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

INTERIM APPLICATION NO. 5236 OF 2022
IN
COMMERCIAL IP SUIT NO. 557 OF 2022

Shemaroo Entertainment Ltd.,
A company incorporated under The
Companies Act, 1956, having its
registered office at Shemaroo House,
Plot No. 18, Marol Co-op. Industrial Estate,
Off. Andheri-Kurla Road, Andheri (East),
Mumbai: 400 059.] **...Applicant.**

In the matter between :

Shemaroo Entertainment Ltd.,
A company incorporated under The
Companies Act, 1956, having its
registered office at Shemaroo House,
Plot No. 18, Marol Co-op. Industrial Estate,
Off. Andheri-Kurla Road, Andheri (East),
Mumbai: 400 059.] **...Plaintiff.**

Versus

1) Saregama India Limited
A Limited Company registered
Under the Indian Companies Act, 1913
having its registered address at 33
Jessore Road, Dum Dum,
Kolkata - 700 028, West Bengal
and place of business at 2nd floor,
Spencer building, 30 Forjeet Street
Near Bhatia Hospital, Grant Road (West),
Mumbai: 400 036, Maharashtra.

2) Gravity Zero Entertainment LLP,
A Public Limited Liability Partnership
Firm Registered under the Limited
Liability Partnership Act, 2008
having its registered address at 10A,

Floor 0, Plot-71B, Mota Mandir Marg,]
J.M Compound, Chingi Tabela,]
Kalba Devi, Mumbai: 400002, Maharashtra]
and also at 210, Mohid Heights,]
2nd Floor, RTO Road, Suresh Nagar,]
Andheri (West), Mumbai, Maharashtra.]
]

3) Babbar Subhash]
Commonly known as B. Subhash,]
the sole Proprietor of the concern]
named B. Subhash Movie Unit]
having its address at 1, Coelho House,]
Juhu Tara Road, Juhu,]
Mumbai-400049, Maharasthra.] **...Defendants.**

Mr. Rashmin Khandekar, Anand Mohan, Mahesh Mahadgut and Kaivalya Shetye for the Plaintiff.
Mr. Rohaan Cama and Sandeep Jalan i/b Mehul A. Shah for Defendant No. 3

Coram : Sharmila U. Deshmukh, J.
Reserved on : July 3, 2025
Pronounced on : August 12, 2025.

Judgment :

1. The suit seeks the substantive relief of declaration that the Plaintiff is the sole, exclusive and absolute owner of the negative rights and all other rights as described in the assignment agreement with respect to the suit film titled "Disco Dancer" and for permanent injunction and damages.

PLEADINGS:

2. The Plaintiff had impleaded the producer of suit film along with the Defendant Nos.1 and 2, who according to the Plaintiff were jointly

launching / producing an adaptation of suit film by making a stage play / musical theater named "Disco Dancer-the Musical" to be showcased from 16th November 2022 to 20th November 2022 and thereby infringing upon the Plaintiff's right without authorization or consent of the Plaintiff. The plaint pleads that in or around October 2011, the Defendant No.3, who was the producer of suit film, approached the Plaintiff and offered to assign to the Plaintiff negative rights and certain other rights in 12 films produced by the Defendant No.3 including the suit film and on 11th November 2011, the assignment agreement was entered into between the Plaintiff and Defendant No.3 by which the Plaintiff acquired exclusive negative rights and other rights *inter alia* over the suit film.

3. The pleading in the plaint under the heading "Defendants unauthorised exploitation of Plaintiff's said rights" reads as under:

> *"18. In or around 1st November 2022, the Plaintiff was shocked to come across previews of the Stage Play title "Disco Dancer-the Musical" (the Infringing Work) on the Social Networking Platform "Instagram". The previews unequivocally claimed the play was an adaption of the Suit Film. From the previews it was also clear that the Infringing Work uses the characters, concept, costumes, script etc of the Suit Film. More particularly, the previews show that the Infringing Work was being promoted as under:*
>
> *"Bollywood's Iconic Film Disco Dancer comes alive on stage". Now, you can enjoy the songs **and the story** of*

> *Disco Dancer, live on stage,with Saregama Live's* ***<u>adaptation of the film.</u>*** *Journey back to the 80s with the costumes, dances and style of Disco Dancer."*

4. On 2nd November 2022, a legal notice was issued to the Defendant Nos.1 and 2, in response whereof the Defendant No.1 alleged that in or around September 2019, it had acquired rights to adapt and use the story, characters, concept and other elements of the suit film for its musical from Defendant No.3.

5. In paragraph 28, it is stated that in the telephonic discussion which took place between one Mr. Vinod Karani of the Plaintiff and the Defendant No.3 where the Defendant No.3 appeared to assert rights contrary to what was given to the Plaintiff under the assignment agreement and reference in the passing was made to the letter exchanged between the parties dated 19th September 2019 which has absolutely no bearing on the facts of the present case and the letter does not vest any right with the Defendant No.3 with respect to making an adaptation of suit film.

