

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

COMMERCIAL ARBITRATION PETITION (L) NO.24521 OF 2023

Oberoi Mega Entertainment LLP and another ... Petitioners

Vs.

Sanjay Saha and others ... Respondents

Mr. Anoshak Daver a/w. Mr. Prerak Choudhary, Mr. Prakash Choudhary, Ms. Anisha Balse, Mr. Tushar Awasthi, Ms. Regina David, Ms. Trisha Ranka and Krisha Barot i/b. Mr. Prerak Choudhary for Petitioners.

Ms. Drishti Khurana i/b. Zen Jurists for Respondent Nos.1, 2, 3, 6 and 7.

Mr. Hiren Kamod a/w. Mr. Ravindra Suryawanshi, Ms. Tanvi Nandgaonkar, Mr. Krunal Mehta and Mr. Archis Bhatt i/b. Bar & Brief Attorneys for Respondent Nos.4 and 5.

CORAM : MANISH PITALE, J.

DATE : SEPTEMBER 04, 2023

P.C. :

This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996, whereby the petitioners are seeking interim measures pending resolution of disputes between the parties through arbitration. The petitioners rely upon an agreement at exhibit-F and an arbitration clause contained therein to press the interim reliefs in the present application.

2. As on today, the petitioners are seeking urgent ad-interim relief of stay of release of film titled '*Haddi*' on the OTT platform of respondent No.4.

3. The learned counsel appearing for the petitioner specifically relies on the agreement at exhibit-F to contend that a limited liability partnership agreement was executed between the petitioners and respondent Nos.1 to 3, whereby respondent No.6 came into existence. It was then submitted that exhibit-H annexed to the petition would show that respondent No.6 came out in public domain with regard to the idea

and story initially titled '*Gunshe*', which eventually was to be made into a film titled '*Haddi*'. In that context, the learned counsel for the petitioner referred to certain cheques at exhibit-I allegedly paid to writers and other creative persons in connection with the production of the said movie '*Haddi*'. Thereafter, attention of this Court was invited to a set of e-mails exchanged with respondent No.4, which according to learned counsel appearing for the petitioners, demonstrated that respondent No.4 was clearly aware about respondent No.6 being associated and actively involved in production of the movie '*Haddi*'. By relying upon the said exchange of emails, it was submitted that respondent Nos.4 and 5 could not have interacted with any other entity in connection with production and release of the said movie. It is claimed that, in this backdrop, when a public notice issued on behalf of respondent Nos.4 and 5 dated 14.05.2022, came to the notice of the petitioners, they addressed e-mails to respondent Nos.4 and 5 seeking appropriate response from them. According to the petitioners, despite such e-mails being exchanged, respondent Nos.4 and 5 went ahead to deal with respondent No.7 in respect of the said movie and as on today, the said movie is ready for release on 07.09.2023 on the OTT platform of respondent No.4 in association with respondent No.7. It is brought to the notice of this Court that respondent No.7 is a partnership firm / company concerning only respondent Nos.1 and 3.

4. It is submitted that the documents on record and the trail of e-mails placed on record sufficiently demonstrates that respondent Nos.4 and 5 could not have surreptitiously engaged with respondent No.7 and that respondent Nos.1 and 3 through respondent No.7 dishonestly gave away the rights pertaining to the movie '*Haddi*' for production and release by respondent Nos.4 and 5. On this basis, urgent ad-interim relief of the stay of the said movie is sought on behalf of the petitioners.

5. On the other hand, learned counsel appearing for respondent

Nos.1 to 3, 6 and 7 submits that the dispute being raised by the petitioners and their grievance, if any, pertains to their claims with regard to respondent No.6 i.e. Anandita Entertainment LLP and the release of the movie cannot be dragged into the said dispute. It is submitted that the petitioners were clearly aware about the association of respondent No.7 with the said movie and the role of respondent Nos.4 and 5 in release of the said movie on their OTT platform. It was submitted that the disputes *inter se* between the petitioners and respondent Nos.1 to 3 were unnecessarily being used as a platform to claim that the release of the movie needs to be stayed. It was submitted that if the said respondents are granted sufficient time, they will place on record the correct picture, through a detailed reply affidavit.

6. The learned counsel appearing for respondent Nos.4 and 5 submits that the trail of e-mails brought to the notice of this Court on behalf of the petitioners is truncated and that the e-mails exchanged between the parties, when appreciated as a whole, would show that from May 2022, respondent Nos.4 and 5 had been asking the petitioners to come forward with any document or material in their possession to assert their claim in the context of the said movie '*Haddi*'. It was submitted that the petitioners failed to do so. It was further submitted that even according to the petitioners, they became aware about the said movie and the association of respondent Nos.4 and 5 with respondent No.7 in respect of the said movie on the basis of public notice issued as far back as on 14.05.2022 and that therefore, the petitioners cannot be permitted to approach this Court at the eleventh hour to seek stay of release of the aforementioned movie.

