

Shephali

**REPORTABLE**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
INTERIM APPLICATION (L) NO 4402 OF 2021  
IN  
COMM (I.P.) SUIT NO. 4398 OF 2021**

**GOLDMINES TELEFILMS PVT LTD**

A company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Plot No. 45, Ganpati Bhavan, M.G. Road, Goregaon (West), Mumbai 400 062

... Plaintiff /  
Applicant

**~ VERSUS ~**

**ACHLA SABHARWAL,**

Sole Proprietress of Media International, having its office at 1596, Dewan Hall Street, Film Colony, Bhagirath Palace, Chandni Chowk, Delhi - 110 006

... Defendant

**A P P E A R A N C E S**

**FOR THE PLAINTIFF  
“GOLDMINES”**

**Mr Zal Andhyarujina, Senior Counsel**  
*With Mr Aurup Dasgupta, Shruti Sardessai, Sonam Ghiya and Jinal Vani, i/b Jhangiani, Narula & Associates*

**FOR THE DEFENDANT  
“SABHARWAL”**

**Mr Ashish Kamat, Counsel**  
*With Mr Ashwin Bhadang, i/b Navin P Sachanandani*

**CORAM : G.S. PATEL, J**

**JUDGMENT RESERVED ON : 9th April 2021**

**JUDGMENT PRONOUNCED ON : 21st April 2021**

**JUDGMENT:-**

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## A. BACKGROUND

1. *Sheela* is a 1987 Hindi motion picture. It starred, among others, Nana Patekar, Ranjeeta, Shahila Chaddha, Kulbhushan Kharbanda, Paintal and others. Its producer was BS Dwarakish (“**Dwarakish**”), the sole proprietor of M/s Dwarakish Chitra, based in Chennai. The Hindi version is a remake of a Kannada original with the title *Africadalli Sheela*. As the producer, Dwarakish originally held the copyright in *Sheela*.

2. The Plaintiff (“**Goldmines**”) is a media entertainment company. The Defendant (“**Sabharwal**”) is the sole proprietor of an enterprise called Media International, apparently also in much the same business as Goldmines.

3. The contest in this commercial intellectual property suit is which of the parties, Goldmines or Sabharwal, is the true assignee of the copyright in *Sheela*. Both claim to have agreements of assignment: Sabharwal's is later but is directly from Dwarakish. Goldmines claims a derivative title through intervening assignees and says that its predecessors took assignments long before Sabharwal. Nothing,

therefore, remained with Dwarakish to assign to Sabharwal or anyone else. Both claim to have exploited copyright without protest from the other. At a very late stage, Goldmines has an affidavit from Dwarakish affirming his transactions with Goldmines' predecessors-in-title but saying nothing at all about his subsequent transaction with Sabharwal.

4. Both Mr Andhyarujina for Goldmines and Mr Kamat for Sabharwal have strived long and hard to tear apart each other's documents of title. The factual narrative is not complicated, but the documents will need close scrutiny.

5. Before I proceed to assess the documents and the contesting submissions on them, I believe it would be useful to set out some of the well-established legal principles that will govern in an interim application such as this.

## B. THE LEGAL TESTS IN AN INTERLOCUTORY APPLICATION

6. The test is of a prima facie case. This means, among other things, that Goldmines must demonstrate a facially convincing case of superior title. Its success or failure is not a matter of expedience. The fact that it may have spent money, or may have purported to exploit rights, will not give it rights if the documents on which it relies do not support the passing of copyright. Once this is established, then there are the questions of balance of convenience and irreparable

injury or prejudice. While making this assessment at an interlocutory stage, I am not to conduct a mini-trial.

7. In *Gujarat Bottling Co Ltd v Coca Cola Co*,<sup>1</sup> the Supreme Court, citing the earlier decision in *Wander Ltd v Antox India (P) Ltd*,<sup>2</sup> said in paragraph 43:

“43. The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. **While exercising the discretion the court applies the following tests — (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence.** Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated.

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1 (1995) 5 SCC 545.

2 (1990) (Supp) SCC 727.



**The court must weigh one need against another and determine where the ‘balance of convenience’ lies.** [See: *Wander Ltd. v. Antox India (P) Ltd.* [1990 Supp SCC 727] (SCC at pp. 731-32).] In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.”

*(Emphasis added)*

8. In *Colgate Palmolive (India) Ltd v Hindustan Lever Ltd*,<sup>3</sup> the Supreme Court noted the precedents on this aspect of the matter, and went on to clarify:

“24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, **the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned.** The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

- (i) extent of damages being an adequate remedy;
- (ii) protect the plaintiff’s interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;
- (iii) **the court while dealing with the matter ought not to ignore the factum of strength of one party’s case being stronger than the other’s;**

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3 (1999) 7 SCC 1.

- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;
- (v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) **balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;**
- (vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

*(Emphasis added)*

9. In *Anand Prasad Agarwalla v Tarkeshwar Prasad & Ors*,<sup>4</sup> the Supreme Court in terms reiterated the three principles set out in *Gujarat Bottling* and said it might not be appropriate for any court to hold a mini-trial at the grant of a temporary injunction. This decision has also been followed by a Division Bench of this Court.<sup>5</sup>

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4 (2001) 5 SCC 568. Followed in *Zenit Mataplast (P) Ltd v State of Maharashtra*, (2009) 10 SCC 388 (paragraph 31), also citing *SM Dyechem Ltd v Cadbury (India) Ltd*, (2000) 5 SCC 573.

5 *Darius Rutton Kavasmaneck v Gharda Chemicals Ltd & Ors*, 2015 SCC OnLine Bom 4813 : (2015) 64 PTC 76 : (2015) 5 Bom CR 162.

