

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.20632 of 2018
and W.M.P.Nos.24249 and 24250 of 2018

Indian Overseas Bank,
Sriramnagar Branch
135 TTK Road
Alwarpet, Chennai - 600 018
Rep. by its Chief Manager

... Petitioner

Vs.

1.M/s.Aascar Films (P) Limited
Rep. by its Managing Director
9, 10th Avenue, Ashok Nagar
Chennai - 600 083

2.V.Ravichandran

3.V.L.Viswanatha Mudaliar

4.D.Ramesh Babu

5.M/s.Reliance Media Work Ltd
(Formerly known as M/s.ADLBS Film Ltd)
Rep. by its Managing Director
9 Kumaran Colony, Main Road
Vadapalani, Chennai - 600 026

6.JM Financial Asset Reconstruction Company (P) Ltd.,
7th Floor, Cnergy,
Appasaheb Maratha Marg
Prabhadevi
Mumbai - 400 025

7.M/s.Rajkamal Film International
No.4, Eldams Road
Vannia Teynampet
Alwarpet
Chennai - 600 018

8.Kamal Hassan

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for a writ of certiorari, calling for the records pertaining to the order dt.07.08.2018 made in I.A. No.530 of 2018 in M.A. 43 of 2018 on the file of DRAT, quash the same and consequently allow the application granting the reliefs as prayed for in IA No.530 of 2018 in MA 43 of 2018 on the file of Debts Recovery Appellate Tribunal.

For Petitioner : Mr.F.B.Benjamin George

ORDER

(Judgment of this Court was made by S.MANIKUMAR, J.)

Instant writ petition has been filed under Article 226 of the Constitution of India, for a writ of certiorari, calling for the records pertaining to the order dt.07.08.2018 made in I.A. No.530 of 2018 in M.A. No.43 of 2018 on the file of DRAT, quash the same and consequently, allow the application, granting the reliefs, as prayed for in IA No.530 of 2018 in M.A. No.43 of 2018 on the file of Debts Recovery Appellate Tribunal, Chennai.

2. Short facts leading to the filing of the writ petition are that the first respondent M/s.Aascar Films (P) Limited, has availed two loans to the tune of Rs.60,00,000/- for production of movie titled "I" both in Tamil and Hindi and Manoharudu in Telugu, from Cathedral Branch of Indian Overseas Bank. Loan was availed on 22.09.2012. The said loan amount was repayable in one single payment within 18 months from the date of availment or from the date of release, whichever is earlier.

3. The first respondent also availed cash credit limit of Rs.10,00,00,000/- towards working capital limit and term loan of Rs.30,00,00,000/- to meet the production cost of the movie titled 'Boologam' from Sriram Nagar branch of the said bank. The term loan of Rs.30,00,00,000/- was to be repayable in one single bullet payment within 18 months from the date of availment i.e. 31.12.2011 or date of release whichever is earlier.

4. Bank has further contended that as regards the term loans in question, the cinematography movies under production are the prime securities. The lien over the negatives of the said movies (known as negative rights in the business circle) titled " I " in Tamil and Hindi and "Manoharudu" in Telugu and also the movie titled Boologam are with the bank. The first respondent assigned all the copyrights of the said movies under production in favour of the petitioner. By entering into a tri-partite agreement with the petitioner and Reliance Media Works Ltd/5th respondent herein, the first respondent agreed and undertook to entrust the

negatives, raw print and the prints of the movies under production for processing and other related works to the said respondent, and the said laboratory agreed and undertook to hold in its possession and control the negatives, etc. all rights of screening for public viewing either domestic or overseas etc. vest with the bank.

5. The loans are secured by mortgagors four immovable properties belonging to the first respondent and its guarantors and the movies referred to above are the prime securities to the loan and the immovable properties are collateral securities.

