

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 406 OF 2013****IN****SUIT NO. 166 OF 2013**

Ramesh Sippy

... Applicant/  
(Orig. Plaintiff)**In the matter between:**

Ramesh Sippy

... Plaintiff

vs.

Shaan Ranjeet Uttamsingh and others

...Defendants

Mr. Janak Dwarkadas, Senior Advocate, along with Ms. Ankita Singhania and Mr. Rohan Cama, instructed by M/s. Bachubhai Munim & Co., for the Plaintiff.

Dr. Veerendra V. Tulzapurkar, Senior Advocate, along with Mr. VR. Dhond, Senior Advocate, Dr. B.B. Saraf, Mr. Mohan Jayakar, Mr. Archit Jayakar and Mr. Nikhil Wagle, instructed by M/s. Jayakar & Partners, for Defendant Nos. 1, 2, 4, 5 and 6.

Mr. Rahul Ajatshatru, instructed by M/s. Anand and Anand, for Defendant No.3.

Mr. Virag V. Tulzapurkar, Senior Advocate, along with Mr. Alankar Kirpekar & Mr. Gautam Panchal, instructed by M/s. MAG Legal, for Defendant Nos. 7 and 8.

Mr. Shiraz Rustomjee, Senior Advocate, along with Mr. Aditya Thakkar, Ms. Faranaaz Karbhari, Mr. Rahul Jain and Mr. Nishit Doshi, instructed by M/s. Res Legal, for Defendant No. 9.

**CORAM: S.J. KATHAWALLA, J.****Order reserved on : March 14, 2013****Order pronounced on : April 01, 2013****ORDER:**

1. The Plaintiff – Ramesh Sippy has filed the above suit claiming to be the

author and first owner of the copyright and also to the Author's Special Rights in the film titled "Sholay" ("the said film Sholay") and other four films viz. (i) Seeta aur Geeta, (ii) Saagar, (iii) Shaan and (iv) Andaz ("the said other films"). According to the Plaintiff, the Defendants are guilty of infringement of the Plaintiff's copyright and the Author's Special Rights in the said film Sholay and the said other films and is entitled in law to restrain them from doing so. The Plaintiff has in the said suit impugned the Deed of Gift dated 14<sup>th</sup> September 2000 whereby Defendant No. 4 has gifted to Defendant No. 5 all rights, title and interest in and to the said original Motion Picture titled 'Sholay' (Exhibit-E to the Plaintiff) and the Agreement dated 20<sup>th</sup> July 2011 whereunder Defendant No. 5 has given on license to Defendant Nos. 7 and 8 the sole and exclusive commercial and non-commercial theatrical rights for 3D/2D/Digital and all theatrical versions (70mm/35mm) of the said film 'Sholay' for a consideration of Rs. 25 crores.

2. Defendant No.1 is the son of the Plaintiff's late sister (Soni Uttamsingh) and is one of the Directors of Defendant No.5 which claims to be the owner of the copyright in the said film Sholay. Defendant No. 2 – Sameer Ranjeet Uttamsingh is the brother of Defendant No.1 and is the Director of Defendant No.6 which claims to have rights to distribute the said other films. Defendant No. 3 – Sascha Vijay Sippy is the son of the Plaintiff's late brother Vijay Sippy and is the Director of Defendant No.5 which claims to be the owner of the copyright in the said film Sholay. Defendant No. 4 – Sippy Films Pvt. Ltd. is a Company which claims to have gifted the copyright in the said film Sholay to Defendant No.5. Defendant No. 5 – Sholay

Media and Entertainment Pvt. Ltd. is a Company owned and controlled by Defendant Nos. 1 and 3 which Company claims to own the copyright in the said film Sholay. Defendant No.6 – Generation Three Entertainment Pvt. Ltd. is a Company controlled by Defendant No.2 which claims to possess and broadcast rights in respect of the said other films. Defendant No. 7 – Pen India Pvt. Ltd. is a Company owned by Defendant No. 8 which claims to have obtained the rights to make and distribute a 3D version of Sholay. Defendant No. 8 – Jayantilal Gada is the owner of Defendant No.7. Defendant No. 9 – Maya Digital Studios Pvt. Ltd. is a Company which has converted the said film Sholay into a 3D version.

3. In the above Suit, the Plaintiff has taken out the above Notice of Motion seeking temporary injunction against Defendant Nos. 5 to 8 from dealing with or disposing of and/or parting with or assigning and/or creating any right, title and interest or dealing in any manner whatsoever with the said film Sholay. The Plaintiff has also sought a temporary injunction against Defendant Nos. 7 and 8 from in any manner communicating to the public the purported 3D version of the said film Sholay in India or outside India.

4. In the above Notice of Motion, an application for urgent ad-interim reliefs was made on behalf of the Plaintiff on 21<sup>st</sup> January, 2013. However the learned Senior Advocate appearing for the Defendant Nos. 1, 2, 4, 5 and 6 and the Advocate appearing for Defendant Nos. 7 and 8 informed the Court that the said film would not be completed before February 2013. In view thereof, no urgent ad-interim

orders were passed and directions were given to the parties to complete their pleadings and the Notice of Motion was directed to be placed for hearing and final disposal on 25<sup>th</sup> February 2013. Thereafter the parties sought extension of time for completion of the pleadings which was granted. Today, when the Notice of Motion is taken up for final hearing, this Court has noted that the Defendants have inter alia made the following submissions in their pleadings:

- (i) That the suit as filed is barred by the Law of Limitation;
- (ii) That the suit as filed is not maintainable as the Plaintiff has not taken Leave under Order 2 Rule 2 of the Civil Procedure Code, 1908, from the Delhi High Court before instituting the present suit.
- (iii) That the above suit is not maintainable since no liberty is granted to the Plaintiff to file a fresh suit whilst permitting the withdrawal of the suit filed at Delhi.

In view thereof, the above submissions made on behalf of the Defendants are required to be framed and decided as preliminary issues under Section 9A of the Code of Civil Procedure, 1908. This Court is therefore not proceeding to hear the above Notice of Motion finally but has keeping the above issues open, allowed the learned Senior Advocate appearing for the Plaintiff to renew his ad-interim application.

5. According to the Plaintiff, the Plaintiff who is a well known Director and maker of cinematograph films in the Hindi Film Industry, is the conceiver, initiator, maker and person who took the responsibility of taking initiative, making,

completing and owning at the time of its completion, the classic cinematograph film titled "Sholay". In addition to the said film Sholay, the Plaintiff is also the author of four cinematograph films viz. (i) Seeta aur Geeta; (ii) Saagar, (iii) Shaan and (iv) Andaz.

6. Mr. Janak Dwarkadas, the Learned Senior Advocate appearing for the Plaintiff has pointed out that it was the Plaintiff who took the initiative and the responsibility for making the said film Sholay and the Plaintiff was therefore involved at each and every stage in the making of the said film Sholay. The amalgam and blend of various constituents that went into the making of the said film Sholay as a "work", was achieved by the Plaintiff by deploying his personal intellectual skill that made the said film Sholay into an aesthetic "personality" and the intellectual property of the Plaintiff as the author thereof. The said film Sholay was the dream project of the Plaintiff, in the making of which he had dedicated his creativity, ingenuity, originality, industry and skill and the said film Sholay upon its release and for all times thereafter has been celebrated as the biggest epic of Hindi cinema. According to the Plaintiff, as the maker of the said film Sholay, his contribution to the history of Indian Cinema is forever etched in the minds and hearts of cinema-goers. Several awards have been bestowed upon him for making the said film Sholay. The said film Sholay was completed some time in August 1975 just before its release on 15<sup>th</sup> August 1975. The Plaintiff being the "author" of the said film Sholay, on the date of completion, is the "first owner of the copyright" in the said film Sholay. In addition and independent of the copyright, the Plaintiff has

the "Author's Special Rights" in respect of the said film Sholay under the Copyright Act 1957 ("the Act"), as in force on the date of completion of the said film Sholay.

7. It is submitted on behalf of the Plaintiff that the making of the said film Sholay, as well as the said other films was financed by the Partnership Firm of Sippy Films (since dissolved) (hereinafter referred to as "the said firm"). The said firm was established in 1965 in which the Plaintiff was a Partner until he retired from it on or about 12<sup>th</sup> June 1975 i.e. prior to the completion of the said film Sholay. The Plaintiff has not assigned to Sippy Films or any of the Partners of Sippy Films or to any other party his copyright in the said film Sholay and the said other films either wholly or partially and so far as Author's Special Rights are concerned, they are not capable of assignment and in any event the Plaintiff has not assigned the said Author's Special Rights in the said film Sholay and the said other films.

