

(2015) 05 DEL CK 0176
In the Delhi High Court
Case No : O.M.P. 1602 of 2014

Sartaj Singh Pannu

APPELLANT

Vs

Gurbani Media Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Contract Act, 1872 — Section 23

Citation : (2015) 4 ARBLR 176 : (2015) 220 DLT 527 : (2015) 63 PTC 590

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Prasad Rao, Kailash Pandey, Ranjeet Singh and Arunima Pal, for the Appellant; Chander M. Lall, Gurmehar S. Sistani, Nancy Roy, Anuj Nair and Nayamat Sistani, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. S. Muralidhar, J.

Introduction

1. Sartaj Singh Pannu ("Pannu"), a young film Director, is the Petitioner in this petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act"). Pannu seeks orders restraining Gurbani Media Pvt. Ltd. (Respondent No. 1) and its Chairman and Managing Director Mr. Harinder Singh Sikka (Respondent No. 2) ("Sikka") from releasing the film "Nanak Shah Fakir" without giving him credit as the "sole Director" of the film.

2. The Court has, in the judgment that follows, concluded that at the present stage, without further evidence being led, it is not possible to conclusively hold that Pannu is the sole Director of the film. The Court has further concluded that the question whether for the purposes of Section 2 (v) of the Copyright Act, 1962 (CR Act), a Director of a film could be considered an "author" of an "artistic work" would also depend on the facts of each case. In the present case that

determination is not possible without evidence being led in the arbitration proceedings. The Court has further concluded that in any event in terms of the CR Act such a right to be recognised as an "author" can be waived voluntarily. Again, at the present stage, without evidence being led, the Court is unable to conclude that Pannu was coerced or otherwise compelled into waiving his rights to be acknowledged as a Director of the film "Nanak Shah Fakir". The Court negatives the plea of Pannu that independent of the CR Act he has moral rights to the film, the waiver of which would be opposed to public policy. Resultantly, the Court declines to grant Pannu the interim relief as prayed for.

The Agreement

3. Pannu and Respondent No. 1 entered into a "Service Agreement for Direction" on 15th January 2013 at New Delhi whereby Pannu was engaged as Director of the film. The Agreement refers to Sikka as "Producer" and "the party of the First Part". Pannu is described as "the Other Party" and "party of the second part". The preamble clauses in the Agreement read as under:

"Whereas:

A. The Producer is, inter alia, in the business of production, distribution and marketing of cinematographic films including feature films, motion pictures, advertisement films, television serials, music videos etc. and other works within the meaning of the Copyright Act, 1957 for worldwide exploitation on all formats;

B. Producer has conceived of and is desirous of making a Feature Film on the life and times of Guru Nanak Dev Ji tentatively entitled as "Nanak Shah Fakir" and hereinafter referred to as the "Film".

C. The other Party has the skill and experience of film Direction in the Indian film industry and has been providing his services for the making of the said film for past several months.

D. WHEREAS on resignation of the existing director of the said film, the producer has approached the other Party to provide his service as director in the making of the said film and the other Party is willing to provide his services as a Director of the said film."

4. Clauses 1 and 2 of the Agreement read as under:

"1. The other party hereto agree to provide his service as director for a motion picture in colour in HINDI, or any other language as the party of the first part may decide on the life and times of Guru Nanak Dev Ji tentatively titled as "Nanak Shah Fakir", hereinafter referred to as the "Film". The Lead and Character artistes, music director/s, lyricist, Story screenplay and dialogue writer as well as all technicians shall be selected and appointed by the party of the first part.

2. The said Film shall be produced under the banner of "Gurbani Media Private Limited" or under any other banner as the Party of the First Part may deem fit

and proper, provided, however, that irrespective of the name of the banner, the said Film shall be deemed to be and treated as DIRECTED by Party of the Second Part."

5. Clause 4 of the agreement set out the duties entrusted to Pannu and Clause 5 the rights asserted by Sikka. The said clauses read as under:

"4. The party of the second part, in his capacity as a director shall

(i) attend all pre-production and production meetings, budget, conferences, rehearsals and like matters and assist in the selection of locations, cast and technicians;

(ii) shall cooperate with the Producer in the preparation of the proper detailed production schedule within the said budget (as decided by the Producer) for the production of the said Film;

(iii) Liaise with the principal personnel involved in the production of the said Film such as the art director and the costume designer, principal cinematographer etc;

(iv) Direct the said Film at such locations, dates and time specified in the production schedule and/or the revised schedules (to be determined mutually) until the completion of the said Film and the receipt of the censor certificate. The Director shall not absent himself on the dates, time and the locations specified in the production schedule and/or the revised schedules:

(v) Upon completion of the principal photography and recording of the said Film, supervise in carrying out the cutting, titling and editing, post-synchronization, scoring, dubbing and completion in order to make due and proper delivery of the said Film to the Producer.

5. The party of the First Part shall be the sole and exclusive owner of all the Intellectual Property rights (IPR) in the said Film and the Script including moral rights, and shall have the sole authority, right, legal competence and capacity to deal with and exploit the entire Rights of the said Picture in any manner it may deem fit and proper. The Party of the Second Part shall have no claim over the same under any circumstance. Said IPR do and shall include remaking, prequel and sequel rights, animated versions and character replication of the Film as the same shall vest with the Party of the First Part. However, the Party of the Second Part agrees to extend full cooperation to the Party of the First Part in selling their rights to the various territorial distributors."

6. In consideration of the services, the Respondent No. 1 agreed to pay Pannu Rs. 20,11,000 in instalments as set out in Clause 8 of the agreement. Under Clause 10 of the agreement, it was stated that in the event of any delay or disruption that may occur for reasons attributable to Pannu or if he was unable to deliver the work to the satisfaction of the Respondent No. 1 or if he was in breach of any term of the contract then the Respondent No. 1 could terminate the contract and bring in appropriate resources to complete the film.

