

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL NOTICE OF MOTION (L) NO. 1626 OF 2018**

**IN**

**COMMERCIAL SUIT (L) NO. 899 OF 2018**

Pooja Entertainment and Films Ltd. ... Applicants

In the matter of :

Pooja Entertainment and Films Ltd. ... Plaintiffs

Vs.

Kriarj Entertainment Pvt. Ltd. and others ....Defendants

*Mr. Aspi Chinoy, Senior Advocate, along with Mr. Vaibhav Krishna, instructed by M/s. Juris Consillis, for the Plaintiffs/Applicants.*

*Mr. Arif Bookwala, Senior Advocate, along with Ms. Kritika Seth, instructed by Satish Kumbhar, for Defendant Nos. 1, 2, 3 and 4.*

*Mr. Dharam Jumani, along with Ms. Chandrima Mitra and Ms. Manasi Vyas, instructed by M/s. DSK Legal, for Defendant No.6.*

*Mr. Virag Tulzapurkar, Senior Advocate, along with Dr. Birendra Saraf, Mr. Ravi Suryawanshi, Ms. Madhu Gadodia instructed by M/s. Naik Naik & Co., for Defendant No.7.*

**CORAM: S. J. KATHAWALLA, J.**

**DATE: 1<sup>st</sup> AUGUST, 2018**

**P.C.**

1. The Plaintiffs – M/s. Pooja Entertainment and Films Limited (Pooja) have filed the present Suit seeking a restraint against the Defendants from distributing,

exhibiting or exploiting the commercial and non-commercial theatrical rights for the Film “Fannee Khan” (the film) for all India Territory. It is the case of Pooja that such distributing, exhibiting or exploiting will be in breach of an Agreement dated 16<sup>th</sup> December, 2017 executed between Pooja and Defendant No. 1 – Kriarj Entertainment Pvt. Ltd. (Kriarj) in respect of the film.

2. The facts as narrated by Pooja are reproduced hereunder:

2.1 That Defendant No.6 – Rakeysh Omprakash Mehra Pictures Private Limited (Producer) had developed a script for a Cinematographic Film “Fannee Khan” (suit film) and is the Producer of the film.

2.2 That around November, 2017, Defendant No.4 (Perna Arora) and Defendant No. 5 (Arjun Kapur) as the Key Personnel of Kriarj had represented to Pooja that they were co-producers along with Defendant No.6 (Producer) under an Agreement dated 8<sup>th</sup> May 2017 and were exclusively entitled to worldwide exploitation rights and had offered the All India Theatrical Distribution Rights (“said Rights”) to Pooja and the credit in the poster, publicity, trailer as “Worldwide Release by Pooja Entertainment and Films Ltd.” against payment of a total consideration of Rs 10 crores..

2.3 That on 16<sup>th</sup> December, 2017, a Memorandum of Agreement (MOU) was executed between Pooja and Kriarj wherein it was recorded that (i) under the Agreement dated 8<sup>th</sup> May, 2017, entered into by Kriarj with Defendant No. 6/Producer, Kriarj has “the exclusive and unencumbered & effective rights of the

Film and that they have not created any charge , lien, mortgage or any other encumbrances on the said Rights in respect of the said Film”; (ii) that Kriarj granted to Pooja “the sole and exclusive right to distribute, exhibit or exploit the commercial & non commercial theatrical rights of the said film for all territories in India; (iii) As and by way of consideration for the said All India rights Pooja agreed to pay Rs 10 Crores to Kriarj as and by of a refundable advance.

2.4 That in November/December, 2017, Pooja remitted Rs 8.5 crores by RTGS to Kriarj under the said MOU for the film Fanney Khan. In May 2018, Kriarj raised an invoice for the said sum of Rs. 8.5 crores and has also paid GST thereon.

2.5 That between May, 2018 and June, 2018, various news reports were published stating that Kriarj has exited production of the film “Fanney Khan” and that Defendant Nos. 7 – Super Cassettes Industries Pvt. Ltd. (Super Cassettes) and Defendant No.13 – Bhushan Kumar have taken over the production and release of the film.

2.6 That Pooja through its Advocates letter dated 18<sup>th</sup> June, 2018, addressed to the Defendants informed them about Pooja’s claim for the said rights under the MOU dated 16<sup>th</sup> December, .2017 and the payment of Rs. 8.50 crores to Kriarj thereunder, which had been used for production of the film.

