

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.621 of 2018
and O.A.No. 837 of 2018

Mr.Arvind Swami,
24-A, Cathedral Road
Gopalapuram,
Chennai- 600086.

..Plaintiff

Vs.

Mr.M.Manobala
Picture House,
9/17, 3rd Floor,
Neelakanta Metha Street,
T.Nagar,
Chennai- 600017.

Also at
No.5/3, 1st Kamaraj Street,
Sathya Garden,
Saaligramam,
Chennai- 600 093.

..Defendant

This Civil Suit is preferred, under Order VII Rule 1 of O.S. Rules

a. Recovery of a sum of Rs. 1,79,80,438/- (Rupees One Crore Seventy Nine Lakhs Eighty Thousand Four Hundred and Thirty Eight) with further interest @ 18% per annum thereon from date of filing of the suit till date of actual receipt;

- b. Costs of the suit; and
- c. Such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr. Roshan Balasubramanian

For Defendant : Ms. D. Revathi

JUDGMENT

There is a sole plaintiff and a lone defendant in the instant suit.

2. Mr. Roshan Balasubramanian, learned counsel on record for sole plaintiff and Ms. D. Revathi, learned counsel on record for sole defendant are before this Commercial Division.

3. Vide earlier proceedings of this Commercial Division dated 20.09.2018, this suit was referred to the 'Tamil Nadu Mediation and Conciliation Centre' under the aegis of this Court ['TNMCC' for brevity] for exploring the possibility of a settlement.

4. After various sessions of mediation, ultimately the parties

have arrived at settlement and the same has been reduced to writing by way of a settlement agreement dated 20.12.2018 and there is an addenda to the settlement agreement which has been styled as an 'affidavit of undertaking' filed by the defendant (dated 20.12.2018).

5. The settlement agreement and the affidavit of undertaking filed by the defendant, both dated 20.12.2018 read as follows:

'SETTLEMENT AGREEMENT'

*This settlement agreement entered into on 20.12.2018 BETWEEN Mr.Arvind Swami aged 48 years, Hindu, son of late Mr.V.D.Swami, formerly residing at 45, Arundale Beach Road, Kalakshetra Colony, Besant Nagar Chennai - 600090 and currently residing at 24-A, Cathedral Road, Gopalapuram, Chennai - 600086 (hereinafter referred to as "**the Plaintiff**") AND Mr.M.Manobala, aged 60 years, son of Mr.Mahadevan, having office at Picture House, No.5/3, 1st Kamaraj Street, Sathya Garden, Saaligramam, Chennai - 600 093 and residing at B/1, 19, Priya Construction, Dhanalakshmi Colony Extension-I, L.V.Prasad Road, Vadaplani, Chennai- 600026 (hereinafter referred to as "**the Defendant**")*

WHEREAS:

*A. The Plaintiff had provided acting services for a movie titled Sathuranga Vettai 2 (hereinafter referred to as "**the Suit**")*

Movie"), directed by one Mr.Nirmal Kumar and produced by the Defendant pursuant to an Agreement for Professional Services dated 21.11.2016 entered into between the Plaintiff and the Defendant.

B. Owing to non-payment of dues in line with the Agreement for Professional Services dated 21.11.2016, th Plaintiff was constrained to file C.S.No. (COMM DIV) 621 of 2018 before Hon'ble High Court, Madras against the Defendant seeking a decree for a total sum of Rs.1,79,80,438/- (Rupees One Crore Seventy Nine Lakhs Eighty Thousand Four Hundred and Thirty Eight) with further interest @ 18% per annum thereon from date of filing of the suit till date of actual receipt;

C. C.S (COMM DIV) 621 of 2018 was referred to mediation under the aegis of 'The Tamil Nadu Mediation and Conciliation Centre vide an order of the Hon'ble Madras High Court dated 20.09.2018.

D. The parties agreed that Mrs.Uma Ramanatham would act as a mediator and the same was also recorded in the order of the Hon'ble Madras High Court dated 20.09.2018.

