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

+ **CS(COMM) 1115/2018**

POOJA FILM COMPANY Plaintiff

Through: Mr. Ravi Prakash Mehrotra and Mr.
Ankit Agarwal, Advocates.
(M:9811197358).

versus

**SUPER CASSETTES INDUSTRIES PVT. LTD.
& ORS.**

..... Defendants

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Neel Mason, Ms. Ridhima Pabbi,
Mr. Harsh Kaushik, Mr. Vihan Dang,
Ms. P. Vennela & Mr. Vishesh
Kumar, Advocates for Defendant
No.1. (M:9958528434)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

ORDER
% **14.09.2018**

I.A12415/2018 (exemption)

1. This is an application seeking exemption from filing original documents. Recording the Plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed. I.A. is disposed of.

CAV. 851/2018

2. Mr. Neel Mason, advocate accepts notice on behalf of the caveator. Caveat is discharged.



I.A12414/2018 (u/O XXXIX Rules 1 2 CPC)

3. This is a suit for recovery, declaration and mandatory injunction on behalf of the Plaintiff in respect of agreement dated 16th October, 2017 stated to have been entered into between the Plaintiff and the Defendant No.2. The Plaintiff submits that it has paid a sum of Rs.6.25 crores to Defendant No.2 under the said agreement and it was to acquire various rights in respect of the film “*Batti Gul Meter Chalu*”. The first right being credit rights for the film; second 15% of overflow in revenue for exploitation; and third right of first refusal to distribute/exploit the film.

4. Learned counsel for the Plaintiff submits that since the Plaintiff had invested in the film which is stated to be releasing this month i.e. on 21st September, 2018, its interest should be secured inasmuch as it has paid a substantial sum of money to M/s Kriarj Entertainment Private Limited.

5. There is no doubt that insofar as Super Cassettes Industries Private Limited is concerned, it acquired 50% rights in the film from M/s Kriarj Entertainment Private Limited vide two agreements dated 28th July, 2017 and 10th August, 2017. One of the said agreements provided that no other rights in the film would be assigned by M/s Kriarj Entertainment Private Limited in favour of any third party without the consent of Super Cassettes Industries Private Limited.

6. According to learned counsel appearing for Super Cassettes Industries Private Limited, the agreement with the Plaintiff being subsequent to the agreements with Super Cassettes Industries Private Limited and having been entered into without the consent of Super Cassettes Industries Private Limited, the same are *void ab initio*.

7. This Court had dealt with similar litigations in respect of the film



“*Fanney Khan*” and “*Batti Gul Meter Chalu*” where various orders were passed at that stage. The said orders have been placed on record by the Plaintiff. Subsequently, however, the Bombay High Court vide judgment dated 1st August, 2018 in the case of ***Pooja Entertainment and Films Ltd. vs. Kriarj Entertainment Pvt. Ltd. and other [Commercial Suit (L) No. 899 of 2018]*** has, while interpreting a similar set of agreements, observed as under : -

“17. As per the original agreement dated 25th May 2017, on 20th July 2017, Kriarj entered into a Co-Production Agreement with Super Cassettes. Under clause 4.3 of the Co-Production Agreement, Super Cassettes agreed to fund the cost of production of the film with Kriarj in the ratio of 60%:40%, respectively. Under clause 5.1, Kriarj and Super Cassettes agreed that they shall jointly, exclusively and equally own Kriarj’s 50% share as per the original agreement dated 25th May 2017 in all right, title and interest in relation to the film, the intellectual property in the film, the distribution rights, the derivative rights, the underlying works, the intellectual property rights, including the underlying, incidental, derivative and ancillary rights therein for the territory for a period of 58 years. Clause 7 of the Co-Production Agreement confirms that Super Cassettes shall either directly or through any other entity exploit the distribution right of the film in perpetuity and in territory. Under clause 9.2, due credit as agreed is to be given to T-Series and its directors as a producer. Under clause 11.1.6, it was agreed that neither party shall deal with, in any manner its rights under the Agreement dated 20th July 2017 with any third party without the written consent of the other party and if such agreement is executed, the same shall be void ab initio and the affected party shall not be bound by the terms of the such agreement. Under clause 15.4, Super Cassettes had a right to



terminate the agreement in case Kriarj failed to commence the said film or abandon the said film or was unable to complete the film within the time schedule mentioned under the Co-production Agreement for any reason including its inability to arrange the requisite funds or if it declares that due to its financial constraints, it is unable to complete the film. Upon any of the said events taking place, the agreement was to stand automatically terminated and all rights under the said Agreement dated 20th July, 2017 would vest in Super Cassettes immediately on the aforesaid termination of the agreement. Super Cassettes would then have the right to complete the film by introducing its own funds.

18. Thus, under the Agreement dated 20th July, 2017, Super Cassettes became a co-producer of the said film and had the right to exploit the film including the theatrical exploitation rights. Kriarj was prohibited from dealing with any third party without written consent of Super Cassettes. Thus, when the agreement with Pooja was purportedly executed by Kriarj on 16th December 2017, Kriarj had no right to grant a license to Pooja and as such, the alleged MOU does not confer any rights on Pooja. Pooja cannot claim a higher right than what Kriarj itself had i.e. Pooja cannot claim the rights from Kriarj, which Kriarj did not have.”

8. There is no doubt that the Plaintiff claims to have invested in the film and has paid to M/s Kriarj Entertainment Private Limited, a sum of Rs.6.5 crores. However, its basic relief is against M/s Kriarj Entertainment Private Limited. Since the film is being released on 21st September, 2018, the only relief that can be granted at this stage in favour of the Plaintiff is to direct Super Cassettes Industries Private Limited which is now releasing the film, to file a revenue statement after the release of the film within a period of eight weeks as to the total revenue earned from the theatrical, satellite



distribution and all other forms of exploitation of the film “*Batti Gul Meter Chalu*”. If, beyond the period of eight weeks, further revenues are earned, SCIL shall file accounts of the same on a quarterly basis, for a period of one year. The said accounts statements shall be filed along with an affidavit of a competent senior official, who is duly authorized by the Board of SCIL. Ordered accordingly.

9. Learned counsel for the Plaintiff prays that credit be given to the Plaintiff in that film which is due to be released. The said relief is not be granted inasmuch as the litigation between Plaintiff and defendants in respect of the same movie, has been pending before this Court, since 10th July and there is no reason as to why the Plaintiff failed to approach the Court earlier. On the eve of release of a film, a relief being sought of this nature cannot be granted, especially when the Plaintiff has had sufficient notice of the disputes that have arisen. Compliance of Order XXXIX Rule 3 be done within a week.

10. Let notice be issued to M/s Kriarj Entertainment Private Limited. Let replies be filed within four weeks. Rejoinder within two weeks thereafter. List the application on 30th October 2018.

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11. Let summons in the suit be issued to M/s Kriarj Entertainment Private Limited upon filing of Process fee. The summons to the M/s Kriarj Entertainment Private Limited shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Insofar as the Super Cassettes Industries Private Limited is concerned, let the written statement be filed within 30 days. Along with the written statement, the Defendants shall also file an affidavit of



admission/denial of the documents of the Plaintiffs, without which the written statement shall not be taken on record.

12. Liberty is given to the Plaintiffs to file a replication within 15 days of the receipt of the written statement(s). Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendants, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

13. List before the Joint Registrar for marking of exhibits on 12th November, 2018. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

14. List before Court on 20th November, 2018.

15. A copy of this order be given *dasti* under signature of the Court Master.

PRATHIBA M. SINGH, J.

SEPTEMBER 14, 2018

Rekha