

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

% Judgment Reserved on: 10.12.2009
Judgment delivered on: 08.01.2010

**IA Nos. 9709/2008 & 15468/2008 in
CS(OS) No. 1691/2008**

SHOLAY MEDIA & ENTERTAINMENT
PVT. LTD & ORS.

..... Plaintiffs

Vs

AJIT SIPPY & ORS.

..... Defendants

Advocates who appeared in this case:

For the Plaintiffs : Mr Jagdish Sagar & Ms Geetanjali Viavanathan, Advocates
For the Defendants : Ms Pratibha M. Singh, Mr Sudeep Chatterjee & Mr Jaspreet
Singh Kapur, Advocates

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may
be allowed to see the judgment ? Yes
2. To be referred to Reporters or not ? Yes
3. Whether the judgment should be reported
in the Digest ? Yes

RAJIV SHAKDHER, J

IA No. 9709/2008 (O. 39 R. 1&2 r/w S. 151 of CPC by the Plaintiffs)
IA No. 15468/2008 (O. 39 R. 4 r/w S. 151 of CPC by Defendant no.2)

1. By this order I propose to dispose of the captioned Interlocutory Application(s) (in short the 'IA'). IA No. 9709/2009 has been preferred by the plaintiffs under the provisions of Order 39 Rules 1&2 read with Section 151 of Code of Civil Procedure, 1908 (in short the 'CPC') and IA No. 15468/2008 has been filed by the defendant no. 2 under the provisions of Order 39 Rule 4 read with Section 151 of CPC. By an order dated 22.08.2008, an ad interim ex-parte injunction was passed by the predecessor Judge in IA No. 9709/2009, against defendant no.2. The defendant no. 2 has filed the aforementioned IA No. 15468/2008 for vacating the interim order dated 22.08.2008.

2. The main grievance of the plaintiffs is that the defendants have infringed their copyright and trademark in the film “Sholay” and in other 31 films (which are detailed out in the plaint); by broadcasting the said films in breach of the two assignment deeds of even date i.e., 12.06.2003 executed by plaintiff no. 1 and 3 respectively in favour of defendant no. 2. At the very heart of the dispute is; the ownership rights in the aforementioned films. As is obvious, the plaintiffs claim undisputed rights in the aforementioned films, which is, presently disputed by defendant no. 2. It is pertinent to point out at this stage that defendant no. 1 and 3, who are the son and wife of late Shri G.P. Sippy, respectively have been proceeded ex-parte vide order dated 16.12.2008, since despite service they have not entered appearance.

3. Briefly the plaintiffs claim to ownership is traced to the following events as set out in the plaint, and as adverted to in the course of arguments by Mr Jagdish Sagar, Advocate appearing for the plaintiffs. In 1954, plaintiff no. 2/Sippy Films Pvt. Ltd. (in short ‘SFPL’) was incorporated to produce cinematograph films as well as to act as distributors of films which were produced by other individuals or production houses. The incorporation of plaintiff no. 2/SFPL was followed by the constitution of a partnership firm by the name of Sippy Films, in 1965. It is the case of the plaintiffs that both plaintiff no. 2/SFPL and the partnership firm/Sippy Films at various points in time were managed and controlled by the members of the G.P. Sippy family which included his wife, his children, as well as his sisters. Though the business was primarily conducted, in both plaintiff no. 2/SFPL, as well as in the partnership firm, by G.P. Sippy and his son Vijay Sippy, it appears that there have been several changes in the persona, who at the relevant point in time controlled and managed plaintiff no. 2/SFPL and the Sippy Films, i.e, the partnership firm. What is of importance is that on 10.09.1997, plaintiff no. 2/SFPL was admitted as a partner in Sippy Films, i.e., the partnership firm. A day later, i.e., on 11.09.1997 defendant no. 3, i.e., Mohini Sippy retired as a partner in the Sippy Films. It is averred that the retiring partner had

relinquished all her interests in the assets in favour of the Sippy Films, i.e., the partnership firm. The crucial aspect is that w.e.f. 11.09.1997 Sippy Films, i.e., the partnership firm evidently had only two partners, i.e., plaintiff no. 2/SFPL and Vijay Sippy. Unfortunately, on 17.04.1998 Vijay Sippy expired. Consequently, according to the plaintiffs, Sippy Films by force of law became a proprietary concern with plaintiff no. 2/SFPL as the owner. It is averred that on 11.09.2000 plaintiff no. 1 was incorporated. The first subscribers and signatories to the Memorandum and Articles of Association were Mr Sascha Vijay Sippy and Mr Shaan Uttam Singh. Mr Sascha Vijay Sippy is the son of late Vijay Sippy, who died in April, 1998 as indicated above, and the paternal grand-son of G.P. Sippy, while Mr Shaan Uttam Singh is the maternal grand-son of G.P. Sippy. It transpires that three days later, i.e., on 14.09.2000, plaintiff no. 2/SFPL, in its capacity as the proprietor of Sippy Films executed a gift deed, whereby the right, title and interest in the film "Sholay" were vested in the newly incorporated plaintiff no. 1. Since then the plaintiffs claim that the ownership right in the film "Sholay" vests in plaintiff no. 1. As regards the rights in the remaining 31 films, the reference with respect to which is made in paragraph 10 of the plaint, as well as in the prayer clause (ii), vest in plaintiff no. 2/SFPL. It is further averred that in so far as the said 31 films are concerned, plaintiff no. 2/SFPL has given marketing rights to plaintiff no. 3.

