

(1996) 01 DEL CK 0017

In the Delhi High Court

Case No : Interim Application No's. 8680 and 9364 of 1995 and Suit No's. 1980 and 2254 of 1995

Chander Kanta Sharma

APPELLANT

Vs

Kulbhushan Gupta
 Honey Enterrises plaintiff Vs
Motion Pictures Association

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (1996) 36 DRJ 272

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : P.N. Lekhi, Arun Jaitley, P.P. Tewari, Mukul Rohatagi, Anil Sapra, Harish Malhotra and V.K. Makhija, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) By this common order, I am disposing of is 8680 of 1995 in Suit No-1980 of 1995 and is 9364 of 1995 in Suit No.2254 of 1995.

(2) Let me notice the facts giving rise to the present litigation between the parties.

(I)One Mrs. Chander Kanta Sharma and Shri Kulbhushan Gupta entered into a partnership, vide deed dated 1st February, 1987, to carry on the business of trade, exhibition, distribution and exploitation of Motion Pictures in the name and style of M/s. C.K. Films, with share in profit of 75% and 25% respectively. The partnership Firm acquired the exhibition, distribution and exploitation rights on 25th July, 1991 of the Motion Picture "DUSHMANI" starring Sunny Deol, Jackie Shroff, Manisha Koirala, etc. on non-refundable M.G. Royalty basis for a sum of Rs.42 lacs from the producers, one M/s. Cineyug.

(II)The Firm M/s. C.K. Films paid a total sum of Rs.18,05,001.00 to M/s.Cineyug,

the producer of the Film during 1991 to 1995. In May 1995, differences had arisen between the partners of M/s. C.K. Films, Mrs. Chander Kanta Sharma and Mr. Kulbhushan Gupta. In the event, Mr. Kulbhushan Gupta purporting to act on behalf of the Firm surrendered, the distribution rights in the Film "DUSHMANI" to the producers M/s.Cineyug, who refunded the amount of Rs.18,05001.00 which was deposited in the account of the Firm. M/s. Cineyug in turn claim to have transferred/assigned the rights of the picture to M/s. Vijay Associates for consideration. M/s. Vijay Associates in turn transferred/assigned these rights in the film to M/s. Honey Enterprises. M/s. Honey Enterprises claim to have bonafide acquired these rights and assert their right of having the registration of the film by Motion Picture Association, in their favor and to exhibit the same without any interference or obstruction by Mrs. Chander Kanta Sharma, partner of M/s.C.K. Films. It is in this background that Mrs. Chander Kanta Sharma Filed suit bearing No. 1980 of 1995 impleading the partner of the Firm Mr. Kulbhushan Gupta and M/s. Cineyug, producer of the Film "DUSHMANI" as defendant Nos. 1 and 2 respectively.

(III) Mrs. Chander Kanta Sharma plaintiff in suit No. 1980 of 1995 sought a declaration that the purported surrender of the rights in the Film by Sh. Kulbhushan Gupta on behalf of the Firm, in favor of M/s. Cineyug is illegal, fraudulent and of no consequence. A decree of permanent injunction is also sought to restrain the producer M/s.Cineyug from acting on the alleged surrender by the partner Sh. Kulbhushan Gupta, is 8680 of 1995 is filed under Order XXXIX rules 1 and 2 CPC seeking to restrain the defendants from acting upon the surrender given by the partner Kulbhushan Gupta in favor of the producer unilaterally. Vide ex parte order dated 22nd August, 1995, the defendant-No.2 i.e. M/s. Cineyug was restrained from acting on the surrender of rights of film "DUSHMANI" by defendant No. 1 Sh. Kulbhushan Gupta in its favour. The pleadings in the suit have been completed.

(IV) Suit bearing No.2254 of 1995 has been filed by M/s. Honey Enterprises, who as stated earlier claim to have acquired rights in the picture "DUSHMANI" from M/s. Vijay Associates, who in turn acquired them from producer M/s. Cineyug. M/s. Honey Enterprises have impleaded the following as defendants:-

(A) Motion Pictures Association;

(B) M/s. C.K. Films i.e. the partnership firm which had acquired rights in film "DUSHMANI";

(C) Smt. Chander Kanta Sharma and

(D) Mr. Kulbhushan Gupta, both partners of M/s. C.K. Films.

