

NARENDRA HIRAWAT AND CO.

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v.

SHOLAY MEDIA ENTERTAINMENT PVT. LTD. & ANR.

(Civil Appeal Nos. 1867-1868 of 2022)

MARCH 07, 2022

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[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]

Injunction: Agreements entered between appellant (NHC) and respondent no.1 (SME) for rights of films for an amount of Rs.20 Crores – Disputes arose in relation to payments of amounts and burden of tax, which got amicably settled between the NHC and SME – Deed of settlement was executed in which the main stipulation was that NHC was to pay a further sum in four tranches – Termination notice issued by SME on ground of alleged non-compliance of the terms of deed of settlement – NHC filed a Commercial suit seeking declaration inter alia of permanent and temporary injunction restraining SME from disturbing the enjoyment of the licensed rights of the appellant – In between, a sub-license agreement was executed between the NHC and respondent no.2, GTP for rights of the said film for a certain period of time – Thereafter, GTP terminated the aforesaid sub-license with NHC and demanded refund – Single Judge of High Court granted interim injunction in favour of NHC – Division Bench, however, reversed the order of Single Judge – On Appeal, held: Prior to the execution of the Deed of Settlement, NHC had already paid a substantial amount in terms of initial agreement – Even after the deed of settlement, Rs. 5.46 crores had already been paid – Every payment made by NHC was against the invoices which were issued by SME – The only reason given by SME for not issuing the invoices with regard to the balance amount was that the liability of payment of GST accrue immediately on issuance of the invoices, which cannot be accepted – Considering the conduct of the parties, equity is in favour of NHC – NHC has made substantial payments and the balance which is little more than 10% of the total amount, has already been deposited in High Court in terms of the injunction order of Single Judge – NHC made out a prima facie case for grant of injunction – Balance of convenience is in favour of NHC – Considering the agreement entered with GTP during the pendency of the civil suit, GTP would also be governed by

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- A *the injunction order – Order of the Single Judge of High Court to be restored.*

Wander Ltd. and Anr. v. Antox India P. Ltd. 1990 (Supp) SCC 727; Shah Babulal Khimji v. Jayaben D. Kania and Anr. (1981) 4 SCC 8; Dorab Cawasji Warden v.

- B *Coomi Sorab Warden and Ors. (1990) 2 SCC 117 : [1990] 1 SCR 332; Metro Marins and Anr. Vs. Bonus Watch Co. (P) Ltd. and Ors. (2004) 7 SCC 478; Best Seller Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd. and Ors. (2012) 6 SCC 792 : [2012] 5 SCR 834;*

- C *Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd. (1999) 7 SCC 1 : [1999] 1 Suppl. SCR 560 – referred to.*

Case Law Reference

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|---|--------------------------------|--------------------|
| D | 1990 (supp) SCC 727 | referred to |
| | (1981) 4 SCC 8 | referred to |
| | [1990] 1 SCR 332 | referred to |
| | (2004) 7 SCC 478 | referred to |
| | [2012] 5 SCR 834 | referred to |
| E | [1999] 1 Suppl. SCR 560 | referred to |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1867-1868 of 2022.

- F From the Judgment and Order dated 26.08.2021 of the High Court of Judicature at Bombay in Commercial Appeal (L) No.8026 of 2020 in Notice of Motion No.2591 of 2019 in Commercial I.P. Suit No.1387 of 2019 and Commercial Appeal (L) No.9909 of 2020 in Notice of Motion No.2591 of 2019 in Commercial I.P Suit No.1387 of 2019.

With

- G Civil appeal Nos.1869-1870 of 2022.

Mukul Rohatgi, Dr. A. M. Singhvi, Sr. Advs., Mahesh Agarwal, Ankur Saigal, Anirudh Bhatia, Ms. Deepshikha Mishra, E. C. Agrawala, Advs. for the Appellant.