7. Under Clause 11 of the agreement, any and all information, data, files, systems, publicity designs, promos, software, documentation and other materials provided or used by Pannu would be considered as confidential and proprietary property of the Respondent No. 1. Clause 11 required Pannu or his licensees and assigns "not to copy, distribute, or disclose, sell, assign, transfer any such Proprietary Information". It was specifically stated in Clause 12 that Pannu would not "disclose, share, supply or provide any information related to the Film to anyone including, but not limited to, the print media and electronic media, without the prior written consent of the Producer". Under Clause 13, Respondent No. 1 could terminate the contract if Pannu was in material breach of any provision of the contract. As far as the Respondent No. 1 was concerned such material breach would only mean failure to pay the money pursuant to verification of bills submitted by Pannu. Clause 18 of the agreement contained the arbitration clause. The disputes were to be referred to a sole Arbitrator to be appointed by the parties and the place of arbitration was to be Delhi.

Allegations and counter-allegations

8. Pannu's case is that although para D of the preamble in the above agreement states that there was an "existing director" of the film on whose resignation Pannu was approached, the said Director, Mr. A.K. Bir ("Bir") was in fact only a Director of Photography ("DoP"). Pannu states that Sikka exploited him till the completion of the shooting of the film in October 2013. According to him, Sikka harboured dishonest intentions which were evident from the fact that although Pannu began shooting the film as Director since October 2012, it was only in January 2013 that the agreement was executed. According to Pannu he was new in Mumbai and became a victim of intimidating tactics adopted by Sikka.

9. The case of Sikka, on the other hand, is that Bir in fact was the first Director and Pannu was initially his assistant. According to Sikka, Pannu made it difficult for Bir to continue as Director, and after Bir left, Pannu stepped in as Director. Sikka alleges that Pannu started falsely claiming to be a Co-producer, Director and writer of the film. On 24th October 2013, Sikka sent an email to Pannu asking him to refrain from making such claims. Sikka states that even earlier in October 2012, Pannu claimed to be the Director of the film when in fact Bir was the Director. Sikka stated that he even wrote to Tom Alter, a veteran Bollywood actor, since Pannu had come to Sikka on Tom Alter's recommendations.

10. In a letter dated 24th October 2014 written to Pannu, Sikka referred to an incident at Mullanpur where some of the shooting of the film took place and stated that there were certain financial irregularities that took place which compelled Sikka to withdraw Pannu's authority to sign on cheque books on behalf of the Respondent No. 1 and asked him to concentrate only on direction. Towards the end of the letter Sikka advised Pannu to "not interfere in the film any more" but stated that "you shall indeed be given your due as a director."

11. On the very next day i.e. 25th October 2013, Pannu responded to the mail by

stating that it was full of false accusations. Sikka replied on the same day stating that Pannu's contribution "as a director has been taken on board and shall be given due credit as per your contract". Sikka stated that the film was complete and Pannu's role as Director had ended "today the 25th of Oct. 2013". He asked Pannu to submit a mail stating that "you, your company or any of your associates are not in possession of any data, intellectual property, MOVs or material directly or indirectly related to our film titled "Nanak Shah Fakir". Simultaneously, Sikka sent an email to Tom Alter stating that Pannu's role as Director had ended. Sikka requested Tom Alter to advise Pannu to keep away from any future interference in the film.

Pannu's waiver

12. Sikka states that he discovered that Pannu had been stealing the footage and digital data of the film in connivance with the Assistant Director of the film. When Pannu was confronted, he allegedly admitted to have taken visuals, data, MOVs and footage of the film. According to Sikka, Pannu returned the said material and also gave a written undertaking to him on 22nd November 2013 in the following terms:

"I, Sartaj Singh Pannu, S/o. Shri Prakash Singh Pannu, resident of 103, A Wing, Payal Apartments, Backside Yari Road, Versova, Andheri West, Mumbai-400061, hereby certify that I have handed over all the footage, data, MOV's etc to the producer of the film titled "Nanak Shah Fakir". Hereinafter, I am not in possession of any visuals, data, MOV's footage etc of the said film. After this date, if I, my company or my associates are found in possession of any material related to the said film then I shall be liable to be tried under the law. M/s. Gurbani Media (P) Ltd. shall be free to claim any kind of consequential loss/damages or both from me.

I further certify that I am not working in parallel on the said film titled "Nanak Shah Fakir" in another location/studio related to either sound/vfx/music/DI/processing labs or all the above.

I shall abide by the producers decision to give me the credit for the creative contribution so far done. And I will not stake claim to any intellectual right/or work yet to be done on the said film. If any material is found in any VOD/Internet or any other platform, through myself and any of the associates of mine, I shall be wholly responsible for any punitive action or other damages. I also understand that I do not have any right to claim any kind of intellectual right or profit or share in the said film and it is entirely at the sole discretion of the producers."

13. According to Sikka, despite the above letter, Pannu claimed on the website of his company Sun Entertainment that he had co-produced and directed the film and also announced a tentative date of release of the film in December 2013. Meanwhile, Pannu wrote to the Indian Motion Picture Producers' Association ("IMPPA") stating that Sikka had made false accusations against him. Sikka then

wrote to Tom Alter on 2nd January 2014 asking him to intervene. He mentioned the fact that he had submitted a complaint to the Crime Branch, Mumbai. On 13th January 2014, Tom Alter wrote to Sikka stating that the issues could be settled. He suggested that Pannu could remove the "harmless announcement from his website" and Sikka could state in his credits that Pannu is the co-writer and director of the film.

14. It appears that with the intervention of Tom Alter an agreement was reached between the parties. Pannu swore to an affidavit on 17th January 2014 as under:

"To Whom it May Concern

I, Sartaj Singh Pannu, S/o. Shri Prakash Singh Pannu, Resident of 103, A Wing, Payal Apartments, Backside Yari Road, Versova, Andheri West, Mumbai.400 061, do hereby declare as under:

1. That I have handed over all the footage, data MOVs etc. to Sh. Harinder Singh Sikka of M/s. Gurbani Media (P) Ltd., the producer of the film titled "Nanak Shah Fakir" and hereafter, I am not in possession of any visuals, data, MOVs, footage etc. of the said film. After this date, if I, my company or my associates are found in possession of any material related to the film, then I shall be liable to be tried under the law. M/s. Gurbani Media (P) Ltd. shall be free to claim any kind of consequential loss or damages or both from me.

