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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : March 18, 2016*

+ **FAO(OS) 276/2015**

M/S TRINITY GLOBAL ENTERPRISES

LTD & ORS

..... Appellants

Represented by: Ms.Manpreet Kaur, Advocate

versus

VIVEK CHAUDHARY & ORS

..... Respondents

Represented by: Mr.Paritosh Budhiraja, Advocate with
Ms.Preeti Sharma, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. It is an elementary principle of law that no relief can be granted in a suit against a party not impleaded as a defendant. The litigating parties cannot enter into a compromise which affects the interest of third parties or casts a liability on them. It is the duty of a Judge to ensure that a compromise effected is legal and valid and does not adversely affect the rights of third parties or cast a duty or a liability on them.

2. Guided by the principle of law as aforementioned, notwithstanding respondents No.2 and 3 not being served, we are constrained to dispose of the appeal setting aside the order dated May 15, 2015 disposing of CS (OS) 2660/2010 as compromised in terms recorded in the order as also the order dated March 26, 2015 modifying the order dated January 15, 2015, as also

the impugned order dated May 06, 2015 refusing to further modify the order dated January 15, 2015, by which the suit was disposed of on a compromise.

3. To appreciate the facts, that the compromise embraces rights of third parties and fastens a liability on them, it needs to be highlighted that Vivek Chaudhary (respondent No.1 in the appeal) filed a suit alleging infringement of his copyright in the movie titled *Sharafat Gayi Tel Lene*. The defendants impleaded were Rajesh Chawla and M/s.Tandav Films Entertainment Pvt. Ltd., impleaded as respondents No.2 and 3 in the appeal. He pleaded that Rajesh Chawla was proclaiming that he was the author of the story and the screenplay of the movie in question. He pleaded that he approached *The Film Writers Association* for settlement of the disputes and that the said association resolved by opining that the credit for the movie would be :-

- (i). Concept by : Anand Kumar & Rajesh Chawla.
- (ii). Screenplay by : Vivek Chaudhary and Gagan Banga.
- (iii). Dialogue by : Vivek Chaudhary and Rajesh Chawla.

4. We note that the decision aforesaid is by the appellate forum against the decision of the Dispute Settlement Committee. But that hardly matters because it is a case of a misdescription of the body which decided the dispute. The substance of the dispute has been correctly pleaded. Now, neither Anand Kumar nor Gagan Banga were impleaded as parties in the suit.

5. The appellants entered the scene from nowhere. Vivek Chaudhary filed an application under Order 1 Rule 10 of the Code of Civil Procedure praying to implead the appellants as defendants No.3 to 5 in the suit.

6. The said application along with the suit was listed before the Court on January 15, 2015. No orders were passed in the application. But, counsel

appeared for the appellants who till then were proposed to be impleaded as defendants No.3 to 5 in the suit. The application was neither taken up nor decided. The suit was disposed of on January 15, 2015 as having been compromised. The order reads as under:-

“The learned counsel for the parties state, upon instructions, that a settlement has been arrived at between the parties whereby :

i. The credits shall be given to Mr.Vivek Chaudhary as per the last decision of the Film Writers’ Association at the end of the original Hindi version of the film, i.e. ‘Sharafat Gayi Tel Lene’, in the following format :

*“Concept
Anand Kumar
Rajesh Chawla*

*Screenplay
Vivek Chaudhary
Gagan Banga*

*Dialogues
Rajesh Chawla
Vivek Chaudhary*

ii. Additionally a sum of ₹7.00 lacs shall be deposited in the account of the plaintiff within two (2) days, i.e. Account No.50100074783399, HDFC Bank, Mukherjee Nagar Branch, New Delhi, RTGS : HDFC0000609, by the defendants as well as the proposed defendants.

iii. Mr.N.N.Aggarwal, Advocate appearing for proposed defendant Nos.3 to 5 states that he has already received NOCs from Mr.Anand Kumar and Mr.Gagan Banga to compromise the matter on their behalf.

iv. The learned counsel for the parties state, upon instructions, that they shall abide by the settlement arrived at between the parties and shall file undertakings to the above effect in four (4) weeks.

The suit is accordingly disposed off.”

7. Now, admittedly Mr.N.N.Aggarwal, Advocate did not have any vakalatnama in his favour issued by Mr.Anand Kumar and Mr.Gagan Banga and the learned Single Judge could not have therefore recorded a compromise by recording that Mr.N.N.Aggarwal claims that proposed defendants No.3 to 5 had received a NOC from Anand Kumar and Mr.Gagan Banga. Further, without formally impleaded proposed defendants No.3 to 5 and understanding in what manner they were seeking impleadment, the suit could not be decreed conferring some rights on them with a corresponding duty on Anand Kumar and Gagan Banga. The order is ex-facie contrary to law and needs to be set aside.

8. IA No.3913/2015 thereafter came to be filed by proposed defendant No.3, seeking modification of the order dated May 15, 2015, praying that the plaintiff be directed to obtain fresh NOCs from Anand Kumar and Gagan Banga. The said application was disposed of by a consent order dated March 26, 2015 which reads as under:-

“IA No.3913/2015

This application seeks modification of the order dated 15.1.2015.

Issue notice.

The learned counsel for the defendants accept notice.

The learned counsel for the applicant submits that this Court had recorded that Mr.M.N.Aggarwal, Advocate appearing for the proposed defendant Nos.3 to 5 has already received the requisite NOC for compromise of the matter on their behalf; that it is an error since the said NOC was stated to have been received by the counsel for the plaintiff, Mr.Paritosh Budhiraja.

