

(1990) 12 DEL CK 0014
In the Delhi High Court
Case No : First Appeal No. 156 of 1990

Suresh Jindal

APPELLANT

Vs

Rizzoli Corriers Della Sera Prodzioni T.V.S.P.S. and Others

RESPONDENT

Date of Decision : 14-12-1990

Acts Referred:

Citation : (1991) 43 DLT 416

Hon'ble Judges : M.K. Chawla, J;Arun Kumar, J

Bench : Division Bench

Advocate : Arun Mohan, D.N. Sawhney, R.K.P. Shankar Das, O.P. Popli and S.K. Tiwari, for the Appellant;

Judgement

Arun Kumar, J.

(1) This is an appeal against the judgment of the Learned Single Judge dated 24-8-90 whereby two applications bearing I.A. No. 6439/89 & 790/90 in S.No. 2332 of 1989 moved by the plaintiff for interim relief have been dismissed. The appellant filed a suit for specific performance of an alleged agreement dated 2nd May 1989. In the said suit, apart from the prayer for specific performance, the plaintiff also made certain prayers regarding mandatory and permanent injunctions. In the first application for interim relief, the following reliefs were sought:

"(a) an interim injunction restraining the defendants, their associates, agents, servants or nominees, from carrying on with the preparation, production or shooting of the film, "THE Mysteries Of The DARK. JUNGLE", including the finalising of any agreement, arrangement or understanding with any actor, film technician or other person, proposed to be in any manner, connected with the other production of the same. (b) an interim injunction restraining the defendants, their servants, agents or nominees from transferring and/or assigning the rights of the plaintiff under the agreement and the letter of confirmation to any other person."

(2) During the pendency of the said application, the plaintiff moved another application bearing 1.A. No. 790/90" wherein he sought to restrain defendants, from carrying on with the production or exhibition of the aforesaid picture, without the participation and/or involvement, of plaintiff, as one of the producer.

(3) The case of the plaintiff, as set out in the plaint is that defendants proposed to make in India a mini T.V. Serial ,titled "The Mysteries of the Dark Jungle" based on an Italian novel. The plaintiff is a renowned film personality in India having several films to his credit. The defendants were unable to make any headway in their project and even the permission of the Govt. of India which was a pre-requisite before the start of such a project had not been received. The plaintiff is said to have been approached by defendant No. 4 for self and on behalf of defendants I to 3 in connection with the making of the said T.V. Serial on 30th April 1989. Besides the aspects of arranging Govt. permission for making the T.V. Serial in India, the defendants are stated to have consulted the plaintiff on various facilities, conditions and constraints in India for the production of the said T.V. Serial .What was essentially desired of the plaintiff was to arrange to get the Govt. of India approval for the project and then to act as a co-producer and discharge all such functions as a co producer might be required to do. It is further the case of the plaintiff that on 2nd May 1989, the defendant No. 4 made an offer to the plaintiff for self and on behalf of defendants I to 3 regarding their intended future relationship which was accepted by the plaintiff. A Memorandum regarding the said offer is contained in an undated handwriting of defendant No, 4 addressed to the plaintiff. The said writing stated to be containing the terms and conditions of the offer was received by the plaintiff on 11th May 1989. Thus, according to the case of the plaintiff, on 2nd May 1989, it was only an oral offer of the defendants which was accepted by the plaintiff and the terms of the offer are contained in the said handwriting of defendant No. 4 stated to have been received by the plaintiff on 11th May 1989. The plaintiff is seeking specific performance of this alleged agreement dated 2nd May 1989. Since the entire case of the plaintiff rests on this document, it may be worthwhile to reproduce the same in toto:

"Mr. Suresh Jindal Devki Chitra 3 Eden Hall Worli, Bombay. Dear Mr. Jindal, This is to confirm you our agreement in cooperating to realize the Tv mini Series titled The Mysteries Of The Dark Jungle that we will produce in India after the necessary clearance of the permission by the Indian Authorities. The contract formula will be agreed between us after have had the above mentioned permission and will include : (a) Evaluation and agreement of the detailed budgets of the expenses in India. (b) Confirmation of some services given by your company. (e) Modalities of payment of your fees in Indian Rupees or in giving to you of your choice the at real and Television right for India and other country of the east Asia to be agreed. It is further agreed your fee will not exide (sic) the percentage of 5% (five per cent) of the agreed service items. It is also agreed that in case of the permission to shoot in India on not being given or if we will not agree in the budget evaluation this letter of intent loses all its effect

without any complaint from either part. In case every thinks (sic) go in the hopeful way, it is understood that your cooperation will be credited in the title list of the film as a co-production".

