

MANU/TN/5681/2020

IN THE HIGH COURT OF MADRAS

O.A. No. 446 of 2020 in C.S. (Comm. Div.) No. 244 of 2020

Decided On: 28.10.2020

Appellants: **Raj Television Network Limited**
Vs.

Respondent: **Kavithalaya Productions Private Limited and Ors.**

Hon'ble

C.V. Karthikeyan, J.

Judges/Coram:

Counsels:

For Appellant/Petitioner/Plaintiff: N.L. Rajah, Senior Counsel assisted by C. Ramesh, Advocate

For Respondents/Defendant: P.S. Raman, Senior Counsel assisted by Gautam S. Raman, Advocate and S.P. Arthi

ORDER

C.V. Karthikeyan, J.

1. This Application has been filed by the plaintiff M/s. Raj Television Network Limited, seeking an order of interim injunction restraining the defendants, M/s. Kavithalaya Productions Private Limited and Ultra Media & Entertainment Pvt. Ltd., and Amazon (Prime Video) from either directly or indirectly infringing or exploiting the copyright of the plaintiff with respect to World Satellite TV Rights including India, Indian TV rights including National Network, Terrestrial Television Broadcasting Rights, Direct to Home (DTH) rights, Pay per view rights, Video on Demand rights (Internet Rights), Wire and Wireless Diffusion for communication to the public without restriction of geographical area for a perpetual period with respect to the films mentioned in the Judges Summons. In the Judges Summons a list of 34 movies have been given.

2. In the plaint, which had been filed under Section 55 and 62 of the Indian Copyright Act, 1957 read with the relevant provisions of the Original Side Rules, Code of Civil Procedure and the Commercial Courts Act, 2015, the plaintiff had stated that the 1st defendant, M/s. Kavithalaya Productions Private Limited was the producer and first owner of the entire copyright with respect to each one of the said 34 movies and that the 1st defendant had assigned and transferred the rights now sought to be protected by the plaintiff by an agreement dated 06.02.2001 for a consideration of Rs. 65,00,000/- for a period of 99 years. It was stated that the rights had been enumerated under Clause 2 and Clause 4 of the said agreement and under Clause 13, the plaintiff had also agreed not to assign any further rights to any other party with consulting the plaintiff herein. It had been further stated that the plaintiff had been exploiting the films by marketing the DVD rights and by telecasting the films through Satellite Television network on their channel Raj TV. They also claimed that after the advent of the internet, they have been streaming the films in the various internet platforms known as OTT platform.

3. The plaintiff then came to know that two of the films Annamalai and Duet were distributed in the internet platform of the 3rd defendant, Amazon (Prime Video). They issued a notice to the 3rd defendant on 13.03.2019. The 1st defendant sent a reply on 23.07.2019 that the claim of the plaintiff for internet rights was illegal and the plaintiff does not have any such right. The plaintiff replied on 27.08.2019 disputing the said claim. The 1st defendant had given a further reply on 19.09.2019 stating that they had not given any internet rights to the plaintiff. The plaintiff then issued another notice to the 3rd defendant on 10.06.2020, once again calling upon them not to infringe the copyright of the plaintiff in the movies except the movie Pallavan. The 3rd defendant sent a reply on 18.06.2020 claiming to have acquired rights in three films namely Annamalai, Roja and Duet.

4. The plaintiff had issued another notice to the 2nd defendant on 23.07.2020. The 2nd defendant issued a notice on 23.08.2020 reiterating their claim. They sent another notice on 08.09.2020. After the said exchange of notices and letters, the suit had been filed seeking reliefs under Sections 55 and 62 of the Copyright Act, 1957, for a declaration that the plaintiff is the absolute owner of the entire copyrights, including particularly internet rights and for a permanent injunction restraining the defendants from exploiting such rights and for costs of the suit.

