

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.11.2016

PRONOUNCED ON: 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.527of 2010

Dr.P.Kalidas, Proprietor
Chennai-81

Plaintiff

Vs

1. V.Arun Vijay @ Arunkumar

2. Feather Touch Entertainments by Mrs.M.Sushil
Chennai-10

3. Gemini Colour Laboratory, Laboratory
Department of Gemini Industries & Imaging Limited
Chennai-78

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules
read with Order VII Rule 1 of CPC for the reliefs as stated therein.

For Plaintiff : Mr.Kumar

For Defendants : Set Exparte

JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against
the Defendants:-

- a) directing the 1st Defendant to pay a sum of
Rs.25,00,000/- (Rupees twenty five lakhs only) towards
the financial loss and mental agony.

- b) granting permanent injunction restraining the Defendants 1 and 2 from releasing the film "Manja Velu" till the payment of damages to the Plaintiff.
- c) directing the 1st Defendant to pay the costs of the suit to the Plaintiff.

2. The Plaintiff, a Medical Surgeon is the distributor and producer of films and has been in the film industry for 15 years. He had produced a Tamil Film 'Thunechal', in which the 1st Defendant, who was an Actor, had acted as the Hero and his remuneration was fixed at Rs.10 lakhs. At the time of producing the film in the year 2005, the Plaintiff had claimed that the 1st Defendant had consecutive flops of 14 films and consequently, his remuneration was only Rs.3 to 4 lakhs. However, the budget of the said Film 'Thunechal' was about Rs.2 crores and the 1st Defendant had received a sum of Rs.5 lakhs as advance. It had been claimed that the 1st Defendant was not cooperative and at his instance, the heroine of the film was also changed and the amount paid to the previous heroine was also not recovered. The shooting of the film was completed in the year 2007 and the post production work was completed in June 2008 and the film audio was released in 2008. Since the 1st Defendant did not come for dubbing of the film, it could not be released in the year 2008. A complaint was given to the Producers Council, which advised the 1st Defendant to cooperate. The marketing of the film had got affected and because of the attitude of the 1st Defendant, the Plaintiff was forced to dub the

film with a third person. This leads to the complaint given by the 1st Defendant and his father to the Artists Association and consequently, the Plaintiff had given a letter, stating that the matter will be settled. The 1st Defendant had also given a letter to the Prasad Laboratories not to give the negatives of the film on the ground that the Plaintiff had to pay a further sum of Rs.5 lakhs. With the intervention of the Producers and Artists Council members, the matter was finally resolved on 24.12.2009. The date of release of the film was fixed as 31.12.2009 and the 1st Defendant had to come for dubbing the voice on 25.12.2009, but he came only on 28.12.2009 at 11.50 p.m. and dubbing was done only upto 12.10 a.m. and he came again on 29.12.2009 between 9.30 p.m. and 11.30 p.m and finally on 30.12.2009 between 10.00 a.m. and 3.00 p.m. and completed the film.

3. In the mean while, it had been further stated that the 1st Defendant and his father in law had started a film 'Malai Malai' in the year 2008 and the 1st Defendant, without informing the Plaintiff, went to America for training for the film. This also lead to a delay in releasing the film 'Thunechal. The 1st Defendant, thereafter, had stated that some scenes in the film had to be re-shooted and one more song had to be added. The Plaintiff informed that he had invested Rs.1.5 crores and the 1st Defendant warned that he will not allow the film to be released.

4. As aforesaid, the date for releasing the film was fixed and publicity was issued from November 2009. Finally, the Plaintiff had booked 160 theatres all over the Tamil Nadu for release of the film, but the 1st Defendant gave an

interview to the Press, which was published in the Tamil Daily 'Dinakaran' dated 29.12.2009 that he had problems with the producer of the film 'Thunechal'. This also lead to loss of credibility in the film market. The 1st Defendant further informed about the shooting of his another film "Manja Velu" and hence, he could not come for dubbing in time. Finally, after much delay, the film was released on 1.1.2010 in 16 theatres only. Since digital film was required, the digital film of 'Thunechal' was released on 8.1.2010 and the film could not run for many days since due to Pongal Festival many new films came to the market. All these caused much financial loss to the Plaintiff and also damaged his reputation in the film industry. The 1st Defendant did not participate in the promotion of the film. The film had got good reviews, but it did not help him to recover the loss. Consequently, stating that the attitude of the 1st Defendant had been a direct cause for mental agony and the financial loss undergone by him, the Plaintiff had filed this suit with the reliefs as stated above.