6. In paragraph 31, it pleaded that left with no alternative, the Plaintiff has been forced to file the present suit in extreme urgency *inter alia* seeking protection of its rights in the suit film. Under the heading "Submissions", it is pleaded that by virtue of assignment agreement executed between the Defendant No.3 and the Plaintiff,

the Plaintiff is the sole, exclusive and absolute owner of negative rights of suit film and other rights set out therein including and particularly remaking, adaptation, dubbing, subtitling, etc. It is pleaded that the Defendant Nos.1 and 2 are attempting to capitalize and encash the goodwill of suit film by making an unauthorised adaptation of suit film by way of infringing work and are generating revenue by issuing tickets of the theatrical release of the infringing work which is scheduled to be premiered in London between 16th November 2022 and 20th November 2022.

7. To the plaint annexed at Exhibit D1 to D5 are the screenshots of official trailer of the infringing work which was titled as *"Bollywood's Iconic Film Disco Dancer comes alive on stage"*.

8. During the pendency of proceedings, the suit came to be settled between the Plaintiff and Defendant Nos.1 and 2 and consent decree was passed *qua* the Defendant Nos.1 and 2.

9. The Affidavit in reply dated 18th January, 2023 filed by the Defendant No 3 pleads that under the special stipulation Clause 30 of agreement dated 11th November 2011, the remaking rights in respect of the film remained with the Plaintiff and the Defendant No 3 has not given any right except remaking the Suit Film in association with Defendant No.2. It was contended that as per letter dated 19th September 2019, the Plaintiff confirmed that Defendant No.3 has

become the perpetual remake right holder of the film Disco Dancer and the Plaintiff has agreed and consented to waive off the limitation period of 10 years of the suit film. It is further contended that the Defendant No.3 had parted with negative rights of the suit film in favour of the Plaintiff however as per Clause 30 of the agreement, remake rights of the suit film was with the Plaintiff earlier for a period of 10 years and thereafter it was extended vide letter dated 19th September 2019.

10. In the Affidavit in rejoinder dated 15th February, 2023, the Plaintiff has specifically pleaded that the submissions are made in relation to following two topics:

(1) The present suit does not pertain to remaking rights in respect of the suit film and

(2) Misinterpretation of the assignment agreement and letter dated 19th September 2019.

11. In so far as Topic No.1 is concerned, in paragraph 4 it is contended that the present suit does not pertain to remaking rights in respect of the suit film and only pertains to illegal adaptation of suit film and unauthorised use of characters, concepts, costumes, script, etc of the suit film. It is pleaded that adaptation and remaking rights are recognised as separate and distinct rights, as they are in law. In

paragraph 7 it is pleaded that the present suit does not pertain to "re-making rights" in respect of suit film and is in respect of the stage play / musical theater named "Disco Dancer- the Musical", the stage play which is and was advertised as an adaptation of the suit film and *inter alia* utilises its story, characters, concept and script amongst various other components which rights are assigned to the Plaintiff and could not have been assigned by the Defendant No.3 to any other party.

12. As regards the misinterpretation, it is pleaded that letter dated 19th September 2019 does not waive or extend the time period of 10 years and the letter was issued during the subsistence of Defendant No.3's right in respect of the remaking of suit film.

13. The additional affidavit-in-reply of the Defendant No.3 dated 22nd June, 2023 pleads the steps taken to direct and produce the remake of film. It was pleaded that as per Clause 30 of the Assignment Agreement, the remaking rights which include adaptation rights, remained with the Defendant No.3 for a period of 10 years from the date of agreement and that order of injunction deserves to be modified to the extent of remaking rights including the adaptation rights of suit film. It is contended that the Defendant No 3 is remaking the film under the joint venture agreement dated 23rd December, 2020 and ad interim order be modified.

14. In response, the Plaintiff by Affidavit dated 23rd February, 2024 re-iterated the pleadings in the plaint. It was contended that the suit has been settled between the Applicant and the Defendant Nos 1 and 2 and came to be decreed as per consent terms and that the Defendant No.3 now belatedly seeks to precipitate the matter and is seeking modification of injunction order to the extent of his alleged remaking rights including the adaptation rights to be excluded from the purview of injunction order. It was pleaded that the right to re-make the film was for period of 10 years and upon expiry of the said period in November, 2021, the remaking rights reverted to the Applicant. It was pleaded that the assignment agreement recognises different and distinct rights in respect of the film *inter alia* including re-making rights, adaptation rights etc. It was pleaded that remake doesn't include an adaptation of film into a stage play or any other work apart from a film and it also does not include any tinkering with or changing of the original story-line or original characters as far as remake version is concerned. It was pleaded that the Joint Venture Agreement dated 23rd December, 2020 regarding remaking of the suit film in fact refers to a prequel and/or sequel and/or an entirely different work based on the Suit film. It was pleaded that from the brief synopsis of the script set out in the Additional Affidavit it is evident that the film contemplated by Defendant No.3 is not a remake

of the suit film and the storyline is starkly different and the Defendant No 3 is making a sequel.