## C. RELEVANT PROVISIONS OF THE COPYRIGHT ACT, 1957

10. On the Copyright Act, 1957 (as amended periodically), there is really no controversy. No one disputes that Dwarakish, the producer, was the first owner of copyright and, therefore, the ‘author’ for the purposes of Section 17 read with Section 2(d)(v) and Section 2(uu).<sup>6</sup>

11. But Section 14(d), in relation to a cinematograph film, will be important. The relevant part says:

**Section 14. Meaning of Copyright.**— For the purposes of this Act, “copyright” means the **exclusive** right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:—

... ..

(d) in the case of a cinematograph film,—

(i) to make a copy of the film, including—

(A) a photograph of any image forming part thereof; or

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6 **Section 2. Interpretation:** In this Act unless the context otherwise requires—

(d) “*author*” means—

(v) in relation to a cinematograph film or sound recording the producer; and

(uu) “*producer*” in relation to a cinematograph film or sound recording means a person who takes the initiative and responsibility for making the work;

**Section 17. First owner of copyright.**— Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein.

**Note:** For our purposes, it makes no differences — there being no dispute — that Section 2(uu) was added by a 1995 amendment.



(B) storing of it in any medium by electronic or other means;

(ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;

*(Emphasis added)*

12. Section 14(1)(d)(ii) suffered an amendment in 2012. Before the amendment, that section read:

“(ii) to sell or give on hire or offer for sale or hire, **any copy of the film**, *regardless of whether such copy has been sold or given on hire on earlier occasion.*”

*(Emphasis added)*

13. The italicised portion was deleted in 2012. It is important to note it if only to get it out of the way, for two reasons. First, we are not here concerned with any transactions (such as a license) regarding “*a copy*” of the film. We are concerned with the assignment of plenary rights in the entirety of the cinematograph film, i.e., a divesting by Dwarakish, the producer and original holder of the copyright, in favour of others. This narrows the controversy before me even further.<sup>7</sup>

14. This is relevant in the context of the very recent decision of the Supreme Court in *Engineering Analysis Centre of Excellence Pvt Ltd v CIT & Anr*,<sup>8</sup> though in the context of income tax and computer

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<sup>7</sup> Mr Andhyarujina’s reference to the decision of a learned single Judge of the Calcutta High Court in *Saregama Ltd v The New Digital Media & Ors*, 2017 SCC OnLine Cal 16610 : (2018) 73 PTC 329 is, therefore, of little relevance.

<sup>8</sup> 2021 SCC OnLine 159, decided on 2nd March 2021.

software. Paragraphs 35 to 38 contain a summation of the essentials of copyright under the Act. Following a review of a considerable body of caselaw, the Supreme Court concluded:

“119. The conclusions that can be derived on a reading of the aforesaid judgments are as follows:

i) **Copyright is an exclusive right, which is negative in nature, being a right to restrict others from doing certain acts.**

ii) **Copyright is an intangible, incorporeal right, in the nature of a privilege, which is quite independent of any material substance.** Ownership of copyright in a work is different from the ownership of the physical material in which the copyrighted work may happen to be embodied. An obvious example is the purchaser of a book or a CD/DVD, who becomes the owner of the physical article, but does not become the owner of the copyright inherent in the work, such copyright remaining exclusively with the owner.

iii) **Parting with copyright entails parting with the right to do any of the acts mentioned in section 14 of the Copyright Act.** The transfer of the material substance does not, of itself, serve to transfer the copyright therein. The transfer of the ownership of the physical substance, in which copyright subsists, gives the purchaser the right to do with it whatever he pleases, except the right to reproduce the same and issue it to the public, unless such copies are already in circulation, and the other acts mentioned in section 14 of the Copyright Act.

... ..”

*(Emphasis added)*

15. Since we are concerned with copyright assignments, Sections 18 and 19 of the Copyright Act will apply.<sup>9</sup> Those sections, as amended, read thus:

**18. Assignment of copyright. — (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:**

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilisation of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of

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<sup>9</sup> Consequently, no question arises of the doctrine of first sale and the principle of exhaustion of copyright dealt with in *Engineering Analysis*. See paragraph 143.



any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilisation of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression “assignee” as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

**19. Mode of assignment.**— (1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

**(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.**

(3) The assignment of copyright in any work shall also specify the amount of royalty and any other consideration payable, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be

deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994 (38 of 1994).

(8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

(9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

(10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.

*(Emphasis added)*

16. This brief overview of copyright law provides the necessary context for the heart of the dispute: If Goldmines' predecessors-in-title had acquired plenary rights to *Sheela* by an assignment, then nothing at all remained in the hands of the producer, Dwarakish, the

original holder of copyright to assign later to Sabharwal. Conversely, if Goldmines' predecessors-in-title did not get good and valid copyright by assignment, then no later act could remedy the initial failure of assignment; and Sabharwal's assignment, though later, would unseat any claim Goldmines might have.

17. Evidently, everything turns on a prima facie assessment of the rival agreement/assignment documents and some related material.

#### D. CHRONOLOGY OF EVENTS

18. A brief chronological narrative is first necessary.

18.1 *Sheela* received an unrestricted public exhibition ("U") certificate from the Central Board of Film Certification on 14th February 1987.

18.2 On 5th December 2002, Dwarakish executed an agreement in respect of *Sheela* with one SD Sharma ("**the 2002 Sharma Assignment**"). This is the first of the documents to which Goldmines traces its rights.

18.3 On 5th June 2007, Dwarakish entered into another deed, this time with one Swastik Distributors, also in respect of *Sheela* ("**the 2007 Swastik Assignment**"). Swastik Distributors is a sole proprietorship of one GL Chandrasekhar. This is the second document invoked by Goldmines.



