
(2002) 09 BOM CK 0114

In the Bombay High Court

Case No : Appeal (Lodging) No. 752 of 2002 in Arbitration No. 301 of 2002

Aamir Raza Husain and Another

APPELLANT

Vs

Cinevistaas Limited and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Copyright Act, 1957 — Section 17, 18, 19

Citation : (2004) 1 ARBLR 248 : (2003) 3 BomCR 827 : (2003) 27 PTC 425

Hon'ble Judges : Nishita Mhatre, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Rohit Kapadia and Rahul Chitnis, instructed by Rawell Kudrolli original Respondent Nos. 4 to 5, for the appearing parties; Shyam Divan, Ajay Vazirani and Puja Puri, instructed by Hariani and Co. for Respondent No. 1, Virendra Tulzapurkar, Salil Shah and Jamshed Mistry, instructed by Eva Almeida for Respondent No. 3 (Original Respondent No. 2), for the Respondent

Judgement

H.L. Gokhale, J.—This proceeding raises the question with respect to the copyright in the script of an unfinished cinematograph film based on the Kargil War of May/June, 1999. On the one side of this copyright war is the claim of the author of the script of the film (who is also the Director of the proposed film), his wife and their organisations, and on the other side that of the Company financing the film. The decision on this question is necessary for deciding as to whether Financing Company is entitled to any interim protection during the pendency of a proposed arbitral proceeding between the parties since they have now fallen apart.

2. THE FACTS LEADING TO THE CONTROVERSY

The factual background prior to this controversy is as follows :-

One Mr. Aamir Raza Husain claims to be a theatre personality of some standing with experience in acting and direction of plays as well as films. His wife Mrs. Virat Husain also claims a similar experience. It is their case that at the time of

the Kargil War. In the month of May/June, 1999 between India and Pakistan, they used to spend their time with the jawans and used their theatre infrastructure to bring singers and mimics to the Army Base Hospital to cheer the Indian soldiers. They claim to have visited the Line of Control, and particularly the Kargil, Drass, and Batalik Sectors, Army Battalions, conducted interviews and made a lot of research. Thereafter they launched a play by name "Fifty Day War" in Delhi on 1st January, 2000. The play is stated to have been seen by the Prime Minister and the Cabinet Ministers who suggested converting it into a film. In May, 2001, they submitted their script for the military clearance and the Ministry of Defence approved the script and granted the permission. Mr. Aamir Raza Husain and his wife are also the Directors of a Company floated by them, which is known as M/s. Amazing Motion Picture Co. Pvt. Ltd. They also run two societies formed under the Societies Registration Act known as M/s. Stage door and M/s. Showbiz. In the month of May 2001, these three organisations entered into an Agreement with one M/s. Cinevistaas Ltd., for making a film, for which M/s. Cinevistaas Ltd. a Public Limited Company, was to provide the finance. It however appears that disputes developed between the parties and after mediation, this Agreement was mutually terminated.

3. The parties came together once again thereafter and entered into an Agreement on 24th November, 2002 for making a film based on this play "Fifty Day War". The Agreement was entered into between M/s. Cinevistaas Communication Ltd. on the one hand and M/s. Amazing Motion Picture Co. Pvt. Ltd., M/s. Stage door and, M/s. Showbiz on the other hand. The Agreement principally, provided that whereas these organisations of Mr. Aamir Raza Husain will provide the creative input, all the financial support will be given by M/s. Cinevistaas Ltd.

4. The parties opened a joint bank account in February, 2002 and thereafter the work proceeded. It is the case of M/s. Cinevistaas Ltd. that whereas they went on providing the finance as required from time to time, the necessary progress in the making of the film with due dispatch was lacking. The lapses and disputes were allegedly on four aspects ; (1) relating to recording of music, (2) changing of Director of Photography from time to time, (3) change in the shooting time frame, and (4) changing of several actors. It was the case of M/s. Cinevistaas Ltd. that all this led to delay and unnecessary expenditure. It is their further case that in view of all these disputes, their Managing Director one Mr. Sunil Mehta went to Kargil all the way and there the parties decided to call off the project. Whereas Mr. Aamir Raza Husain and his organisations wanted to continue the project, M/s. Cinevistaas Ltd. wanted to terminate the relationship. It was the case of M/s. Cinevistaas Ltd. that an atmosphere of coercion, terror and humiliation was created by Mr. Aamir Raza Husain and his team. Yet two Memoranda of Understanding were arrived at on 24th June, 2002. The first one was concerning the disposal of the exposed raw stock of film. That was signed by Mr. Sunil Mehta on behalf of M/s. Cinevistaas Ltd. and by Mr. Aamir Raza Husain and his wife on behalf of M/s. Stage door. The second one, which provided for

the other parting arrangements, was signed by Mr. Sunil Mehta and Mr. Sunil Sangra on behalf of M/s. Cinevistaas Ltd. and Mr. Aamir Raza Husain, his wife and one Ms. Sonali Rege and Ms. Aarti Patkar for the film unit. It was also signed by one Mr. T. Namgyal, Superintendent of Police Kargil, in whose presence the negotiations took place between the parties and the Memorandum was signed.

5. It appears that as per the understanding, the exposed raw stock was to be deposited with Prasad Labs of Chennai, but Ms. Sonali Rege is reported to have deposited the same with Adlabs in Mumbai, in the name of film "Mittoo" which was one of the names proposed for the film. Besides, Mr. Aamir Raza Husain and his organisations decided to go ahead with the making of the film, which M/s. Cinevistaas Ltd. learnt from his letter dated 26th July, 2002. It was the case of M/s. Cinevistaas Ltd. that they have put in Rs. 2.94 crores in this project and Mr. Aamir Raza Husain and his organisations have not accounted for a sum of Rs. 65 lakhs therefrom. It is at this stage that M/s. Cinevistaas Ltd. decided to invoke Section 9 of the Arbitration and Conciliation Act, 1996 and filed Arbitration, Petition No. 301 of 2002 seeking appropriate interim measures. The Respondents to that petition were as follows. (1) M/s. Amazing Motion Picture Co. Ltd., (2) M/s. Stage door, (3) M/s. Showbiz, (4) Aamir Raza Husain, and (5) Mrs. Virat Husain.

6. It was contended by M/s. Cinevistaas Ltd. in that proceeding that under the Agreement on 24th November, 2002 and particularly Clause 2.22 thereof, the copyright in the script vested in M/s. Cinevistaas Ltd. and there was no alteration in their position inspite of the Memoranda of Understanding calling off the project entered into on 24th June, 2002 at Kargil. It was their case that Mr. Aamir Raza Husain and his wife and their organisations had committed breaches of the Agreement and had misappropriated the funds and the exposed negatives.

7. In para 31 of the petition, they laid a four-fold claim ; namely :

(a) For damages for breach of contract estimated at Rs. 5 crores, compensation for the wrongful loss due to the breaches and recovery of the amounts misappropriated as also loss of profit. They also claimed interest at the rate of 18% per annum on this amount.

(b) A permanent injunction restraining Mr. Husain and others from making a film in respect of the Kargil War infringing their copyright in respect of the script.

