

(2009) 09 DEL CK 0383

Delhi High Court

Case No: C.S. OS No. 329 of 2009

PVR Pictures Ltd.

APPELLANT

Vs

iGlass Mediaworks and Another

RESPONDENT

Date of Decision: Sept. 23, 2009**Hon'ble Judges:** Manmohan Singh, J**Bench:** Single Bench**Advocate:** Harish Malhotra and Tanuj Khurana, for the Appellant; None, for the Respondent

Judgement

Manmohan Singh, J.

The plaintiff filed the present suit for permanent injunction and for recovery of Rs. 64,02,000 with pendent lite and future interest. The plaintiff M/s PVR Pictures Ltd. is a company incorporated under the Companies Act, 1956, having its registered office at 61, Basant Lok, Vasant Vihar, New Delhi-110057. The present suit is being filed through Mr. Brijesh Arora, son of Shri Y.K. Arora, Company Secretary who has been authorized to file and institute the present suit before this Court by virtue of a board resolution dated 12.2.2009 as passed by the Board of Directors of the company in his favour.

2. The case of the plaintiff is that the defendants approached the plaintiff for co-production of the feature film titled BINODINI (hereinafter referred to as "said movie") in the month of May, 2007. The plaintiff agreed to co-produce the movie BINODINI with the defendants after thorough negotiations which lasted for several sessions.

3. The parties entered into an agreement on 16/5/07 reducing the terms between them in a Memorandum of Understanding, (hereinafter being referred as MOU) which was signed, and sealed.

4. It is stated that in terms of the said MOU, the movie had to be co-produced by the parties to the suit, where the plaintiff had to fund the entire budget of the movie

and the defendants had to look after the production activities. The said movie had to be written and directed by defendant No. 2, Shri Bibhash Mukherjee. It was further mutually agreed under the MOU dated 16.5.2007 that the plaintiff will be entitled to charge an interest @ 16% per annum on the funds made available by it for the production from the date of providing such funds till the same are recouped from the collection of the movie. It was further agreed that the distribution rights of the movie had to be taken and exhibited by the plaintiff and the plaintiff for this had to charge a commission of 20% on the net box office collection for such distribution of all rights.

5. It is stated that the plaintiff was to pay for print costs and local publicity in its capacity as distributor and entire such costs had to be recouped from the net box office collections.

6. It is alleged that the plaintiff gave an advance of Rs. 51,00,000/- vide cheque No. 201922 drawn on ICICI Bank Ltd. in favour of defendant No. 1 towards signing fee for the movie. Upon payment of the aforesaid amount to defendant No. 1, it was alleged that the parties agreed that they will execute a final agreement incorporating the terms and conditions and respective rights and obligations of the parties for the co-production of the movie within 30 days of the execution of the said MOU dated 16.5.2007. It was also agreed that in case the final agreement is not executed within 30 days of the signing of the said MOU, the MOU dated 16.5.2007 shall stand terminated and defendant No. 1 shall refund the entire amount of Rs. 51 lakhs to the plaintiff forthwith.

7. It is averred that the plaintiff made various requests and telephonic calls to the defendants to execute the necessary final agreement so as to capture the final terms and conditions and rights and obligations for co-producing the movie but nothing was heard from the defendants even after expiry of 30 days i.e. the time which was set out in the MOU dated 16.5.2007 to execute a formal final agreement.

8. It is alleged that on 30.4.2008 i.e. almost on expiry of 10 months, the defendants approached the plaintiff showing their inclination and intention to abide by their duties and obligations under the MOU and expressed their desire to extend the terms and conditions, rights, duties and obligations already mutually arrived at in the MOU dated 16.5.2007. Accordingly, a letter of extension was executed between the parties on 30.4.2008 acknowledging the mutually agreed terms and conditions as already agreed between the parties under the MOU dated 16.5.2007. Under the said letter of extension dated 30.4.2008, both the parties acknowledged and mutually agreed that MOU will be a valid document and its terms and conditions will be binding and enforceable upon the parties. It was further decided in the letter of extension that both the parties shall execute a detailed agreement incorporating the terms and conditions and respective rights and obligations of the parties for co-production within 90 days from the date of signing of the Letter of Extension i.e. within 90 days from 30.04.2008

