



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.348 OF 2010
WITH
ARBITRATION PETITION NO.349 OF 2010
WITH
ARBITRATION PETITION NO.450 OF 2010
AND WITH
CHAMBER SUMMONS NO. OF 2010

M/s. Magic Lantern Productions, through
Ms.Rajita Sharma, Partner having their its's
office at E-2/203, Inlaks Nagar,
Yari Road, Near Mandir-Masjid,
Andheri (W), Mumbai 400061 ... Petitioner

Vs.

Creative Eye Ltd.,
Kailash Plaza, Plot No.12A,
New Linki Road, Opp.Laxmi Industrial Estate,
Andheri (W), Mumbai 400053 ... Respondent

Viacom 18 Media Pvt.Ltd., 36B, Dr. R. K.
Shirodkar Marg, Parel (East), Mumbai 400012 .. Intervener/Applicant

Mr. Rajiv Kumar with Mr. Jamshed Mistry with Mr.Rohan Cama, Advocates
for the petitioner.

Mr. Birendra Saraf i/by Ms. Anuja Jhunjhunwala for the respondent.

Mr.V. R. Dhond i/by M/s.Naik & Naik for the Intervenor/applicant.

CORAM :- ANOOP V. MOHTA, J.

DATED :- 26th March, 2010.

JUDGMENT:-

1 All these Petitions are under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the Act) for various interim reliefs pending the institution and continuation of arbitration proceedings arising out of Memorandum of Understanding (MOU) dated 12.10.2009 between the parties.

2 The basic facts, issues and the MOU, apart from parties, are common. Therefore, this common judgment.

3 The basic facts as averred are as under:

The partner of the petitioner, Ms.Rajita Sharma, is a writer and producer by profession, and had conceptualized the storyline for a television serial concerning the love story between a Brahmin boy and a Kayastha girl residing in Lucknow and the prejudices their love affair evokes from the society as well as from the traditional family of the boy.

4 It is relevant to note, as averred, that by an Oral Agreement between the parties herein it was agreed that the aforesaid concept created and owned by the petitioner herein, would be used in a television serial to be jointly produced by the parties herein with Viacom 18 Media Pvt.Ltd., (hereinafter referred to as "Viacom"). Under the said Oral Agreement, it

was agreed that the petitioner will provide contents and creative supervision, while the Respondents would be responsible for procuring finance for the project. To facilitate the above procuring of the finances and finalization of the budget for the project, the petitioner, upon the express request of the Respondents therein, furnished a detailed note of the concept for the said television serial on 25th August 2009.

5 Pursuant to the above, on 27th August 2009, Viacom entered into a Production Agreement with the Respondent herein whereunder it was agreed that a television serial tentatively titled “ISHQ” to be produced by the parties under the terms and conditions more particularly set out in the said agreement, and to be aired on the Colours channel (hereinafter referred to as the “said channel”).

6 Thereafter for the purpose of formalising the aforesaid Oral Agreement between the parties herein, a series of three MOU in questions came to be entered into between the parties. The three MOUs pertain to three individual aspects relating to the conceptualisation and production of the aforesaid television serial “ISHQ”. The concept was registered under the name “Prem Vivaah” which was later on changed to “Ishq” in the contract between Viacom (Intervener) and Respondents finally renamed and marketed and presented by the name “Yeh Pyaar Na Hoga Kam”.

7 The three MOUs are :

(i) Writers MOU

(ii) Co-production MOU

(iii) Creative Directors MOU

8 Under the Writers MOU it was inter alia agreed between the parties that the petitioner, through its partners, would continue to write and develop the content of the serial to the satisfaction of the said channel. It is pertinent to note that clause 4 of the said Writers MOU states as follows:

“Notwithstanding anything otherwise mentioned in the agreement the writer shall remain associates/engaged with the project till its completion association/engagement shall commence on execution of this agreement”

9 Furthermore, under the said MOU, it was provided as follows:-

Clause 10

“The credit titles till the existence of this agreement shall be granted under:- Concept, Story, Screenplay and Dialogues Writer.”

Clause 11 :

“This above agreement is effective from 27th August, 2009 and shall be in existence till the life of the said program/serial.”

10 Under the Co-Production MOU it was agreed that the petitioner and the respondent herein would jointly produce the said television serial pursuant to the agreement dated 27th August 2009 entered into between the Respondent herein and Viacom. It was further agreed that no financial

investment would be made by the petitioner herein and all the financial requirements would be arranged for/met by the respondent herein.

11 Furthermore in the clause 15 it was stated that the MOU could be terminated only in the following circumstances:

(a) If the serial is stopped, ceased or discontinued, temporarily or permanently by the channel or by virtue of Court Order restraining the exhibition of the said serial. However, temporary cessation of production which resumes within 60 days from such cessation, shall not affect this MOU and all terms and conditions contained herein shall continue to be binding on both parties in equal force and measure.

