

(2013) 04 BOM CK 0183

Bombay High Court

Case No: Notice of Motion No. (L) 764 of 2013 in Suit No. (L) 280 of 2013

Sai Paranjpaye

APPELLANT

Vs

PLA Entertainment Pvt. Ltd. and
Others

RESPONDENT

Date of Decision: April 4, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5
- Copyright Act, 1957 - Section 57

Hon'ble Judges: S.J. Kathawalla, J

Bench: Single Bench

Advocate: Veerendra Tulzapurkar, Mr. Ravi Kadam, Mr. Venkatesh Dhond, s Along with Mr. Sanjay Kadam, Mr. Amit Jamshandekar, Mr. Rashmin Khandekar, Mr. Shyam Kapadia, Ms. Apeksha Sharma and Mohanish Chaudhari Instructed by M/s. Kadam and Company, for the Appellant; Sharan Jagtiani with Mr. G. Mehta and Nilesh Tated Instructed by M/s. Mahimtura and Company for Defendant No. 1, Mr. Janak Dwarkadas Along with Dr. Birendra B. Saraf, Ameet Naik, Ms. Madhu Garodia and Ms. Anushree Rawta Instructed by M/s. Naik Naik and Co. for Defendant No. 3, for the Respondent

Judgement

S.J. Kathawalla, J.

The Plaintiff is a renowned film and theatre personality who has written and directed award winning films and plays in Marathi, Hindi and English languages. The Plaintiff has written and directed six feature films, seven children's films and nine documentaries. The Plaintiff has also written many books several of which have won State and National awards. The Plaintiff was also bestowed with Padma Bhushan Award. The Defendant No. 1 - PLA Entertainment Private Limited claims to be the assignee from PLA Productions in respect of the rights in the film "Chashme Buddoor" (1981) written and directed by the Plaintiff in 1981. Defendant No. 2 is the Director and Co-writer of the film "Chashme Buddoor" (2013) which is a remake of the Plaintiff's film "Chashme Buddoor" (1981). The Defendant No. 3 is the Producer

of the film "Chashme Buddoor" (2013). According to the Plaintiff, the Defendants are jointly and severally guilty of violating the Plaintiff's copyright and/or Author's Special Rights conferred by the Copyright Act, 1957. The Plaintiff has stated in the plaint that in or around early 2013, the Plaintiff became aware for the first time of a serious attempt by Defendant Nos. 2 and 3 of remaking the said film. On a searching enquiry, the Plaintiff discovered that the said remake was a complete distortion and/or mutilation of the Plaintiff's work "Chashme Buddoor" (1981). The said apprehension of the Plaintiff was confirmed when the Plaintiff got to see the trailer and/or promos of the said remake in or around 7th February 2013. The said trailer and/or promos ex facie showed that the Plaintiff's classic "Chashme Buddoor" (1981) was wholly trivialised and reduced to a sleazy, vulgar, obscene and repulsive work. According to the Plaintiff, since her copyright as the writer of the original story had been violated and her moral rights were also violated, she forwarded her complaint dated 12th March, 2013 to the Film Writers' Association, Mumbai. As regards the alleged moral rights, the only statement made in the complaint before the Film Writers Association is "by doing a remake, my name and image as a film maker, stand in danger of being corrupted by association. My moral rights therefore along with copyright have also been violated". In the said complaint, the Plaintiff has further requested the Film Writers Association that "At the very least, the Producers of PLA Production, should award me a sum of Rs. 1 Crore, towards the settlement of my copyright and moral rights" issue in the concern of the remake of the film".