SUBMISSIONS:

15. On the basis of above pleadings on record, the arguments were canvassed by the learned Counsel for the parties. It was necessary to set out the pleadings in some detail for the reasons which are discussed hereinafter in the order.

16. Mr. Khandekar, Learned counsel appearing for the Plaintiff submits that by the agreement dated 11th November 2011, the Plaintiff acquired omnibus and exclusive assignment of all negative rights and other rights *inter alia* in relation to the film including all underlying works in relation thereto. He points out various clauses of the agreement and in particular Clause 4, Clause 4(iii) and Clause 30(1) of the agreement in order to contend that the Defendant No.3 was granted only a limited right to remake the film within a period of 10 years from the date of agreement. He would further submit that the Defendant No.3 is trying to travel beyond the purport of his limited remake rights by attempting an adaptation / sequel of the film which the Defendant No.3 could not do. He submits that the case of the Defendant No.3 that the right to remake includes the right to adapt, is misconceived in both fact and law. He submits that the right to remake a film is traceable only to the right to make any cinematographic film in

respect of literary / musical work or substantial part thereof available under Section 14(a)(iv) of the Copyright Act, 1957 and the right to remake is distinct from the right to adapt which is traceable to Section 14(a)(vi) of the Copyright Act, 1957. He submits that under Section 2(a) of the Copyright Act, 1957 adaptation can be only in respect of literary or artistic work and is not available in respect of the cinematographic film. He submits that the assignment agreement recognises the distinction between an adaptation and remake by separately enumerating the same. He submits that the Defendant No.3 could therefore have made the film based on original script / story / music or substantial part thereof meaning that he could introduce twist / embellishment while still making a film substantially based on original script / story. He submits that the Defendant No 3 had a right to make the film differently but still had to remake that film or a substantial version thereof.

17. He submits that the Defendant No.3 is making a sequel which will pick up from where the original left off and which will follow the story of Jimmy and his son which will never qualify as remake. He would submit that prayer Clause (a) of the Interim Application seeks restraining orders against such unauthorised exploitation / adaptation. He has taken this Court in detail through various clauses of the agreement dated 11th November 2011 and would submit that the

contract reserves a time limited right in favour of the Defendant No.3 *qua* the remake of film and that the letter dated 19th September 2019 cannot amount to any waiver or limitation or relinquishment of the right of Plaintiff in respect of the remake beyond 10 years window. He submits that no film was made within the time bound period as stipulated under Clause 30 of the assignment agreement and the right reverted to the Applicant and no rights remained with Defendant No 3.

18. He would further submit that from the agreements entered into by Defendant No.3 it is clear that Defendant No.3 was attempting to adapt the script of the film without any right whatsoever and that the 2011 agreement specifically recognised the distinct and different rights mentioned therein which includes remaking rights / adaptation rights, screenplay, etc. He would submit that by the injunction order, this Court has already come to a finding that all rights including specifically adaptation rights are assigned to the Plaintiff. He would further submit that the conduct of Defendant No.3 amounts to misrepresentation as after assigning rights in the film to the Plaintiff, the Defendant No.3 has assigned the same rights to third parties by misrepresenting that he is the exclusive owner of copyright and other rights in film and transferred adaptation rights in film to create a musical theater adaptation of film. In support of his submissions he relies upon the following decisions:

Narendra Hirawat v. M/s. Alumbra Entertainment & Media Pvt Ltd.[1]

Zee Entertainment Ltd. v. Ameya Vinod Khopkar Entertainment[2]

Nabha Power Ltd. v. Punjab SPCL[3]

19. Mr. Cama, learned counsel appearing for the Defendant No.3 submits that the entire cause of action in the present suit pertains only to staging of a play based on Disco Dancer which was proposed to be done in November 2022 on the basis that the play was illegal adaptation of film Disco Dancer. He would further point out the ad interim order dated 15th November 2022 and would contend that perusal of the order would show that the same does not refer to Clause 30 and there is no reference to the letter dated 19th September 2019 by which the Defendant No.3 invoked its remake rights. He would submit that the order which is an ad interim order cannot bind the Court at the hearing of interim application. He would further submit that there is no allegation as to how the proposed new film, which is intended to be made by Defendant No.3, in any manner infringes any copyright in favour of the Plaintiff and the Plaintiff is not even aware of the contents of the said film and is purely operating in the realm of speculation. He submits that the cause of action for filing suit was the illegal adaptation by virtue of the stage play derived from the film

1 2017 SCC OnLine Bom 2432.
2 2020 SCC OnLine Bom 11301.
3 (2018) 11 SCC 508.

Disco Dancer.

20. He draws attention of this Court to the affidavit-in-rejoinder dated 15th November 2023 filed by the Plaintiff expressly stating that the present suit does not pertain to the remaking rights in respect of the proposed film and only pertains to the illegal adaptation into stage play. He would further submit that upon a holistic reading of plaint, the allegations of an action being taken purportedly contrary to the assignment agreement dated 11th November 2011 is only in the context of adaptation of Disco Dancer into a stage play and there is no reference to the proposed new film being produced by the Defendant No.3 being an alleged infringement of the rights purported to be assigned under the agreement dated 11th November 2011.

