



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

INTERIM APPLICATION (LODGING) NO. 33559 OF 2024
IN
COMMERCIAL IP SUIT (LODGING) NO. 33463 OF 2024

Goldmines Telefilms Pvt. Ltd.

...Applicant

IN THE MATTER BETWEEN:

Goldmines Telefilms Pvt. Ltd.

...Plaintiff

Versus

Viacom 18 Media Pvt. Ltd. & Ors.

...Defendants

- Dr. Virendra Tulzapurkar Senior Counsel a/w Mr. Aurup Dasgupta, Ms Drshika Hemnani and Ms. Prapti Bhadra i/b M/s. Jhangiani Narula and Associates for the Applicant/Plaintiff.
- Mr. Ashish Kamat Senior Counsel a/w Mr. Ameet Naik, Ms. Madhu Gadodia, Mr. Anand Mohan, Mr. Sujoy Mukherji and Ms. Devesha Tudekar i/b Anand & Naik for the Defendant No.1.
- Mr. Rashmin Khandekar, Mr. Aayush Tainwala i/b NDB Law for the Defendant No.1A

CORAM : MANISH PITALE, J.
RESERVED ON : 02nd APRIL 2025
PRONOUNCED ON : 07th MAY 2025

ORDER:

1. The applicant/plaintiff herein is seeking order of temporary injunction against the defendants in respect of 18 films concerning Film Assignment Agreement dated 30th March 2016, and one film under Film Assignment Agreement dated 06th November 2015, on the basis that the said agreements stood validly terminated in respect of such films for violation of

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certain clauses of the agreements. Although the suit pertains to 19 films under the Film Assignment Agreement dated 30th March 2016, but at the time of arguments it was clarified that the plaintiff is not asserting such relief as against one out of the 19 films i.e. “Mission Vande Mataram.”

2. The plaintiff and defendant No.1 entered into the aforesaid Film Assignment Agreements, whereby the plaintiff under the Film Assignment Agreement dated 30th March 2016, licensed various rights, including the satellite broadcasting rights and non-inclusive on demand rights in 250 cinematograph films for a consideration of ₹ 162 Crores and similarly under the Film Assignment Agreement dated 06th November 2015, the plaintiff licensed the aforesaid rights in respect of the film “Power Unlimited” for consideration of ₹ 2 Crores. It is the case of the plaintiff that although the entire consideration was indeed paid by the defendant No.1 under the aforesaid agreements and accordingly, the rights had been licensed, it was found that in respect of the suit films, the defendant No.1 had committed breach of certain clauses of the agreements, due to which, notices dated 22nd July 2024, and 23rd July 2024, were issued identifying the nature of breaches and calling upon the defendant No.1 to desist from committing such breaches. According to the plaintiff, despite the said notices in respect of the aforementioned two agreements, since the defendant No.1 failed to rectify the breaches and allegedly continued to commit the same, by separate notices

dated 22nd August 2024, the Film Assignment Agreements were terminated in respect of the suit films. In that light, the plaintiff further sent demand draft towards *pro rata* refund of license fee for the unexpired license term in respect of the suit films. It is in this backdrop that the present suit has been filed praying for a declaration that the termination of the licenses in respect of the suit films is valid, legal and binding on the defendants, an order of injunction restraining the defendants from holding out themselves as assignees/licensees in respect of rights in the said films, and a direction to the defendants to render true and faithful accounts of all income earned from exploiting the suit films after termination of the licenses in the aforesaid manner. It is relevant to note here that during the pendency of the suit, the defendant No.1A was added as a party to the present suit in the light of the fact that the defendant No.1 had assigned its rights to defendant No.1A.

3. The interim application has been filed to restrain the defendants during the pendency of the suit from holding out themselves as assignees/licensees of the rights in the suit films and from exploiting the same, as also a direction to defendant No.1 and 1A to disclose on oath the revenue generated by the said films after the termination of licenses with effect from 22nd August 2024. The pleadings in the application were completed and the learned counsel for the rival parties were heard.

4. Dr. Virendra Tulzapurkar, learned senior counsel appearing for the plaintiff made submissions in support of the application. He submitted that in the light of the obvious violation of the clauses of the aforesaid agreements, particularly clauses 3.11 and 3.15 thereof, the plaintiff was justified in terminating licenses as regards the suit films under the said two agreements and that therefore, the defendants ought to be restrained during the pendency of the suit from further exploiting rights in the said films. He submitted that the defendant Nos.1 and 1A committed breach of clause 3.11 of the said Film Assignment Agreements by creating “multiple versions” of the same film by making indiscriminate cuts and deletions. Such power to delete, edit or cut any portion of the films could be exercised only in the specific conditions enumerated in clause 3.11 of the said agreements and for the present case it was necessary for the said defendants to have demonstrated that such deletions or cuts were necessary as per the internal standard practices and policies of the defendant No.1. It was submitted that the deletions and cuts made by the said defendants were for broadcasting convenience and this resulted in “multiple versions” being created of the same film, which could never be part of the internal standard practices and policies of the company, thereby demonstrating that the termination of the licenses of the suit films under the said Assignment Agreements, was clearly justified and that the said defendants ought to be restrained during the pendency of the present suit

from further exploiting rights in the said films. In this regard, reference was made to Exhibit “U” to the plaint, which is an illustrative chart showing the manner in which the said defendants deleted and made cuts in the individual films, thereby committing breach of clause 3.11 of the said assignment agreements.