2. The Film Writers' Association forwarded a copy of the complaint to PLA productions dated 15th March 2013 and 21st March 2013. By their Advocates' letter dated 21st March 2013, PLA Productions inter alia wrote to the Film Writers' Association that "PLA Productions, our Assignor and predecessor-in-title, had entered in a Writing dated 3rd September 1980 with Ms. Paranjpye whereby for consideration therein mentioned she has sold, transferred all rights in the said work and expressly confirmed that PLA Productions, our Assignor and predecessor in title, is entitled to exploit the said work in such manner as it deems fit and is also entitled to assign and transfer the same". In view of this letter received by the Film Writers Association, it appears that the said Association did not proceed with the complaint and the Plaintiff filed the above Suit before this Court, inter alia, for an order of permanent injunction of this Court from theatrically and/or otherwise releasing the said film "Chashme Buddoor" (2013) to the public on Friday 5th April 2013 and also for a decree in favour of the Plaintiff and against the Defendants for a sum of Rs. 50,00,000/- as and by way of damages for already pirating and/or corrupting and/or distorting and/or mutilating the work of the Plaintiff.

3. It is pertinent to note that that though PLA Productions as far back as 21st March 2013 wrote to the Film Writers' Association relying on an Agreement dated 3rd September 1980 in support of their contention that the Plaintiff had given up all her rights in the work carried out by her for consideration, the Plaintiff did not call upon

the Defendants to produce a copy of the same and proceeded to file the present suit by alleging in paragraph 18 of the plaint that she does not recollect having signed and/or entered into any writing dated 3rd September 1980 with the predecessor-in-title of Defendant No. 1 and does not have the said writing in her possession and that assuming the same to be true, the transfer of rights would obviously be limited to the transfer of copyright in the cinematographic film "Chashme Buddoor" (1981) and the said transfer cannot be construed to create rights including copyright in favour of Defendant No. 1 in perpetuity. In the above suit, a Notice of Motion is taken out and the same was moved before this Court yesterday for circulation and for placing the same on Board today for urgent ad-interim reliefs i.e. for an order of injunction restraining the Defendants from releasing the movie "Chashme Buddoor" (2013) on 5th April 2013.

4. Dr. Veerendra Tulzapurkar, the Learned Senior Advocate appearing for the Plaintiff has submitted that the said Agreement dated 3rd September 1980 is a "contract for service" and "not a contract of service" for if the contract would be a contract for service then the Defendants would be the owners of the copyright and no such writing would be required. Dr. Tulzapurkar has submitted that the contract has to be read as a whole and such reading makes it clear that the contract pertains to a specific film and only gives the limited right to the Producer of Defendant No. 1 to make a particular film and not a remake thereof. In response, Mr. Dwarkadas, the learned Senior Advocate appearing for Defendant No. 3 has laid great stress on clause 3 of the Agreement wherein the Plaintiff confirms that she has sold and transferred the sole, exclusive and permanent rights of the story, screenplay and dialogue written for the purpose of filming by PLA Productions and to be produced by them in whatsoever manner they may choose (including publication in books, or on the stage, radio, television, video discs and/or cassettes and any other mode of public or private exhibition) and in any languages they may choose to do now or subsequently thereafter. Mr. Dwarkadas and Mr. Jagtiani, learned Counsel appearing for the Defendants, have also relied on the consideration clause contained in the said contract to contend that the Plaintiff has written the story, screenplay and dialogue in Hindi of the subject mutually settled and fixed between her and PLA Productions and the Plaintiff for a fixed consideration of Rs. 1,00,000/- and in return thereof, she has given up her permanent rights of the story, screenplay and dialogue. Mr. Dwarkadas has submitted that the Plaintiff could have asked for a copy of the contract dated 3rd September, 1980 from the Defendant, if she was not in possession of the same and she ought to have made her submissions regarding the terms of the contract dated 3rd September 2013 in the Plaint instead of submissions being made across the Bar qua the said contract without giving an opportunity to the Defendants to file even a preliminary affidavit in the matter.

