

Ivy Entertainment Private Limited vs Hr Pictures on 27 March, 2025

Author: Manmeet Pritam Singh Arora

Bench: Manmeet Pritam Singh Arora

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27.03.2025

+ CS(COMM) 264/2025 & I.A. 7656/2025 I.A. 7657/2025 I.A. 7658/2025

IVY ENTERTAINMENT PRIVATE LIMITED

.....Plaintiff

Through: Mr. Darpan Wadhwa, Sr. Adv. with
Mr. Sanampreet Singh, Adv.

versus

HR PICTURES

.....Defendant

Through: Mr. Devadatt Kamat, Sr. Adv. with
Mr. Ruchir Tolat and Mr. Utsav
Trivedi, Adv.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

I.A. 7657/2025 (under Order XXXIX Rules 1 and 2 of CPC)

1. This is an application filed by the plaintiff under XXXIX Rules 1 and 2 of the Code of the Civil Procedure, 1908 seeking interim injunction thereby restraining the defendant, its agents, representatives and assigns or any person acting through the defendant, from releasing the Tamil Film - 'Veera Deera Sooran' ('Assigned Film') on March 27, 2025. In addition, the plaintiff seeks a direction to the defendant to render accounts in respect of their contracts with the distributors for the theatrical release of the Assigned Film and its satellite rights.

2. Mr. Darpan Wadhwa, learned senior counsel for the plaintiff has drawn this Court's attention to the Film Assignment Agreement dated June 19, 2024 ('Assignment Agreement') executed between the parties for assignment of digital, theatrical and satellite rights in all copyrights pertaining to the Assigned Film.

2.1. He refers to Article 1.6.1.3 read with Article 5.C.44 and Article 5.C.46 of the Assignment Agreement to contend that the theatrical release of the Assigned Film on March 27, 2025 by the defendant is not permissible without the written approval of the plaintiff. He states that this is a material breach of the Assignment Agreement.

2.2. He refers to Article 1.9 read with Article 1.12 and Article 1.24 and Article 4 of the Assignment Agreement to contend that delivery of 'Before Release Materials' and 'Theatrical Release Material' (collectively referred to as 'materials') have to be made at least 14 days prior to the release date of the Assigned Film; he states that the said delivery is an essential condition of the Assignment Agreement. He states that this obligation of the defendant is outstanding till date and no Theatrical Release Materials have been provided to the plaintiff. He states that due to the non-provision of the materials, the plaintiff has been unable to exploit its rights provided under the Assignment Agreement.

2.3. He refers to Article 1.23 of the Assignment Agreement, which provides that March 31, 2025 will be the date of the theatrical release of the Assigned Film, which can be extended for a period of one month.

2.4. He refers to Article 13 of the Assignment Agreement to contend that there can be no waiver of any rights reserved to the plaintiff under the Assignment Agreement. He also refers to Article 18 of the Assignment Agreement to contend that the plaintiff is entitled to seek injunctive relief against the defendant and this right is recognized under the Assignment Agreement. He states that Article 2.7 of the Assignment Agreement contemplates strict compliance of the obligations under the said Agreement by the assigner i.e., the defendant herein. He states that as per the amended¹ Specific Relief Act, 1963 ('Act of 1963') compensation by damages is not a legal justification for opposing a relief of specific performance. He states that the Assignment Agreement is irrevocable as stipulated in Article 5.B.47 and, therefore, the Agreement is not determinable at the instance of the defendant. He relies upon the judgment of the Division Bench of this Court passed in Global Music Junction Pvt. Ltd. v. Shatrughan Kumar Aka Khesari Lal Yadav and Others². He also relies upon the judgment of the Supreme Court passed in Katta Sujatha Reddy and Another v. Siddamsetty Infra Projects Private Limited³.

2.5. He states that on January 22, 2025, the defendant announced on various social media platforms that the Assigned Film will be released on March 27, 2025. He states that the theatrical release of the Assigned Film is proposed in the Southern States of India i.e., Tamil Nadu, Karnataka, Kerala and Andhra Pradesh, Telangana and Pondicherry in original language - Tamil as well as overseas (except Nepal).

2.6. He states that prior to filing of the present suit on March 23, 2025, the plaintiff herein had issued a notice to the defendant vide e-mail dated March 20, 2025 requesting it to defer the theatrical release of the Assigned Film to a later date to enable the plaintiff to assign the digital rights of the Assigned Film to OTT Platforms before the theatrical release. He states that the plaintiff further addressed a follow-up e-mail on March 21, 2025 requesting deferment of the theatrical release.

