

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

C.S.No.1187 of 2008

M/s.Star Music,
represented by its Partner,
Mr.B.Poonam Chand,
23-A, North Boag Road,
T.Nagar,
Chennai-00 017.

.. Plaintiffs

Vs.

1.M/s.Yogesh Movie Makers,
No.20, Aruppukottai Main Road,
Opposite to Vetri Theatre,
Villapuram,
Madurai-12.

2.M/s.Movie Land,
No.59/0, Singanna Chetty Street,
Chintadripet,
Chennai-600 002.

3.M/s.Bay Shore Record,
No.8, Joshier Street,
Nungambakkam,
Chennai-600 034.

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of C.P.C. and sections 51, 55 and 61 of the Copyrights Act, 1957 seeking judgment and decree against the defendants :
(a) for a permanent injunction restraining the defendants, their men, agents,

servants, dealers, distributors or any one claiming through them from in any manner infringing upon the plaintiff's copy rights in the Tamil Feature Film Titled "Azhagia Thamizhmagan" starring Vijay, Shreya and others, directed by Bharathan and music by A.R.Rahman, by offering for sale, distribution, circulation or exhibition of the said film in any manner whatsoever; (b) for the costs of the suit and ; (c) to pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.S.Kishore Kumar
of M/s.Sai Bharath & Ilan

For Defendants : Ms.Archana
for Mr.K.Harishankar
for D2 and D3

No appearance for D-1

JUDGMENT

There is a sole plaintiff and there are three defendants in this suit. Mr.S.Kishore Kumar of M/s.Sai, Bharath & Ilan (Law Firm) on behalf of plaintiff and Ms.Archana, learned counsel on behalf of counsel on record for defendants 2 and 3 are before this Commercial Division.

2 This suit is now more than a decade old. To be precise, the suit was presented in this Court on 22.12.2008.

3 Before I advert to the facts, it may be necessary to capture the trajectory of this suit.

4 As this suit pertains to copyright in a Tamil cinematograph film, after constitution of the Commercial Division in this Court, which started functioning from December of 2017, this suit was transferred and posted before this Commercial Division for the first time on 13.07.2018 (before my predecessor). Subsequently, the matter was listed on 30.08.2018. Registry had put up a note that all three defendants have been duly served, but none have filed written statement. Details of the note put up by the Registry are as follows :

“There are 3 deffs.

D1 s/d on 7/2/09

D2 s/d on 21/1/09

D3 s/d on 30/12/08

W/S not filed.”

5 On 30.08.2017, jurisdiction of this Commercial Division qua this suit was determined and said proceedings reads as follows :

“Mr.P.Saravanan of M/s.Sai, Bharath & Ilan (Law Firm) on record for the sole plaintiff, Mr.R.Marudha Chalamurthy, learned counsel for first defendant and Mr.K.Harishankar, learned counsel for Defendants 2 and 3 are before this Commercial Division.

2.I heard all the aforesaid counsel on jurisdiction of this Commercial Division.

3.The aforesaid learned counsel made a common submission in unison that this Commercial Division will have jurisdiction to entertain this suit under first proviso to Section 7 of 'The Commercial Courts Act, 2015' ('said Act' for brevity), as the suit pertains to alleged infringement of plaintiff's Copyright in a Tamil feature film, title of which is 'Azhagia

Thamizhmagan”.

4.I have perused the plaint and I have no difficulty in accepting this common submission.

5.Jurisdiction thus determined.

6.Having determined jurisdiction, I now turn to the stage of the suit.

7.Written statement has not yet been filed. In exercise of my powers under proviso to Section 15(4) of said Act, defendants are given 30 days time to file written statement together with all supporting documents and advance copies to the plaintiff.

List this matter on 01.10.2018.”

6 To be noted, paragraph 7 of the aforesaid proceedings dated 30.08.2018 is of utmost relevance as no written statement was filed. (To be noted, no written statement had been filed until today).

7 Therefore, this suit was directed to be listed in 'UNDEFENDED BOARD' vide proceedings dated 01.10.2018. Relevant operative portion of the proceedings dated 01.10.2018 is paragraph 5 and the same reads as follows :

“5.As the defendants have not filed written statements, notwithstanding the aforesaid proceedings in this Commercial Division dated 30.08.2018, Registry is directed to list this matter in the undefended board, i.e., under the caption 'UNDEFENDED BOARD', on 25.10.2018.”

8 Thereafter, there were proceedings on 25.10.2018, 26.10.2018, 27.11.2018 and 18.12.2018. However, proceedings dated 27.11.2018 are of

relevance and the same reads as follows :

“Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 26.10.2018, which reads as follows:

'Mr.N.U.Prasanna, learned counsel for plaintiff is before this Commercial Division on behalf of the sole plaintiff. Learned counsel expresses regret for non-appearance in the previous hearing. Registry to remove the caption 'For Dismissal' from the next listing.

