

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06th DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. No.305 of 2018

in

C.S. No.198 of 2018

Mr.William Alexander,
Proprietor, M/s.Picture Box Company,
No.9/17, Club Road,
Near Shree Mithai,
Chetpet, Chennai-600 031. ... Applicant/Plaintiff

-Versus-

1. Mrs.Fathima Vijay Antony,
Proprietrix, M/s.Vijay Antony Pictures,
No.86/87, Third Street,
SBI Colony, Saligramam,
Chennai-600 093.
2. M/s.Vijay Antony Film Corporation Pvt. Ltd.,
Registered Office at
No.38, Arcot Road,
Vadapalani, Chennai-600 026
rep. by its Director,
Mrs.Fathima Vijay Antony
also at No.86/87, Third Street,
SBI Colony, Saligramam,
Chennai-600 093.
3. Mr.Vijay Antony, Director,
M/s.Vijay Antony Film Corporation Pvt. Ltd.,
No.38, Arcot Road, Vadapalani,
Chennai-600 026 also at
No.86/87, Third Street,
SBI Colony, Saligramam,
Chennai-600 092. ... Respondents/Defendants

Original Application praying that this Hon'ble Court be pleased to pass an order of ad-interim injunction restraining the respondents/defendants 1 to 3 from releasing the Movie "Kaali" either by themselves or under any other banner or through their agents, servants, employees or any other Distributor without settling the claim of the plaintiff pending disposal of the suit.

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

This application has been filed by the Plaintiff in the suit, seeking an order of interim injunction, restraining the Defendants 1 to 3, from releasing the movie 'Kaali', either by themselves or under any other channel or through their agents or any other distributor, without settling the claim of the Plaintiff, pending disposal of the suit.

2. The Plaintiff, William Alexandar, has filed the suit, against three Defendants, namely, (1) Fathima Vijay Antony, Proprietrix, M/s.Vijay Antony Pictures, (2) M/s.Vijay Antony Film Corporation Private Limited, represented by its Director, Fathima Vijay Antony and (3) Vijay Antony, Director, M/s.Vijay Antony Film Corporation Private Limited.

3. The suit has been filed, seeking to pass a judgement and decree, for the following reliefs:-

a) To pay the Plaintiff a sum of Rs.5,79,05,211/- (Rupees five crores seventy nine lakhs five thousand and two hundred and eleven only) together with interest at 18% p.a. from 16.03.2018 till the date of realization in full.

b) For costs of the suit.

4. The case of the Plaintiff as set out in the plaint is as follows:-

a. The Plaintiff, William Alexandar, is the

Proprietor of M/s.Picture Box Company. The 1st Defendant, Fathima Vijay Antony, is carrying on business under the name and style of M/s.Vijay Antony Pictures. The 2nd Defendant is M/s.Vijay Antony Film Corporation Private Limited, represented by the 1st Defendant. The 3rd Defendant is Vijay Antony, Director, M/s.Vijay Antony Film Corporation Private Limited. The Plaintiff is running a distribution Company under the name and style of Picture Box Company, as its Proprietor. He is in the business of distributing films, especially Tamil films for the last 3 years. The 1st Defendant is in the business of producing Tamil films. The Defendants 1 and 3 are the Directors of the 2nd Defendant Company, who have control over the Management and business of the Defendants 1 and 2. The Defendants 1 and 3 are spouses and also Directors/Promoters of the 2nd Defendant Company and if the corporate veil of the 2nd Defendant Company is lifted, the Defendants 1 and 3 are the only beneficiaries.

b. In November 2017, the 1st Defendant had approached the Plaintiff to grant commercial and theatrical exhibition rights of the Tamil film produced by the 1st Defendant and titled as ANNA DURAI in colour on minimum guarantee in the area of entire Tamil Nadu and Pondicherry, including Karaikkal and Chittoor District, Andhra Pradesh for the period of five years from the general release date of the picture, which was on 30.11.2017. The lead actor in

the Film is the 3rd Defendant, who is the husband of the 1st Defendant. It is the home production Company of the Defendants 1 and 3. The Plaintiff, believing the representations of the Defendants, entered into an agreement dated 4.11.2017 and obtained distribution rights of the Tamil film, ANNA DURAI under a minimum guarantee agreement.

c. As per Clause (2) of the said agreement, the Plaintiff had paid a sum of Rs.6,50,00,000/- to the 1st Defendant as minimum guarantee amount along with additional deposit of Rs.99,00,000/- and in total, a sum of Rs.7,49,00,000/- was paid by the Plaintiff. The Plaintiff had obtained distribution rights in respect of said film for the areas stated above. As per Clause 8 of the said agreement, the 1st Defendant is liable to return the additional deposit of Rs.10,00,000/-.