5. The Application came up for consideration on 25.09.2020 and an order of interim injunction was granted till 06.10.2020. The Court had also observed as follows:

"6. The short point to be decided is whether Satellite Rights granted to the plaintiff would also include Internet Rights. However in the reply notice dated 08.09.2020 issued on behalf of the 2nd defendant, specific reference is made that the first defendant had granted video on Demand Rights to the second defendant. Since there are two versions and by any calculation the plaintiff appears to be the prior right holder granted by the first defendant as early as 2001, there shall be an order of interim injunction as prayed for till 06.10.2020.

7. It is also made clear that if the defendants are able to establish that they also hold agreements to exploit movies with the first defendant and they establish the same by producing the agreement, then there is every possibility of this order being re-visited. It would only be appropriate that the 2nd defendant produces the agreement in their favour before the Court."

6. On receipt of notice through Court, the defendants entered appearance.

7. The 1st defendant filed a counter affidavit, wherein, they have stated that originally when movies were exhibited only in theatres, theatrical and distribution rights were alone granted by the producers. Thereafter, with the advent of television sets, satellite and TV rights were also assigned. With the advent of cable TV channels, the rights to exhibit the movie through DVD and VCD were also granted. After that, Direct to Home rights were granted with set top boxes being provided. After the expansion of the internet service, web rights, internet rights, server and multimedia rights all accrued to the producers of cinematography rights and they were also assigned. Films could be exhibited in a specific time slot or the viewers can view the streaming of the contents at any time and from any place. This option is exercised by Netflix, Hotstar and Amazon (Prime Video). These rights came to be exercised only from the year 2015 onwards. When the plaintiff was assigned copyright in the year 2001, development of technology to this extent was not in the vision of either the assignor or assignee.

8. By the agreement dated 06.02.2001, the plaintiff was granted rights which surrounded telecasting of the 34 movies in TV channels and which could be categorized as Satellite TV rights. The consideration paid was Rs. 64,50,000/-. The 1st defendant had also confirmed that such rights would also include Direct to Home Rights, Public View Rights, Video on Demand Rights, Cable TV and Dish Antenna Rights, Wire and Wireless Diffusion for communication to the public without restriction of the geographical area.

9. In the agreement, it was stated that Multi Media Rights, Portal Rights, Personal Video Server Rights, Web Rights and Internet Rights were not assigned to the plaintiff and if at all they were to be assigned to any 3rd party, the plaintiff would be consulted on the same.

10. It was further stated in the counter affidavit that the 1st defendant came to know in the year 2006 that the plaintiff was attempting to assign Internet Rights to 3rd parties. They issued a letter on 10.08.2006 reiterating Clause 13 of the Agreement. The plaintiff replied stating that the 1st defendant before granting assignment of the rights withheld should consult the plaintiff. The 1st defendant replied by letter dated 03.10.2006 and the plaintiff responded by letter dated 04.10.2006. There were no further correspondence. Then the plaintiff through counsel issued a notice on 18.06.2011 and the 1st defendant had replied on 04.07.2011. The correspondences again stopped.

11. It was stated that the 1st and 2nd defendants had entered into an agreement on 29.01.2016, whereby, the 2nd defendant was assigned with Internet Rights and Web Rights with respect to the movies.

12. The 1st defendant again issued a letter to the plaintiff on 23.07.2019. The specific stand of the 1st defendant is that Internet Rights and Web Rights have not been assigned to the plaintiff. It was stated that the suit had been instituted to pre-empt any litigation instituted by the 1st or 2nd defendants against the plaintiff. It was very specifically reiterated that the plaintiff has no right to exploit the movie through Internet or through the World Wide Web. It was also stated that the Application should be dismissed.

13. The 2nd defendant also filed a counter, wherein again reference had been made to various correspondences which, according to the 2nd defendant had not been brought to the notice of the Court by the plaintiff. It was stated that the 1st defendant had, in exercise of their retaining Internet Rights, assigned the same to the 2nd defendant under agreement dated 29.01.2016. It was stated that the plaintiff has no right to seek the reliefs sought.