6. Bank has further contended that in breach of the agreement and without paying the dues to the bank, the first respondent fraudulently released the movie titled " I " in Tamil and Hindi and Manoharudu in Telugu for public viewing on 14.01.2015. The first respondent also sold the satellite rights, audio rights, overseas rights, Hindi and Telugu version rights etc. and the amounts realised were not credited to the loan account. The amounts paid by the distributors had been siphoned by the 1st respondent. Thus the 1st respondent diluted the prime asset given as security for the Term loan of Rs.60,00,00,000/- availed from petitioner's Cathedral Road branch. Therefore, bank has invoked the provisions of RDBI Act and filed O.A. No.235 of 2015 before DRT-II, Chennai praying for recovery of Rs.59,84,99,048/- as on 13.01.2015 and also prayed for an interim order of injunction restraining the 1st respondent and for other reliefs.

7. In the said Original Application, bank has filed three interlocutory applications viz. (a) I.A. No.402 of 2017 under Section 19(3-A)(c) of the Recovery of Debts and Bankruptcy Act 1993, to direct the respondents 1 to 4 and 6 therein, to disclose the details of their assets and particulars of other properties owned by them; (b) I.A.No.403 of 2017 under Section 19(13-A) and (B) of the Recovery of Debts and Bankruptcy Act 1993, to issue notice to the respondents to furnish security to the tune of Rs.89.06 crore within the time as may be fixed by this Tribunal, failing which to order attachment before judgment of the movie titled 'Viswaroopam 2' with all its "QUBE" rights, rights over the negative, audio/video rights, satellite rights, etc. pending disposal of the above Original Application and (c) I.A.No.404 of 2017 under Section 19(25) of the Recovery of Debts and Bankruptcy Act 1993, to appoint a Receiver preferably a Retired High Court Judge of the Hon'ble High Court of Madras to take control of all rights over the movie titled 'Viswaroopam 2' with all its "QUBE" rights, over the negative, audio/video rights, satellite rights, etc. pending disposal of O.A. No.235 of 2015.

8. After hearing the learned counsel for the parties and upon perusing the materials available on record, on 26.04.2018, Debts Recovery Tribunal - II, Chennai disposed of I.A. No.402 of 2017 with a direction to the respondents 1 to 4 to disclose the title of their assets and particulars of other properties owned by them before the Tribunal within a month from the date of the order and dismissed I.A. Nos.403 and 404 of 2017.

9. As against the dismissal of I.A. Nos.403 and 404 of 2017, the petitioner/bank has filed appeals in M.A. No.43 and 42 of 2018, respectively, on the file of the Debts Recovery Appellate Tribunal, Chennai. In M.A. No.43 of 2018, petitioner has filed I.A. No.530 of 2018 to grant an order of ad-interim injunction restraining the respondents 1 to 5 or their agents or any one claiming under them from releasing the movie titled "Viswaroopam - 2" in any language in any part of the world for public viewing pending disposal of the above appeal.

10. Upon hearing both parties and perusing the materials available on record, DRAT, Chennai vide order dated 07.08.2018 disposed of I.A. No.530 in M.A. No.43 of 2018, directing the respondents 1 and 2 herein to furnish bank account details to Debts Recovery Tribunal, Chennai, in which, collection of Tamil and Telugu version of Viswaroopam-2 will be received and further directed the respondents 1 and 2 to produce a workout sheet, calculating the profit share of respondents 1 and 2 from the collection so far, Presiding Officer may try to clear the old dues of bank also but after giving opportunity of hearing to both the parties. The order passed by the DRAT, Chennai, is hereunder:-

"10. On careful perusal of pleadings and submissions of counsel of parties and record, it becomes clear that Viswaroopam - 2 has been produced with the financial assistance of R6. R1 and R2 are impleaders for the joint stake in the film investment as well as in profits in the year 2015, R1 and R2 obtained some loan/financial assistance from appellant bank for production of movies "I". This movie though earned a respectful amount and profits, R1 and R2 have failed to keep up the promises for repayment of money to appellant bank. Almost same thing happened at the time of production of "Boologam". The stakes were somewhat less in that movie. The appellant bank has succeeded to prove the malafide on the part of R1 and R2 those are having prima facie rights to exhibition etc., so far as, Tamil and Telugu version of Viswaroopam-2.

