

M/S. ZEE TELEFILMS LTD.
(NOW KNOWN AS ZEE ENTERTAINMENT
ENTERPRISES LTD.)

A

v.

SURESH PRODUCTIONS & ORS.

B

(Civil Appeal No.1716 of 2020)

FEBRUARY 25, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Cause of Action: Right to sue – Accrual of, when – On facts, plaintiffs assigned telecasting right of 16 schedule films by assignment deeds dated 23.12.1994 for a period of 9 years in favour of defendant Nos.5 to 8 as requested by defendant No.4 – Issuance of public notice in Film Magazine by plaintiff regarding the 16 films – Claim by defendant No.1 that they acquired satellite broadcasting rights of the 16 Hindi films from defendant No.2, by assignment deed dated 21.3.1997 for a period of 99 years – Suit by plaintiffs in 2003, for declaration that defendant Nos. 1 to 4 have no manner of right, title and interest in the Copyright in respect of the scheduled films, and to pass a decree of perpetual injunction against defendant Nos.1 to 4 – Trial court holding that the cause of action arose in the year 1995 itself when the plaintiff got knowledge of claim of the first defendant over the given films and plaintiffs chosen to file the suit in the year 2003 in respect of agreement dated 10.10.1994 – Dismissal of suit as barred by limitation – Cause of action to a plaintiff to file a suit accrues when there is a clear and unequivocal threat to infringe a right of the plaintiff – On facts, plaintiff having already assigned their right for a period of 9 years by assignment deed dated 23.12.1994, there was no cause of action during the said period of 9 years – When the plaintiffs had already parted with their right of telecasting films on 23.12.1994 there could not have been any threat to their right in the year 1995 – Thus, the suit filed by the plaintiffs is within limitation – Order passed by the High Court upheld.

C

D

E

F

G

H

A Dismissing the appeal, the Court

HELD: 1.1 When the plaintiffs assigned their rights to defendant Nos.5 to 8 on the request of defendant No.4 for a period of 9 years, plaintiffs having parted with their satellite rights could not have claimed any right for telecasting during the said period of 9 years. Inter se dispute between defendant Nos.4 and 3 which begun with filing suit in Mumbai there could not have been any cause of action for the plaintiffs to file a suit claiming telecasting rights for themselves. Furthermore, it was the case of the defendant No.3 itself that dispute between defendant No.3 and 4 subsided when the suit filed by defendant No.3 was returned in the year 1995 itself. It was submitted by the counsel for the appellants that even though DS filed a police complaint in the year 1995 itself with regard to the alleged assignment dated 10.10.1994 but no further proceedings were taken by DS thereafter. The trial court in its judgment has also returned a finding that the assignment dated 10.10.1994 by DS in favour of defendant No.4 and assignment dated 17.10.1994 by defendant No.4 to 3 has not been proved. [Para 14][983-C-F]

1.2 The trial court by its judgment dismissed the plaintiffs' suit having accepted the case of the plaintiffs regarding assignment of telecasting rights of said schedule films i.e. assignment of 23.12.1994 in favour of defendant Nos. 5 to 8 at the request of defendant No.4 for 9 years. The plaintiffs' claim for the right of schedule films arose only after 22.12.2003. They having parted with their right, there was no real threat to their right by any inter-se dispute between defendant Nos.4 and 3 or other defendants. It was on 22.12.2003 that plaintiffs again became entitled to assign telecasting rights of the aforesaid 16 films after the expiry of the period of 9 years of assigning the telecasting right of 16 films to defendant Nos.5 to 8 on the request of the defendant No.4 on valuable consideration. [Para 15][984-B-D]

1.3 The trial court had observed that cause of occasion arose in the year 1995 itself when the plaintiff got knowledge of claim of the first defendant over the given films and plaintiffs have chosen to file the suit in the year 2003 in respect of agreement

H

dated 10.10.1994. The trial court further held that plaintiffs sat over their rights for eight long years, hence, suit is barred by time. The suit which was filed in the year 1995 by defendant No.3 against defendant No.4 in the Small Causes Court, Mumbai where assignments dated 10.10.1994 and 17.10.1994 were referred to got dismissed in the year 1995 itself as Small Causes Court had no jurisdiction to consider the claim of defendant No.3. [Para 16][984-E-F]

1.4 Cause of action to a plaintiff to file a suit accrues when there is a clear and unequivocal threat to infringe a right. The plaintiff having already assigned their right for a period of 9 years by assignment deed dated 23.12.1994, there was no cause of action during the aforesaid period of 9 years. When the plaintiffs had already parted with their right of telecasting films on 23.12.1994 there could not have been any threat to their right in the year 1995. Thus, in view of the pleadings on the record and facts of the present case, suit filed by the plaintiffs is well within limitation, the finding of the High Court that the suit is within limitation is based on correct appreciation of facts and pleadings. [Paras 17, 18][985-G-H; 986-G]

Daya Singh and another v. Gurdev Singh (Dead) by Lrs. And others (2010) 2 SCC 194 : [2010] 1 SCR 194 – referred to.

