

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 28TH DAY OF JUNE 2018

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

O.A. No.559 of 2018

in

C.S. No.384 of 2018

Dr.P.Kalidas

S/o. G.Perumal

Proprietor

M/s. Madhumathii Films

No.622, Thiruvottriyur High Road,

Tondiarpet, Chennai 600 081. : Applicant/Plaintiff

-Versus-

Mr.V.Sathyamurthi

Proprietor

M/s. Clapboard Production

Plot No.H, Block 3, Ceebros Shayamala Garden,

Arcot Road, Saligramam,

Chennai 600 093. : Respondent/Defendant

Original Application praying that this Hon'ble Court be pleased to pass an order of Ad-interim injunction restraining the respondent/defendant, his man or men or agent or agents, or any other persons claiming right under him from releasing or screening the Tamil movie "Goli Soda-2" inclusive of digital format of QUBE, UFO, PRO-V, SONY, AEROX, PXD, SCRABBLE, either themselves or under any other banner 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, seeking interim injunction, restraining the Respondent/ Defendant, from releasing or screening the Tamil movie, GOLLI SODA-2, inclusive of digital format of QUBE UFO PRO V SONY AEROX PXD SRABBLE, without settling the claim of the Plaintiff, pending disposal of the suit.

2. The suit in CS.No.384 of 2018 has been filed by Dr.P.Kalidas, Proprietor, M/s.Madhumathii Films, Chennai, against V.Sathyamurthi, Proprietor, M/s.Clapboard Production, Chennai, seeking a judgement and decree for Rs.1,55,00,000/- (Rupees one crore and fifty five lakhs only) together with interest at 18% p.a. from the date of the plaint till the date of realisation and also costs of the suit.

3. It is the case of the Plaintiff that he is the Proprietor of a Distribution and Production Company, viz. M/s.Madhumathii Films and is in the business of distributing Tamil films and has been in the business for the past 25 years. The Defendant is the Proprietor of M/s.Clapboard Production and is also in the business of producing and distributing Tamil films. The Defendant had approached the Plaintiff and offered to grant commercial and theatrical exhibition rights of the Tamil film released by him, titled as 'Oru Nalla Nal Pathu Solren', on a minimum guarantee of Rs. 3 crores. The distribution rights in the area of Chengalput, South Arcot and North Arcot, including Chittoor

District, was granted for a period of five years. The said film was released on 2.2.2018. An agreement was entered into and distribution right was obtained by the Plaintiff. A letter, confirming grant of rights for North Arcot, South Arcot and Chengalput areas was also issued by the Defendant on 16.1.2018. The Defendant had also issued an acknowledgement dated 1.2.2018 for receipt of payment.

4. According to the Plaintiff, he had paid a sum of Rs.3 crores as minimum guarantee. He had also made an additional deposit of Rs.60 lakhs. However, the movie did not do well in the box office. In view of the said reason, the theatrical collections in the areas covered was only Rs.1,70,26,149/-. The Plaintiff claimed that he had incurred a loss of Rs.1,29,73,851/-, apart from the loss of the additional deposit of Rs.60 lakhs. The Plaintiff claimed that he is entitled for return of the said additional deposit of Rs.60 lakhs. The Plaintiff demanded the Defendant to return the additional deposit amount and also to make good the loss sustained by the Plaintiff. The Defendant agreed orally to compensate the loss sustained to the tune of Rs.1,29,73,851/- by giving distribution rights of another Tamil film, GOLI SODA-2. The Defendant had also agreed to refund the additional deposit of Rs.60 lakhs before the release of the said movie.

5. The Plaintiff has further stated that yet another

agreement called 'Distribution Agreement' was entered into between the parties on 15.2.2018 for the areas of South Arcot District, including Pondicherry and North Arcot, including Chittoor District. The Defendant adjusted a sum of Rs.45 lakhs as refund for the film, 'Oru Nalla Nal Pathu Solren' towards the advance taken for the distribution rights of the film, GOLI SODA-2. The Defendant also issued a cheque for Rs.10 lakhs by cheque No.000292, dated 17.4.2018, drawn on HDFC Bank, Valarasaravakkam. However, the Defendant had removed the name of the Plaintiff as the distributor of the film, GOLI SODA-2 and assigned the distribution rights to third parties in the very same areas allotted to the Plaintiff. The Plaintiff made a representation, dated 21.4.2018 to the Chennai, Chengalput and Kanchipuram Film Distributor's Association. He also called upon the Defendant to settle the amount which was quantified at Rs.1,55,00,000/-, exclusive of GST charges. However, in violation of the agreement, the Defendant had allocated the distribution rights of the film, GOLI SODA-2 to persons of his choice in South Arcot District, including Pondicherry and North Arcot, including Chittoor District areas. It is under these circumstances that the Plaintiff has filed the present suit, seeking a judgement and decree, as stated above.

