

Reserved On: 16.3.2017
Delivered on: 11.4.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.8 of 2004
and CMP.No.71 of 2004

Inderchand Jain

... Appellant/2nd defendant

Vs.

1. Vishvadarshan Distributors,

Rep. By its Partner Mr.H.Anraj,

.. 1st respondent/plaintiff

2. M/s. Bhavani Cine Productions,

Rep. by its Partner Mr. Inderchand Jain

3. R.V. Rajan

4. Dr. Kesava Ram

.. Respondents/defendants 1,3,4

Prayer:- This Appeal suit has been filed under Section 96 C.P.C., against the judgment and decree of the Hon'ble IV Addl. Judge, City Civil Court at Chennai dated 13.08.2002 and made in O.S.No. 4698 of 1996.

For Appellant : Mr. Nitin Mandia

For R1 : No Appearance

for R3 and R4 : Mr.G.Mohanram

JUDGMENT

Aggrieved over the judgment and decree of the trial Court in decreeing the suit partly for a sum of Rs.1,88,728.69 with interest at the rate of 6% per annum, the 2nd defendant has filed the present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. Brief facts of the case of the plaintiff are as follows:

(i) The plaintiff is a registered firm, carrying on business as Film Distributor. The defendants are carrying on the business at Tiruttani. The defendants are the owners of all the rights of the picture "MOOKKANANG KAYIRU" (Tamil). On 16.02.1985, the defendants agreed to appoint the plaintiff as sole and exclusive distributor of the said picture for the areas of Madras City, North Arcot, South Arcot and Chinglepet areas (NSC) on commission basis and received a sum of Rs.2,00,000/- towards advance. The plaintiff is entitled to distribution commission of 15% on the

realization by way of exploitation of picture in the said areas.

(ii). The Plaintiff has paid a sum of Rs.2.60 Lakhs towards the above said movie. Apart from the above said amount, the defendant also received another sum of Rs.1,50,000/-. The Plaintiff also spent a sum of Rs.1,22,725.55 towards expenses for exploitation. After giving credit to realizations made and after adjustment of commission, still a sum of Rs. 3,38,728.69 is due and payable by the defendants. Inspite of repeated demands made by the plaintiff and even after receipt of the legal notice dated 21.3.1987, the defendants failed to pay the amount. Hence the suit.

4. The second Defendant filed a written statement, stating that Dr.P.K.Kesavaram was the Managing Partner of the first defendant firm and hence, the first defendant ought to have been represented by him in the plaint. Since the entire cause of action arose outside the jurisdiction of this court, the suit is not maintainable. Though the plaintiff admitted the agreement dated 16.2.1965, he failed to produce account of collection made by him. Further, though the agreement stipulates period of five

years, the plaintiff filed the suit within 2 years from the date of agreement. The defendants also denied the statement that they received another sum of Rs.1,50,000/-. It is also denied that the plaintiff spent a sum of Rs.1,22,725.55. It is stated that the plaintiff has not submitted any account of the amount realised by him on exploitation of the picture. Hence, the defendants prayed for dismissal of the suit.

5. On the basis of the above pleading, the learned Trial Judges framed the following issues:

“1. Whether this court has jurisdiction to entertain the suit?

“2. Whether the suit is filed in Pre-mature stage?

“3. Whether the plaintiff has paid a sum of Rs.1,50,000/- to the defendants?

“4. To what relief, the plaintiff is entitled to ?”

6. On the side of the plaintiff the Manager of the plaintiff

Firm was examined as P.W1 and Exs.A1 to A7 were marked. On the side of the defendants, 2nd defendant was examined as D.W1 and Ex.D1 was marked.

7. On the basis of the evidence and materials available on record, the learned trial Judge has decreed the suit partly for a sum of Rs.1,88,728.69/- with interest at the rate of 6% per annum and dismissed the suit in respect of Rs.1,50,000/- claimed by the plaintiff. As against the said judgment and decree, the 2nd defendant filed the present appeal.