2.7. He states that the present suit was filed on March 23, 2025 and an advance service was served on the defendant on March 21, 2025.

2023 SCC OnLine Del 5479 [paras 29, 38, 39, 42, 86 and 87] 2.8. He states that defendant responded on March 23, 2025 to inter-alia allege that the date of theatrical release on March 27, 2025 was determined mutually and there was an implied consent of the plaintiff. He states that the allegations made in the said e-mail by the defendant are baseless. He states that the defendant did not have any discussion or meetings with the plaintiff on or before March 22, 2025 vis-à-vis determining the date of theatrical release of the Assigned Film.

2.9. He states that the defendant also addressed an e-mail dated March 24, 2025 stating that the material for Tamil and Telugu release in North Indian Territories and Hindi content under the Assignment Agreement, is ready to be delivered. He states, however, the content and the Theatrical Release Material as a matter of fact has not been delivered till date. He states that as per Assignment Agreement the parties have to obtain the CBFC4 Certificate for the theatrical release in Hindi language and this would require reasonable time and, therefore, the offer made to provide the materials on March 24, 2025 is not in compliance of Article 1.9 read with Article 1.24 and Article 4 of the Assignment Agreement. He states that as per Article 2.15 of the Assignment Agreement, timely delivery of materials is one of the main essences of this Agreement. He states that this illusory offer was made belatedly by the defendant after the suit had been served on them on March 21, 2025. 2.10. He states that plaintiff has addressed e-mails on March 24, 2025 to the distributors informing them that the date of the theatrical release of March 27, 2025 has been fixed without seeking prior written approval of the plaintiff and requested the distributors to defer the release of the Assigned Film. 2.11. He states that Article 2.14 of the Assignment Agreement contemplates simultaneous theatrical release of the Assigned Film in Hindi language in the Central Board of Film Certification Signing Date:27.03.2025 14:15:42 territories assigned to the plaintiff. He states though the plaintiff can opt to have the theatrical release on a subsequent date; however, the defendant must comply with the strict obligation of delivery of materials to the plaintiff 14 days prior to the release date of the Assigned Film. He states that thus the defendant ought to have provided the materials at least 14 days prior to the theatrical release of the Assigned Film on March 27, 2025 in the Southern States.

2.12. He states that the CBFC certification for the Assigned Film in Tamil language has been received by the defendant only on March 22, 2025 after the advance service of the suit. He states that defendant is obliged to provide the materials, which includes the CBFC Certificate, at least 14 days prior as contemplated in Article 1.9, Article 1.12 and Article 1.24. He states that thus the plaintiff has not had sufficient opportunity of minimum 14 days as per the Assignment Agreement to take steps to exploit the theatrical release in the territories falling to its share as well as to negotiate with the OTT platforms. 2.13. He states that the date of March 27, 2025 was tentative as is evident from the defendant's email dated February 04, 2025. He states that however since the defendant failed to provide the materials to the plaintiff within the timelines agreed under Article 1.9, the plaintiff was left with no option but to call upon the defendant to defer the release of the Assigned Film vide email dated March 02, 2025.

2.14. He states that the date of March 27, 2025 announced on January 22, 2025 was tentative as is evident from the email dated February 04, 2025. He states that as per common practice, the date of release is announced to promote the film and receive offers from the distributors. He states that

these dates are often not sacrosanct and can be changed depending on the status of Assignment of rights. He states that the contention of the defendants that in the email dated February 4, 2025, defendant had offered to provide the materials as per Article 1.9 is misleading. He states that admittedly CBFC Certificate has been received belatedly on March 22, 2025 and, therefore, the materials could not have been offered on February 04, 2025. 2.15. He states that the plaintiff has admittedly paid an amount of Rs. 44 crores to the defendant for production of the Assigned Film and the rights assigned under the Assignment Agreement are in the lieu of the said amount. He states that the defendant acknowledges that this constitutes 40% of their production cost.

2.16. He states that it is imperative that the plaintiff negotiates the assignment of digital rights with the OTT platforms before the movie is theatrically released so as to secure the best bargain. He states that if the digital rights are not negotiated at this stage and the Assigned Film fails at the Box Office on its theatrical release, the capacity of the plaintiff to negotiate the deal would be severely diminished.

2.17. He states that in the aforementioned facts the balance of convenience is in favour of the plaintiff and irreparable loss and injury will be caused to the plaintiff, if the defendant is not enjoined from releasing the Assigned Film on March 27, 2025.

