IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL IP SUIT NO. 26 OF 2007

Ultra Distributors Pvt. Ltd. … Plaintiff

Versus

M/s. Dhariwal Films Pvt. Ltd. and 2 Ors. … Defendants

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Mr. Rashmin Khandekar a/w. Mr. Pranav Nair, Ms. Jyoti Ghag, Mr. Shailesh Prajapati i/b. Dua Associates for the Plaintiff.

Mr. Amit Dubey a/w. Mr. Abdullah Shaikh i/b Mr. Ashok M. Saraogi for Defendant No. 1.

Mr. Ashok Singh for Defendant No. 2.

Mr. Himanshu Choudhary, Authorised person on behalf of Defendant No. 3, present in the Court.

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CORAM : ARIF S. DOCTOR, J.

RESERVED ON : 20th APRIL 2026

PRONOUNCED ON : 29th AUGUST 2026

JUDGMENT:

1. The dispute in the present Suit concerns the assignment of video copyrights in respect of the feature film titled *“Nehle Pe Dehla”* (the “said Film").

2. The case of the Plaintiff is that in the year 2005, Defendant No. 1 had approached the Plaintiff, offering to assign video rights in the said Film to

the Plaintiff. Also, Defendant No. 1 had, at that time, informed the Plaintiff, of a previous assignment made by Defendant No. 1 in respect of the video copyrights in the said Film to one M/s. Showman Export (I) Pvt. Ltd. ("Showman"). Defendant No. 1, however, represented that the assignment in favour of Showman was cancelled by a writing dated 25th November 2002.

3. Thereafter, Defendant No. 1 executed an Assignment Agreement dated 31st March 2005 ("Plaintiff's Assignment"), under which Defendant No. 1 assigned the video rights in the said Film to the Plaintiff for a period of eight years, for a total consideration of Rs.42,51,000/-, payable in the manner stipulated therein. It is not in dispute that, pursuant to the Plaintiff's Agreement, the Plaintiff paid a sum of Rs.10,01,000/- to Defendant No. 1.

4. Defendant No. 1, on the other hand, contends that the Plaintiff was aware of the prior assignment in favour of Showman and, despite the assignment in favour of Showman, proceeded to enter into the Plaintiff's Assignment.

5. Defendant No. 2, who is also engaged in the production and distribution of VCDs and DVDs of films, has claimed a valid assignment of the video

copyrights in the said Film, and has set up a competing claim towards the same. It is the case of Defendant No. 2 that the video copyrights in the said Film were assigned to Defendant No. 2 under an Assignment Agreement dated 30th May 2002. It is also the case of Defendant No. 2 that the assignment in its favour was subsequently confirmed by Defendant No. 1, by executing a Deed of Assignment dated 28th August 2002. It is not in dispute that the tenure of this assignment has come to an end by efflux of time, the assignment being for eight years.

6. It is the Plaintiff's case that Defendant No. 1 has acted in breach of the terms of the Plaintiff's Assignment, as Defendant No. 1 did not provide the Plaintiff with the Digibeta Master tapes of the said Film, of acceptable quality within the stipulated time under the Plaintiff's Assignment Agreement. Defendant No. 1 instead, permitted Defendant No. 2 to exploit the video rights in the said Film even though they were assigned to the Plaintiff.

7. It is thus that the present Suit was filed in which the Plaintiff has sought the following reliefs:

(a) that this Hon'ble Court may be pleased to declare that the Agreement dated 31st March 2005 entered into between the Plaintiffs and Defendant No.1 is valid and binding and the Plaintiffs are the sole and exclusive copyright holders with regard to video rights, cable TV rights including video on demand rights of the film 'Nehle Pe Dehla' in any language, format, versions for exhibition, exploitation, distribution and multiple telecast all over India, Nepal and Bhutan;

(b) that the alleged agreement dated 28th August 2002 executed between Defendant No.1 and Defendant No.2 is void and illegal and unenforceable, as well as any agreement entered into between Defendant No.3 and Defendant No.1 with respect to the above rights granted to the Plaintiffs by agreement dated 31 March 2005;

(B-1) The Defendant No. 1 be ordered and directed to refund to the Plaintiff a sum of Rs. 10,01,000/- being the amount paid by the Plaintiff under the Agreement dated 31 March 2005.

(B-2) The Defendant No. 1 be ordered and directed to pay to the Plaintiff a sum of Rs. 1,66,75,000/- as by way of damages more particularly described in the particulars of claim annexed as Exhibit "AG" along with 18% interest from the date of amendment the Suit till realisation.

(c) that this Hon'ble Court restrain the Defendant Nos. 1, 2, and 3 their partners and/or proprietors, their assignees, servants and agents, distributors and retailers by an order of permanent injunction from dealing with in any manner, assigning, reproducing, recording, printing, processing, copying on any video format i.e. Videograms, cassettes, discs, tapes etc. or any other format thereinafter invented or discovered and from selling, offering for sale, storing, distributing, advertising directly or indirectly in respect of the said film "Nehle Pe Dehla";

(d) For interim and ad-interim reliefs in terms of prayer clause (c) above;

(e) Cost of the suit be provided for;

(f) Any further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may require;"

8. On 22nd February 2007, Defendant No. 2 similarly instituted Suit No. 542 of 2007, seeking, *inter alia*, a declaration that it was the exclusive distributor and owner of the copyrights in the said Film. The said Suit was subsequently renumbered as Commercial IP Suit No. 20 of 2007 and was, by an Order dated 5th September 2008, tagged along with the present Suit, with a direction that both Suits be heard together.

9. The present Suit was contested by both Defendant Nos. 1 and 2, who filed their respective Written Statements. Defendant No. 3, though served, chose not to contest the Suit, and the Suit as against Defendant No. 3 was, vide an order dated 2nd February 2010, transferred to the list of undefended suits.

10. By an order dated 23rd April 2013, this Court framed the following issues:

ISSUES

(1) Whether the Plaintiff proves that by an Agreement dated 31-03--2005, the Defendant No.1 has assigned the video rights and other rights as set out therein in the film "Nehle Pe Dehla" to the Plaintiff?

(2) Whether the Plaintiff proves that the aforesaid Agreement dated 31--03--2005 is valid, legal and binding ?

(3) Whether the Defendant No.1 had delivered the desired betamasters tape to the Plaintiff in exploitable quality as per the aforesaid Agreement ?

(4) Whether the Plaintiff proves that it is entitled to a refund of Rs.10,01,000/- being the amount paid by it under the Agreement dated 31--03--2005 ?

(5) Whether the Plaintiff proves that it is entitled for damages from Defendant No.1?

(6) Whether the Defendant No.2 are the sole and exclusive distributors and have copyright with regard to the Film "Nehle Pe Dehla" in relation to Video rights, cable TV rights in all format including VCD and/or DVD and have exclusive entitlement for exhibition, exploitation and telecast in relation to aforesaid rights in the Territory of India, Nepal and Bhutan ?

(7) Whether the Defendant No.2 made a prior Assignment (30-05--2002 and 28--08--2002) deed acquired video copyright of the film "Nehle Pe Dehla" for consideration and became owner of video copyright of the film "Nehle Pe Dehla" ?

(8) Whether the Defendant No.2 proves that the Agreement dated 31--03--2005 executed between Plaintiff and Defendant No.1 is void, illegal, untenable and bad in law?

(9) What Reliefs?

(10) What Order?

11.Following this, the evidence was led by the parties. The Plaintiff led the evidence of Mr. Neelkanth Banarjee (PW-1), as well as Mr. Sushil Kumar

Agrawal (PW-2), and Defendant No. 2 led the evidence of Mr. Ajeet Kohli (DW2-1).

12. This Court, by an Order dated 20th April 2026, noted that the tenure of the Agreement under which Defendant No. 2 was asserting rights in the Commercial IP Suit No. 20 of 2007 had come to an end and accordingly dismissed the Commercial IP Suit No. 20 of 2007, observing that nothing survived for adjudication in the said Suit.

Submissions on Behalf of the Plaintiff:

13. Mr. Khandekar, Learned Counsel appearing on behalf of the Plaintiff, while dealing with **Issue Nos. 1 and 2**, at the outset, submitted that Defendant No. 1 had assigned to the Plaintiff, the video rights and cable television rights, including video-on-demand rights, in respect of the said film for exploitation in India, Nepal and Bhutan.

