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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10th January, 2020

Date of decision: 11th January, 2020

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CM (M) 15/2020, CM APPL. 936/2020 & CM APPL. 937/2020

FOX STAR STUDIOS (DIVISION OF STAR INDIA PRIVATE LIMITED)

..... Petitioner

Through: Mr. Rajiv Nayar, Senior Advocate with Ms. Savni Dutt, Mr. Raj Shekhar Rao, Mr. Saurabh Seth, Mr. Nitin Sharma, Mr. Yatinder Garg, Advocates. (M:9999064036)

versus

APARNA BHAT & ORS.

..... Respondents

Through: Mr. Sanjay Parikh, Senior Advocate with Mr. P. Ramesh Kumar, Ms. Karishma Maria, Ms. Shivangi Singh, Ms. Sanjana Srikumar and Ms. Tanima Kishore, Advocates for R-1. (M:9650393360)

Mr. Sandeep Sethi, Senior Advocate with Mr. Rishi Agarwal, Ms. Madhu Chaudhary, Mr. Harshvardhan Jha, Mr. Vikramaditya Chavan, Ms. Mayuri Shukla and Ms. Niyati Kholi, Advocates for R-2 and 3. (M:9818690207)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. “*He threw acid on my face, not on my dreams*” – so said the valiant survivor of acid attack - Ms. Laxmi Agarwal. Her arduous and heroic journey since the time she was attacked at the young age of 15 is the subject matter of the cinematograph film ‘*CHHAPAAK*’.

2. Director/Producer, Ms. Meghna Gulzar, who is Defendant No.1 in the present suit, has produced and directed cinematograph film ‘CHHAPAAK’, which was released yesterday i.e. on 10th January, 2020 across the country. The film relates to an important social cause i.e., the portrayal of women who are acid attack victims. It has been publicly acknowledged that the film was inspired by a real-life event which occurred in the case of an acid attack victim Ms. Laxmi Aggarwal – her emotional and legal journey. The film seeks to capture, in a fictionalised manner the events that occurred since 2005. The film itself is a fictionalised version of real-life events.

3. The Respondent No.1/Plaintiff – Ms. Aparna Bhat (*hereinafter, “Plaintiff”*) is a practising lawyer. As per the plaint, she is stated to be practising in the area of women’s rights, children’s rights and rights of other underprivileged sections of society. The case in the plaint is that she was the lawyer representing acid attack survivor Ms. Laxmi Agarwal. The Plaintiff had represented her in the criminal trial, which ensued after the attack, in the High Court and also in a PIL in the Supreme Court. It is her case in the plaint that she was approached by Defendant No. 1 for her assistance in the making of the film. The Plaintiff claims she was involved in the making of the film by giving her inputs, providing documents, explaining the legal nuances in the entire journey, editing the script etc.,

4. The Plaintiff avers that Defendant No.1 had consulted her extensively for the purpose of the script and had obtained her inputs when the draft screenplay was sent by Defendant No.1 to her. It is further claimed that she had familiarized Defendant No.1 with the various court processes, and facilitated visits to the Delhi High Court and Supreme Court so as to give her a flavour of the real situation. It is her case that in 2018, when the script

was being discussed between the Plaintiff and Defendant No.1, it was agreed that the Plaintiff's role in film would be acknowledged by mentioning the same in the film as under:

“Aparna Bhat continues to fight cases of sexual and physical violence against women”

5. Reliance is placed by the Plaintiff on various emails and other communications exchanged between the parties, extracts from the script which contain the handwritten inputs given by her, as also the notices exchanged.

6. It is stated in the plaint that the Plaintiff was extremely surprised when she was invited for a premier of the film on 7th January, 2020 and realised that there was no acknowledgement about her role in the film. Accordingly, the suit for injunction was filed before the Trial Court seeking the following reliefs:

*“a) A decree of prohibitory/mandatory injunction be passed against the defendants and in favour of the plaintiff, directing the defendants and its officials to restrain the public release of the film on 10.01.2020;
b) Cost of the proceedings/ suit be also awarded in favour of the plaintiff and against the defendant;
c) Grant mandatory injunction for inclusion of the Plaintiff's name in acknowledgments as promised/accepted by the Defendant in communication dated 17.11.2018 prior to the release of the film on 10.01.2020;
d) Such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be.”*

7. Along with the plaint, an application seeking interim relief was also filed, in which the prayer sought was as under:

*“a) Pending hearing and final disposal of the suit, the Defendants either themselves or through anyone acting on their behalf be restrained from the release of the film “Chhapaak” in any jurisdiction including the jurisdiction of this Hon’ble Court;
b) And pass such other or further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case be.”*

