

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****IN ITS COMMERCIAL DIVISION****INTERIM APPLICATION (L) NO. 20559 OF 2021****IN****COMMERCIAL IP SUIT (L) NO. 20558 OF 2021**

Narendra Hirawat & Co

...Plaintiffs

Versus

Aftab Music Industries & Anr

...Defendants

Mr Hiren Kamod, *with Ravindra Suryawanshi, Arpit Choudhary, Krunal Mehta & Archis Bhatt, i/b Bar & Brief Attorneys, for the Applicant/Plaintiff.*

Ms Bhagyashree Keny, *with Rajesh Mishra, i/b Desh Deepak Singh, for Defendant Nos. 1 and 2.*

CORAM: G.S. PATEL, J

DATED: 28th September 2021

PC:-

1. The application is moved after notice. This is one of those cases where, independently of anything that the Plaintiff says, in my view not only should the Interim Application be made absolute immediately, but the Suit should be decreed including with exemplary and punitive costs and a contempt notice should be issued to the Defendants. The reason is, in a single sentence, because the Defendants are today acting in wilful and deliberate breach of an undertaking and acknowledgement they gave in writing

to this Court in Consent Terms as far back as in 2012 and which were made orders of this Court.

2. The request therefore for time “to put in a reply” must be and is empathetically rejected. The right to a reply does not inure to a Defendant who is dishonest and is entirely unmindful of commitments made to this Court. If there has been change of circumstances by which the Defendants expected to be relieved from undertakings made to this Court then it was expected of the Defendants that it would apply to this Court for a suitable order.

3. In any case the Defendant has had service of these papers since 9th September 2021.

4. The relevant dates are very few. By two Deeds of Assignment of 22nd April 2004, the 1st Defendant (of which the 2nd Defendant is a proprietor), and the 2nd Defendant, being the producers of a number of films listed in annexures to the Deeds of Assignment assigns their rights to these films to the Plaintiff in perpetuity. This was what is called a “lock, stock and barrel” assignment, meaning that the Defendants did not retain any rights whatsoever in their favour. The assignments were in perpetuity. As we shall see, about this there can be no dispute at all.

5. In 2007, the Plaintiff filed a Suit No. 455 of 2007 against the 1st Defendant and Suit No. 454 of 2007 against the 2nd Defendant for declaratory and injunctive reliefs. On 21st December 2012, the parties to these previous Suits arrived at Consent Terms and these

were disposed of by an order of this Court (SJ Kathawalla J). A copy of that order is at page No. 214 of the plaint. The Consent Terms themselves are from pages 215 to 219. So that there is no ambiguity at all, I am reproducing the Consent Terms in full but without the annexures.

“CONSENT TERMS

The Plaintiff and the Defendant have amicably agreed to following consent terms:

- A. WHEREAS by the Deed of Assignment dated April 22, 2004, the Defendant being producer of 20 (twenty) feature films as mentioned in Annexure “A” to the said Deed of Assignment assigned entire copyright in perpetuity, for entire world, know in the film trade as “Negative Rights”, in favour of the Plaintiff for a consideration mentioned therein and which was duly paid by the Plaintiff and received by the Defendant. The delivery of all negatives have been effected by the Defendant and as such the negatives of the suit films are in physical possession of the Plaintiff. Prior to said Deed of Assignment dated April 22, 2004 licensed certain rights viz. theatrical rights and Doordarshan (LPT Channel) rights in the suit films in favour of certain persons for a limited period and it was agreed that negative rights of the Plaintiff shall in respect of those films shall be subject to rights already assigned by the Defendant. The detail of said rights so licensed were given in Annexure “B” to the said Deed of Assignment.
- B. AND WHEREAS inspite of said Deed of Assignment, the Defendant had misunderstanding regarding mutual rights and obligations of the parties pursuant to said assignment. Therefore, under such

misunderstanding, the Defendant vide its letter dated 03/11/2006 terminated the said Deed of Assignment dated 22/04/2004, unilaterally in contravention of provisions of Section 19 of the Copyright Act, 1957.