14. He then submitted that the Plaintiff's Assignment was for a period of eight years commencing from the date of (i) delivery of Digibeta Masters of acceptable quality or (ii) the video release of the said film, for a total consideration of Rs.42,51,000/-. He submitted that the Plaintiff had, in

accordance with Schedule I of the Plaintiff's Assignment, paid Defendant No. 1, an amount of Rs.7,51,000/- on execution of the Plaintiff's Assignment and a further sum of Rs.2,50,000/-. He thus submitted that the Plaintiff had paid Defendant No. 1 an amount of Rs.10,01,000/- under the Plaintiff's Assignment.

15.Mr. Khandekar pointed out that the Plaintiff had also issued a public notice after having entered into the Plaintiff's Assignment. He submitted that Defendant No. 2, in response to the public notice, had falsely claimed prior and competing rights in respect of the said film. He then referred to the correspondence exchanged between the Plaintiff and Defendant No. 2, in which both parties asserted competing rights over the said film. He submitted that Defendant No. 1, contrary to the representations made to the Plaintiff, had also supported the claim of Defendant No. 2.

16.Mr. Khandekar submitted that although Defendant No. 1 had denied the Plaintiff's case in its Written Statement, Defendant No. 1 had contemporaneously accepted that Defendant No. 1 had created rights in favour of the Plaintiff in the said film. This, he submitted, was evident from the following:

i. The Written Statement dated 6th May 2007, filed by Defendant No. 1 in Com(IP) Suit No. 20 of 2007, in which Defendant No. 1 had pleaded as follows:

> "*3. Without prejudice to what is stated hereinabove, these Defendants submit that by filing the present suit, the Plaintiffs hereinabove have played fraud upon this Hon'ble Court. These Defendants submit that records of this Hon'ble Court in respect of the present suit as well as the suit filed by M/s. Ultra Distributors Pvt. Ltd. would show that no orders were passed in favour of the present Plaintiff and it was very much brought to the notice of the present Plaintiffs that the rights in respect of the film in question are with M/s. Ultra Distributors Pvt. Ltd. and well within their knowledge, Defendant No. 1 had delivered necessary print/cassette to the said M/s. Ultra Distributors Pvt. Ltd. and had categorically brought to the notice of the Hon'ble Court that the present Plaintiffs do not hold any right in respect of the film in question and despite the same, behind the back of these Defendants the Plaintiff had circulated Video CDs and cassettes in respect of the film in question in the market. ..*"
>
> (emphasis supplied)

ii. The Affidavit in Reply filed by Defendant No. 1 to Notice of Motion No. 752 of 2007 in Suit No. 20 of 2007, in which Defendant No. 1 had on oath stated as follows:

> *"3. (d) With reference to paragraph nos. 2-B and C of the said Plaint, I say that at no point of time, the said M/s. Showman Exports (India) Pvt. Ltd. had a right to assign the rights of the said film in favour of any such third-party, the question of they having assigned the rights in favour of present Plaintiff, does not arise. I say that otherwise also, the said rights could not have been assigned by the said M/s. Showman Exports (India) Pvt. Ltd. without prior consent of the original Producers Mr. Mahendra Dhariwal, who had been the Financer of the said film"*
>
> *"3. (e) ... I say that the whole intention of the Plaintiff seems to be to avoid making payment of the legitimate dues in respect of Music-Rights; and as also to grab the Video Rights without any consideration by depriving M/s. Ultra Distributors Pvt. Ltd. from enjoying the said rights who are lawfully holding the said rights and with whom, necessary Consent Terms have also been filed before this Hon'ble Court in a Suit filed by them. .."*
>
> *" 3. (H) With reference to paragraph No. 2-G of the Plaint, it is true that the Plaintiffs are holding audio rights in respect of the said film. However, they are no way concerned with the Video Rights of the said film. ..."* (emphasis supplied)

iii. Consent Terms executed between the Plaintiff and Defendant No. 1, which, *inter alia*, recorded as follows:

"1. Agreed, declared and <u>confirmed by the Plaintiffs and defendant No.1 that the Agreement of Assignment dated 31st March 2005</u> assigning Video copyrights, Cable TV Rights including video on demand rights and other allied rights executed by the Defendant No.1 in favour of the Plaintiffs <u>is binding, valid and subsisting</u>.

2. The <u>Defendant No.1 acknowledges receipt of payment from the Plaintiffs of an amount of Rs. 10,01,000/-(Rupees Ten Lacs One Thousand Only) towards the aforesaid assignment</u> granted by the Defendant No.1 to the Plaintiffs being Part Payment under the said Agreement of Assignment dated 31st March 2005.)

3. *Agreed, declared and confirmed that the <u>Plaintiffs are the lawful copyright holders for enjoyment of video copyrights and cable TV rights including video on demand and other allied rights in respect of the film titled "Nehle Pe Dehla"</u> starring Sanjay Dutta, Saif Ali Khan, Bipasa Basu, etc. in terms of the said Agreement dated 31st March 2005 at Exhibit "A" to the Plaint."*

(emphasis supplied)

iv. The questions were put to DW1 by Learned Counsel for Defendant No. 1, which show that Defendant No. 1 had admitted that the Consent Terms were entered into and that the Plaintiff's Assignment Agreement was valid.

"Q. 3. Are you aware of that the Notice of Motion in Suit No. 155 of 2007 between Ultra Distributors and Dhariwal Films had been settled?

A. I do not remember.

Q. 4. I put it to you that it is well within your knowledge as per the Consent Terms filed in Suit No. 155 of 2007 that Ultra Distributors was entitled to get the delivery of beta tapes of the said films?

A. I deny your suggestion

Q. 11 I put it to you that from the beginning of the case you are aware that t<u>here is already Agreement entered between Dhariwal Films and Ultra Distributors on 31st March 2005?</u>

A. I accept. " (emphasis supplied)

17. Mr. Khandekar submitted that although the Consent Terms were never filed and the parties did not ultimately act upon them, the same were signed by both the parties and Defendant No. 1 had, in Clause 1, nonetheless, categorically admitted and confirmed that the Plaintiff's Assignment Agreement was valid and binding. He therefore submitted that the video rights to the film had clearly been assigned to the Plaintiff and that the Plaintiff's Assignment Agreement was valid, binding and complete. He thus submitted that **Issue Nos. 1 and 2** ought to be answered in the affirmative.

18. Mr. Khandekar, then in dealing with **Issue No. 3**, submitted that it was the Plaintiff's specific case that the Digibeta tapes supplied by Defendant No. 1 to the Plaintiff were not of the quality contemplated under the Plaintiff's

Assignment Agreement. He submitted that this was specifically pleaded in the Plaint as follows:

> *"28A. ... The Plaintiff submits that the Defendant no. 1 failed to provide exploitable quality master on time to this Plaintiffs and allowed to exploitation of the context rights by Defendant No. 2, and therefore the VCD/DVD could not be released simultaneously and this has cause huge loss to the Plaintiff to the extent of Rs. 1,66,75,000/- towards loss of profits and others, as more particularly described in the Particulars of Claim annexed as Exhibit "AG" hereto which the Plaintiff seeks to recover from Defendant no.1*" (emphasis supplied)

19. Mr. Khandekar was at pains to point out that Defendant No. 1 had not even addressed the Plaintiff's specific case as pleaded in paragraph 28A as extracted above, let alone having denied the same in the Written Statement. He submitted that it was well settled that an assertion not denied in the Written Statement is deemed to be accepted. He placed reliance upon the decision of the Hon'ble Supreme Court in ***Thangam v. Navamani Ammal***[1], to point out that Order VIII Rules 3 and 5 of the Civil Procedure Code, 1908, requires a specific admission or denial of the pleadings in the Plaint and that a general or evasive denial does not suffice. He therefore

[1] (2024) 4 SCC 247.

submitted that the Plaintiff's positive case that Defendant No. 1 had not supplied the Plaintiff with the Digibeta Master tapes of acceptable quality was accepted by Defendant No. 1 for want of non-traverse.