8. It is the main contention of the learned counsel for the appellant/2nd defendant that an agreement dated 16.02.1985 was entered into between the parties, wherein it is clearly agreed by the plaintiff / 1st respondent that he was given a right to exploit the picture "MOOKKANANG KAYIRU" for a period of 5 years from the date of 1st release in the City and NSC areas in a commission basis. Whereas, the suit has been filed within 2 years from the date of entering into an agreement. Hence, it is submitted by the learned counsel for the appellant/2nd defendant

that the suit itself is not maintainable.

9. It is the further contention of the learned counsel for the appellant/2nd defendant that the accounts relied on by the plaintiff in EX.A2 has not been proved in the manner known to law. According to the learned counsel, P.W.1 is only the Manager of the plaintiff's Company and he has not personally acquainted in managing the account. Ex.A2 is only Xerox copy and the same is not supported by any ledgers, vouchers and other relevant documents. Hence, it is submitted that Ex.A2 has not been proved in the manner to law and the same cannot be sufficient to prove the case of the defendants.

10. It is submitted by the learned counsel for the appellant/2nd defendant that the learned trial Judge, without considering Exs.A1 and A2, has passed the decree. It is also submitted by the learned counsel that certificate of registration of the Firm is not filed before the Court and hence, the suit is barred under Section 69 (2) of the Partnership Act. According to the learned counsel, the mandatory conditions set out in the above section are not complied with by the plaintiff. Hence, it is

the submission of the learned counsel for the appellant/2nd defendant that the suit filed by the plaintiff is not maintainable. Thus, the learned counsel for the appellant/2nd defendant prayed for allowing the appeal.

11. The respondents 2 to 4 supported the contention of the learned counsel for the appellant/2nd defendant.

12. There is no representation on behalf of the first respondent/plaintiff.

13. In the light of the above submissions, the points that arise for consideration in this appeal are as follows:

1. Whether the suit filed before the expiry of the contract period is maintainable for recovery of the alleged due from the defendants?
2. Whether the plaintiff has proved their accounts before the court of law properly?

Points 1 and 2:

14. The suit itself is laid for recovery of a sum of Rs.3,92,926.49/-. The main contention of the plaintiff is that they obtained negative rights of the film "MOOKKANANG KAYIRU" for distribution in the Madras City and NSC areas on commission basis and they also advanced a sum of Rs.2,60,000/- to the defendants. Only they realised a sum of Rs.1,22,725.55 p towards expenses for exploitation and after giving proper credit, they are entitled to the suit amount. Further, the plaintiff also advanced another sum of Rs.1,50,000/-.

15. The execution of the agreement for giving negative rights of the film "MOOKKANANG KAYIRU" to the plaintiff, is not disputed. On a careful perusal of EX.A1 dated 16.02.1985, it is seen that the defendants have entered into an agreement, agreeing to appoint the plaintiff as a sole and exclusive distributor for distribution, execution and exploitation rights of their picture "MOOKKANANG KAYIRU". Clause (1) of the

agreement stipulates that, in fact, the plaintiff was given negative rights for the above picture for the specific period of 5 years, from the date of its first release in the cities and NSC areas on commission basis. It is also agreed that the plaintiff has exploited such movie and hence, he is entitled to 15% commission on net realization, apart from the publicity expenses.

16. It is also admitted by the defendants that they received a sum of Rs. 2,60,000/- towards advance for giving negative rights in favour of the plaintiff. When Clauses 1 to 3 in Ex.A1 read together, it is clear that negative right for the film "MOOKKANANG KAYIRU" was given to the plaintiff for distribution, execution and exploitation of the film in the Madras City and NSC areas. It is also agreed between the parties that on realization of the collection from the above picture, the plaintiff is entitled to recover a deposit amount paid by them along with commission of 15 % on net realisation.

17. It is specifically agreed between the parties that such a distribution right was given for a period of 5 years. Having

entered into an agreement to distribute the film for a period of 5 years, without waiting for the expiry of such period, the suit itself has been filed on November 18, 1987, i.e. within 2 years. If really, the movie has been distributed for 5 years and that the plaintiff could not recover his deposit and commission, as agreed in the agreement, then it could be stated that the suit is maintainable.