5. It was further submitted that the said defendants had also committed breach of clause 3.15 of the assignment agreements by making cuts in the title at the beginning and at the end of the regional films, thereby showing that the termination of the licenses in respects of the said films under the assignment agreements was clearly justified. It was emphasized that the defendant No.1 kept on sending holding replies to the notices sent on behalf of the plaintiff and therefore, the plaintiff had no alternative but to terminate the said licenses. It was also highlighted that even before this Court the defendant No.1 had failed to specify as to what was part of its internal standard practices and policies to justify such “multiple versions” of the same films being created due to deletions, edits and cuts at different points in time. On this basis, it was submitted that the prayers made in the interim application deserve to be granted.

6. By placing reliance on judgment of the Privy Council in the case of **Nune Sivayya and Anr. Vs. Maddu Ranganayakulu and Anr.**¹ and that of

1 1935 2 OUDH Weekly Notes 496

the Supreme Court in the case of **Juggilal Kamlapat Vs. Pratapmal Rameshwar**², it was contended that the plaintiff is entitled to justify termination of the assignment agreements on a ground which existed at the time of such termination, whether or not it was stated in the termination notices. This was submitted in the light of the fact that the termination notices relied upon only clause 3.11 of the assignment agreements and there was no reference to clause 3.15 thereof.

7. It was further submitted that although the assignment agreement dated 30th March 2016, pertained to as many as 250 films, the nature of the agreements was such that as regards each film a separate and distinct license was executed, thereby justifying the step taken by the plaintiff to identify specific films in respect of which breaches had been committed by the said defendants and to terminate the licenses only of the said suit films. This was in response to a specific stand taken on behalf of the said defendants that the plaintiff was cherry-picking from the 250 films that formed subject matter of the assignment agreements and that such a step of terminating licenses in respect of only the suit films was not justified. According to the learned senior counsel appearing for the plaintiff, the said stand taken on behalf of the defendants was without any substance and under the Copyrights Act, 1957, each film must necessarily be treated as a separate and distinct work and

2 (1978) 1 SCC 69

breach of any of the clauses of the assignment agreements in respect of individual films could certainly be identified and therefore, the termination of licenses in respect of the suit films could not be said to be cherry-picking and in the facts of the present case such a step taken by the plaintiff was clearly justified.

8. It was further submitted that if the said defendants were to be permitted to continue to exploit the said films despite termination notices issued by the plaintiff, it would result in irreparable loss and injury to the plaintiff. It was submitted that since a strong *prima facie* case is clearly made out by the plaintiff in its favour to justify the termination of licenses in respect of the suit films, under the two assignment agreements, in the face of such grave and irreparable loss being suffered by the plaintiff, the balance of convenience is clearly in its favour and hence, this Court may consider allowing the interim application.

9. In the light of the specific contentions raised on behalf of the defendants to the effect that the plaintiff had acted in a *mala fide* manner, it was submitted on behalf of the plaintiff that there was no place for raising the ground of malice when interpretation of pure contractual terms was involved and the principles of fair play and malice relevant for situations where State and State Authorities are parties to contractual arrangements, are completely

foreign to such purely contractual arrangements between private parties. In that light, it was submitted that reliance placed on behalf of the said defendants on the judgment of the Supreme Court in the case of **M.P. Power Management Company Limited Vs. Sky Power Southeast Solar India Private Limited & Others**³ is wholly unjustified. The learned senior counsel appearing for the plaintiff further distinguished other cases on which reliance was placed on behalf of the said defendants. It was emphasized that when the contractual terms are clear, there is no question of the Court going into the conduct of the parties to interpret contractual terms and therefore, the law laid down by the Supreme Court in the cases of **The Godhra Electricity Co., & Another Vs. The State of Gujarat & Another**⁴ and **MMTC Limited Vs. Vedanta Ltd.**⁵, is inapplicable. It was further submitted that since the contractual terms in the present case in the form of various clauses of the assignment agreements are absolutely clear and can be interpreted in plain terms, there is no scope to apply the law recognized in the judgment of this Court in the case of **Mohan Meakin Breweries Ltd. Vs. Oceanic Imports and Exports Corporation & Another**⁶, which was really concerned with ambiguity in the terms of the contract.

