknowledges that in the event of breach of Agreements, damages may not be an adequate remedy and the parties shall be entitled to specific enforcement of the agreements and seek injunction as well as such other such equitable reliefs. The relevant clause is reproduced hereinbelow:-

“9.8. Specific Performance. The Parties agree that damages may not be an adequate remedy and the Parties shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Party from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including a right for damages.”

(emphasis supplied)



65. Consequently, this Court is of the view that both the Original Agreements and the Addendum in question preclude the Respondent No.1/ Defendant No.6 from contending that damages is an adequate remedy and shows that Respondent No.1/ Defendant No.6 is party in breach whose actions have caused losses to the Appellant/ Plaintiff.

IN VIEW OF THE AVERMENTS IN THE PLAINT, THE APPELLANT-PLAINTIFF'S SUIT CANNOT BE DISMISSED ON LACK OF TERRITORIAL JURISDICTION.

66. As far as the plea of lack of territorial jurisdiction is concerned, this Court finds that the Appellant/ Plaintiff in its plaint in Para 106 has averred that *'the Plaintiff submits that the content created by the Defendant No.6 in breach of the copyrights and Intellectual Property Rights of the Plaintiff granted under agreement with the Plaintiff, has been and can be viewed at New Delhi, and has been downloaded by consumers in Delhi. As such, there is clear infringement of the Plaintiff's rights in its literary work, musical work, cinematographic film and sound recording, which is taking place at New Delhi i.e. within the territorial jurisdiction of this Hon'ble Court. Thus, this Hon'ble Court has the territorial jurisdiction to entertain, try and adjudicate the present suit.'*

67. This Court in ***Banyan Tree Holding (P) Limited Vs. A. Murali Krishna Reddy & Anr., 2009 SCC OnLine Del 3780*** has held, *'...For the purposes of a passing off or an infringement action (where the plaintiff is not located within the jurisdiction of the court), the injurious effect on the Plaintiff's business, goodwill or reputation within the forum state as a result of the Defendant's website being accessed in the forum state would have to be shown. Naturally therefore, this would require the presence of the Plaintiff in the forum state and not merely the possibility of such presence in the future. Secondly, to show that*



an injurious effect has been felt by the Plaintiff it would have to be shown that viewers in the forum state were specifically targeted. Therefore the ‘effects’ test would have to be applied in conjunction with the “sliding scale” test to determine if the forum court has jurisdiction to try a suit concerning internet based disputes’.

68. Subsequently, another Division Bench in **World Wrestling Entertainment, Inc. vs. M/s. Reshma Collection & Ors., 2014 SCC OnLine Del 2031** has held, ‘....Because of the advancements in technology and the rapid growth of new models of conducting business over the internet, it is possible for an entity to have a virtual presence in a place which is located at a distance from the place where it has a physical presence. The availability of transactions through the website at a particular place is virtually the same thing as a seller having shops in that place in the physical world. Let us assume for the sake of argument that the appellant/plaintiff had a shop in Delhi from where it sold its various goods and services. In that case, it could not be denied that the plaintiff carried on business in Delhi. This is apart from the fact that the appellant/plaintiff may also have been regarded as having voluntarily resided in Delhi. When the shop in the ‘physical sense’ is replaced by the ‘virtual’ shop because of the advancement of technology, in our view, it cannot be said that the appellant/plaintiff would not carry on business in Delhi’.

69. Since in the present case, the Appellant/ Plaintiff in its plaint avers that viewers in Delhi have been specifically targeted and there has been an alleged injurious effect of the same, this Court is of the view that Appellant/ Plaintiff’s suit cannot be dismissed at this stage on ground of lack of territorial jurisdiction. It is open to the Respondent No.1/ Defendant No.6 to raise this defence at the trial stage.



IN VIEW OF THE DEFENCE THAT THE AGREEMENT AND ADDENDUM ARE VITIATED BY FRAUD, THE MATTER CANNOT BE REFERRED TO ARBITRATION.

70. It was the Respondent No.1/ Defendant No.6's case in the application for vacation of interim injunction filed before the learned Single Judge that the entire Original Agreement and the Addendum, which incorporate the arbitration clause, are vitiated by fraud. The relevant portion of the application for vacation of the interim injunction filed by Respondent No.1/ Defendant No.6 is reproduced hereinbelow:-

