

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.99 of 2018 and
A.Nos.4006, 5389, 5390 and 6112 of 2018 and 1601 of 2019

M/s.Venkateswara Financiers,
Hyderabad Private Limited,
Rep. By its Managing Director,
Mr.A.Venkatesh Reddy,
H.No.8-2-269/S/90,
Plot No.90, Sagar Co-operative
Housing Society,
Road No.2, Banjara Hills,
Hyderabad – 500 034

Plaintiff

Vs

1.M/s.Gemini Film Circuit,
Represented by its Managing Partner,
Mr.A.Manohar Prasad,
28, New Bangaru Colony,
West K.K.Nagar,
Chennai – 600 078.

2.Mr.A.Manohar Prasad,

3.Mrs.A.Sai Siva Jyothi,

4.Mrs.A Lakshmi Anandi,

5.Mr.A.Anand Prasad

6.Mr.Kovelamudu Bapaiah

7.M/s.Gemini Industries & Imaging Limited,

Represented by its Managing Director,
Mr.A.Manohar Prasad,
No.28, New Bangaru Colony,
West K.K.Nagar,
Chennai – 600 078.

8.Ms.A.Chandini

9.Mr.Kiran Parvataneni

... Defendants

Prayer:- This Civil Suit is filed under Order XXXVII Rule 1 of Madras High Court Original Side Rules read with Order 34 Rule 1 of C.P.C., for the reliefs:-

"(a) to direct the defendants to jointly and severally pay the plaintiff, a sum of Rs.17,93,78,446/- (Rupees Seventeen Crores Ninety Three Lakhs Seventy Eight Thousand Four Hundred and Forty Six only) as on 28.01.2018, with future interest at the agreed rate @ 27% per annum from the date of plaint till date of realization;

(b)In default of the defendants in making the payment to the plaintiff on the date fixed by this Court, appoint a Receiver to sell the Tamil film "Madha Gaja Raja" starring Mr.Vishal, Ms.Anjali, Ms.Varalakshmi, Mr.Prakash Raj, Mr.Santhanam and directed by Sunder C,

with Music by Mr.Vijay Antony along with all rights of the film including the right to sell, assign all the rights of the film including Theatrical rights in India and overseas, Satellite rights, Dubbing, Remaking rights of the film in all languages and all Electronic Media rights i.e, Satellite, Television, Terrestrial, Doordarshan, Cable, DTH, Video, Internet, Compact Video, Digital Video, Local delivery service, MMDS, Cable Wire, Wireless or any other system and apply the sale proceeds after deduction of expenses, towards payment of the Principal, interest and costs to the plaintiff;

(c)In default of the defendants in making the payments on the date fixed by this Court or the amount realized by sale of the rights of the Tamil film "Madha Gaja Raja" not being sufficient to satisfy the Principal, Interest and cost payable to the plaintiff, direct the sale of the mortgaged suit property morefully described in schedule B through public auction and apply the same proceeds after deduction of expenses, towards payment of the balance principal, interest and costs, and if the sale proceeds are not sufficient to satisfy the balance principal, interest and cost due to the plaintiff and direct the defendants to jointly and severally pay the balance principal, interest and cost to the plaintiff and

(d) direct the defendants to pay the cost of the suit."

For Plaintiff	:Mr.Krishnan, for Mr.M.Balaji
For Defendants 1 to 6 and 8	:Mr.S.P.Meenakshi Sundaram
For 7 th Defendant	:Ms.J.Madhuri, Official Liquidator
For 9 th Defendant	:No Appearance

JUDGMENT

The plaintiff is the finance company. The first defendant is the partnership firm engaged in production of motion pictures. The second defendant is the Managing Director of the first defendant firm. The defendants 3 to 7 are the other partners. The present suit is filed for recovery of Rs.17,93,78,446/- (Rupees Seventeen Crores Ninety Three Lakhs Seventy Eight Thousand Four Hundred and Forty Six only) with interest in default to sell the Tamil film "Madha Gaja Raja" produced by the first defendant by appointing a Receiver and pay towards the principal, interest and cost to the plaintiff after defraying the expenses, in default, insufficient of realization by sale of Tamil film "Madha Gaja Raja", direct the sale of mortgaged suit property described in the schedule B of the plaint through public auction and apply the sale proceeds towards the balance amount payable to the plaintiff.