Be that as it may, learned counsel for the first defendant submits that individual carrying on business in the name and style 'Yogesh Movie Makers' and undertakes to give particulars in this regard to learned counsel for plaintiff within a fortnight.

Mr.Maruthachalamoorthy, learned counsel for defendants are before this Commercial Division on behalf of the defendant Nos.2 and 3.

List this matter on 27.11.2018.'

2.Mr.N.U.Prasanna of M/s.Sai, Bharath & Ilan (Law Firm) on behalf of sole plaintiff and Ms.Rajamani Ponnu, representing the counsel on record for defendants 2 and 3 are before this Commercial Division.

3. It is pointed out that learned counsel for first defendant has not furnished details regarding first defendant, pursuant to earlier proceedings dated 26.10.2018, which have been extracted and reproduced supra.

4.Learned counsel for defendants 2 and 3 submits that they are not filing any written statement as they are only formal parties.

5.Learned counsel for plaintiff seeks time to take further instructions from plaintiff in this regard.

List this matter on 18.12.2018 “

9 From the aforesaid proceedings, it is clear that defendants 2 and 3 have made it clear that they are not filing any written statement as they are only formal parties. In addition to this, Ms.Archana, learned counsel, advertg to the counter affidavit dated 01.09.2009 filed in O.A.No.1340 of 2008 by second respondent in the said application (second defendant in this / main suit) submitted that they have never dealt with the cinematograph film which is the subject matter of the suit and therefore, they have nothing to do with the cinematograph film which forms subject matter of instant suit.

10 With regard to first defendant, no written statement has been filed until this day inspite of paragraph 7 of proceedings dated 30.08.2018 which have been extracted supra. To be noted, with regard to first defendant, following proceedings dated 13.07.2018 (there is typographical error and it is shown as 13.08.2018) are of relevance and the same reads as follows :

“The 1st defendant is reported to have died, the 2nd defendant is said to have filed an affidavit that they have no intention to commercially exploit the movie, which is complained of in the plaint.

Plaintiff to file an affidavit whether the cause of action still survives in the above circumstances.

Post the matter again on 16.08.2018, under the caption 'for dismissal'.

11 However, Mr.R.Marudhachalamurthy, counsel who had entered appearance on behalf of first defendant is not before this Commercial Division

today. First defendant neither filed written statement to defend the suit nor pursued A.No.284 of 2010 taken out with a prayer for rejection of plaint. As would be evident from the cause title, first defendant has been described as 'M/s.Yogesh Movie Makers'. Therefore, even the constitution of first defendant has not been made clear to this Commercial Division. Therefore, it is not clear as to who died. This is more so, first defendant does not appear to be a natural person and its constitution is not known as mentioned supra. Under such circumstances, it is safe to proceed on the basis that first defendant which has entered appearance through counsel has neither filed written statement in the main suit nor pursued reject the plaint application being A.No.284 of 2010. Proceedings in this manner will be in accordance with the procedure of amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity).

12 Referring to the aforesaid trajectory, Mr.S.Kishore Kumar, learned counsel drew my attention to proviso which has been inserted by 'The Commercial Courts Act, 2015' ('said Act' for brevity) which is by way of proviso in place of second proviso to Order V Rule 1 sub-rule (1) of 'The Code of Civil Procedure, 1908' ('CPC' for brevity). This proviso reads as follows :

“PROVIDED FURTHER that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court

deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

13 Thereafter, learned counsel drew my attention to a similar proviso which has been replaced by said act being proviso to Order VIII Rule 1 CPC, which reads as follows :

“PROVIDED that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

14 Thereafter, advertng to Rule 10 of Order VIII of CPC, learned counsel submitted that this Commercial Division shall pronounce judgment against first defendant as first defendant has not filed written statement within the prescribed time frame. It was pointed out that even if computed from 30.8.2018, 120 days from 30.08.2018 is over and therefore, plaintiff is entitled to a decree under Order VIII Rule 10 of CPC, is learned counsel's say. As mentioned supra, this suit is already more than a decade old.

15 I have no difficulty in accepting the submission of learned counsel for plaintiff that he is entitled to a decree in the light of provisions of amended CPC as amended by said Act which have been alluded to supra.

16 To be noted, decree will be against first defendant and it will suffice if the stated position of defendants 2 and 3 are recorded.

17 This takes us to the facts as they unfurl from plaint averments. The nucleus of this suit is a Tamil cinematograph film which goes by the title 'Azhagia Thamizhmagan', starring Vijay, Shreya and others, directed by Bharathan and music by A.R.Rahman (hereinafter referred to as 'suit movie' for the sake of brevity and clarity).

