IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

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THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.S.No.315 of 2019
& A.No.3518 of 2019

Mr.Arvind Swami ...Plaintiff

Vs.

Mr.K.Murugan Kumar,
Proprietor, Harshini Movies. ...Defendant

This Civil Suit is preferred under Order VII Rule 1 C.P.C read with Order IV Rule 1 O.S.Rules prays for judgment and decree for A.Recovery of a sum of Rs.76,57,403/- (Rupees Seventy Six Lakhs Fifty Seven Thousand Four Hundred and Three Only) with further interest @ 18% per annum thereon from date of filing of the suit till date of actual payment. B.A mandatory injunction directing the defendant to pay a sum of Rs.27,00,000/- (Rupees Twenty Seven Lakhs Only) together with statutory interest and penalty to the Income Tax Department and issue statutory Form 16A to the plaintiff. C.Cost of the Suit; D. such further or other reliefs as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.Roshan Balasubramanian

For Defendant : No appearance

JUDGMENT

The plaintiff is an Actor by profession. The defendant approached the plaintiff claiming to be producing a full length Tamil motion picture, titled 'Bhaskar Oru Rascal' directed by Mr.Siddhique. The defendant requested the plaintiff to render his service by acting in the motion picture as the lead. The plaintiff also agreed to render his acting services and the terms and conditions were reduced to writing in the form of an Agreement for Professional Services dated 07.04.2017. The original Agreement of professional services dated 07.04.2017 is filed and marked as Ex.P1.

2. As per Clause 6(G) of Ex.P1 agreement, it was agreed that the entire consideration shall be paid in the following 6 trenches:

a.Rs.50,00,000/- as an advance at the time of signing of the Agreement.

b.Rs.50,00,000/- on or before 15.05.2017.

c.Rs.50,00,000/- on or before 15.06.2017.

d.Rs.50,00,000/- on or before 15.07.2017.

e.Rs.50,00,000/- on or before 15.08.2017.

f.Rs.50,00,000/- before commencement of dubbing or by

15.09.2017, whichever is earlier.

3. As per the agreement, the plaintiff had discharged his obligations to the best of his ability and to the utmost satisfaction of the defendant. However as agreed by the defendant vide Ex.P1, the defendant has failed to pay the remuneration of the plaintiff. He has only paid the sum of Rs.2,70,00,000/-. The film was completed and it was successfully released on 17.05.2018. However as per the agreement, the defendant is liable to pay the balance sum of Rs.30,00,000/- and all other charges as applicable.

4. Further, the plaintiff in order to help with the release of the film on time, the defendant had requested him for a short term loan of Rs.35,00,000/-. The said money was also transferred to the defendant on 10.05.2018 by way of RTGS from his bank account in HDFC Bank to the defendant's Bank Account bearing 1085102000008419 in IDBI Bank, Porur Branch (the originals of the RTGS transaction advice from HDFC Bank for the Loan may be marked as Ex.P10). After sending loan amount of Rs.35,00,000/-, the plaintiff has also sent an E-mail on 10.05.2018 stating the details of amount of Rs.35,00,000/- transferred as loan amount and in

addition remind the defendant about the outstanding payable amount of Rs.30,00,000/- towards salary as per the Agreement as well as the amounts deducted as TDS which is not remitted till date with the IT Department for the salary already paid.

5. According to the plaintiff after deducting TDS, the plaintiff has received a sum of Rs.2,43,00,000/- and therefore, it is the duty of the defendant to remit the amount deducted as TDS towards salary to the Income Tax Department. In order to prove the deduction of TDS, the plaintiff also marked Ex.P2 / printout of Form 26AS for Financial year 2017-18 from the official Income Tax website dated 19.04.2019. On perusal of Form 26AS, no amount was deposited in the plaintiff's account by the defendant. Therefore, it was crystal clear that the defendant has not remitted any amount and therefore without any other option, the plaintiff issued legal notice dated 25.06.2018 and the same was returned. It is contented that two times, intimations sent were dropped. Since the defendant failed to come forward to collect the cover from the Postal Department, the same was returned as unserved. Therefore, he contended that it is a deliberate attempt on the part of the defendant to refuse to receive the Registered postal sent

by the counsel for the plaintiff. Thereafter, the plaintiff sent a legal notice by way of E-mail to defendant as attachment dated 25.06.2018, which is marked as Ex.P12. Though the defendant opened that E-Mail and read, he has not sent any reply. However he has sent reply from the same E-mail ID consequently on 13.02.2019. Therefore, the petitioner contended that which means they have seen the E-mail and also noted the legal notice sent by the plaintiff and deliberately they had not replied neither to pay the salary amount nor to settle the loan amount and therefore, the plaintiff prays the suit to be decreed as prayed for.

6. After admission of the suit, the suit summons was served on the sole defendant on 03.06.2019. Since he was not appeared before the Court when this matter came up for hearing on 24.06.2019 he was set exparte. Therefore, this matter was listed before the learned Master for exparte evidence. On behalf of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.P1 to P19 were marked.

7. Heard the learned counsel for the plaintiff and this Court has also perused the averments made in the plaint and the proof affidavit and

also perused Exs.P1 to P19.

