

**CR No.1855 of 2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Case No. : CR No.1855 of 2024****Pronounced On : July 01, 2024**

Sajjan Kumar Duhan and another Petitioners

vs.

Shehnaz Kaur @ Shehnaaz Gill Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Dr. Anmol Rattan Sidhu, Senior Advocate
with Mr. Harlove Singh Rajput, Advocate
and Mr. Jashandeep Singh Bains, Advocate
for the petitioners.

Ms. Fury Jain, Advocate
and Mr. Taranjeet Singh Dosanjh, Advocate
for the respondent.

* * *

GURBIR SINGH, J. :

1. Challenge in the present revision petition is to the order dated 29.08.2023, passed by learned Additional District Judge, SAS Nagar (Mohali) (for brevity – Appellate Court), thereby allowing appeal filed by the respondent/plaintiff against the order dated 17.05.2023, passed by learned Civil Judge (Junior Division), SAS Nagar (Mohali) (for brevity – Trial Court), dismissing the application filed by the respondent under Order 39 Rules 1 and 2 CPC.

2. The respondent before this Court namely Shehnaz Kaur @ Shehnaaz Gill is the plaintiff/applicant before the learned Trial Court and petitioners herein are the defendants/respondents. However, in order to avoid



confusion, the parties hereinafter shall be addressed as per their original status in the suit before the learned Trial Court.

3. Plaintiff Shehnaz Kaur @ Shehnaaz Gill filed suit for declaration that the Agreement dated 25.09.2019, executed between the plaintiff and defendants is void and unenforceable and for permanent injunction restraining the defendants or their agents from raising any ownership claims/conflicts over the works, performances or other related projects/activities, authored/performed by the plaintiff solely or jointly and further permanent injunction restraining the defendants or their agents from defaming the plaintiff and contacting third parties or threatening them with legal action if they proceed to sign/work with the plaintiff. The said suit was also filed seeking damages/compensation for the loss of reputation. Along with the suit, an application for temporary injunction was also filed.

4. The facts, necessary for disposal of the instant petition, are that the plaintiff is a renowned and well respected Indian film actor, singer and model. Defendant no.1 is the Proprietor of defendant no.2 i.e. 'Simran Music Industries', which also operates as 'Single Track Studios' with Youtube username 'hawkrecords'. The plaintiff has sung as well as performed in numerous songs and music videos including one song titled 'Vehem', which was recorded by the plaintiff for the defendants in the year 2019. Neither any contract/agreement was signed between the parties for recording or producing the said song nor any amount or consideration was paid to the plaintiff for the said song.

5. In the year 2019 itself, the plaintiff was invited as a participant in



a reality TV show ‘Big Boss Season 13’, which was premiered on national television on 01.10.2019, for which the plaintiff entered the Big Boss House on 27.09.2019. It was further contended that just two days prior to entering the Big Boss House, defendants approached the plaintiff requesting and pleading her to sign a quick “Memorandum of Understanding” regarding a show of intent with respect to their future working relationship. On denying the request of the defendants, it was conveyed to the plaintiff that it was nothing but a succinct MoU regarding song ‘Vehem’ and could always be modified, if need be. On repeated requests by the defendants, the plaintiff signed the same in hurry and left for Big Boss House. After the said show was over, she started getting many offers. However, to the great dismay of the plaintiff, she came to know that defendants were sending E-mails to third parties claiming that the plaintiff was their exclusive artist as per Agreement dated 25.09.2019 and was not allowed to appear in any other music video without the permission of defendants. When the plaintiff approached the defendants and demanded a copy of said Agreement dated 25.09.2019, they refused to share the same.

6. In May 2020, the defendants wrote another set of E-mails to another music label company, in which the plaintiff was working and demanded to settle considerations with them in case they wished to continue working with the plaintiff. Feeling aggrieved, the plaintiff sent a legal notice dated 09.05.2020 to the defendants, detailing all the illegal actions of the defendants and asking them to desist from addressing any further correspondence to the third parties and making false accusations regarding



the plaintiff and also demanded a copy of the alleged Agreement, which the defendants asserted was executed between the parties.

