



Appeal(CAD).No.30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.06.2024
Pronounced on	30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Appeal (CAD).No.30 of 2023

K.Palanisamy
S/o. Kandasamy
Sri Bannari Amman Production,
No.4/551-A, Rajivgandhi Nagar,
Chikkadwasampalayam,
Mettupalayam,
Coimbatore District

... Appellant/1st Defendant

Vs.

1.S.Sivakumar
2.P.Kavitha.
3.K.Senthil Kumar

.. Respondents



Appeal(CAD).No.30 of 2023

WEB COPY

Appeal Suit (CAD) filed under Section 96 of Civil Procedure Code, r/w 13 (i) of Commercial Courts Act praying to set aside the judgement and decree in C.O.S.No.1381 of 2022 dated 06.04.2023 passed by the learned District Judge, Commercial Court at Egmore.

For Appellant : Mr.K.Thilageswaran

For Respondents : Mr.M.Murugesan
For R1

J U D G M E N T

K.GOVINDARAJAN THILAKAVADI,J.,

This Appeal in Appeal(CAD).No.30 of 2023 is directed against judgement and decree in C.O.S.No.1381 of 2022 dated 06.04.2023 passed by the learned District Judge, Commercial Court at Egmore.

For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

Facts:



Appeal(CAD).No.30 of 2023

WEB COPY

2.The averments in the plaint is that, the plaintiff and the 1st defendant are known to each other. The 1st defendant is running a movie Company in the name and style of Shri Bannari Amman Production at MMDA Colony, Arumbakkam, Chennai 600 016. The 1st defendant is the husband of the 2nd defendant and the 3rd defendant is the brother of the 1st defendant. The 1st defendant for directing and producing a movie "Unakku 20 Enakku 40" approached the plaintiff for financial assistance and promised to give Area Distribution Rights for Madurai, Trichy, Tanjore, Karaikudi and Ramanathapuram for Rs.20,00,000/- and the 1st defendant entered into an agreement dated 04.04.2012 with the plaintiff. On the same date of agreement, the 1st defendant received a sum of Rs.5,00,000/- from the plaintiff. Thereafter, he received a sum of Rs.5,00,000/- on 11.09.2012 and again on 18.11.2012, he received a sum of Rs.5,00,000/- from the plaintiff and also acknowledged the above said borrowals by making endorsements in the said agreement. After the release of the movie, the 1st defendant refused to give Area Distributions to the plaintiff with malafide intention. The 1st defendant also collected a huge amount in Crores from the theatre owners for distributing the above



Appeal(CAD).No.30 of 2023

WEB COPY

mentioned movie. The 1st defendant also evaded to repay the amount received from the plaintiff. Hence, the plaintiff preferred complaints before the "South Indian Film Division and Television Direction Association president" and before "Film Director President". Since no action was taken, the plaintiff was constrained to file the present suit.

3. On the other hand, the contention of the 1st defendant in the written statement is that the entire transaction was held at Coimbatore and therefore, the Commercial Court at Chennai has no jurisdiction to entertain the above suit. His further contention is that the 1st defendant never denied the plaintiff's right of Area Distribution and it was the plaintiff's fault for not coming forward to take up the area distribution despite the 1st defendant's request. It is further submitted that the plaintiff informed the 1st defendant since he was engaged in a second movie namely "Malai Gramam" requested him to release the movie and assured to bear the Area Distribution expenses. It is further submitted that the allegation made by the plaintiff in the plaint that the 1st defendant received Crores of rupees from the theatre owners for releasing the movie is utter false. The 1st defendant never received any loan amount from the



Appeal(CAD).No.30 of 2023

plaintiff. It was the plaintiff who voluntarily asked for a chance for acting as Hero in the said movie and for Area Distribution rights. Hence, the above suit is liable to be dismissed.

4.Before the Commercial Court (herein after referred to as said Court) the following issues were framed:

"1.Whether the plaintiff is entitled for the recovery of the suit claim as prayed for?

2.Whether the plaintiff is entitled to the interest for the suit claim as prayed for?

3.To what relief if any the plaintiff is entitled to ?"

5.Before the said Court, the plaintiff was examined as P.W.1. One Mr.N. Arumugam was examined as P.W.2, Ex.A1 to A13 were marked on the side of the plaintiff. The 1st defendant was examined as D.W.1 and Ex.D.1 was marked on the side of the defendants.

6.The said Commercial Court decreed the suit directing the 1st defendant to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only)



Appeal(CAD).No.30 of 2023

WEB COPY

with interest at the rate of 24% per annum from the date of plaint till the date of decree and with subsequent interest at the rate of 6% per annum, till the realization of the entire amount. As against the defendants 2 & 3 the suit was dismissed.