2. That I am not working in parallel on the said film titled "Nanak Shah Fakir" in any other location/studio related to either sound/vfx/music/DI/processing labs or all the above.

3. That I shall abide by the producers decision to give me the credit for the creative contribution so far done. And I will not stake claim to any intellectual property or work yet to be done on the said film. If any material is found in any VOD/Internet or any other platform, through myself or by any of the associates of mine, I shall be wholly responsible for that and shall also be liable to any punitive action and other damages.

4. I further hereby state that I am not the Co-Producer of the said film, not the Co-Writer, nor do I have any claim in any manner whatsoever, on the film or to any other credit, except for para 3 above. I am therefore withdrawing all my complaints from IMPPA and crime branch Mumbai as well as removing from my companies websites all claims made by me with respect to the said film based on the life and teaching of Guru Nanak.

5. That I understand that I do not have any right to claim any kind of intellectual right or profit or share in the said film, it is entirely at the sole discretion of the producers.

6. That in past I have used foul and abusive language against the producer of the said film i.e., Shri Harinder Singh Sikka and I deeply regret and sincerely apologise for such foul and abusive language used by me towards Shri Harinder

S Sikka. I assure that I shall refrain myself from using such unparliamentary/derogatory language towards him in future.

7. That I also place on record my deep regret for my misbehaviour and consequent hurt caused to Sh. AK Bir (Padam Shree), Bhai Nirmal Singh (Padam Shree) and others. I do hope that taking into account my inexperience and relative immaturity, I shall be pardoned by the elderly gentlemen of high repute. If I am found flouting any of the above undertaking made by me, M/s. Gurbani Media Pvt. Ltd. and/or Shri Harinder Singh Sikka would be free to proceed against me in the Court of law.

8. That I am making this statement in sound state of mind out of my free will and without any pressure on me."

15. On the basis of the above affidavit, on 22nd January 2014 Sikka addressed a letter to the Senior Inspector of the Crime Branch, Yellow Gate Police Station, Mumbai enclosing Pannu's affidavit which had been signed in the presence of Tom Alter as witness. Sikka mentioned in the letter that Pannu has "not only apologized for his conduct and misbehaviour, he has also categorically stated that the claims made by him to the Crime Branch are incorrect and false".

Events post the waiver

16. Pannu, however, now claims that he signed the stamp papers containing the affidavit on the persuasion and inducement of Sikka as well as Tom Alter and that he was assured that by doing so he would get his legitimate dues. Pannu states that he had made a mistake in trusting Sikka who proved to be "incorrigible" as he thereafter went about making statements and press releases falsely claiming to be the Director of the film. Pannu states that he, therefore, got a legal notice dated 27th June 2014 issued to Sikka in which inter alia he claimed that Sikka had got him to sign the affidavit "by exerting duress over him using the false/malicious FIR registered by you by using your money power". The legal notice called upon Sikka to ensure recognition of the directorial services rendered by Pannu in the film in his credits failing which he would seek appropriate legal redress.

17. On 8th July 2014, Sikka replied denying the allegations. Meanwhile, Pannu approached the Indian Film and Television Directors' Association ("IFTDA") requesting them to take action to stop Sikka from misrepresenting to the media as well as the film industry that he was the Director of the film. IFTDA in turn requested the Federation of Western India Cine Employees ("FWICE") to issue a letter to IMPPA not to approve the publicity/promos of the film, if any name other than Pannu was displayed as Director. On that basis, FWICE wrote to the IMPPA on 16th July 2014 forwarding the request.

18. According to Pannu, the police then started applying pressure seeking to have him arrested. Pannu applied for anticipatory bail on 31st July 2014. A statement was made by the police at Yellow Gate Police Station on 4th August

2014 that they had been entrusted with the investigation of FIR No. 2 of 2014. Pannu got issued a public notice on 17th September 2014 in the newspapers stating that he alone should be recognized as Director of the film. He also issued a legal notice on 21st September 2014 to various distributors and marketing agents of the film.

19. On 26th September 2014 Tom Alter gave an affidavit, to no one in particular, stating that he had prevailed upon Pannu on 17th January 2014 to sign the affidavit prepared by Sikka who had stated that he would give Pannu due credit in the "Nanak Shah Fakir" as its director and co-writer, and also withdraw the FIR registered against Pannu. In the affidavit Tom Alter stated that he had been acting as a mediator between Pannu and Sikka. He acknowledged having signed as a witness to the affidavit dated 17th January 2014.

20. Pannu, in the meanwhile, appears to have collected letters and emails from various technical personnel involved in the making of the film acknowledging him as the director of the film. In an email responding to some of the allegations, Sikka alleged that Bir had been signed as a Director as well as DoP in August 2012 and held this position till 31st December 2012. He stated that Bir who resigned in December 2012, complained to Sikka and Tom Alter about the cheating, fraud and abusive language by Pannu. Bir also filed a complaint with the IFTDA and other associations. Sikka stated that when Bir resigned he was left with no option but to sign a legal contract with Pannu as a Director in January 2013. Sikka stated that he discovered gross financial irregularities and so withdrew Pannu's authority to sign cheques on behalf of the Respondent No. 1.

21. Sikka stated that after removing Pannu as Director in October 2013 he had filed a complaint with the Crime Branch, Mumbai, together with evidence supporting the theft and fraud by Pannu and his coterie. He claimed that Pannu apologised to him and returned the stolen film comprising over four-hours of uncropped and un-watermarked footage. Sikka claimed that based on Pannu's apology and Tom Alter's repeated requests, he withdrew his complaint from the Crime Branch. He alleged that Pannu was nevertheless making false claims on his website that he was the co-producer and writer of the film. Although Sikka had another FIR registered against Pannu, he claimed to have deliberately avoided proceeding further lest Pannu's career be ruined. Sikka also claimed that from 25th October 2013 onwards he had redone the film and kept Pannu and his coterie away from all the studios during the film's VFX, edit, DI and other creative work. Sikka claimed that Pannu owed him over Rs. 4 lakhs (with interest) which he failed to repay despite Tom Alter's assurances.