8. It is submitted on behalf of the Plaintiff that in consideration of the said firm having financed the making of the said film Sholay, the Plaintiff in confidence entrusted to the said firm, the distribution and exhibition rights i.e. the exclusive rights to cause the said film Sholay to be communicated to the public and for that purpose entrusted in confidence the negatives thereof to the said firm to make copies of the said film Sholay only in 70 MM and 35 mm in normal 2D format only (and not in any other format), make any record embodying the recording in any part of the sound track associated with the said film Sholay by utilising such sound track and to communicate the same by radio-diffusion. Accordingly, the aforesaid

limited rights in the said film Sholay within the meaning of Section 14 of the Act were entrusted to the said firm (since dissolved).

9. The Plaintiff, in or about August/September 2012, learnt that in breach of his copyright in the said film Sholay, Defendant Nos. 7 and 8 had made or were in the process of making a copy of the said film Sholay. The Plaintiff therefore filed a Suit against Defendant Nos. 7 and 8 bearing Suit No. 3273 of 2012 for infringement of his copyright and Author's Special Rights in the said film Sholay. In the course of proceedings in the Delhi High Court in Suit No. 3273 of 2012 filed by the Plaintiff only against Defendant Nos. 7 and 8 herein for infringement of the Plaintiff's copyright and the Special Rights as "author" in the said film Sholay, at the very first hearing of the Application for interim reliefs on 16<sup>th</sup> November 2012, it came to the notice of the Plaintiff that Defendant Nos. 1 to 6 or any one or more of them claim to be the "sole owner of copyright" and "other rights" in the said film Sholay and Defendant No. 5 has under an Agreement dated 20<sup>th</sup> July 2011 ("the said Agreement") purported to have given on license to Defendant Nos. 7 and 8 the sole and exclusive "*Commercial and Non Commercial Theatrical Rights for 3D/2D/Digital and All Theatrical versions (70mm/35mm) of the said film*" at or for the alleged consideration of Rs. 25,00,00,000/- (Rupees Twenty Five crores only). The Plaintiff has good reason to believe that the parties to the said Agreement have not disclosed the actual consideration for the said 3D/2D/Digital and the other rights as mentioned in the said Agreement, which the Plaintiff estimates to be far in excess of the said alleged disclosed consideration.

10. It is submitted on behalf of the Plaintiff that at the time of the first hearing of the said Delhi High Court Suit on 16<sup>th</sup> November 2012, Counsel on behalf of Defendant Nos. 7 and 8 also made a reference to an order of the Delhi High Court dated 8<sup>th</sup> January 2010 passed in CS (OS) No. 1619 of 2008 (Sholay Media & Entertainment Pvt. Ltd. & Ors. vs. Ajit Sippy & Ors.) wherein in paragraph 13.1 of the said order it is stated that *“Counsel for the Plaintiff therein had pointed out that the original rights in the film “Sholay” vested in the Partnership firm, M/s. Sippy films and the constitution of the M/s. Sippy Films had changed from time to time and at one point between 1975-76, Shri Ajit Sippy (Defendant No.1 therein) was a Partner, but he had ceased to be a Partner thereafter and on 10.9.1997, Sippy Films Pvt. Ltd. had been admitted as a Partner. Subsequently, by virtue of a gift deed dated 14.9.2000 executed by Sippy Films Pvt. Ltd., the rights in the film, “Sholay” had devolved on Sholay Media and Entertainment Pvt. Ltd.”*

11. It is submitted on behalf of the Plaintiff that it is only when the said Agreement came to the notice of the Plaintiff for the first time in the Delhi High Court proceedings in Suit No. 3273 of 2012 that the Plaintiff, who prior thereto at all material times believed that the Defendant Nos. 1 to 5 were dealing with only the distribution rights in the said film Sholay and the said other films and nothing more, caused further enquiry to be made in respect of the wholly unlawful and illegal claim of Defendant No.5 being *“the sole owner of copyright and other rights in the film “Sholay”*. Thereafter from the website of Hindustan Times, on 17<sup>th</sup> December



2012, the Plaintiff downloaded media report which stated that Defendant No. 7 is the distributor and the financier of the 3D version of the said film Sholay and that he has invested a sum of Rs. 25 crores for the 3D version. The said conversion into 3D format is being done by Defendant No.9 herein which is headed by one Mr. Frank Foster, who claims to be the American computer animation veteran.

12. It is submitted that the Plaintiff is certain that if the format of the said film Sholay is altered or modified into a 3D version or in any version other than the original version, some of the main attributes of the said film Sholay, that is the drama and emotion will be lost, as the 3D version will bring to the forefront and enhance the effects of the action and push all the other elements into the backdrop, thereby distorting, mutilating and reducing the impact of the main emotional and dramatic attributes of the said film Sholay which would be prejudicial to the Plaintiff's honour and reputation and in gross violation of the copyright and the Author's Special Rights conferred upon the Plaintiff by virtue of Section 57 of the Act.

13. It is submitted on behalf of the Plaintiff that Defendant Nos. 7 and 8, despite notice of the fact that the Plaintiff is the maker and the owner of the copyright and Author's Special Rights in the said film Sholay and having notice that Defendant No. 5 had no authority in law to claim being the Producer of the said film Sholay in any version much less in 3D version and without exercise of due diligence, have colluded with Defendant Nos. 1 to 6 and perpetrated a fraud on the Plaintiff to deprive and

wilfully infringe the Plaintiff's copyright and Author's Special Rights in the said film Sholay. According to the Plaintiff, Defendant No. 9 which is owned and controlled by prominent personalities in the film industry and the said Frank Foster, who is the Managing Director of Defendant No. 9, knowing that the Plaintiff is the maker and the copyright owner of the said film Sholay, knowingly aided and abetted Defendant Nos. 7,8 and 9 to infringe Plaintiff's copyright and Author's Special Rights in the said film Sholay and without any authority, and/or license whatsoever from the Plaintiff, have made a copy of the said film Sholay in its 3D format. According to the Plaintiff, it was only when Defendant Nos. 7 and 8 relied upon the said Agreement between Defendant Nos. 5 and 7 herein, that the Plaintiff for the first time became aware of the illegal claim of Defendant No.5 to be the alleged copyright owner in the said film Sholay. According to the Plaintiff, he was deliberately not made a party to the said Suit CS (OS) No. 1691 of 2008 filed in the Delhi High Court so that Defendant Nos. 4, 5 and 6 could make their bogus claim of being the owners of the copyright in the said film Sholay. According to the Plaintiff, since he was not made a party to the said suit, he did not have and cannot be expected to have knowledge of the record and the order passed in the said Suit CS (OS) No. 1691 of 2008.

14. The Plaintiff, on the basis of what was stated to the Court at the above mentioned hearing, caused further enquiries to be made in respect of the said Delhi High Court Suit No. 1691 of 2008 filed by Defendant Nos. 4, 5 and 6 herein. The said enquiry recently revealed that in the said Delhi High Court Suit No. 1691 of 2008, Defendant Nos. 4, 5 and 6 were claiming to be "the sole owner of copyright

and other rights” in the said film Sholay on the basis of certain documents clearly got up and fabricated by Defendant Nos. 1 to 6 herein in concert with one another. These documents inter alia include an alleged Deed of Gift dated 14<sup>th</sup> September 2000 whereby Defendant No.4 – Sippy Films Pvt. Ltd. has purportedly gifted to Defendant No.5 – Sholay Media & Entertainment Pvt. Ltd. “ *all rights, title and interest in and to and original motion picture titled “SHOLAY” (“the said Work”) so as to vest exclusively in the Donee the said rights, title and interest as the true and lawful owner thereof*”, which the said firm did not have, except for the distribution rights entrusted to it.

15. It is submitted on behalf of the Plaintiff that the Partnership firm is not the author of either the published or the unpublished film Sholay. It is submitted that sub-Section (1) (b) of Section 13 of the Act provides that subject to the provisions of the said Section and the other provisions of the Act, copyright shall subsist throughout India in a cinematograph film. Sub-section (2) (i) of Section 13 then carves out an exception to the Rule contained in sub-Section (1) of Section 13, whereunder, in the case of a published work for copyright to subsist in it, the work must be first published in India. Merely because the Plaintiff retired from the said firm two months prior to the release of the said film Sholay, it cannot be said that the Plaintiff ceased to be in charge of the said film Sholay, when in fact the Plaintiff was involved in all the aspects of the said film Sholay till even after the release of the said film. Since the Plaintiff alone was the person who took the initiative and responsibility for making the said film Sholay, the copyright in it came to be vested

with the Plaintiff solely, and his ceasing to be a Partner does not affect his status as the author and the first owner of the copyright in the film Sholay. Again, when the Plaintiff retired from the firm, the making of the film Sholay itself was complete and only post production work remained, in which also the Plaintiff was involved. Thus, under the provisions of Section 13 (2) (ii) of the Act, the copyright subsists in an unpublished work (a work may be completed yet not published). It is submitted that the copyright will subsist in a work as soon as it is complete (as contradistinguished from the term of copyright which under the provisions of Section 26 starts running from the date of publication). Thus since the making of the film Sholay itself was complete at the time when the Plaintiff retired from the said firm, copyright came to subsist in the said film as an unpublished work, and the same vested with the Plaintiff as its author and first owner. It is submitted that even assuming that the film Sholay was not complete when the Plaintiff retired from the said firm, that does not alter the fact that the Plaintiff continued even after his retirement to be the person who was in charge of all the aspects of the said film Sholay (neither the Plaintiff being the Partner of the said firm nor his retirement played any role in the making of the film Sholay) and thus whenever the said film Sholay came to be completed (which issue is irrelevant to determining the author of the said film), it is the Plaintiff who on the date of completion of the said film Sholay is the author and the first owner of the said film, as per the definition of the word 'author' in the unamended Act. It is therefore submitted that the Plaintiff's role as the author and the first owner of the copyright in the film Sholay is not affected by his retirement from the said firm. The Plaintiff is therefore also entitled to the

Author's Special Rights conferred upon the Plaintiff by virtue of Section 57 of the Act.

