



2025:DHC:8281-DB



\$~67

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 251/2025**

NILESH GIRKAR

.....Appellant

Through: Mr. Rahul Ajatshatru, Ms.
Daisy Roy, Ms. Swati Chanana, & Ms.
Yukti, Advs.

versus

**ZEE ENTERTAINMENT ENTERPRISES
LIMITED AND & ORS.**

.....Respondents

Through: Mr. Avijit Sharma, Ms. Kripa
Pandit, Mr. Christopher Thomas, Advs. for
R-1

Mr. Amber Dwivedi, Mr. Bhushan
Mahendra OZA and Mr. Himanshu Nayyar,
Advs. for R-2 to 4

Mr. Mayank Sharma, Adv. for R-5

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

%

16.09.2025

C. HARI SHANKAR, J.

1. This appeal, under Section 13 of the Commercial Courts Act, 2015, assails order dated 20 March 2025 passed by the learned District Judge (Commercial Court), South District Saket, in CS (Comm) 72/2024¹.

2. There were five defendants in the suit, who are Respondents 1

¹ Nilesh Girkar v Zee Entertainment Enterprises Ltd & Ors



to 5 in the present appeal. Qua the impugned judgment, the learned Commercial Court has dismissed the suit against Respondent 1 invoking Order VII Rule 11(a)² of the Code of Civil Procedure 1908³ and has returned the plaint qua Respondents 2 to 5 invoking Order VII Rule 10⁴ of the CPC.

3. Aggrieved thereby, the plaintiff before the learned Commercial Court has instituted the present appeal.

4. We have heard Mr. Rahul Ajatshatru, learned Counsel for the appellant and Mr. Avijit Sharma, learned Counsel for Respondent 1, Mr. Amber Dwivedi, learned Counsel for Respondents 2 to 4 and Mr. Mr. Mayank Sharma, learned Counsel for Respondent 5.

5. Could the learned Commercial Court have returned the plaint qua Defendants 2 to 5 under Order VII Rule 10 and rejected the plaint qua Defendant 1 under Order VII Rule 11(a)?

5.1 One of the initial issues which concerned us was as to whether the learned Commercial Court could have returned the plaint in part under Order VII Rule 10 of CPC by dismissing the suit qua Respondent 1 and returning the plaint qua Respondents 2 to 5.

² 11. **Rejection of plaint.** – The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

³ ‘CPC’ hereinafter

⁴ 10. **Return of plaint.** –

(1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.—For the removal of doubts, it is hereby declared that a court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule



5.2 A plaint is returned, under Order VII Rule 10, where it has been presented in a court other than that in which it should have been instituted. The Court which returns the plaint is, therefore, *coram non judice*, to adjudicate the *lis*. A Court either has, or does not have, jurisdiction. Even if part of the cause of action is within the jurisdiction of the Court, it is maintainable, by virtue of Section 20(c)⁵ of the CPC. If the Court holds that it does not have the jurisdiction to entertain the suit, the decision has to be with respect to the suit as a whole, and not in part. The implication of such a decision would be that no part of the cause of action has arisen within the territorial jurisdiction of the Court. The Court would, thereby, become *coram non judice*. It has to abandon all efforts at dealing with the suit, *in respect of any aspect*. It cannot, therefore, return the plaint *in part* and adjudicate it in part.

5.3 Equally, it was not permissible for the learned Commercial Court to reject the plaint in part under Order VII Rule 11, qua Respondent 1 alone. This issue is no longer *res integra*. The Supreme Court has, comparatively recently in *Geetha v Nanjundaswamy*⁶, pronounced on the issue:

“12. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule

⁵ 20. **Other suits to be instituted where defendants reside or cause of action arises.** – Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

⁶ 2023 SCC OnLine SC 1407



11, CPC a *plaint cannot be rejected in part*. This principle is well established and has been continuously followed since the 1936 decision in *Maqsud Ahmad v Mathra Datt & Co.*⁷. This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v Navilan Merchants (P) Ltd.*,⁸ which was again followed in *Madhav Prasad Aggarwal v Axis Bank Ltd.*⁹ The relevant portion of *Madhav Prasad (supra)* is extracted hereinunder:

“10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that *the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s)*. In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd.* is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. *The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.*

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or

⁷ AIR 1936 Lah 1021

⁸ (2018) 11 SCC 780

⁹ (2019) 7 SCC 158



being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part...

(Underscoring in original; italics supplied)

5.4 The learned Commercial Court, therefore, clearly erred in rejecting the plaint qua Respondent 1 and returning the plaint qua the remaining respondents.

6. That said, having heard learned Counsel and perused the material on record, we find that, in fact

- (i) the appellant *did have a cause of action* against Respondent 1, based on the averments in the plaint, and
- (ii) therefore, applying Section 20(c), as well as otherwise, the learned Commercial Court does have the territorial jurisdiction to entertain the suit.