20. He further submitted that Defendant No. 1's failure to deliver Digibeta Masters of acceptable quality was also borne out by the fact that, even after the Consent Terms were executed, Defendant No. 1 had not delivered the same as contemplated under those Consent Terms. He pointed out that the Plaintiff had even handed over certain cheques to M/s. Jhangiani Narula & Associates, which were to be handed over to Defendant No. 1 upon delivery of acceptable quality Digibeta Masters. He submitted that the tapes provided by Defendant No. 1 on 26th February 2007 were not of acceptable quality, and the Plaintiff accordingly wrote to the then advocates of Defendant No. 1, informing them that the new Digibeta Masters were required before the cheques handed over to the advocates of Defendant No. 1 could be released.

21. Mr. Khandekar therefore submitted that Defendant No. 1 had clearly breached the obligations cast upon Defendant No. 1 in both the Plaintiff's

Assignment as also in the Consent Terms by failing to deliver Digibeta Masters of acceptable quality to the Plaintiff. He submitted that the evidence of PW-1 in this regard stood unimpeached. He then invited my attention to the following answers given by PW-1 in cross-examination, viz.

> *Q.21. I put it to you that since there is no delivery effected, the Plaintiff had no occasion to make any grievance about quality of the material delivered?*
> *A. I deny.*
> *Q.22. Has the Plaintiff ever informed the Defendant No. 1 in writing that the material delivered was not as per the required quality?*
> *A. Yes, the Plaintiff has informed the Defendant No. 1.*
> *...*
> *Q.23. Can you point out from the compilation of the report prepared by the technician employed by the Plaintiff referred to in Question No. 24 above?*
> *A. No. It is not a part of the compilation.*
> *Witness volunteers: We received the delivery of Digibeta, but the video quality was not up to the mark for video release and an internal report to this effect was created by the technician of the Plaintiff"*

Basis the above, Mr. Khandekar submitted that the evidence of the Plaintiff in support of the fact that the Digibeta Master tapes of the acceptable quality were never delivered to the Plaintiff remained entirely unimpeached.

22. Mr. Khandekar also pointed out Question No. 21, which was put to PW-1 in cross-examination, which was a suggestion put by Counsel for Defendant No. 1 that no delivery of the Digibeta tapes had in fact been made. This he submitted was an admission on the part of Defendant No. 1 that the Digibeta Master tapes of acceptable quality had, infact, never been handed over to the Plaintiff. He then, in support of his contention that the suggestion put by Counsel for Defendant No. 1 to PW-1 in Question No. 21 would amount to an admission that no Digibeta tapes had infact been supplied to the Plaintiff, placed reliance upon the decision of the Hon'ble Supreme Court in ***Balu Sudam Khalde v. State of Maharashtra***[2] which he pointed out held as follows:

> "***32.*** *We noticed that in the cross-examination of the original first informant, PW 1 Asgar Shaikh (Ext. 7), few suggestions were put to him by the defence counsel. We quote the relevant part of the cross-examination of the first informant:…*
>
> *38. <u>Thus, from the above it is evident that the suggestion made by the defence counsel to a witness in the cross-examination if found to be incriminating in nature in any manner would definitely bind the accused and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client.</u>*

[2] (2023) 13 SCC 365.

> *39. Any concession or admission of a fact by a defence counsel would definitely be binding on his client, except the concession on the point of law. As a legal proposition we cannot agree with the submission canvassed on behalf of the appellants that an answer by a witness to a suggestion made by the defence counsel in the cross-examination does not deserve any value or utility if it incriminates the accused in any manner.*" (emphasis supplied)

23. Basis the above, Mr. Khandekar submitted that there could be no doubt that Defendant No. 1 had failed to deliver the Digibeta Master tapes to the Plaintiff of the exploitable quality as required under the Assignment Agreement. He thus submitted that **Issue No. 3** should accordingly be answered in the negative.

24. In dealing with **Issue Nos. 4 and 5**, Mr. Khandekar clarified that the Plaintiff was not pressing for a refund of the monies paid by the Plaintiff to Defendant No. 1. He then invited my attention to the Particulars of Claim[3] from which he pointed out that the Plaintiff had claimed compensatory damages to the tune of Rs.1,66,75,000/-, as well as such punitive damages as the Court may deem fit.

[3] Exhibit "AG" annexed at page no. 136 to the Plaint.

25.He then submitted that the Plaintiff was entitled to damages for the following reasons:

i. The Plaintiff had duly proved its claim for damages by leading credible oral evidence and producing documentary material evidencing the expenditure incurred. The computation of damages by the Plaintiff's witness was based on the profits that were reasonably expected to be earned from the exploitation of the said film, including the CD covers that had already been printed. The Plaintiff also placed the said printed CD covers on record in support of its claim.

ii. Defendant No. 1 did not challenge the testimony of the Plaintiff's witness on the issue of damages or the computation thereof. Indeed, not a single question was put to the witness in cross-examination on this aspect. Consequently, the Plaintiff's evidence on damages was unchallenged and must therefore be accepted.

iii. Defendant No. 1 also led no evidence to establish that the Plaintiff had suffered any loss or that the loss was less than that claimed. Had the film been less profitable, or had the Plaintiff's loss been lower than alleged, Defendant No. 1 would reasonably have been expected to lead evidence to that effect.

iv. Defendant No. 1 neither entered the witness box nor produced any material that could assist the Court in assessing the quantum of damages. Instead, it made every effort to evade the proceedings. On the other hand, the Plaintiff made every endeavour, including through the cross-examination of Defendant No. 2's witness, to obtain records reflecting the profits earned by Defendant No. 2 from the exploitation of the rights in the said film.

v. Defendant No. 1 had admitted that the rights assigned to the Plaintiff were worth at least Rs.82,51,000/-, which was the enhanced consideration sought by Defendant No. 1 under the Consent Terms.

26. Mr. Khandekar then submitted that, as a starting point for estimating damages, the Court could (i) take the amount of Rs.82,51,000/- as the admitted value of the rights acknowledged in the Consent Terms; (ii) deduct the balance consideration that would still have been payable by the Plaintiff to Defendant No. 1 under the Assignment Agreement, being

Rs.32,50,000/- (Rs.42,51,000/- being the total consideration less Rs.10,01,000/- being the amount already paid) the amount of Rs.50,01,000/- becomes the amount which the Plaintiff was deprived of; and (iii) punitive damages of Rs.25,00,000/- on account of Defendant No. 1's conduct. He submitted that, on this basis, the Court could then proceed to consider the damages as claimed in the Plaintiff.

27. Mr. Khandekar submitted that the Plaintiff had proved its case on damages, as was evident from (i) the evidence of PW-1 and in particular what was set out in paragraphs 45, 51 and 52 of the Affidavit of Examination-in-Chief of PW-1; (ii) the evidence of PW-1 and in particular what was set out in paragraph 9 of the Additional Affidavit of Examination-in-Chief of PW-1; and (iii) the Examination-in-Chief of PW-2 in particular paragraphs 46, 53 and 54.

28. Mr. Khandekar then also pointed out that the Plaintiffs have expended multiple amounts towards advertisement and publication of the said Film, and the particulars of the same have been included in the particulars of claims which are appended as Exhibit "AG" with the Plaint. He submitted

that the evidence led by PW-1 and the documents such as (i) the receipt from Glamour Photo Lab Pvt. Ltd. dated 21st February 2007, (ii) the invoice dated 15th March 2007 from Print Plus in regard to the covers of the said film, and (iii) the inlay covers printed by the Plaintiff, which have been annexed at Serial Nos. 50, 51 and 52 with the Affidavit of Documents of the Plaintiff.

29. He then pointed out that Defendant No. 1 had not cross-examined the Plaintiff's witnesses with regard to the Plaintiff's claim for damages and that Defendant No. 1 had also not led any evidence. He thus submitted that the Plaintiff's evidence on damages stood unimpeached. He placed reliance upon the decisions in ***Arvind Singh v. State of Maharashtra***[4] and ***Union of India v. Rashid M.H. Jung***[5] in support of his contention that evidence in the absence of effective cross-examination or where such evidence remains unchallenged should be accepted.