14. The plaintiff filed a reply affidavit to the counter of the 1st defendant wherein, once again they reiterated that the rights assigned to them would also include Video on Demand which would necessarily mean grant of Internet Rights. It was also stated that any further assignment by the 1st defendant can proceed only after consultation with the plaintiff and since there was no such consultation, the plaintiff had presumed that the 1st defendant had not taken any steps to assign such rights and it was for that fact that, though there were correspondences at an earlier point of time, they being of no relevance to the issues at lis in the present suit, they were not brought to the notice of the Court. It was also stated that the plaintiff had been exploiting the movie by screening them in Youtube, since the year 2012. It was stated that the plaintiff had been exploiting the movies to the knowledge of the 1st defendant. In the counter affidavit the screen shots of two movies namely, Vaaname Ellai and Thirumathy Oru Vegumathy being exhibited through Youtube have also been annexed. It was stated that the plaintiff having been assigned substantial rights in the year 2001, for adequate and valuable consideration has an inherent right to seek protection from infringement of such rights.

15. Heard arguments advanced by Mr. N.L. Rajah, learned Senior Counsel for the applicant/plaintiff and Mr. P.S. Raman, learned Senior Counsel for the 1st respondent/1st defendant and Ms. S.P. Arthi, learned counsel for the 2nd respondent/2nd defendant.

16. For the sake of convenience, the parties shall be addressed as plaintiff and defendants.

17. The fact that the 1st defendant was the producer of the movies now under contention is not disputed.

18. The 34 films now under contention are as follows:

<i>SL. No</i>	<i>Film Name</i>	<i>SL. No</i>	<i>Film Name</i>	<i>SL. No</i>	<i>Film Name</i>	<i>SL. No</i>	<i>Film Name</i>
1.	Netrikkan	11.	Ennakkul Oruvan	21.	Penmani Aval Kanmani	31.	Annamalai
2.	Pudhu Kavithai	12.	Kalyana Agathigal	22.	Unnal Mudiyum Thambi	32.	Roja
3.	Manal Kayiru	13.	Aval Sumungalithan	23.	Siva	33.	Jaathi Malli
4.	Agni Saatchi	14.	Sri Ragavendar	24.	Pudhu Pudhu Arthangal	34.	Duet
5.	Poikal Kuthirai	15.	Sindhu Bairavi	25.	Unnai Cholli Kutramillai		
6.	Anne Anne	16.	Punnagai Manan	26.	Varavu Nalla Uravu		
7.	Nan Mahan Alla	17.	Thirumathy Oru Vegumathy	27.	Oru Veedu Iru Vaasal		
8.	Poo Vilangu	18.	Velaikaran	28.	Sigaram		
9.	Achamillai Achamillai	19.	Vanna Kanavugal	29.	Vaaname Ellai		
10.	Pudhiavan	20.	Manadhil Urudhi Vendum	30.	Nee Pathi Nan Pathi		

19. Under Section 2(d)(v) of the Copyright Act, 1957, "author" in relation to a cinematograph film means the "producer".

20. Under Section 17 of the Copyright Act, 1957, the "author" shall be the first owner of the copyright.

21. The two provisions read in conjunction with each other would imply that a producer of a cinematograph film, is considered to be the 'author' and also the first owner of the copyright of the said film.

22. Under Section 18 of the said Act, the owner of a copyright may assign to any person the copyright either wholly or partly and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.

23. As the Author/Owner/First copyright holder of the 34 films mentioned in the Judges Summons to the Application, the 1st defendant had a right to assign their rights either wholly or partially to any person. The 1st defendant had taken advantage of that provision and assigned the following rights to the plaintiff and in this regard had also entered into an agreement with the plaintiff on 06.02.2001. The rights assigned were as follows:-

"Clause 1. The Lessors hereby agree and grant on Lease the Exclusive Entire World Satellite TV Rights including India, Indian TV Rights including National Network, Terrestrial Television Broadcasting Right with footprint covering and the rights of performing the exhibition of the

picture in any mode of visual or accoustic presentation for commercial and non-commercial exploitation, exhibition, distribution rights, for the Perpetual Period (99) years from 18/04/2005, Satellite TV Rights, TV Rights of the pictures mentioned below referred to as the Leased Period in consideration of a total royalty amount as mentioned below against the said films for the entire World mentioned hereunder hereinafter referred to as the leased territory."