10. Reliance placed on behalf of the defendant Nos.1 and 1A on the

3 (2023) 2 SCC 703

4 (1975) 1 SCC 199

5 (2019) 4 SCC 163

6 1980 Mh.L.J. 803

judgment of the Supreme Court in the case of **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors.**⁷ was also claimed to be misplaced, for the reason that, according to the plaintiff, sufficient material is available on record to indicate the irreparable injury that it would suffer in the event the interim application is rejected. It was emphasized that in the present case the plaintiff is asserting its copyright in the suit films and therefore, this Court ought to hold in favour of the plaintiff in the light of the overwhelming material in its favour.

11. By referring to the clauses of the assignment agreements, it was submitted that although specific clauses for termination of the agreements pertained only to a situation where the consideration amount was not paid as per the agreed terms, but much emphasis was placed on the residuary clause in the agreements, which reserved rights of the parties available to them under general law. On this basis, it was submitted that since according to the plaintiff, the said defendants had breached clauses 3.11 and 3.15 of the assignment agreements, the cure notices as contemplated under the specific termination clause were not necessary. It is a different matter that the plaintiff had issued such notices, but it was not required to do so in law and that in any case, considering the material available on record, it was clear that in view of the flagrant breach of the clauses of the assignment agreements by the said defendants, the termination is clearly valid and therefore, interim reliefs ought

⁷ (1992) 1 SCC 719

to be granted in favour of the plaintiff.

12. It was further submitted on behalf of the plaintiff that the termination of the contract can be justified by relying upon Section 39 of the Indian Contract Act, 1872, since the said defendants had refused to perform their part of contract in its entirety. It was submitted that in such circumstances, the termination notices issued by the plaintiff in the context of the said assignment agreements were clearly justified and valid, thereby indicating that interim reliefs sought in the application deserve to be granted.

13. On the other hand, Mr. Ashish Kamat, learned senior counsel appearing for defendant No.1 submitted that the approach adopted by the plaintiff can be said to be flawed for the reason that the plaintiff has sought to partly terminate the assignment agreement dated 30th March 2016, by selectively picking only the suit films out of total 250 films that were subject matter of the said assignment agreements. It was submitted that such part termination cannot be permitted as it is in the teeth of the terms of the assignment agreement itself. It was emphasized that the suit films were being exploited for more than 8 years at the time when the drastic step of terminating the assignment agreements was taken on behalf of the plaintiff.

14. It was submitted that the specific termination clause in the assignment agreements pertained only to failure on the part of defendant No.1

to pay consideration amount as agreed between the parties. Since it was an admitted position that the entire consideration of ₹ 162 Crores had been paid by the defendant No.1, there was no ground available for the plaintiff to terminate the assignment agreements. It was submitted that even if the general law regarding right to terminate a contract upon breach of terms of the contract is to be applied, the plaintiff has miserably failed to demonstrate as to how clauses 3.11 and 3.15 of the assignment agreements have been breached.

15. It was submitted that the allegation regarding “multiple versions” of the same film being broadcast by the defendant No.1 was without any basis, simply for the reason that the plaintiff has agreed for an absolute right with the defendant No.1 to delete, edit or cut any portion of the subject films, *inter alia*, in terms of its standard practices and policies. The allegation that the defendant No.1 for its broadcasting convenience had committed breach of clause 3.11 of the assignment agreements is not supported by the material on record. It was submitted that it was standard industry policy, which the plaintiff was not only aware but itself was indulging in, to the effect that for adjusting timelines in order to incorporate advertising etc., films are broadcast with such deletions, edits and cuts so that the time period of advertising is properly adjusted within the overall broadcast of the films. It was emphasized that even the plaintiff itself had indulged in such acts of deletion, edits and cuts, when compared with the total duration of such films as recorded in the

certificates issued by the censor board. It was further brought to the notice of this Court that such deletions, edits and cuts of films were undertaken by defendant No.1 in respect of the entire set of 250 films and yet the plaintiff had deliberately chosen only those films that were generating high level of revenue, thereby indicating an attempt to cherry-pick the most successful films in order to somehow cancel the licenses and to take back the films for exploitation of rights itself. In this context, the allegation of malice was levelled against the plaintiff and it was submitted that the contractual terms could not be permitted to be incorporated by the plaintiff to its own advantage only, particularly in the teeth of recognized standard practices and policies of the industry.

16. On the allegation that defendant No.1 had not specified what its standard practices or policies were, attention of this Court was invited to the contents of the reply affidavit filed on behalf of the said defendant. It was submitted that the plaintiff having agreed under the assignment agreements for an absolute right vesting in defendant No.1 to make such deletions, edits and cuts in the subject films, it cannot be permitted turn around and allege that “multiple versions” of the same films were being created, which allegedly violated clause 3.11 of the assignment agreements.

