IN THE COURT OF SH. LOKESH KUMAR SHARMA, DISTRICT JUDGE (COMMRCIAL)-05, SOUTH DISTRICT, SAKET COURTS, NEW DELHI.

CS(Comm) 447/24

In the matter of:-
Ivy Entertainment Pvt. Ltd.
having its registered office at
C-70, Lower Ground Floor, Panchsheel Enclave,
New Delhi-110017 ......Plaintiff

Versus

1. Kajalben (Kinjalben) Naginbhai Maheriya
Having her address at
518K, Chamunda Society,
Gothva, Mahesana,
Gujarat,-384315
Email :- KMDIGITAL852@GMAIL.COM......Defendant No. 1

2. Saregama India Limited
Having its office at:
A-62, 1st Floor, FIEE Complex,
Okhla Industrial Area,
Phase -II, New Delhi-110020
Email : co.sec@saregama.com ....Defendant no. 2

Application filed on :- 19.09.2024
Arguments heard on :- 06.12.2024
Order dated : - 06.12.2024

ORDER

06.12.2024

Vide this order, I shall dispose of an application filed on behalf of plaintiff u/o XXXIX rule 1 & 2 r/w 151 CPC seeking interim injunction against Defendant no. 1 restraining her from singing/recording/performing any audio or video songs in the Gujarati language for any music lable, company or business other than the Plaintiff herein.

Briefly stated the facts that had given rise to filing of the present application, are succinctly given as under:-

The Plaintiff herein has filed the present suit against the defendants for the reliefs of permanent and mandatory injunction as well as for specific performance of agreement entered into between the parties on 20.09.2023 and also for payment of damages against Defendant no. 1, averring therein that Plaintiff is a company incorporated under the provisions of Companies Act, 2013 and is engaged in the business of sourcing and supplying of motion pictures, films and programs in the entertainment industry. It was also stated to be engaged in the production and distribution of films.

It was stated that Plaintiff had entered into an agreement with Defendant no. 1 for recording of 60 songs and corresponding 60 music videos of Gujarati songs, which Defendant no. 1 was supposed to sing and perform exclusively for the Plaintiff and in lieu thereof, the total remuneration agreed to be paid by Plaintiff to the Defendant no. 1 was stated to be Rs. 37,20,000/- @ 62,000/- per song.

It has been argued by Ld. Counsel for the Plaintiff that despite Plaintiff having expressed its readiness and willingness to perform its part of contract as reflected in the letter dated 24.11.2023 as well as letter dated 04.12.2023, the Defendant no. 1 had not paid any heed to the same and had performed for the other producers despite having agreed not to perform for anyone else except the Plaintiff.

It has also been submitted that Plaintiff is still ready and willing to pay 80% of the contractual amount to Defendant no. 1 and had also incurred heavy costs in picturing and shooting etc. for the purpose of recording, which is being termed as production costs by the Plaintiff.

My attention has also been drawn by Ld. Counsel for Plaintiff to para 6(c)(iii) of the agreement at page 48 of the paper book, wherein it was stated that Defendant no. 1 shall be raising her invoices in that regard after filing returns and uploading the same on GST portal. Further, Ld. Counsel has drawn my attention to para 9(C) of the same agreement which provided that in case Defendant no. 1 had failed to perform her part of obligations, then she would have paid damages not less than Rs. 37.2 lakhs to the Plaintiff to compensate for irreparable loss and injury suffered by it.

In the light of the aforesaid provisions, it has been further submitted by Ld. Counsel for Plaintiff that the contract herein does not fall within the category of contracts, which could not be specifically enforced as provided u/s 14 of the Specific Relief Act and hence, Plaintiff has a very good prima-facie case in its favour and balance of convenience also lies in favour of Plaintiff as it had already made the substantial investment towards cost of production and it shall suffer irreparable loss and injury, if Defendant no. 1 herein is not restrained from performing for other persons.

My attention has also been drawn to clause 4 (C) of the agreement at page 39 of the paper book, which provided that if the audio and video recordings would not complete during the exclusive period provided for agreement, then Defendant no. 1 shall complete the same beyond that period and before starting any work with any other person, music label as the case may be.

It has been argued and submitted by Ld. Counsel for Defendant no. 1 that Plaintiff is trying to take advantage of its own wrong as the Plaintiff had miserably failed to perform its part of obligations as provided in the agreement and since the Plaintiff had not paid even a single penny to Defendant no. 1, much less than the 40% of total Defendant no. 1's payment as advance within 15 days of execution of the agreement as mentioned in clause 2(a) of Section D of the agreement at page 40 of the paper book, hence, Defendant no. 1 had no corresponding obligation to perform her part of the contract and hence, Plaintiff had miserably failed to make out the prima-facie case in its favour.

Countering this argument and submission, Ld. Counsel for Plaintiff has vehemently submitted that as per the terms already relied upon by him, the Defendant no. 1 was supposed to raise invoices, so as to enable the Plaintiff to make payments to her, which she had miserably failed to do and hence, now could not take any advantage out of her own wrongs.

However, I do not find myself in agreement with the contentions raised by Ld. Counsel for Plaintiff because it is the settled proposition of law that invoices are raised only against the services rendered or goods supplied by one party to the other and once the Plaintiff itself had agreed to make payment or 40 per cent of the total contractual amount to the Defendant no. 1 within 15 days of the execution of agreement as advance payment, hence, I am of the considered view that Defendant no. 1 was not supposed to raise any invoices towards advance payment and at the best she could have been asked only to issue a receipt or written acknowledgment of the said amount, which would have bound down her to perform her obligations qua the Plaintiff. The consideration is an essential ingredient of a contract to be specifically enforceable.

Admittedly, there is no consideration paid by the Plaintiff to Defendant no. 1 till date and without paying a single penny, the Plaintiff wants to enforce the specific performance of the contract, which otherwise also has expired by afflux of time and would not attain the shape of a legal, valid and binding agreement or contract in absence of any consideration.

Hence, I am of the considered opinion that Plaintiff has miserably failed to make out a prima-facie case in its favour and even the balance of convenience also does not lie in its favour as it had failed to perform its own part of obligations as mentioned in the agreement and so far as the irreparable loss and injury is concerned, once the Plaintiff itself had quantified the amount of damages, then it could not be held that Plaintiff would be suffering any irreparable loss or injury. Therefore, keeping in view my aforesaid provisions, the application as filed u/o XXXIX rule 1 & 2 CPC is dismissed with no order as to costs.

Announced in the open court.

LOKESH KUMAR SHARMA

Digitally signed by LOKESH KUMAR SHARMA
Date: 2024.12.06 15:13:48 +0530

(Lokesh Kumar Sharma)
District Judge (Commercial Court)-05
South/Saket/New Delhi/06.12.2024