

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR. JUSTICE P.D.AUDIKEVALU

O.S.A.Nos.106 and 107 of 2018

and

CMP.Nos.7001 and 7002 of 2018

OSA.No.106 of 2018:

M/s.Vijay Antony Film Corporation
Private Limited
rep. by its Director
Fathima Vijay Antony ... Appellant

Vs.

- 1.William Alexander
Proprietor M/s.Picture Box Company,
No.9/17, Club Road,
Chetpet, Chennai - 600 031.
- 2.Fathima Vijay Antony,
Proprietrix M/s.Vijay Antony Pictures,
No.86/87, Third Street
SBI Colony, Saligramam,
Chennai - 600 093.
- 3.Vijay Antony, Director
M/s.Vijay Antony Film Corporation Private Limited
No.38, Arcot Road, Vadapalani
Chennai - 600 026 and also
No.86/87, 3rd Street, SBI Colony,
Saligramam, Chennai - 600 093. .. Respondents

OSA.No.107 of 2018:

1.Fathima Vijay Antony
Proprietrix M/s.Vijay Antony Pictures,
No.86/87, Third Street
SBI Colony, Saligramam,
Chennai - 600 093.

2.Vijay Antony, Director
M/s.Vijay Antony Film Corporation Private Limited
No.38, Arcot Road, Vadapalani
Chennai - 600 026 and also
No.86/87, 3rd Street, SBI Colony,
Saligramam, Chennai - 600 093. ..Appellants

Vs.

1.William Alexander
Proprietor M/s.Picture Box Company,
No.9/17, Club Road,
Chetpet, Chennai - 600 031.

2.M/s.Vijay Antony Film Corporation Private Limited
rep. by its Director
Fathima Vijay Antony .. Respondents

Appeals filed under Order XXXVI, Rule 11 of Original Side Rules r/w Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 and Order XLIII of Civil Procedure Code, against the order dated 06.04.2018 passed by the learned Single Judge in OA.No.305 of 2018 in CS(Comm Div) No.198 of 2018.

Original application praying that this Hon'ble court be pleased to pass an order of ad interim injunction restraining the Respondentss/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 Distributors without settling the claim of the plaintiff pending disposal of the suit.

For Appellants .. Mr.S.Parthasarathy, SC for
Mr.K.Govi Ganesan

For R1 .. Mr.S.Jayakumar

* * * * *

COMMON JUDGMENT

(Delivered by R.SUBBIAH, J.)

Both the Intra Court appeals are directed against the order dated 06.04.2018 passed by the learned Single Judge in OA.No.305 of 2018 in CS(Comm Div) No.198 of 2018.

2.As the order under challenge in both the appeals is one and the same, they were heard together and are disposed of, by this common judgment.

3.One William Alexander, Proprietor of M/s.Picture Box Company, who is the first respondent in O.S.A.Nos.106 and 107 of 2018, is the plaintiff in CS.(Comm.Div)No.198 of 2018; the defendants 1 and 3 in the aforesaid suit are the respondents 2 and 3 in OSA.No.106 of 2018 and are the appellants in OSA.No.107 of 2018; and the second defendant in the aforesaid suit viz., M/s.Vijay Antony Film Corporation Private Limited, is the appellant in O.S.A.No.106 of 2018 and is the second respondent in O.S.A.No.107 of 2018.

4.For the sake of convenience, the parties are referred to as per their rank in the aforesaid suit viz., C.S.(Comm.Div) No.198/2018 as 'plaintiff' and 'defendants'.

5.The plaintiff has filed the aforesaid suit to pass a judgment and decree against the defendants jointly and severally to pay him a sum of Rs.5,79,32,285/- (Rupees Five Crores Seventy Nine Lakhs Thirty Two Thousand Two Hundred and Eighty Five Only) together with interest at 18% from 17.03.2018 till the date of realization in full and costs of the suit.

6.In the aforesaid suit, the plaintiff has moved an application in O.A.No.305 of 2018 seeking an order of ad-interim injunction restraining the 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.

