

Primetime Communications and ors. Vs. Prakash Chandra Dwivedi

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Court : Delhi

Decided On : Mar-23-1995

Reported in : 1995(33)DRJ159

Judge : Usha Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1

Appeal No. : Interim Application No. 9017 of 1994, 708 of 1995 and Suit No. 2250 of 1994

Appellant : Primetime Communications and ors.

Respondent : Prakash Chandra Dwivedi

Advocate for Pet/Ap. : Arun Jaitley,; Shahruck Katarwalla,; Manoj Wad,;

Judgement :

Usha Mehra, J.

(1) M/S Prime Time Communications, a partnership firm, has sought specific performance and injunction against Shri Prakash Chandra Dwivedi, sole proprietor of M/s Shagun Films, defendant No.1 and others.

(2) It is the case of the plaintiff that some where in June,1991, Mr.Sunil V. Khanwalkar, defednant No.3 a close friend of plaintiffs 2 & 3 introduced

Mr.Prakash Chandra Dwivedi, defendant No.1 to plaintiff No.1. Defendant No.1 informed them that he was engaged in producing 55 episodes of a Serial titled 'Chanakya'. It was to be telecast on Indian Doordarshan (National Network). Since Mr.Dwivedi was facing lot of problem like law suits and financial hardship, therefore, he needed help. Plaintiffs 2 & 3 gave him necessary help and assistance at Delhi in contesting the law suits and also financial help from time to time. On or about 5th September,1991, Mr.Dwivedi told plaintiffs 2 & 3 at New Delhi that as they helped him in his difficult days he, therefore, wanted to pay back. He would like to have business associations with them. He also told them that as he has already entered into an agreement for the first telecast of the Serial with Indian Doordarshan (National Network) through defendant No.2 i.e. M/s Sudharati International, hence he could enter into an agreement with them thereby giving all doordarshan rights i.e. Regional/National Channels or any other channels of Doordarshan throughout India except the first telecast which already stood granted to defendant No.2, to exploit 'Chanakya' subject to the conditions mutually agreed upon between the parties. Defendant No.2 was not to insist upon preferences to be given to them to market the Serial for re-telecast as required under Clause 3 of the agreement dated 19th February,1990. Defendant No.3 being the power of attorney holder of defendant No.2 immediately agreed to issue 'No Objection' for the same. Plaintiffs also conveyed their acceptance of the aforesaid proposal made by Mr.Dwivedi. Accordingly on 7th September,1991, defendant No.3 on behalf of defendant No.2 issued 'No Objection' in favor of the plaintiffs at New Delhi. On the same day agreement was executed at New Delhi by and between defendant No.1 and plaintiffs. One of the terms of the said agreement was that except for first telecast on National Network of Doordarshan, the plaintiff No.1 shall have all rights to exploit the Serial 'Chanakya' on all channels of Doordarshan through out India in Hindi or in Regional languages for a period of 11 years from the date of execution of the said agreement. This agreement was witnessed by defendant no.3.

(3) Pursuance to the said agreement, plaintiffs through defendant No.3 approached M/s Hindustan Lever Ltd., who conveyed their willingness to sponsor the Serial 'Chanakya' on Regional Kendras of Doordarshan especially Lucknow, Jaipur etc. This fact was brought to the notice of the Director General, Directorate

of Doordarshan, Mandi House, New Delhi. A request was made to consent for the Serial 'Chanakya' at Lucknow LPT. Similar request was made to the Deputy Controller of Programmes, Directorate of Doordarshan, Mandi House, New Delhi. Director of Doordarshan sought the view of Lucknow Kendra on re-telecast of Serial 'Chanakya'. This fact was personally told to defendant No.1 by plaintiff No.2 in July, 1994 at Bombay.

(4) In September, 1994 relations got strained between plaintiffs 2 & 3 and defendant No.3, on account of which on 10th December, 1994 defendant No.2 gave public notice in the Bombay Newspapers alleging that they hold first right of refusal for any commercial exploitation of the Serial 'Chanakya' in any channel, Indian or overseas. On getting this information plaintiffs tried to contact defendant No.1 and defendant No.2, but they avoided. On being contacted on 14th October, 1994, defendant No.1 informed the plaintiff No.2 that he was considering of entering into an agreement with someone else for commercial exploitation of the said Serial 'Chanakya'. This was objected by the plaintiff No.2. The defendant No.1, however informed that since now he could get much higher amount than agreed with the plaintiffs in the year 1991, therefore, he would not supply U-Mastic tapes to them.

