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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM

THE HONOURABLE MR. JUSTICE **M. SATHYANARAYANAN**

**C.S.No. 37 of 2011**

Sri Abirami Films  
Rep. by Sole Proprietor  
Mr.N.Thulasiram  
No.C-52, 4<sup>th</sup> Cross East  
Thillai Nagar, Trichy -14.

... Plaintiff

**Vs.**

1. Cinema Paradise  
Rep. by Sole Proprietor  
Mr.Sakthi Chidambaram  
No.108, Durai Arasan Street  
Saligramam, Chennai 600 093.

2. Ekaveera Creations  
Rep. by its Sole Proprietor  
Mr.V.Romesh Babu  
No.1/7, Masilamani Street,  
Madura Apartments  
T.Nagar, Chennai - 600 017. ... Defendants

**PRAYER:** This Civil Suit filed under Order IV Rule 1 of the High Court O.S. Rules read with Order XXXIX Rule 1 of CPC, praying for the following reliefs:

(a) grant permanent injunction restraining the defendants 1 and 2 from alienating or in any manner transferring the distribution rights of commercial and theatrical exhibition in (old) Trichy and (old) Thanjavur areas for a period of 5 years commencing from the date of its first and general release with respect to the Tamil Feature Film "Kaavalan" contrary to the distribution



agreement dated 14.07.2010 entered into between the plaintiff and the first defendant.

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(b) directing the defendants to pay the cost of the suit.

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For Plaintiff : Mr. K.Mohanamurali

For Defendants : Set ex-parte

**JUDGMENT**

The plaint averments are as follows:-

(a) The plaintiff would claim that it is the Sole Proprietor and would state that it is Proprietrix concern and it is carrying on business as a Film Distributor under the name and style of "Sri Abirami Films" at Trichy and in the course of business used to obtain distribution rights of feature Film and exhibit the same in the area of his distribution right. The plaintiff had come to know about the tamil feature film "Kaavalkaarn" being directed by Mr.Siddik and starred by Actors Mr.Vijay and Ms.Asin and music b y Vidyasagar, was approached by the first defendant who represented that he will obtain the rights of the above said feature Film and as he is absolutely entitled to commercially exploit the said Film. The first defendant had also offered the



distribution rights of various centers including Trichy and Tanjore and the plaintiff having taken into consideration, the reputation of the Director, the star cast and in specific the casting of Mr.Vijay, accepted the offer of the first defendant to procure the commercial and theatrical exhibition rights of Trichy and Thanjavur areas on the terms and conditions mutually agreed between the plaintiff and the first defendant.

(b) The plaintiff would further aver that a distribution agreement was entered into between them and the first defendant on 14.07.2010 and as per the terms of the agreement, the plaintiff will be granted commercial and theatrical exhibition rights of the above said Film in the areas of the entire (old) Trichy and Thanjavur for a period of 5 years commencing from its first and general release. It was also agreed that the plaintiff shall pay a sum of Rs.3,00,00,000/- (Rupees Three Crores only) as a consideration to the first defendant to convey the said rights and accordingly a sum of Rs.1,00,000/- (Rupees One Lakh only) was deposited to the credit of the first defendant's Bank. The plaintiff has further paid a sum of Rs.50,00,000/- by way of demand draft in favour of the second defendant on behalf of the first defendant as if it originally produced by the second defendant.



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(c) It is further stated by the plaintiff that the Film was promised to be released for Diwali festival and the plaintiff has already paid a sum of Rs.1,50,00,000/- and the first defendant has also calculated the interest till Diwali and arrived at a sum of Rs.28,50,000/- and thus, the plaintiff has to pay a sum of Rs.1,50,00,000/- at the time of delivery of the print of the said Film. The first defendant subsequent to the above said agreement has changed the name of the Film as "Kaavalan". The plaintiff was eagerly waiting for the release of the Film for Diwali festival and to the shock and surprise it could not be released for Diwali festival and the first defendant has also sought for revision of the consideration which was totally unexpected. After mutual negotiations, the sale consideration was agreed to be increased to a sum of Rs.3,10,00,000/- and the first defendant also made a promise to release the Film for Pongal festival and accordingly a sum of Rs.14,00,000/- was added towards interest payable by the first defendant to the plaintiff after giving credit. The subsequent modification and understanding was put in the form of letter dated 17.12.2010 and signed by both the parties.



