

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2015

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The Honourable Mr.Justice M.JAICHANDREN

and

The Honourable Mrs.Justice S.VIMALA

C.M.A.Nos.1302 and 1303 of 2008

Union of India
represented by the Director of Enforcement
New Delhi ...Appellant in both the appeals
-vs-

M/s.Prabhu Movies
No.12 A, Besant Road
Chennai - 14 ...Respondent in C.M.A.No.1302
of 2008

R.Kumaran @ V.R.Kumar
Managing Partner M/s.Prabhu Movies
No.12 A, Besant Road
Chennai - 14 ...Respondent in C.M.A.No.1303
of 2008

C.M.A.No.1302 of 2008:

Civil Miscellaneous Appeal has been filed Under Section 35 of the Foreign Exchange Management Act, against the order of the Appellate Tribunal for Foreign Exchange dated 10.10.2007 passed in Appeal No.725/2003.

C.M.A.No.1303 of 2008:

Civil Miscellaneous Appeal has been filed Under Section 35 of the Foreign Exchange Management Act against the order of the Appellate Tribunal for Foreign Exchange dated 10.10.2007 passed in Appeal No.726/2003.

For appellant : Mr.M.Dhandapani
in C.M.A.No.1302 & 1303 of 2008

For respondent : Dr.Anitha Sumanth
in C.M.A.Nos.1302 & 1303 of 2008

C O M M O N J U D G M E N T

Since the issues involved in both the Civil Miscellaneous Appeals are similar in nature, they have been taken up together and a common order is being passed.

2. The Civil Miscellaneous Appeals had been filed against the order of the Appellate Tribunal for Foreign Exchange, New Delhi, dated 10.10.2007, made in Appeal No.725 of 2003 and Appeal No.726 of 2003, raising the following substantial questions of law:

"a) Whether the Tribunal is right in holding that the impugned transaction of the respondent does not contravene Section 9(1)(c) of the Foreign Exchange Regulation Act, 1973.

b) Whether the finding of the Tribunal that the receipt of US\$186800 by R.Kumaran, Managing partner of M/s.Prabhu Movies from Sri Dharan S.Mandrayar of M/s.Dharlin Entertainment, USA is not the acknowledgement of debt."

3. The learned counsels appearing for the appellant had submitted that the orders passed by the Tribunal, setting aside the order of the Deputy Director of Enforcement, Chennai, is contrary to the well settled position of law. The Tribunal ought to have seen that the respondent had contravened Section 9(1)(c) of the Foreign Exchange Regulation Act, 1973. The Tribunal ought to have seen that the respondent had admitted, in its statement, the receipt of US\$186800 equivalent to Rs.58,80,000/-, on 18.8.1995 from Shri Dharam S.Mandrayar of Dharlin Entertainment, U.S.A. through the banking channel which had been transferred by it to one Shri G.Ram Kumar, on 19.8.1995.

4. It has been further stated that the Tribunal ought to have seen that the respondent had acknowledged the debt. There is nothing on record to show the fulfilment of the obligations on the part of the respondent, even after a lapse of more than 10 years. The Tribunal ought to have seen that, as per Section 114 of the Indian Evidence Act, 1872, certain presumption of facts would be made, based on the common course of natural events and human conduct. The Tribunal had erred in holding that the statement of R.Kumaran does not amount to acknowledgement of debt. The Tribunal had erred in placing reliance on the decision, made in PRABAKARAN Vs. M.ALAGIRIPILLAI (DEAD) JT 2006 (5) SC 57.

5. Per contra, the learned counsel appearing for the respondent had contended, inter alia, that there is no evidence to show that there was an acknowledgement of debt, as contemplated under Section 9 (1)(c) of the Foreign Exchange Regulation Act, 1973. The acknowledgement of debt ought to be proved by the authorities concerned. It cannot be a presumption that it is a debt, in spite of the fact that there is no evidence to prove the same. When such a concept is contemplated by way of a special enactment, only the language employed in the relevant provisions should be taken into consideration. In the present case, it is clear that the amount received by M/s.Prabhu Movies, from Dharlin Entertainment Inc., U.S.A., had been utilized for making movies. There is no agreement between the parties to show that the amount received by M/s.Prabhu Movies should be returned, if certain conditions had not been fulfilled. Even otherwise, there is nothing on record to show that the amount had not been utilized for the making of the movies, which was the intention of the parties, as per the agreement entered into by them. Further, there was no demand made by Dharlin Entertainment Inc., U.S.A., for the return of the amount paid by it to M/s.Prabhu Movies.

6. In view of the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, we are not inclined to accept the contentions raised on behalf of the appellant. The claim made by the appellant has not been substantiated by sufficient evidence. There is nothing on record to show that the amount paid by Dharlin Entertainment Inc., U.S.A., to M/s.Prabhu Movies, was in the nature of a debt, as contemplated under Section 9 (1)(c) of the Foreign Exchange Regulation Act, 1973.

7. It is also noted that the amount received by M/s.Prabhu Movies had been utilized for making certain movies. While so, it cannot be said that M/s.Prabhu Movies is duty bound to return the amount to Dharlin Entertainment Inc., U.S.A. In such a case,

the amount received by M/s.Prabhu Movies cannot be treated as a debt, as alleged by the appellant. Therefore, the questions of law raised in the Civil Miscellaneous Appeal are answered against the Revenue and in favour of the assessee. As the present Civil Miscellaneous Appeals are devoid of merits, they are liable to be dismissed. Accordingly, the Civil Miscellaneous Appeals stand dismissed. No costs.

-s/d-
Assistant Registrar(CSVII)

True Copy

Sub-Assistant Registrar

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To:

The Appellate Tribunal for Foreign Exchange,
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