2.7 That Pooja received letters dated 21<sup>st</sup> June, 2018 and 26<sup>th</sup> June, 2018 from the Advocate for Super Cassettes contesting Pooja’s claim / right to exploit the said film

and alleging that Kriarj did not have authority to enter into any rights agreement with Pooja in view of the MOU dated 25<sup>th</sup> May, 2017 and Agreement dated 20<sup>th</sup> July, 2017 between Kriarj and Super Cassettes.

2.8 That, in view of the above, on 25<sup>th</sup> June, 2018, Pooja got published a public notice regarding its rights to the said film.

2.9 That on 5<sup>th</sup> July, 2017, the poster for the film was released to the media and general public which did not give credit for the worldwide release of the film and contained reference to the Defendants as the presenters and producers respectively.

2.10 That on 6<sup>th</sup> July, 2018, the trailer of the film was released. Super Cassettes and Bhushan Kumar are representing to the world at large that they are entitled to distribute and deal with the said rights for the film, notwithstanding Pooja's MOU dated 16<sup>th</sup> December, 2017.

2.11 That on 10<sup>th</sup> July, 2018, Super Cassettes filed a suit in Delhi High Court bearing No. CS (OS) 998 of 2018 wherein an ex parte order of injunction was passed with reference to Pooja's public notice.

2.12 That on 19<sup>th</sup> July, 2018, Super Cassettes filed an affidavit alleging (i) that in view of its Agreement dated 20<sup>th</sup> July 2017, Defendant No. 1 could not have granted the rights to Pooja under the Agreement dated 16<sup>th</sup> December, 2017 and could not have executed the agreement without its consent; (ii) that pursuant to Clause 15.4 of its said Agreement, Super Cassettes had terminated the co production agreement dated

20<sup>th</sup> July 2017 and the same was allegedly recorded under a letter dated 19<sup>th</sup> April 2018 whereby Kriarj had surrendered its rights in the film in favour of Super Cassettes and that accordingly all rights in the film vested only in Super Cassettes.

2.13 That Kriarj has filed an affidavit alleging that Pooja's MOU with it was "not valid & binding" and that it had not received the amount of Rs. 8.5 crores under the said MOU or for the Film Fannee Khan, but for other matters. Kriarj has alleged that it "is left with no right and interest in the film" and that the rights belonged exclusively to Super Cassettes.

2.14 That the agreement of Super Cassettes with Kriarj of July/August, 2017 cannot detract from the rights created by Kriarj in favour of Pooja under the December, 2017 agreement. Pooja had no knowledge/notice of any such agreement between Kriarj and Super Cassettes; in fact Pooja's agreement dated 16<sup>th</sup> December, 2017 recorded Kriarj's declaration/warranty that it has "the exclusive and unencumbered and effective rights of the film and that they have not created any charge, lien, mortgage or any other encumbrance on the said Rights in respect of the said film".

2.15 That in any view of the matter Kriarj admittedly had 50% rights in December, 2017 when it entered into the agreement with Pooja. The alleged acquisition of Kriarj's 50% rights in April 2018 by Super Cassettes and Kriarj's alleged surrender of its rights in April 2018, is ex facie false, fraudulent and an attempt to defeat Pooja's claim. Significantly by its letter dated 21<sup>st</sup>/26<sup>th</sup> June 2018 addressed to Pooja in

pursuance of the Public Notice, Super Cassettes had referred to / relied on the co-production agreement dated 20<sup>th</sup> July 2017 and had not referred to any alleged surrender of rights by Kriarj to Super Cassettes in April 2018.

2.16 That the Learned Single Judge of the Delhi High Court has in his order dated 17<sup>th</sup> July, 2018 passed in almost identical circumstances in C.S. (OS) No. 340 of 2018 (*Gothic Entertainment vs/ Super Cassettes*) held, that any such surrender/acquisition of Kriarj's 50 per cent rights by Super Cassettes in April, 2018, cannot affect Gothics rights which were prior to April, 2018.

3. Mr. Aspi Chinoy, the Learned Senior Advocate appearing for Pooja/Pooja submitted as follows:

(i) That Pooja has bona fide entered into the MOU dated 16<sup>th</sup> December, 2017, with Kriarj and has made payment of Rs. 8.50 crores towards the total consideration of Rs. 10 crores for securing "*the sole and exclusive right to distribute , exhibit or exploit the commercial & non commercial theatrical rights of the said film for all territories in India*".

In fact the Agreement recorded Kriarj's declaration/ warranty that it has the exclusive and unencumbered & effective rights of the Film and that they have not created any charge, lien, mortgage or any other encumbrance on the said Rights in respect of the said Film. Till May 2018 there was admittedly no public notice / publicity / articles regarding Super Cassettes having acquired 50% rights from Kriarj for Fanne Khan.