17. In this context, it was submitted that in the reply affidavit, the

defendant No.1 had specified its internal standard practices and policies and that there was nothing in the assignment agreements to indicate that broadcasting convenience of defendant No.1 was excluded from the internal policy and practice of defendant No.1. It was submitted that the plaintiff itself had agreed in plain terms to give absolute and unfettered permission to the defendant No.1 to delete, edit or cut the films and therefore, the argument regarding “multiple versions” being created by the defendant No.1 is nothing but a fallacious argument and that the logical effect of the wide discretion given to the defendant No.1 must follow. Once the plaintiff had agreed for such wide discretion being available to defendant No.1 under the terms of the assignment agreements, there was no scope to restrict the same by alleging that “multiple versions” of the films were being created. Reference was made to clause 2.18 of the assignment agreements to claim that the defendant No.1 was given the exclusive and unrestricted right in the materials of the films and also with regard to the exclusive assigned rights.

18. It was further submitted that the parties to the assignment agreements had negotiated a commercial bargain voluntarily and the terms of clause 3.11 being clear and unambiguous, there is no scope available for the plaintiff to claim that internal policies and practices of the defendant No.1 ought to be stated in writing. It was further submitted that the said practice of making deletions, edits and cuts in the films depending on the advertisements

being shown during the broadcast of the films, is a known industry practice which even the plaintiff has been indulging in and therefore, it cannot lie in the mouth of the plaintiff that “multi versions” of the films were being created by the defendant No.1. In this regard, reliance was placed on judgment of this Court in the case of **Mohan Meakin Breweries Ltd. Vs. Oceanic Imports and Exports Corporation & Another** (*supra*) and judgment of the Supreme Court in the case of **Adani Power (Mundra) Limited Vs. Gujarat Electricity Regulatory Commission & Others**⁸.

19. It was further submitted that the conduct of the parties could also to be looked into to examine the interpretation of clause 3.11 and in that regard reliance was placed on judgments of the Supreme Court in the case of **The Godhra Electricity Co., & Another Vs. The State of Gujarat & Another** (*supra*) and **MMTC Limited Vs. Vedanta Ltd.** (*supra*).

20. As regards Section 39 of the Contract Act, upon which reliance was placed on behalf of the plaintiff, it was submitted that in the first place the plaintiff had failed to establish any breach of the clauses of the assignment agreements, but without prejudice to the said contention, the law in the context of Section 39 of the Contracts Act shows that every breach does not entitle the party to terminate the contract. It was submitted that termination of the contract is a drastic step and a serious matter, which cannot be resorted

⁸ (2019) 19 SCC 9

to on the basis of alleged breach, which does not go to the root of the contract itself. It was submitted that if a party proceeds on the basis of its interpretation as to the effect of the clauses of the contract, it cannot be construed as repudiation or refusal to perform the contract. Therefore, Section 39 of the Contract Act cannot be invoked. In this regard, reliance was placed on judgments in the cases of **Classic Motors Ltd. Vs. Maruti Udyog Ltd. & Ors.**⁹, **Steel Bros. & Co., Limited Vs. Dayal Khatav & Co.**,¹⁰ and **Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd. And Others**¹¹.

21. It was further submitted that even if the material placed on record by the plaintiff was to be taken into consideration, it was clear that after the cure notices were issued in July 2024 on behalf of the plaintiff, there could not be said to be any breach of clause 3.11 of the assignment agreements and that new grounds were raised in the plaint when the suit was filed, which were not available when the assignment agreements were terminated. It was submitted that even if the judgments in the case of **Nune Sivayya and Anr. Vs. Maddu Ranganayakulu and Anr. (supra)** and **Juggilal Kamlapat Vs. Pratapmal Rameshwar (supra)** are to be taken into consideration, at the time when the termination notices were issued, the grounds highlighted in the plaint were not available to the plaintiff and therefore, on this count also, the interim

9 1995 SCC OnLine Del 94

10 1923 SCC OnLine Bom 56

11 (2005) 11 SCC 73

application deserves to be dismissed.

22. It was submitted that in any case, since the alleged breaches were curable in nature and the plaintiff having issued cure notices in July 2024, could not have issued the termination notices in the light of the material available on record to show that there was hardly any breach after the cure notices were received. On this basis, it was submitted that the application deserved to be dismissed.

23. Mr. Rashmin Khandekar, learned counsel appearing for defendant No.1A supported the contentions raised on behalf of defendant No.1 and made further submissions. It was reiterated that since the practice of deleting, editing and cutting the films was applied uniformly in respect of all the films that were subject matter of the assignment agreements, the plaintiff is not justified in claiming breach in respect of only the suit films and contending that a fundamental breach of the assignment agreements had been committed. The contentions regarding broadcasting convenience being a standard practice and policy were reiterated and it is further submitted that when the clauses of the assignment agreements were absolutely clear, there was no scope for reading implied terms into the same. In this regard reliance was placed on judgment of the Supreme Court in the case of **Nabha Power Limited Vs. Punjab State Power Corporation Limited (PSPCL) and another**¹²,

¹² (2018) 11 SCC 508

as also **Mohan Meakin Breweries Ltd. Vs. Oceanic Imports and Exports Corporation & Another (supra)**.