2.The suit summons were served to the defendants and the learned counsel appearing for defendants 1 to 6 and 8 took time. As far as the 7th

defendant is concerned, it is a limited company which has a share in the first defendant partnership firm. The 7th defendant went into liquidation and Official Liquidator appointed. The plaintiff has taken out an application to grant leave to sue and the same was ordered on 31.01.2018. The 7th defendant is duly represented by Ms.J.Madhuri, learned Official Liquidator.

3.Initially, when the matter came up for hearing, the first defendant has given an undertaking to deposit around Rs.14 crores as against the suit claim of Rs.17,93,78,446/- (Rupees Seventeen Crores Ninety Three Lakhs Seventy Eight Thousand Four Hundred and Forty Six only). But later, he went back in his promise and had preferred Original Side Appeal in O.S.A.No.165 of 2018 against the order passed by the learned Single Judge of this Court in O.A.No.124 of 2018. O.S.A.No.165 of 2018 preferred against the order passed in O.A.No.124 of 2018 was disposed of on 03.05.2018. Even thereafter, the defendants have not chosen to file their written statement though the time prescribed under the statute to file written statement expired long ago.

4.In the said circumstances, this Court on 20.11.2019, recorded the failure on the part of the defendants to file written statement and forfeited, the right to file written statement.

5.In the said circumstances, the plaintiff has taken out an application in A.No.1601 of 2019 seeking passing of summary judgment and decree without resorting to recording oral evidence in the light of the defendants failure to file written statement. Prior to the application to pass summary judgment, the defendants 1 to 6, 8 & 9 have filed applications. A.No.1206 of 2018 was filed to dismiss the suit for misjoinder of multiple cause of actions; A.No.1938 of 2019 was filed to dismiss the suit on the ground that the second defendant Mr.Manohar Prasad was adjudged as an Insolvent in I.P.No.5 of 2013 on 28.09.2015. Without leave of the insolvency Court, the suit cannot sustain. A.No.5389 of 2018 was filed to revoke the leave to sue dated 31.01.2018 in A.No.779 of 2018 in C.S.No.99 of 2018 since, the suit for enforcement of mortgage of sale does not fall within the definition of commercial dispute and A.No.5390 of 2018 was filed to return plaint in C.S.No.99 of 2018 for non compliance of the mandatory provision of Order XXXVII Rule 1 of the High Court Original Side Rules, 1994.

7.For All these applications, the plaintiff has filed common counter wherein, the plaintiff has stated that the second defendant A.Manohar Prasad on 28.03.2018 submitted an affidavit before this Court giving an undertaking that he will deposit a sum of Rs.14,14,71,917.81/- wherein, he has not whispered about his insolvency. Neither he has submitted any

document to show that he was adjudged as an insolvent. Having represented before the High Court that he has the ability and willingness to pay the said amount, the adjudication of the second defendant as insolvent has no significance and further more, non compliance of Section 17 of Insolvency Act 1909 is neither willful nor wanton. Hence, A.No.5388 of 2018 is liable to be dismissed.

8.In respect of A.Nos.5389 and 5390 of 2018, the plaintiff has contended that the suit was filed under Order XXXVII Rule 1 of Madras High Court Original Side Rules r/w Order XXXIV Rule 1 C.P.C. Leave to sue was granted by this Court by order dated 31.01.2018 in A.No.779 of 2018. The leave was granted both in respect of 9th defendant as well as in respect of mortgage property which is situated outside the jurisdiction of the High Court. Since, the loan was secured for producing movie which is a commercial activity, this Court while granting leave has clearly held that the said dispute falls under the commercial Court Division and also noted the fact that substantial cause of action has arisen within the jurisdiction of the High Court, Madras. Further, under the supplementary agreement dated 05.02.2015 the parties have conferred jurisdiction upon the Courts of Chennai.

