

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
(ORDINARY ORIGINAL CIVIL JURISDICTION)

RESERVED ON: 07.08.2018

DELIVERED ON : 09.08.2018

THE HON'BLE MR. JUSTICE M.SUNDAR

O.A.NO.744 OF 2018

AND

A.NO.6039 OF 2018

IN

C.S.452 of 2016

**C.S.452 of 2016:**

M/s.Pyramid Saimira Productions  
Intrnationals Limited, Rep.by its,  
Director K.S.Srinivasan,  
Chettinadu Towers,  
Rani Seethai Hall Buildings, 6th Floor,  
NO.672, Anna Salai, Nandanam,  
Chennai-600 035.

...Plaintiff

Vs.

Mr.Kamal Hasan,  
New No.4, Old No.172,  
Eldams Road, Alwarpet,  
Chennai - 600 018.

...Defendant

**O.A.NO.744 OF 2018 and A.NO.6039 OF 2018 :**

M/s.Pyramid Saimira Productions  
Intrnationals Limited, Rep.by its,  
Director K.S.Srinivasan,  
Chettinadu Towers,  
Rani Seethai Hall Buildings, 6th Floor,  
NO.672, Anna Salai, Nandanam,  
Chennai-600 035.

...Applicant/Plaintiff

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vs.

1. Mr.Kamal Hasan,  
New No.4, Old No.172,  
Eldams Road, Alwarpet,  
Chennai - 600 018.

...Respondent/Defendant

2 Aascar Films Pvt, Ltd,  
Rep.by its, Director Mr.Ravichandran  
No.9, 10th Avenue,  
Ashok Nagar, Chennai-600 083.

3 M/s.Gemini FX  
Rep.By its Manager (Lab-Incharge,  
Vembuliamman Kovil Street,  
Virugambakkam, Chennai-600 092.

4. QUBE  
No.42, Range Road,  
Mylapore, Chennai-600004.

5. UFO  
no.178/3 & 4 J.B.Towers,  
Kumaran Colony Main Road,  
Vadapalani, Chennai -600 093.

6. M/s.Prasad Xtreme Digital  
Rep.by its Managaer (Lab-Incharge),  
Arunachalam Road,  
Saligarmam, Chennai- 600 093.

Respondents/Garnishess

**O.A.NO.744/2018:**

Original Petition praying that this Hon'ble Court be pleased  
to grant Interim Injunction restraining the Respondent/Defendant,  
his men, agents, servants, distributors or anybody claim through  
or under them from in any manner alienating, releasing  
distributing, exhibiting or exploiting the picture title

<https://hcservices.ecourts.gov.in/hcservices/>

"VISHWAROOPAM II" Tamil, Telugu (Dubbed) & Hindi-Colour) anywhere  
in the World either through the Respondents 2 to 6/Garnishees 2 to

6 or in any other manner Whatsoever pending disposal.

**A.NO.6039/2018:**

Application praying that this Hon'ble Court be pleased to order attachment before Judgment by issue of a Pro-Order Prohibiting the Respondents 2 to 6/Garnishees 2 to 6 from in any manner parting with or releasing the picture titled "VISHWAROOPAM II" Tamil, Telugu (Dubbed) & Hindi-Colour) to the Respondent/Defendant or any body claiming through or under him for release/exploitation pending disposal.

These Applications coming on this day before this court for hearing and the court made the following order:

This common order will govern the aforesaid two applications, i.e., O.A.No.744 of 2018 and A.No.6039 of 2018, which shall be referred to as 'injunction application' and 'garnishee application' respectively for the sake of convenience and clarity.

2 In the main suit, there is a sole plaintiff, i.e., 'Pyramid Saimira Productions International Ltd.' ('PSG' for brevity) and a lone defendant, i.e., Kamal Haasan. The sole plaintiff in the main suit, i.e., PSG is the sole applicant in both applications herein. Likewise, lone defendant in the main suit is the first respondent in both applications herein. Five third parties qua the main suit have been arrayed as respondent Nos.2 to 6 in the instant applications and they shall be collectively referred to as 'Garnishees' for the sake of convenience and clarity. One Aascar Films Pvt. Ltd., has been

arrayed as respondent No.2 in both applications herein and this Aascar Films Pvt. Ltd. is the contesting garnishee. This contesting garnishee shall be referred to as 'AFL' for the sake of brevity.