4. On 12.06.2003 it appears, as stated hereinabove, that the plaintiffs executed two assignment deeds in favour of defendant no. 2. By the first deed plaintiff no. 1 assigned rights in the film "Sholay" in favour of defendant no. 2 for a period of five years. The essential rights, as contained in First (I) Schedule to the said assignment deed, are as follows:

SCHEDULE-I

<i>TO DEED OF ASSIGNMENT DATED</i>	:	<i>12th June 2003</i>
<i>BETWEEN</i>	:	<i>M/s Sholay Media & Entertainment Pvt. Ltd.</i>
<i>AND</i>	:	<i>M/s Zee Telefilms Limited (EVD)</i>
<i>FILM NAME</i>	:	<i>Sholay</i>
<i>RIGHTS/TERRITORIES</i>	:	<i>Satellite Broadcasting Rights, Pay TV Rights For Entire World including India</i>
<i>PERIOD</i>	:	<i>5 yrs from the 1st Telecast/or DELIVERY</i>
<i>TELECAST</i>	:	<i>Total 10 telecast only</i>
<i>MATERIAL REQUIRED/DELIVERY</i>	:	<i>DG Betacam Of Acceptable Quality to be delivered to ASSIGNEE as required.</i>
<i>DOCUMENT REQUIRED</i>	:	<i>Link Agreements, Censor Certificate, Etc.</i>
<i>PUBLICITY MATERIAL</i>	:	<i>Booklets, Photographs & Designs on CD and any other material requested by the ASSIGNEE</i>
<i>TOTAL NO. OF FILMS</i>	:	<i>One</i>
<i>TOTAL COST</i>	:	<i>Rs. 1,15,00,000/- (Rupees One Crores Fifteen Lacs Only)</i>

5. Since some submissions were made on behalf of defendant no.2 in respect of the contents of Schedule II and III of the said assignment agreement, I may only note that the producer is shown as G.P. Sippy and the assignor is plaintiff no. 1, i.e., Sholay Media Entertainment Pvt. Ltd. The signatory on behalf of the assignor is none other than Mr Shaan Uttan Singh. The assignee, of course, is defendant no. 2 represented by its authorized signatory.

6. Similarly, Schedule III of the assignment deed which pertains to “devolution of rights” alludes to a letter dated 13.11.2001, a copy of which it states is evidently attached; but for some reason the same has not been filed with the documents. Importantly, it refers to the fact that devolution of rights has flown from plaintiff no. 2/SFPL to plaintiff no. 1. The said Schedule is also signed both on behalf of the assignor and the assignee, i.e., on behalf of plaintiff no. 1 by Mr Shaan Uttam Singh, its authorized signatory, and similarly, by authorized signatory of defendant no. 2. To be noted, there is no reference to the gift deed of 14.09.2000 evidently executed by CS(OS) 1691/2008

plaintiff no. 2/SFPL in favour of plaintiff no. 1 whereby, rights in the film “Sholay” devolved on plaintiff no. 1.

7. In respect of the other 31 films, as indicated hereinabove, an assignment deed of even date, i.e., 12.06.2003 assigning the rights in the 31 films was executed between plaintiff no. 3/Generation Three Entertainment Pvt. Ltd. (in short ‘GTEPL’) and defendant no. 2. By virtue of this assignment plaintiff no. 3 conferred satellite broadcast and pay-T.V. rights, in respect of its repertoire of 31 films, in favour of the defendant no. 2. The main terms of the agreement as set out in Schedule I to the assignment deed reads as follows:

SCHEDULE-I

<i>TO DEED OF ASSIGNMENT DATED</i>	:	<i>12th June 2003</i>
<i>BETWEEN</i>	:	<i>M/s Generation Three Entertainment Pvt. Ltd.</i>
<i>AND</i>	:	<i>M/s Zee Telefilms Limited (EVD)</i>
<i>FILM NAME</i>	:	<i>31 movies of Sippy Lot as mentioned in the Schedule-II</i>
<i>RIGHTS/TERRITORIES</i>	:	<i>Satellite Broadcasting Rights, Pay TV Rights For Entire World including India</i>
<i>PERIOD</i>	:	<i>5 yrs from the delivery of material of Acceptable quality/1st telecast whichever is earlier</i>
<i>MATERIAL REQUIRED/DELIVERY</i>	:	<i>DG Betacam Of Acceptable Quality to be delivered to ASSIGNEE as required</i>
<i>DOCUMENT REQUIRED</i>	:	<i>Link Agreements, Censor Certificate, Etc.</i>
<i>PUBLICITY MATERIAL</i>	:	<i>Booklets, Photographs & Designs on CD and any other material requested by the ASSIGNEE</i>
<i>TOTAL NO. OF FILMS</i>	:	<i>31 (Thirty One)</i>
<i>TOTAL COST</i>	:	<i>Rs. 1,85,70,000/- (Rupees One Crore Eighty Five Lacs & Seventy Thousand Only)</i>

8. The Schedule II lists out the names of 31 films, while schedule III alludes to the devolution of rights. Once again there is a reference to a letter dated 12.09.2001, which sources the devolution of rights. The letter dated 12.09.2001 has been placed on

record. The devolution of rights, as per Schedule III flows from plaintiff no. 2/SFPL to plaintiff no. 3/GTEPL. The rights granted by plaintiff no. 2/SFPL in favour of plaintiff no. 3/GTEPL by virtue of letter dated 12.09.2001 are worldwide satellite rights for seven years w.e.f. 12.09.2001. Incidentally, on behalf of the assignor, i.e., plaintiff no. 3/GTEPL the signatory is none other than Mr Shaan Uttam Singh. The assignee, i.e., defendant no. 2 was represented by an authorized signatory. It is, however, averred by the plaintiffs, a fact which is not denied, that both the assignment deeds were executed and signed on the same day by the same individuals representing the assignors and the assignees.

