

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03rd DAY OF AUGUST 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A.No.4667 of 2018

in

C.S.No.393 of 2017

M/s.Radiance Media P.Ltd,
Rep. by its authorized Signatory
N.Srinivasan,
Having registered office at
Khivraj Complex-II, 6th Floor,
480, Anna Salai,
Nandanam,
Chennai-600 035.

...Plaintiff

-Vs-

1.M/s.Magic Frames,
Partnership Firm,
Rep. by its Partner R.Sarath Kumar,
Having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

2. Mr.R.Sarath Kumar,
Partner of M/s.Magic Frames,

3. Mrs.R.RadikaaSarath Kumar,
Partner of M/s.Magic Frames

Both are having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

4. Mr.Listin Stephen,
Partner of M/s.Magic Frames,
having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

..Defendants

A.No.4667 of 2018:

1.M/s.Magic Frames,
Partnership Firm,
Rep. by its Partner R.Sarath Kumar,
Having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

2. Mr.R.Sarath Kumar,
Partner of M/s.Magic Frames,

3. Mrs.R.RadikaaSarath Kumar,
Partner of M/s.Magic Frames

Both are having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

4. Mr.Listin Stephen,
Partner of M/s.Magic Frames,
having office at
No.14, Jayammal Street,
Tenampet,
Chennai 600 018.

...Applicant

-vs-

M/s.Radiance Media P.Ltd,
Rep. by its authorized Signatory
N.Srinivasan,
Having registered office at
Khivraj Complex-II, 6th Floor,
480, Anna Salai,
Nandanam,
Chennai-600 035.

...Respondent

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Application praying that this Hon'ble Court be
pleased to pass a Summary Judgment dismissing the suit
C.S.No.393 of 2017 without recording oral evidence.

This Application coming on this day before this court for hearing the court made the following order:

This application has been filed by the Defendants in the suit under Order XIII-A of CPC to pass a summary judgement, dismissing the suit in CS.No.393 of 2017, without recording oral evidence.

2. CS.No.393 of 2017 had been filed by the Plaintiff, M/s.Radiance Media Private Limited, against four Defendants, namely, (1) M/s.Magic Frames, a partnership firm, (2) R.Sarath Kumar, partner of M/s.Magic Frames, (3) R.Radikaa Sarath Kumar, partner of M/s.Magic Frames and (4) Listin Stephen, partner of M/s.Magic Frames, under Order XXXVII of CPC read with Order IV Rule 1 of the Original Side Rules of the Madras High Court, seeking a judgement and decree, directing the Defendants to pay a sum of Rs.2 crores together with interest at 18% p.a. since the date of return of cheques unpaid till the date of realisation and also for a direction to pay the costs of the suit.

3. The Plaintiff is a Company, incorporated under the Companies Act, 1956 and is engaged in the business of production and distribution of films. The Defendants approached the Plaintiff and requested finance for production of a feature film, titled, 'Production No.4', starring Vikram Prabu and Keerthi Suresh, directed by

entered into between the Plaintiff and the Defendants. The Plaintiff lent a sum of Rs.1.5 crores, by cheque no.002502, dated 5.11.2014, drawn on Kotak Mahindra Bank. The rate of interest was fixed at 30% p.a. since the borrowal was for commercial purposes. The interest was to be paid on monthly basis and a service charge of 2% of the loan amount was also recoverable along with the loan. The date of repayment of the entire loan was 31.03.2015. In the agreement, the Defendants had also undertaken that the revenue from the world satellite television rights and another form of exploitation of the movie would vest with the Plaintiff and if the amounts are not sufficient, money can also be collected from the future productions of the Defendants. The Defendants also undertook not to alienate such rights to any third parties.

