

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**C.S.No.49 of 2003**

Mr.Jaswant Chand ... Plaintiff

Versus

1. M/s.G.V.Films Limited,
"Sujatha Centre"
No.4, Seshadri Road,
Alwarpet, Chennai 600 018.

2. Prasad Film Laboratories
No.58 (Old No.22) Arunachalam Road,
Saligramam, Chennai 600 093. ... Defendants

Plaint filed under Order IV, Rule 1 of Original Side Rules read with
Under Order VII Rule 1 of Civil Procedure Code and praying to pass a
judgment and decree:

- a) directing the 1st defendant to pay a sum of Rs.2,95,00,000/-
together with interest at the rate of 36 per cent per annum from
the date of the plaint till the date of realisation;
- b) for a permanent injunction restraining the defendants 1 and 2,
their men, agents, servants etc from releasing the Tamil Film
"Shokka Thangam" starring Vijaykant and others directed by
K.Bhagyaraj throughout India as well as overseas as advertised in
the newspapers Dinakaran and Daily Thanthi both dated
12.01.2003 without settling the dues to the plaintiff as
contemplated under the agreement dated 19.03.2002;

c) directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.S.Samin S.Shah
for Mr.M.Vijaya Kumar

For Defendants : No appearance

J U D G M E N T

The plaintiff, who is the financier, has come forward with the suit for recovery of a sum of Rs.2,95,00,000/- with interest at the rate of 36% per annum from the date of plaint till the date of realization.

2. The brief averments in the plaint are as follows:

According to the plaintiff, the first defendant-Company, which is engaged in production of cinematographic films had approached the plaintiff seeking finance for their upcoming film "Shokka Thangam". The plaintiff agreed to advance a sum of Rs.2,50,00,000/- and upon such acceptance by the plaintiff an agreement dated 19.03.2002 was entered into between the plaintiff and the first defendant. The plaintiff advanced a sum of Rs.2,50,00,000/- to the first defendant on 19.03.2002. It was proposed to release the movie during August 2002. The first defendant also had agreed to pay the loan amount with interest at 36% per annum, before the release of the said picture. The first defendant-Company also gave a letter to the 2nd defendant, viz. Prasad Film Laboratories,

undertaking that the defendants will not deliver the said picture to any party till such time the entire amount financed by the plaintiff is paid over to him with interest. Clause 6 of the agreement also provides that the financier viz. the plaintiff will have the first charge over the picture. The plaintiff would claim that despite repeated demands, the first defendant did not repay the money, however, attempted to release the picture, during January 2003. This has forced the plaintiff to come forward with the present suit for recovery of the money due under the agreement and for permanent injunction restraining the defendants 1 and 2 from releasing the picture, named "Shokka Thangam" in India as well as overseas as advertised in the newspapers Dinakaran and Daily Thanthi dated 12.01.2003.

3. The plaintiff would claim that M/s.Asian Capital Consolidates & Holdings Pvt. Ltd., had filed a suit against the 1st defendant in CS No.523 of 2001 for recovery of money and the said suit was dismissed by this Court on 14.08.2001. The appeal in OSA No.295 of 2001 was filed by the plaintiff in CS No.523 of 2001 aggrieved by the said dismissal. Pending the said OSA, the 1st defendant attempted to release the picture without reference to the claim of the present plaintiff by entering into a compromise with the said M/s.Asian Capital

Consolidates & Holdings Pvt. Ltd. Hence, the plaintiff had filed the CMP No.808 of 2003 seeking to implead himself in the said appeal. On 14.01.2003, a compromise was entered into between the plaintiff herein and the 1st defendant, under which the 1st defendant undertook to pay a sum of Rs.3,00,00,000/- in full and final settlement of the claim of the plaintiff. As per the said compromise, a sum of Rs.75,00,000/- was to be paid on or before 13.01.2003; a sum of Rs.25,00,000/- was to be paid by 25.01.2003 and the balance was to be paid before 31.03.2003 and it was agreed by the parties that the picture will be released only after settling the entire amount to the plaintiff. The 1st defendant paid a sum of Rs.65,00,000/- on 14.01.2003, but failed to comply with the terms of the compromise entered into in the appeal by paying the remaining amount as per the time line fixed in the compromise.

4. Subsequently, the 1st defendant has filed a suit in CS No.822 of 2005 seeking to cancel the compromise decree in CS No.49 of 2003 to the extent of Rs.1,56,96,984/- and also sought for a consequential declaration declaring that the equitable mortgage created by the plaintiff in favour of the defendant registered on 10.02.2003 over its immovable property as null and void. It also claimed a sum of Rs.71,07,726/- against the plaintiff. The 1st defendant also filed an application in

Application No.3340 of 2006 for setting aside the compromise decree dated 27.01.2003. The compromise decree was eventually set aside by this Court on 31.07.2006, leaving the suit to be decided on merits.