(ii) That the denial of receipt of the payment of Rs 8.5 crores by Defendant No.1/Kriarj is ex facie false and malafide. Kriarj has admittedly received the said amount of Rs 8.5 crores by RTGS but has now (in its affidavit) for the first time alleged that it has not received any amount under the Agreement for Fanney Khan and that the amount was received by it for other films / transactions. The case of Kriarj that it has not received any amount under the said MOU and for the film Fanney Khan is false and belied by the fact that : (i) Kriarj has in May 2018 issued an invoice to Pooja for the identical sum of Rs 8.5 crores for the film Fanney Khan; (ii) Pooja's e-mail dated 27<sup>th</sup> December, 2017 specifically allocating Rs. 1.50 crores towards Fanney Khan and the email of Kriarj in response acknowledging the same. Moreover prior to filing of its affidavit Kriarj has never alleged non payment by Pooja or called upon Pooja to make payment of the amounts under the agreement dated 16<sup>th</sup> December, 2017.

(vi) That it therefore appears that Kriarj and Super Cassettes are colluding in an attempt to obstruct/defeat Pooja's rights.

(vii) That the interim relief as prayed for should be granted restraining release of the film. If the agreement of Super Cassettes with Kriarj of July/August, 2017 is held to limit Kriarj's rights only to 50%, Pooja is in any view of the matter entitled to receive 50 per cent share and to 50 per cent rights to exploit the film.

(viii) That in the event of this Court being of the view that the film ought to be

released, the release of the film be monitored by the Court and the entire proceeds from exploitation of the rights of the film be deposited in court, or Kriarj and Super Cassettes be directed to deposit in court the payment of Rs. 8.50 crores paid by Pooja to Kriarj.

4. On 19<sup>th</sup> July, 2018, an application for urgent ad-interim reliefs was made on behalf of Pooja/Plaintiffs. On that day, it was submitted on behalf of Kriarj that no amount whatsoever was paid by Pooja to Kriarj under the Agreement dated 16<sup>th</sup> December, 2017. This Court therefore enquired from the Advocates appearing for Kriarj to furnish details of the payments of Rs. 8.5 crores allegedly paid by Pooja to Kriarj for the film Fanney Khan. Pooja, therefore, filed an affidavit dated 20<sup>th</sup> July, 2018, Exhibit-A of which is captioned: "List of payments of Rs. 8.5 crores made to Kriarj Entertainment Pvt. Ltd. via RTGS to the Bank Account No. 201000106989 maintained with IndusInd Bank, Andheri (East), Branch towards the film "Fanney Khan". The payments listed therein are reproduced hereunder:

Date	Details	Amount paid
02-11-2017	RTGS Payments from Account No. 507200301000637 maintained with Vijaya Bank, Bandra (West) in the name of Pooja Film Company Proprietor - Mr. Vashu Bhagnani	3,50,00,000.00
14-12-2017	RTGS Payments from Account No. 507200301000286 maintained with Vijaya	1,00,00,000.00

	Bank, Bandra (West) in the name of Pooja Entertainment and Films Limited.	
15-12-2017	RTGS Payments from Account No. 01902100980317 maintained with Saraswat Bank, Andheri (West) in the name of Pooja Entertainment and Films Limited.	1,00,00,000.00
18-12-2017	RTGS Payments from Account No. 507200301000286 maintained with Vijaya Bank, Bandra (West) in the name of Pooja Entertainment and Films Limited.	1,00,00,000.00
27-12-2017	RTGS Payments from Account No. 507200301000286 maintained with Vijaya Bank, Bandra (West) in the name of Pooja Entertainment and Films Limited.	1,00,00,000.00
27-12-2017	RTGS Payments from Account No. 507200301000286 maintained with Vijaya Bank, Bandra (West) in the name of Pooja Entertainment and Films Limited.	2,00,00,000.00
04-01-2018	RTGS Payments from Account No. 507200301000286 maintained with Vijaya Bank, Bandra (West) in the name of Pooja Entertainment and Films Limited.	50,00,000.00

5. Paragraphs 2, 3 and 4 of the said affidavit dated 20<sup>th</sup> July, 2018, reads thus:

“2. The details of payment aggregating Rs. 8.5 crores towards refundable advance for the film is more particularly tabulated at Exhibit-A hereto. The aforesaid payments were made by RTGS to the Bank

*Account of the Defendant No. 1 which are reflected in the Bank Statements of the Bank Accounts from which the payments were made. Annexed hereto and marked as Exhibit B-1 to B-4 are the copies of the Bank statements duly certified by the Bank.*

