

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

O.S.A.No.28 of 2013

1.M.Chinnuswamy
2.C.Baby

... Appellants

-VS-

1.Max Pro Marketers Pvt. Ltd.,
Rep.by its Managing Director,
R.Shanmughasundaram,
Having its registered office at
1, Kumaran Colony Main Road,
Vadapalani, Chennai - 600 026.

2.R.Shanmughasundaram,
Managing Director,
Max Pro Marketers Pvt. Ltd.,t
1, Kumaran Colony Main Road,
Vadapalani, Chennai - 600 026.

3.Max Pro Entertainers Pvt. Ltd.,
Rep.by its Managing Director,
R.Shanmughasundaram,
Having its registered office at
1, Kumaran Colony Main Road,
Vadapalani, Chennai - 600 026.

4.R.Shanmughasundaram,
Managing Director,
Max Pro Entertainers Pvt. Ltd.,
1, Kumaran Colony Main Road,
Vadapalani, Chennai - 600 026.

5.Thankar Thiraikalam,
 Represented by its Mandate Holder,
 Tankar Bachan @ Thankaraj,
 50, Achutha Nagar, V Street,
 Ekathuthangal, Chennai - 600 097.

6.Thankar Bachan @ Thankaraj,
 50, Achutha Nagar, V Street,
 Ekathuthangal, Chennai - 600 097.

7.M/s.Gemini Industries and Imaging Limited,
 Gemini Color Laboratories,
 28, New Bangaru Colony,
 West K.K.Nagar, Chennai - 600 078.

8.UFO Movies India Ltd.,
 Represented by its Director,
 33/1, Walajah Road,
 Chepauk, Chennai - 600 002.

9.M/s.Real Image Media Technologies Pvt Ltd.,
 Represented by its Director,
 7B, 3rd Street, Balaji Nagar,
 Royapettah, Chennai - 600 014.

... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 9 of Original Side Rules r/w Clause 15 of the Amended Letters Patent of 1865, against the fair and decretal order dated 04.12.2012 passed in A.No.5218 of 2012 in C.S.No.733 of 2012 on the file of the Original Side of the High Court of Madras.

For Appellant	:	Mr.V.Lakshminarayanan
For Respondent Nos.1 to 4, 7 to 9	:	No Appearance
For Respondent Nos.5 & 6	:	Mr.T.V.Krishnamachari

J U D G M E N T

[Judgment of the Court was delivered by S.NAGAMUTHU, J.]

The appellants are the plaintiffs in C.S.No.733 of 2012 on the file of this Court. The said suit has been filed against the defendants for a decree for a sum of Rs.32,00,000/- with interest at the rate of 24% p.a. The suit has been laid on the footing that the second defendant floated a claim on behalf of the first defendant calling for investments by the investors. In pursuance of the said advertisement, according to the plaintiffs, they are invested Rs.10,10,000/- [Rupees Ten Lakhs Ten Thousand Only] more specifically stated in paragraph 3 that this amount was paid to the defendants on several dates. The second defendant thereafter issued a cheque for a sum of Rs.22,00,000/- that was deposited for realisation but it was dishonoured. In those circumstances, claiming the amount under the investment, the plaintiffs have filed the above suit.

2. Pending suit, the appellants / plaintiffs filed Application No.942 of 2012 before the learned Single Judge praying for a direction to the defendants to furnish a security for a sum of Rs.32,20,000/- being the amount claimed for investment. That was dismissed by the learned single Judge. As

against the same, the appellants / plaintiffs have come up with the Original Side Appeal.

3. We have heard the learned counsel for the appellants and the learned counsel for the respondents 5 and 6 and there is no representation for the respondents 3, 4, 7 to 9. We have also perused the records carefully.

4. As already pointed out, in paragraph 3 of the plaint, the plaintiffs have stated as follows:

"the plaintiffs wanting to get advantage of this scheme, like the other innocent and gullible investors, invested Rs.10,10,000/- (Rupees Ten Lakhs and Ten Thousand only). This amount was paid to the defendants on several dates."

5. But no document whatsoever has been filed to make out a *prima facie* case that Rs.10,10,000/- was paid to the defendants. Though it is stated that on several dates, such amount was paid, no details as to when, where and how the said amount was paid, that too, in instalments have been stated. In the absence of such particulars to make out a *prima facie* case and in the absence of any document to prove the said investments, the appellants

are not entitled for the relief sought for.

6. In view of the same, no direction as prayed for could be granted to the defendants to furnish the security. The learned Single Judge has considered all the above grounds and has rightly come to the conclusion that the appellants are not entitled for any relief. We find no infirmity in the said order warranting interference at the hands of this Court.

7. In the result, the Original Side Appeal is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

[S.N., J.] [N.A.N., J.]
21.12.2016

Index : Yes/No
Internet : Yes

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and
N.AUTHINATHAN, J.,

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