7. Aggrieved by this, the 1st defendant preferred the present appeal.

8. Mr. K. Thilageswaran, learned counsel for the 1st defendant would contend that the 1st defendant made an offer of performance to grant the distribution rights of his movie in the areas mentioned in the suit agreement and the same was refused by the plaintiff and he asked the 1st defendant to distribute the same and the movie also went into loss. The recitals in Ex.A.1 agreement establish the fact that Rs.20,00,000/- (Rupees Twenty Lakhs only) was given only for the purpose of taking distribution rights of the movie 'Unakku 20 Enakku 40' for Madurai and Trichy areas. This conduct of the plaintiff refusing to take distribution rights as per the agreement, amounts to waiver of his contractual right to distribute the movie in the agreed areas.



Appeal(CAD).No.30 of 2023

WEB COPY

9. His further contention is that, the recitals of Ex.A1 would reveal that a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) was given by the plaintiff for the purpose of distribution right of the movie for the areas at Madurai and Trichy which is established through Exs.A.3 to A.5, A.7 & A.9 and A.13 respectively. Even in the reply notice (Ex.A.13) dated 17.07.2014 the above facts was stated by the 1st defendant for which there was no denial on the part of the plaintiff. The further submission of the learned counsel for the 1st defendant is that as the movie went into loss and the expenses incurred by the 1st defendant in distributing the movie in the areas refused by the plaintiff, the plaintiff is not entitled for the suit claim. Hence, the judgment and decree passed by the trial Court is liable to be set aside.

10. On the other hand, Mr.M.Murugesan, learned counsel appearing for the plaintiff would submit that, the contentions made by the learned counsel for the 1st defendant is incorrect. A bare perusal of Ex.A.1 agreement would establish that the said amount Rs.20,00,000/- (Rupees Twenty Lakhs) only was given to the 1st defendant for producing



Appeal(CAD).No.30 of 2023

the above mentioned movie. The payments made on various dates from 04.04.2012 to 31.01.2013 was duly endorsed in the suit agreement. It is further submitted that a waiver could be brought about only by a contract and it could not be said that there had been any waiver in the present case as alleged by the 1st defendant. Hence, the findings of the Commercial Court does not call for any interference.

11. The learned counsel for the 1st defendant in reply would contend that under Section 63 of the Indian Contract Act, it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Under the Indian Law neither consideration nor an agreement would be necessary to constitute waiver. To support his contention, he relied upon the decision of ***Jagad Bandhu Chatterjee Vs. Smt. Nilima Rani and Others*** reported in (1969) 3 SCC 445 in which it is held that:

" (i) that in India the general principle with regard to waiver of contractual obligations is to be found in Section 63 of the Indian Contract Act. Under that section, it is open to a promisee to dispense with or remit, wholly or in part, the performance of the



Appeal(CAD).No.30 of 2023

promise made to him or he can accept instead of it any satisfaction which he thinks fit. Under the Indian law, neither consideration nor an agreement would be necessary to constitute waiver."

12.Heard, records perused.

13.It is a suit for recovery of money alleged to have been paid by the plaintiff to the 1st defendant. According to the plaintiff, he had extended financial assistance to the 1st defendant for a sum of Rs.20,00,000/-(Rupees Twenty Lakhs only) for producing a movie called "Unakku 20 Enakku 40" and also entered into an agreement dated 04.04.2012 with the 1st defendant. The recitals in Ex.A.1 agreement in this regard is as follows:

நம்மில் 2 லக்கமிட்டவருக்கு சொந்தமான ஸ்ரீ பண்ணாரியம்மன் புரொடக்சன் தயாரிக்கும் உனக்கு 20 எனக்கு 40 திரைப்படத்தின் மதுரை மற்றும் திருச்சி ஆகிய இரண்டு ஏரிய வினியோக உரிமைக்கு ரூபாய் 20,00,000/ (ரூபாய் இருபது லட்சம்) விலைபேசி முன்பணமாக ரூபாய் 5,00,000/- (ரூபாய் ஐந்து லட்சம்) இன்று 2ம் லக்கமிட்டவர் தயாரிப்பு செலவுக்கு அவ்வப்போது திரைப்படம் உருவாகும் (வளரும்) நிலைக்கேற்ப 1 லக்கமிட்டவர் பணம் கொடுத்து ஒத்துழைப்பு கொடுக்க சம்மதித்துள்ளார். 1 லக்கமிட்டவர் கொடுக்கும் தொகைக்கு ரசீது கொடுக்க 2ம் லக்கமிட்டவர் சம்மதிக்கிறார்.

இந்தபடிக்கு நாம் இருவரும் சம்மதித்து



சுயநினைவுடன் எழுதி வைத்துக் கொண்ட ஒப்பந்தம் இதுவே ஆகும்."

