IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2019

Pronounced on : 29.08.2019

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Appl.No.162 of 2016
in
I.P.No.25 of 2014

The Official Assignee
High Court, Madras ... Applicant

Vs

1.Arjunlal Sunderdas ... 1st Respondent / Insolvent

2.Studio Green, K.E.Gnanavel Raja,

... 2nd Respondent / Third Party / Debtor

This Application is filed praying to pass a Judgment and decree against the 2nd respondent, directing the 2nd respondent to pay a sum of Rs.10,35,00,000/- with interest at 18% p.a from 23.12.2013 till date of realization with cost of the recovery proceedings.

For Applicant : Mr.K.V.AnanthaKrushnan,
Assisted by Ms.A.Janani

For R2 : Mr.R.Sankara Narayanan,
Senior Counsel,
For M/s.R&P Partners.

ORDER

C.V.KARTHIKEYAN,J.

The Official Assignee had filed the present Application seeking a Judgment and Decree against the 2nd Respondent / Studio Green, K.E.Gnanavel Raja, to pay a sum of Rs.10,35,00,000/- together with the interest at the rate of 18% per annum from 23.12.2013 till the date of realization, together with cost of the recovery proceedings.

2.By order dated 21.04.2014, a learned Single Judge of this this Court had adjudicated the 1st Respondent / S. Arjunlal Sunderdas as an insolvent. The Official Assignee took steps to determine the debtors and creditors of the estate of the insolvent. A Chartered Accountant, Mr.Ranga Ramanujam was the Auditor for the insolvent. He had prepared his Income Tax statements and had filed his Income Tax Returns. He furnished the list of debtors and creditors along with computer generated Bank statements. The Bank statements contained several transactions with several parties with debit and credit entries only, without any details of the transactions.

3. Thereafter, the Official Assignee had also engaged M/s.Annamalai Associates, Chartered Accountants, to verify the list of debtors and creditors with the computer generated Bank statements. It was stated in the Application that, on such verification, it was found that the 2nd Respondent herein had received a sum of Rs.10,35,00,000/- from the insolvent, which was shown as due and outstanding in the Bank statements as on 23.12.2013. It was also stated that there were no subsequent transactions to prove discharge.

4. The Official Assignee had issued a demand notice on 16.03.2016 to the 2nd Respondent, calling upon him to pay the

amount. It was stated that unless the amounts due to the estate are recovered, it would not be possible to declare any dividend to the creditors. It was under these circumstances that the Application has been filed seeking a Judgment and Decree against the 2nd Respondent as aforesaid.

5. In the counter affidavit filed by the 2nd Respondent, it was stated that he was a leading film producer and distributor in Tamil and Telugu Film Industries. The insolvent had come forward to co-produce a Tamil Film and had promised to invest around Rs.40 Crore. The 2nd Respondent was also to invest Rs.40 Crore. It was stated that the tentative total budget of the proposed film was around Rs.80 Crore. It was also therefore stated that the 2nd respondent commenced pre-production work and the insolvent made periodical payments towards his share of the contribution from September 2011 to October 2012, totally, in all to a sum of Rs.12,85,00,000/-. It was further stated that around June 2013, the insolvent requested for some payment from the 2nd respondent and accordingly, the 2nd respondent had transferred a sum of Rs.3 Crore and another sum of Rs.2 Crore

in July 2013 and a further sum of Rs.2.5 Crore in November and December 2013. The insolvent then expressed his inability to make further payments and sought return of the money paid by him. The 2nd respondent expressed his inability to return the balance amount, since a substantial sum of the money was spent on pre-production expenses. Thereafter, the insolvent and the 2nd respondent had several rounds of discussions and finally came to an understanding that 2nd respondent would grant the Hindi remake rights of three Tamil films namely, "All in All Azaghuraja", "Briyani" and "Madras" (originally named as "Kaali") which the insolvent can sell using his contacts in the Hindi film industry. It was claimed that the sum of Rs.10,35,00,000/- had been offset in this manner. It was therefore stated that the 2nd respondent did not owe any money to the estate of the insolvent. It was further stated that during the floods in December – 2015, all documents, ledgers, vouchers were destroyed / damaged irretrievably. It was therefore stated that no documentary evidence could be filed in support of the averments made in the counter affidavit. It was finally stated that the Application should be dismissed.

