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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION (L) NO.24289 OF 2025

IN

COMMERCIAL SUIT (L) NO.24272 OF 2025

Avanika Films LLP .. Applicant

In the matter between :-

Avanika Films LLP .. Plaintiff

Versus

Abhay Verma .. Defendant

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Dr.Birendra Saraf, Senior Counsel and Advocate General with Mr.Rashmin Khandekar (through VC) and Mr.Anand Mohan i/b Mr.Vikramaditya Vijay Chavan for the Applicant/Plaintiff.

Mr.Rohan Caama with Mr.Sunil Zalmi i/b De Zalmi & Associates for the Respondent/Defendant.

**CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 04th SEPTEMBER, 2025
PRONOUNCED ON : 15th SEPTEMBER, 2025**

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FINAL ORDER

Heard Dr.Birendra Saraf, learned Senior Counsel and Advocate General along with Mr.Rashmin Khandekar and Mr.Anand Mohan i/b Mr.Vikramaditya Vijay Chavan for the Applicant/Plaintiff and learned counsel Mr.Rohan Caama along with Mr.Sunil Zalmi i/b De Zalmi & Associates for the Respondent/Defendant.



2. Instant Interim Application, filed by the plaintiff, seeks enforcement of a negative covenant contained in the Artist Agreement dated 15/06/2025 for restraining the Defendant from engaging himself in any services similar to the services under the Agreement in relation to any other feature film, programme, play, television series, film etc. for any other person during the shooting schedule mentioned in the Agreement for the period from 05/09/2025 to 20/11/2025.

3. The Interim Application for injunction is moved in the Commercial Suit filed by the Plaintiff, seeking permanent injunction with respect to the negative covenant contained in Clause 2.2.2 of the Agreement dated 15/06/2025 alongwith a declaration of termination of the Agreement being null and void, unlawful, *non est* and bad in law. The Plaintiff has also prayed for damages/compensation in a sum of INR Rs.12,00,00,000/- (Indian Rupees Twelve Crores only) with interest at the rate of 18% against the Defendant.

FACTUAL BACKGROUND

4. The factual setup in which the controversy arose is succinctly stated below:

The Plaintiff, a producer of the film had entered into an Artist Agreement with the Defendant on 15/06/2025. This

Agreement mentions elaborate terms and conditions, including specific covenants about 'shooting schedule', which is subject matter of controversy in the instant suit. It is the plaintiff's case that after detailed deliberations and negotiations about the project and about the schedule of dates, the parties have entered into the Agreement specifically mentioning therein that the Defendant shall perform lead role in the cinematographic film named '*Prem Keetanu*', to be produced by the Plaintiff. In accordance with the terms of the Agreement, the shooting was scheduled for the period from 05/09/2025 to 20/11/2025. It is averred that in the month of July itself the defendant conveyed his inability to abide by the shooting schedule on account of overlapping of dates with his earlier assignments. It is averred that instead of abiding by the commitments as incorporated in the specific covenants, the Defendant has terminated the Agreement by his communication dated 12/07/2025. The Plaintiff has, therefore, lodged the instant suit on 03/08/2025 seeking permanent injunction to enforce the negative covenant contained in the said Agreement. By way of an amendment to the plaint, which was allowed on 14/08/2025, the Plaintiff incorporated prayer clause (aa) and thereby sought a declaration that termination of Agreement be held to be illegal.

In this backdrop, the Plaintiff has prayed for interim injunction in the nature of enforcement of negative covenant to restrain the Defendant from engaging himself in services similar to the services in the Agreement.

5. In response to the Interim Application seeking temporary injunction, the defendant has filed his reply affidavit dated 25-08-2025 and in further response thereto the plaintiff has filed its affidavit in rejoinder dated 26-08-2025. As such, on the basis of their respective affidavits in support of the application and the reply, both the parties have advanced submissions on the Interim Application seeking injunction. Pertinently, although the matter was listed under the caption of ad-interim, extensive submissions are advanced by both the parties after the reply and the rejoinder affidavits are filed and even both the parties have filed their notes of submissions as such the case is considered at the stage of Interim Injunction.

