

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 547 OF 2007

Super Cassettes Industries Limited ...Plaintiff
vs.
M/s.Dhariwal Films Pvt.Ltd. & Ors. ...Defendants

Mr.Ashok Singh for the Plaintiff.
Ms.Fatima Khan i/b. Mr.A.M. Saraogi for Defendant No.1.
Mr.Rashmin Khandekar with Mr.Tushar Gujjar i/b. M/s.Naik Naik & Co. for
Defendant No.3.

WITH

SUIT NO. 155 OF 2007

M/s.Ultra Distributors Private Limited ...Plaintiff
vs.
M/s.Dhariwal Films Pvt.Ltd. & Ors. ...Defendants

Mr.Rashmin Khandekar with Mr.Tushar Gujjar i/b. M/s.Naik Naik & Co. for the
Plaintiff.
Ms.Fatima Khan i/b. Mr.A.M. Saraogi for Defendant No.1.
Mr.Ashok Singh for Defendant No.2.

CORAM : S.C. GUPTE, J.

27 SEPTEMBER 2013

P.C. :

The Plaintiff in Suit No.547 of 2007, who is also Defendant No.2 in Suit No.155 of 2007, has filed a common affidavit of documents together with a compilation of documents as also affidavit in evidence. The documents are marked as documents of the Plaintiff in Suit No.547 of 2007, to be used commonly for the companion Suit, namely, Suit No.155 of 2007 as documents of Defendant No.2 therein.

2. The document at Serial No.1 of the Plaintiff's compilation of documents is a photocopy of an Agreement dated 4 February 2002. Advocate for Defendant No.3 objects to this document being marked on the ground that this document is between third parties with whom the Defendant is not concerned and secondly, that the document being a photocopy has no probative value. The probative value of a document is a question to be determined during the trial.

The Plaintiff's witness has deposed to this document which is a xerox copy received by him through Defendant No.2 as also the Director of Defendant No.1. Having regard to the deposition in para 11, the document is marked as "**P-1**".

3. Having regard to the deposition of the Plaintiff's witness in para 12 of his affidavit in lieu of examination in chief, the document at Serial No.2 of the Plaintiff's compilation of documents is marked as "**P-2**".

4. Having regard to the deposition of the Plaintiff's witness in para 13 of the affidavit in lieu of examination in chief, the document at Serial No.3 is marked as "**P-3**".

5. Having regard to the deposition of the Plaintiff's witness in para 14 of his affidavit of evidence, the document at Serial No.4 is marked as "**P-4**".

6. Having regard to the deposition of the Plaintiff's witness in para 14 of his affidavit of evidence, the document at Serial No.5 is marked as "**P-5**".

7. Having regard to the deposition of the Plaintiff's witness in para 15 of the affidavit in lieu of examination in chief, the document at Serial No.6 is marked as "**P-6**".

8. Having regard to the deposition in para 16 of the affidavit in lieu of examination in chief, the document at Serial No.7 is marked as "**P-7**".

9. Having regard to the deposition of the Plaintiff's witness in para 18 of the affidavit in lieu of examination in chief, the documents at Serial Nos.8 and 9 are marked, respectively as "**P-8**" and "**P-9**".

10. By consent, the documents at Serial Nos.10 and 11 are marked on record as "**P-10**" and "**P-11**".

11. The document at Serial No.12 of the Plaintiff's compilation of documents is marked for identification as "**X**".

12. The documents at Serial Nos.13 to 15 are, by consent, marked as **“P-12 to P-14”**.

13. Having regard to the deposition of the Plaintiff's witness in para 23 of the affidavit in lieu of examination in chief, the document at Serial No.16 is marked as **“P-15”**.

14. The documents at Serial Nos.17 to 21 are by consent, marked as **“P-16 to P-20”**.

15. Having regard to the deposition of the Plaintiff's witness in para 27 of the affidavit in lieu of examination in chief, the document at Serial No.22 is marked as **“P-21”**.

16. Having regard to the deposition of the Plaintiff's witness in para 28 of his affidavit in lieu of examination in chief, the document at Serial No.23 is marked as **“P-22”**.

17. The document at Serial No.24 of the Plaintiff's compilation of documents is marked as **“X-1”** for identification.

18. By consent, the document at Serial No.25 of the compilation is marked as **“P-23”**.

19. Having regard to the deposition of the Plaintiff's witness in para 32 of the affidavit in lieu of examination in chief, the document at Serial No.26 is marked as **“P-24”**.

20. Defendant No.3, who is the Plaintiff in Suit No.155/2007 has filed its common compilation of documents to be used by it as Defendant No.3 in Suit No.547/2007 and Plaintiff in Suit No.155/2007. For the sake of convenience, the documents are marked as documents of Defendant No.3 in Suit No.547/2007 to be commonly used by Defendant No.3 in Suit No.547/2007 and by the Plaintiff in Suit No.155/2007.