6. This Court had directed evidence to be recorded by the learned Master and had granted an opportunity to both the parties to adduce oral and documentary evidence to substantiate their respective claims. Accordingly, Mrs.R.Padma, Sub-Assistant Registrar, in the office of the Official Assignee was examined as PW-1 and she marked Ex.A1 – Relevant pages in the report of the Auditor Mr.Ranga Ramanujam. Ex.A2 – Relevant pages in the report of the Auditor Annamalai Associates. Ex.A3 - Notice dated 16.03.2016 sent by the Official Assignee. Ex.A4 - Schedule of affairs filed by the insolvent. Ex.A5 - Relevant entries in the schedule of affairs, and Ex.A6 – Statement of account of the insolvent in Indian Bank, Ethiraj Salai Branch, Chennai, with particular reference to the transactions with the 2nd respondent.

7. On the side of the 2nd respondent, Mr.V.K.Eswaran, one of the partners of the 2nd respondent / Studio Green was examined as RW-1. He marked Ex.R1 – letter dated 23.12.2013 issued by the 2nd respondent to Gemini Colour Laboratory for confirming assignment of Hindi remake rights for the film “All in

All Azhaguraja". Ex.R2 - letter dated 23.12.2013 issued by the 2nd respondent to Gemini Colour Laboratory for confirming assignment of Hindi remake rights for the film "Briyani". Ex.R3 - letter dated 23.12.2013 issued by the 2nd respondent to Gemini Colour Laboratory for confirming assignment of Hindi remake rights for the film "Madras". Ex.R4 – Confirmation letter from Gemini Colour Laboratory with respect to the rights of the film "All in All Azhaguraja" assigned to the insolvent. Ex.A5 - Confirmation letter from Gemini Colour Laboratory with respect to the rights of the film "Briyani" assigned to the insolvent. Ex.A6 - Confirmation letter from Gemini Colour Laboratory with respect to the rights of the film "Madras" assigned to the insolvent and Ex.A7 - Letter dated 18.01.2016 issued by the 2nd respondent to the Service Tax Department intimating about destruction of records during the floods.

8. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee and Mr.R.Sankara Narayanan, learned Senior Counsel for the 2nd Respondent.

9. Mr.K.V.Ananthakrushnan, learned counsel relied on Ex.A6, Bank Statements of the insolvent indicating transfer of money to the 2nd Respondent / Studio Green on various dates from 01.01.2011. The learned counsel stated that the fact that there were financial transactions between the insolvent and the 2nd respondent was also not been disputed by the 2nd respondent. In fact, the 2nd respondent had admitted receipt of Rs.10,35,00,000/- from the insolvent both in his counter statement and also in evidence.

10. The learned counsel seriously questioned the authenticity of the documents produced on behalf of the 2nd respondent, stating that neither were the original documents produced nor had the documents been spoken to by any responsible persons from Gemini Colour Laboratory and therefore stated that the documents have not been proved in manner known to law. The learned counsel also stated that the 2nd respondent had not proved the discharge of the amount received, by repayment in actual money terms. He had only

sought set-off with the value of the assignment of remaking rights of the three Tamil films in Hindi version.

11. It was the further contention of the learned counsel that this fact itself would show that there had been amounts received by the 2nd respondent. The claim of the 2nd respondent that the entire amount of Rs.10,35,00,000/- had been offset by grant of the remake rights of the three Tamil films in Hindi was seriously disputed by the learned counsel. According to him the claim of the Official Assignee had been proved and he urged that the application should be allowed.

12. The arguments so advanced were seriously disputed by Mr.R.Sankara Narayanan, learned Senior Counsel for the 2nd Respondent. The learned Senior Counsel stated that there was a business relationship between the insolvent and the 2nd respondent for production of a movie and towards his contribution, the insolvent had remitted the amounts and when the said business venture was found no longer feasible, the parties had, after mutual discussion, agreed to offset the

amounts paid by grant of rights to remake in Hindi, three Tamil films, namely, “All in All Azaghuraja”, “Briyani” and “Madras”.