Proceedings in the Bombay High Court

22. Pannu filed Arbitration Petition No. 1682 of 2014 in the High Court of Judicature at Bombay under Section 9 of the Act against Gurbani Media Pvt. Ltd. and Sikka inter alia seeking to restrain them from distributing, publishing,

screening or in any other manner doing any act of releasing the film "Nanak Shah Fakir" without acknowledging Pannu as the sole Director. The petition was filed on 17th October 2014. Sikka filed a reply to the said petition on 18th November 2014.

23. In their pleadings, both parties maintained their respective stands. Enclosed with each of their affidavits were documents purporting to support their contentions. With his affidavit, Sikka placed on record emails that he had received from several persons including one dated 6th October 2014, of Honey Trehan, Casting Director, supporting his stand.

24. On 4th December 2014, Pannu got a legal notice issued to Sikka and Gurbani Media P. Ltd. calling them to pay Rs. 50 lakhs towards "immense suffering, loss, prejudice, damages, besides mental anguish, loss of image, defamation, and trauma both mentally and physically" caused to Pannu. Pannu also proposed names of sole Arbitrator and sought Sikka's consent.

25. In the Bombay High Court, Sikka raised a preliminary objection to the maintainability of the petition. Inter alia Sikka contended that the registered office of Respondent No. 1 was in Delhi and the agreement dated 15th January 2013 was also entered into at Delhi. On 26th November 2014, the Bombay High Court accepted the preliminary objection raised by Sikka and the petition was dismissed as withdrawn with liberty to move the appropriate Court. Thereafter, on 12th December 2014 the present petition was filed by the Petitioner.

Proceedings in this Court

26. Notice in this petition was accepted by Sikka who appeared in person on 17th December 2014. He informed the Court that at that stage no permission had yet been taken of appropriate authorities including the Censor Board for release of the film in India. He stated that he intended to apply for necessary permission for release of the film in India in January 2015. After recording the said submission, the Court listed the petition for hearing on 6th February 2015.

27. The Court thereafter heard arguments on 6th February, 4th March and 5th March 2015. On 8th April 2015, the Court passed the following order:

"1. Mr. C.M. Lall, learned counsel for the Respondent states that on or before 10th April 2015, an affidavit will be tendered of Mr. Harinder Singh Sikka, Chairman and Managing Director, Gurbani Media Pvt. Ltd. on the following aspects:

(i) Whether a censorship certificate has been obtained for the film "Nanak Shah Fakir" from the Censor Board, and if so a copy of the said certificate and a copy of the application made for censorship certificate be enclosed.

(ii) The actual credits for direction and production appearing in the film submitted for censorship certificate.

(iii) The truth of the interview purportedly given by Mr. Sikka carried on the

website BollywoodLife.com with the dateline of 5th April 2015 (a hard copy of which has been provided to Mr. Lall in the Court).

(iv) Whether while applying for censorship certificate in Singapore the Petitioner was shown as the sole Director of the film?

(v) Whether in email addressed to the Petitioner on 16th October 2013 (a hard copy of which has been provided to Mr. Lall in the Court) it was stated by Mr. Sikka that the film was of 2 hrs 35 minutes duration and has been "locked" and would not be changed thereafter and whether in fact any changes were made thereafter?

2. List on 10th April 2015."

28. Further arguments were heard on 10th April 2015 when inter alia, Mr. CM. Lall, learned counsel for the Respondents tendered a copy of the certificate issued by the Central Board of Film Certification ("CBFC") dated 13th March 2015 for the film "Nanak Shah Fakir" (Hindi) Colour. The Court also recorded the statement of Mr. Lall that he would be filing an affidavit of Mr. Sikka in due course.

29. In his affidavit dated 13th April 2015, Mr. Sikka stated that "at least 30% of the film was shot under the direction of Mr. A.K. Bir" and "after Pannu was removed from the project, substantial changes were made to the final cut of the film at a huge cost". Mr. Sikka added that "four songs were picturized by Mr. A.K. Bir and myself, the process of which was started in 2014, well after removing Mr. Sartaj Singh Pannu in Oct 2013". He added that songs sung by well known signers were filmed after the exit of Pannu and "today form part of the film". He also stated that after the exit of Pannu, "in November 2013, the entire digital imaging and special effects were included" in which Pannu had "no role to play". He further added that in the application for censorship certificate submitted with the CBFC "we had mentioned the name of Mr. A.K. Bir as the Director. Even in the film credits the name of Mr. A.K. Bir is stated as the Director". He stated that he had not given any interview to any newspaper or television channel or any other interview whatsoever, wherein he claimed to be the Director. He enclosed with the affidavit a newspaper article dated 6th April 2015 in which Pannu was claiming directorship of the film although the issue was sub judice. As regards the censor certificate issued by the authorities in Singapore, Mr. Sikka enclosed with the affidavit copies of the relevant emails exchanged. Mr. Lall submitted that the name of the Director was not provided by Sikka and was probably picked up from the internet.

30. A rejoinder affidavit was filed on 13th April 2015 by Pannu in which he stated that Sikka had knowingly filed a false affidavit "to mislead, subvert the course of justice" and that Pannu was "deeply distressed/disturbed by the utter false statements on oath" made by Sikka. It was urged that the Respondent No. 2 was liable for contempt of Court and perjury. Enclosed therewith were affidavits of several of the crew associated with making of the film including Sandeep Patil,

Ashok Halder, Mrinal Das, Preetisheel G Singh, Archit D Rastogi, Mark Troy D'Souza, Honey Trehan and several others. Most of the affidavits were related to the shooting of the film which took place at Mullanpur where according to the deponents of the affidavits, Bir was not a Director but was working as DoP. Pannu further asserted that Sikka had earlier falsely claimed himself to be a Director during the screenings of the film at the Cannes Film Festival, the film festivals in Toronto and in the United States. He was now falsely stating that he had not made any such claim. Pannu asserted that the entire movie, right from the first schedule of shooting till its completion, had been made under his "sole direction". Inter alia, Pannu stated that on the release of the music of the film the name of the Director was not mentioned on the CD cover.

