

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.12.2016

PRONOUNCED ON: 23.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.928 of 2010

M.Kumar
Proprietor of Aishwarya Films,
Chennai-1 Plaintiff

Vs

N.Karthic Nagarajan,
Proprietor of Indra Films,
Chennai-78 Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1
of Original Side Rules read with Order VII Rule 1 of CPC.

For Plaintiff : Mr.N.Kannan

For Defendant : Mr.R.Selvakumar

JUDGEMENT

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

- a)directing the Defendant to pay the Plaintiff a sum of Rs.41,32,500/- (Rupees forty one lakhs thirty two thousand five hundred only) with 18% interest on the principal amount of Rs.30,00,000/- (Rupees thirty lakhs only) from the date of the plaint till the date of realisation of the amount.
- b)granting permanent injunction restraining the Defendant from releasing the Tamil film MANDHIRA PUNNAGAI.
- c)directing the Defendant to pay the costs of the suits to the Plaintiff.

2. The case of the Plaintiff, in a nutshell, as set out in the plaint is that The Plaintiff, who is the Proprietor of Aishwarya Films, is doing Cinema Film Distribution business, having registration No.18/2007. The Defendant is the Proprietor of M/s.Indra Films and is in the business of producing Tamil Films. The Defendant, for the purpose of producing the Tamil Film MANDHIRA PUNNAGAI, had borrowed a sum of Rs.30,00,000/- from the Plaintiff on 10.10.2008, agreeing to repay the same with interest at 18% p.a. within a period of two months and the Defendant had issued a post dated cheque no.304326, dated 9.12.2008 in favour of the Plaintiff Company for a sum of Rs.30,00,000/- drawn on Axis Bank, Madurai 625001. On 24.11.2008, the Defendant had requested the Plaintiff not to present the cheque immediately. Since the Defendant had been evading repayment of the amount with interest, the Plaintiff had presented the said cheque for encashment on 5.6.2009, which was dishonoured with an endorsement 'Funds Insufficient'. Hence, the Plaintiff had sent a legal notice dated 30.6.2009, demanding the principal amount with interest and subsequently, a rejoinder notice dated 4.8.2009 to the Defendant, which were received by the Defendant, but however, the Defendant did not send any reply nor paid the amount. Hence, the Plaintiff had filed a complaint under

Section 138 of the Negotiable Instruments Act in STC.NO.1394 of 2009 on the file of the Judicial Magistrate II, Madurai and the same is pending. It had been further stated in the plaint that though the Defendant had completed the said Tamil Film, the Defendant had failed to pay the due amount, which comes to Rs.41,32,500/- including interest of Rs.11.32,500/- upto 15.11.2010. The Defendant was planning to release the said Tamil Film on 19.11.2010 or on subsequent dates without settling the dues to the Plaintiff. In such circumstances, this civil suit has been filed for the reliefs as stated above.

3. Though the service had been completed on the Defendant as early as on 23.03.2011, no written statement had been filed by the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set exparte by the order of this court dated 18.3.2013. In the evidence, the Plaintiff had marked Exs.P1 to P5 on 12.04.2013 and examined himself in Chief on 20.7.2015 and he was cross examined by the learned counsel for the Defendant on 11.09.2015. Thereafter, in spite of several opportunities given to the Defendant, the Defendant did not come to forward to let in both oral and documentary evidence.

4. All along it has been the contention of the Plaintiff that the Defendant is wantonly protracting the case for one reason or the other and is not at all interested in prosecuting the case further. It is also evident from the various orders of this court and events, as stated below:-

1. There was a direction of this court on 10.12.2013 to the Defendant to bring up an application to set aside the exparte order dated **18.3.2013**.
2. However, only in 2014, on the representation of the Defendant, by order dated **28.1.2014**, the exparte order dated 18.3.2013 was set aside.
3. By order dated **25.03.2014**, further time was granted till 21.4.2014 to the Defendant to let in evidence subject to payment of cost of Rs.5000/-.
4. Thereafter, further three weeks time was granted for filing the written statement as a last chance by order dated **23.4.2014**.
5. Since there was no representation on behalf of the Defendant on 19.06.2014, the Defendant was set exparte by order dated **19.06.2014**.
6. On 22.7.2014, on the representation that the said cost had been paid on 19.6.2016, further time was extended till 30.07.2014 for filing the written statement, by order dated **22.07.2014**.
7. By order dated **5.8.2016**, this court had imposed a cost of Rs.5000/- on the Defendant as a condition to let in evidence. Though the said cost had been paid, the Defendant did not come forward to let in evidence.