GIST OF SUBMISSIONS :

6. Dr. Saraf, learned Senior Counsel for the Plaintiff submitted that the Defendant had voluntarily entered into the Artist Agreement and the terms of the Agreement were incorporated based on prior negotiations with the Defendant. The Agreement was preceded by exchange of several emails from the month of

March 2025 and in view of the convenience of the Defendant, the shooting schedule was finalized. He vehemently submitted as follows:-

(i) The defendant was bound by the terms of the agreement which were sacrosanct and the unilateral breach of agreement by the defendant is illegal.

(ii) The negative covenant in the agreement is enforceable u/s 42 of Specific Relief Act.

(iii) In view of the nature of the project and involvement of number of agencies in the shooting of the film, the Plaintiff has incurred huge expenditure for completing the shooting within the scheduled dates. As such, in view of the peculiar nature of the project, the Defendant, who was to play the lead role in the film, was bound by the shooting schedule, making himself exclusively available for services to be rendered for the Plaintiff.

(iv) The Artist Agreement contained specific clauses, containing positive as well as negative covenants, which are in furtherance of the trade of production of the films and having voluntarily entered into the Agreement, none of the parties could unilaterally cancel the Agreement.



(v) The Defendant was bound to act strictly in accordance with terms of the Agreement and the unilateral termination of the Agreement by the Defendant *vide* communication dated 12/07/2025 is grossly illegal, rendering the Defendant liable for damages.

(vi) By referring to various clauses in the Agreement, particularly the negative covenant contained in Clause 2.2.2 of the Agreement and the emails exchanged between the parties, learned Senior Counsel vehemently submitted that the Plaintiff has demonstrated a *prima facie* case to restrain the Defendant from engaging in any similar services.

(vii) In view of the unilateral termination of the Agreement by the Defendant, the Plaintiff is put into lot of inconvenience and the Plaintiff would suffer huge irreparable loss, which cannot be compensated in terms of money.

7. To buttress his submissions, learned Senior Counsel for the Plaintiff placed reliance on the following Judgments :-

1. *Niranjan Shankar Golikari Vs. The Century Spinning and Mfg.Co. Ltd.*; AIR 1967 SC 1098;
2. *Warner Brothers Pictures, Incorporated Vs. Nelson; King's Division Bench 1936 W No.2785.*
3. *Gujarat Bottling Co. Ltd. & Ors. Vs. Coca Cola Company & Ors.*; AIR 1995 SC 2372;



4. *Global Music Junction Pvt. Ltd. Vs. Shatrughan Kumar & Ors.* **2023 (96) PTC 324 (Del);**
5. *Lumley Vs. Wagner, (Decision by the Hon'ble Lord Chancellor Lord St. Leonards dated 22, 26th May, 1852.*
6. *Balaji Telefilms Ltd. Vs. Salil Ankola (Arbitration Petition (L) No.610 of 2006 dated 08/11/2006.*

8. By referring to these judgments, learned Senior Counsel for the Plaintiff vehemently submitted that the position of law is well settled that the terms of an agreement are sacrosanct and in view of the negative covenant voluntarily agreed upon by the Defendant, binding effect of the negative covenant be given effect to. By placing heavy reliance on the judgment in *Niranjan Golikari (supra)*, it is submitted that the negative covenants do not fall under the purview of Section 27 of the Indian Contract Act and cannot, therefore, be considered to be a restraint of trade. By inviting attention of the Court to various paragraphs from this Judgment, it is submitted that the position of law is settled in the matter of *Gujarat Bottling Co. Ltd. (supra)* that unilateral termination of an Agreement cannot nullify the effect of negative covenant, thereby rendering Section 42 of the Specific Relief Act nugatory. It is submitted that in the instant case, the Defendant has, without any basis, unilaterally terminated the Agreement and he cannot be allowed to take advantage of his own wrong. It is submitted that the entire



conduct of the Defendant in terminating the Agreement with the Plaintiff, only on account of failure to abide by the shooting schedule in view of other prospective assignment, demonstrates that the Defendant is attempting to avoid the effect of the negative covenant. It is, therefore, submitted that the entire conduct on part of the Defendant renders himself bound by the effect of the negative covenant and entitles the Plaintiff for the relief of interim injunction.

