

Court dated 16th February, 2022 when the Interim Application had come up under the caption for ad-interim relief. A statement had been made by Mr. Sharan Jagtiani, Senior Counsel appearing on behalf of Defendant No.4 and Mr. Ashish Kamath, learned Counsel appearing for the Defendant No.5 that the respective Defendants shall only telecast the subject film titled "83" on satellite and digital media on or after 20th March, 2021. This statement was accepted by this Court. It was further noted in the said order that Defendant Nos.4 and 5 are showing promos or publicity of the subject film and will continue to do so. This was subject to further orders of this Court in the Interim Application. Accordingly, the pleadings were directed to be completed and the matter was to be listed under the caption "ad-interim relief" on 14th March, 2022. The Interim Application has thereafter been heard from 15th March, 2022 for ad-interim relief.

2. Mr. Virag Tulzapurkar, learned Senior Counsel appearing for the Plaintiff has applied for ad-interim relief seeking an order of injunction restraining the Defendant Nos.1 to 5 from releasing, broadcasting, telecasting and / or exploiting or using any of the elements of the cinematograph

film through satellite, digital and / or like media.

3. The present Suit was filed on 14th February, 2022. In the Complaint, it is stated that the cause of action arose on 10th February, 2022 when the Plaintiff learnt of unauthorised delivery of the subject film vide February, 10 email and that the cause of action is continuing one. It appears that the real dispute in the matter before this Court is with regard to the interpretation of the Clauses of the Consent Terms / Consent Minutes of Order entered into between the Plaintiff, Defendant No.1 and Defendant No.2 in Execution Proceedings being Execution Application (L) No.27808 of 2021. The Execution Proceedings were for execution of the Consent Arbitration Award dated 3rd March, 2021 in arbitral proceedings between the Plaintiff, one Madhu Mantena as claimants against Defendant No.2 and Defendant No.3 as well as Anurag Kashyap, Vikramaditya Motwane and Vikas Bahl. In the Arbitral proceedings between these parties, the Consent Award was arrived at on 3rd March, 2021.

4. Under paragraph 32 of the Consent Award it was ordered and directed that all intellectual property rights and

exploitation of the subject film shall immediately vest in Defendant No.3 subject to the following rights already granted to third parties as on the date of the Consent Award i.e. 3rd March, 2021. The concerned agreements to note are the Worldwide Satellite Rights as per contract dated 29th June, 2017 with Defendant No.4 - Star India and Worldwide digital rights as per contract dated 22nd May, 2019 with Defendant No.5 - Netflix Global LLC.

5. Thereafter, there were certain disputes with regard to the execution of the Consent Award and Petitions under Section 9 of the Arbitration and Conciliation Act, 1996 were filed. It is necessary to note that in Commercial Arbitration Petition (L) No.18152 of 2021, the Plaintiff being the Petitioner therein has not disputed the satellite or digital rights created in favour of Defendant Nos.4 and 5 in the subject film "83". The prayer in that Arbitration Petition against Defendant Nos.4 and 5 was only to deposit in this Court all amounts payable by Defendant Nos.4 and 5 to Defendant Nos.1 and 2 under the aforementioned agreements.

6. It is necessary to note that Defendant Nos.1 and 3

had entered into Consent Terms on 6th December, 2021 to vest in the Plaintiff 37.5% intellectual property rights in the subject film. These Consent Terms were arrived at since it was alleged by the Plaintiff that Defendant No.2 had failed to comply with its obligations under the Consent Award. The Consent Terms was taken on record by this Court vide order dated 8th February, 2021 and the Execution Application was disposed of in terms of the Consent Terms.

7. The present Suit proceeds on the premise that Plaintiff's consent was required for delivery of the subject film for exploitation on satellite and / or digital media by Defendant Nos.4 and 5. Mr. Tulzapurkar has referred to certain clauses in the Consent Terms and in particular clause 19 by which the Plaintiff had been vested 37.5% of intellectual property rights in the subject film such that the Plaintiff, Defendant Nos.1 and Defendant No.6 would hold intellectual property rights in the following proportions:-

- (i) 37.5% with the Plaintiff;
- (ii) 37.5% with the Defendant No.1; and

(iii) 25% with the Defendant No.6.