E. Several meetings were held during the process of mediation from 12.10.2018 to 19.12.2018 and the parties have with the assistance of the mediaor, voluntarily arrived at an amicable solution resolving the Suit Dispute.

F. The parties hereto confirm and declare that they have

voluntarily and of their own free will arrived at this settlement agreement in the presence of the mediator.

NOW THEREFORE THIS SETTLEMENT AGREEMENT WITNESSETH AS FOLLOWS:

- 1. The Defendant has made a part-payment to the tune of Rupees Twenty Five Lakh (Rs.25,00,000/-) to the Plaintiff on 11.10.2018 pursuant to the undertaking given by the Defendant to the Hon'ble Court as recorded in the order dated 20.09.2018 in O.A. 837 of 2018 in C.S (COMM DIV.) 621 of 2018.*
- 2. This sum of Rupees Twenty Five Lakh (Rs.25,00,000/-) is being adjusted by the Plaintiff towards his dues in the following manner-*
 - a. TDS Dues of Rupees Seventeen Lakh and Fifty Thousand Only (Rs.17,50,000/-)*
 - b. Pre-suit interest on the TDS Dues at 8% per annum amounting to Rs.One Lakh Eighty One Thousand Eight Hundred and Eight (Rs.1,81,808/-)*
 - c. A sum of Rupees Five Lakh Sixty Eight Thousand One Hundred and Ninety Two (Rs.5,68,192/-) towards pre-suit interest on the contractual consideration.*
- 3. The Plaintiff, in view of this settlement, agrees to waive his claim for the remaining portion of pre-suit interest as well as post-suit interest subject to default clause set out in Clause 14 hereinafter.*

4. The Defendant agrees to pay a further sum of Rupees One Crore Forty Seven Lakhs and Fifty Thousand (Rs.1,47,50,000/-) to the Plaintiff comprising of balance consideration amounting to One Crore and Twenty Five Lakhs (Rs.1,25,00,000/-) and GST at the rate of 18% thereon amounting to Rupees Twenty Two Lakh and Fifty Thousand (Rs.22,50,000/-).

5. The Defendant may deduct tax at source only on the consideration component (i.e., Rs.1,25,00,000/-). In the event that the Defendant deducts tax at source on the aforementioned amount, the tax so deducted will be deposited by the Defendant with the Income Tax Department promptly without delay or demur. The Defendant will issue Form 16A to the Plaintiff for any amounts so deducted latest by the end of the Financial Year 2018-2019.

6. The Defendant agrees to make all payments pursuant to this settlement by way of Demand Draft only and no payment will be made by either cash or cheque.

7. The Defendant agrees to make payment of the aforementioned sum in the following tranches and as per the following timeline-

a. A sum of Rupees Fifty Lakh (Rs.50,00,000/-) on or before 30.23.2018.

b. The balance of Rupees Ninety Seven Lakh and Fifty Thousand (Rs.97,50,000/-) on or before 15.02.2019 or one week prior to the release of the Suit Movie, whichever is earlier. For the sake of clarity, it is

reiterated that this amount shall be paid by the Defendant by 15.02.2019 even if for any reason the Suit Movie is either not released or not ready for release by the said date for any reason whatsoever.

8. On receipt of the first tranche of payment referred hereinabove, the Plaintiff agrees to make himself available for dubbing and complete the same within two weeks from the date of receipt of payment of the first tranche of payment, subject to the Defendant making all necessary arrangements for the studio, technicians etc.

9. In the event that the Defendant for any reason is unable to complete the dubbing within the period of 2 weeks for any reason whatsoever, the Plaintiff may give further dates which would be solely as per his schedule and convenience. The parties expressly agree that the payment and other obligations of the Defendant under this Agreement are not contingent on the completion of dubbing if the same is not completed within the period of 2 weeks as set out in Clause 8 above.

10. The Defendant agrees not to release the Suit Movie either theatrically or via any other medium until the Plaintiff is paid the full amount due under this Agreement.