9. **Per contra**, Advocate Rohan Caama, learned counsel for the defendant strenuously submitted that the Interim Application seeking interim injunction against the Defendant is liable to be rejected as the Plaintiff has failed to demonstrate fulfillment of essential conditions for grant of temporary injunction.

The submissions of the defendant are stated in nutshell, as follows ;

(i) The Suit filed by the Plaintiff, essentially seeking specific performance of contract of personal service is not at all maintainable and the instant application seeking to enforce the negative covenant thereby ultimately seeking enforcement of specific performance of personal service, is liable to be rejected.



(ii) The temporary injunction sought for is in effect requiring the Plaintiff to sit idle for the period of shooting schedule thereby depriving the Defendant from performing the work in his profession which ultimately violates Section 27 of the Contract Act as it amounts to restraint of trade.

(iii) The Defendant had already conveyed his inability to attend shooting schedule from 05/09/2025 and accordingly the parties have deliberated to resolve the issue of overlapping of shooting dates. He submitted that in view of the prior commitments of the Defendant, which were very well informed to the Plaintiff, it became out of control for the Defendant to adjust the shooting schedule and consequent upon the confrontations with the Plaintiff, the Defendant was constrained to terminate the Agreement.

(iv) Though the Plaintiff has filed instant application to enforce the negative covenant, the Plaintiff has not at all prayed for stay to the termination of the Agreement and as such, since the Agreement stood terminated, the Defendant is not entitled to seek enforcement of negative covenant incorporated in the said Agreement.



(v) The Plaintiff has failed to demonstrate violation of its rights and the instant application is for harassing and pressurizing the Defendant.

(vi) The Plaintiff has failed to demonstrate any case to protect the Plaintiffs proprietary interest or property rights and hence he is not entitled to claim temporary injunction.

(vii) The Plaintiff is not entitled for injunction in peculiar facts of this case since the Plaintiff can be compensated in terms of money by award of damages.

(viii) The temporary injunction claim is in the nature of final relief as claimed in the suit.

(ix) The Plaintiff has failed to demonstrate the factors of balance of convenience and irreparable loss and thus the Plaintiff is not entitled for the discretionary relief of temporary injunction.

10. In support of his submissions, the learned counsel for the Defendant relied on following case laws:

- i) Percept D'Mark (India) (P) Ltd. vs. Zaheer Khan & Anr. (2006) 4 SCC 227;*
- ii) Jet Airways (I) Ltd. vs. Mr. Jan Peter Ravi Karnik, 2000 SCC OnLine 241;*
- iii) SVF Entertainment Pvt. Ltd. vs. Mr. Anupriyo Sengupta, 2018 SCC OnLine Cal 4775;*



iv) Pepsi Foods Ltd. & Others vs. Bharat Cola-Cola Holdings Pvt. Ltd. & Ors., 1999 SCC OnLine Del 530.

11. By inviting my attention to the authoritative pronouncement of Hon'ble Supreme Court in the matter of *Percept D'Mark (India)(P)Ltd.* (supra), learned counsel for Defendant submitted that the position of law is well settled that in case the enforcement of negative covenant amounts to ordering specific performance of a contract of personal service, the Plaintiff is not entitled for claiming discretionary relief of injunction. Further, my attention is adverted to the position of law that the Plaintiff is not entitled for injunction when he can be compensated in monetary terms. By placing heavy reliance on the Judgment in *Jet Airways (I) Ltd.* and *Pepsi Foods Ltd.* (supra), the learned counsel for the Defendant stressed on the position of law that the relief of injunction can only be granted to protect the proprietary interest of the Plaintiff. He thus submitted that the interim injunction claimed is in the nature of final relief and cannot be granted.

12. In the light of above mentioned submissions, the rival contentions fall for my consideration.



RELEVANT CLAUSES OF ARTIST AGREEMENT :

13. Before dealing with the controversy, for the purpose of deciding the application for interim relief, certain clauses of the Artist Agreement dated 15-06-2025 need proper consideration. The relevant clauses are reproduced below :-

