

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.64 of 2011

Kasthoori Film, represented by its
Proprietor, Mr.M.Ashok Samraj

.. Plaintiff

.Vs.

1.Cinema Paradise represented by its
Proprietor, Mr.Shakthi Chidambaram

2.Dream World Pictures, represented by its
Proprietor Mr.Kubendiran

..Defendants

The plaint is filed and numbered as Civil Suit under order IV Rule 1 of Original Side Rules r/w Order VII Rule 1 of Civil Procedure Code, praying for a judgment and decree:

a) Directing the defendants to jointly and severally pay to the plaintiff a sum of Rs.85,00,000/- together with interest at the rate of 12% p.a. From the date of the plaint till the date of realization;

b)Directing the Defendants to pay the costs of this suit to the Plaintiff; and

For Plaintiff : Mr.J.SRinivasan

For Defendants : Exparte

JUDGMENT

Suit is filed for recovery of sum of Rs.85,00,000/-(Rupees Eighty five lakhs only) together with interest at the rate of 12% p.a., from the date of the plaint till the date of realization.

1.The plaintiff's case is as follows: Under an agreement dated 28.04.2010, the plaintiff obtained the distribution rights for Salem area and on the same day, Mr.Palaniyappan, a friend of the plaintiff obtained distribution rights for the "Trichy-Tanjore" area for the film "Guru Sishyan". Both the agreements contained a covenant that the 1st defendant would make good any unrealized advance. The plaintiff paid Rs.39 lakhs (Rupees Thirty nine lakhs only) as advance and the said Mr.Palaniyappan paid Rs.41 lakhs (Rupees Forty one lakhs only). After the general release of the film, the plaintiff and the said Mr.Palaniyappan could not realize the advance amount paid by them. The amount that was left unrecovered in the case of the plaintiff was around Rs.31 lakhs (Rupees Thirty one lakhs only) and in the case of the said Mr.Palaniyappan, it was around Rs.36 lakhs.(Rupees Thirty six lakhs only).

2. At the time of release of the said film, to meet the eleventh hour deficit, the plaintiff paid a further sum of a little over Rs.15 lakhs (Rupees Fifteen lakhs only). Mr. Palaniyappan made over the dues under the Distribution Agreement dated 28.04.2010. The 1st defendant is well aware of this transaction. After repeated demands from the plaintiff for refunding the advance amount, the 1st defendant executed an agreement dated 24.11.2010, agreeing to pay the sum of Rs.85 lakhs (Rupees Eighty five lakhs only) promised to settle before the release of his another film "Kavalan". The 2nd defendant has also agreed to pay the said amount directly to the plaintiff. As a result, tripartite letter dated 28.11.2010 was signed by both the defendants. As the amount is not paid, the plaintiff has filed the present the suit. Defendants remained ex-parte. They are not contesting.

3. Defendants remained ex-parte. They are not contesting. On the side of the plaintiff was examined P.W-1. Ex.P-1 to 6 were marked. In his evidence, PW-1 deposed that distribution rights, were given to the plaintiff and one Mr. Palaniyappan also and the 1st defendant agreed to make the good unrealized the advance amount, besides that, 1st defendant has made over the dues to the plaintiff under the Distribution Agreement dated 24.11.2010 and a tripartite

letter dated 28.11.2010. From the evidence of P.W-1 and Ex.P-1 agreement, it is clear that the plaintiff that they have proved the agreement between the parties. The plaintiff has paid a sum of Rs.39,00,000/- (Rupees Thirty nine lakhs only) as refundable distribution amount. The agreement clearly shows that the 1st defendant specifically agreed for refund of unadjusted distribution advances at the end of 45th day from its first and general release of the said picture. Ex.P.2 similar agreement executed by the 1st defendant, specifically relating to Mr.Palaniyappan, also containing similar version, wherein also the first defendant had received advance of Rs.41,00,000/- (Rupees Forty one lakhs only). The Ex.P-3 and 4 receipts were filed to prove the receipt of the advance amounts. As per Ex.P-5 agreement dated 24.11.2010; the first defendant agreed to return a sum of Rs.85,00,000/- (Rupees Eighty five lakhs only) to the plaintiff, 7 days before the release of the Tamil film "Kavalan". As per Ex.P-6 tripartite letter dated 28.11.2010, the 2nd defendant has agreed to settle the amount. These documents have not been disputed. From the above documents, it is clear that the plaintiff established its case for recovery of money. In the absence of any contra evidence, when the documents are established before the Court, the plaintiff has proved its case as per the law.

5. Accordingly, the suit is decreed for a sum of Rs.85,00,000/- (Rupees Eighty five lakhs only) with interest at 6% p.a., from the date of plaint till the date of realization, along with costs.

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Index: Yes/No
Internet: Yes/No

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N.Sathish Kumar, J.,
KP

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