7. To explain why, it is necessary briefly to refer to the actual controversy.

8. The plaint

8.1 The averments in the plaint, on the basis of which the appellant sought to make out the cause of action to sue the respondents, are as follows:

- (i) A film titled “SHOOTER” was being produced by M/s Tutri Ventures Private Limited, Respondent 2 herein, of which



Respondents 3 and 4 herein are the directors. Respondents 2 to 5 contacted the appellant and engaged his services for the purposes of writing the dialogues and lyrics for the songs incorporated in the film. An understanding existed between the appellant and Respondents 2 to 5, to the effect that, as the appellant was the author of the dialogues and the lyrics of the songs, he would be compensated for the work undertaken by him.

(ii) In 2016, however, the appellant was informed that the entire project relating to the film “SHOOTER” had been shelved. The appellant, therefore, stopped pursuing the issue.

(iii) Seven years thereafter, the appellant came across a movie “OPERATION FRYDAY” which was being streamed on ZEE5, which is an OTT¹⁰ Platform of Respondent 1. On making inquiries, the appellant came to learn that Respondents 2 to 4 had released the film which was earlier to be released under the title SHOOTER after changing its name to OPERATION FRYDAY. The film also carried the songs and dialogues which were written by the appellant. No acknowledgement was, however, accorded to the appellant for using the songs and dialogues written by him, and no license had been taken from the appellant before doing so.

(iv) In the circumstances, the appellant issued a show cause notice to the respondents on 15 February 2023, calling on them

¹⁰ Over The Top



2025:DHC:8281-DB



to give due credit to him for his contribution towards the songs and dialogues in the film or, in the alternative, to remove, from the film, all the songs and dialogues which had been written by the appellant.

(v) This was followed by a reminder dated 7 March 2023 and personal meetings on 10 March 2023 and 14 March 2023. However, they were of no avail.

(vi) Subsequently, the appellant came to know that the opening credits of the film recognised his contribution as the lyricist of the songs. However, there was still no recognition of his contribution as the author of the dialogues which had been employed in the film. Neither was any permission taken from the appellant for using the said dialogues nor was any royalty paid to him in that regard.

8.2 In the circumstances, after an initial abortive attempt at mediation, as required by Section 12A of the Commercial Courts Act before the Maharashtra State Legal Services Authority on 15 May 2023, the appellant instituted CS (Comm) 72/2024 before the learned Commercial Court. The prayer clause in the plaint read thus:

“24. In view of the facts and circumstances mentioned hereinabove it is humbly prayed to this Hon'ble Court that this Court be pleased to:

(a) pass in order to perpetually/permanently restrain the Defendants, jointly and severally, by themselves or acting through their partners, officers, employees, agents or any other third party, from infringing the copyright of the



Plaintiff in its various literary material / Plaintiff's Works, in any manner;

(b) pass in order to perpetually/permanently restrain the Defendants, jointly and severally, from exhibiting, displaying, communicating to the public the impugned film titled "OPERATION FRYDAY" in any manner including online platforms including ZEE5,

(c) Pass in order directing the Defendants, jointly and severally, to give due credits to the Plaintiff for all his contribution in the Film and restrain the Defendants, jointly and severally, from infringing the Plaintiff's moral rights of Author's Special Rights;

(d) Pass in order directing the Defendants, jointly and severally, to pay damages of Rs. 10,00,000 (Rupees Ten Lacs) to the Plaintiff for infringement of his copyright;

(e) Pass an order for costs for the present legal proceedings to the Plaintiff;

(f) Pass such other order is in the interest of justice as a sport may deem fit in necessary."

8.3 We deem it appropriate, before proceeding further, to reproduce the following paragraphs from the plaint:

"5. In and around January 2015, Defendants No. 2 to 4 (hereinafter "Producers") commenced production of a Hindi feature film under the working title of "SHOOTER" (Starring Mr. Randeep Hooda, Mr. Suniel Shetty and other & directed by Mr. Vishram Sawant) (hereinafter "Film"), One Mr. Nipun Gupta, the editor of the Film, on behalf of the Producers, approached the Plaintiff to engage him to write dialogues for the promo of the Film. During the engagement of the Plaintiff his scope of services was enlarged, and he was also asked by the director of the Film, Mr. Vishram Sawant, to write dialogues for narration / voice over in the Film. As it appeared, the duration of the Film had exceeded beyond what was intended and scenes in the Film were being deleted to reduce the length of the film and the continuity of the story was to be maintained by adding voice over narration and the disconnected scene due to the break were to be patched together by adding narration/voice over.

