

Suresh Jindal

Vs

Rizoli Corriere Della Sera Produzioni T.V. S.P.A. and Others

Civil Appeal No. 2735 of 1991

(S. Ranganathan, Smt. M. S. Fathima Beevi, N. D. Ojha JJ)

18.07.1991

JUDGMENT

S. RANGANATHAN, J. –

1. Leave to appeal is granted. Both counsel have been heard and we proceed to dispose of the appeal itself by this order.

2. The appellant, Suresh Jindal, is an Indian film producer with several films to his credit. The respondents, three Italian companies and a foreign film producer acting on behalf of these companies, are claimed to have entered into an agreement with the appellant for the production and exhibition of a television serial based on an Italian novel. According to the appellant, the respondents were unable to make any headway in their project and they were not even able to obtain the permission of the Government of India for shooting the film in India which was a pre-requisite before they could start their project. He claims that the respondents therefore got into touch with him on April 30, 1989. There were certain negotiations between the parties and the purport of an agreement said to have been arrived at in the course of these negotiations was set down in a letter dated May 2, 1989 written by respondent 4, to the appellant. According to the appellant, there was a concluded agreement between the parties under which the appellant was to arrange to get the Government of India's approval for the project and also to act as a co-producer and discharge all such functions that a co-producer might be required to. It is further the case of the appellant that by making certain necessary modifications to the script, necessitated by the policies and guidelines of the Indian Government with which he was familiar, he was able to obtain, on August 1, 1989, the permission of the Government of India for the shooting of the film. He also took concrete steps for the study of suitable locations for the shooting of the film and to discharge his responsibilities as a co-producer. But, he complains, soon after the government permission was obtained, on August 26, 1989, the respondents began cold shouldering him, dissociated themselves and proceeded ahead with the production of the film without his participation. The appellant, therefore, filed a suit for specific performance of the agreement dated May 2, 1989. He also filed two applications for interim relief. By the first, he sought an interim injunction restraining the defendants-respondents from proceeding with the production of the film and from transferring and/or assigning the rights of the appellant under the agreement of any other person. By the second application, he sought to restrain the respondents from carrying on with the production or exhibition of the picture without the participation and/or involvement of the appellant as one of the producers. It, however, appears that, before these interim reliefs could be obtained, the respondents completed the production of the film. Therefore, when the applications for interim relief came on for hearing, the appellant confined his claim only to a three-second display, in the "credit titles" of the serial, of his name as a "co-producer". This relief was not granted to him by the learned Single Judge on the original side and an

appeal by him to a Division Bench was also unsuccessful. Hence the present appeal.

3. Before us, again, the learned counsel for the appellant restricted his claim for interim relief in the manner already set out. He also stated that the appellant was not even keen to be shown as a "co-producer" and that he would be satisfied if some acknowledgment was publicly made of his participation in the project.

4. We have heard the learned counsel for the appellant as well as the learned counsel for the respondents for quite some time. At the outset, we may point out that, according to the respondents, there had been no concluded contract regarding the part to be played by the appellant in the actual production of the film, though the appellant disputes this. It is, however, clear that the appellant did not play any part in the production of the film because, even according to him, he was totally excluded by the respondents from doing so. For obvious reasons, the question of specifically performing this portion of the contract (even assuming, as contended by the appellant, that there was a concluded contract in this respect which could be enforced) can no longer arise. At best the only issue that can be agitated in the suit would be whether the appellant is entitled to damages for having been excluded from being allowed to participate in the production of the film. But, whatever may be the merits of the appellant's claims in the suit, the facts as placed before us have, *prima facie*, left no doubt in our minds that the appellant did render some services to help the respondents to obtain the permission of the Government of India for shooting the film in India. Whether or not the appellant's claim that, but for his help such permission could not have been obtained, is correct, there is no doubt that he did make a valuable contribution in this respect. The only question before us now is whether the appellant is entitled to any interim relief on the basis of the undoubted part played by him in this regard.

