

# M/S Pvr Pictures Ltd. vs Studio 18 on 9 July, 2009

**Author: S.Ravindra Bhat**

**Bench: S. Ravindra Bhat**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on :08.07.2  
Judgment pronounced on : 09.07.2

+ CS (OS) 1164/2009 AND  
I.A. Nos. 8193/2009 (U/O 39 R 1 & 2) & 8194/2009

M/S PVR PICTURES LTD. . . . . Plaintiff  
Through : Mr. Harish Malhotra, Senior Advocate with  
Mr. Tanuj Khurana, Advocate.

versus

STUDIO 18 . . . . . Defendant  
Through : Mr. Rajiv Nayar, Sr. Advocate with Mr. P.S.  
Sudheer, Mr. Vyapak Desai and Mr. P.V. Dinesh, Advocates.

CORAM:  
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1.

Whether the Reporters of local papers may be allowed to see the judgment?	Yes
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2. To be referred to Reporter or not?	Yes
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3. Whether the judgment should be reported in the Digest?	Yes
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Hon'ble Mr. Justice S. Ravindra Bhat  
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1. Issue summons in the suit and notice on the application. Mr. P.V. Dinesh accepts notice and summons; learned senior counsel for the defendants, Mr. Rajiv Nayyar, submits that the interlocutory application may be heard without a reply. He also submits that the suit is not maintainable, since the plaintiff does not have any right to sue for injunction. In view of the statement, counsel argued on both maintainability of the suit, as well as merits of the application under Order 39, Rules 1 & 2, for grant of ad-interim injunction.

2. The plaintiff sues the defendant for specific performance of its obligation under a Distribution Term Sheet Agreement, dated 8th September, 2008, in respect of a movie SHORT KUT, for the "East Punjab" territory as known in the Film Trade, and further direction to the defendant to deliver the print and publicity materials for the movie, "upon receiving CS (OS) 1164/2009 Page 1 advance payment by signing a fresh license of exploitation rights agreement". Permanent injunction restraining the defendants from exhibiting or distributing, or releasing the said movie, is also sought. According to the suit averments, the parties (i.e. the plaintiff, referred to hereafter as "PVR" and the defendant, referred to hereafter as "Studio 18") entered into a term sheet agreement, on 8-9-2008 ("the TSA"). It was agreed, by the TSA, that PVR would be the exclusive licensee for distribution rights in respect of the cinematograph films, i.e. KIDNAP, GOLMAL RETURNS, DIL KABBADDI, GHAJANI and SHORTKUT, for the East Punjab territory, as known in film trade parlance. This TSA specified that in respect of each film, publicity materials were to be given by Studio 18 and, likewise, for each film, PVR had to spend specified amounts towards advertisements, etc. The date(s) of release of each film were mentioned, in Part 5; another condition (clause 3) was that 21 days before the date of release, PVR had to pay 33% of the advance amount. The plaintiff is concerned here with the release of SHORTKUT.

3. PVR avers, and its counsel contends that the TSA amounted to an exclusive distributor's license, and all the conditions necessary for effectuating it, were present. It is argued that the TSA clearly records that the right granted was a license, for a period of one year, and that it was "exclusive". PVR submits that the TSA was in fact, implemented, since the prints were released by Studio 18, in respect of the other four films. Studio 18, therefore, cannot be heard to contend that the TSA was merely a Memorandum of Understanding; it, on the contrary, contained all the necessary terms that an exclusive license should contain. Thus, PVR relies upon clauses 4 and 5 of the TSA. It also relies on the condition that the arrangement between the parties is "irrevocable"; for this purpose, reliance is placed on the following term:

"Other than the theatrical rights for exploitation and exhibition in India of the films given under this Agreement to the Distributor, all copyrights and other exploitation and ancillary rights (IP rights) belong to the producers of the films and or the Licensor exclusively, as the case may be.

The above has been irrevocably agreed and confirmed by both Parties."