(c) A mandatory injunction to hand over the property including raw stock and exposed stock of film of approximately 12,530 feet.

(d) A direction to hand over the permissions issued by Ministry of Defence to shoot the film in the Kargil area and an injunction on utilising those permissions.

8. Prayers (a)(i),(a)(ii), (b) and (c)(i) were about the exposed stock of 12,530 feet of the film, unexposed raw stock, the materials and properties. These prayers sought a direction to disclose the whereabouts of these items [prayer (a) (i)], a direction to hand over to them [prayer (a)(ii)], a direction for appointment

of Receiver [prayer (b)], and an injunction not to create any third party right in them [prayer (c)(i)]. Prayer (a)(iii) sought a direction to hand over the permissions obtained from the Ministry of Defence and prayer (c) (ii) sought an injunction not to proceed with the shooting based thereon. Prayer (d) sought a Bank Guarantee as a security in the sum of Rs. 8 crores pending the passing off the arbitral award. Prayers (c)(iii) and (c)(iv) were based on the alleged copyright of M/s. Cinevistaas Ltd. in the script and the connected intellectual property. These two injunctions sought to restrain the Respondents to the petition from -

(iii) using the idea, the script, any of the literary works, intellectual property, film/tape/audio cassette or any other recording in respect of the motion picture on the kargil war so as to infringe the copyrights the Petitioners have in the said works;

(iv) negotiating with a third party, entering into an agreement with a third party or hiring or engaging any person relating to the production of any film or documentary with regard to the Kargil 50 days were as defined in the said Agreement.

9. Mr. Aamir Raza Husain affirmed an affidavit-in-reply. The parties produced the documents relied upon and thereafter the learned Single Judge, who heard the matter, formed an opinion that it was in pursuance of the Agreement dated 24th November, 2002 that M/s. Cinevistaas Ltd. had parted with valuable consideration, and prima facie the application of proviso (b) and/or (c) to Section 17 of the Copyright Act, 1957 cannot stand excluded. The relevant clauses of the Agreement dated 24th November, 2002 would in fact attract the applicability of those provisions (para 11 of the order of the learned Judge). In para 12 of his order, the learned Judge declined to accept the interpretation of Clause 2.22 of the Agreement as sought to be canvassed by Mr. Aamir Raza Husain and his organisations that the copyright under that clause would not vest until the motion picture was released. In the circumstances, the learned Judge granted an ad interim order in terms of prayers (c)(iii) and (c)(iv) quoted above. It is material to note that the Counsel appearing for both the contesting parties stated before the learned Judge that they had no objection if the High Court Receiver was appointed as Receiver in respect of 12,530 feet of exposed stock as also the exposed stock of film relating to the Naval shoot which was in the custody of M/s. Cinevistaas Ltd. Accordingly, the learned Judge by his order dated 28th August, 2002 appointed Receiver with respect to both these stocks of films. It is this ad interim order on the petition which is challenged in the present appeal filed by Mr. Aamir Raza Husain and his wife.

10. The Respondent No. 1 to this appeal is M/s. Cinevistaas Ltd. whereas Respondent Nos. 2, 3 and 4 are M/s. Amazing Motion Picture Co. Pvt. Ltd., M/s. Stage door and M/s. Showbiz respectively. Mr. Rohit Kapadia, Senior Advocate, has - appeared for the Appellants. Mr. Shyam Divan has appeared for Respondent No. 1, M/s. Cinevistaas Ltd. and Mr. Virendra Tulzapurkar has

appeared for Respondent No. 3 M/s. Stage door.

11. Although this appeal is filed against the ad interim order in favour of M/s. Cinevistaas Ltd., the Counsel appearing for the contesting parties submitted that there was an urgency in the matter. Mr. Kapadia submitted that it was necessary to proceed with the shooting at the earliest since it will be difficult to proceed with it after the month of October starts. Mr. Divan (and Mr. Chenoy, who had earlier led him) also submitted that M/s. Cinevistaas Ltd. were equally keen on making the film. It was pointed out by the Counsel for the rival parties that another film on the Kargil War was being made by another reputed Director and hence either way they wanted to proceed with the film at the earliest. It was therefore submitted by them that apart from considering the legality and validity of the ad interim order passed by the learned Single Judge, it would be better that the main petition itself was finally heard by this Division Bench so that final orders would be passed one way or the other on the main controversy pending in the Arbitration Petition. Thus, while hearing this appeal, the main petition is also heard by consent of the parties. Therefore, for the sake of convenience, M/s. Cinevistaas Ltd. is referred to as the Petitioners hereafter and Mr. Aamir Raza Husain and his wife are referred to as Respondent Nos. 4 and 5 respectively. M/s. Amazing Motion Picture Co. Pvt. Ltd. is referred to as Respondent No. 1, M/s. Stage door and M/s. Showbiz are referred to as Respondent Nos. 2 and 3 respectively. Since the main petition was also to be heard and disposed of while deciding this appeal, an affidavit-in-rejoinder in the main petitioner was filed on behalf of the Petitioners which was affirmed by Mr. Sunil Sangra, Director (Business & Finance) and the same was taken on record. They also filed six supporting affidavits affirmed by Sudhir Mittoo (a cine artist) Atul Shah (Accountant), Yogesh Pandey (a Driver), Sunil Sharma (Director of Photography), Shahbaz Khan (Cine Artist) and Sunil Mehta (Managing Director of Cinevistaas). These affidavits were filed to support the submissions of the Petitioners that an atmosphere of coercion and humiliation was created by the Respondents in Kargil. Since these affidavits were filed in this appeal during the course of the arguments, Mr. Kapadia stated that Mr. Aamir Raza Husain and his wife were proceeding with the matter on the basis of denial thereof. Mr. Kapadia also tendered a copy of the affidavit of Respondent No. 4 filed in pursuance to the direction of the learned Single Judge to place on record as to which items of equipment and property were in his possession or control and indicating their location. The Petitioners also made available a copy of their notice dated 23rd August, 2002 invoking arbitration which was issued subsequent to the filing of the Arbitration Petition (filed on 20th August, 2002). Issuance of a notice invoking arbitration is not a condition precedent to filing of an application u/s 9 of the Arbitration and Conciliation Act, 1996 as held by the Apex Court in M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd., .

SUBMISSIONS OF RIVAL PARTIES IN NUTSHELL:

12. The main submission of Mr. Divan, learned Counsel appearing for the

Petitioners, was that the copyright in the script vested in the Petitioners in view of Clause 2.22 of the Agreement of 24th November, 2002. His submission was that the Memoranda of Understanding (M.O.U. for short) arrived at Kargil on 24th June, 2002 were out of coercion and even under that M.O.U. also the rights of the Petitioners were preserved. He submitted that the Petitioners had a copyright in the script of the film under proviso (b) and (c) to Section 17 of the Copyright Act, 1957. Alternatively, he submitted that in any case assuming that Respondent No. 4 had any copyright in the script of the film, he had assigned the same in favour of the Petitioners and the said assignment was goods under Sections 18 and 19 of the Copyright Act. He submitted that unless there was a reassignment, the assignment would not lapse. Mrs. Kapadia supported by Mr. Tulzapurkar, on the other hand, submitted that there was no question of any assignment in the present matter nor that of the copyright going over to the Petitioners inasmuch as a first owner of the script, the copyright vested in Respondent No. 4. He submitted that there was no such assignment in the Agreement of 24th November, 2001. That alone could be the reading of that Agreement alongwith the M.O.U. arrived at on 24th June, 2002. Mr. Divan as well as Mr. Kapadia took us through various clauses of the two documents and contemporaneous correspondence as also the relevant judgments in this behalf.