(4) During the course of final hearing of these applications before the Learned Single Judge, the plaintiff confined the interim relief only to a three seconds display in the titles/credits of the Serial of his name as a co-producer. Similarly in the present appeal, the plaintiff/appellant has confined his prayer to a three second display of his name as a co-producer in the titles/credits of the Serial .This stand of the plaintiff is quite understandable in view of the fact that during the pendency of the proceedings before the Learned Single Judge, the entire picturisation of the Serial was completed and only the Serial remains to be released. In the present appeal, directions were given to the respondents to inform the Court by filing an affidavit as to whether the Serial has been released so far. However, no such affidavit has been filed and the counsel for defendants have stated at the Bar that in spite of various telex messages sent to the respondents, they are unable to get any information so far, regarding the release of the T.V. Serial .

(5) The case of the plaintiff is that there is an agreement between the parties which is liable to be specifically enforced by this Hon"ble Court and Therefore, the plaintiff is entitled to the relief which he is claiming in the present appeal as an interim measure while the suit remains to be tried on merits. The plaintiff further submits that the writing of the defendant No. 4 referred to above is in the nature of a representation made by the defendants to the plaintiff and the plaintiff having acted on the basis of the said representation, the defendants are estopped from resiling from it and the same gives rise to a binding obligation on the part of the defendants. The plaintiff has strongly relied on 1971 SC 1021 in support of his case The plaintiff says that it is as a result of the efforts made by him that the defendants were able to get permission from Govt. of India to pictures the said Serial in India. And in view of the permission having been received from the Govt. of India, the plaintiff says that he is entitled to the benefits of the further agreement which was envisaged in the said handwriting. The counsel for plaintiff has urged before us that the moment permission from the Govt. of India was received through the efforts of his client, the defendants turned out the plaintiff because their purpose was served as the main hurdle which they were facing regarding their project was the permission of the Govt. of India. After the "permission was received through the efforts of the plaintiff, they did not need the plaintiff any more and Therefore, the plaintiff was turned out. The plaintiff has chosen to divide the arrangement between him and the defendants into two stages : first up to receipt of Govt. permission and thereafter production of the T.V. Serial in India. The first stage was successfully completed through plaintiff's efforts. For the second stage, the plaintiff was turned out. This is plaintiff's case.

(6) The defendants have controverted the allegations of the plaintiff and have

stated that the first stage of the understanding between the parties was of course reached when permission of the Govt. of India was received on 1st August 1989. The defendants do not deny that plaintiff did make efforts in this behalf. Thereafter also the joint efforts of the parties continued in order to work out the arrangement which was envisaged between the parties and to formulate the agreement mentioned in the writing of defendant No. 4. According to defendants, this was given a try for almost the entire month of August 1989. However, it was found that there was total Incompatibility between the two and the nature of the arrangement envisaged between the parties being one requiring personalised services, it would not have been appropriate to put two incompatible parties together. Therefore, no understanding could be reached between the parties and no formula/agreement could result. Relying on the same writing of defendant No. 4, the counsel for respondents submits that the plaintiff is not entitled to the interim relief sought by him. It is further submitted by the counsel for respondents that admittedly the pasteurization of the T.V. Serial has been completed without association of the plaintiff. In that event the Court will not permit to be done something which is factually incorrect. The relief sought by the plaintiff regarding three seconds display in the credits/titles of the film of his name as co-producer would be factually incorrect since admittedly, the plaintiff has never acted as a co-producer. If plaintiff's name is displayed as a co-producer despite his never having acted as such, it will amount to permitting a wrong being perpetrated under the auspices of the Court. It is conceded by the counsel for the respondents that the plaintiff did do some work for them for purpose of helping them in getting permission from the Govt. of India. Further, the counsel submitted that the nature of this work could not be of such importance or magnitude as is being suggested by the counsel for the appellant. It is the appellant's own case that the parties met for the first time on 30th April 1989 and the memorandum of understanding in the hand of defendant No. 4 was received by plaintiff on 11th May 1989. It is suggested that during such a short period of about ten days, the plaintiff could not have possibly made much contribution to the script or to anything else so far as his personalised services were concerned. It is further submitted that writing or correcting the script was none of the plaintiff's concern, more so because the defendants had hired the services of another Indian expert besides two Italians for this particular part of the project.