11. The Defendant agrees to file an affidavit before the Hon'ble Court with a request for the Hon'ble Court to record that the Defendant on pain of contempt undertakes-

a. Not to release the Suit Movie or permit to be released theatrically or via any other medium until the

Plaintiff is paid the full amount due under this Agreement;

b. To make payment of the sum of Rupees Fifty Lakh (Rs.50,00,000/-) on or before 30.12.2018;

c. To make payment of the sum of Rupees Ninety Seven Lakh and Fifty Thousand (Rs.97,50,000/-) on or before 15.02.2019 or one week prior to the release of the Suit Movie, whichever is earlier; and

d. To remit amount deducted as TDS, if any, for payments made under this Agreement to the Income Tax Department together with the appropriate forms/returns without any delay or demur and to promptly issue form 16A to the Plaintiff latest by the end of the Financial Year 2018-2019.

12. The parties agree that this settlement is subject to the Defendant filing an affidavit of undertaking as outlined above and having the same recorded by the Hon'ble Court and this Agreement will only take effect upon the Hon'ble Court and this Agreement will only take effect upon the Hon'ble Court recording the Defendant's undertaking. The parties have agreed to such a course of action as the Defendant is unable to offer any security for the payments due to the Plaintiff.

13. The Defendant has made arrangements for finances to pay the Plaintiff the sums due under this Agreement and understands fully that a failure to pay the amounts agreed as per the timeline set out hereinabove would render the Defendant liable to be held in contempt, notwithstanding the

rights of the Plaintiff to execute the decree.

14. In the event that the Defendant breaches any of the terms of this agreement including but not limited to failure to issue Form 16A within the time limit prescribed hereinabove and failure to adhere to the Payment Schedule set out hereinabove, the Plaintiff will be entitled to a default decree for the sum of Rupees One Crore Fifty Four Lakhs Eighty Thousand Four Hundred and Thirty Eight (Rs.1,54,80,438/-) minus any payments received from the Defendant post the signing of this Agreement together with interest at 18% per annum on such amount from date of filing of suit till date of accrual receipt. The Plaintiff may immediately put into execution the default decree on breach of any term of this Agreement by the Defendant.

15. The Plaintiff shall be entitled to refund of court fee under Section 69-A of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and the Defendant shall co-operate with the Plaintiff in the attaining of the refund.

16. On complete compliance of all terms of this Settlement Agreement neither party will have any claim as against the other as regards all matters covered by this Settlement Agreement.'

'Affidavit of Undertaking:

I, M. Manobala, aged 60 years, son of Mr. Mahadevan, having office at Picture House, No.5/3, 1st Kamaraj Street, Sathya

Garden, Saaligramam, Chennai-600 093 and residing at B/1, 19, Priya Construction, Dhanalakshmi Colony Extension-I, L.V.Prasad Road, Vadapalani, Chennai-600 026

do hereby do hereby affirm and sincerely state as follows:

1. I am the Defendant above-named ad as such am competent to swear this Affidavit.
2. I state that I have produced a movie titled Sathuranga Vettai 2 (herein after referred to as "the Suit Movie"), directed by one Mr.Nirmal Kumar for which the Plaintiff has provided acting services. The subject-matter of the present suit is the amount due to the plaintiff for providing his acting services for the Suit Movie.
3. I state that the above suit was referred to mediation and the plaintiff and I have of our own free will entered into a settlement dated 20.12.2018. I state that as part of the settlement I have agreed to give the present undertaking to this Hon'ble Court with a request for this Hon'ble Court to record the same.
4. I hereby undertake to this Hon'ble Court on pain of contempt that-
 - a. I undertake not to release or permit to be released the Suit Movie theatrically or via any other medium until the Plaintiff is paid the full amount due under the Settlement Agreement dated 20.12.2018;
 - b. I undertake to make payment of a sum of Rupees Fifty

lakh (Rs.50,00,000/-) to the Plaintiff on or before 30.12.2018;

c. I undertake to make the balance payment of Rupees Ninety Seven Lakh and Fifty Thousand (Rs.97,50,000/-) to the Plaintiff on or before 15.02.2019 or one week prior to the release of the Suit Movie, whichever is earlier; and

d. I undertake to remit amounts deducted as TDS, if any, for payments made under the Settlement Agreement dated 20.12.2018 to the Income Tax Department together with the appropriate forms/returns without any delay or demur and I will promptly issue Form 16A to the Plaintiff latest by the end of the Financial Year 2018-2019.