- 18.4 On 19th August 2010, one Ravi Sharma, said to be the heir of SD Sharma, executed an assignment deed with Goldmines in 35 films, *Sheela* among them (“**the 2010 Sharma Assignment**”). This is Goldmines’ principal document, the one under which it directly claims to have acquired the entire copyright in *Sheela*.
- 18.5 On 4th September 2010, Goldmines issued a public advertisement in a trade journal, *Complete Cinema*, claiming to have acquired rights in several films, including *Sheela*.
- 18.6 On 7th September 2010, Dwarakish executed a third document in respect of *Sheela*, this time with Sabharwal (“**the 2010 Sabharwal Assignment**”). This is Sabharwal’s claim to having a full-envelope assignment of the copyright in *Sheela*.
- 18.7 On 9th September 2010, Goldmines received an objection from one Sonal Enterprises in response to its public notice of 4th September 2010.
- 18.8 On 20th September 2010, Sabharwal executed an assignment agreement with one Shri Vijaydeep Combines, assigning to it in perpetuity the theatrical rights in *Sheela*.
- 18.9 On 28th September 2010, Dwarakish wrote to Prasad Colour Laboratories — then one of the country’s largest film processing labs — saying that he had transferred all rights in *Sheela*, including the picture and sound

negatives, to Sabharwal. Dwarakish requested Prasad Colour Labs to deliver the picture and sound negatives to Sabharwal.

**18.10** On 28th October 2010, Ravi Sharma obtained a No Objection from Sonal Enterprises — the objector to Goldmines’ 4th September 2010 public notice — saying that Ravi Sharma was entitled to assign the satellite broadcasting rights in *Sheela* to third parties after 20th June 2015.

**18.11** On 11th December 2010, Sabharwal issued a public notice, again in *Complete Cinema*, saying she had acquired global exclusive satellite broadcasting rights, including DTH on demand, cable rights, and world video rights in *Sheela*. Sabharwal received no objection to this notice, not even from Goldmines, Swastik or Ravi Sharma.

**18.12** On 20th August 2011, Multi Screen Media Pvt Ltd, now Sony Pictures Networks (India) Pvt Ltd (“**Sony**”), issued a public notice, again in *Complete Cinema*, claiming it had acquired rights in several motion pictures, including *Sheela*. Nobody objected.

**18.13** On 3rd October 2011, Goldmines executed an agreement with Sony, licensing the satellite broadcasting rights and other rights to it for four years from 21st June 2015 to 20th June 2019.



- 18.14 On 10th December 2011, the Motion Pictures Association wrote to Vijaydeep Combines (Sabharwal's assignee) regarding its application for registration of *Sheela* for Delhi, UP and Uttaranchal.
- 18.15 On 22nd August 2013, Sabharwal assigned the Doordarshan rights in *Sheela* to one M/s Lifetime Entertainment.
- 18.16 On 27th February 2017, Goldmines executed a second license agreement with Sony, also for the satellite broadcasting and allied rights in *Sheela*, this time for a period from 21st June 2019 to 20th June 2024.
- 18.17 On 24th June 2019, M/s Lifetime Entertainment registered *Sheela* with the Directorate-General of Doordarshan.
- 18.18 On 22nd and 29th August 2019, one SK Nagaraj, said to be representing one RN Enterprises, issued a public notice (inevitably, in *Complete Cinema*), claiming that RN Enterprises had acquired various rights in *Sheela*.
- 18.19 On 29th May 2020, Sabharwal filed a complaint under the Copyright Act and the Indian Penal Code, 1860, with the North Delhi police against what it said was the illegal broadcast of *Sheela* on Sony's television channel "Sony Wah".

- 18.20** On 9th September 2020, Goldmines wrote to Nagaraj, objecting to the notice and saying it had acquired rights in *Sheela*.
- 18.21** On 5th October 2020, Sabharwal wrote to the Ministry of Information & Broadcasting (“**I&B Ministry**”) complaining of illegal broadcasts of various movies in which Sabharwal claimed rights. One of these was *Sheela*. On 9th October 2020, the I&B Ministry forwarded Sabharwal’s complaint to the Indian Broadcasting Foundation. Sony received a copy of the I&B Ministry’s letter. It wrote to Goldmines asking it to look into the matter.
- 18.22** On 21st October 2020, Goldmines sent Sabharwal a cease-and-desist notice.
- 18.23** On 13th January 2021, the Delhi Police sent a notice to Sony and its directors saying that Sabharwal had filed a First Information Report complaining of copyright infringement on account of Sony’s broadcast of *Sheela* on the “Sony Wah” channel.
- 18.24** On 27th January 2021, Goldmines received a letter from RN Enterprises, now saying it had no rights in *Sheela* and that these rights vested in GL Chandrasekhar, the sole proprietor of Swastik Distributors.
- 18.25** On 30th January 2021, Goldmines and GL Chandrasekhar (as the sole proprietor of Swastik Distributors) entered into a Deed of Assignment by



which Swastik assigned satellite broadcasting and allied rights (said to be ‘revised rights’) to Goldmines in perpetuity. This is “**the 2021 Swastik Assignment**”. Goldmines also relies on this and says it took this assignment to ‘perfect’ its title, although it already had in hand the 2007 Swastik Assignment. Goldmines followed this with public notices on 30th January 2021 and 6th February 2021 in *Complete Cinema*.

**18.26** Goldmines brought suit on 11th February 2021. On 8th March 2021, Dwarakish affirmed an affidavit purporting to confirm the 2002 Sharma Assignment and the 2007 Swastik Assignment. In the affidavit, he said nothing at all about the 2010 Sabharwal Assignment.

**18.27** Sabharwal filed her Affidavit in Reply to the Interim Application on 11th March 2021. Goldmines filed a Rejoinder on 17th March 2021.

## E. SUMMARY OF RIVAL CLAIMS

**19.** This bare-bones narrative tells us that both Goldmines and Sabharwal have been “running the rights” they each claim, almost in parallel.

**19.1** Both have issued public notices. Neither has replied to the other’s notices. These public notices will not, therefore, count for very much at this prima facie stage. It is hardly possible to draw inferences against or for one

or the other of these parties on the basis that the other did not object to the notices. All that the notices seem to have achieved is more revenue for *Complete Cinema*.

**19.2** Both have 'exploited' their claimed rights: Sabharwal in assignments with Vijaydeep Combines and Lifetime Entertainment, and Goldmines with Sony. These second-tier documents are of very little assistance in deciphering the origins of the rights Goldmines and Sabharwal each claim.

