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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 334 OF 2013

IN

NOTICE OF MOTION NO.406 OF 2013

IN

SUIT NO.166 OF 2013

Ramesh Sippy,
of Indian Inhabitant, carrying on
business in the name and style of RS
Entertainment Pvt. Limited as a Sole
Proprietor at C/3, Himalaya Bungalow,
3rd Cross Lane, Lokhandwala Complex,
Andheri (West), Mumbai – 400 053

Appellant
(Orig. Petitioner)

versus

1. **Shaan Ranjeet Uttamsingh**
a citizen of USA / UK carrying on
business at 3-G, Naaz Building,
Lamington Road, Mumbai – 400 004
2. **Sameer Ranjeet Uttamsingh**
a citizen of USA / UK carrying on
business at 3-G, Naaz Building,
Lamington Road, Mumbai – 400 004
3. **Sascha Vijay Sippy,**
a citizen of USA carrying on
business at 3-G Naaz Building,
Lamington Road, Mumbai – 400 004

4. **Sippy Films Private Limited**
3-G, Naaz Building, Lamington
Road, Mumbai - 400 004
5. **Sholay Media and Entertaining
Private Limited,**
3-G, Naaz Building, Lamington
Road, Mumbai - 400 004
6. **Generation Three Entertaining
Pvt. Limited,**
3-G, Naaz Building, Lamington
Road, Mumbai - 400 004
7. **Pen India Private Limited,**
a company incorporated under the
provisions of the Companies Act,
1956, having its Registered Office at
Pen House, Asha Colony, Bungalow
No.3, Opp. Sea Princess Hotel, Juhu
Tara Road, Juhu, Mumbai - 400 049
8. **Jayantilal Gada,**
Pen House, Asha Colony, Bungalow
No.3, Opp. Sea Princess Hotel, Juhu
Tara Road, Juhu, Mumbai - 400 049
9. **Maya Digital Studios Private
Limited,**
2nd Floor, Mukta House, Dada
Saheb Phalke Film City, Goregaon
(East), Mumbai - 400 065

Respondents
(Original Defendants)

...contd/-

APPEARANCES

FOR THE APPELLANT	Mr. Janak Dwarkadas, Senior Advocate, a/w Ms. Ankita Singhania i/by Bachubhai Munim & Co.
FOR RESPS. Nos.1,2,4,5 & 6	Dr. Veerendra Tulzapurkar, Senior Advocate, along with Mr. V. K. Dhond, Senior Counsel, Dr. Birendra Saraf and Mr. Archit Jayakar, i/b Jayakar & Partners
FOR RESP.No. 3	Mr. Rahul Ajatshatru i/by Anand & Anand
FOR RESP.No.7 & 8	Mr. Alankar Kirpelkar, i/b Mag Legal
FOR RESP.No.9	Mr. Aditya Thakkar a/w Mr. Rahul Jain i/b RES Legal.

**CORAM : S. J. Vazifdar &
G.S.Patel, JJ.**

JUDGEMENT RESERVED : 22nd November 2013

JUDGEMENT PRONOUNCED : 3rd December 2013

JUDGMENT : (Per G.S. Patel, J.)

1. By consent, the appeal is taken up for hearing and final disposal at the stage of admission.
2. This appeal is directed against an order dated 1st April 2013 of the learned Single Judge declining ad-interim reliefs to the appellant.

3. The appellant is a film director. He has to his credit several Hindi films. The most notable of these is *Sholay*. He has also directed other Hindi films including *Sagar*, *Shaan*, *Seeta aur Geeta* and *Andaaz*. In his Suit, the appellant claims to be the “author” of and the “first owner of copyright” in these films. He also claims to be entitled to “Author’s Special Rights” in these films. The appellant claims that the respondents have infringed these rights of the appellant and seeks protective orders in relation to these rights. For the purposes of the present appeal, we are principally concerned with the film *Sholay*. This is also the focus of the judgment under appeal. We have, therefore, in this judgment referred only to that film and only note that the appellant has sought some reliefs in respect of the other films. In his Notice of Motion in which the impugned ad-interim order was passed, the appellant sought injunction restraining the respondents from alienating, encumbering, disposing of or creating any interests in these films; and, in particular, by prayer (c) of the Notice of Motion, from releasing the 3-D version of *Sholay*. It is the imminent release of the 3-D version of *Sholay* that is of pressing concern to the Plaintiff.