M/s. Honey Enterprises in the suit have inter alia sought a declaration that defendants 2 to 4 namely M/s. C.K. Films, Mrs. Chander Kanta Sharma and Sh. Kulbhushan Gupta have no right, title or interest in distribution rights of the picture "DUSHMANI". Further that they alone hold the sole and exclusive rights

of distribution and exhibition of film in Delhi and U.P. A permanent injunction has also been sought to restrain the Motion Pictures Association defendant No.1, from registering the picture in favor of M/s. C.K. Films or in favor of anyone other than M/s. Honey Enterprises. A mandatory injunction for registration of the firm in favor has also been sought. In is 9364/95 M/s. Honey Enterprises has sought an ex parte injunction restraining the defendants from causing any interference in the release of the picture "DUSHMANI" by them and for direction to M/s. Motion Pictures Association to register it in its favor . M/s. Honey Enterprises did not implead either M/s. Vijay Associates or M/s. Cineyug as parties to the suit.

(V) Mrs. Chander Kanta Sharma's contention is that the entire transaction of surrender of the rights in the picture by the other partner Mr. Kulbhushan Gupta is a fraudulent one, to cause loss to the firm and undue gain to himself. The surrender was done unilaterally, when differences had" arisen between the partners. M/s.Cineyug the producer had full knowledge of the disputes between the partners and colluded with Mr. Kulbhushan Gupta, M/s. Vijay Associates and M/s. Honey Enterprises to perpetrate the fraud. It is urged that Mr. Kulbhushan Gupta as a partner, could not surrender the assets of the firm without the consent of the other partner.

(3) That since both these suits concerned the distribution rights and release of the picture "DUSHMANI" and were based on inter-connected facts, the hearing of IAs. in both these suits was taken up together.

(4) I have been addressed at length on behalf of Mrs. Chander Kaanta Sharma plaintiff in suit No.1980/95 and defendant in Suit No.254/95 by Mr. P.N. Lekhi Senior Advocate, Mr. Arun Jaitley Senior Advocate and Mr. P.P. Tewari Advocate. Mr. Harish Malhotra has addressed me on behalf of Sh. Kulbhushan Gupta defendant No.1 in suit No.1980/95 and defendant No.4 in suit No.2254/95. Mr. Vijay Kishan Makhija has appeared on behalf of M/s. Cineyug, producer of the film "DUSHMANI", defendant No.2 in suit No.1980/95. Mr. Mukul Rohtagi Senior Advocate has addressed me on behalf of M/s. Honey Enterprises plaintiff in suit No. 2254/95, who are the ultimate beneficiaries of the distribution rights in film "DUSHMANI" for Delhi and U.P. The submissions were concluded on 15th January, 1996.

(5) Let me briefly recapitulate the case set up on behalf of Mrs.Chander Kanta Sharma by Mr. Arun Jaitley and Mr. P.N. Lekhi. While assailing the purported surrender of the rights in the picture "DUSHMANI" in favor of the producers M/s. Cineyug and the subsequent assignments, Mr. Jaitley submitted that the whole transaction was vitiated by fraud perpetrated by Sh. Kulbhushan Gupta in which M/s.Cineyug and M/s. Honey Enterprises colluded and in any case had full knowledge of the same. Mr. Jaitley argued that it was inconceivable that a picture that had been acquired at M.G. Royalty Rs.42 lacs on 25th July, 1991 and towards which a sum of Rs.18,05,001.00 had been paid by the firm and which was almost complete, could be sur rendered merely on the refund of the amount paid, which was also deferred. M/s. Cineyug claim to have assigned it for a value

of Rs.50 lacs and within a period of two days it is reportedly further assigned for a value of Rs.70 lacs.

(6) Mr. Jaitley points out that in any 1995, correspondence was going on with the producers of the film, who had asked M/s. C.K. Films to pay a further sum of Rs.3 lacs. M/s. C.K. Films had replied back saying that only Rs.1,91,000.00 was due and sent the statement of account. It is submitted that at this stage Shri Kulbhushan Gupta fraudulently and deceitfully entered into a conspiracy with M/s. Cineyug for the surrender of the picture. This was done behind the back and without the consent of Mrs. Chander Kanta Sharma to the detriment of the firm. Difference had already arisen between the parties. Reference may be made to the following public notice taken out by Sh. Kulbhushan Gupta in the issue dated 2nd July, 1995 of Patriot:-

"NOTICE/WARNING

ALL the people in general and film industry in particular take notice that all the payments in respect of any transactions with M/s. C.K. Films, Delhi, should be made by cheque D/D and not in cash or in the name of third party/parties. Such payments or receipts for such payments will not be binding and persons making such payments in cash will not be entitled for prints and the company shall not be liable for such dealings. Any receipts signed by one of the partners will not be binding."