*3. The RTGS payments tabulated in the table aggregates Rs. 10 crores out of which Rs. 8.5 crores pertains for the Film "Fannee Khan" and Rs. 1.5 crores is for the Film "Parmanu" which are explained i.e. Rs. 3.5 crores was made from the Bank Account of the Proprietary concern of Mr. Vashu Bhagnani, who is also the Managing Director of Poojas towards the film "Fannee Khan". Further the payment of Rs. 3 crores remitted on 27.12.2017 was utilized for the distribution of the film "Parmanu" and "Fannee Khan" equally i.e. Rs. 1.5 crores each. This is supported by Poojas e-mail dated 27.12.2017 addressed to the Defendant No.1. The Defendant No. 1 had acknowledged the said payments including the payments for Fannee Khan. Annexed hereto and marked as Exhibit-C is the copy of the e-mail dated 27.12.2017.*

*4. The payments of refundable advance of Rs. 8.5 crores towards the Film "Fannee Khan" have been acknowledged by the Defendant No. 1 by Tax Invoice bearing No. KA/PEF/18-19/001 dated 14.5.2018 issued to Pooja. Annexed hereto and marked as Exhibit "D" is the copy of the Tax Invoice dated 14.5.2018."*

6. Mr. Arif Bookwala, the Learned Senior Advocate appearing for Kriarj has submitted that Pooja has not made payment of the alleged sum of Rs. 8.5 crores towards the film Fannee Khan but have dishonestly included/shown therein the

amounts paid to Kriarj for the other films of Kriarj. Mr. Bookwala drew my attention to Exhibit 'A' of the additional affidavit filed by Pooja (reproduced in paragraph 4 above) and pointed out that the first payment of Rs. 3,50,00,000/- shown in the said Exhibit 'A' was not made by Pooja but was made by the sole Proprietary firm of Mr. Bhagnani being 'Pooja Films Company'. The said payment was made on 2<sup>nd</sup> November, 2017 i.e. before the execution of the Agreement dated 16<sup>th</sup> December, 2017 by and between Pooja and Kriarj. Attention of the Court was also invited to the Finance Agreement dated 16<sup>th</sup> October, 2017, entered into between Kriarj and Pooja Films Company relating to the film "Kedarnath". It was also brought to the notice of the Court that the said sum of Rs. 3.50 crores agreed to be paid in paragraph 2.2 (ii) of the Finance Agreement was in fact paid on 2<sup>nd</sup> November, 2017 to Kriarj by Mr. Bhagnani under the Agreement relating to the film "Kedarnath", and the said payment is now dishonestly shown by Pooja as payment made by Mr. Bhagnani for the film "Fannee Khan". Mr. Bookwala submitted that the said amount of Rs. 3.50 crores allegedly paid for the film "Fannee Khan" on 2<sup>nd</sup> November, 2017, finds no mention in the MOU between Pooja and Kriarj which was admittedly executed thereafter i.e. on 16<sup>th</sup> December, 2017. Mr. Bookwala submitted that similarly the sum of Rs. One crore each, shown to have been allegedly paid on 14<sup>th</sup> December, 2017 and 15<sup>th</sup> December, 2017, do not find any mention in the MOU dated 16<sup>th</sup> December, 2017. Mr. Bookwala submitted that any payment made prior to the execution of the MOU

dated 16<sup>th</sup> December, 2017, is bound to find place in the said MOU and also in the Complaint, which is not the case in the present matter. Mr. Bookwala submitted that in fact Annexure 'A' to the MOU which sets out how the amount of Rs. 10 crores is payable by Pooja to Kriarj belies the submission now made by Pooja in its Additional Affidavit dated 20<sup>th</sup> July, 2018, that an amount of Rs. 5.50 crores was already paid by Pooja by RTGS to Kriarj, prior to the execution of the MOU dated 16<sup>th</sup> December, 2017.

7. Mr. Bookwala further submitted that as explained in their affidavit dated 23<sup>rd</sup> July, 2018, all the other amounts allegedly paid by Pooja to Kriarj for the film Fanney Khan were not paid for the said film but were paid for the film "Pari". It is submitted that the reliance placed by Pooja on an e-mail of 27<sup>th</sup> December, 2017, which allegedly records that a sum of Rs. 1.50 crores was given towards the film "Fanney Khan" and was acknowledged on behalf of Kriarj by an employee of Kriarj is not an admission of receipt of Rs. 1.50 crores by Kriarj towards the film "Fanney Khan". The response only acknowledges the receipt of the e-mail but does not confirm the payment of the said sum towards the film "Fanney Khan". As regards the invoice dated 14<sup>th</sup> May, 2018, it is submitted that although the invoice may have been issued by Kriarj, it was never cleared by Pooja as no payments were received by them under the said MOU. It is denied that the said Invoice acknowledges receipt of Rs. 8.5 crores from Pooja as alleged. It is also submitted that for every invoice raised by

Kriarj, it is necessary to pay GST on the same, irrespective of whether or not payment has been received under the said invoice. It is for this reason that Kriarj had paid GST on the said amount of Rs. 8.5 crores.