4. The appellant claims to have been the individual solely responsible for the creation of *Sholay*, in every sense of that term except for its financing. With a claim so emphatically mounted, one would reasonably expect to find some unequivocal supporting documentary material and, at the very least, a consistent pattern of conduct by the appellant to show that he held to this claim over the

past several decades since *Sholay*'s release in 1975. We find instead not only a complete absence of any cogent documentation favouring the appellant but also a conspicuous want of action by the appellant in defending his claims when others asserted the very rights that the appellant now contends always belonged exclusively to him. Other entities dealt with the rights in *Sholay*. They executed assignments and granted licenses. They launched litigations to defend those rights. In all of this, they acted as the owners of rights, especially the copyright, in *Sholay*. Much of this was in the public domain in the form of public notices and news reports. The appellant could not have been unaware of these actions. Yet he stood by. In one case, he supposedly even supported the actions of others who claimed these rights in *Sholay*. On a considered scrutiny of the factual material before us, and as the following discussion shows, it is not possible to hold that the appellant has made out a *prima-facie* case that he had rights in *Sholay* capable of enforcement today. We have been unable to find any valid ground for interference with the impugned order. As the appellant has failed to make out a case on merits that he is the owner of the copyright in *Sholay*, it is unnecessary for us to deal with the issues of law raised by both sides, especially at the ad-interim stage.

5. Respondents No. 1 and 2 are brothers. They are the sons of the appellant's late sister one Soni Uttamsing. The 3rd respondent is the appellant's nephew, the son of the appellant's brother Vijay Sippy. Respondents No. 1 and 3 are directors of the 5th respondent.

Respondent No. 4, Sippy Films Private Limited (“**SFPL**”), is a company that claims to have gifted the copyright in *Sholay* to the 5th respondent, Sholay Media & Entertainment Private Limited (“**SMEPL**”). This is, in turn, a private limited company said to be wholly controlled by the 1st and 3rd respondents. SMEPL claims to own the copyright in *Sholay*. Respondent No.6 is also a private limited company. It is said to be controlled by the 2nd respondent, and to have the rights to broadcast the other four films directed by the appellant. The 8th respondent, Jayantilal Gada (“**Gada**”) controls 7th respondent, Pen India Pvt. Ltd. (“**PIPL**”), and PIPL is said to have obtained the rights to make and distribute a 3-D version of *Sholay*. Finally, the 9th respondent, Maya Digital Studios Pvt. Ltd. (“**Maya Digital**”) is the company that has converted *Sholay* into a 3-D version.

6. In his elaborate and careful judgment, the learned Single Judge noted the extensive arguments and submissions made before him, scrutinized the record, and ultimately concluded that the appellant had failed to make out a *prima-facie* case and had also not been able to show that the balance of convenience was in his favour. The learned Single Judge *inter alia* found that although the appellant now claims to have rights in respect of *Sholay*, as the person who was not only its director but also its driving force, he has not, for the four decades that have passed since the film’s release, ever asserted any such right. To the contrary: there have been several occasions when the 5th respondent has claimed that right and the appellant

has not only raised no objection but, at least in one case, can be shown to have supported the 5th respondent in its litigation to defend the rights it claimed to have in *Sholay*. We must straightaway state that, having carefully considered the material before us, and having heard learned Counsel for the parties at some length, we are not inclined to interfere with the impugned order. Our reasons follow.