8. Under Clause 22 of the Consent Terms, it was provided that the exploitation rights of the subject film shall immediately vest exclusively and absolutely in the Plaintiff for the period after the 'First Cycle' as defined in what is referred to as the '83 Agreement'. It is further provided in Sub Clause A (ii) of Clause 23 that during the period of the First Cycle a percentage of the net collections from exploitation of domestic theatrical rights from Hindi language shall be paid to the Plaintiff by Defendant No.1. In Sub Clause B (ii) of the Clause 23, it is provided that a percentage of net collections from domestic theatrical rights of the film in languages other than Hindi shall be paid by Defendant No.1 to the Plaintiff. It is further provided in Sub Clause B(iii) that until such payment is fully received by the Plaintiff, the Plaintiff shall have no obligation to consent to the delivery of the film for exploitation of digital and / or satellite rights of the subject film. This is not provided in so far as revenue from exploitation of domestic theatrical rights from Hindi language is concerned in Sub Clause A of Clause 23. It has also been provided in Sub Clause (C) (iii) of the Clause 23 that in the event a percentage of the

net collections from the Overseas Theatrical Rights of the film is not fully received by the Plaintiff, and which is payable by the Defendant No.1, the Plaintiff shall have no obligation to consent to the delivery of the film for exploitation of digital and / or satellite rights of the subject film. Another clause which Mr. Tulzapurkar has relied upon is clause 31 of the Consent Terms which provides that the Defendant No.1 shall obtain any and all necessary third party approvals in whose favour any right or interest has been created in respect of the subject film. In the event that Defendant No.1 failed to cause such third parties to accept and acknowledge the Plaintiff's right, interest, benefit in the subject film to the complete satisfaction of the Plaintiff on or before 9th December, 2021 and in any event at least 15 days prior to the theatrical release of the subject film, the Plaintiff shall have no obligation to consent to the delivery of the subject film for the Domestic and Overseas Theatrical exhibition and / or for digital, satellite broadcast of the subject film.

9. Mr. Tulzapurkar submits that the aforementioned Clauses in the Consent Terms are material clauses which require consent of the Plaintiff for exploitation of digital and /

or satellite rights of the subject film which as mentioned in clause 21 of the Consent Minutes of Order are to be exploited by Defendant No.1 in the First Cycle i.e. for period of 10 years from the date of the first theatrical release of the subject film. It is further provided that the Plaintiff's will be made party to the un-executed agreements for domestic theatrical non-Hindi rights for the First Cycle. He has submitted that the Defendant No.1 has failed to comply with Sub Clause (B) (iii) and (C) (iii) of Clause 23 as well as Clause 31 of the Consent Terms, and accordingly, the Plaintiff had no obligation to consent to the delivery of the film for exploitation of digital and / or satellite rights of the subject film.

10. It is accordingly submitted by Mr. Tulzapurkar that the Defendant No.1, 4 and 5 are required to be restrained by ad-interim injunction from exploiting the subject film through satellite and / or digital media as the subject film has been obtained by Defendant Nos.4 and 5 from Defendant No.1 without the prior consent of the Plaintiff.

11. Mr. Tulzapurkar has relied upon the Affidavit in Reply of Defendant No.1 wherein Defendant No.1 has

admitted that the Plaintiff prior to consent for delivery of the film for digital and / or satellite exploitation is conditional only upon payment as agreed in Clause 23(B) 23 (C), 28 and 30 of the Consent Terms. It is an admitted position that Clauses 28 and 30 have been complied with by Defendant No.1. However, the other clauses are not complied with according to the Plaintiff. In the said Affidavit in Reply the Defendant No.1 has in fact admitted, that Clause 31 of the Consent Terms which require Defendant No.1 to obtain all necessary approvals from third parties in whose favour any right in respect of the subject film has been created has not been complied with. This Clause is necessary to be complied with for the consent of the Plaintiff. Mr. Tulzapurkar has further relied upon certain DRT proceedings initiated by Yes Bank Ltd with respect to charge created in respect of the subject film. An injunction had granted in favour of Yes Bank Ltd. in these proceedings on 24th December, 2021. He has submitted that the Defendant No.1 has not sought the consent of Yes Bank prior to handing over the subject film to the Defendant Nos.4 and 5 for exploitation on satellite and digital media. This is in violation of the Clause 31 of the Consent Minutes of Order. He has accordingly submitted that by virtue of the Plaintiff not complying with Clause 31 as

well as Sub Clause (B) & (C) of Clause 23 of the Consent Terms, the Plaintiff was under no obligation to give consent.