6. Also, the Producers along with the Director, decided to



temper the tone of the Film and add songs in the Film to make it less gruesome and intense. Accordingly, the music director of the film, Mr. Vikas Vishwakarma who was engaged to compose the musical composition for the songs of the Film approached the Plaintiff to compose lyrics for the songs that were required to be inserted in the film. Based on the brief the Plaintiff, of his own skill and effort thereafter composed the lyrics for four original songs:

- (a) Lyrics for song titled "Raja Raja" that was delivered in person by hand to Mr. Vikaas Vishwakarma in the Production Office in and around Feb 2015;
- (b) Lyrics for song titled "Ek Kadam Aage, Do Kadam Peeche" that was delivered to Vikaas Vishwakarma by email on 24.05.2015;
- (c) Lyrics for song titled "Himmat-e-marda" that was delivered to Vikaas Vishwakarma by email on 18.06.2015;
- (d) Lyrics for song titled "Sadrakshanay Khal-Nigrahanay" that was delivered to one Sandeep who was the Director's Assistant by email on 11.02.2015;
- (e) Dialogues for narration in the Film;
- (f) Dialogue for Promo of the Film;
(hereinafter referred to as 'Plaintiff's Works'). Compilation of emails written by the Plaintiff to the representatives of the Producers are being filed in the Plaintiff's List of Documents.

7. These lyrics were thereafter performed by the performing artists (singers) in the recording studios and the sound recordings / songs ('Impugned Songs') were prepared with an understanding that in the event the Producers utilized them and incorporated them in the Film, the Plaintiff being author for the same, will be compensated and necessary rights / permissions in the Plaintiff's Works. The Plaintiff followed up with Defendants, however, he was informed that the project has been shelved in 2016 and he stopped following up.

8. In and round second week of February, 2023 the Plaintiff came across a film titled "OPERATION FRYDAY" that was released on Defendant No. 1's OTT Platform – ZEE5. After viewing the same the Plaintiff realised that the Producers have released the Film on 26th January, 2023 by changing its name from the original name "SHOOTER". The impugned film carried the songs composed by the Plaintiff and also the dialogue for voice over / narration. However, the Plaintiff was not acknowledged for



the same and no permission / license / assignment has been taken by the Producers before incorporating the Plaintiff's Works in the Film. Compilation of extracts of the Film showing credits for songs is being filed in the Plaintiff's List of Documents.

9. Aggrieved by the infringement of his moral rights and his copyrights, the Plaintiff issued a show cause notice to the Defendants on 15.02.2023 calling upon them to give the Plaintiff (a) appropriate credits for all his contributions and (b) take necessary permissions for utilisation of Plaintiff's work in the Film, or, in the alternative, take down all infringing portions of the impugned film. Copy of the legal notice addressed to the Defendants is being filed in the Plaintiff's List of Documents.

10. The said notice was followed up by a reminder dated 07.03.2023. The representatives of the Producers spoke to the Plaintiff on 10.03.2023 and as per their understanding met in person on 14.03.2023 to discuss an amicable settlement of the Plaintiff's claims. During the meeting held on 14.03.2023 the Plaintiff asserted his copyright in the literary material - songs and dialogue/narration - composed by the Plaintiff for the film. Plaintiff in unequivocal terms claim that he expects due credits to be given to him in the credits of the Film and he expected the producers to obtain necessary copyright permission/license from the Plaintiff on payment of adequate royalty for the same. The Plaintiff was assured by the representatives of the Defendants that they will look into the matter and address the grievances of the Plaintiff shortly however, nobody contacted the Plaintiff thereafter. The Plaintiff was then constrained to issue another communication dated 21.03.2023 in which the Plaintiff captured all meetings in communications that took place between the parties and the Plaintiff also included a table containing details of voice-over text/dialogues that were supplied by him and as found utilised in the Film. However, the Defendants did not respond to the Plaintiff's communication or contacted him to take the settlement talks forward. A copy of communication dated 07.03.2023 and dated 21.03.2023 are being filed in the Plaintiff's List of Documents.

11. Meanwhile, it came to the Plaintiff's attention that the impugned film which is being broadcasted on the Defendant No. 1's OTT Platform carried the name of the Plaintiff in the opening credits as the composer of lyrics/lyricist. Thus, as acknowledgement of utilisation of works of Plaintiff's creation the Plaintiff was given opening credits for the lyrics of the songs in the Film. The Defendant, however, still did not give credit to the Plaintiff for his dialogue/literary works for the narrator of the Film and also no permission in writing has been taken by the Plaintiff



2025:DHC:8281-DB



nor any royalty for utilisation of his copyright work in the Film.

14. The impugned film now is being communicated by Defendant No. 1 on its platform ZEE5 and it is Defendant No. 1 who is the ultimate commercially exploiting the impugned film by communicating the same to the public, without prejudice to its rights, the Plaintiff wrote to Defendant No. 1 through their Advocate vide letter dated 31.10.2023 calling upon them to amicably settle the dispute out of court. A copy of communication dated 31.10.2023 is being filed in the Defendant No. 1. No response was given to the said request.