THE public notice warned the public in general and Film Industry in particular against payments in cash to the firm requiring it to be by cheques. Further receipts were required to be signed by both and receipt by one of the partner was not to be binding. Mrs. Chander Kanta Sharma had also written on 4th July, 1995 to M/s.Cineyug, the producer informing that Sh. Kulbhushan Gupta was not authorised to sign any document on behalf of the firm and that her written consent ought to be obtained. Similar communication dated 7th July, 1995 is said to have sent to the Motion Pictures Association. She also addressed a letter of 19th July, 1995 to the Motion Pictures Association seeking registration of the film "DUSHMANI" in the name of the firm.

(7) Mr. Jaitley also referred to the partnership deed, wherein a partner was prohibited without the consent of the other to do anything whereby the partnership property may be taken in execution or endangered as also from assigning, mortgaging or charging his share in the assets or profits of the partnership firm. It is pointed out by Mr. Jaitley that Mr. Kulbhushan Gupta had himself written to the Motion Pictures Association that all future communication should be signed by both the partners. Mr. Jaitley submitted that the letter dated 3rd June, 1995 purporting to surrender in favor of M/s. Cineyug was a fabricated and manufactured document. By the said letter Sh. Kulbhushan Gupta is said to have written on behalf of M/s. C.K. Films informed M/s. Cineyug that it was unable to pay the balance sum of Rs.3 lacs and it was not possible for them to take delivery of the picture. Request was made for refund of the sum of

Rs.18,05,001.00 .

(8) Mr. Jaitley submitted that it was inconceivable that the rights in the picture could be surrendered on 3rd June, 1995, subject to payment of Rs.18,05,001.00 , while time was being granted to the producer to refund the amount paid. The amount in question is said to have been refunded only on 27-7- 1995. Mr. Kulbhushan Gupta on receipt of the bank drafts kept the same with him for a period of about nine days. Though the drafts were drawn on Delhi, he deposited the same in Bombay entailing delay of another 15 days for collection and incurring bank charges of Rs.4,500.00 . From the attendant circumstances, it is clear that the letter dated 3-6-1995 was ante dated with a view to somehow attempt to justify the unilateral and illegal surrender especially in the light of the correspondence and communications of Mr. Kulbhushan Gupta and the public notice taken out. Mr. Jaitley submitted that M/S. Vijay Associates had been brought in as an intermediary to serve as conduit, with a view to pass on the profits to Mr. Kulbhushan Gupta. He argued that M/s. Cineyug claim to have acquired the rights on 3-6-1995 and transferred and assigned the same to Ms. Vijay Associates on 29-7-1995 for consideration. M/s. Vijay Associates in turn are said to have granted the distribution rights to M/s. Honey Enterprises on 31-7-1995. It is pointed out by him that the transfer and assignment in favor of M/s. Honey Enterprises by M/s. Vijay Associates was dated 31- 7-1995 for a total royalty and minimum guarantee of Rs.70,0(),000.00 out of which only Rs.1,00,000.00 had been paid as signing amount, Rs.19,00,000/0 was to be paid during the post production work. Rs.50,00,000.00 was to be paid against the delivery of quota prints. Learned counsel has drawn my attention to the application filed by the distributor producer for registration of the picture with Motion Picture Association. The name of the producer in the said form is M/ s.Cineyug. M/s. Vijay Associates as suppliers arc said to have assigned rights in favor of M/s.Honey Enterprises. The form is dated 29th July, 1995. There is over writing and as per Mr. Jaitley it is dated 24/25th July, 1995. The form shows the minimum guarantee amount as Rs.50,00,000.00 with Rs.7,50,000.00 as publicity contribution. The signing amount is shown as Rs.1,00,000.00 . Mr. Jaitley laid considerable emphasis on the fact that assignment agreement between M/s. Vijay Associates and Honey Enterprises was itself dated 31-7-1995, the registration in favor of M/s. Honey Enterprises could not have been sought on 24th and 25th July 1995 or at best even on 29th July, 1995. The value show was also Rs.50,00,000.00 as against Rs.70,00,000.00 shown in the agreement. This completely exposes the sham transaction and fraud perpetrated.