2.18. He states that the defendant has already recovered substantial amounts by selling its theatrical rights to the distributor and it will be the plaintiff who will suffer losses if the Assigned Film is permitted to be released. 2.19. He has also placed before this Court the three (3) alternate offers made to the defendant to amicably resolve the matter earlier today i.e., March 26, 2025. He states however defendant has failed to accept any of these offers. 2.20. He states on instructions from the defendant that plaintiff is willing to deposit the balance amount of Rs. 7 crores with this Court within 24 hours and prays that the theatrical release date be deferred by four (4) weeks as contemplated in Article 1.23 of the Assignment Agreement so as to enable the plaintiff to inter-alia negotiate the assignment of digital rights and prepare for theatrical release of the Assigned Film in the territories falling to the exclusive share of plaintiff as per Annexure B to the Assignment Agreement.

3. In reply, Mr. Devadatt Kamat, learned senior counsel appearing for the defendant states that plaintiff has not approached this Court with clean hands and has suppressed two material facts namely, email dated February 4, 2025 and the fact that not one written request was sent by the plaintiff to the defendant asking for the theatrical release materials. 3.1. He states that the plaintiff has failed to disclose to this Court that the plaintiff has been unable to negotiate an agreement with OTT platforms for the digital rights and has thus been unable to monetize the assignment in its favour. He states that this becomes amply clear from the contents of the emails dated February 04, 2025 and March 20, 2025. He states that there is no clause in the Assignment Agreement, which states that the OTT rights have to be monetized by the plaintiff before the theatrical release by the defendant. He states that it is clear in the facts of this case that the plaintiff is unable to put a business plan in place.

3.2. He states that the defendant has exclusive rights of theatrical release of the Assigned Film in South India and therefore, the plaintiff cannot seek an injunction to stop the release. He states that the plaintiff has been aware of the release date of March 27, 2025 since January 2025 and he relies upon paragraph 9 of the plaint and the document annexed with the plaint to buttress this point. He states that the lead actor of the film has also announced the release date of the Assigned Film on his social media handle in the post-dated January 22, 2025.

3.3. He states that the Assigned Film was ready for release in January, 2025 and initially the defendant intended to release the Film in January, 2025 at the festival of Pongal; however, it was deferred to March 27, 2025 at the request of the plaintiff. He fairly admits that the CBFC certification for release of the Assigned Film in the original language - Tamil has been received only on March 22, 2025.

3.4. He states that the release date of the Assigned Film has been notified by the theatres and tickets have already been booked by cinema goers for March 27, 2025. He states that the plaintiff by approaching this Court at the eleventh hour has disentitled itself from grant of any interim relief. He states that approximately 15,000 tickets for the Assigned Film have already been sold. He states that the plaintiff is not the sole distributor of the Assigned Film. He states that there are several other distributors and they will suffer losses if the date of release is postponed. He relies upon the judgment of the Coordinate Bench of this Court in Warner Bros. Entertainment Inc. and Another v. Harinder Kohli and Others⁵ and Reliance Big Entertainment Pvt. Ltd. v. Percept Limited and Another⁶.

3.5. He states that the defendant has been assured minimum guaranteed amounts by its distributors. He states that the details of the distributors are given in the written submissions. He states that the minimum guaranteed amount will be specified in a separate note to be submitted before 07:30 PM. 3.6. He states that reliance placed by the plaintiff on Article 1.6.1.3 of the Assigned Agreement is inapplicable as the said Clause would have been applicable only if there was premature release by the defendant. He states that the outer release date for March 31, 2025 is contemplated in the Assignment ILR (2009) I DELHI 722 [para 34] Agreement at Article 1.23. He states that, therefore, the slated release on March 27, 2025 is in conformity with the Assignment Agreement. He states that thus the plaintiff has failed to make out a prima facie case. 3.7. He fairly admits that the plaintiff has paid Rs. 44 crores to the defendant as per the Assignment Agreement. He states that, however, the plaintiff has till date failed to pay a balance amount of Rs. 7 crores. He states that thus plaintiff is not entitled to materials prior to payment of the entire consideration as per Article 3 of the Assignment Agreement.

3.8. He states that the plaintiff in the present suit has quantified its damages to the tune of Rs. 5 crores and, therefore, in case it is finally determined that the defendant was in breach the said losses can be recouped by the plaintiff. He states that if the Court finds that defendant is in breach, it can direct the refund of Rs. 44 crores along with interest at the final stage.