6. In the affidavit filed in support of the present application, the Plaintiff had once again reiterated the

facts as stated in the plaint and further stated that there was an express agreement by the Defendant to refund the additional deposit of Rs.60 lakhs before the release of the movie, GOLIE SODA-2. It was stated that by the agreement dated 15.2.2018, the Defendant adjusted a sum of Rs.45 lakhs as refund for the film, 'Oru Nalla Nal Pathu Solren' towards advance payment for distribution right of the film, GOLIE SODA-2. It has been further stated that the Defendant had issued a cheque no.000292 dated 17.4.2018 drawn on HDFC Bank, Valarasavakkam for a sum of Rs.10 lakhs. It was also stated that the Defendant had assigned the distribution rights to third parties in the areas allocated to the Plaintiff. The Plaintiff had also made a representation on 21.4.2018 to Chennai, Chengalput and Kancheepuram Film Distributor's Association. It has been stated that though several messages had been sent to the Defendant, the Defendant did not come forward to honour the agreement. Consequently, the Plaintiff sought interim injunction restraining the Defendant from releasing or screening the Tamil movie, GOLIE SODA-2, inclusive of digital format of QUBE UFO PRO V SONY AEROX PXD SRABBLE, without settling the claim of the Plaintiff, pending disposal of the suit.

7. When the application was moved before this Court, seeking interim orders, this Court had directed the Defendant

to deposit a sum of Rs.75 lakhs, which was roughly 50% of the amount claimed in the suit and it was further held that if the Defendant does not undertake either to deposit the amount or produce a bank guarantee for the said sum, there will be an order of injunction, restraining the Defendant from releasing the said movie, GOLI SODA-2 in North Arcot District and South Arcot District areas. Notice was thereafter directed to the Defendant. Upon receipt of notice, the Defendant had entered into appearance. It is also to be noted that notice sent through Court had been returned as 'door locked'.

8. A counter has been filed by the Defendant. In the counter, the Defendant has admitted to the letter, dated 16.1.2018 and the acknowledgement, dated 1.2.2018 in paragraph 3, but stated that the acknowledgement did not mention any specific amount. It was stated that he hurriedly wrote the said letter and failed to mention the amount received. It was also denied that an additional deposit of Rs.60 lakhs was made, apart from the minimum guarantee payment of Rs.3 crores. It was claimed that what was actually paid was only Rs.45 lakhs. But, it was admitted that the said sum of Rs.45 lakhs is refundable. It was stated that it was to secure the amount that the agreement dated 15.2.2018 had been entered into between the parties. It was denied that the Defendant indulged in cheating with respect

to collection of the earlier movie, 'Oru Nalla Nal Pathu Solren'. It was also stated that the sum of Rs.3 crores was paid only on minimum guarantee basis and the loss would rest only with the distributor and not on the Defendant. It was stated that the agreement dated 15.2.2018 was only an security arrangement agreement. There was no agreement to return Rs.60 lakhs. There was no compulsion to enter into such an agreement. It was stated that since Rs.10 lakhs had been paid by a cheque, a sum of Rs.35 lakhs alone has to be paid out of the refundable amount of Rs.45 lakhs. It was stated that a complaint had been lodged by the Plaintiff with the Chennai, Chengalput and Kanchipuram Film Distributor's Association, wherein only a sum of Rs.45 lakhs was claimed. The Defendant has stated that he had deposited a sum of Rs.25 lakhs to the Association and had also issued a security cheque for Rs.20 lakhs. He also stated that a sub distributor had been requested to arrange for the deposit of Rs.25 lakhs through bank transfer. It has been stated that the Plaintiff had filed the suit in the last hour and that the suit film had been released and consequently, it was stated that the application had become infructuous and has to be dismissed.

9. A reply affidavit had been filed by the Plaintiff. It was reiterated that a sum of Rs.3 crores had been paid under the distribution agreement and an additional

deposit of Rs.60 lakhs had also been paid. It was also reiterated that a loss of Rs.1,29,73,851/- had been incurred with respect to the earlier film, 'Oru Nalla Nal Pathu Solren'. This was exclusive of the additional deposit of Rs.60 lakhs. It was further reiterated that to compensate the loss, the distribution right for the new Tamil film, GOLI SODA-2 was agreed to be given by the Defendant. It was stated that the agreement dated 15.2.2018 was under compulsion. However, the distribution right for the areas of South Arcot District, including Pondicherry and North Arcot District, including Chittoor District was granted. It was further stated that following the terms of the agreement, the Defendant had granted distribution rights for the said areas to third parties. It has been stated that after orders were passed by this Court, directing the Defendant to deposit 50% of the suit claim, the Defendant had deposited a sum of Rs.25 lakhs with the Association and had also issued a cheque for a sum of Rs.20 lakhs. It has been stated that the film had been released without complying with the directions of this Court.