17. **Cause of action:** The cause of action in favour of the Plaintiff in the case Defendants arose first in February, 2023 when the Plaintiff sent its show cause notice dated 15.02.2023 to the Defendants. The Cause of action again arose in favour of the Plaintiff when on 27.07.2023 the Maharashtra State Legal Services Authority (MSLSA) issued a non-starter report on the Plaintiff's application for mediation and again arose on 31.10.2023 when the Defendant No. 1 was, as a last opportunity, invited to settle the matter out of court, amicably. The cause of action in favour of the Plaintiff and the Defendant arises continuously on a day-to-day basis as the Defendants are not restrained from exploiting the Plaintiff's Copyright Work through the Film. Thus, the present action as well within limitation.

18. **Jurisdiction:** This Hon'ble Court has jurisdiction to adjudicate the present dispute as the film (OPERATION FRYDAY) is being communicated to the public by Defendant No. 1 on its OTT Platform throughout the territories of India and is also available within the territorial limits of this Hon'ble Court in New Delhi, and accordingly, under Section 20(c) of the Code of Civil Procedure, 1908, this Hon'ble Court has the requisite jurisdiction to adjudicate the present dispute.”

9. Summons in the suit have yet to be issued by the learned Commercial Court.

10. Order dated 30 March 2024



Even without issuing summons in the suit, the learned Commercial Court rejected the suit by order dated 30 March 2024, the operative paragraphs of which reads thus:

“Cause of Action had further arisen when the work of the plaintiff was included in the movie but no credits were given to him for the same, nor any compensation was paid to him. Thus, if the movie was telecasted/broadcasted by defendant no. 1 with a separate and independent understanding with its producers and directors, that per se would not be termed as giving rise to or extending an existing cause of action qua the present plaintiff as well, as has been claimed in the present case by the Ld. Counsel for the Plaintiff. Therefore, I have no hesitation in holding that the suit as filed before this court is without any cause of action and thus same is rejected in terms of provisions of Order 7 rule 11 (a) CPC, as it has failed to disclose any cause of action having arisen in favour of the plaintiff within the territorial limits of this court.”

11. First round of litigation

11.1 The appellant challenged the aforesaid order before this Court by way of RFA (Comm) 159/2024¹¹.

11.2 By order dated 7 February 2025, a Coordinate Division Bench of this Court held that the learned Commercial Court had materially erred in rejecting the suit under Order VII Rule 11(a) having held that it was bad for want of territorial jurisdiction. If the suit was not within the territorial jurisdiction of the Court, the Division Bench held that the plaint ought to have been returned and not rejected under Order VII Rule 11(a). Accordingly, the suit was remitted for fresh consideration to the learned Commercial Court.

¹¹ Nilesch Girkar v Zee Entertainment Enterprises Ltd & Ors



12. It is thus that the impugned order has come to be passed by the learned Commercial Court on 20 March 2025.

13. The impugned order

13.1 As we have already observed towards the commencement of this judgment, the learned Commercial Court has dismissed the plaint qua Respondent 1 holding that no cause of action exists against the said Respondent 1 under Order VII Rule 11(a) of the CPC and has returned the plaint qua Respondents 2 to 5 on the ground that the learned Commercial Court did not possess the territorial jurisdiction to adjudicate the *lis* between the appellant and Respondents 2 to 5.

13.2 The learned Commercial Court has, in arriving at its decision, placed reliance on various pronouncements of this Court, following which the reasoning of the learned Commercial Court is contained in the following paragraphs from the impugned judgment:

“ Since advance notice of this suit was already served upon the defendants, hence, defendants had also caused their appearance and had opposed the maintainability of the suit by tooth and nail and had stated and argued that this attempt of the plaintiff was nothing but amounted to forum shopping.

Later on, plaintiff had also filed an application u/o VI Rule 17 CPC, seeking some amendments in the plaint along with another application u/o 11 Rule 1 CPC for placing on record, the additional documents. However, since the maintainability of the suit itself was under question, hence, no orders on those applications were passed, however, the court had assured the Ld. Counsel for the Plaintiff that the documents sought to be placed on record would be considered while determining the issue of territorial jurisdiction. Accordingly, I must mention those documents, which are nothing but the printouts of the subscription page of defendant no. 1 's website, which provides for the various



2025:DHC:8281-DB



options and payment plans for the customers to avail the services of defendant no. 1, including the typed copy of terms and conditions of defendant no. 1's subscription and platform.

