



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO. 98 OF 2012

Radhakrishna Productions Pvt. Ltd.

...Plaintiff

Versus

Ikkon Films Pvt. Ltd. & Ors.

...Defendants

Mr. Bhupesh Dhumatkar a/w Mr. Simon Mascarenhas i/b Mulla & Mulla and Craigie Blunt & Caroe, for the Plaintiff.

None for the Defendants.

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 18th DECEMBER 2025
PRONOUNCED ON : 5th JANUARY 2026

JUDGMENT:

1. The Plaintiff has filed the captioned Suit, *inter alia*, seeking the following reliefs.

a. That this Hon'ble court be pleased to declare that the Copyright Assignment Exhibit B hereto, is valid and subsisting and that the Plaintiff is the owner of all the Rights in the Film, 'Will You Marry Me';

a(i). That this Hon'ble Court be pleased to declare that the Film Finance Agreement (being Exhibit "D-3" hereto) entered into between the 1st Defendant and the Plaintiff and the agreement between the 1st and 2nd Defendants and the Plaintiff as recorded in the letter dated 9th September 2010 (being Exhibit "Q" hereto) are valid, binding and subsisting Agreements.

b. that this Hon'ble Court be pleased to declare that Defendant No.1 has infringed the Plaintiff's Rights in the Film and is in breach of the Copyright Assignment, Exhibit B hereto;

b.i. That this Hon'ble Court be pleased to declare that the said MOU, the Agreement dated 9th February 2012 and the Sixteen Agreements infringe the Rights of the Plaintiff, are violative of the Copyright Assignment, Exhibit B hereto and are invalid, illegal and non est;

b.ii. That this Hon'ble Court be pleased to direct Defendant No.3 and Defendant No. 5 to Defendant No.21 to deliver to this Hon'ble Court the said MOU, the Agreement dated 9th February 2012 and the Sixteen Agreements for cancellation.

c. That this Hon'ble Court be pleased to pass an order of permanent injunction restraining the Defendants either by themselves or through their representatives and/or agents and/or servants and or assigns and/or any person claiming through them from in any manner, transferring, alienating, disposing, or creating any third party rights of whatsoever nature or releasing the film. 'WILL YOU MARRY ME'.

c(i) That this Hon'ble Court be pleased to pass an order of permanent injunction restraining the Defendants either by themselves or through their representatives and or agents and or servants and or assigns and or any other person claiming through them from in any manner, transferring, alienating, disposing, or creating third party rights whatsoever nature or releasing the said Film "Joker" and from creating any telecast rights for the film "Will You Marry Me".

d. That in the alternative to prayer (c):-

(i) this Hon'ble Court be pleased to declare that the Plaintiff is entitled to a charge on the all revenues in connection with the movie 'WILL YOU MARRY ME', whether generated by way of sale proceeds/ distribution monies/ticket sales/ telecast rights etc. and costs of the Suit and necessary directions be passed against the Defendants for maintaining complete accounts in respect of the same;

(ii) That this Hon'ble Court be pleased to pass an order and decree for enforcement of the charge;

d(i) that in the alternative to prayer c(i), this Hon'ble Court be pleased to declare that the Plaintiff is entitled to a charge on the revenues in connection with the film "Joker" and the film "Will You Marry Me" whether generated by way of sale proceeds /distribution

monies / ticket sales / telecast rights etc. and costs of the suit and necessary directions be passed against the 1st, 2nd and 3rd Defendants for maintaining complete accounts in respect of the same;

- e. That in the alternative to prayers (c) and (d), this Hon'ble Court be pleased to order, direct and decree Defendant No.1 to pay to the Plaintiff, a sum of Rs 5,41,51,705/- comprising Rs.3,85,17,829/- towards refund of the Monies Paid and Rs. 1,56,33,876/- towards interest thereon at the rate of 24% p.a. from the respective dates of payment till the date of filing of the Suit as per the Particulars of Claim, Exhibit O hereto, together with further interest at the rate of 12% p.a. on the said amount of Rs.3,85,17,829/- from the date of suit until payment and/or realization thereof;
- f. That this Hon'ble Court be pleased to order, direct and decree Defendant No. 1 to pay to the Plaintiff, a sum of Rs. 1,50,00,000/- in the nature of Damages as per the Particulars of Claim, Exhibit L hereto;
- g. That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to pass an order of temporary injunction restraining the Defendants either by themselves or through their representatives and/or agents and/or servants and or assigns and/or any person claiming through them from in any manner, transferring, alienating, disposing, or creating any third party rights of whatsoever nature or releasing the movie 'WILL YOU MARRY ME';
- g.i. That pending the hearing and final disposal of the Suit this Hon'ble Court be pleased to pass an Order of temporary injunction restraining Defendant No.3 and Defendant No.5 to Defendant No.21 either by themselves or through their representatives and/or agents and/or servants and/or assigns and/or any person claiming through them from in any manner acting in pursuance of the said MOU, the Agreement dated 9th February 2012 and the Sixteen Agreements for cancellation;
- h. That pending the hearing and disposal of this Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court Bombay or any other fit or proper person as the receiver of the film, 'WILL YOU MARRY ME' with all powers under Order XL Rule 1 of the Code of Civil Procedure 1908 including the power to call upon Defendant No.4 to deposit with the Court Receiver, all the film negatives, sound negatives and rush prints in respect of the Film;
- h.i. That pending the hearing and final disposal of the Suit this Hon'ble Court be pleased to direct Defendant No.3 and Defendant No.5 to Defendant No.21 to deposit with the