9. It is submitted that even after expiry of 90 days from the date of letter of extension dated 30.4.2008, the defendants once again completely failed to abide by the terms and conditions of the MOU dated 16.5.2007 and the letter of extension dated 30.4.2008. It is urged that upon expiry of 90 days of the extension in terms of the letter of extension dated 30.4.2008 i.e. on 29.7.2008, the MOU dated 16.5.2007 expired by efflux of time and all the terms and conditions as agreed under the said MOU ceased to exist and ceased to bind the parties.

10. The plaintiff sent a legal notice through its advocate on 8.9.2008 to the defendants to remit and refund the entire signing amount of Rs. 51 lakhs which was given to the defendants pursuant to the MOU dated 16.5.2007 as signing fee for the co-production of the movie along with interest @ 16% p.a. as was mutually agreed under the MOU dated 16.5.2007.

11. The defendants sent a reply by letter dated 16.9.2008, wherein they admitted the liability and obligation to refund the signing amount back to the plaintiff. By virtue of the said letter, the defendants made a request to give 90 days to repay the signing amount to the plaintiff. It was also promised in the said letter by the defendants that the said amount will be paid on or before 15.12.2008.

12. The plaintiff acknowledged the abovesaid letter of the defendants by sending a letter dated 31/10/08. However on 15.12.2008, the plaintiff received an e-mail from the defendants No. 2 informing the plaintiff that due to unexpected market meltdown and general recession, the defendants could not arrange the funds. Therefore, the defendants has not yet refunded the amount of Rs. 51 lakhs to the plaintiff. Hence, the present suit.

13. The plaintiff sought the following prayer in para 36 of the plaint:

(a) pass decree for Rs64,02,000/- (sixty four lakh two thousand) in favour of the plaintiff and against the defendants .

(b) pass a decree of permanent injunction in favour of the plaintiff against the defendants thereby restraining the defendants their partners, agents, representatives and employees from in any manner initiating and dealing with any third party qua the movie BINODINI forming subject matter of the present suit till such time the advance signing amount of Rs. 51,00,000/-(rupees fifty one lakhs) is remitted back to the plaintiff with interest @ 16% p.a.

(c) Pendent lite and future interest @ 18% may be allowed to the plaintiff against the defendants on the decretal amount from the date of filing the suit.

(d) cost of the suit be allowed to the plaintiff.

(e) any other relief which this Hon"ble court deems fit may also be granted to the plaintiff.

14. On 17/2/09, this Court passed the interim order restraining the defendants, heir agents, representatives and employees from in any manner initiating and dealing with any third party qua the movie BINODINI. Vide order dated 4/8/09, the right of the defendants to file the written statement was closed. The matter was thereafter put up for filing the evidence by way of affidavit and statement of PW-1, Mr. Brijesh Arora was recorded on 3/9/09. The plaintiff witness has proved the following documents on record:

i) Copy of MOU dated 16/5/07

ii) Copy of extension letter dated 30/4/08 exhibited as Ex. PW- 1/5.

iii) Copy of legal notice dated 8/9/08 sent by the plaintiff exhibited as Ex PW-1/6.

iv) Copy of reply sent by defendants on 16/9/08 exhibited as Ex. PW-1/7.

v) Copy of letter by plaintiff dated 31/10/08 confirming the letter of defendants exhibited as PW-1/8.

vi) Copy of e-mail sent by defendants on 15/12/08 exhibited as PW-1/9.

15. I have gone through the pleadings, documents as well as the ex parte evidence produced by the plaintiff. The entire case of the plaintiff has gone un-rebutted. No written statement has been filed by the defendants nor any interest has been shown by the defendants in the matter. Therefore, the suit of the plaintiff is decreed in terms of prayers (a) and (c) of the plaint except that the plaintiff would be entitled to pendente lite and future interest @ 9 % on the amount of Rs. 64,02,000/- from the date of filing of the suit till the time the payment is made by the defendants to the plaintiff. The decree be drawn accordingly.