

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY & ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 3391 OF 2009

IN

SUIT NO. 2417 OF 2009

Sushila Sharma

.....Plaintiff

V/S.

1. Madhur Bhandarkar
2. Preetish Nandy
3. M/s.Bhandarkar Entertainment
4. Percept Picture Co-op Pvt.Ltd
5. Manoj Tyagi

.....Defendants

Mr.Sanjay Jain a/w.Mr.Manoj Tyagi,
adv.for plaintiff.

Mr.Virag Tulzapurkar, Seniouir Counsel with Mr.Ameet Naik i/by. Naik Naik & Co.
adv.for defendants no.1 and 3.

Mr.Vineet Naik i/by. Madhu Chaudhary with Ms.Swati Karmarkar
adv.for defendant no.4.

Mr.Venkatesh Dhond i/by. Anuja Jhunjhunwala with Ms.Neha Khotkar
adv.for defendant no.5.

Coram : S.C.Dharmadhikari, J.

Dated : 4th November, 2009.

RC. :

1. With the consent of all the advocates, the motion itself is placed for

hearing and disposed off finally by this order.

2. The notice of Motion claims injunction in the following terms :

“(a). That this Hon’ble Court be pleased to pass a temporary order and injunction restraining the Defendants and their servants agents and/or any other person or persons claiming through or under them from in any manner releasing, exhibiting and exploiting any such film titled “JAIL” containing the story line on the basis of which the plaintiff had started the film titled “JAIL” to be directed by defendant no.1, story by defendant no.5 in any manner whatsoever. “

3. The plaintiff is one Sushila Sharma wife of Rajan Sharma and claims to be carrying on business under the firm name and style Harsh Raj Productions. Defendants no.1 and 2 are employed as partners/directors of defendants no.3 and 4. Defendant no.5 is a writer by profession.

4. It is stated that the plaintiff is a film producer of repute and persons associated with film trade recognize the plaintiff as a film producer. In paragraph-3 of the plaint, it is stated that somewhere in the year 2003, the first defendant accompanied by defendant no.5 approached the plaintiff and specifically represented that the defendant no.1 intends to act as a Director of the film to be produced by the plaintiff.

5. It is then stated that defendants no.1 and 5 represented to the plaintiff that the 5th defendant has already written out the story line for the purpose of

production of the film and if his services are accepted, he is ready and willing to complete the script. The defendants had represented to the plaintiff that initially they planned the film for one M/s.Dhariwal Films Pvt.Ltd and signed necessary agreements. However, considering the reputation of the plaintiff they were keen on working with the plaintiff rather than M/s.Dhariwal Films Pvt.Ltd. It is stated that based on these representations, the plaintiff agreed to accept production of a film titled "Jail" and the services of the 1st defendant were accepted as a Director and defendant no.5 was engaged as a writer of the film. Since, defendants no.1 and 5 had agreed to work for M/s.Dhariwal Films Pvt.Ltd the plaintiff settled the matter with M/s.Dhariwal Films Pvt.Ltd and acquired the rights in respect of the said film. The plaintiff relies upon Annexure-A and A1 to the plaint which are stated to be the copies of some of the documents including the acquisition of rights from M/s.Dhariwal Films Pvt.Ltd.

6. It is then alleged that after making substantial payment to M/s.Dhariwal Films Pvt.Ltd and spending huge amounts on defendants no.1 and 5 for their hotel accommodation, the entire script was completed. The plaintiff also proceeded to sign leading artists by paying them substantial sum. The title of the film was also got registered, the muhurat was also conducted and the plaintiff was awaiting further steps to be taken to complete the production. Even the song recording was also held. At all relevant times, the film was made for the plaintiff on the basis of the script of defendant no.5 and under

the direction of defendant no.1. However, defendant no.1 did not take further steps despite the plaintiff incurring heavy expenses. It is clear that the copyright of the film including the story, screen play and the title vests with the plaintiff. All the efforts including the writing of the storyline etc. were done for and on behalf of the plaintiff.

7. The plaintiff had to move the court by filing the instant suit because despite the screen play and the script being held in trust for the plaintiff, defendants no.1 to 5 have now got together to produce the film on the basis of the same title and script of defendant no.5. This is in clear violation of the rights of the plaintiff. Therefore, to protect the copyright in respect of the film which was under production for the plaintiff that the instant suit has been filed for a declaration and permanent injunction in furtherance of which the Notice of Motion for interim reliefs has been moved.

