



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (LODGING) NO. 18905 OF 2023

Sri Abhishek Pictures ...Petitioner
Versus
Abhishek Agarwal Arts LLP and Ors. ...Respondents

- Mr. Mayur Khandeparkar a/w Mr. Vikramjeet Garewal i/b Mahalakshmi Ganpathy, for Petitioners.
- Mr. Venkat Rao a/w Mr. Akash Gaonkar and Ms. Archita Rao, for Respondent No. 1.
- Ms. Sindhu Kotian i/b Legalserve and Associates, for Respondent No. 3.
- Mr. Vikas Kumar a/w Mr. P. V. Narendran i/b Lex Legal and Partners, for Respondent No. 5.

CORAM : MANISH PITALE, J.
RESERVED ON : 19th OCTOBER, 2023.
PRONOUNCED ON : 27th OCTOBER, 2023.

ORDER :

1. The Petitioner, by filing the present petition under Section 9 of the Arbitration and Conciliation Act, 1996, is seeking interim measure of restraining the Respondents from producing a sequel to a film "Goodachari", on the basis that a Deed of Transfer executed by the Petitioner authorized Respondent No. 1 only to produce a remake of the said original film. It is the contention of the Petitioner that the original film being in Telugu language, the Deed of Transfer specifically limited the assigning of the copyright in the said film by incorporating specific covenants, which clearly indicated that the right to produce a sequel was not granted. The Respondents have placed their own interpretation on the covenants in the said Deed of

Transfer and they have opposed the interim measures sought in the present petition.

2. The chronology of events in brief, leading to the filing of the present petition is that the Petitioner and the Respondent No. 3 entered into an Agreement on 15th May, 2017, for jointly producing the aforesaid Telugu language film “Goodachari”. The Petitioner and Respondent No. 3 jointly held Intellectual Property Rights and Exploitation Rights pertaining to the said film in the proportion of 50% : 50%.

3. The Petitioner and Respondent No. 3 jointly produced the said film and released it theatrically on 03rd August, 2018. The film was very well received by the audience and it was also artistically acclaimed in the Telugu film industry.

4. Respondent Nos. 1 and 2 approached the Petitioner and expressed their interest in acquiring rights concerning the said film, including remake rights. In this backdrop, a Deed of Transfer dated 04th May, 2019, was executed, wherein the Petitioner, who signed the same in the capacity of an Assignor in favour of Respondent Nos. 1 and 2 as the Assignees, with Respondent No. 3 signing the same in the capacity of being a Consenting party. It is the interpretation of the clauses of the said Deed of Transfer that has given rise to the dispute

between the Petitioner and the Respondents. It is the case of the Petitioner that some time in June, 2023, the Petitioner learnt about Respondent Nos. 1 and 2 alongwith Respondent No. 4 making a public announcement about producing a sequel of the said film, tentatively titled as "Goodachari-2/G-2". The Petitioner issued a legal notice dated 28th June, 2023 to the Respondent Nos. 1, 2 and 4, claiming that the Deed of Transfer excluded the right of make a sequel to the said film and therefore, the Petitioner called upon the said Respondents to restrain from making any attempt to produce the sequel.

5. On 05th July, 2023, the Petitioner received a reply sent on behalf of Respondent No. 1, disputing the claims of the Petitioner. It was claimed that since Respondent No. 1 had acquired entire rights of Respondent No. 2 under the Deed of Transfer, it was now a 50% owner of the Intellectual Property Rights in the said film. On this basis, it was submitted that since Respondent No. 3, which held the balance 50% rights, was consenting to the production and launch of aforesaid sequel, there was no substance in the claim made on behalf of the Petitioner.

6. In this backdrop, the Petitioner filed the present petition in July, 2023. But it was not moved urgently. It was claimed before this Court that when one of the lead Actors concerning the said film

made a statement on social media on 23rd September, 2023 about the proposed sequel going into pre-production stage, urgency arose in the matter for the Petitioner to get the present petition circulated for arguments. In the meanwhile, the pleadings were completed with reply affidavits of Respondent Nos. 1, 3 and 5 on record, as also the rejoinder affidavit being filed on behalf of the Petitioner.