8. The Trial Court, vide order dated 9th January, 2020 granted an interim order with the following observations:

“.....The facts disclosed that plaintiff has rendered her contribution in the form of consultation, necessary inputs, documents for the making of the aforesaid film to defendant no.1. As per the document relating to “Actual Footage & Images, the contribution of the plaintiff was to be acknowledged through words “Aparna Bhat continues to fight cases of sexual and physical violence against women.” It is a matter of fact that the aforesaid film depicts legal nuances and as such, the contribution of the plaintiff should necessarily be acknowledged in the background of the fact that she provided necessary legal support in the form of consultation, inputs and documents. Further, it is also necessary from the perspective of the viewers as they deserve to know the source of the legal inputs, guidance provided by the plaintiff. Plaintiff is in her legitimate right to compel the defendant to show her contribution during the screening of the film as such right is embedded in the agreement which is evident from the template acknowledging her contribution and communication effected between the parties.

If ad interim injunction directing the defendant to show on actual footage and images the line “Aparna Bhat continues to fight cases of sexual and physical violence against women” is not granted, then grave prejudice, injustice would be caused to her as the screening of the film without it would prevent the

general public from knowing the said contribution of the plaintiff in the film. The Plaintiff has thus prima facie able to show an infraction of her legal right emanating from the agreement and the facts presented. The balance of convenience also lies in her favour as it is the plaintiff who would be subjected to grave hardship, inconvenience, prejudice and injustice by not granting the injunction. Although, the said agreement do not have any financial implication but non-inclusion of the plaintiff's contribution during the screening of film would cause irreparable damage to her in other terms.

Accordingly, this court is of the considered view that facts are indicative that the plea of the plaintiff for ad interim injunction is well founded and it is necessary that her contribution be acknowledged by providing on the slide of actual footage and images, the line "Aparna Bhatt continues to fight cases of sexual and physical violence against women" during the screening of the film. The said line of screen may be with a rider that the same is through court orders."

9. The present petition has been filed challenging the said order dated 9th January, 2020. The petition has been preferred by Fox Star Studios (Division of Star India Private Limited), which is the production house for the film. The Plaintiff is Respondent No.1 in the petition. Ms. Meghna Gulzar – Defendant No.1, and the other co-production companies are *proforma* Respondent Nos.2-4.

10. On behalf of Fox Star Studios, it is submitted by Mr. Rajiv Nayar, Id. Senior Counsel that the Trial Court has completely erred in granting a mandatory *ex-parte* ad-interim injunction. It is his submission that such an injunction cannot be granted by the Court, that too, *ex-parte* as it is the settled position in law that an interim mandatory injunction can be only to

restore the *status quo ante* and not to create a fresh state of affairs. He relies upon *Dorab Cawasji Warden v Coomi Sorab Warden and Others (1990) 2 SCC 117*.

11. It is further submitted by Mr. Nayar that the Trial Court has gone beyond the reliefs which were sought by the Plaintiff herself, as the only order that was sought by the Plaintiff was restraint on the release of the film. An interim mandatory injunction for inclusion of credits was not even sought by the Plaintiff. Mr. Nayar further submits that in fact, the Trial Court has granted the final order sought at the interim stage. Further reliance has been placed on Rule 36, Section IV, Chapter II, Part VI of the Bar Council of India Rules to argue that the nature of credit, as directed by the Trial Court, in fact, constitutes advertising/promoting the lawyer, which is barred under the Rules. Since the credit sought for is itself impermissible, the same could not have been directed by the Trial Court. Mr Nayar also urges that the draft credits have been completely deleted by the Producers and there has not been any selective deletion qua the Plaintiff.

12. Mr. Sandeep Sethi, Id. Senior Counsel appearing for Defendant No.1 submits that there is no legal basis for the Plaintiff's case. No legal right has been claimed to have been violated. It is submitted that neither did the parties enter into any contract, nor was there any specific understanding/agreement between the parties to acknowledge the Plaintiff's role. He further submits that the Plaintiff cannot claim any legal right to get any credit and mere assistance need not be acknowledged.