24. These rights were further qualified in Clause 4 as follows:

"The Lessors hereby agree and confirm that the Assignment of the rights would also include Direct to Home (DTH) Rights, Pay Per View Rights, Video on Demand Rights, Pay Television Rights, Satellite Pay Television Rights, Direct to User (DTU) Rights, DVD Rights for Entire World, Cable TV & Dish antenna Rights, MMDS Cable rights for the entire world, wire and wireless diffusion for communication to the public without restriction of geographical area within the meaning of the Indian Copyright Act."

25. The 1st defendant had retained a few of the existing rights and they had been mentioned in Clause 13. Clause 13 is as follows:

"13. The Lessors hereby confirm that prior to the execution of this agreement, they have not assigned the rights assigned under this agreement of the above pictures to any other party and also agrees not to assign the Multi Media Rights, Portal Rights, Personal Video Server Rights, Web Rights and Internet Rights without consulting the Lessees."

26. The dispute in the present suit surrounds interpretation of Clause 13. It is the contention of the learned Senior Counsel for the plaintiff that by grant of Video on Demand rights and wire and wireless diffusion for communication to the public without restriction of geographical area, it automatically meant that Internet rights have also been granted to the plaintiff. The learned Senior Counsel therefore interpreted Clause 13 as meaning that if the 1st defendant wanted to deal with Internet rights with any other party, there should be a consultation with the plaintiff in this regard, only because the plaintiff had been assigned such right.

27. This interpretation has been questioned and disputed by the learned Senior Counsel for the 1st defendant. According to the learned Senior Counsel, the 1st defendant had not assigned Internet rights or Web rights and if they were to assign the same to any third party, then they must consult the plaintiff, but it was the 1st defendant who alone can enter into any agreement assigning such rights to any other party.

28. Along with the counter, the 1st defendant had also brought to the notice of this Court, a series of exchanges between the plaintiff and the 1st defendant in the year 2006 with respect to the issues raised in the plaint. It was forcefully stated by the learned Senior Counsel that the plaintiff had not brought to the notice of this Court, the assertion of the 1st defendant in the year 2006 itself that the Multi Media Rights, Portal Rights, Personal Video Server Rights, Web Rights and Internet Rights have been retained by the 1st defendant.

29. The correspondences in the year 2006 with respect to that specific assertion by the 1st defendant and which assertion had been disputed by the plaintiff were not taken to their logical end. It is the claim of the learned Senior Counsel for the 1st defendant that the said correspondences had given a cause for action by the plaintiff and having abandoned such right in the year 2006, those rights cannot be revived in the year 2020 and suit can be instituted. In effect, the learned Senior Counsel stated that the cause for action first arose in the year 2006 and the suit instituted in the year 2020 was hopelessly barred by the law of limitation.

30. There were a further set of correspondences in the year 2011, wherein, in reply to a notice issued by the counsel for the plaintiff, once again on the very same issues as raised in the instant plaint, the 1st defendant had again asserted that they enjoyed complete ownership of the internet and other associated rights of the said films. The correspondences then went cold.

31. They were revived again only in the year 2019.

32. It is the assertion of the learned Senior Counsel for the plaintiff that grant of Video on Demand Rights would naturally imply grant of Internet rights and in this regard reliance was placed on an article in Wikipedia.

33. Reliance had also been placed on MANU/SC/0225/2020 : 2020 5 SCC 353, Zee Telefilms Limited (Now known as Zee Entertainment Enterprises Limited) V. Suresh Productions and Others and of a Division Bench Judgment of this Court reported in MANU/TN/0658/2005 : 2005 3 LW 249, Raj Video Vision, a registered partnership firm represented by its Partner, M. Raveendran, No. 703, Anna Salai, Chennai-600 002 V. S.A. Rajkannu, Proprietor, Sree Amman Creations, 154, Anandan Street, North Usman Road, T. Nagar, Chennai-17.