24. It was submitted that as per the assignment agreements there was no restriction on editing choices under clause 3.11 or that the deletion, editing or cut in the films could be made only once and not thereafter. On this basis, it was reiterated that the drastic step of terminating licenses in respect of the suit films was not justified. It was also emphasized that although details of deletion of certain specific scenes from the films were sought to be highlighted, there is no pleading on record alleging any mutilation or distortion of the films in the said process. It was submitted that reliance placed on Exhibit “U” to the plaint, is unjustified. It was submitted that the instances given in the said exhibit, except two, pertained to broadcasts that were made after the termination notices dated 22nd August 2024 were issued. Even with regard to removing credits from six regional films, it was highlighted that five out of the six instances pertained to dates after the issuance of the termination notices. It was further stated that the plaintiff by cherry-picking only the suit films out of 250 films that form part of the Film Assignment Agreement dated 30th March 2016, showed the *mala fide* nature of termination of the licenses pertaining to the suit films. It is submitted that in any case, the aspect of balance of convenience tilted in favour of the defendants, as the entire consideration of ₹ 162 Crores was admittedly

received by the plaintiff and if the plaintiff is ultimately able to make out its case, it can be compensated by way of damages. But, on the other hand, the defendant will suffer irreparable injury if interim reliefs as prayed by the plaintiff are granted and therefore, the balance of convenience is in favour of the defendants. It was submitted that on this ground also the interim application deserved to be dismissed. In support of the said contention, reliance was placed on judgments of the Supreme Court in the case of **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors. (supra)** and **Best Sellers Vs. Aditya Birla**¹³.

25. This Court has considered the rival submissions, particularly in the light of the relevant clauses of the two assignment agreements pertaining to the suit films. Before dealing with the relevant clauses of the assignment agreements, it would be necessary to first deal with the contention of the said defendants that the plaintiff could not have terminated the individual licenses pertaining to the suit films because the assignment agreement dated 30th March 2016 covered as many as 250 films for which the entire consideration of ₹ 162 Crores was paid to the plaintiff. This Court is of the opinion that since the plaintiff under the said assignment agreements effectively assigned the copyright in each of the 250 films in favour of defendant No.1, each such license pertaining to an individual film has to be treated as a separate and

13 (2012) 6 SCC 792

distinct license. The plaintiff is justified in claiming that it can exercise its right to terminate the license pertaining to an individual film by relying upon the clause in the assignment agreements permitting termination on the basis of general law pertaining to breach of any clause concerning material obligations of the parties. Clause 3.11 of the said assignment agreements does grant right to the said defendants to delete, edit or cut the films in certain specific contingencies, including in compliance with the internal standard policies and practices of the defendant No.1. If and when such deletions, editing and cuts of any portion of an individual film is undertaken, which according to the plaintiff, does not fall within the contingencies contemplated under clause 3.11 of the assignment agreements, the plaintiff is well within its right to terminate such individual license of the film which forms part of the assignment agreement. Therefore, this Court is unable to agree with the said defendants that the assignment agreements could only have been terminated in entirety and the acts of the plaintiff in issuing termination notices only in respect of the suit films was not justified.

26. The said defendants have also alleged that by terminating the license of only the suit films, the plaintiff was cherry-picking, which demonstrated *mala fides* on the part of the plaintiff. In this regard reliance was placed on judgment of the Supreme Court in the case of **M.P. Power Management Company Limited Vs. Sky Power Southeast Solar India Private**

Limited & Others (supra) but, this Court is of the opinion that the said judgment is inapplicable to the facts of the present case, simply for the reason that the Supreme Court in the said case was dealing with a situation where one of the parties was a State entity and certain observations were made in that context. In the present case, this Court is concerned with purely private parties, who entered into a contract and the Court needs to examine as to whether the act of the plaintiff in issuing the termination notices in respect of the suit films can be said to be within the contractually agreed arrangement between such private parties. So long as the plaintiff is able to justify that its termination notices were validly issued within the four corners of the terms of the contract, the allegation of *mala fide* raised on behalf of the said defendants cannot be accepted. This would equally apply to the contention raised on behalf of the said defendants that the plaintiff was seeking to claw back certain commercially successful films and therefore, such an act could be said to be *mala fide*, amounting to cherry-picking. This Court is of the opinion that in a commercial contract between private parties, if one of the parties terminates the contract and it is able to justify the same purely on the interpretation of the terms of the contract, such an allegation of *mala fide* and cherry-picking cannot be the basis to doubt the validity of such termination of contract. Therefore, this Court rejects the contention raised on behalf of the said defendants that the termination notices pertaining only to the suit films can be

said to be bad, only on the ground that specific number of films were subject matter of such termination, although the assignment agreements pertained to more number of films.