5. Dr. Tulzapurkar has further submitted that only because the Plaintiff has moved the Court one day prior to the release of the movie, the Plaintiff cannot be shown the door. In support of his contention, he has relied on several case laws including

the decision of this Court in [Ram Sampath Vs. Rajesh Roshan and Others](#), wherein the learned Judge of this Court has granted stay on the release of a movie just a day prior to the release of the film. Dr. Tulzapurkar has submitted that in fact in a case where the Plaintiff is moving the Court for enforcing her moral rights, the question of delay cannot be considered at all. He gave an illustration of a defamation suit where a defamatory article may have already been published, but the Court, despite publication, does consider whether the Defendant should be restrained from publication of such defamatory article in future. Dr. Tulzapurkar therefore submitted that once the Court is satisfied that the Plaintiff's moral rights are violated, the argument of delay is not available to the Plaintiff. In response, Mr. Dwarkadas and Mr. Jagtiani have submitted that the facts in the case law relied upon by the Plaintiff is completely different from the facts in the present case and the Plaintiff in the present case has moved this Court after more than 5 years of Defendant No. 3 issuing a public notice in the trade magazine "Complete Cinema" dated 24th March, 2007 informing the public in general and the Film Trade in particular that they are in the process of acquisition of the sale, absolute and exclusive assignment on an unencumbered, unfettered and unrestricted basis without any limitation under the Copyright Act, 1957 to remake/reproduce a new version of the Hindi Film titled "Chashme Buddoor" and that any person having any claim or rights of whatsoever nature on such rights by way of compensation, license, lien, transfer or reservation of any nature may inform the Defendant No. 3 in writing along with documentary proof of evidence of claim within 30 days of the said Public Notice. The learned Advocates appearing for Defendants have also handed over a compilation of articles/interview, inter alia, appearing in the Times of India in its e-paper and on several websites since April-May, 2011 upto April 2013, inter alia, pointing out that the film "Chashme Buddoor" is being remade. Mr. Dwarkadas has also relied on case laws where ad-interim relief has been declined on the ground of delay. Mr. Dwarkadas has also brought to the attention of the Court the arrangements made by his clients for the all India release of the movie "Chashme Buddoor" (2013) on 5th April 2013 i.e. tomorrow and it was also pointed out by him that the overseas release has already taken place today.

6. I have considered the submissions advanced on behalf of the parties and also the case laws cited by them. Due to paucity of time, I am unable to set out herein each and every argument as well as case law cited by the Advocates for the parties. In view of the public notice which was issued/advertised by Defendant No. 3 in the Trade Magazine "Complete Cinema" dated 24th March, 2007 giving notice to the public in general and Film Trade in particular that they are in the process of acquisition of the sole, absolute and exclusive assignment on an unencumbered, unfettered and unrestricted basis without any limitation under the Copyright Act, 1957 (as amended upto date) the perpetual rights (whether present, vested, future or contingent) to remake/reproduce a new version of the Hindi Film titled "Chashme Buddoor" starring Farooq Sheikh, Deepti Naval, Rakesh Bedi and Ravi Waswanji and

others and any person having any claim or rights of whatsoever nature on such rights may send their objections to Defendant No. 3 within a period of 30 days from the date of publication failing which they shall not be responsible for any such claims, the Plaintiff who is very closely associated with the Film Industry and its working cannot be heard to say that she had not come across the said advertisement or that her attention was not drawn by anyone qua the said public notice. Even if we assume that the Plaintiff genuinely missed the said public notice, a compilation of advertisements/press reports on websites and e-paper of Times of India etc. is tendered in Court on behalf of the Defendants, which shows that right since April, 2011 upto April 2013 the information regarding remake of the film "Chashme Buddoor" (2013) to be directed by David Dhawan was repeatedly published. The Plaintiff who has relied on the information appearing on such websites in the year 2013 could not have missed the similar facts published/advertised repeatedly in the years 2011 and 2012. The Plaintiff has in the plaint stated that in the beginning of 2013 she became aware of a serious attempt by Defendant Nos. 2 and 3 of re-making the said film and the preliminary research by the Plaintiff revealed that the said remake was also titled "Chashme Buddoor" (2013). On a more searching enquiry, the Plaintiff discovered that the said remake was a complete distortion and/or mutilation of the Plaintiff's work "Chashme Buddoor" (1981). The said apprehension of the Plaintiff was confirmed when the Plaintiff got to see the trailer and/or promos of the said remake in or around 7th February 2013. Despite that, the Plaintiff sent a complaint to the Film Writers Association after more than a month i.e. on 12th March 2013. In response to a query raised by the Court, whether the Film Writers Association is empowered to decide the issue as regards the alleged moral rights of the Plaintiff u/s 57 of the Copyright Act, Dr. Tulzapurkar has responded in the negative. If that be so, the Plaintiff has not explained as to why she has not approached this Court at least for getting protective orders against violation of her moral rights in February 2013. Instead, the Plaintiff has in the said complaint stated " At the very least, the Producers of PLA Production, should award me a sum of Rs. 1 crore, towards the settlement of my copyright and moral rights issue in the concern of the remake of the film". Therefore, the Plaintiff expressed her contentment if her monetary claim of Rs. One crore towards the settlement of her copyright and moral rights is satisfied by the Defendants. Interestingly, in the said complaint (which was made after going through the promos by the Plaintiff) the Plaintiff has only alleged in the complaint that by doing her remake, her name and image as a film maker stand in danger of being corrupted by Association and that her moral rights therefore along with copyrights have also been violated. There is not a whisper in the said complaint about the alleged vulgarity and obscenity in the said film as is alleged in paragraph 12 of the Plaint. The Plaintiff is therefore guilty of unpardonable delay in approaching this Court one day prior to the release of the film despite news of the remaking of the said film being in public domain since the year 2007 and repeatedly in the years 2011 to 2013. The judgments cited by Dr. Tulzapurkar on delay therefore can be