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4. PVR submits that Studio 18 had entered into formal agreements, ("License of Exploitation Rights - Domestic Theatrical Agreements" referred to as "formal license") in respect of the other four films and that its terms show that they were "....exhaustive agreements which were signed between the parties i.e. the plaintiff being the distributor and the defendant being the licensor as to grant exploitation rights to the plaintiff for the movies KIDNAP and GOLMAAL RETURNS for the territory of 'East Punjab', as popularly known in the film trade and approved by IMPA/Guild/AMPTPP and their apex bodies AIFPC/FMC. That further a bare

perusal of the Licence Of Exploitation Rights- Domestic Theatrical Agreement as executed between the parties for the movies KIDNAP and GOLMAAL RETURNS will show that in terms of clause 2 i.e. the commencement and duration clause the term of the above mentioned agreements, had to commence from the date of receipt of part of the advance to the defendant licensor by the plaintiff. That in terms of clause 3, the defendant under the Agreement, granted to the plaintiff exclusive exploitation rights for the films in the territory as mentioned in the agreements and it was incumbent upon the distributor to release the film in the territory not later than the release date mentioned in the agreement itself. Under this clause, the plaintiff was granted rights to appoint a sub distributor for the territory concerned."

It is further claimed that, for the other three films, i.e. DIL KABADDI, GHAJINI and SHORT KUT, license agreements were drawn, in the following circumstances:

"9. That as to remove any ambiguity and to honour the representation so made by the defendant to the plaintiff that it also has a commercial theatrical rights in movies DIL KABADDI, GHAJINI and SHORT KUT and as a step to invest in the business relationship with the plaintiff, the parties drew a Distribution Term Sheet Agreement dated 8.9.08, acknowledging the terms arrived at previously signed Licence of Exploitation Rights- domestic Theatrical agreements which was signed and reduced in writing by both the parties containing all further mutual agreed terms and conditions to govern the future relationship between the parties."

5. PVR says that the TSA clearly shows and depicts that the licensor i.e. the defendant specifically agreed to grant exclusive rights of the films, as follows:-

"(1). KIDNAP, starring Sanjay Dutt, Imran Khan, Minisha Lamba, directed by Sanjay Gadvi, releasing on Oct 2, 2008 with 30 days grace period, (2) GOLMAAL RETURNS, starring Ajay Devgun, Kareena, Arshad Warshi, Shreyas Talpade, Ushar Kapoor and directed by Rohit Shetty, releasing on Oct 29, 08 with 30 days grace period.' CS (OS) 1164/2009 Page 3 (3) DIL KABADDI - starring Irfan Khan, Rahul Bose, Soha Ali Khan and directed by Anil Senior, releasing on Dec 5, 08 with 30 days grace period.

(4) GHAJINI starring Aamir Khan, Jiah Khan directed by A.R. Murugadoss releasing on Dec 25, 2008 with 90 days grace period, (5) SHORT KUT-starring Akshay Khanna, Arshad Warsi and Directed by Neeraj Vohra releasing on Jan 23, 2008 with 30 days grace period (It is clarified that though in the agreement that the release date for the movie Short Kut has been mentioned as Jan 23, 08 i.e. the date before the distribution terms sheet could have been signed and the actual date of release was Jan 23, 2009.) For the territory of 'East Punjab' on the terms and conditions as contained in the Distribution Term sheet agreement for releasing of the aforesaid films in the said territory."

6. According to PVR, it was liable to pay the Studio 18, a refundable advance as enumerated in the agreement and the said refundable advance for each of the above mentioned movies had to be paid by the plaintiff to the defendant in the manner and mode as prescribed in the agreement at 33% of the advance amount for each film 21 days before the release date of each film and the balance 67% of the advance amount four days before the release date of the said films. It was also specifically agreed that all the prints, UFO and other digital prints for the said movies had to be supplied to the distributor i.e. the plaintiff at the licensor's cost. Referring to the license agreements dated 23.7.08 for the movies KIDNAP and GOLMAAL RETURNS, PVR says that as distributor, it paid Studio 18, advance monies as set out in the terms. It is contended that Studio 18 thereafter supplied print and publicity material to PVR, and it successfully exploited the rights granted to it and released the movies KIDNAP and GOLMAAL RETURNS successfully. The plaintiff also alludes to similarly successfully releasing DIL KABADDI and GHAJINI pursuant to the license agreement, dated 23-11-2008 in the East Punjab territory, on their respective release dates, under the TSA.

7. It is submitted that the production of SHORTKUT and its subsequent release was delayed due to some tiff between producers and distributors in January, 2009, and the stalemate continued from February to June (2009). PVR submits that representing to Studio 18 for the release of the film (SHORTKUT) but did not hear anything, because of the ongoing stalemate; it says that since the other four movies had been released, there was an CS (OS) 1164/2009 Page 4 expectation that SHORTKUT too, would be similarly released. It is contended, in the above circumstances, that:

"It is submitted that the defendant has been avoiding to enter into Licence Of Exploitation Rights- Domestic Theatrical Agreement with the plaintiff on one pretext or the other despite the fact that the plaintiff has always been ready and is still ready and willing to perform his part of the contract and is still bound by the terms and conditions as mutually agreed under the Term sheet agreement dated 8.9.08.