4. This Court has considered the submission of the parties and perused the record.

5. In the facts of the present case, there is no dispute between the parties that the defendant, who has produced the Assigned Film-Veera Deera Sooran, has assigned sole and exclusive rights with respect to the said film in Hindi and North Indian languages favour of the plaintiff ('Assigned Languages') in perpetuity including theatrical rights in the Assigned languages and non-linear rights, digital and online rights, etc., in all languages. The North Indian languages have been defined in Article 1.28 of the Assignment. The assigned rights for assigned languages and all languages have been set out at Annexure B and Annexure C of the Assignment Agreement.

6. The defendant has retained to itself the theatrical rights and linear rights of the Assigned Film in other languages for release in India in the States of Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, Telangana and Pondicherry as well as overseas (except for Nepal).

7. These exclusive rights have been assigned in favour of the plaintiff for a consideration amount of Rs. 51 crores which was agreed to be paid in five (5) tranches as per Article 3 of the Assignment Agreement. It is admitted between the parties that the plaintiff has duly paid a substantial amount of Rs. 44 crores to the defendant as per the terms of the Assignment Agreement at relevant stages when the film was under production. It is admitted that only the last tranche of Rs. 7 crores remain outstanding. The release of the last tranche is conditional upon due compliance of the obligations of the defendant set out in Article 3.1(e) of the Assignment Agreement which reads as under:

"3.1(e) 5% of the consideration upon general theatrical release of the said film, subject to Assignor handing over to all the Materials as detailed in Article 1.13 and 1.24 as per the technical specifications in the Annexure D and Theatrical Publicity Materials in accordance with Article 4 of this Agreement and subject to completion of the technical clearance within 7 days of receipt of all the Materials and receipt of no claims on release of public notice or settlement of the claims received; Timely delivery of theatrical material is one of the main essence of this agreement."

(Emphasis supplied)

8. The Before Release Materials as per Article 1.12 and Theatrical Release Materials as per Article 1.24 of the Assignment Agreement are required to be delivered by the defendant to the plaintiff at least 14 days prior to the release date of the Assigned Film. This is specifically stipulated in Article 1.9 of the Assignment Agreement. Pertinently, 1.24.d requires that the defendant will provide the CBFC Certificate as a part of the Theatrical Release Materials. The said Article 1.24 and Article 1.9 reads as under: -

"1.24. Theatrical Release Materials [for dubbing and Hindi theatrical release purposes]. Materials Required for Theatrical Release (all material will be given in original language for the purpose of dubbing in Hindi and North Indian languages only): -

Signing Date:27.03.2025 14:15:42 a. DPX in 2K and 4K Format b. HD.Mov Apple Pro. Res 4444 having a resolution of 1920 x 1080 c. Open files of publicity designs.

Posters (in DVD) (PSD Format) d. Copy of original language censor certificate with edit point given by CBFC to Assigned Film, promos and trailers e. Movie IT and Songs IT f. Original Language 5.1 & Stereo Mix g. Movie Trailer h. Movie SRT i. Producer CBFC ID j. Making Video, Promotional Videos, Teasers, Trailers, Songs of the Film with Original Censor Certificate. k. And such other materials and documents, letters, etc. as required by the Assignor Article 1.9:

1.9. "Delivery Dates" means such date on which the Before Release Materials and Publicity Material are delivered by the Assignor to the Assignee which shall in no event be later than 14 (Fourteen) Working Days from the Execution Date and Theatrical Release Materials are delivered by the Assignor to the Assignee which shall in no event be later than 14 (Fourteen) Working Days prior to Release Date of Assigned Film and After Release Materials are delivered by the Assignor to the Assignee which shall in no event be late than 1 (One) day from the Release Date, at the Assignor's own costs and expenses;"

(Emphasis supplied)

9. In the facts of the present case, it is admitted that the defendant obtained the CBFC certificate for the original language - Tamil only on March 22, 2025 (i.e., after the service of the advance copy of this plaint). It is also admitted that defendant has till date not provided the Theatrical Release Materials stipulated in Article 1.24 as well as the Before Release Materials stipulated in Article 1.12 to the plaintiff till date; even after the advance service of the paper-book.

10. The Assignment Agreement acknowledges that Theatrical Release Materials stipulated in Article 1.24 are required by the plaintiff for dubbing and Hindi theatrical release of the Assigned Film. So also, the Agreement stipulates that the Before Release Materials stipulated in Article 1.12 are required for enabling the release of the Assigned Film in the Tamil language for the North Indian States at the same time as the Hindi dubbed version of the film as stipulated in Article 2.15 of the Assigned Agreement.