27. A perusal of the termination notices dated 22nd August 2024, issued by the plaintiff in the context of both the Film Assignment Agreements shows that the ground for termination pertained only to clause 3.11 of the said assignment agreements. But, during the course of arguments, reliance was also placed on clause 3.15 of the assignment agreements in order to claim that there was breach of the said clause also. It would be appropriate to first deal with the contention raised on behalf of the parties in respect of the alleged breach of clause 3.11 of the assignment agreements. But, at this stage, reference to both the clauses would be appropriate. Clauses 3.11 and 3.15 of the Film Assignment Agreements read as follows :

“3.11 The Assignee shall have absolute, complete and unrestricted rights/ power to delete, edit, cut any portion of the Films to the extent necessary solely for complying with any applicable local/national laws/ regulations in the Territory or a written direction from a regulatory or judicial authority or internal company’s standard and practices polices or to avoid obscene or blasphemous content or to avoid hurting the cultural or religious sentiments of persons or communities or defame any person (alive or dead). Further, the Assignee shall have the

right to insert commercial breaks during the telecast of the Films to display the advertisements of third party products/services and may provide such breaks during the Films. The Parties hereby agree that the Assignee shall also have the right to extract clips, image, audio-video, etc. for creation of publicity materials solely for the purpose of promotion of the Films and not for any commercial exploitation of such clips, images and audio-video. The assignee shall take prior approval (not to be unreasonably withheld or delayed) of the Assignor for extracting any audio of any songs of the films even for promotional purposes.

- 3.15 The Assignee shall have the sole discretion and right to edit/delete (if required by Assignee) the end credits appearing on the tapes/masters of the Regional Language Films. Further, the Assignor confirms and undertakes that, the afore-mentioned right to edit is available with the Assignor for the Regional Language Films and that the Assignor is authorised to grant the said rights to the Assignee.*

“Regional Language Films” for the purpose of this Agreement shall mean the film(s) wherein the Original Language is any language other than Hindi i.e. original language is either Tamil, Telugu, Kannada, Malayalam, Bengali, Gujarati or Marathi and dubbed in Hindi language as more particularly mentioned in Annexure-A (“Regional Language(s)).

The Assignee hereby confirms that the Assignee will not

edit the opening title “Goldmines Telefilms Private Limited Presents, Manish Shah and Name of the Movie” and end title “It’s a Goldmines Telefilms Private Limited presentation” from the Regional Language Films wherever it appears. Further, the Assignee hereby confirms that they have no right to edit the end credits appearing on the tapes/masters of the Hindi films i.e. film(s) wherein the Original Language is Hindi.”

28. Clause 3.11 of the assignment agreements specifies that the defendant No.1 has absolute, complete and unrestricted rights/power to delete, edit or cut any portion of the films. This power is to be exercised in contingencies enumerated in the aforesaid clause. It is undisputed that for the purposes of the present case the only contingency in question is “internal company standard and practices policies.” The plaintiff has alleged that the said defendants for their “broadcasting convenience” have deleted, edited and cut portions of the suit films on various occasions, thereby creating “multiple versions” of the suit films and that this amounts to breach of clause 3.11 of the assignment agreements. The question is, whether *prima facie* the creation of such “multiple versions” by the said defendants can be said to be a breach of clause 3.11 of the assignment agreements.

29. In this context one of the major allegations made by the plaintiff against defendant No.1 is that neither in response to the cure notices issued in

July 2024, nor in the reply affidavits filed in the interim application before this Court, has the said defendant specified its internal practices and policies to justify the act of creating “multiple versions” of the suit films. In this context, a perusal of paragraph Nos.22 to 25 of the affidavit in reply of defendant No.1 shows that the said defendant has stated its practice and policy while exploiting the said films on various channels and platforms when limited time slots are provided for advertisements and that in that context addition of advertisement during run time of a film may alter the original run time of a film. It is specifically pleaded that the programming team of the said defendant does make minor changes in this context as satellite channels generate revenue through the process of inserting limited slots for advertisements during the broadcast of a film. This Court is of the opinion that *prima facie* the aforesaid pleadings do indicate the manner in which defendant No.1 has referred to its internal standard practices and policies with regard to incorporating limited time slots for advertisements during the course of broadcast of films. This Court is of the opinion that having paid valuable consideration amounting to ₹ 162 Crores for the films that are subject matter of the Film Assignment Agreement dated 30th March 2016 and ₹ 2 Crores in respect of Film Assignment Agreement dated 06th November 2015, the defendant No.1 *prima facie* can be said to be entitled to have its own internal standard practice or policy to earn maximum revenue by commercially

exploiting the films that form subject matter of the assignment agreements.

30. It is also specifically pleaded in the said affidavit in reply of defendant No.1 that this is a practice employed consistently by the said defendant in respect of the entire set of films that form subject matter of the assignment agreements, thereby indicating consistency in such practice or policy. It is also indicated that the plaintiff itself has indulged in exploiting films after editing the original versions as per censor certificates. In the rejoinder affidavit, the plaintiff has not been able to demonstrate why the defendant No.1 cannot claim the aforementioned acts on its part as being part of its internal standard practice or policy. It is significant to note that in response to the specific stand taken by defendant No.1 that even the plaintiff has been carrying out such deletions, edits and cut, the plaintiff has merely stated that while it has an unqualified right from its assignors to edit films as per its convenience, while the defendant No.1, has restricted rights. The said stand taken on behalf of the plaintiff is not borne out by the language used in clause 3.11 of the assignment agreements, because the clause actually confers absolute, complete and unrestricted rights/power on the defendant No.1 to delete, edit or cut any portion of the films and thereupon gives the list of contingencies. This Court is of the opinion that the defendant No.1 has been able to *prima facie* indicate that its act of carrying out deletions, edits and cuts in the films is covered under its absolute, complete and unrestricted

rights/power as per its internal standard practice and policy.

