

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2015

| Date of Reserving the Orders | Date of Pronouncing the Orders |
|------------------------------|--------------------------------|
| 13.08.2015                   | 13 .08.2015                    |

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THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM  
and

THE HON'BLE Mr.JUSTICE G.CHOCKALINGAM

O.S.A No.158 of 2015

M/s.Sellamuthu Devar Films  
Through its Propr. P.S.Senthur Pandian  
No.5 West Avani St.  
Madurai-625 001.

[ PETITIONER / APPELLANT ]

Vs

1 NIC ARTS  
Through its Propr. S.S.Chakaravarthi  
No.1 Senthil Andavar St.  
Dhanalakshmi Colony  
Vadapalani  
Chennai -600 026

2 Chimbu Cine Arts  
Through Propr. T.Rajendran  
No.4 Hindi Prachar Saba  
T.Nagar  
Chennai - 600 017.

3 Gemini Color Laboratories  
No.28 New Bangaru St.  
K.K.Nagar  
Chennai -600 078

[ RESPONDENTS / RESPONDENTS ]

Prayer:-Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules r/w clause 15 of Letter Patent, against the order dated 04.08.2015 in Application No.714 of 2015 in C.S.No.567 of 2015.

Original Application praying this court to grant temporary injunction restraining the defendants, their men, agents or any one claiming under them in individual capacity or otherwise from assigning, transferring or otherwise alienating in any manner the distribution rights of theatrical exploitation of the Tamil feature colour film "Vaal" by releasing and exhibiting it in the area of Madurai Ramanathapuram (old area) pending disposal of the suit.

For Appellant : Mr.S.Parthasarathy Sr.counsel for  
M/s.A.L.Gandhimathi

For Respondents : Mr.A.Abdul Hameed for  
M/s.AAV Partners for R1 & R3  
Mr.P.L.Narayanan for R2

#### J U D G M E N T

T.S.SIVAGNANAM, J.

This appeal by the plaintiff in C.S.No.567 of 2015, is directed against the order in O.A.No.714 of 2015, filed for grant of an order of temporary injunction restraining the defendants from assigning, transferring or otherwise alienating in any manner the distribution rights of theatrical exploitation of the Tamil feature colour film "Vaal" by releasing the exhibiting its in the area of Madurai and Ramanathapuram (Old area) pending disposal of the Suit.

2. The learned Single Judge by the impugned order dated 04.08.2015, dismissed the application on the ground that the appellant/plaintiff has not made out a prima facie case for grant of interim injunction. In this appeal, the parties shall be referred to as per the description in the Suit.

3. The plaintiff filed the Suit to direct the defendants 1 and 2 to specifically perform the terms of the distribution agreement dated 14.03.2013, to supply necessary prints/cubes/ufo/pxd/digital format including photocards, posters and publicity for theatrical

exploitation of the Tamil Feature Film "Vaal", in Madurai Ramanathapuram (Old area) for a period of five years from the date of supply and specifically perform all other terms of the agreement dated 14.03.2013 and for a decree of permanent injunction.

4. The plaintiff is stated to be engaged in distribution of Tamil feature films in Madurai Ramanathapuram Districts as well as a financier. It is stated that the plaintiff distributed a film 'Kallai' under his proprietary concern M/s.NIC Arts. It is stated that the first defendant approached the plaintiff for finance for production and release of the said film and he was prepared to give the distribution rights of the said film. Accordingly, a distribution agreement dated 27.10.2007, was entered into for a consideration of Rs.1.40crores. It is further stated that a sum of Rs.15 lakhs was paid on the date of the agreement and a sum of Rs.20 lakhs to be paid within one month i.e., on or before 27.11.2007. It is stated that the sum of Rs.20 lakhs was paid on 25.11.2007 and receipt was obtained from the first defendant. It is further stated that the first defendant requested the plaintiff by letter dated 12.01.2008, to pay a sum of Rs.27,34,500/-, which is said to have been paid and the balance amount due to the first defendant as per the agreement was Rs.42,65,500/-. The date of release of the film was fixed as 14.01.2008 and the plaintiff approached the first defendant for distribution rights and an agreement was entered into. It is stated that the plaintiff collected a sum of Rs.80 lakhs, from the theatre owners and deducted Rs.10 lakhs though he is entitled to 20% commission out of the collection of Rs.70 lakhs, was paid to the first defendant. It is stated that since a sum of Rs.70 lakhs was paid out of the hand of the plaintiff, the first defendant was bound to repay the same, but he did not do so and said to have promised to adjust the amount in the distribution agreement to be entered into between the parties with regard to the next feature film. It is further stated that the first defendant began producing another feature film "Vaal" (subject film) and required further funds and hence a distribution agreement dated 14.03.2013 was entered into between the parties. The plaintiff would state that the first defendant has breached the terms and conditions of the agreement dated 14.03.2013, and has failed to assign the distribution rights to the plaintiff, but has assigned it to the second respondent. Therefore, the plaintiff has filed the Suit for specific performance of the agreement. Along with the Suit, the plaintiff filed an application for interim injunction in application No.714 of 2015.

