

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 09th DAY OF MAY 2019

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

A.No.3600 of 2019

and

O.A. No.516 of 2019

in

C.S. No.322 of 2019

70 MM Entertainment,
Represented by its partner,
T.N.Arun Balaji S/o A.Nandakumar,
Having office at 7/2, Fourth Floor,
Rosy Towers, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. ... Applicant/Plaintiff
(in O.A. No.516 of 2019)

-Versus-

1.M/s MG Auraa Cinemas Pvt Ltd.,
Represented by its Director G.Mahesh,
Having its office at Old No.116, New No.24,
G.S.Towers, 2B-3rd Floor,
Abiramipuram, 4th Street,
Chennai - 600 018.

2.Kaviya Venugopal
W/o G.Mahesh,
Having its office at Old No.116, New No.24,
G.S.Towers, 2B-3rd Floor,
Abiramipuram, 4th Street,
Chennai - 600 018.

3.M/s UFO Digital Cinema,
No.53, Arunachalam Street,
Police Quarters, Triplicane,
Chennai - 600 004.

4.M/s PXD,
Prasad Extreme Digital Cinema Network Private Limited,
No.28, Arunachalam Road,
Saligramam, Chennai - 600 093.

5.M/s QUBE,
No.42, Dr.Ranga Road,
Chennai - 600 004. ... Respondents/Defendants
(in O.A. No.516 of 2019)

O.A. No.516 of 2019:-

Original application praying that this Hon'ble Court be pleased to grant an order of Interim Injunction restraining the 1st and 2nd Defendant its men, agents, associates and/or assignees or any person claiming rights from therein from releasing the movie "100" starring Adharva, directed by Sam Anton.

A.No.3600 of 2019

1.M/s MG Auraa Cinemas Pvt Ltd.,
Represented by its Director G.Mahesh,
Having its office at Old No.116, New No.24,
G.S.Towers, 2B-3rd Floor,
Abiramapuram, 4th Street,
Chennai - 600 018.

2.Kaviya Venugopal
W/o G.Mahesh,
Having its office at Old No.116, New No.24,
G.S.Towers, 2B-3rd Floor,
Abiramapuram, 4th Street,
Chennai - 600 018. :Applicants/Respondents 1 &2 /
Defendants 1 and 2

-vs-

1. 70 MM Entertainment,
Represented by its partner,
T.N.Arun Balaji S/o A.Nandakumar,
Having office at 7/2, Fourth Floor,
Rosy Towers, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. ...1st Respondent/
Applicant/Plaintiff

2.M/s UFO Digital Cinema,
No.53, Arunachalam Street,
Police Quarters, Triplicane,
Chennai - 600 004.

3.M/s PXD,
Prasad Extreme Digital Cinema Network Private Limited,
No.28, Arunachalam Road,
Saligramam, Chennai - 600 093.

4.M/s QUBE,
No.42, Dr. B.R. Ambedkar Road,
Mylapore, Chennai - 600 004. ... Respondents/Respondents 3
to 5//Defendants 3 to 5

Application praying that this Hon'ble Court be pleased to vacate the exparte order of interim injunction dated 30.04.2019 passed by this Hon'ble Court in O.A.No.516 of 2019 in C.S.No.322 of 2019.

These Applications coming on this day before this court for hearing, the Court made the following Order:-

The plaintiff has filed the instant suit for an injunction restraining the defendants 1 and 2, its men, agents, associates and /or assignees or any person claiming rights from therein from releasing the movie "100". The plaintiff had also filed an application for interim injunction restraining the release of the film "100".

2.The averments in the plaint are :

(a)the plaintiff have produced a film called "Balloon";

(b)the plaintiff decided to dispose of the entire Negative Rights/ Copy Rights including exploitation of the Tamil Film and all its Indian language dubbing rights of film "Balloon" for the entire world including India.

(c)the 1st defendant approached the plaintiff for the request to convey, grant, assign and transfer the absolute ownership of the copyrights [including Picture and Sound media], dubbing rights of the picture in all languages including exploitation of the Tamil Film to the first

(d)an agreement was entered into between the plaintiff

and 1st defendant and as per the agreement, the plaintiff assigned, transferred and conveyed the entire copyright of the film "Balloon" to 1st defendant for a consolidated royalty of Rs.6,30,00,000/- [Rupees Six Crore Thirty Lakhs Only] before the release of the film.

(e)the plaintiff obtained censorship certificate for the film "Balloon".