Receiver the said MOU, the Agreement dated 9th February 2012 and the Sixteen Agreements for cancellation;

i. That pending the hearing and final disposal of the Suit and for ensuring complete compliance of the orders of this Hon'ble Court, this Hon'ble Court be pleased to direct the Defendants to forthwith inform the persons/entities to whom/ in whose favour the film negatives, sound negatives and rush prints or any other rights in respect of the Film, if any, have already been delivered/created, about the orders of this Hon'ble Court and also provide the Plaintiff or furnish before this Hon'ble Court:-

(i) a list of all the persons/entities to whom the film negatives, sound negatives and rush prints in respect of the Film, if any, have already been delivered; and

(ii) a list of all the theatres where the Film is scheduled to be exhibited/screened pursuant to its release.

j. That pending hearing and final disposal of the Suit, in alternate to prayers (g) and (h), this Hon'ble Court be pleased to pass necessary directions against the Defendants for maintaining complete accounts in respect of all revenues in connection with the movie 'WILL YOU MARRY ME', whether generated by way of sale proceeds/ distribution monies/ ticket sales/ telecast rights etc.;

k. That in the alternative to prayers (g) and (h), pending the hearing and final disposal of this Suit, this Hon'ble Court be pleased to order and Defendant No.1 to secure the sums claimed in prayers (e) and whether by way of causing bank guarantee to be issued in favour of the Plaintiff or such other security as may be deemed fit by this Hon'ble Court;

K(i) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to restrain the Defendants either by themselves or through their representatives and or agents and or servants and or assigns and or any other person claiming through them from in any manner, transferring, alienating, disposing, or creating third party rights whatsoever nature or releasing the said Film "Joker" and from creating any telecast rights for the film "Will You Marry Me".

K(ii) That pending the hearing and final disposal of the Suit, the 4th Defendant be restrained from in any manner delivering to the 1st and 2nd Defendants the prints of the film "Joker" to the 1", 2nd and 3 Defendants or to any distributors or to any third party without the No Objection letter of the Plaintiff.

K(iii) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court Bombay or any other fit and proper person as the Receiver of the said Film "Joker" and for the telecast rights of the film "Will You Marry me" with all powers under Order XL Rule 1 of the Code of Civil Procedure 1908 including the power to call upon the Defendants to deposit with the Court Receiver, all the negatives and rush prints and other paraphernalia in respect of the said Films.

K(iv) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct the Defendants to maintain accounts with respect to all the revenue in connection with the Films "Joker" and "Will You Marry Me" whether generated by way of sale proceed / distribution rights / telecast rights/ theatrical rights/ cinema release, audio rights or any other rights whatsoever in connection with the said Films;"

A Brief Background

2. The Plaintiff and Defendant No.1, who is the producer of the film "Will You Marry Me" entered into a Term Sheet on 1st April 2010, whereby Defendant No.1 had agreed to assign to the Plaintiff in perpetuity, free from all encumbrances, all the existing and future worldwide rights, title and interest in and to the film, including the exclusive right to exhibit, transmit, distribute or otherwise utilize the film or any part thereof, in any manner or media for a consideration of Rs.5,50,00,000/-.
3. In pursuance of the Term Sheet, Defendant No.1 executed a Copyright Assignment Agreement on 17th May 2010, assigning the copyright in respect of worldwide distribution, marketing, release and exploitation of the film "Will You Marry Me" in perpetuity to the Plaintiff.