d. The Plaintiff had made wide publicity for the said film and promoted the movie. However, the film did not do well and the film incurred a huge loss to the Plaintiff and the entire collection was only Rs.2,00,00,000/-. Hence, the representation of the Defendants that it would be a box office hit was false. A theatrical collection report was also submitted to the 1st Defendant with the knowledge of the 2nd Defendant. The Plaintiff had incurred a loss to an extent of Rs.4,50,00,000/-, exclusive of the additional deposit

amount paid by him. As per clause 8 of the agreement, the 1st Defendant has to refund additional deposit of Rs.99,00,000/- after the Plaintiff submitting all the collections and agreement. However, the 1st Defendant did not choose to refund the same.

e. The minimum guarantee clause in the agreement is penal in nature and is violative of the provisions of the Contract Act. The Plaintiff demanded the Defendants to compensate the loss suffered by him, in respect of the said film ANNA DURAI. However, the Defendants evaded such demand. Thereafter, the Defendants 1 and 3 had agreed to compensate the loss of Rs.4,50,00,000/- by giving a distribution right in respect of a new movie, KAALI, produced by them. The Defendants had agreed, apart from refunding a sum of Rs.4.5 crores, to refund the additional deposit of Rs1,00,00,000/-, before the release of the movie, KAALI. The Defendants had promised that the loss suffered by the Plaintiff in ANNA DURAI will be set right by granting to him the distribution right of the film, KAALI for the entire State of Tamil Nadu and Pondicherry. For the said purpose, the Plaintiff had entered into another agreement, dated 15.02.2018 and for the said second agreement, the Defendants stated that the entire amount could be paid before the release of the film KAALI i.e. on 13.04.2018. The Plaintiff had also executed another minimum guarantee agreement, dated 15.02.2018 with the 2nd

Defendant, which is the Company in which the Defendants 1 and 3 are the Directors, who are also spouses.

d. The 2nd Defendant is the producer of the film, ANNA DURAI and the 2nd Defendant is the lead Actor in both the films, ANNA DURAI and KAALI. The Defendants 1 and 3 have promoted two different business entities under different Constitution in order to deceive the Plaintiff and other distributors. The reason for forcing the Plaintiff to sign the second agreement is that the other distributors decided not to distribute the film, under the banner of the 2nd Defendant. The Plaintiff had paid another sum of Rs.50,00,000/- towards advance payment in terms of the second agreement, dated 15.02.2018 and the Defendants had agreed to reimburse the loss of Rs.4,50,00,000/- suffered in the release of the film, ANNA DURAI and additional deposit of Rs.99,00,000/-, aggregating to Rs.5,49,00,000/- on or before 28.02.2018. The said amount was to be adjusted towards the amount payable for the said minimum guarantee agreement, dated 15.02.2018 entered into with the 2nd Defendant.

f. After signing the agreement, the Defendants had removed the name of the Plaintiff as Distributor of the film, KAALI in the advertisement banner, thereby creating suspicion in the minds of the Plaintiff, just 3 to 4 days prior to the releasing the trailer. Since the Plaintiff attempted to take legal action against the Defendants, in

the presence of Mediators, the Defendants offered that the Plaintiff need not pay any amount under the agreement dated 15.02.2018 and that by releasing the film, KAALI, all his loss in the film, ANNA DURAI will be set right. However, the Defendants neither paid the loss amount incurred for the film, ANNA DURAI, nor adjusted the said loss amount as against the amount due and payable by the Plaintiff to the 2nd Defendant under the second agreement. With an ulterior motive, the Defendants sent emails dated 1.3.2018 and 3.3.2018, demanding the amount payable under the second agreement, by suppressing the real facts, with an intent to escape from their liability.