7. Sometime in 1965 a partnership firm named M/s Sippy Films was constituted. The appellant was a partner in this firm. The other partners of M/s Sippy Films at that time were Vijay Sippy (the 3rd respondent's father) and one Mrs. Ruki Sippy. The father of the appellant and Vijay Sippy, the late Mr. G.P. Sippy, was, since the 1950s, a well-known director and producer of Hindi films. Between them, Mr. G.P. Sippy and M/s Sippy Films were credited as producers of several films. A very long list of these films is annexed at Exhibit "E" to the affidavit in reply filed on behalf of respondent Nos.1, 2, 4, 5 and 6. These films date from 1952 to 1997.

8. In the plaint, the appellant categorically admits that *Sholay* (as well as the other films in which he claims rights) were all financed by the partnership firm M/s Sippy Films. The appellant claims that sometime in 1973, the appellant was approached by the renowned team of film script writers Salim Khan and Javed Akhtar (popularly known by their screen name, Salim-Javed), who narrated to the appellant a four-line concept for a film that latter became *Sholay*.

The appellant claims that he evolved the film from this concept using his personal skills; that he guided the team of Salim-Javed to prepare a detailed script (story, screenplay and dialogue); and engaged the contribution of music by R.D. Burman and lyrics by Anand Bakshi. He claims that these are among the many elements that he brought and fused together using his personal skills and intellectual abilities into the film *Sholay*. The appellant says that he organized every aspect of this film and was involved at every stage of its making. *Sholay* was, the appellant claims, his dream project and he threw all his creativity, originality, industry, and skill into the making of this film.

9. On 12th June 1975, a few months before *Sholay*'s first general public release, the appellant retired from the partnership firm of M/s Sippy Films. *Sholay* was released on 15th August 1975. It was instantly a runaway success. There is no denying that in more ways than one *Sholay* marked a watershed in the history of the Indian cinema, both in terms of its final realization of screen and its technical features: it was India's first 70 MM movie; it was shot on location at a specially constructed township outside Bangalore; and it broke with traditional cinematic forms, particularly in its depiction of the villain Gabbar Singh played by Amjad Khan. In the 37 years or more since its release, *Sholay*'s stature as a classic of Hindi cinema has only grown. It continues to be exhibited in various media. Its songs remain popular, as do many lines from the dialogue.

10. A few months before *Sholay*'s release on 15th August 1975, the appellant retired from the partnership firm of M/s Sippy Films. In the credits of the film, the appellant is shown only as a director of *Sholay*, not as a producer. *Sholay*'s censor certificate shows M/s Sippy Films as its producer. The appellant claims that in consideration of Sippy Films having financed *Sholay*, he "entrusted in confidence to the said partnership firm the distribution and exhibition rights", and that this included the negatives of the film to make copies. He says that this was limited to the as-is 2-D version only. There is no document evidencing any such entrustment or assignment, and we are left to speculate as to the terms of that entrustment, and whether it could have been made at all.

11. The partnership firm of M/s. Sippy Films was reconstituted several times between 1st January 1976 and 10th September 1997. On 10th September 1997, the 4th respondent, SFPL, became partner of the firm, joining the then other partners Vijay Sippy and Mohini Sippy, the appellant's brother and mother respectively. The next day, 11th September 1997, Mohini Sippy retired from the firm. The continuing partners thereafter were only Vijay Sippy and SFPL. On 17th April 1998, Vijay Sippy expired and the partnership firm stood dissolved. SMEPL, the 5th respondent company, was incorporated on 11th September 2000. On 14th September 2000, G.P. Sippy executed a deed on behalf of SFPL, gifting the copyright and all other rights in *Sholay* to SMEPL. The appellant now challenges this Deed of Gift.