4. Thereafter, on 1st July 2010, the Plaintiff and Defendant No.1 entered into a Film Finance Agreement for another film called "*Joker*". The Agreement, *inter alia*, stipulated that the Plaintiff would provide Defendant No.1 with finance of Rs.1,75,00,000/- for the production of the film "*Joker*". The Film Finance Agreement provided for a lien in favour of the Plaintiff on all rights of the film "*Joker*", which was to continue until payment of interest and repayment of the entire loan availed by Defendant No.1 under the Film Finance Agreement.

5. The Plaintiff thereafter paid a total sum of Rs.3,85,17,329/- under the Copyright Assignment Agreement dated 17th May 2010 and Film Finance Agreement dated 1st July 2010.

6. However, Defendant Nos.1 and 2, contrary to the terms of the Copyright Assignment Agreement and the Film Finance Agreement entered into an Agreement for Assignment of Music Rights in respect of the film "*Will You Marry Me*" with Defendant No. 3 and also assigned distribution rights of the film in favour of Defendant No.5.

7. It is the case of the Plaintiff that Defendant No.5, thereafter in collusion with Defendant Nos.1 and 2, filed Suit No.232 of 2011 in the Munsiff Court in Gopalganj, Bihar, in respect of the distribution rights relating to the film "*Will You Marry Me*" in which Defendant No.3 claimed that the music rights in the film were assigned by Defendant No.5 to Defendant No.3.

8. Defendant No.3, on the basis of such assignment, entered into agreements with Defendant No.6 to Defendant No.21.

9. The Munsiff Court in Gopalganj then, vide an order dated 21st January 2012, appointed Defendant No. 22 as Court Receiver and directed him to take possession of the negatives of the film “*Will You Marry Me*” which were in the custody of Defendant No. 4.

10. The Plaintiff thereafter issued a notice dated 21st September 2011 calling upon the Defendant Nos.1 and 2 to refund the money, as they had breached the terms of the Copyright Assignment Agreement. Defendants Nos.1 and 2 neither replied nor complied with the same.

11. Defendant Nos.1, 2 and 5 thereafter, on 16th February 2012, entered into consent terms in Suit No.232 of 2011 wherein it was admitted by Defendant Nos.1 and 2 that the Plaintiff had paid a sum of Rs.1,65,00,000/- and they would refund the said amount to the Plaintiff herein. Defendant Nos.1 and 2 deposited a cheque worth Rs.1,65,00,000/- but the same had expired, and the said money could not be paid to the Plaintiff.

12. Plaintiff herein addressed another legal notice dated 24th February 2012, asserting its rights in the film and demanding a refund of monies paid along with the interest at the rate of 24% per annum in accordance with the terms of the Copyright Assignment Agreement. The Defendant refused to accept the service of the notice, and therefore the present Suit came to be filed on 28th February 2012.

Pleadings, Issues and Evidence

13. Defendant Nos. 1 to 5 and 22 thereafter filed their respective Written Statements.

14. The Plaintiff filed several Interlocutory Applications¹ as well as a Contempt Petition², which were all disposed off by a common Order dated 9th April 2015, which, *inter alia*, directed as follows:

- "(i) Such rights in respect of the film "Will You Marry Me", as are unexploited, having regard to the affidavit of Defendant No. 3 dated 9 March 2012, shall be exploited through Mr. Harish Gadodia.*
- (ii) The monies received out of such exploitation shall be deposited with the Court and shall be invested by the Prothonotary & Senior Master of this Court in Fixed Deposits of Nationalised Bank initially for a period of two years and, thereafter, renewable from time to time, until further orders, and shall abide by further orders that may be passed in the suit.*
- (iii) Defendant Nos. 1 to 3 and 5 shall maintain accounts in respect of all the exploitation of rights in respect of the film "Will You Marry Me".*
- (iv) Notices of Motion Nos. 1057 of 2012 and 2488 of 2012 are disposed of in terms of the orders noted above.*
- (v) Defendant No.3 shall maintain an account in respect of all receipts from exploitation of rights concerning the film "Joker", which is now titled as "Little Star", and furnish the same to this Court, as and when required.*
- (vi) In the event Defendant No. 3 creates any third party rights in respect of the film "Joker", the same shall be notified to the Plaintiff.*
- (vii) Besides maintenance of account, no other order is passed on Notice of Motion No. 2358 of 2012, and the same is disposed of.*

¹ Notice of Motion No. 1057 of 2002, Notice of Motion No. 2488 of 2012, Notice of Motion No. 2358 of 2012, Notice of Motion No. 1416 of 2013

² Contempt Petition No. 35 of 2013

(viii) *Notice of Motion No.1416 of 2013 is disposed of by directing Defendant Nos. 1 and 2 to deposit a sum of Rs.1.65 crores in this Court within a period of six weeks from today. The Plaintiff shall be at liberty to withdraw the amount as and when it is deposited by Defendant Nos. 1 and 2 in this Court.*

(ix) *Contempt Petition No.35 of 2015 is dismissed.*

(x) *No order as to costs."*

Since Defendant Nos. 1 and 2 failed to comply with the said Order, the Written Statement filed by Defendant Nos. 1 and 2 was struck off.