7. Mr. Mayur Khandeparkar, learned Counsel appearing for the Petitioner submitted that a proper interpretation of the Deed of Transfer would show that only specific right of making/producing remake of the said film was assigned on behalf of the Petitioner in favour of Respondent Nos. 1 and 2. Specific reference was made to the operative clauses of the Deed of Transfer with reference to Schedules I and II appended to the Deed of Transfer. It was submitted that a proper interpretation of the said clauses would show that the right to make sequels and prequels was specifically excluded from Intellectual Property Right i.e. copyright in the said film being assigned/ transferred to Respondent Nos. 1 and 2 under the Deed of Transfer.

8. It was submitted that in similar factual controversies, on earlier occasions, this Court had held that right to make or produce the sequel or prequel had to be specifically assigned and in absence thereof, an order restraining the Respondents deserved to be issued.

Specific reliance was placed on order of learned Single Judge of this Court in the case of *Zee Entertainment Enterprises Limited Vs. Ameya Vinod Khopkar Entertainment & Ors.* (Order dated 04th March, 2020 passed in Interim Application No. 01/2019 in Commercial IP Suit (Lodging) No. 1287 of 2019). Reliance was also placed on Division Bench judgment of this Court in the case of *Narendra Hirawat & Co., Vs. M/s Alumbra Entertainment & Media Pvt. Ltd. & Ors.*¹

9. Upon referring to the objections raised on behalf of the Respondents in their reply affidavits, the learned Counsel appearing for the Petitioner submitted that there was no substance in the contention raised on behalf of the Respondents that the Arbitration Clause in the Deed of Transfer did not constitute an Arbitration Agreement. It was submitted that the relevant clause sufficiently indicated the intention of the parties to arbitrate and that a commonsense approach was necessary in the facts and circumstances of the present case. Specific reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Enercon (India) Limited and others Vs. Enercon GMBH and another*². The learned Counsel for the Petitioner sought to distinguish the judgments upon which reliance was placed by the learned Counsel

1 2017 SCC OnLine Bom. 2432

2 (2014) 5 SCC 1

appearing for Respondent No. 1.

10. It was further submitted that Respondent No. 1 was not justified in contending that since the present application was not an application under Section 11 of the aforesaid Act, this Court would not have the jurisdiction to give finding on the question as to whether the clause in question could qualify as Arbitration Agreement. In that regard, reliance was placed on judgment of the Hon'ble Supreme Court in the case of *SBP & Co., Vs. Patel Engineering Ltd. & Another*³, to contend that even in a petition filed under Section 9 of the said Act, if specific objection was raised as regards the Arbitration Agreement, the Court was required to render a finding regarding the same.

11. The learned Counsel for the Petitioner further relied upon judgment of the Delhi High Court in the case of *Tara Sikand Atwal Vs. Viraj Sikand and Others*⁴, to contend that when the operative part of the Deed of Transfer was clear and unambiguous, the recitals in the said Deed could not be relied upon to give findings.

12. Attention of this Court was specifically invited to operative clauses of the Deed of Transfer read with Schedules I and II, to contend that the present petition deserved to be allowed. It was submitted that Respondent No. 1 was unnecessarily relying upon an

³ (2005) 8 SCC 618

⁴ 2019 SCC OnLine DI 8185

interview given by the Petitioner, as the same was wholly irrelevant in the light of the specific clauses of the Deed of Transfer.

13. On the other hand, Mr. Venkat Rao, learned Counsel appearing for Respondent No. 1 submitted that in the present case, the Arbitration Clause does not qualify as an Arbitration Agreement between the parties. By placing reliance judgments of the Hon'ble Supreme Court in the case of *K. K. Modi Vs. K.N. Modi & Others*⁵ and also *Mahanandi Coalfields Ltd. & Anr. Vs. IVRCL AMR Joint Venture*⁶, it was submitted that the essential ingredients of an Arbitration Agreement were missing in the clause in question and that therefore, the present petition itself ought not to be entertained on this ground.

14. Judgment of the Hon'ble Supreme Court in the case of *Enercon (India) Limited and others Vs. Enercon GMBH and another (supra)* was sought to be distinguished on the basis that the said judgment arose out of an application filed under Section 11 of the aforesaid act.

15. The learned Counsel further submitted that a proper analysis and interpretation of the Deed of Transfer as a whole would show that all rights, including the right to produce sequel to the said film were assigned to Respondent Nos. 1 and 2. Schedule I to the Deed

⁵ (1998) 3 SCC 573

⁶ 2022 SCC OnLine SC 960

of Transfer clearly spelt out the rights assigned/transferred to Respondent Nos. 1 and 2, including formats that would be invented or developed or discovered in future. It was further submitted that if the definition of “Intellectual Property Rights” stated in Schedule II was to be accepted in the manner insisted upon by the Petitioner, it would lead to absurdity, as even the right to produce a remake would not be available. On this basis, it was submitted that, if at all, there was an ambiguity, the recitals of the Deed of Transfer could be perused, which assigned all rights in the said Intellectual Property concerning the aforesaid film in favour of Respondent Nos. 1 and 2.