9.Regarding misjoinder of cause of action, the plaintiff has stated that the suit for recovery of money based on the financial transaction, the relief sought for recovery of the money by enforcing two sureties namely, the movie mentioned in the schedule I and the immovable property mortgaged as described under Schedule II.

10.Today, when the suit along with the applications mentioned above came up for consideration, the learned counsel for the plaintiff insisted upon order in his application to pass summary judgment. Whereas, the learned counsel for the defendants 1 to 6 and 8 not ready and sought adjournment.

11.This is the case where from the records, this Court would find that the defendants at the first instance have promised to pay part of the suit amount but later, failed to pay the money. Be that as it may, the defendants have not filed any written statement. Therefore, the right to file written statement has been forfeited. Few applications have been taken out by the defendants questioning the maintainability of the suit and misjoinder of multiple reliefs. The relief sought in the plaint are as below:-

"(a) to direct the defendants to jointly and severally pay the plaintiff, a sum of Rs.17,93,78,446/-

(Rupees Seventeen Crores Ninety Three Lakhs Seventy Eight Thousand Four Hundred and Forty Six only) as on 28.01.2018, with future interest at the agreed rate @ 27% per annum from the date of plaint till date of realization;

(b) In default of the defendants in making the payment to the plaintiff on the date fixed by this Court, appoint a Receiver to sell the Tamil film "Madha Gaja Raja" starring Mr.Vishal, Ms.Anjali, Ms.Varalakshmi, Mr.Prakash Raj, Mr.Santhanam and directed by Sunder C, with Music by Mr.Vijay Antony along with all rights of the film including the right to sell, assign all the rights of the film including Theatrical rights in India and overseas, Satellite rights, Dubbing, Remaking rights of the film in all languages and all Electronic Media rights i.e, Satellite, Television, Terrestrial, Doordarshan, Cable, DTH, Video, Internet, Compact Video, Digital Video, Local delivery service, MMDS, Cable Wire, Wireless or any other system and apply the sale proceeds after deduction of expenses, towards payment of the Principal, interest and costs to the plaintiff;

(c) In default of the defendants in making the payments on the date fixed by this Court or the amount realized by sale of the rights of the Tamil film "Madha Gaja Raja" not being sufficient to satisfy the Principal,

Interest and cost payable to the plaintiff, direct the sale of the mortgaged suit property morefully described in schedule B through public auction and apply the same proceeds after deduction of expenses, towards payment of the balance principal, interest and costs, and if the sale proceeds are not sufficient to satisfy the balance principal, interest and cost due to the plaintiff and direct the defendants to jointly and severally pay the balance principal, interest and cost to the plaintiff and

(d) direct the defendants to pay the cost of the suit.”

12.This Court, at the time of admission, has gone through the pleadings and having satisfied with the nature of the case has accepted it as a commercial dispute falling within the jurisdiction of Commercial Division of this Court. Section 2(c)(i) of the Commercial Courts Act, squarely attracts to the facts of the case. The relief sought in the suit as extracted above are not misjoinder of relief but an multiple relief based on the pro notes, agreement, and registered mortgage deed.

13.As far as the alleged insolvency of the second defendant is concerned, it is only an after thought of the second defendant to put spokes in the wheels of justice to raise this plea belatedly after giving an

undertaking to this Court to pay a substantial portion of the suit claim. Even otherwise, when the plaintiff was not aware of the insolvency of the second defendant at the time of instituting a suit, without leave of the Court, is condonable and it will not denude the right of the plaintiff to sustain the suit.

14.The recital of the loan agreement dated 23.07.2012 (document No.12 in the typed set of papers) and the registered mortgage deed executed by the defendants 5 & 8 on 27.05.2014 (document No.22 in the typed set of papers) and the supplemental agreement dated 05.02.2015 (document No.24 in the typed set of papers) clearly show that this Court has jurisdiction to try the suit. Therefore, the none of the plea taken in the applications filed by the defendants to stall the progress of the case deserves merit for consideration. Hence, the applications are liable to be dismissed.