RELEVANT PROVISIONS OF THE AGREEMENT OF 24TH NOVEMBER, 2001.

13. This Agreement is made between M/s. Cinevistaas Communications Ltd. (referred to as CCL in the Agreement), the First Party therein, and M/s. Amazing Motion Picture Co. Pvt. Ltd., (which is to mean and include M/s. Stage door & M/s. Showbiz), the Second Party therein. The recitals of this Agreement state that whereas CCL is engaged in the business of producing Tele-serials and feature films and whereas the Second Party is engaged in producing and directing stage plays and has so researched, scripted and directed the state play "Kargil-The Fifty Day War" and is also in the process of producing a full-fledged feature film on the same, and whereas CCL is desirous of producing a full length motion picture on the Kargil War, and whereas the Second Party has agreed to participate with CCL in the creative inputs for the production of the motion picture, the parties have entered into this Agreement. The Agreement contains 10 articles and there are many sub-clauses of these articles. Article 1 gives the definitions. Article 2 lays down the roles, responsibilities, rights and obligations of the parties. Article 3 contains the warranties. Article 4 is on indemnity. Article 5 is on confidentiality. Article 6 is on notices. Article 7 is a miscellaneous article, Article 8 contains the remedies, Article 9 contains the arbitration clause. Article 10 lays down the governing law. Now "the Kargil War" is defined as war between India and Pakistan in the months of May and June, 1999 in the Kargil, Drass, Batalik sectors of Jammu and Kashmir. "Scripting" means the complete script, screenplay and dialogue for the motion picture. "Copyright" is defined to mean the entire copyright subsisting under the laws of India and all analogous rights. Thereafter Clause 1.9 states as follows:

"The relationship of the 2 parties CCL and the Second PARTY under this contract is not of principal or agent/employer but of independent entities collaborating in the production."

Clauses 2.1, 2.2, 2.5 and 2.9 to 2.22 are relevant for our purpose and they read as follows:

2.1 THE SECOND PARTY will dedicate the time, efforts and services of any of its members, employees or associates as it deem fit for the fulfillment of her responsibilities under this Agreement. This shall specifically include but not be limited to the full time efforts and services of Mr. Aamir Raza Husain and Mrs. Virat Husain who will be directly responsible for the scripting screenplay, dialogues, concept development, ideation and direction till the completion of the motion picture.

2.2 THE SECOND PARTY will obtain all permissions from the Ministry of Defence for shooting in all locations as per the script. This will include any other approvals that may be needed from any of the arms of the Defence forces or any other Governmental bodies or Institutions. 2.5 CCL will provide its inputs for the final script, screenplay, dialogues, casting, background, music and all other creative elements for the motion picture.

2.9 The SECOND PARTY and CCL will jointly explore, negotiate and conclude opportunities for corporate sponsorships in the motion picture. 2.10 All decisions, regarding the implementation of the project will be on mutual agreement of both parties. Both parties appreciate that time is of the essence and agree that the motion picture should be released of exhibition in theaters in India by July 26, 2002. Both parties also agree that all decisions regarding the implementation of the project need to be driven by the balance of creative excellence and commercial success.

2.11 THE SECOND PARTY agrees that CCL shall have full creative and technical approval over the script, screenplay, dialogues, artists, technicians, music, direction, cinematography, editing and any and all other such aspects.

2.12 THE SECOND PARTY agrees that the producers credits will vest with CCL or any of its Directors or employees.

2.13 The SECOND PARTY appreciates and acknowledges the fact that the entire cash risk in the project is being borne by CCL. In the unlikely event that any of the members of the SECOND PARTY are unable to perform their functions, CCL may substitute them with any other persons it deems appropriate. Both parties also agree to adhere to time and cost schedules as mutually developed. Any delay that may occur which is directly attributable to The SECOND PARTY, or any of its members, on account of health reasons will entitle CCL to appoint any other person as a substitute, in the mutual interest of the project.

2.14 CCL will open a separate bank account in Mumbai and New Delhi under the name of "Cinevistaas Communications Ltd. A/C Kargil-The Fifty Day War".

Signatories to operate the account will be authorised representatives of the SECOND PARTY on one part and authorised representatives of CCL on the other. CCL will fund the account from time to time as required and all expenses incurred for the motion picture will be debited to this account. Similarly all revenues from the motion picture will be credited to this account only.

2.15 The motion picture is expected to be completed in a budget of Rs. 5 crores. The cash investment will be funded in entirety by CCL.

2.16 The SECOND PARTY will be paid a consolidated fee of Rs. 45 lakhs (Rupees Forty-five Lakhs only) for the following: Concept development and ideation Script writing Direction Executive and managerial aspects for the execution of the motion picture which includes obtaining of necessary permissions for shooting in all locations including defence locations etc., and any other permissions/approvals needed from various Government bodies/institutions. Rs. 10 lakhs will be paid on signing the Agreement, Rs. 5 Lakhs on completion of script, Rs. 10 Lakhs on completion of shooting Rs. 10 Lakhs on release and Rs. 10 Lakhs 3 months after release. THE SECOND PARTY agrees that this is the full and complete remuneration due to it for its services under this Agreement.

2.17 Sharing of revenues from all forms of exploitation (sale of distribution rights for theatre exhibition, sale of music rights, sale of television rights,

corporate sponsorships, or revenues from any other means of exploitation) worldwide and in perpetuity of the motion picture will be as follows:--

2.18 First, to the extent of the cost of the motion picture : 100% to CCL.

2.19 Second, Rs. 60 Lakhs (Rupees Sixty Lakhs only) or 18% p.a. on the amounts invested by CCL.

2.20 These amounts as per Clauses 2.18 and 2.19 above will be distributed immediately upon realisation and the SECOND PARTY agrees that it will not be in any way obstruct the same.

2.21 Finally, all revenues over and above the amounts mentioned above in Clauses 2.18 and 2.19, will be shared in the ratio of 70:30, i.e. 70% to CCL and 30% to THE SECOND PARTY. These will be distributed every quarter on March 31, June 30, September 30 and December 31, upon realisation or as mutually agreed.

2.22 The copyright for the idea, the script and all literary works/intellectual property/film/tape/audio/cassette/or any other recording medium for all forms of exploitation of the motion picture shall vest in entirety and in perpetuity with CCL. However, this will be subject to the following:

(i) sharing of revenues with THE SECOND PARTY as per Clause 2.21:

(ii) neither party will attempt to change/modify/distort the finished product without prior written approval of the other party; and

(iii) THE SECOND PARTY and CCL will be involved in all negotiations for the exploitation, and sale of the motion picture, its music and its literary work. The warranties in Clauses 3.1 to 3.4 read as follows:

3.1 That the script, screenplay, dialogue and all other literary and creative inputs from him will be free and clear of any lien or claim by any Party including without limitation any claim by any union or guild including any residuals or reuse fees.

