

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.579 of 2016
and O.A.No.696 of 2016
and A.No.4150 of 2016

Mr.Babu Xavier
No.3-B, Majestic Towers
No.101, Eldams Road, Alwarpet
Chennai - 600 018.

..Plaintiff

Vs.

1.M/s.Feather Touch Entertainments,
A Partnership Firm, Rep by its Partner Mr.Mohan,
No.56, Harleys Road, Kilpauk
Chennai - 600 010, and also at
No.11, Ormes Road, III Cross Street,
Kilpauk, Chennai - 600 010.

2. M/s.J.S.K.Films Corporation,
Represented by Mr.J.Sathish Kumar
Old NO.20, New NO.47, Giriappa Road
T.Nagar, Chennai - 600 017.

.. Defendants

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This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules Read with Order VII Rule 1 of C.P.C, praying for

(i) Directing the 1st Defendant to pay the plaintiff a sum of RS.1,17,00,000/- (Rupees One Crore and Seventeen Lakhs) together with interest at the rate of 24% per annum on Rs.75,00,000/- from the date of Plaintiff till date of realisation.

(ii) For permanent injunction restraining the Defendants their men, agents, assignees or any other person acting under them or authorized from them from releasing the picture **VAA DEAL** Tamil starring Arun Vijay, Karthika and others music by Thaman and directed by Sivagnanam.

(iii) For costs of the suit;

(iv) For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.C.Ramesh

For Defendant : Ms.Kamachi.D for D1

SUMMARY JUDGMENT

Mr.C.Ramesh, learned counsel on record for sole plaintiff and Ms.D.Kamachi, learned counsel on record for first defendant are before this Commercial Division. To be noted, second defendant has been duly served on 18.11.2016, but this Commercial Division is informed that no one has entered appearance. There is no representation for second defendant today. Name of second defendant called out aloud thrice. No response. Second defendant is set *ex-parte*.

2. Both learned counsel before me point out that jurisdiction of this Commercial Division qua this suit has to be determined. Both learned counsel made common submissions that entire transaction pertains to the plaintiff giving financial assistance for the making of a cinematograph film

and subsequent default in the same has resulted in the instant suit. In the light of advancing of the money being for a cinematograph film, the same creates certain rights in the cinematograph film, both learned counsel submit in unison that this suit will therefore qualify as a 'Commercial Dispute' under Sub-Clause (xvii) of Section 2(1)(c) of 'The Commercial Courts Act, 2015' ('said Act' for brevity). To be noted, Sub-Clause (xvii) of Section 2(1)(c) reads as follows:

'(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semi-conductor integrated circuits;'

3. This takes us to 'specified value' aspect. Both learned counsel point out that this suit is valued at Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs only). In other words, this suit is valued at Rs.1.17 Crores. This satisfies the 'specified value' aspect also within the meaning of Section 2(1)(i) read with Section 12 of said Act. To be noted, this suit has been presented on 22.08.2016 and therefore this satisfies 'specified value' aspect as it existed prior to 03.05.2018. In other words, the 'specified value' should have been one crore or above prior to 03.05.2018. Therefore, this suit is a 'Commercial Dispute' of 'Specified Value', owing to which this Commercial Division will have jurisdiction to entertain this suit under Section 7 of said Act.

4. Having determined jurisdiction, both learned counsel submitted that parties have hammered the issues out and have reduced to writing the terms which is styled 'Joint Memorandum of Compromise', though this is in the interlocutory applications in the suit. This is dated 29.01.2019 and it has been placed before me. This memorandum is duly signed by the plaintiff as well as the first defendant and their respective counsel. Most importantly, it has been duly notarized by Commissioner of Oaths.