30. Mr. Khandekar submitted that, although the Plaintiff's loss could not be quantified with exactitude since Defendant No. 1 had failed to produce the

4 (2021) 11 SCC 1.
5 2017 SCC OnLine Del 10519.

relevant documents, the Plaintiff was nevertheless entitled to damages assessed on a reasonable estimate. He contended that such an estimate could legitimately be made by drawing an adverse inference against Defendant No. 1 for withholding the necessary documents and by extrapolating from the limited financial material available on record. He submitted that, once breach on the part of Defendant No. 1 was established, the Plaintiff's claim for damages could not be defeated merely because the precise quantum of loss was incapable of proof. He submitted that proof of breach gave rise to a presumption of loss, leaving the Court to determine the quantum of damages on the basis of the material available. In support of his contention that damages could be awarded upon establishment of a breach of the Plaintiff's Assignment, he relied upon the decision of this Court in ***Mahanagar Gas Ltd. v. Babulal Uttamchand and Co.***[6] He also relied upon the decision of the Hon'ble Supreme Court in ***Board of Control for Cricket in India v. Kochi Cricket Private Limited***[7] to contend that, where specific evidence of the loss occasioned by a breach is unavailable,

[6] 2012 SCC OnLine Bom 1254.
[7] 2025 SCC OnLine Bom 2378.

the Court may resort to honest guesswork or “rough and ready methods” to arrive at a reasonable estimate of damages.

31. He also submitted that, once it was shown that the Plaintiff had attempted to prove its case and the Defendant had failed to produce relevant documents, an adverse inference could be drawn against the Defendant. He submitted that such adverse inference could be factored into the computation of damages. In support of his contention, he placed reliance on the decision of the Delhi High Court in ***Koninklijke Philips N.V. v. MAJ (RETD) Sukesh Behl***[8], in which he pointed out that the Delhi High Court, while dealing with a matter pertaining to the grant of damages against the sales of replicated DVDs, had relied upon an estimate of 10,000 DVDs per stamper to guesstimate the actual damages caused due to such replicated DVDs.

32. Mr. Khandekar also submitted that a Defendant's awareness of the loss likely to be occasioned to the Plaintiff was also a relevant factor in the computation of damages. In support of this contention, he placed reliance

[8] 2025 SCC OnLine Del 11121.

upon the decision in the case of ***Bence Graphics International Ltd. v. Fasson U.K. Ltd.***[9], which he pointed out held as follows, viz.

> "*The situation often arises where the buyer seeks to displace the presumption and recover losses other than the diminution in value. Where a seller knows that the buyer intended to resell the goods and ought reasonably to have contemplated that a breach of his undertaking as to the description or condition of goods would be not unlikely to cause the buyer to lose the profit he hoped to make on the resale, or potential sub-sale, the buyer may recover damages in respect of such loss of profits caused by a breach of the seller's undertaking.*
>
> ...
>
> *In the present case there was no series or "string" of contracts. The same goods were not sold on. Even so the string contract cases illustrate graphically how the court is permitted to and will depart from the presumption in order to do justice between the parties based on a finding of fact of what the parties reasonably contemplated*." (emphasis supplied)

33. He placed reliance upon the decision in the Delhi High Court in the case of ***Thyssen Krupp Materials AG v. Steel Authority of India***[10], to submit that the rate in the contract which has been breached would also be relevant for the contemplation of damages arising out of such breach.

[9] [1998] QB 87.
[10] 2017 SCC OnLine Del 7997.

34.Mr. Khandekar then submitted that in the present case the Court ought to grant punitive damages even though they were not specifically pleaded since the facts of the present case would warrant such grant. In support of his contention, he placed reliance upon the decision in ***Organo Chemical Industries v. Union of India***[11] which he pointed out held as follows:

> *"**38.** What do we mean by "damages"? The expression "damages" is neither vague nor over-wide. It has more than one signification but the precise import in a given context is not difficult to discern. A plurality of variants stemming out of a core concept is seen in such words as actual damages, civil damages, compensatory damages, consequential damages, contingent damages, continuing damages, double damages, excessive damages, exemplary damages, general damages, irreparable damages, pecuniary damages, prospective damages, special damages, speculative damages, substantial damages, unliquidated damages. But the essentials are (a) detriment to one by the wrongdoing of another, (b) reparation awarded to the injured through legal remedies, and (c) its quantum being determined by the dual components of pecuniary compensation for the loss suffered and often, not always, a punitive addition as a deterrent-cum-denunciation by the law. <u>For instance, "exemplary damages" are damages on an increased scale, awarded to the plaintiff ever and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant, and are intended to solace the plaintiff for mental anguish, laceration of his feelings, shame, degradation, or other aggravations of the original wrong, or else to punish the defendant for his</u>*

[11] (1979) 4 SCC 573.

evil behavior or to make an example of him, for which reason they are also called "punitive" or "punitory" damages or "vindictive" damages, and (vulgarly) "smart-money". [See Black's Law Dictionary, 4th Edn., pp. 467-648] It is sufficient for our present purpose to state that the power conferred to award damages is delimited by the content and contour of the concept itself and if the Court finds the Commissioner travelling beyond, the blow will fall. Section 14-B is good for these reasons." (emphasis supplied)

35. From the decision of the Delhi High Court in the case of ***Hero Honda Motors Ltd. v. Assuramji Scooters***[12], he pointed out that the Court had observed that the punitive damages are elements of corrective justice and must be awarded to signal the wrongdoers, and the Court shall not hesitate while awarding compensatory and punitive damages against blatant infringements.

36. In light of the above, Mr. Khandekar submitted that the Plaintiff was entitled to an award of compensatory damages of Rs.1,66,75,000/-, along with punitive damages of Rs.25,00,000/-, together with interest at 18% p.a. from the date of the suit, i.e., 8th January 2007. He therefore submitted that **Issue Nos. 4 and 5** ought to be answered in the affirmative.

[12] 2005 SCC OnLine Del 1275.

37. Mr. Khandekar, then addressing **Issue Nos. 6, 7 and 8,** submitted that Defendant No. 2's claim to the video rights in the said film rested entirely upon forged and fabricated documents. He submitted that this was borne out by Defendant No. 2's own pleadings, documents and evidence, all of which were irreconcilably inconsistent and exposed the falsity of Defendant No. 2's case. In support of this contention, he adverted to the following:

I. Assignment by Qamar Films to Showman

38. On 4th February 2002, M/s. Qamar Films executed an Assignment Agreement whereby it assigned all copyrights in the said film to Showman, and M/s. Indian Movies, the sole proprietorship concern of Mr. Mahendra Singh Dhariwal, a Director of Defendant No. 1, who signed the agreement as the "World Rights Controller" and as a confirming party.

II. Assignment by Showman to Defendant No. 2

39. Thereafter, by an agreement dated 30th May 2002, Showman purportedly assigned to Defendant No. 2, all video copyrights in the said film, including the rights of transfer, processing, recording, duplication and copying, for

the territories of India, Nepal, Bhutan and Sikkim. Under Schedule I of the agreement, the signing amount was only Rs.11,000/-.

III. Public notice issued by Defendant No. 1

40. He submitted that despite the above alleged assignment, on 24th August 2002, Defendant No. 1 published a public notice in a trade magazine announcing its intention to acquire the sole, exclusive and perpetual negative and video rights in the said film from M/s. Qamar Films.

41. Mr. Khandekar submitted that this notice fundamentally undermined the case of Defendant No. 2 since, if Defendant No. 2 had, infact, acquired the video rights under the agreement dated 30th May 2002, there was no reason whatsoever for Defendant No. 1 to publicly announce its intention to acquire those very rights since the Director of Defendant No. 1, i.e., Mr. Dhariwal, had himself signed the earlier purported Assignment Agreement dated 4th February 2002 by which Qamar Films sold the said rights to Defendant No. 2.