12. Mr. Tulzapurkar has further submitted that the Defendant Nos.4 and 5 were duly informed of the Consent Terms / Consent Minutes of Order and he has relied upon the correspondence by which Defendant Nos.4 and 5 have been informed which are annexed at Exhibit Q and T of the Plaint and are both dated 16th December, 2021. He has further relied upon an email sent by Defendant No.1 which had sought NOC from the Plaintiff prior to Defendant No.1 delivering the subject film for exploitation on satellite and digital media to Defendant Nos.4 and 5. This is by email dated 25th January, 2022. He has further relied upon a draft letter which is to be addressed to Defendant No.4 as well as Defendant No.5 informing them that the Plaintiff along with Defendant Nos.2 and 3 have resolved their dispute and differences in relation to Consent Award dated 3rd March, 2021 and filed Consent Minutes of Order dated 6th December, 2021 before this Court and that the Consent Award stands disposed of in terms of the said Consent Minutes of Order.

13. Mr. Tulzapurkar has further submitted that there is a fundamental defect in the agreement between the Defendant No.2 and Defendant No.4 as Defendant No.2 had no intellectual property in the subject film to assign to Defendant No.4 and similar is the case with regard to the agreement with Defendant No.5 as Reliance Entertainment US Inc had no intellectual property rights in the subject film to license to Defendant No.5.

14. Mr. Tulzapurkar has referred to certain authorities of both English and Indian Courts in support of his contention that one Co-owner of copyright cannot exercise rights of a copyright owner alone, not even if he accounts to his co-owners for a share of any profits. The rights of his co-owners are not limited to an account. In this context he has relied on the following authorities:

i) Notes on Joint Authors and Joint Owners by Copinger and Skone James.

ii) 1915 C 3065 2 KB 325: Cescinsky v. George Routledge & Sons Ltd.

iii) (1998) FSR 622 : Robin Ray v. Classic FM Plc.

iv) 1980 SCC Online All 444 : Nav Sahitya Prakash and Ors. Vs. Anand Kumar and Ors.

v) 2008 (4) Mh.L.J. 926 : Angath Arts Pvt. Ltd v. Century Communications Ltd & Anr.

15. Mr. Tulzapurkar has submitted that the Plaintiff together with Defendant Nos.1 and 6 are co-owners of the copyright and in that context the Consent of the Plaintiff is material and one co-owner, namely Defendant No.1, cannot act alone. He has submitted that the balance of convenience is in favour of the Plaintiff and irreparable loss would be caused to the Plaintiff in case Defendant Nos.4 and 5 are not restrained from exploiting the subject film through satellite and / or digital or other like media. He has accordingly pressed for the ad-interim relief to be granted.

16. Mr. Venketesh Dhond, the learned Senior Counsel appearing for the Defendant No.1 has submitted that the Plaintiff proceeds on the premise that it accepts that Defendant Nos.4 and 5 have been respectively assigned and

licenced the right to exploit the subject film on satellite and / or digital or other like media. He has referred to the prayers in the Plaintiff and has submitted that the prayers proceed on the basis that the Defendant Nos.4 and 5 have such exploitation rights through satellite and / or digital or other like media subject to only written consent of the Plaintiff under the Consent Terms. There is no challenge to either of the agreements by which Defendant Nos.4 and 5 have been respectively assigned and licenced the respective satellite and digital rights of exploitation of the subject film. He has submitted that paragraphs 8.10, 8.12 and 8.13 of the Plaintiff make it clear that the only dispute in the present Suit is with regard to the failure of Defendant No.1 to have complied with Clause 31 of the Consent Terms by not obtaining such approvals or consent of third parties and absent such consent, the Defendant No.1 could not have delivered any of the elements of the subject film to Defendant Nos.4 and 5 or any other parties.

