

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 10690 OF 2023
IN
COMMERCIAL IP SUIT (LODGING) NO. 10496 OF 2023

Everest Entertainment LLP ... Applicant/Plaintiff

vs.

Hridaynath D. Kadudeshmukh and others ... Respondents/Defendants

Mr. Virag Tulzapurkar, Senior Counsel, a/w. Mr. Hiren Kamod, Mr. Ravindra Suryawanshi, Mr. Krunal Mehta, Mr. Archis Bhatt and Mr. Anil Dube, i/by. Bar and Brief Attorneys for applicant/plaintiff.

Mr. A. A. Garge a/w. Mr. Jitendra H. Oak for respondents/defendant Nos.1 & 2.

Mr. Aniesh Jadhav a/w. Mr. Rushikesh Kekane for respondent/defendant No.3.

Mr. Yogesh Thorat a/w. R. B. Jagtap for defendant No.5.

CORAM : MANISH PITALE, J

DATE : 3rd MAY, 2023

P.C. :

. Heard Mr. Virag Tulzapurkar, learned senior counsel for the applicant/plaintiff. It is stated that the defendants were privately served and that the affidavit of service is filed. The plaintiff to ensure that the affidavit of service is on the record of this Court before the next date of hearing. The defendant Nos.1 to 3 and 5 have appeared through counsel.

2. Learned senior counsel appearing for the plaintiff submits that for the present, due to urgency in the matter, the plaintiff is pressing for limited ad-interim reliefs.

3. The plaintiff claims to be assignee of copyrights in films listed at

Exhibit A, on the strength of an assignment deed dated 12th August, 2022, executed by defendant No.5 in favour of the plaintiff. It is the case of the plaintiff that defendant No.5 had acquired rights in the said films, on the basis of a Will dated 2nd January, 1998 executed by the original owner of copyright, Shri Dadasaheb Kondke, a famous film personality of Marathi film world. The defendant No.5 is related to the late Shri Dadasaheb Kondke and the documents on record show that a competent Court granted probate of Will by an order dated 19th December, 2008. An appeal filed against the said order was dismissed for want of prosecution on 22nd July, 2019.

4. According to the plaintiff, under the said Will, specific rights were granted to defendant No.5 in the context of the aforesaid films, while a trust was created of which, defendant Nos.1 and 2 are trustees in whose favour certain properties and rights therein were bequeathed to the trust.

5. According to the learned senior counsel for the plaintiff, on proper reading of the contents of the Will, it becomes clear that the rights were assigned to defendant No.5, who, in turn, executed assignment deed in favour of the plaintiff. It is submitted that the negatives pertaining to the said films are presently in the custody of laboratories of defendant Nos.3 and 4. It is contended that the aforesaid trust is claiming that it has rights in the said films and has been addressing communications to defendant Nos.3 and 4, for handing over the negatives of the said films. It is in this backdrop that the plaintiff is constrained to institute the present proceedings.

6. It is submitted on behalf of the plaintiff that for the present, this Court may consider granting urgent ad-interim reliefs in terms of prayer clauses a(i), a(iii) and (b), which pertain to restraining the trust through its trustees-

defendant Nos.1 and 2, from infringing with the rights, including copyright in the films at Exhibit A and restraining them from representing to any third parties about any rights pertaining to the said films and further restraining the respondent Nos.3 and 4 from handing over negatives/print positives or any material of 12 cinematograph films specifically listed at Exhibit I-3.

7. Mr. Garge, learned counsel appearing for the contesting defendant Nos.1 and 2, vehemently oppose the contentions raised on behalf of the plaintiff. It was submitted that a proper reading of the Will dated 2nd January, 1998, particularly the residuary clause therein, shows that the rights in the films at Exhibit A are bequeathed to the trust. It is submitted that defendant No.5 herself was not bequeathed with the rights of the said films and therefore, there was no question of she assigning the rights to the plaintiff, by executing assignment deed dated 12th August, 2022. It is submitted that defendant Nos.1 and 2 have filed a suit in the competent Court at Pune, wherein defendant No.5 has filed an application for being impleaded. In these circumstances, it is submitted that no case is made out for grant of ad-interim reliefs. It is submitted that this Court may grant opportunity to the said defendants to file their reply affidavits and thereupon, the said application may be taken into consideration. It was submitted that there is no urgency in the matter.