21. He submits that the plaint has not been amended and no attempt has been made to incorporate any prayer in respect of the new film. He would further submit that Plaintiff's interpretation of the term "remaking rights" to mean only a right to make the same film with the same characters and script / songs is not a correct interpretation and even assuming that the same is correct interpretation of the term "remaking rights", the rights were invoked on 19th September 2019 and no injunction could then be granted. He submits that as the Plaintiff contends that term "adaptation" is not equivalent to the term "remake", then relief sought in the prayer Clause (a) which applies only

to adaptation can absolutely have no application whatsoever to remake of the film.

22. He would point out Section 2(a)(v) of the Copyright Act, 1957 defining the terms "adaptation" and submits that the right of remaking will have to include an alteration / rearrangement of several aspects of the story, dialogue, characters, songs etc to align with the contemporaneous time period. He submits that the remake has to be understood as making a new and different version of the film and not a copy paste of the old film and therefore would clearly fall within the definition of "adaptation" under Section 2(a)(v) of the Copyright Act. He would further point out that Clause 4 of the agreement referring to the term adaptation differently from the term remake cannot be accepted as the same clause also uses different terms such as screenplay, songs, scenes, sequences, etc. and it would be absurd to contend that while making a remake, the Defendant No.3 will not be able to use the underlying works of the original film.

23. He would further submit that Clause 30 which is a special stipulation clause if validly invoked by Defendant No.3, then to that extent, the Defendant No.3 would retain all rights in respect of the said Film and would be entitled to make a new film with all attendant rights and exploitation entitlements. He submits that Mr. Khandekar during the submissions has fairly admitted that the rights in Disco

Dancer, if remade by Defendant No 3 ought to be read to include the rights for screenplay, songs, dialogues etc failing which the remake rights would be meaningless.

24. He would submit that the Plaintiff's case in reply to the additional affidavit that Defendant No.3 appears to be making a sequel of the film Disco Dancer is pure hypothesis based on on certain online articles which are misleading and interim relief cannot be granted based on such hypothesis. He would further submit that without prejudice that even if Defendant No. 3 is making a sequel of the film Disco Dancer, it is a settled position in law that the right of making a sequel not being expressly assigned to the Plaintiff, there cannot be any question of infringement of the Plaintiff's copyright.

25. He would submit that so far as the decision in ***Narendra Hirawat v. M/s. Alumbra Entertainment & Media Pvt Ltd*** (supra) relied upon by Mr. Khandekar is concerned, the same takes a view that right of making a sequel, which is a right in respect of a different film, was never assigned to the Plaintiff in that case and therefore there was no question of granting any injunction which in fact assists the case of Defendant No. 3. He would further submit that even in the case of ***Zee Entertainment Ltd. v. Ameya Vinod Khopkar Entertainment*** (supra), the Clause therein provided that for an assignment of all rights to the Plaintiff and despite the wide language in the Clause, the Court

declined to grant injunction on the ground that right to make a sequel was not assigned and the words "sequel" or "sequel rights" were conspicuously absent in the assignment agreement.

26. He would further submit that Defendant No.3 has invoked Clause 30 within a period of 10 years and both parties understood the said Clause to mean that the right had to be exercised within a period of 10 years as it is well known that the films may take a more than a decade to be made and on an average every film takes about 5 to 6 years to make. He submits that communication of 19th September 2019 issued by the Plaintiff expressly accepts the invocation and therefore there is no question of contending that the invocation was not within time. He submits that there was significant publicity and newspaper articles as regards the steps taken by Defendant No.3 towards the production of proposed new film and at no point of time the Plaintiff raised any objection and the only objection was raised to the stage play being proposed in the month of November 2022 which was well after the 10 years period had lapsed in November 2021. He submits that the judgment in ***Union of India v. D. N. Revri & Co*** (supra) is cited to contend that when interpreting clauses of the agreement, a logical commercial interpretation should be given. He submits that once the Clause was *bona fide* invoked, there was no reversion of right to the Plaintiff under Clause 30. In support, he relies upon the following decisions.:

- ***Union of India v. D. N. Revri & Co.***[4]
- ***Krishika Lulla v. Shyam Vithalrao Devkatta***[5]

27. In rejoinder, Mr. Khandekar submits that the frame of the suit and pleadings therein makes it clear that the Plaintiff had sought direct relief against the Defendant from engaging in any unauthorised adaptation of the suit film in any manner whatsoever. He submits that Defendant No.3 understood this suit to include the reliefs against Defendant No.3's purported right to make an adaptation and therefore prayed for modification of the ad-interim order. He submits that the Defendant No.3 claims to have the right to make an adaptation and/or sequel, which right is directly in issue.