(f)the first defendant paid a sum of Rs.5,18,00,000/- [Rupees Five Crore and Eighteen Lakhs Only] towards consolidated royalty. The balance payable is Rs.1,12,00,000/- [Rupees One Crore Twelve Lakhs Only]. The film Balloon was scheduled for release on 29.12.2017. The plaintiff requested 1st defendant to pay the remaining amount of Rs.1,12,00,000/- [Rupees One Crore Twelve Lakhs Only]. The amount was not paid.

(g)A Memorandum of Understanding dated 28.12.2017 was entered into between the plaintiff and 1st defendant. The Memorandum of Understanding states that out of Rs.1,12,00,000/- [Rupees One Crore Twelve Lakhs Only] payment of Rs.1,00,00,000/- [Rupees One Crore Only] would be paid at the time of release of the Telugu version of the movie. The Memorandum of Understanding also records that the theoretical rights of another film "Arasiyalla Idhellam Sadharanamappa" would be given to the plaintiff and that 1st defendant would pay the balance of Rs.12,00,000/- [Rupees Twelve Lakhs Only] within a period of twelve(12) months.

The film "Balloon" was released on 29.12.2017. The plaintiff states that the film "Arasiyalla Idhellam Sadharanamappa" was shelved at the pre-production stage itself.

(h) The plaintiff states that the defendants gave a cheque dated 23.04.2019 for a sum of Rs.1,00,00,000/- [Rupees One Crore Only] towards the payment of the balance consideration. The plaintiff presented the cheque on 24.04.2019 in City Union Bank and the cheque was returned as the account closed.

(i) The plaintiff states that he came across an advertisement in a newspaper on 25.04.2019 with regard to the release of the film "100". The plaintiff states that they approached the defendants regarding the release of the film "100" without making the payment due to the plaintiff.

(j) The plaintiff states that the acts of the defendants in releasing the film "100" amounts to infringement of copyright of the plaintiff for the film "Balloon".

(k) The averments regarding the cause of action reads as follows:

"15. The plaintiff submits that cause of action arises within the jurisdiction of this Hon'ble Court as the plaintiff and all the defendant address are within the jurisdiction of this Hon'ble Court in the City of Chennai. When the copyright agreement for entire world negative rights dated 19.09.2017 was entered between the

plaintiff and the 1st defendant company, when the MOU dated 28.12.2017 was entered between the plaintiff and the 1st defendant company, when cheque dated 23.04.2019 was issued by the 1st defendant company to the plaintiff and when the advertisement for release of the movie "100" was published in Dinathanthi dated 25.04.2019, the plaintiff is entitled to initiate proceedings before this Hon'ble Court."

(1) the further averment regarding the infringement of the Copyright Act reads as under :

"16. The plaintiff states that the present suit is for a suit for copyright under Copyright Act, 1957 by virtue of first proviso to section 7 of the commercial courts Act, 2016 R/W Sections 61 & 62 of the Copy right Act, 1957 this Hon'ble Court has jurisdiction to entertain the present suit. The Commercial Division of this Hon'ble Court has got jurisdiction to entertain and try this suit. The subject matter of the suit is passing off under trademarks act and other consequential reliefs. Therefore, it is a commercial dispute under Section 2(1)(c)(17) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. In view of this statutory mandate, the suit falls within the ambit of section 7 proviso (1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of Courts Act 2015. Therefore this suit may be listed off before the Commercial Division of the Hon'ble High Court of Madras."

3. On these averments, the present suit for injunction has been filed. This Court on 30.04.2019, while deciding the application for interim injunction restraining 1st and 2nd defendants from releasing the film "100", granted an interim injunction. This Court also observed that on receipt of the notice, it is open to the defendants to file a vacate stay petition, if so advised and seek permission of the vacation Judge for moving the vacation court. The entire order granting injunction is re-produced as follows:

" This Application is filed seeking to grant an order of interim injunction restraining the 1st and 2nd Defendants, its men, agents, associates and/or assignees or any person claiming rights from therein from releasing the movie "100" starring Adharva, directed by Sam Anton.

2. According to the Applicant, they produced a movie named "BALLOON" and the said movie is their first production film. The 1st Respondent/Company approached the Applicant with a request to convey, grant, assign and transfer the absolute ownership rights/copyright (including Picture and Sound), all India language dubbing rights of the said movie including exploitation rights of the Tamil film to the 1st Respondent/Company. The Applicant agreeing to the offer made by the 1st Respondent/Company, entered into a copyright Agreement dated 19.09.2017 and assigned, transferred and conveyed the entire copyright for the film "BALLOON" to the 1st Respondent/Company for a consolidated royalty of Rs.6,30,00,000/- before the release

date of the movie.