15. This Court then, vide an Order dated 31st July 2015, framed the following Issues.

(i) *Whether the Plaintiff proves that the Plaintiff has paid the sum of Rs. 3,85,17,289 to the Defendant no.1 and 2 under the Assignment Agreement dated 17th May, 2010 and the Film Finance Agreement dated 1st July, 2010?*

(ii) *Whether the Plaintiff proves that Defendant nos.1 and 2 have committed a breach of the Copyright Assignment dated 17th May, 2010 by the Defendant no.2 by entering into an Agreement dated 8th August, 2011 with Defendant no.5?*

(iii) *Whether Defendant nos. 1 and 2 prove that the Plaintiff failed to perform its obligation under the Assignment Agreement?*

(iv) *If the issue no.(iii) is answered in the negative, whether Defendant nos.2 and Defendant no. 5 prove that the Agreement dated 18th August, 2011 executed between the Defendant no.2 and Defendant no.5 in respect of the movie "Will you Marry Me" is valid and binding?*

(v) Whether the Agreement dated 18th August, 2011 entered into between the Defendant no.2 and Defendant no.5 infringe the rights of the Plaintiff under the Assignment dated 17th May, 2010 and is therefore, invalid and illegal?

(vi) Whether Defendant no. 5 proves that the Defendant no.5 assigned the distribution, promotion and marketing rights to the Defendant no.3 vide Agreement dated 9th February, 2012?

(vii) Whether the Agreement dated 9th February 2012 entered into between the Defendant no.5 and Defendant no.3 infringe the rights of the Plaintiff under the Assignment Agreement dated 17th May, 2010 and is therefore, invalid and illegal?

(viii) Whether Defendant no.3 proves that it acquired the rights in the film "Will You Marry Me" before filing of the present Suit?

(ix) Whether Defendant no.3 proves that the Satellite Rights in the Film "Will You Marry Me" have been transferred to Sumit Arts vide an agreement dated 28th February, 2012?

(x) Whether the sixteen Agreement entered into by Defendant no.3 with Defendant nos. 6 to 21 respectively infringe the rights of the Plaintiff and are therefore, invalid and illegal?

(xi) Whether the Film Finance Agreement dated 1st July, 2010 entered into between the Plaintiff and Defendant no.1 is valid and binding?

(xii) Whether Defendant nos.1 and 2 prove that no consideration was received by them from the Plaintiff under the Film Financing Agreement dated 1st July, 2010 in respect of film "Joker"?

(xiii) Whether Defendant no.3 proves that the Defendant No.3 acquired the film "Johnny Joker" vide an agreement dated 28th February, 2012?

(xiv) *Whether the Plaintiff is entitled to the sum Rs.5,41,51,705/- as per the particulars of claim?*

(xv) *Whether the Plaintiff is entitled to damages Rs.1,50,00,000/- as claimed in Particulars of Claim?*

16. By an order dated 9th August 2016, the affidavit of the Plaintiff's witness in lieu of examination in chief (PW-1) was taken on record along with the Plaintiff's compilation of documents. All the documents were taken on record and marked as Exhibits P-1 to P-29.

17. None of the Defendants led any evidence, nor did they cross-examine the plaintiff's witness. Hence, by an order dated 9th August, 2016, the Court recorded that the trial was complete and the suit was posted for final hearing.

Submissions on behalf of the Plaintiff

18. Mr. Dhumatkar, Learned Counsel appearing on behalf of the Plaintiff, at the outset submitted that though various reliefs had been sought for in the Plaintiff, the Plaintiff was only pressing for relief in terms of prayer clauses- a, a(i), b, b(i), c, c(i) d(i), e, and f.

Issue no. (i) , Issue no (xiv) and Issue no. (xii).-

19. Mr. Dhumatkar submitted that the Plaintiff has paid an aggregate sum of ₹3,85,17,289/- to the Defendant No.2 upon the instructions of Defendant No.1, pursuant to the Copyright Assignment Agreement and Film Finance Agreement. In support of this claim, then placed reliance upon the Plaintiff's bank statements and applications for availing RTGS facilities, which have been marked in evidence as Exhibits P-3 to P-12, P-14 to P-17 and P-20 to P-21. He submitted that these facts have also been specifically deposed to by PW-1 in his Affidavit of Evidence, particularly in paragraphs 14 to 27 thereof.