5. A perusal of the terms and conditions, which have been adumbrated in the aforesaid memorandum reveals that plaintiff has no real prospect of succeeding on the claim wholly or in other words, beyond what has been set out in the settlement terms. However, to be noted, there is a default clause in the settlement terms and if the first defendant does not adhere to the schedule to the payments, plaintiff will be entitled to a decree as prayed for in the suit. It is axiomatic and it is also a matter of corollary that the first defendant also has no real prospect of successfully defending the claim beyond the terms of settlement which have been set out therein. As this is applicable to the plaintiff, first defendant also in the event of not adhering to the schedule of payment and the time frame set out in the terms will have to suffer a decree as prayed for.

6. Both learned counsel draw my attention to Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('CPC' for brevity) as amended by said Act and submit that this a fit case for a summary judgment to be passed. In other words, this is a fit case for judgment to be passed in terms of the aforesaid settlement without resorting to oral evidence is their common say. Both learned counsel submit that the grounds on which summary judgment can be passed are adumbrated in Rule 3 of Order XIII-A of amended CPC as amended by said Act.

7. A perusal of Rule 3 of Order XIII-A reveals that when the plaintiff has no real prospect of succeeding in the claim beyond the terms of settlement and when the defendant has no real prospect of successfully defending the claim beyond the terms of settlement and there is no other compelling reason as to why this suit should not be disposed of before recording oral evidence, a summary judgment can be passed.

8. As all the parameters are satisfied in the instant case, there will be no difficulty in passing a summary judgment in terms of the 8 clauses set out as terms and conditions in the aforesaid memorandum. 8 clauses adumbrated read as follows:

'1. The Applicant/plaintiff agrees to receive a sum of

Rs.75,00,000/- (Rupees Seventy Five Lakhs only) as against the suit claim amount in full and final settlement of all his claims made in the suit.

2. The Applicant/Plaintiff agrees that he will not make any further claim in the past, present or future as against the 1st defendant apart from the suit amount from the 1st Defendant.

3. The Applicant/plaintiff agrees that out of the agreed amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs) the First respondent/First Defendant had already paid a sum of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) on three occasions as follows:

a) Rs.10,00,000/- (Rupees Ten Lakhs only) on 19.02.2018 by way of RTGS.

b) Rs.10,00,000/- (Rupees Ten Lakhs only) on 26.02.2018 by way of RTGS.

c) Rs.9,00,000/- (Rupees Nine Lakhs only) in September 2018, totaling the receipt of which sum the plaintiff hereby acknowledges.

4. The First respondent/First defendant agrees to pay the remaining sum of Rs.46,00,000/- (Rupees Forty Six Lakhs) in the following manner.

i. Rs.21,00,000/- (Rupees Twenty One Lakhs) to the Applicant/Plaintiff within a period of Six Months from the date of recording this Joint Memorandum of Compromise by this Hon'ble Court i.e., on or before 20.07.2019. either in one lumpsum or in parts.

ii. The Applicant/Plaintiff agrees that on receipt of the aforesaid sum of Rs.21,00,000/- (Rupees Twenty Ony lakhs only) from the 1st Respondent/1st Defendant, the Applicant/Plaintiff will give a letter of no objection to the 1st defendant, only to negotiate with third parties for sale of the

copyrights relating to the suit film **VAA DEAL** , but the defendants shall not release the said picture anywhere in the World, until the 1st defendant settles the balance amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) also.

iii. The First respondent/first defendant agrees to pay the applicant/plaintiff the balance sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on or before the general release of the Tamil film **VAA DEAL**, which shall be not later than 20.11.2019.

5. The applicant/plaintiff agrees that on receipt of the entire amount of Rs.46,00,000/- (Rupees Forty Six Lakhs) agreed under this compromise, he will give a clearance certificate/letter to the 1st defendant to take delivery of the Release prints of the said picture **VAA DEAL** from the third respondent, Garnishee M/s.Gemini Colour Laboratories.