11. At the same time, this is also clear that default committed by R1 and R2 in respect of loan

taken for production of "I" and "Boologam", OA is pending and bank was interested in security of about Rs.90 crores to be furnished. The record reveals that R1 and R2 had mortgaged their immovable properties situated at Salem, Vellore, Ashok Nagar and Alwarpet. But ultimately it is nothing but the matter of intention of the parties. If R1 and R2 have a clear intention of repayment of dues then there should be no hitch and hassle in making a joint commitment for repayment of bank dues.

12. During the course of arguments it was transpired that the appellant bank should/can proceed for sale of aforesaid properties in auction in regard to recovery of old dues. In so far as release of Viswaroopam - 2 is concerned the stay of release of Tamil and Telugu version will not solve the problem. Such type of order will have more side effects than the reliefs. The law of injunction, prima facie says about the ingredients of prima facie case, balance of convenience and irreparable loss. In this case, value of irreparable loss fails because money is the compensation. It may be a security of Rs.90 crores or a deposit of Rs.100 or Rs.150 crores. Accordingly, there appeared to be no ground to pass against any interim injunction against release of Viswaroopam - 2 in Tamil and Telugu version. However, having a comparative view of attitudes and intentions of appellant bank and R1 and R2, remaining respondents and impleaders a balance has to be maintained so that tendency of non-repayment of money of bank dues is checked and controlled.

13. Accordingly, R1 and R2 are directed in following terms:

(i) They will furnish the bank account details to DRT in which collection of Tamil and Telugu version of Viswaroopam - 2 will be received.

(ii) Further, they will produce a workout sheet calculating the profits share of R1 and R2 from this collection so far Presiding Officer may try to clear the old dues of appellant bank also but after giving opportunity of hearing to both the parties.

14. Accordingly, IA No.530/2018 is disposed of in terms of above.

List on 26.09.2018 for consideration of other IAs.

11. Being aggrieved by the order of the DRAT, Chennai dated 07.08.2018 made in I.A. No.530 of 2018 in M.A. No.43 of 2018, instant writ petition has been filed contending inter alia that the respondents did not comply with any of the conditional orders passed by various courts including this court and Apex court; that the Tribunal failed to note that the proceeds from the release of the movie comes from the theatres. In the normal course, the theater owners either outrightly purchases the right to release the movie or acquire the rights by paying a substantial advance and the balance on revenue sharing basis. In any case, the producer gets substantial amount even before releasing the movie and only in the said circumstances, the 1st respondent undertook to make the entire payment by way of single bullet payment before the release of the movie, get no objection and then to release the movies; that the Tribunal failed to note that the 6th respondent/JM Financial Asset Reconstruction Company (P) Ltd, who had advanced for the production of the movie supported the case of the bank and that the Tribunal ought to have either appointed a Receiver to release the movie or directed the respondents 1 and 2 to make substantial deposit before permitting them to release the movie.

12. Heard Mr.F.B.Benjamin George, learned counsel for the petitioner, perused the impugned order and the materials available on record.

13. I.A. No.403 of 2017 in O.A. No.235 of 2017 on the file of DRT-II, Chennai, has been filed, to issue notice to the respondents 1 to 5 to furnish security to the tune of Rs.89.06 Crores within the time as may be fixed by the Tribunal failing which order of attachment before judgment of the movie titled Viswaroopam-2 with all its Qube rights, rights over the negative, audio/video rights, satellite rights etc. DRT-II, Chennai on 26.04.2018, dismissed the said IA.

14. Aggrieved by the order of dismissal, bank has filed M.A. No.42 of 2018, to set aside the order dated 26.04.2018 made in I.A. No.403 of 2017 in O.A. No.235 of 205 on the file of DRT-II, Chennai and allow the same and to issue notice to the respondents 1 to 5 to furnish security to the tune of Rs.89.06 Crores within the time as may be fixed by the Tribunal failing which order of attachment before judgment of the movie titled Viswaroopam-2 with all its Qube rights, rights over the negative, audio/video rights, satellite rights etc. in the hands of the respondents or any one claiming under them.