7.By order dated 06.04.2018, the learned Single Judge has allowed the aforesaid application on the following terms:

(a) (1)Mrs.Fathima Vijay Antony, Proprietrix of M/s.Vijay Antony Pictures, (2)M/s.Vijay Antony Film Corporation Pvt. Limited rep. by its Director, Mrs.Fathima Vijay Antony, (3) Mr.Vijay Antony, Director, M/s.Vijay Antony Film Corporation Pvt. Limited, the defendants are hereby restrained by an order of interim injunction till 11.04.2018 from being released the movie "Kaali";

(b) If the defendants deposited a sum of Rs.4,73,00,000/-

(Rupees Four Crores and Seventy Three Lakhs Only) into the credit of C.S.No.198 of 2018, the aforesaid order shall stand automatically vacated; and

(c) If such deposit is made, the defendants shall be at liberty to release the movie on the scheduled date on 13.04.2018 and if such deposit is not made, the injunction order shall continue from 11.04.2018.

8. Feeling aggrieved, the second defendant and the defendants 1 and 3 have come up with the present Intra Court Appeals viz., OSA.Nos.106 and 107 of 2018 respectively.

9. At the outset, this Court feels it appropriate to recapitulate the necessary pleadings made by the parties.

9.1 The case of the plaintiff can succinctly be narrated as under:

(i) The plaintiff is the proprietor of a Distribution Company viz., M/s. Picture Box Company and is in the business of distributing films especially Tamil films for the last three years. According to him, the first defendant is the Proprietrix of M/s. Vijay Antony Pictures and is in the business of producing Tamil feature films and the defendants 1 and 3 are the Directors of the 2nd defendant Company.

(ii) During the course of business of the plaintiff, in the month of November, 2017, the first defendant had approached the plaintiff to grant the commercial and theatrical exhibition rights of the Tamil feature film produced by her, titled as "Annadurai" in colour on minimum guarantee in the area of entire Tamil Nadu and Puducherry, including Karaikkal and Chittoor District (Andhra Pradesh) for a period of five years from the general release date of the picture, i.e., on 30.11.2017. The lead actor in the said film is the third defendant, who is none else than the husband of the first defendant. At that time, the defendants 1 and 3 promised that the said film will be a huge hit in the market and that, the plaintiff would be making a substantial income/profit. Believing the same, the plaintiff has entered into an agreement dated 04.11.2017 and obtained the distribution rights of the said film "Annadurai" under a minimum guarantee agreement.

(iii) As per Clause (2) of the said agreement, the plaintiff has paid a sum of Rs.6,50,00,000/- (Rupees Six Crores Fifty Lakhs Only) to the first defendant as minimum guarantee amount, besides additional deposit of Rs.99,00,000/- (Rupees Ninety Nine Lakhs Only), in total a sum of Rs.7,49,00,000/- (Rupees Seven Crores Forty Nine Lakhs Only) and obtained distribution rights of the said film for the above stated areas.

(iv) According to the plaintiff, as per Clause 8 of the said agreement, the first defendant is liable to return the additional deposit of Rs.1,00,00,000/- (Rupees One Crore Only). For better appreciation, the said clause is extracted as under:

"8.The distributor shall forward the weekly statement of accounts showing the earnings and all earnings shall be appropriated in the following order:

a. First adjusting all the minimum guarantee amount paid under clause 2 above.

b. Thereafter, adjusting the additional deposit of Rs.1,00,00,000/- (Rupees One Crore Only). If it is not covered within 45 days from the general release date, then the producer shall have to refund the additional deposit after the distributor submitting all collection and agreements, immediately."

(v)Believing that the film "Annadurai" would be a huge Box Office hit, the plaintiff had made elaborate publicity in respect of the release of the movie and promoted the same. However, the movie did not do well at the Box Office and it incurred a huge loss to the plaintiff and the entire theatrical collection of the area covered in the minimum guarantee agreement dated 04.11.2017 was only Rs.2,00,00,000/- (Rupees Two Crores Only) and the theatrical collection report was also submitted to the first defendant with the knowledge of the second defendant. According to the plaintiff, he had incurred a huge loss to an extent of Rs.4,50,00,000/- exclusive of the additional deposit and hence, he is entitled to receive back the additional deposit of Rs.99,00,000/- paid by him, in terms of clause 8 of the agreement.