C. AND WHEREAS aggrieved by the act of the Defendant the Plaintiff filed the instant suit for following reliefs:

“(a) that this Hon’ble Court be pleased to declare —

(i) that the deed of Assignment dated April 22, 2004 assigning negative rights in 20 (Twenty) films in favour of the Plaintiff is valid and subsisting ;

(ii) that the Plaintiff is the owner of the entire copyright in perpetuity for the entire world (known in film world as Negative Rights) in 20 (twenty) feature films mentioned in Annexure - “A” to the Deed of Assignment dated April 22, 2004 (Exhibit - “A” to the Plaintiff);

(iii) that the Defendant is not entitled under law to terminate Deed of Assignment dated April 22, 2004 entered into with the Plaintiff;

(b) that this Hon’ble Court be pleased to pass a permanent order and injunction restraining the Defendant -

(i) directly or indirectly from claiming any copyright or dealing with 20 (twenty) feature films as mentioned in Annexure - “A” to the Deed of Assignment dated

April 22, 2004 (Exhibit - "A" to the Plaintiff) in any manner whatsoever;

- (ii) from claiming termination of the Deed of Assignment dated April 22, 2004 (Exhibit - "A" to the Plaintiff) in any manner whatsoever;*
- (c) For interim and ad-interim relieves in terms of prayer (b) above.*
- (d) For cost of this suit to be provided for.*
- (e) For such other and further relieves as the nature and circumstances of the case may require."*

D. AND WHEREAS the Plaintiff had also taken out Notice of Motion NO. 638/2007 seeking temporary order and injunction against the Defendant, pending hearing and final disposal of the suit. The said Notice of Motion was made absolute in terms of prayer clause (a) (i) and (a) (ii) restraining Defendant.

E. The parties now amicably settle the dispute as per following terms.

1. **The Defendant do hereby forthwith irrevocably accept, admit, acknowledge and confirm that the Deed of Assignment dated April 22, 2004 whereby the Defendant assigned in favour of the Plaintiff entire copyright in the suit films as mentioned in Annexure "A" to the said Deed of Assignment in perpetuity, for entire world (known in the film trade as "Negative Rights") is valid and subsisting and the Defendant has no right, of any nature whatsoever, to terminate and/or, in any manner, interfere with the same.**

Annexure “A” is annexed and forming part of this consent term.

2. **The Defendant do hereby accept, admit, acknowledge and confirm that the Plaintiff is unconditionally entitled to the reliefs prayed for in the instant suit.**
3. **The Defendant do hereby accept, admit, acknowledge and confirm that the Plaintiff is entitled to prevent all persons *including the Defendant* (and all persons claiming through or under it), except the persons and extent to which mentioned in Annexure “B” to the Deed of Assignment dated April 22, 2004 from claiming any right and prosecute them for infringing the Plaintiff’s copyrights in the suit films (as mentioned in Annexure “A”). Annexure “B” is annexed and forming part of this consent term.**
4. **The Defendant do hereby confirm that it has not created any third party interest in respect of the suit films, save and except what is already stated hereinabove, do undertake that it will not do so in future and further undertake to keep harmless and indemnify the Plaintiff against any claim, harm, loss, injury or damage arising due to any claim by the third party.**
5. **In view of the settlement between the parties, the suit be decreed in above terms with no order as to costs.**

Annexure:

- a. **Annexure “A”:** Detail of suit films.
- b. **Annexure “B”:** Detail of licenses already granted prior to Deed of Assignment dated 22/04/2012

Mumbai, this 21st day of December, 2012.”

6. The Consent Terms were identical in both suits. There is no dispute that the annexures to the Consent Terms corresponded exactly to the Deeds of Assignment and the films in this Suit are covered by the Consent Terms and the Deeds of Assignment.

7. As the emphasized clauses 1, 2 and 3 above show the Defendants accepted the Plaintiffs’ perpetual and absolute title to these films.

8. But an order of the Court an undertakings to the Court do not seem to have hampered these Defendants at all. For instance, it seems that the Defendants are using the same films on their YouTube channels, “Cinebox Pictures”. One of those is the film **BADAL**. This film is one of those listed in the annexures to one of the Deeds of Assignment and which the Defendants expressly accepted. It is at Sr. No. 9 of Annexure- ‘A’. The Deed of Assignment specifically covers internet rights and **BADAL** is listed as one of those films for which website and internet rights have been assigned perpetually and absolutely by the Defendants to the Plaintiffs.

9. The complaint is that now the Defendants are showing as many as twenty films, all covered by the Deeds of Assignment and by the assignment of internet rights, on their YouTube channel. In their replies to the Plaintiffs notices the Defendants falsely claim that they never give the Plaintiffs “YouTube rights”.