7. The defendants sent reply to the legal notice vide representation dated 15.05.2020 and for the first time, a copy of the alleged Agreement was shared with the plaintiff. During September-November 2020, the defendants wrote another set of E-mails to another music label company 'Desi Music Factory', where the plaintiff was working. A copy of the mails was also sent to the plaintiff. The plaintiff then sent detailed legal notice dated 25.12.2020, submitting therein that the impugned Agreement was result of misrepresentation and was absolutely void and unenforceable. It was grossly unfair and unilateral, founded on inequality of bargaining power and shrewdly crafted in a way that all liabilities fall only on the plaintiff while the defendants stood free from all kinds of liability. The contract was also void for want of consideration, certainty. It was a commercial contract extendable in perpetuity which amounted to an unfair Negative Covenant placing an unjust restraint on the plaintiff's right to freedom of trade and profession and was opposed to public policy. It was also communicated to the defendants that she had rescinded the said Agreement and was, in no way, bound by the same. Since the receipt of above said legal notice dated 25.12.2020 by the defendants, for a period of more than two years, the plaintiff did not receive any further communication or objections from the side of the defendants, either directly or via correspondence with the third parties. The matter was thus deemed finally settled and the plaintiff successfully completed many projects over the two years including songs,



advertisements, music videos, reality shows, movies etc., without any direct or indirect interference on the part of the defendants. During these last two years, plaintiff appeared on three more seasons of Big Boss as a guest and also made guest appearances in other famous reality shows. She also starred in the Punjabi movie titled 'Honsla Rakh'. She also hosted her own talk-show on her Youtube channel.

8. After a long gap, on 15.02.2023, the plaintiff was shocked to learn that the defendants, after maintaining silence for more than two years, suddenly raised an ownership conflict through their Youtube channel 'Single Track Studios' with username 'hawkrecords' on the plaintiff's latest music video titled 'Ghani Syanni' produced by 'Desi Music Factory' and released in December 2022, due to which Youtube temporarily suspended the revenue inflow to the producers of the song, as per their protocol. So, the producers were deprived of all the revenue from Youtube despite the video having reached 24 million views. This act of the defendants is negatively impacting the plaintiff and causing irreparable harm to her career and reputation. It may further lead to the legal complications and copyright issues in future.

9. Defendants contested the suit as well as the application for stay. The case of the defendants is that the instant suit is perfect example of exploitation as well as self-serving approach adopted by the persons who are nurtured in the music industry by veterans like defendants. It was contended that the defendants had been working in the music industry for the last 25 years and giving their blood and sweat in order to explore and grab



opportunities, enabling a person swift from a common man to a celebrity. The Agreement in question was duly signed by the parties and was attested by two witnesses, for legal and valid consideration without any unlawful object. The Agreement was legal and valid and was not void. The defendants are a leading name in the Punjabi Media and Entertainment Industry, who regularly entered into exclusive arrangements and agreements with different artists. The song titled 'Vehem' was sung by the plaintiff and it was recorded for the defendants. It is wrong that there was no agreement or contract between the parties for recording the said song and no consideration was paid. A sum of Rs.2,11,000/- was paid to the plaintiff and various other expenses were incurred by the defendants over the production, promotion, distribution and releasing of the said song by the defendants under their name, as per mutual agreement between the parties. It was further contended that the defendants did not approach the plaintiff, rather she came to the office of the defendants on 25.09.2019 in order to sign the Agreement in question. The audio/video song/work was released on 02.10.2019, as per desire of the plaintiff whereas it was fixed for release on 27.09.2019 i.e. the date on which the plaintiff was to enter the Big Boss House but the plaintiff herself delayed the release of the song in order to create hype among the audience after entering the Big Boss House. The E-mails/communications were sent to different persons in the music industry claiming that the plaintiff was their exclusive artist as per the contract dated 25.09.2019 in order to avoid multiplicity of litigation. The defendants admitted having raised ownership conflict through their Youtube channel on



the plaintiff's latest video due to breach of contract by the plaintiff. It has been further submitted that the act of the defendants in not raising any dispute with respect to the song released by the plaintiff titled "Tu Yahin Hain" on 29.10.2020¹ is result of their mutual understanding and request of plaintiff to the defendants for not raising any claims qua this song due to demise of her better half Sidharath Shukla. The same cannot be portrayed as acquiescence to harass the defendants.

10. The learned Trial Court has dismissed the application on 17.05.2023, filed by the plaintiff for temporary injunction, on the ground that no finding can be given with respect to the Agreement dated 25.09.2019 that the same is result of misrepresentation, without consideration or against public policy. The plaintiff is already working on different projects. So, no prima facie case is made out in favour of the plaintiff and relief claimed in the application is not such which cannot be compensated in terms of money.

11. The learned Appellate Court, vide order dated 29.08.2023, allowed the appeal and has held that the Trial Court has failed to take into consideration that by writing E-mails to third parties, with whom the plaintiff was doing certain projects, the reputation of plaintiff was lowered. The third party would avoid entering into contract with the plaintiff, which would cause irreparable loss to the plaintiff. After issuing notice by the plaintiff in December 2020, the defendants kept quiet for two years, which prima facie shows that the contract was not validly executed and was specifically rescinded. The major period of contract had already been passed and the defendants could not be allowed to obstruct the working of



the plaintiff with different projects by writing letters to third parties and in case, the Agreement is held to be valid, the defendants can be compensated in terms of money. Prima facie case existed in favour of the plaintiff and application for temporary injunction was allowed.