(vi)The plaintiff has made repeated visits and demanded the defendants 1 and 3 to refund the additional deposit. Though the defendants 1 and 3 failed and neglected to do so, they ultimately, agreed orally to compensate the loss of Rs.4,50,00,000/- by giving the distribution right in respect of the new movie named "Kaali" produced by them. They also agreed to refund the additional deposit of Rs.1,00,00,000/- before the release of the said movie "Kaali" i.e., on 13.04.2018. Further, they compelled the plaintiff to execute one more minimum guarantee agreement dated 15.02.2018 with the second defendant company, in which, the defendants 1 and 3 are the Directors.

(vii)Accordingly, the plaintiff has paid a sum of Rs.50,00,000/- towards advance payment in terms of the agreement dated 28.02.2018 and the defendants, in turn, agreed to reimburse the loss of Rs.4,50,00,000/- suffered in respect of the release of the film "Annadurai" and additional deposit of Rs.99,00,000/- aggregating to Rs.5,49,00,000/- on or before 28.02.2018. The said amount of Rs.5,49,00,000/- was to be adjusted towards the amount payable for the said minimum guarantee agreement dated 15.02.2018. Contrary to the same, the defendants have removed the name of the plaintiff as distributor of the film "Kaali" in the advertisement banner. On coming to

know about the same, the plaintiff threatened to take legal action against them. The defendants, in turn, have come forward and orally informed that the plaintiff need not pay any amount under the agreement dated 15.02.2018 and all his loss incurred in respect of the film "Annadurai" will be set right, upon releasing the film "Kaali".

(viii) However, the second defendant sent e-mails dated 01.03.2018 and 03.03.2018 to the plaintiff, demanding the amount payable under the agreement dated 15.02.2018. Further, the defendants threatened the staff of the plaintiff with dire consequences. Consequently, they presented the cheque dated 08.03.2018 given for security at the time of execution of the agreement dated 15.02.2018, which was returned dishonoured, due to the stop payment instruction given by the plaintiff to his banker. In the mean time, apprehending legal action, the defendants sent a Whatsapp message dated 16.12.2017 to the plaintiff agreeing to refund the security deposit of Rs.1,00,00,000/- before the release of the film "Kaali" as against the claim of Rs.5.79 crores made by the plaintiff. Despite the same, they failed to do so. Hence, the plaintiff has filed the suit along with the aforesaid application.

9.2 Denying the averments so made by the plaintiff, the second defendant and the defendants 1 and 3 have filed their respective counter affidavits.

9.2.1 The sum and substance of the averments made in the counter affidavit filed by the second defendant are as under:

(i) It is denied that the first defendant is the Proprietrix of M/s.Vijay Antony Pictures and that, if the corporate veil of the second defendant is lifted, the defendants 1 and 3 alone would be beneficiaries.

(ii) It is also denied that the first defendant approached the plaintiff during the month of November 2017 to grant commercial and theatrical exhibition rights of the Tamil feature film "Annadurai"; the defendants 1 and 3 promised that the said film would be a huge hit and the plaintiff would be making a substantial income/profit; and the plaintiff, believing the same, entered into the agreement dated 4.11.2017.

(iii) The defendants 1 and 3 stoutly denied the alleged payment of Rs.7,49,00,000/- made by the plaintiff. According to them, the plaintiff, on his own volition, has taken a decision of obtaining the distribution rights for the Tamil Nadu and Puducherry and Chittoor District in Andhra Pradesh, on consideration of Rs.6,50,00,000/- as minimum guarantee amount along with additional deposit of Rs.99,00,000/-, in total, Rs.7,49,00,000/- and executed the agreement dated 04.11.2017. The fact remains that the plaintiff has paid only a sum of Rs.4,23,00,000/-, the details of which, are as follows:

- (a)Rs.3,00,000/- on 4.11.2017
- (b)Rs.1,00,00,000/- on 4.11.2017
- (c)Rs.50,00,000/- on 14.11.2017
- (d)Rs.30,00,000/- on 18.11.2017
- (e)Rs.20,00,000/- on 24.11.2017
- (f)Rs.50,00,000/- on 27.11.2017
- (g)Rs.70,00,000/- on 28.11.2017
- (h)Rs.50,00,000/- on 28.11.2017
- (i)Rs.50,00,000/- on 01.12.2017

Though the plaintiff has failed and neglected to pay the balance amount, in order to avoid the delay, the first defendant has released the movie through the plaintiff.