9. Apart from the fact that there was a difference of cost in acquisition of rights of defendant no. 2 in respect of the film “Sholay” which was Rs 1.15 crores, as against the consideration paid for acquisition of rights in 31 films, which was, Rs 1,85,70,000/-, the telecast rights in respect of the film “Sholay”, eventhough for a period of five years from the date of first telecast or delivery, was limited to a total of ten (10) telecasts. It also appears that there was a Memorandum of Understanding dated 12.03.2003 executed between defendant no. 2 and plaintiff no. 3 in respect of 25 films including the film “Sholay”; which preceded the aforementioned assignment deeds. This, however, was not given effect to and no submissions were made by both sides with regard to the said document perhaps for the reason that it got superceded by the assignment deeds of 12.06.2003 as also by virtue of the fact that plaintiff no. 3 had no rights evidently in the film “Sholay”. However, in so far as defendant no.2 is concerned, it has taken a categorical stand in its written statement that their right in both the film “Sholay” as well as in the other 31 films flowed from the plaintiffs; it is to be noted that there is no denial by defendant no.2 to the execution of the aforementioned two assignment deeds. Though, in the course of submissions made by Ms Pratibha M. Singh, which I shall deal with in the later part of my judgment, stress was laid on the fact that the ownership

rights in the film Sholay as well as the other 31 films vested in G.P. Sippy from whom purportedly they have acquired fresh rights, so to speak, subsequently.

10. Continuing with the narrative, it appears that since defendant no. 2 did not respond to the letters issued by plaintiffs dated: 31.03.2005; 04.05.2005; and 21.08.2007 with respect to the numbers of broadcasts, which defendant no. 2 had made of the film "Sholay", plaintiff no. 1 was propelled to issue a cease and desist notice dated 29.10.2007, calling upon defendant no. 2 not to screen the film "Sholay" any further. By the very same notice, dated 29.10.2007, it was also conveyed to defendant no. 2 by plaintiff no. 1, that it did not wish to continue its relationship with defendant no. 2 with respect to the said film, and that it would be free to deal with another organization. Finding that defendant no. 2 had not paid any heed to its letter of 29.10.2007, and that the telecast of film "Sholay" was slated for 10.11.2007, plaintiff no. 1 by yet another letter dated 09.11.2007, called upon defendant no. 2 not to telecast the film "Sholay". This resulted in meetings being held between the representatives of the plaintiffs in February, 2008 as also exchange of correspondence between them. It appears that during the course of meetings it was conveyed by the representatives of defendant no. 2 that it had entered into an another deed of assignment with respect to both the movie "Sholay" and other 31 films with defendant nos. 1 and 3. The above disclosure obviously resulted in consternation, in so far as the plaintiffs are concerned. Consequently, the plaintiffs, it appears, did two things. Firstly, they went ahead with their agreement with another entity by the name of Shemaroo Entertainment Pvt. Ltd. (hereinafter referred to as 'Shemaroo') in respect of assigning rights in favour of both "Sholay" and the 31 films, referred to hereinabove. In this regard, Shemaroo issued a notice in a trade journal Supercinema on 21.06.2008. Secondly, the plaintiffs decided to file the instant suit.

11. In the instant suit, as instituted in the first instance, in particular, in paragraph 30, the plaintiffs have averred that the defendants had declined to show the plaintiffs a copy of the agreement or agreements based on which defendant no. 2 had, evidently in meetings with their representatives claimed that they had acquired rights in the film “Sholay” as also the other 31 films from defendant nos. 1 to 3. The suit was moved on 18.08.2008. On the said date it appears that the plaintiffs sought time from the court to amend the plaint. Accordingly, the suit was listed for further proceedings on 22.08.2008. On 22.08.2008 the court allowed the amendment sought which resulted in the incorporation of paragraph 11A in the plaint. It is important to note at this stage that on the said date, i.e., on 22.08.2008 another IA being IA No. 10025/2008 was also listed for hearing. This IA was filed by the plaintiffs under the provisions of Order 11 Rule 12 read with Section 151 of the CPC whereby, the plaintiffs sought discovery of: The document dated 28.01.2005 purportedly signed by defendant no. 3, late G.P. Sippy and the representative of defendant no.2, whereby defendant no. 2 was authorized to make television broadcast of the film “Sholay”; and all other documents based on which defendant no. 2 claimed right to make television broadcast or otherwise broadcast the remaining 31 films. The basis for moving this application, as averred therein, was that on 30.07.2008 a legal representative of Shemaroo was allowed inspection of some documents in the office of defendant no. 2 situate at Worli, Mumbai. Mr Shaan Uttam Singh, even though informed about the inspection, reached late and hence, could not personally see the documents inspected by the representative of Shemaroo. In brief, the averment was that Mr Shaan Uttam Singh did not personally get to read the contents of the documents. Consequently, in the suit as instituted on 18.08.2008, there was no averment with respect to the documents in issue. Since, fortiously the matter stood adjourned to 22.08.2008, and in the interregnum, on 20.08.2008, Mr Shaan Uttam Singh had visited the office of Shemaroo at Andheri, Mumbai, where he was given a typed copy of the contents of the document as inspected

and noted down by the representative of Shemaroo on 30.07.2008; there arose a need and necessity to move the said application.

11.1 Only to be noted that this application was listed before the court on 22.08.2008; however, no orders came to be passed. The application was accompanied by a typed document which showed M/s Sippy Films as the assignor and defendant no. 1 and 3, as its authorized signatories with G.P. Sippy, Chairman of plaintiff nos. 1 to 3 as the “*confirming party*”. I have referred to this aspect at this stage as the counsel for defendant no. 2 had made averments with respect to the fact that the plaintiffs had withheld vital information from the court and hence, were not entitled to any relief whatsoever.

12. In response to the case set out by the plaintiffs, defendant no. 2 has based its rights on the following:

(i) letter dated 22.12.2004 evidently issued by G.P. Sippy in his capacity as the chairman of plaintiff no. 1. By this letter it was sought to be conveyed that further to agreement dated 18.06.2003 (*sic* 12.06.2003) all overseas rights in the film “Sholay” have been assigned to “Sippy Films”; and that “Sippy Films” was authorized to modify the rights, and further assign satellite broadcasting rights in all forms with immediate effect;

(ii) letter dated 23.12.2004 issued purportedly on behalf of “Sippy Films” by defendant no. 1 (Ajit Sippy) and defendant no. 3 (Mohini Sippy) and confirmed by G.P. Sippy acting in his capacity as the chairman of plaintiff no. 1. By this letter, evidently “Sippy Films” has assigned in favour of defendant no. 2, ‘*multiple*’ exclusive satellite broadcasting rights till 17.06.2008 with immediate effect, for the entire world including India, in consideration of payment of Rs 50.00 lacs;

