

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE R.HEMALATHA

O.S.A.Nos.355 and 356 of 2018
and CMP Nos.15414 and 15415 of 2018

C.J.Jayakumar, Proprietor,
M/s.Cameo Films,
No.59, Vijayaraghava Road,
T.Nagar, Chennai-600 017. ... Appellant in both O.S.As.

vs.

1.M/s.R.V.Media Solutions,
Rep. by its Partner Mr.M.Ravindran,
No.28A, ABM Avenue,
R.A.Puram, Chennai-600 028.

2.Mr.M.S.Sharavananan, Proprietor,
M/s.Sri Green Productions,
Prameela Towers, 4th Floor,
No.13B, Puliyur 1st Lane,
II Main Road, Kodambakkam,
Chennai-600 024. ... Respondents in both O.S.As.

Prayer: Original Side Appeals filed under Clause 15 of the Letters Patent read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, against the order dated 29.08.2018 made in O.A.No.795 of 2018 in C.S.(Comm. Div.) No.601 of 2018 and O.A.No.795 of 2018 and Appln.No.6482 of 2018 in C.S.(Comm.Div.) No.601 of 2018.

For Appellant : Mr.Om Prakash, Senior Counsel
in both Appeals for Mr.Omsairam

For Respondents : Mr.K.Harishankar,
in both Appeals for R1

COMMON JUDGMENT

(Order of the Court was made by M.Sathyannarayanan, J.)

The second respondent in O.A.No.795 of 2018 and A.No.6482 of 2018 in C.S.No.601 of 2018 is the appellant and aggrieved by the common order of interim direction dated 29.08.2018 made in those

applications, has filed these appeals.

2. The first respondent/plaintiff filed the Suit in C.S. (Comm.Div.)No.601 of 2018 on the file of this Court, praying for the following reliefs:

"a(i) Declaring that the Plaintiff is the absolute owner of the theatrical, exhibition and exploitation rights in NSC area for Tamil Film "Imaikka Nodigal" starring Nayanthara, Atharva and Others, directed by Ajay Gnanamuthu.

a(ii) Grant a Permanent Injunction restraining the 1st and the 2nd Defendant, their men, agents, servants or any other person acting on their behalf from releasing the film "Imaikka Nodigal", starring Nayanthara, Atharva and others, directed by Ajay Gnanamuthu without settling the dues to the Plaintiff; or in the alternative

b) Directing the Defendants to pay the Plaintiff a sum of Rs.4,00,00,000/- along with interest @ 36% per annum from 03.03.2017 till realization;

c) Directing the 1st and the 2nd Defendants to pay the costs of the Suit;

d) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The first respondent/plaintiff, pending disposal of the Suit, took out the above said applications praying for the relief of ad-interim injunction restraining the defendants, their men, agents, servants or any other persons acting on their behalf from releasing the Tamil cinematograph film "Imaikka Nodigal", pending disposal of the Suit and also for an order of attachment before Judgment in the nature of interim prohibitory order restraining the respondents 3 to 5/Garnishees from releasing the digital prints of the Tamil film "Imaikka Nodigal", pending disposal of the Suit.

3. The case of the first respondent/plaintiff is that second respondent is the producer of the said film and he and the first defendant had entered into a Royalty Minimum Guarantee Agreement dated 07.01.2017, in and by which the appellant/second defendant granted the commercial and theatrical exhibition copyrights of the said film and as such, the first defendant became the copyright holder of commercial and theatrical exhibition rights of the said film for the area of Tamil Nadu including Pondicherry and Chittoor for a perpetual period. It is further averred in the plaint that on 03.03.2017, a Distribution

Agreement was executed between the first respondent/plaintiff and the first defendant, whereby the first defendant has assigned to the plaintiff the copyright to distribute, exhibit and exploit the said Tamil film in favour of the plaintiff on distribution basis for the entire area of North Arcot, South Arcot and Chengalpattu [in short "NSC area"]. Accordingly, the first defendant has issued a letter dated 04.03.2017 to the President of the Chennai Kanchipuram Thiruvalluvar District Film Distributors Association, expressing no objection in registering the said picture in the name of the first respondent/plaintiff for the NSC area.