(iv)The defendants 1 and 3 denied the alleged loss of Rs.4,50,00,000/- sustained by the plaintiff in respect of the film "Annadurai". According to them, the plaintiff has collected huge money and has not properly accounted it in respect of the said movie. However, suppressing the same, he has filed the suit in CS.No.198/2018 only with an intention to prevent the second defendant from taking any action against him for his failure to make payment as per the agreement dated 15.02.2018 in respect of the film "Kaali" produced by the second defendant.

(v)As per clause 8 of the agreement dated 4.11.2017, the plaintiff is entitled for refund of Rs.99,00,000/- only if he had paid additional deposit over and above the minimum guarantee amount. Further, as per Clause 9 of the said agreement, there is no provision for refund of minimum guarantee amount.

(vi)It is denied that the defendants 1 and 3 orally agreed to compensate the loss of Rs.4,50,00,000/- by giving a distribution right in respect of the new movie "Kaali" produced by them. It is also denied that the defendants agreed to refund Rs.1,00,00,000/- before the release of the movie "Kaali", apart from refunding a sum of Rs.4,50,00,000/-.

(vii)According to the defendants 1 and 3, the plaintiff has voluntarily signed the agreement dated 15.2.2018 with regard to the distribution right of the film "Kaali". Though the said agreement contains the payment schedule, he has not complied with the same.

(viii)It is denied by the defendants 1 and 3 that they agreed to reimburse the alleged loss of Rs.4,50,00,000/- sustained by the plaintiff and additional deposit of Rs.99,00,000/- on or before 28.02.2018 and the said amount was to be adjusted towards the amount payable for the minimum guarantee agreement dated 15.2.2018. According to them, the said allegation is made only for the purpose of preventing the defendants from releasing the film "Kaali" and to extort money illegally from them.

(ix)It is the case of the defendants 1 and 3 that they have not given any undertaking to the effect that they will

settle the claim of the plaintiff prior to the release of the film "Kaali". On the other hand, the plaintiff, having failed to make payment as per the terms of the agreement, has filed the present suit with unclean hands, in order to make up his failure in honouring his contractual obligations made therein and hence, he is not entitled for any interim relief as prayed for herein.

9.2.2 The sum and substance of the averments made in the counter affidavit filed by the second defendant are as under:

(i) The second defendant is a separate legal entity and is independently doing the production of movies.

(ii) As the second defendant is a company and its liabilities are limited, they have nothing to do with the transaction that had taken place between the plaintiff and the first defendant. Further, they have not been arrayed as party to the agreement dated 4.11.2017. As such, they are in no way connected with the claim made by the plaintiff.

(iii) It is specifically stated in the agreement dated 4.11.2017 that the distributor shall not demand refund of minimum guarantee amount or any other amount spent under this agreement under any circumstances, once the picture is released, there is no cause of action for filing the present suit.

(iv) In the agreement dated 15.02.2018 entered into between the second defendant and the plaintiff, there is no whisper about the earlier agreement dated 4.11.2017 or about any refund as alleged by the plaintiff.

(v) According to the second defendant, the plaintiff has voluntarily come forward and approached them with a request to convey, grant, assign and transfer the ownership of movie rights in respect of the film "Kaali" and thereafter, executed a minimum guarantee agreement dated 15.02.2018, which is in no way connected with the earlier agreement dated 4.11.2017 entered into between the plaintiff and the first defendant.

(vi) While admitting the advance payment of Rs.50,00,000/- made by the plaintiff in terms of the agreement dated 15.02.2018, the second defendant has denied the execution of the agreement dated 28.02.2018. According to them, the plaintiff has failed to make further payment as per the terms of the said agreement. After much persuasion, he has given a cheque for Rs.1,25,00,000/- dated 8.3.2018, which was returned unpaid with an endorsement 'payment stopped by the drawer'. The plaintiff, instead of honouring the cheque, has issued a legal notice dated 8.3.2018 making false and vexatious claim, with an intention to prevent the second defendant from releasing the movie "Kaali" and extort money from them.

(vii) According to the second defendant, as the plaintiff failed to make payment as per the terms of the agreement dated 15.2.2018, they have cancelled the agreement, due to which, the name of the plaintiff has been removed as distributor of the film "Kaali" in the advertisement banner.