**19.3** Goldmines' claim is serpentine and based on multiple documents, including one very latterly obtained, the 2021 Swastik Assignment. This complex of documents will have to be read with Dwarakish's 8th March 2021 affidavit, filed with the Rejoinder, i.e., after the suit was instituted.

**19.4** Sabharwal's claim is altogether tidier and is traced back to a solitary document, the 2010 Sabharwal Assignment. It also has Dwarakish's letter to Prasad Colour Labs (and of which there is no mention either in Dwarakish's 2021 Affidavit).

**20.** Dwarakish, though, seems to have entered into assignments and agreements left and right, given an affidavit and written at least one letter to a third party, all of it with little or no thought spared for his previous transactions.

21. Thus, a prima facie assessment of the rival claims requires considering the following:

**21.1 For Goldmines:**

- (i) the 2002 Sharma Assignment,
- (ii) the 2007 Swastik Assignment,
- (iii) the 2010 Sharma Assignment,
- (iv) the 2021 Swastik Assignment, and
- (v) Dwarakish's 2021 Affidavit.

Goldmines' claim is founded on four documents and an affidavit.

**21.2 For Sabharwal:**

- (i) the 2010 Sabharwal Assignment, and
- (ii) Dwarakish's 2010 letter to Prasad Colour Labs.

## F. GOLDMINES' DOCUMENTS

### I *The 2002 Sharma Assignment*

22. The 2002 Sharma Assignment of 5th December 2002 is a short two-page document.<sup>10</sup> It says that Dwarakish is the producer of Sheela, gives the CBFC certificate date and number, and some details

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<sup>10</sup> Plaintiff, Exhibit "B", pp. 39–40.

about the film, including mentioning Prasad Film Laboratories. It then says that Dwarakish, as the producer and holder of rights in the film's negatives, '*hereby agrees to grant*' to SD Sharma some identified rights. The words used are:

“The ASSIGNOR producer / Negative right holder **hereby agrees to grant** to the ASSIGNEE the Sole and Exclusive Television and all such expiation [*sic*] on thereof, Rights of exploitation of the film commercially, non-commercially, **non-theatrically**, in all dimensions including all types and all formats, Video, Cable TV, Satellite Broadcasting, TV telecasting, Pay TV and Internet rights in all format and in all other Electric Medias which is seen on TV is the screen now in existence and those that may come to use future for the territory of the Entire world including India (**except Audio rights which Assignor only**) and all other rights with Assignee **for the period (25) twenty-five years, from the date of this agreement.**”

*(Emphasis added)*

23. The consideration is said to be 'royalty', in the amount of Rs.50,000. Of this, half was paid by an instrument dated 23rd December 2002 (clearly post-dated). The remaining Rs.25,000/- was to be paid in 40 days. There is no contemporaneous — or nearly contemporaneous document — of the remaining amount being paid. Then the document says Dwarakish has already given video rights to another party, Time Video Mumbai, but these rights had expired. Dwarakish also confirmed that he had already given the satellite rights to Zee Satellite, and those would expire in September 2003, after which the satellite rights would vest in SD Sharma for 25 years.

24. On any rational reading of it, this ‘assignment’, if indeed there was one (and not just an agreement to assign, as Mr Kamat says), was restricted in several ways. It was for only 25 years, that is to say, until 4th December 2027. But it excluded any in praesenti assignment of satellite rights because there admittedly given to Zee Satellite until September 2003. Very possibly, the theatrical rights were also excluded: that is unclear from the emphasised portion above. The audio rights were certainly not assigned.

25. What does Dwarakish himself have to say about this? His affidavit of 8th March 2021 says this in paragraph 2:<sup>11</sup>

“2. I say that I have vide an Agreement dated 5th December 2002, executed with one S.D. Sharma, assigned Electronic Media rights which means and includes all formats of Video, Cable TV, **Satellite Broadcasting**, TV Telecasting, Internet rights and television rights of the film Sheela to S.D. Sharma for a period of 25 years. Pursuant to the execution of the said Agreement, I have received the entire consideration payable by S.D. Sharma for the assignment of the above rights in the film Sheela, as such the assignment in favour of S.D. Sharma stands completed and concluded.”

*(Emphasis added)*

26. But this is plainly contrary to the 2002 Sharma Assignment’s wording. The satellite rights, which seem to be pivotal, were *not* assigned for 25 years from 5th December 2002. They would begin only in 2003 and run until 2028, about a year longer than the other rights (to end on 4th December 2027). The exact dates of the Zee

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11 Interim Application, Exhibit “3”, pp. 75–79, at p. 76.

Satellite rights commencing and ending are unknown even now. Dwarakish's affidavit also says nothing at all about how and when he received the remaining consideration from Sharma.

27. Mr Andhyarujina says that even accepting the exceptions for the audio rights and exclusion of the satellite rights, the 2002 Sharma Assignment is otherwise a valid and proper assignment. It is captioned 'ASSIGNMENT', and it opens by saying that the document is an 'assignment'. It makes no difference that in the operative clause, the reference is to an 'agreement'.

28. Mr Kamat, however, submits that the 2002 Sharma Assignment is no assignment at all. It is only an agreement to assign. The operative clause does not say "hereby assigns". It says Dwarakish, by that document, 'hereby agrees to grant' Sharma some rights. No rights stood assigned by this document; and the reason, Mr Kamat says, is self-evident, for the entire consideration had admittedly not passed by that date. In fact, closely read, on the date of the document, 5th December 2002, no consideration had passed at all. The pay order for half the consideration, Rs.25,000, was by an instrument no 1754256 post-dated to 23rd December 2002. When, how or even if the balance was paid is unclear even to this day, and Dwarakish's 2021 Affidavit does not help clarify matters in the least. In any case, there were (i) reserved rights, specifically the audio; and (ii) an existing assignment to Zee Satellite of Satellite rights; so this could not possibly have been an assignment of the full panoply of rights.