16. It is further submitted that the said firm could never have been the author of the said film Sholay in its own right as the said firm is not a natural person who can infuse a work with the requisite creative input required for gaining copyright protection and further under Section 13 (2) (ii) of the Act, the said firm cannot be considered to be a citizen of India, as it is not a natural person nor is it deemed to be domiciled in India under the deeming provision contained in Section 8 of the Act, and thus could never have been the author of the said film Sholay.

17. Mr. Dwarkadas in support of the Plaintiff's contention submitted that when a Partner of a Partnership firm makes a work, the copyright in the same does not automatically vest with the Partnership firm, but continues to remain with the Partner in his individual capacity unless assigned by him to the Partnership. The Plaintiff has relied on the law laid down in the judgment of *O'Brien v. Komesaroff*<sup>1</sup>. Further, in support of the contention that the said firm is not a natural person nor a citizen of India and therefore cannot be the author of the said film Sholay, reliance is placed on the decisions of the Delhi High Court in (i) *Camlin Pvt. Ltd. vs. National Pencil Industries*<sup>2</sup>, *Rupendra Kashyap vs. Jiwan Publishing House Pvt. Ltd.*<sup>3</sup> and the decision in *Gee Pee Films Pvt. Ltd. vs. Pratik Chowdhury and others*<sup>4</sup>. In support of his

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1 (1981) 150 CLR 310 @ 317, 319-322

2 AIR 1986 Delhi 444

3 1994 (1) Arbitration Law Reports 156 (Delhi)

4 AIR 2002 Cal. 33

submission that the Plaintiff has worked at every stage in making of the said film Sholay and therefore he alone can be the author/producer of the said film Sholay, the Plaintiff has relied on the decision of the Hon'ble Supreme Court in *Indian Performing Right Society Ltd. vs. Eastern Indian Motion Pictures Association and others*<sup>5</sup>, more particularly paragraphs 20, 21, 22 and 23 therein.

18. It is therefore submitted on behalf of the Plaintiff that the ad-interim reliefs as prayed for in the Notice of Motion be granted and the Defendants be restrained from releasing the said film Sholay in 3D format.

19. Dr. Veerendra Tulzapurkar, the Learned Senior Advocate appearing for Defendant Nos. 1, 2, 4, 5 and 6 has submitted that the Plaintiff has in the suit alleged that he continues to be the owner of the copyright in the said film Sholay and that since he is the author of the said film, he is also entitled to claim moral rights under Section 57 of the Act. However, the entire material on record clearly shows that the Plaintiff has no copyright in the said film. He submitted that the said film was made by the Partnership firm of Sippy films. In the Censor certificate the name of the Applicant and the name of the producer is shown as Sippy Films. It is an admitted fact that the firm of Sippy Films financed the said film. However, it is the Plaintiff's claim that because of the finance provided by the said firm, the distribution rights were entrusted to the said firm. It is submitted that this is nothing but *ipsi dixit* of the Plaintiff. There is no distribution agreement between

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<sup>5</sup> (1977) 2 SCC 820

the Plaintiff and the said firm. The Plaintiff did not claim ownership rights over the years and his inaction for all these years shows that he is not the owner of the copyrights. No material is produced to show that he claimed to be the producer of the said film Sholay in the Income Tax Returns or to show how he repaid the finance to Sippy Films. It is submitted that it is therefore clear that the firm of Sippy Films was the producer and the Partners of the firm at the time of completion of the film would have the copyright therein. It is submitted that as a result of the change in the constitution of the said firm, Sippy Films Pvt. Ltd. (Defendant No.4 herein) became solely entitled to all the assets of the said firm including all the rights in the said film. On 14<sup>th</sup> September 2000, Sippy Films Pvt. Ltd. i.e. Defendant No.4 executed a Deed of Gift in favour of Defendant No.5. From the release of the film on 15<sup>th</sup> August 1975 upto 14<sup>th</sup> September 2000, the said firm and Defendant No.4 and after 14<sup>th</sup> September, 2000 Defendant No. 5 exercised rights in respect of the said film and entered into various Agreements as mentioned in Exhibit-N to the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6. However the Plaintiff never raised any objection claiming any copyright in the said movie at any time till the filing of the present suit i.e. for almost 40 years. It is submitted that the film has been broadcasted on television on numerous occasions to which also the Plaintiff never objected. Various advertisements were published by the proposed assignees. However, the Plaintiff has never objected to the assignment or the public notices nor did he assert any right of ownership in any of the films including the said film Sholay. It is pointed out that Defendant No.5 had initiated proceedings against Ramgopal Varma in the Delhi High Court to protect the copyrights in the said film.

This fact was widely published. The Plaintiff was aware of the said dispute and in fact gave interviews in various newspapers. However, the Plaintiff never raised any claim in respect of his alleged copyright. In fact, in one of such interview given on 10<sup>th</sup> September, 2007, the Plaintiff complimented the act of Defendant No.5 in adopting the proceedings which shows that the Plaintiff knew that he had no copyright in the said film. It was further pointed out that in a dispute between Ajit Sippy, Mrs. Mohini Sippy and M/s. Zee Telefilms Ltd. on the one hand and Defendant Nos. 4, 5 and 6 on the other regarding ownership rights of the said film Sholay and the said other films, Defendant Nos. 4, 5 and 6 filed a suit in the Delhi High Court and by an order dated 8<sup>th</sup> January 2010 in the interim application, the Delhi High Court held that the rights in the said film Sholay vested with Defendant Nos. 4 and 5. It is further pointed out that in fact Defendant No.5 has adopted various proceedings to prevent infringement of copyright as set out in paragraph 8.14 of the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6 and it is therefore submitted that the Plaintiff was at all times aware about the claim made by Defendant Nos. 4 and/or 5 to the said film Sholay and the Plaintiff never raised any claim there against.

20. Dr. Tulzapurkar further pointed out that the Plaintiff retired from the firm of Sippy Films with effect from 12<sup>th</sup> June 1975 and a Deed of Retirement was executed by the Plaintiff as a retiring Partner and Shri Vijay G. Sippy and Ruky G. Sippy as the continuing Partners. The said Deed records that the Plaintiff has voluntarily retired from the said firm on 12<sup>th</sup> June 1975 and the said business of



M/s. Sippy Films has been taken over as a running business with all its assets, liabilities, trade name and goodwill, etc. by the continuing Partners and in consideration of the settlement of accounts, the retiring Partner has assigned to the continuing Partners his share and interest in the said Partnership, the trade name, fixtures, fittings, book debts, stock in trade and/or effects, to hold the same. Dr. Tulzapurkar submitted that therefore it is clear that the said film which was completed in August 1975 was not ready on the date on which the Plaintiff retired. Furthermore, in any event, whatever rights the Partners of the said firm had in the said film Sholay form part of the said Partnership Firm and the Plaintiff has assigned his share of interest in the said Partnership to the continuing Partners. It is submitted that the said Retirement Deed is deliberately suppressed by the Plaintiff from this Court and the Plaintiff has made a false claim of ownership in the said film Sholay which was an asset of the said firm. The Plaintiff has in his affidavit-in-rejoinder dated 25<sup>th</sup> February 2013, in paragraph 11 at page 256 admitted the fact of retirement and the said Deed of Retirement, but has contended that the said clause does not amount to relinquishment of any copyright or Author's Special Rights in the said film.