16. Reliance was placed on golden rule of construction for ascertaining the intention of the parties, after considering all the words in their ordinary and natural sense. Reliance was placed on the judgment of the Hon’ble Supreme Court in the case of *Ramkishorelal and another Vs. Kamal Narayan*⁷. Reliance was also placed on judgment of the Hon’ble Supreme Court in the case of *Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors.*⁸, to contend that if two constructions of a document were possible, the one which gave effect to all the clauses ought to be preferred.

17. Apart from this, it was vehemently submitted on behalf of Respondent No. 1 that the intention of Respondent Nos. 1 and 2 to

⁷ AIR 1963 SC 890

⁸ AIR 1959 SC 24

produce sequel to the said film was in the public domain, at least since 15th June, 2022 and in that regard, reference was made to an interview given by the lead actor of the said film. It was further submitted that the Economic Times published an online news on 29th December, 2022, again referring to the announcement about production of sequel to the said film and it also referred to a Teaser. It was further submitted that the Petitioner himself gave an interview on 04th April, 2023, specifically stating that he was not making a sequel and that he was even aware about Respondent Nos. 1 to 3 being in the process of making the sequel. On this basis, it was submitted that the statement made in the petition that the Petitioner became aware in June, 2023, about the sequel being produced, is wholly unbelievable. The Petitioner waited for all this while and then approached this Court, showing that on this ground also the present petition deserves to be dismissed.

18. The learned Counsel appearing for Respondent No. 3 supported the contentions raised on behalf of Respondent No. 1 and sought dismissal of the petition.

19. The Respondent No. 5 also opposed the petition, stating that it is not a party to the Deed of Transfer and since it has acquired digital rights of the film and it has invested considerably in acquiring digital rights of even the proposed sequel, any delay in production of

the same would cause undue financial hardship to the said Respondent.

20. This Court has considered the rival submissions in the context of the material placed on record. It would be appropriate to first deal with the preliminary objection raised on behalf of Respondent No. 1, with regard to the very maintainability of the present petition. It is asserted on behalf of Respondent No. 1 that the relevant clause in the Deed of Transfer cannot be said to be an Arbitration Agreement executed between the parties. It would be relevant to reproduce the relevant clause to consider the said preliminary objection. The said clause reads as follows :

“23. Subject to the provisions of clause 25 herein above mentioned, the Courts having jurisdiction under the provisions of the Arbitration and Conciliation Act, 1996 to determine all matters which the Courts is entitled to determine under the Act, including, without limitation provision of interim relief under the provisions of Section 9 of the Arbitration and Conciliation Act, 1996, shall exclusively be the Courts at Mumbai, India.”

21. There can be no doubt about the fact that the clause is not very happily worded. This is because the Deed of Transfer ends with clause 23 and there is no clause 25 therein. Yet, there is reference to clause 25 in the above quoted clause 23. Nonetheless, this Court finds

that a proper and holistic reading of the above quoted clause 23 of the Deed of Transfer would show that parties agreed for determination of all matters under the provisions of the Arbitration and Conciliation Act, 1996. It also referred to the exclusive jurisdiction of Courts at Mumbai in India with regard to such determination of all matters, including the aspect of interim relief under Section 9 of the said Act. This Court is of the opinion that even if the ratio of the judgments of the Hon'ble Supreme Court, upon which reliance is placed on behalf of Respondent No. 1 i.e. *K. K. Modi Vs. K.N. Modi & Others (supra)* and *Mahanandi Coalfields Ltd. & Anr. Vs. IVRCL AMR Joint Venture (supra)*, is to be applied, the above quoted clause 23 does qualify to be an Arbitration Agreement executed between the parties. There is substance in the contention raised on behalf of the Petitioner that no party can be allowed to take advantage of inartistic drafting of the arbitration clause, as held by the Hon'ble Supreme Court in the case of *Visa International Ltd. Vs. Continental Resources (USA) Ltd.*⁹, quoted with approval in the subsequent judgment of the Hon'ble Supreme Court in the case of *Enercon (India) Limited and others Vs. Enercon GMBH and another (supra)*. The Court ought not to hold against the Petitioner, as long as the essential ingredients of an Arbitration Agreement are found in clause 23 in the present case. This Court is satisfied that the above quoted clause 23 is indeed an

9 (2009) 2 SCC 55

Arbitration Agreement executed between the parties.