5. The first defendant resisted the application by filing a counter affidavit mentioning about the agreement dated 27.10.2007,

and that the movie ''Kallai' was released and the movie was distributed in Madurai Ramanathapuram area by the plaintiff, but failed to remit the collection in terms of clause 10 of the agreement dated 27.10.2007, and reconcile the accounts. The signature found in the distribution agreement dated 14.03.2013, is denied and it is stated that the document is forged and fabricated. It is stated that the alleged agreement is shown to have been executed at Chennai with witnesses from Ramanathapuram and it is not out of place to mention that the plaintiff has hails from Madurai and earlier distribution agreement dated 27.10.2007, was executed at Madurai only. That the plaintiff miserably failed to produce any document to support the claim that Rs.50 lakhs was paid and it is inconceivable that the plaintiff after having deducted his commission from the amounts received from the exhibitors has paid Rs.70lakhs back to the first defendant in connection with the movie ''Kallai' and waited for the first respondent to pay Rs.70 lakhs and there is no document evidencing such payment. Further, it is stated that there are several inconsistencies in the agreement and the Suit itself is not maintainable. Further, the expenses incurred for the production of the film and for its release have been set out in paragraph 25 & 26 of the counter affidavit.

6. A reply affidavit was filed by the plaintiff reiterating the stand and denying the averments in toto with no specific denial of the veracity of the suit agreement and the inconsistencies pointed out.

7. The learned Single Judge held that the plaintiff has failed to prima facie established by any material for the alleged payment of Rs.1,20,00,000/- and the genuineness of the document in question cannot be gone into at the interlocutory stage.

8. We have elaborately heard the learned Senior counsel for the plaintiff, the learned counsels for the defendants 1 and 2 and carefully considered the materials placed on record.

9. The Suit has been filed to specifically enforce the alleged distribution agreement dated 14.03.2013. During the pendency of the Suit, the said agreement has been terminated vide notice of termination dated 29.07.2015. However, this has not been mentioned in the memorandum grounds of appeal.

10. Be that as it may, on a perusal of the agreement dated 14.03.2013, there appears to be inconsistencies. Clause 5 of the agreement stipulates the amount agreed to be paid and clause 6

states that payment in time is the essence of the agreement and the rights agreed to be conferred on the distributor get ascertained only on the distributor fulfilling their obligations and the amounts payable under clause 5 are fully paid. Thus, the pre-requisite appears to be the payment schedule to be adhered to and the distribution rights would be conferred only after fulfilling the obligation under the agreement. The plaintiff has miserably failed to establish that the payment schedule has been kept up and payment effected. Therefore, the learned Single Judge rightly held that there was no document to establish the payment of Rs.1,20,00,000/-. The first defendant has made an outright sale of all the distribution rights to the second defendant and certain documents which were placed before the learned Single Judge have been produced to show that transactions with third parties has already been completed. Clause 17 of the distribution agreement dated 14.03.2013, states that if the producer decide to sell the picture on outright basis, the first option shall be given to the distributor, if the rights is/are granted to third parties then the distributor is entitled to a 10% sale commission on the total sale proceeds of such disposal.

11. It has to be seen as to whether the distribution agreement dated 14.03.2013, could be specifically enforced in the light of clause 17 of the agreement which empowers the producer to sell the picture on outright basis to a third party other than the plaintiff.

12. As rightly pointed out by the learned counsel for the second defendant in terms of Section 14(1) (c) of the Specific Relief Act, 1963, a contract which is in its nature determinable cannot be specifically enforced. By applying the said provisions, it has to be necessarily held that the distribution agreement cannot be specifically enforced as it empowers the first defendant to sell the picture on outright basis and in such event, the agreements only speaks of 10% of sale proceeds as commission. Therefore, this is also a relevant factor to be taken note of while considering an application for grant of interim injunction. Furthermore, there are other inconsistencies as between the terms and conditions of the distribution agreement and the plaint averments, more particularly, paragraph 3 of the plaint, which states that Rs.70lakhs was paid out of the hand of the plaintiff. Admittedly, no document has been filed along with the plaint to prove this stand. Thus, prima facie, there is inconsistency between the pleading and document produced.

13. One more submission which was convincing is that the plaintiff took no action to exercise his so called rights under the earlier agreement dated 27.10.2007, or any other understanding

thereafter for nearly seven years. It is stated that in the interregnum the first defendant has produced and released three films and no claim was raised by the plaintiff. Thus, it appears that attempt of the plaintiff is to stall the release of the subject film alone, that too, on the eve of its release.

14. It is further submitted that the second defendant has already distributed the overseas prints and the theatres have been blocked and the trial screening is to take place today (13.08.2015) and the in facts and circumstances of the case and the discussion made above, we are convinced that the plaintiff has not made out a prima facie case for grant of interim injunction and the order impugned does not call for any interference.

In the result, the Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

pbn

To

The Sub-Assistant Registrar,  
Original Side,  
High Court, Madras.

1 CC to M/s.A.L.Gandhimathi, Advocate SR.No. 42979

1 CC to M/s.AAV Partners, Advocate SR.No. 42872

TEJ (CO)  
PSI (01.09.2015)

O.S.A No.158 of 2015

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