4. The Defendants had to issue promissory notes and post dated cheques as security for the loan. It has been specifically stated in the plaint that the Defendants did not repay either the interest or the principal by the due date 31.3.2015. However, the 2nd Defendant approached the Plaintiff seeking further finance. The 2nd Defendant, acting on behalf of the 1st Defendant and other Defendants, executed a mortgage deed, dated 21.1.2016 for a sum of Rs.3,39,29,960/- which amount also included the outstanding loan amount and interest. The Plaintiff lent a fresh loan

Rajamannar Street, T.Nagar, a flat at Kannadasan Salai, T.Nagar and vacant land at Kuthukalvalasai Village, Tenkasi, were the schedules in the mortgage deed. It was also registered as Document No.207 of 2016 on 21.1.2016 in the Office of the Sub Registrar, T.Nagar. Since the Defendants did not return the loan either towards the original loan or towards the mortgage deed, the Plaintiff sought further securities from the 2nd Defendant. The 2nd Defendant acknowledged the mortgage deed and also undertook to grant right of possession, use and enjoyment of all the three properties. The title deeds of all the three properties were also undertaken to be handed over to the Plaintiff. The 2nd Defendant also undertook not to create any charge or alienate the properties. This undertaking was given on 21.1.2016. Since the amounts were not still paid by the Defendants, the Plaintiff again approached the Defendants, seeking repayment.

5. Two cheques for a sum of Rs.75 lakhs each were issued by the 1st Defendant and signed by the 2nd and 4th Defendants. Five cheques were also issued for Rs.10 lakhs each by the 2nd Defendant. The Defendants, however, requested the Plaintiff not to deposit the cheques. In the mean while, the Defendants, in violation of the undertaking given on 21.1.2016, released and exploited a feature film, PAMBU SATTAI on 24.3.2017. Even after the release of the

amount. The Defendants requested the Plaintiff to present the cheques for collection in the first week of May 2017. On 8.5.2017, two cheques for Rs.75 lakhs each and five cheques for Rs.10 lakhs each were presented for collection and all the cheques were returned unpaid for the reason 'payment stopped by drawer'. It is under these circumstances that the Plaintiff had instituted the suit, taking advantage of the Order XXXVII Rule 1 of CPC.

6. Along with the plaint, the Plaintiff also filed the loan agreement dated 5.11.2014, the mortgage deed dated 21.1.2016, the undertaking given by the 2nd Defendant dated 21.1.2016, the discharge receipt issued by the Plaintiff with regard to one property, dated 28.10.2016, legal notice and the reply notice dated 26.4.2017 and 6.5.2017, respectively, and seven cheques and their return memos.

7. The Defendants entered appearance. The Defendants filed A.No.5680 of 201, seeking unconditional leave to defend the suit. This application came up for consideration before the Master. That application is still pending.

8. In the mean while, the Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016) received the assent of the President on 31.12.2015 and was published in the gazette dated 01.01.2016. This Court, by order dated 13.4.2018,

commercial in nature and also noting that both the learned senior counsel for the Plaintiff and the learned counsel for the Defendants also agreed that the lis was commercial in nature and consequently, it was held that the commercial division of this Court would have jurisdiction to entertain the allegations made in the plaint. At that stage, the Defendants came forward to file the present application under Order XIII-A of CPC.

9. Order XIII-A of CPC had been inserted pursuant to the Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015. For the purpose of the discussions hereunder, Order XIII-A of CPC, which deals with summary judgement, is extracted hereunder, with respect to Rules 1, 2 and 3:-

1. Scope of and classes of suits to which this Order applies:

- (1) Order sets out the procedure by which Court may decide a claim pertaining to any Commercial Dispute without recording oral evidence.
- (2) For the purposes of this Order, the word 'claim' shall include-
 - (a) part of a claim
 - (b) any particular question on which the claim (whether in whole or in part) depends; or
 - (c) a counter claim, as the case may be.
- (3) Notwithstanding anything to the contrary, an application for summary judgement under this Order shall not be made in a suit in respect of any Commercial Dispute that is

originally filed as a summary suit under Order XXXVII.

2. Stage for application for summary judgement.- An Applicant may apply for summary judgement at any time after summons has been served on the Defendant.

Provided that, no application for summary judgement may be made by such Applicant after the Court has framed the issues in respect of the suit.

3. Grounds for summary judgement:- The Court may give a summary judgement against a Plaintiff or Defendant on a claim if it considers that-

(a) the Plaintiff has no real prospect of succeeding on the claim or the Defendant has no real prospect of successfully defending the claim, as the case may be; and

(b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence."

10. This amendment to the Code of Civil Procedure came to be passed pursuant to Section 16 of the Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015. Section 16(1), (2) and (3) are as follows:-

"16. Amendment to the Code of Civil Procedure, 1908, in its application to commercial disputes:- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Appellate Division shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as

amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."