Case Law Reference

[2010] 1 SCR 194 referred to Para 17

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1716 of 2020.

From the Judgment and Order dated 11.03.2016 of the High Court of Judicature at Hyderabad in City Civil Court Appeal No. 120 of 2015.

Sridhar Potaraju, Gaichangpou Gangmei, Ms. Petal Chandok, Ms. Rupali Gupta, Ms. Shweta Parihar, Ms. Shiwani Tushir, Ms. G. Ushasri, Vishnu Tulasi Menon (for M/S. Trust Legal), Advs. for the Appellant.

T. Raghuram, Mullapudi Rambabu, N. Eswara Rao, Ms. Prity Kumari, Ms. Vijayshree Pattnaik (for M/S. M. Rambabu And Co.), Advs. for the Respondents.

A The Judgment of the Court was delivered by
ASHOK BHUSHAN, J.

B 1. This appeal has been filed by the defendant against the judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 11.03.2016 allowing the plaintiffs' appeal.

2. Brief facts of the case for deciding this appeal are:

C The parties shall be referred to as described in the suit. The plaintiffs have been carrying on business of producing, distributing and exhibiting cinematographic films. On a request of 4th defendant, M/s. N.S. Films, the plaintiffs on 23.12.1994 assigned to four persons nominated by 4th defendant satellite broadcasting rights of 16 Hindi films for a period of 9 years. The assignments were made by six assignment deeds all dated 23.12.1994. In the year 1995, plaintiffs came to know about the pendency of the Small Causes Suit filed in Bombay, Small Causes Suit No.281 of 1995 by 3rd defendant, M/s. Asia Vision against the 4th defendant seeking for relief of declaration and injunction in respect of above 16 films, on the basis of certain documents purporting to be a deed of assignment dated 07.10.1994 and declaration dated 15.10.1994 allegedly assigned by D. Suresh Babu assigning satellite and Doordarshan rights in favour of 4th defendant. The suit at Bombay was filed on the basis of notarised of the said forged documents. Shri D. Ramesh Babu, Director of first plaintiff lodged a complaint with the Police Station, Jubilee Hills, Hyderabad complaining about the said forgery. Defendant No.3 had also lodged complaint against 4th defendant and plaintiffs at Mumbai. Several criminal proceedings were filed by the plaintiffs as well as by defendant Nos.3 to 8. However, suit filed by the other parties came to be dismissed for default and controversy was subsided.

G 3. The plaintiffs issued a public notice in the Film Information Magazine on 27.09.2003 with respect to the above said 16 Hindi films. A legal notice from first defendant on 14.10.2003 in reply to the notice of the plaintiffs was received where defendant No.1 claimed that they have acquired satellite broadcasting, Pay TV and Cable TV rights of all above 16 Hindi films from defendant No.2, M/s. B.N.U. & Co. vide deed of assignment dated 21.03.1997 for a period of 99 years and that, M/s. B.N.U. & Co. had in turn acquired the said rights from M/s. Asia Vision, defendant No.3, vide agreement dated 16.03.1997. The first defendant

H

called upon the plaintiffs to withdraw the said public notice. The plaintiffs sent reply dated 17.10.2003 refuting the facts in the notice of the first defendant. The plaintiffs filed Original Suit No.392 of 2003 on 11.11.2003 before the Chief Judge, City Civil Courts, Hyderabad, for declaration that defendant Nos.1 to 4 have no manner of right, title and interest in the Copyright in respect of the scheduled films, to pass a decree of perpetual injunction against defendant Nos. 1 to 4.