8. Upon hearing the learned counsel for plaintiff and defendant Nos.1 and 2, this Court is of the opinion that in order to consider the limited ad-interim reliefs, claimed on behalf of the plaintiff, a perusal of the Will deed dated 2nd January, 1998, is necessary. A perusal of the same shows that the plaintiff has indeed made out a *prima facie* case in its favour as clause No.18 of the said Will deed appears to indicate that rights in the films in which, the

original owner of the copyright, could assert his rights were bequeathed to defendant No.5. The Will deed specifically bequeaths immovable properties in favour of the trust, which was also created under the said document. The reference to the films and the rights therein is found in clause No.18 and therefore, a strong *prima facie* case is made out by the plaintiffs, indicating that the residuary clause may not be resorted to, for examining as to whether the plaintiff can derive rights through defendant No.5 in the present case.

9. This Court finds that defendant Nos.1 and 2 cannot claim that defendant No.5 has absolutely no rights in the said films or that they are limited to making copies of the negatives. It would be a matter for further examination as to whether residuary clause can be resorted to. As on today, on consideration of material on record, this Court is of the opinion that *prima facie*, a case is indeed made out in favour of the plaintiff, on the strength of defendant No.5 having acquired rights in the said films, under the aforesaid Will deed.

10. Once such a *prima facie* conclusion is reached, the plaintiff is clearly justified in relying upon the assignment agreement dated 12th August, 2022 executed in its favour to assert rights in films at Exhibit A. This Court is informed that the negatives pertaining to some of the films were already handed over by defendant Nos.3 and 4 and that therefore, there is urgency in the matter and the prayer for interim reliefs is restricted to directions to defendant Nos.3 and 4 in respect of the negatives of the films, still available with the said defendants. The prayers made for grant of ad-interim reliefs for the present, appear to be reasonable and the balance of convenience is clearly in favour of the plaintiff. If such limited ad-interim reliefs are not granted, there is every possibility of further complications arising in the matter and the plaintiff suffering grave and irreparable loss.

11. In view of the above, this Court is inclined to grant limited ad-interim reliefs in favour of the plaintiff.

12. Accordingly, there shall be ad-interim reliefs in favour of the plaintiff, in terms of prayer clauses a(i), a(iii) and (b), which read as follows:

“a) That pending the hearing and final disposal of the Suit this Hon'ble Court pass a temporary order and injunction restraining the Shahir Dada Kondke Pratishthan/ Respondent Nos. 1 and 2 and any of their subsidiaries, agents, partners, associates, officers, licensees, assignees from in any manner:

(i) infringing the Applicant's said Rights including copyright in the said Films listed at Exhibit "A" hereto;

(ii) * * *

(iii) representing to any third parties or holding out that they own any rights pertaining to the said Films; and

b) That pending the hearing and final disposal of the Suit, the Respondent Nos. 3 and 4 by themselves or their directors, subsidiaries, agents, partners, associates, officers, licensees, assignees or otherwise be restrained from releasing and handing over the negatives/ print positives or any material of 12 (twelve) cinematograph films (listed in Exhibit "I-3" hereto) forming a part of the said Films in their custody to the Shahir Dada Kondke Pratishthan/ Respondent Nos. 1 and 2 or to anyone other than the Applicant;”

13. Reply affidavits on behalf of the defendants be filed within five weeks from today.

14. Rejoinder affidavit be filed within two weeks thereafter.

15. List the application for further consideration on 4th July, 2023.

16. Ad-interim reliefs shall continue to operate till then.

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(MANISH PITALE, J)