8. Mr.Jain appearing on behalf of the plaintiff contended that the plaintiff had moved the court at earlier point of time. However, it is stated that on that occasion, there was no apprehension, in as much as, the movie was not slated for release immediately. In such circumstances, no application for ad-interim reliefs was made and liberty was reserved to make it on a future occasion. Now, the movie is slated for release on 6th November, 2009. An application was made in the vacation but the learned Vacation Judge directed the plaintiff to move the regular court. The matter was to be heard finally on 16th October

2009 but the Notice of Motion was not taken up on that date. In such circumstances and inviting my attention to the additional Affidavit on record, Mr.Jain submits that the Affidavits filed by the defendants would go to show that the script is one and the same. Some minor deviations and changes have been made here and there but it is not the case of the parties that the film is not based on the same script. There are no denials of the factual assertions by defendant no.5 with regard to the script being one and the same. In such circumstances, atleast defendant no.5 cannot be heard to say that the plaintiff is not entitled to any reliefs. He submits that the plaint averments read together with the further affidavits of the plaintiff go to show that now in respect of the title in the script and the film, defendants no.1 and 4 have engaged the services of defendant no.5 and defendant no.5 having handed over the script already to the plaintiff, the declaration as claimed would automatically follow. In these circumstances, it cannot be urged that the application for interim injunction restraining release of the film should not be granted, more particularly, considering the contents of the Annexures to the plaint.

9. Mr.Jain has taken me through the plaint averments and the affidavit of the defendants, more particularly of defendant no.5. He has also handed over to me during the course of his arguments, a statement wherein the features of the script of defendant no.5 based upon which the film "Jail" has now been made are compared. Mr.Jain submits that a detailed script has not been

submitted. However, the script of the film is based on the same story i.e. of a innocent boy landing in a jail on account of the acts of his friend. This is the basis of both the scripts and merely because some scenes are appearing differently would not mean that based upon the identity of the script, the interim injunction cannot be granted. In such circumstances, and considering the clear mandate of the CopyRight Act and more particularly Section 17(c) thereof, the interim injunction must follow.

10. On the other hand, Mr.Tulzapurkar learned counsel appearing on behalf of defendants no.1 and defendant no.3 contends that the whole suit is false and lacks in bonafides. It is claimed that the plaintiff is carrying on business under the firm name and style Harsh Raj Productions. However, there are documents to evidence that the plaintiff was never representing the said Productions. M/s.Harsh Raj Productions was all throughout the firm or concern of one Rajesh Maria. He is the sole proprietor thereof. He is stated to have engaged the 1st defendant. However, the terms of engagement are incomplete. The letters themselves recite that tentatively the 1st defendant agreed to direct the film. However, the final terms and conditions were never settled. In these circumstances, it cannot be held that the services of the 1st defendant were engaged by the plaintiff. In any event, the plaintiff herself is not clear as to what is the copyright that she is claiming and in what work. Inviting my attention to paragraphs 14, 21 and 23 of the plaint, it is urged by Mr.Tulzapurkar

that what the plaintiff claims is copyright in respect of the film. On her own showing, the film is under production. If that was not her case, then it was not necessary for her to plead that the defendants were holding the script, screenplay etc. of a film to be produced by the plaintiff in trust and purely in the capacity of service providers. According to Mr. Tulzapurkar, paragraph-23 reads as if the plaintiff claims to be the original producer in respect of the film in question. However, at no stage has the plaintiff in the plaint pleaded that she was concerned with the film and in what manner. There is nothing in the plaint which would indicate as to how Rakesh Maria claims to be the proprietor of Harsh Raj Productions when the plaintiff also states that she carrying on business under the same firm name and style. Rakesh Maria has not been joined as a party. There is an affidavit filed by Rakesh Maria but that is at a belated stage and the said affidavit also does not indicate as to how the plaintiff and Rakesh Maria are associated with one another. In such circumstances, when the plaintiff's own version is doubtful, then, there is no question of granting any injunction, much less in the terms prayed. Mr. Tulzapurkar has pointed out that the scheme of the Copyright Act and more particularly Section 17 thereof. It recognises rights in works which are stated to be original or claimed to have been assigned. No such case has been pleaded by the plaintiff. In these circumstances, interim reliefs be refused is his contention.

