



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

**INTERIM APPLICATION (L) NO. 2720 OF 2023
WITH
COMMERCIAL SUMMARY SUIT (L) NO. 2658 OF 2023
WITH
SUMMONS FOR JUDGMENT (L) NO. 17289 OF 2023**

Zee Entertainment Enterprises Limited]
A public listed Company incorporated]
under the provisions of the Companies]
Act, 1956 having its registered office at]
18th Floor, Marathon Futurex, N M Joshi]
Marg, Lower Parel, Mumbai - 400013].. Plaintiff

V/s.

1. Triller Inc]
A company incorporated under the]
relevant laws of the United States of]
America having its registered office at]
2121, Avenue of the State Suite, 2350]
Los Angeles, California 90067].. Defendant

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Mr. Priyank Kapadia a/w. Mr. Kunal Parekh, Ms. Nirali Atha
i/b. Dua Associates, for the Plaintiff.

Mr. Malhar Zatakia a/w. Mr. Arpit Solankim Mr. Siddharth Bafna
i/b. Integrum Legal, for the Defendant.

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**CORAM : KAMAL KHATA, J.
RESERVED ON: 2ND AUGUST, 2023.
PRONOUNCED ON: 7TH SEPTEMBER, 2023.**

JUDGMENT:

1. This summary suit is instituted in this Court's Commercial
Division for the recovery of a sum of \$300,000/- equivalent to
Rs.2,44,26,480/- along with interest thereon at the rate of 18%

p.a. on the principal sum of \$ 3,00,000/- from the date of filing of the suit till payment and/or realization as particularly set out in Exhibit M to the Plaint.

2. By this Interim Application (“IA”) the Plaintiff seeks security, attachment of all properties of the Defendant both moveable and immovable available in India and pending the final hearing of the IA an affidavit disclosing on oath, all properties and bank statements particularly mentioned in prayer clause (c) of the IA and an injunction restraining the Defendants from in any manner dealing with and/or disposing in any manner whatsoever the properties belonging to the Defendant.

ESSENCE OF PLAINT:

3. The Plaintiff a Public Listed Company is engaged in the business of procurement, development, distribution and dissemination, broadcast/re-broadcast of music, entertainment, television programs including cinematograph feature films serials, talent hunts, reality shows through satellite, terrestrial and cable channels, through Direct to Home (“DTH”) using existing and emerging platforms in short the media and entertainment business. The Plaintiff is an owner of a large repertoire of copyrights in sound recordings and audio visuals/music videos as also the underlying musical and literary works embodied therein (Repertoire). Its music division is engaged in acquisition, distribution, exploitation and broadcasting content such as song/sound recordings, audio visuals songs/music videos and

underlying literary and musical works embodied therein across various mediums.

4. The Defendant is a company incorporated in the United States of America engaged in the business of video sharing social networking service that allows users to create and share short-form videos, including videos set to, or automatically synchronized to music using artificial intelligence technology.

5. By a Record Music License Agreement dated 13th October 2020 (“**Agreement**”) the Plaintiff granted limited non-exclusive, revocable, non-transferable license to exploit the Plaintiff’s sound recordings repertoire (“**Licensed Works**”) to the Defendant for the period 1st July 2020 to 30th June 2021 which it undisputedly used . The Defendant was liable to pay US \$ 6,00,000 plus applicable taxes in 4 equal quarterly instalments under clause 4(a) of the Agreement which were paid after multiple reminders.

6. By an amendment dated 15th September 2021, the agreement was extended by a period of one year commencing from 1st July 2021 to 30th June 2022 on the same terms as is in the original agreement, i.e., including the consideration, i.e., US \$ 6,00,000 payable in four equal quarterly instalments.

7. The Defendant continued to exploit the Licensed Works for the two quarters and paid the Plaintiffs US \$ 3,00,000 under its two invoices dated 17th September 2021 and 13th October 2021 only after a notice dated 13th January 2022.

8. It is the case of the Plaintiff that without making payments for the third invoice dated 21st January 2022 and the fourth invoice dated 22nd April 2022 the Defendant continued to exploit the Licensed Works. Therefore the Plaintiff was compelled to issue reminder notices dated 5th August 2022 and 19th August 2022 calling upon them to pay the principal sum of US\$ 3,00,000 along with interest @ 18% per annum from the date of the invoices till payment and/or realization thereof. On account of failure to pay the dues or revert to the said notices the Plaintiff was constrained to issue legal notice dated 12th September 2022 to pay the aforesaid sum with interest within 48 hours of receipt of the notice.

9. In response to the notice, the Defendant by its email dated 13th September 2022 assured payment of the third instalment of US \$ 150,000 by 31st October 2022 and the fourth instalment by 29th January 2023 thus admitting and acknowledging its liability. The Plaintiff accepted the revised timelines through its Advocates letter dated 21st September 2022 on the condition that any further delay would attract interest of 18% p.a.