8. This Court is of the view that Ex.P1 is the original agreement entered between the plaintiff and the defendants, whereby, the defendant has agreed to pay a sum of Rs.3 crores as professional charges. As per the terms and conditions of the agreement, the petitioner acted and performed his services by acting in the tamil motion picture and the film was also completed and the said film was also released on 17.05.2018. Inspite of release of the film, the defendant as agreed in Ex.P1, failed to make full payment to the plaintiff. He has made only Rs.2,43,00,000/- after deducting the TDS. According to the plaintiff, TDS deducted also not paid. To support his contentions, he has also marked Ex.P2/Form 26AS, this Court has also perused the said form. On perusal of the form, it clearly shows that no amount is credited in the Income Tax account of the plaintiff by the defendant. Therefore, it is crystal clear that even after the payment of part of the salary, after deducting TDS, the defendant has failed to make payment of Rs.27,00,000/- on the account of the Income Tax in terms of the provisions of Income Tax Act. Hence, he is liable to make payment for the sum of Rs.27,00,000/- along with interest as liable to pay in terms of the said Act.

9. As per the contract, the defendant is liable to pay a sum of Rs.3 crores. However, he paid the sum of Rs.2,70,00,000/- only. Therefore, he is liable to pay Rs.30,00,000/- and the said payable amount has also already intimated to the defendant through E-mail and also through the legal notice, which are marked as Exs.P5, P10 and P11. However, the defendant, even after receipt of the notice, he failed to make payment as claimed. Therefore, this Court is of the view that the defendant is liable to pay a sum of Rs.30,00,000/- as agreed in Ex.P1 towards professional charges to the plaintiff. Interms of Ex.P10, the plaintiff lent money from his Bank Account by way of RTGS for a sum of Rs.35,00,000/- as loan to the defendant, but the said amount has also not repaid sofar. Therefore, the plaintiff proved his case through Ex.P10, wherein it is clear that he has transferred a sum of Rs.35,00,000/- from his account to the defendant. Therefore, defendant is liable to pay the sum of Rs.35,00,000/- as loan with interest at the rate of 8% from the date of demand till the date of payment to the plaintiff. As far as balance amount of Rs.30,00,000/- towards professional charges is concerned, the defendant is liable to pay not only Rs.30,00,000/- but also other charges which are applicable to the plaintiff along with interest from

15.09.2017.

10. Apart from the above, the defendant paid the sum of Rs.2,43,00,000/- after deducting TDS of Rs.27,00,000/- to the plaintiff as professional charges. However, after deducting Rs.27,00,000/-, the defendant has failed to remit the said amount to the Income Tax Department in favour of the plaintiff account, which also clearly reflected in Form 26AS. Therefore, this Court is of the view that the defendant is liable to deposit Rs.27,00,000/- along with interest charges as per the provisions of the Income Tax Act.

11. In final, this Court satisfied with the reasons stated by the plaintiff and passing the following decree by directing the defendant to:

A) pay a sum of Rs.30,00,000/- along with interest from the date of 15.09.2017 till the date of realization towards professional charges + GST @ 18%. Per annum

B) pay a sum of Rs.35,00,000/- towards settlement of loan amount to the plaintiff and shall also pay interest at 18% per annum from the date of 25.06.2018.

C) deposit a sum of Rs.27,00,000/-, TDS deducted by the defendant, in the plaintiff account along with interest, penalties etc., as per the provisions of the Income Tax Act.

12. Accordingly the suit claim is proved and hence, the suit is decreed as prayed for with the above directions. Since the plaintiff filed the present suit and also he initiated mediation, he has spend considerable time and amount, he pleaded for the compensatory costs. This Court is inclined to order a sum of Rs.2,00,000/- as compensatory costs. Consequently, connected application is closed.

19.07.2019

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Index:Yes/No
Internet:Yes/No
Speaking/Non Speaking Order

List of Witnesses and Exhibits:

Plaintiff's Side Witnesses:

P.W.1 - Mr.Kalathi

Plaintiff side Documents:

Ex.P1-the original agreement of professional services dated 07.04.2017.

Ex.P2-Printout of Form 26AS for Financial year 2017-18 from the official Income Tax website dated 19.04.2019.

Ex.P3- Printout of E-mail sent by the plaintiff dated 22.11.2017.

Ex.P4- Printout of E-mail sent by the plaintiff dated 03.04.2019.

Ex.P5-Printout of E-mail sent by the plaintiff dated 10.05.2018.

Ex.P6-Printout of E-mail sent by the plaintiff dated 22.05.2018.

Ex.P7-Printout of E-mail sent by the plaintiff requesting for breakup of payments dated 21.11.2017.

Ex.P8-Printout of E-mail sent by defendant with Statements of Account enclosed as an attachment dated 21.11.2017.

Ex.P9-Printout of E-mail sent by defendant with Statements of Account enclosed as an attachment dated 03.04.2018.

Ex.P10-Original RTGS Transaction Advice for Loan dated 10.05.2018.

Ex.P11-Original Legal notice sent to the defendants with Return Envelope and Postal Tracking dated 25.06.2018.

Ex.P12-Printout of E-mail with legal notice to defendant as attachment dated 25.06.2018.

Ex.P13-Office copy of notice for conciliation with acknowledgment card dated 08.11.2018.

Ex.P14-Printout of E-mail enclosing notice for conciliation dated 08.11.2018.

Ex.P15-Printout of E-mail from the defendant to the plaintiff dated 13.02.2019.

Ex.P16-Printout of Reply E-mail from the plaintiff to the defendant dated 13.02.2019.

Ex.P17-True copy of Memo filed by the defendant dated 21.02.2019.

Ex.P18-Original Form-3 Non Starter Report dated 21.02.2019.

Ex.P19-Section 65B Certificate dated 16.07.2019.

KRISHNAN RAMASAMY.,J

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