
(2002) 10 BOM CK 0118

In the Bombay High Court

Case No : Appeal No. 815 of 2002 in Notice of Motion No. 2180 of 2002 in Suit No. 2750 of 2002

Manisha Koirala-II

APPELLANT

Vs

Shashilal Nair and Others

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

Cinematograph Act, 1952 — Section 5E, 6
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A

Citation : (2003) 2 BomCR 647

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : Satish Maneshinde, instructed by Mulla and Mulla, for the Appellant; I.M. Chagla, Janak Dwarkadas and T.N. Subramaniam, instructed by Pandya and Co. for Respondent No. 1 and Anita Castelio, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—We heard Mr. Satish Maneshinde, learned Counsel for the appellant and Mr. Iqbal Chagla, learned Senior Counsel for respondent No. 1.

2. The appellant is the original plaintiff in Suit No. 2750 of 2002 and respondent Nos. 1 to 3 herein are defendant Nos. 1 to 3 respectively. In the suit, the plaintiff has prayed for following reliefs:

"(a) for a decree against defendant No. 1 for an amount of Rs. 50 lakhs towards her professional fees for her performance in the suit film "Ek Chhotisi Love Story" produced and directed by defendant No. 1.

(b) for an order of permanent injunction restraining the defendants jointly and severally from using the suit film "Ek Chhotisi Love Story" for theatrical, non theatrical, commercial and non-commercial exhibition or from any other manner exhibiting or causing to be exhibited the said film containing the objectionable shots portraying the plaintiff and/or parting of possession of the release prints,

rush prints or any other complete or incomplete portions of the film containing the objectionable shots to any third party or any other distributor or any other person/s whosoever.

(c) pending the hearing and final disposal of the suit, for an order of temporary injunction restraining the defendants jointly and severally from using the suit film for theatrical, non-theatrical, commercial and non-commercial exhibition or any other manner of communication to the public using any medium, and/or causing the suit film to be communicated to the public in any manner without first deleting the four objectionable scenes portraying the plaintiffs and/or for parting of possession of the release prints, rush prints or any other complete or incomplete portions of the film to any third party or any other distributor or any other person/s whosoever.

(d) that pending the hearing and final disposal of the suit, a Court Receiver, High Court, Bombay be appointed Receiver of all release prints of the film and all complete and incomplete portions of the said film, containing the objectionable shots rushes and publicity material in respect of the suit film.

(e) that pending the hearing and disposal of the suit, the defendants be restrained from giving interviews, briefs, statements and holding press briefing in relation to the suit film to the extent if contains the plaintiffs role therein and the objectionable shots of the film as set out by the plaintiff.

(f) that pending the final hearing and disposal of the suit, the defendants be jointly and severally restrained from releasing or causing to have released or exhibiting or causing to be exhibited the said film containing the objectionable shots for exhibition or parting with the prints of the suit film for exhibition by theatrical, non-theatrical, commercial and non-commercial means or communicating the film or any part thereof to the public in any manner or by any part thereof to the public in any manner or by any means or to the media, now known or hereafter developed or invented without the defendant No. 1 having paid over to the plaintiffs professional fees of Rs. 50 lacs.

(g) for ad interim and interim reliefs in terms of prayers (c) to (f) above.

(h) for such other and further reliefs as this Hon"ble Court deems fit.

(i) for costs."

3. The dispute relates to four objectionable scenes in the film "Ek Chotisi Love Story" produced and directed the 1st respondent herein. The plaintiff is the lead actress in the said film. In the suit plaintiff took out notice of motion praying for the order of temporary injunction against the defendant from using the film "Ek Chotisi Love Story" for theatrical, non-theatrical, commercial or non-commercial exhibition or any other manner of communication to the public without first deleting the four objectionable scenes. The Notice of Motion taken out by the plaintiff was contested by the defendants and the learned trial Judge by his order dated 30th August, 2002, Manisha Koirala Vs. Shashilal Nair and Others, ,

dismissed the Notice of Motion. Before the order was passed disposing of Notice of Motion, the learned Judge himself watched the film to decide whether the objectionable scenes are impermissible and/or not to be exhibited. The learned Single Judge held that prima facie the objectionable scenes form part of the story board and was known to the plaintiff and if seen in this context it cannot be said that the scene would fall out of definition of what the plaintiff contends defamatory. Upset by the order of learned Single Judge, the plaintiff has preferred this appeal. The appeal came up before us on 5th September, 2002 and after hearing learned Counsel for the appellant and learned Senior Counsel for respondent No. 1 and respondent No. 3 we admitted the appeal and passed the following ad interim order:

"6. We considered the matter in respect of interim relief. In the affidavit filed by respondent No. 1, it is stated that 97 number of prints have been paid and the said prints have been sent to the exhibitors both in India and overseas. It is further stated that a cost over Rs. 50 lacs. has been incurred for the aforesaid purpose and that excluded the cost of publicity which has been incurred amounting to over Rs. 75 lacs. The various exhibitors have handed over prints to various theatres and for some of the territories in India like Bihar, Assam, Orissa, rights have been created on the basis of outright sale. Advance booking has opened for the film all over the country on or about 2nd September, 2002 and tickets have been sold. The exhibitors have booked theatres by paying rental in advance. DVD rights for U.S.A., Canada and Middle East Countries have been created and print have been sent to the DVD rights holders or exploitations. The said rights have been sold on an outright basis. Faced with these facts, the question before us is whether ad interim relief deserves to be granted since we have admitted the appeal and found that matter requires consideration. On the one hand are the facts stated by respondent No. 1 which relate to commercial considerations while on the other hand is a reputation of the plaintiff and if during the pendency of appeal, the respondents are permitted to exhibit the film, irretrievable injustice may be occasioned to the plaintiff which cannot be compensated in terms of money. In the circumstances, we are satisfied that ad interim order in terms of prayer (a) of the Notice of Motion shall remain operative in the meanwhile."