29. Mr Kamat's task, in my view, is simpler than Mr Andhyarujina's. Mr Kamat only need show the deficiencies. Mr Andhyarujina must explain them. I do not see a clear, cogent and unequivocal answer to the points Mr Kamat makes. As a document of origin of assigned rights, the 2002 Sharma Assignment makes for thin reading.

## II *The 2007 Swastik Assignment*

30. A copy of the 2007 Swastik Assignment of 5th June 2007 is annexed to the 2021 Swastik Assignment.<sup>12</sup> I am ignoring Mr Kamat's submission that there is some discrepancy in the apparent date of the last stamp paper or stamp franking. The copy is unclear, and that question will need evidence.

31. The document is between Dwarakish and GL Chandrasekhar as the sole proprietor of Swastik Distributors. It pertains to two films, *Gangvaa* and *Sheela*. The first page says that Dwarakish has

**“offered the world Television Telecasting, Satellite Telecasting, Video Rights, Cable TV Rights and along with all other rights of the said two picture for the areas of entire world for a perpetual period of 99 years”**

and that Chandrasekhar has accepted these. I have added the emphasis above. Then the operative clause says that Dwarakish

**“has agreed and hereby irrevocably grant, transfer and assign in favour of the Assignee the said picture entire world Television Telecasting, Video rights, Video Compact Disc,**

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12 Plaintiff, Exhibit “R”, pp. 252–267; at internal Exhibit “B”, pp. 263–267.

Digital Video Disc, Blue Rays Disc, Laser Disc, CCTV rights, Radio Diffusion rights, Audio and All FMS rights, All India Broadcasting rights for **broadcasting of soundtrack** of the said pictures, Cable TV Rights and along with all other copyrights of the said pictures in all gauges, dimensions and in all media. The rights also include Airborne/Sea rights, State Linked Transmitters, Film Archive rights, DTH, Internet rights, All Pay Channel rights, **Songs Telecasting rights**, Subtitling rights and any other mode of displaying on TV and all other rights of the said two pictures in all formats in all media and also including any innovation rights in future displaying on TV and all other rights of the said two pictures in all formats in all media and also including any innovation rights in future in electronic media of the said two pictures for the areas of entire world for a perpetual period of 99 years commencing from the date of this agreement on the following terms and conditions for a total consideration of Rs.2,00,000/- (Rupees Two Lakh Only).

*(Emphasis added)*

32. Clause 1 sets out the consideration, said to have been paid by a cheque dated 15th June 2007 (again, post-dated). Clause 2 entitled Swastik / Chandrasekhar to telecast the films in full, including any song, any sequence/clippings etc, from any Doordarshan Kendra and from any or all private/independent/autonomous TV channels without restrictions, worldwide. Private satellite TV channels were included in Clause 3. In Clause 4, Dwarakish said that these rights were “free from all encumbrances” and assured Chandrasekhar “that there are no prior commitments over the same of whatever nature”.

33. But there were, if Mr Andhyarujina’s submission on the 2002 Sharma Assignment is to be accepted. That document, in his

formulation, created rights in praesenti in favour of Sharma; acknowledged an existing right in favour of Zee Satellite due to end in 2003, and then gave Sharma the satellite rights given to Zee for 25 years. If all that is correct, then clearly Dwarakish had nothing (except the audio rights) to give to Swastik.

34. Notably, the language of the grant is markedly different. Where the 2002 Sharma Assignment says Dwarakish '*agrees to assign*', the wording of the 2007 Swastik Assignment is '*agreed and hereby irrevocably grant, transfer and assign*'.

35. Then there is the fact that the 2007 Swastik Assignment says nothing at all about the 2002 Sharma Assignment. Was the 2002 Sharma Assignment no assignment at all, as Mr Kamat says, but only an agreement to assign? The possibility cannot be ruled out.

36. And there is again the 2021 Dwarakish Affidavit, annexed to the Affidavit in Rejoinder. In paragraph 3 of that Affidavit, Dwarakish says this:

“3. I say that I have thereafter vide Articles of Agreement dated 5th June 2007, entered into with one G.L. Chandrasekhar Proprietor of Swastik Distributors, I assigned to GL. Chandrasekhar World Television Telecasting, **Satellite Telecasting**, Video Rights, Video Compact Disc, Digital Video Disc, Blu Ray Disc, Laser disc, CCTV rights, Radio Diffusion rights, Audio and all FMS rights, All India Broadcasting rights for broadcasting of Soundtrack, Cable TV rights and along with all copyrights of the film *Sheela* in all gauges, dimensions and in all media, for the entire world in perpetuity.”

*(Emphasis added)*

37. How could he have done this? The satellite rights were, if Mr Andhyarujina is right, *already* assigned, post the Zee Satellite assignment ending in 2003, to Sharma for 25 years, ending sometime in 2028. In paragraph 4 of his affidavit, Dwarakish attempts this explanation:

**“4. I say that it was understood between myself and G.L. Chandrasekhar, that though I had by the Articles of Agreement dated 5th June 2007, assigned the aforesaid rights in perpetuity, the Electronic Media rights which means and includes all formats of Video, Cable TV, Pay TV, Satellite Broadcasting, TV Telecasting, Internet rights and television rights of the film *Sheela*, would commence in favour of G.L. Chandrasekhar on 5th December 2028, as the same had been assigned to S.D. Sharma till the said date.”**

*(Emphasis added)*

38. Even prima facie, this is just preposterous. Dwarakish is attempting, in an affidavit made 14 years after the event, to give some manner of evidence in variation of the terms of a written contract. The 2007 Swastik Assignment contains no such qualification.

39. Moreover, the 2021 Affidavit actually makes matters worse, for it now *expands* the exclusions in the 2002 Sharma Assignment — the exclusion is no longer only of satellite rights, but of all electronic media rights.