easily distinguishable on facts and would lend no assistance to the Plaintiff. Though it is true that in the case of Ram Sampath vs. Rajesh Roshan and others (supra), this Court did pass an injunction order against the release of the film one day prior to the release. Paragraphs 18 and 19 of the said decision are relevant and are reproduced hereunder.

As regards the delay, the plaintiff did not know and could not have known that a film was being produced by the defendants containing the songs and/or music violating the copyright of the plaintiff in his musical work. According to the Defendants 1 to 3 the trailers of the film "KRAZZY-4" are exhibited/showing in the theaters since 17th February 2008. According to the plaintiff he heard the defendants work on MTV channel in March 2008 immediately purchased a CD on 18th March 2008. The plaintiff came to know of the infringement on or about 18th March 2008. This fact is not denied in the affidavit in reply by the defendants and hence I see no reason to disbelieve him. Within less than a week which is normal time for a lawyer to take instructions and draft a notice, the plaintiff issued a notice to the Defendants on 24th March 2008 calling upon them to cease and desist from infringing his copyright within six days. Immediately on expiry of six days i.e. 1st April 2008 the plaintiff has moved this Court. The plaintiff therefore cannot be said to be guilty of delay or laches.

19. As regards the despatch of the prints of the film, counsel for the plaintiff tendered for my inspection the gate passes of the film laboratory wherein the prints were made and/or stored. The gate passes are dated 4th and 5th April 2008. The notice of the suit and motion was served on the defendant Nos. 1 to 3 on 3rd April 2008. The defendants 1 to 3 despatched the prints of the film to the distributors knowing full well that the suit for injunction and damages was filed and plaintiff was seeking an interim relief of injunction against them. The defendants 1 to 3 have thus to blame themselves for actions taken after the notice of the suit and the motion.

7. The Censor Board has granted the Censor Certificate for the film "Chashme Buddoor" (2013) on 4th March 2013. Again what the Plaintiff perceives as vulgar/obscene may not be looked by the general public in such perspective. The Court will also be required to see both the films and decide the context in which certain words/statements/action are used/shown in the movie and decide whether the movie smacks of vulgarity/obscenity, which cannot be done just a day before the release of the film "Chashme Buddoor" (2013). An order restraining the showing of the film can be passed even after the release. Ad-interim reliefs on the ground of violation of moral rights is therefore not granted at this stage not only on the ground of gross delay but also on the ground that the Plaintiff has not talked about vulgarity/obscenity in her complaint to the film Writers Association on 12th March 2013 but has in the said complaint also claimed damages for Rs. One crore for the alleged violation of copyright as well as the moral rights. Therefore, in my view, this Court is not in a position at this stage even to reach a prima facie finding that the

moral rights of the Plaintiff have been violated by the Defendants.