(viii) It is denied that the defendants have sent a Whatsapp message on 16.12.2017 agreeing to refund the Security Deposit of Rs.1,00,00,000/- before the release of the film "Kaali", which fact was not disclosed in the legal notice dated 8.3.2018 and hence, it is only an after thought for the purpose of filing the suit.

(ix) The defendants have not given any undertaking that they will settle the claim of the plaintiff prior to the release of the film "Kaali", whereas, the plaintiff is not ready and willing to perform the terms of the agreement dated 15.2.2018, due to which, the purpose of entering into the agreement was not served and the defendants have suffered more loss.

(x) It is the case of the second defendant that the first defendant has produced the movie "Annadurai"; the second defendant has produced the movie "Kaali"; and the third defendant is the lead actor in both the movies; the defendants 1 and 2 are the distinct and separate legal entities; and the second defendant cannot sue or be sued for any dispute between the plaintiff and the first defendant and hence, they cannot be penalized for the fraudulent claim made by the plaintiff against the first defendant. Thus, the second defendant prayed for dismissal of the aforesaid application.

10. The crux of the arguments advanced by the learned Senior Counsel for the appellants/defendants is thus:

(i) The sum of Rs.4,23,00,000/- paid by the plaintiff is not a borrowing money, but it is towards distribution rights for a period of five years in respect of the movie "Annadurai" under the minimum guarantee agreement dated 4.11.2017, as per which, he had released the movie and collected the amount invested.

(ii) The plaintiff has entered into a minimum guarantee agreement dated 4.11.2017 on his own volition and under clause 9 of the same, he cannot claim any sum once the movie is released.

(iii) The learned Single Judge has erred in holding that if the payment schedule of the plaintiff is delayed or defaulted, then Vijay Antony Pictures must refund the advances, whereas, according to the learned Senior counsel, the refund can be made only when the producer Vijay Antony Pictures terminates the agreement dated 4.11.2017 and releases the movie directly or through any other distributor.

(iv) The plaintiff has neither pleaded nor produced any evidence for the alleged payment of Rs.7.49 crores under the agreement dated 4.11.2017.

(v) The movie Kaali is produced by the second defendant which is a separate legal entity and there is no evidence to show that the second defendant has agreed to adjust the alleged loss sustained by the plaintiff in the film "Annadurai" by granting distribution rights of the film "Kaali" produced by the second defendant.

(vi) The agreement dated 4.11.2017 between the plaintiff and the first defendant and the agreement dated 15.2.2018 between the plaintiff and the second defendant are distinct and they are not connected with each other. Further, there is no reference about the earlier agreement dated 04.11.2017 in the agreement dated 15.2.2018 and there is no mention about adjustment of the loss sustained in the earlier movie.

(vii) The refund of additional deposit of Rs.99,00,000/- can be claimed, only if the plaintiff has paid Rs.7,49,00,000/- to the first defendant under the agreement dated 4.11.2017. According to the learned Senior Counsel, the plaintiff has paid only a sum of Rs.4,23,00,000/-.

(viii) Even assuming without conceding that the plaintiff has sustained any loss, he is entitled to claim damages and not refund of any amount. In any event, the damages cannot be quantified at this stage. Thus, the learned Senior Counsel prayed to set aside the order impugned herein and allow the present Intra Court Appeals.

11. Per contra, the learned counsel for the first respondent/plaintiff made the following submissions:

(i) The two agreements were executed between the appellants and the first respondent for theatrical exhibition of the films "Annadurai" and "Kaali".

(ii) At the time of first agreement dated 4.11.2017, Rs.6,50,00,000/- was paid towards minimum guarantee amount and Rs.99,00,000/- was paid towards additional security deposit.

(iii) The film "Annadurai" did not do well at the box office and the plaintiff incurred a huge loss.

(iv) To compensate the same, another agreement was signed on 15.2.2018 for theatrical exhibition of the film "Kaali" in respect of the areas of Tiruvallur, Kanchipuram, Cuddalore, Villupuram, Vellore and Tiruvannamalai in Tamil Nadu and Chittoor District in Andhra Pradesh. At that time, he has paid a sum of Rs.50,00,000/-.