A
B

4. First defendant filed written statement. It was pleaded that D. Suresh Babu representing the plaintiff Nos.1, 3 and 4 assigned T.V. Doordarshan and world satellite rights in the said 16 films in favour of 4th defendant on 10.10.1994 for a valuable consideration of Rs.55,00,000/-. The 6 assignment deeds dated 23.12.1994 was alleged to be manufactured for the purpose of claiming rights in the suit scheduled films. Although, the above plaintiffs have already been divested of their rights by assignment dated 10.10.1994 with 4th defendant. Under deed of assignment dated 17.10.1994, the 4th defendant had assigned the rights to third defendant and third defendant in turn assigned the rights to second defendant by deed of assignment dated 16.03.1997. First defendant claims deed of assignment from second defendant by assignment deed dated 21.03.1997. First defendant pleaded that from 21.03.1997 it has been exercising the satellite broadcasting rights acquired under the deed of assignment and the suit scheduled films have been telecasted as many as 223 times on various occasions since August 1997 till date. The allegations made in the plaint were denied. Defendant No.2 adopted the written statement filed by defendant No.3. Defendant No.3 also filed a written statement which was in the line of the written statement filed by defendant No.1. Reference of Suit No.221 to 225 of 1995 filed by the defendant Nos.4 to 8 was also made which were dismissed on 31.08.2000, the defendant No.3 claimed to be bona fide purchasers of suit scheduled 16 films for a valuable consideration, with regard to Small Causes Suit Nos. 281 of 1995 filed by defendant No.3 against defendant No.4 through Mrs. Nalini Shanker it was stated that it was not necessary to pursue as Small Causes Court, Mumbai was not having jurisdiction. It was pleaded that the plaintiffs were very well aware of as back as 1994 rights acquired from the plaintiffs on 10.10.1994.

C
D
E
F
G

5. The trial court framed the following 10 issues:

1) Whether the suit is barred by limitation?

H

- A 2) Whether the suit is barred by res judicata in view of decree in O.S.Nos.18 to 21 of 1996?
- 3) Whether the plaintiffs acquiesced the infringement of copy right of the scheduled films?
- B 4) Whether the claim of Defendant No.1 over the plaint schedule films is true?
- 5) Whether the suit transactions, as alleged by the plaintiffs are true, valid and binding on the defendants?
- 6) Whether the plaintiffs are entitled to the declaration as prayed for?
- C 7) Whether the plaintiffs are entitled to the perpetual injunction as prayed for?
- 8) Whether the plaintiffs are entitled to the delivery of tapes etc., as prayed for?
- D 9) Whether the plaintiffs are entitled to the damages, as prayed for?
- 10) To what relief?"

E 6. On Issue No.1 trial court held that cause of action for filing the suit arose in the year 1995 itself when the plaintiff got knowledge of the claims of the first defendant over the given films and they have chosen to give report to the police in respect of the agreement dated 10.10.1994. Trial Court held that they slept over their rights for eight long years, hence, the suit claim is hopelessly barred by limitation.

F 7. On Issue No.2, trial court held that suit is not barred by principle of res judicata. Issue Nos.4 to 9 were answered in favour of the plaintiffs, it was held that the plaintiffs' claim over the suit scheduled films is proved. The agreement dated 23.12.1994 was held to be proved whereas defendants have failed to prove the assignment dated 10.10.1994. The transactions alleged to have been entered into between 4th defendant and 3rd defendant in respect of 16 films was held not to be proved. Issue No.3 was also decided in favour of the plaintiffs. Trial court, however, in view of finding on Issue No.1 that suit is barred by limitation dismissed the suit by its judgment dated 09.03.2011.

G 8. The plaintiffs aggrieved by the judgment of the trial court filed
H appeal before the Hight Court which appeal has been allowed by the

High Court by impugned judgment dated 11.03.2016. The High Court noticed in the judgment that only point for determination in the appeal is: “Whether the finding of the trial court that suit was barred by limitation is factually and legally correct?” The High Court after considering the submissions of the learned counsel of the parties held that suit filed by the plaintiffs was not barred by limitation.

9. The High Court held that in the year 1995 defendant Nos.1 and 2 were not in the scene and so the question of plaintiffs taking action against them does not arise. It held that to the plaintiffs cause of action arose for the first time when defendant No.1 issued notice dated 14.10.2003 and the suit having filed immediately thereafter was well within time. The High Court allowed the appeal and decreed the suit in favour of the plaintiffs. Defendant No.1 aggrieved by the judgment of the High Court has come up in this appeal.