(b) If the commissioning agreement between CEL and channel stands terminated or cancelled for any reason whatsoever.”

Furthermore it bears mention that under clause 17 it was clearly stated that “this MOU may not be altered or amended except by an instrument of writing signed by both parties”.

12 By third MOU, referred to as the Creative Directors MOU, it was agreed between the parties that the partners of the Petitioner herein would act as the Creative Directors for the said television serial. In the MOU, Clause 9 provides that “The Credit Title agreed between the parties shall be

“Creative Director””. Further, Clause 10 of the said MOU/agreement states as follows:

“The association shall stand termination in case of breach by either parties or if the production of the said serial is stopped, ceased or discontinued, temporarily or permanently by the, broadcast channel or by virtue of the Court Order restraining the exhibition of the said serial. However temporary cessation of production which resumes within 60 days from such cessation, shall not affect this Agreement and all terms and conditions contained herein shall continue to be binding on both parties in equal force and measure”.

Clause 13 of the MOU, expressly provided that the instant MOU would remain “in existence till the life of the said program.

13 As alleged, the respondent failed to fulfill its production obligations under the MOU. Therefore, the petitioner made several oral representations and also on 7.12.2009, 11.12.2009 and 14.12.2009 emailed and met personally for the same. Separate notices were exchanged on 21.12.2009 and 24.12.2009, through the Advocates also. On 28.12.2009, the first episode of the said Serial was aired on the said channel.

14 The petitioner further averred that he was and still ready to comply with its obligations under the MOU, and will continue to do so in future. The obligations on the petitioner were to write the script and to provide

creative vision and content, which the petitioner and its partners duly fulfilled by providing the concept (for 260 episodes), larger story (for about a 100 episodes), characterization (for 260 episodes), character graphs (260 episodes), episodic story, screenplay and dialogue drafts and by supervising the set construction and propping the same to the channel's satisfaction (for 260 episodes). The creative vision for the show and has set it up creatively (for the 260 episodes) which creative vision includes supervision of costumes, look, casting, briefing to actors and directors, cameramen, hairstylists, makeup artists etc. The petitioner has averred that as co-producer its contribution to the said serial was already in place and approved by the channel for 260 episodes, and the petitioner has not faltered in complying with its obligations under the said MOU.

15 The petitioner has averred that if the respondent proceeds with its threatened stand of excluding the names of the petitioner and its partner from the titles of the said show after 5th episode, grave harm and prejudice will be caused to the petitioner and its partners, who have expended considerable time, efforts and money towards conceptualising, creating and finalising various aspect of said shows as stated hereinabove.

16 The petitioner in this background filed the two petitions on 29.12.2009 and Arbitration Petition No.450/2010 on 8.1.2010. The petitioner basically prayed similar reliefs in all these matters in the following terms:

(a) Pending the institution, continuation and conclusion of the arbitration proceedings and for a period of three months thereafter, for an appropriate order or direction of this Hon'ble Court directing the respondent herein to fulfill its commitments stipulated in the said MOU, and to refrain from taking any coercive steps including airing any further episodes of the said serial until due compliance with the aforesaid commitments.

(b) Pending the institution, continuation and conclusion of the arbitration proceedings and for a period of three months thereafter, for a temporary order and injunction restraining the respondent herein, its servants, agents, associates and/or any other person acting by, through or under them, from acting or purporting to act in furtherance of the purported notice of termination dated 21st December, 2009, and from in any manner disturbing, obstructing or adversely affecting the operation of the said MOU dated 12th October 2009 entered into between the petitioner and the respondent herein.

(c) Pending the institution, continuation and conclusion of the said arbitration proceedings and for a period of three months thereafter, for a temporary order and injunction of this Hon'ble Court restraining the respondent and/or its agents, associates, servants or any other person claiming by, through or under them from publishing/forwarding for publication any correspondence, letters or other media publicity with

objectionable contents/allegations against the petitioner herein and/or its partners and/or its employees and associates.

(d) Pending the institution, continuation and conclusion of the said arbitration proceedings and for a period of three months thereafter, the petitioner is entitled to an order of this Hon'ble Court directing that the respondents complies with it's obligation under the said MOU, to ensure display of the names of the petitioner herein and it's partners in the credit titles in the said serial pertaining to concept, story, screenplay and dialogues.

17 In Arbitration Petition No.349/2010, the reliefs are for claiming the credit, title pertaining to concept story, screenplay and dialogue. In Arbitration Petition No.450/2010, the claim is in respect of credit title in the serial pertaining to co-production thereof.