10. Despite assuring payments on the revised timelines the Defendant failed to pay whilst it continued to exploit the Licensed Works and the Plaintiff's Advocates notices dated 2nd November 2022, 10th November 2022 and 18th November 2022 were disregarded. In these circumstances the Plaintiff after obtaining leave under Order II Rule 2 and under Clause XII of the Letters Patent instituted this Suit on 4th January 2023.

11. Mr. Kapadia the Learned Counsel for the Plaintiff submitted that the Plaintiff has reached out to the Defendant both through email dated 1st February 2023 and then even through their Advocates on 30th March 2023, 25th May 2023. The Defendant made a proposal for settlement on 6th June 2023 that was unacceptable to the Plaintiff and was rejected on the same day.

12. The learned counsel urged that they have discovered that the Defendant is a habitual defaulter and several litigations are pending before various courts in the United States of America against the Defendant. In view thereof the Plaintiff apprehends that the Defendant might attempt to sell or dispose of its assets in India to wriggle out of its obligations. The counsel further urges that, since the Defendant is based out in the United States of America, it is practically impossible for the plaintiff to monitor the financial soundness of the Defendant. The learned counsel drew my attention to Exhibit A being a report of "Los Angeles Times" dated 4th October 2022 to substantiate the urgency and the need for obtaining interim reliefs.

13. In support of his aforesaid contentions he relies upon the following judgements:

1. ***IDBI Trusteeship Services Limited Vs Hubtown Limited***¹
2. ***Antara Housing LLP vs M/s Primeland Constructions***²
3. ***Future Corporate Resources Pvt. Ltd vs Edelweiss Special Opportunities Fund and Another***³

1 (2017) 1 SCC 568

2 High Court Judgement dated 3rd October 2022 in SJ (L) No. 15542 of 2022 with IA (L) No. 10318 of 2022 in Comm Sum Suit No. 20 of 2022

3 2022 SCC OnLine Bom 3744

4. *Suresh K Jogani vs M/s Champalal K Vardhan*⁴

14. Mr. Zatakia learned counsel for the Defendant submits that the Defendant is a Los Angeles Californian Company which owns, operates and controls social media application known as Triller and website, <https://triller.co> (“Platforms” for short). The Defendant is an intermediary which allows its users to create, upload and share short form videos, including videos set to, or automatically synchronized to music using artificial technology on the Platforms.

15. His preliminary objection is that the suit is premature. He submits that the IA is filed to circumvent pre-suit mediation under Section 12-A of the Commercial Courts Act, 2015 which is mandatory in nature. He submits that the last instalment was due on 29th January 2023 but the suit was filed earlier on 27th January 2023.

16. He submits that the news articles relied upon are misleading, misconceived and an attempt to show the Defendant in a bad light – they are nothing but sensationalistic articles with a click-bait mentality used by tabloid journalists. According to the Defendant there are no monies due and payable to the Plaintiff and the offers made for settlement were in good faith and without prejudice in the current financial situation of the Defendant. Furthermore, the Defendant had not agreed to pay any interest on the principal amount in the event of delay or otherwise.

4 High Court Order dated 10th November 2022 in SJ No. 33 of 2022 in IA (L) No 22029 of 2022 in Comm Summ Suit (L) No. 22017 of 2022

17. The Learned Counsel for the Defendant contends that the suit is barred for non-compliance of Section 12-A of the Commercial Courts Act, 2015. To support his contention the counsel places reliance on *Patil Automation Private Limited versus Rakheja Engineers Private Limited*⁵ particularly paragraph nos. 48, 49, 83, 113.1 to submit that Section 12-A is mandatory and any suit instituted violating the mandate of section 12-A must be rejected under Order VII Rule 11.

18. He also placed reliance on *Dilip Kumar Rungta versus KLG Tradefin Pvt. Ltd.*⁶ that held that mere filing an application of injunction and/or security cannot be regarded as dispensation of rigor of Section 12A of the act. The Plaintiff was directed to exhaust the remedy available under Section 12-A.

19. The learned counsel for the Defendant, would urge that the interim application taken out by the Plaintiff is only an attempt to circumvent the provisions of Section 12-A of the Commercial Courts Act, 2015. Placing reliance on the above judgments he submits that the averments in the Plaint do not carve out an exception under the provisions of Section 12-A. He submits that the Defendant's letter dated 6th June 2023 was not responded to by the Plaintiff. He submitted that if an attempt would be made, there was a likelihood of succeeding in mediation proceedings. He draws my attention to the Order dated 6th July 2023, where an offer was made by the Defendant however, the Plaintiff failed to respond positively nor made a counter offer. He therefore submits that the interim application deserves to be dismissed.