3. It is further stated by the Applicant that the 1st Respondent/Company had paid a sum of Rs.5,18,00,000/- to the Applicant towards consolidated royalty and had not paid the remaining amount of Rs.1,12,00,000/- as per the Agreement dated 19.09.2017. Since the 1st Respondent/Company has not paid the remaining sum of Rs.1,12,00,000/- till 28.12.2017, a day before the release of the movie, a Memorandum of Understanding was entered into between the Applicant and the 1st Respondent/Company, which confirms that the part payment of Rs.1 crore will be paid at the time of Telugu version release of the movie "BALLOON" before February 2018. As per the said MOU, as a safety purpose, the 1st Respondent/Company transferred the Tamil Nadu Theatrical Rights of the Tamil movie "ARASIYALLA IDHELLAM SADHARANAMAPPA" and the same was confirmed by Agreement dated 28.12.2017, and the 1st Respondent/Company agreed to pay the remaining sum of Rs.12 lakhs within a period of 12 months from the date of signing of the MOU, dated 28.12.2017.

4. Subsequently, the Tamil movie "BALLOON" got released on 29.12.2017. But, the 1st Respondent/Company did not pay the sum of Rs.1 crore, as confirmed by them in the MOU, dated 28.12.2017, before February 2018. Thereafter, the 1st Respondent/Company and the 2nd Respondent met the Applicant and gave a cheque dated 23.04.2019 for a sum of Rs.1 crore towards the remaining consideration. The Applicant presented the Cheque on 24.04.2019 in City Union Bank and

the said Cheque was returned as "Account closed".

5. Learned counsel for the Applicant/Plaintiff submitted that the Applicant came across an advertisement on 25.04.2019 in Dhinathanthi Newspaper with regard to release of the movie "100", without the payment due to the Applicant and the 1st Respondent/Company and the 2nd Respondent evaded from meeting the Applicant. Learned counsel contended that the act of the Respondents 1 and 2 amounts to infringement of copyright for the movie "BALLOON" and if the Respondents 1 and 2 are not enjoined from releasing the movie "100", the Applicant will face irreparable loss and injuries."

4. The defendants on receipt of the order of injunction have filed an application for vacation of stay.

5. It is contended in the application for vacation of stay that the plaintiff has filed the suit alleging infringement of the copy right of the film "Balloon". Film "Balloon" has nothing to do with the film "100".

6. According to the defendants, the copyright for the film "Balloon" has transferred to them by virtue of the agreement dated 19.09.2017. It is stated that the defendant cannot infringe their own copyright by releasing the film "100". According to the defendants, the Telugu

also stated that the entire shooting of the film "Arasiyalla Idhellam Sadharanamappa" has been completed and it is in the post-production stage. The defendants would contend that the present suit as framed is not maintainable.

7. Heard the learned counsel for the parties.

8. Mr. P. H. Aravind Pandian, learned Additional Advocate General appearing for the plaintiff would contend that 1st defendant is yet to pay a sum of Rs. 1,12,00,000/- [Rupees One Crore Twelve Lakhs Only] towards the balance consideration for transfer of copyright of the film "Balloon". He states that the Memorandum of Understanding and also the assurance to transfer Tamil Nadu Theoretical Rights of the Tamil film "Arasiyalla Idhellam Sadharanamappa" would show the admitted liability of the defendants. He would submit that till the money is not paid, 1st defendant cannot be permitted to release the film "100". He would also state that 1st defendant before being permitted to release the film "100" must be put to terms, so that the amount due to plaintiff is secured.

8. Mr. T. V. Ramanujam, learned Senior Counsel appearing for the defendants would contend that the remedy of the plaintiff, if any, lies only in filing a suit for recovery of money or damages. The present suit is based on the

infringement of the copyright of film "Balloon" cannot lie on the averments of the plaintiff.

9. Mr.T.V.Ramanujam, learned Senior Counsel appearing for the defendants would contend that only if the copyright of the film "100" is with the plaintiff, can he maintain a suit under Section 55 of the Copyright Act ? Section 55 of the Copyright Act reads as under:

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right :

Provided that if the defendant proves that at the date of infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of infringing copies as the Court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, [or, subject to the provisions of sub-section(3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears] on copies of the work as published, or,

in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the Court."