18 The respondent resisted the same by filing reply on various grounds. A rejoinder is also filed by the petitioner. A chamber summons is taken out by Viacom 18 Media Pvt.Ltd., to intervene in the matter.

19 The rights of the petitioner, based upon the MOU is a matter of trial and inquiry. At this stage, specially in view of the fact that the particular serial and episodes have already been broadcasted and telecasted as produced by the respondent by getting every episodes produced through some other person than the petitioner, though revolving around the basic story-line and the concept, but the screenplay and dialogues had been

written by other person than the petitioner under the creative direction of other director. The broadcaster/ producer has right over such episode/ serial, as recognized under the Copyright Act. The position cannot be restored back. The serials/episodes, for whatever may be the reason have already been telecasted under the particular names and banners and, therefore, now to grant any reliefs to the petitioner without deciding the merits of her claim and rights, will create more complications and problems than solving it. The petitioner needs to prove her case first and then only the relief as prayed can be granted, under Section 9 of the Act.

20 During the final hearing of the matter before the Tribunal, if case is made out and if it is proved that the respondent is in breach and not the petitioner, then appropriate relief/compensation/damages may be awarded by the Arbitral Tribunal. Therefore, there is no case for interim order or relief as sought in the present petitions. There is no question of passing of any order of injunction. Section 9 of the Act cannot be utilised to decide the merit of the said MOU at this stage itself. Let the Arbitrator do that after giving full opportunity to both the parties. No prima facie case is made out. The balance of convenience and equity also do not support the petitioner.

21 The learned counsel for the petitioner has strongly relied on Suresh Jindal vs. Rizoli Corriere Della Sera Prodzoini T.V.S.p.a. And ors., AIR 1991, SC 2092 [1991 Supp (2) SCC 3] and contended that the

entitlement of the claim of damages for excluding him from participating in the production of films is not sufficient. The petitioner wants the recognition and acknowledgment of their efforts in making the episodes/serial as the basic concept and idea which are registered and recognised have been misused and will be misused by the respondent. In the present case, as noted, the petitioner did render some services/help to the respondent and the production was commenced, accordingly, but for the reasons which are in dispute, the said contract/MOU could not be acted upon by both the parties. The petitioner themselves unable to continue with the working though agreed. The reason for that is again a matter of trial and inquiry. The fact remains that the respondent required to obtain the services of other screenplay and script writer and got the every episode produced and released as stipulated and announced. This factor itself is distinct and distinguishes the Supreme Court judgment so relied upon. The episodes which have been already released by giving credit to the concerned person/screenplay writer or producer or Co-Directors, and admittedly which were not made and/or even not attended by the petitioner in any way except first few, cannot claim such rights. As recorded above, it is difficult to accept the case of the petitioner to put their name even on such already released and/or broadcasted serial/episodes. It is totally unjust and impermissible. The credit needs to be given to the person who has actually done or made and/or created the particular

episode from time to time.

22 Before the Supreme Court, **Suresh Jindal (Supra)** a Suit for specific performance was filed and injunction was sought restraining the defendant/respondent from proceeding with the production and exhibition of a film and also for a direction to display the name as a co-producer. The present Petitions are under Section 9 of the Act. The Arbitration proceeding based upon the MOU not yet commenced. The remedy here also to get the relief of specific performance, but for granting ad-interim relief, as noted above, no prima-facie case is made out by the petitioner. All elements as contemplated under Order 39 of Code of Civil Procedure (CPC) are missing. The production of a film and distribution of the same at one stroke just cannot be compared with the production of T.V. Serial basically when the requirement is to broadcast one episode at one time on day to day or weekly basis. The initial concept may be modified, tested and/or even changed in every episode as per the demand. There is no strict jacket formula, to telecast or broadcast or direct every episode as per the basic concept as announced initially. In the present case, factually every episode if written separately by other screenplay/writer and produced accordingly under the direction of different Director, the claim of petitioner to put their name and/or to give them credit in the present facts and circumstances is un-acceptable.

23 The aspects of copyrights of the broadcaster, once the serial or

episodes are released just cannot be overlooked in such matters. The broadcasters have exclusive right once the serial/episode are released. That right just cannot be interfered with at this stage. The credit so claimed, based upon the alleged concept or format of the said serial/episode, once it is assigned by the petitioner to the respondent, based upon the agreement/MOU itself, therefore also cannot be granted except the monetary claim, if any. The petitioner cannot claim credit or rights even though they have not provided the services to the respondent and specially after termination of these agreements.

24 Resultantly, as there is no case made out for any and/or any ad-interim relief, all these Petitions are dismissed. However, all points are kept open to be agitated before the Arbitral Tribunal.

25 In view of above, the chamber summons is also disposed of. No costs.

(ANOOP V. MOHTA, J.)