10. There is no such thing. There is no separate concept “YouTube rights” any more than there is a concept of “Netflix rights”, “Disney Hotstar rights”, “Amazon Prime” rights or the like. A long, long time ago, there was an internet without YouTube. But there was never YouTube without the internet. Hard as it may be for these Defendants to believe, YouTube cannot run as YouTube without the internet. The Defendants cannot possibly explain how YouTube exists independent of the internet. This nonsensical stand that “YouTube rights” were not assigned was reiterated in the Defendants Advocates notice of 23rd August 2021 justifying the Defendants elicit use of these movies on the YouTube channel NH Studioz.

11. The Defendants have also been writing to the Plaintiffs licensees demanding that those licensees stop using those films. One such communication is shown to me in Court today by Mr Kamod for the Plaintiffs. In this, it is now alleged that there is some payment yet due from the present Plaintiff. But there is no assertion of any separate YouTube rights. The Consent Terms in question which settled the disputes do not make any reservation for payment by the Plaintiffs to the Defendants. Any amounts that were due under the agreement from the Plaintiffs to the Defendants, if disputed by the Defendants, ought to have required the Defendants either to settle at the time of the Consent Terms or to adopt proceedings of their own, if there was a question of ongoing payment. It seems to me inconceivable that the payment under an perpetual irrevocable world-wide assignment could be equated with a license royalty. The Assignment Deeds required payment in phases. The last of these was due on 15th July 2004. It is inconceivable that on 18th

September 2021 that Defendants could have any sort of claim for amounts due under either of the Deeds of Assignment.

12. Notably, the Deeds of Assignment also assigned the internet rights to these 29 films in question today. The two Deeds of Assignment are of the same date. One assigns the internet rights of twenty films and another assigns the internet rights of nine films.

13. There is an ample prima facie case. The balance of convenience is with the Plaintiffs, to whom ongoing prejudice is caused daily.

14. There will, therefore, be an immediate ad-interim order in terms of prayer clauses (a), (b), (c), (d) and (e), which read thus:

“a) That pending the hearing and final disposal of the Suit this Hon’ble Court pass an interim order and injunction restraining the Respondents, along with their directors, subsidiaries, agents, partners, associates, officers, licensees, assignees from infringing the Applicant’s exclusive copyright in the said films listed in Exhibit “F-1” and Exhibit “G-1” hereto, which includes the impugned films listed at Exhibit “N” hereto, by making copies and/ or storing in any medium by electronic or other means and/ or communicating to the public any or all of the said films listed at Exhibit “N” hereto and/ or substantial part thereof and/ or in any other manner whatsoever;

b) That pending the hearing and final disposal of the Suit this Hon’ble Court pass an interim order and injunction restraining the Respondents, along with their directors, subsidiaries, agents, partners, associates, officers, licensees, assignees from:

- (i) any further exploitation and from claiming any rights pertaining to the said films, and
 - (ii) representing to any third parties that they own any rights pertaining to the said film.
- c) That the Respondents, along with their directors, subsidiaries, agents, partners, associates, officers, licensees, assignees be restrained by an order of interim injunction and directed to forthwith pull down/ remove the films “(i) “Badal”; (ii) “Aapas Ki Baat”; (iii) “Jigar”; (iv) “Aadmi”; (v) “Aa Gale Lag Ja”; (vi) “The Don”; (vii) “Phool Aur Angar”; (viii) Adalat; (ix) Loha; (x) Quatil; (xi) Batware; (xii) Police Officer; (xiii) Baazi; (xiv) Mehndi; (xv) Mitti; (xvi) Budkaar; (xvii) Tomar Rakte Amaar; (xviii) Biyer Phool; (xix) Haar Jeet; and (xx) Phool Aur Pathor; from their official YouTube channel “Aftab Music Industries”;
- d) That pending the hearing and final disposal of the Suit the Respondents be ordered and directed to disclose on Affidavit particulars and provide copies of all agreements and transactions executed by them with third parties for exploitation of any rights pertaining to the said films;
- e) That pending the hearing and final disposal of the Suit the Respondents be ordered and directed to furnish on Affidavit certified detailed account statement as to the revenues and royalties generated and/ or received by the Respondents from any mode, medium or platform including from right management societies (including copyrights/collecting societies) etc. from exploitation of any rights pertaining to the said films and deposit the same with this Hon’ble Court.”

15. The disclosures required in prayer clauses (d) and (e) are to be set in an Affidavit and to be filed and served on or before 11th

October 2021. At this stage a Rejoinder is not required in the facts of the case.

16. List the matter on 13th October 2021.

17. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)