

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 16th DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. Nos.7665 & 7666 of 2017
in
O.A. No.839 and A. No.151 of 2017
in
C.S. Nos.677 & 22 of 2017

A. No.151 of 2017 in C.S. No.22 of 2017:-

Mr.Dunger Chand Kothari,
S/o.Jawarilal Kothari,
Old No.21, New No.12,
Dr.Sadasivam Road,
T.Nagar, Chennai-600 017. ... Applicant/Plaintiff

-Versus-

M/s.REBEL Studio,
Rep by its Partner,
Mr.Deepan Boopathy,
New No.4, Old No.6,
Sri Balaji Apartments,
Rajambal Street,
Near Ramana hall,
T.Nagar, Chennai-600 017. ... Respondent/Defendant

O.A. No.839 of 2017 in C.S. No.677 of 2017:-

R.Naveen,
S/o.M.Ramanathan,
New No.50, Old No.43,
South Madavalagam Street,
Karur-639 001. ... Applicant/Plaintiff

-Versus-

1. M/s.REBEL Studio,
Rep by its Proprietor,
Deepan Boopathy,
having office at
Sri Balaji Apartments,
New No.4, Old No.6, Rajambal Street,
T.Nagar, Chennai-600 017.

2. JSK Film Corporation,
rep. by its Proprietor, J.Sathish Kumar,
No.9/3, Vaidyarama Street,
T.Nagar, Chennai-600 017. ... Respondents/Defendants

A. No.7665 of 2017:-

JSK Film Corporation,
rep. by J.Sathish Kumar,
No.9/3, Vaidyarama Street,
T.Nagar, Chennai-600 017. ... Applicant/2nd Respondent/
2nd Defendant

-Versus-

1. R.Naveen,
S/o.M.Ramanathan,
New No.50, Old No.43,
South Madavalagam Street,
Karur-639 001. ... 1st Respondent/Applicant
/Plaintiff

2. M/s.REBEL Studio,
Rep by its Proprietor,
Deepan Boopathy,
Sri Balaji Apartments,
New No.4, Old No.6, Rajambal Street,
T.Nagar,
Chennai-600 017. ... 2nd Respondent/1st Respondent/
1st Defendant

Application praying that this Hon'ble Court be pleased to
set aside the order dated 20.10.2017 in O.A. No.839 of 2017.

A. No.7666 of 2017:-

JSK Film Corporation,
rep. by J.Sathish Kumar,
No.9/3, Vaidyaraman Street,
T.Nagar, Chennai-600 017.... Applicant/4th Respondent/
Garnishee

-Versus-

1. Mr.Dunger Chand Kothari,
S/o.Jawarilal Kothari,
Old No.21, New No.12,
Sadasivam Road,
T.Nagar, Chennai-600 017.... 1st Respondent/Applicant
/Plaintiff
2. M/s.REBEL Studio,
Rep by its Partner,
Mr.Deepan Boopathy,

Sri Balaji Apartments,
 New No.4, Old No.6, Rajambal Street,
 Near Ramana Hall, T.Nagar,
 Chennai-600 017.... 2nd Respondent/1st Respondent/
 Defendant

3. Ravi Prasad Film Labs,
 33/12, Dr.Subbaraya Nagar,
 Kodambakkam, Chennai-600 024.
4. Real Image Media Technologies,
 42, Dr.Ranga Road, Marvadi Thottam,
 Narasimhapuram, Mylapore,
 Chennai-600 004. ... Respondents 3 & 4/Respondents
 2 & 3/Garnishees

Application praying that this Hon'ble Court be pleased to set aside the order dated 20.10.2017 in A. No.151 of 2017.

These applications coming on this day before this court for hearing the Court made the following order:-

These applications have been filed for vacating the Order passed by this Court in C.S.No.677 of 2017 and A.No.151 of 2017.

2. On 20.10.2017, this Court passed the following Order :

"A Collection statement has been furnished by the 4th respondent stating that a sum of Rs.2,63,46,408.48/- had been received through exhibition of the movie in the Theatres at Chennai, Chengalpattu, Kovai, Salem, Madurai, Trichy and that collection statement has not been received from theatres in Tirunelveli North and South Arcot Districts.