(v) According to the learned counsel, the plaintiff has paid the entire amount in respect of the first agreement and in order to compensate the loss sustained, he has executed the second agreement in respect of the film "Kaali". However, the defendants failed and neglected to act in terms of the agreements. Thus, the learned counsel submitted that the order passed by the learned Single Judge, which is impugned herein, is perfectly correct and the same does not call for any interference by this Court.

12. We have given our anxious consideration to the rival submissions and also carefully gone through the materials placed before us.

13. By the order impugned herein, the learned Single Judge

has allowed the aforesaid application filed by the plaintiff. While doing so, in paragraphs 30 and 31, it has been held as follows:

"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 first 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."

14.On 11.04.2018, when these appeals were taken up for consideration, this Court, in order to protect the interests of both the parties, has passed the following order:

"There shall be an order of suspension of the order of injunction dated 06.04.2018 made in O.A.No.305 of 2018 in CS (Comm.Div) No.198 of 2018 on condition that the appellants shall furnish a bank guarantee for a sum of Rs.2,00,00,000/- (Rupees two crores only) in favour of the Registrar General, High Court, Madras, to the credit of C.S.No.198 of 2018 on or before 12.04.2018, failing which, the order granted by this Court shall stand cancelled automatically.

Post the OSAs on 19.04.2018."

15. Accordingly, today, when the appeals are taken up for hearing, the learned Senior Counsel for the appellants submits that as directed by this Court, the appellants have furnished a bank guarantee to the tune of Rs.2 Crores on 12.04.2018 and they have also given an undertaking to maintain the accounts pertaining to the theatrical release of the movie "Kaali". The learned Senior Counsel has also filed an affidavit dated 20.04.2018 signed by the appellants to that effect. The said submission is recorded.

16. It is not in dispute that the defendants 1 and 3 are spouses and the third defendant is the lead actor of both the movies "Annadurai" and "Kaali". According to the plaintiff, who is the first respondent herein, he has entered into an agreement on 4.11.2017 with the first defendant in respect of the distribution rights of the film "Annadurai" and paid a sum of Rs.7,49,00,000/-. Unfortunately, the said film did not do well at the box office, due to which, he has sustained a loss to the tune of Rs.4,50,00,000/-, to which, the defendants orally agreed to compensate the same by granting distribution rights of the film "Kaali", besides refund of Rs.1,00,00,000/- before the release of the said film. However, they failed to do so.

17. On the contrary, the defendants, who are the appellants herein, have totally refuted the claim made by the plaintiff, stating that there was no oral agreement. According to them, the plaintiff has failed to pay the entire amount, in terms of the agreements and hence, he is not entitled for refund of any amount. It is the specific plea of the defendants that the defendants 1 and 2 are the distinct and separate legal entities and they are not connected with each other.

18. We are of the opinion that the correctness or otherwise of the averments so made by the parties cannot be gone into at this stage, based on the rival contentions. Certainly, it has to be gone into and decided only after conducting a full fledged trial. As the material facts with full particulars are essential and they have to be substantiated by adducing evidence, so as to enable the Court to arrive at a just and proper conclusion in respect of the above allegations. Therefore, the interim injunction granted by the learned Single Judge cannot be allowed to sustain at this stage.

19. In such perspective of the matter, both the Intra Court Appeals are allowed, on the following terms:

(a) The order dated 06.04.2018 passed in O.A.No.305 of 2018 in CS.No.198 of 2018 by the learned Single Judge is set aside;

(b)The bank guarantee for Rs.2,00,00,000/- furnished by the appellants pursuant to the order of this Court dated 11.04.2018 in these appeals, shall remain in force till the disposal of the suit in CS.No.198 of 2018 and the same shall be periodically renewed, if required.

(c)The appellants, as undertaken by them, shall maintain the accounts pertaining to the theatrical release of the movie "Kaali" till the disposal of the aforesaid suit.
No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

rk
To
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2cc to Mr.K.GOVIGANESAN, Advocate, S.R.No.29740
+2cc to Mr.K.J.PARTHASARATHY, Advocate, S.R.No.29739
+4cc to Mr.S.JAYAKUMAR, Advocate, S.R.No. 29758 & 29757

O.S.A.Nos.106 and 107 of 2018

KJ(CO)
TR(26/04/2018)

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