12. The appellant claims that some time in August or September 2012 he learned that PIPL and Gada (respondents No. 7 and 8) had made, or were making, a copy of *Sholay*. He claims that this was in breach of his copyright in the film. He filed Suit No. 3273 of 2012 against PIPL and Gada in the Delhi High Court. This was an action in copyright infringement. It was, the appellant claims, at the first hearing of an application made on his behalf for urgent interim reliefs on 16th November 2012 that the appellant learned that respondents No.1 to 6 were claiming ownership and copyright and other rights in *Sholay*; and that SMEPL had licensed to PIPL and Gada certain rights in respect of *Sholay* under an agreement dated 20th July 2011. The appellant claims that at this hearing on 16th November 2012, the advocates for PIPL and Gada relied on an earlier order of the Delhi High Court passed on 8th January 2010 in Civil Suit No.1619 of 2008 (*Sholay Media & Entertainment Private Limited and others V/s. Ajit Sippy and others*), which recorded SMEPL's claim to have acquired the original rights in *Sholay* by the Gift Deed of 14th September 2000. The appellant claims all innocence of this Gift Deed at any time prior to 16th November 2012, and, too, of the assertion of copyright in *Sholay* by anyone else before that time. He contends that he believed, till then, that respondents No. 1 to 5 were only dealing with the distribution rights in *Sholay* and nothing else. It is, the appellant says, only on further enquiry that he came to learn that *Sholay* is now proposed to be released in January 2014 in a 3-D version. He claims that if this is permitted, not only will his copyright, and special and ownership

rights in *Sholay* be violated, but also that the artistic integrity of the film will be forever lost, prejudicing the appellant's honour and reputation.

13. The appellant's case is that while the partnership firm may have provided the finance for the film, he and he alone was the author of *Sholay*, for it was he who took the initiative and responsibility for its making. This is the factual foundation of the appellant's claim, and it is on this basis that he claims that the copyright in the film vested in him. The fact that the partnership firm or G.P. Sippy are credited as producers of the film is, the appellant submits, irrelevant as there are irreconcilable discrepancies in the naming of the producer: in the censor certificate, the partnership firm is credited as the producer, while in the publicity materials it is G. P. Sippy. Equally irrelevant, according to the appellant, is the fact of his resignation from the partnership firm before its general public release in India. The film was otherwise complete and he had both copyright in the film as an unpublished work under Section 13(2)(ii) of the Copyright Act, 1957, copyright in the published work after the film was released under Section 13(2)(i) of that Act, and an Author's Special Rights under Section 57.

14. Mr. Dwarkadas, learned Senior Counsel for the appellant, urged that the impugned order calls for our interference because the learned Single Judge has arrived at a conclusion, albeit one at the *prima-facie* stage of an ad-interim application, that it is possible in

law, and within the meaning of the Copyright Act, 1957, for a partnership firm to own the copyright in a cinematograph film as its “author”. This, Mr. Dwarkadas submitted, was a finding wholly alien to the Copyright Act, for only a natural person can be the “author” of a cinematograph film.

15. The appellant’s submissions as to his legal rights and entitlements are predicated on his being able to establish, even *prima-facie*, a factual basis for his claim. The appellant’s assertions as to complete creative dominance of the film are strenuously disputed by the respondents. They do not dispute that *Sholay* was a technical and creative breakthrough, but claim that it was the appellant’s father, G.P. Sippy, and not the appellant, who was responsible for this. It was G.P. Sippy, the respondents say, to whom Salim-Javed first pitched the story concept, and it was he who brought together and marshalled all the necessary elements that made *Sholay* so unlike any other film before. Specifically, the unique conceptualization of some of the characters (the villain played by Amjad Khan and the jailer played by Asrani) were the product of G.P. Sippy’s vision, not the appellant’s, and it was the former who was responsible for the idea of shooting the film on location outside Bangalore (where an entire village was constructed), rather than on a traditional film set. It was the work and creative genius of the appellant’s father that gave *Sholay* its final shape and form. The appellant was merely the director, hired for the job and paid some remuneration (though this remuneration is not specified), as he was for all other films he directed. The appellant has no material to

substantiate his claim. In that state of the record, it is not possible to accept the appellant's contentions as to authorship and copyright ownership.