IV. Letter dated 26th August 2002

42. Mr. Khandekar then pointed out that Defendant No. 2 had claimed to have immediately objected to the aforesaid public notice dated 24th August 2002 by addressing a letter dated 26th August 2002 to Defendant No. 1, asserting that it had already acquired the Home Video Rights from Showman under the agreement dated 30th May 2002. He, however, submitted that the evidence relating to this letter itself demonstrated that it was a fabricated document since, in cross-examination, the witness of Defendant No. 2, in answer to Question Nos. 26 to 68, made several damaging admissions, including that (i) he did not remember whether the alleged office copy had ever been compared with the original (Answer to Question No. 33); (ii) he first claimed that the original letter had been misplaced but later changed his version to state that only the office copy had been misplaced (Answer to Question No. 37); (iii) although his Affidavit of Evidence stated that the original letter was misplaced, he could not satisfactorily explain that statement (Answer to Question No. 38); (iv) initially asserted that an acknowledgement of receipt by Defendant No. 1 existed, but when called

upon to produce it, admitted that no such acknowledgement was on record and suggested that it too "must have been misplaced" (Answer to Question No. 40); (v) could not explain why the letter made no reference to the fact that Mr. Dhariwal was himself a confirming party to the alleged earlier transaction (Answer to Question No. 42). Mr. Khandekar thus submitted that these contradictions completely destroyed the credibility of the alleged letter.

V. Withdrawal letter dated 28th August 2002

43. Mr. Khandekar then pointed out that Defendant No. 2 had further relied upon a letter dated 28th August 2002 whereby Mr. Mahendra Dhariwal, acting through Indian Movies, allegedly informed Defendant No. 2 that the public notice dated 24th August 2002 had been issued under a bonafide mistake and should be treated as withdrawn. Mr. Khandekar submitted that this explanation was wholly implausible, since if Mr. Dhariwal had himself signed the earlier agreements as the confirming party and World Rights Controller, there could have been no occasion for Defendant No. 1 to have

mistakenly published a notice proposing to acquire rights which had allegedly already been assigned.

VI. Assignment dated 28th August 2002

44. He then pointed out that on the very same day, Defendant No. 1 allegedly executed a fresh Deed of Assignment assigning the video rights in the said film to Defendant No. 2 for India, Nepal, Bhutan and Sikkim. Mr. Khandekar submitted that this document was itself plainly fabricated since, firstly, Defendant No. 2 had adopted a mutually destructive position as to the source of its title. He pointed out that on the one hand, Defendant No. 2 had claimed to have already acquired complete video rights from Showman on 30th May 2002; however, on the other hand, he claimed to have obtained the very same rights once again from Defendant No. 1 under the deed dated 28th August 2002.

45. He then pointed out that the contradictions in the evidence of Defendant No. 2 were apparent from the cross-examination, wherein the witness of Defendant No. 2 had, in answer to Question Nos. 44 to 72, admitted that (i) Defendant No. 2 already owned the video rights before executing the

deed dated 28th August 2002; (ii) the subsequent assignment was allegedly executed merely "as a precautionary measure"; (iii) no additional consideration was allegedly agreed to be paid, notwithstanding Clause 5 of the deed expressly providing for payment of Rs.7,00,000/-; (iv) he could not reconcile his oral evidence with the express contractual terms; (v) he alternated between stating that Defendant No. 2 already owned the video rights and asserting that Defendant No. 1 possessed those rights; (iii) he could not explain when or how the rights allegedly reverted from Defendant No. 2 to Defendant No. 1; (iv) no due diligence whatsoever had been undertaken before entering into the deed; and (v) although the deed was allegedly executed only as a precautionary measure, the deed nowhere records that fact. Mr. Khandekar submitted that these admissions alone rendered Defendant No. 2's case wholly untenable.

46. Secondly, he submitted that the Agreement dated 30th May 2002 itself suffered from several glaring infirmities; (i) there are no witness signatures on the execution page; (ii) neither Defendant No. 1 nor Defendant No. 2 affixed its company seal; (iii) the deed is executed on Rs.50/- stamp paper

bearing neither a serial number nor the stamp vendor's signature; (iv) the mode of payment of consideration is not disclosed; and (v) the names of the producers, director and principal cast were all blank in Schedule A, and even the year of production of the said film was not mentioned.

47. He then pointed out the following inconsistencies which emerged during cross-examination of Mr. Ajeet Kohli (DW-1), wherein the witness had, in answer to Question Nos. 6 to 24 and 98 to 101, admitted that (i) he did not know what rights Qamar Films possessed; (ii) he did not know why Indian Movies was made a confirming party; (iii) no due diligence had been conducted before entering into the agreement dated 30th May 2002; (iv) he could not explain why the Schedule to that agreement bore no numbering; (v) he could not explain why the Schedule carried no witness signatures although the agreement itself did; (vi) he admitted that there were no witnesses to the agreement; (vii) he was unaware where the agreement had been executed; and (viii) despite stating on oath in his Affidavit of Evidence that the agreement had been executed in his presence, he admitted in cross-examination that he had not in fact seen the parties

execute it and attempted to explain away the false statement by saying that he merely received the signed agreement moments later. Mr. Khandekar submitted that these admissions further demonstrated that Defendant No. 2's documentary case was entirely unreliable.

VII. Public notice issued in 2004

48. He then pointed out that on 1st May 2004, nearly two years after its alleged acquisition of rights, Defendant No. 2 issued public notices in *Complete Cinema* and *Super Cinema* claiming ownership of the Indian video rights but conspicuously omitted to disclose from whom those rights had been acquired.

VIII. Alleged payment of Rs.42 lakhs

49. Mr. Khandekar then submitted that according to Defendant No. 2, Defendant No. 1 subsequently addressed a letter dated 22nd June 2006 requesting Defendant No. 2 to pay Rs.42,00,000/- to M/s. Prime Focus Limited towards the alleged assignment and claiming to have made this payment. He, however, submitted that this transaction only deepened the inconsistencies and pointed out that during cross-examination, in answer

to Question Nos. 76 to 80 and 135, the witness of Defendant No. 2 had admitted that (i) Defendant No. 1 merely instructed Defendant No. 2 to pay Prime Focus because Defendant No. 1 allegedly owed money to that company; (ii) he could not explain why Defendant No. 2 would pay an additional Rs.42 lakhs if the assignment of 28th August 2002 had truly been executed only as a precautionary measure; and (iii) he ultimately admitted that Defendant No. 2 had paid Defendant No. 1 a total consideration of Rs.42,11,000/-, comprising Rs.42 lakhs routed through Prime Focus and the earlier signing amount of Rs.11,000/-. Mr. Khandekar submitted that this entirely contradicted Defendant No. 2's earlier explanation that no additional consideration was payable under the 28th August 2002 assignment.

IX. Revision of consideration

50. He then pointed out that Defendant Nos. 1 and 2 had also relied upon a letter agreement dated 29th November 2006 whereby the consideration under the assignment dated 28th August 2002 was increased from Rs.7,00,000/- to Rs.42,00,000/-, despite Showman not being a party to this

revision. He, however, pointed out that when questioned about this revision in answer to Question Nos 73 to 75, the witness of Defendant No. 2 was unable to offer any explanation beyond stating that it was "*as per the understanding of Defendant No. 1 and the Managing Director of the Plaintiff*". Mr. Khandekar submitted that no commercial or legal explanation had been offered for such a drastic revision of consideration more than four years after the alleged assignment.

51. Mr. Khandekar, therefore, submitted that, on the cumulative effect of the above evidence, Defendant No. 2 had failed to establish any clear chain of title to the video rights of the said film. Instead, the documentary record and the witness's own admissions demonstrated that Defendant Nos. 1 and 2 had, in collusion with each other, constructed a false and fabricated case founded upon inconsistent and unreliable documents. He accordingly submitted that **Issue Nos. 6, 7 and 8** ought to be answered in the negative.

52. In light of the above facts and circumstances, it is humbly submitted that the Suit filed by the Plaintiff ought to succeed, with Defendant No. 1 being directed to pay the Plaintiff a sum of Rs.1,66,75,000/- as

damages/compensation, together with interest at 18% p.a. The Plaintiff also ought to be granted the costs of this Suit as well as punitive damages. The suit filed by Defendant No. 2 ought to be dismissed with costs.

