

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 13TH DAY OF SEPTEMBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A. No.151 of 2019

in

C.S. No.459 of 2015

O.A. No.151 of 2019 and C.S. No.459 of 2015:

****1) .S.MUKANCHAND BOTHRA AMP FAMILY (DECEASED)**

Rep. by S.Mukanchand Bothra,
S/o.Late Srichand Bothra,
No.43, Veerappan Street, Sowcarpet,
Chennai-600 079.

**** 2. M. KARISHMA BOTHRA,**

D/o.Late Shri.S.Mukanchand Bothra,
No.44, Veerappan Street, Sowcarpet, Chennai-79

3. M. GAGAN BOTHRA

S/o.Late Shri.S.Mukanchand Bothra,
No44, Veerappan Street, Sowcarpet, Chennai-79

4. M. SANDEEP BOTHRA

D/o.Late Shri.S.Mukanchand Bothra,
No44, Veerappan Street, Sowcarpet, Chennai-79

(plaintiffs 2 to 4 are brought on record as LRS of
Deceased Sole Plaintiff as per order dt 11.06.19in
A.No.3808/19)

..Applicants/Plaintiffs

-VS-

1.R.K.PRODUCTIONS PRIVATE LTD

Rep. by its Director R.Krishnamurthy @
kasthoori raja, Office at Plot No.64,
Krishna Street, Nesapakkam, Chennai-600 078.

2. R.KRISHNAMURTHY @ KASTHOORI Raja,

Director, Residing at Plot No.64, Krishna Street,
Nesapakkam, Chennai-600 078.

..Respondents/Defendants

This application praying that this Hon'ble Court be pleased to grant an order of injunction restraining the defendant/respondent his men, his agents, either directly or indirectly from releasing the movie titled Pandi Muni pending disposal of the suit C.S.No.459 of 2015.

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

This application has been filed to grant an order of interim injunction restraining the defendants / respondents from releasing the movie titled "Pandi Muni" pending disposal of the suit.

2. The case of the applicant is that he is a financier and the second respondent, who is the Director of the first respondent, approached him in the year 2012 and borrowed totally Rs.65,00,000/- after executing two promissory notes dated 02.01.2012 and 13.07.2012. Subsequently, he failed to pay the amount. Hence, the suit.

3. Mr.Gagan Bothra, party-in-person, submitted that the respondents have defrauded the applicant. The suit filed by the respondents in O.S.No.6796 of 2012 before the IV Assistant City Civil Court for mandatory injunction was dismissed after contest on 24.08.2016. The learned Judge has observed that the plaintiff in that suit failed to return the amount to the applicant herein. It is further submitted that the present counter has been filed with incorrect particulars. Hence, unless an order of injunction is granted, the applicant would not be in a position to

recover the suit claim.

4. Per contra, Mr.G.Veerapathiran, learned counsel for the respondent would submit that the applicant herein filed an application in A.No.3786 of 2015 along with the present suit seeking an attachment before judgment and the application came to be dismissed on 15.12.2015 holding that the case of the plaintiff or the defence putforth before this Court is to be probablised only during the trial of the suit. It is further contended that the undertaking letter dated 13.07.2012 said to have been executed by the second defendant was found to be false by the Commissioner of Police and the same was confirmed by this Court in a Criminal Original Petition.

5. The learned counsel further submitted that the applicant filed a suit in C.S.No.400 of 2015 for mandatory injunction and the suit was struck off under Order 7 Rule 11 CPC and the order has become final. According to the learned counsel, the present suit is hit by Order 2 Rule 2 CPC. Moreover, in a suit for recovery of money, the application for interim injunction is not maintainable.

6. In reply, the party-in-person would submit that the application filed under Order 39 Rule 1 is very well maintainable and the earlier application in A.No.3786 of 2015 was dismissed on a different circumstances and that does not mean the applicant is not entitled to file the present application.

7. Heard both sides and perused the materials

available on record.

8. It is not in dispute that the promissory notes dated 02.01.2012 and 13.07.2017 have been executed by the second defendant in his individual capacity. The learned counsel for the respondents would submit that the second defendant is only a director for the film "Pandi Muni" and the producer of the film R.K. Productions is a proprietrix concern owned by Dr.K.Vimala Geetha and she is not a signatory to the suit pronotes.

9. Though the applicant vehemently contended that the first defendant is the producer of the movie "Pandi Muni", but there is no privity of contract between the applicant and the first respondent. It is the case of the respondents that they are not liable to pay the suit claim and the application filed for attachment before judgment was admittedly dismissed. Therefore, in my considered opinion, the applicant is not entitled for interim order sought for in this application. Accordingly, the application fails and the same is dismissed.

Sd/.M.K.K.S.J.

13.09.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/03.10.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.