21. It is submitted that under Section 17 of the Act, the author of a work shall be the first owner of the copyright therein except as provided in clauses (a), (b), (c), (cc), (d), (dd) and (e) of Section 17 of the Act. Therefore, the Plaintiff's contention that the Partnership Firm cannot be the owner of the copyright is not correct. Relying on Section 2 (z) of the Act, Dr. Tulzapurkar submitted that in the case of a

Partnership firm, the Partners who were the owners of the cinematograph film at the time of the completion of the film were the joint authors of the cinematograph film and thus the first owners of the copyright. The film will be the property or asset of the firm, and all the persons who were Partners at the time when the film was completed would have joint or common interest in the film so completed. Therefore, it is trite that the Partnership property belongs to all the Partners constituting the firm. Dr. Tulzapurkar therefore submitted that the Plaintiff having assigned all his rights as a Partner of the said firm which include the copyright, if any, in the said film Sholay, and by reason of the Plaintiff having acquiesced in the exclusive exercise of copyrights in the said film Sholay by Defendant No.4 and/or 5, the Plaintiff cannot claim to be the owner of the copyright in the said film Sholay and no relief can be granted on the basis thereof.

22. Dr. Tulzapurkar submitted that the said film was produced by the firm i.e. M/s. Sippy films, the Plaintiff as the Partner of the said firm retired on 12<sup>th</sup> June 1975. The said film was not complete when the Plaintiff retired and was completed in August 1975. Thus when the said film was completed, the Plaintiff was not the Partner and therefore not an author/owner of the said film. It is submitted that it is therefore clear that the Plaintiff ceased to be a Partner of the said firm who made the said film prior to the date on which it was completed. It is therefore submitted that the Plaintiff's claim of Special Rights under Section 57 of the Act is also false and not sustainable.

23. Dr. Tulzapurkar further submitted that in case of a film and sound recording, the author cannot be 'only' a natural person. A limited company or even a Partnership of individuals can claim to be the author thereof for the following reasons:

(I) The first owner of copyright in a film under Section 17 (b) is the person at whose instance someone makes the film;

(ii) Like immovable property which can be a Partnership asset though standing in the name of a Partner individually or Partners collectively, the film or copyrights in a film can be a Partnership asset. Hence, a Partnership firm can be the owner of copyrights in a film produced by a Partnership firm. At the highest, this will be a case of ownership of copyrights amongst the Partners who in their capacity as Partners own the copyrights jointly.

24. Dr. Tulzapurkar submitted that the contention of the Plaintiff that the Partnership cannot be the author and he having allegedly contributed for the making of the film is the author is unsustainable in law. There is a distinction between the copyrightable works such as literary, musical, dramatic or artistic work on the one hand and the cinematograph film and the sound recording on the other. It may be that the author of a literary musical artistic or dramatic work has to be a natural person, the same is not necessarily true in the case of a cinematograph film and/or a sound recording. This is so by reason of the definition of the term 'author' being different for literary, musical, artistic or dramatic work and the definition of the term 'author' for cinematograph film and sound recording. Under the 1957 Act,

prior to its amendment in 1995, the term 'author' in relation to a literary dramatic work was the author of the work i.e. one who created the literary or dramatic work and in relation to a musical work, the composer and in relation to an artistic work other than a photograph, the artist and in relation to photograph, the person taking the photograph. Thus the said definition clearly provided that the authors of such works were the person who actually created those works and therefore the authors of such works had to be natural persons. However, in respect of a cinematograph film, the author was the 'owner' of the film at the time of its completion and in relation to a record, the owner of the plate from which the record is made at the time of making of the plate. Thus, in the case of cinematograph film and record, there is a marked departure in conferring ownership, from the person who created the work to the person who owned the work. It is therefore submitted that in case of a cinematograph film or record, the author need not necessarily be a natural person.

25. Dr. Tulzapurkar further submitted that even if the amended definition is considered, the producer of a cinematograph film is the author of the cinematograph film and the producer is defined as the person who takes the initiative and responsibility for making the work. The two words are initiative and responsibility. It means it is the person who proposes to make a cinematograph film and who has the responsibility of making the film i.e. who undertakes the financial burden. The author of a cinematograph film will be the persons responsible for the arrangements, particularly in the financial sense. In the case of a film produced by

a Partnership firm, the Partnership firm becomes the author, in the sense that the Partners at the time who were the owners of the film when the film was completed, become the authors of the film. This is clear from the definition of the term 'author' in relation to a cinematograph film, appearing in the Act that was prevalent at the relevant time. Therefore, considering the law as it stood, at the time when the film was completed, the Partners of Sippy Films who were Partners when the film was completed in August 1975 were the authors of the film and not any erstwhile Partner who had ceased to be a Partner when the film was completed. The definition of 'author' in the Act prevailing at the time when the film was completed recognized only the owners of the film when it was completed. Admittedly, the Plaintiff, having resigned as a Partner prior to the date of completion and having relinquished all rights in the assets of the firm to the Continuing Partners, was not the owner of the film at the relevant time and therefore was and is not the author of the film. It is submitted that once it is found that there are joint authors of a cinematograph film, the question of joint ownership must be approached in accordance with the law in force when the work was made.

26. Dr. Tulzapurkar has submitted that the Plaintiff is also disentitled from claiming any relief in view of the unmeritorious conduct of the Plaintiff. It is submitted that the Plaintiff has indulged in forum shopping. Prior to the filing of the present suit, the Plaintiff filed a suit in the Delhi High Court on the same basis and claiming same reliefs and that too without joining the necessary parties. The Plaintiff applied for interim reliefs in the Delhi High Court but did not get any. After the

failure of the Plaintiff to obtain any interim reliefs in the Delhi Suit, the Plaintiff instituted the present Suit suppressing material documents viz. The Deed of Retirement. The Plaintiff has withdrawn the Delhi suit without liberty to file a fresh suit. It is submitted that in view of the suppression of documents, the Plaintiff is disentitled to claim any reliefs. It is submitted that the decisions relied upon by the Plaintiff are also of no assistance to him in the facts and circumstances of the present case. Dr. Tulzapurkar therefore submitted that the Plaintiff is not entitled to any ad-interim relief/s as prayed for or otherwise.

27. The learned Advocate appearing for Defendant No.3 has reiterated and adopted the arguments advanced on behalf of Defendant Nos. 1, 2, 4, 5 and 6. It is submitted on behalf of Defendant No.3 that the Act rewards different persons with 'authorship' in a work. In an original literary, musical, artistic and dramatic work, the natural person, the actual creator/composer is deemed to be the author of such works. Accordingly he gets the first ownership of the economic rights under Section 14 of the Act except for the exceptions carved out in Section 17 and is also vested with the 'moral rights' or 'Author's Special Right' in the 'work' as per Section 57 of the Act. In case of 'sound recording' and a 'cinematograph film, the authorship is rewarded to the owner of the sound recording/cinematograph film 'at the time of completion' (as per the Act on 15<sup>th</sup> August 1975) or the 'Producer' (as per the 1994 Amendment to the Act) who is behind the production of the film, who employs and engages various creative and technical people (writers, composers, actors, cinematographers, Director(s), editors, technicians, etc.) and who takes the 'risk of

commercial failure and shoulders the risk of losses”.

28. It is submitted on behalf of Defendant No.3 that it is an admitted position that the Plaintiff was the principal Director of the film Sholay. Though the director of a film is expected to be involved at every stage in the creation of the film, he does not put in financial investment for the making of the film but it is the producer who either finances the film himself or arranges for the finance and it is the producer who takes the sole risk of suffering losses if the film is a flop. The director is paid his fee and bears no liability whatsoever if the film is not commercially successful. In the present case, the film Sholay was produced by the said firm and it was the said firm which arranged for the finances and solely took the commercial risk of failure. Much prior to the completion of the film in August 1975, the Plaintiff realising the risk of failure, voluntarily retired from the said firm on 12<sup>th</sup> June 1975 and settled all accounts with the said firm to mitigate any liability of losses which the producer firm may have suffered if the film was not successful at the box office. Thus, at the time of completion of the film in August 1975, the said firm was the sole producer and the owner of the said film Sholay and accordingly as per the provisions of the Act as it stood then, was the 'sole' author of the cinematograph film Sholay. The Plaintiff may have been associated with the production and completion of the film after 12<sup>th</sup> June 1975 but only as its Director and only doing all the jobs of the Director. The Directorship of the film in question has brought tremendous laurels to the Plaintiff and he enjoys fame even till date. However, the Directorship does not entitle him to claim being the 'author' of the film and claim copyright and moral

rights in the film, either at the time of release of the film or even today. It is submitted that there is nothing brought on record by the Plaintiff to prove that he was the producer or owner of the said film Sholay at the time of its completion in August 1975 or to show that he shouldered the risk of commercial failure if the film was a flop or for that matter he enjoyed the profits from the successful commercial exploitation of the film as the producer of the said film Sholay. It is submitted that the Plaintiff's stand, on the role of a principal Director of a film in relation to authorship of a film is a matter of record and the Defendant No.3 has relied on "Department – Related Parliamentary Standing Committee on Human Resources Development on "The Copyright (Amendment) Bill, 2010" ("Bill) that was tabled in the Lok Sabha on 27<sup>th</sup> November 2010, proposing inter alia to amend the definition of the 'author' of a cinematograph film to include the Producer as well as the principal Director. The Plaintiff was a part of the delegation of the Film and Television Producers Guild of India which vehemently opposed the proposed amendment giving authorship to the principal director of a film. It is submitted that the Plaintiff is now taking a different stand before this Court on Authorship in the film Sholay and is therefore blowing hot and cold which cannot be permitted. It is submitted that the Plaintiff was and remains only to be the Principal Director of the said film Sholay and nothing more, and therefore cannot claim authorship in the said film and consequently cannot claim any reliefs as prayed for in the suit and the Notice of Motion.