(9) He submitted that conspiracy and the fraud was perpetrated on Mrs. Chander Kanta Sharma by Mr. Kulbhushan Gupta, the producer of the Film M/S. Cineyug and M/S. Honey Enterprises, who also brought in a sham intermediary M/S. Vijay Associates to get over the injunction that had been granted in the suit Filed by Mrs. Chander Kanta Sharma against M/s.Cineyug. Counsel also argued that it was a case of the parties colluding for defrauding the plaintiff and the Firm. The action of Mr. Kulbhushan Gupta in relinquishing the rights of the Film would not

come within the implied authority of the partner. In view of the admitted differences between the partners, the correspondence exchanged, the public notice issued, there was no question of Mr. Kulbhushan Gupta exercising any implied authority. It was submitted that the whole transaction was tainted by fraud. Reliance was placed on S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, in support of the proposition that fraud vitiates all judicial acts. Even judgment or decree of a Court vitiated by fraud were a nullity and no nest in the eye of law. The apex court observed ".....A fraud is an act of deliberate deception with a design of securing something by taking unfair advantage of other. It is a deception in order to gain by another's loss. Counsel submitted that it was not necessary to return a Finding of actual fraud at this stage. A prima facie case indicating a fraudulent transaction, collusion of the parties was sufficient at this stage, for the grant of relief of interim injunction.

MR.Jaitley also referred to the acquiring Sub-Committee of the Motion Picture Association dated 30-7-1995 and 14-8-1995 and letter of Motion Picture Association proceedings dated 6-9-1995, when the case for registration of the Film "DUSHMANI" in favor of the Firm M/s. C.K. Films was considered-and accepted. Mr. Jaitley referred in particular to the proceedings dated 14th August, 1995, wherein it was observed " after due consideration and discussion it is clear before the Committee that both the partners are agreeable at one point i.e. the rights and authority for relinquishing vest with the partners jointly and no single partner can relinquish the rights" . In view of the above discussions the resolution already adopted on 31st July, 1995 for registering the picture "DUSHMANI" in favor of M/s. C.K. Films for 10 years from the date of First release on non-refunded M.G. amount was correct. The matter was then directed to be put up again.

(10) In reply, learned counsel, Mr. Harish Malhotra, on behalf of Mr. Kulbhushan Gupta, submitted that it was Mr. Kulbhushan Gupta who had signed the agreement for acquiring rights in the Film on behalf of M/s. C.K. Films. He had all along been negotiating and concluding the agreements for acquisition and surrender of Film on behalf of the Firm. He had implied authority, Mrs. Chanderkanta Sharma, according to him, had not denied that it was Mr. Kulbhushan Gupta, who entered into contract for acquiring the rights as well as for surrender of the same. Mr. Malhotra also referred to the disputes with regard to certain other pictures like "God and Gun" and argued that Mrs. Chander Kanta Sharma had misappropriated huge amounts. It is not necessary for me to advert to the said allegations and counter allegations. Mr. Malhotra urged that differences having arisen between the partners, it was agreed that the forthcoming Film releases should be surrendered and monies advanced to the producer, be got refunded to liquidate the liabilities of the Firm. Letters were addressed to the producers of other pictures like "Himmat" for surrender of rights. The submission in brief is that Mrs. Kulbhushan Gupta had acted in the usual course of business within the implied authority as partner and with the consent of the plaintiff, that the rights had been surrendered and the amount

received and deposited in the account of the Firm. Mr. Malhotra submitted that a notice of dissolution of the Firm had been given on 7-8-1995. He relied on Section 45 and 47 of the Indian Partnership Act to urge that implied authority could even continue during dissolution. Besides there was no bar on surrender of moveable property, the rights in the Film were stock in trade of the Firm. In the instant case he argued, it was clear that the Firm could not release the picture due to differences between partners and it was best to recover the amount from the producer to meet the liabilities of the Firm. As regard the public notice, he submitted that the same was confined to receiving money in cash and would not whittle the implied authority of the partner Mr. Kulbhushan Gupta.