28. He submits that Clause 30 has to be given its express meaning and the Defendant No 3 is not entitled to merely invoke the rights within the stipulated 10 year period and was required to complete the film within the 10 year period. He submits that remake rights are meaningless without implying a wider grant. He submits that the remade film becomes a new work and the Defendant No 3 would be entitled to exploit the remade film without recourse to the Plaintiff's rights on account of the said remade having been made legitimately.

4 (1976) 4 SCC 147.
5 (2016) 2 SCC 521.

29. He submits that by the assignment agreement all rights including the underlying works were assigned to the Plaintiff and the Defendant No 3 retained nothing. He submits that once the underlying work vested with the Plaintiff, it is only the Plaintiff who could have made the sequel based on the underlying work in exercise of that right. He submits that the fact that the Defendant No 3 has taken steps not towards a remake but sequel is evident from the material relied upon by the Defendant No 3 itself.

REASONS AND ANALYSIS:

30. The interim Application seeks the following reliefs:

> "(a) that pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to pass a temporary order and injunction restraining the Respondents by themselves, their Directors, partners/proprietor, heirs, representatives, successors in business, assigns, distributors, agents or any one claiming through them, from infringing the Applicant's copyright subsisting in the Suit film titled ***'Disco Dancer'*** and/or any other rights contained in the Agreement annexed at 'Exhibit-B' to the Plaint by performing or causing to be performed or releasing or causing to be released or exhibiting or causing to be exhibited or distributing, communicating to the public by any means, broadcasting, telecasting or otherwise publishing or in any other way producing/ preforming/ releasing/exhibiting the stage play named ***'Disco Dancer-The Musical'*** or any adaptation of the Suit film/the Applicant's rights, including using the concept, story, script, adaptation, dialogue, characters, dance, choreography, costume, the title of the Suit film in any manner whatsoever;
>
> (b) that pending the hearing and final disposal of the Interim Application, this Hon'ble Court be pleased to direct the Respondents to furnish a copy of their Agreement to the Applicant on the basis of which they are claiming rights in the stage play named ***'Disco Dancer-The Musical'***.

31. By order of 15th November 2022, this Court granted ad interim

relief in terms of prayer clause (a). Paragraph 2 of the order of 15th November 2022, records as under:

> "2. The present suit and the interim application seeking urgent ad-interim orders have been filed on the basis that on 01.11.2002, the plaintiff came across preview of a stage play titled "Disco-Dancer-The Musical" on the social networking platform Instagram. It became evident from the previews that a drama, to be stage at the behest of defendant no 1 as a musical infringed the rights of the plaintiff in the film "Disco Dancer" as per the aforesaid agreement executed in favour of the Plaintiff by the Defendant No.3.It was revealed that defendant no 1 is to stage the aforesaid musical drama, completely based on the film "Disco Dancer" from 16.11.2022 in London for five days."

32. The submissions recorded in paragraph 4 of the order on behalf of the Plaintiff would indicate that what was canvassed before the Court was that the Defendant No.1 could not claim rights of adaptation of characters and storyline of the said film for staging the musical in London from 16th November 2022. During the hearing, the Defendant No.3 did not appear. The arguments canvassed on behalf of the Defendant No.1 was that by the agreement dated 11th November 2011, executed in favour of the Plaintiff the Defendant No.3 had only assigned rights in a cinematographic film Disco Dancer and not the rights pertaining to adaptation or staging of musical or drama.

33. This Court upon perusing various clauses of the agreement held that *prima facie* all rights pertaining in the suit film stood assigned to the Plaintiff and there is *prima facie* substance in the Plaintiff's contention that this would include adaptation of the said film in various manners including dramas and musicals based on the content,

storyline and characters of the said film. It *prima facie* held that the Defendant No.3 had already assigned all rights including the intellectual property rights etc in favour of the Plaintiff and any subsequent agreement executed by the Defendant No.3 claiming to assign adaptation rights or the rights to stage the musicals pales in significance. It was recorded in paragraph 24 of the ad-interim order that appropriate directions can be granted for balancing the equities in so far as staging of the musical in theaters in London was concerned and granted ad-interim relief in terms of prayer clause (a) without affecting the staging of the musical subject to Defendant No.1 depositing the entire collections with the Court.

34. The pleadings in the plaint which are reproduced hereinabove when read in the meaningful manner conveys that the case of the Plaintiff was that there was an assignment of copyright in the film "Disco Dancer" in Plaintiff's favour by an assignment agreement dated 11th November 2011, between the Plaintiff and the Defendant No.3, who was the producer of the film, which copyright is sought to be infringed by reason of promotional material which has come to the knowledge of Plaintiff that the Defendant Nos. 1 and 2 are jointly producing an adaptation of suit film by making a stage play/musical theatre "Disco Dancer-The musical." The fact that Defendant No.1 and 2 are impleaded as party to the proceedings would indicate that the

cause of action for filing of suit arose by reason of the Defendant Nos.1 and 2 proposing to adapt the suit film into a stage play/musical theatre. The legal notice issued by the Plaintiff was also issued to Defendant No.1 and 2. Particularly, in paragraph 28 of the plaint, it is pleaded that there was a telephonic discussion with Defendant No.3 when Defendant No.3 referred in passing to the letter dated 19th September 2019, and there is specific pleading that the said letter has no bearing on the facts of the present case and the letter in no manner, whatsoever vest any right with Defendant No.3 with respect to making an adaptation of suit film. It is in this frame of the suit that the interim application was filed seeking interim relief against infringement of copyright.