29. Mr. Virag Tulzapurkar, the learned Senior Advocate appearing for Defendant



Nos. 7 and 8, adopted the contentions, arguments and submissions made on behalf of Defendant Nos. 1, 2, 4, 5 and 6. It is submitted that the Defendant Nos. 7 and 8 claim their right through Defendant No.5 i.e. Sholay Media Entertainment Private Ltd. for creation of 3D version of the magnum opus film Sholay. It is pointed out to this Court on behalf of Defendant Nos. 7 and 8 that the Plaintiff was interviewed by Rachana Dubey, Journalist of Hindustan Times and as per the interview of the Plaintiff published in the newspaper, the Plaintiff is said to have stated that “ *I don't know anything about the film being turned into 3D, but my best wishes to whoever is doing so*”. It is submitted that as per the said interview, the Plaintiff was well aware of the 3D version of Sholay being made by the Defendant/s since long and had no objection thereto. It is submitted that this shows that the Plaintiff accepted that he had no right in relation to the said film Sholay and his present claim is bogus, untenable and an afterthought.

30. It is further submitted on behalf of Defendant Nos. 7 and 8 that the Plaintiff is guilty of forum shopping. The Plaintiff has withdrawn the suit at Delhi since he was refused an injunction by the Delhi High Court. It is submitted that while permitting the withdrawal of the suit at Delhi, the Plaintiff was not granted liberty to file a fresh suit. It is therefore submitted that the present suit is not maintainable. It is also submitted that the Plaintiff has not paid cost of Rs. 50,000/- to the Defendant Nos. 7 and 8 till date, even though it was ordered by the Court to pay the said cost within a period of one week from 14<sup>th</sup> February 2013.

31. It is next contended on behalf of Defendant Nos. 7 and 8 that Defendant Nos. 7 and 8 are bona fide purchasers/transferees for value without notice of any alleged claim of the Plaintiff. Defendant Nos. 7 and 8 have bought rights to produce 3D version of the film Sholay from Defendant No. 5 for valuable consideration under a bona fide belief that Defendant No. 5 (which includes their predecessors in the title who are claiming the rights in relation to the said film Sholay since the release of the film) is the full owner of the copyright in the said film Sholay. The answering Defendants in their reply affidavit on page 209, have specifically stated that Defendant No.7 created television landmark by telecasting the movie Sholay on Doordarshan which was re-telecasted on Sony TV. It is also submitted that the said telecasting was never objected to by the Plaintiff on the basis of his alleged copyright over the film. It is also submitted that the said movie was thereafter re-telecasted on movie channels for more than 50 times but the Plaintiff did not object. Hence Plaintiff is guilty of delay and/or latches.

32. It is further submitted on behalf of Defendant Nos. 7 and 8 that the Defendant Nos. 7 and 8 obtained rights in relation to movable property under bona fide belief that Defendant No.5 is the author/owner of the film titled Sholay. It is submitted that though the movable property is purchased by Defendant Nos. 7 and 8 from Defendant No.5 under bona fide belief, the principles underlying the transfer of immovable property as enunciated in Section 41 of the Transfer of Property Act shall apply *mutatis mutandis* to this case and the Plaintiff is now precluded from making any claim in relation to his alleged rights against the bona fide purchasers of

the right for the 3D version from Defendant No.5. Placing reliance on Section 17 (b) of the Act, it is submitted on behalf of Defendant Nos. 7 and 8 that in view of this Section, the Cinematograph work if made at the instance of somebody else and for valuable consideration then unless the contrary is proved by virtue of a document, the ownership will vest in the said person at the instance of whom the work is undertaken and completed. In other words, the person who finances and takes the risk of making the work and directs other to do work for valuable consideration is the owner. In the present case, based on the documents the said firm was the owner of the copyright in the cinematograph work of the film Sholay, the Plaintiff was only the Director and a Director has no copyright in the film.

33. It is further submitted on behalf of Defendant Nos. 7 and 8 that there is a fallacy in the argument of the Plaintiff that only a 'natural person' can be the author of the copyright work and a legal person cannot be the author/owner of copyrightable work. It is submitted that the Plaintiff is trying to equate the 'author' with the 'owner'. It is also submitted that as per the Act applicable on the date of the completion of the movie Sholay i.e. 15<sup>th</sup> August 1975, as per the definition of Section 2 (d) in relation to cinematograph, the owner is the author. It was also submitted that though author is required to be a natural person in relation to literary and/or artistic work, in relation to cinematograph work the owner is the author and an owner can be even a legal/juristic entity and the author also can be a legal entity. Hence the requirement of a natural person is not applicable to cinematograph work. It is therefore submitted that since the Plaintiff failed to show

any documentary evidence to prove his copyright in the suit filed before the Delhi High Court and even in the present Suit, the present suit as well as the Notice of Motion ought to be rejected with compensatory costs.

34. The learned Senior Advocate appearing for the Plaintiff has not pressed any reliefs at this stage against Defendant No.9. However, Mr. Shiraz Rustomjee, the Learned Senior Advocate appearing for Defendant No. 9 has pointed out that Defendant No. 9 has specifically averred in paragraph 8 of his affidavit in reply dated 14th February 2013 which is reproduced hereinbelow:

*“I submit that pursuant to the said MOU digital copy on the hard drive was provided to the Defendant No. 9 by the Defendant No. 5 from 12<sup>th</sup> May 2011 to 14<sup>th</sup> December 2011. The Defendant No. 9 after converting the same into 3D format have duly returned the digital copy on the hard drive on 9<sup>th</sup> January 2013. It may be appreciated that the work of conversion was completed in or around 9<sup>th</sup> January 2013 and informed to the Defendant No.5. The Defendant No.5 hence, by an email dated 17<sup>th</sup> December 2012 requested the Defendant No. 9 to make delivery of Sholay 3D to one Prasad Labs. The Defendant No. 9 has accordingly returned digital copy on the hard drive to the said Prasad Labs on 9<sup>th</sup> January 2013”.*

The Learned Senior Advocate appearing for Defendant No. 9 has further pointed out that the Plaintiffs have not controverted the aforesaid averments of Defendant No. 9 but have in fact stated in paragraph 8 of their affidavit in rejoinder dated 25<sup>th</sup> February 2013 as follows:

*“I have no reason not to believe the above referred to statements made*

*in the Affidavit in reply of Anish Mehta made on behalf of Defendant No.9”.*

35. The learned Senior Advocate appearing for Defendant No. 9 has submitted that the Defendant No. 9 denies and disputes all the allegations made by the Plaintiff against Defendant No. 9 in his pleadings as well as during the oral arguments and that no relief ought to be granted to the Plaintiff against Defendant No. 9.

36. Mr. Dwarkadas, the learned Senior Advocate appearing for the Plaintiff has in rejoinder repeated and reiterated his submissions made earlier and has denied and disputed the submissions advanced on behalf of the Defendants.

37. I have considered the submissions advanced on behalf of the Plaintiff as well as the Defendants. It is noted that Mr. Dwarkadas has made his submissions mainly as regards the said film Sholay and has only pressed for ad-interim relief restraining the Defendants from releasing the movie Sholay in 3 Dimensional form. The ad-interim relief sought is basically based on the claim of the Plaintiff that he is the owner of the copyright in the cinematograph film Sholay and that he is the author of the said film and therefore entitled to claim moral rights under Section 57 of the Act. However, the censor certificate at pages 99 and 100 of the affidavit-in-reply of the Defendant Nos. 1, 2, 4, 5 and 6 shows the name of the applicant and the name of the producer as Sippy Films which is admittedly a Partnership of the Sippy family

whose patriarch was G.P. Sippy and who admittedly is considered the doyen of the film industry.

38. Admittedly, the provisions of the Copyright Act (prior to the amendment of 1994) are applicable to the present case. Section 2 (d) (v) defines 'author' in relation to a cinematographic film to mean "the owner of the film' at the time of its completion. Section 17 of the Act provides as to who would be the first owner of copyright. Section 17 (b) is relevant and reproduced hereunder:

“ **17. First owner of copyright.**- subject to the provisions of this Court, the author of a work shall be the first owner of the copyright therein:

Provided that -

- (a) ..... ..
- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein:”

In other words, if the person who finances and takes the risk of making the work and directs others to do work for valuable consideration, such person is the owner within the meaning of the Copyright Act, 1957. In the present case, based on the censor certificate itself, the firm Sippy films appears to be the owner of the copyright in the cinematograph of the said film Sholay.