13. Mr. Sanjay Parikh, Id. Senior Counsel for the Plaintiff submits that the Plaintiff has rendered *pro-bono* work for the acid attack victim for more than ten years. When she was approached by Defendant No.1, the Plaintiff

has trustingly given all her inputs and enormous help in the making of the film. He relies upon the extracts of the script, wherein corrections have been made by the Plaintiff personally in her own hand, to show the contribution and role of the Plaintiff. He also relies upon the emails, correspondence and the communications exchanged between the Plaintiff and Defendant No.1 to argue that it was always the understanding between the parties that the Plaintiff would be acknowledged. He submits that even in the last letter, which was written by Defendant No.1 to the Plaintiff, she acknowledges the contribution made by the Plaintiff. He submits that the Plaintiff is entitled to relief as there has been a severe breach of trust by the Defendants, including Defendant No.1. He submits that by applying the principle of promissory estoppel, the relief sought ought to be granted to the Plaintiff. He relies upon the following judgments to argue that in some cases, even at the interim stage an order can be passed, which may be similar to the final relief:

- (i) *Deoraj v State of Maharashtra and Ors. (2004) 4 SCC 697*
- (ii) *Sajeev Pillai v Venu Kunnapalli FAO No. 191/2019- Kerala High Court (Decided on 11th December, 2019)*
- (iii) *Saregama India v Balaji Motion Pictures Limited CS (COMM) 492/2019 – Delhi High Court (Decided on 13th September, 2019)*
- (iv) *Kirtibhai Raval v Raghuram Jaisukhram, Appeal From Order No. 262/2007 – Gujarat High Court (Decided on 20th January, 2010)*

14. It is further urged on behalf of the Plaintiff that other parties, who had contributed, have been acknowledged in the credits of the film, such as Alok Dixit, whose NGO has been mentioned in the opening credits.

15. The present case was listed upon urgent mentioning today and was

taken up at 2:15 pm. Detailed submissions have been made by the counsels. The Court had also called upon Fox Star Studios to place on record the opening and concluding credits in the film. The same have been filed in a pen drive and have been viewed by the Court.

Analysis and findings

16. The film has not been viewed by the Court. However, the court has taken into consideration the pleadings, the correspondence, the opening and concluding credits filed by the Petitioner – Fox Star Studios, the oral submissions as also the settled judicial precedents on the legal issues. The pleadings in the suit are yet to be completed, and the stand of Defendant No.1 was not filed before the trial court. However, Mr. Sandeep Sethi, Id. Senior Counsel has handed across a copy of a counter affidavit, which seeks to place on record the stand of Defendant No. 1 and her production house. The same has been considered by this Court. A perusal of the plaint/documents and the counter affidavit, which has been handed over yesterday in Court shows that the following facts are broadly admitted between the parties:

i) that the film ‘CHHAPAAK’ is based on the real life of acid attack survivor – Ms. Laxmi Agarwal, though the protagonist in the film is named Malti. The counter affidavit filed, states:

*“6. That a concise statement of facts is as under:
a. The suit film and/or its underlying works (including its story and screenplay) are original works and the same is a fictionalized version of the life of Laxmi Agarwal...”*

ii) that Defendant No.1 approached Ms. Laxmi Aggarwal – the real victim and collected a large number of facts from her;

- iii) thereafter, she approached the Plaintiff in order to seek her guidance and assistance in picturising the entire legal journey of Ms. Laxmi Agarwal, beginning from the Sessions Court till the Supreme Court. Documents were also given by the Plaintiff to the Defendant No.1;
- iv) that the said Defendant had detailed discussions with the Plaintiff of the court hearings which had taken place when the Plaintiff had represented Ms. Laxmi Agarwal;
- v) that a draft screenplay was also shared by Defendant No.1 with the Plaintiff for her views;
- vi) that in the said draft screenplay, the role of the Plaintiff was clearly sought to be acknowledged;
- vii) that the Plaintiff reviewed the draft screenplay and gave her inputs insofar as aspects relating to legal intricacies were concerned;
- viii) The acquaintance between the Plaintiff and Defendant No.1 was quite established, as the Plaintiff was also invited for a special screening of the film on the 7th January, 2020 by Defendant No.1.
- ix) The exchange of various e-mails and WhatsApp messages and their content also stands admitted. The legal notices and replies post the screening of the film on 7th January, 2020 are also admitted.

17. First, the Plaintiff has placed on record orders passed by the Supreme Court in the case involving Laxmi which clearly show that she was the counsel representing her. The counter affidavit, specifically mentions the meetings between the Plaintiff and Defendant No.1 in the following paragraphs:

“6 e. Thereafter, she met the Respondent No.1 between

August and September 2016. On meeting the Respondent No.1, she discussed various details of Laxmi Agarwal's the legal cases which were argued before the Trial Court as well as before the Supreme Court of India.

f. The Respondent No.2 had detailed discussions with Respondent No.1 of the courts hearings which took place when the Respondent No.1 represented Laxmi Agarwal. In fact, the Respondent No.2 also shared a draft screenplay with the Respondent No.1 for her views. It is pertinent to note that this screenplay was merely a draft screenplay and the Respondent No.1 reviewed some portions of the draft only to the extent of confirming the legal terminology or court related scenes contained therein. However, there was no agreement/promise/commitment whatsoever, express or implied, with respect to giving any credits in the film to Respondent No.1

(Respondent No.1 refers to the Plaintiff, Ms. Aparna Bhat.)