(5) It is in this background that the suit was filed. Along with the suit the present application seeking ad-interim injunction has been filed which is listed as I.A. No.9017/94. Subsequently another application has been filed which is listed as IA.No.708/95. It has been the case of the plaintiffs in these applications that if defendant No.1 is not restrained from getting re-telecasting and exploiting the said Serial in favor of defendant No.2 or any other person/agency and handover the unmixed U-mastic High Band Tapes to defendant No.2 or to any other person or agency, then the plaintiffs will suffer irreparable loss which cannot be compensated by any amount. Hence defendant No.1 should be directed to handover U-mastic High Band tapes to them so that the Serial 'Chanakya' could be shown in the Lucknow Doordarshan in the regional language.

(6) This application has been contested by defendants. Defendant No.1 took the plea that the suit was based on false and fabricated documents. There is in fact no

privity of contract between plaintiffs and defendant No.1. The alleged agreement dated 7th Septemebr,1991 is a made up document. The plaintiffs had in fact in connivance & conclusion with defendant No.3 under the garb of engaging advocates and for the purpose of making applications obtained from him signatures on blank papers. Plaintiffs have in fact misused one of such signatures obtained from him on blank paper to prepare the alleged agreement. Defendant No.1 was not in Delhi on 7th September,1991. thereforee, the question of his signing this agreement at Delhi on 7th September,1991 could never arise. The plaintiffs 2 & 3 and defendant No.3 are business associates. Their relation never got strained. Moreover the claim of the plaintiffs is barred by limitation. The agreement between the defendant No.1 and defendant No.2 related only to six episodes of Seriall 'Chanakya'. Hence, there was no question of giving 'No Objection' by defendants 2 and/or 3 to any of the episode made beyond the one which formed part of their contract. The rights in the entire Seriall did not arise either to defendant No.2 and/or 3 or to any one else. The purported no objection of defendant No.2 through defendant No.3 must have been obtained recently in collusion. He denied that he needed financial help or did not have adequate finance to fight the litigation. He denied that he gave any rights to plaintiffs to exploit the Seriall 'Chanakya' as alleged. Moreover, the Seriall which commanded an initial price of Rs. 9.5 lakhs per episode i.e. much before the actual filming started, the defendant No.1 could not have sold such a Seriall for a petty amount of Rs. 10,000.00 per episode. Even otherwise, the defendant No.2 gave earlier in advance an amount of over Rs. 55 lakhs. As against that the defendant No.1 was not out of his senses to have sold the Seriall for a petty amount without any consideration and advance of any amount and that too for a period of 11 years. The right to defendant No.2 was sold only for one telecast at the rate of Rs. 9.5 lakhs which later was raised to Rs. 14.00 lakhs per eipisode.

(7) Defendants 2 and 3 filed a joint reply to these applications. They have more or less supported the case of plaintiffs.

(8) I have heard Mr.Arun Jaitley, Senior Advocate for the plaintiffs and Mr.E.C.Aggaral for defendant No.1, Mr.Ravinder Sethi, Senior Advocate for defendant No.3. Before taking up the case on merits, I would like to discuss the

legal objections raised by defendant No.1.

(9) According to Mr.Aggarwal, the relief sought in the main suit is specific performance and in case by way of interim order any direction is given to the defendant No.1 to handover the unmixed U-Mastic High Band Tapes it would amount to granting the decree without trial. I find force in these submissions of the counsel. It is well settled principle of law that if a mandatory injunction is to be granted it should be only to restore status quo and not to establish a new state of things, different from those existing as on the date of the suit. The U-Mastic Tapes as per the plaintiffs' own showing are in the custody of the defendant No.1. By giving directions to handover the same to the plaintiff would tantamount to decreeing the suit of specific performance without trial and this is not permissible under law. I think plaintiff were aware of this legal hurdle, that is why the plaintiffs in their application in para 4 has stated as under:-

'THE plaintiffs submit that, without prejudice to their contention that plaintiffs are entitled to compel specific performance of the Agreement dated 7th September,1991 by defendant No.1, the plaintiffs submit that assuming for a moment that this Hon'ble Court is of the view that specific performance of the affirmative agreement cannot be compelled in that event, this Hon'ble Court be pleased to grant an injunction to perform the negative Agreement embodied in clause 4 of the said Agreement under Section 42 of the Specific Relief Act,1963, which reads as under.'