31. On 16th April 2015 another affidavit was filed by Pannu placing on record a letter dated 11th October 2014 of the IFTDA whereby a request was made to the IMPPA to take immediate action against Sikka since in the posters of the film there was no mention of the name of Pannu as Director. The letter ended by saying that "It was the unbiased decision of the Joint Dispute Settlement Committee, endorsed by producer's own email which confirms that our member's name be included as Director in the promos/publicity/credit titles, interviews of the film "Nanak Shah Fakir". While enclosing a copy of the said letter along with relevant documents, it was stated that recognition had to be given to Pannu since more than forty members of the team which made the film vouched for him as Director of the film. Also enclosed with the affidavit was the letter dated 14th November 2014 sent by Sikka to IMPPA stating that since Pannu had approached the High Court at Bombay, the matter was sub judice and no longer under the purview of the IMPPA, FWICE and other federations.

32. The film "Nanak Shah Fakir" was released on 17th April 2015 in several cinema halls in the country and even abroad. Meanwhile, arguments continued and judgment was reserved on 20th April 2015. Soon thereafter, news items appeared in the print and electronic media on 22nd April 2015, with the dateline of 21st April 2015, that Sikka had decided to withdraw the film following the directions of the Sikh religious body, the Akal Takht. The news items mentioned that the Government of Punjab had already suspended the screening of the film for two months. The news articles mentioned that Sikka had "gracefully followed Akal Takht's direction" and that the Akal Takht would constitute a panel and advise the changes to be made in the film.

33. In view of the above developments, the case was listed for directions on 24th April 2015 and the following order was passed on that date:

"1. The case was directed to be listed today in light of the Press reports which indicated that Mr. Harinder Singh Sikka, Respondent No. 2, bowing to the request of the Akal Takht has temporarily and unconditionally withdrawn the film from all the cinema halls in India and elsewhere. Mr. Lall, learned counsel appearing for the Respondents, confirms this fact and states that Mr. Sikka will file an affidavit bringing on record the recent developments. The affidavit be filed within three

days with an advance copy to learned counsel for the Petitioner.

2. Orders reserved."

34. Sikka has since filed an affidavit dated 29th April 2015 confirming the above developments. In the said affidavit Sikka stated that the changes suggested by the Akal Takht might entail re-shooting of select scenes, re-working the sound design and "creative alterations and corrections."

Submissions of counsel for the Petitioner

35. Mr. Prasad Rao, learned counsel for the Petitioner, submitted:

"(i) It is inconceivable that in a feature film, the "captain" of the team making the film, viz., the Director, will not be acknowledged in the credits of the film for any reason whatsoever.

(ii) Pannu was the "sole" Director of the film and had a right to be acknowledged as such. Bir was never a Director but only the DoP. The assertions by Sikka on affidavit to the contrary were pure falsehood and ought to be rejected. Reliance is placed on the affidavits of the technical crew who have consistently acknowledged that Pannu was the sole Director of the film.

(iii) As far as the Copyright Act ("CR Act") was concerned, even if in terms of Section 2(d)(v) the "author" in relation to a cinematograph film or sound recording is only the producer, it did not mean that a Director was not an author in relation to a "literary or dramatic work", "a musical work" and "an artistic work". As regards the definition "artistic work" under Section 2 (c) of the Act, the role of the Director could be related to sub-clause (iii) under which an artistic work included "any other work of artistic craftsmanship". It is submitted that a Director can be stated to be a "craftsman" as he is bringing to life a scene in a film which comprises of several elements. Reference was made to an article titled "Moral rights and the English business community" by Robyn Durie published in 1991.

(iv) There were two independent sets of rights flowing even under Section 2 (d) of the CR Act. Section 14 which defined "copyright" relating to a cinematograph film dealt with the commercial rights of exploitation of a film. Section 57 of the CR Act was concerned with the moral rights of an author, which were independent of the rights of commercial exploitation. The failed attempt at introducing an amendment to Section 2(d)(v) of the CR Act in 2010 to include a director as a joint author only meant that in relation to cinematograph film a Director may not have the commercial rights of exploitation of the film. It made no difference to the moral rights of a Director in relation to the film which was acknowledged under Section 57 of the CR Act.

(v) Even de hors the CR Act, as a creator of an artistic work, as a film maker, a Director had a right to be acknowledged and be given credit as such. That right could not be taken away either by statute or by a contract.

(vi) Since the public had a right to know who the Director of a film was, and under the Cinematograph Act it was mandatory to disclose that information, any contract under which that right was waived would be opposed to public policy and be hit by Section 23 of the Contract Act, 1872. Alternatively, such waiver to be valid had to be voluntary.

(vii) Neither the letter dated 27th November 2013 nor the subsequent affidavit dated 17th January 2014 given by Pannu was voluntary. Both were given under extreme distress, duress and coercion and therefore not valid under law. Tom Alter's affidavit dated 26th September 2014 substantiated this contention of Pannu. The FIRs and the criminal proceedings arising there from were false and invalid. They were used to coerce Pannu into giving up his right to be acknowledged as Director.

(viii) The importance attached to the disclosure of the name of the Director of the film was evident from the information sought by the CBFC in the application made to it for grant of censorship certificate. Even in awards announced for the films considerable importance is given to the prize announced for the best Director. Pannu was not agreeable to Sikka's offer of acknowledging him for creative contribution, but not as sole Director, as that would be adding insult to injury.

(ix) Since the entire reputation of a Director depended on being acknowledged as the maker of the film, and since the Director enjoyed a pre-eminent position as far as the credits for the film was concerned, the failure of Sikka to do so would cause irreparable harm and injury to Pannu which can never be adequately compensated in terms of damages. The balance of convenience in the Court issuing a mandatory interim injunction restraining Respondent No. 1 and Sikka from exhibiting the film without giving credit to Pannu as the film's sole Director was therefore entirely in favour of Pannu."

Submissions of counsel for the Respondents

36. In reply to the above arguments, it was submitted by Mr. C.M. Lall, learned counsel for the Respondents, that:

"(i) The case of the Respondents was based not only on the provisions of the CR Act but also on the rights and obligations flowing from the contract between the parties. As far as the CR Act is concerned, under Section 2(d)(v) of the CR Act only the producer of a cinematograph film is acknowledged as its author. Even under Section 14 (d) of the Act the exclusive rights in respect of a cinematograph film are available only to the author. Under Section 17(a) the author is the first owner of the copyright in the cinematograph film and it is he who can be acknowledged as the owner having the right to assign it in favour of anyone else under Section 18 of the Act.