18. A perusal of the correspondence between the parties, including the e-mail dated 17th November, 2018 along with the draft screenplay shows that the initial representation was to explicitly acknowledge the contribution of the Plaintiff. The draft screenplay, which was sent by Defendant No.1 to the Plaintiff, along with email dated 17th November, 2018, read as under:

Email dated 17th November, 2018

*“Dear Aparna,
It was so lovely to speak to you yesterday!
As I'd mentioned, here is the script and story treatment we've carved out for my film on Acid Violence, based on all the conversations we've had with you, Shireen, Laxmi and Alok; along with our research and information available in the public domain...*

There are some creative and cinematic adaptations, but nothing that distorts the facts as told to us or as we found during our research. I hope you like what you read and I look forward to your thoughts! And hoping we've managed alright with our legal and police-related scenes! Thank you so much!

- Meghna”

Credits in the Draft Screenplay

ON ACTUAL FOOTAGE & IMAGES:

Laxmi's PIL concluded in April 2015 when all 4 pleas were finally granted. The Supreme Court ordered that both government and private hospitals provide completely free treatment and care to victims of acid attack.

In 2014, Laxmi was presented the International Woman of Courage award by Michelle Obama.

Laxmi and Alok have a daughter.

Aparna Bhat continues to fight cases of sexual and physical violence against women.

The campaign against Acid Violence in India still continues.

The road ahead is a long one ...

Cases of Acid attacks 2012:106

2013: 116

2014: 349

2015: 249

2016: 307”

19. A perusal of the above e-mail shows that Defendant No.1 clearly acknowledges in this e-mail that the Plaintiff contributed in the making of the film. This is also strengthened by a perusal of illustrative portions of the script which have been edited by the Plaintiff. The following are some specific edits/inputs which have been placed on record:

ORIGINAL SCRIPT	EDITS/INPUTS BY PLAINTIFF
<p>“101 INT. ARCHANA’S OFFICE – NIGHT – CONTINUOUS <i>White board with a heading: Union of India Vs Bashir Khan.</i> <i>It has the word EVIDENCE written under it.</i> <i>Meenakshi underlines it. She writes more: ...”</i></p>	<p>Union of India Vs Bashir Khan replaced with <i>State of Delhi</i> Vs Bashir Khan.</p>
<p>“ARCHANA (CONT’D) <i>Karnataka, Sikkim, Punjab – yeh woh states hain jahan Acid Survivors ko sarakri compensation ke saath hasapatalon mein muft ilaaj bhi diya jata hai. Ucchatam Nyayalaya se humne appeal ki hai ke woh poore desh mein yahi compensation yojana lagu karein.”</i></p>	<p><i>Karnataka, Sikkim, Punjab are scored out by hand.</i> “ONLY Haryana” is added</p>
<p>“JUDGE <i>Malti ji ... aap apni final statement mein kuchh kehna chaahengi?”</i></p>	<p><i>“Change this to Archana making a request that Malti wants to say something.”</i></p>
<p><i>“The judges are waiting for her to come to the point. Judge 3 asks for a tea refill from an assistant on the side.”</i></p>	<p><i>“Does not happen.”</i></p>
<p>“PARVEEN <i>Humein nahi pata kahan se aayi ye peeli chunni humare ghar mein. Humein lagta hain police ne hi laake rakh di thi hamare sandook mein. Hum thay nahin na ghar pe.”</i></p>	<p><i>“Accused do not depose.”</i></p>
<p>“JUDGE 2 (CONT’D) <i>This bench admits this plea. Let’s revisit the plea in three month’s time. Aur agli hearing pe, let’s meet with the Solicitor General.”</i></p>	<p><i>“Call to Attorney General.”</i></p>

20. The above illustrative examples of the changes made in the script/screenplay show that the Plaintiff has had a detailed look at the same and gave her professional inputs. The Defendant No.1 and the Plaintiff were

in continuous communication with each other which is clear from the WhatsApp exchanges placed on record by Defendant No.1. The Plaintiff was invited for the special screening of the film by Defendant No.1. Even after the screening of the film, the Plaintiff addressed an e-mail dated 7th January, 2020 wherein she brought to the notice of Defendant No. 1 that she had expected her contribution to be acknowledged in the film and was disappointed for not finding such an acknowledgement. In response, the reply dated 8th January, 2020 sent was as under:

*“Dear Aparna,
I am writing this as placeholder because as your rightly said, I do have too much going on. Between copyright cases to inclusion and exclusion complaints. (I guess just making this film wasn’t enough)
I will respond to your email once I’m relieved of my duties of releasing this film.
Till then let be on record, that whenever I have detailed the real life characters wrt to the film in any of my interviews, I have always mentioned you.
And perhaps acknowledged you and your contribution to Laxmi and the PIL in the film, more than Laxmi had ever done. You have said so yourself.
I will leave that with you.
Best,
Meghna.”*

21. A perusal of this e-mail dated 8th January, 2020 clearly shows that the Plaintiff’s contribution is clearly acknowledged by Defendant No.1.

22. On a query from the Court, ld. counsels appearing for Fox Star Studios as also for Defendant No.1 admit that no consideration was ever paid to the Plaintiff for her contribution or inputs. Further, there was no written contract setting out any of the terms. Thus, there was no contract of service between the Plaintiff and the producers/director.

23. The question that now arises is as to what would be the legal right that the Plaintiff would have in such a situation. On behalf of the Plaintiff, the doctrine of promissory estoppel has been invoked to seek reliefs. The said doctrine has been recognized and acknowledged in several judgments. It is the settled legal position that the threshold to establish promissory estoppel is very high. As held in *Monnet Ispat and Energy Limited v. Union of India and Others (2012) 11 SCC 1*, in order for any conduct to constitute promissory estoppel, there has to be a clear and unequivocal promise, which is intended to create a legal relationship, and that such promise would be binding. The observations of the Supreme Court are as under:

“182. In my view, the following principles must guide a court where an issue of applicability of promissory estoppel arises:

182.1. Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

182.2. The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private

party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

182.3. *The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.*

182.4. *For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.*

182.5. *In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.*

182.6. *It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.*

182.7. *The doctrine of promissory estoppel cannot be*

invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.”

24. In ***Manuelsons Hotels Private Limited v. State of Kerala and Ors.*** (2016) 6 SCC 766, the Supreme Court, after referring to the judgment of the Australian High Court in ***Commonwealth of Australia v. Verwayen*** (1990) 170 CLR 394 (Aust) concluded as under:

“20. The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference—under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel—one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party.”

The conditions required to constitute promissory estoppel, are also well

established but is there promissory estoppel in the present case, which can be established by the Plaintiff? Did Defendant No.1 make a promise to the Plaintiff that she would be adequately acknowledged in the making of the film?

25. A perusal of the e-mails and the communications exchanged between the parties shows that the Plaintiff and Defendant No.1 were previously unknown to each other and the Plaintiff was contacted specifically in the context of the production of the film. She rendered her assistance in the making of the film. The letters, e-mails and WhatsApp messages show that an expectation was created in the Plaintiff's mind that her inputs and contribution in the making of the film would be adequately acknowledged. This is clear from e-mail dated 17th November, 2018 along with the draft screenplay, as also the latest letter dated 8th January, 2019 addressed to the Plaintiff. The law is also well settled that promissory estoppel can act both as a defence and as a cause of action. In the present case, it is the latter. There is no doubt that the non-acknowledgment of the contribution of the Plaintiff is contrary to what was represented to her since the inception of the making of the film.

26. A perusal of the opening and the closing credits in the film, as also the trailer of the film, which is publicly available, shows that the legal journey of Ms. Laxmi Agarwal apart from her emotional journey, forms the crux of the film itself. The ending credits, in fact, show that the film contains various courtroom scenes, depiction of judges, lawyers, court premises, etc. The documents also show that in-depth research has been conducted for the purpose of attempting to ensure accuracy of the legal aspects of the litigation of the survivor. All this has been made possible due to intricate work which

has been undertaken by the Producer/Director. She has been, evidently, assisted by several persons including the victim herself, including her lawyer – the Plaintiff. Thus, the effort, skill and labour of the Plaintiff cannot be undermined especially after a clear assurance, representation and promise was made to recognise her contribution. The consideration for the Plaintiff in rendering her services was not monetary but in the form of the recognition. All that the Plaintiff expected was some form of acknowledgement of her role in the making of the film. There was no monetary consideration that was either demanded or given. Since there was no contract vesting the Plaintiff's contribution in the Producer/Director, she does have rights in the inputs that have been provided by her, including in the various scenes of the screenplay.