22. As regards the contention raised on behalf of Respondent No. 1 that this Court cannot examine the said aspect of the matter, as the present petition has been filed under Section 9 of the said Act and not under Section 11 thereof, the said contention is only to be stated to be rejected. The Petitioner is justified in relying upon judgment of the Hon'ble Supreme Court in the case of *SBP & Co., Vs. Patel Engineering Ltd. & Another (supra)*, wherein it has been categorically held that when a party seeks interim relief, while claiming that the dispute is liable to be resolved by Arbitration under the said Act and the opposite party disputes the very existence of Arbitration Clause/Agreement, even in a proceeding under Section 9 of the said Act, the Court must necessarily decide as to whether such an Arbitration clause/Agreement is valid in law. Thus, there is no substance in the preliminary objection raised on behalf of Respondent No. 1.

23. Much has been said on behalf of the rival parties, as regards interpretation of the clauses of the Deed of Transfer in respect of the right to produce or make a sequel to the said film.

24. A perusal of the clauses of the Deed of Transfer and Schedules I and II appended thereto, would show that the entire

document along with the Schedules would have to be read as a whole.

Clause 1(b) of the Deed of Transfer reads as follows :

“1(b) The expression “SAID RIGHTS” shall mean the rights conferred by the SELLER to the BUYER as mentioned exhaustively hereinabove and also in SCHEDULE I annexed hereto. For the sake of clarification the “SAID RIGHTS” would mean the rights as defined in SCHEDULE II.”

25. A perusal of the above quoted clause 1(b) shows that the rights conferred upon Respondent Nos. 1 and 2 have been exhaustively stated in the document above the said clause, as also in Schedule I. A perusal of Schedule I to the Deed of Transfer shows that the rights transferred include remake rights in all languages other than theatrical release rights in Telugu Language, dubbing rights in Hindi and North Indian languages. Schedule I specifically elaborates that such rights would mean and include as many as 39 aspects of the rights specified therein. Clause XXXIX therein specifies as follows :

“(xxxix) all other ancillary and residuary rights and/or formats or all rights arising from or touching in relating to and/or in respect to and into the Said Film solely and exclusively, by any means and whatsoever manner and /or any method, right or format which may be introduced, invented or developed or discovered, in future throughout the CONTRACTED TERRITORY/TERRITORIES of the Whole World, Universe, Planets including India And

whereas all such rights as mentioned herein above are hereinafter collectively referred to as the “said rights.”

26. It is relevant to note that clause 1(b) of the Deed of Transfer also states that for the sake of clarification, the “Said Rights” would mean the rights as defined in Schedule II. In this regard, much emphasis was placed on behalf of the Petitioner on the definition of the term Intellectual Property Rights. The same reads as follows :

“Intellectual Property Rights will mean all rights arising out of or in relation to the Intellectual Property save and except the Exploitation Right and derivative rights defined therein. It is hereby expressly provided that the intellectual property in the story remains with the assignor.”

27. Placing emphasis on the aforesaid definition of “Intellectual Property Rights”, it has been emphasized on behalf of the Petitioner that “Exploitation Rights” and “Derivative Rights” have been excluded. Thereupon, emphasis is placed on definitions of the said terms “Exploitation Rights” and “Derivative Rights”.

28. This Court has considered the above referred portions of Schedule II to the Deed of Transfer. This Court finds that if the contention raised on behalf of the Petitioner is accepted, it would lead to an absurdity, for the reason that the exhaustive definitions of “Derivative Rights” and “Exploitation Rights” in Schedule II would

