

(1999) 02 BOM CK 0027

In the Bombay High Court

Case No : Notice of Motion No. of 1999, in Suit No. 256 of 1999

Banwarilal H. Khaitan

APPELLANT

Vs

P.L.A. Exports Pvt. Ltd. and others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 147, 148
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Copyright Act, 1957 — Section 18

Citation : (1999) 2 ALLMR 4 : (1999) 2 BomCR 428 : (1999) 2 MhLj 30

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : A.M. Saraogi, for the Appellant; Birendra Saraf, instructed by Mahimtura and Co., Anil Menon, for the Respondent

Judgement

S.S. Nijjar, J.—Leave under Rules 147 and 148 of the High Court of Judicature at Bombay (O.S.) Rules, 1980 is granted to the plaintiffs to take out the Notice of Motion in terms of the draft Notice of Motion handed in. Notice of Motion made returnable forthwith. Defendants waive service of Notice of Motion. By consent, Notice of Motion heard forthwith.

2. The plaintiff has filed this suit for a declaration to the effect that the plaintiff is the exclusive copyright holder in respect of the suit film SARPHIRA and the defendants have no right, title or interest of any nature whatsoever to telecast/release, exhibit and/or exploit the film in any manner whatsoever. Prayer is also made for injunction restraining the defendants, their agents, servants or any persons claiming through or under them in any manner infringing the copyright of the plaintiff in respect of the suit film by releasing, exhibiting and exploiting or telecasting the suit film on any of the medias in any manner. This relief is claimed on the basis of the pleaded facts to the effect that plaintiff is a producer of the film Sarphira. Defendant No. 1 is a Company which is alleged to have entered into an agreement to acquire certain rights in the film. Defendant Nos. 2 and 3 are Companies which are owners in respect of private T.V. Satellite channel

known as Sony T.V.

3. It is the case of the plaintiffs that under an agreement dated 13th December, 1994 the plaintiff had agreed to assign the Satellite T.V. and other rights in respect of the suit film to defendant No. 1 for a total consideration of Rs. 1,25,000/-. The copy of the agreement is at Exhibit-A to the plaint. In paragraph 4 of the plaint it is stated that after signing the agreement the defendant No. 1 failed and neglected to pay the consideration and thus the plaintiff had no other option but to terminate the agreement. The plaintiff also sought to refund the amount of Rs. 25,000/- paid by defendant No. 1 together with interest by pay order in the sum of Rs. 25,646/-. This pay order was sent back by the defendant No. 1 to the plaintiff. The plaintiff is ready and willing to deposit the said amount in the suit account. It is also pleaded that the plaintiff after the termination of the agreement with defendant No. 1 had agreed to assign the rights in favour of one M/s. Marwar Films by an agreement dated 9-2-95. This party, however, tried to create litigation by filing a suit in the City Civil Court. By letter dated 12th December, 1997 M/s. Marwar Films surrendered all their rights in favour of the plaintiff. The proceedings in the City Civil Court were also withdrawn. Thereafter the plaintiff was looking for suitable persons to assign the rights. Considering the fact that now the plaintiff was offered much more amount than the amount which was to be received by the plaintiff earlier, the plaintiff has been bargaining for a much better offer. However, to the surprise of the plaintiff the film in question was telecast by defendant Nos. 2 and 3 on Sony T.V. on 6th November, 1998 and in the morning of 7th November, 1998. At no point of time the plaintiff had assigned any rights in favour of defendant Nos. 2 and 3. The defendant Nos. 2 and 3 have no right to telecast the suit film in any manner whatsoever. In para 8 of the plaint the plaintiff further stated "And at all the relevant time the plaintiff remain to be exclusive copyright holder in respect of the suit film and telecast of the film at the hands of defendants 2 and 3 in clear terms amounts to infringing of copyright of the plaintiff. The plaint further states that they have now learnt that defendant Nos. 2 and 3 are trying to claim their rights through defendant No. 1 although in view of the facts as stated above, defendant No. 1 also had no right in respect of the suit film. The plaintiff is trying to ascertain the exact loss caused to the plaintiff by the illegal telecast of the suit film and reserve their right to file suit for recovery of damages. In paragraph 11 of the plaint it is stated that "the plaintiff apprehends that the defendants would again telecast the suit film on Sony T.V. channel again, infringing the copyright of the plaintiff and hence in order to protect his copyright, the plaintiff is filing the present suit in great haste and hurry and might have missed some averments to be made in the plaint and proceedings and seeks liberty of this Hon"ble Court to add, amend and alter the plaint, when need so arises and in any case the same shall not be treated as suppression of material facts from this Hon"ble Court." It is reiterated in paragraph 12 that the present suit is filed by the plaintiff seeking a declaration that the plaintiff is the exclusive copyright holder in respect of the suit film Sarpshira and the defendants have no right, title or interest of any nature

whatsoever to telecast/ release the film.