40. Even more damaging is the fact that the 2021 Swastik Agreement between Swastik Distributors and Goldmines *makes no mention at all of Dwarakish's so-called 'understanding' with Swastik.* The reason is obvious: The 2021 Swastik Agreement is of 30th January 2021. Dwarakish's Affidavit is of 8th March 2021, very much a latter-day epiphany. If paragraph 4 of Dwarakish's Affidavit is, in fact, true, then Goldmines did not need — and, indeed, *could not get* — these electronic media rights from Swastik in 2021. Swastik did not have them. Goldmines did, until 2028. Or so Dwarakish would have us believe.

41. Prima facie, the 2002 Sharma Assignment and the 2007 Swastik Assignment are irreconcilable. One of the two must fall; both cannot co-exist.

42. And then it gets worse.

### III *The 2010 Sharma Assignment*

43. SD Sharma died. When exactly, we do not know, except that it was some time before August 2010. Who his heirs were, we do not know. But he seems, in his lifetime, to have amassed a considerable number of rights — real or imagined — to a raft of motion pictures. Until August 2010, we have Dwarakish playing ducks and drakes with the *Sheela* copyright with different entities: Sharma, Zee, and Swastik are only the ones we know.

44. On 19th August 2010, Goldmines entered into a Deed of Assignment with Ravi Sharma, the 2010 Sharma Assignment.<sup>13</sup> It related to 35 films. *Sheela* was one of these. Each is listed in a separate schedule to the Assignment. Sharma the younger claimed to have ‘exclusive, unqualified and unrestricted copyright’ in all 35 as ‘the Owner, Copyright Holder and/or the Assignee’. If there existed the 2007 Swastik Assignment (sans the 2021 ‘explanation’ by Dwarakish on affidavit), then this assertion, for *Sheela*, was simply untrue.

45. The plaint says Ravi Sharma was the ‘legal heir’ of SD Sharma. The basis for this is unknown. There is, as Mr Kamat says, no recital about this at all. The 2010 Sharma Agreement does not say so. It only claims that Ravi Sharma ‘owns the exclusive, unencumbered and effective rights’ mentioned in the schedules; and that he has ‘valid and subsisting rights’ in those films. How he comes to ‘own’ anything in respect of *Sheela* is unclear.

46. Incidentally, and in sharp contrast to the 2002 Sharma Agreement, the 2010 Sharma Agreement says the Assignor ‘*hereby assigns*’ not ‘*agrees to assign*’.

47. But, for *Sheela*, what is it that Ravi Sharma purported to do? We find this in Schedule VII.<sup>14</sup> There is a universal (‘entire world’) alleged assignment for 99 years, excluding video rights, for a consideration of Rs.2,00,000, of which Rs.20,000 was payable on execution and the rest in 60 days. The actual assignment, in very fine

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13 Plaint, Exhibit “C”, pp. 42–87.

14 Plaint, Exhibit “C”, at p. 54.

print, was of ‘negative rights including lock-stock and barrel’, and included in particular electronic media rights, audio rights, theatrical rights, and satellite rights. This is qualified by saying that the satellite rights could be exploited from November 2014. But the audio rights had never been assigned to SD Sharma; there is a question of theatrical rights, too, as I have noted; and, in any case, Sharma the elder had rights only for 25 years.

48. There is also no explanation at all for this date of November 2014 for the Satellite rights. It simply does not fit. The 2002 Sharma Assignment postponed the satellite rights until 2003, and then, according to Goldmines, conferred them for 25 years. Dwarakish, in his 2021 Affidavit, insists in paragraph 4 that Sharma had those rights until 5th December 2028. Where and how there came to be this date of November 2014 is unknown.

49. I do not think it is at all plausible to accept Mr Andhyarujina’s submission that the mention of 99 years here is a ‘typographical error’. Prima facie, that is hard to accept.

50. There is also a head-on collision between what Ravi Sharma purported to do with the rights in *Sheela* and what Swastik Distributors had in the 2007 Swastik Assignment (taking the document as it stands, sans Dwarakish’s 2021 explanation on affidavit).

51. Ravi Sharma’s claim to rights in *Sheela* raises more questions than it answers. Where is the reference to the 2002 Sharma

Assignment, under which alone Ravi Sharma could have got his rights? Where is the reference to the 2007 Swastik Assignment? How is it that nobody at all knew of the 2007 Swastik Assignment? Why is there no mention of the 2002 Sharma Assignment anywhere until 2021?

52. Happily mashing metaphors, Mr Kamat insists that if Mr Andhyarujina calls the 2010 Sharma Assignment a ‘bouquet of rights’, then it is ‘bouquet with a lemon’. Floral and fruity references apart, once again, it is prima facie impossible to reconcile the 2010 Sharma Assignment with the 2007 Swastik Assignment and either of those with the 2002 Sharma Assignment.

53. And then it gets even worse.

#### IV *The 2021 Swastik Assignment*

54. The 2021 Swastik Assignment between Swastik Distributors / GL Chandrasekhar and Goldmines is of 30th January 2021, just before Goldmines brought suit on 11th February 2021.<sup>15</sup> From the narrative, it seems Goldmines only learned of Swastik around 27th January 2021 when it got a letter from RN Enterprises saying that RN Enterprises had no rights in *Sheela* and that these stood vested in Swastik Distributors.<sup>16</sup> This was in regard to RN Enterprises advocate’s notice of 17th September 2020 claiming rights in *Sheela*.

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15     Plaint, Exhibit “R”, pp. 252–267.

16     Plaint, Exhibit “Q”, p. 251.



RN Enterprises withdrew its notices of 22nd and 29th August 2020. Copies of these notices are not annexed, but the withdrawal letter makes it clear that RN Enterprises also claimed rights in *Gangvaa*. Now the only time this film finds mention is in the 2007 Swastik Assignment. Obviously, RN Enterprises knew of the 2007 Swastik Assignment. How, we do not know.