Mr.Budhiraja states that he is in possession of the NOCs from Mr.Anand Kumar and Mr.Gagan Banga. A copy of the same has been handed over to Mr.Rohit Gandhi, who has read it and states that the same is in order. Let the original of the said document be supplied to him within a week. A copy of the same be filed on record in this Court.

The amount of ₹7.00 lacs, which was directed to be paid to the plaintiffs by 17.1.2015, as per the last order, has not been paid. The learned counsel for defendant Nos.3 to 5 states, upon instructions, that the said amount shall be paid to the plaintiff within a week failing which costs of ₹50,000/- shall be payable for every fortnightly default thereafter. The amount shall be payable for every fortnightly default thereafter. The amount shall be paid by way of a Demand Draft which shall be handed over to the learned counsel for the plaintiff, Mr.Paritosh Budhiraja.

Mr.Gandhi further states that insofar as the credits were agreed to be given to Mr.Vivek Chaudhary in the end of the original Hindi version of the film, the settlement may be modified to the extent that the credits have already been given in the beginning of the film. To this, Mr.Budhiraja has no objection.

The order stands modified accordingly.

The application stands disposed off in the above terms.”

9. It was followed thereafter by IA No.9215/2015 praying that orders dated January 15, 2015 and March 26, 2015 be revoked and the plaintiff be directed to provide written assignments in his favour by Anand Kumar and Gagan Banga. The said application was disposed of vide impugned order dated May 06, 2015 which reads as under:-

“IA No.9215/2015(u/S. 151 CPC for setting aside of orders dated 15.1.2015 & 26.3.2015) & IA No.9216/2015 (exemption)

This Court notices that IA No.826/2015 seeking impleadment of M/s.Trinity Global Enterprises Ltd., Mr. Devender Jain and Mr.Akhilesh Jain as defendant Nos. 3 to 5 stood disposed off on account of the suit being disposed off vide order dated 15.1.2015, however, no formal order was passed on the said application. It is also noteworthy that the learned counsel for the said defendants had entered appearance on the said date. Accordingly IA No.826/2015 is allowed and M/s. Trinity Global Enterprises Ltd., Mr.Devender Jain and Mr.Akhilesh Jain are impleaded as defendant Nos.3 to 5, respectively.

This application seeks modification of this Court’s order dated 15.1.2015 on the ground that NOCs which were to be given to the proposed defendant Nos. 3 to 5 had not been handed over and that the NOC is with regard to only the Hindi version of the film and does not cover other languages.

The learned counsel for the applicant submits that the understanding was that the NOC, i.e., assignment of copyright would be with respect to all languages in which the film could be made but credits were sought to be given only apropos the Hindi film.

The learned counsel for the non-applicant/plaintiff has handed over the original NOCs from Sh.Anand Kumar and Sh.Gagan Banga as well as from the plaintiff to the learned counsel for the applicant. He further submits that other than assignment of copyrights in the Hindi film, nothing else was contemplated or agreed to on the date when the settlement was made in this Court on 15.1.2015 and it has been so recorded. He submits that the applicant is now seeking to extend the terms of settlement beyond what was agreed between the parties. He further states that the monies, i.e., ₹7 lacs which were supposed to have been paid by the defendant/applicant have not been paid to the plaintiff so far.

The learned counsel for the applicant submits that the original demand draft has been placed on record. The learned counsel for the applicant submits that the NOC is not in the requisite format in terms of Section 19 of the Copyright Act. This Court is of the view that what was agreed between the parties is clearly recorded in the order dated 15.1.2015, i.e., credits being given apropos the Hindi version of the film and there was no mention of assignment of rights in any other language. If that was so, then it should have been specifically agitated by the learned counsel for the parties. In the absence of such averments or submissions to the Court, there is no occasion for modifying the said order. The application is without any basis.

The draft NOC regarding the Hindi version shall be supplied to the learned counsel for the plaintiff within a week from today.

The learned counsel for defendants Nos. 3 to 5 submits that a draft NOC in terms of the Copyright Act apropos the Hindi version of the films shall be supplied to the learned counsel for the plaintiff. The requisite NOCs shall then be supplied to defendant Nos.3 to 5 within one

(1) week thereafter provided the settlement amount is paid to the plaintiff by then.

The applications are disposed off in the above terms.

Dasti under signatures of the Court Master.”

10. Now, the quibbling is concerning no objections to be given by Anand Kumar and Gagan Banga, who are not even parties to the suit.

11. Learned counsel for the appellants states that the plaintiff sought their impleadment on the plea that defendant No.2 has assigned its rights in the film in favour of appellant No.1, of which appellants No.2 and 3 are directors of.

12. Since the suit has been disposed of on a compromise embracing rights of Anand Kumar and Gagan Banga and parties have started filing applications calling upon the others to obtain documents concerning no objection certificate from Anand Kumar and Gagan Banga, with consent of learned counsel for the parties to the compromise who are present before us i.e. the plaintiff of the suit and the appellants who claimed to be successors-in-interest of defendant No.2, we dispose of the appeal setting aside the compromise order dated January 15, 2015, the order dated March 26, 2015 and the impugned order dated May 06, 2015.

13. The suit is restored for adjudication afresh with a direction to the Registry to find out IA No.826/2015. The learned Single Judge would first decide IA No.826/2015 and then proceed ahead. If parties compromise the dispute it would be ensured that the compromise does not embrace any right of Anand Kumar and Gagan Banga or cast any obligation on them.

14. Parties are given liberty to move an application for formal listing of

the suit.

15. No costs.

CM No.9513/2015

Dismissed as infructuous.

**(PRADEEP NANDRAJOG)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

MARCH 18, 2016

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