12. Learned counsel for the defendants/petitioners has argued that the plaintiff has not raised any dispute that the Agreement in question was not signed by her. The same was attested by two independent witnesses. It was fully lawful, for valuable consideration and was binding on the parties. Plaintiff has alleged misrepresentation and fraud in the plaint regarding the alleged Agreement in question but plaintiff worked with the defendants which resulted in delivery and release of song titled 'Vehem'. The plaintiff did not file even a single complaint against the defendants for any offence or fraud. The defendants sent different E-mails to third parties in order to bring to their notice with respect to breach of trust on the part of the plaintiff. In order to avoid medium of litigation, they preferred the medium of mediation. The plaintiff, in her struggling stage of her career, was backed by the defendants. After earning fame, the behaviour of the plaintiff changed and she resiled from the Agreement. Negative Covenant is there in the Agreement and the same binds the parties that at the fag end of the period of Agreement, defendants cannot be restrained from exercising the right what belonged to them. Reliance in this regard is placed on judgment of Hon'ble Delhi High Court in Global Music Injunction Pvt. Ltd. vs. Shatrughan Kumar Aka Khesari Lal Yadav & Others – FAO (OS) (COMM) 7/2023 and CM Appls. 2067/2023 and 2070/2023.



13. Learned counsel for the plaintiff/respondent has argued that the Agreement dated 25.09.2019 is result of misrepresentation and without consideration. So, the same is void and unenforceable. The plaintiff had already written to the defendants in the legal notice dated 25.12.2020 that she had rescinded the said Agreement. Since the Agreement itself stood rescinded, the defendants cannot force the plaintiff to comply with the negative covenant in the Agreement. After issuing legal notice dated 25.12.2020, the plaintiff did not receive any further communication or objections from the defendants, which meant that the matter stood finally settled. Thereafter, the plaintiff also completed various projects over the period of two years, that too without any interference on the part of the defendants, either directly or indirectly. Reliance in this regard has been placed on a judgment of Delhi High Court titled **Simran Music Company vs. Prit Brar and others** – **Law Finder Doc Id # 445409**.

14. I have heard the submissions made by learned counsel for the parties and have also gone through the record.

15. A bare reading of the Agreement dated 25.09.2019 shows that the same was effective for five years w.e.f. 25.09.2019, stating therein that the plaintiff could not sing and record for any other Company. The plaintiff was to make four official Audios and Videos for the defendants in each year. It was further stated therein that the plaintiff would not perform or sign for any other concern/party/individual/person/organization etc. without written permission of the defendants. The relevant contents of the said Agreement are as under :-



“.....

3) *That Party of 1st part shall make 4 (Four) Official Audio & videos of the party of 2nd Part in each year mentioned in the term & Monthly That Party of 2nd part can ask for termination of this contract only if the term mentioned in Point is not completed & (USA) Show Not Included 2020.*

4) *That party of 1st part will record Cassettes/recorded/Song work of party of IInd part with different span of time and will release/supply/promote the same all over the territory from time to time. The party of IInd part will sign in the first instance for giving a performance/singing songs and/or any other matter/material on which voice and sound can be transferred exclusively for the party of First part and None Else. As per market conditions, 1st party may release Cassettes in the given period but party of IInd part will have to record all the cassettes even after the expiry of Five year's time. Any compilation &/or different combination of various songs extracted from the contents of this agreement will not be calculated as a new recorded/visual work, that the 1st party releases in near future. Further, the party of second part will not perform/sign for any other concern/party/individual/person/organisation without the written.consent/legal permission/courtesy of the party of the 1st part which may be on appropriate stamped/Judicial paper executed in the presence of judicial or executive authority only and in Future on Music Or Videos, first party i.e. Simran Music Industries (Smi Records) will take all the responsibility of the expenses.*

5) *That it is further clarified that the currency of*



time period will be automatically extended until the completion of the contents of the agreement i.e. the party of IInd part will not sign/perform/record Her voice for any other concern/person until the release of last cassette/recorded work in the market by the party of the first part. All these cassettes &/or recorded works will be released one by one

6) That as a full and final settlement the party of the first part i.e. SMI has paid party of IInd part a lump sum royalty of Rs.2,11,000.00/- (Rupees Two lacs eleven Thousand only) per one recorded works during the currency of period as advance in cash as full and final consideration and 2nd party has received it in cash. The above agreement is mainly for name & fame of the party of IInd part.

