

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 6TH DAY OF JUNE 2018

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

A. No.1449 of 2018

in

C.S. No.350 of 2017

1.Avni Cinemax Private Ltd.

Rep. by its authorised signatory

Mr.R.Badri Narayanan

Flat No.4, Komalvillah,

No.48, Second Main Road,

Raja Annamalaipuram,

Chennai - 600 028.

2.Mr.Sundar C

No.2, Leith Castle Road

Santhome, Mylapore,

Chennai - 600 004.

: Plaintiffs

Vs.

Mr.N.Velmurugan

No.20, Sankaralinganar Street,

MGR Nagar

Chennai 600 078

: Defendant

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1.Avni Cinemax Private Ltd.

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No.2, Leith Castle Road
Santhome, Mylapore,
Chennai - 600 004.

: Applicants / Plaintiffs

Vs.

1.Mr.N.Velmurugan

No.20, Sankaralinganar Street,
MGR Nagar
Chennai 600 078

: Respondent / Defendant

2.Sun TV Network Ltd.

Rep. by its Managing Director
Murasoli Maran Towers
73, MRC Nagar Main Road
MRC Nagar
Chennai 600 028.

: Respondent / 3rd Party

Application praying that this Hon'ble Court be pleased to stay all further proceedings in O.S.No.166 of 2017 on the file of the Principal District Judge at Thiruvallur, till the disposal of the suit in C.S.No.350 of 2017.

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

This application has been filed by the Plaintiffs seeking stay of further proceedings in OS.No.166 of 2017, pending on the file of the Principal District Court, Tiruvallur, till the disposal of CS.No.350 of 2017

2. CS.No.350 of 2017, had been filed by Avni Cinemax Private Limited, represented by Authorised Signatory, R.Badri Narayanan, and Sundar C, against the Defendant, N.Velmurugan,

seeking a direction to the Defendant to pay a sum of Rs.50 lakhs towards compensation for spoiling the name, image and reputation of the Plaintiffs and for permanent injunction, restraining the Defendant or anybody acting under him, from tarnishing the image of the Plaintiffs through media and for costs.

3. The cause of action for the suit arose on 7.9.2016 when the Defendant entered into an employment agreement as a Screen Play Consultant and on subsequent dates, when according to the Plaintiffs, the Defendant started tarnishing the name and image of the Plaintiff by spreading false and mischievous information through media, such as whatsapp, you tube, twitter, face book, etc. and when the Defendant raised allegations as if he was the author of the story of the Tele Serial, "Nandini", telecast through Sun TV Network.

4. It is the case of the Plaintiffs that the 1st Plaintiff is engaged in production of films and the 2nd Plaintiff is Managing Director of the 1st Plaintiff Company. The Defendant was permitted to take part in a few small pre-production works. He also played small roles in a few films of the 2nd Plaintiff. The 2nd Plaintiff became very famous in South Indian films in view of the success of his movies, Annamalai 1 and 2, and horror tele serial, 'Nandini'. The 2nd Plaintiff, after writing the main story of the tele serial, 'Nandini', appointed Venkataraghvan as a Screenplay Writer. The Defendant was permitted by an agreement to perform as a Screen Play Consultant for the tele serial, tentatively titled as 'Devasena'. The same had been titled as 'Nandini' in Tamil.

5. The Defendant performed his services as Screen Play Consultant. The Plaintiff used to receive many complaints from

Venkataraghavan, Screen Play Writer, regarding the Defendant. The 2nd Plaintiff issued a legal notice on 25.3.2017. The Defendant replied on 10.4.2017 and stated that an amount of Rs.1 lakhs paid to him was not for his services as a Technician, but only a payment towards his contribution as a story writer. It is under these circumstances that CS.No.350 of 2017 had been filed, seeking the reliefs as stated above.

6. The suit in OS.No.166 of 2017 has been filed by N.Velmurugan, who is the Defendant in CS.No.350 of 2017, against Sundar C, who is the 2nd Plaintiff in CS.No.350 of 2017 and Sun TV Network Limited. The relief sought in the said suit in OS.No.166 of 2017, which is pending before the Principal District Judge, Tiruvallur, is for declaration that the 1st Defendant therein had infringed the copy right of the Plaintiff by using the original literary work of the story of the serial titled 'Nandini' and consequently, for injunction, restraining the 1st Defendant from further infringing the copy right of the Plaintiff and for consequential relief of injunction and also for costs.

7. In the plaint in OS.No.166 of 2017, it has been stated that the Plaintiff therein, was the author of the literary work of the tele serial, 'Nandini'. It has been stated that the original story was written by him. He is in possession of the original manuscript. The 1st Defendant had approached him, requesting to provide a story for a horror based tele serial proposed to be telecast by the 2nd Defendant. According to the Plaintiff, he along with Raj Kapoor, Director, Venkataraghavan, Screenplay Writer and Badri Narayanan, Dialogue Writer, prepared the entire screen play.