(10) From the reading of this para, it becomes clear that the plaintiffs admitted that the affirmative order compelling the defendant to perform his part of the agreement at that stage could not be made. Clear distinction exists between principles applicable in granting temporary injunctions of prohibitory and mandatory character. For a prohibitory injunction it may be necessary to establish a prima facie case or an arguable case or also balance of convenience. For granting mandatory injunction besides showing prima facie case, the balance of convenience, the plaintiffs are also required to establish irreparable injury and that the case falls within the exceptional category calling for intervention of the court immediately in granting relief which may cover the entire relief that should have

been granted in the suit itself. To my mind, the plaintiffs have not been able to show at this juncture irreparable injury which they may suffer because of the non granting of the affirmative or mandatory injunction. As already observed above the mandatory injunction is to restore the status quo. In the present case as per plaintiffs' own showing the unmixed U-Mastic High Band Tapes are in the possession of the defendant No.1. thereforee, if this court now orders the same to be handed over to the plaintiffs, it would not mean maintaining status quo rather it would mean granting the relief of the main suit. It would rather establish a new state of things, different from those existing on the day the present suit was filed. Delhi High Court in M/s Ashok Leyland Ltd. v. Union of India AIR 1980 Delhi 140 took the view that temporary injunction of mandatory character can be granted after notice to defendant and after hearing the parties. thereforee, it is not in all cases that temporary injunction of mandatory character cannot be passed. But as observed above, it has to be established irreparable injury. In the present case the plaintiff has placed reliance on the letters written by Doordarshan indicating that Regional Kendra of Lucknow has agreed to telecast the Seriall 'Chanakya'. But if it is not telecast no irreparable loss or injury to my mind would be caused to the plaintiffs. At best the monetary loss the plaintiff may suffer can be compensated. It cannot be called an extreme case of hardship. As held by this Court in Kailash Nath & Associates v. Ram Nath & ors. (1990) Drj 19, mandatory injunction is not granted before trial, save in exceptional cases and extremely rare circumstances. Merely because Lucknow Kendra has favorably considered to telecast the Seriall 'Chanakya' on the Lucknow Doordarshan is not such an exceptional case or a rare circumstance which cannot wait the final outcome of this trial. Moreover, it is well known principle of law that where the plaintiffs can be compensated by costs injunction cannot be granted. In the facts and circumstanaces of this case, defendant No.1 cannot be compelled to do specific performance of the alleged agreement without going into the merits of the case particularly when the defendant No.1 has challenged the genuineness of the impugned agreement dated 7th September,1991. thereforee, for the reasons stated above, I find force in the legal submissions made by counsel for defendant No.1 that as far as mandatory injunction or as the plaintiff calls it affirmative injunction cannot be granted.

(11) Now turning to the negative covenant whereby the plaintiffs want direction to defendant No.1 not to enter into any agreement with any agency or with any person for a period of 11 years, we have to appreciate the facts which have come on record. For that we have to keep in mind that both the parties have asserted their respective view points, plaintiffs by relying on the agreement dated 7th September,1991 and want the above direction, whereas defendant No.1 has categorically denied the execution of the said agreement. He has set up a defense that he was not even in Delhi when the alleged agreement dated 7th September,1991 was executed. He also took the defense that the alleged 'No Objection Certificate' purported to have been issued by defendant No.3 on behalf of defendant No.2 was a procured one from defendant No.3 in connivance with plaintiffs. Mr.Aggarwal in order to prove that defendant No.1 was not in Delhi on 7th September,1991 has placed reliance on the letter dated 12th September,1990 issued by Mulla & Mulla Craigie Blunt & Caroe, Advocates, wherein it has been mentioned that:-

'ONSaturday, the 7th instant, a Memo of Appeal filed by Mr.Khambe Along with the Stay application was received and a detailed conference was held with your Delhi Advocate Mr.Shrinarayan, when a further strategy was discussed in detail.