8. By order dated **6.8.2014**, the delay of 1144 days in filing the written statement was condoned.
9. Thereafter, by order dated **6.8.2014**, the written statement dated 24.07.2014 of the Defendant was taken on file.
10. In 2016, on the representation of the Defendant, by order dated **21.10.2016**, a further cost of Rs.10,000/- was ordered to be paid by the Defendant to let in evidence.
11. Again, by order dated **22.11.2016**, time was granted to comply with the condition of payment of cost of Rs.10,000/- till 02.12.2016.
12. Again when the matter was taken up on 2.12.2016, since it was reported that the cost has not been paid, by order dated **2.12.2016**, this court had closed the evidence on the side of the Defendant and ordered the matter to be listed for arguments. Finally, the matter was heard on 8.12.2016 and reserved for judgement.

5. Though the Defendant had filed a written statement that too on 24.07.2014 i.e. after lapse of nearly 4 years, he did not come forward to let in evidence despite several opportunities given to him and hence, his evidence had been closed, since he is not interested in prosecuting the case.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P5 adduced by PW.1, when the evidence of the Defendant had been closed on the Defendant not getting

into the witness box, this Court is of the view that the Defendant is not interested in conducting the case and wantonly protracting the proceedings for one reason or the other and that the plaintiff has proved the suit claim in respect of the relief (a) and (c). In respect of the relief (b), since the suit film had been already released, the same does not survive and accordingly, this civil suit is dismissed in respect of the relief (b). Accordingly, this civil suit is decreed in respect of the relief (a) and (c) with costs. Time for payment is three months.

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

1. P.W.1 — M.Kumar

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

S.No	Exhibit	Description	Date
1	Ex.P. 1	Original cheque issued by the Defendant	091208
2	Ex.P. 2	Written memo issued by the bank	050609
3	Ex.P. 3	Certified copy of the notice issued by the Plaintiff counsel to the Defendant	
4	Ex.P. 4	Acknowledgement for the receipt of the notice by the Defendant	
5	Ex.P. 5	Certified copy of the rejoinder notice sent by the Plaintiff with the postal receipt	

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

Nil

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

Nil

sd/.C.V.K.J
23.12.2016

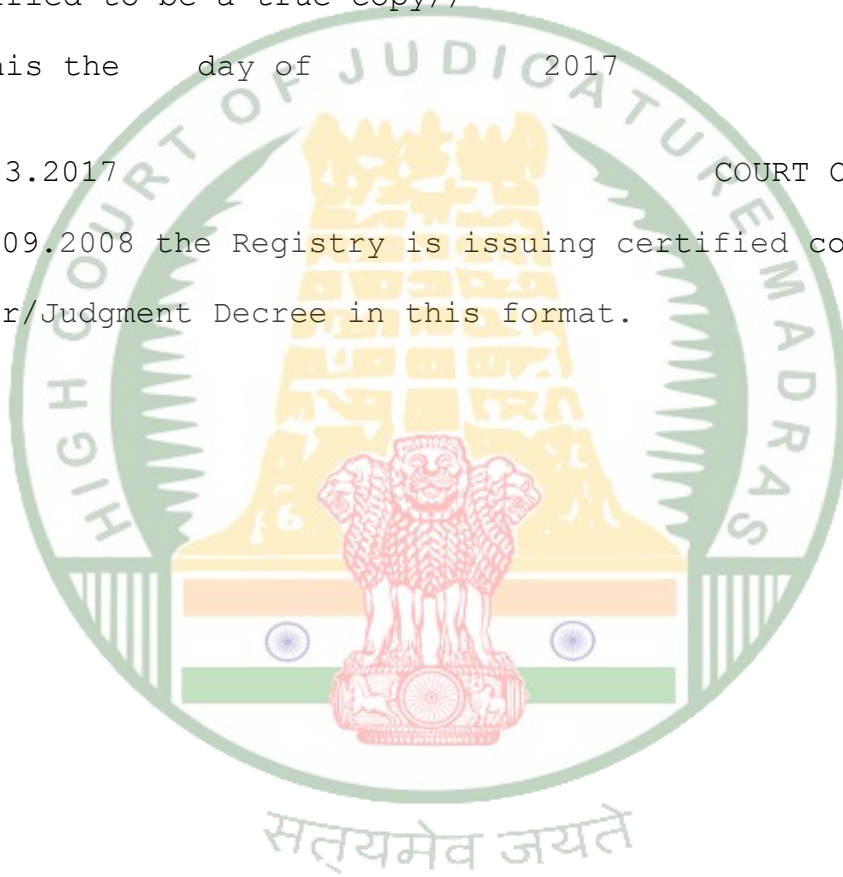
//Certified to be a true copy//

Dated this the day of JUDICATURE 2017

R.s/23.03.2017

COURT OFFICER

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



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