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Neeraj Kishan Kaul, Siddharth Bhatnagar, Chander Uday Singh, A
Sr. Advs., Mehul M. Gupta, Ms. Shreya Parikh, Archit Jayakar, Ms.
Divya Tyagi, R. P. Gupta, Aurup Dasgupta, Rohan Thawani, Ms. Pooja
Dhar, Ms. Gunjan Ahuja, Advs. for the Respondents.

The following Order of the Court was passed :

ORDER

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1. Leave granted.

2. In connection with a suit for injunction and other reliefs filed by the appellants, the learned Single Judge of the High Court of Judicature at Bombay granted an order of interim injunction, delivered on 9th March, 2020 which was challenged in appeals filed before the Division Bench of the High Court. The appeals have been allowed and the order of interim injunction granted by the Single Judge has been reversed by the Appellate Bench. Questioning the legality of the said order of the Division Bench, these appeals by way of special leave petitions have been filed. As these appeals have been filed against an interim order, we are giving only skeleton facts relevant for the purpose of present appeals.

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3. On 09.09.2015, two agreements were entered into between the appellant namely, Narendra Hirawat and Company (for short ‘NHC’) and respondent no.1, namely Sholay Media Entertainment Pvt. Ltd. (for short ‘SME’) for the rights of films “Sholay and Sholay 3D” for the period from 01.04.2016 to 31.03.2022 for an amount of Rs.20 crores. The second agreement of the same date was executed for the rights of the same films “Sholay and Sholay 3D” for the period from 01.04.2022 to 31.03.2027 for an amount of Rs.5 crores. This was in regard to the first set of appeals (hereinafter referred to as “Sholay appeal”). In the second set of appeals, similar agreements were executed on the same date between the NHC and respondent no.1 therein i.e., Generation Three Entertainment Pvt. Ltd. (hereinafter referred to ‘G3’). These were with regard to the rights of the 32 films given in favour of NHC for a similar length of period. The facts in both these sets of appeals, though may not be identical but are very similar. For convenience we shall deal with the facts of the first set of appeals, which we shall henceforth refer to as “Sholay appeal”.

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4. After the aforesaid agreements were executed, on 12.07.2016 two addenda were executed in the license agreements dated 09.09.2015. These addenda stipulated that on an additional amount of Rs.1.75 crores

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- A to be paid by NHC, the NHC would have the rights for unlimited runs of the film and the period was also extended from 31.03.2027 to 30.09.2027. There were certain disputes with regard to the mechanism arrived at in relation to payments of amounts and burden of tax, which got amicably settled between the appellant-NHC and respondent no.1 -SME. In
- B between on 16.05.2018, a sub-license agreement was executed between the appellant - NHC and the respondent no.2 namely, Goldmines Telefilms Pvt. Ltd. for rights of the said film in favour of the respondent no.2, which was for the period of 15.11.2021 to 14.11.2026.

5. As already mentioned, since there were certain disputes between NHC and respondent no.1 - SME, there were dialogues between the parties and ultimately a memorandum of settlement was arrived at between the two parties on 05.11.2018. Finally, on 03.12.2018, a Deed of Settlement was executed between the NHC and the SME - respondent no.1 in which the main stipulation was that NHC was to pay a further sum of Rs.8.71 crores in four tranches of Rs.1.25 crores, Rs.2.46 crores, Rs.2.50 crores and Rs.2.50 crores and instead of the period which earlier was till 30.09.2027, the same was extended by further one year, up to 30.09.2028.

6. Ultimately, the final dispute which has now culminated in these proceedings is allegedly for non-compliance of the final Deed of Settlement dated 03.12.2018, as according to the respondent no.1 the payments have not been made in terms of Deed of Settlement. Stand of NHC, however, is that substantial payments have already been made, and what has not been paid was because of certain non-compliances on the part of the respondent no.1. It is stated that NHC has always been ready and willing to make the payment. However, on the ground of alleged non-compliance of the terms of the Deed of Settlement dated 03.12.2018, a termination notice was issued by the respondent no.1 on 18.06.2019.

7. The respondent no.2, by notice dated 26.08.2019, terminated the sub-license agreement dated 16.05.2018 which was entered into with NHC, and demanded refund of over Rs.11 crores from NHC.