5. Though the Defendants 1 to 3 were served on 6.11.2015, 13.6.2010 and 11.5.2010 respectively, no written statement had been filed by them. For non filing of the Written Statement, the Defendants were set exparte and Exparte Evidence was ordered by the order of this court, dated 28.3.2016.

6. The Plaintiff had also sought for permanent injunction restraining the Defendants 1 and 2 from releasing the film "Manja Velu". However, since the suit is of the year 2010, by efflux of time, that relief does not subsist as on date.

7. Another relief claimed by the Plaintiff for a sum Rs.25 lakhs as

damages from the 1st Defendant has to be analysed in the light of the oral and documentary evidence adduced by him. As stated above, the Defendants remained exparte. The 3rd Defendant was only a formal party involved with the processing of the film "Manja Velu". The 2nd Defendant was the Company, under which the film "Manja Velu" was to be released. The Plaintiff, consequently, had not claimed the reliefs against the Defendants 2 and 3.

8. To substantiate the claim against the 1st Defendant, the Plaintiff had filed the proof affidavit for his chief examination and receipt of 27 documents as documentary evidence to prove the suit claim. In the Evidence, the Plaintiff examined himself as PW.1 and marked Exs.P1 to P27 as documentary evidence in order to prove the suit claim.

9. It is seen from Ex.P1 that the 1st Defendant and the Plaintiff had jointly signed the terms of remuneration and it is stated that there was a balance of Rs.5 lakhs and the manner in which the said amount has to be paid had been given. The 1st Defendant had also affixed his signature for receipt of cheque for Rs.50,000/- bearing no.150923 drawn on Catholic Syrian Bank and acknowledged the receipt of Rs.1,00,000/- towards remuneration of "Thunechal" movie on 5.5.2006. This document establishes the participation of the 1st Defendant in the film "Thunechal" and receipt of consideration for acting in the said film. This document further establishes the business agreement between the 1st Defendant and the Plaintiff towards successful release of the movie 'Thunechal'.

10. Ex.P2 is the copy of the complaint dated 24.11.2007 given by the

Plaintiff to the President and Secretary of the Producers Association, complaining about the non cooperation of the 1st Defendant and seeking their intervention in successful release of the film. Ex.P3 is the copy of the letter dated 29.11.2007 issued by the Plaintiff to the President, SICADU. Ex.P4 is the copy of the letter dated 29.9.2008 issued by the South Indian Films Actors Association to the Prasad Laboratories that the 1st Defendant had acted in the film called "thunechal" and the Plaintiff is continuing with the release of the film by dubbing the voice with the third party. Ex.P5 is yet another letter dated 23.4.2009 and Ex.P6 is the payments details and statement of expenses with respect to Prasad Laboratories towards the production of the film "Thunechal" and it is seen that the total amount is Rs.20,00,211/-. Ex.P7 is another letter relating to the dispute and Ex.P8 is the letter, stating that the claim for Rs.5 lakhs from the Artist Arun Vijay has not been settled. This letter has been issued by the Prasad Laboratories. Ex.P9 to 11 are the call sheet receipts of Nivetha Studios for the dubbing of the 1st Defendant for the Tamil film "Thunechal". Ex.P12 is the statement of accounts issued by the Prasad Laboratories with respect to the film "Thunechal" and it is a running account. Thus, it is seen that the total transaction summary is for Rs.21,96,633/-. Ex.P13 to 20 are advertisements given in various newspapers for the Tamil Film 'Thunechal'. Ex.P21 is the interview given to the Dinakaran Newspaper dated 29.12.2009, in which the 1st Defendant had stated that the Plaintiff is attempting to release the film 'Thunechal' without dubbing his voice. Ex.P22 to 27 are also the advertisements given in various newspapers for the release of the Tamil

Film 'Thunechal'.