### 3 **Precise of Facts :**

(a) PSG entered into a joint venture with one 'Raajkamal Films International' ('RKFI' for brevity) on 02.04.2008. This joint venture was reduced to writing by way of memorandum of understanding ('MOU' for brevity) dated 02.04.2008. This joint venture agreement / MOU dated 02.04.2008 is the genesis of this lis, which shall hereinafter be referred to as 'suit agreement'. Suffice to say that the suit agreement is for the joint production of a feature film in Tamil and Hindi, which goes by the name 'Marmayogi'. This feature film 'Marmayogi' shall hereinafter be referred to as 'suit movie' for the sake of brevity, convenience and clarity. It has also been covenanted in the suit agreement that the sole defendant in the main suit Kamal Haasan shall be the Director as well as hero of the suit movie.

(b) It is not in dispute before this Commercial Division in the hearing that PSG paid a sum of Rs.6,90,00,000/- to RKFI and another sum of Rs.3,88,67,000/- to sole defendant Kamal Haasan under the suit agreement. Complaining that sole defendant in the main suit failed to discharge his obligations under the suit agreement by neglecting to commence production of the suit movie, to confirm the artists, technicians, to finalise the script, shooting schedule, etc., PSG sought refund of the moneys paid under the suit agreement. PSG also alleged that moneys paid under

the suit agreement to the sole defendant have been diverted for the production of another movie which goes by the name 'Unnaipol Oruvan'. Complaining that sole defendant in the main suit has not refunded the moneys paid under the suit agreement, instant main suit, i.e., C.S.No.452 of 2016 was filed claiming a sum of Rs.5,44,00,000/- together with interest on Rs.4,00,00,000/-. There is also a prayer for costs.

(c) Suit agreement which is genesis of the lis is also the fountain-head for four different suits in this Court. This is not in dispute in the hearing before this Commercial Division. Three other suits are prior to instant main suit and a brief mention about the same is necessary.

(d) First suit is C.S.No.821 of 2009. This suit was filed by PSG against RKFI, Kamal Haasan and an another partner of RKFI. Considering the scope of the instant applications, suffice to say that this suit was filed inter-alia for recovery of aforesaid Rs.6,90,00,000/- paid by PSG to RKFI under the suit agreement.

(e) Second suit is C.S.No.829 of 2009 and this Commercial Division is informed in the hearing that this suit was filed by sole defendant in the instant main suit, i.e., Kamal Haasan against PSG inter-alia claiming Rs.11,00,00,000/- as damages for breach of suit agreement.

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(f) Third suit is C.S.No.830 of 2012 which has been filed by



Regent Saimira Entertainment Ltd. against RKFI, another partner of RKFI and two other entities. It is not in dispute that 'Regent Saimira Entertainment Ltd.' is the changed name of PSG (changed in accordance with the provisions of law inter-alia under the Companies Act) and the prayer in this suit was for creating first charge over a feature film, which went by the name 'Viswaroopam' which shall hereinafter be referred to as 'Viswaroopam 1' for the sake of convenience and clarity. This suit is also predicated essentially on the suit agreement and the charge over Viswaroopam 1 was sought to be created on the ground that moneys are due under the suit agreement from RKFI and therefore, PSG is entitled to charge over Viswaroopam 1 which was produced by RKFI.

(g) It was submitted in the hearing in this Commercial Division in these two applications by the counsel for PSG and counsel for Kamal Haasan (sole defendant in the main suit) that the first of the four suits, i.e., C.S.No.821 of 2009 is in a advanced stage and the trial (examination of witnesses) is under way. It was submitted that the second and third suits are lying dormant. However, it is not clear as to why the parties to the lis have not sought for joint or simultaneous trial of four suits. Ironically, this is a 'mystery', may be to be in tandem with the title of the suit movie (Marmayogi) as both the counsel before this Commercial Division were unable to say why a joint trial had not been sought for.

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(h) Under the aforesaid circumstances, it is not in dispute that the movie which goes by the name Vishwaroopam II'

(hereinafter referred to as 'said movie') has been produced by RKFI and that the said movie is scheduled for release on 10.08.2018. Under such circumstances, PSG has filed the instant two applications and brought up the same before this Commercial Division for the first time on 03.08.2018.