8. In response to a query raised by the Court as to why Kriarj has issued an Invoice of Rs. 8.50 crores to Pooja on 14<sup>th</sup> May, 2018, Mr. Bookwala has submitted that the Director/Promoter of Pooja i.e. Mr. Vashu Bhagnani has been threatening and intimidating Defendant No. 3 i.e. Ms. Prerna Arora and her mother Defendant No.2 (Pratima Arora) with dire consequences unless they agree to tow his line and also make wrong and illegal public statements in respect of the rights and stakes of Pooja. In support of this submission that Ms. Prerna Arora was required to conduct herself as per the directions given by Mr. Vashu Bhagnani, Mr. Bookwala submitted a compilation of WhatsApp messages exchanged between Mr. Vashu Bhagnani, Director/Promoter of Pooja Company and Ms. Prerna Arora.

9. Mr. Virag Tulzapurkar, Senior Advocate appearing for Super Cassettes Industries Pvt. Ltd. (Defendant No.7) has made the following submissions:

(i) That the initiation of the present proceedings is in breach of the order dated 10<sup>th</sup> July, 2018 passed by the Delhi High Court.

(ii) That Pooja/Plaintiffs claim a license to exploit the theatrical rights of the said film in all India territory and has sought an injunction in the present Suit. Clauses 4.3, 5.1, 5.1.1, 5.1.2, 7.1, 9.2, 11.16, and 15.4, make it clear that Kriarj had no rights to grant

licence as purportedly done under Pooja's MOU. Pooja's MOU is therefore void and in any case does not confer any rights on Pooja.

(iii) Super Cassettes has invested an amount of Rs. 19.50 crores towards the film.

In other words the entire film is made out of the funds provided by Super Cassettes.

(iv) That even in law Super Cassettes is a co-producer of the said film and Kriarj was not entitled to create any rights in the film without the consent and concurrence of Super Cassettes. This submission is supported by the judgment of this Court in the case of *Angath Arts Pvt. Ltd. vs. Century Communications Ltd. and another*<sup>1</sup>.

(v) That Pooja's MOU is not an authentic document, is ante-dated and cannot be relied upon. This is clear from a letter circulated by Kriarj stating that the signatures of Defendant No.2 who is the Director and authorized signatory of Kriarj had changed from 1<sup>st</sup> January 2018. However, the signature on Pooja's MOU though said to have been executed on 16<sup>th</sup> December 2017 appears to bear the signature of Defendant No.2 which is the signature valid and done after 1<sup>st</sup> January 2018. Again, this when contra distinguished from Co-Production Agreement with Super Cassettes in July 2017, makes it apparent that the July 2017 Agreement bears the old signature of Defendant No.2.

(vi) That it appears that there were some finance transactions between Pooja and Kriarj and the MOU is a got up document to defeat the rights of Super Cassettes.

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1 2008 (4) Mh. L. J.

(vii) That even between the parties inter se there is a serious dispute as regards any amounts being paid under Pooja's MOU.

(viii) That the tax invoice dated 14<sup>th</sup> May, 2018 submitted by Pooja can in no manner affect the rights of Super Cassettes or confer any rights on Pooja when no such rights vest in them.

(ix) That the reliance placed by Pooja on the aforesaid order of the Delhi High Court to contend that Super Cassettes ought to be directed to deposit the share of Kriarj in the revenue of the said film in Court is baseless. The said case is decided in the facts of those agreement between the parties and the nature of the agreements in the said case whereunder Kriarj was to pay Gothic 50 per cent share in profits. In the present case, there is only an agreement whereby Kriarj has illegally granted a license to exploit the film.

(x) That the takeover of rights by Super Cassettes was in public domain since 19<sup>th</sup> April, 2018 (backed by newspaper articles in May 2018) and was reported in various media reports which are annexed at Exhibit-D to the Affidavit of Super Cassettes. There is gross delay and laches on the part of Pooja who have filed the present Suit only on 11<sup>th</sup> July, 2017.

(xi) That Pooja is therefore not entitled to any ad-interim relief as prayed for by them with respect to the said film and against Super Cassettes.