39. In fact, there has been no change in the concept of authorship under law even by the 1994 amendment. As submitted by Defendant No.3, the owner (who is an entrepreneur and who has taken the risk of commercial failure), of a film has always been the producer of the film in the history of Indian cinema. The statement of objects and reasons to the 1994 amendments admits to the same and explains the change to bring it at par with common industry usage. In sub-clause (v) it is now proposed to define 'author' of a cinematograph film or a sound recording as the producer thereof instead of as the owner of the film or 'plate' as the case may be. The revised definition proposed is consistent with the common usage and also, is not tied to any particular technology. Definition of the term 'producer' is also proposed to be inserted separately vide sub-clause (xiii). Further, 'producer' has been defined by the said amendment as follows:

*“producer' in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work”.*

40. In *re. F.G. Films Limited* <sup>6</sup> the Court in interpreting the expression 'maker' defined as, “in relation to a film, the person by whom the arrangements necessary for the making of the film are undertaken” held:

*“... This is perhaps a strange collocation of words which might in other circumstance give rise to some difficulty of interpretation. “Undertakes” means, I think, be responsible for, especially in the financial sense, but also generally”.*

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6 [1953] 1 W.L.R. 483

41. As submitted by the Defendants, it is a well known fact that a producer is a person who spends on the making of the film, owns the film and the copyright therein and is the author of the film. In order to prove that the Plaintiff was the maker of the film, he has to prove that he was financially responsible for the making of the film. The Plaintiff has contended that he was the Director of the said film Sholay and was, like all Directors, involved very closely at every stage of the film, the finalizing of the script, the screenplay, finalizing the star cast, the location for shoot, getting the film shot at location, dubbing and editing after the shooting was over. But all this would not make the Plaintiff the owner of the film. In fact, in the present case the Plaintiff admits that it was the firm Sippy films which paid for the entire cost of the film. The Plaintiff however alleges that since the firm provided finance he entrusted the job of distribution of the film to the said firm. Therefore, according to him, the said firm only lent the money for making of the said film Sholay. The Plaintiff has also not produced his Accounts and/or Income Tax Returns to show that he was advanced any loan by the firm or that he has repaid any amounts to the said firm which were financed to him as a loan by the said firm in connection with making of the said film Sholay. If that would have been so, the Plaintiff would have received proceeds/profits from the film Sholay after the firm recovered its alleged loan/finance advanced to the Plaintiff. The Plaintiff has nowhere alleged/asserted that he received any profits from the commercial success of the film or partook in the profits of the film after the firm recovered its alleged loan/finance advanced to the Plaintiff. In fact, it is clear that the said firm cleared the film Sholay for exhibition from the Censor Board and distributed the



film and received all the monies for such commercial exploitation of the film. The Plaintiff's assertion of being the author/owner of the film Sholay is further belied by the fact that it is not even the Plaintiff's case that he has entered into any agreements with the writers, lyricists, actors, music directors, etc. of the said film. If the Plaintiff's assertion would be true, it is the Plaintiff who would have entered into the required agreements with the writers, lyricists, actors, music directors, technicians qua their appointments as well as remuneration and would have produced at least copies of such Agreements.

42. An owner is therefore a person who has spent towards the production of the film and who has not merely arranged for the funds but in fact has taken the risk of commercial failure, i.e. one who will lose money if the film flops and who will reap the fruit of commercial success if the film is a hit. In the instant case, it is the said firm which spent on the production of the film and accordingly the cinematograph film became the property of the said firm when the film was completed. Admittedly, the Plaintiff has resigned from the Partnership Firm much prior to the completion of the film. The Plaintiff has only directed the film 'Sholay' and has received accolades as a Director of the film 'Sholay'. Since it was the Partnership Firm which produced the film the name of late Mr. Vijay Sippy being a Partner in the said firm was also acknowledged and credited as Associate producer of the film. The Plaintiff has therefore miserably failed to show that he has spent any amount whatsoever on the film Sholay by himself and/or by taking a loan. The Plaintiff therefore at no point of time was the author and/or the owner of the said

film Sholay.

43. After holding as aforesaid that the Plaintiff at no point of time was the author and/or the owner of the said film Sholay in his own rights and that the producer of the said film Sholay was M/s. Sippy Films, it needs to be specified that the Plaintiff was earlier admittedly a Partner of M/s. Sippy Films and he retired from the said firm of M/s. Sippy Films with effect from 12<sup>th</sup> June 1975 and a Deed of Retirement was executed by the Plaintiff as a retiring Partner and Shri Vijay G. Sippy and Ruky G. Sippy as the Continuing Partners and a copy of the Deed of Retirement is at page 101 of the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6. Clauses 2 and 5 of the said Deed of Retirement are important and the same are reproduced hereunder:

*“2. The said business of M/s. Sippy films has been taken over as a running business with all its assets, liabilities, trade name and goodwill etc by the continuing Partners.*

*5. In consideration of the settlement of accounts, the retiring Partner hereby assigns to the continuing Partner his share and interest in the said Partnership, the trade name, fixtures, fittings, book debts, stock in trade and/or effects to hold the same to the continuing Partners.”*

44. The 'authorship' of a work is to be determined when the work comes into existence, in case of a film when the film was completed. The said film 'Sholay' was admittedly completed in August 1975 and was not ready on 12<sup>th</sup> June 1975, i.e. the day on which the Plaintiff retired from the said firm. Therefore on the date of the retirement of the Plaintiff even the said firm had not acquired Authorship in the

copyright of the film 'Sholay'. Whatever rights the Plaintiff had in the said film by virtue of being one of the Partners has been assigned by the Plaintiff in terms of clause (5) of the retirement deed mentioned hereinabove. The Plaintiff has contended that it cannot be said that by the aforesaid clauses the Plaintiff has relinquished his copyright or 'Author's Special Right' in the said film. In my view, once it is prima facie established that the said firm of Sippy Films was the author and owner of the copyright in the film Sholay, the same being the asset of the firm, upon the Plaintiff assigning all his rights and interest in the Partnership Firm to the Continuing Partners, it follows that the Plaintiff has given up his rights, if any, as co-owners/co-author in the copyright of the film Sholay in favour of the Continuing Partners.

45. The Plaintiff having miserably failed to discharge his burden of establishing that the Plaintiff is "the owner of the film at the time of its completion" has sought to find fault in the Defendants' title. If the Plaintiff himself cannot cross the threshold of establishing that the Plaintiff is the owner of the copyright, then the various issues raised including alleged defects in the Defendants' claim for copyright would be of no relevance. The assertion of absence of rights in the Defendants cannot confer rights on the Plaintiff. In any event, some of his main objections are dealt with hereinafter.

46. It is submitted on behalf of the Plaintiff that a Partnership firm cannot be the owner of the copyright. This submission cannot be accepted. A Partnership is a

compendium of individuals and when a Partnership firm is the owner of the copyright, in fact, the Partners are the joint owners of the copyright and as such the 'joint authors' of the copyright in the film. Joint authorship is acknowledged in Section 2 (z) of the Copyright Act wherein 'work of joint authorship' is defined to mean a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of other author or authors. When a Partnership firm makes a film and takes various steps including funding the film, the financial contribution of one Partner is not distinct from the contribution of the other Partners. Therefore, the Partners of a Partnership firm would be the joint authors and as such, the owners of the copyright. As submitted on behalf of Defendant Nos. 1, 2, 4, 5 and 6, the concept that a Partnership firm owns intellectual property rights is not alien to the laws relating to intellectual property. If a Partnership firm has been using the trade mark, unless there is evidence to the contrary, it has to be prima facie presumed that it is the property of the firm. The provisions of Section 24 of the Trade Marks Act, 1999, also recognizes registration of a trade mark in case of two persons who are Partners of a firm. Similarly the Patent Rights shall be deemed to belong to the two Partners of the firm and the Partners will hold it for the business of the Partnership and that during the subsistence of the Partnership, none of the two Partners can treat and deal with the Patent Right as his individual property. Similarly, the Partners who were the owners of the film at the time of its completion, are the authors of the film and thus the first owners of the copyright therein. The film will be the property or asset of the firm in which all the persons who were Partners at the time when the film was

completed, have joint or common interest. Therefore, the submission of the Plaintiff that a Partnership firm cannot be the owner of the copyright is rejected.