4 Mr.A.Chidambaram, learned counsel on record for PSG, Mr.K.S.V.Prasad, learned counsel on record for sole defendant in main suit, i.e., Kamal Haasan and learned Senior Counsel Mr.P.S.Raman instructed by Mr.Vijayan Subramanian, counsel on record for AFL were before this Commercial Division.

5 To be noted, vide separate proceedings dated 07.08.2018 in the main suit, in the light of the joint common undisputed submissions made without any disagreement or dispute by aforesaid two counsel and one senior counsel before this Commercial Division, jurisdiction of this commercial division qua the main suit, i.e., C.S.No.452 of 2016 was determined. Thereafter, instant applications were heard.

**6 Rival submissions of adversaries :**

(a) Submissions of Mr.A.Chidambaram, learned counsel for PSG can be summarised as follows :

(i) Pending main suit, PSG is entitled to security for the suit claim;

(ii) After receipt of moneys under the suit agreement, sole defendant did not do anything with regard to suit movie and therefore, PSG is entitled to refund and PSG is entitled to have the same

secured pending suit.

(b) Submissions of Mr.K.S.V.Prasad, learned counsel for sole defendant in the main suit (first respondent in the instant applications) can be summarised as follows :

(i) Sole defendant in the main suit has discharged all his obligations under the suit agreement, which includes payment made to music director and others who were commissioned for the suit movie, but PSG went into a financial nosedive owing to which RKFI had to take over the suit movie, which is yet to be completed.

(ii) Sole defendant in the main suit has filed C.S.No.829 of 2009 against PSG claiming Rs.11,00,00,000/- as damages inter-alia owing to breach and loss caused to him by PSG in and by the suit agreement.

(iii) In the first of four suits, i.e., C.S.No.821 of 2009 in which trial is in progress, the witness on behalf of PSG was unable to say anything about diversion of funds. Other parts of deposition thus far are also in his favour.

(iv) PSG made a similar attempt to stall the release of Viswaroopam 1 by taking out an interlocutory application in C.S.No.830 of 2012, the same came to be dismissed with costs by a learned Single Judge of this court and the intra court appeal



against the same was ultimately withdrawn.

(c) Mr.P.S.Raman, learned senior counsel leading the counsel on record for AFL made submissions which can be summarised as follows :

(i) AFL is not a garnishee qua sole defendant in the main suit or for that matter, RKFI which is the producer of the said movie. In other words, AFL has independent rights in the said movie, independent of RKFI and sole defendant in the main suit.

(ii) Release of the said movie was widely advertised inter-alia in a website which goes by the name 'Indiaglitz' as early as on 17.7.2018. Besides this, there have been advertisements in all kinds of media for the past one month about the release of the said movie, but PSG has chosen to bring up the instant applications only on 03.08.2018 for the first time before this Commercial Division in the eleventh hour, on the verge of release of the said movie. Such a practice has been deprecated by Courts.

(iii) AFL has purchased rights in the said movie for a valuable consideration of Rs.40,75,00,000/-. This is an outright purchase and AFL is not holding any money payable to sole defendant in the main suit or to RKFI for that

matter pending main suit.

(iv) At least, five movies, which go by the names 'Manmadan Ambu', 'Viswaroopam 1', 'Uthamavillan', 'Papanasam' and 'Thoonga Vanam' which were either produced by RKFI or sole defendant in main suit and in which sole defendant has played lead role, have been released and PSG did not take any action against those releases, owing to which AFL had every reason to bona fide believe that there is no encumbrance or hindrance in releasing said movie and certain rights in the said movie were purchased on the basis of such bona fide belief for valuable consideration.

## 7 Analysis :

(a) A careful analysis of the rival submissions reveals that the entire issue in the instant two applications turn on a very narrow compass. The reason is not far to seek. All the submissions pertaining to non performance of obligations / breach of obligations under the suit agreement and submissions denying the same (asserting performance of obligations and counter allegations) have to necessarily be decided in the main suit. Those questions cannot be decided in the instant interlocutory applications because of the scope of the applications and also because of the obtaining position that the instant interlocutory applications are decided on affidavits and counter affidavits.