“2.2.2. Shooting Schedule: The Artist shall render his Services to Producer on an exclusive basis during the Shooting Schedule as mentioned in Schedule A. The Services during the Shooting Schedule shall include, but not be limited to acting, dancing, delivering lines and such other customary services as may be required by the Producer (and/or any persons authorized by the Producer) for the enactment of the Role in relation to the Film. It is hereby clarified that the Shoot Days (defined in Schedule A) would not include travel days, off days and any other services during the Pre-Production Schedule, Post-Production Schedule, and Promotion/Publicity Period. The tentative Shooting Schedule of the Film has been scheduled as per Schedule A, subject to any revisions as may be required by the Producer in consultation with the Artist. *It is agreed between the Parties that the Artist shall ensure his availability to render his Services during the entire Shooting Schedule and shall not enter into any arrangements/ agreements in conflict hereof. The Artist shall not engage himself in any services similar to the Services, in relation to any other feature film, programme, play, television series, film etc., for any other person during the Shooting Schedule. A complete shoot day consists of 13 (thirteen) hours of shoot including hair, make-up from the Artist's on location call time.*

2.2.3. Post-Production Schedule: The Artist shall make himself available to the Producer on a non-exclusive but first priority basis during the Post-Production Schedule of the Film on such dates as determined by the Producer taking into account his prior professional commitments.



2.8 Artist's availability during the locked Shooting Schedule : The Artist acknowledges that the Producer and the Artist have arrived at the Shooting Schedule after various discussions, which shall include the availability of the director and other artist and key technicians, based on the Artist's confirmation the Producer shall be investing substantial amounts of monies, time, efforts and human resources ("**Resources**") for the Film based on the Artist's confirmation of his availability during the Shooting Schedule specified in the Schedule A i.e. between 5th September, 2025 to mid November 2025 and other representations made herein and is likely to employ more Resources. The Artist shall render the services faithfully and shall not, under any circumstances, deliberately and intentionally, delay, not be available and neglect the performance of his/her Services, withdraw his/her appearance in the Film, before the expiry of the Term of this Agreement, this being the essence of this Agreement. The Artist understands that in the event the Artist, deliberately and intentionally, delays or neglects the performance of his/her Services, withdraws his/her appearance in the Film, exits the Film midway, breaches the exclusivity provisions, the same would cause irreparable loss and damage to the Producer, both monetary and otherwise, which would not be adequately compensable in damages in an action at law, and therefore, in addition to and without prejudice to the other remedies of the Producer under this Agreement and under law, including without limitation replacing the Artist, the Artist will be liable to make payment of twice the amount of Consideration as agreed herein as liquidated damages. Notwithstanding the above, the Producer shall be entitled to other appropriate remedies available to it under applicable law."



14. Apart from these Clauses, it is also necessary to have a look at Clauses 11.1 and 11.4 under caption, 'Remedies', which are reproduced below :-

“11.1 The Artist hereby acknowledges and agrees that this Agreement is a contract for personal services and production of the Film is of a unique unusual and extraordinary character and any disruption in the performance of Services and obligations by the Artist shall cause loss to the production of the Film, which loss cannot be adequately compensated through damages at law. However, since it is understood that the Artist's Services are special, unique, unusual, extraordinary and of an intellectual character, given them a peculiar value, which cannot be compensated in monetary terms or damages, the Producer who shall be entitled to seek equitable relief against the Artist in respect of performance of the Artist's obligations hereunder. Further, the Producer shall also have the right to approach and invoke the jurisdiction of any collective bargaining organisation, or association or union or guild in any territory throughout the world.”

11.4 Notwithstanding contained under the Agreement, if the Artist wilfully and intentionally refuses and/or fails to render his Services as per the terms of the Agreement and as per the Production Schedule, including or any revised dates as may be required by the Producer, then without prejudice to any right that the Producer may have thereunder, and/or under law or in equity, upon a written demand by the Producer the Artist shall be liable to compensate the Producer with an amount equal to twice the amount of the Consideration as and by way of liquidated damages (“Damages”) within a period of seven (7) days from the date on which the Producer makes such a demand.”