20. Mr. Dhumatkar further submitted that the evidence led by the Plaintiff has gone wholly unchallenged, as none of the Defendants have cross-examined PW-1 nor have they led any evidence to the contrary. He then pointed out that the Written Statements of Defendant Nos.1 and 2 have already been struck off, and consequently, the Plaintiff's evidence stands uncontroverted, and the Plaintiff has fully discharged the burden of proof. Mr. Dhumatkar then submitted that none of the Defendants had led any evidence nor had they made themselves available for cross examination and thus an adverse inference would have to be drawn against the Defendants Nos.3, 4 and 5 as per the illustration (g) under Section 114 of the Indian Evidence Act, 1872. In support of this contention, he placed reliance upon the decision of the Hon'ble Supreme Court in *Iswar Bhai C. Patel v. Harihar Behera*³, to point out that where a party does not enter the

³ (1999) 3 SCC 457

witness box and does not subject itself to cross-examination, an adverse presumption must be drawn against such party as per the illustration (g) under Section 114 of the Evidence Act, 1872.

21. Mr. Dhumatkar then also placed reliance upon the decision in ***Maroti Bansi Teli v. Radhabai w/o Tukaram Kuni & Ors.***⁴, which has been approved by the Hon'ble Supreme Court in ***CBI v. Mohd. Parvez Abdul Kayuum***⁵, in order to submit that it is a settled and well-accepted practice that matters which are not challenged either in the pleadings or in cross-examination must be treated as having been duly proved once a witness enters the witness box and deposes on oath. He submitted that, when a material assertion is not put in issue or challenged, the Court is entitled to accept the same as established. He also placed reliance upon the decision of the Hon'ble Supreme Court in ***Anita Sharma & Ors. v. New India Assurance Company Ltd. & Anr.***⁶, to submit that the failure of a party to cross-examine a witness or to confront such witness with its own version, despite having adequate opportunity, must lead to an inference of tacit admission.

Issue no. (ii), Issue no. (v), Issue no. (vii), Issue no. (x) and Issue no. (xi)

22. Mr. Dhumatkar then submitted that Defendant Nos.1 and 2 had committed multiple breaches of both the Copyright Assignment Agreement and the Film Finance

⁴ AIR 1945 Nag 60

⁵ (2019) 12 SCC 1

⁶ (2021) 1 SCC 171

Agreement. Insofar as the Copyright Assignment Agreement was concerned, he pointed out that Defendant Nos.1 and 2 had breached clauses 1.1, 3, 3.4, 5, 5.2, 7 and clause 8 of the said Agreement. From the Film Finance Agreement, he pointed out that Defendant Nos.1 and 2 had breached Clause 6 and Clause 7 thereof.

23. Mr. Dhumatkar thereafter emphasized that under the Copyright Assignment Agreement time was expressly made of the essence, as recorded *inter alia* set out in clauses 5 and 8 thereof. He pointed out that under Clause 1.1 of the Copyright Assignment Agreement, Defendant No. 1 was required to deliver the film "*Will You Marry Me*" on or before 31st July 2010, with a grace period of 60 days. He pointed out that the delivery date could only be modified with the prior written consent of the Plaintiff, as provided under Clause 5.2 and that the shooting schedule was required to commence no later than 22nd May 2010 and to be completed by 30th June 2010. He submitted that admittedly, Defendant No.1 had failed to deliver the film within the stipulated time, thereby committing a clear breach of Clauses 1, 5 and 8 of the Copyright Assignment Agreement.

24. Mr. Dhumatkar further submitted that the Plaintiff had issued legal notices dated 21st September 2011 and 24th February 2012, to both Defendant Nos.1 and 2, and neither had been replied to, much less disputed, by either Defendant No.1 or 2.

25. Mr. Dhumatkar submitted that Defendant No.1 had delivered neither the film "*Will You Marry Me*" nor the film "*Joker*" to the Plaintiff and that Defendant No.1 had

also failed to refund the amounts paid by the Plaintiff under both the Agreements. He submitted that both of these facts conclusively establish that Defendant Nos.1 and 2 have breached the terms of the Copyright Assignment Agreement and the Film Finance Agreement.