(b) It follows as a sequitur that it will suffice if the question as to whether PSG is entitled to security pending suit is discussed and analysed.

(c) With regard to instant two applications, injunction application has been taken out inter-alia under Order XXXIX Rules 1 and 2 of 'The Code of Civil Procedure 1908' (hereinafter referred to as 'CPC' for brevity) and the garnishee application has been taken out under Order XXXVIII Rule 5 CPC. It is not in dispute that the said movie is produced by RKFI, but RKFI is not a party to the main suit and has not been arrayed as respondent in the instant applications.

(d) Elaborating on the submission regarding PSG's entitlement to have security pending suit, it was submitted by learned counsel for PSG that RKFI was originally constituted by two partners, namely, sole defendant in the main suit and his brother, his brother died and therefore, it became a sole proprietary concern by operation of law. This was contested by learned counsel for sole defendant as well as learned senior counsel for AFL. To be noted, both are not counsel for RKFI, but their submissions were in their capacity as counsel appearing for partner in RKFI and as counsel appearing for AFL which is a contracting party qua RKFI for purchasing certain rights in the said movie. On this basis, it was asserted that RKFI continues to be a partnership firm and it was pointed out that if the submission of counsel for PSG that

RKFI has become a sole proprietary concern by operation of law is to be admitted, RKFI which has produced the said movie may be a

different firm. However, this submission was made on a demurrer or in other words, assuming the stand of the counsel for PSG to be correct. These issues can certainly not be decided in the instant applications.

(e) As mentioned supra, even in the main suit, RKFI is not a party. In this backdrop, it is to be seen that AFL is not a garnishee qua sole defendant in the main suit. In other words, AFL does not hold any money in its hand which is payable to sole defendant. It is also asserted and averred before this Commercial Division that no money with regard to said movie, which will become payable to sole defendant, will come into the kitty and coffers of AFL even in future, i.e., post release of said movie. This submission was made on instructions and it is recorded. Therefore, it is the stated position of AFL that it is not a garnishee qua sole defendant. It neither holds money payable to sole defendant nor will it get monies payable to sole defendant qua said movie, post release. With regard to other garnishees, there is nothing on record to show that they have been served, but considering the paucity of time, counsel for PSG chose to pursue instant applications against sole defendant in the main suit and AFL, i.e., respondents 1 and 2 and requested this Court to decide the applications on this basis. The arguments were advanced on this basis.

(f) AFL has also filed an affidavit dated 7.8.2018 in its capacity as garnishee. It has been categorically averred in the affidavit that AFL has purchased theatrical rights and negative rights in said movie by way of agreements dated 10.04.2013, a



memorandum of agreement dated 11.3.2017 and supplementary agreement dated 13.07.2018. It is further stated position of AFL that vide said three agreements, AFL has obtained absolute rights qua said movie for valuable consideration and therefore, right of AFL is completely independent of sole defendant in the main suit. This coupled with the stated position of AFL that even in future, post release of said movie, no money is payable to sole defendant which will come into the coffers with regard to said movie and no order can be passed against AFL.

(g) Further more, as mentioned supra, garnishee application has been filed under Order XXXVIII Rule 5 CPC. The ingredients and parameters necessary for acceding to a prayer under Order XXXVIII Rule 5 are too well settled. Suffice to say that a person seeking relief under Order XXXVIII Rule 5 CPC should be able to establish that there are actions on the part of person against whom relief has been sought, which are intended to defeat the rights of applicant and that such actions are intended to defeat a possible decree in future. There is no categorical and specific allegation in this regard.

(h) Further more, it is not in dispute that with regard to first of the four suits, i.e., C.S.No.821 of 2009, a bank guarantee for 50% of the suit claim has been furnished in favour of PSG. It is also not in dispute that the bank guarantee is being renewed from time to time and it is kept alive. The claims in C.S.No.821 of 2009 and the instant main suit, i.e., C.S.No.452 of

subsisting for 50% of the suit claim in C.S.No.821 of 2009.

