

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.07.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Review Application No.193 of 2018
in O.S.A.No.16 of 2018.

Aascar Films Pvt. Ltd.,
Represented by its Managing Director,
Mr.V.Ravichandran,
No.9, 10th Avenue,
Ashok Nagar, Chennai - 600 083. ... Petitioner/Defendant

Vs.

AGS Entertainment Pvt. Ltd.,
Represented by its Director,
Mr.R.Rangarajan,
B-2, First Floor, No.12, Shoba Flat,
10th Avenue, Ashok Nagar,
Chennani - 600 083. .. Respondent/Plaintiff

Prayer : Review Application is filed against the order dated 09.01.2018 passed in O.S.A.No.16 of 2018.

Original Side Appeal filed under XXXVI R.2 of Original Side Rules read with clause 15 of letters patent against the order dated 28.08.2017 made in Application No.149/2017 in C.S.No.695 of 2016.

Prayer in O.A.No.149 of 2017:

To pass an order or direction directing the Respondent/Plaintiff to produce the following documents viz.,

1. Theater contracts duly signed by the exhibitors.

2. Daily collection reports directly from the screening theaters together with the signatures of the exhibitors.

3. Daily Collection reports on daily basis to be submitted by you before 7.00 P.M. on the subsequent dated pertaining to the agreement dated 21.02.2014 and 20.11.2015

entered into between the respondents/Plaintiffs and the applicant/Defendant within such time as may be prescribed.

Prayer in C.S.No.695 of 2016:

a. directing the defendant to pay to the plaintiff a sum of Rs.3, 17, 79, 789/- along with interest @ 24% per annum on Rs.1 91 ,72, 895/- from the date of plaint till realization.

b. Grant a permanent injunction restraining the defendant, their men, agents, servants or any other person acting on their behalf from releasing the picture "Viswaroopam 2" starring Kamal Hassan Pooja and others, music by Ghibran and directed by Kamal Hassan without settling the dues to the plaintiff.

c) Directing the defendant to pay the costs of the suit.

For Petitioner : Mr.S.Thankasivan

For Respondent : Mr.AR.L.Sundaresan
Senior Counsel

For Mr.Srinath Sridevan

O R D E R

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This review application has been filed to review the judgment passed in O.S.A.No.16 of 2018, dated 09.01.2018.

2. The petitioner is the defendant in C.S.No.695 of 2016. The suit was filed by the respondent/plaintiff for recovery of Rs.3,17,79,789/- and for permanent injunction restraining the defendant from releasing the picture "VISWAROOPAM 2".

3. In the suit, the petitioner filed an application in O.A.No.149 of 2017, seeking direction to the plaintiff for production of theatre contract agreement, daily collection reports directly from the screening theatres together with the signature of the exhibitors and for daily collection reports. The learned Single Judge of this Court disposed of the application along with O.A.No.844 of 2016 and Application No.4874 of 2016, by a common order, directing the plaintiff to produce those documents at the time of trial, failing which, adverse inference under Section 114 of the Indian Evidence Act will be drawn against the plaintiff.

4. Aggrieved over the order, the petitioner preferred O.S.A.Nos.14, 15 and 16 of 2018. As per the direction of this Court, the petitioner filed an affidavit of undertaking dated

04.01.2018, thereby, the petitioner undertook to deposit a sum of Rs.2,00,00,000/- (Rupees Two Crores only) to the credit of the Suit one week prior to the release of the motion picture film "VISWAROOPAM 2" and in the last paragraph, he prayed for direction to the respondent for production of the documents covered by O.A.No.149 of 2017.

5. This Court, by an order dated 09.01.2018, permitted the petitioner to release the movie based on the affidavit dated 04.01.2018 and with regard to production of documents, this Court has passed the following order:-

4. Since, the appellant says that he has not been given copies of the theatre contracts and daily collection reports, order will be passed by the Court, after it is satisfied, with regard to this aspect of the matter."

6. Heard Mr.S.Thankasivan, learned counsel for the petitioner; Mr.AR.L.Sundaresan, learned Senior Counsel, representing Mr.Srinath Sridevan, learned counsel for the respondent and perused the materials available on record.

7. The learned counsel for the petitioner submitted that the petitioner is a producer and the respondent is a distributor of three Tamil movies produced by the petitioner. The suit has been instituted on the basis of distribution agreements entered into between the petitioner and the respondent, and they stipulate furnishing of documents sought for by the petitioner and instead of furnishing those documents, the respondent had sent only the statement of accounts.