3.2 That THE SECOND PARTY is free and has full authority to enter into and perform this Agreement and in doing so is not violating or contravening any provision of its Memorandum or Articles of Association or the laws or Acts governing its formations and THE SECOND PARTY has not entered into any other Agreement and shall not make any arrangement which may conflict with it or in any way may interfere with the full and complete performance of THE SECOND PARTY'S obligations to CCL and that THE SECOND PARTY shall receive no compensation in connection with T.V. Series, motion picture other than as herein provided.

3.3 The script, screenplay, dialogue and all other literary and creative inputs from THE SECOND PARTY shall not be obscene, libelous, blasphemous,

inaccurate or defamatory or infringe the copyright, the trade mark, trade name, copyright, right of privacy or publicity, property rights or of any other right of any Party and also will not constitute unfair competition or defamation or breach of contract and or any other right of whatever nature of any third party, including but not limited to the various characters in the motion picture who may or may not be based on true real life incidents. 3.4 THE SECOND PARTY shall deliver the script, screenplay, dialogue and all other literary and creative inputs free and clear of any distribution fees or payment of whatever nature and all fees relating to all personnel, facilities, equipment or otherwise in connection with the same shall have been paid for in full by THE SECOND PARTY on or before delivery.

INDEMNITY

Thereafter under Clause 4.1 the Second Party has agreed to indemnify and hold harmless C.C.L. and its employees, officers and agents against any claim, loss etc. arising out of any breach of warranty made by the Second Party and for which C.C.L. is permitted to take necessary action. Thereafter Clause 7.7 is another important clause, which reads as follows:--

"7.7 The grant of rights, representations, warranties, indemnities and, confidentiality obligations contained herein shall survive the expiration or earlier termination of this Agreement."

MEMORANDA OF UNDERSTANDING ARRIVED AT KARGIL

14. As stated earlier, two Memoranda were arrived at Kargil on 24th June, 2002. The first one was regarding the disposal of the exposed stock. It provided that the exposed stock will be made available by Stage door for viewing the Ministry

of Defence, which may remove all defence sensitive negatives and thereafter all non-sensitive negatives will continue to be in possession of Cinevistaas Ltd. and will be the sole property of Cinevistaas 15 Ltd. It is further stated in this Memorandum that this stock includes the Naval shoot also. This Memorandum also records that Mr. Aamir Raza Husain and his wife ensured that all this exposed stock is deposited with Prasad Labs at Chennai. It is the second Memorandum which is more material for our purposes and which reads as follows:

"Monday June 24, 2002

This is to state that a meeting was held at the Circuit House, Kargil on Sunday, June 23, 2002 at 18.30 Hrs. in the presence of Shri T. Namgyal, S.P. Kargil. The following were also present-

From Cinevista

1. Mr. Sunil Mehta
2. Mr. Sunil Sangra From Film Unit
3. Ms. Somali Rege
4. Ms. Aarti Patkar And the Directors
5. Mr. Aamir Raza Husain
6. Ms. Virat Husain

The meeting was held in an attempt to arrive at peaceful solution to the situation arising out of the discontinuation the project "Kargil-The Fifty Day War".

The Project titled "Kargil-The 50 Day War" has been discontinued by M/s. Cinevistaas Ltd. due to reasons and issues pertinent of them being temperamental differences and issues related to the disbursement of monies/finances by the directorial team and its immediate associate. To date details of payments to the tune of Rs. 65 Lakhs have not been received by Cinevistaas Ltd. However, these are a few of the Reasons for discontinuation, thereby several others, which should the occasion arise will be raised at the appropriate forum. Cinevistaas also places on record that the signature of this document by Mr. Sunil Mehta and Mr. Sunil Sangra, in no way compromises or diminishes the rights available to it vide the Agreement dated 24.11.2001 between Cinevistaas and Amazing Motion Pictures Pvt. Ltd. Stage door/Showbiz.

The Directors state in no uncertain terms that they have not called off the Project. They have worked diligently, in extremely harsh conditions shooting at any cost. At extreme danger to themselves and their immediate team, they have remained in areas where shelling was continuing even after having evacuated all personnel connected with the film to safe locations. Even today they are prepared to continue with the project as per the terms of the original contract and as such reject any liability connected with the discontinuation of the project.

Amidst acrimony and argument the meeting went on till 22.00 hrs. However the following issues were mutually agreed upon.

(a) All exposed stock, Betacam and VHS tapes of the shoot which depicts Army camps, soldiers and/or equipment would be handed over to Stage door immediately.

(b) Stage door would not be at liberty to exploit the same for any commercial purpose.

(c) However if at any stage the Ministry of Defence or the Army decides to use the footage for any purpose, Stage door would not be held liable.

(d) Cinevista agreed that all intellectual property belonged to Stage door/Aamir Raza Husain and Virat Husain but laid claim to all production property and finances.

(e) Aamir Raza Husain and Virat Husain pointed out that as execution of the production has been halted, all money and material, paid for by Cinevistaas, was disputed claims to which would be decided in Arbitration proceedings as per contract. Mr. Mehta stated that the disputed materials should be kept in the safe custody of a third party viz. Mr. Namgyal till such time that the Arbitrators have adjudicated on the issue. However, Mr. Husain refuted the same on the ground that this disputed material was in his possession and would continue to remain so until the decision of the arbitrator.

(f) Cinevista agreed to accept the liability of all personal and equipment hired for the production till June, 21.

(g) The Directors agreed the liability of all local payments in Drass and Kargil including local labour, local contractors local hotels and local actors hired including all the Delhi Staff.

(h) Cinevista further agreed to pay by cheque 2 months' salary due for May, 02 and June, 02 to Sonali Rege, Aarti Patkar and Komal Soni amount to Rs. 1,36,000/- in Mumbai by the end of the day of June 24, 2002. (i) All production equipment brought in by Cinevista including lights, Rostrums, track trolley, generators (2.110 KVA) cables, stands, electric trolleys, cutters, etc. on the conclusion of the above points, to be taken back by Cinevista.

It was agreed that all further points of dispute would be resolved through due legal process.

Sd/-

Shri T. Namgyal

sd/-

Mr. Sunil Mehta

sd/-

Ms. Sonali Rege

Sd/-

Mr. Aamir Raza Husain

sd/-

Mr. Sunil Sangra

sd/-

Ms. Aarti Patkar

sd/-

Mrs. Virat Husain."

15. Before we deal with the rival submissions, it will be desirable to refer to relevant Sections 17,18 and 19 of the Copyright Act, which reads as, follows:--

"17. First owner of copyright.

Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein: Provided that--

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper magazine or similar periodical, the said proprietor shall in the absence of any agreement to the contrary, be the first owner of the copyright in the work, insofar as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

(b) subject to the provisions of Clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;

(c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which Clause (a) or Clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary be the first owner of the copyright therein.

18. Assignment of copyright

(1) The owner of the 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 term of the copyright or any part thereof:

Provided 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.