CONSIDERATION OF THE CONTROVERSY:

15. The controversy involved in the matter is with respect to the negative covenant incorporated in Clause 2.2.2 reproduced above. A perusal of this Clause shows that this Clause contains a positive covenant as well as a negative covenant. A perusal of the Clauses of the Agreement clearly show that it is an Agreement of rendering personal services by the Defendant. The Plaintiff is seeking interim injunction to enforce this negative covenant. It is pertinent to note that the plaintiff has harped on this negative covenant which is to restrain the defendant to render personal service to anybody during the said period. Pertinently, the plaintiff's main thrust of arguments is to enforce the mandate of the negative covenant and to stop the defendant from engaging in any other assignment during the period of the shooting schedule i.e. from 5th September 2025 to 20th November 2025 and it has to be noted that the plaintiff has not averred violation of any right of the Plaintiff. The plaintiff has also stressed on the illegality in the act of termination of the agreement by the defendant, against which the relief of damages is claimed in the suit.

16. It is pertinent to note that in the suit, the Plaintiff has prayed for permanent injunction to enforce the negative



covenant along with the relief of declaration of termination of the Agreement being illegal and claimed for damages of Rs.12 Crore against the Defendant. It is crucial to note that the Plaintiff has not sought any relief of specific performance of the Agreement dated 15/06/2025 and also no prayer is made seeking stay to the termination of the Agreement. As such, the controversy involved in the suit is with respect to illegality of termination of the Agreement and claim for permanent injunction alongwith damages. In this backdrop, the Application for interim injunction needs to be considered.

It has to be noted that in the suit, the plaintiff has prayed for a permanent injunction restraining the defendant from acting contrary to the negative covenant contained in clause 2.2.2 of the agreement during the shooting schedule i.e. from 5th September 2025 to 20th November 2025. The relief claimed by the temporary injunction application is also of the same nature.

17. The controversy involved in the Interim Injunction application is about grant of ad-interim injunction to seek enforcement of negative covenant. The prayer in the Interim Application seeking temporary injunction is to restrain the Defendant from engaging in any services similar to the services under the Agreement in relation to any other feature film, programme, play, television series, film etc. for any other person



during Shooting Schedule i.e. from 05/09/2025 to 20/11/2025. As such, it is crucial to examine whether the Plaintiff has demonstrated fulfillment of essential conditions seeking discretionary relief of temporary injunction. It has to be noted that although the Plaintiff has raised challenge to the termination of the Contract by way of amendment in the Suit, however, no stay is sought for to the decision of the Defendant to terminate the Agreement. As such, the only prayer to be considered at this stage is about enforcement of negative covenant to restrain the Defendant from taking up any other assignment to perform as an Actor.

18. The Plaintiff has primarily relied upon **Clause 2.2.2** of the Agreement which incorporates a positive as well as negative covenant. A perusal of **Clause 2.2.2** with the title 'Shooting Schedule' shows that it categorically mentions a tentative schedule of the film as per Schedule A, subject to any revision as may be required by the Producer in consultation with the Artist. It further states *'it is agreed between the Parties that the Artist shall ensure his availability to render his Services during the entire Shooting Schedule and shall not enter into any arrangements/ agreements in conflict hereof'*.

The entire thrust of the arguments of the Plaintiff is based on this covenant and it is important to note that the Plaintiff is

seeking temporary injunction after the termination of the Agreement by the Defendant. As such, the crucial issue which needs to be focused is *whether the negative covenant need to be enforced after the termination of the Agreement*. It, therefore, becomes necessary to ascertain whether the Plaintiff has demonstrated violation of his right necessitating entitlement of discretionary relief of temporary injunction.

19. The Plaintiff's primary contention is illegal breach of contract/agreement by the Defendant and resultant monetary loss likely to be suffered by the Plaintiff. As regards the issue of illegality of the termination of the Agreement by the Defendant alleged to be unilateral and without any authority flowing from terms of Agreement, the same will have to be decided on the basis of evidence to be laid by the parties. The plaintiff has attempted to demonstrate a *prima facie* case on the basis of alleged illegal breach of Agreement by the Defendant. It is pertinent to note that the Plaintiff is seeking to enforce a negative covenant which eventually amounts to enforcing terms of Contract which is undisputedly (as can be seen from clause 11.1 of the agreement) a contract of personal service. As such, the interim relief prayed by the Plaintiff seeking enforcement of negative covenant is in effect an attempt to enforce the Contract of personal service which is prohibited in view of provisions of



Section 41(e) of the Specific Relief Act, 1963. Further, considering the nature of the negative covenant, it is clear that enforcing the same will have the effect of making the defendant sit idle. Although the Plaintiff has relied on provisions of Section 42 of Specific Relief Act for seeking performance of negative covenant, in absence of demonstration of violation of any rights of the Plaintiff, the enforcement of negative covenant rendering the Defendant to sit idle appears to be clearly violative of provisions of Section 27 of the Indian Contract Act. Thus, in absence of any prayer seeking stay to the termination of agreement, the claim for temporary injunction to enforce negative covenant is of no avail.