g. On 7.3.2018, the Defendants threatened the staff of the Plaintiff, Balaji, with dire consequences when he approached them seeking refund of the entire amount and that they will present the security cheque given to them dated 8.3.2018 to file a case against the Plaintiff and cancel the second agreement. The Plaintiff, coming to know about the presentation of the said cheque, gave stop payment instructions to their bankers. The act of the Defendants in not paying the agreed loss amount and not adjusting the said loss amount in respect of the amount payable in the agreement dated 15.02.2018 clearly shows the illegal motive of the Defendants. The Defendants made huge profits by selling a third rate film, to the Plaintiff and other distributors. The said profits collected by them has now

been diverted to purchase a property at TTK.Road, Alwarpet, Chennai-18 for more than Rs.12 crores. The Defendants sent a WhatsApp message dated 16.12.2017 agreeing to refund the security deposit of Rs.1,00,00,000/- before the release of the film, KAALI as against a total loss of Rs.5.79 crores. Hence, the Plaintiff had issued a legal notice dated 7.3.2018, by email as well as by RPAD on 8.3.2018, calling upon the Defendants to pay the said loss amount of Rs.4,50,00,000/- and additional deposit of Rs.99,00,000/-, aggregating Rs.5,49,00,000/- together with interest 18% p.a. from 4.11.2017 and return the said security cheque no.006800, dated 8.3.2018. But, there was no reply from the Defendants. Being a commercial transaction, the Defendants are liable to pay interest at 18% p.a. on the amount to be refunded. The amount due and payable by the Defendants as on 15.3.2018 is Rs.5,79,05,211/-. Since the Defendants did not come forward to pay the said amount, this suit has been filed, seeking the reliefs as stated above.

5. Along with the plaint, the Plaintiff has filed the present application, seeking interim injunction, relief as stated above, with the same averments as stated in the plaint.

6. A counter affidavit has been filed by the Respondents 1 and 3/ Defendants 1 and 3, denying the averments made in the affidavit filed in support of this

application. It has been stated in their counter as follows:-

a. Fathima Vijay Antony is not the Proprietrix of the 1st Defendant Company and is not connected with the alleged transaction. The claim of the Plaintiff is false and vexatious. The Plaintiff is carrying on business under the name and style of M/s.Picture Box Company. The 1st Respondent is not the Proprietrix of M/s.Vijay Antony Pictures. The 2nd Respondent is a Company incorporated under the provisions of the Indian Companies Act and the same was incorporated on 23.6.2017 and the 2nd Respondent is a distinct and separate legal entity and is independently doing production of movies. Since it is a Company, its liabilities are limited and the 2nd Respondent is not a proper party to the suit, pertaining to a transaction that is alleged to have taken place between the 1st Respondent and the Applicant.

b. Execution of the agreement entered into in November 2017 in respect of the film, ANNA DURAI has been denied. The 2nd Respondent is a popular cine artist and he had acted in several successful movies and there is a great demand for his movies. The Applicant on his own volition offered a consideration of Rs.6,50,00,000/- as minimum guarantee amount along with additional deposit of Rs.99,00,000/- and in all Rs.7,49,00,000/- for distribution rights for the Tamil Nadu and Pondicherry and Chittoor

District in Andhra Pradesh. The Applicant/ Plaintiff had paid a sum of Rs.1,00,00,000/- at the time of signing the agreement on 04.11.2017 and as per the agreement, the Applicant has to make payment of Rs.3 crores on 6.11.2017 and Rs.2 crores on 15.11.2017 and Rs.1,49,00,000/- on 23.11.2017. The total amount paid under the said agreement dated 4.11.2017 by the Applicant/ Plaintiff is Rs.4,23,00,000/- (Rupees four crore and twenty three lakhs only). The Plaintiff failed to pay the entire amount as per the agreement. Hence, the 1st Respondent was constrained to release the movie through the Applicant. The Applicant had collected huge money and had not accounted for the same. Even the minimum guarantee amount was not paid. The Applicant/ Plaintiff has suppressed all these facts and has filed the present suit only with an intention to prevent the 2nd Respondent from taking any action against the Applicant for his failure to make payment as per the minimum guarantee agreement, dated 15.02.2018, relating to the film, KAALI.

c. The Applicant had approached the 1st Respondent to grant commercial and theatrical exhibition rights of the Tamil film, produced by the 1st Respondent, ANNA DURAI. The Proprietor of M/s.Vijay Antony Pictures is Vijay Antony and not Fathima as alleged in the affidavit. The Respondents 1 and 3 did not make any promise that the film, ANNA DURAI will be a huge hit and that the Applicant

would make a substantial profit. The agreement dated 4.1.2017 was entered into by the Applicant on his own volition and not on the representations of the Respondents. The Applicant had paid only Rs.4,23,00,000/-. Since the Applicant has not paid the full amount as per the agreement, the question of refund does not arise. The Respondents issued a reply notice to the Applicant dated 17.3.2018. Though as per the clause 8 of the agreement dated 4.11.2017 for refund of additional deposit of Rs.1 crore, the above clause would come into operation only if the Applicant had paid the additional deposit as per the agreement.

