
(2008) 12 BOM CK 0060

In the Bombay High Court

Case No : Draft Notice of Motion No. ... of 2008 in Suit Lodging No. 3821 of 2008

KBC Pictures

APPELLANT

Vs

A.R. Murgadoss and Others

RESPONDENT

Date of Decision : 26-12-2008

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 147, 148
Bombay Stamp Act, 1958 — Section 34
Income Tax Act, 1961 — Section 40A(3)

Citation : (2009) 111 BOMLR 598 : (2009) 40 PTC 627

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : P.M. Arjunwadkar and Manjiri Parasnis, for the Appellant; V.R. Dhond, instructed by Naik Naik and Associates for Defendant No. 1, Vineet Naik, instructed by Naik Naik and Associates for Defendant No. 3 and Vyapak Desai, instructed by Nishiith Desai and Associates for Defendant No. 2, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karnik, J.—Leave under Rule 147 of the High Court (Original Side) Rules 1980 is granted to the plaintiff. Respondents waive service.

2. Heard learned Counsel for the parties.

3. By this motion, the plaintiff seeks injunction restraining the defendants from infringing his copyright in the story, screen play and dialogs in the Hindi remake of the Tamil film "Ghajini".

4. The defendant No. 1 wrote the story, screen play and dialogs for the Tamil film "Ghajini". According to the plaintiff, by an agreement dated 29th December 2004, the defendant No. 1 by receiving a consideration of Rs. 11 lakhs assigned to him the copyright in the story, screenplay and dialogs of the Tamil film "Ghajini" with a right to remake the film in Hindi language. In the month of November 2008 the plaintiff learnt that the defendant No. 3 was making a

remake of that film in Hindi in violation of the copy right of the plaintiff. He has, therefore, sought an injunction restraining the defendants from releasing the Hindi remake of the film "Ghajini" and/or infringing his copyright.

5. The defendant Nos. 1 and 3 have filed an affidavit denying the averments in the plaint. In the plaint, he has stated that though he had written the story of the original Tamil film "Ghajini" he had done it for M/s.Sri Sarvanna who was the owner of the copyright in the story, screenplay and the dialogs. He further denied having executed the alleged agreement dated 29th December 2004 as also having received Rs. 11 lakhs in pursuance of the alleged agreement. He denied his signatures on the alleged agreement and receipt both dated 29th December 2004 and contended they were forged and fabricated.

6. The defendant No. 3 in his affidavit denied that plaintiff was the owner of the copyright of the story, screen play and dialogs of the original film "Ghajini" or that he had any right to remake it in Hindi. He has stated that the copyright vested in v. Sarvanna from whom he had acquired the right to remake the film in Hindi. He has further stated that he started advertising the film in February 2008 and various advertisements were released in different newspapers and media from February 2008 to December 2008. He produced copies of 9 advertisements published between period 27th February 2008 and October 2008 and copies of two advertisements published in the month of December 2008. He submitted that plaintiff was well aware and must be deemed to be aware that Hindi remake of the film was being produced. The plaintiff has come too late and has moved the Court at the last minute to stall the exhibition of the film and to extract money unlawfully.

7. Almost 15 years ago, in Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, , the Supreme Court has laid down the principles governing the grant of temporary injunction. In paragraph Nos. 30 and 31 of the decision, the Supreme Court has held that grant of interim injunction is not a matter of right and before any such order is passed, the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience. The plaintiff must further prove that refusal of an injunction would cause irreparable injury to him. Taking notice of the fact that on account of huge pendency of the cases in court, the court observed that once an interim order of injunction was passed, in many cases, such interim order would continue for months, if not years, and even if the order was vacated after long lapse of time, more damage and more serious injury would be caused to the defendant than the injury that would be caused to the plaintiff by refusing the injunction.

8. In Mahadeo Savlaram Shelke and Others Vs. Puna Municipal Corporation and Another, , the Supreme Court has held that while exercising the discretionary power to grant an injunction, the court should adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would

adequately compensate the defendant for the loss ensued due to the order of injunction granted in his favour.

9. Rule No. 148 of the Bombay High Court Original Side Rules states that a party to whom interim relief has been granted shall before the order is issued, unless the Court otherwise directs, give an undertaking in writing or through his Advocate to pay such sum by way of damages as the Court may award as compensation in the event the party affected sustaining prejudice by the order. The object of Rule 148 is clear. It is to compensate the defendant who may suffer a loss on account the injunction wrongfully obtained. On my query whether the plaintiff had filed any bond in compliance with Rule 148 and if not whether the plaintiff was willing to file any bond and give security to the satisfaction of the court to compensate the defendant for the ill gotten injunction in the event ultimately he failed in the suit, counsel for the plaintiff, on telephonic instructions from the plaintiff, stated that plaintiff was not willing to do so. This is one of the circumstance which I need to bear in mind while considering whether a relief of injunction should be granted.