11. When this application was taken up for hearing, Mr.N.L.Rajah, the learned senior counsel for the Plaintiff raised a preliminary objection as to the maintainability of this application and he pointed out Order XIII-A Rule 1(3) of CPC which is as under:-

"1. Scope of and classes of suits to which this Order applies: (3) Notwithstanding anything to the contrary, an application for summary judgement under this Order shall not be made in a suit in respect of any Commercial Dispute that is originally filed as a summary suit under Order XXXVII."

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12. Pointing out the above provision, the learned senior counsel for the Plaintiff stated that an application for summary judgement under Order XIII A shall not be made in a suit that was originally filed as a summary suit under Order XXXVII of CPC.

13. Mr.K.Ravi, the learned counsel for the Defendants strongly disputed this submission made by the learned senior counsel for the Plaintiff. The learned

counsel for the Defendants pointed out that the application had been filed under Order XIII-A of CPC as amended and stated that the suit though it had been captioned as having been filed under Order XXXVII Rule 1 of CPC, is actually a suit filed under Order VII Rule 1 of the Original Side Rules.

14. Order VII Rule 1 of the Original Side Rules deals with 'special procedure in respect of certain suits' and it is as follows:-

"R.1 A suit to recover a debt or a liquidated demand in money, evidenced by a document, or any money payable by the Defendant with or without interest, arising on a negotiable instrument or on a bond or a contract for payment of a liquidated amount of money evidenced by a document, or on a guarantee where the claim arises against the principal in the manner aforesaid, may, in case the Plaintiff desires to proceed here under, be instituted by presenting a plaint in the form prescribed.

For the purpose of this order "Liquidated demand" means a demand for the amount stated or so expressed that the ascertainment of the amount is a mere matter of calculation."

15. The procedure to be followed had also been given in Rules 3, 4, 5, and 6 of the Original Side Rules.

16. The learned counsel for the Defendants contrasted with the procedure given in Order VII of the Original Side Rules with that of the procedure contemplated under Order XXXVII of CPC and stated that when the suit is

shall only be filed under Order VII Rule 1 of the Original Side Rules and cannot be considered as a suit filed under Order XXXVII Rule 1 of CPC.

17. The learned counsel for the Defendants relied on **1951 2 MLJ 121 FB (V.Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service)** wherein at page 128, it was held as under:-

"There is no doubt differences between suits under the summary procedure under Order XXXVII, Civil Procedure Code and Order VII, Original Side Rules, both regarding the period of limitation and also the nature and the class of suits that could be instituted. Due to these differences, a suit which is triable as an under chapter suit under Order VII, Original Sides Rules, cannot be tried by the City Civil Court as an under-chapter suit under Order XXXVII, Civil Procedure Code."

18. Placing heavy reliance on this judgement, the learned counsel for the Defendants stated that the suit filed as a summary suit before the High Court, can never be placed on par with the suit filed under Order XXXVII of CPC. The learned counsel then pointed out Order XIII-A of CPC and stated that the bar under Order XIII-A is that an application under Order XIII-A of CPC shall not be filed in a suit that is originally filed as a summary suit under Order XXXVII of CPC. The learned counsel stated that the amendment does not mention suits filed under Order VII of the Original Side Rules and once there is no mention about the same, the Court has to hold that an application under

Order XIII-A of CPC is maintainable even for suits filed as a summary suit before the Original Side Rules of the High Court.

19. The learned counsel for the Defendants also stated that the bar is only for suits instituted under Order XXXVII of CPC and not for suits instituted under Order VII of the Original Side Rules. The learned counsel also pointed out that the Original Side Rules of the Madras High Court had seen many amendments.