In the light of the said documents, it was submitted by Sh. Rahul Ajatshatru, Ld. Counsel that the aforesaid APP could have been also subscribed from South Delhi itself. However, the arguments of Ld. Counsel for Plaintiff did not find favour from the court and the suit was rejected u/o VII rule 11 CPC vide order dated 30.03.2024 against which an appeal was preferred by the Plaintiff in which the aforesaid order was set aside by the Hon'ble High Court of Delhi and case was remanded back to this court to consider and decide the aforesaid submissions afresh after bearing all the parties. While remanding back the matter Hon'ble High Court was further pleased to make the following observations:

"8. Having perused the Impugned Order, we are of the opinion that the learned Trial Court, in the Impugned Order, has erred in mixing the jurisdiction of the Court under Order VII Rule 10 of the CPC and Order VII Rule 11 of the CPC.

The jurisdiction of the Court, in the two provisions, is different. While under Order VII Rule 11 of the CPC, a plaint can be rejected for the grounds mentioned therein, including that the plaint does not disclose a cause of action or the suit is barred by law, the jurisdiction under Order VII Rule 10 of the CPC is for the return of a plaint when it is instituted in a Court lacking territorial or pecuniary jurisdiction to entertain the same.

9. In the present case, while making certain observations on the nature of the cause of action that has been pleaded by the appellant, the learned Trial Court eventually rejects the plaint by observing that no part of the cause of action has arisen in favour of the appellant within the territorial limits of the said Court. This would be an exercise of power under Order VII Rule 10 of the CPC, in which case the plaint should be returned rather than rejected."

I have heard all the Ld. Counsels representing their parties and considered the additional citations placed on record by the Ld. Counsel for the Plaintiff which are as follows:



As is clear from the preposition discussed above the citations mentioned at Sr. No. 3 and 4 do not apply to the facts of this case as they pertain to Plaintiff's application u/o VI rule 17 CPC. So far as citation at Sr. No. 1 is consider same is distinguishable on facts as two Plaintiff's were involved in the said case. So far as citation mentioned at Sr. No. 2 is concerned, no doubt that the Plaintiff is dominus litus, however, he cannot create a jurisdiction where he does not lie at all. The citations mentioned at Sr. No. 5 and 6 provide that the Plaint has to be read in its entirety to decide the cause of action. My attention in this regard has been drawn by Ms. Kripa Pandit, Ld. Counsel Representing the defendant no. 1 on contents of paras 10 and 11 of the plaint which is reproduced here under:

"10. The said notice was followed up by a reminder dated 07.03.2023. The representatives of the Producers spoke to the Plaintiff on 10.03.2023 and as per their understanding met in person on 14.03.2023 to discuss an amicable settlement of the Plaintiff's claims. During the meeting held on 14.03.2023 the Plaintiff asserted his copyright in the literary material - songs and dialogue/narration composed by the Plaintiff for the film. Plaintiff in unequivocal terms claim that he expects due credits to be given to him in the credits of the Film and he expected the producers to obtain necessary copyright permission/license from the Plaintiff on payment of adequate royalty for the same. The Plaintiff was assured by the representatives of the Defendants that they will look into the matter and address the grievances of the Plaintiff shortly however, nobody contacted the Plaintiff thereafter. The Plaintiff was then constrained to issue another communication dated 21.03.2023 in which the Plaintiff captured all meetings in communications that took place between the parties and the Plaintiff also included a table containing details of voice-over text/dialogues that were supplied by him and as found utilised in the Film. However, the Defendants did not respond to the Plaintiff's communication or contacted him to take the settlement talks forward. A copy of communication dated 07.03.2023 and dated 21.03.2023 are being filed in the Plaintiff's List of Documents.

11. Meanwhile, it came to the Plaintiff's attention that the impugned film which is being broadcasted on the Defendant No. 1's OTT Platform carried the name of the Plaintiff in the opening credits as the composer of lyrics/lyricist. Thus, as acknowledgement of utilisation of works of Plaintiff's creation the Plaintiff was given opening



credits for the lyrics of the songs in the Film. The Defendant, however, still did not give credit to the Plaintiff for his dialogue/literary works for the narrator of the Film and also no permission in writing has been taken by the Plaintiff nor any royalty for utilisation of his copyright work in the Film."

In the light of aforesaid paras it has been submitted that the entire transactions were taking place between the Plaintiff and defendants no. 2 to 5 at Mumbai and defendant no. 1 was nowhere involved in those and also once the defendant no. 1 had broadcasted the movie carrying opening credits to the Plaintiff being composer of lyrics/lyricist then there arose no cause of action whatsoever in favour of the Plaintiff and against the defendant no. 1.

After hearing the parties and considering the entire material available on record, I have no hesitation in holding that the citation relied upon by the Ld. Counsel including the citations as mentioned and discussed hereinabove pertained to "websites" and especially to "interactive websites", where a person can not only place an order but also can make payments for the product to purchase the same and thereby conclude the transaction. However, the case in hands is quite different as it pertains to a Mobile APP carrying entertainment material, though which is available online for download, however, its services cannot be availed by a prospective customer unless and until he had taken the requisite subscription package by making the payment before using the APP services. However, in case of a website, a person makes payment after purchasing the item.