5. I state that I have arranged finances to make the payments above-mentioned and I am giving this undertaking after evaluating in full my ability to comply with the same.

In light of the facts and circumstances set out above, it is humbly prayed that this Hon'ble Court may be pleased to record the undertakings herein-above states and thereby render justice.'

6. Both learned counsel submit that the parties were present before TNMCC in the aforesaid session on 20.12.2018 and also submit that the settlement agreement was thus signed before TNMCC. On this

basis, both learned counsel request that presence of the parties may please be dispensed with for recording the settlement agreement.

7. In the light of common submission of both sides that parties to this lis were present before TNMCC and the settlement agreement was signed by both parties and their respective counsel before TNMCC, this prayer is acceded to.

8. On the aforesaid basis, both learned counsel on instructions, from their respective parties, make a common request that the main suit itself may please be disposed of by way of compromise decree in terms of aforesaid settlement agreement dated 20.12.2018 and affidavit of undertaking (also dated 20.12.2018) filed as an addenda to the settlement agreement.

9. In the light of the narrative supra, there shall be a decree in terms of aforesaid settlement agreement and the affidavit of undertaking filed by the defendant (dated 20.12.2018) which shall be treated as an addenda to the settlement agreement.

10. Settlement agreement and affidavit of undertaking both dated 20.12.2018 shall form part of compromise decree. Suit decreed on above terms.

21.12.2018

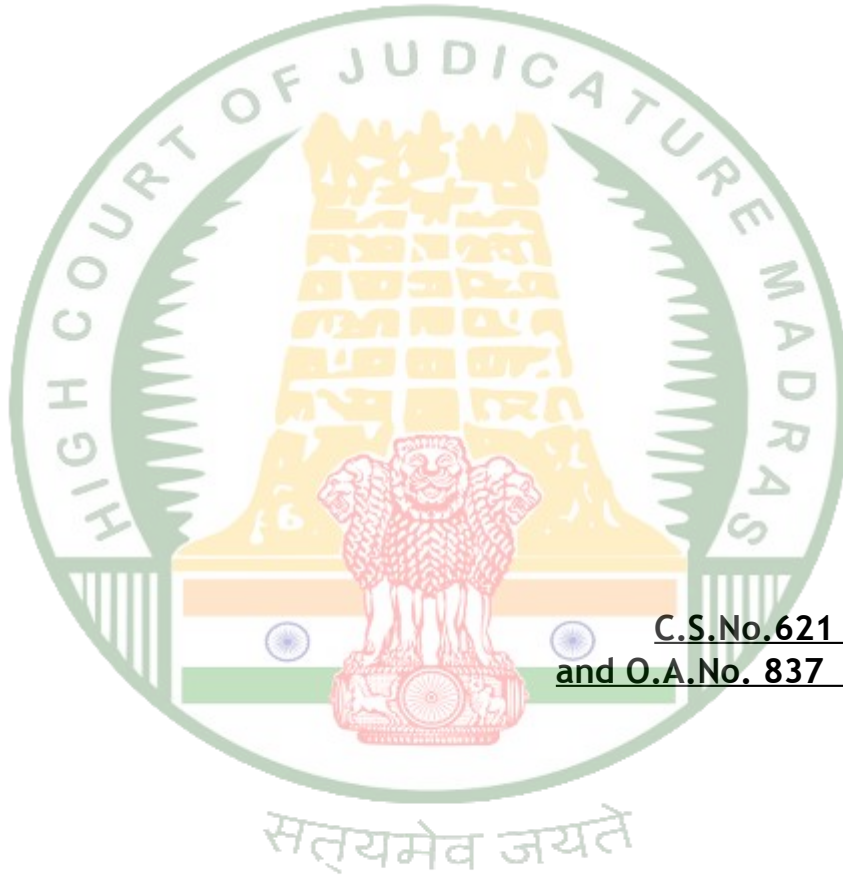
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