

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.10.2019

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.S.NO.433 of 2015

M/s Sun TV Network Limited,
Represented by its Authorised Signatory,
Mr.M.Jyothi Basu,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai-28. Plaintiff

Vs.

M/s Pavithram Creations,
Represented by its Proprietor,
Mr.Santhosh Pavithram,
Pavithram Kayampara,
Ottapalam 678 581, Kerala. ... Defendant

PRAYER Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 of the Rules of the High Court of Madras Original Side, 1956 to pass a decree and judgment for

a) recovery of a sum of Rs.1,63,17,500/- (the sum being the advance paid Rs.33,75,000) on 08.12.2011, along with interest at the rate of 24% from 08.12.2011 to 17.03.2015 which is Rs.26,32,500/-. The 2nd instalment amount of Rs.33,75,000/- paid on 27.01.2012, along with interest at the rate of 24 from 27.01.2012 to 17.03.2015 which is Rs.25,65,000/-. The

3rd installment amount of Rs.22,50,000/- paid on 07.03.2012, along with interest at the rate of 24% from 07.03.2012 to 17.03.2015 which is Rs.16,20,000/- and in total the plaintiff is entitled for Rs.1,58,17,500/- the liquidated damages the sum of Rs.5,00,000) as against the defendant with future interest at the rate of 24% per annum from the date of filing the suit till the date of realization of principal amount and for costs.

For Plaintiff : Ms.M.Sneha,

JUDGMENT

This suit has been filed for recovery of a sum of Rs.1,63,17,500/- with interest at the rate of 24% per annum.

2. The case of the plaintiff in brief is as follows.

The plaintiff is a leading Television Network in South India. In the course of its business, the plaintiff would enter into assignment agreement to take assignment of copyright for the films for Terrestrial Television Broadcast and Satellite Television Broadcast rights and other broadcasting rights including the exhibition of films by means of wireless diffusion and by wire for communication of the public.

2.2 The defendant had entered into an assignment agreement dated 22.11.2011 with the plaintiff and assigning the exclusive copyright in respect of satellite Television Broadcasting, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and all other rights connected therewith including exhibition of the said film by means of wireless diffusion and by wire for communication and other means of communications to the public through television broadcast for the entire world for perpetual period of 99 years. As per the said agreement, consideration was fixed at Rs.1,25,00,000/- inclusive of all applicable taxes.

2.3. On the date of agreement, the plaintiff paid a sum of Rs.37,50,000/- as advance. The said advance after deducting TDS is Rs.33,75,000/-. As per the agreement,

i) a sum of Rs.37,50,000/- shall be paid on completion of shooting of the said film (after deducting TDS, Rs.33,75,000 shall be paid) and the plaintiff paid the same on 27.01.2012.

ii) a sum of Rs.25,00,000/- shall be paid during post production of the said film (After deducting TDS Rs.22,50,000/- shall be paid) and the plaintiff has paid the said amount on 07.03.2012.

iii) a sum of Rs.25,00,000/- shall be paid as full and final payment one day prior to the general theatrical release, only on handing over the duly confirmed lab letter by the concerned lab in favour of the plaintiff along with the Censor Certificate and Digital Intermediate date files on the said film.

2.4. As per the agreement, the tentative date of release of said movie was 30.03.2012 and the telecast commencing date for the entire world including India was 30.09.2012, from which date, the plaintiff is entitled to broadcast the said film through Satellite Television broadcast. As per clause 19 of the said agreement, if there is a delay in the release of the said film for a period of more than 90 days from the tentative date of release i.e. 30.03.2012, the plaintiff may exercise the option to cancel the assignment and in case of such option being exercised, the defendant undertook to repay all the amounts paid by the plaintiff with interest at the rate of 24% per annum and also undertook to pay a further sum of Rs.5,00,000/- for liquidated damages. The defendant failed to release the movie on the agreed date i.e. 30.03.2012. Hence, the plaintiff issued a legal notices dated 15.12.2014 and 11.03.2015 to the defendant, calling upon him to repay the advance amount of Rs.1,00,000,000/- with interest at the rate of 24% p.a. along with liquidated damages of Rs.5,00,000/-. Even after receipt of the

above said notices, the defendant neither reply nor repay the advance amount. Hence the suit.

3. The defendant remained absent and hence, he was set *ex parte*. Hence, the matter was directed to be listed before learned Additional Master-I for recording *ex parte* evidence.

4. The learned Additional Master-I recorded the evidence of one M.Jyothibas as PW1 and marked Ex.P1 to Ex.P7 and posted the suit before this Court for Final Disposal.

