

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUMMONS FOR JUDGMENT NO.11 OF 2016
IN
SUMMARY SUIT NO.1143 OF 2015**

M/s.Y.T.Capital Pvt. Ltd.

....Plaintiffs

V/s.

Anjum Rizvi

....Defendant

Mr.A.Dasgupta i/by Jhangiani, Narula & Associates for plaintiffs.

Mr.Ashok M.Saraogi for the defendant.

CORAM : K.R.SHRIRAM,J

DATE : 7.6.2016

P.C.:-

1 The plaintiff has filed a summary suit based on written agreement dated 22.9.2014 read with letter dated 12.3.2015 claiming a sum of Rs.2,44,71,718/- together with further interest on the principal amount of Rs.2,00,00,000/- at the rate of 27% p.a. from the date of filing of the suit till payment/realization.

2 As mentioned in the agreement dated 22.9.2014, copy whereof is annexed to the plaint at Exhibit-A, the plaintiffs and the defendant entered into a co-production agreement for producing a Hindi feature film "Katha". The defendant had represented to the plaintiffs that he has acquired the remake rights of an old Hindi film by the same name "Katha" that was released in the year 1983. It was

also represented by the defendant to the plaintiffs that he shall be able to complete the new film in all aspects including the 1st married print and release the new film within a confirmed budget not exceeding Rs.1,50,00,000/- inclusive of contingencies.

3 Pursuant to the letter dated 12.3.2015 the budget of the film which was Rs.1,50,00,000/- was increased to Rs.2,00,00,000/-. As mentioned in the agreement, the defendant promised to repay the amount of Rs.1,50,00,000/- increased to Rs.2,00,00,000/- on or before 7.4.2015 or atleast 15 days before the release of the film anywhere in the world whichever is earlier. Recital-E provides "Relying upon the above representations, the party of the Second part has agreed to join the party of the First part in producing the said New Film as a CO-PRODUCTION by way of contributing the 100% of the said Budget on the terms and conditions hereinafter appearing."

The plaintiffs were to release the funds as required by the defendant in various tranches. Clause 2.5 which is very important reads as under :-

"2.5 The party of the First part hereby irrevocably agrees and undertakes to repay to the party of the Second part the said sum of Rs.2,00,00,000/- along with the compensation @ 27% interest Per Annum on or before 7th April 2015 or at least 15 (Fifteen) days before the first release of the said Film anywhere in the World, whichever is earlier, hereinafter called the 'DUE DATE' irrespective of whether the said Film is completed/released or not. It is clearly understood that any delay in payment beyond DUE DATE will entitle the party of the Second part to charge further interest @ 30% Per Annum for the period of delay."

Clause 1.1.8 defines the compensation as under :-

*“**Compensation** shall mean and include the amount to be calculated @ 27% Per Annum on the contributed amount from the date of disbursement of installments by the party of the Second part up to sum of Rs.1,50,00,000/- in addition to the repayment of the investment.”*

4 Clause 5.1 and 5.2 of the agreement also provides that the defendant agrees, undertakes and confirms to refund the entire amount invested along with compensation on or before due date irrespective of whether the said Film is completed/released or not and repayment of the amount was an essence of the agreement. Clauses 5.1 and 5.2 read as under :-

“5.1 The party of the First Part hereby irrevocably agrees, undertakes and confirms to refund to the Party of the Second Part the entire amount invested by them along with the Compensation on or before the DUE DATE irrespective of whether the said Film is completed/released or not. Repayment of the amount by the Party of the First Part on or before the DUE DATE is the ESSENCE of this Agreement. In order to ensure the repayment, the party of the First part irrevocably agrees and confirms to handover to the Party of the Second Part post dated cheque/s equivalent to the amount to be invested by them along with Fixed Return. However, the Party of the First Part solemnly promises and assures that :-

(i) The above mentioned cheque/s shall not be deemed to have been handed over to the Party of the Second part as the security or any collateral security ;

(ii) The above cheque/s will positively be honoured and encashed when presented to the Bank on the DUE DATE ;

(iii) The party of the First part shall not under any circumstances whatsoever close the Bank Account from where the Cheque/s is/are issued ;

(iv) The party of the First Part shall not disown its liability to pay the aforesaid amount to the Party of the Second part on any ground whatsoever ;

(v) The party of the First part shall neither ask nor compel the party of the Second part to extend or refer the said DUE DATE.

5.2 For the repayment of the money due to the Party of the Second part, the proprietor Mr.Anjum Rizvi of the Party of the First Part shall be personally responsible and liable for the money due to the party of the Second part and Mr.Anjum Rizvi agrees and undertakes not to release and or distribute the said Film and or any other feature film/TV Serials produced by him directly or indirectly until and unless the amount due to the Party of the Second part under these presents is fully paid up.”

5 The parties also agreed under clause 6.1 that the intellectual property rights (IPR) of the film shall be with the plaintiffs until the entire amounts are repaid and after the amounts are repaid clause-7 provides that the plaintiffs will be entitled to 70% of the share of profit from the exploitations of each and every rights of the said Film in each and every format all over the World for perpetual period.

6 Therefore, as it appears from the agreement, the parties had agreed that the plaintiffs will give Rs.2,00,00,000/- in stages as required by the defendants for co-producing the film “Katha” which amount the defendant shall repay with interest @ 27% p.a. on or before 7.4.2015 or 15 days before the release of the film, whichever is earlier, and after these amounts are repaid, when the film releases, the plaintiffs will get 70% of the profit.