It could also be easily understood with the example of difference between a prepaid and a postpaid mobile connection. As in case of a prepaid mobile, one has to get the mobile phone recharged first and then only he can use the telephone facilities, such as mobile facilities and other facilities to the extent of amount recharged by him. However, in case of a postpaid mobile phone, one can go on using the facilities endlessly and has to pay later on.

A platform of this kind of nature as is involved in the case in hands, could not be termed as "interactive" by any stretch of imagination as has been held and discussed by our own Hon'ble High Court in number of pronouncements including the cited cases, because neither one can place a specific order nor the website is going to respond to him, nor the website is offering anything for sale. Rather whatever the APP has been offering is a limited number of items uploaded there and it is for the choice of the customer/viewer as to what he wants to watch and what he does



not want to watch. Therefore, the subscription, even if considered as a consideration, cannot be held to be a subscription for this particular movie alone rather it is a subscription paid for hundreds of other movies/webseries/ serials/etc., which are also available on the said platform.

Admittedly, all the parties to the suit are residents of Mumbai, and other parts of Maharashtra. All the transactions, meetings were also held at Mumbai. Even pre-litigation mediation was also held at Mumbai, Maharashtra. Hence, the plea that being available for viewing in Delhi also gives rise to part of cause of action before this case does not seem to be sustainable in law as the term "Cause of Action" means and essentially includes "an actionable cause" meaning thereby a cause which could be acted upon and on which, some action could be taken. Even in the Banyan Tree Judgment cited and relied upon by the Plaintiff the Hon'ble Division Bench was pleased to hold that for the purpose of a passing of action, or an infringement action where the Plaintiff is not carrying on business within the jurisdiction of a court, and in the absence of a long arm statute, in order to satisfy the forum court that it has jurisdiction to entertain the suit, the Plaintiff would have to show that the defendant "purposefully availed" itself of the jurisdiction of the forum court. For this it would have to be *prima facie* shown that the nature of the activity indulged in by the defendant by the use of the website was with an intention to conclude a commercial transaction with the website user and that the "specific targeting" of the forum state by the defendant resulted in an injury or harm to the Plaintiff within the forum state.

In view of the aforesaid mandate the Plaintiff was also required to show any specific targeting of the subscribers of the APP of defendant no. 1 within jurisdiction of this court. How it would be considered as specific targeting would again vary with the circumstances. Even if the subscription document filed by the Plaintiff is taken into consideration, then also, the possibility of specific targeting is ruled out as its rates have remained same and static through out the country. Had it been a discounted price or subscription for the residents of South Delhi, then it could have been held that there was an attempt of targeting the people of South Delhi by defendant no. 1. However, neither it has been pleaded or it has been shown by the Plaintiff.

Here the agreement of the plaintiff, if any, was with the producer of the movie, which had taken place at Mumbai. He had no agreement or privity of any kind of contract or legally enforceable obligation or liability qua defendant no. 1 at any point of time whatsoever.



Cause of action in this case had not arisen when the movie was broadcasted/telecasted on the platform, rather it had arisen when the plaintiff was approached for his literary work and was assured to be compensated for the same, if his work was taken into movies by the producers and directors of the same.

Cause of Action had further arisen when the work of the plaintiff was included in the movie but no credits were given to him for the same, nor any compensation was paid to him. Thus, if the movie was telecasted/broadcasted by defendant no. 1 with a separate and independent understanding with its producers and directors, that *per se* would not be termed as having given rise to or extending an existing cause of action qua the present plaintiff as well, as has been claimed in the present case by the Ld. Counsel for the Plaintiff. Therefore, I have no hesitation in holding that the suit as filed before this court is without any cause of action whatsoever qua defendant no. 1 i.e. Zee Entertainment Enterprises Ltd. and thus same is rejected in terms of provisions of Order 7 rule 11(a) CPC qua defendant no. 1. So far as remaining defendants no. 2 to 5 are concerned, since no 'cause of action against them had arisen within the territorial jurisdiction of this court, hence, plaint is directed to be returned to the Plaintiff for the purpose of its presentation before the competent court having jurisdiction to try and entertain the same, however, Plaintiff shall provide an attested copy of pleadings and documents before taking back the originals.”

Analysis

14. Having heard learned Counsel, and in the light of the law and the facts before us, we are of the considered opinion that the learned Commercial Court has erred singly on both ground in arriving at both of its conclusions, i.e. that there was no cause of action qua Respondent 1 and that the suit was not territorially maintainable before the learned Commercial Court qua the remaining respondents.