(7) For purpose of deciding the present appeal, it is essential to examine the memorandum of understanding, i.e. the handwriting of defendant No. 4 addressed to the plaintiff. In order to analyze this document, we would like to divide it into portions while retaining the language of the agreement as it is. This will be as follows :

"This is to confirm you our agreement in cooperating to realize the Tv mini series titled The Mysteries Of The Dark Jungle that we will produce in India after the necessary clearance of the permission by the Indian Authorities. The contract formula will be agreed between us after have had the above mentioned

permission and. will include : (a) Evaluation and agreement of the be tailed budgets of the expenses in India. (b) Confirmation of some services given by your company. (c) Modalities of payment of your fees in Indian Rupees or in giving to you of your choice the at real and Television right for India and other country of the east Asia to be agreed. It is further agreed your fee will not exide (sic) the percentage of 5% (five percent) of the agreed service items. It is also agreed that in case of the permission to shoot India on not been given or if we will not agree in the budget evaluation this letter of intent loses all its effect without any complain from either part. In case every thinks (sic) go in the hopeful way, it is understood that your co-operation will be credited in the title list of the film as coproduction."

(8) It will be seen from the above that the first stage was achieved i.e. the permission of the Indian authorities was received on 1st August 1989. However, the second stage, as we have shown above, did not come into operation because the contract formula which was intended to be agreed between the parties could not be worked out between them. Counsel for plaintiff submits that this was not even tried and the defendants are taking advantage of their own wrong. However, this does not appear to be correct. As per the plaintiff's own document on record it is established that For almost one month, the parties associated together and that is how when the stage for going into details came, it was found that they could not get along. It was for this reason that the intended agreement between them for governing their future relationship could not be reached. The third aspect is correlated with the second and Therefore, the stage for that also did not arrive. Now coming to the fourth part which we feel is most crucial, we find that it has two parts again. One is if the permission to shoot in India is not given while the second is, (prefaced by the word "or") if we will not agree in the budget evaluation. Then it goes on to say that in either of these possibilities this letter of intent loses all its effect without any complaint from either party. From these lines, we feel, the answer to our inquiry clearly emerges. There were two conditions. Though the permission to shoot in India was received, the other condition could not be fulfilled They could not reach an understanding on the agreement. The parties were not able to agree about the budget evaluation and Therefore, the letter of intent as the writer of this document has chosen to call it, loses all its effect without any complaint from either side. The last sentence of this document on which great reliance has been placed by counsel for the appellant is : "that in case everything goes in the hopeful way, it is understood that your co-operation will be credited in the title of the Serial as a co-producer". The plaintiff wants us to hold that the word "everything" is confined to the grant of permission whereas the counsel for respondents has urged that "everything" means everything including the formula agreement being reached between the parties. Prima facie we are inclined to accept the interpretation put by the counsel for respondents for the reason that the word "everything" should mean that all aspects of the deal and not just one aspect i.e. grant of permission by the Govt. of India to pictures the Serial in India. Therefore, according to us,

prima facie, "everything" has not gone in the hopeful way and the resultant benefits do not flow.

(9) Thus, prima facie, we feel that neither the second alternative in clause 4 reproduced by us above, i.e. or if we will not agree on the budget evaluation, has been fulfilled nor everything has gone in the hopeful way as mentioned in part 5 above and the plaintiff, Therefore, is not entitled to the relief sought by him. This is on the prima facie nature of the case of the plaintiff for purpose of grant of relief to him at the interim stage.

(10) Counsel for respondents has taken us through the plaint as well as the written statement filed on behalf of the defendants. The counsel has also drawn our attention to an affidavit of respondent No. 4 which was filed in the suit containing details of events in a chronological manner about the various steps taken by respondents for purposes of making of the said mini T.V. Serial .We may note that there is no affidavit to the said affidavit of respondent No. 4. It is worth noting from the said affidavit that the manner in which the respondents were operating for purpose of making the said T.V. Serial shows that detailed contracts had been provided for the purpose of being entered into with the various artists. Certain contracts entered into by the respondents with some of the well-known artists in India have been annexed to the said affidavit. They are detailed documents taking care of minute details. The respondent No. 4 has also annexed with affidavit a draft agreement which was intended to be entered into with the plaintiff. This again is a very detailed document. In fact, a copy of the said draft agreement had been supplied to the plaintiff and there is a letter on record from counsel for plaintiff to defendant No. 4 asking him to send another copy of the said draft agreement because the copy supplied earlier had been lost. These agreements show that the defendants were not out to act in haste or in a slipshod manner on the basis of oral agreements or on the basis of the type of writing relied upon by the plaintiff. Their future relationship with the plaintiff could only be the on the basis of a formal agreement taking care of all the aspects as far as possible.