8. Even as regards the allegation qua violation of the copyright in the remake of the film "Chashme Buddoor" (2013), though Dr. Tulzapurkar very strongly submits that the clauses in the Agreement dated 3rd September 1980 should be interpreted to mean that the same pertains to one specific film, this Court cannot lose sight of the submissions advanced by Mr. Dwarkadas and Mr. Jagtiani, more particularly qua the fact that the Plaintiff has permanently given up her rights to PLA Productions of the story/screenplay and dialogue written by her for the purpose of filming by PLA Productions. The decision on the said issue also requires an opportunity to be given to the Defendants to file their affidavits and documents before this Court to enable the Court to adjudicate the issue qua the authorship claimed by the Plaintiff in respect of her work. Since the Plaintiff has not raised any objection to the remake of the film "Chashme Buddoor" (1981) despite repeated advertisements/write-ups in the year 2007 and 2011-2013, I am also of the prima facie view that the Plaintiff herself understood the Agreement dated 3rd September 1980 to mean that she has given up all her rights including all the copyrights in the film "Chashme Buddoor" (1981). Again, as stated earlier, the Plaintiff has herself crystalised her claim in terms of monetary compensation before the Film Writers Association to the extent of Rs. One crore for alleged breach of her copyright as well as her moral rights and therefore the Plaintiff can be compensated if ultimately it is found that she is correct in her submissions qua her alleged copyright and moral rights.

9. Mr. Dwarkadas has submitted that his clients have spent approximately Rs. 25 crores on the remake of the movie "Chashme Buddoor" (2013). The International Premiere of the movie was held on 2nd April 2013. The overseas release of the said movie has taken place today. The same is to be released tomorrow i.e. 5th April 2013 all over India for which 1000 prints are already released and 1300 theatres all over India have been booked. His clients have not received any cease and desist notice from the Plaintiff. His clients have taken all steps /precautions even before entering into the Deed of Assignment by giving a public notice in the Trade Magazine as far back as in March, 2007. The Plaintiff has claimed an amount of Rs. 1 crore for alleged violation of her copyrights and moral rights before the Film Writers' Association and Rs. 50 lakhs before this Court and it is not the case of the Plaintiff that in the event of a decree being passed against the Plaintiff, she will not be able to execute the same and realise the decretal amount. I agree with Mr. Dwarkadas and Mr. Jagtiani on this aspect. As stated hereinabove, the Plaintiff has in her complaint to the Film Writers Associations stated that " At the very least, the Producers of PLA Production, should award me a sum of Rs. 1 Crore, towards the settlement of my copyright and moral rights" issue in the concern of the remake of the film". In the Plaint, the Plaintiff has stated in paragraph 20 : " The Plaintiff has immensely suffered due to the act of the Defendants. Though, the loss and prejudice which has occurred to her rights and esteem is immense and cannot be adequately compensated, the Plaintiff states that she humbly weighs her damages

to a sum of Rs. 50,00,000/- only. The Plaintiff submits that she is entitled to the aforesaid monies from all the Defendants as and by way of token of compensation to her rights has infringed by them and loss of repute that has been and shall be caused by the release of the movie, if at all released". The Plaintiff has therefore herself crystalised her claim in monetary terms for violation of her copyright and moral rights and it is not the Plaintiff's case that she is entitled to get any relief today under the provisions of Order 38 Rule 5 of the Code of Civil Procedure, 1908. In view thereof, in my view, the Plaintiff has at least today not made out a prima facie case in her favour and the balance of convenience is also in favour of the Defendants. In view of the above, this Court is rejecting the application made on behalf of the Plaintiff to the release of the movie "Chasme Buddoor" (2013) scheduled to be released tomorrow i.e. on 5th April 2013. However, the Defendant No. 3 shall maintain accounts and produce the same before the Court on the next date of hearing. The Defendants shall also file their affidavit-in-replies on or before 12th April 2013. Rejoinder, if any, on or before 16th April 2013. Stand over to 18th April 2013 for hearing and final disposal of the Notice of Motion, after the matters under the caption "For ad-interim reliefs".