10.Mr.T.V.Ramanujam, learned Senior Counsel for the defendants would contend that the injunction cannot be granted under Section 41 of the Specific Relief Act. Since the copyright in film "100" has not been granted to the plaintiff and the claim against film "Balloon" cannot be recovered by getting an injunction on releasing of film "100" which has nothing to do with the film "Balloon".

11.Mr.T.V.Ramanujam, learned Senior Counsel for the defendants would contend that his right, if any, would only lie against the film "Balloon" and not against the film in question, which is completely unconnected to the film "Balloon".

12.The reading of the entire plaint and its averments does not make out a case as to how the plaintiff has any copyright on the film "100". There is no agreement between

the plaintiff and defendant regarding the production or distribution of the film "100". In the absence of any agreement, it cannot be said that there is an infringement of the copyright of the film "100". Any right pertaining to film "Balloon" cannot be enforced by injuncting to release of another film "100". The entire plaint averments would only indicate that the plaintiff is actually claiming the balance amount payable to him under the agreement dated 19.09.2017 which only concerns the film "Balloon". The remedy of the plaintiff is only to file a suit for recovery money. There is thus no *prima facie* case in favour of the Petitioner by which injunction can be granted for release of the film "100", which is totally unconnected with the film "Balloon". There is no material to indicate that the defendants had agreed not to release any film till the payment to the plaintiff is made. There is no infringement of the copyright for the film "100". There is nothing to suggest that the film "100" is any way connected with film "Balloon". In the absence of any copyright over film "100" in the plaintiff injunction under the Copyright Act, 1957 cannot be granted for the release of film "100". Therefore, the interim Injunction granted on 30.04.2019 is vacated.

13.At this stage, Mr.P.H.Aravind Pandian, learned

Additional Advocate General appearing for the plaintiff

<https://hcservices.ecourts.gov.in/hcservices/>

would submit that he would like to take a chance to file an

appeal. This order pronounced at 10.45 a.m. is kept in abeyance till 5 p.m.

14.The copy of the order be given to the learned counsel for the defendants by 5 p.m.

Sd./-S.P.J

09/05/2019

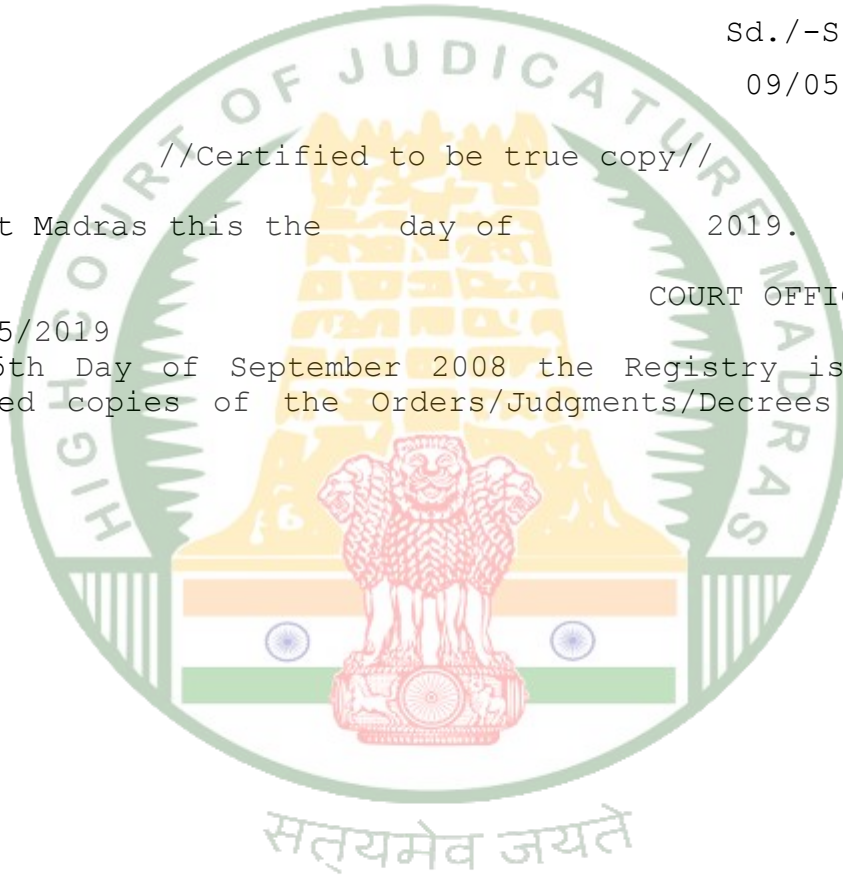
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Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

jj 09/05/2019

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