(ii) The legislative intent behind Section 2(d)(v) was plain that a Director was not the "author" of a cinematograph film, for the purposes of either Section 14 or

Section 57 of the CR Act. Outside of the CR Act there could be no copyright or even a moral right in a work. The failed attempt in 2010 at amending the law to overcome the lacuna and a comparison with the provisions in Sections 10 (1A) and 77 (6) of the Copyright, Designs and Patent Act, 1988 of the United Kingdom (UK), only reinforced the above legal position.

(iii) The expression "artistic craftsmanship" in Section 2(c)(iii) of the CR Act had to reflect the production of durable handmade objects in a skilful way. It was never meant to and could not be interpreted to include the contribution by a Director to the making of a cinematograph film. Likewise he could not be an author, much less a joint author in relation to a literary or dramatic work or a musical work.

(iv) Even for the purposes of Section 57, moral rights would vest only in the "author". Therefore, under the CR Act, there was no moral right of a Director in a cinematograph film. There was no copyright or even a moral right outside of the CR Act and the same was evident in Section 16.

(v) Under Section 21(1) of the CR Act, the author of a work may relinquish any or all of the rights comprised in the copyright by giving the notice in the prescribed form to the Registrar of Copyright or by way of public notice. That the rights if any of the Director including moral rights could be waived was implicit in the provisions of the CR Act. However, for such waiver to be valid, it had to be voluntary.

(vi) There was no public policy involved as far as the acknowledgement of the rights of a Director in a film was concerned. It is possible that a person may not want to be acknowledged as a Director.

(vii) The agreement signed by both parties itself states that there was a director previous to Pannu on whose exit Pannu was engaged. Bir was the Director of the film earlier to December 2012 and subsequent to October 2013 and was involved at the post-production stage as well. Pannu directed around 70% of the film, and was not its sole Director.

(viii) Pannu had by letter dated 27th November 2013 and his affidavit dated 17th January 2014, voluntarily waived his rights to be acknowledged as Director. The waiver by Pannu of his right to be acknowledged as Director not just once but twice was voluntary. The affidavits now produced by Pannu of crew members including that of Tom Alter could be only tested in evidence and could not be taken to be conclusive of the question whether Pannu had in fact waived his rights under any coercion or duress.

(ix) Pannu had been caught "red handed" stealing the film material and falsely claiming to be the co-producer. In the film industry, this was a serious misconduct which could not be excused. Pannu consciously took a call on avoiding the criminal proceedings and therefore waived his rights to be acknowledged as Director. It was on that basis that Sikka withdrew the criminal

case against Pannu. In the circumstances, Sikka was justified in insisting that Pannu should not be mentioned as Director in the credits as that would harm the reputation of the film which was based on the story of a pious person. Sikka was nevertheless prepared to give Pannu credit for having made "creative contribution" to the film.

(x) The relief of an interim mandatory injunction as prayed for could never be granted by the Court. Pannu had himself prayed for an alternative relief of damages. The balance of convenience was in favour of the Respondents. They cannot be compelled at an interlocutory stage to give Pannu credit as sole Director as that was without factual or legal basis."

Was Pannu the sole Director of the film?

37. The first issue that arises is whether Pannu was the "sole" Director of "Nanak Shah Fakir" as claimed by him? To recall the agreement dated 15th January 2013 between the parties, it is seen that in the preamble clause (D) there is a reference to "resignation of the existing director of the said film". Although it was argued by Mr. Rao that this was an erroneous statement, it appears that even from the letters of the film crew produced by Pannu along with the petition filed by him in the Bombay High Court, and in the affidavits placed of such crew members before the Court, it is acknowledged that in the initial phase the services of Bir was engaged both as Director and DoP. Apart from Sikka's own affidavits asserting that Bir was initially the Director, there is a letter of Honey Trehan dated 6th October 2014 addressed to Bir in which he states that Bir was both the Director as well as DoP. Bir's letter dated 1st July 2014 addressed to IFTDA also states that "Even though I was signed as the Director and the DOP by M/s. Gurbani Media Pvt. Ltd., he (Pannu) continued to overly dishonour the agreement by making compulsive indulgence in directorial venture with the help of 2nd camera operator."

38. In the affidavits of some of the film crew enclosed with Pannu's affidavit dated 13th April 2015 it is stated that at the Mullanpur shooting it was Pannu and not Bir who was the Director and that Bir was the DoP. One of the affidavits is of Honey Trehan. In a sense therefore Honey Trehan appears to be contradicting himself. The other person who has given an affidavit is Archit D. Rastogi who states that at Mullanpur it was Pannu who was directing the film and Bir was the DoP. However, before the Bombay High Court, Sikka produced an email of Rastogi dated 8th November 2014 in which he states that "I was made aware that Shri A.K. Bir was signed as the Director of Photography and Director for the said film in August 2010 and remained in position till December 2012." Rastogi further stated that "post this Mr. A.K. Bir joined back after Mr. Sartaj Singh Pannu was removed from his service in October 2013".

39. The above affidavits depict a contested position on whether Pannu was the "sole" Director as claimed by him. The supporting affidavits produced by Pannu are silent on whether, prior to the Mullanpur phase of shooting, Bir was indeed

the Director and whether he re-joined as Director after October 2013 when Pannu quit as Director. On his part Sikka does not deny that Pannu was one of the Directors of the film. He, however, asserts that 30% of the film was shot with Bir as Director. He further states that Bir was the Director at the post-production stage. Pannu has not averred that the statement made in the preamble Clause D of the agreement dated 15th January 2013 about the "resignation" of the "existing Director" is incorrect. The assertions to the contrary during arguments by Mr. Rao cannot possibly rewrite that clause. Pannu also has not been able to contradict Sikka's assertion that it was Bir, and not Pannu, who was involved in the post-production phase of the film, which was within the scope of the Director's work in terms of the agreement. Then there is Sikka's assertion that after Pannu left, Bir as Director had picturized four songs that were added to the film.