10. I have gone through the Plaint, the affidavits filed by the parties, the documents

relied upon by them and have considered the oral as well as written submissions of the parties.

11. In paragraph 5 (j) of the Plaint, Pooja has relied and reproduced the relevant clauses of the MOU dated 16<sup>th</sup> December, 2017 executed by and between Pooja and Kriarj. Pooja has, inter alia, relied on and reproduced therein, clause 8.1 of the said MOU which provides that as and by way of consideration for the said commercial and non-commercial theatrical rights of All India territories, Pooja has agreed to pay to Kriarj as and by way of refundable advance for the said film a sum of Rs. 10 crores only plus GST as may be applicable **in the manner as mentioned in Annexure-A.** Annexure-A of the said MOU provides that Pooja has agreed to pay the said amount of Rs. 10 crores to Kriarj and that Kriarj has agreed to accept the said amount of Rs. 10 crores from Pooja as under:

- (a) Rs. 5 Crores payable against receivables;
- (b) Rs. 50 lakhs on 20<sup>th</sup> December, 2017;
- (c) Rs. 4.50 crores one week before release of the said film.

In clause (g) of paragraph 5 of the Plaint, Pooja has categorically stated that “*In pursuance to the Agreement dated 16<sup>th</sup> December, 2017, the Plaintiffs have from time to time made payment aggregating Rs. 8.5 crores approximately to Defendant No.1. Thereby the Plaintiffs have made surplus payment of Rs. 3 crores since as per the Agreement dated 16<sup>th</sup> December, 2017, a sum of Rs. 5.5 crores was to be paid and balance Rs. 4.5 crores was to be*

*paid one week before the release of the film....”* The deponent who has verified the Plaint on behalf of Pooja has categorically stated/deposed in the verification clause that the contents of the entire paragraph 5 of the Plaint is true to his own knowledge. Therefore, Pooja has in the plaint represented to this Court that the amount of Rs. 8.5 crores was payable as per Annexure 'A' to the MOU, the same was paid by Pooja to Kriarj **after the Agreement dated 16<sup>th</sup> December, 2017 was executed**, and the only deviation made was, that an amount of Rs. 3 crores was paid in excess, before the release of the film. However, in its Additional Affidavit dated 20<sup>th</sup> July, 2018, Pooja for the first time inter-alia alleged that an amount of Rs. 3.5 crores was paid on 2<sup>nd</sup> November, 2017, an amount of Rs. 1 crore was paid on 14<sup>th</sup> December, 2017 and an amount of Rs. 1 crore was paid on 15<sup>th</sup> December, 2017, to Kriarj under the MOU dated 16<sup>th</sup> December, 2017. Therefore, now, according to Pooja, an amount of Rs. 5.50 crores was already paid by RTGS to Kriarj prior to the execution of the MOU dated 16<sup>th</sup> December, 2017. If that would have been the case, Pooja would certainly have recorded in the MOU dated 16<sup>th</sup> December, 2017, that an amount of Rs. 5.50 crores is already paid out of the said consideration of Rs. 10 crores to Kriarj and would certainly not have shown in Annexure-A to the MOU that a sum of Rs. 5 crores would be paid against receivables, Rs. 50 lakhs on 20<sup>th</sup> December, 2017, and Rs. 4.50 crores before release of the said film. Pooja would also not have represented to the Court by stating in the Plaint that the amounts were payable by Pooja to Kriarj as per Annexure-A to

the MOU and that a sum of Rs. 8.50 crores was paid **after** the execution of the Agreement dated 16<sup>th</sup> December, 2017 with only one deviation viz. surplus payment of Rs. 3 crores was paid before the release of the said film, and certainly would not have deposed in the verification clause of the Plaint that the said facts are true to the knowledge of the deponent/Pooja.

12. What is further pertinent to note is that Mr. Bookwala, learned Senior Advocate appearing for Kriarj, after taking me through the first item set out in Exhibit 'A' of the additional affidavit of Pooja dated 20<sup>th</sup> July, 2018 which shows that an amount of Rs. 3.50 crores is paid by Pooja Film Company to Kriarj, thereafter took me through a copy of the Finance Agreement executed by and between Mr. Vashu Bhagnani, proprietor of Pooja Film Company and Kriarj dated 16<sup>th</sup> October, 2017 wherein Pooja Film Company has agreed to finance an amount of Rs. 13 crores to Kriarj towards production of the film Kedarnath. Clause 2.2 of the Finance Agreement shows that the said amount of Rs. 13 crores was agreed to be paid by Pooja Film Company to Kriarj as follows:

- (a) Rs. 2.50 crores which was already paid on 4<sup>th</sup> October, 2017;
- (b) Rs. 4 crores on 16<sup>th</sup> October, 2017;
- (c) **Rs. 3.50 crores on 1<sup>st</sup> November, 2017;** and
- (d) Rs. 3 crores on 15<sup>th</sup> December, 2017.