It has been further stated that the literary work was reduced in writing. Whenever he asked for payment of royalty, the 1st Defendant assured that an employment contract would be entered into. There was an agreement to pay a sum of Rs.1,00,000/- every month as professional charges. He further stated that the original title was 'Devasena' which was later changed to 'Nandini'. However, as requested by the 2nd Defendant, the name of the 1st Defendant was given in the title card as the Story Writer. The 1st Defendant did not make any payment towards the story/literary work. The Plaintiff claimed authorship rights of the story of the tele serial, 'Nandini'. It is under these circumstances that the suit had been filed before the District Court at Tiruvallur.

8. The present application in A.No.1449 of 2018 has been filed by the Plaintiff in CS.No.350 of 2017 under Section 10 of CPC, seeking stay of all further proceedings in OS.No.166 of 2017, till the disposal of CS.No.350 of 2017.

9. In the affidavit filed in support of this application, it has been stated that the issues in OS.No.166 of 2017 are directly and substantially the same as in CS.No.350 of 2017, which is the previously instituted suit. It is, therefore, prayed that since two parallel proceedings with the same cause of action involving the same subject matter, cannot be permitted to continue, the suit in OS.No.166 of 2017 has to be stayed.

10. A counter has been filed in this application, stating that the suit in OS.No.166 of 2017 had been filed under Section 62 of the Copyright Act, 1957, whereas the suit in CS.No.350 of 2017 had been filed under Order 7 Rule 1 of CPC read with Order 4 Rule 1 of

the Original Side Rules and that Section 10 of CPC will not apply to the facts of the present case since the issues are totally different. It has been further stated that the suit for infringement will have precedents over a suit for defamation. It has been further stated that consequently, this application should be dismissed.

11. This Court heard the arguments of the learned counsel on either side.

12. Section 10 of CPC is as follows:-

"10. Stay of suit:-

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

13. A perusal of the pleadings reveal that CS.No.350 of 2017 has been filed, seeking damages for defamation as against the Defendant therein.

Whereas OS.No.166 of 2017 had been filed before the District Court at Tiruvallur under Section 62 of the Copyright Act, 1957.

14. Section 62 of the Copyright Act, 1957 is as follows:-

'62. Jurisdiction of court over matters arising under this Chapter. - (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other

right conferred by this Act shall be instituted in the district court having jurisdiction.

(2) For the purpose of sub-section (1), and "district court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain."

15. The issues involved in the suit in OS.No.166 of 2017 are whether the Plaintiff therein has copy right for the story lines of the tele serial, 'Nandini' and whether the 1st Defendant therein had infringed the copy right of the Plaintiff. The principal issue in CS.No.350 of 2017 is whether the Defendant therein had defamed the Plaintiffs through whatsapp, you tube, face book, twitter and such other social media.

16. The primary conditions to attract Section 10 of CPC are that the issues must be substantially the same and more particularly, the decision in the earlier suit should act as res-judicata in the subsequent suit. Any decision rendered in CS.No.350 of 2017 would certainly not act as res-judicata over the issues in OS.No.166 of 2017. In OS.No.166 of 2017, the issue of copy right will have to be decided. In CS.No.350 of 2017, the issue whether the Defendant therein had defamed the Plaintiffs would have to be decided. Both are two parallel proceedings and consequently, the relief sought in this application cannot be granted even at the cursory glance of the averments of both the complaints.

17. In 2000 II CTC 664 (Vee Cee Yes Granites Vs. Central Bank of India, Chennai), it had been held as follows:-

"10. Mainly, for staying a subsequently filed suit, matters in issue in both the suits should be identical.

11. The words "directly and substantially in issue" would mean that Section 10 would apply only if there is identity of the matter in issue in both the suits meaning thereby that the whole of the subject-matter in issue in both the proceedings is identical and not merely one of the main issues which arise for determination in the two suits.

12. Where the subject-matter of two suits are not the same, Section 10 will have no application. In other words, where the determination of the issues involved in the earlier suit would not put an end to the controversy between the parties with regard to the other issues that may be left in the subsequent suit, stay of the subsequent suit is not possible.

13. What the section requires is that the matter in issue in the two suits should be directly and substantially the same, and proper effect must be given to the language used in the section that the identity required is a substantial identity of the subject-matter, the field of controversy between the parties in the two suits must also be the same, but the identity contemplated and the field of controversy contemplated need not be identical and the same in every particular but the identity and the field of controversy must be substantially the same."

18. It clear from the pleadings that the issues are not substantially the same. The issues are totally different. The judgement in CS.No.350 of 2017 would not resolve the issues in OS.No.166 of 2017. Consequently, this application is to be dismissed.

19. In the result, this application is dismissed. No costs.

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

06.06.2018

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/6.6.2018

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