16. An important and telling circumstance in a situation like this is the conduct of the parties, in particular the appellant, in the time since *Sholay*'s first general public release. If the appellant can be shown to have been vigorous in defending the rights to which he now lays claim, and successful in those attempts, it might then be possible to examine what legal rights, if any, can be said to vest in him today. On the other hand, if it is shown that those very rights over which the appellant claims dominion, have, in the intervening years since the film's release, been dealt with by other persons and entities, and that the appellant not only had knowledge of this, but also actively supported attempts by these others to defend their rights in the film, then the appellant's claim would have to be held to be lacking in the necessary factual basis.

17. What does the record show? The appellant claims that because Sippy Films financed *Sholay*, he "entrusted" distribution rights to the firm. There is nothing to support this, and we believe Dr. Tulzapurkar, learned Senior Counsel for respondents Nos. 1, 2, 4, 5 and 6 is justified in his contention that this is not only the *ipse dixit* of the appellant, but also does not establish that he had any rights to begin with, let alone any that he could entrust to the firm, or to anyone else for that matter. There is no distribution agreement.

The appellant does not even claim that he ever executed one. There is no material to show that he contributed any finance or repaid M/s Sippy Films.

18. Even more telling is the fact that for almost four decades now, *Sholay* has been exhibited and distributed in different media and formats. It has been broadcast on television several times. Publicity material was issued by the assignees. At no point did the appellant object to any of this. To the contrary: there is evidence to show that when SMEPL asserted its rights in legal proceedings, far from objecting, the appellant supported SMEPL. Specifically: in 2006-2007, SMEPL filed Civil Suit No. 1892 of 2006 in the Delhi High Court against Mr. Ram Gopal Verma. SMEPL sought an order restraining Verma from using the word *Sholay* in the title of a film he was then making, and also from using the name “Gabbar Singh” for the villain of that film. The Delhi High Court granted an injunction on 5th October 2006 against Verma, who changed the names of both his film and its villain. This dispute was widely reported in the media. The appellant was interviewed. He spoke to the press. At no time did he challenge SMEPL’s right to bring suit, and to do so *qua* the entity claiming ownership of rights in the film. To the contrary: in one interview, published in the Bombay Times of 10th September 2007, the appellant commended the 3rd respondent (a director of SMEPL) for “taking RGV to court and getting the name of his movie changed”. Paragraph 8.14 of the Affidavit in Reply to the appellant’s Notice of Motion before the court below sets out the

various proceedings initiated by SMEPL in respect of *Sholay*. There are as many as six separate proceedings, only one of which (against Ajit Sippy and others) has been disposed of. All the others are pending. In all of them, SMEPL claims to be the owner of the copyright in *Sholay*. The appellant has never raised any objection to the assertion of these claims by SMEPL.

19. After its release on 15th August 1975, various entities dealt with the rights in *Sholay*. Exhibit "N" to the Affidavit in Reply to the Notice of Motion is a list of 12 such agreements between 1991 and 2012. These agreements include the assignment of video copyright and cable TV, Pay TV, Satellite, Broadcasting and Communication rights (for several movies, including *Sholay*); re-issue rights for different circuits for different years; assignments of worldwide satellite rights for five years; license agreements for use of popular scenes of famous characters from *Sholay*; and exclusive satellite broadcasting rights for five years. Re-issue rights include the right to exhibit and distribute the film. That these agreements were executed is not disputed by the appellant. All these agreements were in exercise of the very rights that the appellant claims today belong to him. The appellant cannot have been unaware of *Sholay*'s almost continuous viewing availability in different media. *Sholay* has been broadcast over 50 times on television. Copies of as many as 11 separate public notices issued by proposed assignees of various rights are annexed to the Affidavit in Reply. Two public notices were issued by SMEPL asserting its exclusive ownership of "all

copyrights and rights” in various films, including *Sholay*. There is no material to show that in these 40 years the plaintiff once objected to these transactions, proposed assignments and assertions of copyright ownership.