10. This Court heard Mr.T.N.Rajagopalan, the learned counsel for the Applicant/ Plaintiff and Mr.P.L.Narayanan, the learned counsel for the Respondent/ Defendant. Even though orders were being passed in this application, for the

sake of convenience, the parties shall be herein after referred to as the Plaintiff and the Defendant.

11. The suit is filed, seeking a judgement and decree for Rs.1,55,00,000/- together with interest @ 18% p.a. and for costs of the suit.

12. It is the case of the Plaintiff that he is the Sole Proprietor of M/s.Madhumathii Films, Chennai, which is involved in distribution and production of Tamil movies. Similarly, the Defendant V.Sathyamurthi, Proprietor, M/s.Clapboard Production, Chennai, is also involved in production and distribution of Tamil movies. There was an earlier agreement between them with respect to the earlier movie, 'Oru Nalla Nal Pathu Solren'. It was stated that the Defendant had agreed to grant commercial and theatrical exhibition rights of the Tamil film released by him, titled as 'Oru Nalla Nal Pathu Solren', on a minimum guarantee of Rs. 3 crores. This was for the areas of Chengalput, North Arcot and South Arcot Districts, including Chittoor District for a period of five years from the date of release of the movie, which was 2.2.2018. Even though popular actors, Vijay Sethupathy and Gowtham Karthick, acted in the movie, unfortunately, according to the Plaintiff, the movie was not as successful as it was projected. But, even at that time, the Defendant had issued a letter of arrangement called NSC letter of arrangement, dated 16.1.2018 for North Arcot, South

Arcot, Chengalput areas and with respect to the payment made by the Plaintiff, the Defendant issued an acknowledgement dated 1.2.2018.

13. In the NSC letter of arrangement, dated 16.1.2018, it is stated as follows:-

"Hereby we confirm give north south and chengalput areas rights to m/s.madhimathi films represented by its proprietor Mr.kalidas for sum of Rs.3,00,00,000/- (three crore) minimum guarantee and Rs.60,00,000 (sixty lakhs) additional deposit. We agree to give 11% running commission. Hereby we received RS.5,00,000/- (five lakhs) as advance. Other conditions as usual in film trade."

14. The letter of acknowledgement dated 1.2.2018 is as follows:-

"Payment received for the movie, 'Oru Nalla Naal Paathu Solren' for the Area NSC (North & South Arcot, Chengalput Area as known as in film trade."

15. In the counter affidavit, with respect to the said two letters, the Defendant had stated as follows:-

"It is true that there is a letter dated 16.1.2018 and also an acknowledgement dated 1.2.2018, but it is important to note here that the acknowledgement does not spell out receipt of any specific amount either in figures or in words. The Applicant asked a letter of acknowledgement and I did hurriedly write such a letter wherein I failed to mention the amount received."

16. A reading of the said statements leads this Court to come to a reasonable conclusion that there is an admission with respect to the letters and particularly, with

respect to writing and signing of the letters. But, it has been stated that the second letter was written in a hurried manner and the amount alone was not mentioned. From a reading of the plaint, where this fact was also stated, a prima facie conclusion can be drawn that a minimum guarantee agreement for Rs.3 crores had been entered into and a sum of Rs.60 lakhs had been given as additional deposit.

17. Along with the plaint, the collection receipts for the movie, 'Oru Nalla Naal Pathu Solren', have also been enclosed. In the application and also in the plaint, it has been consistently stated by the Plaintiff that he had suffered a loss of Rs.1,29,73,851/-. It is under these circumstances that when the Defendant began to commence his next project of release of the movie, GOLI SODA-2, once again, the parties had entered into an agreement. According to the Plaintiff, the Defendant agreed to compensate for the loss of Rs.1,29,73,851/- by granting distribution rights for the areas of South Arcot District, including Pondicherry and North Arcot District, including Chittoor District. This distribution agreement is dated 15.2.2018 and it has been specifically provided as follows:-

"1.1 Assigned Rights: Theatrical Distribution rights of said film in Tamil language only North & South Arcot area.

1.2 Authorization Letters and such requisite instruction to concerned other agencies conveying DISTRIBUTORS right to access release prints physical an digital, for the sole purpose of

distribution in the areas of lease only as defined above in Tamil language only subject to complete fulfilment of all obligations pursuant to this agreement by the DISTRIBUTOR..