20. The Original Side Rules as originally framed included Order XII which related to commercial causes, Order XIII which related to originating summons and Order XXVIII which related to the Specific Relief Act. These three Orders were subsequently deleted. However, the preamble of the Original Side Rules is as follows:-

"By virtue of the powers conferred by the enactments set out in Appendix I hereto, and of all other powers hereunto enabling, it is ordered that the following rules of practice and procedure and the forms set out in Appendix II hereto, shall be used and observed in the High Court of Judicature at Madras, in all cases, coming before the said Court in the exercise of its Ordinary and Extraordinary Original Civil Jurisdiction and in the exercise of its Extraordinary Original Criminal Jurisdiction, and as a Court of Admiralty, and its Testamentary and Intestate, and Matrimonial Jurisdiction, and its jurisdiction with respect to the person and estates of infants, idiots, and lunatics, and also in the exercise of its jurisdiction as regards appeals from all judgements, decrees and orders passed in the exercise of such jurisdiction as aforesaid."

21. Appendix-I referred to above, gives the list of following enactments:-

- 1.The Government of India Act, 1915 and 6 Geo V.61.
- 2.The Letters Patent of the High Court at Madras, dated the 25th December, 1865, as amended by Letters Patent, dated the 11th March, 1919.
- 3.The Code of Civil Procedure, 1908, and the Acts amending the same.
- 4.The Indian Oaths Act, 1873 (X of 1873).
- 5.The Transfer of Property Act, 1882 (IV of 1882)
- 6.The Partition Act, 1893 (IV of 1893)
- 7.The Guardians and Wards Act, 1890 (VIII of 1890)
- 8.The Indian Succession Act, 1925 (XXXIX of 1925)
- 9.The Indian Divorce Act (IV of 1869) and the Acts amending the same.
- 10.The Indian Arbitration Act, 1940 (X of 1940)
- 11.The Indian Stamp Act, 1899 (II of 1899) and the Acts amending the same.
- 12.The Indian Trusts Act, 1882 (II of 1882).
- 13.The Legal Practitioners' Act, 1879 (XVIII of 1879).
- 14.The Constitution of India.

22. Originally, the Specific Relief Act, 1877 was also included, but with the deletion of Order 28, that

enactment was also deleted from the Appendix I. A perusal

of the enactment shows that among the enactments, the Code of Civil Procedure as amended is also mentioned .

23. In the Code of Civil Procedure, under Section 128, the High Court had been granted the power to make the Rules. Section 128 (2f), which relates to summary procedure, is as follows:-

"128. Matters for which rules may provide:- (2)

In particular, and without prejudice to the generality of the powers conferred by sub section (1), such rules may provide for all or any of the following matters, namely,

(f) summary procedure-

(i) in suits in which the Plaintiff seeks only to recover a debt or liquidated demand in money payable by the Defendant, with or without interest, arising-

on a contract express or implied; or

on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only; or

on a trust; or

(ii) in suits for the recovery of immovable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non payment of rent, or against persons, claiming under such tenant."

24. It is, thus, seen that the Order XXXVII Rule 1

of CPC relates to summary procedure on certain classes of

suits. The High Court under Sections 128 and 129 of CPC can regulate the procedure to be followed with respect to such suits. Since a separate procedure has been provided under the Original Side Rules, suits under Order XXXVII of CPC and suits under Order VII of the Original Side Rules differ only in the procedure to be adopted, but the nature of suits are the same.

25. Section 129 of CPC is as follows:-

"129. Power of High Court to make rules as to their original Civil Procedure:- Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."

26. This Rule had been examined by the Honourable Supreme Court in **2005 1 CTC 304 (Iridium India Telecom Limited Vs. Motorola Inc.)** wherein in paragraph 38 it had been stated that Section 129 is not merely declaratory, but indicative of Parliament's intention to prevent the application of the CPC in respect of civil proceedings on the Original Side of the High Courts.

27. The learned counsel for the Defendants stated that since the procedures followed during the trial of the

Rules and that of the Order XXXVII Rule 1 of CPC are totally different and since under Order XIII-A of CPC as amended an application cannot be filed only in suits instituted under Order XXXVII of CPC, the application under Order XIII-A of CPC before the Original Side of the Madras High Court, wherein Order VII of the Original Side Rules along prevails, is maintainable. With much respect to the learned counsel, I am not able to agree with the said contention.

28. Order XXXVII of CPC relates to summary procedure. Originally, it was summary procedure on negotiable instruments. The words 'on negotiable instruments' had been omitted by the Code of Civil Procedure (Amendment) Act, 1976. Order XXXVII Rule 1 of CPC is as follows:-

"Order XXXVII:-

SUMMARY PROCEDURE"

1. Courts and classes of suits to which the Order is to apply:- (1) This Order shall apply to the following Court, namely:-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts;

Provided that in respect of the Courts referred to in clause (b), the High Court may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further

restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1) the Order applies to the following classes of suits, namely:-

(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,-

(i) on a written contract, or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only."

