

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)
THURSDAY, THE 23RD DAY OF FEBRUARY 2017
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

A.No.950 of 2017

in

C.S.No.97 of 2017

T.R.Pachamuthu @ T.R.Paarivendhar,
Chancellor,
S.R.M.Group of Institutions,
3, Veerasamy Street,
West Mambalam,
Chennai-600 033.

...Applicant/Plaintiff

Vs

1.Vendhar Movies,
Rep by S Madhan,
Office at Basement of Doshi Garden,
Vadapalani,
Chennai-600 026.

2.S.Madhan,
No.14, Mango Block,
Appasamy Arcade,
Opp AVM Theatre,
Vadapalani,
Chennai-600 026.

...Respondents/Defendants

3.Super Goods Films,
Rep by R.B.Choudhary,
32, North Boag Road,
T.Nagar,
Chennai-600 017.

...Garnishee/Third Party

Application praying that this Hon'ble Court be pleased to pass a Prohibitory Order Prohibiting the 3rd Respondent Garnishee part with the sum of Rs.6 Crores or any money due to 1st and 2nd Respondents or

anyone claiming under them, and Direction 3rd respondent Garnishee to deposit the same into court in the suit.

This application coming on this day before this court for hearing the court made the following order:

Applicant is the plaintiff. Pending the suit, the present application has been filed, seeking an order of prohibitory order, prohibiting the third respondent Garnishee part with a sum of Rs.6,00,00,000/- [Rupees Six Crores only] or any money due to first and second respondents or anyone claiming under them and direct the third respondent garnishee to deposit the same into the Court, pending disposal of the suit.

2. According to the applicant, he is the Chancellor of S.R.M. Group of Institutions, which runs several institutions viz., Engineering and Medical Colleges. The second respondent, who is the proprietor of the first respondent joined the applicant's political party 'Indhiya Jananayaga Katchi' (IJK) and he was using the name of the applicant under the banner called 'Vendhar Movies' and also published his photograph, despite his objections. In February 2016, the second respondent was removed from the political party and thereafter he did not meet him, so far. While so, the applicant became aware of the fact that the second respondent by playing fraud on the students, is said to have received Rs.75,00,00,000/- [Rupees Seventy Five Crores only] and he was missing from 30.05.2016.

3. The applicant would further claim that he lodged a complaint against the second defendant and based on the complaint of the students, the applicant was also implicated and to protect the reputation of the institutions, he deposited Rs.75,00,00,000/- [Rupees Seventy Five Crores only] as a pre-condition for releasing him, on bail. The applicant has alleged that the second defendant has been producing the films, by duping people and providing finance for production of the films.

4. The third respondent has filed a counter affidavit refuting the allegations made in the affidavit.

5. Mr.V.T.Gopalan, learned Senior Counsel for the applicant would submit that on 27.12.2016, it was reported in the newspaper that the third respondent has agreed to pay Rs.6,00,00,000/- [Rupees Six Crores only] to the second respondent for getting his consent for release of the film "Mottai Siva Ketta Siva". The learned Senior Counsel would further submit that the second respondent is still in the judicial custody and an order was passed, directing him to deposit Rs.10,00,00,000/- [Rupees Ten Crores only] to come out on bail and so to collect the amount and cheat the other financiers, now a false claim is made by the third parties. It is further contended that admittedly the applicant has deposited Rs.75,00,00,000/- [Rupees Seventy Five Crores only] for the fraud allegedly committed by the second respondent and for no fault of the applicant. So, to protect the interest of the applicant, a direction may be issued to the third respondent to deposit Rs.6,00,00,000/- [Rupees Six Crores

only] to the credit of the suit.

6. Per contra Mr.E.Prabhu, learned counsel for the third respondent would submit that the third respondent has purchased remake rights of the Telugu film "Pataas" by an agreement dated 20.08.2015 from M/s.Nandamuri Tharaka Ramarao Arts. Subsequently, the third respondent entered into an agreement with the second respondent, dated 06.11.2015 for production of a movie titled "Mottai Siva Ketta Siva" and as per the agreement, the second respondent had to pay Rs.1,63,00,000/- [Rupees One Crore and Sixty Three Lakhs only] to the third respondent and the profits were to be shared in a ration of 50:50. The learned counsel would further submit that the second respondent had borrowed about Rs.20,58,00,000/- [Rupees Twenty Crores and Fifty Eight Lakhs only] from the financiers to meet out the expenses for production of the film and also executed the first charge of the movie with the financiers and the same have been registered with M/s.Gemini Colour Lab.