18. Further, there is no pleadings in the entire plaint to show that the movie "MOOKKANANG KAYIRU" in which the negative right given to the plaintiff was not doing well at the relevant time. Whereas DW1, in his evidence has stated that the movie was doing well and running for many days, even in the City. The aforesaid evidence was not even challenged. In any event, as discussed above, there is no evidence whatsoever, available on the side of the plaintiff to show that collection of the movie was so poor and hence, they they could not get their deposit amount as well as commission. In the absence of any evidence to prove the above fact, now the plaintiff cannot contend that they are entitled to get back the amount of

Rs.2,60,000/-, which was paid as a security deposit.

19. In view of the above stated position, this court is of the view that the suit filed within a period of two (2) years from the date of agreement for recovery of deposit amount is not at all maintainable. If the movie has been distributed for 5 years and exploited fully for the 5 years as agreed, then the question of recovery would arise. Since the same has not been done, this court is of the view that the suit is not maintainable for recovery of the amount.

20. Insofar as EX.A2, accounts said to have been maintained by the plaintiff company, is concerned, it is to be noted that P.W1, who is the Manager of the plaintiff Firm was examined. In the entire examination, except stating that they paid a sum of Rs.2,60,000/- and a sum of Rs.1,50,000/- separately, he has not even spoken what was the nature of realization from the above picture. His cross examination clearly shows that he has not maintained any account. The entire evidence of P.W.1 clearly shows that he has no personal knowledge about EX.A2 accounts.

21. When Ex.A2, statement of accounts, is carefully analysed, it is clear that the same was prepared only in the later date. The first page is the letter dated 24.11.1986 said to have been written to the defendant. Further, the first page appended in Ex.A2, is only xerox copy of the Bill showing accounts and the original has not seen the light of the day. Similarly the second page is a carbon copy. Absolutely there is no evidence to show that who has prepared those accounts. All pages appended in Ex.A2 are only carbon copies and no one has signed in those copies. No doubt, entries in the books of accounts regularly made in the course of business are relevant, whenever they referred the matter to the Court. But such statement alone is not sufficient to fasten the liability on the person. To fasten liability against any person based on the so called accounts, it must be established by the plaintiff that the entries were made in the regular course of business and the same were properly maintained. Admittedly, in Ex.A2 accounts, some of the pages are xerox copies and the same have not even been signed. No ledgers, vouchers and other relevant documents were filed before

the court of law to prove such entries. Therefore, merely on the basis of Ex.A2, particularly the xerox and unsigned copies, it is very difficult to fasten the liability on the defendants. Absolutely, there is no corroborative evidence in respect of Ex.A2. In the absence of producing any ledger and voucher and the particulars with regard to the person, who has maintained those accounts, Ex.A2 cannot be given any importance in the eye of law. Therefore, the learned trial Judge, relying upon Ex.A2 and decreeing, the suit is not on proper appreciation of the evidence.

22. It is further to be noted that in the plaint itself, it is pleaded that the plaintiff is a registered Firm. Except filing the copy of the notice sent by the plaintiff to the defendants under Ex.A1 and A2, no other documents, whatsoever, have been filed to prove the fact that the person, who filed the instant suit, is also partner in the registered Firm at the relevant time. Two mandatory conditions stipulated under Section 69 (2) of the partnership are that the Firm should be registered and the person suing must be shown as a partner in the Registrar of Firm. In this case, absolutely there is no evidence to show that the partnership

Firm was registered and the name of the person, who filed the plaint, appears in the registration of firm. This aspect would also go against the plaintiff.

23. In any event, the plaintiff has failed to establish the accounts to fasten the liability on the defendants. That apart, having agreed to distribute the film for 5 years, the plaintiff filed the suit within 2 years, i.e. prior to the expiry of the agreement period. On that score itself, the suit is not maintainable. Accordingly these points are answered.

In the result, the appeal is allowed with cost and the judgment and decree dated 13.08.2002 passed by the IV Additional Judge, City Civil Court at Chennai in O.S.No.4698 of 1996 is set aside.

11..04.2017

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To

IV Additional Judge,
City Civil Court
Chennai.

N.SATHISH KUMAR, J.
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A.S.No. 8 of 2004

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