26. Mr. Dhumatkar then submitted the Suit filed in the Gopalganj Court, i.e., Suit No. 232 of 2011, was collusive and which was clear from the fact that Defendant Nos.1 and 2 immediately admitted all the allegations made in the Plaintiff. He further pointed out that pursuant to such admissions, the Court at Gopalganj appointed Defendant No.22 as Court Receiver and directed him to take possession of the film "*Will You Marry Me*" from Defendant No.3. He then pointed out that the suit ultimately came to be decreed in terms of consent terms, wherein Defendant Nos.1 and 2 categorically admitted their liability to refund a sum of ₹1,65,00,000/- to the Plaintiff. Mr. Dhumatkar took pains to point out that the Plaintiff's witness had deposed to all these facts and that the evidence had gone completely uncontested.

27. Mr. Dhumatkar then submitted that the Plaintiff had duly discharged all its obligations under both the Agreements and that it was not the case of either Defendant No.1 or 2 that these agreements were not valid and subsisting or that they had been terminated. He pointed out that on the contrary, Defendant Nos.1 and 2 had, on several occasions, admitted having received and accepted the amounts paid by the Plaintiff and thus the Plaintiff had proved, beyond any doubt, that it had discharged all its obligations

under the said agreements. He thus submitted that both the Agreements were therefore valid, subsisting, and binding on Defendant Nos.1 and 2.

28. Mr. Dhumatkar accordingly submitted that, since the agreements entered into between the Plaintiff and Defendant Nos.1 and 2 are valid and subsisting, all subsequent agreements, including those executed by Defendant Nos.1 and 2 with Defendant Nos.3 and 5, and any further agreements entered into by Defendant Nos.3 and 5 with other Defendants, were invalid and non est in law. He submitted that such subsequent transactions and agreements infringe the Plaintiff's rights and are therefore illegal, void, and unenforceable.

Issue No. (iii), Issue no. (iv), Issue No. (viii), Issue No. (ix) and Issue No. (xiii):

29. Mr. Dhumatkar submitted that the burden of proving Issue Nos. (iii), (iv), (vi), (viii), (ix) and (xiii) lay squarely upon the Defendants. He pointed out that Defendant No.3 had filed a Written Statement claiming to have acquired rights in respect of the film "*Will You Marry Me*" from Defendant No.5 under an agreement dated 9th February 2012 prior to the filing of the present Suit.

30. Mr. Dhumatkar further submitted that Defendant No.5 had also filed a Written Statement denying the Plaintiff's case and contending that Defendant No.3 had acquired rights in the film pursuant to an Order dated 7th February 2012 passed by the Court of the Munsiff at Gopalganj, Bihar. He, however, pointed out that neither Defendant No.5 nor Defendant No.3 had led any evidence to support the case pleaded in the Written

Statement. Mr. Dhumatkar also pointed out that Defendant No.5 had chosen not to cross-examine the Plaintiff's witness, and thus the evidence led by the Plaintiff's witness wherein the Plaintiff's witness had, *inter alia*, deposed that the Plaintiff had paid a sum of Rs.3,85,17,329/- pursuant to two Agreements, viz., the Copyright Assignment Agreement dated 17th May 2010 and the Film Finance Agreement dated 1st July 2010. However, the Defendant Nos.1 and 2 committed several breaches of the said Agreements by distributing the rights pertaining to the artistic work involved in the same among Defendant Nos.3 and 5. In spite of having admitted their liability to refund Rs. 1,65,00,000/- to the Plaintiff, Defendant Nos.1 and 2 have failed to do so. These submissions made in the evidence affidavit had remained uncontested. He thus submitted that no material had been brought on record by Defendant No.5 to disprove the Plaintiff's case or to establish that it had validly assigned the distribution, promotion, and marketing rights in the film to Defendant No.3 under the agreement dated 9th February 2012.

Issue No. (xv)

31. Mr. Dhumatkar submitted that the Plaintiff has claimed an aggregate sum of Rs. 1,50,00,000/-, and Rs. 5,41,51,705/- as damages. This computation and the basis thereof have been specifically deposed to by PW-1 in his Affidavit of Evidence, particularly in paragraph 42 at page 30, which had gone completely unchallenged. However, in the particulars of claim annexed along with the Plaintiff, the Plaintiff has

made a claim of Rs.96,29,457.25/- towards loss of profit and Rs.53,70,542.75/- towards damages for mental agony. He submitted that the loss of profit has been computed on the basis of the returns, the Plaintiff would have earned had the amount of Rs.3,85,17,829/- been invested at a rate of return of 25%.