31. This Court is unable to accept the contention raised on behalf of the plaintiff that such deletions, edits or cuts in the films could not have been carried out for broadcasting convenience by the said defendants. After all, broadcasting of the films is for commercially exploiting the rights in the films, which have been assigned to the said defendant No.1 and this is evident from clause 2.18 of the assignment agreements. The said clause specifies that the defendant No.1 shall have exclusive and unrestricted rights in the materials of the films and also with regard to the exclusive assigned rights, further specifying that the same shall be exercised by the said defendant in any manner whatsoever as deemed fit. Thus, the defendant No.1 and consequently defendant No.1A are entitled to undertake such steps as necessary to fully commercially exploit the films that form subject matter of the assignment agreements.

32. In this context, when the same film is being broadcast on different platforms, including satellite television channels, wherein limited time slots for advertisements may vary, the said defendants would *prima facie* be entitled to carry out such deletions, edits and cuts to the films and this may lead to “multiple versions” but that in itself cannot be said to be in breach of clause 3.11 of the assignment agreements. As noted hereinabove, clause 3.11

of the assignment agreements starts with an absolute right being reserved with the said defendants to carry out deletions, edits and cuts to the films. Having agreed to such a wide right/power being available with the said defendants, the plaintiff cannot claim that the actual deletions, edits and cuts carried out by the said defendants violate the clause to justify the drastic step of terminating the assignment agreements to the extent of licenses in respect of the suit films. In this context, the said defendants are justified in relying upon judgments in the cases of **Mohan Meakin Breweries Ltd. Vs. Oceanic Imports and Exports Corporation & Another (supra)** and **Adani Power (Mundra) Limited Vs. Gujarat Electricity Regulatory Commission & Others (supra)**.

33. At this stage, it would be relevant to deal with the contention raised on behalf of the plaintiff in the context of Section 39 of the Contract Act. The said provision stipulates that a contract can be put an end by a party, if the other party to the contract refuses to perform its part of the contract wholly or disables itself from performing. In the present case, even if the allegations made by the plaintiff against the said defendants are to be accepted, there is scope for the said defendants to argue that the steps taken on their behalf can be justified on the basis of their interpretation of the relevant clauses of the contract and in such circumstances, at this stage itself, it would not be possible to reach a conclusion that the said defendants had refused to perform their promise wholly, so as to justify in order to take the drastic step of

terminating the contract itself. The step taken by the said defendants *prima facie*, cannot be said to be manifesting their refusal to perform their part of the contract in order to justify the drastic step of termination undertaken by the plaintiff. In this context, the said defendants are justified in relying upon judgment of the Delhi High Court in the case of **Classic Motors Ltd. Vs. Maruti Udyog Ltd. & Ors. (supra)**, wherein it was held that termination of a contract is a drastic step and in the context of Section 39 of the Contract Act, it has to be ascertained whether the alleged breach goes to the very root of the contract. In the facts of the present case, this Court is unable to agree with the plaintiff that the alleged breach is of such a nature that it would justify the drastic step of termination of the contract itself, quite apart from the fact that in the facts of the present case, *prima facie*, this Court is unable to agree with the plaintiff that the said defendants could at the most have made deletions, edits or cuts to the films only once and that doing it more than once, leading to “multiple versions” could be said to be in breach of clause 3.11 of the assignment agreements, which was so fundamental that it went to the root of the contract. The law laid down on similar lines in the judgment passed by this Court in the case of **Steel Bros. & Co., Limited Vs. Dayal Khatav & Co., (supra)**, is also correctly relied upon by the said defendants while resisting the prayers made in the present application.

34. Even otherwise, by referring to the material placed on record by

the plaintiff itself, the said defendants have submitted that at the time when the termination notices were issued on 22nd August 2024, the grounds for termination as claimed in the plaint were not available for the plaintiff. It is to be noted that the plaintiff itself issued cure notices in July 2024, before issuing the actual termination notices in the present case. It has been vehemently argued on behalf of the plaintiff that as per clauses of the assignment agreements, cure notice was required to be issued only if there was breach of the conditions pertaining to payment of consideration, as that was the specific ground spelt out in the termination clause, thereby claiming that no such cure notices were required to be given to the defendant No.1 and that therefore, the said aspect could be ignored while considering the termination notices issued on 22nd August 2024.