4. Notice of Motion has been taken out by the plaintiff for injunction restraining the defendants from infringing the copyright of the plaintiff by releasing, exhibiting and/or exploiting the suit film on any of the medias in any manner whatsoever.

5. Mr. Saraogi, Counsel appearing for the plaintiff, has submitted that defendant No. 1 failed to pay the consideration price within the stipulated period. Defendant No. 1 had paid only a sum of Rs. 25,000/-. Therefore, the agreement was terminated by the plaintiff on 2nd February, 1995. The plaintiff also sought to refund to defendant No. 1 the amount of Rs. 25,000/-together with interest as pleaded in the plaint. Thereafter the facts have been narrated as pleaded.

6. Mr. Saraf, learned Counsel appearing for defendant No. 1 has filed an affidavit in reply to the affidavit in support of the Notice of Motion. Mr. Saraogi had also submitted that defendant No. 1 in the affidavit in reply has made certain admissions which would go to show that the plaintiff has a very strong prima facie case. He has submitted that the fact of non-payment of Rs. 1 lakh is admitted. The fact that the pay order in the sum of Rs. 25,646/- was sent is also admitted. Receipt of the letter of termination of agreement is also admitted. Mr. Saraf submits that the plaintiff is not entitled to any discretionary relief in view of their conduct. He submits that admittedly the film was telecast according to the plaintiff on 6th November, 1998 and 7th November, 1998. The plaint is filed on 11-1-1999 i.e. after a period of two months. Yet the averments which have been made in paragraph 11 of the plaint tends to indicate that the plaintiffs are filing the suit in a great hurry. He submits that the aforesaid averments have been made merely to cover up the deliberate suppression of facts. He points to the earlier agreement between the plaintiff and defendant No. 1 dated 13th March, 1986 under which defendant No. 1 took on lease the rights of distribution, exhibition and exploitation of the suit film which included rights of satellite and electronic transmission and video rights. The period of lease was for 21 years from the date of delivery of print and the right of exhibition of the film extended was for the entire world excluding India but including air borne rights and high sea rights. The first defendant is said to have paid the entire royalty of Rs. 4,31,000/ - under the aforesaid agreement and also increased price of Rs. One lakh for assigning the rights in respect of the agreement. He submits that these facts have been deliberately suppressed by the plaintiff to paint a favourable picture about the conduct of the plaintiff. He further submits that knowing perfectly well that the defendant No. 1 did not have any rights to telecast the film in India, they had approached the plaintiff for such rights. On that basis the agreement dated 13th December, 1994 had been entered into between the plaintiff and defendant No. 1. In the meantime, defendant No. 1 had entered into an agreement on 7th December, 1994 with M/s. Shemaroo Video Pvt. Ltd. giving them exclusive rights of telecast and other rights for a period of five years. He submits, after entering into the agreement with defendant No. 1 they failed to

carry out their obligations under the agreement. Defendant No. 1 was required to make the payment against delivery within a period of 30 days. This is so provided in the agreement itself. The agreement also provides that rights have been assigned to defendant No. 1 for a period of 11 years for the whole world. Thus, in this agreement there is no exclusion of the rights in India. He also submits that there is a valid and subsisting agreement between the plaintiff and defendant No. 1. In view of the above he submits that no ad-interim relief can be granted to the plaintiff.