20. Crucial to note, the agreement in between the plaintiff and the defendant stands canceled and it is not in force, neither the plaintiff has sought for stay to the act of termination and as such there is no covenant in operation which could be enforced. In this regard, even if the plaintiff's argument that the agreement still subsists since the termination is under challenge is given due consideration, still it has to be seen that enforcing the negative covenant has the only effect of making the defendant sit idle and in any case by enforcing the negative covenant the plaintiff is not going to enjoy the fruits of the agreement in any manner nor is



going to be benefited in the three months period of the shooting schedule.

21. Thus although the Plaintiff has made an attempt to demonstrate existence of *prima facie case* in its favour alleging unilateral breach of Agreement by the Defendant, for the purpose of seeking interim injunction, the Plaintiff is also required to establish the other factors particularly balance of convenience and irreparable loss.

22. As regards *balance of convenience* is concerned, the Plaintiff has vehemently submitted that the Defendant was supposed to perform role of lead actor in the movie and based on the shooting schedule, the Plaintiff has made all the arrangements of engaging the services of co-actors, engagement of other agencies for completing the shooting in pre-decided schedule and on account of termination of agreement, it is stated that the Plaintiff is put to lot of inconvenience. In this regard, it is pertinent to note that in the month of July itself the Defendant has conveyed his inability in view of conflict of dates for shooting. The parties had thereafter negotiated and exchanged several communications to adjust the shooting schedule and in view of the overlapping of the dates of the previous shooting schedule, the Defendant has conveyed his final unavailability. In this



background, the Defendant has terminated the Agreement by the communication dated 12/07/2025. Although legality of the termination of Agreement is a matter of evidence, it is clear that the Plaintiff became aware about termination of the Agreement on 12th July itself. The Plaintiff has filed the Suit in the first week of August, without raising any challenge to the decision of the termination of Agreement. Although the challenge to the termination of Agreement is subsequently raised by way of amendment, it is clear that the Defendant had explored the possibility of resolving the issue of conflict in dates of shooting. It is crucial to note that till today the Plaintiff has not sought for any stay to the termination of the Agreement. It is pertinent to note, by terminating the Agreement, the Defendant has also deprived himself of an opportunity to execute the performance in the film of the Plaintiff and there is nothing on record to show that the defendant has earned any additional benefit/advantage. As such, in view of the conduct of parties, it cannot be concluded that the balance of convenience entirely lies in favour of the Plaintiff to the extent of entitling it to enforce the negative covenant with its full vigour.

23. As regards irreparable loss alleged to have been suffered by the Plaintiff, it is crucial to note that the specific clauses of the



Agreement particularly **Clause 2.8 and 11.4** (reproduced above) clearly shows that in the event of willful and intentional refusal and/or failure to render service as per the terms of Agreement, the Artists shall be liable to compensate the Producer with an amount equal to twice the amount of consideration as and by way of liquidated damages. As such, the injury suffered by the Plaintiff can be compensated in terms of money by invoking the relevant clause of the Agreement. It has to be noted that the Plaintiff has itself raised a claim for damages of Rs.12 Crore alongwith interest at the rate of 18%, as claimed in the Suit. In view of the peculiar circumstances of this case, the factor of irreparable loss also does not weigh in favour of the Plaintiff.

It has to be noted that in view of the peculiar facts of this case, injury suffered by the plaintiff on account of the breach of agreement and alleged unilateral termination of the agreement by the defendant, the plaintiff can be compensated by award of damages. As such enforcing the negative covenant is not of imminent necessity, much less to protect any rights of the plaintiff at this stage.