15. We proceed to address each of these issues.

16. In so far as, Respondent 1 is concerned, it is a conceded



position that Respondent 1 is the owner of the OTT platform over which the film OPERATION FRYDAY was streamed.

17. To this extent, there are specific pleadings in the plaint, in the paragraphs which we have already reproduced *supra*.

18. Section 51¹² of the Copyright Act deals with infringement of copyright. Section 51(a)(i) deems the doing of anything, the exclusive right to do which is conferred on the owner of the copyright, without a license from such owner, to amount to infringement of copyright. Section 51(a)(ii) further extends the ambit of infringement to grant of permission, for profit, to use any place for the communication of the work to the public where such communication constitutes infringement of copyright.

19. Thus, in the case of a film, if the release and exhibition of the film without a license from the owner of the copyright in the lyrics of

¹² 51. **When copyright infringed.** – Copyright in a work shall be deemed to be infringed—
(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act—
(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or
(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or]
(b) when any person—
(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
(iii) by way of trade exhibits in public, or
(iv) imports into India,
any infringing copies of the work:
Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation. – For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.



the songs used in the film or in the dialogues used in the film amounts to infringement, the owner of the online OTT platform over which the film is permitted to be screened would also be an infringer within the meaning of Section 51(a)(ii) of the Copyright Act.

20. Section 51(b)(ii) further ordains that copyright in a work would be deemed to be infringed when any person distributes, either for the purpose of the trade or in any manner as prejudicially affect the copyright owner, any infringing copy of the work. The Explanation to Section 51 includes, within the ambit of the expression “infringing copy”, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film.

21. The exclusive rights which vest in the owner of copyright in a literary work – which would include the dialogues in a film – are delineated in the various clauses of Section 14(a)¹³ of the Copyright Act. To the owner of copyright in the literary work, exclusive right is granted, by Section 14(a)(i) to reproduce the work in any material form, by Section 14(a)(ii) to perform the work in public, by Section 14(a)(iv) to make any cinematograph film or sound recording in respect of the work, by Section 14(a)(vi) to make any adaptation of the

¹³ **14. Meaning of copyright.** – For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely: —

- (a) in the case of a literary, dramatic or musical work, not being a computer programme,—
 - (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - (ii) to issue copies of the work to the public not being copies already in circulation;
 - (iii) to perform the work in public, or communicate it to the public;
 - (iv) to make any cinematograph film or sound recording in respect of the work;
 - (v) to make any translation of the work;
 - (vi) to make any adaptation of the work;
 - (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);



work and by Section 14(a)(vii) to do, in relation to any adaptation of the work, any of the acts envisaged by clause (i) to (vi) of Section 14(a).

22. Section 17 of the Copyright Act, read with the first proviso thereto¹⁴, treats the author of the work to be the first owner of copyright therein. The expression “author” in relation to any literary or dramatic work is defined by Section 2(d)(i) as the author of that work.

23. Thus, in the case of a dialogue in a film,

- (i) the author of the dialogues would be the “author” within the meaning of Section 2(d)(i),
- (ii) by application of Section 17 read with proviso (a) thereto, he would be the first owner of copyright therein,
- (iii) “copyright” in the dialogues, as literary works, would mean the exclusive right to do one or more of the acts enumerated in clauses (i) to (vii) of Section 14(a),
- (iv) by a combined reading of Section 17 read with Section 14(a), therefore, the author of the dialogues had the exclusive right to reproduce the dialogues, *perform the dialogues in public or communicate it to the public, make any*

¹⁴ **17. First owner of copyright.** – Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that—

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work, in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;



cinematograph film in respect of the dialogues, make any adaption of the dialogues, or do, in respect of any such adaptation, any of the said acts,

(v) any cinematograph film which includes such dialogues, made by a person other than the author would, therefore, amount to infringement of copyright, and

(vi) any person who permitted any place to be used for communication of such an infringing film to the public would also be a copyright infringer.

24. As such, if the averments in the plaint are to be accepted, the appellant, as the author of the dialogues which were used in the film OPERATION FRYDAY, would be the first owner of the copyright in the dialogue. Ergo, Section 14(c) would grant exclusive right to the appellant to do any of the acts envisaged in clauses (i) to (vii) thereof, in respect of the said dialogues and, if any person were to do so without obtaining a license from the petitioner, it would amount to infringement of copyright within the meaning of Section 51 of the Copyright Act.

25. As such, the producers of the film would *ipso facto* become copyright infringers within the meaning of Section 51 read with Section 14 of the Copyright Act.

26. Respondent 1 as the person who is permitting the film to be screened on his OTT platform would also become a copyright infringer, *inter alia* within the meaning of Section 51(a)(ii).



27. As such, we are clearly of the opinion that the learned Commercial Court erred in holding that the appellant had no cause of action to sue Respondent 1 merely because there was no independent privity of contract between the appellant and Respondent 1.