d. The Applicant has not produced any document to support his claim. Even assuming that there is a loss, the 1st Respondent is not liable for the loss sustained by the Applicant / Plaintiff. There is no breach of the agreement dated 4.11.2017. It is well settled practice and rule that in the case of minimum guarantee, if the film does not earn revenue over and above the minimum guarantee amount and if there is any shortfall amount, the said short fall amount should be borne by the assignee/ the distributor. As per clause 9, the Applicant has no right to seek refund of minimum guarantee amount once the picture has been released. The 1st Respondent has not breached the contract. As per clause 9 of the agreement dated 4.11.2017, there is no provision for refund of minimum

guarantee amount. The 1st Respondent reserves his right to recover the amount due to him under the agreement dated 4.11.2017. The business dealing between the 2nd Respondent and the Applicant has nothing to do with the earlier agreement entered into between the Applicant and the 1st Respondent. The 2nd Respondent had entered into an agreement with the Applicant on 15.2.2018 and there is not even a single word or whisper about the earlier agreement dated 4.11.2017. It is false to state that the 1st Respondent produced the film, ANNA DURAI and the 2nd Respondent produced the film, KAALI. The 1st Respondent and the 2nd Respondent are separate and distinct legal entities and the 2nd Respondent cannot sue or be sued for any dispute between the Applicant and the 1st Respondent.

e. The 2nd Respondent cannot be penalized for the fraudulent claim being made by the Applicant against the 1st Respondent. The Applicant having failed to make the payments under the said two agreements, the suit has been filed, making false and vexatious allegations. The cheque dated 8.3.2018 given towards the amount due to the 2nd Respondent as per the agreement dated 15.2.2018 was dishonoured. Having failed to honour the cheque issued by him in favour of the 2nd Respondent, the Applicant has come forward with a false claim that the cheque was given only as a security and that the Respondents have not paid the agreed loss amount. The property at TTK Road, Alwarpet,

Chennai 600018 was purchased by availing bank loan much prior to the date of agreement dated 4.1.2017. The legal notice dated 8.3.2018 is silent about the alleged whatsapp message dated 16.12.2017. The Respondents had also given a suitable reply on 17.3.2018.

d. The Respondents are not liable to pay any amount as claimed by the Applicant. The Respondents have not given any undertaking to settle the claim of the Applicant prior to the release of the film KAALI. The Applicant is not ready and willing to comply with the said two agreements. The Applicant has to compensate the Respondents. The Applicant is not entitled for the interim relief as prayed for as there is no balance of convenience in favour of the Applicant. In such circumstances, this application should be dismissed.

7. The 2nd Respondent/ 2nd Defendant has also filed a separate counter affidavit denying the averments made in the affidavit filed in support of this application and stated as follows:-

a. The 2nd Respondent is a Company incorporated under the Indian Companies Act on 23.6.2017. It is a separate entity. It is doing production of movies. Its liabilities are limited. They are not liable for the claim of Rs.5,79,32,585/- as stated by the Applicant. This Respondent was not a party to the agreement dated 4.11.2017. There is no cause of action for filing the

suit. The averment in the plaint that the Defendants agreed to refund a sum of Rs.4.5 crores and another sum of Rs.1 crore before the release of the movie, KAALI has been denied. The Plaintiff came forward volutarily to this Defendant with a request to convey and transfer ownership of movie rights except (FMS and HINDI) and dubbing rights of the Tamil film, KAALI. A minimum guarantee agreement was entered into on 15.2.2018. The Plaintiff had watched one half of the movie and accepted to release the movie, KAALI.

b. There are terms and conditions in the agreement and it is therefore clear that the Plaintiff has to make payment to this Respondent and there is no adjustment as claimed by him. The 1st Defendant produced the movie, ANNA DURAI and the 2nd Defendant produced the movie, KAALI. They are both separate entities. The Plaintiff had made a payment of Rs.50 lakhs towards advance in terms of the agreement, dated 15.2.2018. The Plaintiff failed to make any further payment. The Plaintiff gave a cheque for Rs.1.25 crores, dated 8.3.2018 as further payment towards the agreement, dated 15.2.2018. However, the cheque was returned unpaid with an endorsement 'payment stopped by drawer'. It is stated that this Respondent has no obligation to make any payment to the Plaintiff. This Respondent had borrowed monies from various persons and if the movie is not released on 13.4.2018, this Respondent would be put to much hardship and irreparable loss. The

suit as framed is not maintainable. It has been stated that since the agreement dated 15.2.2018 has been cancelled, there is no enforceable contract between the Plaintiff and this Respondent. It has been therefore prayed that the application should be dismissed.