An payment of Rs.45,00,000/- (Forty five lakhs only) refund of "Oru Nalla Nal Pathu Solren' NSC area payment consider as ASSIGNEE ADVANCE FO RTHE ABOVE SAID RIGHTS."

18. However, it is the grievance of the Plaintiff that the Defendant had made arrangements to release the movie even in North Arcot and South Arcot areas which had been granted to him to a third party in direct violation of the agreement under which the Plaintiff had an existing right. The Plaintiff's name was also not printed in the advertisement posters. He was not shown as the Distributor for the South Arcot including Pondicherry and North Arcot, including Chittoor Districts. The Plaintiff had therefore given a complaint before the Chennai, Chengalput and Kanchipuram Film Distributor's Association. It was stated that the Defendant had given a cheque no.000292 dated 17.4.2018, drawn on HDFC Bank, Valasaravakkam, for Rs.10 lakhs.

19. From the counter filed by the Defendant, it is seen that pursuant to the complaint, there were discussions and negotiations and the Defendant had made an arrangement through his sub distributor, Senthil, to deposit a sum of Rs.25 lakhs to the Association and had also issued a cheque for Rs.20 lakhs as security. However, details as to the date

on which the amount was transferred to the Association and the date of the said cheque, have not been disclosed in the counter affidavit. These are facts which are to the exclusive knowledge of the Defendant. It is the assertion of the learned counsel for the Plaintiff that the said deposit has been made after the date of the order of this Court in the application, wherein this Court had directed the Defendant to deposit one half of the suit claim, namely, Rs.75 lakhs into the Court and had also stipulated that on failure to do so, an order of injunction with respect to release of the movie in the said areas would follow.

20. It is pertinent to point out that the Defendant had not deposited the said amount into the Court. The Defendant stated that he would deposit a sum of Rs.35 lakhs and further stated that it was only on condition that the Plaintiff should not withdraw the amount. Imposing such pre-conditions cannot be permitted.

21. It is clear that the Plaintiff has made out a prima facie case with respect to payment of at least Rs.60 lakhs additional deposit at the time of release of the movie, 'Oru Nalla Naal Pathu Solren' and adjustment of Rs.45 lakhs at the time of release of the movie GOLI SODA-2. The Plaintiff has also established that he was granted distribution rights for the areas of North Arcot, including Chittoor District and South Arcot District including

Pondicherry for the said movie. The Plaintiff has also established that in violation of the said agreement, third parties have been entrusted with the distribution rights by the Defendant.

22. The Defendant had not come forward to disclose the date on which he had transferred a sum of Rs.25 lakhs through the sub distributor, Senthil in favour of the Association, to whom the Plaintiff had given a complaint and also the date of the cheque for Rs.20 lakhs said to have been given as security deposit. The Defendant has also not complied with the directions of this Court and had also not sought for modification of the order. The Plaintiff having lent money and the Defendant having violated not only the terms of the agreement, but also the orders of this Court, the balance of convenience swings in the direction of the Plaintiff.

23. In the earlier order of this Court dated 13.6.2018, it was directed as follows:-

"'7. On consideration of the facts and the documents in the case, the Defendant is directed to deposit a sum of Rs.75,00,000/- which would roughly be 50% of the amount claimed in the suit and if the Defendant does not undertake to either deposit the said amount or produce bank guarantee towards the said amount, automatically there will be an order of injunction restraining the Defendant from releasing the said movie, 'Goli Soda-2' in North Arcot and South Arcot areas."

24. The learned counsel for the Defendant claimed that the Plaintiff has not come to Court with clean hands and has suppressed the fact that a complaint had been given before the Chennai, Chengalput and Kanchipuram Film Distributor's Association. A careful reading of the plaint reveals that the Plaintiff had disclosed the complaint. The fact that the Defendant had transferred the money to the Bank Account of the Association and the fact that the Defendant had issued a cheque as security deposit to the Association are facts to the exclusive knowledge of the Defendant and the Plaintiff cannot be faulted for not mentioning the same. As a matter of fact, the Defendant has also not given the date on which the said bank transfer was made and the date on which the cheque was issued.

25. The learned counsel for the Defendant has also relied on **MANU/TN/2543/2015 (SVD.Jeevanand Vs. NIC Arts and Others)**. The facts of the present case are totally different. In that case, the Defendant had termed the loan agreement to be a forged and fabricated document. In the present case, the Defendant has admitted to the documents. Consequently, the said decision would not be applicable to the facts of this case.

26. The Defendant had not complied with the earlier orders of this Court nor sought any modification of the order. Consequently, there will be an order of interim

28.06.2018

Dated this the day of 2018
JJ 29/06/18

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.