8. With regard to the termination notice dated 18.06.2019 issued by respondent no.1, NHC filed a commercial suit on 30.08.2019. Reliefs claimed included prayer for declaration that the plaintiff is the sole and exclusive licensee in respect of the suit films for all territories, further declaration that the termination letter was illegal, bad in law, null and

void and unenforceable, permanent injunction restraining the defendants from enjoying the licensed rights and damages. Temporary injunction was also asked for. By order dated 09.03.2020, the learned Single Judge of the High Court (before whom the commercial suit was filed) granted interim injunction in favour of NHC, restraining the respondents from disturbing the enjoyment of license rights of the appellant in the suit films and also restrained the respondent no.1 - SME from acting on the termination notice. Respondents no.1 & 2 were also restrained from acting on the agreement executed on 24.10.2019 which, after the filing of the suit, was entered into between respondents no.1 and 2, awarding rights of the film Sholay and Sholay 3D in the first set of appeals and 32 films in the second set of appeals in favour of respondent no.2. An intra-court appeal was filed assailing the order of the learned Single Judge before the Division Bench of the High Court, which has been allowed in favour of the respondents and, hence, these appeals before this Court.

9. Mr. Mukul Rohatgi and Dr. A.M. Singhvi, learned senior counsel along with Mr. Ankur Saigal, learned counsel have appeared for the NHC in both sets of appeals. Mr. Neeraj Kishan Kaul, Mr. Siddharth Bhatnagar and Mr. C.U. Singh, learned senior counsel along with Mr. R.P. Gupta and Ms. Pooja Dhar, learned counsel have represented the respondents in both sets of appeals. We have heard them at length and perused the records.

10. The facts as narrated above are not disputed by the learned counsel for the parties. From the above facts, what can be culled out is that though there were certain disputes with regard to the payments and other clauses of the initial agreements as well as the addenda, but after the execution of the Deed of Settlement on 03.12.2018, all prior disputes had been ironed out and what was now required was compliance of the said deed. This deed provided that NHC was to pay a sum of Rs.8.71 crores to the respondent no.1 in four tranches and the period of license was to be extended for one year i.e. up to 30.09.2028 (instead of 30.09.2027 as earlier). Learned Single Judge had considered all the aspects of the matter and held that the balance of convenience was in favour of NHC and thereafter granted the injunction in favour of the appellant. On the aspect of prima-facie case, the Single Judge found the payment obligation were by and large met by the plaintiff (appellant before us). Argument was advanced before the learned Single Judge on the basis of Section 14(d) of the Specific Relief Act 1963 by the defendants. It

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- A was contended that the subject contracts were determinable and hence no specific performance thereof could be granted. The learned Single Judge, however, found that this was not a clause which contemplated unilateral determination but the right to determine was subject to the other party committing breach of the agreement. As a condition for granting interim relief, direction was given to the plaintiff to deposit the entire balance amount of Rs.3.25 crore as per the settlement deed. Such deposit was to be made in Court and we are apprised by learned counsel for the plaintiff that this part of the direction has been complied with.
- B 11. The Division Bench has, in appeal, reconsidered the entire case and decided in favour of the respondents. It has been, inter-alia, held by the Division Bench in the judgment under appeal:-
 - C “62. The impugned order has brought about a highly inequitable situation. A Plaintiff, who was not ready and willing having consistently breached essential terms of the Agreements, who was admittedly in arrears on the date of the suit, who is yet to establish its rights at the final trial; is permitted by through a mandatory interim injunction to exploit all rights under the terminated Agreement. The true owners of the licensed material are prevented from monetizing their property rights. The Goldmines Telefims, which has paid money to both, Plaintiff and Lessor Appellants, is deprived of exploiting the licenses. No extraordinary situation existed for such a drastic interim order.
 - D 63. Therefore, to recapitulate, as per the true construction of the contract between parties, Plaintiff has failed to establish that Plaintiff was and has always been ready and willing to perform an essential part of the terms of the contract. No *prima facie* case, much less a high *prima facie* case, is established by Plaintiff. No extraordinary circumstances exist to grant a mandatory injunction again akin to the stay of the termination six months after the termination was effected and third party rights were created. Since the basic essential terms of the contract and documents on the record itself have been overlooked while passing the impugned order, the grant of an injunction will have to be set aside, even though these appeals are appeals on principle.
 - E 64. As a result, these four Commercial Appeal, are allowed. The common impugned order 9 March 2020 passed by the learned Single Judge in Notice of Motion No.2591/2019 in Commercial IP