27. That now the plaintiff has been made aware of the fact from close sources in the film industry the defendant is planning to release the said movie SHORT KUT through some other distributor completely jeopardizing the rights of the plaintiff which the plaintiff has acquired under exclusive and irrevocable agreement dated 8.9.08.

28. That despite the fact that the plaintiff has always been ready and willing and is still ready and willing to perform his obligation, it is the defendant who is trying to back out from his duty under the agreement by not granting the petitioner (sic) distribution rights as promised under the agreement dated 8.9.08 for the movie SHORT KUT and by doing so the defendant is trying to defeat the rights of the plaintiff under the Distribution Term Sheet Agreement."

8. It is submitted that the present suit is the only remedy available, and an injunction the most appropriate interim relief, without which the plaintiff would be irreparably prejudiced. Elaborating this, PVR's counsel submits that the license, though for a period of one year, only mentioned an advance of Rs. 90 lakhs; the kind of injury that would follow if the relief of injunction were to be

denied, is uncompensatable. Studio 18 would go ahead with the release of the movie in the concerned territory, thus denying forever PVR the chance to exploit its rights.

9. It is submitted that the TSA is a class of agreement which contains a negative covenant, i.e., exclusivity of PVR's license, which, if not acted upon and the defendant suitably injuncted, would destroy its rights to the movie itself. Learned counsel submitted that apart from the fact that damages are not an appropriate remedy, the exclusive nature of the license is conferred with a right, under Section 42 of the Specific Relief Act, 1963 (hereafter "the SR Act"). Reliance is placed upon the judgment of the Supreme Court, reported as Gujarat Bottling Co. -V- Coca Cola & others, 1995 (5) SCC 545, particularly on the following observations:

CS (OS) 1164/2009 Page 5 "42. In the matter of grant of injunction, the practice in England is that where a contract is negative in nature, or contains an express negative stipulation, breach of it may be restrained by injunction and injunction is normally granted as a matter of course, even though the remedy is equitable and thus in principle a discretionary one and a defendant cannot resist an injunction simply on the ground that observance of the contract is burdensome to him and its breach would cause little or no prejudice to the plaintiff and that breach of an express negative stipulation can be restrained even though the plaintiff cannot show that the breach will cause him any loss. [Se : Chitty on Contracts, 27th Edn., Vol. I, General Principles, paragraph 27-040 at p. 1310; Halsbury's Laws of England, 4th Edn., Vol. 24, paragraph 992.] In India Section 42 of the Specific Relief Act, 1963 prescribes that notwithstanding anything contained in clause (e) of Section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. This is subject to the proviso that the plaintiff has not failed to perform the contract so far as it is binding on him. The Court is, however, not bound to grant an injunction in every case and an injunction to enforce a negative covenant would be refused if it would indirectly compel the employee either to idleness or to serve the employer. [See' Ehrman v. Bartholomew; N. 5. Golikari at p. 389.]"

9. It is argued that the merely because the TSA mentions that the parties would execute a separate formal agreement, would not detract from the nature of that document; it confers exclusive distribution rights in respect of the five films; four of them were released, pursuant to Studio 18's obligations. As long as the parties were aware of the essential terms, which were reflected in writing, in the TSA, it had to be treated as a license, under Section 30 of the Copyright Act (hereafter "the Act"). Reliance is placed on the judgment reported as Kollipara Sriramulu -V- T. Aswathanarayana, AIR 1968 SC 1028, to the following effect:

"It is well-established that a mere reference to a future formal contract will not prevent a binding bargain between the parties. The fact that the parties refer to the preparation of an agreement by which the terms agreed upon are to be put in a more formal shape does not prevent the existence of a binding contract.."