8. To the counter filed by the 3rd Respondent, a rejoinder affidavit has been filed by the Applicant/Plaintiff, stating as under:-

a. The 1st Respondent/ Defendant, who signed as authorised signatory of Vijay Antony Pictures, was thought to be its Proprietrix. Even in the typed version, Fathima Vijay Antony has been described as Proprietrix of Vijay Antony Pictures. The Respondents 1 and 3 are spouses and also Directors/ Promoters of the 2nd Defendant Company and if the corporate veil of the 2nd Respondent Company is lifted, the Respondents 1 and 3 are the only beneficiaries.

b. It has been reiterated that the Plaintiff had paid a total sum of Rs.7.49 crores, which included Rs.6.5 crores as minimum guarantee amount and further Rs.99 lakhs as additional deposit. The Plaintiff has been put to huge loss. It was the Defendant, who came forward to help the Plaintiff by requesting him to entered into the 2nd agreement dated 15.2.2018. There was no demand regarding alleged amounts due and payable to the 1st and 3rd Defendants by the Plaintiff earlier to the suit. The second agreement dated 15.2.2018 had also been entered into

and there was adjustment of the amounts due in the earlier agreement. It has therefore been stated that the application should be dismissed.

9. Earlier, after hearing both sides, this Court, by order dated 28.03.2018, had passed interim directions as under:-

"12. Considering and evaluating three parameters of prima facie case, balance of convenience and irreparable injury, I am convinced that it could be suffice and serve the ends of justice at present to restrain the Defendants from creating any third party rights in the suit film no.2 i.e. Tamil cinematographic film going by the title "Kaali" by the 2nd Defendant between now and Tuesday i.e. till 03.04.2018."

10. This Court heard the arguments of Mr.S.Vasudevan, learned counsel for the Petitioner, Mr.K.J.Parthasarathy, the learned counsel for the Defendants 1 and 2 and Mr.S.Parthasarathy, the learned senior counsel for the 2nd Defendant. For the sake of convenience, the parties herein after referred to as they were arrayed in the plaint, namely, the Plaintiff and the Defendants.

11. The Plaintiff had filed the suit for recovery of a sum of Rs.5,79,05,211- together with interest and costs. The Plaintiff, William Alexander, is the Proprietor Picture Box Company. The said Company is involved in distribution of films, particularly Tamil films. It has been in the trade for the past three years. The 1st Defendant, Fathima Vijay Antony is described as the

Proprietrix of M/s.Vijay Antony Pictures, a sole proprietorship concern.

12. Even before proceeding further, Mr.K.J.Parthasarathy, the learned counsel for the Respondents 1 and 3 disputed the description of Fathima Vijay Antony as Proprietrix of Vijay Antony Picture. He claimed that the actual Proprietor of Vijay Antony Pictures was the 3rd Defendant. Vijay Antony is incidentally the husband of Fathima Vijay Antony. At any rate, the Plaintiff has described the parties as Defendants with the knowledge that he has and if at all there is any mistake in the description, but with no doubt in the identity, such mistake and description would not affect the affairs of the Plaintiff.

13. The 2nd Defendant is Vijay Antony Film Corporation Private Limited. As is seen, it is a private limited Company. There are only two Directors, namely, the 1st Defendant Defendant, Fathima Vijay Antony and her husband, the 3rd Defendant Vijay Antony. During the course of arguments, Mr.S.Vasudevan, the learned counsel for the Plaintiff insisted that the Court must pierce the corporate veil of the 2nd Defendant since the Defendants claimed that the 2nd Defendant Company is a separate legal entity, which is legally correct. It is further claimed that it cannot be mulcted with any of the act of commission and commission by either Fathima Vijay Antony, the 1st

Defendant or Vijay Antony, the 3rd Defendant, in their capacity, representing Vijay Antony Pictures.

14. Mr.S.Vasudevan, the learned counsel for the Plaintiff invited the Court to give a finding that the three Defendants are part of one common group and more damagingly, he stated that the common purpose is to defraud the Plaintiff. I am not prepared without oral and documentary evidence on those aspects, to enter into a discussion or a finding at this stage of the proceedings. Existence or otherwise of prima facie case has to be examined and also the relative hardships that could be caused to either side either by grant of injunction or by denial of grant of injunction. But, since arguments had been advanced to that effect, it would only appropriate for this Court to state that recourse to the arguments of the learned counsel can be considered at a later stage, if they though fit to take it forward in subsequent proceedings of the suit.