28. The existence or non-existence of a cause of action for the purpose of Order VII Rule 11 CPC has to be decided solely by referring to the averments in the plaint and nothing outside it.

29. In the plaint, there is a specific averment that the film OPERATION FRYDAY, which contained the dialogues written by the appellant, was streamed on the OTT platform owned by Respondent 1. That by itself would constitute a cause of action to sue Respondent 1.

30. We are of the opinion that the learned Commercial Court misdirected itself in holding that there was no cause of action against Respondent 1 merely because there was no privity of contract between the appellant and Respondent 1. The existence of an independent contract is not necessary for a case of infringement of copyright to exist.

31. We hasten to clarify, however, that these observations are being returned by us only to examine the correctness of the decision of the learned Commercial Court to reject the suit under Order VII Rule 11(a) on the ground that the appellant did not have any cause of action against Respondent 1. For the reasons we have already adduced hereinabove and on the basis of the assertions in the plaint which



alone can be taken into consideration, we are of the firm opinion that the learned Commercial Court could not have rejected the plaint *qua* Respondent 1 on the ground of non-existence of a cause of action.

32. We must not be treated as having expressed any opinion, even perfunctory or *prima facie*, on the aspect of whether there is in fact any infringement of copyright by the respondents *qua* the appellant. That is something which would have to be decided by the learned Commercial Court.

33. Once we held that a cause of action exists between the appellant and Respondent 1, the suit *ipso facto* becomes maintainable before the learned Commercial Court at Saket in view of Section 20(c) of the CPC which permits a suit to be instituted within the territorial limits of any Court within whose jurisdiction the cause of action arises either in whole or part. Insofar as the display and propagation of the film to the public is the basis of the cause of action *vis-a-vis* Respondent 1, and the OTT platform of Respondent 1 was accessible within the territorial limits of the learned Commercial Court at Saket, the learned Commercial Court was clearly possessed of the territorial jurisdiction to entertain the suit as at least a part of the cause of action had arisen within such jurisdiction.

34. Once the suit could have been entertained against Respondent 1, the suit was maintainable against all the respondents before the learned Commercial Court at Saket even if Respondents 2 to 5 were situated outside the territorial jurisdiction of that Court.



35. Independently, too, we are of the view that the suit was maintainable against all the respondents before the Commercial Court at Saket. Communication of the copyrighted work to the public is also the exclusive right of the owner of copyright, under Section 14(1)(c) of the Copyright Act. Streaming of the film containing the dialogues written by the appellant, *prima facie*, would constitute communication of the copyrighted work of the appellant to the public. Inasmuch as the ZEE 5 OTT platform of Respondent 1 was accessible within the jurisdiction of the learned Commercial Court at Saket, infringement of copyright, as per the averments in the plaint, did take place within such jurisdiction. The suit would, therefore, lie against all respondents before the learned Commercial Court at Saket.

36. Moreover, Mr. Ajatashatru points out that the appellant had moved an application for placing certain additional documents on record which would indicate that Respondent 1 was providing its services of OTT streaming of films for subscription, so that the website was not just for display but interactive as well, over which a commercial transaction could be concluded. The learned Commercial Court has noted this fact in the impugned order, as well as the understanding that the documents would be taken into account while deciding the applications under Order VII Rule 10 and Order VII Rule 11 but has not appreciated the significance thereof. Even on this ground, therefore, the suit was maintainable against the respondents before the learned Commercial Court at Saket.

37. Even otherwise, we find substance in the contentions of Mr. Ajatashatru, learned Counsel for the appellant, that the cause of action



of the appellant *qua* all the respondents was in the nature of a bouquet of grievances, which were interconnected. It would be difficult to vivisection the grievance of the appellant *vis-à-vis* Respondents 2 to 5 with the grievance *vis-à-vis* Respondent 1. The grievance of the appellant was with respect to infringement of copyright as a result of the usage, in the film OPERATION FRYDAY, of the dialogues written by the appellant without a license from him, without recognising his contribution and without paying him any royalty. That being the case, the cause of action was jointly available against all the respondents.

38. As we have already held that the suit was maintainable against Respondent 1 before the learned Commercial Court at Saket, the suit *ipso facto* was maintainable against all the respondents before the said Court.

39. We, therefore, are of the opinion that the learned Commercial Court was in error in rejecting the suit *qua* Respondent 1 under Order VII Rule 11(a) of the CPC and returning the plaint *qua* the remaining respondents under Order VII Rule 10 of the CPC.

40. Resultantly, the impugned order is quashed and set aside.

41. Accordingly, the suit is remitted to the learned Commercial Court which would now take a decision on all pending applications and also issue formal summons to the respondents and proceed further in accordance with law.



2025:DHC:8281-DB



42. The appeal stands allowed to the aforesaid extent.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 16, 2025

dsn