5. The appellant has frankly stated before the High Court as well as before us that he was not interested in pursuing the claim for specific performance or damages if only the respondents would make a public acknowledgment (if not that he was a co-producer) at least that he had played a part in making the film possible. He has assured us that, if this relief is granted to him, he would even be prepared to withdraw the suit itself. This appears to us to be a very reasonable stand. We repeatedly made it known to the learned co-counsel for the respondents that we were firmly of the opinion that the least that the respondents could do was to acknowledge the help given by the appellant. We left them to choose their own words for expressing such acknowledgment. We suggested to them that it would only be just and proper that they should display, for a short time, (say three seconds, as suggested by the appellant) their acknowledgment in the titles of "credits" for the film so that the services rendered by the appellant, whether they were crucial as urged by the appellant or not very substantial as claimed by the respondent, are made known to the public. Learned counsel for the respondents, however, after taking instructions, reported that the respondents would neither be willing nor able to make any such acknowledgment inasmuch as the production of the film was complete and steps had already been finalised even for its distribution and exhibition.

6. The High Court seems to have taken the view that, even if the appellant had rendered some services as claimed and the respondents refused to acknowledge it, he can be adequately compensated by the award of damages. Of course, it is possible that the court may ultimately be able to assess some damages for this breach if it comes to the conclusion that there has been such breach. However, we think that in a matter of this type the award of damages is not a complete and adequate remedy or relief. As the appellant has made clear, he is not interested so much in the monetary aspect of the deal he claims to have entered into with the respondents. The gain by way of reputation as well as goodwill which the appellant would secure if his services are acknowledged in

the title shots of the film is not one which can be adequately expressed in terms of money. By the time the suit is finally decided, any such exhibition of acknowledgment may become totally impossible or infructuous. In that situation, perhaps, there would be no alternative but to assess the damages somehow or other depending upon the findings of the court on the issues in the case. We, however, think, on the prima facie case made out and having regard to the fact that the necessary modifications in the "credit titles" can be easily made as the film is still in the early stages of its exhibition, that it is just and necessary that the appellant should be granted interim relief at this stage by injunctioning the respondents from exhibiting the film except after displaying an acknowledgment of the appellant's services.

7. We have pondered on the nature of the relief that should be given to the petitioner. As we have already said, there is no doubt in our minds that, whether there was a concluded contract as claimed by the appellant or not, the appellant did play some part in making the film possible and that the respondents are acting unreasonably in denying him the benefit of the limited acknowledgment he is entitled to have. In view of respondent's disinclination to extend even this courtesy to the appellant, we were initially inclined to issue directions to the respondents to effect necessary changes in the title shots and introduce an acknowledgment of the appellant's services in appropriate language before distributing or exhibiting the film and its copies. We have no doubt that the grant of such a direction would be absolutely within the scope of suit and would mete out proper justice to the appellant. On second thoughts, however, we refrain from doing this. We learn that, though the picture was short in India, it is being exhibited only in foreign countries. Even if we give a direction as proposed, it might be difficult for this Court to ensure that the respondents carry out these directions. Even the appellant would not be in a position to ensure that such directions are complied with. It is well known that a court will not issue directions over the compliance of which it has no control. In view of this we think that we should not issue such general directions as indicated above. We, therefore, restrict the scope of the interim relief and direct, in the interests of justice, that in case the film is proposed to be, or is, exhibited either on the T.V. or in any other medium in India, it shall not be so exhibited by the respondent or their agents unless it carries, in its title shots, an acknowledgment of the services rendered by the appellant to the producers in some appropriate language. We direct accordingly.

8. We would like, however, to make three clarifications. First, we realise that the direction given by us does not fully grant the appellant the relief he deserves. The appellant's desire really is that the part played by him should become known to other foreign producers so that they may indent on his services. A publicity in India alone may not achieve his purpose. However, for the reasons indicated already, we do not wish to further broaden the scope of the interim relief. Second, we are leaving the phraseology of such acknowledgment, in the event of the respondents' decision to exhibit the film in India, to their good sense. In case the film is exhibited without such acknowledgment as we have directed or in case the appellant is not satisfied with the terms in which the acknowledgment is phrased, it will be open to the appellant to approach the High Court for appropriate relief. Third, we have referred to the appellant's willingness to withdraw the suit itself in case the respondents agree to exhibit an acknowledgment in the terms sought by him. In view of the fact that the respondents have not agreed to the suggestion and that the relief given by us is a limited and restricted one, we should like to make it clear that the grant of the interim relief by this order should not be construed as imposing an obligation on the appellant to withdraw his suit or to not prosecute it further. Nor should it be construed as prejudicing or abridging the appellant's claim to damages or other relief in case, for one reason or another, the film is exhibited in India or elsewhere without such acknowledgment as we have suggested.

9. The appeal is partly allowed as indicated. We, however, make no order regarding costs.

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