(iii) letter dated 24.12.2004 addressed by defendant no. 2 to defendant nos. 1 and 3 (i.e., Ajit Sippy and Mohini Sippy) as representatives of Sippy Films. By this letter a cheque in the sum of Rs 50.00 lacs drawn on BNP Paribas Bank is forwarded for

assigning exclusive “*multiple*” telecast satellite rights in the film “Sholay”. This letter bears confirmation by G.P. Sippy, authorized signatory of Sippy Films. A photocopy of the cheque bearing no. 733400 dated 24.12.2004 drawn in favour of Sippy Films in the sum of Rs 50.00 lacs drawn on BNP Paribas Bank is also enclosed;

(iv) letter dated 25.01.2005 issued once again by defendant no. 1 and 3 purportedly acting on behalf of Sippy Films giving their no objection to satellite broadcasting rights including Pay TV, Pay Per View and DTH Rights of 24 hindi feature films assigned by plaintiff no. 3 to defendant no. 2 vide agreement dated 12.06.2003 for a period of five years from the delivery date of acceptable material;

(v) letter dated 25.01.2005, which is, addressed by defendant no. 1 and 3, purportedly acting on behalf of Sippy Films, addressed to defendant no. 2, whereby they evidently agreed to provide picture and sound negatives of 25 hindi feature films, as per the list attached, on returnable basis as and when required, to the representative of defendant no. 2 till 23.07.2014. This letter also purportedly bears the confirmation of G.P. Sippy acting as chairman of plaintiff nos. 1 to 3; and

(vi) lastly, the agreement dated 28.01.2005 evidently executed between Sippy Films represented by defendant nos. 1 and 3 and defendant no. 2. The main terms and conditions are contained in Schedule I of this agreement. The same being relevant are extracted hereinbelow:

SCHEDULE-I

<i>TO DEED OF ASSIGNMENT DATED</i>	:	<i>Friday, 28 January 2005</i>
<i>BETWEEN</i>	:	<i>M/s Sippy Films</i>
<i>AND</i>	:	<i>M/s Zee Telefilms Limited (EVD)</i>
<i>EXCLUSIVE RIGHTS</i>	:	<i>Satellite Broadcasting including Pay TV, Pay Per View, DTH Rights as known in the film trade</i>
<i>TERRITORIES</i>	:	<i>All above mentioned Rights are for Entire World including India</i>
<i>NO.OF TELECAST OF EACH FILM</i>	:	<i>Multiple</i>
<i>PERIOD OF EACH FILM</i>	:	<i>After expiry of current assignment to 23/7/2014</i>

<i>DOCUMENT REQUIRED</i>	:	<i>Link Documents</i>
<i>PUBLICITY MATERIAL (IF AVAILABLE)</i>	:	<i>Promos and Movie Trailors on Digi Betacam, Photographs for PR Purpose, Printed Film Posters and/or any other material requested by the ASSIGNEE.</i>
<i>TOTAL No. OF FILMS</i>	:	<i>25 (Twenty Five)</i>
<i>TOTAL COST</i>	:	<i>Rs. 2,40,00,000/- (Rs. Two Crores Forty Lacs Only)</i>
<i>PAN No. OF THE ASSIGNOR</i>	:	<i>AAGFS 9297 M</i>
<i>TERMS OF PAYMENT</i>	:	
<i>ON SIGNING OF AGREEMENT</i>	:	<i>Rs. 2,20,00,000/- (Rs. Two Crores Twenty Lacs Only)</i>
<i>WITHIN 10 DAYS OF SIGNING THE AGREEMENT</i>	:	<i>Rs. 20,00,000/- (Rs. Twenty Lacs Only)</i>
<i>FOR ASSIGNOR M/S. SIPPY FILMS</i>	:	<i>FOR ASSIGNEE M/S. ZEE TELEFILMS LTD (EVD)</i>
<i>Sd/-</i>		<i>Sd/-</i>
<i>AUTHORISED SIGNATORY</i>		<i>AUTHORIZED SIGNATORY</i>

(vi)(a) Schedule II of this agreement refers to various films which are 24 in number in addition to “Sholay”. What is important to be noted is that the producer of all the films, including Sholay, is shown as Sippy Films. On behalf of the assignor signatures have been appended by defendant nos. 1 and 3 as the representative of Sippy Films and confirmed by G.P. Sippy as the chairman of plaintiff nos. 1 to 3. The total consideration which evidently was agreed to was a sum of Rs 2.40 crores.

12.1 Defendant no. 2 has also relied upon the documents filed by it, in the form of certificate of its banker BNP Paribas Bank, to show that payments have been made by cheques drawn in favour of an entity by the name of “Sippy Films”. The said cheque of Rs 2.20 crores, as also a separate cheque of Rs 20.00 lacs was, as per two certificates of even date i.e., 29.05.2008 issued by BNP Paribas Bank; were presented for clearance through Standard Chartered Bank by the payee.

13. Based on the above broad facts, it was submitted by Mr Jagdish Sagar, learned counsel for the plaintiff that: plaintiff no. 1 is the owner of the rights in the film Sholay, while plaintiff no. 2 is the owner of rights in the 31 films, referred to

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hereinabove. It was submitted that the distribution rights in the 31 films have been granted to plaintiff no. 3 by an agreement dated 12.09.2001 based on which plaintiff no. 3 had executed a deed of assignment dated 12.06.2003 in favour of defendant no. 2 in respect of the said films. Similarly, plaintiff no. 1, which had been vested with rights in the film "Sholay", by virtue of a gift deed dated 14.09.2000 executed by plaintiff no. 2 in favour of plaintiff no. 1, had assigned these rights by an assignment deed dated 12.06.2003 in favour of defendant no. 2. It was thus contended that defendant no. 2 was governed by the said assignment deeds. By virtue of the execution of said assignment deeds defendant no. 2 had recognized plaintiff no. 1 as the owner of right, title and interest in the film "Sholay", and similarly, in respect of other 31 films it had recognized plaintiff no. 3 as the assignor of the said rights. In these circumstances, it was contended that it was not open for defendant no. 2 to cobble up an agreement dated 28.01.2005 and claim rights contrary to the said assignment deeds. It was contended that the fact that defendant nos. 1 and 3 had not refuted the averments made by the plaintiffs in the suit only fortified its stand. As a matter of fact defendant nos. 1 and 3 have not even entered appearance to support the case of defendant no. 2.