13. The learned Senior Counsel therefore stated that no amounts were actually payable by the 2nd respondent. The statement of accounts produced as Ex.A6 was also seriously challenged and disputed by placing reliance on Section 34 of the Indian Evidence Act. The learned Senior Counsel was emphatic in his submission that such statement was not sufficient evidence to charge any person with liability. It was also pointed out that only a copy of the Statement of Accounts had been produced and placing reliance on Sec.62 of the Indian Evidence Act, the Learned Senior Counsel insisted that the said document, Ex.A6, should be rejected. The learned Senior Counsel stated that the burden was heavily on the applicant to prove the debt. This burden had not been discharged. He urged that the application should be dismissed.

14. The learned Senior Counsel also placed reliance on ***AIR 1954 Cal 105, Radha Kisen Chamria and others Vs.***

Keshardeo Chamria and another, wherein, the Division Bench of the Calcutta High Court had examined the definition of the term "loan" as defined under Section 2(12) of the Bengal Money Lenders Act, and stated that interest is a crucial component of any loan transaction and was one of the essential condition to determine whether a transaction is a loan within the meaning of the Act.

15. The learned Senior Counsel also placed reliance on ***AIR 1967 SC 1118, Jiwanlal Achariya Vs. Rameshwarlal Agarwalla,*** wherein, the Honourable Supreme Court had an occasion to examine the definition of the term "loan", as defined under Section 2(f) of the Bihar Money Lenders (Regulation of Transactions) Act, also wherein "loan" had been defined as "an advance, whether of money or in kind with interest".

16. The learned Senior Counsel also relied on ***1992-1-LW.262, Deluxe Road Lines rep.by its Partner Kushalchand B.Shah Vs. P.K.Palani Chetty,*** wherein, a learned Single Judge of this Court had an occasion to examine a

transaction with reference to Section 34 of Indian Evidence Act, and had held that Account Books by themselves were not sufficient to charge any person with liability and that independent evidence has to be adduced to prove that the entries represented real and honest transactions and that the transactions actually took place in accordance with those entries.

17. The learned Senior Counsel also relied on ***90 L.W 686, V.K.Abraham Vs. N.K.Abraham***, wherein, again a Division Bench of this Court had examined failure to prove charging of interest on a business transaction.

18. The learned Senior Counsel finally relied on ***1993 SCC Online All 455, Dilip Singh Rana Vs. State of U.P,*** wherein, a Division Bench had examined the evidentiary value of an audit report and had held that an audit report cannot be used as substantive evidence of the genuineness or the bonafide nature of the transactions referred in the accounts.

19. The learned Senior Counsel finally stated that the

Application does not merit any consideration and urged that the same should be dismissed.

20. We have carefully considered the arguments advanced and have also perused the relevant records.

21. The 1st respondent / Arjunlal Sunderdas, had been declared as an insolvent on 21.04.2014 on an application made by a creditor. During the course of enquiry into the affairs of the insolvent by the Official Assignee, it was found that he had accumulated debts and credits to substantial sums of money. There were also several creditors and debtors to the estate.

22. As a matter of fact, while examining the nature of the transaction involved, on reference made by the Insolvency Court to the Honourable Chief Justice, this Bench was specially constituted to determine and adjudicate the debts and credits and also realize the debts to the estate. The insolvent unfortunately, did not co-operate with the Official Assignee. More unfortunately, he also died. Taking into account the serious

frauds in the transactions including violations attracting the penal provisions of the statutes relative to economic offences, this Court had directed registration of a First Information Report against the insolvent. The investigation was carried on originally by the Economic Offences Wing of the Chennai City Police and later when it was found that there were interstate ramifications, further investigation was handed over to the Central Bureau of Investigation. Since investigation is pending, we are not inclined to dwelve further on this aspect.

23. The Auditor of the insolvent, Mr.Ranga Ramanujam was examined by the CBI and also by the Official Assignee. He produced the Bank Statements of the insolvent and also the list of creditors and debtors. This was also verified by Mr.Annamalai Associates, Chartered Accountants. From the statement of accounts, the Official Assignee was able to procure the list of debtors and the amounts due from them to the estate of the insolvent. One among such debtors is the 2nd respondent herein, a Film Production Company called Studio Green, and more particularly run by K.E.Gnanavel Raja.

