

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE R.MAHADEVAN

O.S.A.No.236 of 2016

M/s.Ad Bureau Advertising Pvt. Ltd.
rep. by its Managing Director
Abirchand Nahar
'Rayala Towers'
No.781, Mount Road
Chennai - 600 002. ... Appellant

Vs.

1. M/s.Mediaone Global Entertainment Ltd.
rep. by its Director, Dr.J.Murali Manohar
No.59, Vijayaraghava Road
T.Nagar, Chennai - 600 017.
2. Dr.J.Murali Manohar
Director, M/s.Mediaone Global Entertainment Ltd.
No.A A17, 3rd Street
Anna Nagar, Chennai - 600 040.
3. Latha Rajinikanth ... Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent read with Order XXXVI, Rule 9 of the Original Side Rules against the judgment and decree dated 15.3.2016 in Application No.6842 of 2015 in C.S.No.545 of 2015.

For Appellant : Mr.M.Madhu Prakash
for M/s.AL.Ganthimathi

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The appellant is a film financier and claims to have advanced loans to the first respondent through the process of opening an OD account in the bank by giving security of his

immovable property. The appellant claims that the loans were not paid and this resulted in his instituting C.S.No.545 of 2015. The appellant claimed a decree under Order XII Rule 6 of the Code of Civil Procedure, 1908, on the basis of clear, unambiguous and unequivocal admission stated to be arising by a document filed by the appellant, being an email dated 30.8.2014. This application has been dismissed by the impugned order dated 15.3.2016.

2. The learned counsel for the appellant contends that he is facing proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act from the bank on account of the default in the OD account and that is the reason he was compelled to file an application under Order XII Rule 6 of the said Code. We are afraid that such a submission cannot be accepted for the reason that a decree under Order XII Rule 6 of the said Code cannot be passed because the plaintiff is facing some other proceedings. The requirements of the said provisions have to be met before a decree is passed.

3. The learned Single Judge, while analysing this aspect, has taken note of the fact that the statement of account dated 27.8.2014 sent by the defendants through email dated 30.8.2014 is the basis for the claim of the decree on admission. The stand of the respondents in respect of this application is that out of the sum of Rs.10 Crores advanced, a sum of Rs.9.20 Crores has been repaid to the appellant and that despite the film being a huge loss, the appellant was claiming 12% profit sharing which was inflating the loan amount. The email was stated to be sent at the instance of the appellant for production before the Central Bank of India for further funds to invest in the film and thus it was not to be treated as an admission of liability. In this behalf, the learned Single Judge has opined that the case sought to be set up by the respondents and the circumstances under which the email was sent gave rise to issues which could be determined only at trial and the email could not ipso facto be treated as an unequivocal admission of the liability. There being triable issues, more specifically arising from this plea, not from vacuum but from the interpretation of the terms and conditions of the Memorandum of Understanding regarding profit sharing, trial would have to be conducted.

4. We are in agreement with the aforesaid reasoning of the learned Single Judge and are unable to accept the contention of the learned counsel for the appellant that at this stage itself the respondents first must have established that they have suffered a loss, as that would be a matter of trial. The question being one of profit sharing determined on the basis of losses and profits, a decree cannot be straightaway passed.

We, thus, find no merit in the appeal and accordingly dismiss the same.

Sd/-
Asst.Registrar (CS II)

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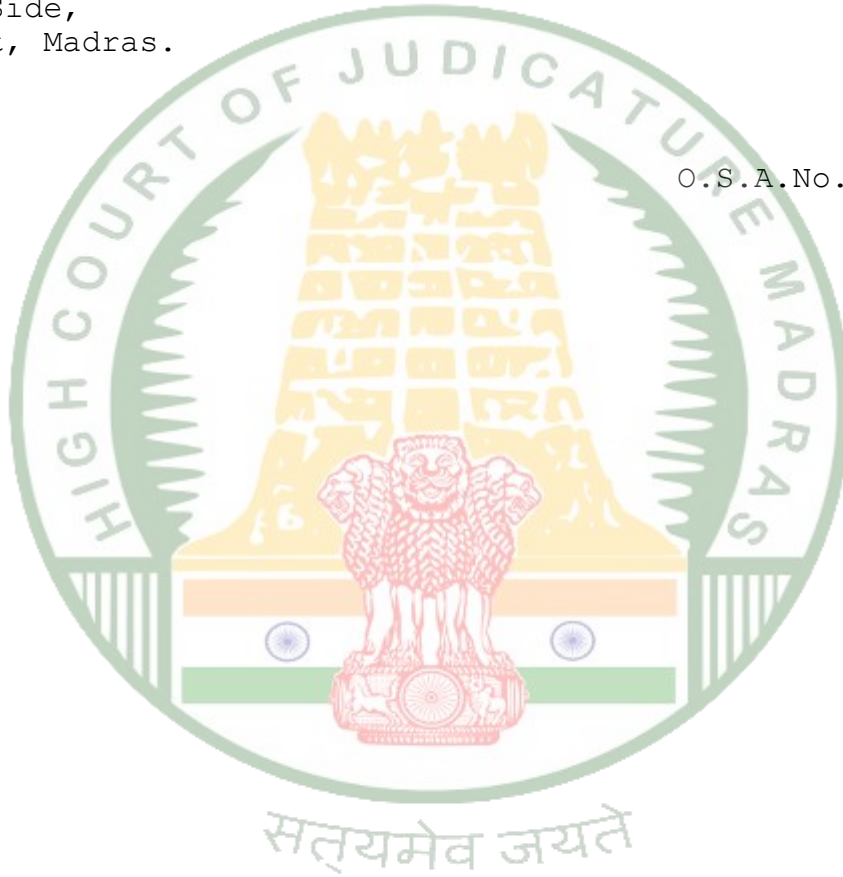
Sub Asst. Registrar

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

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O.S.A.No.236 of 2016



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