35. Prayer Clause (a) of the Interim Application is widely worded and seeks relief against (a) infringing the Applicant's copyright and/or any other right in the suit film (b) by performing or causing to be performed or releasing or causing to be released or (c) exhibiting or causing to be exhibited or (d) distributing, communicating to the public by any means (d) broadcasting, telecasting or otherwise publishing or in any other way producing/ performing/ releasing/ exhibiting the stage play named "Disco Dancer- The Musical" (e) or any adaptation of the Suit film/the Applicant's rights, including using the concept, story,

script, adaptation, dialogue, characters, dance, choreography, costume, the title of the suit film in any manner whatsoever.

36. The interim relief thus seeks to restrain the Defendant from staging the musical play or from any adaptation of the suit film including using the concept, story, script dialogue, characters etc of the suit film. The cause of action as pleaded in paragraph 47 of the plaint is that on 1st November, 2022, the Plaintiff came across the promotional content of Defendant No 1 and on account of refusal of Defendant No.1 from exploiting the suit film and claiming rights in the suit film, the present suit has been instituted. There is no pleading in the plaint as regards Clause 30 of the Assignment Agreement dated 11th November, 2011 and on the contrary the specific pleading is that the communication of 19th September, 2019 has no bearing on facts of the present case whereas entire submissions of the learned Counsel for the parties revolved around the interpretation of Clause 30 and letter of 19th September 2019.

37. The Affidavit in rejoinder dated 15th February, 2023 of the Plaintiff specifically pleads that the present suit does not pertain to remaking rights in respect of the suit film and in paragraph 4 it is contended that the present suit does not pertain to remaking rights in respect of the suit film and only pertains to illegal adaptation of suit film and unauthorised use of characters, concepts, costumes, script, etc

of the suit film. In paragraph 7, it is pleaded that the present suit is in respect of a stage play/musical theater named "Disco-Dancer-the Musical" which is and was advertised as an adaptation of the suit film.

38. The submissions canvassed during the hearing of the ad-interim relief did not make any reference to the rights of remake for period of 10 years or the letter of 19th September, 2019 and were confined to seek an ad-interim relief against the staging of the musical which demonstrates that the interim application was confined to seek orders against the staging of the musical and the reference to adaptation rights of the suit film in the prayer Clause (a) of Interim Application was in context of the musical play.

39. What is now sought to be argued by Mr. Khandekar is not the pleaded case of the Plaintiff in the plaint. Mr. Khandekar would base his arguments on the proposed new film of the Defendant No.3, which according to him, is a sequel of the suit film. This new line of argument is based on the Additional Affidavit in reply of the Defendant No 3 that under the Assignment Agreement dated 11th November, 2011 read with letter dated 19th September, 2019, the Plaintiff has no remaking rights including adaptation rights in respect of the suit film which vests with Defendant No 3 and he is remaking the film under Joint Venture Agreement dated 23rd December, 2020, and that order of injunction be accordingly modified.

40. Despite a query by this Court as to whether the Plaintiff would want to amend the plaint/interim application to seek appropriate relief, Mr. Khandekar submitted that there is no requirement as prayer clause (a) of the Interim Application seeks injunction against infringement of the Plaintiff's rights not only in respect of the musical play but also adaptation including using the concept, story, script, dialogue, characters etc. The said submission is fundamentally flawed as the *quia timet* action can lie on an apprehension of breach and in the present case there is no apprehension of breach of the Plaintiff's copyright by reason of the proposed new film. There is not even any pleading regarding the remake rights of the Defendant No 3 *qua* the limited time period of 10 years as stipulated under Clause 30 of the Assignment Agreement dated 11th November, 2011 or the subsequent proposed new film by the Defendant No 3 by invoking the said re-making rights.

41. There is no pleading to demonstrate *prima facie* infringement of the Plaintiff's copyright ownership by virtue of exercise of remaking rights/sequel by the Defendant No.3. The cause of action for infringement of the Plaintiff's copyright in the plaint was the proposed musical play to be staged by the Defendant Nos.1 and 2 in London. The injunction against adaptation was premised on the staging of musical play. The cause of action for grant of interim relief *qua* the musical

play was exhausted upon grant of ad-interim relief on 15th November, 2022 and in any event upon the consent terms being executed between the Plaintiff and Defendant Nos.1 and 2.