24. Examination of the documents filed on behalf of the Official Assignee reveal that on various dates, the insolvent had transferred huge sums of money to the 2nd respondent in the financial years 2011 – 12, 2012-13 and 2013 – 14. The details are as under:

"Financial Year from 01.04.2011 to 31.03.2012

Date	**Debit**	**Credit**
23.09.2011	75,00,000/-	
24.09.2011	75,00,000/-	
26.09.2011	25,00,000/-	
04.10.2011	5,00,000/-	
18.10.2011	50,00,000/-	
19.10.2011	25,00,000/-	
20.10.2011	25,00,000/-	
31.10.2011	25,00,000/-	
08.11.2011	25,00,000/-	
07.12.2011		30,00,000/-
13.02.2012	25,00,000/-	
14.12.2012	15,00,000/-	
Total	3,90,00,000/-	30,00,000/-

Financial year from 01.04.2012 to 31.03.2013 :

Date	Debit/ Rs.
Opening Balance	3,60,00,000/-
03.04.2012	25,00,000/-
09.04.2012	25,00,000/-
12.04.2012	25,00,000/-

Date	Debit/ Rs.
28.05.2012	25,00,000/-
15.06.2012	50,00,000/-
30.07.2012	75,00,000/-
01.08.2012	1,00,00,000/-
24.08.2012	50,00,000/-
15.09.2012	1,00,00,000/-
17.09.2012	1,00,00,000/-
28.09.2012	1,50,00,000/-
08.10.2012	1,00,00,000/-
09.10.2012	1,00,00,000/-
Total	12,85,00,000/-

Financial year from 01.04.2013 and 31.03.2014 :

Date	Debit	Credit
Opening Balance	12,85,00,000/-	
11.07.2013		2,00,00,000/-
12.07.2013	2,00,00,000/-	1,00,00,000/-
13.07.2013	1,00,00,000	
18.07.2013		1,00,00,000/-
19.07.2013	1,00,00,000/- 1,00,00,000/-	1,00,00,000/-
13.11.2013		50,00,000/-
23.12.2013		2,00,00,000/-
Debt Amount		7,50,00,000/- 10,35,00,000/-
Total	17,85,00,000/-	17,85,00,000/-

25. The witness who was examined on behalf of the 2nd respondent, V.K.Eswaran had stated as follows in his proof affidavit:

"The First Respondent made regular payments from September 2011 to October 2012 in various installments. In all, a sum of Rs.12,85,00,000/- (Rupees Twelve Crores Eighty Five Lakhs Only) was received for the purpose of co-production of proposed film as per the Original Arrangement."

26. During cross examination he answered as follows:

"It is correct to state that Arjunlal Sunderdas the 1st Respondent, has given a sum of Rs.12 Crores as 85 lakhs between September 2011 and October 2012 to the 2nd Respondent Studio green. It is correct to state that myself repaid a sum of Rs.2 Crores on 23.12.2013 to the 1st Respondent as stated by me in the proof affidavit. It is correct to state that after deducting the above said amount a sum of Rs.10 Crores and 35 lakhs is due to the 1st Respondent."

The above admission effectively proves the transactions as averred by the Official Assignee.

27.However, it is the contention of the 2nd respondent that this amount had been offset by transfer of the rights to remake in Hindi, three Tamil films namely, “All in All Azaghuraja”, “Briyani” and “Madras”. To substantiate this statement the 2nd respondent had produced Exs.R1 to R6. However, no explanation has been given by the 2nd respondent as to why any person from Gemini Colour Laboratory had not been summoned to give evidence to prove the said documents. The said documents also referred to an agreement between the parties. That agreement has also been produced. The explanation given for producing Xerox copies was that during the floods in December – 2015, the originals were either destroyed or damaged.

28. RW-2, during his cross examination, had answered as follows:

> *“Q: I put it to you that since your office is located at 2nd floor in Thanikachalam Chetty Street, you were not affected by floods?*
>
> *A : True.*

Q : I put it to you that therefore, your contention that you were affected by floods and that several documents got destroyed due to floods, is false?

A: The office mentioned above is not affected by floods. We have one another office for the purpose of keeping stocks at the ground floor. We kept several documents in that office. And that office was affected by the floods.

Q: I put it to you that Ex.R4 to Ex.R6 were addressed to the office situated at Thanikachalam Chetty Street?

A: Yes.

Q: I put it to you that in any communication or in your website, you have not mentioned that you have office at Masilamani Street, T.Nagar, Chennai?

A: We have communicated about the damage due to floods and address of the office at Masilamani Street to Servie Tax Authorities.