5. The 1st defendant has filed the written statement. Issues were framed by this Court on 04.02.2011 and the matter was referred to the Additional Master. Despite several adjournments before the Additional Master, the first defendant did not appear to prosecute the suit, in fact the plaintiff was examined as P.W.1 in chief on 27.02.2012 and 18.04.2012 and he was partly cross-examined on 04.09.2012. Thereafter, the counsel for the 1st defendant reported no instruction. Hence, the Additional Master referred the suit back to the Court

6. When the matter was listed before the Court, the learned counsel appearing for the 1st defendant in CS No.49 of 2003 and the plaintiff in CS No.822 of 2005 reported that they returned the papers even on 07.05.2016. No other counsel had entered appearance. This Court had set the defendant set *ex-parte* on 13.12.2017 and the suit filed by the 1st defendant in CS No.49 of 2003, viz. CS No.822 of 2005 was also dismissed for non prosecution on the same day. The plaintiff has been examined as P.W.1, he has filed a proof affidavit and Exhibits

P1 to P39 have been marked. Ex.P1 is the Finance Agreement, Ex.P2 is the Laboratory letter and Ex.P3 is the Confirmation letter. Exs.P6 to P30 are 25 pronotes each for Rs.10,00,000/-. Ex.P31 is the Statement of Account filed by the plaintiff.

7. From the above documents, and the oral evidence of the plaintiff it is seen that the plaintiff has established the borrowing. There is no contra evidence available, to discredit the evidence of P.W.1. Even in the Cross examination nothing has been elicited to show that the case of the plaintiff is not reliable. The execution of the promissory notes by the Director of the 1st defendant is not denied, hence I find that the plaintiff has proved the borrowing. The plaintiff has claimed 36% interest on the ground, it is a Commercial Transaction. Even if the suit transaction is a Commercial Transaction, In ***Alka Bose v. Parmatma Devi & Ors***, reported in **2009 (2) SCC 582**, the Hon'ble Supreme Court has held that Courts have discretion to interfere with the contractual rate of interest. However, the plaintiff is entitled to the contractual rate of interest till the date of filing of the suit. The plaintiff has come forward for recovery of the sum of Rs.2,95,00,000/- due as on 13.06.2003.

8. Considering the facts and circumstances of the case, I am of

the considered opinion that the *pendente lite* interest could be reduced to 12% per annum from the date of suit till date of realization. The plaintiff has filed the suit for recovery of sum of Rs.2,95,00,000/- due on 13.01.2003. On 14.01.2003, the plaintiff has received a sum of Rs.65,00,000/- from the 1st defendant. So the amount due as on 14.01.2003 would be Rs.2,30,00,000/-. Therefore, the plaintiff would be entitled to 12% interest on Rs.2,30,00,000/- from the date of suit till date of realization.

9. In fine the suit is decreed for a sum of Rs.2,30,00,000/- with interest at 12% per annum on the said sum from the date of suit till date of realization with proportionate costs as against the 1st defendant, the suit against the 2nd defendant will stand dismissed.

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Index:Yes/No

Internet: Yes/No

Speaking Order/Non speaking order

List of the witnesses examined on the side of the plaintiff:

P.W.1

Jaswant Chand

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex.P1	19.03.2002	The finance agreement
2	Ex.P2	-	The laboratory letter
3	Ex.P3	22.03.2003	The confirmation letter
4	Ex.P4	12.01.2013	The paper publication in Dinakaran
5	Ex.P5	19.03.2002	The Pronote
6	Ex.P6	19.03.2002	The another Pronote
7	Ex.P7	19.03.2002	The another Pronote
8	Ex.P8	19.03.2002	The another Pronote
9	Ex.P9	19.03.2002	The another Pronote
10	Ex.P10	19.03.2002	The another Pronote
11	Ex.P11	19.03.2002	The another Pronote
12	Ex.P12	19.03.2002	The another Pronote
13	Ex.P13	19.03.2002	The another Pronote
14	Ex.P14	19.03.2002	The another Pronote
15	Ex.P15	27.09.2002	The another Pronote
16	Ex.P16	27.09.2002	The another Pronote
17	Ex.P17	27.09.2002	The another Pronote
18	Ex.P18	27.09.2002	The another Pronote
19	Ex.P19	27.09.2002	The another Pronote
20	Ex.P20	06.11.2002	The another Pronote
21	Ex.P21	08.11.2002	The another Pronote
22	Ex.P22	08.11.2002	The another Pronote
23	Ex.P23	09.11.2002	The another Pronote
24	Ex.P24	13.11.2002	The another Pronote
25	Ex.P25	19.12.2002	The another Pronote
26	Ex.P26	19.12.2002	The another Pronote
27	Ex.P27	06.01.2013	The another Pronote
28	Ex.P28	06.01.2013	The another Pronote
29	Ex.P29	07.01.2013	The another Pronote
30	Ex.P30	09.01.2013	The another Pronote

Sl. No.	Exhibits	Date	Description of Documents
31	Ex.P31	-	The Statement of account
32	Ex.P32	14.07.2004	Memorandum of Understanding
33	Ex.P33	22.07.2004	The photocopy of the letter
34	Ex.P34	16.08.2004	The letter
35	Ex.P35	-	The copy of affidavit alongwith docket order in IA.8820/2004
36	Ex.P36	23.08.2004	The office copy of the legal notice with postal acknowledgement cards (6 Nos)
37	Ex.P37	-	The Photocopy of MOU
38	Ex.P38	21.12.2005	The letter
39	Ex.P39	21.12.2005	The letter

List of the witnesses examined on the side of the defendants: **Nil**

List of Exhibits marked on the side of the defendants:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex.D1 series	17.01.2005	The summon to witness the first defendant dated 17.01.2005 alongwith letter dated 17.01.2005 from Income Tax Depart.

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R.SUBRAMANIAN, J.

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To

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



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