4. The first respondent/plaintiff further averred in the plaint that at the time of entering into the agreement dated 03.03.2017, the first respondent had further represented that the film will be censored and made ready for release before 03.04.2017 and it was also as per the undertaking provided by the second defendant/appellant in the agreement dated 07.01.2017. The plaintiff also expressed grievance that despite passage of several months, production of the film had not been completed and there was no sign of release of the film and therefore, the first respondent/plaintiff preferred a complaint before the Micro and Small Enterprises Facilitation Council at Chennai on 05.03.2018 against the first defendant/second respondent herein seeking return of the advance with interest and it was referred for conciliation, but no concrete proposal for settlement has been forthcoming from the first defendant and the first defendant had also not denied its liability or disputed the debt. However, to the shock and surprise of the first respondent/plaintiff, he became aware of the advertisement given by the second defendant/appellant that the film is to be released in the month of August, 2018.

5. The grievance expressed by the first respondent/plaintiff is that having assigned the copyrights for theatrical exploitation in NSC area in favour of the plaintiff, the act of the second defendant in attempting to release the film without informing the plaintiff is an infringement of the plaintiff's copyrights and release of the said film would definitely cause severe loss and hardship to them and therefore, the first respondent/plaintiff has issued a legal notice to the defendants on 07.08.2018 calling upon the defendants to cease and desist from releasing the film "Imaikka Nodigal" in any territory or in any medium without delivering the prints for theatrical exploitation in NSC area to the plaintiff.

6. The second defendant/appellant had lodged a Caveat and a reply notice dated 11.08.2018 was received by the plaintiff. Subsequently, a second reply notice dated 11.08.2018 was issued on behalf of the second defendant, containing untenable allegations and according to the plaintiff, contents of the

replies would also disclose that there was an active collusion between the defendants 1 and 2 to deny the rightful claim of the plaintiff over the said film. Therefore, the first respondent/plaintiff came forward to file the said Suit and pending disposal of the Suit, took out the above said two applications.

7. The learned Judge has ordered notice to the first defendant, who had entered appearance through Mr.Mubarak, Advocate and on instructions, he also offered immovable properties by way of Security Deposit to cover the claim of the plaintiff and since the value of the said property has been disputed on the ground that it may not cover the entire claim, the said proposal was not considered.

8. The learned Judge, after taking note of the rival submissions and that the matter in issue may require detailed consideration and taking into consideration the interest of the plaintiff, has observed that the plaintiff is entitled to some security as it has acquired certain rights, more importantly, it has parted with a sum of Rs.4 Crores, albeit, in favour of first defendant. The learned Judge further recorded a finding that the agreement between the defendants 1 and 2 came to be cancelled on 17.04.2017 and at that time, the agreement between the plaintiff and the first defendant was also subsisting. The learned Judge, after taking into consideration the materials placed, passed a common order of interim direction directing the second defendant/producer/appellant herein to deposit into this Court, proceeds of the collections including monies already collected and now in the hands of the second defendant, with regard to the Suit movie in respect of NSC areas alone, upto the next listing of these applications on 12.09.2018.

9. The learned Judge further observed that in the interregnum, if the deposit of the proceeds from collections in the aforesaid three areas exceeds Rs.4 Crores before 12.09.2018, the second defendant need not make any further deposit and also taken note of the submission of the learned counsel appearing for the first respondent/plaintiff, on instructions, that it can be taken that actual money paid is Rs.3.4 Crores. The learned Judge, by consent of all parties, appointed Mr.K.J.Krishnamoorthy, Advocate as Commissioner to monitor and oversee the release/collections qua the Suit movie with regard to the aforesaid three areas to ensure that the interim order is operated in accordance with the directions contained therein. The second defendant in the Suit/second respondent in the above said applications, challenging the legality of the interim direction/arrangement, came forward to file these Original Side Appeals.

10. Before advancing arguments by Mr.Om Prakash, learned Senior Counsel appearing for the appellant, objection has been raised by Mr.Harishankar, learned counsel appearing for the first respondent/plaintiff by inviting the attention of this Court to Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, especially to proviso to Section 13(1) and would submit that while passing the interim direction, the learned Judge did not go into the merits of the rival claim and in order to protect the interest of both parties has passed such an order and therefore, it cannot be termed as final order so as to enable the second respondent to prefer these appeals. The learned counsel appearing for the first respondent, in support of his submissions, placed reliance upon the decision of the Hon'ble Supreme Court of India dated 07.02.2018 made in Civil Appeal Nos.1661 - 1663 of 2018 @ SLP(Civil) No.28582 - 28584 of 2017 [Kandla Export Corporation & Another v. M/s.OCI Corporation and Another].