7. I have considered the arguments put forward by the learned Counsel. In my view, the averments made in the plaint cannot be said to be disclosing faithfully and correctly the dealings between the plaintiff and defendant No. 1. I am of the view that the plaintiff has deliberately not mentioned the agreement dated 13th March, 1986 to give an impression to this Court that the plaintiff and defendant No. 1 commenced business dealings only on the signing of the agreement dated 13th December, 1994. It was pointed by Mr. Saraf that the amount of Rs. 25,646/- which was returned to the plaintiff has been encashed by them. This fact is also not alluded to anywhere in the plaint although it is stated that the plaintiff is ready and willing to bring the amount into the suit account. Apart from this, a perusal of the prayer clause would show that a declaration is sought to the effect that the plaintiff has the exclusive copyright in the said film and the defendants have no right of any nature whatsoever to telecast the said film in any manner whatsoever. In my view, the earlier agreement ought to have been brought to the notice of the Court by way of pleadings. The previous business dealings have a bearing on the relief that the plaintiff can claim. Defendant No. 1 by virtue of the agreement dated 13th March, 1986 has been granted leasehold rights in the film for a period of 21 years which would expire in the year 2007. The plaintiff could hardly claim that the defendant No. 1 had no rights of whatsoever nature. These averments, if not patently false, in my view, do not reflect the correct state of affairs of business dealings between the plaintiff and defendant No. 1. A view is sought to be projected which cannot be supported by the documents. In such circumstances the Court would be fully justified in dismissing the suit itself rather than merely declining ad-interim relief. Support for this view of mine can also be found in the judgment of Justice Kuldeep Singh given in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . The relevant observations are as under :

"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the Court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties.

One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the Court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the Court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellant had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the Court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

From a perusal of the aforesaid observations, it becomes abundantly clear that it was the bounden duty of the plaintiff to produce all the documents executed by him which are relevant to the litigation. It was the duty of the plaintiff to produce the agreement dated 13th March, 1986. A duty is cast upon the plaintiff to come to Court by pleading the true facts.

8. Mr. Saraogi has further stated that he was not given an opportunity to meet the case pleaded in the affidavit in reply which has been handed over only today in the Court. I am unable to accept the submission as Mr. Saraogi proceeded with the whole matter without raising any objection. He even referred to the admissions made in the affidavit and sought to rely on them to support the case of the plaintiff. It was only at the stage when perhaps the prima facie view of the Court had become apparent that Mr. Saraogi had stated that he had no opportunity whatsoever to meet the affidavit. Thus, I am of the view that the request made by the Counsel is not justified.

9. Apart from this, on merits it can be seen that admittedly the plaintiff has not made the delivery within 30 days. This is sought to be justified by Mr. Saraogi on

the ground that the defendants were demanding delivery of the negatives of the film which is apparent from their letter dated 20th December, 1994. On the other hand the agreement had been terminated on the ground that defendant No. 1 had failed to pay the entire consideration amount. I am unable to agree with the submission of Mr. Saraogi because the agreement simply says mode of payment" against delivery within 30 days." This condition does not stipulate anywhere that the delivery of negatives cannot be sought. A perusal of the letter dated 9-2-95 sent by defendant No. 2 clearly indicates that the defendants were asking only for the Betacan Umatic cassette. There are no averments to the effect that the agreement has been terminated on the ground that the defendants were claiming delivery of negatives. Mr. Saraogi has very fairly pointed out that this is an argument addressed by him on the basis of the letter of the defendants themselves. A perusal of the letter dated 2nd February, 1995 shows that the defendants were always ready and willing to complete the transaction. If they were ready and willing then by virtue of Clause 2 of the agreement, the same stood continued, subsisting, in force, and operative with all obligations under the agreement. Therefore, I do not find much force in the submission of the learned Counsel for the plaintiff on merits also.

10. Further, even the balance of convenience cannot be said to be in favour of the plaintiff. The defendant No. 1 even today is prepared to deposit a sum of Rs. One lakh on the delivery of the cassettes. Apart from this, the plaintiff can well be compensated by way of damages in the event he succeeds in the suit. In fact the real reason for filing the suit is to make extra profits. The plaintiff has admitted this fact in para 4 of the plaint, when he says, that he is now negotiating with others, for a much higher consideration. Thus, it is evident that the plaintiff has not come to Court with clean hands. The Court would be failing in its duty by exercising discretion in favour of such a dishonest litigant. Thus, no case of irreparable loss has also been made out.

11. In view of the aforesaid observations, the Notice of Motion is hereby dismissed with no order as to costs.

12. Notice of Motion dismissed.