13.1 Mr Jagdish Sagar further contended that plaintiffs have, in the past, asserted their right of ownership against various parties including defendant no. 1 by instituting a suit bearing no. 1892/2006 in this court. In the said suit the interim application being IA No. 11146/2006 was disposed of based on a consent that the defendants arrayed therein [which included defendant no. 1 (Ajit Sippy) impleaded in the instant suit] will not use the title "Sholay" or any other character including 'Gabbar Singh' and 'Gabbar' which appeared in the film "Sholay". This order was passed not too far in point of time i.e., 16.07.2007. Similar steps were taken against one Suresh Production, Hyderabad by issuing a notice through plaintiff no. 1 in July, 2006 as it proposed to release a computer gaming programme titled "Sholay". The said Suresh Production, Hyderabad accepted the plaintiffs' rights in the film "Sholay". The learned counsel for CS(OS) 1691/2008

the plaintiffs also made reference to the fact that defendant no. 3 in July, 2005, at which point in time she was about 91 years of age, had instituted a criminal complaint against her grand-sons Mr Shacha Vijay Sippy, Mr Shaan Uttam Singh and others alleging therein that they had no rights in the film “Sholay”, and they had wrongfully exercised rights in respect of the same. Defendant no. 3 had averred in the said complaint that her eldest son Ajit Sippy, i.e., defendant no. 1, was the owner of all the rights in the film “Sholay”. A reference was made to the crime report to suggest that there were no documents produced to prove the ownership rights of Ajit Sippy, i.e., defendant no. 1. The sum and substance of the submission of Mr Jagdish Sagar was that the original rights in the film “Sholay”, as also the other 31 films, vested in the partnership firm, Sippy Films. The constitution of the firm changed from time to time. At one point between 1975-1976 defendant no. 1 was its partner; after which he ceased to be a partner in Sippy Films. However, on 10.09.1997 plaintiff no. 2/SFPL was admitted as a partner to the said partnership firm/Sippy Films. On 11.09.1997 defendant no. 3 retired as a partner, leaving thereby only two partners in the firm/Sippy Films, i.e., plaintiff no. 2/SFPL and Vijay Sippy. On 17.04.1998 Vijay Sippy died; which resulted in the dissolution of the partnership firm/Sippy Films. The firm got converted by force of law into a proprietorship concern with plaintiff no. 2/SFPL as its owner. By virtue of the gift deed dated 14.09.2000 executed by plaintiff no. 2/SFPL the rights in the film “Sholay” devolved on plaintiff no. 1. Similarly, by an agreement dated 12.09.2001, plaintiff no. 2 conferred distribution rights in plaintiff no. 3. It is by virtue of the said occurrences that plaintiff nos. 1 and 3 executed two assignment deeds dated 12.06.2003 in favour of defendant no. 3. To buttress his submissions the learned counsel for the plaintiff relied upon the two assignment deeds dated 12.06.2003; the gift deed dated 14.09.2000; the partnership deeds of 10.09.1997 and 11.09.1997; the certificate dated 15.01.2007 issued by the Registrar of Trademarks under the Trade Marks Act, 1999; and the copies of Form-23 filed in compliance with provisions of Section 192 of the CS(OS) 1691/2008

Companies Act, 1996 to bring to fore the fact that the resolutions had been passed by plaintiff no .1 to accept the gift of the rights in the film “Sholay” conferred by plaintiff no. 2 in favour of plaintiff no. 1.

14. As against this, Ms Pratibha M. Singh, appearing for defendant no. 2 has submitted as follows: The plaintiffs have not come to the court with clean hands. It was submitted that the plaintiffs had failed to disclose the fact that they already had prior knowledge of the fact that defendant no. 2 had executed an agreement dated 28.01.2005 with defendant nos. 1 and 3. It was contended by Ms Pratibha M. Singh that the dishonesty of the plaintiffs is quite evident from the fact that with their IA No. 10025/2008, filed under the provisions of Order 11 Rule 12 of the CPC, a typed copy of the extract of the agreement dated 28.01.2005 is appended. Ms Pratibha M. Singh contended that had this fact been brought to the notice of the court on 22.08.2008, perhaps an order of ex-parte injunction would not have been passed by the Court. She further contended that the sole and exclusive owner of the film “Sholay” and other 31 films is undoubtedly G.P. Sippy. In December, 2004 rights were acquired by defendant no.2 for multiple telecast of the film “Sholay” upon payment of a valuable consideration of Rs 50.00 lacs to ‘Sippy Films’. For this purpose, as noted hereinabove, reference was made to letters dated 23.12.2004 and 24.12.2004 filed by the defendants alongwith their documents. Reliance was placed on the said letters which demonstrate that rights have been conferred in favour of defendant no. 2 by defendant nos. 1 and 3 while acting as authorized signatories of ‘Sippy Films’. It was stressed by the learned counsel that both letters bear a confirmation by G.P. Sippy acting as the chairman of plaintiff nos. 1 to 3.

14.1 Ms Pratibha M. Singh thus contended that it could not in these circumstances be doubted that the rights and obligations of defendant no. 2 are governed by the agreement dated 28.01.2005. The agreement, according to Ms Pratibha M. Singh, is lawful. She asserted that the said agreements were executed with persons having legal

capacity; against payment of a huge consideration of Rs 2.40 crores, which is, in addition to Rs 50.00 lacs, as stated above, for acquiring multiple rights of telecast in the film "Sholay". Ms Pratibha M. Singh contended that the plaintiffs have, by employing this device after accepting the consideration, instituted the present suit only to frustrate exploitation of rights conferred on defendant no. 2 by virtue of the agreement dated 28.01.2005.