7) That the party of first part may record the recorded work in the voice of the party of IInd part in any studio available in India/territory at its own choice under the music arrangement/direction of any of the professional Music Director of its own choice

8) That the party of Ist part may also sell copyrights of any of the recorded work/cassettes in voice of party of IInd part under this contract to any of the recording/music co. in the territory defined.

9) Party of 2nd part is at liberty to collect songs from different lyricists, but the selection procedure of songs/recorded work (matter to be recorded would be in the hands of party of Ist part and the party of Ist part will not be bound to pay the charges of songs furnished by Party of 2nd part and the same will be get recorded, if selected. At the costs/liability of party of 2nd part. Party of 2nd part will not deny recording the songs



collected by Party of 1st part from its own sources. If the 2nd party sings any song duet and or solo with any other person, copyrights of that song/recorded work will be automatically transferred with the 1st Party and the full legal liability of the 2nd party i.e. Ms. SHEHNAZ KAUR ALIAS SHEHNAZ KAUR GILL.

10) That Party of 2nd part will perform Her public program/performance or other proceedings with regard to Her singing profession throughout the world under the control and supervision of party of 1st part and party of 2nd part out of all Her earnings (that includes prizes in shape of any currency and otherwise) after deducting all expenditure of musicians, conveyance and sound services etc. that 1st party will keep Her 40% part and will hand over 40% to party of 1st part i.e. SMI & Balance 20% Share For Management (Gurpreet SINGH GALOT ALIAS GURPREET KHETLA)

16. It is established principle of law that negative covenants, operative during the period of employment when the employee is bound to serve the employer exclusively, are not to be regarded as restraint of trade, and therefore, do not fall under Section 27 of the Indian Contract Act, 1872.

17. It is also well established that freedom of contract must be founded upon equality and bargaining power between the contracting parties. The party having less bargaining power is left with little or no choice but to accept the unfair and unreasonable terms imposed upon it by the party with superior bargaining power.

18. In the case in hand, plaintiff sent the notice in December to the



defendants rescinding the contract on the ground that it was result of misrepresentation and fraud. The defendants did not reply to the said notice. Meanwhile, the plaintiff worked on different projects. Defendants did not interfere directly or indirectly. The defendants did not raise any issue. There is no explanation as to why the defendants did not give reply to the notice sent to them by the plaintiff in December 2020, rescinding the contract. Moreover, the defendants have not taken any step to restrain the plaintiff from working anywhere else in violation of terms of the contract. As per terms of the agreement, the defendants were to make four official Audios and Videos of plaintiff in each year. Defendants neither took any step nor gave any notice to the plaintiff for performing her part of the contract. The defendants seemed to have acquiesced in December 2020 to the notice of the plaintiff, whereby plaintiff informed the defendants that she had rescinded the agreement. Defendants did not directly and indirectly interfere in the working of the plaintiff for the said period and allowed the plaintiff to work independently. The silence of defendants prima facie establishes that they took the Agreement to have been rescinded, as conveyed by the plaintiff.

19. Looking from another angle, defendants Company, due to its goodwill and reputation in the music industry, is placed on higher pedestal, whereas the plaintiff, who was an aspiring singer, was dreaming to create her place in the music industry and accordingly, in order to fulfill her dreams, acceded to the unfair terms mentioned in the Agreement.

20. To grant injunction, the Courts are required to see three

ingredients i.e. prima facie case, balance of convenience and irreparable loss or injury. In the present case, prima facie, the terms of the Agreement in question are unfair and the same is result of one party having superior bargaining power and the other party at a very inferior position with low bargaining power. So, the Agreement cannot be prima facie considered to be valid and therefore, cannot be said to be binding the plaintiff. The defendants did not interfere the working of the plaintiff for a long period of two years after receiving legal notice from her, rescinding the Agreement in question. Balance of convenience is also in favour of the plaintiff. If the plaintiff is estopped from working, except for the defendants, on the basis of unfair Agreement, the plaintiff would suffer irreparable loss and injury. In the case **Global Music Injunction Pvt. Ltd. (supra)**, the Court came to the conclusion that both the parties to the contract were having equal bargaining power for mutual benefits and agreement was not one-sided. Since this judgment is distinguishable on facts, it is of no help to the petitioners/defendants.

21. In view of what has been discussed in the preceding paragraphs, this Court is of the view that there is no merit in the present revision petition. The same is accordingly dismissed.

22. Pending applications, if any, shall stand disposed of along with this judgment.

July 01, 2024

monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.