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright the assignee as respects the rights as assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes and legal representatives of the assignee, if the assignee dies before the work comes into existence.

19. Mode of assignment

(1) No assignment of the copyright in any work shall be valid, unless it is in writing signed by the assignor or his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to be lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in Sub-section (2) or Sub-section (3) or Sub-section (4) or Sub-section (5) or Sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994."

SUBMISSIONS FOR CINEVISTAAS LTD.

16. Mr. Divan, learned Counsel appearing for the original Petitioners, submitted that it was the Petitioners (Cinevistaas Ltd.) which was bringing in all the funds and by the time the petition was filed, they had put in Rs. 2.94 crores. He

submitted that out of them, Rs. 65 lakhs were not accounted for and which included an amount of Rs. 7.5 lakhs given in cash and Rs. 25 lakhs by Demand Draft. In his submission, the only interpretation of Clause 2.22 can be that with the signing of the Agreement, it is declared and accepted by all the Respondents that the copyright for the idea, the script and all other forms of exploitation of the film as mentioned in Clause 2.22 of the Agreement vest in the Petitioners. He submitted that otherwise there was no reason for the Petitioners to bring in so much money. After putting in so much money if still the Respondents were to walk away with the script, it would be a futile exercise on the part of the Petitioners. He submitted that under Clause 2.16, a fee of Rs. 45 lakhs for the script and various purposes was contemplated to be given to the Respondents for their services under the Agreement. It is true that there was a sharing of revenue contemplated under Clause 2.21, but that did not take away the effect of the declaration under Clause 2.22 that the copyright shall vest in the Petitioners. He therefore submitted that since the film was being made for valuable consideration at the instance of Cinevistaas Ltd., it became the first owner of the copyright under the proviso (b) to Section 17 of the Copyright Act. Alternatively, he submitted that in any case this was an assignment of the copyright u/s 18 of the Act. He pointed out that in the script which was forwarded by the Respondents, there was a clear representation that they copyright was registered with Stage door. Now knowingly when Mr. Aamir Raza Husain signs the Agreement of 24th November, 2001 on behalf of Stage door, he cannot subsequently, say that the script belonged to him and not to Stage door. He submitted that the appeal was therefore not filed purposely in the name of Stage door. Mr. Divan pointed out that under Clause 2.13, the Petitioners had a right to substitute the second party if it fails to perform its function for any reason such as that of health reason etc. Besides, under Clause 3.2, the second party had given a warranty that it shall not enter into an arrangement which may conflict with this Agreement. Mr. Divan pointed out that under Clause 2.11, the second party had agreed that Cinevistaas Ltd. will have full creative and technical approval over the script, screenplay, etc. Over and above this, under Clause 7.7 it was declared that the grant of rights, representations, warranties, indemnities, etc. under the Agreement shall survive the expiration or earlier termination of the Agreement. Mr. Divan submitted that even though the film was not made as of now, the Agreement will have to be read in any case as any assignment of existing and future rights which was held permissible by the Apex Court in Indian Performing Right Society Ltd. Vs. Eastern Indian Motion Pictures Association and Others, .

17. Mr. Divan submitted that the Memoranda of Understanding arrived at Kargil on 24th June, 2002 though laid down as to how the parties had decided to part, Clause (d) thereof could not take away the rights under the Agreement of 24th November, 2001. Firstly, he claimed that the Agreement was entered into under coercion and drew our attention to the letter of the Petitioners, Attorneys dated 19th August, 2002 wherein they have stated that it was basically a document

that was signed by their clients under extreme duress and commercial coercion. He also drew our attention to the six supporting affidavits which were filed in this Court to substantiate this submission. His submission therefore was that the Memoranda at Kargil was vitiated and even if they were to be read as they were written, the grievance of coercion made by the Petitioners could not be lost sight of. That is why the Superintendent of Police was requested to remain present during those negotiations. Mr. Divan submitted that although Clause (d) of the M.O.U. stated that all intellectual property belonged to Stage door and Mr. Aamir Raza Husain and Mrs. Virat Husain, unless there was a reassignment, the assignment made under the Agreement of 24th November, 2001 and protected u/s 18 of the Act could not be terminated. Besides, he pointed out that in this M.O.U. itself, it was stated that the signatures of Mr. Sunil Mehta and Mr. Sunil Sangra no way compromise the rights available under the Agreement of 24th November, 2001. When we read this clause with Clause 7.7 of the Agreement of 24th November, 2001, in the submission of Mr. Diwan, the M.O.U. cannot be said to be taking away the assignment in favour of Cinevistaas Ltd.

18. Mr. Divan then submitted that the Respondents were estopped by deed as well as by conduct. Submitted that the Petitioners had acted to their detriment in view of the representation of the Respondents. The object of estoppel was to prevent fraud and secure justice. He pressed the principle behind Section 115 of the Evidence Act into service as also the observations from Halsbury's Laws of England, Volume 15 on the meaning of "estoppel", "estoppel by deed" and "estoppel in pais". He submitted that "estoppel by deed" is based on the principle that when a person has entered into a deed he will not be permitted to deny any matter to which he has so assented. Similarly where a person by words or conduct makes a clear and unequivocal representation of a fact with the intention that it should be acted upon, under the principle of estoppel in pais, if the other party acts upon such representation, altering his position to his prejudice, an estoppel arises against the party who makes the representation. Mr. Divan pressed into service the observations of the Apex Court in *Wander Ltd. and Another Vs. Antox India P. Ltd.*, that an interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. In the instant case, Cinevistaas Ltd. had made out a prima facie case for a copyright u/s 17 proviso (b) and in any case u/s 18 of the Act, and therefore the injunction which was granted by the learned Single Judge was necessary. He also submitted that in addition a security for the claim made out by Cinevistaas Ltd. was also required to be provided. He submitted that the order of the learned Single Judge contained a possible view and it should not be interfered.

SUBMISSIONS FOR MR. AAMIR RAZA HUSAIN AND HIS ASSOCIATES

19. Mr. Kapadia, learned Counsel appearing for original Respondent Nos. 4 and 5 (the Appellants herein), on the other hand, submitted that the Agreement of 24th November, 2001 as also the M.O.U. dated 24th June, 2002 had both to be given a meaningful interpretation. To begin with, he dealt with the plea of

coercion and in his view the plea of coercion was a clear afterthought on the part of the Petitioners. He accepted that undoubtedly there was an acrimony between the parties which led to the calling off the project as it is specifically mentioned in the M.O.U. dated 24th June, 2002. But the submission that it was because of coercion that the M.O.U. was entered into by Cinevistaas Ltd. was clearly an afterthought and totally untenable. He drew out attention to a paragraph from the letter of the Attorneys of Cinevistaas Ltd. dated 23rd July, 2002, (i.e. one month after the M.O.U.), addressed to the Defence Ministry wherein the Attorneys have clearly recorded that their clients had gladly agreed to the arrangement in the national interest. The relevant sentences of the said letter read as follows:

"However since the matter involved national interest our client gladly agreed to this arrangement and accordingly signed the M.O.U. dated June 24, 2002, in Kargil (enclosed as Annexure 3) and later on signed another M.O.U. the same day which referred to this alongwith other aspects (enclosed at Annexure 4) (hereinafter referred to as the "said M.O.U.s."). The understanding reached was that all exposed negative would be deposited by Mr. Aamir Raza Husain and Mrs. Virat Husain at Prasad Labs., Chennai. (This is to lab. that had been contracted to process the said film)."