20. It is in this factual matrix that we must test the plaintiff’s claim that he was unaware of SMEPL’s claim to copyright ownership till he filed his Suit No.3273 of 2012 in the Delhi High Court against PIPL and Gada, seeking to restrain them from making and releasing a 3-D version of *Sholay*. Given the events of the past four decades, it is difficult to see how that claim or assertion can be accepted. Indeed, even as regards the 3-D version of *Sholay*, the appellant was interviewed by a National News Daily and is supposed to have said “I do not know anything about the film being turned into 3-D, but my best wishes to whoever is doing so”. Not only does this belie the appellant’s claim that he came to learn about the proposed 3-D version only during the course of the legal proceedings in the Delhi High Court, but it also appears to indicate that the appellant had no objection to a 3-D version, and did not then claim that it violated his copyright or any other rights in the film.

21. A considerable part of the impugned judgment is directed to the appellant’s assertion that only he could have possibly been the owner of copyright in film; and, specifically, that the law does not recognize the vesting of copyright in a partnership firm. Although it

was not specifically so urged before us, it seems to us that Mr. Dwarkadas's submission in this behalf amounts to a claim by the appellant of authorship or copyright ownership in *Sholay* by a process of elimination. The appellant's father, Mr. G. P. Sippy, was not a partner in the partnership firm of M/s Sippy Films. Although he is credited in some places as the producer of *Sholay*, he has never exercised any rights as an owner of copyright or as an author of the film. Therefore, Mr. G.P. Sippy could not be said to be the copyright owner in *Sholay*. That would leave only the appellant and the partnership firm of M/s. Sippy Films as possible owners of copyright in *Sholay*. Since, in Mr. Dwarkadas's submission, the law does not recognize, at least in respect of cinematograph films, the authorship or copyright ownership in a film of anyone but a natural person, it must necessarily follow that the appellant, and the appellant alone, is the only contender for the throne of authorship of and ownership of copyright in *Sholay*. In other words, according to Mr. Dwarkadas, once we have eliminated the impossible, whatever remains, however improbable, must be the truth.

22. We must disagree. In the impugned order, and particularly in paragraphs 46 and 47, the learned Single Judge meticulously noted the rival submissions in law and concluded that the appellant's submission cannot be accepted. There is no dispute that the appellant retired from the partnership firm of Sippy Films on 12th June 1975. A Deed of Retirement was executed between the appellant as a retiring partner and Mr. Vijay Sippy (the appellant's

brother) and Ms. Ruki Sippy as continuing partners. A copy of the Deed of Retirement is on record. Clause 5 of that Deed of Retirement says that in consideration of settlement of accounts between the partners *inter se*, the retiring partner, viz., the appellant, assigned to the continuing partners his share and interests in the partnership firm, its trade name, fixtures, book debts, stock-in-trade, etc. The appellant claimed that the film was ready in all respects on the date of his retirement, i.e., 12th June 1975, and that he, therefore, had copyright in an unpublished work since the film had not then been released. In our view, the learned Single Judge rightly rejected this submission and held that the authorship of a work is to be determined when work comes into existence. In the case of a film, it would be when the film was completed. The film *Sholay* was completed only in August 1975 and, therefore, on the date of the appellant's retirement, the appellant could not have acquired any copyright in the film. Further, any rights that the appellant might have had in the film were assigned by him in terms of clause 5 of the retirement deed to the firm. The appellant could not, therefore, now claim any such rights.

23. The learned Single Judge found, as a matter of law, that it is permissible in law for a juristic entity such as the firm or company to be the owner of copyright, and further, that the law does not demand that the author of a film must necessarily be a natural person. We do not think that it is necessary to decide this issue finally at this stage. The view expressed by the learned Single Judge

is admittedly a *prima facie* view at an ad-interim stage. This appeal is preferred from an ad-interim order. At this stage, we are only required to see whether the appellant has made out a *prima facie* case, whether the balance of convenience favours him and whether irretrievable harm and prejudice is likely to be caused to the appellant if reliefs are denied. These are the usual determinants for the grant of any interim or ad-interim order. In appeal, a further consideration is whether it can be said that the view of the court below was so thoroughly improbable or implausible as to warrant interference in appeal. On a careful scrutiny of the material before us, we do not think so.