15. I.A. No.404 of 2017 in O.A. No.235 of 2018 on the file of DRT-II, Chennai has been filed for appointment of a receiver preferably a retired Hon'ble Judge from Madras High Court, to take control of all rights over the movie titled Viswaroopam - 2 with all its Qube rights, rights over the negative, audio/video,

rights, satellite rights etc. On 26.04.2018, DRT-II, Chennai has dismissed the said IA.

16. As against the said order of dismissal, bank has filed appeal in M.A. No.43 of 2018, to set aside the order dated 26.04.2018 made in I.A. No.404 of 2017 in O.A. No.235 of 2015 on the file of DRT-II, Chennai and to appoint a receiver preferably a retired Hon'ble Judge from Madras High Court, to take control of all rights over the movie titled Viswaroopam - 2 with all its Qube rights, rights over the negative, audio/video, rights, satellite rights etc., release the same and deposit the proceeds to the credit of the above appeal.

17. In M.A. No.43 of 2018, the bank has filed I.A. No.530 of 2018 for an order of ad-interim injunction restraining the respondents 1 to 5 or their agents or anyone claiming under them from releasing the movie titled Viswaroopam-2 in any language in any part of the world for public viewing pending of the appeal. M.A. No.43 of 2018 has been preferred by bank against part of the order dated 26.04.2018, by which DRT has declined to direct the respondents to furnish security to the tune of Rs.89.06 Crores so that in the event of failure of furnishing the security order of attachment before judgment of movie titled Viswaroopam-2 with all its rights.

18. In the present writ petition petitioner has prayed the following reliefs:

i) to grant an order of interim injunction restraining the respondents 1 to 5 and 7 & 8 or anyone claiming under them from releasing the Tamil and Telugu version of the movie titled "Viswaroopam-2" for public viewing in theatres, pending disposal of the writ petition;

ii) to appoint a Court Receiver to release the Tamil and Telugu version of the movie titled "Viswaroopam-2" for public viewing in theaters with conditions as may be prescribed by the court pending disposal of the writ petition; and

iii) writ of certiorari to call for the records pertaining to the order dated 07.08.2018 made in I.A. No.530 of 2018 in M.A. No.43 of 2018 on the file of DRAT, Chennai, quash the same and consequently allow the application granting the relies as prayed for in I.A. No.530 of 2018 in M.A. No.43 of 2018 on the file of DRAT, Chennai.

19. In M.A. No.43 of 2018, bank has prayed for a direction to appoint a Receiver, preferably a retired High Court Judge, to take control of all rights over the movie titled Viswaroopam - 2 with all its Qube rights, rights over the negative, audio/video, rights, satellite rights etc., release the same and deposit the

proceeds to the credit of the above appeal, whereas in I.A. No.530 of 2018 in M.A. No.43 of 2018, bank has prayed for an order of interim injunction restraining the respondents 1 to 5 and 7 and 8 or anyone claiming under them from releasing the Tamil and Telugu version of the movie titled "Viswaroopam-2" for public viewing in theaters. Courts/Tribunals have power to grant orders incidental or ancillary to the main prayer sought for in the original proceedings or appeals, as the case may be.

20. Word "interim", according to Oxford Dictionary means, "temporary or provisional arrangement". In Black's Dictionary, it is defined as, "in the meantime; meanwhile; temporary; between". Interim relief can be granted in aid of, incidental and as an ancillary relief, to the main relief. Broad guidelines for granting such relief are (i) prima facie case, (ii) balance of convenience, and (iii) irreparable hardship.

21. Relief prayed for in the appeal M.A. No.43/2017 is "to appoint a Receiver, and the interim relief sought for in I.A. No.530/2018 in M.A. No.43/2017, is for an injunction not to release the movie. Interim prayer is not in aid of, incidental or ancillary, to the main relief. But they are contrary and diametrically opposed to each other.

22. The writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

asr

To

The Registrar,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
No.55 Ethiraj Salai,
Chennai - 600 008.

W.P.No.20632 of 2018
and W.M.P.Nos.24249 and 24250 of 2018

EV(CO)
GSP(06/09/2018)