11. Article 2.15 and Article 4.1 of the Assignment Agreement stipulates that timely delivery of the pre-release materials and theatrical release materials is the essence of the Agreement and the delivery dates as noted above are specified in Article 1.9 of the Assignment Agreement. The said Articles 2.15 and 4.1 reads as under: -

"2.15. In addition to the above, the Assignor hereby agree and accept that the Theatrical Rights for the North Indian states (ie excluding Tamil Nadu, Kerela, Karnataka, Andra Pradesh & Telangana and Pondicherry) shall also include Tamil language version of the Film and the Assignor shall provide the necessary materials and KDM to the Assignee to enable the release of the Film in the Tamil language for the North Indian states at the same time as the Hindi dubbed version of the Film's release date. Timely delivery of pre-release and theatrical release materials is one of the main essences of this agreement.

...

4.1. On the Delivery Date (s), the Assignor shall deliver to the Assignee all before and after the Materials and Theatrical release materials and Publicity Materials as per the technical specifications detailed in the Agreement, in respect of the Assigned Rights required by the Assignee for exercising and exploiting the Assigned Rights under this Agreement. For avoidance of doubt, it is agreed and accepted by the Assignor that materials required for North Indian languages Dubbing will be given as specified in Schedule D and for Hindi language theatrical and satellite release, assignor Will Dubb the film in Hindi and censor in Assignor's name on required format for assignee to exploit on time for said territory. Timely delivery of theatrical materials and other satellite /digital release materials is one of the main essences of this agreement."

(Emphasis supplied)

12. The non-compliance of Article 1.12, Article 1.24, Article 1.9, Article 2.15 and Article 4.1 of the Assignment Agreement by the defendant is admitted and is a matter of record. These clauses of the Assignment Agreement acknowledge that furnishing the plaintiff with the requisite materials by the defendant is a sine-qua-non for enabling the plaintiff to exercise and exploit its rights under the said agreement. Further, to effectively discharge this obligation, the timely delivery of these materials by the defendant to the plaintiff has been made the essence of the Agreement.

13. Learned senior counsel for the defendant has contended that the plaintiff was aware that the theatrical release of the Assigned Film in original language Tamil is slated for release on March 27, 2025 and, therefore, it is the plaintiff, who ought to have called upon the defendant to deliver the Before Release Materials and Theatrical Release Materials. He relies upon the email dated March 24, 2025 to contend that the defendant offered to deliver the Theatrical Release Materials on the said date.

14. In the considered opinion of this Court the aforesaid submission of the defendant is untenable, as the obligation to deliver the Before Release Materials and the Theatrical Release Materials at least 14 days prior to theatrical release of the Assigned Film under the Assignment Agreement is absolute and falls upon the defendant; and the said obligation is not conditional upon the plaintiff making a request to the defendant. This is expressly clear from the language of Article 1.9, Article 3.1(e), Article 2.15 and Article 4.1 of the Assignment Agreement. The e-mail dated March 24, 2025 cannot constitute as defendant's compliance and discharge of this obligation.

15. Additionally, in the facts of the present case it is evident that the defendant was not in a position to deliver the Theatrical Release Materials prior to March 22, 2025 as the CBFC certification which is a mandatory statutory requirement under Cinematography Act, 1952 and it was only obtained by the defendant on March 22, 2025. Moreover, as a matter of fact the defendant has also not supplied any other Theatrical Release Materials enlisted in Article 1.24 of the Assignment Agreement or the pre-release materials stipulated in Article 1.12 of the Assignment Agreement. In these facts, the

defendant's refusal to defer the release date of March 27, 2025 is a flagrant breach of its obligations under the Assignment Agreement.

16. The defendant has contended in its e-mail dated March 23, 2025 that the release date of the March 27, 2025 had the implied consent of the plaintiff as, the plaintiff had been aware of the release date since January 22, 2025; when the announcement was made on social media platforms by the defendant. Learned senior counsel for the defendant has also contended that in any event in view of Article 1.23 of the Assignment Agreement, the outer date for the theatrical release date of the film in its original language has been agreed as March 31, 2025 and thus the existing release date i.e., March 27, 2025 is in conformity with Article 1.23. He contended that Article 1.6.1.3 of the Assigned Agreement would be attracted only if parties were proposing a release date prior to March 31, 2025.

17. For considering this submission it would be relevant to refer to Article 1.23 and Article 1.6.1.3 of the Assigned Agreement, which reads as under: -

"1.23. "Theatrical Release Date" means 31st March 2025, being the date of the theatrical release of the Film in its original language (Tamil) in the states of Tamil Nadu, with a grace period of one month.

1.6.1.3. Announce, promote, fix and/or finalize the Theatrical Release Date of the Film without obtaining prior written approval from the Assignee."