29. Thereafter, the Madras High Court has its own Original Side Rules, wherein Order VII Rule 1 which can be, to a large extent, equated with Order XXXVII Rule 1 of CPC, deals with 'special procedure in respect of certain suits'. Since the Master functions as a delegate of the High Court in the Original Side, the procedures with respect to the suits under Order VII are held before the Master. But, the character of the suit is the same. The procedures may differ, but substantial purpose for which Order VII had been enacted is the very same purpose for which Order XXXVII had been enacted in the Code of Civil Procedures.

The objects of both are one and the same. They are both applied when suits are filed when the Plaintiff seeks recovery of a debt or liquidated demand. When the substantial objects of both Order XXXVII Rule 1 of CPC and Order VII of the Original Side Rules are one and the same, this Court cannot restrict its view on the narrow ground that the order XIII-A of CPC being said to have been barred for filing suits under Order XXXVII of CPC cannot be extended to the suits under Order VII Rule 1 of CPC. As a matter of fact, Order XIII-A also states that an application for summary judgement cannot be made in a suit which is originally filed as a summary suit.

30. The Bombay High Court in **2016 SCC Online Bom 9019 (Hubtown Limited Vs. IDBI Trusteeship Service Limited)** had held as under:-

"34 The conceptual position of "summary suit" as contemplated under Order XXXVII of CPC and its specific provisions are governed as per the original provisions of CPC. The amended CPC, in view of Section 16 of the Commercial Courts Act inserted the provision for a "summary judgement", through Order XIII-A which is made applicable to the classes of Suits (commercial suits) which required to be decided by the Commercial Division/Court. It prescribes the procedure and stages for application for summary judgement This also includes and provides the powers of a Commercial Judge to pass conditional order including for evidence for hearing of summary judgement We are concerned with Order XIII-A, Rule 1(3) of CPC, whereby it is specifically provided "notwithstanding anything to the contrary, "an application" for summary judgement under this Order shall not be made in a Suit in respect of any commercial disputes that is originally

filed as a summary suit under Order XXXVII.". Therefore, once the summary suit as originally filed, prior to the commencement of the and as now transferred, being commercial dispute matter, the original procedure as provided under Order XXXVII shall be applicable to such summary suits. The parties are not entitled to prayer for summary Judgement under XIII-A in view of the specific provision so referred above. This also means that the judgements and the issues so decided in summary suit shall for all purposes be governed by the CPC, even after such suits are transferred as commercial suits. The Commercial Division Judge is required to follow the original C.P.C. and is required to keep in mind the position in law revolving around all the facets of summary suits. The provisions of Section 13, therefore, is required to be interpreted and/or considered accordingly, when any decision is given by the Commercial Division/Court in such summary suit. The proviso to Section 13(1), will not affect the maintainability of such Appeal so filed against such order/judgement passed by the Commercial Division/Court in such summary suit.

35. The submission that Section 13 proviso has extinguished, expressly and/or by necessary intentment the Appeal against the order passed by the Commercial Judge in summary suit granting the Defendant conditional leave to defend a summary suit is unacceptable. Section 13 itself contemplates that an Appeal is maintainable against the decision/judgement or order which has effect of "judgement", though it falls outside the purview of Order XLIII as observed above."

31. A careful reading shows that in summary suits originally filed prior to the commencement of the Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016) the parties are not entitled to a prayer for summary

issues decided in a summary suit shall be governed by the Code of Civil Procedure. The Commercial Division Judge is required to follow the provisions of CPC.

32. I hold that the bar to file application under Order XIII(A) of CPC (as amended) in suits filed under Order XXXVII of CPC would, by corollary also extend to bar of suits filed in the Original Side, Madras High Court, whether captioned as suits under Order XXXVII of CPC or under Order VII of the Original Side Rules.

33. For the reasons stated above, I hold that the present application has to be rejected as not maintainable and accordingly, this application is dismissed. No costs.

Sd/.C.V.K.J

03.08.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

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