Submissions on behalf of Defendant No. 1:

53. Mr. Dubey, learned Counsel appearing on behalf of Defendant No. 1, at the outset submitted that the present Suit deserved to be dismissed, as the Plaintiff did not have any cause of action against Defendant No. 1. He submitted that, at the time of execution of the Plaintiff's Assignment Agreement, the Plaintiff was fully aware that the rights in the said film had already been assigned to Showman, despite which fact, the Plaintiff had chosen to execute the said Plaintiff's Assignment Agreement dated 31st March 2005.

54. Mr. Dubey further submitted that the Plaintiff and Defendant No. 1 had, infact, with a view of resolving the disputes between them, executed Consent Terms. He submitted that under the Consent Terms, Defendant No. 1 had agreed to provide the requisite cassettes of the said film to the Plaintiff for an additional consideration of Rs.45,00,000/- towards the

acquisition of the video rights. He submitted that the Plaintiff had failed to pay this additional consideration.

55.Mr. Dubey then invited my attention to the cross-examination of PW-1, particularly Question Nos. 16 and 17, wherein he submitted that PW-1 had admitted on oath that the Plaintiff had created an Escrow Account in respect of the said amount. He submitted that there was no provision in the Consent Terms permitting the creation of an Escrow Account or the deposit of the consideration therein. He further submitted that the Plaintiff had produced no material whatsoever to establish either the payment of the said amount to Defendant No. 1 or that the Plaintiff had, infact, deposited the said amount into the alleged Escrow Account.

56.Mr. Dubey then invited my attention to the answers given by PW-1 to Question Nos. 20 and 21 in support of his contention that there were material contradictions in the Plaintiff’s case. He pointed out that, in response to Question No. 20, PW-1 had denied that any delivery of Digibeta Master tapes had taken place. He, however, pointed out that in response to Question No. 21, PW-1 had answered that the delivery had in fact been rejected on account of poor quality. Mr. Dubey submitted that this answer amounted to an admission that delivery of the cassettes had indeed been effected.

57. He further submitted that PW-1, when questioned regarding the alleged inferior quality of the cassettes and whether the Plaintiff had obtained any technical report to substantiate such allegation, admitted that no such report had been obtained or produced on record. Mr. Dubey thus submitted that the contention regarding the poor quality of the cassettes was merely an afterthought and was deliberately raised by the Plaintiff to evade the Plaintiff's obligation to pay the balance consideration.

58. Mr. Dubey thereafter referred to the answers given by PW-1 to Question Nos. 28, 29 and 30 and submitted that PW-1 had admitted that the Plaintiff is a producer who bears the cost of publicity material for the release of the films and further admitted that, in the present case, such publicity material had been supplied by Glamour Photolab Pvt. Ltd. on the instructions of Defendant No. 1. He therefore submitted that Defendant No. 1 had duly discharged its obligations under the Consent Terms and that the Plaintiff's

claim of having incurred additional expenditure towards publicity was wholly misconceived, as this expenditure was never the contractual responsibility or liability of the Plaintiff.

59. Mr. Dubey then invited my attention to the answers given by PW-1 to Question Nos. 50 and 51, to point out that PW-1 had admitted (i) that the total consideration payable under the Plaintiff's Assignment Agreement was Rs.42,51,000/- and (ii) that the Plaintiff had not paid the entire consideration which was due to Defendant No. 1. He then placed reliance upon the letter dated 15th January 2007, issued by Defendant No. 1 to the Plaintiff, enclosing a cheque for Rs.9,12,271/- towards the refund of the amount already paid by the Plaintiff under the Assignment Agreement. He pointed out that the said letter formed part of Exhibit D-38 in Defendant No. 1's compilation of documents. He submitted that Defendant No. 1 had unequivocally offered to refund the amounts paid by the Plaintiff, a fact admitted by PW-1 during cross-examination, since PW-1 had specifically stated that the said cheque was never encashed by the Plaintiff.

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60. Mr. Dubey then submitted that Defendant No. 1 had always intended to assign the rights in the said film only if the Plaintiff was willing to acquire both the video rights and the audio rights. He submitted that since the Plaintiff was unwilling to acquire both the audio and video rights, Defendant No. 1 proceeded to enter into an agreement with Defendant No.2.

61. He further submitted that it was only in the year 2013 that the Plaintiff amended the Suit by incorporating prayers for a refund of the consideration as well as damages. He submitted that the Plaintiff, having elected not to accept the refund when it was offered, could not now seek inconsistent reliefs and effectively take a "second bite at the cherry". He therefore submitted that the Suit deserved to be dismissed with costs.

62. Mr. Dubey also submitted that the assignment in favour of the Plaintiff was never an exclusive assignment of rights in the said film, since the rights had already been assigned first to Showman and thereafter to Defendant No. 2. He submitted that the Plaintiff, having entered into the Assignment Agreement with full knowledge of these prior assignments, was estopped

from asserting any rights contrary thereto. He reiterated that, once Defendant No. 1 had offered to refund the sum of Rs.10,01,000/- paid by the Plaintiff, which offer was refused by the Plaintiff, the Plaintiff did not have any surviving cause of action against Defendant No. 1.

Submissions on behalf of Defendant No. 2:

63. Mr. Singh, the Learned Counsel appearing on behalf of Defendant No. 2 at the outset, submitted that the Plaintiff has sought limited relief against Defendant No. 2 which pertains to a declaration that the Agreement by which Defendant No. 2 has acquired the video rights in the said film is void.

64. He submitted that the Defendant No. 1, being the owner and producer of the said film, was also a signatory to the Agreement dated 4th February 2002, by which M/s. Qamar Films assigned all the rights in the said film to M/s. Showman Exports Pvt. Ltd. He submitted that on 30th May 2002, M/s. Showman Exports Pvt. Ltd. assigned all video rights in the said film to Defendant No. 2 ("Defendant's Assignment Deed"). He submitted that as a precaution, Defendant No. 1 executed an Assignment Agreement on 12th

August 2002, in favour of Defendant No. 2, reconfirming the assignment to Defendant No. 2.

65. He then submitted that the entire consideration amount pertaining to the assignment in favour of Defendant No. 2 was paid by Defendant No. 2, which is evident from the letter dated 29th November 2006, which is appended at Exhibit "Z", which mentions that consideration of Rs.42,00,000/- to Defendant No. 1 was paid by Defendant No. 2, and the same is acknowledged by Mr. Dhariwal. Mr. Singh thus submitted that the assignment in favour of Defendant No. 2 was not just prior in point but was complete, and therefore such assignment cannot be declared as void.

66. Mr. Singh submitted that Defendant No. 1 has admitted that Defendant No. 2 has a better title towards the rights in the said film than the Plaintiff in paragraph No. 5 of the Written Statement of Defendant No. 1. He also pointed out from the Affidavit of Mr. Dhariwal, which was appended at Exhibit "AA" to the Written Statement of Defendant No. 2, that the assignment in favour of Defendant No. 2 was prior in point of time to the Plaintiff's Assignment and was a valid Assignment of which the Plaintiff

was fully aware. He submitted that the Plaintiff's Agreement was void and/or inconclusive.

67. He also pointed out from the letter dated 12th July 2006, addressed by Defendant No. 1 to the Plaintiff, which was annexed as Exhibit “X” to the Written Statement of Defendant No. 2, that the same substantiated the claim of both the Defendants and the Plaintiff was aware of Defendant No. 2’s prior rights in the said film before signing its own Assignment Agreement.

68. Mr. Singh lastly submitted from the cross-examination of PW-1 and all the relevant material on record that the Plaintiff has made out no case for the grant of relief as to the declaration that the Plaintiff’s Assignment Agreement is valid and the Defendant No. 2’s Assignment Agreement is void, and therefore the Suit deserves to be dismissed with costs.

Reasons and Conclusion:

69. Having heard the learned Counsel appearing for the parties and having considered the pleadings, the oral and documentary evidence on record and

the authorities relied upon, I proceed to consider the Issues framed as follows:

Issue Nos. 1 and 2

70. The existence and validity of Plaintiff's Assignment is not in dispute. Equally not in dispute is the fact that the Plaintiff had, pursuant to the assignment in its favour, made payment to Defendant No. 1 of a sum of Rs.10,01,000/- towards the total agreed consideration of Rs.42,51,000/-.