42. The entire submissions of Mr. Khandekar based on interpretation of Clause 30 of the Assignment Agreement and the communication dated 19th September, 2019 is not the Plaintiff's pleaded case and what has been pleaded has not been argued before this Court. The submissions canvassed based on the contentions of the Defendant No.3 in the response Affidavits, goes beyond the scope of the plaint and sans the appropriate amendment to the plaint / interim application setting out the necessary material in respect of purported infringement of the Plaintiff's copyright in the suit film based on what was brought on record by the Defendant, it is not possible to consider the said submissions.

43. Mr. Khandekar seeks to make a distinction between right to adapt and right to remake and as prayer clause (a) of the interim application makes a reference to the staging of the musical play or any adaptation by using the suit films concept, story etc even otherwise the prayers would not cover the apprehension as regards the proposed new film. Mr. Cama is right in contending that the Plaintiff is seeking relief in respect of infringement without any complaint of act of infringement.

44. The relief sought in the interim application has run its course upon the consent terms being executed between the Plaintiff and the Defendant Nos.1 and 2. For seeking any further relief in respect of the proposed new film, it is necessary for the Plaintiff to atleast *prima facie* demonstrate that the proposed new film is either a remake, without any right to remake subsisting in the Defendant No.3 due to expiry of period of 10 years or a sequel, which the Defendant No.3 is not entitled by reason of no right subsisting to use the underlying works. There is no pleading in the plaint/interim application on the basis of which this Court can come to a *prima facie* finding as to whether the proposed new film is a remake or a sequel or a completely new film. Equally in dark is the Plaintiff about the proposed new film as the submissions canvassed by Mr. Khandekar is based only on some news articles, which quotes the Defendant No.3 that the proposed new film is the sequel. Pertinently, in the Additional Affidavit in reply, the Plaintiff pleads that on reading of the Joint Venture Agreement from brief synopsis of the script, the Defendant No 3 is not making a remake of the suit film and the storyline is starkly different. That being the specific pleading of the Plaintiff, the Assignment Agreement dated 11th November, 2011 will not cover a starkly new film and there is no cause of action for seeking any injunction. The arguments of Mr. Khandekar about the proposed new film are in the realm of speculation, which cannot form

the basis of an injunction. Assuming *arguendo* that the proposed new film is a sequel, the same will take the story forward and the Plaintiff is required to bring material on record to demonstrate *prima facie* that the sequel proposed by the Defendant No 3 uses the underlying works such as script, screenplay, songs, lyrics, scenes etc in which the Defendant No 3 did not have any subsisting copyright by reason of the Assignment Agreement dated 11th November, 2011. In absence of any material on record, this Court cannot come to a conclusion that the proposed sequel uses the underlying work of the original suit film without any subsisting right. *Sans* such material, there cannot be any *prima facie* finding that the proposed new film infringes the copyright in the suit film subsisting in favour of Plaintiff. Despite specifically calling upon the Plaintiff to amend the plaint and seek appropriate relief in respect of the proposed new film, the Plaintiff chose to continue with the facts as it stood, and therefore now must suffer the consequences.

45. The Interim Application/plaint does not seek any relief of injunction specifically restraining the Defendant No.3 from proceeding with the proposed new film or challenging the joint venture agreement and the plaint/interim application makes no averments whatsoever as to how the proposed new film intended to be made by Defendant No.3 in any manner infringes the copyright in favour of the Plaintiff.

46. As regards the interpretation placed on the definitions of "remake" and "adaptation", it would be appropriate to consider the relevant statutory provisions. Section 2(a) define the terms "adaptation" as under:

> "(a) "adaptation" means,—
> (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
> (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;
> (iii) in relation to a literary or dramatic work, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;
> (iv) in relation to a musical work, any arrangement or transcription of the work; and
> (v) in relation to any work, any use of such work involving its re-arrangement or alteration;"

47. Perusal of the said provision would indicate that there is a specific reference to the literary,, artistic, dramatic, musical work while defining adaptation and sub-clause (v) makes a reference to any work and any use of such work involving its rearrangement or alteration. Section 2(y) defines the "work" as under:

> (y) "work" means any of the following works, namely:-
> (i) a literary, dramatic, musical or artistic work;
> (ii) a cinematograph film;
> (iii) a sound recording.

48. Section 2(y)(ii) makes a specific reference to a cinematograph film and the expression "work" which is used in Section 2(a) (v) will include a cinematograph film. Conjoint reading of section 2(a) (v)and

section 2(y)(ii) would make it clear that a cinematograph film is covered by the expression adaptation and would mean the use of cinematographic film involving its re-arrangement or alteration. The submission of Mr. Khandekar that adaptation can be made only in respect of literary or artistic work and is not available in respect of cinematograph film runs contrary to the relief sought by Plaintiff seeking to restrain the Defendants from any adaptation of the suit film and Clause 4 of the Assignment Agreement which makes specific reference to adaptation. The Interim Application pleads that the infringing work of staging the musical play uses characters and story of the suit film and the Defendant No 1 had evidently adapted the infringing work from the suit film. Having specifically pleaded about adaptation of the suit film, even otherwise the Plaintiff cannot assert that adaptation right is not available in respect of cinematograph film.