"15. That thereafter in month of February 2022 Sh. Raj Kumar Singh (representative of plaintiff) again approached the applicant/ answering respondent no.6 and stated that he wants to continue with the applicant afresh and this time there would be no breach of trust, but applicant/ answering defendant no.6 clearly denied the request of the Raj Kumar Singh. Later on at the instance of the Raj Kumar Singh and the Global Music Junction Pvt. Ltd. a meeting was arranged in which many of the investors of Global Music Junction Pvt. Ltd., its directors, their promoters and the applicant/answering respondent no.6 were present. In the same meeting they persuaded applicant/answering defendant no. 6 to continue to work with the plaintiff. For the past conduct they also said sorry. That again in good faith they obtained signatures of the applicant on some written papers stating it to be a new/fresh agreement and assured that in the new agreement both parties will get equal rights and liabilities, further said that applicant/answering respondent no. 6 will have freedom to continue with his profession as an artist, actor, performer etc. independently and no exclusive rights will remain with the plaintiff in any regard. This time agreement was got typed by the plaintiff in English and in Hindi as well as to show that there would be no foul play. It was further agreed that as per the conditions in the agreement applicant/answering respondent no.6 will have complete freedom and right to work with other producers/directors also. Thereafter, applicant/answering respondent no.6 started continuing his work/assignments with the other producers as well. Now, when applicant/answering defendant no. 6 was working with the other producers he came to know that the plaintiff has fraudulently got my signatures in the name of making fresh contract as agreed by and understood by me, but they have got prepared a contract and got signed by applicant, where the terms and conditions of the new contract were similar to that of previous illegal and void contract dated 27.04.2021. The defendant no. 6 after understanding the contract realized that the plaintiff again bounded the applicant/answering defendant no.6 with their company exclusively which is prejudice and





detrimental to the defendant no. 6. Further, the conduct of the plaintiff shows their malafide intent to not to adhere to the terms and conditions which was discussed in the meeting of February.

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22. That even in the termination clause no option is conferred on the artist to terminate the contract. The artist has been made liable to deliver songs to third parties with whom he has no direct or indirect agreement. The rights of writers, lyrist, directors, producers of the applicant/Defendant has been attempted to be taken away by the plaintiff despite the fact that no writer/lyrist of the songs sung by the applicant/ answering Defendant, directors and producers were party to the above said fraudulent and unlawful agreements. The agreements have been drafted with a fraudulent mindset wherein not only an attempt has been made to steal, usurp and detain the art of the applicant/ Defendant but also the work of the writers, lyrist, directors, producers have been attempted to be illegally captured.”

71. In *Vidya Drolia and Others Vs. Durga Trading Corporation, (2021) 2 SCC 1*, the Supreme Court has held as under:-

“78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan [N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72 : (2010) 1 SCC (Civ) 12] inter alia observing that allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full Bench decision of the Delhi High Court in HDFC Bank Ltd. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.”

72. Consequently, as it is the Respondent No.1/ Defendant No.6’s case that fraud vitiates and invalidates the entire Original Agreement and the Addendum including the arbitration clause therein, the matter cannot be referred to arbitration.

73. In any event, as the learned Single Judge in the impugned order has not dealt with the objection, this Court is of the view that it would not be fair and proper to dismiss the present appeal on the said ground.



THE AGREEMENTS BETWEEN THE PARTIES ARE NEITHER 'EXCESSIVELY ONE SIDED' NOR THEY IMPOSE A 'BONDAGE'.

74. The fact that under the Addendum, the consideration payable to Respondent No.1/ Defendant No.6 was substantially enhanced to further award 10% share in the profits earned from the deliverables above and over the consideration of Rs.2,50,000/- per song strengthens the Appellant/ Plaintiff's argument that the Addendum was executed with equal involvement and representation of the Respondent No.1/ Defendant No.6.

75. Consequently, the execution of Original Agreement and Addendum were purely commercial transactions entered into after detailed negotiations between the parties. The restrictions, if any, were on account of voluntary obligations undertaken by the Respondent No.1/ Defendant No.6 and assurances made by him.

76. This Court is of the prima facie view that the agreement between the parties is not a contract between a 'Goliath & David' or an employee-employer or a manager-sportsperson contract. Rather they are commercial contracts entered into between parties with equal bargaining power and for mutual commercial benefit. Accordingly, the agreements between the parties are neither 'excessively one sided' nor they impose a 'bondage' on Respondent No.1/ Defendant No.6. Hence, the Respondent No.1/ Defendant No.6 cannot be permitted to renege his promises under the garb of a restriction allegedly violative of any law.

PRIMA FACIE CONDUCT OF THE RESPONDENT NO.1/ DEFENDANT NO.6 IS NEITHER HONEST NOR FAIR.

77. The primary defence adopted by Respondent No.1/ Defendant No.6 that he entered into the agreements under misrepresentation or fraud perpetrated by



the Appellant/ Plaintiff as the Respondent No.1/ Defendant No.6 was not well versed in English, inspires no confidence. The Addendum was entered into both in English and Hindi languages, post-exchange of legal notices between the parties to avoid any allegation that the Respondent No.1/ Defendant No.6 did not understand the terms of the agreement.

78. This Court also finds that at the time of execution of the Addendum several insertions/ corrections were made in handwriting and signed by the Respondent No.1/ Defendant No.6 which is apparent from review of clauses 3.1, 6.2 and 8 of the Addendum.

79. Disputes having arisen between the parties post execution of the Original Agreement, this Court is of the *prima facie* view that Respondent No.1/ Defendant No.6 being a professional is likely to have been assisted by lawyers and his manager at the time of execution of Addendum. This view gains support from the fact that several legal notices were exchanged between the parties including the reply dated 27th December, 2021 and reply dated 2nd February, 2022 issued by the lawyer of the Respondent No.1/ Defendant No.6.