(Emphasis supplied)

18. Article 1.23 of the Assignment Agreement contemplates a grace period wherein the release date can be extended up to April 30, 2025. In this backdrop, the Article 1.6.1.3 of the Assignment Agreement assumes significance. It is a matter of record that the plaintiff has not given its written consent to the release date of March 27, 2025. The defendant has also admitted that it neither sought the written consent of the plaintiff nor informed the plaintiff in writing about the proposed release date of March 27, 2025. Even the email dated February 04, 2025 relies upon by the defendant refers to the release date in March 2025 as tentative. Therefore, there is no material on record for this Court to conclude that there was any implied consent of the plaintiff for the proposed release date of March 27, 2025.

19. In the facts of this case where the defendant has admittedly failed to perform its material obligation of delivering Before Release Materials as per Article 1.12 and Theatrical Release Materials as per Article 1.24 of the Assignment Agreement despite having received a substantial amount of Rs. 44 crores from the plaintiff for producing the Assigned Film, in the considered opinion of this Court it was a fit case for the defendant to have consented to extension of the release date as per the grace period provided under Article 1.23 of the Assignment Agreement to enable the plaintiff to exploit its assigned rights in its exclusive territories for theatrical release of the Assigned Film as well as for sale of inter-alia its digital rights. The simultaneous release of the Assigned Film all over India by the plaintiff and the defendant is contemplated by the parties in Article 2.14 of the Assignment

Agreement. The defendant by withholding the materials i.e., Theatrical Release Materials and Before Release Materials have effectively denied the plaintiff the option to exercise the said right to release the movie in its assigned territory on the same day under the agreement. Article 2.14 reads as under:

"2.14. Hindi & NI Dubbed Theatrical Rights: The Assignee shall have the right to Theatrically Release the Film in the Hindi & North Indian Languages in the Assigned Territories (excluding Tamil Nadu, Kerela, Karnataka, Andra Pradesh & Telangana and Pondicherry) on the same day when the Assigned Film gets theatrically exhibited/released in its original language (i.e., Tamil) in India or such other day it may elect. The Assignor specifically undertakes to deliver all the theatrical materials (as detailed in Article 1.24), permission/consent letters, documents/no-objection certificates, teasers, trailers, songs and promotional/publicity materials etc. within the delivery timelines (as detailed in Article 1.12 & 1.13) to enable the Assignee to dub, censor and theatrically release the Film in the Hindi and North Indian languages in the Assigned Territories on the same day of the original language theatrical release in India."

(Emphasis supplied)

20. The amount of Rs. 44 crores paid by the plaintiff to the defendant admittedly constitutes close to 40% of the total cost incurred by the defendant in production of the Assigned Film, which is a substantial portion of the costs.

21. At the hearing held on March 26, 2025 an opportunity was granted to the parties to arrive at an out of Court settlement. The parties attempted a settlement which could not fructify. The plaintiff made a statement during the hearing that it is willing to deposit the outstanding sum of Rs. 7 crores as per Article 3.1(e) of the Assignment Agreement with the defendant within 24 hours and requested the defendant to defer the release date by four (4) weeks to enable the plaintiff to monetize its assigned rights within the four (4) weeks. It is stated by the plaintiff that this would also be in conformity with Article 1.23 of the Assignment Agreement which contemplates grace period until April 30, 2025. In response, defendant state that it was willing to accept the said offer with a modification that the release date be deferred by two (2) weeks and not by four (4) weeks.

22. In the considered opinion of this Court, the offer made by the plaintiff for seeking deferment of the release date by four (4) weeks in the facts of this case is reasonable and justified. As noted above the defendant was not in legal position to furnish Theatrical Release Materials till March 22, 2025 and as a matter of fact the defendant also not delivered the Before Release Materials Signing Date:27.03.2025 14:15:42 and Theatrical Release Materials to the plaintiff till date as required under Article 2.15 and Article 4.1 of the Assignment Agreement. Therefore, the unilateral act of defendants in proceeding with theatrical release of the Assigned Film on March 27, 2025 without discharging its obligations towards the plaintiff amounts to breach of the terms of the Assignment Agreement.

23. The defendant has alleged that since the plaintiff failed to pay the remaining sum of Rs. 7 crores as per the Assignment Agreement, it has no cause of action to claim specific performance. However, as noted above, the last tranche was payable by the plaintiff as per Article 3.1 (e) of the Assignment Agreement and the said conditions have admittedly, not been fulfilled by the defendant till date. Moreover, the plaintiff has, at the outset, offered to pay the balance amount of Rs. 7 crores to the defendant within 24 hours, which offer has been refused by the defendant. This Court, therefore, finds no merit in the submission of the defendant that the plaintiff has no cause of action.