32. Mr. Dhumatkar then placed reliance upon the decision of the Hon'ble Supreme Court in ***CBI v. Mohd. Parvez Abdul Kayuum***, which approved the decision of this Court in the case of ***Maroti Bansi Teli v. Radhabai w/o Tukaram Kuni & Ors.***, to submit that it was a well-accepted practice that facts which are not challenged either in the pleadings or in cross-examination must be treated as having been duly proved once a witness enters the witness box and deposes on oath and there is no challenge to the same in cross examination. He further placed reliance on the decision of the Hon'ble Supreme Court in ***Anita Sharma & Ors. v. New India Assurance Company Ltd. & Anr.***, which held that the failure of a party to cross-examine a witness or to confront the witness with its own version, despite having adequate opportunity, must lead to an inference of tacit admission.

Costs

33. Plaintiff submits that the Suit pertains to a commercial transaction, as the same is a commercial suit in accordance with the provisions of the Commercial Courts Act, 2015. The Plaintiff further submits that, being a Commercial Intellectual Property Suit,

this Hon'ble court may grant cost of Rs. 50,00,000/- in accordance with Section 35 of the Code of Civil Procedure, 1908, read with the Commercial Courts Act, 2015. This Hon'ble Court had, in the case of *Shoban Salim Thakur vs Chaitanya Arora*⁷, imposed a cost of Rs. 50,00,000/- on the Defendant no. 2 and 3.

REASONS AND FINDINGS

34. Having heard learned counsel for the Plaintiff and having considered the pleadings, the evidence led and the fact that none appeared on behalf of the Defendants at the stage of final hearing, I hold as follows:

- A. The Plaintiff has led cogent documentary evidence to establish payment of an aggregate sum of Rs.3,85,17,289/- to Defendant Nos. 1 and 2 under the Copyright Assignment Agreement dated 17th May 2010 and the Film Finance Agreement dated 1st July 2010. The bank statements, RTGS applications and related documents have been marked as Exhibits P-3 to P-12, P-14 to P-17, and P-20 to P-21. These payments have been specifically deposed about, by PW-1 in paragraphs 14 to 27 of his Affidavit of Evidence. Inconsistently, the Particulars of Claim which is annexed along with the Plaintiff prescribe the amount of Rs. 96,29,457.25/- towards loss of profit and Rs. 53,70,542.75/- as damages for mental agony. Significantly, no defence whatsoever has been put up by Defendant Nos. 1 and 2 since their Written Statement has been struck

⁷ [Bombay High Court] Order dated 15th October 2025 in IA (L) No. 18278 of 2025 in Comm. Suit. (L) No. 18197 of 2025

off. Also, Defendant Nos. 1 and 2 have also chosen not to cross examine the Plaintiff's Witness. Thus, there is not even an attempt on the part of Defendant Nos. 1 and 2 to contest the Plaintiff's case. Equally, though Defendant Nos. 1 to 5 and 22 have filed their respective Written Statements, none of them have led any evidence in support of their respective cases nor have any of them cross examined the Plaintiff's Witness. Thus, there has been no real attempt on the part of Defendant Nos. 1 to 5 and 22 to defend the Suit. Thus, I see no reason why the evidence led by the Plaintiff insofar as the same pertains to the payment of the sum of Rs.3,85,17,329/- by the Plaintiff to the Defendant Nos. 2 and 3 should not be accepted. Equally, there is no reason why I should not accept the Plaintiff's case that the Copyright Assignment Agreement and the Film Finance Agreement are valid, subsisting and binding upon Defendant Nos. 1 and 2.

Breach of agreements and infringement of Plaintiff's rights

B. The Plaintiff has, through the evidence of PW-1, proved the breaches committed by Defendant Nos. 1 and 2 of the Copyright Assignment Agreement, in particular the breaches of Clauses 1.1, 3, 3.4, 5, 5.2, 7 and 8 of the Assignment Agreement. Conversely, Defendant No. 1 and 2 have not denied these breaches, nor have they attempted to test the evidence of PW-1 by way of cross examination. The terms of the Copyright Assignment Agreement specifically make time of the essence despite which the film "*Will*

You Marry Me" was admittedly not delivered within the stipulated period, nor was any written extension obtained from the Plaintiff. On the contrary, Defendant Nos. 1 and 2, despite the subsistence of the Copyright Assignment Agreement, proceeded to assign both the music and distribution rights in respect of the film "*Will You Marry Me*" to Defendant Nos. 3 and 5 and facilitated further other subsequent agreements in direct violation of the exclusivity clauses and negative covenants contained in the Copyright Assignment Agreement.