(11) Thus, the parties intended to enter into a formal agreement containing the various details of the relationship intended to be between them and genuine efforts were made in this behalf. In the nature of the work envisaged, it was absolutely essential to provide for various details because the relationship was intended to last over a long period of time and there were various things which were required to be done between the parties. Admittedly, this was an arrangement for rendering specialised personnel services by the plaintiff to the defendants and after being given a try for nearly month, it was found that there was incompatibility between the parties and it was not possible to have this kind of a relationship. In the very nature of things, in matters of personal services, if parties find themselves totally incompatible, it is best not to enter into such a relationship rather than drag on and get bogged down at every stage so to ultimately rain the entire project. Counsel for plaintiff has in this connection laid

great stress on this that after the respondents got the permission from the Govt. of India which came through the efforts of the plaintiff, the plaintiff was turned out. The counsel says that the defendants did not let the second stage come i.e. the stage for formulation of an agreement between the parties and on this basis, it is submitted that the defendants cannot be allowed to take advantage of their own wrong. When we refer to the affidavit of defendant No. 4 and correspondence between the parties in the shape of various telegrams/telex messages, we find that this argument is factually not correct. The permission was received on 1st August 1989. Thereafter also, the plaintiff has been associated with the project. He has gone on a reconnaissance with the unit on 4th August 1989 to the various places where the shooting of the Serial was intended to take place. He has been associated with the project till 25th August 1989 on his own showing. All these things indicate that the statement of the counsel for the appellant that immediately the permission was granted, the plaintiff was turned out is not correct. The parties have given a try to the further relationship which was intended to be between them and to work out an agreement between them. They have failed to do so. Therefore no malafides can be imputed to the defendants nor their conduct can be said to be blameworthy. It cannot be said to be a case of defendants taking advantage of any wrong on their part.

(12) Counsel for appellant has heavily relied on 1971 Supreme Court 1021 to say that defendants made a representation to plaintiff which was acted upon by him. He altered his position. His efforts have borne fruit. Govt. of India permission was received through his efforts. His efforts were not meant to be gratuitous. Therefore, the defendants are bound by their representation and the same is liable to be specifically enforced. We feel that plaintiff cannot derive any benefit from the said judgment. The facts in the said case were totally different. There was a clear representation which was acted upon by the other party. Therefore, relief was granted. In the present case, the representation itself was conditional. We have shown above that all the conditions were not fulfilled and as stated in the representation, the parties have to sit content with no complaints from either side.

(13) Counsel for the appellant has also cited *Ersine Macdonald Limited v. Eyles* 1921 (1) Ch. Div. 631 in support of his case. In the said case, an author, who had entered into an agreement with a publisher to publish her books only through the said publisher, was restrained from committing any breach of her agreement inasmuch as she, during the subsistence of her agreement with the plaintiff, agreed with a rival firm of publishers to print and publish her next novel. It was held that the agreement with the first publisher was not a contract of personal service but was a contract by the author to sell the products of her labour or industry of which the Court would grant specific performance by restraining her from disposing off the novel in breach of her agreement with the plaintiffs. In the present case, the situation is quite different. As already noticed, there was no formal agreement between the parties to govern their intended

future relationship. Therefore, the question of specific performance cannot arise when there is no agreement. At this stage, what is there for the Court to enforce ? Moreover, prima facie, the present case appears to us to be one of personal services which were to be rendered by the plaintiff to the defendants. Whereas in the judgment cited above, it was a matter of publication of works of an author and the Court rightly held that that was not an agreement of personal services. Therefore, no assistance can be derived from the said judgment.

(14) Counsel for appellant has also placed reliance on the fact of his client being mentioned as a co-producer and a co-realize in the application for permission made by the defendants to the Govt. of India. According to him this shows that the future relationship of the parties for purposes of fulfillment of the project was clearly established and the plaintiff could not be denied this. We feel that the plaintiff cannot rest his case on this, specially in view of the language of the document written by defendant No. 4 on which both parties have heavily relied. The mention of plaintiff and his firm name in the application for permission to the Govt. of India is quite consistent with the document in the hand of defendant No. 4. At the stage of making the application such a relationship was intended and envisaged by both the parties. However as already observed by us, this could not ultimately fructify. In fact, the possibility of its not fructifying was also visualised and that is why it was stated in the writing of defendant No. 4 that on permission not being granted or on agreement not being reached between the parties, they will sit at home without any complaint from either part. In view of this, we do not feel that plaintiff can any much advantage from the fact that his name is mentioned as a co-producer and co-realize in the application for permission submitted to the Govt. of India. Similarly, nothing turns on the argument that respondents did nothing to fulfill the condition imposed by the Govt. of India regarding obtaining its approval of the agreement for co-production to be entered into. Simple answer to this argument is that since no agreement for co-production was arrived at, there was no occasion to submit one for government approval.