17. Mr. Dhond has further referred to the Consent Arbitral Award and in particular Clause 32 thereof and has submitted that rights were vested in Defendant No.3 for the first time in the subject film by the Consent Award

subject to the rights already granted to third parties as on date of the Consent Award. He has thereafter referred to Clause 19 and 20 of the Consent Terms to submit that in Clause 19, the Plaintiff has for the first time been vested 37.5% of intellectual property rights in the subject film by Defendant No.1. In Clause 20 of the Consent Terms, it is provided that the third party rights referred to in Clause 1.2 of the '83 agreement have already been created in respect of the subject film. Further, Clause 1.2 of the '83 agreement specifically mentions the agreements by virtue of which Defendant Nos.4 and 5 have been respectively assigned and licensed the respective satellite and digital rights in the subject film. These are the agreement dated 29th June 2017 between Defendant No.2 and Defendant No.4 for a period of 10 years for assigning satellite broadcasting rights of the subject film and the agreement namely Amendment No.37 between Reliance Entertainment US Inc and Defendant No.5 dated 24th September, 2019 for a period of 10 years for licencing digital rights of the subject film. He has submitted that from a clear reading of Clause 1.2 of the '83 Agreement' it is clear that Defendant No.1 shall continue to exploit the film in exercise of its exploitation rights and this is to be read with Clause 21 of the Consent Terms under which

Defendant No.1 shall continue to have all ancillary non-theatrical rights or exploitation rights for the subject film on worldwide basis for a period of 10 years from the date of the first theatrical release of the subject film. This would be during the First Cycle and it is only after the expiry of the first cycle that the Plaintiff will have such exploitation rights in the subject film as provided in Clause 22 of the Consent Terms.

18. Mr. Dhond has submitted that Clause 23 provides for the going ahead of the First Cycle. Sub clause B (iii) of Clause 23 and Sub Clause (C) (iii) of the Clause 23 provide that the Plaintiff shall have no obligation to consent to the delivery of the film for exploitation of digital and / or satellite rights of the subject film, in the event the Plaintiff does not receive full payment of its percentage of net collections from Defendant No.1. This necessarily would relate to subsequent agreements of assignment or licencing of digital and / or satellite rights. This interpretation also applies to Clause 31. These clauses requiring consent of the Plaintiff cannot apply to prior assigned and / or licenced rights of the Defendant Nos.4 and 5 as provided for in the aforementioned 2017 and 2019 agreements respectively which have already

created such rights in favour of Defendant Nos.4 and 5.

19. Mr. Sharan Jagtiani, learned Counsel for Defendant No.4 has opposed grant of any ad-interim relief. He has submitted that the Plaintiff has both acknowledged and accepted the agreement dated 29th June, 2017 executed between Defendant Nos.2 and 4 by which satellite broadcasting rights had been assigned to Defendant No.4 of the subject film which was under preparation at that time. He has in this context referred to the paragraphs 24 and 32 of the Consent Award as well as Clause 20 of the Consent Minutes of Order. Further Clause 1.2 of the '83 agreement' specifically mentions the satellite broadcasting agreement dated 29th June, 2017 with Defendant No. 4. Under paragraph 32 of the Consent Award, the words used are 'subject to' the agreements with Defendant Nos.4 and 5 by which satellite and digital rights in the subject film have been created. Mr. Jagtiani has submitted that the words "subject to" has been considered in a decision of this Court in *Aniket Sa Investments LLC, Mauritius Vs. Janapriya Engineers Syndicate Pvt. Ltd.*¹ wherein this Court has held that the words "subject to" is not to be read as

¹ 2021 SCC OnLine Bom 919 : (2021) 4 Mah LJ 123.

“notwithstanding”. It is stated in paragraph 23 of the said decision that, the words “subject to” the seat at Mumbai amounts to a choice of Courts at Mumbai and in the event of any conflict the latter clause should prevail.

20. Mr. Jagtiani has further relied upon the admission by the Plaintiff in the Commercial Arbitration Petition (L) No. 18152 of 2021 which has been filed under Section 9 of the Arbitration and Conciliation Act, 1996, wherein the Plaintiff had expressly stated that the Consent Terms do not disturb the rights created in favour of Defendant Nos.4 and 5 in the film “83”. It is further stated that there is no debate that the ownership of the subject film including intellectual property rights or exploitation rights vests exclusively with Defendant No.3.

