

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

O.S.A.No.21 of 2018
and CMP.No.1072 of 2018

M/s.M.K.Enterprises
Rep by A.Kumar, Partner
No.7, I Floor, 7th Street
Shenoy Nagar
Chennai - 600 030.

.. Appellant/Plaintiff

Vs.

1.Balaji Real Media Pvt Ltd.,
Rep by its Director Thandra Ramesh
No.41, Manaswi Apartments
Marudham Street, Fathima Nagar
Valasaravakkam, Chennai - 600 087.

2.Balaji Colour Laboratories
Film Nagar
Road No.2, Jublee Hills
Hyderabad, Telangana - 500 096.

.. Respondent/Defendants

Prayer : Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Amended Letters Patent 1865, to set aside the impugned order dated 08.6.2017 made in Application No.2867/2017 in C.S.No.372/2017 by allowing the above appeal with costs.

For Appellant : Mr.A.Chidambaram

For Respondents : Mr.Om Prakash, Senior Counsel
Assisted by Mr.K.C.Krishnamoorthy

JUDGEMENT

[Order of the Court was delivered by N.SESHASAYEE,J.]

The plaintiff/applicant in O.A.No.2867 of 2017 in C.S.No.372 of 2017 had come before this Court challenging the Order of the

learned Single Judge dated 08.06.2017, dismissing its application seeking a grant of injunction.

2. The brief facts that are necessary for the disposal of this appeal is stated as follows:

- The first defendant is a film producer and it proposes to produce a film originally titled " Production No.5" (Telugu-Colour) and now titled as "Aaradugla Bullet", casting Mr.Gopichand, Ms.Nayanthara and others, directed by Mr.Boopathi Pandian and music scored by Mr.Taman. Subsequently, on 20.04.2012, the first defendant entered into two separate agreements with the appellant assigning the World Satellite Rights for the cinematography work to be made. So far as the Telugu version is concerned, the consideration fixed under the Agreement of Assignment was Rs.75,00,000/- and the entire consideration is stated to have passed hands by 04.05.2012. The consideration for the assignment of the Tamil version of the same film was fixed at Rs.25,00,000/- and in this agreement too, the entire consideration has been paid by 05.05.2012. Accordingly, the appellant has acquired the copyright for Worldwide Satellite telecast for the movie to be made. Be that as it may, the first defendant had not completed the film production within the time schedule.
- While so, the first defendant/first respondent advertised the release of the movie in May, 2017 the media as well as in the internet, but without specifying a specific date of release of the movie. Therefore, the appellant has approached the first respondent for the deliverables in terms of the assignment of the copyrights, but the first respondent has been evading things, which spreads just apprehension in the appellant that the first respondent might release the movie titled originally as 'Production No.5' and now named 'Aaradugula Bullet'. Inasmuch as the Worldwide Satellite Rights have been assigned to the appellant, the same should not be let to be infringed.
- On this set of allegations, the appellant have sought a declaration that it is the sole and exclusive owner of limited Copyrights for the film titled 'Production No.5' and subsequently titled as 'Aaradugula Bullet', in respect of its World Satellite Rights and for a consequential injunction.
- In the suit, the appellant moved an application in A.No.510 of 2017 for an order of interim injunction restraining the respondents/defendants, their agent, servants, distributors or anybody claiming through or under them from in any manner infringing their limited copyright in respect of the World Satellite Rights (including India) of the Tamil and Telugu

versions of above referred to movie.

- Initially, an injunction was granted, consequent to which the respondent had moved the application in A.No.2867 of 2017, for vacating it. Among the various grounds on which the first respondent has sought to vacate the injunction which is contextually relevant is that the allegation that 'Aaradugula Bullet' is a re-titled version of what was originally titled as 'Production No.5' is false and that retaining the same lead cast, the first respondent has changed the director and the music director, an entirely new movie has been shot which has nothing to do with the movie for which the appellant might have had the limited copy right, and that the movie 'Aaradugula bullet' is not the one which is involved in the contract assigning limited copy right to the appellant. There is also an allegation that the 'Aaradugula Bullet' is produced by Jaya Balaji Real Media Pvt. Ltd.

3. On considering the materials before the Court, the learned Single Judge has dismissed the petition.

4. Mr.A.Chidambaram, learned counsel arguing for the appellant, has argued on the core issue that the first respondent has strategically dropped the Director of the movie, changed the Music Director of the movie, retained the lead cast and has produced the movie, which they intend to produce under the title "Production No.5" and now they fraudulently claim that the entire movie was based on a different storyline or script and is also produced by a different company and in support of it, relied on the agreement that Mr.Boopathi Pandian, the Director of "Production No.5" has entered into with the first respondent, dated 01.08.2011. (This document is not seen filed along with the plaint). He then relied on two separate agreements both dated 20.04.2012, under which limited copyrights for World Satellite Rights of a future work in "Production No.5" was assigned, which the plaintiff/appellant had entered into with the first respondent, of which one is for the Telugu version and the other is for the Tamil version. He also brought to the notice of this Court, a couple of other communications one dated 11.07.2013 (document No.7 in the typed set of papers produced before this Court) and another document dated 17.10.2013, which the Director of "Aaradugula Bullet" has entered into with two other artists who worked in the movie. The last of the document he relied on was the one dated 07.12.2013, which is the Lab Confirmation given to the Director. These documents are produced essentially during the course of the arguments.

5. Per contra, the Senior Counsel appearing for the first respondent struck to the stands it has adopted in its affidavit

for vacating the injunction, and submitted that the first respondent has retained the lead cast, changed the storyline/script, the Director and the Music Director of the movie, and that the one which has gone for production has little to do with "Production No.5." The movie "Aaradugula Bullet" was originally commenced as "Production No.4" and except the lead cast, there is nothing in common between the two productions. Therefore, the argument of the counsel for the appellant founded on a presumption that "Production No.5" and "Aaradugula Bullet" are the same is without any factual basis.

6.This Court finds considerable force in the submission of the learned counsel for the respondents. Prima facie, it is necessary for the appellant to establish that the cinematography production which commenced production as "Production No.5" is one that emerged ultimately as ""Aaradugula Bullet" are the same. It is not sufficient at this stage to presume that merely because the lead cast and the producer are the same, the cinematography work is also the same. Whether "Production No.5 and "Aaradugula Bullet" are the same is a matter for trial and this Court refrains from making an opinion on this.

7. In conclusion, this Court finds no merit in this appeal and accordingly, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TO:

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

+2cc to Mr.K.C.Krishnamoorthy, Advocate sr.no.75962
+1cc to Mr.A.Chidambaram, Advocate sr.no.75201

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