10. Studio 18, through its counsel, argues that the materials and averments relied on by PVR do not reveal that there was any grant of license to the latter. It is argued that the TSA is a mere desire to enter into contractual relationship, and does not evidence a binding CS (OS) 1164/2009 Page 6 contract, amounting to a distributorship license, under the Copyright Act. Counsel points to the fact that even according to PVR, in respect of the other four movies, i.e. KIDNAP, DIL KABADDI, GOLMAL RETRUNS and GHAJINI, separate and elaborate license agreements were drawn and signed by the parties. This was also the understanding between the parties, in respect of SHORT KUT. According to the counsel, the stipulations in the license agreements would show that the conditions travel far beyond the contents of the TSA, which does not amount to a binding and concluded arrangement or contract, evidencing a license in law.

11. Studio 18's senior counsel submits that even though the TSA covers five movies, in respect of those which were released, separate agreements were entered into (for KIDNAP and GOLMAAL RETURNS) on 23rd July, 2008 and for the other two movies, i.e. DIL KABADDI as well as GHAJINI, on 26th November 2008. Two of these agreements showed significant departure from the TSA conditions, both relating to advance and also the territory. Besides, counsel emphasized on clauses 3.1, 5.1, 7, 10.1 and 10.4, cast in similar terms in all the said license agreements, to say that they truly reflected the intention of the parties that such documents conferred license rights, and not the TSA. It is submitted that such express terms also bear out the submission that prints are made available only after the advance amount is paid. Though the TSA for SHORT KUT showed that an advance of Rs. 90 lakh was payable, 21 days before the agreed date (23 January 2008) no amount has been paid by PVR so far. In these circumstances, even according to the averments and the understanding of the parties, as revealed from their conduct, (by entering into separate license agreements, for each movie) PVR did not hold a distribution license. In these circumstances, the mention of a formal agreement, in the TSA was a matter of substance; without its execution, there was no distributorship license, in favour of PVR; it could therefore, not claim any of the reliefs.

12. Studio 18 further contends that the e-mail relied upon by PVR, in this case, dated 3rd July, 2009, a copy of which is produced, also supports its (Studio 18's) submission that PVR was conscious that it did not own a distributorship license. It relies on the following extract of the said e-mail:

"...as soon as the strike got over we represented to you to come forward and sign a License of Exploitation Rights agreement for the aforesaid movie so that the exploitation rights could come exclusively to us in terms of the term sheet agreement but nothing was heard from you and you have been avoiding to enter a fresh license agreement on one pretext or the other. That CS (OS) 1164/2009 Page 7 on 2nd july'09 we were made aware of the fact that your company while trying to wriggle out of the term agreement and by surpassing our rights is planning to release the movie concerned through a third distributor on 10th July'09. That immediately upon knowing this fact I personally called upon you on behalf of my company referring to the term sheet agreement and asking you to send your representative at our Mumbai office to collect the cheque for advance amount so that upon the receipt of which an agreement of license for exploiting the distribution rights in the movie SHORT KUT can be signed so that you can supply us publicity material and requisite prints

enabling us to distribute and release the film in East Punjab area....."

XXXXX XXXXX XXXXX XXXXX ".....That we are still willing to deliver you this advance money in terms of the agreement upon you entering into with us a new license of exploitation agreement for the movie concerned and upon delivery of publicity material and prints to us enabling us to distribute the film in east Punjab territory as agreed under the distribution term sheet agreement dated 8th September'09."

13. Studio 18 urges that PVR cannot seek the reliefs claimed in this case, because of Section 14 of the SR Act. It is submitted that besides, there being no valid license, under Section 30 of the Copyright Act, the PVR cannot enjoin Studio 18, which is entitled to all rights in law, being the intellectual property right owner of the copyright in the film.

14. In view of the above discussion, the question which the court has to answer is whether the plaintiff is licensee of the defendant in the film SHORT KUT, and if so, entitled to ad-interim injunction. Learned counsel for the parties argued on the question of maintainability of the suit, on the specific issue whether the plaintiff has a valid distributor's license, under the Copyright Act, for the East Punjab area.

15. Before considering the merits of the rival contentions, it is necessary to extract the relevant portions of the TSA, and parts of one of the license agreement (the one for DIL KABADDI, entered into between the parties in November, 2008). They are as follows:

EXTRACTS OF TERM SHEET AGREEMENT "PART 4 RIGHTS GRANTED : 35mm/Digital Disc THEATRICAL ORIGINAL VERSION DISTRIBUTION EXHIBITION EXPLOITATION RIGHTS CS (OS) 1164/2009 Page 8 (ONLY) PART 6 TERRITORY : TERRITORY "EAST PUNJAB", AS KNOWN IN THE FILM TRADE in India."