(d) It is also stated by the plaintiff that the first defendant has directed to pay a sum of Rs.5,00,000/- to Vijaya theatre, Thanjavur, leaving a balance sum of Rs.1,12,50,000/- payable by him to the first defendant and it was further agreed that the commission cost for theatre booking shall be fixed at 5% and the petitioner later on came to know that the first defendant is trying to enter into fresh agreement for distribution in the area for which he has also conveyed the rights in favour of the plaintiff and though the plaintiff was always ready and willing his part of obligation under the agreement dated 14.07.2010 as well as letter dated 17.12.2010, the first defendant did not co-operate with the same and hence, constrained to file the suit.

2. Though the defendants were served, they did not enter appearance and therefore, they were set ex-parte and evidence was also recorded and the matter was before the Court for arguments on 14.12.2015 and on that day, the learned counsel appearing for the second defendant prayed for time to take necessary steps to file an application for condonation of delay in filing the application to set aside the ex-parte order and also to set aside the ex-parte order and therefore, this Court



has granted time.

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3. When the suit is listed today for arguments, there is no appearance on behalf of the defendants 1 and 2 as no counsel has entered appearance.

4. Mr. K.Mohanamurali, the learned counsel appearing for the plaintiff has drawn the attention of this Court to the plaint averments as well as the testimony of PW-1 and Exhibits and would submit that in the light of Exs. P-1 and P-2, the plaintiff has substantiated the case beyond all probabilities and praying for decreeing of the suit.

5. This Court has considered the submission made by the learned counsel appearing for the plaintiff and also perused the pleadings, oral and documentary evidence.

6. The following issues arise for adjudication:-

"(i) Whether the agreement dated 14.07.2010 (Ex.P-1) and the modification and understanding in the form of letter dated 17.12.2010 (Ex.P-2) are true and valid?



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(ii) Whether the first defendant had gone back upon the terms of Exs. P-1 and P-2?

(iii) To what relief, the plaintiff is entitled?"

**7. Issue No.1:**

Perusal of Exs. P-1 and P-2 would disclose that the distributor agrees to pay a sum of Rs.3,00,00,000/- (Rupees Three Crores only) to the right holder and it was also signed by the first defendant and later on some modification was effected and consideration was increased to a sum of Rs.3,10,00,000/- (Rupees Three Crores and Ten Lakhs only) which was signed by the first defendant. Under Ex.P-3, a sum of Rs.5,00,000/- (Rupees Five Lakhs only) was received by the theatre in which the Film is sought to be released.

It is the specific case of the plaintiff that the first defendant in violation of terms and conditions agreed upon under Exs. P-1 and P-2, sought to enter into the distribution agreement with some other third parties with a mala fide and oblique motive and therefore, the plaintiff was constrained to file the suit.

As rightly pointed out, the defendants were served and they remain absent and they did not enter appearance and filed their written statement and they

<https://hcservices.ecourts.gov.in/hcservices> were served absent and set ex-parte and though



Since the first defendant did not enter appearance in spite of service of summons, it is to be taken that he is not seriously disputing the contents of Exs. P-1 and P-2 and that the terms of Exs. P-1 and P-2 stand substantiated and therefore, issue No.2 is answered in favour of the plaintiff.

9. Issue No. 3 are the plaintiff through the pleadings, oral and documentary evidence, has substantiated his case beyond all probabilities and therefore, he is entitled to the Judgment and Decree as prayed for.

10. In the result, the suit is decreed as prayed for and there shall be a Judgment and decree for permanent injunction restraining the defendants 1 and 2





from alienating or in any manner transferring the distribution rights of commercial and theatrical exhibition in (old) Trichy and (old) Thanjavur areas for a period of 5 years commencing from the date of its first and general release with respect to the Tamil Feature Film "Kaavalan" contrary to the distribution agreement dated 14.07.2010 entered into between the plaintiff and the first defendant. The plaintiff is also entitled to the cost of the suit.

**List of Witnesses:**

P.W.1 - Mr.N.Thulasiram

**List of Exhibits:**

1. Ex.P1 - The original agreement dated 14.07.2010
2. Ex.P2 - The original letter
3. Ex.P3- The letter acknowledging payment from Vijaya Theatre.

**Sd/M.S.N.J**

20.01.2016

//Certified to be a true copy//

Dated this the        day of                      2016

S.s/30.06.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.