take away even Rights of producing remake of the said film. It would also militate against clause XXXIX of the Schedule I quoted hereinabove. In this context when clause 1(b) of the Deed of Transfer is appreciated in the correct perspective, this Court finds that Schedule II is merely for the sake of clarification of the expression "Said Rights", although the very same clause specifically states that the rights conferred upon the Respondent Nos. 1 and 2 have been exhaustively mentioned in the Deed of Transfer above the said clause i.e. clause 1(b) and also stated in Schedule I. Reading the entire document as a whole, this Court finds that the interpretation sought to be placed on the effect of the clause of the said Deed of Transfer on behalf of the Petitioner would lead to an absurdity. In this context, reliance placed on behalf of Respondent No. 1 on the judgment of the Hon'ble Supreme Court in the case of *Radha Sundar Dutta Vs. Mohd. Jahadur Rahim & Ors. (supra)* is justified, for the reason that in the said judgment it is recognized as a settled rule of interpretation that if two constructions of a document are possible, the one which gives effect to all the clauses therein, has to be preferred over the interpretation that renders one or more such clauses nugatory. This Court agrees with the contention raised on behalf of Respondent No. 1 pertaining to golden rule of construction clarified by the Hon'ble Supreme Court in the *Ramkishorelal and another Vs. Kamal Narayan (supra)*, whereby it is laid down that under the said rule the intention

of the parties to an instrument has to be ascertained after considering all the words in their ordinary and natural sense. There is substance in the contention raised on behalf of Respondent No. 1 that in this context reference to the recitals becomes relevant, wherein it is recorded that all residuals rights in the said film were also being transferred or assigned to Respondent Nos. 1 and 2.

29. In that context, reliance placed on behalf of the Petitioner on the judgment of the Delhi High Court rendered in the *Tara Sikand Atwal Vs. Viraj Sikand and Others (supra)* can be of no assistance to the Petitioner.

30. Reliance placed on behalf of the Petitioner on the order of the learned single Judge of this Court in *Zee Entertainment Enterprises Limited Vs. Ameya Vinod Khopkar Entertainment & Ors. (supra)* and on the judgment of the Division Bench of this Court *Narendra Hirawat & Co., Vs. M/s Alumbra Entertainment & Media Pvt. Ltd. & Ors. (supra)* can also not be of much assistance, for the reason that the said cases were decided on their own facts and in the context of the documents that came up for consideration in those cases.

31. This Court, on an analysis of the clauses of the Deed of Transfer, finds that the Petitioner has failed to make out a *prima facie*

case in its favour for grant of interim measures, as claimed in the petition.

32. Ordinarily, once a finding is rendered that no *prima facie* case is made out, no discussion is warranted on the aspects of grave and irreparable loss and balance of convenience.

33. But, since the learned Counsel for the parties addressed this Court exhaustively on the aspect of balance of convenience and in that context about the aspect of urgency, this Court is inclined to refer to the rival contentions. In the face of the documents placed on record in the present proceedings, this Court is of the opinion that the Petitioner circulated the present petition on a contrived ground of urgency. The ostensible reason for urgently moving the petition before this Court in October, 2023, while it was filed in July, 2023, was an interview or statement given by the lead actor of the said film on 23rd September, 2023, as regards the proposed production of the sequel of the said film.

34. The documents placed on record on behalf of Respondent No. 1 show that the intention of Respondent Nos. 1 and 3 to produce sequel of the said film was in public domain, as far back as from 15th June, 2022. It is also on record that the Economic Times reported about the sequel of the said film being announced on 29th December,

2022. In fact, the said article referred to a Teaser of the proposed sequel “Goodachari-2/G-2.” Translated copy of an interview given by the Petitioner on 04th April, 2023, placed on record with the reply affidavit of Respondent No. 1, clearly shows that the Petitioner himself discussed about production of the sequel, specifically stating that he had entirely given up on the sequel “Goodachari-2”. It was also specifically stated that the Petitioner had asked Respondent Nos. 1 to 3, to do the sequel themselves. Thus, all this while the Petitioner was clearly aware about the production of the sequel “Goodachari-2” by the Respondent Nos. 1 to 3 and he chose not to take any action in the matter. In the present petition, it was stated that the Petitioner became aware about the aforesaid sequel of the film only in June, 2023, which statement is not borne out by the documents brought on record on behalf of Respondent No. 1. Thus, on this count also the present petition does not deserve favourable consideration.

35. The Statements made on behalf of Respondent No. 1 and Respondent No. 5 show that the film is already into pre-production, agreements and contracts have been executed, including investment made by Respondent No. 5 for acquiring digital rights of the sequel “Goodachari-2”, thereby clearly showing that number of third parties are involved and that they would suffer hardship if the prayers made in the present petition are granted. Thus, this Court is convinced that

the Petitioner does not deserve any indulgence and that the present petition deserves to be dismissed.

36. Accordingly, the petition is dismissed.

(MANISH PITALE, J.)