47. It is next submitted on behalf of the Plaintiff that the author of a cinematograph film has to be a natural person and the said firm not being a natural person cannot claim authorship of the film Sholay. As submitted on behalf of the Defendants, there is a distinction between the copyrightable works such as literary, musical, dramatic or artistic work on the one hand and the cinematograph film and the sound recording on the other. It may be that the author of a literary musical artistic or dramatic work has to be a natural person. However, the same is not necessarily true in the case of a cinematograph film and/or sound recording. This is so by reason of the definition of the term 'author' being different relating to the literary, musical artistic or dramatic work and the definition of the 'author' of a cinematograph film and sound recording. Under the 1957 Act, prior to its amendment in 1995, the term 'author' in relation to a literary dramatic work was the person who created the literary or dramatic work, in relation to a musical work, its composer, in relation to an artistic work other than photograph, the artist and in relation to a photograph, the person taking the photograph. Thus the said definition clearly provided that the authors of such works were the person who actually created those works and therefore the authors of such works had to be natural persons. Even if the amended definition is considered, the producer of a cinematograph film is the author of the cinematograph film and the producer is defined as a person who takes the initiative and responsibility for making the work.

The two words are initiative and responsibility. It means it is the person who proposes to make the cinematograph film and who is responsible for the making of the film i.e. who undertakes the financial burden. The author of a cinematograph film will be the persons responsible for the arrangements, particularly in the financial sense. In the case of a film produced by a Partnership firm, the Partnership firm becomes the author, in the sense that the Partners at the time when the film was completed were the owners of the film and thus become the authors of the film. This is clear from the definition of the term 'author' in relation to cinematograph film in the Act that was prevailing at the relevant time.

48. Further, as submitted on behalf of Defendant No.3, cinematograph films are not works of original composition created by 'sweat of the brow' or creativity of just one person or few persons but is the collective work that put together with contribution from several creative, technical and artistic persons who are joined together only by the common thread of the entrepreneurship of the producer who has brought them together under one roof, and who is responsible for creating the work. Accordingly, the status rewards producers of 'cinematograph films' for their entrepreneurship unlike authors and composers of works that are literary, musical, artistic and dramatic which are created without anyone else's investment, entirely by a person from his own personal 'sweat of the brow' and creative talents. The Plaintiff has relied on the description of a cinematograph film by Justice Krishna Iyer in *Indian Performing Right Society vs. Eastern India Motion Pictures*<sup>7</sup> which captures

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<sup>7</sup> 1977 AIR 1443

this succinctly:

*“ A cinematograph is a felicitous blend, a beautiful totality, a constellation of stars, if I may use these lovely imageries to drive home my point, slurring over the rule against mixed metaphor. Cinema is more than long strips of celluloid, more than miracles in photography, more than song, dance and dialogue and indeed more than dramatic story, exciting plot, gripping situations and marvellous acting. But it is that ensemble which is the finished product of orchestrated performance by each of the several participants, although the components may, some times, in themselves be elegant entities”*

The above description acknowledges the contribution of many individuals who work together at the behest of and at the cost of the producer's substantial investment. Therefore, I am of the view that so far as authorship and first ownership of copyright in a cinematograph film is concerned, it can be any legal person – an individual, a Partnership firm, or a company who has invested and has taken the risk of failure/loss of investment.

49. The Plaintiff has relied on a decision of the Australian High Court in *O'brien & others vs. Komesaroff*<sup>8</sup>, mooted the point that when a 'Partner' of a Partnership firm makes a work, the copyright in the same does not automatically vest with the Partnership firm, but continues to remain with the Partner in his individual capacity unless assigned by him to the Partnership firm. The Plaintiff asserts that in the present case there was no assignment in writing wherein the Plaintiff had assigned

8 (1981) 150CLR 310

the rights of the film to the said firm Sippy Films. In the above cited Australian case, the work had come into existence prior to the author of the work becoming a partner and it was conceded by the Defendants that the ownership of the work had not been transmitted from the author to the partnership. Secondly, in the above case the question of authorship/ownership in copyright was in respect of a literary work (a legal document being a 'unit trust deed') and not a cinematograph film. The law of authorship for both classes of work stands on a different footing. The author of 'literary works' even under the Copyright Act, 1957 is a natural person, the actual author who composes/writes such 'literary work'. Such natural person (author/composer) is also the first owner of copyright under the Indian Laws. In this regard, Indian copyright laws stand on the same footing as copyright laws in most countries of the world where the concept stems out of the Berne Convention. The ratio of *O'brien's* case therefore cannot be applied in the present case of a cinematographic film and lends no assistance to the Plaintiff's submission that the author/owner of a cinematographic film has to be a natural person.

50. The Plaintiff has also relied on the decisions in *Rupendra Kashyap vs. Jiwan Publishing House (P) Ltd.* (supra) and *Camlin Private Limited vs. National Pencil Industries* (supra) in support of his argument that only natural persons can be authors in copyright works. In both these cases, the work in question was either artistic work or literary work and not cinematograph film and therefore lend no support to the Plaintiff. Though the Plaintiff has submitted that in the decision in *Gee Pee Films Pvt. Ltd. vs. Pratik Chowdhury* (supra) it was held by the Calcutta High



Court that the author of a sound recording must be a natural person, no such finding is found in the said decision. The facts and circumstances of that case are also completely different. In that case, the Defendants had recorded sound recordings at the behest of the Plaintiff therein at a recording studio for which all expenses were paid by the plaintiff therein and in fact he had commissioned the lyricist and composer to compose lyrics and music for the songs. It was found by the Plaintiff therein that a similar track was released by the defendants therein with altered lyrics. The plaintiff therein did not succeed in claiming authorship in all the three works (a) literary, (b) musical and (c) sound recordings. For (a) and (b) the plaintiff could not prove that (a) and (b) were composed under a contract of service (course of employment). As regards sound recording, on facts it was held that the Plaintiff was not the producer of the sound recording. The Plaintiff could not have contended that it was the author of the infringing sound recording as it was not produced at his behest but was another similar sound recording which would pass off as the one prepared for him. These elements of facts are the most important and different from the present case at hand.

51. The Plaintiff has relied on Section 13 (2) (ii) of the Act to contend that since the making of the film Sholay itself was complete at the time when the Plaintiff retired from the said firm, copyright came to subsist in the said film as an unpublished work, and the same vested with the Plaintiff as its author and first owner. The same in my view lends no aid to the Plaintiff. Firstly, Section 13 (2) does not set out any pre-requisite for authorship. It only lays down certain

conditions for subsistence of copyright. Once a film is first published in India, there are no other conditions. In such a situation, Section 13 (2) (ii) would not apply. In the present case, it is an undisputed position that the film was a published work and was first published in India. In any case, the 'authorship' is to be determined at the time of completion of the work. Even Section 13 (2) (ii) is clear about it when it reads 'at the date of making of work'. 'The date of making' here means the date of completion of the work and when the work comes into existence and not the various dates when the work was being made. Publication and completion are two different things. Even under Section 13 (2) (ii), the question of completion of work is sine qua non. Be it published or unpublished, the work has to be completed. Authorship of a cinematographic film itself arises upon completion of the film. The work in the present case is cinematograph film which was completed in August 1975 (as stated in paragraphs 2, 14 and 15 of the Plaint itself) and published on 15<sup>th</sup> August, 1975. At the time of completion of the film (August 1975) and at the time of publication of the film (15<sup>th</sup> August, 1975) the Plaintiff was admittedly not a Partner or a Producer (along with other Partners) of the said film 'Sholay' and accordingly, could not have been the author or owner of the said film. Secondly, even assuming the work in question was not published and was an unpublished work there is no such prohibition in section 13 (2) (ii) which precludes a Partnership firm or a Company to be an author /first owner of copyright in such a work.

52. As per the wording of the sub-section, the author needs to be a citizen of India (and accordingly, a natural person) or may be domiciled in India which may be

a company or a Partnership firm. A company for instance is deemed to be domiciled in the country of its incorporation, vide *Technip Sa vs. Sms Holding (Pvt.) Ltd. and ors.*<sup>9</sup> where the Hon'ble Supreme Court has held that a company is domiciled where it is registered. 'Citizen of India' and 'domiciled in India' are two different concepts and these expressions are to be read disjunctively and accordingly, an author or an unpublished work may fall in any one of the two categories. With regard to a partnership firm, the explanation to Section 13 would apply which provides that in case of a work of joint authorship, the conditions conferring copyright specified in Section 13 (2) shall be satisfied by all the authors of the work. By necessary corollary, an author can be a natural person or a juristic person under the Copyright Act.

53. The Plaintiff has also claimed to be vested with moral right or Author's Special Rights in the cinematograph film. The Plaintiff has miserably failed to show how he is the 'author' of the said film 'Sholay' and consequently how he is the first owner of copyright in the film. Accordingly, the Plaintiff cannot claim to be vested with the Author's Special Right.