24. As regards the legal position about enforceability of negative covenant, the Plaintiff has heavily relied upon the Judgment in *Niranjan Golikari* (supra). This Judgment of the Supreme Court considers the position of law as laid down in **Warner Brothers**



Pictures (supra), a 1936 Judgment of King’s Division Bench, which has dealt with the similar fact situation, as can be seen from paragraph 15 & 20 of the Judgment, which are reproduced below:

“15. On a contention that.....

Applying these observations Branson, J., in Warner Brothers Pictures v. Nelson [1937] 1 K.B. 209, held a covenant of a similar nature not to be void. The defendant, a film artist, entered into a contract with the plaintiffs, film producers, for fifty-two weeks, renewable for a further period of fifty-two weeks at the option of the plaintiffs, whereby she agreed to render her exclusive service as such artist to the plaintiffs, and by way of negative stipulation not to render, during the period of the contract, such services to any other person. In breach of the agreement she entered into a contract to perform as a film artist for a third person. It was held that in such a case an injunction would issue through it might be limited to a period and in terms which the Court in its discretion thought reasonable.

20. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract.

Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of W. H. Milsted & Son, Ltd. [1927] W.N. 233.”

Plaintiff’s reliance on the judgment in *Gujarat Bottling Co. Ltd.* (supra) is also on the same proposition of law. As such, it is



clear that these judgments deal with the situation about enforcement of negative covenant during the period of contract. However, in the instant case, the Plaintiff has sought to enforce the negative covenant after termination of the Contract, that too without seeking any stay to the termination of contract, and thus the position of law laid down in *Niranjan Golikari* (supra) is not of any assistance to the Plaintiff.

25. As regards the Judgment of the Delhi High Court in *Global Music Junction* (supra), it has to be noted that the same was a case of copyright infringement and was based on a different factual set up. In the instant case the effect of negative covenant sought to be enforced against the Defendant will render the Defendant sit idle and prevent him from performing the work as 'Actor', which cannot be a comparable situation with the case of infringement of copyright. As such, the position of law in this matter is also of no assistance to the Plaintiff.

26. Even the Judgment in *Balaji Telefilms Ltd.* (supra) deals with a situation of a negative covenant which was to operate during the term of Agreement and the same cannot be of any assistance in view of termination of Agreement in the instant case.

27. In view of the controversy involved in the instant case, the judgment in ***Percept D'mark India Limited*** (supra) and Judgment of Co-ordinate Bench of this Court in ***Jet Airways(I) Limited*** (supra) needs to be taken into consideration.

28. While dealing with the issue of enforceability of negative covenant *vis-a-vis* provision of Section 27 of the Indian Contract Act 1872, the Hon'ble Supreme Court has observed in ***Percept D'mark India Limited*** (supra) as under :-

“56. The legal position with regard to post-contractual covenants or restrictions has been consistent, unchanging and completely settled in our country. The legal position clearly crystallised in our country is that while construing the provisions of Section 27 of the Contract Act, neither the test of reasonableness nor the principle of restraint being partial is applicable, unless it falls within express exception engrafted in Section 27.

58. We have perused the relevant portions of Niranjana Shankar Golikari, Superintendence Co. of India and Gujarat Bottling which have been extracted by the learned Judges of the Division Bench and quoted in extenso. In the circumstances, there can be no manner of doubt that the Division Bench was right in coming to the prima facie conclusion drawn by it, and in setting aside the Single Judge's order. No case was made out by the appellant for compelling Respondent 1 to appoint the appellant as his agent in perpetuity. In view of the personal nature of the service and relationship between the contracting parties, a contract of agency/management such as the one entered into between the appellant and Respondent 1 is incapable of specific performance and to enforce the performance thereof would be inequitable. Likewise, grant of injunction restraining the first respondent would have the effect of

compelling the first respondent to be managed by the appellant, in substance and effect a decree of specific performance of an agreement of fiduciary or personal character or service, which is dependent on mutual trust, faith and confidence.”

While elaborating the reasons for refusing specific performance of the negative covenant, the Hon’ble Supreme Court has observed in para 64 of this judgment that injunction resulting in compelling specific performance of a contract of personal, confidential and fiduciary service cannot be granted. In the instant case enforcing negative covenant in effect amounts to enforcing contract of personal service.