11. It is seen that the Plaintiff has established the following facts:-

1. That the Plaintiff had endeavoured to produce and release the Tamil Film called "Thunechal".
2. That the release of the film was conclusively postponed from day today.
3. That the Prasad Laboratories was involved in the production of the film and the statement shows that the total transaction was for a sum of Rs.21,96,633/-.
4. That the 1st Defendant was the Hero of the film.
5. That the Plaintiff blames the 1st Defendant for the loss suffered by him.
6. That the 1st Defendant had also complained that the attitude of the Plaintiff in utilising the services of a third person for dubbing the voice of the 1st Defendant.

12. It is seen from the records that the 1st Defendant had not actually appeared for dubbing and this was the reason for the Plaintiff to utilise the services of a third person for dubbing the voice. It is seen that the Plaintiff has suffered loss. In his proof affidavit, the Plaintiff had stated that he had suffered loss of Rs.1.5 crores and had filed the suit restricting the loss to Rs.25 lakhs. Even for this, he has not given any further details as to how he arrived at the sum of Rs.25 lakhs. But, it is evident that the Plaintiff has indeed suffered a loss. As already stated above, the service of the Defendants had been completed and there was a representation made on behalf of the Defendants 1 and 2, seeking time to file a written statement on 17.2.2016 and accordingly, time was granted. Further, by order dated 28.3.2016, this court, while setting

exparte the Defendants as there was no representation on behalf of the Defendants, had observed as follows:-

“Accordingly, it is listed today and when the matter was called in the morning, there was no representation on behalf of the Defendants 1 and 2. It was passed over again, called at 12.55 p.m. and even then, there is no representation on their behalf.”

13. It is therefore seen that the 1st Defendant has not come forward to resist the claim of the Plaintiff by letting in legally acceptable denial in the form of written statement. Consequently, this court holds that the Plaintiff is entitled for the damages for the loss on the ground of mental and financial hardship from the 1st Defendant. There being no concrete evidence on the loss suffered by the Plaintiff, this court holds that the decree may be passed against the 1st Defendant only for a sum of Rs.1,00,000/- (Rupees one lakh only) with costs.

14. In the result, this civil suit is decreed against the 1st Defendant for a sum of Rs.1,00,000/- (Rupees one lakh only), with costs. In so far as the Defendants 2 and 3 are concerned, this civil suit is dismissed. Time for payment is three months.

17.11.2016

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - Dr.P.Kalidas

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description	Date
1	Ex.P. 1 (Series)	Payment receipts given to the 1 st defendant	
2	Ex.P. 2	Letter sent by the plaintiff to the President, Tamil Nadu Film Producer's Association	24112007
3	Ex.P. 3	Letter sent by the plaintiff to the President, SICADU	29112007
4	Ex.P. 4	Letter sent by the Joint Secretary to SIFAA to the Prasad Laboratories	29092008
5	Ex.P. 5	Letter sent by the plaintiff to the Director Majith	23042009
6	Ex.P. 6	Payment details as on 14.12.2009 given to the Prasad Lab	
7	Ex.P. 7	Letter sent by General Secretary, SIFAA to the Prasad Laboratory	18122009
8	Ex.P. 8	Letter sent by Prasad Lab to Tamil Nadu Film Producer's Council	21122009
9	Ex.P. 9 to 11	Dubbing call sheet receipts dated 28.12.2013, 29.12.2013 and 30.12.2013 respectively	
10	Ex.P. 12	Statement of accounts from Prasad Lab	31032010
11	Ex.P. 13 to 27	Advertisements given on different dates in various dailies	

1. List of Witnesses Examined on the side of the defendants:-

Nil

2. List of Exhibits Marked on the side of the defendants:-

Nil

17.11.2016

Srcm

C.V.KARTHIKEYAN, J.

Srcm

Pre-Delivery Judgement in
CS.No.527of 2010

17.11.2016
<http://www.judis.nic.in>