54. Apart from the aforesaid, the following conduct of the Plaintiff also does not entitle him to any ad-interim relief.

(i) As a result of the change in the Constitution of the said firm, the said firm

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9 (2005) 5 SCC 465 @ para 17

became solely entitled to all the assets of the said film Sholay including all the rights in the said film as stated in paragraph 8.7 of the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6. On 14<sup>th</sup> September, 2000, Sippy Films Pvt. Ltd. i.e. Defendant No.4 executed a Deed of Gift in favour of Defendant No.5, a copy of which is annexed as Exhibit-N to the Affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6. From the release of the film on 15<sup>th</sup> August, 1975 upto 14<sup>th</sup> September, 2000, the said firm and Defendant No. 4 (at respective times) and after 14<sup>th</sup> September,2000, Defendant No.5 exercised rights in respect of the said film and entered into various agreements as shown below:

Sr. No.	Date	Parties	Particulars
1	22 <sup>nd</sup> July 1991	Sippy Films/Jupiter Enterprises	Assignment of Video Copyrights/Cable TV/Pay TV /Satellite/Broadcasting/ Communication rights relating to 21 Movies (including Sholay/Shaan/ Seeta Aur Geeta/Saagar)
2	13 <sup>th</sup> July 1996	SME/Surya Cine Arts	Re-issue rights of Sholay for Tamil Nadu circuit (including Kerala) for 2 years
3	19 <sup>th</sup> November 2001	SME/Ultra Distributors	Deed of Assignment of Video Copyrights and Cable TV Rights for India, Nepal and Bhutan
4	29 <sup>th</sup> November 2001	SME/Swastik Films	Re-issue rights of Sholay for Bihar circuit (excluding Nepal) for 4 years
5	3 <sup>rd</sup> December 2001	SME/Saltas Samuel	Re-issue rights of Sholay for Tamil Nadu circuit (including Kerala) for 2 years
6	12 <sup>th</sup> June 2003	SME/Zee Entertainment	Deed of Assignment of Satellite Rights for entire world including India for 5 years

Sr. No.	Date	Parties	Particulars
7	3 <sup>rd</sup> December 2003	SME/Oscar Films	Re-issue rights of Sholay for Tamil Nadu circuit (including Kerala) for 2 years
8	2 <sup>nd</sup> July 2004	SME/Shivam Videotech	Assignment of sole and exclusive rights in Sholay for 7 years
9	17 <sup>th</sup> December 2004	SME/KGN Films	Re-issue rights of Sholay for the Nizam circuit for 2 ½ years
10	20 <sup>th</sup> December 2004	SME/Malla Venkateshwara Rao	Re-issue rights of Sholay for the Andhra Ceded circuit for 2 ½ years
11	21 <sup>st</sup> April 2009	SME/ESPN Software	License Agreement for use of popular scenes of famous characters of Sholay for its various brands, programmes, TV Shows and TNA Wrestling
12	5 <sup>th</sup> October 2012	SME/Zee Entertainment	Agreement or exclusive satellite broadcasting rights in Sholay for 5 years up to 2016 (15 telecasts) in India.

The Plaintiff has not raised any objection claiming any copyright in the said film at any time till the filing of the present suit i.e. for almost 40 years.

(ii) The said film has been broadcast on television on numerous occasions to which also the Plaintiff has never objected. From 1997 till date the said film has been broadcasted over 50 times on Zee Network to which the Plaintiff has not objected to.

(iii) Various advertisements were published by the proposed assignees, copies of

which are annexed as Exhibits O-1 to O-13 to the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6 at pages 121 to 140. In fact, at pages 131 and 132 of the reply of the said Defendants, a public notice was issued on behalf of Defendant No. 5 in April, 2008 wherein the ownership rights of Defendant No.5 were asserted and reiterated. However, not once has the Plaintiff objected to the assignment or the public notices in any manner whatsoever nor did he assert any right of ownership in various films including the said film Sholay.

(iv) In respect of the dispute between Defendant No.5 and Ramgopal Varma, regarding use of the word 'Sholay' and the name 'Gabbar' or 'Gabbar Singh' in the movie made by Ram Gopal Varma, proceedings were adopted in the Delhi High Court by Defendant No.5 to protect their copyrights in the said film Sholay. This fact was widely published and various articles appeared in respect of the said disputes, copies of which are annexed at Exhibit-Q to the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6 and at pages 141 to 159. The Plaintiff was aware of the said disputes and in fact gave interviews which appeared in various newspapers, copies of which are also annexed at Exhibit-R to the affidavit in reply of Defendant Nos. 1, 2, 4, 5 and 6 at pages 160 and 161. However, the Plaintiff never raised any claim in respect of his alleged copyright. In fact, in one such interview given on 10<sup>th</sup> September, 2007 by the Plaintiff to Bombay Times, the Plaintiff complimented Defendant No.3 for having commenced legal proceedings against Ramgopal Varma which shows that the Plaintiff knew that he had no copyright in the said film Sholay. Though the Plaintiff has contended that the Defendants cannot rely on newspaper

cuttings, it is neither the case of the Plaintiff that he is wrongly quoted in the newspapers nor has he written any protest letter to the Times of India stating that he has been misquoted. In fact, in the interview of the Plaintiff taken by Journalist Rachana Dubey for Hindustan Times, the Plaintiff has stated that “ I don't know anything about the film being turned into 3D, but my best wishes to whoever is doing so.”

(v) In a dispute between Ajit Sippy, Mrs. Mohini Sippy and M/s. Zee Telefilms Ltd., on the one hand and Defendant Nos. 4, 5 and 6 on the other, regarding the ownership rights of the said film Sholay and the said other films, Defendant Nos. 4, 5 and 6 filed a suit in the Delhi High Court and by an order dated 8<sup>th</sup> January 2010 in the interim application, the Delhi High Court held that the rights in the said film vested with Defendant Nos. 4 and 5. A copy of the said order and judgment is at Exhibit-S to the affidavit in reply of Defendant Nos. 4, 5 and 6 at pages 162 to 179.

(vi) Defendant No.5 has adopted various proceedings to prevent infringement of the copyright of the said film Sholay, as set out in paragraph 8.14 of the affidavit in reply of Defendant Nos. 4, 5 and 6, the details of which are set out hereunder:

Sr. No.	Parties	Case No.	Status
1	Sholay Media & Entertainment Pvt. Ltd. Versus Parag Sanghvi & Others	CS (OS) 1892 of 2006	Pending

Sr. No.	Parties	Case No.	Status
2	Sholay Media & Entertainment Pvt. Ltd. Versus Ajit Sippy & Others	CS (OS) 1961 of 2008	Disposed off
3	Sholay Media & Entertainment Pvt. Ltd. Versus Indus Video Pvt. Ltd. & Others	CS (OS) 591 of 2010	Pending
4	Sholay Media & Entertainment Pvt. Ltd. Versus Yogesh Patel & Others	FAO (OS) 222 of 2010	Pending
5	Sholay Media & Entertainment Pvt. Ltd. Versus Vodafone Essar Mobile Services Ltd. & Others	CS (OS) 490 of 2011	Pending
6	Sholay Media & Entertainment Pvt. Ltd. Versus Law & Kenneth & Others	CS (OS) 3199 of 2012	Pending

55. From the aforesaid facts, it is clear that the Plaintiff never claimed to be the author/owner qua the copyright in the cinematograph film Sholay and for the first time after 40 years made his claim for reasons best known to him.

56. As submitted on behalf of Defendant Nos. 7 and 8, it appears that they are bona fide purchasers /transferees for value without notice of any alleged claim of the Plaintiff. Defendant Nos. 7 and 8 have bought rights to produce 3D version of the film Sholay from Defendant No.5 for valuable consideration under a bona fide belief that the Defendant No.5 (which includes their predecessors in title who are



claiming the rights in relation to the said film Sholay since release of the film), is the full owner of the copyright in the film Sholay. The Defendant Nos. 7 and 8 in their reply affidavit at page 209 have specifically stated that Defendant No. 7 created television landmark by telecasting the movie Sholay on Doordarshan which was subsequently telecast on Sony TV. The said telecast was never objected to by the Plaintiff on the basis of his alleged copyright over the said film Sholay. According to Defendant Nos. 7 and 8, the said movie 'Sholay' was thereafter re-telecasted on movie channels for more than 50 times but the Plaintiff did not object.

57. In the above circumstances the Plaintiff has failed to make out a prima facie case in his favour. The balance of convenience is also in favour of the Defendants and against the Plaintiff. No ad-interim relief is therefore granted in favour of the Plaintiff. As stated hereinabove, the issues raised by the Defendants qua limitation and maintainability of the suit are kept open and not dealt with herein. Place the suit for framing of preliminary issues under Section 9A of the Code of Civil Procedure 1908 on 9<sup>th</sup> August 2013.

(S.J. KATHAWALLA, J.)