5 2022 10 SCC 1

6 2023 SCC OnLine Cal 764

20. The parties were given an opportunity to try and settle the matter. However, it is submitted that no money was offered and the other manner of repayment by the Defendant was unacceptable to the Plaintiff. Hence, I proceeded to hear the matter on merits.

21. I have perused the agreement dated 13th October 2020 and the amendment No.1 dated 15th September 2021 and the invoices that were raised by the Plaintiff on the Defendant. It is not the case of the Defendant that they have not exploited the Licensed Works. I did not find any averment to suggest there was any dispute or complaint with regard to the Licensed Works exploited by the Defendant. It is therefore abundantly clear that an amount of US \$ 300,000 is due and payable to the Plaintiff. A bare denial in the reply to the Summons for Judgement is no defence. The Defendant's denial to the legal notice dated 12th September 2022 in paragraph 11 (k) of Affidavit in Reply to the Summons for Judgement is ex facie dishonest and a blatant lie in as much as there is a reply from the Defendant dated 13th September 2022 referring to it. With regard to the interest charged at 18%, a bare perusal of the invoices, particularly the remarks section, clearly evinces that an interest at the rate of 18% would be charged for delayed payment. Besides the Plaintiff has also claimed interest in their letters dated 13th January 2022, 5th August 2022, 19th August 2022 and 12th September 2022. The Defendant did not rebut the assertions in their response vide email dated 13th September 2022. I therefore have absolutely no doubt that interest is due on the delayed payment.

22. The Defendant owes money, it is refusing to pay in monetary terms or needs time to repay which is not acceptable to the Plaintiff. It is not a company based in India but only an intermediary. There is no dispute that there are several litigations against the Defendant. Though some of them are stated to have been settled the Plaintiff is not wrong in being anxious and in seeking urgent relief to attach the properties of the Defendant. There is every possibility given the numerous litigations the Defendant may alienate its assets and properties in India. It is certainly not an attempt to circumvent the provisions of Section 12-A particularly when at least two or three attempts to settle the matter have failed. The reliance on the judgement in Patil Automation Private Limited (supra) and Dilip Kumar Rungta (supra) is unacceptable as there is a clear case of urgent interim relief made out which carves out an exception to the mandate. The Defendant has not produced any material to show its ability or capacity to repay the admitted debt. It is apparent that the Defendant is seeking to delay the inevitable in the garb of these defences and alienate properties to deprive the Plaintiff of its rightful dues. In my view the court cannot turn a blind eye and allow a party to take untenable defences and make a mockery out of the system. In the present case it is apparent that the Defendant seeks to repay the rightful dues on its own terms and no other way which the Plaintiff has not accepted.

23. With reference to the contention that the suit is premature, Admittedly the outstanding dues were payable on 29th January 2023 and the same have not been paid for more than 6 months i.e.

till the hearing. It is not the case of the Defendants that they tried to pay the Plaintiff and they rejected any payment offered on 29th January 2023 or thereafter. Rejecting the Plaintiff in these circumstances would be nothing else but aiding and encouraging the wrong doer.

24. I do not find any merit in the submission that merely because the Plaintiff tried to settle the matter and did not press for interim reliefs between 27th January 2023 (when it was filed) till June 2023 there was no urgency. It is the other way around. The fact that the Defendant failed to pay inspite of Plaintiffs making attempts to settle the matter, makes it clear that the Defendant was seeking to delay and/or defeat the claim of the Plaintiff. I am unable to agree with the submission of the Defendant's Counsel that nothing prevented the Plaintiff from seeking urgent reliefs though without prejudice discussion were ongoing between the parties. It is common knowledge that parties would stay their hands during settlement talks and if any party would proceed, normally the talks would fail on such action by the party. It does not lie in the mouth of the Defendant to take such a defence after having received the benefit. There is no defence at all. Neither plausible nor probable. There is by no stretch of imagination any triable issue raised thus, the Plaintiff is entitled to judgement forthwith.

25. I am therefore inclined to grant a decree in favour of the Plaintiff as under

: ORDER :

- (a) The Defendant to pay a sum of US \$300,000, i.e.,

Rs. 2,44,26,480/- along with the interest at the rate of 18% per annum thereon from 27th January 2023 till payment and/or realization.

(b) The Defendant to pay ₹ 2.5 lakhs as costs of the suit to the Plaintiff in addition to the deficit of the Court fees refunded.

(c) Refund of Court fees in accordance with the High Court rules.

(d) The Plaintiff will be entitled to proceed in execution without the drawing up of the decree.

(f) The Suit Decreed in the aforesaid terms.

(g) Summons for Judgment and Suit stand disposed of.

(h) In view of disposal of the suit all interim applications stand disposed of.

(i) All concerned to act on the authenticated copy of the Order.

(KAMAL KHATA, J.)