27. In the absence of a contract and payment of consideration, her efforts, skill and labour cannot vest with the producer completely gratuitously. She at least has a right to be recognized and acknowledged, to which the Producer/Director had willingly agreed since the beginning of the project.

28. There is no adequate or satisfying answer to the question as to why the Plaintiff's role was not acknowledged. The Defendant no.1 has definitely been unhesitating in her correspondence with the Plaintiff to acknowledge that the Plaintiff assisted and contributed, however for inexplicable reasons, despite agreeing, the due acknowledgement was not given. The Plaintiff has clearly gone by the stature and standing of the Defendant No.1 and not insisted on having a signed contract. But that does not mean that she can be left remediless especially when her role is admitted. The only feeble reason mentioned is that the Plaintiff herself wanted her role to be discreet, and that the authenticity of the film had to be preserved so that it does not become

contractual. This is clear from the reply dated 7th January 2020 given by Defendant No.1, as also a WhatsApp message which reads as under:

*“[07/01/20, 11:22:40 PM] MG: Dear Aparna,
I will request you to clarify this.
I have not said “Thank you” in the credits for any real
character, who assisted and appeared in the film.
Including Laxmi Agarwal and Alok Dixit.
Also same for the Talwar family in Talvar. Because I
felt it takes away from the authenticity of the film. And
makes it contractual.
Pointing this out to you since you pointed it out to me
after the screening.”*

Clearly, from the initial screenplay, which was to acknowledge both Ms. Laxmi Agarwal and the Plaintiff, the complete absence of any mention of the Plaintiff’s name anywhere in the beginning or in the end credits would constitute renegeing from the promise. A perusal of the credits shows that a large number of contributors have been expressly acknowledged.

29. The legal issue as to whether an *ad interim* mandatory injunction can be granted at the *ex parte* stage in this manner is no longer *res integra*. Mandatory injunctions and mandatory interim injunctions can clearly be granted even as per the judgment relied upon by the Petitioner. The judgment in *Dorab Cawasji Warden v Coomi Sorab Warden and Others* (*supra*) holds that such injunctions are granted to preserve the *status quo* or restore the *status quo* of the last non-contested status, generally. The observation of the Supreme Court is as under:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel

the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.”

30. The above observations of the Supreme Court also considered the celebrated passage from *Halsbury's Laws of England* on mandatory injunctions, which reads as under:

“On the test to be applied in granting mandatory injunctions on interlocutory applications in Halsbury's Laws of England, 4th edn., Vol. 24, para 948 it is stated:

*A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. **However, if the case is clear and one which the court thinks ought to be decided at once,** or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in*

respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory application.”

A reading of the above extracts clearly shows that the general rule is not to grant a mandatory injunction. It can, however, be granted to restore the *status quo ante* and to remedy a situation *at once*. The standard required for a mandatory injunction is higher than that of a prohibitory injunction, and the same is granted when the injury cannot be compensated in money.

31. The clear position prior to the release of the film was that the Plaintiff's contribution was being acknowledged. It was only changed, post the release of the film, when the Plaintiff found that there was no acknowledgment and the Defendants refused to incorporate the same. Though, the Id. Trial Court granted a mandatory injunction, the nature of relief that can be granted at the *prima facie* stage or even at the *ex parte* stage depend depends on the facts of each case and the nature of the injury likely to be caused.

32. It is also the well-settled position in law that in order for any person's paternity rights in any work to be recognised, a written contract is not required. The right of paternity is an integral part of the moral rights of a person who makes any contribution. Delving into the moral rights of an author, a Id. Single Judge of this Court in *Neha Bhasin v Anand Raaj Anand & Anr. (2006) 132 DLT 196* recognized the right of the singer therein to be credited as the lead female singer as against just a singer. The question as to whether the Plaintiff would be entitled to such a moral right would have to be decided at a subsequent stage, after the pleadings are completed.