Suit No.1387/2019 and Notice of Motion No.2607/2019 in A
Commercial IP Suit No.1469/2019 is set aside. Considering the
facts and circumstances, no order as to costs.”

12. As we have noticed above, the entire case falls around the Deed of Settlement executed on 03.12.2018. What is not disputed is that out of the four payments which were to be made by NHC to the respondent no.1, the first and the second payments were made by the appellant - NHC either simultaneously on the issuance of the invoice by respondent no.1 or after the invoice had been issued. However, after the first two payments were made, the respondent no.1 issued a third invoice for an amount of Rs.1.75 crores (although the third installment was to be of Rs.2.50 crores) only on 03.06.2019 and after the invoice was issued, the payment of the entire amount of Rs.1.75 crores was made by NHC on 10.06.2019. It is the case of NHC that thereafter NHC had been asking the respondent no.1 for issuance of the invoices for the balance amount so as to enable NHC to make the balance payment out of Rs.8.71 crores as agreed under the Deed of Settlement but since the invoices were not issued (as the same were required for payment of GST), no further payment was made by the appellant - NHC. According to NHC, on every occasion earlier the payments were made by NHC only after the invoices were issued by the respondent no.1 – SME, which included the GST amount and the last payment could not be made because of non issuance of the invoice by the respondent no.1 – SME. B C D E

13. The contention of the learned counsel for the respondent no.1 is that the requirement of issuance of invoices was not a condition precedent to the payments to be made in terms of the Deed of Settlement dated 03.12.2018, whereas the NHC asserts that in terms of clause 4 of the Deed of Settlement, respondent no.1 was to issue the invoices against each tranche of payment stating the amount, including the GST, after which the appellant- NHC was to make the payment. The entire controversy in the present case would hinge around this provision as to whether NHC did not pay the amount in terms of the Deed of Settlement because of non-issuance of invoices by the respondent no.1 or otherwise. F G

14. In the facts of the present case, what we notice is that prior to the execution of the Deed of Settlement, NHC had already paid an amount over Rs.20 crores in terms of the initial agreement dated 09.09.2015. Then as per the Deed of Settlement also, Rs.5.46 crores had already been paid. What we also notice is that from the record it is clear, and not disputed by the respondents, that every payment that was H

- A made by NHC, was against the invoices which were issued by the respondent no.1.

15. The only reason given by the learned counsel for the respondent no.1 for not issuing the invoices with regard to the balance amount was that the liability of payment of GST would accrue immediately on issuance

- B of the invoices, even if NHC did not pay the money. We cannot accept this form of justification as for all previous payments, invoices had been issued by the respondent no.1 – SME.

16. At this stage, we would not like to give final verdict with regard the interpretation of the various clauses of the Deed of Settlement, including

- C clause 4 relating to issuance of invoices, as the same would be a matter to be considered first in the suit proceedings. However, considering the conduct of the parties, specially the fact that the invoices were issued by the respondent no. 1 before each of the payments were made by the appellant – NHC, and only fraction of the total payment remained to be paid, which also the learned Single Judge, while issuing injunction in favour of NHC directed them to deposit in court, in pursuance of which Rs.3.5 crores has already been deposited by NHC in the High Court and also considering the other attending factors and circumstances, we are of the opinion that the injunction order granted by the Trial Court in favour of the appellant cannot be faulted.