11. Mr.Dhond, learned counsel appearing on behalf of defendant no.5 has contended that there is another glaring discrepancy in the plaint. The plaintiff states that she is a film producer and somewhere in the year February 2003 the 5th defendant accompanied by defendant no.1 approached her. However, according to Mr.Dhond, the documents annexed to the plaint would show that M/s.Dhariwal Films Pvt. Ltd allegedly transferred the rights in respect of the film to be produced by them on 20th March, 2003. However, the plaintiff is stated to have engaged the services of the actors much prior to the letter dated 20th March, 2003. That apart, the letter engaging the services of artists and technicians is signed by Rakesh Maria. The plaintiff does not disclose as to how these documents came in her possession. There is no pleading with regards to the assignment of rights to Rakesh Maria. Further, the plaintiff claims to have filed the suit to protect her rights in respect of the film which is under production. In these circumstances, when the film is now slated to be released, not exclusively on the script of defendant no.5 but on the efforts of defendant no.5 alongwith one Ms.Anuradha Tiwari. That has resulted in making of the film, then, there is no question of the plaintiff claiming any declaration, much less, a permanent injunction or an interim injunction.

12. Mr.Naik appearing on behalf of defendant no.4 while highlighting the aspect of delay supported the pleas of the other defendants.

13. All the defendants have invited my attention to paragraph-34 of the plaint

which reads as under :

“34. The plaintiff states that since the suit is only to protect the copyright in respect of the film, the same can never be valued in terms of money and as such, the plaintiff values the suit for the purpose of court fees and jurisdiction for prayer (a) for Rs.1000/- for prayer (b) for Rs.1,000/- and pays the court-fees of Rs.400/- accordingly and further undertakes to pay further additional court fees as may be directed by this Hon’ble Court.”

14. With the assistance of the learned counsel appearing for the parties, I have perused the plaint and the annexures thereto. I have also perused the affidavit and additional affidavits together with their annexures. In my view, the plaintiff is not entitled to any interim injunction as she has failed to make out a prima-facie case. The plaint proceeds on the basis that the plaintiff carries on the business under the firm name and style of Harsh Raj Productions. There is nothing stated with regard to the composition/constitution of Harsh Raj Productions. It is not clear from the plaint averments as to whether the plaintiff is the sole proprietor of the said Harsh Raj Production or that she is associated with it as a partner. In this behalf, perusal of the annexures to the plaint would reveal that Harsh Raj Productions is all throughout represented by Rakesh Maria, as a proprietor. Annexures-B, B-1, B-2 and B-3 are all signed by Rakesh Maria as a proprietor of M/s.Harsh Raj Productions. Even the communication of Association of Motion Pictures and TV Programme Producers

is addressed to Rakesh Maria. This has all taken place in the year August 2003. When the plaintiff claims to have been approached by defendants no.1 and 5 for producing the film on the script of defendant no.5 in February 2003, then one fails to understand as to how the plaintiff is suing in the year 2009 but without any explanation with regard to the contents of these letters. From the record, it appears that when this objection was raised by the defendants, an attempt was made to approach Rakesh Maria. The said Rakesh Maria has then filed an affidavit dated 27th July 2009. In the affidavit, he states that at all the relevant time, the plaintiff has been the producer of the film. She delegated the authority to represent her to Rakesh Maria. He now claims that he represented the plaintiff. It is only for the sake of convenience that he has been signing the Documents as a proprietor. However, it is evident from a reading of this Affidavit that the said Rakesh Maria and the plaintiff are both aware of the objections raised by the defendants, more particularly, the objection that it was Rakesh Maria who had been approached by defendants no. 1 and 5. The amount initially to be paid to defendant no.1 was paid by Rakesh Maria and that when the film was not taking shape and despite a long period was not seeing any completion, the 1st defendant is stated to have refunded the amount to Rakesh Maria. The said Rakesh Maria contradicts himself by stating in paragraph-4 of the Affidavit that at all relevant time, defendant no.1 and 5 had been promising to complete the film by starting the necessary shooting

and that they have delayed the project purposely. He states that payments were made by him and received back by him but they were made for and on behalf of the plaintiff. The amounts which are alleged to have been refunded are not pertaining to the transactions in respect of the film as he was handling the suit film for and on behalf of the plaintiff and sees no reason to receive refund of the amounts, save and except the fact that he has been assisting the plaintiff as a family friend. Further, in paragraph-6 of the affidavit he contradicts himself by stating that the amounts which have been refunded in respect of some payments made by him personally for and on behalf of defendant no.1, has nothing to do with the suit film. It is rather strange that the plaintiff claims to have spend sizeable amount by engaging the services of defendants no.1 and 5. It is further strange that the plaintiff claims that she has an exclusive right in respect of the film including the script, screenplay etc. She annexes documents which evidences signatures of Rakesh Maria as a proprietor. However, in the entire plaint she maintains absolute silence with regard to the amounts paid to defendant no.1 in respect of the film and which are stated to have been refunded. When defendant no.1 files an affidavit in reply to this Motion and states that initially he had evinced interest in the project but seeing that it was delayed that he decided to himself produce the film, direct it and base it on a script which is the joint work of defendant no.1 and one Anuradha Tiwari that the plaintiff proceeds to give the aforesaid