24. At this juncture it would be apposite to refer to the Judgement of the Supreme Court in Dalpat Kumar v. Prahlad Singh⁷ wherein the Supreme Court summarized the law relating to grant of ad-interim injunctions during the pendency of the Suit, the Supreme Court recognized the fact that wherein the inter-reference of the Court is necessary to protect the interest of the party and irreparable injury or damage would ensue before the legal right could be established at trial Court must consider granting ad-interim injunction.

25. Considering the facts of the present case the defendant is acting in the breach of the Assignment Agreement, this Court is satisfied that the plaintiff has made out a prima facie case for grant of ad-interim injunction against the defendant, its agents, representatives and assigns or any person acting through AIR 1993 SC 276 Signing Date:27.03.2025 14:15:42 the defendant from releasing the Assigned Film on March 27, 2025 for a period of four (4) weeks and no further. This is subject to the plaintiff depositing a sum of Rs. 7 crores with the defendant within 24 hours. Upon receipt of the Rs. 7 crores, the defendant shall immediately provide the Before Release Materials and Theatrical Release Materials to the plaintiff within 48 hours as stipulated in Article 4 of the Assignment Agreement. The reliance placed by plaintiff on the judgment of Global Music Junction Pvt. Ltd. (supra) to contend that specific performance must follow unless the relief is found to be barred under the limited grounds of the amended Section 14 of the Act of 1963 is apposite. In the facts of this case, the relief sought by the plaintiff is not barred by any of the grounds enumerated in Section 14 of the Act of 1963 and none have been pleaded by the defendant.

26. The balance of convenience is also in favour of the plaintiff as the damages which the plaintiff will suffer on its investment of Rs. 44 crores cannot be quantified with precision. The submission of the plaintiff that monetization of the digital rights has to be done preferably prior to the theatrical release holds merit. Undoubtedly, if the film unfortunately fails at the Box Office, post facto negotiation for digital rights may fetch a lower price. On the other hand, since, the injunction is only being granted for a limited period of four (4) weeks the interests of the defendant have also been balanced. It is directed that the plaintiff must conclude all its negotiations within this extended time of four (4) weeks and no further extension will be merited. The extension by four (4) weeks is also otherwise within the scope of Article 1.23 of the Assignment Agreement. The defendant will be entitled to release the Assigned Film after four (4) weeks.

27. During the course of arguments, the defendant while admitting that it has received Rs. 44 crores from the plaintiff for producing the Assigned Film declined the offer of the plaintiff to return the said amount or secure the said amount during the trial. The defendant is likely to earn substantial amounts by exploitation of its own rights by releasing the film in its assigned territories. So also, the

plaintiff will presumably be able to earn its returns by selling its assigned rights in its territories within the extended time. This will also avoid a prolonged determination of the alleged damages which the plaintiff may suffer if the release date is not postponed. The plaintiff has stated that it would be satisfied with a four (4) week extension to complete monetization of its rights. The extension will put a quietus to any alleged claim of loss and damages by the plaintiff and protect the interests of the defendant as well. This Court is thus satisfied that the plaintiff will suffer irreparable injury if the release date is not deferred by four (4) weeks. Moreover, the reliance placed by the plaintiff on the judgment of the Division Bench in Global Music Junction Pvt. Ltd. (supra) is apposite wherein the Court in the similar facts held that in such transaction damages are not an adequate remedy as it is difficult to ascertain the extent of loss which the plaintiff may suffer. Similarly, the judgment of Supreme Court in Katta Sujatha Reddy and Another (supra) with respect to the plea of damages being unavailable an alternative to specific performance, relied upon by the plaintiff is relevant. In the Assignment Agreement parties have consciously agreed at Article 18 that the aggrieved party will be entitled to seek injunctive relief. Article 18 reads as under:

"ARTICLE 18: INJUNCTIVE RELIEF:

Both Parties agrees and acknowledges that damages alone would not be an adequate remedy for any breach by the Other of any of the provisions of this Agreement, and the Assignee shall be entitled, without proof of special damages, to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the Party in breach of any of the provisions of this Agreement."