35. But, this Court is of the opinion that if the plaintiff is relying upon the residuary clause in the assignment agreements specified in the standard terms and conditions to the effect that all rights and remedies whatsoever, to which either party may be entitled, would be available, having issued the cure notices even with regard to the alleged breach of clause 3.11 of the assignment agreements, it cannot lie in the mouth of the plaintiff to turn around and assert that no such cure notices were necessary. To this limited extent the said defendants are justified in relying upon the law laid down by the Supreme Court in the cases of **The Godhra Electricity Co., & Another Vs.**

The State of Gujarat & Another (supra) and MMTC Limited Vs. Vedanta Ltd. (supra).

36. In this context, when the material placed on record by the plaintiff itself, highlighted by the said defendants, is perused it shows that after the cure notices dated 22nd July 2024 and 23rd July 2024 were issued by the plaintiff, there was hardly any breach of clause 3.11 of the assignment agreements on the part of the said defendants. Even if the law laid down in the cases of **Nune Sivayya and Anr. Vs. Maddu Ranganayakulu and Anr. (supra)** and **Juggilal Kamlapat Vs. Pratapmal Rameshwar (supra)** is to be applied, it becomes evident that the plaintiff would be entitled to rely upon grounds that were available on the date when the termination notices were issued i.e. 22nd August 2024. The material placed on record by the plaintiff itself shows that even with regard to clause 3.15 of the assignment agreements, after the cure notices were issued, the said alleged breach was rectified. Therefore, the plaintiff *prima facie* does not appear to be justified in taking the drastic step of issuing termination notices on 22nd August 2024, even if clause 3.15 of the assignment agreements is to be taken into consideration. Considering the fact that the plaintiff itself issued cure notices in the present case and *prima facie* the breach of clause 3.15 of the assignment agreements can be said to be a curable breach, the said defendants are justified in resisting the interim reliefs claimed in the present application.

37. Although during the course of arguments, much emphasis was placed on deletion of certain scenes of the suit films, in the absence of any pleading with regard to the suit films being distorted or mutilated in any manner, this Court is of the opinion that the emphasis placed on the said aspect of the matter is not justified. In any case, the illustrations given in the Exhibits filed alongwith the plaint pertain to the period after the termination notices dated 22nd August 2024 were issued. As noted hereinabove, even such deletions, edits or cuts were in the context of advertisements, time slots specified in various platforms on which the said defendants have been broadcasting the films and therefore, the plaintiff cannot be said to have made out a strong *prima facie* case for grant of interim reliefs as claimed. It is a settled position of law that when the plaintiff fails to make out a *prima facie* case for grant of interim reliefs, enquiry on the other two aspects of the matter i.e. the likelihood of irreparable loss or injury and balance of convenience is not required. But, since the said defendants have referred to the judgments of the Supreme Court in the case of **Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors. (supra)** and **Best Sellers Vs. Aditya Birla (supra)**, it would be appropriate to consider the nature of reliefs sought in the suit itself by the plaintiff. The plaintiff in prayer clause (E) has specifically sought a decree against the said defendants to render accounts of all income earned from exploitation of the suit films after termination of the licenses and thereupon they be ordered to

pay to the plaintiff such amount as may be found due. This indicates that the plaintiff itself has claimed damages/compensation and therefore, this Court is of the opinion that even if the plaintiff ultimately succeeds in the suit, it can claim amounts towards such damages/compensation. On the other hand, if the said defendants are restrained from exploiting the suit films, during the pendency of the suit, they will suffer irreparable losses, if eventually the suit is dismissed. This, despite the fact that the entire consideration of ₹ 162 Crores has been admittedly paid by defendant No.1 for 250 films under the Film Assignment Agreement dated 30th March 2016 and ₹ 2 Crores for the subject film of the Film Assignment Agreement dated 06th November 2015. Therefore, this Court is of the opinion that the plaintiff is not justified in insisting upon interim reliefs as prayed in the application.

38. A passing reference was made to Section 57 of the Copyrights Act on behalf of the plaintiff in respect of which specific submissions were made on behalf of the said defendants also. But, since the learned senior counsel appearing for the plaintiff indicated that the said point was not being pressed, this Court is not dealing with the same in this order.

39. It is also to be noted that a specific statement was made on behalf of defendant No.1 as well as defendant No.1A that clause 3.15 will be strictly adhered to by the said defendants and that there would be no breach of the

same in the future. The said statement is recorded as an undertaking to this Court. It would also be appropriate, in the facts and circumstances of the present case, that if eventually the suit is indeed decreed in favour of the plaintiff, for successfully pressing relief in terms of prayer clause (E) noted hereinabove, the said defendants ought to be directed to maintain accounts as regards all the income earned from the date of termination i.e. 22nd August 2024, in respect of the exploitation of the suit films except “Mission Vande Mataram.” The defendant No.1 and 1A shall place on record of this suit such statement of accounts on 31st December and 30th June of each year during the pendency of the suit.

40. In view of the above, the specific reliefs sought in the instant interim application are rejected and the application is disposed of in above terms.

(MANISH PITALE, J.)