21. Mr. Jagtiani has submitted that the said agreement between Defendant No.2 and Defendant No.4 has thereafter been novated on 20th July, 2022 by which Defendant No.1 has stepped into shoes of Defendant No.2. Defendant No.4 has paid 90% of the amount due under the said agreement. He has submitted that the Plaintiff has only been

vested copyright rights in subject film by Defendant No.1 to the extent of 37.5% by the Consent Minutes of Order dated 6th December, 2021. He has submitted that a reading of Clause 19 would make this apparent as it is provided therein that assignment, transfer and vesting of all 37.5% of the intellectual property of the subject film including all wordmark and logo trademark of the subject film from Defendant No.1 to the Plaintiff and for which purpose they have entered into agreement dated 6th December, 2021 (“83 agreement”).

22. Mr. Jagtiani has submitted that under clause 20 of the Consent Minutes of Order read with Clause 1.2 of the 83 Agreement, it is agreed between the parties which include the Plaintiff that the third party rights in respect of the subject film has already been created and which includes the satellite broadcasting rights as per agreement dated 29th June, 2017 with Defendant No.4 for a period of 10 years from first telecast of the subject film as well as satellite broadcasting to regional languages for a period of 10 years or perpetuity, whatever is the term mentioned in the respective regional satellite broadcasting agreement. This will necessarily be during the First Cycle during which Defendant No.1 is to exclusively

exploit the subject film.

23. Mr. Jagtiani has submitted that Defendant No.4 is not a party to the Consent Minutes of Order, inspite of which the Plaintiff is seeking enforcement of Consent Minutes of Order against Defendant No.4. Mr. Jagtiani has in support of the submission that third parties who are not parties to the Consent Terms are not bound by the Consent Terms, relied upon the decision of the Supreme Court in **Chitraleka Builders and Anr. Vs. G.I.C. Employees Sonal Vihar Co-op. Housing Society Ltd. and Anr.**² The assignment rights of Defendant No.4 being prior in point of time to the Plaintiff's intellectual property rights in the subject film would supersede such rights. He has submitted that delivery of the subject film for exploitation of satellite rights has already been made on 25th January, 2022 i.e. prior to the filing of the Suit on 14th February, 2022. He has accordingly submitted that there is no merit in the application for ad-interim relief.

24. Mr. Ashish Kamath, learned Counsel for the Defendant No.5 has submitted that, Defendant No.5 is similarly

2 2021 SCC Online 153

placed with Defendant No.4 having been licenced rights for Internet Transmission (digital rights) of the subject film by agreement for a period of 10 years. He has also relied upon relevant clauses of the Consent Minutes of Order. He has also relied upon the paragraphs of the Plaintiff and in particular paragraph 8.28 of the Plaintiff which makes it clear that the Plaintiff had accepted said agreement between Reliance Entertainment US Inc and Defendant No.5. The Plaintiff had informed Defendant No.5 that the dispute between the parties in the execution of the Consent Award has been resolved and Consent Minutes of Order has been passed. This is by a letter dated 16th December, 2021. He has submitted that by the Consent Award as well as by the Consent Minutes of Order and the 'Agreement 83' the digital rights of the subject film already granted in favour of Defendant No.5 were acknowledged and accepted. He has submitted that antecedent rights cannot be questioned by the Plaintiff who had subsequently been vested by the Consent Minutes of Order with intellectual property rights in the subject film to the extent of 37.5%. Further, the Defendant No.5 is not a party to the Consent Minutes of Order and thus, cannot be bound by any of the terms of the Consent Minutes of Order.

25. Mr. Kamath has also submitted that the Consent Terms operate as an estoppel on the parties to the Consent Terms and that they are binding on the Plaintiff. The pre-existing rights created in favour of the Defendant No.5 which is acknowledged and accepted by the Plaintiff in the Consent Minutes of Order would operate as an estoppel on the Plaintiff and he cannot now deny such rights or claim that the intellectual property rights vesting in the Plaintiff by virtue of the Consent Minutes of Order override such antecedent rights in favour of Defendant No.5. Further, it is not open for the Plaintiff to challenge the agreement by which digital rights to the subject film have been created in favour of Defendant No.5, apart from the fact that there are no pleadings to that effect.