Mr. Kapadia submitted that this assertion of coercion was made for the first time in their letter of 19th August, 2002 which was on the eve of filing of the petition which was filed next day on 20th August, 2002, prior where there was no such allegation at any point of time. He also drew our attention to another letter of Cinevistaas Ltd., dated 21st May, 2002, which is signed by Mr. Sunil Mehta, Managing Director of Cinevistaas Ltd. Now, it is material to note that this letter is written just about one month before calling off of the project on 24th June, 2002. In this letter some of the sentences are as follows:

"Right from the very first time I met you I've been greatly impressed with the confidence that you exude and which forms an integral part of your personality, the perfection for detail that you bring into everything you execute and the foresight with which you select your team.....understand and appreciate the tremendous efforts and hardships that you Virat and the entire team are undergoing at this point of time to get the shoot going. We may not be there physically to partake share and lift your burden, but believe me when I say my heart is in Kargil-The Venture. The Project and The Dream.....incidental. Each one of us out there is doing his or her best to ensure that all the requisites reach you in time and as per the specifications given. Sunil has put in long hours each day to facilitate and ensure that all moves smoothly, but there have been lapses and I sincerely apologise for them....."

.....Before ending I take this opportunity to wish you the very best in your new career as a mega film Director. I also hope that this is the beginning of a long association, based on goodwill, mutual respect, honest intentions and faith in each others ability....."

Having quoted from this letter, Mr. Kapadia noted that if this was the position on 21st May, 2002 and when there is nothing to the contrary recorded until 19th August, 2002, can it be ever accepted that the M.O.U. of 24th June, 2002 was arrived at by coercion exerted by the Respondents and that too in the presence of Superintendent of Police? He pointed out that undoubtedly there were disputes lately between the parties and there was acrimony as recorded in the minutes, but that was in the nature of the project itself. The shooting was at a very odd and difficult place and a number of complications were bound to arise and which had arisen. Mr. Kapadia submitted that the project was being called off by Cinevistaas Ltd. for no fault of the Respondents and they wanted to continue the relationship. Now it is true that the second M.O.U. dated 24th June, 2002 provide that it did not diminish the rights of Cinevistaas Ltd. under the earlier Agreement. But, at the same time, it declared that all intellectual property belonged to Stage door and Mr. Aamir Raza Husain. He pointed out that pursuant to this declaration, when Mr. Aamir Raza Husain wrote to Cinevistaas Ltd. on 26th July, 2002, he asserted that all intellectual property rights including the script, title and other written material belonged to him as per those terms, and he was proceeding with the filth. It is nearly one month thereafter when the Attorneys wrote on 19th August, 2002 that they took the plea of coercion and contended that the intellectual property belonged to them.

20. Mr. Kapadia submitted that as the author of the script of the film, Mr. Aamir Raza Husain was the first owner of the copyright u/s 17 of the Act. The Agreement of 24th November, 2001 was an Agreement of Joint Venture. It was not an agreement of surrendering the copyright. It is true that Clause 2.22 did say that the copyright for the ideas, script, etc. shall vest in entirety with CCL. However, that was for all forms of exploitation of the motion picture, i.e. after it was ready. Besides, that was subject to the following, namely sharing of revenue under Clause 2.21 which provided for 30% in the revenue to Mr. Aamir Raza Husain. Mr. Kapadia accepted that under Clause 2.16, a fee of Rs. 45 lakhs was provided for Mr. Aamir Raza Husain. However, out of this only Rs. 10 lakhs were paid to him admittedly on signing the Agreement. The script was admittedly not completed, and therefore, the remaining Rs. 5 lakhs on completion of script and further amounts were not paid to him. The note on the incomplete script that Stage door had the copyright did not change this position and when the script was not complete there was no question of assigning it. Thus, Mr. Husain was being told that on payment of Rs. 10 lakh, he had given up his rights in the script. He pointed out that under Clause 1.9 of the Agreement, both parties were independent entities collaborating in the production. Under Clause 2.9, there was a provision for a joint exploration for corporate sponsorship. It is true that under Clause 2.11, CCL had full creative and technical approval over the script, but that itself indicated a joint venture. If CCL had the copyright, there was no occasion to provide, for CCL having an approval overriding Mr. Aamir Raza Husain. Under Clause 2.13 he accepted that in the event of failure on the part of Mr. Aamir Raza Husain, the Petitioners had a right to replace him, but that will also not take

away the right of sharing the revenue under Clauses 2.17 and 2.21. In his submission, it was an Agreement of Joint Venture. Clause 7.7, though stated that the rights will survive expiration or earlier termination of the Agreement, it meant that the revenue sharing will continue. Mr. Kapadia submitted that when the Agreement and the M.O.U. are read both together, the M.O.U. clearly gives a declaration that all intellectual property belonged to Mr. Aamir Raza Husain, which meant that the script belonged to Mr. Aamir Raza Husain. Alternatively, he submitted that assuming that there was any assignment as claimed u/s 19, it was terminable u/s 19(3) and at the highest, the M.O.U. will have to be read as meaning a termination thereof. He submitted that Clause 2.22 provided that the copyright shall vest in Cinevistaas Ltd. on all the conditions being completed. Undoubtedly when the film was completed, Mr. Aamir Raza Husain could not claim any right in the script. This is because on completion of the film, the copyright shall vest in the producer. Until then the Cinevistaas Ltd. could not say that he had no copyright in his own original script.

21. Mr. Kapadia lastly submitted that the order of injunction as granted by learned Single Judge was totally uncalled for. The utilised stock was already with the Receiver. Both parties were free to proceed on their own if they want to. Mr. Aamir Raza Husain was not preventing Cinevistaas Ltd. if they wanted to make film on Kargil, but he could not be prevented from making a film on Kargil on his own script. Mr. Kapadia submitted that there was no case for prayers (c)(iii) and (c)(iv) granted by the learned Single Judge. Similarly, as far as the Defence Ministry permissions are concerned they were issued to Mr. Aamir Raza Husain and he cannot be prevented from utilising the same.

22. With respect of the submission that the security be provided, Mr. Kapadia pointed out that this claim is in the nature of a prayer of attachment before judgment under Order 38, Rule 5 of the CPC as was noted by a learned Single Judge of Madhya Pradesh High Court in the case of Manohar Singh and Others Vs. Hind Kumar Kohli and Others, , in the context of Arbitration Act of 1940. However, for that an unquestionable prima facie case has to be made out. In the present case, the contemporaneous correspondence clearly establishes to the contrary and Cinevistaas Ltd. are now trying to put up affidavits against their own letters. In a situation like this, it cannot be prima facie said that Mr. Aamir Raza Husain and others were responsible for termination of this relationship or that there was any breach of Agreement on their part. He submitted that even at the end of the arbitration, Cinevistaas Ltd. had no chance of success, put in any case at the interim stage on the basis of the material on record, there was no case for any such protective order. It will be for them to establish their case in arbitration on evidence whereafter they may get an appropriate order but not at an interim stage.