(11) Mr. V.K. Makhija, learned counsel submitted on behalf of M/s. Cineyug that Mr. Kulbhushan Gupta had been dealing as a partner of the Firm in all the dealings with the producers. The said partner surrendered the rights on behalf of the Firm since the Firm was unable to pay balance amount of Rs.3,00,000.00 and to make further payments. The * request for the refund of Rs.18,05,001.00 was fully justified. Upon refund of the amount of Rs.18,05,001.00 the Firm was left with no rights in distribution of the Film "DUSHMANI". The amount was refunded by bank draft on 27-7-1995. The producer having acquired the rights in the Film, assigned the same to M/S. Vijay Associates on 29-7-1995. M/s. Vijay Associates transferred/assigned their rights to M/S. Honey Enterprises on 31st July, 1995. The surrender by Mr. Gupta was in the usual course of business and within the ambit of Section 19 of Indian Partnership Act so as to which bind the Firm. Mr. Makhija also denied that the producer M/S. Cineyug received any letters from plaintiff Mrs. Chander Kanta Sharma. He submitted that the surrender had been fully acted upon and third party rights have come into play in favor of M/S. Honey Enterprises on 31-7-1995. He also referred to Section 20 of the Indian Partnership Act in support of his contention that the partners may extend or restrict the implied authority u/s 19, however, notwithstanding such restrictions, the act done by the partner falling within the implied authority would bind the firm unless the person with whom he is dealing knows of the restrictions. Mr. Makhija also submitted that the suit itself was barred u/s 41 of the Specific Relief Act as damages would be adequate compensation. The suit was also barred u/s 14 of the Specific Relief Act this being a contract which could not be specifically enforced. Mr. Makhija, contended that the suit for perpetual injunction was infructuous as the date on which it was filed i.e. 22- 8-1995 M/s. Cineyug had already assigned their rights to M/s. Vijay Associates and third party rights had come into play. Besides u/s 10 of the partnership Act, a partner was responsible to indemnify the firm for the loss caused by his fraudulent act.

MR. Makhija also drew my attention to the fact that the suit No. 1980/95, had been filed through Mr. K.K. Mehra, advocate, on behalf of Mrs. Chander Kanta Sharma. Mr. K.K. Mehra later on withdrew his appearance from the suit. It was contended that Mr. K.K. Mehra had filed a caveat bearing No. 744/95 on behalf of M/s. Honey Enterprises on 31-7-1995, in respect of a suit or proceeding that was expected to be filed by M/S. C.K. Films against M/s. Honey Enterprises, M/S.

Cineyug, M/S. Motion Picture Associations and M/S. Vijay Associates. This demonstrated that Mrs. Chander Kanta Sharma, who had filed the present suit bearing No. 1980/95 through the same counsel, would have been aware of the interest of M/S. Vijay Associates and Honey Enterprises, but deliberately did not implead them. I do not propose to enter into the question of professional ethics of the Advocate so acting or the effect of the nonjoinder of parties at this stage.

(12) Mr. Harish Malhotra learned counsel for defendant No.1 has drawn my attention to a decision dated 17th May, 1995 in is No.12000 of 1994 in suit No.2920 of 1994 titled Mis. Padmawati Paras Nath Pictures Vs. Honey Enterprises and Others, wherein the learned Judge declined to grant injunction. The plaintiff was seeking enforcement of the agreement entered into in July, 1991. Holding that at best it was a case of breach of contract and that the plaintiffs remedy would be a claim for damages and not for specific enforcement of the agreement the injunction was declined . The said case is distinguishable, no collusion or fraud appears to have been pleaded. Besides in this case M/s. Honey Enterprises are itself seeking registration and restraint against defendants from interfering in the release and exhibition of the film.

(13) My attention has also been drawn to order dated 4-1-1996 by Arun Kumar, J. in a suit filed by Shri Kulbhushan Kumar Gupta titled Sh.Kulbhushan Kumar Gupta Smt. Chander Kanta Sharma & others, wherein the learned Judge declined the prayer of plaintiff for a restraint against the release of picture "Himmat" without the producer and distributor depositing entire amount of Rs.1,25,000.00 . The defendant distributors in the said suit had claimed that plaintiff owed them more than Rs.1,25,000.00 . Holding it to be a matter of accounts, learned Judge declined the injunction also holding that plaintiffs agreement with defendant stood terminated.