14.2 In support of her submission Ms Pratibha M. Singh relied upon the provisions of Section 2(d)(v) of the Copyright Act, 1957 (in short the 'Copyright Act') to show that the author, in the case of a cinematograph, would mean the producer. A reference was also made to Section 17 of the Copyright Act to demonstrate that the author, i.e., the producer is the first owner of the copyright. Particular stress was laid on clause (b) of Section 17 of the Copyright Act, to show that any cinematograph film made for a valuable consideration at the instance of any person, then such person shall, in the absence of any agreement to the contrary, would be the first owner of the copyright therein. Reliance was also placed on Section 2(f) and Section 54 of the Copyright Act that owner of the copyright shall include an exclusive licensee. In nutshell, the submission of Ms Pratibha M. Singh veered around to persuading the court in holding that defendant no. 2 could never be held to be an infringer of copyright within the meaning of the provisions of Section 51 of the Copyright Act as it had acquired rights in the said films based on a license granted by the producer of the films, i.e., G.P. Sippy. It was thus the contention of the learned counsel that if the assignment deed dated 28.01.2005 has been executed by the owner/producer of the films which is in sum and substance a license in favour of defendant no. 2, the injunction granted by this Court on 22.08.2008 cannot be confirmed. Apart from the above, Ms Pratibha M. Singh also asserted that in the assignment deed of 12.06.2003, executed between plaintiff no. 1 and defendant no. 2, in Schedule III there is no reference to the gift deed dated 14.09.2000 which is, according to her, an ante dated document drawn up only to

frustrate the rights of defendant no. 2. In this context she asserted that Form- 23, which seeks to bring on record the minutes of extraordinary general meetings dated 13.09.2000 of plaintiff no. 1, evidencing acceptance of the gift deed given by plaintiff no. 2 could not have been filed before 10.02.2006 as the Registrar of Companies had permitted E-filing only after February, 2006; thus no credence could be placed on the gift deed dated 14.09.2000.

15. I have heard the learned counsel for both the plaintiffs and defendant no. 2. As indicated at the outset the entire controversy is pivoted on the issue as to who is the owner of both the film “Sholay”, as well as the other 31 films, referred to above. In so far as the defendant no. 2 is concerned; a fact which cannot be denied is that it entered into the two assignment deeds of even date 12.06.2003 whereby rights were conferred both in the film “Sholay” and the other 31 films in its favour. The assignor of rights in so far as the film “Sholay” is undoubtedly shown as plaintiff no. 1, whereas the assignor of rights in so far as the other 31 films are concerned is shown as plaintiff no. 3. Undoubtedly, while in the Schedule II appended to agreement dated 12.06.2003 executed between plaintiff no. 1 and defendant no. 2 the producer is shown as G.P. Sippy; in Schedule III the rights in favour of plaintiff no. 1 have been shown as having devolved from plaintiff no. 2/SFPL. Similarly, in so far as the other assignment deed dated 12.06.2003 is concerned, which is executed between plaintiff no. 3 and defendant no. 2, the assignor is plaintiff no. 3, while Schedule III shows the rights having flown from plaintiff no. 2 in favour of plaintiff no. 3 by virtue of a deed dated 12.09.2001 executed between them which is attached to the agreement. As noted above, the copy of letter dated 13.11.2001, to which reference is made in Schedule III to the assignment deed, executed between plaintiff no. 1 and defendant no. 2, the same has not been produced. Even so, defendant no. 2 cannot prima facie avoid the fact that the rights in both the films Sholay as well as the 31 films vests in plaintiff no. 1 and plaintiff no. 3 respectively as it is a signatory and beneficiary of the two assignment deeds of even

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date, i.e., 12.06.2003. There may be some substance in the assertion of defendant no. 2 as to why there was no reference to the gift deed dated 14.09.2000 which pre-dates the letter of 13.11.2001 in Schedule III of the assignment deed executed between plaintiff no. 1 and defendant no. 2. Perhaps the entire factual matrix with regard to this aspect may emerge with greater clarity at the trial. However, in so far as defendant no. 2 is concerned, it has in its written statement categorically taken the stand in reply to *'paragraphs 11-14 of the reply on merits'* that because the plaintiffs are the proprietors of the film "Sholay" they had executed the aforementioned assignment deeds. The relevant extract of the averments made in the written statement by defendant no. 2 reads as follows:

".....It is submitted that the defendant no.2 has never denied the fact that the Plaintiffs are the proprietors of the movie Sholay. It is for this very reason that the defendant no.2 had entered into agreements with the plaintiff companies and paid the consideration for the said assignments accordingly in the name of the Plaintiff companies ..."

15.1 In the same vein, defendant no. 2 in paragraph 22 to 25 of the Written Statement has taken a stand that the assignment deed of 12.06.2003 being valid only for ten telecasts was sought to be varied by inclusion of a right for multiple telecast within an overall period ending in September, 2008 (i.e., period of five years) as stipulated in the original deed upon payment of an additional sum of Rs 50.00 lacs to plaintiff no. 2; that this right was further expanded by virtue of agreement dated 28.01.2005 whereby, defendant no. 2 obtained an exclusive license for a period commencing after the expiry of the agreement deed dated 12.06.2003 and ending on 23.07.2014; and lastly, the agreement of 28.01.2005 was executed by late G.P. Sippy, the chairman of plaintiff companies which is valid till 23.07.2014. The averments being relevant are extracted hereinbelow:

".....The contents of para 22-25 are admitted to the extent that the movie Sholay was telecasted by the defendant no.2. However it is submitted that

*while the first agreement entered into on 12th June 2003 was valid for only 10 telecasts, Defendant No.2 has obtained consent of Plaintiff No 2 for the **multiple telecasts** within the overall rights period upto September 2008 by payment of additional sum of Rs 50 lakhs. Thereafter the defendant no.2 then signed another deed of assignment dated **28.1.2005** wherein the exclusive assignments of the films was assigned to the defendant no.2 for **the period commencing from expiry of the earlier agreements signed in 2003 and for a period up to 23.07.2014**. The said agreement was executed by Late Mr. G.P.Sippy, **Chairman** of the **plaintiff companies** and is valid till 23.7.2014. The preliminary objection in this regard be read as part of reply to this para....”*

16. As observed above, defendant no. 2 has categorically averred that its right have flown from the plaintiffs. The oral submission that Ms Pratibha M. Singh made before me to the effect that the rights in the films in issue vest in the original producer, i.e., late G.P.Sippy are not borne out from the written statement. The edifice on which Ms Pratibha M. Singh has based her submission is, in my view, not laid out in the written statement. Therefore, the consequent submissions with respect to the provisions of the Copyright Act have to be rejected on this short ground.