15.As far as the application taken out by the plaintiff for passing of summary judgment in A.No.1601 of 2019 is concerned, the plaintiff has stated that all the defendants have entered appearance through their learned counsel but no written statement filed by them within 120 days from the date of service of summons, by failing to do so, the defendants forfeited their right to file written statement. As per the amended C.P.C., Order VIII Rule 1 C.P.C., prescribes maximum time of 120 days to file written

statement from the date of service of suit summons. Thereafter, the defendants had forfeited their right to file written statement and the Court recorded the same.

16. Multiple applications are taken out by the defendants to subvert the spirit of order VIII Rule 1 C.P.C. Those contentions are untenable. Having failed to file written statement and lost the right of filing written statement, the defendants have no real prospectus in successfully defending the claim. Therefore, the decree has to be passed summarily.

17. On perusing the pleadings and the documents filed in support of the plaint, this Court finds that the suit summons for the defendants have been served on the following dates:-

<i>Sl.No</i>	<i>Defendants</i>	<i>Served on</i>
1	Defendant 1	25/02/2018
2	Defendant 2	02/03/2018
3	Defendant 3	02/03/2018
4	Defendant 4	19/06/2018
5	Defendant 5	02/03/2018
6	Defendant 6	01/03/2018
7	Defendant 7	27/02/2018
8	Defendant 8	02/03/2018
9	Defendant 9	24/03/2018

**"Order VIII Rule 1 of Code of Civil Procedure
1908 "Written statement"**

(1) The defendant shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

(2) Save as otherwise provided in rule 8A, where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter. claim, he shall enter such documents in a list, and shall,-

(a) If a written statement is presented, annex the list to the written statement :

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement; .

(b) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(3) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(4) If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

(5) A document which ought to be entered in the list referred to in sub-rule (2), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(6) Nothing in sub-rule (5) shall apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(7) Where a Court grants leave under sub-rule (5), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (2)."

18.This Court after waiting for the defendants to file written statement,

even beyond the time prescribed had forfeited the right of the defendants to file written statement on 20.11.2019. The documents such as the loan agreement dated 23.07.2012; the registered mortgage deed executed by the defendants 5 & 8 on 27.05.2014 and the supplemental agreement dated 05.02.2015 proved that the schedule 'B' mentioned property has been mortgaged in favour of the plaintiff and the document is also duly registered.

19.As far as the film of "Madha Gaja Raja" which is morefully described under schedule 'A' of the suit property, this Court finds that the 7th defendant is one of the partner in the first defendant partnership firm. The said feature film has been produced by the first defendant. Since the 7th defendant have a share in it and the 7th defendant now been liquidated and Official Liquidator has been appointed. As far as the 'A' schedule property is concerned, the right and liability of the 7th defendant has to be worked out independently. Regarding Item Nos.1 & 2, immovable properties morefully described in schedule 'B' of the suit property stands in the name and 5th and 8th defendants have both jointly executed a deed of simple mortgage on 27.05.2014 and the same has been registered as document No.5557 of 2014 on the file of Saidapet Sub Registrar Office. Clause 11 of the mortgage deed, which is document No.22 in the plaint indicates that in the event of default committed by the defendants, the plaintiff could take possession of

the mortgaged property, sell the property and apply the proceeds to satisfy the outstanding loan amount.

20.Item Nos.1 and 2 of the immovable properties mentioned in 'B' schedule property are the personal properties of defendants 5 and 8. neither the insolvency of the first defendant nor the liquidation of the 7th defendant company shall have no bearing over the said property. Hence, this Court holds that the plaintiff is entitled for summary judgment. Since, the defendants have no real prospectus of succeeding in defending the case.

21.As per Order XIII - A C.P.C., the procedure for dealing with application for summary judgment is prescribed. Within 30 days from the receipt of notice of application of summary judgment, the defendants have to submit their reply disclosing all material facts and identity in respect of the reason why the relief sought for by the applicant should not be granted. In the event of any document in evidence to be relied on by the defendants, the same can be mentioned. However, in this case, the defendants after receipt of the notice of the applicant to pass summary judgment on 21.02.2019, has filed a counter affidavit dated 05.03.2019 wherein, it is stated that the application is not maintainable; multiple applications pending questioning the maintainability of the suit and when the suit itself is not

maintainable, it is inconceivable to grant summary judgment is granted and this is not a fit case for summary judgment. Summary judgment ought to be granted only when there is absolutely no possibility of any doubt arising with respect to the plaintiff's case.