40. Although Mr. Rao repeatedly urged that Sikka had falsely claimed to be the Director of the film, Mr. Lall denied that Sikka ever made such a claim. Mr. Lall emphasised that Sikka was justified in denying Pannu credit as Director but was prepared to acknowledge his "creative contribution". Mr. Rao however stated on instructions that Pannu would not be content with anything short of being credited as "sole Director".

41. Given the conflicting positions that emerge from the above documents and pleadings, it is unsafe for the Court at this stage to come to even a prima facie conclusion on the question whether Pannu was, as asserted by him, the "sole" Director of the film. That question requires a detailed examination of the evidence including the cross-examination of the deponents of the various affidavits that have been tendered.

The position of the Director under the CR Act

42. The next question that arises is since even Sikka acknowledges that Pannu is a Director of the film, although not its sole Director, can Sikka justifiably deny Pannu credit as Director in the posters, publicity material and the credits appearing in the film? If the answer to the above question is in the negative, the further question that would arise is whether the Court in exercise of its power under Section 9 of the Act can issue an interim mandatory injunction to the Respondents not to continue exhibiting the film without giving Pannu credit as Director or whether the only remedy available to Pannu is to seek damages? The answers to the above questions require examination of the nature and extent of the rights of a Director of a cinematograph film under the CR Act and otherwise.

43. Section 16 of the CR Act makes it explicit that there shall be no person entitled to copyright "otherwise than under and in accordance with the provisions of this Act". As regards a cinematograph film and its sound recording, Section 2(d)(v) acknowledges only the producer of the film as the author. It does seem anomalous that a Director of a film, who is usually the moving force behind the creative work that goes into its making, would not be statutorily acknowledged

as an author or even as joint author. This is even more evident when the provisions of the corresponding law in the U.K. are examined. Under Section 10(1A) of the Copyright, Designs and Patent Act, 1988 in the UK, a film shall be treated as a work of "joint authorship unless the producer and the principal director are the same person". Under Section 9(1) an "author" in relation to a work is "the person who creates it". Section 9(2)(ab) states that both the producer and the principal director are the "author" of a film. Section 77 (6) of the UK Act states: "The director of a film has the right to be identified whenever the film is shown in public or communicated to the public or copies of the film are issued to the public". The absence of any similar provisions in the Indian CR Act is telling.

44. An attempt was made in 2010 to fill this lacuna. An amendment was moved in the Indian Parliament by the Minister of Information and Broadcasting but the entire discussion appeared to centre around on the rights of a director to royalties. The proposed amendment sought to introduce in Section 2(d)(v) the "principal Director" also as an author of a cinematograph film. That would have also taken care of Section 57 of the Act which recognizes the moral rights of authors. The Minister, who tabled the amendments, was unable to convince the Standing Committee which turned down the amendments. The Minister spoke eloquently when he stated:

"All over the world, there is equitable distribution of royalties. But unfortunately this is not what has been happening in India. Actually, I wanted to give this right to the principal director of films as well. Ultimately, in a film, who are the real artists? They are those who sing songs, those who perform, and those who direct the film. Now a Director is kept out of any profits of the film. He is the one who actually creates the architecture of the film. But unfortunately he does not share any part of the royalty because there is no risk capital involved. It is the producer who risks his capital. Though I made this recommendation to the Standing Committee that the principal director should also partake of the profit, the Standing Committee had thought in its wisdom that the time has not come for the principal director to be included and he too share in the profit of the business. So, I have, in fact, dropped those amendments and I have not pressed on them".

(emphasis supplied)

45. With the amendment not getting passed, as of now the CR Act does not acknowledge a director as an "author" in relation to a cinematograph film. Since the moral rights flowing from Section 57 of the CR Act also presuppose authorship, it would appear that in relation to a cinematograph film, a Director would not be able to assert any moral rights either. However, that is not the end of the matter. The alternative argument of Mr. Rao appearing for Pannu is that notwithstanding the failed attempt at amending Section 2(d)(v) of the CR Act, the right of a Director of a film to be acknowledged as an "author" of a "literary or dramatic work" [under Section 2(d)(i)], or "musical work" [under Section 2(d)

(ii)] or "artistic work" [under Section 2(d)(iii)] and to the extent the above works are computer generated [under Section 2(d)(v)] remains unaffected. The argument is posited on the Director being integral to and involved in all departments of film making. The argument foregrounds an image of a director as a "captain" of a film making team. This right, according to Mr. Rao, is independent of the right to commercially exploit the copyright in a film which may have been the central focus of the failed attempt at amending the law. Even while it is conceded that for a literary or dramatic work or a musical work, there would have to be a statutory recognition as "co-author", it is submitted by Mr. Rao that a Director is a creator of an "artistic work", i.e. a work of "artistic craftsmanship" [Section 2(c)(iii)].

46. Indeed, there have been remarkable film directors whose work transcends the category of "direction". These are the genre of Directors who are renowned "film makers". Illustratively, Satyajit Ray, Akira Kurosawa, Ingmar Bergman, Alfred Hitchcock are legendary figures who belong to the genre of "film makers". They are known to have been intimately involved not just in directing the film but in every aspect of its making from its conception to the final product exhibited on the screen. Indeed, it is not unusual that a director will typically be involved in all or many of the stages of film making - the development of the story line, the casting of actors, the lyrics, the musical score, the dialogues, and during the actual filming, the position or angle of the camera, the lights, the layout of the scene, ensuring continuity and so on. Everything that happens in a film usually passes through the Director. The extent of involvement of the Director in departments other than direction will obviously vary from case to case. A "film maker" Director brings to the film a characteristic style. Ingmar Bergman is known to have adopted certain techniques different from his contemporaries. In a book titled "Ingmar Bergman: A Reference Guide" by Birgitta Steene (Amsterdam University Press, 2005) there is the following quote attributed to him (at p.139): "I say my films are good craftsmanship. I am diligent, conscientious and extremely careful. I make my work for daily use and not for eternity. My pride is that of a craftsman."