34. The learned Senior Counsel placed reliance on Zee Telefilms Limited, (referred supra) on the issue of limitation and claimed that the suit was not barred by the law of limitation.

35. Reliance was placed on Raj Video Vision, (referred supra) with respect to extension of a copyright assigned to include satellite rights, though grant of satellite rights were not envisaged at the time of grant of the original assignment.

36. In this connection, learned counsel drew the attention of the Court to Section 2(ff) of the Copyright Act, 1957, 'Communication to the public', and stated that the rights assigned to the plaintiff was all comprehensive and includes communication to the public by any means, including through internet and stated that if the 1st defendant were to enter into any further agreement, there will have to be prior consultation with the plaintiff.

37. The word 'consultation' had been defined in Black's Law Dictionary, 10th Edition as follows:

"Consultation: 1. The act of asking the advice or opinion of someone (such as a lawyer).

2. A meeting in which parties consult or confer.

3. International law. The interactive methods by which states seek to prevent or resolve disputes."

38. The definition has not been expanded to include 'prior permission or approval'.

39. The facts in the present case are quite simple. The 1st defendant as producer and owner of the copyright had granted an assignment in favour of the plaintiff by an agreement dated 06.02.2001.

40. Clause 1 of the said agreement had been extracted above. It is again extracted for the sake of convenience,

"Clause 1. The Lessors hereby agree and grant on Lease the Exclusive Entire World Satellite TV Rights including India, Indian TV Rights including National Network, Terrestrial Television Broadcasting Right with footprint covering and the rights of performing the exhibition of the picture in any mode of visual or accoustic presentation for commercial and non-commercial exploitation, exhibition, distribution rights, for the Perpetual Period (99) years from 18/04/2005, Satellite TV Rights, TV Rights of the pictures mentioned below referred to as the Leased Period in consideration of a total royalty amount as mentioned below against the said films for the entire World mentioned hereunder hereinafter referred to as the leased territory."

41. The above are the rights assigned. Internet rights have not been assigned.

42. The rights assigned have been qualified under Clause 4 which had also been extracted above, and which is again extracted once again,

"The Lessors hereby agree and confirm that the Assignment of the rights would also include Direct to Home (DTH) Rights, Pay Per View Rights, Video on Demand Rights, Pay Television Rights, Satellite Pay Television Rights, Direct to User (DTU) Rights, DVD Rights for Entire World, Cable TV & Dish antenna Rights, MMDS Cable rights for the entire world, wire and wireless diffusion for communication to the public without restriction of geographical area within the meaning of the Indian Copyright Act."

43. Video on Demand rights have been assigned, but Video on Demand (Internet Rights) as stated in the plaint have not been assigned. The words 'Internet Rights' have been interpolated by the plaintiff. The plaintiff has no right to re-write the agreement they had entered into in the year 2001 with the 1st defendant and incorporate 'Internet Rights' though the same was not specifically assigned.

44. Clause 13 had also been extracted above and the same is also extracted below:

"13. The Lessors hereby confirm that prior to the execution of this agreement, they have not assigned the rights assigned under this agreement of the above pictures to any other party and also agrees not to assign the Multi Media Rights, Portal Rights, Personal Video Server Rights, Web Rights and Internet Rights without consulting the Lessees."

45. Interpretation surrounding Clause 13 had been under dispute between the parties in 2006 and again in 2011 and again now in the years 2019 and 2020.

46. The plaintiff asserts that they have Internet rights over the movies. The 1st defendant asserts that they have not granted Internet rights. All they say is that prior to granting Internet rights to any third party there must be consultation with the plaintiff. As seen, 'consultation' does not mean 'getting prior approval'. It would be a meeting in which parties would consult and confer. But it does not imply that any rights assigned by the 1st defendant to any third party would depend on the approval granted by the plaintiff.