55. Paragraph 4(u) of the Plaint<sup>17</sup> then says that although Goldmines was the assignee of ‘the said Rights’ until 4th December 2027 (incorrect; at least the Satellite Rights would have run until 5th December 2028 — or so Dwarakish says in his 2021 Affidavit filed with the Affidavit in Rejoinder), Goldmines negotiated with GL Chandrasekhar/Swastik ‘with a view to perfect its title to the said Rights and acquired the said Rights in perpetuity.’

56. The 2021 Swastik Assignment references both the 2002 Sharma Assignment and the 2007 Swastik Assignment. But it provides even more conflicting dates, for it says the satellite rights under the 2002 Sharma Assignment ran in favour of Sharma until September 2028. That is not the date Dwarakish mentions in his affidavit. He puts it at 5th December 2028. The 2021 Swastik Assignment also casts no light on Ravi Sharma’s claim to sole entitlement. It also does not explain the discrepant dates of November 2014 for the satellite rights in the 2010 Sharma Assignment or the term of 99 years. The wording of the 2021 Swastik

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17 Plaint, pp. 16–19.

Assignment actually undercuts any flow of rights under the 2010 Sharma Assignment.

57. Then the 2021 Swastik Assignment says that all rights in *Sheela*, (again, ‘lock, stock and barrel’) including all satellite broadcasting rights, stood assigned to Goldmines in perpetuity *commencing immediately on signing of this Deed of Assignment*.

58. But that does not tally with the 2010 Sharma Assignment — which conferred satellite rights for 99 years after November 2014 — or Dwarakish’s 2021 Affidavit, which said that the satellite rights were with Sharma (not Swastik) until 5th December 2028. Therefore, on 30th January 2021, Swastik did not have the satellite rights to give to anyone at all. Instead, it says in clause 2(ii) that Swastik has acquired ‘the assigned rights’ — i.e., including the satellite rights — from Dwarakish under the 5th June 2007 Swastik Assignment.

59. All this is on Goldmines’ own showing.

## G. SABHARWAL’S DOCUMENTS

60. Sabharwal has only one deed, the 2010 Sabharwal Assignment of 7th September 2010, directly with Dwarakish.<sup>18</sup> This is made on Rs. 100 stamp paper in New Delhi. I am straightaway rejecting Mr Andhyarujina’s submission that the document is insufficiently stamped. That is a generalised assertion in paragraph 4 of the

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18 Affidavit in Reply, Exhibit “A”, pp. 25–31.

Affidavit in Rejoinder,<sup>19</sup> and it does not say why this is so. The argument that Sabharwal has ‘brought the document’ to Maharashtra is also unconvincing. Sabharwal is not suing on the document at all. The submission is entirely misconceived and based on a patent misreading of Section 3(b) of the Maharashtra Stamp Act, 1958 read with entry 5(h)(v) of Schedule I to that Act. The charging section applies to every such instrument executed outside Maharashtra (on or after the commencement of the Act) “relates to any property situate or to any matter or thing done or to be done in this State and is received in this State”. Sabharwal has not ‘received’ the document in Maharashtra and seeks to do nothing with it here; she does not sue on it but only points to its existence outside this State. It would be absurd if every reference to every document executed outside the State, even if not sought to be enforced, was required to be ‘stamped’ according to the Maharashtra Act.

61. Further, even if this document is to be disregarded, it does not follow at all that Goldmines must succeed. Goldmines’ case must stand or fall on its own documents, not on the vulnerability of Sabharwal’s. Also, though knowing of it, Goldmines has not sought to have the 2010 Sabharwal Assignment set aside and cancelled.

62. The 2010 Sabharwal Assignment is straightforward. For a consideration of Rs.4.5 lakhs (Rs 2 lakhs on signing and the rest in 60 days),<sup>20</sup> Dwarakish assigned the full spectrum of rights in *Sheela*, including the negative rights and satellite rights, to Sabharwal in

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<sup>19</sup> Affidavit in Rejoinder, *pp.* 60–63.

<sup>20</sup> The balance was paid on 4th February 2011; Affidavit in Reply, Exhibit “C”, *p.* 34.

perpetuity. There is no mention of any of the Dwarakish's two previous documents — the 2002 Sharma Assignment and the 2007 Swastik Assignment — here. Dwarakish makes no mention of the 2010 Sabharwal Assignment in his 2021 Affidavit.

63. Mr Andhyarujina is incorrect in saying that Sabharwal did nothing to exploit rights under the 2010 Sabharwal Assignment. On 20th September 2010, Sabharwal assigned theatrical rights to Shree Vijaydeep Combines.<sup>21</sup> Then on 22nd August 2013, Sabharwal gave the Doordarshan rights to M/s Lifetime Entertainment.

64. The 2010 Sabharwal Assignment is to be read with Dwarakish's letter of 28th September 2010 to Prasad Colour Laboratories, Chennai.<sup>22</sup> In this, Dwarakish confirmed that he had transferred his 'entire picture including picture negative and sound negative' to M/s Media International, Sabharwal's proprietorship. Dwarakish asked Prasad Colour Labs to deliver the picture and sound negatives of *Sheela* to M/s Media International. In my view, this is a telling circumstance. Apart from the incorporeal entitlements in copyright, what Dwarakish was now actually doing was placing the physical artefact of the film — its picture and sound negatives — in Sabharwal's hands. Dwarakish says nothing at all about this letter in his 8th March 2021 Affidavit.

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21 Affidavit in Reply, Exhibit "D", pp. 36–39.

22 Affidavit in Reply, Exhibit "E", p. 40.

## H. FURTHER SUBMISSIONS CONSIDERED

65. Mr Andhyarujina’s submission that the use of words like “full rights”, “absolutely”, and “worldwide” — and, I would add, “lock, stock and barrel” — are prima facie indicators of the assignment of plenary, full-spectrum rights.<sup>23</sup> There can be no quarrel with the generality of that proposition. But that question might have arisen if each side had only one document. The issue Mr Andhyarujina faces is more formidable. He has, quite literally, a *mélange* — one might even say *mess* — of documents. He claims he has two streams of rights devolving on Goldmines; Mr Kamat says both are polluted. Certainly, as we have seen, there are virtually irreconcilable conflicts between Goldmines’ four so-called ‘title’ documents; and Dwarakish’s 2021 affidavit only muddies already turbid waters. As Mr Kamat says, it only attempts to rewrite an extremely foggy title.