71. The real dispute is whether Defendant No. 1 was entitled to make such an assignment and whether the Plaintiff's Assignment was absolute and would supersede any right or claim asserted by Defendant No. 2. In my view, the material on record establishes that the Plaintiff's Assignment was entered into upon the representation made by Defendant No. 1, that the earlier assignment concerning the video rights in the said Film in favour of Showman Exports (India) Pvt. Ltd. had been cancelled. The Plaintiff has sufficiently established that, acting upon this representation, the Plaintiff entered into the Agreement and paid part consideration of Rs.10,01,000/- thereunder to Defendant No. 1. Importantly, Defendant No. 1 has, at no

stage, disputed either the execution of the Agreement dated 31st March 2005 or the receipt of Rs.10,01,000/- from the Plaintiff.

72. Additionally, I find that even apart from the Plaintiff's Assignment, there are significant contemporaneous admissions made by Defendant No. 1 which lend support to the Plaintiff's case that there is a valid assignment in favour of the Plaintiff. They are as follows, viz.

I. In the Written Statement filed by Defendant No. 1 in Commercial IP Suit No. 20 of 2007, Defendant No. 1 has affirmed that the rights in respect of the said Film were with the present Plaintiff and further stated that the necessary print/cassette had been delivered to the Plaintiff.

II. Similarly, in the Affidavit in Reply filed to Notice of Motion No. 752 of 2007, Defendant No. 1 has taken the specific plea that Showman had no authority to further assign the video rights without the consent of the producer and, has consequently, questioned the validity of the rights asserted by Defendant No. 2.

III. The Consent Terms executed between the Plaintiff and Defendant No. 1 execution of which is admitted (though not filed), expressly acknowledged and confirmed that the Agreement dated 31st March 2005 assigning the video copyrights, cable television rights, video-on-demand rights and allied rights to the Plaintiff was "*binding, valid and subsisting*".

IV. Defendant No. 1 also had, in the said Consent terms, acknowledged receipt of Rs.10,01,000/- from the Plaintiff and confirmed that the Plaintiff was the lawful holder of the rights assigned under the Agreement dated 31st March 2005.

73. The record plainly discloses that Defendant No. 1 has, at different points in time, taken different and plainly contradictory stands with regard to the creation of competing rights in favour of the Plaintiff and Defendant No. 2 in respect of the same Film. These stands are clearly mutually inconsistent and incapable of reconciliation. This, in my view, speaks volumes in respect of the lack of credibility and commercial dishonesty on the part of Defendant No. 1.

74. Also, the fact that the Plaintiff was aware that there had previously been an assignment involving Showman would not, *ipso facto*, assist Defendant No. 1 in its contention that the Plaintiff's Assignment was in any manner conditional or contingent upon any previous assignment of rights. It is the Plaintiff's specific case that Defendant No. 1 had represented to the Plaintiff that the earlier assignment stood cancelled. The Plaintiff, on this basis, entered into the Agreement dated 31st March 2005. Aside from the admissions of Defendant No. 1 noted above, Defendant No. 1 has led no evidence to establish that the Plaintiff was made aware of, or for that matter knew of, any subsisting assignment by Defendant No. 1 in favour of Defendant No. 2 and that such assignment would prevail over the rights which Defendant No. 1 had assigned to the Plaintiff.

75. For the aforesaid reasons, I am satisfied that the Plaintiff has duly established the execution of the Agreement dated 31st March 2005 and that the said Agreement was valid and binding upon Defendant No. 1.

76. Accordingly, Issue Nos. 1 and 2 are answered in the affirmative.

Issue No. 3

77. It is clear that in terms of the Plaintiff's Assignment, Defendant No. 1 was required to provide the Plaintiff with Digibeta Master tapes of the said Film, which were of a quality which could be used for commercial exploitation. The issue is therefore not whether any Digibeta Master tapes were physically delivered or handed over to the Plaintiff, but whether Digibeta tapes of the desired and acceptable quality, which were capable of commercial exploitation, were handed over to the Plaintiff. In this regard, the Plaintiff has, in paragraph 28A of the Plaint, <u>specifically pleaded</u> that Defendant No. 1 <u>failed to provide exploitable-quality Masters within the stipulated period</u>. *Crucially*, this positive case of the Plaintiff has not been specifically traversed by Defendant No. 1 in the Written Statement. Thus, Defendant No. 1 has, for want of non-traverse, admitted that the Digibeta tapes of the desired quality were not delivered to the Plaintiff. The Plaintiff's reliance upon the decision of the Hon'ble Supreme Court in ***Thangam v. Navamani Ammal*** in support of the contention that

a general or evasive denial cannot be a substitute for a specific traverse of a material assertion is apposite.

78. The Plaintiff has also led oral evidence which is consistent with the Plaintiff's pleaded case that the Digibeta Tapes were not of the desired quality suitable for video release. The contemporaneous correspondence relied upon by the Plaintiff also records that the Digibeta Tapes were not of the acceptable quality and that fresh Master tapes were required before the cheques deposited with the advocates of Defendant No. 1 could be released. In my view the fact that no independent technical report has been produced by the Plaintiff to support the contention that the Digibeta Tapes were not of the desired quality does not, in the facts of the present case, displace the Plaintiff's evidence. The evidence of PW-1 on this aspect has not been effectively impeached.

79. Importantly, Defendant No. 1 has led no evidence whatsoever to even attempt to establish that the Digibeta Master tapes of the desired quality were delivered to the Plaintiff. There is no technical evidence, delivery acknowledgement, correspondence, acceptance of the quality of the

Masters, or any other material that has been produced by Defendant No. 1 in that regard. The only defence which was raised was that the Plaintiff had raised a grievance concerning the quality of the Digibeta tapes only to avoid payment of the balance consideration, which is, in my view, equally unsupported by any evidence. Defendant No. 1 has produced no contemporaneous demand demonstrating that the balance consideration had become unconditionally payable despite the failure to furnish Master Tapes of acceptable quality.

80. I therefore find that, even assuming certain Digibeta tapes were physically tendered to the Plaintiff, Defendant No. 1 failed to prove that Digibeta Masters of acceptable and commercially exploitable quality, as contemplated by the Agreement, were delivered. Issue No. 3 is accordingly answered in the negative.

Issue No. 4

81. During the course of submissions, learned Counsel appearing for the Plaintiff expressly stated that the Plaintiff was not pressing its claim for refund of the sum of Rs.10,01,000/- paid to Defendant No. 1 under the

Agreement dated 31st March 2005. In view of this statement, it is unnecessary to adjudicate the Plaintiff's entitlement to such refund.

82. Issue No. 4 therefore does not survive for determination and is disposed of as not pressed.

Issue No. 5

83. The answer to Issue Nos. 1 and 2 establishes that Defendant No. 1 had entered into a binding assignment with the Plaintiff, under which Defendant No. 1 had also received part consideration. Despite this, Defendant No. 1 failed to provide the Digibeta Masters of commercially exploitable quality and, in the same breath, has also claimed to have and infact supported a competing claim to those very rights video in favour of Defendant No. 2. For this, the Plaintiff has claimed compensatory damages quantified at Rs.1,66,75,000/- as set out in the Particulars of Claim, which is supported by the evidence of PW-1 and PW-2, as well as the documentary material produced in support thereof. On the other hand, Defendant No. 1 has not led any evidence. Also, a perusal of the record shows that there has been no effective cross-examination by Defendant No.

1 of the Plaintiff's witnesses on the Plaintiff's claim for damages and crucially, the basis on which the damages have been computed.

84. The Plaintiff has led evidence to support the contention that the resultant loss arises from the Plaintiff's inability to commercially exploit the video rights in the said Film, the expenditure incurred in preparation for its proposed release, and the commercial value associated with the rights acquired under the Agreement. The Plaintiff's evidence on these aspects has substantially and effectively remained unchallenged. The principle that material evidence which has not been subjected to effective cross-examination may, in an appropriate case, be accepted by the Court finds support in the decisions relied upon by the Plaintiff in the case of ***Arvind Singh v. State of Maharashtra*** and ***Union of India v. Rashid M.H. Jung***.