29. The position of law as considered in *Jet Airways(I) Limited* (supra) which is delivered after considering, rather distinguishing the judgment of *Nirajan Golikari*, also needs to be taken note of. The relevant observations of the learned Single Bench as reflected in para 20 are reproduced below :-

“20.Since the plaintiffs has no property/ proprietary right in the skill acquired by the defendants, no protection can be granted on the basis of the negative covenant. The apprehension expressed by the learned Counsel for the plaintiffs that if an injunction is not granted, then the pilots are likely to leave and join the competitor is no ground for granting the drastic relief of injunction against the defendants. It is common ground between the parties that earlier sixteen pilots had left Sahara Airlines and joined Jet Airways. The plaintiffs did not see anything wrong in poaching the pilots from Sahara Airlines. It is settled law that the relief of injunction can only be granted to protect



the proprietary interest of the plaintiffs. To prevent the pilots from leaving the plaintiffs and joining the competitor would not be protection of any proprietary interest of the plaintiffs. Such a protection could have been provided by the plaintiffs themselves by offering better condition of service than the competitor. It would clearly be against public policy to compel the defendants to be forced to work with the plaintiffs merely because of the covenant. It would amount to compelling disgruntled employees to work for an equally disgruntled employer. This would not be in the interest of anyone. I am unable to agree with the submissions of Mr. Chagla to the effect that if injunction is not granted, then there would be no sanctity of contract.”

In the case in hand the plaintiff has not at all claimed to have contributed to the defendant in acquiring any skill of acting much less involving proprietary interest and further the agreement in question is clearly a contract to render personal service as can be seen from clause 11.1 of the agreement and as such no injunction can be claimed by invoking negative covenant.

30. In view of the position of law mentioned above, it is clear that a negative covenant cannot be enforced for the purpose of seeking performance of a contract of personal service. The position of law is also fairly settled that an injunction can be granted only for protecting rights of the Plaintiff but cannot be granted to limit the legal rights of the Defendant. In the instant case, the Plaintiff has failed to demonstrate violation of any of its rights as basis for claim for interim injunction. The breach of Agreement by the Defendant may entitle the Plaintiff for relief of



compensation, as claimed by it in the plaint, however, the same cannot be a reason for seeking ad-interim injunction or interim injunction for enforcement of negative covenant. In view of the peculiar facts of this case, it is clear that enforcement of said negative covenant will render the Defendant sit idle and in effect amount to restraint of trade upon the Defendant. Further, in view of the reliefs claimed in the suit seeking permanent injunction to restrain the defendant from acting contrary to the negative covenant for the period of the three months of the shooting schedule, it is clear that interim relief claimed by way of temporary injunction is in the nature of final relief.

31. I am unable to agree with the submissions of Senior Counsel Mr. Saraf, *firstly* because the plaintiff has not sought specific performance of the agreement; *secondly*, the specific performance is sought for enforcement of negative covenant which is with respect to rendering personal service which cannot be enforced in view of the position of law elaborated above; *thirdly*, because the plaintiff has not at all sought any stay to termination of the agreement at the interim stage; and *fourthly* because the interim relief claimed is in the nature of final relief as after the expiry of the period of three months there will be no question of enforcing any negative covenant. On the contrary, I find force in the



submission of Adv. Caama that the enforcement of negative covenant by way of interim injunction doesn't protect any kind of interest of the plaintiff, much less proprietary interest and in effect leads the defendant to sit idle.

32. Even by considering the aspect of conduct of parties and the issue of comparative hardship, it is crucial to note that here is no material to demonstrate that the Defendant has refused performance of Agreement after the shooting was started. It is also clear that the Plaintiff is not seeking specific performance of the said Agreement, although it has alleged that the Agreement still subsists. Pertinently, the prayer for interim injunction for enforcement of negative covenant is required to be considered in view of the reliefs sought in the plaint and in the Application for interim injunction.

33. In view of overall factual and legal aspects mentioned above, I am of the considered view that the Plaintiff has failed to make out a case for seeking interim injunction. The prayer for ad-interim injunction and in effect interim injunction therefore deserve to be rejected, particularly in view of the fact that the Plaintiff is entitled to establish its claim for damages as claimed in the suit.



34. The prayer for ad-interim relief is rejected. The Interim Application for temporary injunction is hereby rejected.

(PRAFULLA S. KHUBALKAR, J.)

Salgaonkar/More