16.1 However, in view of the fact that submissions were made on this aspect of the matter, let me briefly deal with it. The submission of the learned counsel for defendant no. 2 that it is not an infringer as it has acquired a license from the author of the work, i.e., the producer, who undoubtedly is Late G.P.Sippy. In my opinion, as noticed by me above, this is not the stand which defendant no .2 has taken in the written statement. It is repeatedly asserted that its rights both in the film “Sholay”, as well as in the 31 other films, flow from the plaintiffs. Notwithstanding this fact, it is quite clear upon a plain reading of Section 54 of the Copyright Act that the owner of copyright includes an exclusive licensee. In the facts of the present case the producer of the film, i.e., G.P.Sippy, who was the owner, may for his own good reasons have assigned these rights in favour of the partnership firm/Sippy Films, and thereafter on dissolution of the partnership firm/Sippy Films the rights devolved on plaintiff no. 2. Plaintiff no. 2, in

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turn, has assigned these rights in favour of plaintiff no. 1 vis-à-vis the film “Sholay” and in favour of plaintiff no. 3 vis-à-vis the other 31 films. An assignment of this kind is recognized under the provisions of Sections 18 and 19 of the Copyright Act.

16.2 As observed by me hereinabove, since defendant no. 2 entered into the said assignment deeds, it accepted the fact that the original producer, i.e., G.P. Sippy had assigned these works in favour of plaintiff nos. 1 and 3, therefore, the argument raised in oral submissions contrary to the stand taken in written statement is untenable. This is more so by virtue of the fact that G.P. Sippy, who is a confirming party to the agreements dated 23.12.2004 and 28.01.2005, has signed in his capacity as the chairman of the plaintiff nos. 1 to 3. If G.P. Sippy had not assigned these rights in favour of the plaintiffs there was no need, in my view, to have signed them as a “confirming party” in his capacity as the chairman of plaintiff nos. 1 to 3. There is prima facie, no entity in existence by the name of Sippy Films. This is also a fact which is recognized by defendant no. 2 when it speaks of having entered into an agreement with plaintiffs whether it be plaintiff no. 1 or plaintiff no. 3. The result of all this is that, prima facie the agreements of 23.12.2004 and 28.01.2005 have no legal sanctity as defendant no. 2 was aware of the fact that the individuals appending their signatures perhaps had no legal authority to act on behalf of the entities which they represented. This being the situation, prima facie defendant no. 2 has infringed the rights of the plaintiffs in the film “Sholay” and in the other 31 films which have been broadcast after the expiry of the validity period provided in the assignment deed dated 12.06.2003 executed between plaintiff no. 3 and defendant no. 2.

16.3 In this context, the learned counsel for defendant no. 2 had also referred to the judgment of the Single Bench of this Court in the case of *M/s Jorden Electronics & Anr vs Bombino Video (P) Ltd MIPR 2007 (3) 0361*. The said judgment has been cited by Ms Pratibha M. Singh to support her submission that defendant no. 2 cannot be held to be an infringer as it had obtained a license from the original producer, i.e.,

G.P.Sippy. I find that this case has no applicability to the facts obtaining in the instant case. *Jorden Electronics (supra)* was a case in which plaintiff had come to court seeking injunction against the defendant in respect of the defendant's rights to make VCD, DVD and CDs in view of its assertion that it had rights to the films from the producer. The learned Single Judge in the said case declined an injunction in view of the fact that plaintiff was not able to prima facie demonstrate subsisting legal rights in its favour by virtue of the fact that plaintiff in the said case had failed to show that the agreement, on the basis of which they were claiming a right, was executed in their favour by any person "on behalf of the producer". This is not the situation obtaining in the present case. The other issue which arose in the said case was with regard to impleadment of the original producer in a suit instituted by an exclusive licensee. In the present case it is not disputed that G.P.Sippy passed away in 2007. In so far as the other person that is his wife and his son are concerned, they have been impleaded as parties. Therefore, the provisions of Section 61 of the Copyright Act would also not come in the way of plaintiffs in the instant case.

17. In my opinion, based on the averments made in the written statement, the only submission which could have been professed on behalf of defendant no. 2 even though it was not articulated in so many words before me, was perhaps that the variation in assignment deed of 12.06.2003 brought about in December, 2004, and the execution of agreement dated 28.01.2005 was made based on the ostensible authority of defendant nos. 1, 3 and G.P. Sippy to act on behalf of the plaintiffs. This seems plausible on first blush, however, on a closer scrutiny even this defence would fail in so far as defendant no. 2 is concerned for the reason that such a defence is available only to an innocent third party who is unaware of the inner workings of a company, in this case the plaintiff companies. Such an innocent third party can invoke the *Doctrine of Indoor Management*. In the present case, defendant no. 2 having entered into the agreements dated 12.06.2003 where the authorized signatory was shown as Mr Shaan Uttam Singh, CS(OS) 1691/2008