6. The First respondent agrees that a copy of this Memorandum of Compromise will be given to the third respondent Garnishee M/s.Gemini Colour Laboratories to confirm the above arrangement and see that the prints are delivered for general release only upon the applicant furnishing a clearance letter addressed to the Laboratory, the Third respondent in Application No.4150/2018.

7. The applicant agrees that on realisation of the entire sum of Rs.75,00,000/- (Rupees Seventy Five lakhs only) as aforesaid, he shall instruct his counsel to report settlement in court and withdraw the suit accordingly.

8. The first respondent/first defendant agrees that in the event of default in complying with any of the clauses in this Joint memo of Compromise, the Applicant/Plaintiff shall be entitled to a decree as prayed for in the suit.'

9. There shall be a summary judgment in the instant suit and the summary judgment shall be in terms of 8 clauses (terms and conditions which have been extracted supra).

10. To be noted, though the terms and conditions have been placed before this Commercial Division for being recorded in the interlocutory applications, as mentioned supra, in the light of the proceedings today and the trajectory of the hearing today condition No.9 therein becomes otiose. To be noted, Condition No.9 reads as follows:

'9. The plaintiff and the First Defendant pray that this Joint Memo of Compromise may be recorded in the applications and the applications disposed off in terms of this Compromise and thus render justice.'

Suit is decreed on above terms. Consequently, all interlocutory applications are closed. No costs.

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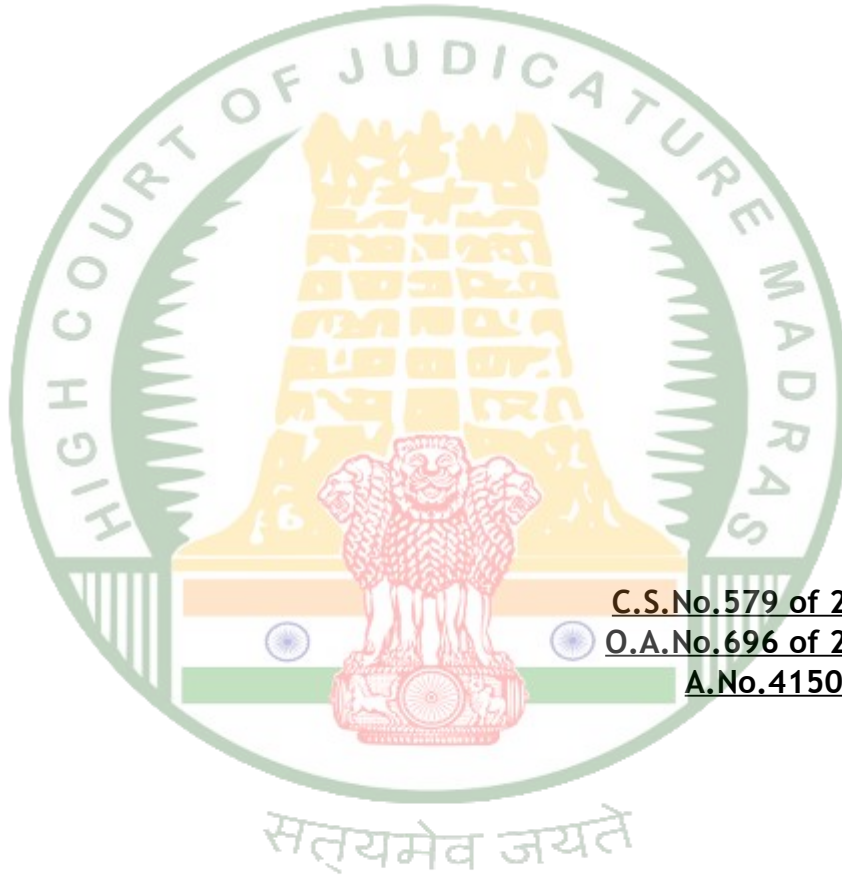
Speaking order/Non-Speaking Order

Index : Yes/No

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M.SUNDAR, J.

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