33. The Supreme Court had the occasion to consider a case, under similar circumstances in *Suresh Jindal v Rizoli Corriere Della Sera Prodzioni T.V. Spa and Others 1991 Supp (2) SCC 3*. The Plaintiff in the said case was a film producer, who had rendered his services for the purpose of enabling the Defendants who were Italian film makers, to shoot their film in India. He had assisted the producers in obtaining permission for shooting of the film in India and he had also carried out modifications to the script. After the Plaintiff had made his contributions, the Defendants sought to disassociate themselves from the Plaintiff. The Plaintiff then sought specific performance. The Plaintiff argued that he had a concluded contract and the Defendants denied the same. During the pendency of the suit, the production of the film was completed and the Plaintiff, instead of seeking a restraint order on the release of the film, sought interim relief for being recognized as a co-producer of the film. Both the Ld. Single Judge and the Id. Division Bench had rejected the prayer for interim relief. In this context, the Supreme Court observed as under:

“4..... At the outset, we may point out that, according to the respondents, there had been no concluded contract regarding the part to be played by the appellant in the actual production of the film, though the appellant disputes this. It is, however, clear that the appellant did not play any part in the production of the film because, even according to him, he was totally excluded by the respondents from doing so. For obvious reasons, the question of specifically performing this portion of the contract (even assuming, as contended by the appellant, that there was a concluded contract in this respect which could be enforced) can no longer arise. At best the only issue that can be agitated in the suit would be whether the

appellant is entitled to damages for having been excluded from being allowed to participate in the production of the film. But, whatever may be the merits of the appellant's claims in the suit, the facts as placed before us have, prima facie, left no doubt in our minds that the appellant did render some services to help the respondents to obtain the permission of the Government of India for shooting the film in India. Whether or not the appellant's claim that, but for his help such permission could not have been obtained, is correct, there is no doubt that he did make a valuable contribution in this respect. The only question before us now is whether the appellant is entitled to any interim relief on the basis of the undoubted part played by him in this regard.

5. The appellant has frankly stated before the High Court as well as before us that he was not interested in pursuing the claim for specific performance or damages if only the respondents would make a public acknowledgment (if not that he was a co-producer) at least that he had played a part in making the film possible. He has assured us that, if this relief is granted to him, he would even be prepared to withdraw the suit itself. This appears to us to be a very reasonable stand. We repeatedly made it known to the learned counsel for the respondents that we were firmly of the opinion that the least that the respondents could do was to acknowledge the help given by the appellant. We left them to choose their own words for expressing such acknowledgment. We suggested to them that it would only be just and proper that they should display, for a short time, (say three seconds, as suggested by the appellant) their acknowledgment in the titles of "credits" for the film so that the services rendered by the appellant, whether they were crucial as urged by the appellant or not very substantial as

claimed by the respondent, are made known to the public. Learned counsel for the respondents, however, after taking instructions, reported that the respondents would neither be willing nor able to make any such acknowledgment inasmuch as the production of the film was complete and steps had already been finalised even for its distribution and exhibition.

6. The High court seems to have taken the view that, even if the appellant had rendered some services as claimed and the respondents refused to acknowledge it, he can be adequately compensated by the award of damages. Of course, it is possible that the court may ultimately be able to assess some damages for this breach if it comes to the conclusion that there has been such breach. However, we think that in a matter of this type the award of damages is not a complete and adequate remedy or relief. As the appellant has made clear, he is not interested so much in the monetary aspect of the deal he claims to have entered into with the respondents. The gain by way of reputation as well as goodwill which the appellant would secure if his services are acknowledged in the title shots of the film is not one which can be adequately expressed in terms of money. By the time the suit is finally decided, any such exhibition of acknowledgement may become totally impossible or infructuous. In that situation, perhaps, there would be no alternative but to assess the damage somehow or other depending upon the findings of the court on the issues in the case. We, however, think, on the prima facie case made out and having regard to the fact that the necessary modifications in the "credit titles" can be easily made as the film is still in the early stages of its exhibition, that it is just and necessary that the appellant should

be granted interim relief at this stage by injuncting the respondents from exhibiting the film except after displaying an acknowledgement of the appellant's services.

7. We have pondered on the nature of the relief that should be given to the petitioner. As we have already said, **there is no doubt in our minds that, whether there was a concluded contract as claimed by the appellant or not, the appellant did play some part in making the film possible and that the respondents are acting unreasonably in denying him the benefit of the limited acknowledgment he is entitled to have.** In view of respondent's disinclination to extend even this courtesy to the appellant, we were initially inclined to issue directions to the respondents to effect necessary changes in the title shots and introduce an acknowledgment of the appellant's services in appropriate language before distributing or exhibiting the film and its copies. We have no doubt that the grant of such a direction would be absolutely within the scope of suit and would mete out proper justice to the appellant. On second thoughts, however, we refrain from doing this. We learn that, though the picture was shot in India, it is being exhibited only in foreign countries. Even if we give a direction as proposed, it might be difficult for this Court to ensure that the respondents carry out these directions. Even the appellant would not be in a position to ensure that such directions are complied with. It is well known that a court will not issue directions over the compliance of which it has no control. In view of this we think that we should not issue such general directions as indicated above. We, therefore, restrict the scope of the interim relief and direct, in the interests of justice, that in case

the film is proposed to be, or is, exhibited either on the T.V. or in any other medium in India, it shall not be so exhibited by the respondent or their agents unless it carries, in its title shots, an acknowledgment of the services rendered by the appellant to the producers in some appropriate language. We direct accordingly.”