2. The claim of the plaintiff is Rs.42,00,000/- (Rupees forty two lakhs only) in C.S.No.22 of 2017 and Rs.50,00,000/- (Rupees fifty lakhs) in C.S.No.677 of 2017. The conduct of the first defendant has been exposed from the affidavit filed today by the plaintiff in C.S.No.22 of 2017, wherein it is stated that two

cheques, which were handed over in the Court in the presence of the counsel of all the parties had actually been dishonoured. The said two cheques were for a total amount of Rs.10,00,000/- (Rupees Ten Lakhs only). The first defendant has deliberately played fraud even on the Court and also disrespected the sanctity and dignity of the Court. The 4th respondent is directed to deposit a sum of Rs.42,00,000/- (Rupees forty two lakhs only) to the credit of C.S.No.22 of 2017 and a sum of Rs.50,00,000/- (Rupees fifty lakhs only) to the credit of C.S.No.677 of 2017. The copies of statement today filed by the 4th respondent to provide the collection statement from theatres in Tirunelveli and North and South Arcot districts and also file a final report before this Court on 06.11.2011.

3. Mr.Deepan Boopathy, Proprietor of the first defendant M/s. Rebel Studio is directed to be present before the Court on 06.11.2017 and to give explanation as to the circumstances, under which the two cheques were issued and the circumstances under which they have been dishonoured. It is made clear that if the said Deepan Boopathy fails to appear on 06.11.2017, bailable Warrant will be issued against him. Call on 06.11.2017."

3. Now this application has come up for vacating the order stating that no relief has been claimed against the garnishee and he is only arrayed as a second defendant in the suit. Having made the defendant in C.S.No.22 of 2017, the applicant is made as a garnishee. However, in the main suit he is not made a party.

4. This Court by an Order dated 20.11.2017 directed the garnishee to deposit the amount, taking into consideration the

various circumstances and facts from the inception of filing of the suit and various stages. Now the garnishee has filed this application stating that no relief is claimed against the second defendant and the order directing the second defendant to deposit the amount cannot be sustained. Though the submission of the learned counsel has some force legally, the same cannot be decided at this stage for the simple reason that while this Court passed an Order on 31.08.2017, observed as follows :

"Mr.N.Senthilkumar and Ms.U.Archana were appointed as Advocate Commissioners, by Order of Court dated 28.08.2017 and they were requested to interact with the plaintiff, defendant and garnishee and file an interim report. Today, the matter was called in the morning session. It was again called at 2.15 p.m. on request by the learned counsel for the defendant/ garnishee. Again it was requested to call the matter at 3.30 p.m. When the matter was taken up now at 3.30 p.m., on a perusal of the report of the learned Advocate Commissioners, it had been stated that the defendant offered to pay a sum of Rs.35,00,000/- (Rupees thirty five lakhs only) which is to be paid by means of a Demand Draft for Rs.25,00,000/- (Rupees twenty five lakhs only) and Rs.10,00,000/- (Rupees ten lakhs only) by way of two post-dated cheques in favour of the plaintiff. The proof of purchase of Demand Draft was exhibited in Court by Mr.A.K.Sriram, learned counsel who entered appearance on behalf of the fourth respondent, who is the garnishee. He further stated that it was the burden of the first respondent to issue the two cheques for Rs.10,00,000/- (Rupees ten lakhs only). However, this has been disputed by the learned counsel for the plaintiff who

pointed out that A.No.151 of 2017 is an application seeking an order directing the Garnishee to deposit the said amount to the suit claim into the Court. The fourth respondent is the assignor of all interests in the film and has an agreement with the first defendant. It is trite to point out that such assignment would also include discharge of existing liabilities."

5. Having regard to the observations of the Court, when the garnishee has offered to pay a sum of Rs.35,00,000/- initially, the above facts clearly indicate that he is also somehow or other connected with the lis.

6. Hence, the Order passed by this Court directing the garnishee to deposit the amount cannot be modified at this stage. The garnishee is directed to comply with the order passed by this Court on 20.10.2017. All the questions and disputes between the parties can be decided only in the trial. Till such time, the amount deposited by the garnishee shall be deposited in interest bearing fixed deposit.

7. With the above observations, both the applications are dismissed and the garnishee is directed to comply the order of this Court within two weeks.

Sd./-N.S.K.J

16/04/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

JJ 13/07/2018

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