Q: I put it to you that in Ex.R7, there is no reference to the effect that you were occupying an office at Masilamani Street and that it got damaged due to *floods?*

A: Correct.

Q: Have you got list of documents, which were kept at Masilamani Street and which got destroyed due to floods?

A: No."

29. It is thus seen that convincing answers had not been given by the witness with respect to destruction of records during floods in December – 2015. The evidence of the witness does not inspire evidence.

30. The learned Senior Counsel for the 2nd respondent relied on Section 34 of the Indian Evidence Act and had also, as aforesaid relied on,

(i) ***1992-1-LW.262, Deluxe Road Lines rep.by its Partner Kushalchand B.Shah Vs. P.K.Palani Chetty;***

(ii) ***90 L.W 686, V.K.Abraham Vs. N.K.Abraham;*** in this regard.

31. We are afraid that on the fact of this case, this argument cannot be countenanced by us, since the 2nd respondent himself has admitted to the transactions alleged by the Official Assignee. That itself is sufficient evidence to uphold the genuinity of the transaction and the further fact that a sum of Rs.10,35,00,000/- was actually transferred to the 2nd respondent and was due and payable by the 2nd respondent to the estate of insolvent.

32. The learned Senior Counsel had also relied on,

(i) ***AIR 1954 Cal 105, Radha Kisen Chamria and others Vs. Keshardeo Chamria and another;***

(ii) ***AIR 1967 SC 1118, Jiwanlal Achariya Vs. Rameshwarlal Agarwalla;*** for the contention that every transaction involving payment of money should be necessarily accompanied with interest.

33. In the present case, the insolvent had lent money to the 2nd respondent and a demand is made by the Official Assignee for

recovery of the said amount together with interest. The insolvent had to contribute a sum of Rs.40 crore towards his share of the production cost of a Tamil film along with the 2nd respondent. He had admittedly transferred a sum of Rs.10,35,00,000/-. That amount is now claimed by the Official Assignee together with interest at the rate of 18 % per annum till date of payment. The Official Assignee, in this case, had raised a demand of recovery of the amount together with interest since it was a commercial transaction on the principle that every loan should also include an interest component at the time of repayment. We have no quarrel with that ratio as pointed out in the judgements relied by the learned Senior Counsel appearing for the 2nd respondent.

34. The reliance placed by the learned Senior Counsel on ***1993 SCC Online All 455, Dilip Singh Rana Vs. State of U.P.*** would however not come to the rescue of the 2nd respondent, since the witness of the 2nd respondent had admitted the transactions. The Auditor report supports such admission.

35. The stand of the 2nd respondent that loan had been

offset by grant of rights to remake in Hindi, the three Tamil films namely, “All in All Azaghuraja”, “Briyani” and “Madras” are also rejected by us, since the evidence in that regard does not inspire any confidence at all. In the first place, the alleged agreement between the insolvent and the 2nd respondent in this regard has not been produced. The date of the agreement had also not been stated. The value and the goodwill of the three movies have also not been stated. No evidence had been let in to justify the stand that the remake rights of the three movies would be exactly equal to Rs.10,35,00,000/-. There is also no oral evidence to that extent, let alone documentary evidence. The documents produced are xerox copies. The explanation that the originals has been lost in floods had not withstood cross examination. The 2nd respondent had not called upon any Official from Gemini Colour Laboratory to speak about the said documents. The xerox copies alone have been filed.

36. We hold that the said documents have to be rejected. They are neither admissible nor have they been proved in manner known to law. This reasoning cannot be made applicable

to Ex.A6, Statement of Accounts, as insisted by learned Senior Counsel for the 2nd respondent who had placed reliance on Section 62 of the Indian Evidence Act. The relevant portion of the Statement of Accounts alone had been marked as evidence to prove the transactions. The entire Statement of Accounts duly certified by the Bank Officials is very much available in the court records. Consequently, we are constrained to reject the arguments advanced on this ground also.

37. In view of the above reasons, we hold that the Official Assignee had proved the debt and accordingly, the Application is allowed with costs.

(G.J.,J) (C.V.K.,J.)

29.08.2019

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Index: Yes/No
Internet: Yes/No
Speaking order: Yes/No

DR. G.JAYACHANDRAN,J.
and
C.V.KARTHIKEYAN,J.
smv

Pre-delivery Judgment in
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