
(1985) 03 DEL CK 0006
In the Delhi High Court
Case No : Suit No. 323A of 1983

Filmistan Distributors

APPELLANT

Vs

Pooja Movies

RESPONDENT

Date of Decision : 04-03-1985

Acts Referred:

Citation : (1985) 03 DEL CK 0006

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Judgement

D.R. Khaiwa, J.

(1) An agreement was executed on 9th July, 1971 between Filmistan Exhibitors and M/S Pooja Movies under which the former advanced a loan of Rs. 2,50,000.00 to the latter for production of the picture "Ulfat" The interest stipulated was 12% per annum. It was agreed that in case the amount was not repaid within 12 months, the Filmistan Exhibitors would hold a charge over the distribution, exhibition . and exploitation rights of the said picture in the Delhi U.P circuit. Those rights were to be treated as transferred in its favor. Clause 10 of this agreement provided for arbitration of one Rajender Krishan of Bombay in case of any dispute arising out of or touching the meaning, scope & interpretation of the agreement. Clause 11 next envisaged that Delhi courts only would have the jurisdiction in the matter.

(2) On 16.10.73, a number of documents were executed. One of them was a letter addressed by the Filmistan Exhibitors to the Filmistan Distributors (Petitioner) in which it was mentioned that the former had to recover Rs-2,85,000.00 from M/s Pooja Movies, Bombay, the producer of the picture "Ulfat." The recovery of the amount was, it was mentioned, agreed to by the petitioner There were confirmations from the petitioner and M/s Pooja Movies on this letter of having agreed to this transfer. By another letter M/s Pooja Movies confirmed to the petitioner that apart from the said amount of Rs. 2,85,000.00 they had received Rs. 1,15,000.00 also from it, and in this manner rupees 4 lacs were due

from M/s Pooja Movies towards the rights of distribution, exhibition and exploitation of the picture "Unfit" in Delhi U.P. circuit which had been acquired by the petitioner Ltd. Another similar letter was written by the petitioner to M/s Pooja Movies. and confirmed by the latter. An agreement was also executed between the petitioner and M/s Pooja Movies on the same day, in which the distribution, exhibition and exploitation rights of the picture "Ulfat" for Delhi Up circuit were exclusively given by M/s Pooja Movies to the petitioner. There was a further provision that Rs. 50,000.00 would be given by the petitioner to M/s Pooja Movies against delivery of complete quota publicity material and another amount of Rs. 3,75,000/- against delivery of 12 Brand New Quota Printers rights of the said picture. I need not reproduce the other terms and conditions contained in this agreement. Suffice it to say that in this agreement there was no arbitration clause. Clause 14 next was :

"14. That the dispute, if any, arising out of the interpretation and or implementation of the provisions hereof shall be subject to the court at Bombay city only".

(3) Now a petition u/s 20 of the Arbitration Act has been moved by the petitioner and the respondents imp leaded are M/s Pooja Movies and its proprietor K.K. Rajdan. There is a narration of above facts, and it is mentioned that respondents had by their letter dated 9.7.1971 informed the Motion Picture Association Delhi to register the film in the name of the petitioner .the petitioner however was not till then in the picture. That Associations rules, it is contended, provide for arbitration in case of any dispute and differences. They have not been laid before the court. Reference has next been made to the agreement of 9.7.1971 providing for arbitration. It has been alleged that the film "Ulfat" has been completed in the year 1982, and the petitioner has learnt that the respondent is trying to assign the distribution. Filmistan Distributors, vs. Pooja Movies exhibition and exploitation rights to to some other persons. Reference to arbitration has, Therefore been sought.

(4) The respondents are exparte, and none has appeared from their side.

(5) After hearing the petitioner and going through the documents placed on record, I find that the agreement dated 16.10.1973 constitutes the documents inter-se parties, from which rights and liabilities flow qua each other. This in fact is the basic document between the parties for ascertainment of their rights. The earlier agreement of 9.7.71 was between a different concern, namely, the Filmistan Exhibitors, and M/s Pooja Movies. Even if the former was a sister concern of the present petitioner, their distinct legal entitles cannot be ignored. The loan of Rs. 2,50,000.00 which had been given under that agreement was, of course, assigned to the present petitioner, and thereafter it became entitled to recover the amount thereof, and the interest thereon. The distributorship rights over which the charge had been created also passed on to the present petitioner. However, the rights between the present parties do not flow from what was stated in that agreement, but find their base in the subsequent agreement dated

16.10.73. It was a complete document by itself, and this was irrespective of whether the liability of M/s Pooja Movies to the Filmistan Exhibitors Pvt. Ltd, was taken over by the present petitioner. This latter document clearly provided that the Bombay city court alone will have jurisdiction in matters and disputes arising under the agreement. It is this clause, Therefore, which is operative and binding inter-se parties. Any clause to the contrary in the earlier agreement creating jurisdiction in Delhi courts has to be treated as superceded, obliterated and of no effect, more so when the parties to the present agree are different.

(6) From the side of the petitioner, reference has been made to a decision in *Hakam Sing Vs. Gammon (India) Ltd.*, , in support of the contention that parties cannot by agreement confer jurisdiction on Court not possessed by it under the Code of Civil Procedure. However, agreement that one of the Courts having such jurisdiction alone shall try dispute is not contrary to public policy and does not contravene Section 28 of the Contract Act. The petitioner has contended that the said agreements were executed at Delhi, and the distribution exhibition and exploitation of the film have also to take place in Delhi, U.P. circuit. As such it is asserted that the Bombay court has no jurisdiction, and in the circumstances the clause in the agreement dated 16.10.73 is void. However, I find that the addresses of both the respondents given in the petition are of Bombay. They are not only residing there, but carrying on business also .there. u/s 20 of the CPC an action can be brought within the local limits of the jurisdiction of a court where the cause of action wholly or partly arises, or where the defendant actually and voluntarily resides or carries on business or personally works for gain. Thus any of the courts which qualify such incident is competent to try the action. In the circumstances, with the respondents being residents of Bombay and carrying on business there, it cannot be said that Bombay court has no jurisdiction at all. The petitioner has, Therefore, to pursue his civil remedy under the agreement in Bombay court only.

(7) Without expressing any opinion as to whether the agreement dated 16.10.73 is governed by any arbitration clause, the petition is returned to the petitioner for presentation to a proper court.