26. Having considered these submissions, it would be necessary to note that both the Consent Arbitral Award dated 3rd March 2021 as well as in the subsequent Consent Terms/Consent Minutes of Order dated 6th December 2021 to which the Plaintiff is a party has acknowledged as well as accepted the agreement conferring the Satellite Broadcasting Rights as per agreement dated 29th June 2017 initially between the Defendant No. 2 and the Defendant No. 4 and

thereafter novated by which Defendant No. 1 came into the shoes of Defendant No. 2, as well as the Amendment No. 37 Agreement dated 24th September 2019 between Reliance Entertainment US INC and Defendant No. 5 by which the digital rights in respect of the subject film have been licenced to Defendant No. 5. This is clear from the Clauses 24 and 32 of the Consent Arbitral Award and Clause 20 of the Consent Terms read with Clause 1.2 of the "83 Agreement" entered into on 6th December 2021. It is clear from these Clauses that the third party rights which include the respective Satellite and Digital Rights of Defendant No. 4 and Defendant No. 5 have already been created in respect of the subject film ""83"". Under Clause 32 of the Consent Arbitral Award, it is provided that all Intellectual Property Rights and exploitation rights in the film "83" shall immediately vest in the Company, i.e. Defendant No. 3 subject to following rights already granted to third parties as on the date of Award, which includes, the Worldwide satellite rights as per contract dated 29th June 2017 with Defendant No. 4 and Worldwide digital rights as per contract dated 22nd May 2019 with Defendant No. 5.

27. Subsequent to the passing of the Consent

Arbitral Award, there was a dispute insofar as execution thereof and proceedings under Section 9 of the Arbitration and Conciliation Act, 1999 were instituted. From these proceedings it is clear that the Plaintiff had in fact accepted and acknowledged the rights of Defendant No. 4 as well as Defendant No. 5, as can be seen from the prayer sought for in the Arbitration Petition (L) No. 18152 of 2021 filed by the Plaintiff in August 2021, wherein the only direction sought against Defendant No. 4 and Defendant No. 5 was to deposit in this Court all amounts payable by them to Defendant Nos. 1 and 2 and/or respective subsidiaries referred to therein. Thus, there was no dispute insofar as the agreements respectively assigning and licencing the Satellite and Digital Rights in favour of Defendant No. 4 and Defendant No. 5 as has now been raised in these proceedings.

28. Under the Consent Terms of which the Plaintiff was a party, in particular Clause 20 thereof, it is provided that the third party rights which would include the rights of Defendant No. 4 and Defendant No. 5 referred to Clause 1.2 of the '83 Agreement' have already been created in respect of the subject film. The Intellectual Property Rights

vested in the Plaintiff only by virtue of the Consent Terms/Consent Minutes of Order entered into in the execution proceedings for execution of the Consent Arbitral Award. It is made clear from Clause 19 of Consent Minutes of Order that it is agreed, ordered and directed that 37.5% of the intellectual property rights and derivative rights in the film titled "83" ("Film 83") stands *ipso facto* vested, assigned, transferred and conveyed in the Plaintiff such that the Plaintiff, Defendant No. 1 and Defendant No. 6 hold the intellectual property rights in the following proportions:- (i) 37.5% with the Plaintiff; (ii) 37.5% with Defendant No. 1 and (iii) 25% with Defendant No. 6.

29. It is further made clear in Clause 19 of the Consent Minutes of Order that vesting of 37.5% of the Intellectual Property Rights of Film 83 including all wordmark and logo trademark in the Film "83" is from Defendant No. 1 to the Plaintiff herein and for which the agreement dated 6th December 2021 ("83 Agreement") was entered into.

30. Under Clause 21 of the Consent Minutes of Order, it is made clear that all other ancillary theatrical rights or exploitation rights for the Film on worldwide basis for a

period of 10 years from the date of release of the subject film, shall be exploited by Defendant No. 1. The Plaintiff will only be made party to unexecuted agreements for the domestic theatrical non-Hindi rights for the First Cycle. The meaning of First Cycle is ascribed in the "83 Agreement". Further under Clause 22 of the Consent Minutes of Order, all exploitation rights in the Film 83, shall immediately vest exclusively and absolutely in the Plaintiff herein for the period after the 'First Cycle'. Thereafter, from Clause 23 onwards, it has been agreed, ordered and directed that calculation and distribution of revenue earned in relation to any and all exploitation of the Film 83 from theatrical distribution during the period of the First Cycle shall be under Sub-Clause A, B and C thereof which is respectively in Hindi Language; Languages other than Hindi and exploitation for Overseas Rights.