(i) This takes us to the aborted attempt by PSG to stall the release of Viswaroopam 1. An application in this regard, being O.A.No.1069 of 2012 was taken out by PSG (as mentioned supra, in its changed and present name 'Regent Saimira Entertainment Ltd.') in C.S.No.830 of 2012. After full contest, the same came to be dismissed with costs. Learned single Judge of this court in and by order dated 08.01.2013, held that PSG is not in any way concerned with the movie Viswaroopam 1. Learned single Judge has also held that charge if any can be created only under Order XXXVIII Rule 5 CPC and that can be only after fulfilling the conditions stipulated therein. These two aspects have been articulated by the learned Single Judge in paragraphs 24 and 22 of the said order. Relevant portion of paragraph 24 and entire paragraph 22 of the said order read as follows:

**Paragraph 24 :**

"24.The plaintiff neither has a prima facie case nor is going to suffer any irreparable loss. The plaintiff/applicant is not in any way concerned with the film "Viswaroopam" now to be released even as per his own pleadings in the suit. ...."

**Paragraph 22 :**

"22.The Charge can be created by the Court on the property in a suit by invoking the provisions of Order 38 Rule 5 in case any unsecured amount is due fulfilling the conditions stipulated therein."

(j) It is also not in dispute that this matter was carried in appeal by way of an intra court appeal being O.S.A.No.45 of 2013 and the same came to be withdrawn on 09.01.2017. Learned counsel for PSG has not been able to point out that the position has since changed and some new developments have taken place thereafter which necessitates this Commercial Division to take a different view now. However, learned counsel for PSG pressed into service a judgment of Hon'ble Supreme Court in **Sardar Govindrao Mahadik Vs. Devi Sahai** reported in **AIR 1982 SC 989** to drive home the time honoured parameters and determinants for answering in the affirmative a prayer under Order XXXVIII Rule 5 CPC. This is contained in paragraph 58 of the said case law and relevant portion of paragraph 58 reads as follows :

"58. ...Attachment before judgment is levied where the Court on an application of the plaintiff is satisfied that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him (a) is about to dispose of the whole or any part of his property, or (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court. The sole object behind the order levying attachment before judgment is to give an assurance to the plaintiff that his decree if made would be satisfied. It is a sort of a guarantee against decree becoming infructuous for want of

property available from which the plaintiff can satisfy the decree.....”

(k) As already alluded to supra in this order, there is no averment that sole defendant in the main suit is taking efforts to dispose of some properties or remove some properties from the local limits of the jurisdiction of the Court which is likely to render a possible decree in the main suit infructuous. Therefore, this judgment does not help PSG in the instant case. Further more, in the light of no reason for PSG for not having approached this Commercial Division earlier, the principle that it is not desirable to approach the Court in the eleventh hour in cases of this nature also militates against PSG. In any event, 50% of the suit claim in C.S.No.821 of 2009 which is part of the claim under the suit agreement has clearly been secured by way of bank guarantee and it is not in dispute that the same is subsisting even as of today.

(l) In the light of the narrative supra, it follows as a sequitur and necessary corollary that PSG is not entitled to any relief in the instant applications.

(m) Before parting with the case, it is made clear that the adversaries have to proceed with the main suits as expeditiously as possible. In any event, as the instant main suit is now before the Commercial Division and governed by the Commercial Courts Act, 2015, strict time lines will operate. However, as alluded to supra, it is a mystery and irony as to why parties have not chosen to ask for a joint trial of the aforesaid four suits. In other



words, it is a 'mystery' because both counsel for the adversaries in the main suit are unable to give any explanation / reason much less convincing explanation / reason as to why neither of them sought for tagging of suits and simultaneous trial, though it is not in dispute that all the four suits arise out of suit agreement. 'Ironical' (in the light of factual matrix of this case) because, the suit movie goes by the title 'Marmayogi'.

(n) The parties will do well to seek for a joint trial of four suits in a manner known to law. This Commercial Division is very clear in its mind that a joint trial of four suits is not only just and desirable, but imperative and non negotiable as it can lead to anomalies and avoidable complications if the suits are not tried and disposed of together.

**8 Outcome :**

Owing to all that have been set out supra, both applications are dismissed. Parties are left to bear their respective costs.

Sd./-M.S.J

09.08.2018

//Certified to be true copy//

Dated at Madras this the                      day of                      2018.

COURT OFFICER (O.S.)

GJM/09.08.2018