C. The Plaintiff's legal notices dated 21st September 2011 and 24th February 2012, calling upon Defendant Nos. 1 and 2 to remedy the breaches and refund the monies paid, remained unanswered. These facts, deposed by PW-1, have again gone unchallenged. Given that the Copyright Assignment Agreement was valid and subsisting, Defendant Nos. 1 and 2 had no authority in law to create any third-party rights and thus all subsequent agreements entered into by them, or by persons claiming through them, were therefore void and unenforceable as against the Plaintiff.

Defendants' plea of independent acquisition of rights

D. Defendant Nos. 3 and 5, who have in their respective Written Statements pleaded that they had independently acquired rights in the film "*Will You Marry Me*" prior to the filing of the present Suit, have not led any evidence in support of such a case. More importantly, Defendant Nos. 3 and 5 have chosen

not to cross-examine PW-1 on any of the material assertions regarding the Plaintiff's prior assignment, subsisting rights, or the alleged collusive nature of the proceedings before the Munsiff Court at Gopalganj. Hence, in view of illustration 114 (g) under Section 114 of the Evidence Act, 1872, an adverse inference must be drawn against the Defendants. The law is well settled that where a party fails to enter the witness box or challenge material evidence, the Court is entitled to accept the opposing party's version as proved. The Defendants have thus failed to discharge the burden cast upon them and have been unable to establish that they had lawfully acquired rights in the film "*Will You Marry Me*".

Damages

E. The Plaintiff has claimed damages aggregating to ₹1,50,00,000/-, comprising loss of profit and damages for mental and emotional trauma. The basis of computation, including the notional return of 25% on the blocked investment of ₹3,85,17,829/-, has been set out in the Affidavit of Evidence of PW-1, particularly in paragraph 42 thereof. This evidence has gone completely unchallenged. The Defendants have neither disputed the computation nor suggested any contrary basis. However, insofar as the claim for damages on account of mental and emotional trauma is concerned, such a claim is unsustainable given the Plaintiff is a private company incorporated under the provisions of the Companies Act, 1956.

F. In light of the findings that the Plaintiff is the lawful assignee of copyright and related rights in the film "*Will You Marry Me*", and that the Defendants have acted in breach of contract and infringement of the Plaintiff's rights, the Plaintiff is clearly entitled to permanent injunctive relief. The Defendants' conduct demonstrates a clear intention to defeat the Plaintiff's contractual and statutory rights by creating unlawful third-party interests.

G. The present suit, being a commercial suit, is governed by the provisions of the Commercial Courts Act, 2015. Section 35 of the Code of Civil Procedure, 1908, as amended by Section 16 of the Commercial Courts Act, 2015 mandates that costs shall ordinarily follow the event and be awarded to the successful party. The provision further requires the Court, while determining costs, to have due regard, *inter alia*, to the conduct of the parties. In the facts of the present case, the record demonstrates that the Defendants have been negligent in prosecuting the matter and have, by their conduct, compelled the Plaintiff to incur substantial and wholly avoidable expenditure. Despite being duly served and having filed their Written Statement, the Defendant Nos. 1 to 5 and 22 failed to lead any evidence or even to cross examine Plaintiff's Witness. The other Defendants have chosen not to appear or contest the Plaintiff's claim. In these circumstances, having regard to the conduct of the Defendants and the statutory mandate under Section 35 of the Civil Procedure

Code, 1908 as amended, the Plaintiff is entitled to an award of compensatory costs.

35. In the aforesaid backdrop, I proceed to now answer the Issues as follows:

- For the reasons recorded in paragraph 'A.', Issue Nos. (i) and (xiv) are answered in the affirmative.
- For the reasons recorded in paragraphs 'B.' and 'C.', Issue Nos. (ii), (v), (vii), (x) and (xi) are answered in the affirmative.
- For the reasons recorded in paragraph 'D.', Issue Nos. (iii), (iv), (vi), (viii), (ix), (xii) and (xiii) are answered in the negative.
- For the reasons mentioned in paragraph 'E.', Issue No. (xv) is answered in the negative.

36. In light of the above, I pass the following order:

ORDER

(I) The Suit is decreed in terms of prayer clauses a, a(i), b, b(i), c, c(i), and e, which are reproduced above.

(II) For the reasons recorded in paragraph 'G.', the Defendant Nos. 1 and 2 shall jointly pay costs of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the Plaintiff within a period of 8 weeks from today.



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(III) In the event the costs are not paid within a period of 8 weeks from today, interest at the rate of 8% shall apply.

(IV) The Suit is disposed of in the aforesaid terms.

[ARIF S. DOCTOR, J.]