31. The Sub-Clauses which has been relied upon by Mr. Tulzapurkar during his argument, namely Sub-Clause B(iii) and C(iii) of Clause 23 provide that the Plaintiff shall have no obligation to give such consent when percentage of the net collection from Domestic Theatrical Rights of the subject film under Sub-Clause B of Clause 23 and percentage of net

collection from exploitation of overseas theatrical rights of the subject film under Sub-Clause C of Clause 23 are not paid in full.

32. In my *prima facie* view, a reading of these Sub-Clauses as well as Clause 31, which provide for obtaining any and all necessary third party approvals in whose favor any right or interest created in respect of the Film "83", makes it clear that these clauses would necessarily apply to future agreements entered into between the Defendant No. 1 and third parties for exploitation of Digital and/or Satellite Rights of the subject film. This certainly cannot apply to the Agreements which are already referred to in the Consent Minutes of Order and Clause 1.2 of the "83 Agreement" as having already created rights in favour of these third parties including Defendant Nos. 4 and 5.

33. *Prima facie* in my view, the Plaintiff cannot claim any right to intellectual property over and above such antecedent rights already created in favour of Defendant No. 4 and Defendant No. 5. It is in fact, made clear by Clause 1.2 of the "83 Agreement" that as per paragraph 23 of the Consent Minutes of Order, the Defendant No. 1 shall continue to exploit

the film in exercise of its exploitation rights in the manner provided and during the period of the First Cycle. The Satellite Broadcasting Rights as per the Agreement dated 29th June 2017 with Defendant No. 4 and the Digital Rights of the film as per Amendment No. 37 with Defendant No. 5 dated 24th September 2019, have been categorically mentioned in this Clause. It has been further mentioned in Clause 1.4 of the Consent Minutes of Order that from the date of the Consent Minutes of Order till lapse of the respective above mentioned Agreements periods shall be referred to as "First Cycle". It is further provided in Clause 1.5 of the 83 Agreement that during the First Cycle, the Defendant No. 1 shall continue to exploit and distribute the subject film and appropriate the Revenue earned in the manner specified in the Consent Minutes of Order and as recorded in Schedule A to the agreement. Further, in Clause 3.4.2 of the "83 Agreement", it is provided that the Defendant No. 1 is/was the sole and exclusive owner of the rights that have vested in the Plaintiff herein from Defendant No. 1 pursuant to Clause 19 of the Consent Minutes of Order. Further, in Clause 3.4.3 of the 83 Agreement, it is provided that the Defendant No. 1 was not under any restriction, or prohibition, whether legal or contractual or otherwise, which

shall prevent it from performing or adhering to any of their obligations under this Agreement and have not entered into and shall not enter into any agreement that may violate this Agreement. Thus, it is clear from the Consent Minutes of Order, read with the “83 Agreement” that the Defendant No. 4 and Defendant No. 5 having antecedent Satellite Broadcasting Rights and Digital Rights respectively for the period of 10 years defined as the ‘First Cycle’ cannot be restrained from exercising such rights. The Plaintiff is vested with the exploitation rights in the subject film only after the period of the First Cycle.

34. Thus, I am of the *prima facie* view, the Plaintiff has made out no case for seeking *ad-interim* relief by way of injunction restraining the Defendant No. 1, and/or Defendant No. 4 and Defendant No. 5 from exploiting the subject film in accordance with their antecedent rights and particularly, during the period of the First Cycle.

35. On a reading of the Plaint, it appears that the Plaintiff’s claim is in relation to the subject film being delivered to Defendant No. 4 and Defendant No. 5 by Defendant No. 1

without the prior written consent of the Plaintiff. It is a claim made on the basis of the Consent Minutes of Order. It is to be noted that Mr. Tulzapurkar during arguments has based the Plaintiff's claim not only on the Consent Minutes of Order, but also under law of copyright. Section 18 of the Copyright Act, 1957 provides for assignment of copyright. It is provided that the owner of 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 of the copyright or any part thereof. There is a proviso under Section 18 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.