Mr. Bookwala pointed out that this amount of Rs. 3.50 crores which was disbursed on 1<sup>st</sup> November, 2017 to Kriarj under the said Finance Agreement dated 16<sup>th</sup> October, 2017 is now dishonestly shown by Pooja as payment made by Pooja to Kriarj by RTGS for the film 'Fannee Khan' under Agreement dated 16<sup>th</sup> December, 2017.

13. The aforestated facts clearly demonstrates that Pooja has approached this Court with a false case of having paid Rs. 8.50 crores to the Defendants under the Agreement dated 16<sup>th</sup> December, 2017. It is only when this Court insisted on 19<sup>th</sup> July, 2018, that Pooja should file an affidavit and explain how an amount of Rs. 8.50 crores was paid by Pooja to Kriarj that a misleading affidavit contradicting the representations made in the Plaint pertaining to the alleged payment of Rs. 8.5 crores, is filed by Pooja. This raises a serious doubt about the genuineness of the transaction asserted by Pooja. On the basis of such a document and transaction, Pooja cannot assert any rights in the said film. On this ground alone, Pooja is not entitled to any urgent ad-interim reliefs as sought or otherwise.

14. Reliance on the purported tax invoice raised by Kriarj on 14<sup>th</sup> May, 2018, mentioning an amount of Rs. 8.50 crores towards the film also does not take the case of Pooja any further. In the said tax invoice there appears no acknowledgement by Kriarj having received Rs. 8.5 crores from Pooja as alleged by Pooja in its written submissions. Only because certain GST payments are made by Kriarj upon raising the said invoice

does not assist Pooja in establishing that Rs. 8.5 crores were received by Kriarj. Though Mr. Bookwala has, on behalf of Kriarj, attempted to explain that the said invoice was raised by Kriarj at the instance of Mr. Bhagnani who was administering threats to Defendant Nos.2 and 3, Pooja has not even attempted to explain that if an amount of Rs. 8.50 crores was paid by them in November/December, 2017 (as set out in the written submissions), why an invoice of Rs. 8.50 crores was raised on them by the Defendants only on 14<sup>th</sup> May, 2018.

15. I am also in Agreement with Mr. Tulzapurkar that the Agreement dated 16<sup>th</sup> December, 2017, appears to be ante-dated. This is because a letter circulated by Kriarj stating that the signatures of Defendant No.2 who is the Director and authorized signatory of Kriarj had changed from 1<sup>st</sup> January, 2018. The said letter specified the signature which was valid before 1<sup>st</sup> January, 2018 and also the signature which was valid after 1<sup>st</sup> January 2018. The signature on Pooja's MOU though said to have been executed on 16<sup>th</sup> December, 2017 appears to bear a signature of Defendant No.2 which is the signature valid and done after 1<sup>st</sup> January 2018. This when contra distinguished from Co-Production Agreement with Super Cassettes in July 2017, makes it apparent that the July 2017 Agreement bears the old signature of Defendant No.2.

16. As submitted by Mr. Tulzapurkar, Learned Senior Advocate appearing for Super Cassettes, originally Kriarj entered into an Agreement with Rakeysh Omprakash

Mehra, as a Co-Production Term Sheet whereunder, Kriarj became a co-producer with 50% of the IPR. The said term sheet is at Exhibit B, page 37 of the Plaint. Pooja has relied upon a clause in the Term Sheet to the effect that Kriarj will distribute, market and exploit the film. It is the Pooja's case that under a Memorandum of Agreement dated 16th December, 2017, Kriarj granted to Pooja a license for the commercial and non-commercial theatrical rights of the film in licensed cinema halls for a period of 12 months throughout India, Nepal and Bhutan. It is Pooja's case that in their Agreement Kriarj represented that Kriarj has exclusive and unencumbered rights of the said film and that it had not created any charge, lien, mortgage or any other encumbrance on the said rights. Under the said Agreement, Pooja were to pay an amount of Rs. 10 crores towards refundable advance which was to be paid in the manner set out at Annexure 'A' thereunder. It is on this basis that Pooja claim a license to exploit the theatrical rights of the said film in all India territory and has sought an injunction in the present suit. In paragraph 5 (g) of the Plaint, Pooja has averred that “ *in pursuance to the Agreement dated 16<sup>th</sup> December 2017, the Plaintiffs have from time to time made payment aggregating to Rs. 8.5 crores approximately to then Defendant No.1*”.