- E 17. Even otherwise, we are of the opinion that interference by the Division Bench of the High Court in appeal against the order of the learned Single Judge granting the injunction was not justified specially when the injunction order passed could not, in our opinion, be said to be perverse or unjustified in law. Several authorities were cited on behalf

- F of the learned counsel for the parties outlining the principles for granting interim injunction. In **Wander Ltd. and Anr. vs. Antox India P. Ltd.** [1990 (supp) SCC 727], it had been held:-

- G “14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess

the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. In *Printers (Mysore) Private Ltd. v. Pothan Joseph* [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

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“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton* [1942 AC 130] ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

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The appellate judgment does not seem to defer to this principle.”

18. In the case of **Shah Babulal Khimji Vs. Jayaben D. Kania and Anr.** [(1981) 4 SCC 8], a three Judge Bench of this Court had opined that Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure, 1908 applied to a Letters Patent appeal as well. In **Dorab Cawasji Warden Vs. Coomi Sorab Warden and Ors.** [(1990) 2 SCC 117] grant of mandatory injunction at the interim stage has been left to the sound judicial discretion of the Court. **Metro Marins and Anr. Vs. Bonus Watch Co. (P) Ltd. and Ors.** [(2004) 7 SCC 478] also follows the principles laid down in the case of **Dorab Cawasji Warden** (supra). But these two authorities dealt with the question of grant of interim injunction in relation to disputes arising out of transfer of immovable property. Applicability of Rules 1 and 2 of Order 39 of the Code on the question of granting interim injunction has been reconfirmed by a Coordinate Bench of this Court in **Best Seller Retail (India) Private Ltd. Vs. Aditya Birla Nuvo Ltd. and Ors.** [(2012) 6 SCC 792]. In **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.** [(1999) 7 SCC 1], the principles guiding grant of interim injunction have been summarized as:-

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- A “24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:
- (i) extent of damages being an adequate remedy;
 - (ii) protect the plaintiff’s interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefor;
 - (iii) the court while dealing with the matter ought not to ignore the factum of strength of one party’s case being stronger than the other’s;
 - (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case — the relief being kept flexible;
 - (v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties’ case;
 - (vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or *prima facie* case in support of the grant;
 - (vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.”
19. In our opinion, however, each individual case is to be decided on its own facts and in the present case, in view of the facts as narrated above, equity is in favour of NHC. It has made substantial payments and the balance, which is little more than 10% of the total amount, has already been deposited in the High Court in terms of the injunction order of the Single Judge. As regards the claim of the respondent no.2, what is noteworthy is that initially the sub-license agreement was executed between NHC and respondent no. 2 on 16.05.2018. After the dispute

arose, the termination notice was issued by the respondent no.1 on 18.06.2019. The suit had been filed by NHC on 29.08.2019 and it was only then, on 24.10.2019 that the respondent no.2 entered into a fresh agreement with respondent no.1 with regard to the same films being Sholay and Sholay 3D in the first set of appeals and 32 other films in the second set of appeals. Considering the aforesaid facts and keeping in view that the agreements between respondents no.1 and 2 were entered into during the pendency of the civil suit, of which the respondent no.2 would also be well aware of, we are of the opinion that respondent no.2 would also be governed by the injunction order granted by the Single Judge of the High Court.

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20. Since the facts of both sets of appeals are on the same lines, with slight differences of certain dates and some amounts to be paid, and there being no other material difference, both sets of appeals would be governed by this order.

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21. Accordingly, as we are of the firm view that the appellant has made out a prima facie case for grant of injunction and also that the balance of convenience is in favour of the appellant – NHC, hence we allow these appeals. The Single Judge's order was founded on sound reasoning and we find no fault in exercise of discretion by the Single Judge in granting the order of injunction. We, thus, set aside the order passed by the Division Bench of the High Court and restore the order of the learned Single Judge. The learned Single Judge, however, is requested to expedite the hearing of the suit and decide the same as expeditiously as possible, preferably within one year, in accordance with law and without being influenced by any observations made by the Single Judge while granting the injunction order or by the Division Bench of the High Court passed in appeal, as well as by this Court. The parties shall not seek any unnecessary adjournment in the High Court.

22. There shall be no order as to costs.