XXXXX XXXXX XXXXX XXXXX

4. The LICENSOR has agreed to grant the exclusive Rights of the Films for the Territory of "East Punjab" as known in the film trade in India (hereinafter referred to as the "Territory") on the terms and conditions hereinafter mentioned for release of the said Films in the Territory.

5. This Agreement is for the grant of the Rights by way of 'sole' and exclusive license by LICENSOR to the Distributor under the provisions of the Copyright Act, 1957 (as amended from time to time)."

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"TERMS AND CONDITIONS

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2. The Distributor is entitled to spend a consolidated amount of Rs.25,50,000/- (Rupees Twenty Five Lacs and Fifty Thousand only) towards trade Publicity (excluding TV Hoardings etc). The Publicity amount for the abovementioned Films is classified as below:

- I. Rs. 5,00,000/- (Five Lakh Only) for Kidnap.
- II. Rs. 5,00,000/- (Five Lakh Only) for Golmaal Returns.
- III. Rs. 3,00,000/- (Three Lakh Only) for Dil Kabaddi.
- IV. Rs.7,50,000/- (Seven Lakh Fifty Thousand Only) for Ghajini.
- V. Rs. 5,00,000/- (Five Lakh Only) for Shortcut.

3. The Distributor shall pay to the Licensor a Refundable Advance as follows for all the films as follows:

- i) Kidnap-Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs)
- ii) Golmaal Returns-Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs).
- iii) Dil Kabaddi- No Advance Payment.

- iv) Ghajini-Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakhs Only)
- v) Shortcut-Rs.90,00,000/- (Rupees Ninety Lakhs)

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The Distributor shall pay 33% of the Advance Amount for each film 21 days before the said release date of each film, and the balance 67% of the Advance Amount 4 days before said release date.

XXXXXX XXXXXX XXXXXX XXXXXX

7. In continuation to the 'TERM SHEET' the following have been agreed between both the parties for Distribution Terms of each film 7.1 This term sheet will be followed by a formal Long Form Agreement.

ALL OTHER RIGHTS Other than the theatrical rights for exploitation and exhibition in India of the films given under this Agreement to the Distributor, all copyrights and other exploitation and ancillary rights (IP rights) belong to the producers of the films and or the Licensor exclusively, as the case may be.



The above has been irrevocably agreed and confirmed by both Parties.

Confirmed and agreed as above."

16. The extract of the "License of Exploitation Rights- Domestic Theatrical" dated 26.11.2008 for "Ghajini" are as follows:

"'Territory' shall mean East Punjab & Bangalore City & Suburbs (A part of the Mysore territory) as popularly known in the film trade and approved by IMPPA/GUILD/AMPTPP and their apex bodies AIFPC/FMC.

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"3. EXPLOITATION RIGHTS

3.1. Studio 18 hereby grants to the Distributor the exclusive Exploitation Rights for the Film in the Territory and the Distributor hereby accepts the same upon payment of the Consieration.

3.2. Studio 18 warrants and that it will release the Film in the Territory no later than the Release Date as mentioned above."

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"TERMINATION

7.1 Studio 18 shall be entitled to terminate this Agreement in case of happening of any of the following events by giving a written notice of 15 days.

7.1.1 If the Distributor exploits any other Intellectual Property Rights other than the Exploitation Rights in respect of the said Film;

7.1.2 In case the Distributor breaches any of its obligations, covenants, representation, warranties or undertakings set out under this Agreement in relation to the Film. Studio 18 has given the Distributor a written notice of 15 days to rectify the default and the Distributor fails to rectify such breach within such period."

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10. MISCELLANEOUS

10.1 Dispute Resolution: Any disputes or differences arising out or pertaining to this Agreement, shall first be resolved by the parties through negotiations, failing which such disputes/differences shall be subject to arbitration of three arbitrators. Such arbitration proceedings shall be conducted at Mumbai in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The award passed by the Arbitrator/s in pursuance of such arbitration proceedings shall be final and binding upon both parties hereto. The Courts at Mumbai shall have jurisdiction in this aspect.

XXXXX XXXXX XXXXX XXXXX 10.4 Agreement Final and Complete: The Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes prior negotiations, representations, or agreements either written or oral. This Agreement shall not be deemed to constitute a Partnership or Joint Venture or employment relationship between the parties."