14.The above recitals in the agreement would reveal that a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) was borrowed by the 1st defendant for Area Distribution Rights. It is not in dispute that endorsements were made in the said agreement for receipt of the said amounts on various dates which also bears the signature of the 1st defendant. The 1st defendant was examined as D.W.1 in his evidence, D.W.1 has made a categorical admission with regard to the payments received by him and the endorsements made in Ex.A.1. Therefore, the admissions made by D.W.1 would clearly establish the borrowal of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the plaintiff. Nothing on record to show that the plaintiff requested the 1st defendant to provide him an opportunity for acting in the said movie and to adjust the amount paid by him. No doubt, Section 63 of the Indian Contract Act entitles the promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or entitles him to accept instead of that promise any satisfaction which he thinks fit. Though in order to constitute a



Appeal(CAD).No.30 of 2023

WEB COPY

waiver or a dispensation of a promise under Section 63 of the Indian Contract Act, neither consideration nor an agreement is necessary. But it has to be seen what the facts are in this case and whether the defendant has succeeded in making out a case of dispensation of his promise as stated in the agreement.

15.A waiver is the act of voluntarily surrendering, relinquishing or abandoning a right or claim. It is the discretion of a person to willingly give up or forego some rights or certain privileges that are available to them. Whenever waiver is pleaded, it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. In any contract, there is always a possibility of certain subsequent events which may affect its performance. However, in the present case, there is nothing on record that the plaintiff by his conduct waived the terms of contract. The defendant failed to establish that the plaintiff refused to take the distribution rights in the areas mentioned in the agreement and by acting in the above movie, adjusted the amount to be paid by the 1st defendant.



Appeal(CAD).No.30 of 2023

WEB COPY

16.Considering the above facts, the learned Judge of the Commercial Court has rightly rendered a finding that the 1st defendant is liable to pay the said amount to the plaintiff and exonerated the defendants 2 & 3 from the said liability by stating that there is no materials on record to show that the defendants 2 & 3 participated in the said transaction which took place between the plaintiff and the 1st defendant. Therefore, in the light of the above discussion, we are of the considered opinion that the said findings of the trial Court in this regard calls for no interference.

17.With regard to *pendente lite* interest, the learned trial Court has ordered interest at the rate of 24% per annum from the date of plaint till the date of decree and with subsequent interest at the rate of 6% per annum till the realization of the entire amount.

18.The learned counsel appearing for the 1st defendant would contend that the trial Court has directed the 1st defendant to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) with interest at the rate of 24% per annum from the date of plaint till the date of decree is exorbitant and unreasonable.



Appeal(CAD).No.30 of 2023

WEB COPY

19. In this regard, it is relevant to extract Section 34 CPC which runs as follows:

"34. Interest-(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum of adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum of any period prior to the institution of the suit, [with further reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit:

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation 1.—In this sub-section, “nationalised bank” means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of



Appeal(CAD).No.30 of 2023

Undertakings) Act, 1970 (5 of 1970).

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie. "

20. Admittedly, it is a commercial transaction and there is no agreement between the parties with regard to interest for the amount borrowed. At this stage, the submission of the learned counsel for 1st defendant needs to be considered. According to the learned counsel, the *pendente lite* interest awarded by the learned Judge is exorbitant and unreasonable. Be it noted that, proviso to Sub Section (1) of Section 34 C.P.C stipulated that the liability arisen out of a commercial transaction the rate of further interest i.e., from the date of the suit till the date of realization, may exceed 6% per annum but shall not exceed the contractual rate of interest and in the case where there is no such contractual rate of interest, the rate at which money is lent or advanced



Appeal(CAD).No.30 of 2023

by Nationalized Banks in relation to a commercial transaction. In simple terms, if the liability of the defendant is in relation to a commercial transaction, it is competent for Court to award rate of interest ranging between 6 % per annum to the contractual rate of interest. In the absence of any contractual rate of interest, the discretion vest in Court, while awarding interest. However, in the present case in our considered opinion, the rate of interest *pendente lite* awarded by the trial Judge is unreasonable. We are also of the considered opinion that this Court is not denuded of the power to modify the rate of interest *pendente lite*, subject to the requirement of proviso to Sub Section (1) of Section 34 CPC. Therefore, we deem it appropriate to modify the rate of interest *pendente lite*.

21. Accordingly, the appeal is partly allowed and the judgement and decree of the trial Court is modified, with regard to interest portion alone, directing the 1st defendant to pay the amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) with interest at the rate of 18% per annum from the date of the suit till the date of decree with subsequent interest at the rate of 6% per annum till the date of realization.



Appeal(CAD).No.30 of 2023

WEB COPY

22.In the result, this Appeal Suit (CAD) is partly allowed. No costs.

[M.S.J.] [K.G.T.J.,]
30.07.2024

vsn

Index:Yes/No

Neutral Citation: Yes/No

Speaking/Non-speaking order



WEB COPY



Appeal(CAD).No.30 of 2023

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

Appeal(CAD).No.30 of 2023

30.07.2024