who acted both on behalf of plaintiff no. 1 as well as plaintiff no. 3, could not thereafter turn around and execute the agreements of December, 2004 and 28.01.2005 with defendant nos. 1 and 3 acting on behalf of plaintiff no. 2 with late G.P. Sippy as the confirming party. Defendant no. 2 being aware of the fact that Mr Shaan Uttam Singh had acted on behalf of the plaintiff nos. 1 and 3, had a bounden duty to make requisite inquiries before proceeding any further in the matter. What is curious is that defendant nos. 1 and 3 have acted for an entity described as *Sippy Films*. A perusal of the stand taken by defendant no. 2 in the written statement would show that Sippy Films is plaintiff no. 2. In the oral submissions, however, an argument was raised that Sippy Films actually referred to the partnership firm. Such a submission on the face of it is untenable in view of the categorical stand taken in the written statement. What is more curious is that defendant no. 2 claims to have paid a huge sum of nearly Rs 2.70 crores to an entity described as *Sippy Films* without having displayed, the least amount of interest, in determining as to who is the real beneficiary of the consideration. This question was put by me, to the learned counsel for defendant no. 2. She was not in a position to supply me with an answer. I am surprised that this issue has not agitated the mind of defendant no. 2 despite the fact that it claims that it has paid the said consideration to an entity described as *Sippy Films* as far way back as in 2005. In this context in the course of arguments what came to fore was that in the agreement dated 28.01.2005, executed between the entity *Sippy Films* represented by defendant nos. 1 and 3; and defendant no. 2, there is a reference to the PAN No. of the assignor which, I would assume is that of entity Sippy Films. The PAN No. reads as AAGFS9297M. The learned counsel for the plaintiffs produced before me the details of the PAN no. of plaintiff no. 1 and plaintiff no. 2: the said PAN Nos. are AAGCS7387H and AACCS4377H, respectively. The assertion of the learned counsel for the plaintiff was obviously the entity Sippy Film referred to in the agreement dated 28.01.2005 was not plaintiff no. 2 with whom the defendant no. 2 says it has arrived at an agreement. In

these circumstances, I am of the prima facie opinion that no rights whatsoever flow in favour of defendant no. 2 based on the agreements dated 23.12.2004 and 28.01.2005. The parties are governed by the rights which flowed in their favour by virtue of two assignment deeds dated 12.06.2003 appended at pages 24-31 and 32-42 respectively of the documents filed by the plaintiffs.

18. The submission of the learned counsel for defendant no. 2 that the plaintiffs had come to court with unclean hands in as much as the plaintiffs had not disclosed the fact that they were not aware of the agreement dated 28.01.2005, in my view, would not enure to the benefit of defendant no. 2. The reason for this is two-fold. First; if the assertions made by the plaintiffs are to be accepted, and I have no reason to disbelieve them at this stage, then Mr Shaan Uttam Singh actually became aware of existence of such an agreement, eventhough there was a reference to some agreement in February, 2008; only on 20.08.2008 when he was shown extracts by Shemaroo. It is the stand taken by the plaintiffs in IA No. 10025/2008 that Mr Shaan Uttam Singh was given a typed copy of a document, which is appended to the said application, which propelled them to ask for the discovery of the said document. Second, the plaintiffs have, in my view, no good reason not to disclose the existence of the agreement dated 28.01.2005, if in the final analysis they are seeking to restrict the rights and obligations of defendant no. 2 to the two assignment deeds dated 12.06.2003. Importantly, as noted by me hereinabove, a fact which I discovered on calling for the cause list of 22.08.2008 that IA No. 10025/2008 was shown in the cause list of that day, therefore, there is no reason to doubt the stand of the plaintiffs that they did not intend to disclose to the court that there was an agreement dated 28.01.2005 purportedly executed in favour of defendant no. 2. The allegation of the learned counsel for defendant no. 2 that it was sought to be suppressed from the court so that an ex-parte order could be obtained on 22.08.2008, is not quite accurate. The extract of the agreement dated 28.01.2005 was evidently on record of the court on the date when an ad interim ex-parte order was passed. In this

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context, the learned counsel for defendant no. 2 had cited the judgment of the Supreme Court in the case of *S.P. Chengalvaraya Naidu (Dead) By LRs. Vs Jagannath (Dead) By LRs & Ors. 1994 (1) SCC 1* and *Ram Krishan And Sons Charitable Trust Ltd vs IILM Business School (2009) 39 PTC 16 (Del) DB in paragraph 4 at page 18*. In view of the fact situation being different, both the judgments have no applicability to the present case.

19. In so far as the relief is concerned following needs to be noticed: At the stage of grant of the ex-parte interim injunction this court had restrained the defendants, their directors, partners, proprietors and other persons acting for and on their behalf, from broadcasting the film Sholay and 18 other films, mentioned hereinabove, which were being broadcast beyond the agreed period. These films being:

“Aatish, Raju Ban Gaya, Seeta Aur Geeta, Raaz, Nasbandi, Bewaqoof, Saagar, Andaz, Brahmachari, Jahar in Goa, Ahsaas, Black Cat, Mere Sanam, Bandhan, Trishna, Shaan, Patthar Ke Phool, & Mr X in Bombay.”

19.1 Suffice it to say at this stage that defendant no. 2 failed to adhere to the ex-parte injunction order; a fact which is admitted to by defendant no. 2 in their reply to the application of the plaintiffs filed under the provisions of Order 39 Rule 2A of the CPC. Whether it was an inadvertent infraction of the order or otherwise, is a fact which will be determined while dealing with the said application of the plaintiff. The reason that I have mentioned it here is that, it would in these circumstances be expedient to issue an injunction order with respect to films which are subject matter of the aforementioned two assignment deeds of even date, i.e., 12.06.2003, as its operability could then be easily supervised by the court. Accordingly, the injunction order needs to be modified only to the extent that it would extend to all 31 films and the film “Sholay”. Thus, the plaintiffs’ prayers in terms of clauses 42(i) & (ii) made in the captioned IA No.

9709/2008 are allowed. Consequently, IA No. 15468/2008 filed by defendant no.2 is dismissed.

20. Needless to state, the observations made hereinabove are only prima facie in nature, made only for the purposes of disposal of the captioned applications which shall have no impact on the adjudication held pursuant to a trial.

RAJIV SHAKDHER, J

JANUARY 08, 2010
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