4. It is not disputed before us that the film was exhibited and screened at some places from 6th September, 2002 despite the ad interim order dated 5th September, 2002. According to 1st defendant, it was so because 97 prints of the film had already been sent to the exhibitors both in India and overseas, before we passed the order on 5th September, 2002. We noted all these facts concerning delivery of 97 prints and creation of DVD rights for U.S.A., Canada and Middle East countries in our order and observed that on the one hand are the facts stated by respondent No. 1 which relate to commercial consideration while on the other hand was the reputation of the plaintiff and if during the pendency of appeal the respondents are permitted to screen and release the film, irretrievable injustice may be caused to the plaintiff which cannot be

compensated in terms of money. Hence we passed the ad interim order in terms of prayer (a) which reads thus:

"(a) Pending the hearing and final disposal of the suit, for an order of temporary injunction restraining the defendants jointly and severally from exhibiting the suit film or causing or enabling the exhibition of the suit film for theatrical, non-theatrical, commercial or non-commercial exhibition or any other manner of communication to the public without first deleting the four objectionable scenes portraying the plaintiffs and/or for parting of possession of the release prints, rush prints or any other complete or incomplete portions of the film to any third party or any other distributor or any other person/s whosoever."

5. Despite the ad interim order passed by us on 5th September, 2002 restraining the defendants jointly and severally from screening and releasing the film "Ek Chhotisi Love Story" without first deleting the objectionable scenes when the said film was screened and exhibited in disregard to the Court's order, no steps were taken by the plaintiff in moving the Court for appropriate order and direction to stop the screening and exhibition of the film. As a matter of fact it has been 42 days since we passed the ad interim order and the film "Ek Chhotisi Love Story" has been screened at various places and at various theatres but the plaintiff has not moved the Court for taking appropriate action against the persons be it exhibitors or theatre owners for disobedience of this Court's order and for bringing the defiant to justice. When we asked Mr. Satish Maneshinde, learned Counsel for the appellant, as to why no steps were taken by the appellant in moving the Court for appropriate order and direction when the film "Ek Chhotisi Love Story" was being screened in defiance of Court's order dated 5th September, 2002, the learned Counsel for the appellant submitted that it was not possible for the plaintiff who is lone lady to find out the names of persons who defied the Court's order. The learned Counsel submitted that the plaintiff through this Advocate/Solicitors sought information from defendant No. 1 and defendant No. 3 in this connection but complete information in that regard was not furnished by them. This means that the ad interim order passed by this Court on 5th September, 2002 could not be effectively implemented. If that be so we find no justification for continuance of such order which cannot be enforced. The order of temporary injunction is not passed to remain on file without it being capable of implementation and enforcement and, therefore, this by itself is sufficient to dismiss the appeal.

6. Besides that the learned Senior Counsel appearing for defendant No. 1 submitted that the plaintiff for implementation of the order passed by this Court on 5th September, 2002, sought help of third person and, therefore, she has disentitled herself from any relief. There is substance in submission of Mr. Chagla, learned Senior Counsel for respondent No. 1. This Court initiated suo motu criminal proceedings against the plaintiff for taking a subjudice matter to third party for enforcement of this Court's order. It is not permissible for the party to the pending proceeding to seek help of third party to the pending

proceeding to seek help of third party for enforcement of Court's order. The order which we passed today disposing of suo motu contempt petition would show that on 6th September, 2002 when the film "Ek Chhotisi Love Story" was screened in some of theatres in Mumbai, Shiv Sainiks obstructed the screening of the film and caused damage to cinema halls and theatres. It was not disputed that immediately after the order was passed on 5th September, 2002, the appellant met Shiv Sena Chief. Armed with the judicial order, the litigant cannot be permitted to take such order to streets for enforcement. By her conduct, the plaintiff has disintitiled herself to the grant of discretionary relief. Moreover it appears that the plaintiff also represented the Minister for Information and Broadcasting to exercise the power u/s 6 of Cinematograph Act, 1952, by informing that the High Court has accepted her case that she has been defamed. Based on that Ministry of Information and Broadcasting issued notice u/s 5-E of Cinematograph Act, 1952, to the 1st defendant Shashilal Nair on September 10, 2002, as to why certificate granted to the film should not be suspended until the High Court disposed of the appeal. The appellant-plaintiff, thus, abused the process of this Court by taking up the pending matter to third person and the Ministry of Information and Broadcasting. Surprisingly she never moved this Court for appropriate order and direction if any act was done by the defendants in defiance of Court's order or there was any breach of this Court's order dated 5th September, 2002. In the circumstances, we are satisfied that we need not go further into merits of the appeal as the appellant had disintitiled herself from grant of any relief in the appeal arising out of discretionary order passed by the learned Single Judge of this Court.

7. We, accordingly, dismiss the appeal with no order as to costs. The effect of undertaking given by the plaintiff-appellant under Rule 148 of High Court (Original Side) Rules shall be seen and considered at the time of final disposal of the suit.