7 The plaintiffs paid the amount of Rs.2,00,00,000/- in 19 tranches beginning from 25.9.2012 upto 10.3.2015. The statement of the payments made can be found in Exhibit J to the plaint.

8 As the defendant did not pay back any amount before 7.4.2015, the plaintiffs by their letter dated 5.8.2015 called upon the defendant to repay the amount of Rs.2,00,00,000/- along with compensation @ 27% p.a. The defendant by a letter dated 8.8.2015, copy whereof is at Exhibit D to the plaint, did not deny any of the allegations or statement made in the letter dated 5.8.2015 but stated that the defendant was sincerely and dedicatedly working on the production of the film and the film was racing towards completion and that the defendant needed further funds to complete the film.

9 In response, the plaintiffs by their letter dated 14.8.2015 reiterated what they had stated in the letter dated 5.8.2015 and refused to give any more money to the defendant and called upon the defendant once again to repay the amount. There was no reply from the defendant and therefore, the plaintiffs once again sent a letter dated 26.8.2015 elaborating that the amounts were payable under the agreement dated 22.9.2015 read with correspondence dated 12.3.2015. There was no response to this letter as well. The plaintiffs, therefore, went ahead and deposited the post dated cheques issued by the defendant and these cheques were dishonoured due to insufficient funds. The plaintiffs also issued notice dated 14.10.2015, through its Advocate, under Section 138 of the Negotiable Instruments Act for which there has been no reply.

Proceedings under Section 138 of the Negotiable Instruments Act are independently prosecuted by the plaintiffs.

10 The defendant has filed an affidavit in reply. The defendant does not dispute the fact that Rs.2,00,00,000/- has been funded by the plaintiffs. It is true that the defendant has not admitted that amount of Rs.2,00,00,000/- has been paid but certainly has admitted that some amount has been given. When the plaintiffs have made a positive averment that they had given Rs.2,00,00,000/-, it was up to the defendant to quantify what according to the defendant the amount lent was instead of making a wishy washy statement in the affidavit in reply. In fact, the defendant in paragraph-15 of the reply states that "I personally deny that at any point of time, I have promised to repay to the plaintiffs amount of Rs.2,00,00,000/- as claimed in the said paragraph on or before 7.4.2015." This would mean that the defendant has received amount of Rs.2,00,00,000/- but did not promise to pay the amount before 7.4.2015.

11 The defence basically is (a) amount has been received but they were payable only subject to account being settled between the parties and after the release of the film ; (b) the defendant at no point of time was permitted to read the contents of the agreement ; (c) As regards the letter dated 12.3.2015, the defendant's signature was

taken on blank letterhead and (d) the cheques were stolen from the office of the defendant and a criminal complaint has been lodged before the Metropolitan Magistrate at Andheri.

12 In my view, all these defences taken by the defendant are after thought, misconceived and moonshine. As provided under the agreement which the defendant has not denied, the defendant has promised to repay the amount of Rs.2,00,00,000/- with 27% interest p.a. on or before 7.4.2015 or atleast 15 days prior to the release of the film anywhere in the World, whichever is earlier. As the movie has not been released, the deadline to repay was 7.4.2015, which has not been met. Therefore, the submission that the amount was payable only after settlement of account or after the released of the film, cannot be accepted.

13 As regards signature on blank letter head relating to the letter dated 12.3.2015, nowhere prior to filing the affidavit in reply has the defendant raised this issue. Even in the only reply that defendant wrote on 8.8.2015 the defendant is silent. Even if we take the defendant's case further, in the letter dated 26.8.2015 the plaintiffs have expressly stated that the amount of Rs.2,00,00,000/- with compensation was payable as per the agreement dated 22.9.2015 read with correspondence dated 12.3.2015. Even to this, the

defendant has not responded. Reference to the letter dated 12.3.2015 can also be found in the Advocate's notice, copy whereof is at Exhibit-I to the plaint. Therefore, the bogey of blank letter head being stolen from the office of the defendant cannot be accepted.

14 As regards the cheque being stolen, though reference to a complaint is mentioned in the affidavit in reply, no details of the complaint like complaint number, or the court where it has been filed or the date on which it was filed is mentioned in the affidavit in reply. There is no mention about the status of the complaint as well. Even if we consider the copy of the alleged complaint, though it is alleged that the plaintiffs used to go to the office of the defendant and the accused have procured the cheques by illegal means, it is not even stated that the defendant used to keep signed cheques which were stolen by the plaintiffs or its directors. Therefore, even this defence cannot be accepted.

15 In the circumstances, I have no hesitation in holding that the defence raised by the defendant is nothing but moonshine.

16 Be that as it may, I am inclined to give conditional leave to the defendant to defend the suit.

The defendant is directed to deposit sum of

Rs.2,00,00,000/- with the Prothonotary & Senior Master, High Court, Bombay within six weeks from today. If the defendant deposits this amount, the defendant shall then file his written statement within 8 weeks from today. If the defendant fails to deposit this amount within six weeks provided, the suit be listed for directions on 25.7.2016.

Summons for Judgment disposed accordingly.

(K.R.SHRIRAM,J)