17. As per the original agreement dated 25<sup>th</sup> May 2017, on 20<sup>th</sup> July 2017, Kriarj entered into a Co-Production Agreement with Super Cassettes. Under clause 4.3 of the Co-Production Agreement, Super Cassettes agreed to fund the cost of production of the film with Kriarj in the ratio of 60% : 40%, respectively. Under clause 5.1, Kriarj and

Super Cassettes agreed that they shall jointly, exclusively and equally own Kriarj's 50% share as per the original agreement dated 25<sup>th</sup> May 2017 in all right, title and interest in relation to the film, the intellectual property in the film, the distribution rights, the derivative rights, the underlying works, the intellectual property rights, including the underlying, incidental, derivative and ancillary rights therein for the territory for a period of 58 years. Clause 7 of the Co-Production Agreement confirms that Super Cassettes shall either directly or through any other entity exploit the distribution right of the film in perpetuity and in territory. Under clause 9.2, due credit as agreed is to be given to T-Series and its directors as a producer. Under clause 11.1.6, it was agreed that neither party shall deal with, in any manner its rights under the Agreement dated 20<sup>th</sup> July 2017 with any third party without the written consent of the other party and if such agreement is executed, the same shall be *void ab intio* and the affected party shall not be bound by the terms of the such agreement. Under clause 15.4, Super Cassettes had a right to terminate the agreement in case Kriarj failed to commence the said film or abandon the said film or was unable to complete the film within the time schedule mentioned under the Co-production Agreement for any reason including its inability to arrange the requisite funds or if it declares that due to its financial constraints, it is unable to complete the film. Upon any of the said events taking place, the agreement was to stand automatically terminated and all rights under the said Agreement dated 20<sup>th</sup> July, 2017 would vest in Super Cassettes immediately on the

aforesaid termination of the agreement. Super Cassettes would then have the right to complete the film by introducing its own funds.

18. Thus, under the Agreement dated 20<sup>th</sup> July, 2017, Super Cassettes became a co-producer of the said film and had the right to exploit the film including the theatrical exploitation rights. Kriarj was prohibited from dealing with any third party without written consent of Super Cassettes. Thus, when the agreement with Pooja was purportedly executed by Kriarj on 16<sup>th</sup> December 2017, Kriarj had no right to grant a license to Pooja and as such, the alleged MOU does not confer any rights on Pooja. Pooja cannot claim a higher right than what Kriarj itself had i.e. Pooja cannot claim the rights from Kriarj, which Kriarj did not have.

19. In any case, as stated in paragraph 17 of the affidavit of Super Cassettes, Kriarj failed to make payments as agreed under the agreement and therefore Kriarj terminated the Co-Production Agreement dated 20<sup>th</sup> July, 2017. In any case, as per the terms of the Co-Production Agreement, upon the failure to comply with the obligations under the Co-Production Agreement, as per clause 15.4, the Co-Production Agreement stood automatically terminated. Kriarj also recorded this in a letter dated 19<sup>th</sup> April 2018 which is at Exhibit H, page 337 of the affidavit of Super Cassettes. In these circumstances, as per the Co-Production Agreement, all the rights of Kriarj automatically stood vested with Super Cassettes.

20. As regards the reliance placed by Pooja on the order dated 17<sup>th</sup> July, 2018 passed by the Delhi High Court in CS (OS) No. 340 /2018 (Gothic Entertainment vs. Super Cassettes) I am in agreement with Mr. Tulzapurkar that the said case is decided in the facts of those agreement between the parties and the nature of agreements in the said case, whereunder Kriarj was to pay Gothic 50% share in profits. In the present case, there is only an agreement whereby Kriarj has granted a license to exploit the film which Kriarj was not entitled to do. In any case, the reliefs sought in the present suit is only of a restraint on the exploitation of the theatrical rights of the film on the basis that the said rights vest in Pooja. Again, in the present case the facts narrated herein- above raises a serious doubt about the genuineness of the transaction asserted by Pooja.

21. Therefore, imposition of any condition on Kriarj or Super Cassettes as sought by Pooja also does not arise.

22. In the circumstances, no ad-interim relief is granted in favour of Pooja. However, the hearing of the Notice of Motion is expedited and is peremptorily fixed on 16<sup>th</sup> August, 2018. The parties are at liberty to file additional affidavits. Needless to add that the observations herein are prima facie, and the Notice of Motion will be heard uninfluenced by the observations made herein.

Stand over to 16<sup>th</sup> August, 2018.

**(S.J. KATHAWALLA, J.)**