explanation and file an affidavit of the said Rakesh Maria. Taking the case of the plaintiff further, there are contradictions in her version in the plaint. Infact, there is substance in the contention of Mr.Tulzapurkar and Mr.Dhond that the plaintiff's claim lacks bonafides. The plaintiff has suppressed relevant and material facts pertaining to the rights in respect of the film claimed by her. In paragraph-6 of her affidavit affirmed on 27th July 2009, the plaintiff seeks to explain that one Rakesh Maria had been acting for and on behalf of her but at all the relevant time he had been acting so, as she was unable to run around. She claimed that Rakesh Maria had no personal interest of the film, save and except, working as a well wisher of the plaintiff. She states that she has obtained the affidavit of Rakesh Maria. She states that though defendant no.1 had refunded the amount to Rakesh Maria, by retaining some of the amounts received by him, the said Rakesh Maria has admitted her case in the plaint. However, her version in that behalf is not in tune with what Rakesh Maria has stated in his affidavit.

15. In these circumstances, it is difficult to hold that a prima-facie case in respect of the rights of the film in question has been made out by the plaintiff. The plaintiff's version raises serious doubts about the acquisition of such rights. Assuming that the plaintiff claims to have some rights which is not clear from the plaint averments, whether the rights are in respect of the film as a whole including the script, story line etc. or that she has engaged the services of each

of the defendants and more particularly defendants no.1 and 5 independently is not clear at all. While she states that she has rights in the film, it is her own case that the film is not completed. It is her own case which raises doubt with regard to the story line and script of the film. It appears that the plaintiff is agitated by the fact that that the 5th defendant has thereafter allowed the 1st defendant to produce and direct the film based on his script. However, the 5th defendant has also raised serious issues in his affidavit. He has pointed out on oath as to how the film was to be made initially. He has very clearly stated in his affidavit that he was approached by Rakesh Maria in or about March, 2003. On 9th March 2003, the agreement, about the story, dialogues of the film of Harsh Raj Productions, were agreed tentatively. The terms were however, not finalised. He claims that there was no concluded agreement with M/s.Harsh Raj Productions. He does not deny that the muhurat was held but since remuneration was not concluded and finalised, the 5th defendant did not develop the storyline, screenplay and dialogues for Harsh Raj Productions. In November 2003, he claims to have been approached by Rakesh Maria who informed him that the project "Jail" was stalled. It is thereafter that in July 2005 that the 5th defendant was approached by the 1st defendant for making of a film based on the concept of the life of prisoners. It is very clear from the affidavit, that defendant no.1 engaged the services of defendant no.5 through his proprietorship concern, i.e. defendant no.3. He also engaged the services of one

Ms.Anuradha Tiwari. Thus, he claims that this is an independent arrangement between defendants no.1 and 3 and defendant no.5. In these circumstances, it is difficult to hold that the plaintiff has made out a prima-facie case that the rights in respect of the script and storyline, so also, the entire film vest in her.

16. There is one more reason as to why interim injunction should not be granted in this case, apart from the doubt created by the version of the plaintiff. It is surprising that the plaintiff has filed this suit to settle her claim in a court whose pecuniary jurisdiction is Rs.50,000/- and above. From the reading of the paragraphs relevant for the purposes of valuation of the claim and jurisdiction of the court, it is apparent that the plaintiff has valued the claim much below Rs.50,000/-. In these circumstances, on the plaintiff's own case this suit could not have been filed in this court.

17. There is an increasing tendency to file suits and seek reliefs on the eve of release of a film with which big Production Houses, Directors, Technicians and Artists are associated. Mr.Tulzapurkar has termed this suit as a 'blackmail action'. It is not necessary to go into this aspect in the view that I have taken. However, time has come when a serious view will have to be taken of such actions. If doubts are created about the versions of persons approaching the court, then merely denying them reliefs would not be sufficient. If doubts raised, show complete lack of bonafides on their part, then, proceedings for making false statements on oath, need to be also taken up against such parties.

Beyond this, I say nothing more and leave it for the defendants to adopt appropriate proceedings.

18. In the view that I have taken, it is not necessary to refer to the observations of the learned Single Judge on the aspect of delay. Since, I have already held that the plaintiff has failed to make out a prima-facie case and even the balance of convenience is not her favour, there is no alternative but to dismiss this Notice of Motion. It is accordingly dismissed. No order as to costs.

[S.C.Dharmadhikari, J]