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

SUMMONS FOR JUDGMENT NO.57 OF 2014
IN
SUMMARY SUIT NO.289 OF 2014

Starwing Developers Private Limited ….Plaintiffs

V/s.

Vainteya Films (P) Ltd. and Ors. ....Defendants

WITH

SUMMONS FOR JUDGMENT NO.58 OF 2014
IN
SUMMARY SUIT NO.257 OF 2014

UY Industries Private Ltd. ….Plaintiffs

V/s.

Vainteya Films(P) Limited and Ors. ….Defendants

Mr.Anjani Kumar Singh i/by Lex Remedeum for plaintiffs.

Mr.K.H.Halai a/w Mr.P.Ranjan i/by Halai & Co. for defendants.

CORAM : K.R.SHRIRAM,J
DATE : 7.6.2016

P.C.:-

1 In both these suits, the plaintiffs are two separate entities whereas the defendants are common. Both the plaintiffs are however, related companies. Defendant no.1 is a company and defendant nos. 2 & 3 are the directors of the company. At the outset, the counsel for the plaintiffs in fairness conceded that there is no personal guarantee or promissory note signed by any of the two

directors acknowledging personal liability for the amount involved in the suits. In view thereof, unconditional leave to defend has to be granted to defendant nos. 2 & 3 in both the suits.

2 Now reverting to defendant no.1, it is the case of the plaintiffs in both the suits that certain amounts were given as loan to defendant no.1. It is stated that defendant no.1 wanted the money to complete producing a film by the name “Maximum” which was allegedly based on the life of a Police officer. It is the case of the plaintiffs that the defendant no.1 first approached the plaintiffs when the film was almost 60% made and as the defendant no.1 was running short of funds to complete production of the film, the plaintiffs lent to defendant no.1 certain amounts. It is also stated that the defendant no.1 in return, issued post dated cheques and at the request of defendant no.1 these cheques were substituted from time to time and the date of repayment was extended. These amounts were paid under 4 agreements in Suit No.289 of 2014 and 1 agreement in Suit No.257 of 2014.

Even though the amounts repayable under the first agreement was not paid by the defendant no.1, the plaintiffs continued to enter into fresh agreements and gave further sums of money to the defendant no.1 at various stages of production of film. The counsel for the plaintiffs made valiant effort to convince the Court that because money was already stuck they had to keep pumping more and more money to recover the original amounts lent. It is the case of the plaintiffs that the agreements relied upon by the plaintiffs and the other correspondence relied upon by the plaintiffs expressly show that it was a pure loan transaction and nothing more and as the liquidated sums are not being returned by defendant no.1 as mentioned in the written agreements, the plaintiffs are entitled to a summary decree.

3 Per contra, it is the case of the defendants that the idea for the film itself was mooted by one Rajeev Ramesh Dube who was the Chairman and managing director of the plaintiffs in Summary Suit No.289 of 2014 and the authorized signatory of the plaintiffs in Summary Suit No.257 of 2014. Common affidavits have been filed in both the suits affirmed by Rajeev Ramesh Dube. It is the case of the defendant no.1 that as the story of project was mooted by the plaintiffs through the said Rajeev Ramesh Dube, the plaintiffs had agreed to finance the production of the movie and towards film financing the amounts were paid. It is also submitted that the agreements, though it looks like a pure loan transaction, in effect was a film financing transaction and they were to be only paid back from the profits made out of that movie. It is also submitted that the movie was completed, released but it failed at the box office and therefore,

nothing was payable. In support of the stand taken by the defendants it is averred in the sur-rejoinder in paragraph-15 as under :-

> *"I say that the amount infused in by the plaintiff was actually an investment in lieu whereof parties had an understanding to have joint title rights and share, in the proposed publicity and promotion of the film. As stated in the reply the plaintiff has participated in every aspect of the film including the promotion of the film, music launch etc. in fact it was the plaintiffs Director's on Mr.Udai Yash Kothari was sown as a presenter and Rajeev Dube as co-presenter of the film. …............ I say that the plaintiff had extensively been involved in the promotion of the film in view of the agreement that they would be a part of the film. I say that the two sons of Mr.Deepak Kothari, the Managing Director of the plaintiff company, Mr.Udai Kothari and Mr.Yash Kothari participated in the much publicized music launch of the movie on 18th June, 2012 at the PVR Juhu, along with the entire Cast and Crew of the movie. The said sons of the MD of the plaintiff company were introduced to the media as the Presenters of the film. The logos of the plaintiff were displayed on the banners and other publicity material of the film including in print media, electronic and other modes".*

4. The defendants have also annexed publicity material of the movie to the affidavit in which it is mentioned as under :-

> "UDAI YASH KOTHARI presents
> Co-presenter RAJEEV DUBE project design STARWING
> A VAINTEYA FILMS production
> Maximum
> a KABEER KAUSHIK film"

5 The publicity material therefore, show that the plaintiff's son was presenting the movie, the said Rajeev Ramesh Dube was co-presenter and the plaintiff in Summary Suit No.289 of 2014 is shown as Project designer. Of course, the plaintiffs have filed an affidavit in sur-rejoinder where in response to the averment contained in paragraph-15 as quoted above, the plaintiffs have denied that they

participated in day to day film production and that they attended the promotion only as an invitee and were not concerned with the film production. There is no explanation as to how the plaintiff's director's son is shown as presenter and Rajeev Ramesh Dube is shown as co-presenter.

6 The counsel for the plaintiffs submitted that the names have been used by the defendants without permission and the Court should not grant leave to defend purely on the basis of the publicity material relied upon by the defendants. I do not find anywhere in the affidavits of the plaintiffs where it is averred that the name of Rajeev Ramesh Dube or starwing was used without permission. Moreover, the defendants have also annexed copies of e-mails exchanged between the defendant no.2 and the representative of the plaintiffs whereby the contents of publicity material have been discussed. The defendants have also relied upon an e-mail which was sent by defendant no.2 to the said Rajeev Ramesh Dube asking him what is to be done in response to the notice under Section 138 of the Negotiable Instruments Act issued by the plaintiffs. All this makes me feel that there is something more which requires to be decided at the trial.

7 In the circumstances, I cannot brush aside the

submissions of the defendants as moonshine or bogus. The defendants have certainly raised a triable issue i.e., “Whether the agreement should be read as a pure loan transaction or whether the amount was advanced by the plaintiffs as film financiers ? Otherwise there is no reason why the name of the plaintiff director's son should be shown as a presenter, the said Rajeev Ramesh Dube should be shown as co-presenter and project design should be by plaintiff in Suit No.289 of 2014.

8 In the circumstances, unconditional leave to defend is granted to defendant no.1 as well in both the suits. Both Summons for Judgments accordingly disposed.

9 The defendants to file their written statement and serve a copy thereof upon the plaintiffs within four weeks from today. Within two weeks thereafter parties to file their respective affidavit of documents together with compilation of documents and also complete discovery and inspection. Within one week thereafter parties to exchange their statement of admission and denial with reasons for denial.

10 Suits to be listed on 22.8.2016 for settling issues. Parties are put to notice that the directions contained above have to be

strictly and meticulously complied, failing which parties will be put to terms.

Stand over to 22.8.2016.

(K.R.SHRIRAM,J)

KJ