(Emphasis supplied)

28. The contention of the defendant that the plaintiff has approached this Court at the eleventh hour and, therefore, is disentitled from grant of relief on the basis of the judgment of Warner Bros. Entertainment Inc. (supra) is not attracted to the facts of this case. In the said case the parties to the suit were strangers and there was no issue pertaining to breach of contract. The said case pertained to issue of trademark infringement and in those facts the Court after returning a finding that prima facie there was no infringement held that the balance of convenience was in favour of the defendant as the plaintiff therein had approached the Court on the close release of the film in question. Similarly, the judgment of Reliance Big Entertainment Pvt. Ltd. (supra) is also not applicable to the facts of this case since in the said case the plaintiff itself was seeking to rescind the agreement on the plea of fraud and misrepresentation. The Court observed that the plaintiff had not sought specific performance of the Assignment Agreement and in these facts the Court held that since the plaintiff was itself seeking to rescind the contract it would not seek to injunct the release of the film.

29. In this case, the defendant was served with the advance paper book on March 21, 2025. The matter was first listed for hearing on March 25, 2025 however none appeared for the defendant on the said date of hearing. In fact, the Court directed the plaintiff to re-serve the defendant so as to hear the version of the defendant before passing any order and accordingly the matter was listed for March 26, 2025. The defendant finally appeared on March 26, 2025. Thus, both parties have literally taken the matter down to the wire, as they say. Moreover, since in the opinion of this Court,

the plaintiff has made out a prima facie case in its favour and the defendant is in breach of the agreement, this Court finds that the issue of eleventh hour cannot be the sole basis for denying the injunction.

30. In addition to ensure that the period of four (4) weeks is utilized productively by the parties so as to ensure due compliance of Article 4 of the Assignment Agreement, this Court deems it appropriate to appoint Mr. Aditya Gupta, Advocate (M. No. 9958158982) (Enrollment No. D/2700/2010) as a Court Commissioner to supervise the due compliance of delivery of articles as per Article 4 by the defendant, to obviate any objection by the plaintiff with respect to its non-compliance. The Court Commissioner will be paid fees of Rs. 2.5 lakhs by the plaintiff. The Court Commissioner will endeavor to complete the commission at the earliest and not later than one (1) week.

31. No arguments have been addressed with respect to release of rendition of accounts from the defendant with respect to its contracts with its distributors. In any event the said issue would have arisen only if the release date was not deferred and the plaintiff's claim for loss would have to be adjudicated, however, since the release date is hereby extended, therefore, the said issue does not survive for consideration.

32. The defendant has contended that the plaintiff has suppressed the e-mail dated February 04, 2025. The said e-mail has been placed on record by the defendant. In the considered opinion of this Court, the said e-mail is relevant and ought to have been placed on record by the plaintiff. However, since no ex-parte order has been passed in this matter against the defendant without considering the said document, this Court is not inclined to reject the application on this ground. The plaintiff and its representatives, who has signed this plaint are cautioned to be careful in future with respect to full disclosure. However, costs of Rs. 25,000 are hereby imposed on the plaintiff for non-filing of this document. The costs will be paid to Delhi High Court Legal Services Committee (DHCLSC) within one (1) week and proof of deposit will be placed on record before the next date of hearing.

33. The application is accordingly allowed in the aforesaid terms; an injunction is hereby granted against the defendant, its agents, representatives and assigns or any person acting through the defendant from releasing the Assigned Film on March 27, 2025 for a period of four (4) weeks. The plaintiff is directed to deposit Rs. 7 crores through RTGS with the defendant in 24 hours. In case, the plaintiff defaults in making this deposit, the injunction shall stand vacated forthwith without any reference to this Court.

34. With the aforesaid directions, the application stands disposed of.

35. This is an application filed by the plaintiff under Section 12 A of the Commercial Courts Act, 2015 seeking exemption from pre-institution mediation in light of the urgent interim relief sought in I.A. 7657/2025.

36. In view of the orders passed today in I.A. 7567/2025 in favour of the plaintiff, this Court is satisfied that the plaintiff has made out a sufficient case for seeking this exemption.

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37. This suit has been filed seeking the relief of specific performance of the terms of the Assignment Agreement dated June 19, 2024 executed between the parties; for grant of Damages and rendition of accounts.

38. The plaint be registered as a suit. Mr. Ruchir Tolat, Advocate accepts summons on behalf of the defendant and waives formal service of Summons and suit paper-book.

39. Written statement must be filed within thirty (30) days from today. The defendant shall also file affidavits of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

40. The plaintiff is at liberty to file replication thereto within thirty days after filing of the written statement. The replication shall be accompanied by affidavits of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.

41. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

42. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

43. List before the learned Joint Registrar (J) for completion of pleadings marking of exhibits on 25.04.2025.

44. List before the Court on 18.08.2025 for framing of issues.

45. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA (JUDGE) MARCH 27, 2025/mr/hp/MG/AKT Click here to check corrigendum, if any