23. The submissions of Mr. Kapadia were supported by Mr. Tulzapurkar appearing for M/s. Stage door, Mr. Tulzapurkar submitted that today the film is not ready, even the final script is also not ready and there cannot be a copyright in an idea.

As an author the copyright vests in Mr. Husain u/s 17 of the Act. Assuming that there was any assignment, it was not complete and the copyright under Clause 2.22 shall not vest until the sharing of revenue is completed. Besides, under Clause (d) of M.O.U., it was declared that the intellectual property belonged to Mr. Husain. Under Clause (g) of M.O.U., Mr. Husain took up the responsibility to make all local payments which he has done to the tune of Rs. 6 lakhs. This was in modification of the earlier Agreement. Mr. Tulzapurkar pointed out that the M.O.U. was arrived at despite differences, but there was no coercion. He drew our attention to para 20 of Mr. Husain's reply where he has denied giving any threats as alleged or creating a law and order problem. He drew our attention to two judgments of the Apex Court. Firstly, he relied upon a judgment in the case of R.G. Anand Vs. Delux Films and Others, , where the Apex Court has held in para 46 that there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts. The Court has also held that when the same idea is developed in a different manner, it is manifest that the source being common, similarities are bound to occur. Mr. Tulzapurkar then referred to a judgment in the case of Vicco Laboratories v. Art Commercial Advertising 2001 (3) RAJ 75 : 2001(21) PTC 687. That was a case wherein the Appellants had financed the serial "YE JO HAZINDAGI" and it was their contention that they were owners of the copyright in respect of the said serial. The Respondents pointed out that they had done preliminary project work on their own. They had made extensive study and research and prepared the script. It is thereafter the Appellants had approached the Respondents and on understanding was arrived at between the parties. A finding to that effect was given by the Trial Court and left undisturbed by the High Court. On appeal, the Supreme Court held that the Respondents had not undertaken the production of the said serial at the instance of the Appellants. This was one of the factors which led the Apex Court to hold that the claim of the copyright or ownership in respect of the serial by the Respondents u/s 17(b) and (c) would not arise at all.

CONCLUSIONS

24. We have heard the Counsel for the parties at length. In this matter, we are concerned with interpreting the Agreement of 24th November, 2001 and the M.O.U. of 24th June, 2002. A reading of this Agreements in its entirety clearly indicates that it is an Agreement of Joint Venture. The Agreement itself records in the recitals that M/s. Amazing Motion Picture Co. Pvt. Ltd. and its two sister organisations were in the process of producing a full-fledged feature film on the basis of the play "Kargil-The Fifty Day War" which was staged by Mr. Aamir Raza Husain and Mrs. Virat Husain. Mr. Divan undoubtedly accepts that as far as the script of the play is concerned, Cinevistaas Ltd. has no claim on that. He is concerned with the script of the film. Now it is very material to note that in the petition also, Cinevistaas Ltd. have clearly stated in para 7 that in accordance with Article 8 of the Agreement, the services of Respondent Nos. 4 and 5 were essence to the Agreement and their services were unique and special. In para 11 of the petition, it is asserted-"The Petitioners submit that Respondent Nos. 4 and

5 were selected to make the said film due to their unique knowledge of the subject." This is because of the initial spade work and research made by Respondent Nos. 4 and 5 by going to the Line Of Control, meeting members of the Armed Forces and collecting material, staging the play based thereon etc. The Agreement in turn states that it is to convert the play into a film that both parties had come together. It is material to note that under Clause 1.9, it is declared that the relationship of both the parties was that of independent entities collaborating in the production. Therefore this is not a case of work made by anybody in the course of an employment under a contract of service or apprenticeship and hence Section 17 proviso (c) of the Act has no application at all. Besides, since this is a joint venture, it cannot be said to be at the instance of an other for consideration and therefore, Section 17 proviso (b) also will not apply. It is Mr. Aamir Raza Husain who obtained the permissions from the Ministry of Defence. Under the Agreement, it was he who had to put in creative inputs. It is true that an amount of Rs. 45 lakhs was contemplated to be given to Mr. Husain under Clause 2.16 at different stages. As of now it is only an amount of Rs. 10 lakhs which is paid to him on signing the Agreement. It is true that Rs. 2.94 crores are claimed to have been spent by Cinevistaas Ltd., but the kind of accounts that they have given only indicate a list of daily expenditure. Thus, as the present position stands, it is the initial conception of Mr. Aamir Raza Husain who made the plea and thereafter it is he who is converting it into a script and the film. Even before the script of the film is complete, just on payment of Rs. 10 lakhs as the signing amount he is being told that the copyright is that of Cinevistaas Ltd. Therefore, any footnote at the bottom of the present incomplete script that it belongs to Stage door, cannot be read against Mr. Husain. Admittedly, Rs. 5 lakhs contemplated under Clause 2.16 for script writing on completion of the script are not paid to Mr. Husain. The distribution of Rs. 45 lakhs lays down that Rs. 10 lakhs are on signing of the Agreement, Rs. 5 lakhs on completion of the script and Rs. 10 lakhs on completion of shooting. Thereafter when the film is released Rs. 10 lakhs are to be paid and Rs. 10 lakhs three months thereafter. Thus, until the shooting is completed, he is to get only Rs. 25 lakhs, out of which he has received only Rs. 10 lakhs and on receiving this Rs. 10 lakhs he is being told that under the interpretation of this Agreement he has to forgo all his claim. As against that what one has to see is that Clause 2.22 states that the copyright shall vest in CCL, but it is subject to the conditions mentioned therein, and it further states that it is subject to sharing of revenue under Clause 2.21, i.e. when Mr. Husain gets 30% of the revenue after the entire initial expenditure of Cinevistaas Ltd. is recovered. It is only at that stage that it can be said that the copyright in the script will vest in Cinevistaas Ltd. As of now, the script for the film is not complete. The film is undoubtedly not complete. It is an incomplete film and the copyright of the script is being claimed on the basis of this Agreement. It can vest only in the author of the work as the first owner.

25. It is undoubtedly true that under Clause 2.13, Cinevistaas Ltd. has a right to replace Mr. Aamir Raza Husain if there is a failure on his part, but that clause

also states that this is in the unlikely event of any such thing happening. Undoubtedly, when the agreements are made, one provides for different eventualities but basically the agreements are made so that they are acted upon. Mr. Kapadia accepts that in the event there is a failure on the part of Mr. Husain, he can be replaced, but still his rights in the joint venture cannot be disturbed. This is because it is a joint venture to produce a film on the basis of a script based on the play written by Mr. Husain, i.e. Kargil-The Fifty Day War. The project is to make a film on this script. It is possible that on his failure, Mr. Husain will be replaced, but the clause of 30% revenue will remain. When that clause is read alongwith the other clauses, it can only mean that it is a joint venture for making a film based on the play and the script based thereon. As far as that project is concerned, Mr. Husain has a 30% share and he cannot be wished away by saying that even now the copyright vests in Cinevistaas Ltd. In fact u/s 17 of the Act, it will have to be held that it vests in the author who is the first owner of the copyright.