34. The present suit concerns a cinematographic film which has been released on 10th January, 2020. The Plaintiff, all along, was represented and was clearly informed that she had a substantial contribution in the film, and that her role would be suitably recognized and acknowledged. It was not until 7th January, 2020 that the Plaintiff came to know of the absence of the same. There was no intimation or communication to her that her role would not be recognized, contrary to what was represented earlier. The e-mail correspondence and the other communications, as also the inputs given in the script clearly show that the Plaintiff played a role. The letter dated 8th January, 2020 also shows that the Producer/Director does recognize her role. Under these circumstances, the Plaintiff is entitled to avail of her remedies to bind the Defendants to the promise, and the assurance as also the representations made by them. In *Suresh Jindal (supra)* it is clear that the Supreme Court, when confronted with similar facts, held that the non-grant of relief would make the entire suit infructuous and that damages was not an adequate remedy. The Supreme Court held that even ‘some part’ that the Plaintiff therein played in the film, deserves to be acknowledged.

35. What would be the nature of acknowledgement/ recognition that the Plaintiff would deserve? The Plaintiff is not the author of the script or the screenplay, however she has given inputs in the same. The said inputs could be considered to be those of an expert/a professional having expert

knowledge, both in the legal journey of the victim, as also in general. For whatever reason, she had clearly altered her position based on the representations made by the Defendants and had not insisted on a written contract, maybe owing to the fact that she considered this to be a social cause and in view of the stature of Defendant No.1.

36. At this stage, the imminent release of the film tilted the scale in favour of the Plaintiff for grant of interim relief, inasmuch as if the film was released without the acknowledgment given to the Plaintiff, and by the time the trial of the suit is concluded, the reliefs pleaded in the suit may themselves become infructuous, as the Plaintiff did not expect any monetary compensation for her role in the film. The acknowledgments given to various professionals in the film and the addition of the Plaintiff and her contribution thereto would not put the Petitioner – Fox Star Studios to any inconvenience, apart from modification of one slide of the opening credits. The text of the acknowledgement, which has been directed by the Trial Court is extremely broad, and in fact may not be appropriate considering that the Plaintiff is a practising lawyer. However, this should not deprive the Plaintiff from having her role recognized in the making of the film. There are various other professionals who have already been acknowledged in the credits of the film.

37. The Defendants do not dispute that the Plaintiff was approached by them, was consulted by them and that her help/assistance was taken. She had not merely provided all help in terms of the history of the criminal trial, the proceedings emanating therefrom, and the public litigation which was filed but also provided documents, explained the nuances of litigation processes and corrected and modified the script. She has, therefore, helped in

maintaining the integrity and the credibility of the film itself, in respect of the legal journey of the victim. The lead Producer/Director has in fact acknowledged the same without any hesitation, both in communications and even in the counter affidavit that has been filed before the Court. Under such circumstances, it cannot be held that the Plaintiff is not entitled to any interim relief at this stage. Accordingly, while the acknowledgement given by the Trial Court may be broad, the Plaintiff deserves to be recognized for her '*some part*' in the making of the film.

38. Under these circumstances, the following directions are issued:

a. The Defendants are restrained from releasing the film '*CHHAPAAK*' on any electronic medium/s such as cable television, home viewing, DTH platforms, internet entertainment or streaming services, etc., without acknowledging the name of the Plaintiff, in the opening credits in the following manner:

***“Inputs by Ms. Aparna Bhat, the lawyer who represented
Laxmi Agarwal are acknowledged.”***

b. Insofar as the further theatrical exhibition is concerned, since the film has already been released on 10th January 2020 both internationally and in India, in order to ensure that there is no disruption in the screening, it is directed that the film shall not be exhibited in theatres with effect from 15th January 2020 without the above credit being added to the digital copies of the film's opening credit slides.

c. Since this Court has modified the order passed by the trial court, the contempt application stated to have been filed by the Plaintiff, shall not be pressed.

39. The petition and all pending applications are disposed of in the above terms. A copy of this order be given *dasti* under signatures of the Court Master.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 11, 2020

dk/rahul/dj/ R.T.A.