8. According to the learned counsel for the petitioner, for filing written statement and for making counter claim, the petitioner needs those documents and they also relevant to decide the issues involved in the suit; that though the petitioner has preferred O.S.A.No.16 of 2018 against the order passed by the learned Single Judge in O.A.No.149 of 2017, but admittedly, no direction has been issued by this Court and that if a suitable direction is not issued, it would end in failure of justice. In support of the contention, the decision of the Hon'ble Supreme Court in (2012) 8 SCC 148 [Union of India vs. Ibrahim Uddin and another], is relied upon.

9. Per contra, the learned Senior Counsel for the respondent argued that a Review Petition cannot be a rehearing of the appeal and the prayer sought for by the petitioner was considered by the learned Single Judge and the Division Bench of this Court; that when there is no specific direction, it shall be presumed that his prayer was rejected and hence, the remedy of the petitioner is elsewhere and that there is no error

apparent on the face of the record, hence, the Review is not maintainable and the same has to be dismissed.

10. The only grievance of the petitioner is that though he is entitled to seek direction to produce the documents covered by Application No.149 of 2017, no time limit has been fixed.

11. Before going into the facts of this case, it would be relevant to see the scope of review. The Hon'ble Apex Court in AIR 1955 SC 233 (Harivishnu v. Ahmad) held that an error apparent on the face of the record cannot be defined precisely or exhaustively there being an element of indefiniteness inherent in its very nature, and it is must be left to be determined judicially on the facts of each case. In AIR 2003 SC 2095 (Rajendra Kumar vs. Rambai), it has been observed that the foremost requirement of entertaining a review petition is that the order of which review is sought, suffer from any error apparent on the face of the order and permitting the order to stand would lead to failure of justice.

12. Relevant provisions are Order 11 Rule 14 and Rule 21 of C.P.C., which would run thus:-

"Rule 14. Production of documents:-

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Rule 21. Non-compliance with order for discovery:-

(i) Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for any order to that effect, and an order may be made on such application accordingly, after notice to the parties and after giving them a reasonable opportunity of being heard.

(2) Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."

13. In the decision cited by the learned counsel for the petitioner, the Hon'ble Apex Court has held that the Court is competent to direct any party to produce the documents asked by the other party which is in his possession or power and relating to any material in question in such suit. Paragraph 22 reads under:-

"22. Under Rule 14 of Order 11, the court is competent to direct any party to produce the document asked by the other party which is in his possession or power and relating to any material in question in such suit. Rule 15 Order 11 provides for inspection of documents referred to in the pleadings or affidavits. Rule 18 thereof empowers the court to issue order for inspection. Rule 21 thereof provides for very stringent consequences for non-compliance with the order of discovery, as in view of the said provisions in case the party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if he is a plaintiff, be liable to have his suit dismissed for want of prosecution and if he is a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect."

14. Rule 14 of Order 11 and the principles laid down in the above judgment would make it clear, a duty is cast upon the Court to issue directions for production of documents relating to any matter in question in such suit.

15. From the perusal of the records, it is evident that the respondent has instituted the suit based on the distribution agreements dated 21.12.2014 and 20.11.2015. Even prior to the institution of the suit, the petitioner / defendant issued a letter dated 06.04.2016, requesting the respondent to furnish the details of the statement of the accounts pertaining to the distribution and collection of Motion Picture "I". It is not in dispute that the amount collected by the distributor is to be disbursed as per the covenants in the agreements, for which, the documents are material in question in the suit. It is to be noted that the distribution agreements mandate the distributor to furnish the documents to the producer. Hence, we find force in the submissions of the counsel for the petitioner that the documents are relevant and unless, those documents are produced, the defendant will not be in a position to make a proper defence.

16. Though the petitioner preferred O.S.A.No.16 of 2018 against the order passed in O.A.No.149 of 2017, but, admittedly no order has been passed by this Court at the time of the

disposal of the Original Side Appeals and the observations referred supra cannot be construed that the claim of the petitioner was rejected as suggested by the learned Senior Counsel for the respondent.

17. Keeping in view the principles laid down in the above decisions of the Supreme Court and for the foregoing reasons, we are of the considered view that the petitioner is entitled to seek direction to produce the documents. In that view of the matter, the respondent / plaintiff is directed to produce the documents within a period of three months from today.

18. It is made clear that if the respondent fails to produce the documents, the Court shall draw adverse inference as observed in the order in O.A.No.149 of 2017. The petitioner shall scrupulously comply the conditions stated in the O.S.A. as they are unaltered.

19. Accordingly, the Review Application is allowed. However, there shall be no order as to costs.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

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

Copy to

1. The Registrar General
High Court, Madras
2. The Sub Assistant Registrar
Accounts Section
High Court, Madras 104.

+1 CC to Mr.S.Thankasivan, Advocate sr 51573.

Rev.Appl.No.193 of 2018
in O.S.A.16 of 2018.

RSY(CO)
SP(10/08/2018)