11. Per contra, Mr.Om Prakash, learned Senior Counsel appearing for the appellant has invited the attention of this Court to Order 43 CPC and as per Sub-Rule (2), appeal is maintainable in respect of orders passed under Order 39, Rules (1) and (2) CPC and since O.A.No.795 of 2018 and Appl.No.6482 of 2018 have been filed invoking Order 39, Rules (1) and (2) CPC and that the learned Judge has passed the common interim order, the present appeals are maintainable.

12. This Court has considered the primordial objection raised by the learned counsel appearing for the first respondent/plaintiff.

13. In the judgment relied on by the learned counsel appearing for the first respondent/plaintiff, the appellants therein filed an appeal under the Commercial Courts Act, which was dismissed by the impugned judgment stating that the Commercial Courts Act did not provide any additional right of appeal which is not otherwise available to the appellants therein under the provisions of the Arbitration Act. The Hon'ble Supreme Court of India, in paragraph 15 of the said judgment, has taken into consideration proviso to Section 13(1) of the Commercial Courts Act and in paragraph 28 of the judgment observed among other things that "... For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act.. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best

harmonized by giving effect to the special statute i.e., the Arbitration Act vis-a-vis the more general Statute, namely the Commercial Courts Act, being left to operate in spheres other than arbitration.”

14. As already pointed out, in one of the applications, the first respondent/plaintiff has also invoked Order 39 Rule (1) CPC and the same is appealable in terms of proviso to Section 13 (1) of the Commercial Courts Act and since the learned Judge has passed an order of ad-interim direction without separately dealing with the prayer sought for by the first respondent/plaintiff, this Court is of the considered view that the present appeals are maintainable.

15. Now coming to the merits of the claim put forward by the respective learned counsel appearing for the parties, this Court is of the considered view that insofar as the direction directing the appellant/second defendant to deposit the proceeds of the collections including monies already collected, requires modification for the following reasons.

16. A perusal of the plaint averments as well as averments made in the applications would disclose that no specific averment as to the collection of the said amount has been pleaded and it is the submission of the learned counsel appearing for the first respondent/plaintiff that during the course of argument, such a statement was made. Mr. Om Prakash, learned Senior Counsel appearing for the appellant/second defendant has invited the attention of this Court to the common counter affidavit filed in the said applications and would aver that though they have not taken such a stand, the learned Judge ought not to have directed them to deposit the monies already collected and admittedly no quantification has also been done.

17. However, in response to the same, learned counsel appearing for the first respondent/plaintiff would submit that the proceeds of the collections including monies already collected is within the exclusive knowledge of the second defendant and he is bound to deposit the same in order to protect the lawful right and claim of the plaintiff.

18. This Court has considered the rival submissions and also perused the entire materials placed before it.

19. It is the specific case of the appellant/second defendant that he has nothing to do with the agreement dated 03.03.2017 entered into between the first defendant and the plaintiff and since the terms of the Minimum Guarantee Agreement dated 07.01.2017 has been terminated and whatever amounts paid by the first defendant has also been refunded and however, the said fact has been seriously disputed by the learned counsel

appearing for the first respondent/plaintiff. It is also the submission of the learned counsel appearing for the first respondent/plaintiff that after passing the impugned common order, the appellant/second defendant collected some amounts from NSC distributors and the said fact is also seriously disputed by the learned Senior Counsel appearing for the second defendant/appellant, on instructions.

20. In the considered opinion of the Court, in the light of the disputed question of facts, it cannot go into the legality or otherwise of the said averments as it may require evidence. The learned Judge, while directing the appellant/second defendant to deposit the monies already collected, has not specifically indicated the quantum and not even a rough quantification of the amount. It is also the specific case of the appellant/second defendant in paragraph 20 of the counter affidavit that he has already invested more than Rs.23 Crores for the film and in the event of any adverse interim orders passed, it would not only paralyze 100 of families involved in the project but also virtually kill the second defendant/appellant due to heavy borrowing at high rate of interest and prayed for dismissal of the applications. Therefore, this Court is of the considered view that the order of interim directions in paragraph 24 of the common interim order dated 29.08.2018 passed by the learned Single Judge requires modification/deletion.