24. The issue of whether or not an entity other than a natural person can hold copyright in a cinematograph film cannot, in our view, assist the appellant in making out a *prima facie* case. It also does not tilt the balance of convenience in his favour. The 5th respondent has asserted his right as the owner of copyright in the film *Sholay* for a very long time. The appellant did not controvert this. Indeed, it would perhaps not be inaccurate to say that the appellant chose not to controvert this in all this time. It is not possible to grant the appellant reliefs he seeks without first arriving at a *prima facie* conclusion that he is the owner of copyright in the film and that no prejudice would be caused to the respondents if reliefs were granted; and, equally that if reliefs are denied, the appellant would suffer irretrievable harm or prejudice. Indeed it seems to us that it is precisely the converse: given that the 5th

respondent has dealt with the rights in the film *Sholay* for several decades without any protest from the appellant, to interfere with its exercise of these rights at this stage would undoubtedly harm the 5th respondent, and the other respondents, far more than it would the appellant.

25. We agree with the learned Single Judge that the appellant has not made out even a semblance of a *prima facie* case. He has also not, in our view, been able to show that the balance of convenience is in his favour, or that any irretrievable prejudice or harm would be caused to him if reliefs are denied. Given the concatenation of facts we have noted, it is, in our view, impossible to hold that the appellant can be said to have made out any sort of *prima facie* case as to his ownership of copyright in *Sholay* or authorship of that film.

26. Dr. Tulzapurkar submits that this entire action is not about the copyright or ownership in *Sholay* or about the 3-D version of the film, or even about the appellant having any legitimate grievance that the 3-D version will somehow destroy the artistic integrity of *Sholay* at all, but only about a dispute pertaining to an immovable property at Altamont Road pending in this Court. The appellant has filed Suit No. 552 of 2012 against the 1st and 2nd respondents in respect of a residential flat of considerable value, claiming that respondents No. 1 to 3 are in unlawful occupation of this flat. This, Dr. Tulzapurkar says, is the clearest possible indicator that the purpose of the present suit is something other than what is claimed.

The appellant's case is not *bona fide* and deserves no equitable relief. We only note this submission since it was made before us.

Though Dr. Tulzapurkar's submission is probably not unfounded, in the view that we have taken, we do not think it necessary to address it.

27. The respondents have also raised preliminary issues, both before the learned Single Judge and again before us in this Appeal. There are three distinct issues so raised. The first is that the Suit as filed is barred by the Law of Limitation. The second relates to the appellant's Suit No.3273 of 2012 filed in the Delhi High Court against PIPL and Gada. The respondents' contention is that the appellant did not seek leave of the Delhi High Court under Order 2 Rule 2 of the Code of Civil Procedure, 1908 from the Delhi High Court before instituting the present suit. Order 2 Rule 2(3) says that if a party who is entitled to more than one relief in respect of the same cause of action omits to sue for all such reliefs available to him except with the leave of the Court, then, "he shall not afterwards sue for any relief so permitted". The third objection taken by the respondents is that the present Suit is not maintainable since the appellant withdrew his suit in the Delhi High Court without obtaining liberty to file a fresh Suit. In the impugned order, the learned Single Judge rightly left all these issues, i.e., as to limitation and maintainability, open and did not deal with them, only directing that the suit itself be placed for framing of preliminary issues.

28. We see no reason to interfere with the order under Appeal. Neither before the Court below nor before us in appeal has the appellant been able to make out a *prima facie* case or to establish that the balance of convenience is in his favour. The appeal is, therefore, dismissed. There will be no order as to costs.

(G.S. Patel, J.)

(S.J. Vazifdar, J.)