18 It further unfurls from plaint averments that plaintiff acquired copyright in suit movie by way of Assignment Agreement dated 29.06.2007 from the Producer of suit movie for valuable consideration of Rs.4,50,000/-. It is submitted that thereafter, plaintiff, to its shock and surprise, came to know from the business circles in the industry on 19.12.2008 that first defendant was planning to release VCDs and DVDs of suit movie during last week of December, 2008. There was also an apprehension in this regard with regard to defendants 2 and 3 which is articulated in paragraph 5 of plaint and the same reads as follows :

“5.....The plaintiff also understands that the second

and third defendants are also attempting to infringe on the plaintiff's copy rights by surreptitiously releasing the above film in different formats. The plaintiff has therefore made arrangements for causing of a public notice."

19 In the light of the stated position of defendants 2 and 3, it will suffice if it is recorded that defendants 2 and 3 have nothing to do with the suit movie. They have not acquired any right (though they are in the same line of business activity as that of plaintiff) and therefore, they were not even dealing with the suit movie.

20 This takes us to the cause of action paragraph in the plaint, which is paragraph 7 and the same reads as follows :

"7.The Plaintiff states that the cause of action for the suit arose at T.Nagar, Chennai within the jurisdiction of this Hon'ble Court, where the plaintiff is carrying on business, on 29.06.2007 when the plaintiff acquired the copy rights in the film "Azhagia Thamizhmagan" under the Assignment Agreement with the Producer which was executed at Chennai, on 19.12.2008 when the plaintiff came to know about the illegal attempts being made by the defendants to infringe on the plaintiff's copy rights and subsequently."

21 Prayer paragraph in the plaint is paragraph 9 and the same reads as follows :

"9.The plaintiff therefore prays for a judgment and decree against the defendants:

a. for a permanent injunction restraining the defendants,

their men, agents, servants, dealers, distributors or any one claiming through them from in any manner infringing upon the plaintiff's copy rights in the Tamil Feature Film Titled "Azhagia Thamizhmagan" starring Vijay, Shreya and others, directed by Bharathan and music by A.R.Rahman, by offering for sale, distribution, circulation or exhibition of the said film in any manner whatsoever;

b. for the costs of the suit and ;

c. to pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice."

22 In the light of the narrative supra, owing to the aforesaid provisions of CPC as amended by said Act, plaintiff is entitled to a decree as prayed for against first defendant alone.

23 Suit is decreed as prayed for against first defendant with costs. Consequently, all connected interlocutory applications, i.e., O.A.No.1340 of 2008 and A.No.284 of 2010 are closed.

सत्यमेव जयते

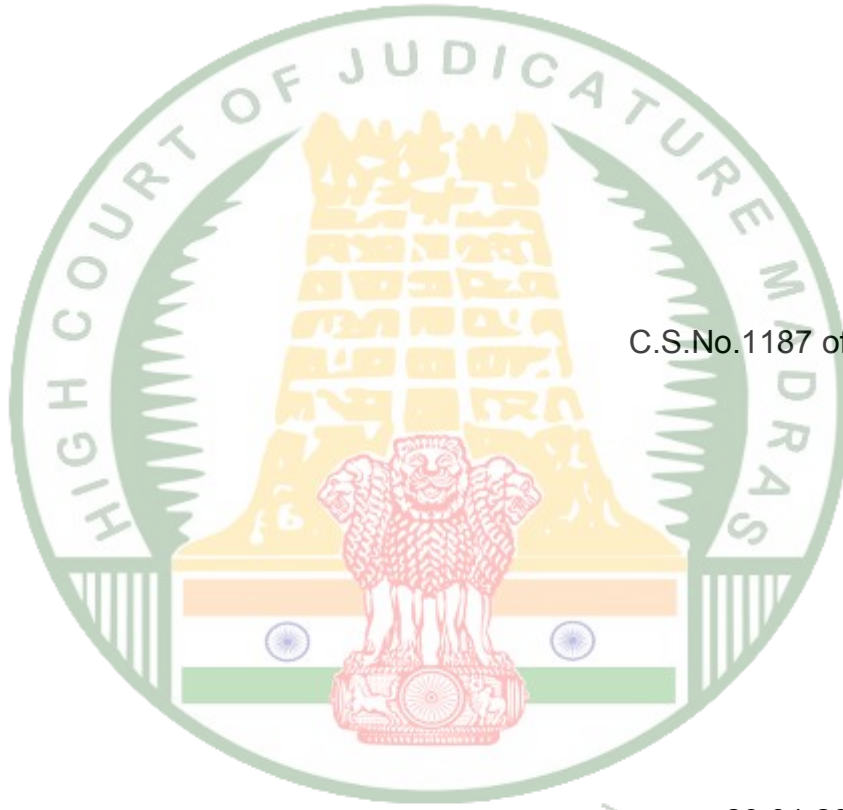
29.01.2019

Speaking order
Index : Yes/No
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M.SUNDAR, J.

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