17. Section 14 of the Copyright Act unequivocally states that copyright means the exclusive right (of course subject to provisions of the Act) to do or authorizing the doing of any of the acts mentioned in Section 14 (a) to (e) or any "substantial part thereof". For the purposes of this case, the content of copyright in respect of cinematographic films are spelt out in Section 14 (d). A joint reading of the controlling provisions of the earlier part of Section 14 with clause (d) implies that in the case of cinematographic films, copyright would CS (OS) 1164/2009 Page 11 mean the doing or authorizing the doing- in respect of work (i.e. the cinematographic films) or any substantial part thereof - (i) making a copy of the film including the photograph of any image forming part thereof; (ii) selling or giving on hire or offer for sale or hire any copy of the film regardless of whether such copy has been sold or given on hire on earlier occasions, (iii) to communicate the film to the public. The explanation states that "for the purposes of this Section, a copy which has been sold once shall be deemed to be a copy already in circulation. In Indian Performing Right Society v. Eastern Indian Motion Pictures Association & Ors 1977 (2) SCC 820, the Supreme Court evocatively described copyright in a film as a "felicitous blend, a beautiful totality, a constellation of stars ..... that ensemble which is the finished produced orchestrated performance by each of the several participants, although the components may, sometimes, in themselves be elegant entities." In the earlier part of the judgment the Supreme Court likened the various rights - to the lyrics, music, screenplay and still photographs, other design effects, etc. as a "bundle of exclusive rights." In relation to films (movies) such rights are those where the "visual portion and audible portion are synchronized."

18. The bundle of copyrights does not only relate to the content of the film - it extends to the 'doing' or 'authorizing the doing' of: -

1. making copies of the films or photographs of the images;
2. sell, or offer for sale any copy of the film, regardless of whether such copy has been sold or hired earlier;

3. give on hire, or offer for hire, any copy of the film regardless of whether such copy has been sold or given on hire earlier;
4. to communicate the film to the public.

The "bundle of exclusive rights", thus has the widest content. In films, it includes making copies -

which can extend to any medium, film prints, VCDs, DVDs, HDDs format, Video Cassettes, or any other form enabled through technologies. It includes licensing for communication of the film, a part of it or the songs, to the public. This valuable economic right is controlled and parted by the copyright owner, through licensing assignment, market segmentation fixing of release of separate rights, etc. Section 17 declares that subject to provisions of the Act, the author of a work [which includes a film, by Section 2 (y) (ii)] is the first owner of the copyright in it. Due to Section 17 (c), CS (OS) 1164/2009 Page 12 unless there is a contract to the contrary, copyright in the work of an employee - in the case of films

- vests in the employer. By reason of Section 18, a copyright owner can assign to any person the copy right, either wholly or partially and either generally or subject to limitation, either for the whole or part of copyright. Section 19 describes the mode of assignment; it reads as follows:-

"19. Mode of assignment - No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or his duly authorised agent.

(2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment.

(3) The assignment of copyright in any work shall also specify the amount of royalty payable, if any, to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

(5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

(6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

(7) Nothing in sub section (2) or sub section (3) or sub section (4) or sub section (5) or sub section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994."

Section 30, which deals with licensing of copyrights, is as follows:

"30. LICENCES BY OWNERS OF COPYRIGHT.

CS (OS) 1164/2009 Page 13 The owner of the copyright in any existing work of the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent:

Provided that in the case of a licence relating to copyright in any future work, the licence shall take effect only when the work comes into existence.

Explanation.-Where a person to whom a licence relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the licence, be entitled to the benefit of the licence.

30A. APPLICATION OF SECTIONS 19 AND 19A.

The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to a licence under section 30 as they apply in relation to assignment of copyright in a work."

19. Thus, a license - in respect of any copyright, has to be in writing. There is authority (Ref. Bry Air India (P) Ltd. -V- Western Engineering Co. 1999-(2)-Arb.LR 122 (DEL)- and Saregama India Ltd -V- Suresh Jindal AIR 2006 Cal 340) for the proposition that the document in question must clearly reflect the intention to grant the license or assign the particular copyright, as the case may be.

20. In the present case, PVR contends that the TSA itself defines the rights of the parties, and constitutes the license agreement. It argues that the reference to a formal agreement is really that, i.e. it is formal, and that all essential conditions that bind the parties and had been agreed upon are contained in the TSA. Therefore, it says that the court is competent to treat that document as a license, and injunct Studio 18 from releasing the prints of the movie SHORT KUT to someone else.