7. It was submitted that this Court has repeatedly held that such attempts at obtaining orders of stay of release of movies cannot be tolerated. Attention of this Court was specifically invited to one such

judgement / order dated 21.03.2017 in the case of *Dashrath B. Rathod Vs. Fox Star Studios India Private Limited* passed by this Court in **Notice of Motion (L) No.693 of 2017** in **Suit (L) No.196 of 2017**. It was submitted that the disputes and the grievances that the petitioners may have, would be relevant only against respondent Nos.1 to 3 and that respondent Nos.4 and 5 cannot be dragged into the matter, particularly when crores of rupees have been spent by the said respondents in the production and release of the said movie.

8. This Court has heard the learned counsel for the rival parties in the backdrop of the material placed on record. On an overall appreciation of the material on record, this Court is of the *prima facie* opinion that the petitioners may have a grievance against respondent Nos.1 to 3 in respect of the amounts invested in furtherance of the agreement at exhibit F, but release of the movie cannot be stayed only on that ground.

9. The public notice at exhibit J1, upon which the petitioners themselves rely, is dated 14.05.2022. The trail of e-mails brought to the notice of this Court by learned counsel for respondent Nos.4 and 5 shows that the said respondents had called upon the petitioners repeatedly, at least from May, 2022 onwards to come forward with their documents or court orders etc. to support the claim made in respect of the movie in question. But, admittedly, the petitioners made no efforts to reach out to respondent Nos.4 and 5 with relevant material.

10. It was further specifically submitted on behalf of the petitioners that respondent No.7 came into existence in April, 2022 and therefore, respondent No.7 must explain as to how it ended up associating with respondent Nos.4 and 5 in respect of the said movie, when the petitioners were negotiating with the said respondents much prior in point of time. This Court is of the opinion that *prima facie*, the said

argument would have to be considered after opportunity is granted to the respondents to file their reply affidavits, simply for the reason that there is no agreement or document on record showing that the petitioners and respondent No.6 i.e. Anandita Entertainment LLP ever entered into an agreement with respondent Nos.4 and 5 in respect of the said movie. Therefore, the said contention is rejected.

11. As on today, this Court finds that the petitioners waited all along and when the movie was declared to be released on 07.09.2023 on the OTT platform of respondent Nos.4 and 5, they rushed to this Court seeking ad-interim relief for stay of release of the said movie. This Court fails to understand how the stay of the release of the said movie could, in any manner, protect the rights, if any, of the petitioners. The disputes sought to be raised by the petitioners and the grievance in that regard, at this stage, appear to be only against respondent Nos.1 to 3, which could be a matter of damages or compensation that the petitioners may claim against the said respondents, but they have failed to make out a case for staying release of the said movie. This Court has repeatedly deprecated the practice of approaching the Court at the eleventh hour to seek stay of the release of movies and learned counsel for respondent Nos.4 and 5 has correctly relied upon one such order passed in the case of **Dashrath B. Rathod Vs. Fox Star Studios India Private Limited** (*supra*).

Relevant portion of the said order reads as follows:-

“30. I also have, as I said in the beginning, a far more fundamental issue with this approach and this so-called litigation strategy or courtroom gambit. I am now making it clear once and for all that these attempts at snatching last-minute injunctions, unfairly prejudicing the other side, and putting other litigants to real hardship (not mere inconvenience), let alone putting Courts and their infrastructure under pressure, will not be tolerated. Our Courts are not meant for these frivolities. They are not meant as playgrounds where any person with a fanciful notion can come at the last minute and demand as of right that all other work be set aside and all other concerns be relegated to second place. I have even today

before me a courtroom packed with lawyers and litigants. Parties in other actions are patiently waiting their turn. There are as many as three separate listings today, each in double digits. While Mr D'Costa, Mr Saboo and their clients take liberties with judicial time, this comes at the cost of others who have done nothing wrong. I have no means of compensating any of the others who have waited their turn, having come to court today in the reasonable expectation that their cases will be taken up. I can only apologize to these many others; and I must do so because I hear no hint of apology or regret from Mr D'Costa or Mr Saboo. There is not much more I can do. But I can certainly make it clear to the Plaintiffs that having gambled with the court's time, and having 'taken their chances', they will also now take the consequences. I made this clear to Mr Saboo when, despite everything I told him, and told him again and again, he insisted on being given an early hearing.

31. I am refusing all ad-interim relief. The Notice of Motion will come up in its ordinary course. I set no date for it and I am not setting for any Affidavit in Reply either. The Defendants will file their Affidavit in Reply as and when they think it is appropriate. I stress this again. I do not care whether that Affidavit in Reply takes one week, one month, one year or more. The Defendants will take their time over it.”

12. In view of the above, this Court is of the opinion that no case is made out for grant of ad-interim reliefs. The prayer for ad-interim reliefs is rejected.

13. The respondents may file their reply affidavits within three weeks from today.

14. Rejoinder affidavit, if any, be filed within two weeks thereafter.

15. List for further consideration on 16.10.2023.

(MANISH PITALE, J.)

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