15. Quite incidentally, it has also emanated from the counter of the 2nd Defendant that the said Company had been incorporated only on 23.6.2017 under the Indian Companies Act. The lis surrounding the two agreements which the Plaintiff had entered into on 4.11.2017 and 15.2.2018. The first agreement dated 4.11.2017 had been entered into by the Plaintiff and Vijay Antony Pictures, represented by its authorised signatory, Fathima Vijay

Antony. In the last page of the agreement, Fathima Vijay Antony has been described as 'Proprietrix' and 'Producer'. However, the seal of Vijay Antony Pictures has described her as 'authorised signatory'. These are all the issues to be clarified only at the time of trial. But, still, as stated above, there is no quarrel about the identity of the individuals around whom the lis surrounding.

16. The second agreement dated 15.2.2018 had been entered into between the Plaintiff and the 2nd Defendant, Vijay Antony Film Corporation Private Limited and represented by its Director, Fathima Vijay Antony. It is the case of the Plaintiff that monies were advanced by the Plaintiff under the two agreements. There had been breach of clauses of the two agreements giving cause for institution of the suit and further to seek an order of interim injunction in the application, which is now under consideration.

17. The brief facts of the case reveal that the Plaintiff, who is stated to be a Distributor of Tamil films, had entered into a minimum guarantee agreement with Vijay Antony Pictures, represented by the 1st Defendant in her capacity as authorised signatory on 4.11.2017. This was at the time when Vijay Antony Pictures, was producing the Tamil movie, called ANNA DURAI. The 1st Defendant, who was called the Producers/Rights Holder in the agreement granted commercial and theatrical exhibition rights of the said

movie for various areas in Tamil Nadu and Pondicherry for a period of 3 years. In consideration of such grant of commercial and theatrical exhibition rights, the Plaintiff was obliged to, in view of this agreement, to pay a sum of Rs.6,50,00,000/- as minimum guarantee amount along with the additional deposit of Rs.99,00,000/-. This came to a total sum of Rs.7,49,00,000/-. The said amount was agreed to be paid in the following manner:-

i.Rs.1,00,00,000/- by demand draft dated 4.11.2017 produced from City Union Bank as advance.

ii.Rs.3,00,00,000/- to be paid on 6.11.2017.

iii.Rs.2,00,00,000/- to be paid before the audio release which was scheduled on 15.11.2017.

iv.Rs.1,49,99,000/- which was payable on 23.11.2017.

v.Schedule was fixed since the release date was scheduled on 30.11.2017.

18. There was a further clause provided in the agreement that if the payment schedule was delayed or defaulted by the Distributor, namely, the Plaintiff, then the Producer, who was the 1st Defendant, Vijay Antony Pictures, shall have the right to terminate the agreement and arrange the release directly or through any other Distributor. In that event, the Producer had an obligation to refund the advances received till then. Such refund should be after 30 days from the general release of the picture. Such refund shall not carry any interest or

compensation. There was also a term with respect to adjustment of minimum guarantee amount. The minimum guarantee amount should be adjusted first. That amount was Rs.6,50,00,000/-. Thereafter, the additional deposit of Rs.1,00,00,000/- should be adjusted. If the said amount is not adjusted within 45 days from the general release date, then the Producers shall have to refund the additional deposit of Rs.99,00,000/-.

19. An argument was also advanced by Mr.S.Vasudevan, the learned counsel for the Plaintiff that the agreement in itself cannot be termed as a legally binding agreement since the clauses tended towards wagering. There was an element of a supposition of profit and the refund depended on profit being made or not. Again, I am not dwelling deeply into that aspect since the Defendants did not agree to the said contention raised by the learned counsel for the Plaintiff. They claimed that the agreement is valid and binding.

20. The Defendants relied on a further clause in the agreement that the Distributor shall not demand refund o the minimum guarantee amount or any other amount spend under this agreement under any circumstances once the picture had been released. The schedule for refund had also been given in the agreement.

21. With respect to the actual collections made from the movie, ANNA DURAI, the issue of the legally

binding nature of the agreement is again not dwelled by deeply since an opportunity has to be given to both sides to first prove the agreement, to then prove the monies paid under the agreement and then to establish the actual terms of the agreement with the surrounding circumstances prevailing at the time when the agreement was entered into. That would require analysis of oral and documentary evidence.