47. The word 'consultation' is used because if a rival entity, in this case, the 3rd defendant were also to exhibit the movies in their platform, then naturally, the plaintiff would be affected to that extent and therefore, it was only appropriate that the 1st defendant was to put the plaintiff on notice about grant of such assignment.

48. The disturbing aspect in the case are the non-disclosure of earlier correspondences in the years 2006 and 2011, on the same issues, on the same assertions, on the same denials of the assertions between the parties.

49. A further disturbing aspect is the inclusion of words, within parenthesis, 'Internet rights' after the words Video on Demand in the relief paragraph of the plaint.

50. Internet rights have not been specified either under Clause 1 or under Clause 4. The plaintiff had, unwittingly, by such insertion actually invited the Court to examine their case with deeper circumspection and to a little extent with deeper suspicion of their bonafide. When they have not been granted Internet rights, they cannot claim such right. If the 1st defendant had granted such rights to the 2nd defendant without consulting the plaintiff, then the plaintiff will have to workout their remedies in manner known to law or in manner advised. But grant of such rights cannot be prevented by the plaintiff, because they do not have any such rights, since those rights have not been specifically assigned and hence they have no right to prevent the 1st defendant from assigning such rights to any third party.

51. The issue whether Video on Demand would also include Internet rights, is an issue to be decided on the basis of the evidence adduced by the parties and further examination of the approved literature on that aspect.

52. The Court is not for a moment discounting the credit worthiness of a report or a statement made in Wikipedia. However, since an adjudication has to be made on the valuable rights of the mentioned films, it would only be prudent that the Court invites the plaintiff and the defendants to adduce evidence on the circumstances surrounding the agreement and their intention. Detailed evidence has to be adduced and such evidence should also be subjected to cross examination and then analysed to arrive at a conclusion.

53. The issue whether the suit had been filed within the period of limitation or not is a fact to be considered in the light of the claim of the plaintiff that they have made out a prima facie case. When it is seriously disputed that the suit had not been filed within the period of limitation, then that issue would have to be examined first, even before considering whether the plaintiff had made out a prima facie case for grant of interim relief. Any point raised on limitation, being a mixed question of facts and law, naturally can be resolved only on analysing the evidence on that aspect.

54. The 2nd defendant had produced an agreement dated 29.01.2016, whereby, Internet Rights, World Wide Web Rights, and all such rights have been granted by the 1st defendant. That agreement has been in force for the past more than four years.

55. Naturally, it would only be appropriate that a responsible witness for the plaintiff comes to the witness box and speaks on behalf of the plaintiff, stating the manner in which they claim 'Internet Rights' over the movies. Similarly, such opportunity has to be granted to the 1st defendant also. Only on analysis of such evidence, can the Court come to any conclusion whether in the year 2001, Internet Rights had been granted to the plaintiff or not.

56. In MANU/SC/0715/1991 : (1992) 1 SCC 719, Dalpat Kumar and Another Vs. Prahlad Singh and Others, the principles for grant of interim injunction had been laid down. The Hon'ble Supreme Court had stated as follows:

"4. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting

or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

57. In the instant case, as repeatedly pointed out, contradictory stands have been taken with respect to the rights granted to the plaintiff and the rights reserved by the 1st defendant.

58. All these issues require detailed examination and it would only be appropriate that the parties are invited to adduce evidence. Therefore, it has to be held that the plaintiff has not crossed even the first stage of establishing a prima facie case. Their contentions are disputed. When a material proposition of a fact, in this case, grant of Internet Rights, is affirmed by the plaintiff and denied by the 1st defendant, then a necessity to frame an issue on that aspect arises, and such issue can be determined only on analysis of evidence adduced by both parties.

59. Grant of any order will have to await determination of the rights asserted and denied, and based on analysis of evidence adduced by the parties. Therefore, I have no other alternative but to hold that the plaintiff has not made out a prima facie case and to dismiss the Original Application. Accordingly, the Original Application is dismissed. No order as to costs.

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