80. Further, it was only during the hearing of this appeal when this Court had raised suspicion with regard to the Agreement dated 01st June, 2021 executed between Respondent No.1/ Defendant No.6 and Respondent No.2, that the Respondent No.1/ Defendant No.6 for the first time had disputed his signatures on the agreement with Respondent No.2, though this fact was never disputed before the learned Single Judge. Consequently, this Court is of the *prima facie* view that the conduct of the Respondent No.1/ Defendant No.6 in the present case has been neither honest nor fair.



ENFORCING NEGATIVE COVENANT (CLAUSE 3.5 OF ADDENDUM)
WILL NEITHER RENDER RESPONDENT NO.1 IDLE NOR COMPEL HIM
TO EXCLUSIVELY WORK WITH THE APPELLANT.

81. This Court disagrees with the contention of the learned counsel for the Respondent No.1/ Defendant No.6 that if the negative covenant is enforced, then the Respondent No.1/ Defendant No.6 would be rendered idle.

82. It has been admitted by Respondent No.1/ Defendant No.6 in his written submissions before this Court that he is a well established artist who has many revenue streams in his kitty and is a multi-faceted individual as he is an actor, singer and dancer in the Bhojpuri Film Industry for the past ten (10) years and is performing in films as well as on national TV channels, social media platforms and on stages.

83. This Court is of the opinion that enforcing the negative covenant encapsulated in Clause 3.5 of the Addendum will neither compel him to exclusively work with the Appellant/ Plaintiff, nor result in 'benching' him or rendering him 'idle' or preventing him from practising his trade or profession as he will continue to act, sing, dance in the Bhojpuri Film Industry as well as on national TV channels, social media platforms and on stages. Further, enforcing the negative covenant encapsulated in Clause 3.5 of the Addendum would not in substance and effect amount to a decree of specific performance of an agreement of personal service. Consequently, the judgments of this Court in ***ABP Network Private Limited vs. Malika Malhotra*** (supra), ***Simran Music Company vs. Prit Brar & Ors.*** (supra), ***Infinity Optimal Solutions Pvt. Ltd. (IOS) vs. Vijender Singh & Ors.*** (supra) and ***Warren vs. Mendy and Anr.*** (supra) offer no assistance to the Respondent No.1/ Defendant No.6.



CONTENTION THAT ADDENDUM WAS NEVER ACTED UPON IS NOT CORRECT

84. The contention of the Respondent No.1/ Defendant No. 6 that the Addendum was never acted upon is not correct as out of the total twelve (12) songs delivered by him since the inception of the Original Agreement, eight (8) songs were delivered after execution of the Addendum, i.e. from 8th April 2022 onwards. Post receipt of twelve (12) songs, the advance of Rupees Thirty Lakh (Rs. 30,00,000/-) provided by the Appellant/ Plaintiff was adjusted and requests to raise further invoices were made by the Appellant/ Plaintiff.

NO ALLEGATION THAT APPELLANT/PLAINTIFF BREACHED EITHER THE ORIGINAL AGREEMENT OR ADDENDUM

85. It is pertinent to mention that there is no allegation either in the application for vacation of interim injunction or in the present appeal that the Appellant/ Plaintiff has breached or violated any terms of the Original Agreement or Addendum. Consequently, this Court is of the *prima facie* view that the Appellant/ Plaintiff has always been ready and willing to perform its obligations and has not breached any of its obligations under the Original Agreement and/ or Addendum.

CONCLUSION

86. To conclude, the Amendment Act, 2018 has taken away the discretion of the Courts in granting specific performance. Altering the nature of specific relief from an exceptional rule to a general rule has been done to ensure contractual enforcement and to increase adherence to the sanctity of contracts.

87. In any event, Courts are not precluded from granting an injunction to perform a negative covenant and the same is in no manner controlled/ affected by Section 14 of the Act, 1963.



88. Accordingly, keeping in view the aforesaid conclusions, the impugned judgment is set aside and this Court injuncts the Respondent No.1/ Defendant No.6 from engaging with any third person including Respondents No.2 to 5 and/ or Appellant/ Plaintiff's competitor for monetising of any new song till 30th September, 2025, except when the Appellant/ Plaintiff refuses to accept delivery of the said song subject to the Appellant/ Plaintiff proving its bonafides by depositing the balance fee (i.e. Rs.2.20 crores) with the Registry of this Court. The release of the said amount shall abide by final judgment/order to be passed by the learned Single Judge. To place the matter beyond controversy, it is clarified that the Respondent No.1/ Defendant No.6 can continue to act, sing, dance in the Bhojpuri Film Industry as well as on national TV channels, social media platforms and on stages, but he can't sell his new songs to distributors/ music companies/ producers/ third parties like Respondents No.2 to 5 etc. till the Appellant/ Plaintiff refuses to accept delivery of the said new songs.

89. With the aforesaid directions, the present appeal along with applications stands disposed of but without any order as to costs.

MANMOHAN, J

SAURABH BANERJEE, J

SEPTEMBER 05, 2023
TS/AS/KA