22. However, it is the case of the Plaintiff that the movie, ANNA DURAI, did not do well in the market to the expected level when released in theatres.. The amounts paid by the Plaintiff were not recovered. Subsequently, the Plaintiff and the 2nd Defendant entered into an independent second agreement dated 15.2.2018. That agreement was a result of launching of a fresh project by the Defendants, namely, production of a Tamil movie, called KAALI. This agreement was entered into by the Plaintiff and the 2nd Defendant, which was represented by Fathima Vijay Antony in her capacity as Director. The 2nd Defendant was termed as the 'assignor' and the Plaintiff was termed as 'assignee'. The Plaintiff was granted a right of transfer of ownership of the movie rights, except FMS and Hindi for all Indian languages and dubbing rights including exploitation of the Tamil film, but again the Plaintiff had to part with a consideration for such grant of rights.

23. The consideration which the Plaintiff had to

part with was the minimum guarantee amount of Rs.7.25 crores. A schedule was also given. An advance amount of Rs.56 lakhs had to be paid on 15.2.2018 and a further advance of Rs.56 lakhs had to be paid on 19.2.2018, including further payments of Rs.1,00,00,000/- on 20.02.2018, Rs.1,00,00,000/- on 26.02.2018, Rs.1,00,00,000/- on 5.3.2018, Rs.1,00,00,000/- on 12.3.2018, Rs.1,00,00,000/- on 19.3.2018 and Rs.1,25,00,000/- on 26.3.2018.

24. The assignee, namely, the 2nd Defendant agreed to release the movie on 13.4.2018. It is the admitted case of the 2nd Defendant that an advance amount of Rs.50 lakhs had been paid and received by them. A further amount of Rs.1,25,00,000/- had been paid by cheque, but since disputes arose between the Plaintiff and the Defendants, the said cheque when presented for encashment had been returned by the Bankers on the ground of 'stop payment'. The 2nd Defendant has stated that in their counter that they are initiating steps under Section 138 of the Negotiable Instruments Act. It is the contention of the learned counsel for the 2nd Defendant that the present suit has been filed to preclude such initiation of proceedings under Section 138 of the Negotiable Instruments Act to act as possible defence in the criminal proceedings, which the 2nd Defendant intended to initiate.

25. The above being the facts, the learned counsel

for the Plaintiff stated that the Plaintiff had paid monies to the 1st Defendant towards the production of the movie, ANNA DURAI. The said movie did not reap to the expected level when it was released in theatres. Consequently, the Defendants were not able to repay the monies advanced by the Plaintiff. Thereafter, the 2nd Defendant launched a project to produce the second movie called KAALI. The Plaintiff, after adjustment of the earlier amount, which was due to him, he advanced a further sum to the 2nd Defendant. Thereafter, disputes arose. Consequently, the Plaintiff withdrew from the agreement and raised a demand for return of the amounts advanced by him.

26. In this application, the Plaintiff has sought for an injunction that the movie, KAALI should not be released till dues are settled. Mr.S.Parthasarathy, the learned senior counsel for the 2nd Defendant has raised the issue of misjoinder of causes of action. According to the learned senior counsel, there were two separate agreement entered into by the Plaintiff with two different entities and for two different films and there was no connection between the first agreement and the second agreement. There was also no mention about the first agreement in the second agreement. There was also no mention that the second agreement was entered into in continuation of the earlier agreement when amounts were advanced and that there has been adjustment of the amounts

due and payable.

27. The learned senior counsel has further stated that the 1st Defendant is a sole proprietorship concern and the 2nd Defendant is the Private Limited Company. Even though persons behind the two entities may be the same, still law recognises the sole proprietorship concern independently and also recognises that a Company incorporated under the Companies Act as a separate legal entity.

28. Mr.K.J.Parthasarathy, the learned counsel for the Defendants 1 and 3 also raised a technical objection in the description of Fathima Vijay Antony as Proprietrix of Vijay Antony Pictures, the 1st Defendant. The learned counsel stated that she is not the Proprietrix, but the 3rd Defendant her husband is the Proprietor. She had entered into the agreement as authorised signatory. The learned counsel stated that consequently there is misjoinder of parties and also wrong description of the Defendants.