47. Turning to Section 2(d)(i) of the CR Act, it is clear that an author in the case of a literary or dramatic work would be the author of the work. Unless it is shown that a Director contributed substantively to the ultimate product, which would be a matter for evidence, it would be difficult to conclude that a Director has an automatic right of joint authorship in respect of the above works merely because he provided certain inputs. The same would be the position as far as a musical work [defined under Section 2(d)(ii)] is concerned, where it is the composer alone who is acknowledged as the author.

48. Turning to an author of an "artistic work" in terms of Section 2(d)(iii), the considerations may be different. The expression "artistic work" is defined under Section 2(c)(iii) of the CR Act to mean "any other work of artistic craftsmanship". Although it was sought to be suggested by Mr. Lall that craftsmanship means

some actual work done by hands like painting or sculpting, the Court is not prepared to adopt such a narrow interpretation of the expression. What constitutes a work of art has evolved over time. We are in an age of multimedia art installations, where an artist might work on several media, in a single comprehensive presentation, to express or convey a creative moment or feeling or emotion. When it comes to directing or making a film, the "directorial touches" that a Director imparts to the film cannot be confined to any particular oeuvre. The expression "artistic craftsmanship" is wide enough to accommodate the effort of a film maker director who brings to the final product a distinctive style, an "artistic touch" so as to qualify for acknowledgment as an "artist" in relation to an "artistic work".

49. At the same time, it is not every directorial effort that can qualify for being considered an "artistic work". That will again depend on an evaluation or assessment of the work, by experts, based upon some objective criteria. The most apposite analogy would be the work of juries in film festivals. Whether the work of a Director in a particular film can be stated to be a work of artistic craftsmanship will be a matter for evidence. In the case on hand, it is difficult for the Court at the present stage to form even a prima facie opinion that Pannu's directorial effort in the film is a work of artistic craftsmanship.

Waiver of the right of a Director

50. Even if one were to proceed on the basis that Pannu is able to somehow conclusively establish that he is the sole Director of the film, and further that his effort qualifies as a work of "artistic craftsmanship", the further question that arises is whether he could have, and did in fact, voluntarily waive his right to be given credit as the Director of the film? The further question is whether the Director can also waive his moral right if any to be acknowledged as the Director of a film.

51. The submission of Mr. Rao that outside of the CR Act there exists a moral right in a work of art does not appear to have a statutory basis. For the purposes of Section 57 it is only an author in relation to any copyrighted work who can assert moral rights. Prima facie, it appears that Section 57 is tied up with the concept of "author" as defined under the CR Act.

52. In response to a query whether a Director can decide to not want his name to be associated with a film which he considers harmful to his reputation, Mr. Rao submitted that such a waiver would be contrary to public policy since the public would have a right to know who the Director of a film was. However, the Court is not prepared to go as far as to deny the right of a Director to waive his right to be credited as such if for any reason he does not want his name to be associated with the film. As long as the waiver is voluntary, it cannot be said to be opposed to public policy. The mandatory declaration of the name of the Director in the application for a censor certificate is sufficient to satisfy the requirement of the right of the public to know who the Director is.

53. Turning to the facts of the present case the waiver by Pannu of his right to be recognized as a Director is explicit both in a letter written by him to Sikka on 27th November 2013 and in the subsequent affidavit given by him on 17th January 2014. Although Pannu asserts that the said letter and the affidavit were signed by him under duress and coercion and also relies on the affidavit of Tom Alter dated 26th September 2014 in support, the Court is of the view that this is a matter which will require a detailed examination of the evidence to be led by the parties. Pannu appears to have benefited from such waiver since Sikka withdrew his criminal complaint against Pannu as a result of the waiver.

54. Again, it would be unsafe to proceed on the basis of Pannu's affidavits that the criminal case against him was false and fabricated. If indeed the affidavit dated 17th January 2014 was obtained by Sikka from Pannu under coercion and duress, Pannu could have at any time soon thereafter resiled from such affidavit and be prepared to face the criminal proceedings. However, Pannu does not appear to have adopted that course. He also did not take steps to have the said criminal complaint quashed. It is difficult at this stage for the Court to take a view one way or the other on these assertions.

55. The net result is that at present the Court is unable to even prima facie conclude that Pannu was compelled to waive his rights to be acknowledged as Director of the film under duress and coercion and that therefore such waiver should not be taken note of by the Court, while deciding Pannu's plea that the film should not be released without giving him due credit as a Director.

Can the relief of a mandatory temporary injunction be granted?

56. The last issue of course is whether the Court can in any event at this stage restrain the continued exhibition of the film without Pannu being given the credit as a Director. The Courts does not find it possible to grant such a relief at this stage. This is one of those cases where the grant of such an interim relief would amount to grant of the final relief at the interlocutory stage.

57. For the above reasons, the Court is of the view that Pannu has been unable to make out a prima facie case that he should be given credit, even at this stage, as the sole Director of the film "Nanak Shah Fakir". Further, the balance of convenience in granting such interim relief also does not appear to be in his favour. If Pannu succeeds ultimately in showing that he was wrongly denied credit, his plea for the alternate relief of damages can be considered at that stage.

Conclusion

58. Consequently, the Court is unable to grant Pannu any of the interim reliefs as prayed for at this stage. This order will not preclude the parties from seeking appropriate interim reliefs in the arbitral proceedings in accordance with law. The Court clarifies that this order contains its prima facie observations on merits and will not influence the final determination of the issues and the contentions

thereon of the parties in the arbitral proceedings.

59. The parties have requested the Court to appoint a sole Arbitrator, in this petition itself, to adjudicate their disputes. The Court accordingly appoints Justice K.P.S. Radhakrishnan, a former judge of the Supreme Court, as sole Arbitrator to adjudicate their disputes, including their claims and counter-claims. The arbitration will take place under the aegis of the Delhi International Arbitration Centre (DAC). The fees of the learned Arbitrator will be in terms of the Delhi Arbitration Centre (Arbitrators Fees) Rules.

60. The petition is disposed of in the above terms but with no order as to costs. A certified copy of this order be delivered forthwith to the learned Arbitrator and the Additional Coordinator, DAC.