21. The TSA states by clause 4 that "The LICENSOR has agreed to grant the exclusive Rights". In the next clause, i.e. Clause 5, it says that the "Agreement is for the grant of the Rights by way of 'sole' and exclusive license by LICENSOR to the Distributor under the provisions of the Copyright Act, 1957". Facially, these and the stipulation regarding the consideration (Rs. 90 lakhs) along with the name of the movie, the specificity of the territory, and the tenure of the agreement may suggest that the document is comprehensive and amounts to a license. However, the totality of pleadings, and the documents relied upon by PVR are to be seen by the court.

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22. The following facts are undeniable:

(a) The TSA refers to five movies. Of these, concededly four were released.

(b) In respect of the said four movies, the same parties, i.e. Studio 18 and PVR e

into four separate license agreements, ( two in July, 2008, and the other two in November, 2008) which spelt out the rights and obligations of the licensor and the distributor in great detail. Each of these contained a termination clause (No. 7); an arbitration clause to resolve inter se disputes (Clause 10.1); mentioned that previous agreements and documents between the parties (such as the TSA itself) did not have any effect and that the license agreement contained the full and complete details, constituting the contract between the parties;

(c) In respect of two movies, the territories were different from what were mentioned in TSA;

(d) The consideration was different from that mentioned in the TSA, in respect of two movies (nil, in the TSA in the case of DIL KABBADDI, and Rs. 25 lakh, in the license agreement for that film; Rs. 2.5 crores for Ghajini in the TSA, and Rs. 4 crore, in the case of the license agreement);

(e) No amount has been paid by PVR till date, in respect of SHORT KUT.

23. Now, there can be no exception with PVR's argument that if a negative covenant exists in a contract, the court will not hesitate to grant injunction, if the circumstances so warrant, to prevent injury to the party likely to be affected. That is settled law, by the judgment in Gujarat Bottling. However, the question here is whether the plaintiff is a licensee or someone having an enforceable right. Every claim for equitable relief, under the SR Act has to be founded on a valid and sustainable legal right. Sans that essential condition, the suit is liable to be rejected at the threshold as not maintainable, under Order 7, Rule 11, CPC.

24. In Von Hatzfeldt-Wildenburg v. Alexander [[1921] 1 Ch. 284, cited and applied in Kollipara Sriramulu) it was stated as follows:

CS (OS) 1164/2009 Page 15 "It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognize a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored."

In Rickmers Verwaltung Gmbh, Appellant V. Indian Oil Corporation Ltd AIR 1999 SC 504, the Supreme Court stated that:

"13. In this connection the cardinal principle to remember is that it is the duty of the court to construe correspondence with a view to arrive at a conclusion whether there was any meeting of mind between the parties, which could create a binding, contract between them but the court is not empowered to create a contract for the parties by

going outside the clear language used in the correspondence, except insofar as there are some appropriate implications of law to be drawn. Unless from the correspondence, it can unequivocally and clearly emerge that the parties were *ad idem* to the terms, it cannot be said that an agreement had come into existence between them through correspondence. The court is required to review what the parties wrote and how they acted and from that material to infer whether the intention as expressed in the correspondence was to bring into existence a mutually binding contract. The intention of the parties is to be gathered only from the expressions used in the correspondence and the meaning it conveys and in case it shows that there had been meeting of mind between the parties and they had actually reached an agreement upon all material terms, then and then alone can it be said that a binding contract was capable of being spelt out from the correspondence.

14. From a careful perusal of the entire correspondence on the record, we are of the opinion that no concluded bargain had been reached between the parties as the terms of the standby letter of credit, and performance guarantee were not accepted by the respective parties. In the absence of acceptance of the standby letter of credit and performance guarantee by the parties, no enforceable agreement could be said to have come into existence. The correspondence exchanged between the parties shows that there is nothing expressly agreed between the parties and no concluded enforceable and binding agreement came into existence between them. Apart from the correspondence relied upon by the learned Single Judge of the High Court, the fax messages exchanged between the parties, referred to above, go to show that the parties were only negotiating and had not arrived at any agreement. There is a vast difference between negotiating a bargain and entering into a binding contract. After negotiation of bargain in the present case, the stage never reached when the negotiations were completed giving rise to a binding contract..."