21. Having regard to the deposition of the witness of Defendant No.3 in para 2 of his affidavit in lieu of examination in chief, the document at Serial No.1 of the compilation of documents of Defendant No.3 is marked as “**D-1**”.
22. Having regard to the deposition of Defendant's witness in para 4, the document at Serial No.2 is marked as “**D-2**”.
23. Having regard to the deposition of the Defendant's witness in para 5 of the affidavit in lieu of examination in chief, the document at Serial No.3 is marked as “**D-3**”.
24. Having regard to the deposition of the Defendant's witness in para 6 of the affidavit in lieu of examination in chief, the document at Serial No.4 is marked as “**D-4.**”
25. The document at Serial No.5 is marked as “**D-5**”.
26. The document at Serial No.6 is marked as “**Y**” for identification.
27. The document at Serial No.7 is marked as “**D-6**”.
28. By consent, the document at Serial Nos.8 to 11 are marked as “**D-7 to D-10**”.
29. Having regard to the deposition of the Defendant's witness in para 11 of his affidavit in lieu of examination in chief, the document at Serial No.12 is marked as “**D-11**”.
30. By consent, the documents at Serial Nos.13 to 16 are marked as “**D-12 to D-15**”.
31. Having regard to the deposition of the Defendant's witness in para 15 of his affidavit in lieu of examination in chief, the document at Serial No.17 is marked as “**D-16**”. (The reference to this document in the deposition in para 15 is by consent corrected to Serial No.17).

32. Having regard to the deposition in para 16 of the affidavit in lieu of examination in chief, the document at Serial No.18 is marked as “**D-17**”. (The reference to this document in para 16 of the affidavit is, by consent, corrected as Serial No.18).

33. Having regard to the deposition in para 17 of the affidavit in lieu of examination in chief, the document at Serial No.19 is marked as “**D-18**”, after correcting the reference in the deposition from Serial No.18 to Serial No.19.

34. The documents at Serial Nos.20 to 26 are, by consent, marked as “**D-19 to D-25**”.

35. Having regard to the deposition of the Defendant's witness in para 24 of the affidavit in lieu of examination in chief, the document at Serial No.27 (reference in the deposition corrected from Serial No.26 to 27 by consent) is admitted on record and marked as “**D-26**”.

36. By consent, the document at Serial No.28 is marked as “**D-27**”.

37. Having regard to the deposition of the witness in para 26 of the affidavit in lieu of examination in chief, the document at Serial No.29 (after correcting the reference in the deposition from Serial No.28 to 29 by consent) is marked as “**D-28**”.

38. By consent, the document at Serial No.30 is marked as “**D-29**”.

39. Having regard to the deposition in para 28 of the affidavit in lieu of examination in chief, the document at Serial Nos.31 and 32 (after correcting the reference in the deposition from Serial No.30 and 31 to Serial No.31 and 32, by consent) is marked as “**D-30 and D-31**”.

40. Having regard to the deposition of the Defendant's witness in para 29 of his affidavit in lieu of examination in chief, the document at Serial No.33 (after correcting the reference in the deposition from Serial No.32 to 33, by

consent) marked as “**D-32**”.

41 By consent, the documents at Serial Nos.34 to 38 are marked as “**D-33 to D-37**”.

42. Having regard to the deposition in para 35 of his affidavit in lieu of examination in chief, the document at Serial Nos.39 and 40 are marked as “**D-38**” and “**D-39**” (after correcting the reference in the deposition from Serial Nos.38 and 39 to Serial Nos.39 and 40, respectively, by consent).

43. By consent, the document at Serial No.41 is marked as “**D-40**”.

44. Having regard to the deposition of the Defendant's witness in para 38 of the affidavit in lieu of examination in chief, the document at Serial No.42 is marked as “**D-41**” (after correcting reference thereto in the deposition from Serial No.41 to Serial No.42, by consent).

45. Having regard to the deposition of the Plaintiff's witness in para 40 of his affidavit in lieu of examination in chief, the document at Serial No.43 (after correcting the reference in the deposition from Serial No.42 to Serial No.43) is marked as “**D-42**”.

46. Having regard to the deposition of the Defendant's witness in para 39 of his affidavit in lieu of examination in chief, the document at Serial No.44 is marked as “**D-43**” (after correcting reference thereto in the deposition from Serial No.43 to Serial No.44, by consent).

47. By consent, the document at Serial No.45 is marked as “**D-44**”.

48. Having regard to the deposition in para 42, the documents at Serial Nos.46 and 47 are marked as “**D-45**” and “**D-46**” (after correcting reference thereto in the deposition from Serial No.45 and 46 to Serial No.46 and 47, by consent).

49. The documents at Serial Nos.48 and 49 are marked as “**D-47 to D-**

48”.

50. Having regard to the deposition of the Defendant's witness in para 44 of his affidavit in lieu of examination in chief, the document at Serial No.50 is marked as “**D-49**” (after correcting reference thereto in the deposition from Serial No.49 to Serial No.50, by consent).

51. Having regard to the deposition of the Defendant's witness in para 45 of the affidavit in lieu of examination in chief, the documents at Serial Nos.51 to 53 are marked as “**D-50 to D-52**” (after correcting reference thereto in the deposition from Serial No.50, 51 and 52 to Serial No.51, 52 and 53, by consent).

52. The documents at Serial Nos.54, 55 and 56 are, respectively, marked as “**Y-1**”, “**Y-2**” and “**Y-3**” for identification.

53. Having regard to the deposition of the witness in para 48 of the affidavit in lieu of examination in chief, the document at Serial No.57 is marked as “**D-53**” (after correcting the reference thereto in the deposition from Serial No.56 to Serial No.57).

54. The document at Serial No.58 is the original letter dated 25 March 2008. The same is marked as “**D-54**”. (after correcting reference thereto in the deposition from Serial No.57 to Serial No.58).

55. The document at Serial No.59 is the 3rd Defendant's letter dated 11 July 2008. The document is marked as “**D-55**”.

56. Having regard to the deposition of the witness in para 51 of his affidavit, the document at Serial No.60 is marked as “**D-56**” (after correcting reference thereto in the deposition from Serial No.59 to Serial No.60, by consent).

57. S.O. to 4 October 2013.

(S.C. Gupte, J.)