10. Shri Sridhar Potaraju, learned counsel for the appellant submits that the plaintiffs had knowledge of violation of their rights qua scheduled 16 films in the year 1995. It is submitted that defendant No.3 has filed S.C. Suit No.281 of 1995 in Mumbai for declaration and injunction against defendant No.4 where reference of agreement dated 10.10.1994 and 17.10.1994 was made. PW.1, D. Suresh Babu who appeared as witness in the present suit admitted having knowledge of the suit filed in the Bombay Court. It is further submitted that defendant Nos.4 to 8 had filed O.s.No.221 to 225 of 1995 for declaration and injunction against plaintiff No.1 and defendant Nos. 3 and 4 before the City Civil Court, Hyderabad which suit was subsequently dismissed. Plaintiff Nos.1 to 4 has also filed O.S.No.16 of 1996 in the Court of Chief Judge, City Civil Court, Hyderabad against defendant Nos.3,4 and 8 qua 3 films. The above facts clearly indicate that they had full knowledge of infringement of their right and ought to have filed suit within the period of limitation. He submits that Article 58 of the Indian Limitation Act provides that suit can be filed within three years from the date when the cause of action first arose. He further contends that plaintiff being aware of the claim of the defendants as reflected in various litigations and having not taken any action acquiesced to the claim of the defendants,hence, the suit is liable to be dismissed on the principle of acquiescence.

11. Learned counsel for the respondents, Shri T. Raghuram refuting the submissions of the appellants contends that the High Court after considering the materials on record has rightly come to the conclusion

A that the suit was not barred by time. It is submitted that the alleged assignments dated 10.10.1994 and 17.10.1994 which are foundation of the case of the defendants having not been proved in the suit and the trial court itself has found that the said assignments have not been proved, there was no cause of action to the plaintiff to file suit in the year 1995. It is submitted that assignment dated 23.12.1994 by the plaintiff in favour of defendant No.4 has been proved by which plaintiff has assigned broadcasting rights to defendant No.5 to 9 for a period of 9 years. The plaintiff was not concerned about the telecasting of films during the said period. It is submitted that cause of action arose to the plaintiff when they published notice in the Film Information Magazine with regard to prosecute their right to which reply was given on 27.09.2003. It is submitted that cause of action arose when reply dated 14.10.2003 was received from defendant No.1 which claimed rights to the aforesaid 16 films. It is submitted that the suit of the plaintiffs was well within time and the High Court has rightly come to the said conclusion.

D 12. We have heard learned counsel for the parties and perused the records.

E 13. The plaintiff's case in the plaint was that plaintiffs have assigned telecasting right of 16 schedule films by 6 assignment deeds dated 23.12.1994 for a period of 9 years in favour of defendant No.5 to 8 as requested by defendant No.4. The trial court in its judgment while considering the Issue Nos.4 to 9 has specifically considered the assignment deed dated 23.12.1994. While answering Issue Nos.4 to 9 especially assignment deed dated 23.12.1994 by the plaintiff in favour of defendant No.5 to 8 at the instance of defendant No.4, the trial court recorded the following finding:

F "It is an undisputed fact that originally copyright holders in respect of suit schedule films have been the plaintiffs firms only. D.W.1 also accepted the same. It is the contention of the plaintiffs that Sr.D. Rama Naidu, representing plaintiffs firm has entered into assigned agreement with fourth defendant and assigned satellite and broadcasting rights over the suit schedule films for a period of nine years from 23.12.1994 to the nominees of fourth defendant i.e. Defendant No.5 to 8 for valuable consideration received by the plaintiffs from fourth defendant and acknowledging said assignment and receipt of the consideration vide letter dated 23.12.1994. Exs. A7 to A12 are assignment agreements pertaining

G

H

to Defendant Nos.5 to 8. Defendant Nos. 4,5,6 and 8 have not chosen to contest the suit by filing written statement, though they appeared before the Court through their respective advocates. They have not even cross-examined the witnesses examined for plaintiff and first defendant and they have not adduced any evidence either. Thus, it is to be taken that, they are not actually disputing with the claims of the plaintiffs. By examining P.W.1 before the court and by producing Exs.A7 to A12, plaintiffs could establish their claims in respect of assignment agreement entered into by plaintiffs with fourth defendant and their assignment rights over the suit schedule films and also expiry of the period of said assignment prior to the date of filing of this suit.”