25. It is apparent that whether a binding contract, or agreement was entered into between the parties, would depend on the facts of the individual case, having regard to the CS (OS) 1164/2009 Page 16 materials on record. Here, though PVR strongly relies on the circumstance that four movies were released, thereby implying that the parties had substantially fulfilled their mutual bargain, what cannot be lost sight of is the circumstance that in each instance, the parties had entered into separate agreements. These contained unambiguous conditions about the nature of the copyright (Clause 3.1) the advance amount (which varied from the TSA, in two cases), a clear condition that prints would be handed over only on receipt of the consideration (clause 5.1); that the document could be terminated (clause 7) and dispute resolution through arbitration. The plaintiff's counsel submitted that even for SHORT KUT, all those conditions would naturally apply. Clause 10.4 states that obligations under other documents would not be taken into consideration, and the license agreement was to be read as the complete contract. Each of the license agreements obliges PVR to pay additional consideration; they also indicate the obligations of parties; Clause 6 outlines more than 26 conditions, which PVR has to adhere. These pertain to the manner of exploitation Studio 18's copyrights in the film. These are "essential" conditions, of which there is no clue in the TSA of 8th September, 2008. There is no dispute that no amount was ever paid to the defendant, by the

plaintiff.

26. Apart from the above, PVR itself understood the importance and necessity of entering into a license agreement, as is clear from its e-mail, of 3rd July, 2009, to this effect:

"I personally called upon you on behalf of my company referring to the term sheet agreement and asking you to send your representative at our Mumbai office to collect the cheque for advance amount so that upon the receipt of which an agreement of license for exploiting the distribution rights in the movie SHORT KUT can be signed so that you can supply us publicity material and requisite prints enabling us to distribute and release the film in East Punjab area....."

XXXXXX XXXXXX XXXXXX XXXXXX ".....That we are still willing to deliver you this advance money in terms of the agreement upon you entering into with us a new license of exploitation agreement for the movie concerned and upon delivery of publicity material."

27. All the above circumstances, in the opinion of the court, clearly disclose that the parties did not contemplate that with execution of the term sheet agreement (TSA) a CS (OS) 1164/2009 Page 17 binding contract, and a license, contemplated under the Copyright Act, came into existence. The parties' conduct, in entering into separate licenses, for four movies, which exhaustively outline the rights and obligations of parties, precludes support to such a view. In the circumstance, it is held that there was no license in favour of PVR. Therefore, it cannot claim the relief of specific performance, or injunction.

28. So far as PVR's submission regarding existence of a negative covenant is concerned, the Court is of the opinion that enforcement of such condition can arise only if there is a binding contract, in the form of a license. Here, the essential conditions, including the exact quantum of the consideration, whether additional consideration was payable, even the territory for exploitation of the distributorship (which is finalized through the license agreement in respect of each film, separately) were not clearly spelt out; they were not discernable, in the TSA; that cannot be deemed conclusive on all those aspects.

29. The Court also finds merit in the submission that even if, for arguments' sake, it were to be assumed that there was a contract, the Court would be unable even then, by virtue of Section 14(1) (b) and (c) of the SP Act to grant the reliefs claimed. Section 14 (1) (b) and (d) which spell out what kinds of contracts cannot be specifically enforced, read as follows:

"(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

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(d) a contract the performance of which involves the performance of continuous duty which the court cannot supervise.

The court would necessarily have to, in this case, involve itself in the exercise of implementing the contract, particularly in relation to payments, release of prints, payment of additional consideration, the manner of calculating receipt and profit sharing, etc. For this reason, both Sections 14 (1) (b) and (d) constitute a bar on granting the kind of reliefs sought for are inadmissible, in the facts of this case.

30. In view of the above reasons, it is held that the suit cannot be entertained, by virtue of both Order 7, Rule 11 CPC, as it does not disclose any triable cause of action in CS (OS) 1164/2009 Page 18 favour of the plaintiff, who does not possess a right or claim enforceable in law. The plaint is therefore liable to be rejected.

31. As far as the interim injunction sought for is concerned, (in the event the previous part of the reasoning is not maintained) since the court has found that the plaintiff does not possess any legal right or copyright, to entertain the suit, there is no prima facie merit in the case. Equally, the plaintiff cannot complain of prejudice, because it has not expended any amount, or paid any consideration, to the defendants. In the circumstances, the plaintiff also cannot claim ad-interim injunction.

32. For the above reasons, the plaint in Suit No. 1164/2009 is hereby rejected. IA 8193/09 and IA 8194/2009 are accordingly dismissed. No costs.

Order Dasti.

July 09, 2009

S.RAVINDRA BHAT  
(JUDGE)

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