WE confirm the discussion at the time of the conference and after the conference.'

(12) Reading of this letter, Mr.Aggarwal contended, shows that defendant No.1 was not in Delhi. He was at Bombay and that is the reason the Advocate apprised him as to what transpired in Court on 5th, 6th and 7th September,1991. Had the defendant No.1 been in Delhi there was no necessity for Mulla & Mulla to inform about the strategy they discussed with his Advocate. This letter was issued on 12.9.91, but by typographical error the year has been wrongly mentioned as 1990. Mr.Aggarwal further contends that in sharp contrast to this letter dated 12.9.1990/1991, the letter dated 6th August,1991 also written by Mulla & Mulla, would show that whenever the defendant No.1 was present at the time of discussion in Delhi, it has been so recorded. The concluding line of para 1 of letter dated 6th August,1991 shows that defendant No.1 was present in Court on 8th June,1991. So relying on these two letters he urged that the impugned agreement

is fabricated. The defendant No.1 was not in Delhi on 7th September,1991, therefore, no reliance can be placed on the alleged agreement. In the absence of the alleged agreement, the plaintiffs have no case. Hence no prima facie case can be built up on the basis of this forged document. Except the agreement, the plaintiffs have not placed any other material on record to show that on 7th September,1991 the defendant No.1 was in Delhi and executed the agreement. On the contrary the letters relied by defendant No.1 shows that he was not in Delhi on that date. Be that as it may, at this point, I am not touching merits of the case vis.a.vis. the execution of the agreement dated 7th September,1991. It is only prima facie that this court has drawn inference that the alleged agreement may or may not have been executed on the said date. Absence of defendant No.1 on 7th September,1991 can be inferred, prima facie, from the letter of 12.9.1990(1991). Moreover, in the agreement executed by defendant No.1 with defendant No.2, the defendant No.1 had covered all the aspects. Each episode was to be sold for Rs. 9.50 lacs per episode and subsequently as per defendant No.1's own showing it was raised to Rs. 14.00 lacs per episode. As per agreement dated 7th September,1991, the telecast rights have been given at Rs. 10,000.00 per episode. Mr.Aggarwal contended that defendant No.1 was not in that desperate need of money that he would have given away the Seriall Chanakya, which had become a very popular on the National Network, at a throw away price of Rs. 10,000.00 per episode. Moreover, defendant No.3 had no right to give no objection certificate for all the episodes because the agreement with defendant No.2 was only for 26 episodes. Hence, the question of giving 'No Objection' in respect of other episodes could not arose. There appears to be some force in these contentions of Mr.Aggarwal. Mr.Jaitely on the other hand strenuously argued that the heritage and culture of India has been depicted through this Seriall and if this Seriall is not allowed to be telecast on Regional Kenderas, it will go waste. The amount of reputation and earning which plaintiffs would get cannot be measured in terms of money. I do not find any merits in this argument of Mr.Jaitley. Simply because the Seriall 'Chanakya' has heritage and depicts India's culture but that is no ground to force defendant No.1, not to enter into any agreement for all times to come with any other person or agency. So far as plaintiffs' right to earn from the telecast of this Seriall for 11 years is concerned that can be calculated and

compensated in terms of money. Hence the loss, if any, the plaintiffs may suffer can be measured in terms of money. Therefore, even the negative relief of restraining defendant No.1 from entering into any agreement for the retelecast of this Serial cannot be granted in favor of plaintiffs. I am not convinced of a prima facie case particularly when the document dated 7.9.91 itself is in doubt. Secondly so far as irreparable loss and balance of convenience are concerned the plaintiffs' right can be protected by giving directions to defendant No.1 that as and when he enters into an agreement for retelecasting the Serial 'Chanakya' he will inform this Court and would also file the statement of account of the money agreed to be received from such an agency or a person. Taking into consideration the comparative mischief or inconvenience likely to be caused from granting the injunction will be greater than withholding the same. In order to ensure that no mischief is played with the plaintiffs the above directions have been given. The defendant No.1 will furnish to this Court at the time of entering into any agreement, the amount received or likely to be received and at what price the retelecast has been allowed.

(13) For the reasons stated above, I find no merits in these applications. These are accordingly dismissed.

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