14. When the plaintiffs assigned their rights to defendant Nos.5 to 8 on the request of defendant No.4 for a period of 9 years, plaintiffs having parted with their satellite rights could not have claimed any right for telecasting during the aforesaid period of 9 years. Inter se dispute between defendant Nos.4 and 3 which begun with filing suit in Mumbai could not have been any cause of action for the plaintiffs to file a suit claiming telecasting rights for themselves. Furthermore, it was the case of the defendant No.3 itself that dispute between defendant No.3 and 4 subsided when the suit filed by defendant No.3 was returned in the year 1995 itself. It is submitted by the counsel for the appellants that even though D. Suresh Babu filed a police complaint in the year 1995 itself with regard to the alleged assignment dated 10.10.1994 but no further proceedings were taken by D.Suresh Babu thereafter. The trial court in its judgment has also returned a finding that the assignment dated 10.10.1994 by D. Suresh Babu in favour of defendant No.4 and assignment dated 17.10.1994 by defendant No.4 to 3 has not been proved. The trial court has itself returned the finding in paragraph 10(iv) to the following effect:

“10(iv) In such circumstances, it is the bounden duty of the defendants, who are relying upon such document i.e. assignment deed dated 10.10.1994 to establish that such document has been executed by P.W.1 conveying satellite broadcasting rights and other rights over the suit schedule films to fourth Defendant. But no such evidence is adduced on record. Neither original nor any authenticated copy of the said document is produced before the Court. Further, documents relating to transaction alleged to have

A been entered into between fourth defendant and third defendant in respect of these films, also have not been produced before the Court. No evidence is adduced on record to establish the claims of the contesting defendants in respect of transfer of satellite broadcasting rights over the suit schedule films from one to another among Defendant Nos.3 and 4.”

B

15. The trial court by its judgment dismissed the plaintiffs’ suit having accepted the case of the plaintiffs regarding assignment of telecasting rights of said schedule films i.e. assignment of 23.12.1994 in favour of defendant Nos. 5 to 8 at the request of defendant No.4 for 9 years. The plaintiffs’ claim for the right of schedule films arose only after 22.12.2003. They having parted with their right, there was no real threat to their right by any inter-se dispute between defendant Nos.4 and 3 or other defendants. It was on 22.12.2003 that plaintiffs again became entitled to assign telecasting rights of the aforesaid 16 films after the expiry of the period of 9 years of assigning the telecasting right of 16 films to defendant Nos.5 to 8 on the request of the defendant No.4 on valuable consideration.

C

D

16. The trial court while discussing Issue No.1 had observed that cause of occasion arose in the year 1995 itself when the plaintiff got knowledge of claim of the first defendant over the given films and plaintiffs have chosen to file the suit in the year 2003 in respect of agreement dated 10.10.1994. The trial court further held that plaintiffs sat over their rights for eight long years, hence, suit is barred by time. The suit which was filed in the year 1995 by defendant No.3 against defendant No.4 in the Small Causes Court, Mumbai where assignments dated 10.10.1994 and 17.10.1994 were referred to got dismissed in the year 1995 itself as Small Causes Court had no jurisdiction to consider the claim of defendant No.3.

E

F

17. Cause of action to a plaintiff to file a suit accrues when there is a clear and unequivocal threat to infringe a right. The plaintiff having already assigned their right for a period of 9 years by assignment deed dated 23.12.1994, there was no cause of action during the aforesaid period of 9 years. When the plaintiffs had already parted with their right of telecasting films on 23.12.1994 there could not have been any threat to their right in the year 1995. This Court in **Daya Singh and another vs. Gurdev Singh (Dead) by Lrs. And others, (2010) 2 SCC 194**, had laid down that a right to sue accrues when there is a clear and

G

H

unequivocal threat to infringe a right of plaintiff. In paragraphs 14 and 15 following was laid down: A

“14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in *Bolo v. Koklan*, AIR 1930 PC 270. In this decision Their Lordships of the Privy Council observed as follows: (IA p. 331) B C

“... There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.” D

15. A similar view was reiterated in *C. Mohammad Yunus v. Syed Unnissa*, AIR 1961 SC 808, in which this Court observed: (AIR p. 810, para 7)

“7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.” E

In *C. Mohammad Yunus*, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.” F

18. We are of the view that in view of the pleadings on the record and facts of the present case, suit filed by the plaintiffs is well within limitation, the finding of the High Court that the suit is within limitation is based on correct appreciation of facts and pleadings. We do not find any merit in this appeal. The appeal is dismissed. G