85. Furthermore, it is now well settled, as held in the case of ***Koninklijke Philips N.V. v. MAJ (RETD) Sukesh Behl, Mahanagar Gas Ltd. v. Babulal Uttamchand and Co.*** and ***Board of Control for Cricket in India v. Kochi Cricket Private Limited,*** that a reasonable assessment of damages is permissible where the exact computation is rendered difficult by the

nature of the breach and the evidence that is available. Therefore, just because in a given case the Plaintiff is unable to prove the precise quantum of loss or damages with exactitude, that would not, in an appropriate case, preclude an award of damages where the fact of loss is established and the available evidence furnishes a reasonable basis for the assessment of damages.

86. In the present case, I am satisfied that by virtue of the non-delivery of Digibeta Master Tapes, the Plaintiff would have suffered commercial loss since the Plaintiff could not exploit the acquired rights in the said Film for commercial exploitation. The Plaintiff has admittedly paid an amount of Rs.10,01,000/- towards consideration for those rights and had also undertaken preparatory steps for the release and exploitation of the said Film. Towards that end, the Plaintiff had also incurred expenditure upon publicity material pertaining to the said Film, however, the Plaintiff was thereafter prevented from exploiting the rights in the manner contemplated under the Plaintiff's Assignment because Defendant No. 1 failed to perform its corresponding obligations of supplying the Digibeta Master

tapes of the required quality and, infact, permitting the Plaintiff's rival to do so.

87. To appreciate the value of the commercial rights in respect of the said Film, the Consent Terms form a useful yardstick. As already noted, these Consent Terms, though not filed, are admittedly executed between the Plaintiff and Defendant No. 1, in which the consideration in respect of the video rights of the said Film are recorded as being Rs.82,51,000/-, which is significantly higher than the amount mentioned in the Plaintiff's Assignment. *Crucially,* the figure of Rs.82,51,000/- is the commercial value that Defendant No. 1 itself placed on the rights. Thus, in my view, this figure can certainly form the basis of awarding compensatory damages to the Plaintiff. The Plaintiff made a rational contention that since the Plaintiff was liable to pay Rs.42,51,000/- under the Assignment and the Plaintiff had already paid Rs.10,01,000/-, Rs.32,50,000/- remained payable by the Plaintiff. By deducting the remnant consideration amount from the admitted value of rights, Rs.50,01,000/- becomes the amount of 'Expectation Damages', which Defendant No. 1 was liable to pay, i.e., to

restore the aggrieved party by placing them in the economic position they would have been in, if the contract had been performed. Hence this fact can certainly be taken into account when deciding the Plaintiff's claim for damages.

88. The Plaintiff has also, in my view, adequately established that the Plaintiff had incurred expenditure in preparing for the exploitation and release of the said Film. The Plaintiff has, in support of this claim, *inter alia*, relied upon the receipt issued by Glamour Photo Lab Pvt. Ltd., the invoice issued by Print Plus and the inlay covers printed for the proposed VCD/DVD release. The Particulars of Claim specify the amount which has been expended by the Plaintiff towards publicity of the said film, and the Plaintiff has satisfactorily established, through the material placed on record, the expenses incurred by the Plaintiff towards the publicising of the said film, and thus the Plaintiff is required to be granted damages to that extent.

89. I also find that the reliance placed by the Plaintiff on the decision in the case of ***Bence Graphics International Ltd. v. Fasson U.K. Ltd.***, in support

of the contention where the nature and commercial object of the transaction in question are known to the contracting parties, loss of profit reasonably contemplated from the proposed commercial exploitation may constitute a relevant measure of damages. Similarly, the contractual consideration and surrounding commercial circumstances may also constitute relevant material in assessing the loss or damages reasonably within the contemplation of the parties.

90. In my view on the totality of the evidence, led by the Plaintiff especially, the evidence of PW-1 and PW-2, which has remained largely unchallenged, the contemporaneous contractual material, the expenses proved by the Plaintiff and the complete absence of any evidence on behalf of Defendant No. 1, I am satisfied that the Plaintiff has established a sufficient evidentiary basis for an award of compensatory damages quantified at Rs.1,66,75,000/-.

91. In addition to the above, I also find that the Plaintiff has made out a case for the grant of punitive damages. I say so not because Defendant No. 1 has failed to perform its obligations under the contract but because

Defendant No. 1 has acted in a manner which clearly shows that Defendant No. 1 never really intended to and clearly sought to create multiple and competing rights in respect of the same Film on the basis of false representations or representations which Defendant No. 1 had no intention of honouring. In my view, the Plaintiff has adequately established that Defendant No. 1 (i) represented to the Plaintiff that the earlier assignment stood cancelled; (ii) entered into the Agreement dated 31st March 2005 and accepted substantial part consideration thereunder; (iii) subsequently acknowledged in the Consent Terms that the Plaintiff's Agreement was valid, binding and subsisting; (iv) questioned Defendant No. 2's title on oath in another proceeding; and (v) thereafter reversed its position and supported Defendant No. 2's claim of a prior and superior assignment.

92. Such conduct really amounts to misrepresentation and cheating and exposes the commercial dishonesty of Defendant No. 1 and therefore must be met with punitive damages. The Plaintiff has, in support of its claim for punitive damages, placed reliance upon the decisions in the case of ***Organo Chemical Industries v. Union of India*** and ***Hero Honda Motors Ltd. v.***

Assuramji Scooters, which *inter alia* recognise that, in appropriate cases involving contractual obligations, the Court may order exemplary damages intended not merely to compensate the aggrieved party but also to act as a deterrent against the party breaching the contractual obligations. I therefore find that the Plaintiff would also be entitled to punitive damages quantified at Rs.25,00,000/-.

93. Issue No. 5 is accordingly answered in the affirmative.

Issue Nos. 6 and 7

94. Defendant No. 2 claims to have a prior and superior title to the video rights in the said Film. The entire case of Defendant No. 2 rests substantially upon the chain of transactions commencing with an Agreement dated 4th February 2002 between M/s. Qamar Films and Showman, followed by an Agreement dated 30th May 2002 between Showman and Defendant No. 2, and a further Deed of Assignment dated 28th August 2002 purportedly executed by Defendant No. 1 in favour of Defendant No. 2. The burden of proving this asserted chain of title lies upon Defendant No. 2.

95. However, the evidence led by Defendant No. 2, reveals various material inconsistencies with regard to the alleged assignment in favour of Defendant No. 2. Also, and crucially, the documentary record relied upon by Defendant No. 2 does not disclose a clear and consistent chain of title. To compound matters, the answers given in cross-examination by DW2 infact raise grave doubts with regard to the very execution and validity, etc. of these documents.

96. I am therefore unable to hold that Defendant No. 2 has proved that it acquired the sole and exclusive video copyrights in the said Film under the Agreements dated 30th May 2002 and 28th August 2002.

97. Issue Nos. 6 and 7 are accordingly answered in the negative.

Issue No. 8

98. The entire premise on which Defendant No. 2 has challenged the Plaintiff's Assignment is that Defendant No. 2 had already acquired an exclusive and superior title under the earlier assignments. However, for the reasons recorded in answer to Issue Nos. 6 and 7, Defendant No. 2 has failed to establish any such valid chain of title. Therefore, Defendant No. 2 has, in

my view, failed to establish any independent legal right or basis for declaring the Plaintiff's Assignment either void or subject to any prior rights of Defendant No. 2.

99. Issue No. 8 is accordingly answered in the negative.

100. I accordingly pass the following Order:

ORDER

(i) The Suit is therefore decreed in terms of prayer clause '(a)' which is reproduced above.

(ii) Defendant No. 1 shall pay an amount of Rs.1,66,75000/- as damages and Rs.25,00,000/- as punitive damages to the Plaintiff.

(iii) Defendant No. 1 shall also pay an amount of Rs.15,00,000/- as costs of the present proceedings to the Plaintiff.

(iv) If Defendant No. 1 fails to comply with the directions in (**ii**) and (**iii**) above within a period of 8 weeks from today, interest at the rate of 8% shall apply.

(v) The office shall return the original documents to the Advocate for the Plaintiff upon the Advocate of the Plaintiff handing over a true copy of this Order along with photostat copies of the said compilation of documents duly certified by them as true copies.

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

[ARIF S. DOCTOR, J.]