10. As held by the Supreme Court in the case of Shiv Kumar Chedha (Supra), the plaintiff is required to make out a strong prima facie case before a relief of interim injunction can be granted. The plaintiff would therefore be required to prove prima facie that the defendant No. 1 had executed the agreement and the receipt of Rs. 11 lakhs both dated 29th December 2004. This is especially so because the defendant No. 1 has specifically denied the agreement and receipt dated 29th December 2004 and the signatures thereon. The defendant No. 1 has gone further and stated that he does not even know the plaintiff and had never met him as alleged in the plaint. In my view, the agreement and the receipt dated 29th December 2004 (the original of which were tendered in the court by the counsel for the plaintiff) are suspicious documents, not admissible in evidence, and I am not prima facie satisfied that the defendant No. 1 has executed either of them for the reasons mentioned below:

11. I have perused the disputed signatures of the defendant No. 1 appearing on the agreement and the receipt dated 29th December 2004 and the admitted signature of defendant No. 1 on the affidavit filed in the court and signature appearing on the driving licence issued on 8th February 2005. The signatures on the affidavit in reply filed in the court and the driving licence are identical and are materially different from the disputed signatures appearing on the agreement and receipt dated 29th December 2004. Even the learned Counsel for the plaintiff admitted that they were materially different. He however submitted that the signatures were not contemporaneous and therefore they cannot be looked into for the purpose of comparison. The alleged agreement and receipt are dated 29th December 2004. The driving licence is dated 8th February 2005 and they are contemporaneous documents executed in less than two months. Though the plaintiff was aware of the denial of the signatures by the defendant No. 1 he has not produced on record any other documents containing admitted signature of

the defendant No. 1 for the purpose of comparison.

12. Paragraph No. 6 of the agreement dated 29th December 2004 states that consideration of Rs. 11 lakhs was paid by cheque but the cheque number, date of the cheque and name of the bank are kept blank in the agreement. In the plaint, a case has been made out that the amount was paid in cash and the cash receipt of Rs. 11 lakhs is sought to be produced. On my query whether the plaintiff was willing to produce the books of accounts and in particular the cash book maintained by the plaintiff (who is a businessman and maintains accounts) showing the entry regarding cash payment of Rs. 11 lakhs, counsel for the plaintiff expressed inability to do so.

13. Sub-section (3) of Section 40A of the Income Tax Act says that where any expenditure in respect of which payment is made in a sum exceeding Rs. 20,000/- otherwise than by an account payee cheque, no deduction shall be allowed in respect of such expenditure. The plaintiff is a businessman. It is highly improbable he would make payment of huge sum of Rs. 11 lakhs without being able to claim it as deductible expenditure from the profit.

14. Perusal of the agreement dated 29th December 2004 shows that it has been written on a stamp paper which has been purchased in the name of Mr. S.B.Sharma. Mr. Sharma is not a party to the agreement. u/s 34 of the Bombay Stamp Act (as amended by Maharashtra Amendment Act 29 of 1994 with effect from 1st May 1994) an instrument which is written on an impressed stamp, is required to be written on a stamp paper which is purchased in the name of one of the parties to the instrument. The present stamp paper has not been purchased in the name of any of the parties to the instrument. The agreement dated 29th December 2004 is therefore not properly stamped and is inadmissible in evidence.

15. The agreement apparently is executed before a notary public. Under the Notaries Act and the Rules framed thereunder, a notary is required to keep record of all notarial acts performed by him and note serially in a notarial register to be maintained by him, all the notarial acts performed by him. The agreement, though it purports to bear notarial stamp, seal and the signature of the notary, does not bear the serial number at which the notarial act of signing and sealing was recorded by him in the notarial register. A copy of the relevant entry, if any, in the notarial register required to be maintained by lawiis not produced. In the circumstances, the purported notarisation does not raise any presumption in favour of the plaintiff.

16. In my view, as the plaintiff has not proved even prima facie that the defendant No. 1 has executed the agreement and receipt dated 29th December 2004, it cannot be said that he has proved that he is the owner of the copyright in the story, screenplay and dialogs for the Hindi version of the film "Ghajini". The plaintiff has not made out a strong prima facie case for grant of injunction.

17. The plaintiff is also guilty of delay and latches. Affidavit of defendant No. 3

discloses that advertisements of the film began in February 2008. It is a big budgeted film and the promos have also been on the mega scale. It is unbelievable that the plaintiff, who claims to be in the trade of film making, did not know of the Hindi remake of film Ghajini was being made till November 2008 as alleged by him in the plaint. Even assuming the plaintiff's case that he came to know of the alleged infringement of the copyright in November 2008 to be true, still he did not act immediately and has not filed the suit with dispatch. He waited till the closing of the courts for winter vacation and has filed the suit in vacation on 20th December 2008 i.e. just 5 days of the date of the release of the film. The grievance made by defendant No. 3 that the suit is an attempt to extract some money from him by trying to secure an order of injunction at the last minute cannot be said to be unwarranted. The long delay from February 2008 till the date of the filing of the suit is not satisfactorily explained. The delay has caused great prejudice to the defendant No. 3. He has spend large amounts not only in making of the film but also in the advertisements and promos. Affidavit of defendant No. 3 shows that third party interest have been created. The movie has already been released yesterday.

18. For these reasons, interim relief is refused and motion is dismissed with costs which are quantified at Rs. 10,000/-