5. I have perused the evidence of PW1 and the documents marked as Ex.P1 to Ex.P7. A careful perusal of Ex.P2 assignment agreement shows that the defendant is the producer and copyright holder of the cinematography film tentatively titled as " Production No.3" (Malayalam) and the plaintiff agreed to take assignment of the copyright for the said film and to pay a sum of Rs.1,25,00,000/- to the defendant by installments, in the manner as mentioned in the agreement. Ex.P3 to Ex.P5 are the payment voucher, through which the plaintiff paid a sum of Rs.37,50,000, Rs.37,50,000 and Rs.25,00,000/- respectively (including TDS).

6. As per clause 19 of the assignment agreement, if there is a delay in the release of the said film for a period of more than 90 days from the tentative date of release i.e. 30.03.2012, the plaintiff may exercise the option to cancel the assignment and in case of such option being exercised, the defendant undertook to repay all the amounts paid by the plaintiff with interest at the rate of 24% per annum. Besides, the defendant also undertook to pay a further sum of Rs.5,00,000/- for liquidated damages. Since the defendant failed to release the movie on the agreed date i.e. 30.03.2012, he has to repay the advance amount paid by the plaintiff along with interest and liquidated damages of Rs.5,00,000/-. Therefore, the plaintiff issued a legal notices Ex.P6 and Ex.P7 dated 15.12.2014 and 11.03.2015 respectively calling upon the defendant to repay the amount with interest and liquidated damages.

7. The evidence of PW1 and the documents adduced by the plaintiff proved the claim of the plaintiff and the defendant has not refuted the above oral and documentary evidence by contesting the case. Therefore, the plaintiff is entitled to get the suit amount with interest at the rate of 9% per annum from the date of plaint till the date of realization.

8. In the result, the suit is decreed for a sum of Rs.1,63,17,500/- with subsequent interest at the rate of 9% per annum from the date of plaint till the date of realization with costs.

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Plaintiff side witness

PW1 M.Jyothibas

Plaintiff side documents

Ex.P1	14.11.2011	Original Bord resolution for authorisation
Ex.P2	22.11.2011	Original assignment agreement between the plaintiff and the defendant
Ex.P3	08.12.2011	Original payment voucher
Ex.P4	27.01.2012	Original payment voucher
Ex.P5	07.03.2012	Original payment voucher
Ex.P6	15.12.2014	Legal notice sent by the plaintiff to the defendant
Ex.P7	11.03.2015	Legal notice sent by the plaintiff to the defendant

Index: Yes/No

Internet: Yes/No

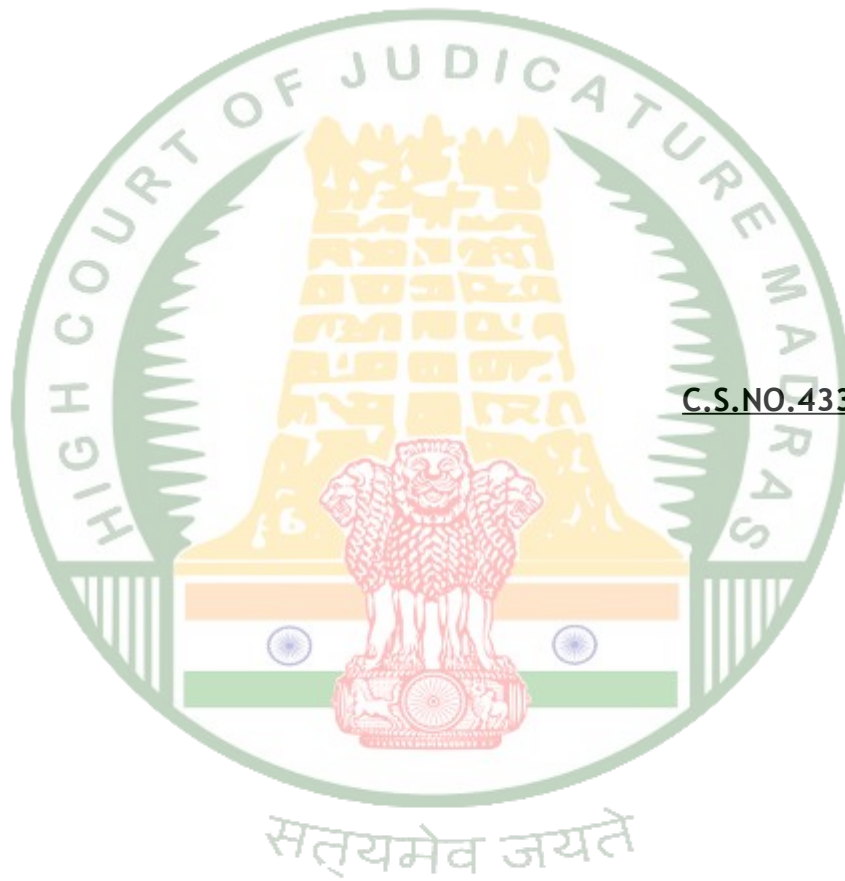
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