(14) Mr. Mukhija has also drawn my attention to an order dated 4-1-1996 passed by Arun Kumar, J. in Suit No.2009 of 1995 titled Kulbhushan Gupta Vs. Smt. Chander Kama Sharma. Mr. Makhija points out that in this case Smt. Chander Kanta Sharma has been appointed the receiver to take charge of the entire assets of the partnership firm as detailed in Schedule A. The said schedule does not include the Film "DUSHMANI". According to Mr. Makhija this shows that the parties themselves recognize that the said film "DUSHMANI" is not an asset of the partnership firm and the assignment eventually in favor of M/s.Honey Enterprises through M/s. Cineyug, M/s. Vijay Associates is complete. An omission to include the picture "DUSHMANI" in the list of pictures in the said suit, when the matter is hotly being contested in the present suits, is not considered by me to be fatal so as to non-suit Mrs. Chander Kanta Sharma.

(15) Mr. Rohtagi, learned counsel for M/S. Honey Enterprises submitted that his clients had bonafide acquired the rights in the picture for value. They were not concerned with the in terse disputes between the partners. M/s. Honey Enterprises was entitled to have the registration in its favor from M/s. Motion picture Association. The firm M/S. C.K. Films was also under dissolution. The

picture was slated to be released on 19-1-1996 and they acted bonafide on the basis of the surrender of the rights by the partner on behalf of M/S. C.K. Films to M/S. Cineyug. As a result of in terse disputes between the partners, M/s. Honey Enterprises were being made to suffer. Their whole reputation and good will in the trade and industry was at stake. It was not a question of mere compensation. He defended the surrender by Mr. Kulbhushan Gupta, who had all along being executing the contracts for acquiring distribution rights as well as for relinquishment of rights without any objection from the other partner. This fact was known in the trade. Mr. Rohtagi submitted that Mr. Jagdish Sharma who was husband of Mrs. Chander Kanta Sharma, was a member of acquiring sub Committee of M/S. Motion Picture Association and was exercising his clout and influence so as to put obstacles in the registration of the film in favor of the plaintiff, M/s. Honey Enterprises. As regards the submission of Mr. Jaitley regarding the acquiring Sub-Committee of the Motion Picture Association having prima facie found that relinquishment of right by Sh. Kulbhushan Gupta was not valid and proper. Mr. Rohatagi vainly submitted that the matter was not finally concluded. Mr. Rohatagi submitted that in the present state of affairs, there have been a number of transactions and the balance of convenience would be against unscrambling all the transactions and putting the clock back. He submitted that it was in mutual interest and for the benefit of all that picture is exhibited. The balance of convenience was against any fetter being put on the registration of the picture in plaintiffs favour. M/s. Honey Enterprises should be granted the registration in its favor and the defendants should be restrained from causing any interference in the exhibition of film.

(16) I have considered the rival contention of the parties, the documents filed on record and the submission made, I find considerable merit in the submissions of Mr. Jaitley that prima facie a case indicating fraud is made out wherein Mr. Kulbhushan Gupta, M/s. Cineyug, M/s. Vijay Associates and M/s. Honey Enterprises colluded together to get undue benefit to the detriment of the firm M/s. C.K. Films and cause loss to Mrs. Chander Kanta Sharma. The course of transaction and events is so inextricably linked, so as to indicate the knowledge and collusive participation of the parties, who subsequently acquired rights in the picture. The factors which point out to this are the unilateral surrender by Mr. Kulbhushan Gupta, despite his earlier own communication and the public notice. The argument that the public notice concerned only cash payments is taking a hyper technical view and giving a very narrow restrictive meaning to the public notice. The notice has to be viewed in a manner as would be understood by persons with ordinary common sense in public and prudence in trade. Moreover, the letter dated 3-6-1995 appears to be ante dated. In the given circumstances, it is unlikely that a partner would agree to surrender the rights and defer the refund of the amount for a period of over a month. There has been nothing tenable filed on record to show the consideration that was paid by M/S. Vijay Associates. The stamp paper for the agreement between M/s. Honey Enterprises and M/s. Vijay Associates carries the date 27-7-1995 i.e. when payment by M/s.