36. Reading of this Section makes it clear that the prospective owner of copyright in a future work may also assign to any person the copyright in the future work. Though the proviso states that the assignment of copyright in any future work, shall take effect only when the work comes into existence, there is an antecedent assignment right created in favour of the assignee in respect of the future work. In the

present case, the antecedent assignment as well as licencee rights in favour of Defendant Nos. 4 and 5 respectively have been accepted by the Plaintiff, as there is no challenge in the Plaintiff to such antecedent rights created by Agreements entered into with Defendant No. 4 and Defendant No. 5, by which they have been assigned both Satellite as well as Digital Rights in the subject film. The law which has been relied upon by Mr. Tulzapurkar in the context of his submission that in case of there being a co-owner of the copyright, one co-owner has no right to exercise the rights of a copyright owner alone, not even if he accounts to his co-owners for a share of any profits, the right of co-owners being not limited to an account, do not apply in the present case. The Plaintiff's rights in the Intellectual Property Rights has only arisen upon execution of the Consent Minutes of Order and that too on 6th December 2021. Prior thereto the Satellite and Digital Rights have already been created in favour of Defendant No. 4 and Defendant No. 5 under their respective aforementioned agreements. The assignment and licence agreements with Defendant No. 4 and Defendant No. 5 have been accepted by the Plaintiff and this is apparent from on the documents on record which include the Consent Arbitral Award, Consent

Minutes of Order and the other proceedings, namely the Arbitration Petition under Section 9 of the Arbitration and Conciliation Act, 1999 as well as this very Complaint filed in the Suit.

37. Thus, in my *prima facie* view, it is too late in the date for the Plaintiff to challenge the aforementioned assigned agreements and/or contend that they are non est.

38. Thus, considering that there are such antecedent Satellite and Digital Rights created in favour of Defendant Nos. 4 and 5 which have been acknowledged and accepted by the Plaintiff, in my *prima facie* view, the Plaintiff is not entitled to be granted *ad-interim* injunction restraining either the Defendant No. 1 and/or Defendant Nos. 4 and 5 from exploiting or using any elements of the subject film through satellite and/or digital media without prior written consent of the Plaintiff.

39. It is also further relevant to note that the Defendant No. 4 and Defendant No. 5 are neither parties to the

Consent Arbitral Award nor Consent Minutes of Order. Thus, they cannot be bound by any of the clause in the Consent Minutes of Order as contended by the Plaintiff. This is clear from the well settled law laid down by the Supreme Court in **Chitraleka Builders and Anr.** (supra) that the Consent Terms does not bind parties, who are not parties to the Consent Terms. In fact, in my *prima facie* view, the Consent Minutes of Order will amount to an estoppel insofar as the Plaintiff is concerned who is a party to the Consent Minutes of Order as well as Consent Arbitral Award and by virtue of which the Plaintiff cannot challenge the assignment and licence agreements entered into in respect of the subject film with Defendant No. 4 and Defendant No. 5 respectively.

40. Notice of the Consent Minutes of Order given by the Plaintiff to Defendant No. 4 and Defendant No. 5 and wherein it is stated that the Consent Arbitral Award dated 3rd March 2021 stand disposed of in the terms of Consent Minutes of Order makes no difference as the Defendant No. 4 and Defendant No. 5 are not parties to the Consent Minutes of Order. Neither the fact that the Defendant No. 1 had applied for consent of the Plaintiff prior to handing over the subject film

for exploitation by satellite and digital can come in the way of Defendant No. 4 and Defendant No. 5 exercising their antecedent Satellite and Digital Rights in respect of the subject film.

41. Accordingly, the prayer for *ad-interim* relief of the Plaintiff is rejected.

42. The Interim Application shall be listed for hearing in due course.

43. Mr. Tulzapurkar applies for a direction against Defendant No. 4 and Defendant No. 5 not to release the subject film titled "83" either through satellite and/or digital media for a period of one week from the date of this order.

44. Considering the above findings as well as the findings that the Defendant No. 4 and Defendant No. 5 have antecedent rights of exploitation of the subject film on satellite and digital media and which has acknowledged and accepted by the Plaintiff, the application is rejected.

45. The costs sought for by the Defendants shall be considered at the time of hearing of the Interim Application.

46. Parties to act on an authenticated copy of this order.

[R.I. CHAGLA J.]