29. Mr.S.Vasudevan, the learned counsel for the Plaintiff in his answer to these arguments, has stated that in effect, Vijay Antony and Fathima Vijay Antony produced the movie, ANNA DURAI and later produced the movie KAALI. They have produced the first movie in the name of Vijay Antony Pictures. In the agreement, Fathima Vijay Antony has signed as authorised signatory and in the last page of the agreement, she had signed as Proprietrix/Producer. He

further stated that she had signed the second agreement in her capacity as the Director of Vijay Antony Film Corporation Private Limited. The learned counsel insisted that the Defendants have created a camouflage and are hiding behind this, to screen the fact that actually they as individuals were involved in the production of two movies and incorporation of a private Limited Company and creation of a sole proprietorship firm was only with reason to defeat the legitimate creditors like the Plaintiffs.

30. A perusal of the two agreements reveals that as a group, Vijay Antony and his wife, Fathima Vijay Antony alone were involved with the agreements entered into with the Plaintiff. The sole proprietorship firm, Vijay Antony Pictures and the Private Limited Company, Vijay Antony Film Corporation Private Limited are entities created as special purpose vehicles alone. They have no independent existence. They are driven by Fathima Vijay Antony and Vijay Antony. Fathima Vijay Antony has signed the 1st agreement as Proprietrix and as authorised signatory. She also signed the 2nd agreement as Director.

31. The Court has to look behind the screen and behind the veil to find out who actually are the players. In effect, the two individuals are deeply and directly involved in film production. They have received monies from the Plaintiff. In the counter affidavit of the 1st Defendant, it has been admitted that under the minimum

guarantee agreement, dated 4.11.2017, the Plaintiff had paid a total sum of Rs.4.23 crores. The break-up was also given. This has been given in the affidavit signed by the 3rd Defendant, Vijay Antony in his capacity as Proprietor of Vijay Antony Pictures. Once that admission is on record, the clause under the first agreement that if the payment schedule of the Plaintiff is delayed or defaulted, then Vijay Antony Pictures must refund the advances has to be invoked.

32. It is the grievance of the Defendants 1 and 3 that the Plaintiff did not keep up with the schedule. However, the movie was actually released. The Defendants relied on further clause in the agreement that the Plaintiff should not demand refund of minimum guarantee amount. But, that does not preclude the Plaintiff from seeking the amounts actually paid by him. The operation of the minimum guarantee comes into force only when there is sufficient collection on the release of the movie and there cannot be a clause which forces the Plaintiff who has paid a sum of Rs.4.23 crores to simply write it off as a bad debt without any avenue to claim them.

33. In the counter affidavit filed by the 2nd Defendant, there is an again an admission that the Plaintiff had advanced a sum of Rs.50,00,000/- as initial payment. Once amounts had been advanced towards the said two agreements, then both the parties have consciously

taken the agreement forward after they had signed the same. There could have been a breach subsequently. But, the agreement had started to fructify and thereafter, on breach of compliance, on cancellation, there has got to be a reconciliation of accounts and determination of damages provided under the agreement.

34. Reconciliation of the accounts reveals that the Plaintiff has paid a sum of Rs.4,23,00,000/- under the agreement dated 4.11.2017 and a sum of Rs.50,00,000/- under the agreement dated 15.2.2018. The claim of the Plaintiff that he has paid further sums of money are disputed by the Defendant and will have to be established by him during the trial.

35. The claim of the Defendants that the Plaintiff did not keep up with the schedule will have to be established by them during the trial. Prima facie the Plaintiff has paid Rs.4,23,00,000/- under the first agreement and Rs.50,00,000/- under the second agreement. Whether the said payments as agreed under the agreement and whether there has been default in further payment and whether there has been default in the schedule of the payment are all issues, which are kept open to be adjudicated at the time of trial. But, on admission of the Defendants that the Plaintiff had actually paid a sum of Rs.4,23,00,000/- and another sum of Rs.50,00,000/- under the two agreements, the Plaintiff is entitled to protection

till he receives back the money. This would necessarily entitle the Plaintiff to an order of interim injunction as claimed in OA.No.305 of 2018, by injuncting the Defendants from releasing the movie, KAALI. Therefore, I would injunct the movie, KAALI from being released till 11.4.2018 and further hold that the said order shall stand automatically vacated if the Defendants deposit into the court a sum of Rs.4,73,00,000/- (Rupees four crores seventy three lakhs only) on or before 11.4.2018. If such deposit is made, the Defendant shall be at liberty to release the movie on the scheduled date on 13.4.2018. If such deposit is not made, the injunction order shall continue from 11.4.2018.

36. In the result, this application is allowed on the above terms. No costs.

Sd./- C.V.K.J
06.04.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

R.s/06.04.2018

COURT OFFICER(O.S.)

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