26. Mr. Divan had submitted that the existing and the future right is capable of assignment and in any case this is an assignment u/s 18 of the Act. Even as far as this submission is concerned, it is not possible to accept this construction and, as rightly submitted by Mr. Kapadia, when read with M.O.U. of 24th June, 2002, there is a declaration in Clause (d) thereof that the intellectual property right belonged to Mr. Husain. As it is stated therein, it will have to be read meaning that it belonged prior thereto and that means inspite of the earlier agreement. In view of the letter of the Respondents addressed in May, 2002 appreciating Mr. Husain and their subsequent letter of 24th July, 2002 addressed to the Ministry of Defence, the plea of coercion is prima facie untenable. They have themselves stated that they gladly entered into the arrangement. If that is so, they cannot wish away this Clause (d) of the M.O.U. On the other hand, as submitted by Mr. Kapadia, it would mean a termination of assignment (if any, existing under the earlier agreement) u/s 19(3) of the Act. But, in any case, as observed by us), inasmuch as the copyright vested in Mr. Husain being the author of the script, it did not pass on to Cinevistaas Ltd. under the Agreement and it is not possible to read any assignment thereof under the Agreement.

27. Mr. Divan pressed the warranties into service as also Clause 7.7 of the Agreement which stated that the rights will survive expiration or earlier termination of the Agreement. That will certainly be so. This clause gives right to both the parties. That being so, the right of Mr. Husain to receive of revenue cannot be determined even when he is required to be removed for his failure under Clause 2.13 of the Agreement. That in fact shows the strength of his submission on the copyright in the script. On the other hand, when Cinevistaas Ltd. walk out of the joint venture, Mr. Husain cannot be faulted for going ahead with the film. In the circumstances, the plea based on estoppel cannot be permitted to be taken by the Petitioners when they have terminated the relationship nor can it be said to be a prima facie for any injunction. In the present case, one cannot read any prima facie case in favour of the Petitioners

merely because they have put in Rs. 2.94 crores into the project. They will have to establish a breach of contract by Mr. Husain and as of now there is no prima facie case in that behalf. Mr. Divan submitted that the concept of copyright under Clause 2.22 was a wide one, and though the M.O.U. talked about intellectual property, it was only one item in Clause 2.22 and it cannot over script which was separately mentioned. On a question as to what it would cover, he stated that it would cover other ideas on the making of the film such as arrangements of special effects. It is not possible to accept this restricted reading. When the M.O.U. declared that all intellectual property belonged to Mr. Husain, it will have to be read in the general sense and in any case, script of the film cannot be excluded therefrom. While interpreting the Agreement and M.O.U., we have to consider on a prima facie basis the totality of the circumstances at the interim stage so as to give a meaningful interpretation to the various clauses of the two documents. That can only be done by holding that the copyright in the script remained with Mr. Husain and it was not passed on. No other interpretation can explain the Agreement and M.O.U. Accordingly, since Cinevistaas have prima facie not established their copyright prayers (c)(iii) and (c)(iv) based thereon are not warranted.

28. Out of the four prayers of the petition, which are made in the petition, as far as the exposed stock of 12,530 feet of the film is concerned that same and the stock used for Naval shoot is already with the Receiver. That takes care of the work which both the parties have jointly done so far and for which Cinevistaas Ltd. has put its money. As far as the Defence Permissions are concerned, Mr. Husain has obtained the same and he cannot be prevented from using the same and making the film of his own, Similarly as far as the security for the alleged claim for loss suffered by Cinevistaas Ltd. is concerned, they have failed to make out any prima facie strong case that Mr. Husain and his association are responsible for the severance of the ties or breach of contract. Even in the document of 24th June, 2002, Mr. Husain has recorded that he was ready to proceed with the project with Cinevistaas Ltd. He has recorded that in his subsequent letter of July, 2002 also. It is Cinevistaas Ltd. Which has recorded in the M.O.U. that they want to discontinue the project. Mr. Divan, on talking instructions from the Petitioners, stated that without, prejudice to whatever that has been submitted, Cinevistaas Ltd. is prepared to accept various rights of Mr. Husain provided he co-operates, namely he completes the script, but gives up other participation. On a specific query, Mr. Divan stated that it meant that he should give up directorship. Inasmuch as this was a project conceived by Mr. Husain himself and his organisations, he has declined to accept it.

29. For the reasons stated above, we are of the view that the learned Single Judge has committed an error in coming to the conclusion that Cinevistaas Ltd., had a case under proviso (b) and (c) of Section 17 of the Copyright Act and also that they had copyright vested in them even though the final script was not ready, nor was the film. Section 9 of the Arbitration and Conciliation Act provides for making an application for appropriate interim measures of protection. In Sub-

clause (ii)(b), it speaks of securing the amount in dispute and in Sub-clause (ii) (c) about the preservation of any property or thing which is subject matter of dispute. Interim injunction or appointment of Receiver is provided in Sub-clause (ii)(d) and such other interim measure of protection as may be necessary in Sub-clause (ii)(e). These are the clauses relevant for our purpose inasmuch as in the present case, the Respondent No. 1 (original Petitioners) have failed to make out a prima facie case of copyright or a breach of contract, any quantification to their claim at an interim stage will amount to a guesswork. It will have to be established on evidence before the Arbitrator. There is no provision for compensation to be paid by Mr. Husain or his organisations in the Agreement in the event of there being a failure on their part. That being so, the order with respect to appointment of Receiver made by the learned Single Judge, by consent of the parties, to secure the exposed stock as also the stock utilised for Naval shoot was sufficient by way of an interim arrangement. As far as the other stock and properties and concerned their whereabouts have been placed on record through the affidavit of Mr. Husain as directed by the learned Single Judge. In the circumstances, no case was made out for any other interim relief. The order passed by the learned Single Judge, except to the extent of Receiver, is therefore required to be set aside and the same is accordingly set aside. The appeal is accordingly allowed.

30. For the reasons stated above, there is no merit in other prayers in the main petition itself which also have been discussed above. The petition is therefore dismissed. There will be no order as to costs.

31. Before we conclude we cannot resist referring to the warning of Krishna Iyer, J. in Indian Performing Rights Society's case (supra) where he has observed:

"23. The creative intelligence of man is displayed in multiform ways of aesthetic expression but it often happens that economic systems so operate that the price less divinity which we call artistic or literary creativity in man is exploited and masters, whose works are invaluable are victims of piffling payments."

We cannot ignore that the idea in providing the copyright a statutory protection is to encourage art and originality and not to stifle it.

32. The appeal and the petition both stand disposed of. After the order was pronounced, Mr. Divan, learned Counsel appearing for the Respondent No. 1 applied for stay of this order for a period of 8 weeks and/or continuation of the ad interim injunction which was granted by the learned Single Judge on 28th August, 2002. Mr. Chitnis, learned Counsel appearing for the Appellants, opposed this prayer submitting that the request for an early hearing in this matter was made on the footing that shooting will become difficult from October onwards. Considering this aspect, we are not inclined to entertain this request for stay. The request is rejected.

Authenticated copy of this order be made available to the parties.