Cineyug was made and M/s.Vijay Associates had not even acquired the rights. The agreement was executed on 31- 7-1995, it does not have any witnesses, it is for a total value of Rs. 70,00,000.00 with a payment of signing amount of Rs.1,00,000.00 , At the same time, M/S. Honey Enterprises on 24th and 25th July or at best on 29th July 1995, had Filled the producer distribution certificate showing consideration of Rs.5(),0(),())().00 in all. The purported surrender by Mr." Kulbhushan Gupta on behalf of the Firm was for mere refund of Rs.18,05,000]. The proximity of dates and events depend further credibility to the submissions of Mr. Jaitley as recorded in paras 8 to 10, which need not be repeated here. Mrs. Chander Kanta Sharma and M/s. Honey Enterprises have placed affidavits and documents on record; the former contending that M/s. Vijay Associates and its proprietor Mr. Vipin Savia have never distributed any Motion Picture in Delhi, U.P. Territory and are not members of the Motion Pictures Association. Certificate to this effect of the Motion Pictures Association has been Filed. While the latter i.e. M/s. Honey Enterprises have filed affidavit showing that M/s. Vijay Associates have been dealing and trading in the Film industry and have produced the bills relating to raw Films. It is not necessary to return a Finding on whether M/s. Vijay Associates is a sham and bogus Firm. It is sufficient to notice that they appear to have been brought in as a intermediary into the transaction to serve as conduit. These anomalies and contradictions, prima facie show fraud and collusion. In this view of the matter, the case set up by Mrs. Chander Kanta Sharma that the entire transaction is tainted with fraud and M/s. Cineyug and others have colluded together definitely requires further examination and investigation.

(17) In the view that I have taken, it is not necessary at the interim stage to examine the pleas advanced on the maintainability of the suit. The question of implied authority of the partner also does not arise in view of fraudulent and collusive nature of transaction as found prima facie.

(18) The next question to consider is what would be an appropriate order to pass in this situation. Although prima facie case of a fraudulent and collusive transaction requiring further investigation and consideration is made out, I cannot lose sight of the fact that the picture is stated to be released today and any further delay in the release of picture or uncertainty of the same would be to the detriment of all the parties and prejudicially effect the prospects of the Film. An attempt was made for arriving at a settlement between the parties. However, no agreement could be reached due to the divergence on respective claims and as such arguments on merits were heard.

(18) Mr. Rohtagi is right in arguing that considerations of balance of convenience are for permitting the release of picture, which should go on. It is also noticed that Mrs. Chander Kanta Sharma in the suit Filed has not impleaded M/s. Vijay Associates and Honey Enterprises as defendants while seeking injunction. Nevertheless, in the peculiar facts and circumstances of the case, since M/s. Honey Enterprises derive all their rights and title to the exhibition of Films from

M/s.Cineyug through M/s.Vijay Associates, they could even be directed to be bound by directions given to M/s. Cineyug. However, in any case M/s. Honey Enterprises are before the Court seeking relief for registration of the picture by Motion Pictures Association and restraint on the defendants M/s. C.K. Films, Mr. Kulbhushan Gupta and Mrs. Chander Kanta Sharma from interfering in the release and exhibition of the films. M/s. Honey Enterprises can therefore be put to terms while granting relief to them.

(19) Having regard to the totality of the facts and circumstances of the case, I am of the view that ends of justice would be met if M/s. Honey Enterprises is required to deposit a sum of Rs.11 lacs (Rupees Eleven lacs only) in Court within a period of seven days as a pre-condition for interim registration of the film "DUSHMANI" in their favor by Motion Picture Association and for a restraint on the defendants M/s. C.K. Films, M/s. Chander Kanta Sharma and Mr. Kulbhushan Gupta from interfering in the release and exhibition of the picture pending the disposal of the suit, so as to secure the interest of Mrs.Chander Kanta Sharma and the partnership firm of M/s. C.K. Films. Let a direction be issued to Motion Picture Association in terms as aforesaid for interim registration of the Film "DUSHMANI" in favor of M/s. Honey Enterprises, subject to decision of suit. M/s. C.K. Films, Mrs. Chander Kanta Sharma and Mr. Kulbhushan Gupta. are also restrained from interfering in the release and the exhibition of the picture by M/s. Honey Enterprises. However, in case M/s. Honey Enterprises fail to deposit the amount as aforesaid within a period of one week, they shall not be entitled to exhibit or distribute the Film "DUSHMANI" in Delhi, U.P. Sector and the interim registration of the Film in their favor by M/s. Motion Picture Association would stand revoked. The expression of opinion or the observations made in the order are on a prima facie view of the matter and would not affect the ultimate decision in the suits.