21. The appellant/second defendant shall deposit the collections after the release of the film in respect of NSC areas to the credit of the Suit in C.S.(Comm.Div) No.601 of 2018 and insofar the direction to the second respondent/appellant to deposit the monies already collected and now in the hands of the second respondent is to be deleted to the effect that he need not deposit the same. It is made clear that the said issue shall also be gone into at the time of adjudication of the rights of the respective parties.

22. In the result, these Original Side Appeals are partly allowed and the portion of the interim common order dated 29.08.2018 made in O.A.No.795 of 2018 and Appln.No.6482 of 2018 in C.S.(Comm.Div.)No.601 of 2018, directing the appellant/second defendant to "deposit the monies already collected and now in the hands of the second defendant in respect of NSC areas" alone is set aside and rest of the order stands. It is also made clear that the claim of the first respondent/plaintiff in respect of monies already collected can be adjudicated at the time of final disposal of the applications/Suit. No costs. Consequently, connected miscellaneous petitions are closed.

23. It is also made clear that observations/findings made herein are only for the purpose of disposal of these appeals and this Court has not gone into the merits of the claim of the parties, either in the pending applications or in the main Suit.

-s/d-

Assistant Registrar(CS-IV)

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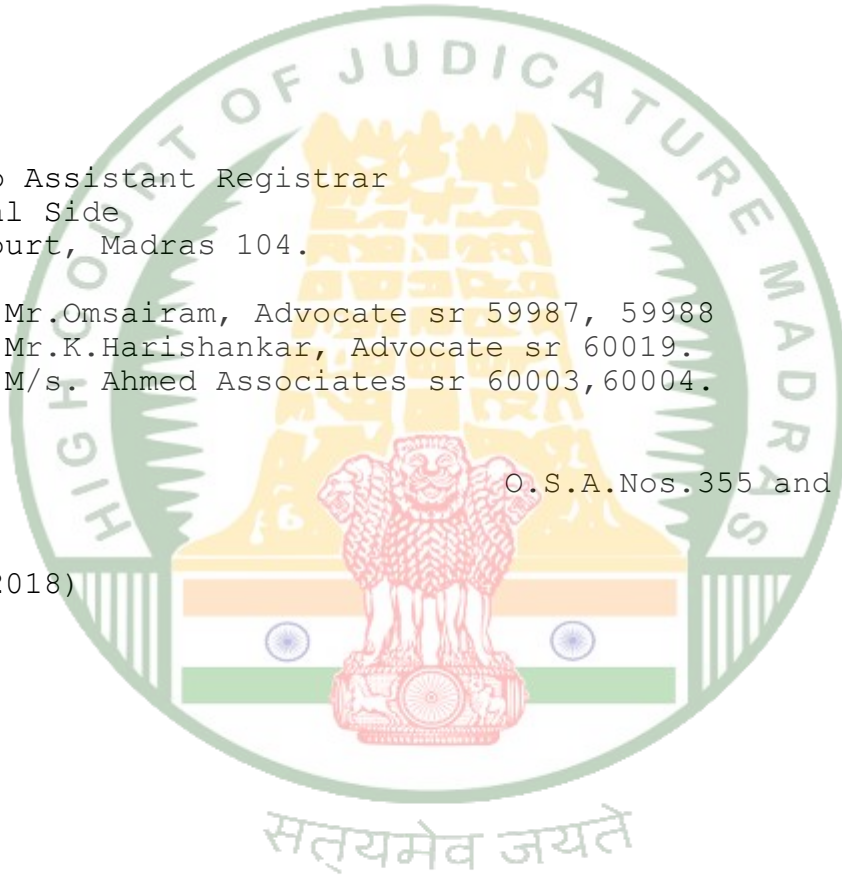
To

1. The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+4 Ccs to Mr.Omsairam, Advocate sr 59987, 59988
+2 Ccs to Mr.K.Harishankar, Advocate sr 60019.
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O.S.A.Nos.355 and 356 of 2018

SP(10/09/2018)



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