(15) Counsel for plaintiff submits that it is the efforts of his client which have resulted in government permission. His client cannot be deprived of the fruits of his efforts. The question is what fruits ? As already stated, counsel for respondents has conceded that the plaintiff did render some services. However, according to him, the plaintiff is not entitled to the relief which he is claiming in the present appeal. At best, it is submitted that the plaintiff may be entitled to some compensation/damages for the services rendered by him up to the stage of arranging government of India permission. Even for this, the counsel for respondent points out that there is another difficulty in the plaintiff's way. The suit of the plaintiff in spite of various amendments of the plaint, is still confined to one for specific performance and injunctions and no damages whatsoever have been claimed in the suit. .Therefore, as the plaint stands, there is no question of grant of any damages or compensation. In the .event of plaintiff choosing to claim damages, he may have a case for damages/ compensation for

services rendered. So, at this stage, the only thing to consider is whether the plaintiff is entitled to the relief sought. Prima facie we find that the plaintiff has no case for grant of such a relief.

(16) Counsel for respondents has also drawn our attention to the provisions of Section 14 of the Specific Reliefs Act wherein it is provided that contracts of this kind cannot be specifically enforced. In view of the common case of the parties that it is a contract for personal services, we are of the prima facie view, assuming that there is a contract, it may be difficult to specifically enforce it. The Learned Single Judge has expressed doubts as to whether actually there can be said to be an agreement between the parties on these facts. We however, proceeded to examine the case on the assumption that there was an agreement. Therefore, we wish to clarify that this assumption is only for purposes of deciding this appeal or in other words for finding out if plaintiff could be granted the interim relief sought for by him. Really a finding on this issue can be recorded only after trial of the suit and on the basis of evidence on record. Therefore, we leave the question open.

(17) Now coming to the question of balance of convenience. We find that the Learned Single Judge has found that the balance of convenience is in favor of the respondents and demands that no such relief as sought for by the plaintiff be granted. The Learned Single Judge has observed :

"The balance of convenience, also does not lie in favor of plaintiff. Moreover, plaintiff can be compensated in terms of money. Incase the name of Sh. Suresh Jindal is not given credit, in the title of the film. In case the name of Sh. Suresh Jindal is given credit in the title of the film, and the film is released throughout the world, but plaintiff suit fails, what will be the result ? But on the other hand, if the name of Sh. Suresh Jindal is not given in the title as co-producer, and in the event of his success, in my view, then plaintiff can be adequately compensated in terms of money."

We are in agreement with the said observation of the Learned Single Judge.

(18) We feel that there is yet another aspect which needs to be emphasised in this connection. Admittedly, the plaintiff has never acted as a co producer. Permitting his name to be shown in the credits/title of the film as a co-producer will mean that we would be allowing something to happen which is factually incorrect. We feel that the court should not be a party to something which is admittedly not correct. For this reason also, we feel that the plaintiff is not entitled to the interim relief sought for by him.

(19) For the aforesaid reasons we agree with the view taken by the Learned Single Judge while disposing of the interim applications filed by the plaintiff. We are also of the opinion that the plaintiff is not entitled to the interim relief prayed.

(20) Counsel for respondents has raised certain cross-objections regarding the judgment of the Learned Single Judge in so far as it contains directions regarding

maintenance of accounts by the respondents regarding the business done by the Serial .The counsel points out that these directions at best could be for exploitation of the T.V. Serial in India or other countries of the East Asia as per the writing of defendant No. 4 referred to hereinbefore and could not cover the entire world. We feel that this is correct. It appears to have escaped the attention of the Learned Single Judge. The direction regarding maintenance of accounts has to be confined to the territory mentioned in the said writing which is the Highest that the plaintiff could place his case.

(21) Accordingly, we order that the said directions will be confined only to the territories in India and countries of the East Asia.

(22) With these observations, the appeal is dismissed without, however any order as to costs.