7. The learned counsel would further submit that the second respondent had entered into an agreement, dated 04.04.2016 with M/s.Sivabalan Pictures for distribution rights in Tamil Nadu, Chittor and Pondicherry, however he was missing from 29.05.2016. But, as per the agreement dated 06.11.2015, the second respondent paid only Rs.31,50,000/- [Rupees Thirty One Lakhs and Fifty Thousand only] and he yet to pay Rs.1,31,50,000/- [Rupees One Crore Thirty One Lakhs and Fifty Thousand only] to the third respondent. Since the third respondent has not holding the money of the respondents 1 and 2,

there cannot be any direction against the third respondent to deposit the amount.

8. The learned counsel would further submitted that the newspaper report relied on by the learned Senior Counsel for the applicant is false and in fact Mr.Sivabalan, Proprietor of M/s.Sivabalan Pictures has lodged a complaint against the second respondent alleging that he had received Rs.6,00,00,000/- [Rupees Six Crores only] from him and also cheated him.

9. The applicant has filed a reply affidavit stating that the second respondent is a producer of the movie "Mottai Siva Ketta Siva" and now an attempt is being made by the respondents to share the booty and to move the money payable to Madhan, away from reach of this Court and the stand of the respondents and the and their partners are dubious and fishy.

10. Heard both sides and perused the materials available on record.

11. The applicant has instituted the suit for permanent injunction restraining the defendants, their men or agents, or any one claiming under the defendants from in any way using the photo or name of the plaintiff "Paarivendhar", in full or part, in their banner or any venture and for permanent injunction from in any way releasing, distributing and exhibiting / publishing the movie titled "Mottai Siva Ketta Siva"

12. The case of the applicant is that when the second defendant was a member of the political party of the applicant viz., "IJK" and the second respondent had used the name of the applicant and published the photos of the applicant and his name in the banner called "Vendhar Movies", which was objected by him. It is his further case that he was falsely implicated in a criminal case in Crime No.143 of 2016 and he deposited Rs.75,00,00,000/- [Rupees Seventy Five Crores only] as a pre-condition in coming out on bail. According to the applicant, the third respondent had agreed to pay Rs.6,00,00,000/- [Rupees Six Crores only] to the respondents 1 and 2 for release of the movie "Mottai Siva Ketta Siva", which was also reported in Dinamalar Newspaper on 27.12.2016.

13. The learned Senior Counsel for the applicant mainly relying on the newspaper and seeks direction to the third respondent to deposit Rs.6,00,00,000/- [Rupees Six Crores only] to the credit of the suit. The learned counsel for the third respondent would submit that there was an agreement between the respondents 2 and 3 on 06.11.2015 for production of the movie "Mottai Siva Ketta Siva" and as per the agreement, the second respondent had to pay Rs.1,63,00,000/- [Rupees One Crore and Sixty Three lakhs only] to the third respondent as he is an assignor for the movie and the second respondent is yet to pay Rs.1,31,00,000/- [Rupees One Crore and Thirty One Lakhs only]. The newspaper report is incorrect and the third respondent is not holding any amount of the second respondent much less Rs.6,00,00,000/- [Rupees Six Crores only] as alleged by the applicant.

14. It is settled law that a direction could be given to the garnishee for deposit of the amount only if it is proved that the amount of the respondents are lying with the garnishee. When it is disputed by the garnishee, the applicant has to establish the same. Otherwise, a pro-order cannot be issued against the garnishee. In **1996 (1) LW 455 (cited supra)**, a Division Bench of this Court has observed that Garnishee is a person who is bound to pay certain amount to the defendant or one who is in possession of money belonging to the defendant. Liability to pay the debit due to the defendant is necessary.

15. In the case on hand, though the applicant has alleged that the third respondent has agreed to pay Rs.6,00,00,000/- [Rupees Six Crores only] to the respondents 1 and 2 for release of the movie, there is no material placed to establish his case, except the newspaper report. Therefore, this Court is of the considered opinion a direction sought for by the applicant cannot be allowed. In the result, the application is dismissed.

Sd/.M.K.K.S.J
23.02.2017

//Certified to be a true copy//

Dated this the day of 2017.

MD/24.02.2017

COURT OFFICER

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