49. The Plaintiff has approached the Court by understanding that the term "adaptation" means the conversion of film into a stage play and therefore while seeking relief in respect of stage play, the order of 15th November 2022 records in paragraph 22 that the drama to be staged at the behest of Defendant No.1 as a musical infringes right of the Plaintiff in the film as per the assignment agreement. In the context of cinematographic film, the term "remake" would mean a film which retells the story in the same format with new interpretation,

which would involve updating the film to make it contemporaneous using new actors and changing some portion of the plot while retaining the original script, whereas an adaptation would mean to bring the story to a new audience in different format and will involve transformation of story from one medium to another, i.e., is from a film to a novel, or from a play to a musical. A sequel would take the story forward from where the original film had left off and introduce new characters and new script while retaining some of the original characters to keep the narrative in sequence.

50. It is the adaptation of the suit film into a musical which was sought to be assailed by the Plaintiff by filing the suit by relying upon the assignment agreement dated 11th November 2011. It is also evident from paragraph 7 of the affidavit-in-reply filed by the Plaintiff that the suit is in respect of the stage play-musical theater, which is and was advertised as an adaptation of suit film. In paragraph 11 of the plaint, the story of film Disco Dancer has been narrated in brief stating that the story is fictional and revolves around a young street performer named Anil a.k.a Jimmy from the slums of Bombay and when the manager, David Brown is fed up with the tantrums of the current Indian disco champ, Sam and looks for some new talent, he happens to see Anil dance-walking across the street. Rebranded as Jimmy, the rising star must take the throne from Sam and win the heart of Rita.

According to the affidavit-in-rejoinder, the script which is stated to be a remake of the film Disco Dancer and is proposed new film "Disco Dancer Star" gives the story in brief as under:

> "Shankar and Parvati are small time singers and performers in town. Harikisan and Jaikishan are Shankar's friends. They take Shankar's songs and publish them in their company. They never give Shankar's name as singer and throw him in an asylum when he comes to ask for his share. After 20 years Shankar's son comes to Mumbai and becomes a star. Shankar manages to escape the asylum and discloses to his son Raj about the cheating of his friends. Raj takes revenge from Harikishan and Jaikishan."

51. *Prima facie* it appears that the script of the film Disco Dancer, which was as regards the central character Jimmy - a street performer being made a star, is not being used in the proposed new film. There appears to be an introduction of certain other characters and tale of revenge by the son of central character in the proposed new film. The contention of Plaintiff in the additional affidavit-in-reply is that the joint venture agreement annexed to the additional affidavit of Defendant No.3, which refers to remake of original film Disco Dancer, with an adaptation of original storyline or adaptation of characters of the original Disco Dancer in a future scenario or past scenario, etc., is not a remake and the storyline is starkly different. That being the specific pleading by the Plaintiff in the additional affidavit, it is incomprehensible as to how *prima facie* case of infringement is made

out. The Plaintiff would rely upon the media articles to contend that the Defendant No.3 is not making a remake but a sequel. There is no authentic material placed on record by the Plaintiff from which this court can come to a conclusion as to whether the new storyline is different or is a remake or is a sequel and the Plaintiff and Defendant No.3 have taken varying stands in that respect. The question of interpretation of Clause 30 of the Assignment Agreement dated 11th November, 2011 or whether the right of remake was rightly invoked by the Defendant No 3 would arise only if the interim application seeks appropriate reliefs based on appropriate pleadings.

52. In the absence of any pleading in the plaint/interim application to demonstrate *prima facie* infringement of the Plaintiff's right under the Assignment Agreement dated 11th November, 2011 by reason of the proposed new film by Defendant No 3, I am not inclined to consider the rival contentions. It is therefore not necessary for this Court to consider the citations. Though this Court had called for the script of the new film in sealed cover, in absence of any pleadings, I have not considered the script. The script of the proposed new film is re-sealed and handed over to the learned Counsel for Defendant No.3.

53. The ad-interim order of 15th November, 2022 granting ad-interim relief in terms of prayer clause (a) while balancing the equities in so far as the staging of musical play is concerned has served its purpose as

the interim relief was sought only in respect of staging of the musical based on the suit film. The wide import of prayer clause (a) of the Interim Application cannot be extended to cover the proposed new film by the Defendant No 3 without amendment of the pleadings by the Plaintiff to demonstrate infringement of the Plaintiff's copyright in the suit film. The filing of the consent terms between the Plaintiff and Defendant Nos 1 and 2 has rendered the interim application infructuous and the prayer for interim relief *qua* the proposed new film cannot be considered without the pleadings being amended.

54. In light of the above discussion, the Interim Application stands disposed of. It is open for the Plaintiff to take out appropriate proceedings to amend the pleadings and seek appropriate relief against the Defendant No.3. Needless to clarify that the observations made in the present order will not have binding effect on the subsequent interim proceedings, if any.

[Sharmila U. Deshmukh, J.]

55. At this stage, request is made for stay of the present order. Order is stayed for a period of six weeks.

[Sharmila U. Deshmukh, J.]