66. Dwarakish, Mr Kamat says, surfaces very late in the day: “an angel in Rejoinder, or a magician who can make assignments vanish and then reappear,” is how he puts it. For 20 years, Goldmines has been trying to ‘perfect’ its title, as if — and this is Mr Kamat again, now in full flow — “*Sheela* will somehow attain adulthood at some point if one keeps at it long enough.” And then acerbically adds, “*Sheela* is not *Sholay*.”

67. Mr Kamat insists that given the muddled title Goldmines claims, Dwarakish is a necessary party; and, without him arrayed,

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<sup>23</sup> *Saregama Ltd v The New Digital Media & Ors*, 2017 SCC OnLine Cal 16610 : (2018) 73 PTC 329, paragraph 136.

Goldmines is not entitled to relief.<sup>24</sup> Again, that is an issue I will have to leave for trial.

68. In any case, Mr Kamat submits, the burden is on Goldmines to show that it has valid copyright.<sup>25</sup>

69. Mr Andhyarujina's submission is that each of Goldmines' documents must be read as a whole.<sup>26</sup> Goldmines did not need title from Swastik; it had enough rights from Sharma. But that, as we have seen, is not entirely accurate. Dwarakish's transactions have made any such segregation almost impossible. Indeed, read 'as a whole', Goldmines' title history documents are far from clear. This is not a matter of inconsistent clauses within a document; and the generality of that proposition will not aid Goldmines, for instance, in regard to the 2010 Sharma Assignment, where the Schedule has specific restrictions not found in the main body. These provisions are in conflict not with other clauses in the documents but with other documents. Goldmines does not seem to have a clear, clean line of antecedents of copyright assignments. What is apparently given in one is compromised in the next, and so on to the end of the chapter, with Dwarakish's 2021 affidavit only adding to the already considerable confusion. Invoking the principle of 'business efficacy' here is meaningless in the face of all this Dwarakish-led contractual

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24 *JS Yadav v State of Uttar Pradesh & Anr*, (2011) 6 SCC 570; *Mumbai International Airport (P) Ltd v Regency Convention Centre & Hotels (P) Ltd*, (2010) 7 SCC 417.

25 *K Bose Babu v M/s Gowri Productions & Ors*, 2018 (76) PTC 48 (Mad).

26 *Nabha Power Ltd v Punjab State Power Corporation Ltd & Anr*, (2018) 11 SCC 508; *Mumbai Metropolitan Region Development Authority v Unity Infraproject Ltd*, 2008 SCC OnLine Bom 190 : (2008) 5 Bom CR 196.

disarray.<sup>27</sup> Once I have found, albeit prima facie, that there are conflicts between the various documents on which Goldmines relies, there is no question of ‘harmonious construction’. That principle applies to a construction or interpretation conflict between clauses in one document. But where two documents are plainly contrary to each other and cannot co-exist, this principle can have no application and certainly not at the prima facie stage. As we have seen, the 2002 Sharma Agreement and the 2007 Swastik Agreement cannot both stand together. They are both then in conflict with the 2010 Sharma Agreement (including crucial commercial terms like dates); and the 2021 Swastik Agreement helps matters not at all. Finally, there is Dwarakish’s 2021 Affidavit, produced by Goldmines in Rejoinder, and this is just confusion worse confounded.

## I. FINAL ORDER

70. There is a solitary prayer in the Interim Application. Goldmines wants an injunction against Sabharwal from holding herself and her proprietorship firm out to be an owner or assignee of the copyright in Sheela, from exploiting any rights and from ‘*infringing in any form and in any manner whatsoever the rights assigned to*’ Goldmines in that film.

71. That is not a relief I am inclined to grant. To get that relief, Goldmines must make out a prima facie case of having rights assigned

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<sup>27</sup> *Adani Power (Mundra) Ltd v Gujarat Electricity Regulatory Commission & Ors*, (2019) 19 SCC 9.

to it. It cannot and has not done that. It has not shown better antecedent title by assignment of rights to that claimed by Sabharwal. No question arises then of looking at any balance of convenience question or saying that it tilts in favour of Goldmines. Certainly, there is no necessity to address any issue of irreparable prejudice. I am not required to declare title in favour of either of the parties — that must await trial.

72. The Interim Application is dismissed.

73. However, the Defendant, Sabharwal, is required to maintain accounts of all commercial transactions she and her firm enter into in respect of the film *Sheela*. This is required until the final disposal of the suit.

## J. COSTS

74. This is a suit and an Interim Application in the Commercial Division, and the provisions of the Commercial Courts Act, 2015 will apply, including the amendment to Section 35 of the Code of Civil Procedure, 1908 governing costs. The amended Section 35 demands that costs follow the event. It also permits interest on any award of costs. Mr Kamat submits a statement of costs in the amount of Rs.5.92 lakhs. This is reasonable, but I will round this off to Rs.5.90 lakhs. Mr Andhyarujina submits that this is not a fit case for the award of costs as the Plaintiff's case is very arguable. I disagree. My reasons show why. There will be an accompanying order of costs in favour of



the Defendant and against the Plaintiff in the amount of Rs.5.90 lakhs, to be paid in two weeks, failing which the order of costs will carry simple interest at 9% per annum. The order of costs is enforceable as an order of this Court. Drawn up order dispensed with.

75. The views expressed here are prima facie and only for the purposes of this Interim Application.

76. The Interim Application is to be got finally numbered within two weeks for statistical purposes.

77. All concerned will act on production of an ordinary copy of this order.

**(G.S. PATEL, J.)**