22.While saying so, the second defendant denied the loan agreement dated 23.07.2012 and the supplemental agreement dated 05.02.2015. The defendants contended that merely for not filing written statement, summary judgment should not be passed. The contentions raised by the second defendant in the counter affidavit in response to the application for summary judgment, does not give any scope for this Court to reject the application for summary judgment.

23.As discussed earlier, the multiple applications filed by the second defendant herein after his admission of liability before the Court are all very hyper technical and unsustainable for the reasons stated above. While so, citing multiple, frivolous and baseless applications filed cannot be a ground for defeating the lawful claim of the plaintiff and exercise of the provisions of the Act. When Order XIII-A C.P.C., provides opportunity to the defendants to putforth their case in defence, the defendants have not availed that opportunity effectively. They have filed counter affidavit with vague denial.

Hence, this Court finds no merit in the case of the defendants and there is no compelling reason as to why the application for summary judgment not to be allowed before recording of oral evidence. Hence, A.No.1601 of 2019 is allowed and A.Nos.4006, 5389, 5390 and 6112 of 2018 are dismissed.

24.In the light of the above observations, the Civil Suit is decreed as prayed for with costs.

jbm

Index: Yes

Speaking order/non speaking order

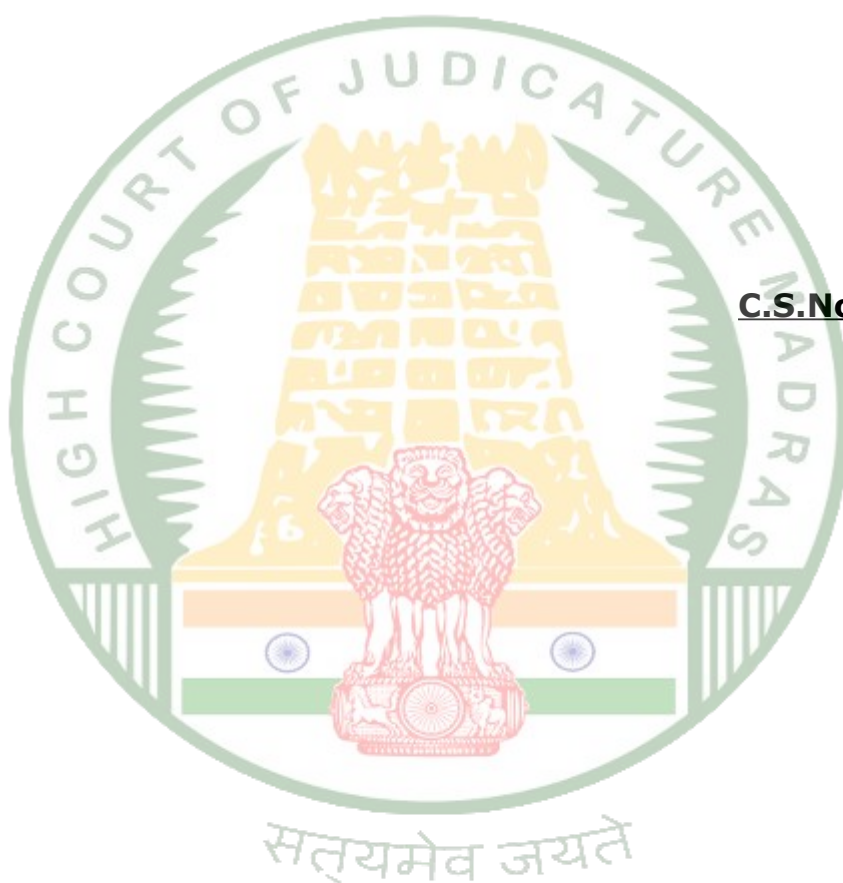
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