IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 05TH DAY OF SEPTEMBER 2019

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

A.No.5024 of 2019

In the matter of Section 9 of Arbitration and Conciliation Act, 1996 and In the matter of the Agreement dated 26.05.2018 between the applicant and the Respondents in respect of Tamil Film DHRUVA NATCHATIRAM

M/s. Shraddha Entertainment
Rep.by its Partner Badri kasturi
No.2, Seaface Road,
Palavakkam,
Chennai 600 041 ...Applicant

-vs-

1.M/s. Koundauvom Entertainment
A Partnership Firm, rep.by its
Partner Mr.Gautham Vasudev Menon
69A, Habibullah Road,
T.Nagar, Chennai 600 017

2.Mr.Goutham Vasudev Menon,
69-A, Habibullah Road,
T.Nagar, Chennai 600 017

3.Mr.Madan Pandy,
69-A, Habibullah Road,
T.Nagar, Chennai 600 017

4.S.Venkataramanan,
70-A, Habibullah Road,
T.Nagar, Chennai 17

5.Ms.A.Reshma Ghatala,
69-A, Habibullah Road,
T.Nagar, Chennai 600 017

6.Gemini FX,
Laboratory Department,
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai 600 078 ...Respondents 1 to 5

7.Qube Cinema Technologies Pvt Ltd.,
No.42, Dr.Ranga Road,
Mylapore, Chennai 600 004
...Garnishees/Respondents 6 & 7

Application praying that this Hon'ble Court be pleased to direct the Respondents 1 to 5 herein to furnish security for a sum of Rs.4.2 Crores together with interest @ 12% per annum thereon from 28.02.2018 till the date being the sums due to this applicant within certain date to be fixed by this Honble Court failing which to attach before Judgment, the film 'Enai Noki Payum Thota', directed by Gautham Vasudev Menon (the 2nd Respondent herein), starring Danush, Mega Akash etc., produced by the 3rd Respondent herein as the sole proprietor of M/s. Escape Artists Motion Pictures, and all the materials relating thereto by issuing a prohibitory order to the 6th and 7th Respondents/Garnishees, not to process, make any copy or part with any copy or material of or relating to the film Enai Noki Payum Thota pending disposal of the proposed Arbitration.

This application coming on this day before this court for hearing the court made the following order:

M/s.Shraddha Entertainment has come up with this application to direct the respondents 1 to 5 herein to furnish security for a sum of Rs.4.2 Crores together with interest @ 12% per annum thereon from 28.02.2018 till the date being the sums due to this applicant within certain date to be fixed by this Court failing which to attach before judgment, the film "Ennai Nokki Payum Thota", directed by Gautham Vasudev Menon (the second Respondent herein), starring Danush, Mega Akash etc., produced by the third Respondent herein as the sole proprietor of M/s. Escape Artists Motion Pictures, and all the materials relating thereto by issuing a prohibitory order to the sixth and seventh respondents / Garnishees, not to process, make any copy or part with any copy or material of or relating to the film "Ennai Nokki Payum Thota", pending disposal of the proposed Arbitration.

2. This application has been filed under Section 9 of the Arbitration and Conciliation Act 1996 in the matter of agreement dated 26.05.2018 entered between the applicant and the respondents in respect of Tamil Film "Dhruva Natchatiram".

3. According to the applicant, the first respondent is a registered partnership firm and one Mr.Goutham Vasudev Menon (GVM) / second respondent is a partner of the said firm. The applicant would state that the second respondent approached the applicant to render financial

assistance for production of the Tamil Film titled as "Naragasooran" to be directed by one Karthik Naren and inaugural ceremony (pooja) was organised on 15.09.2017. However, the rights of the said movie could not be sold before or after the date of pooja and hence, the second respondent approached the applicant and expressed his inability for production of the said movie. The second respondent suggested that the applicant can take over the production of the film, for which the second respondent would render his co-operation and assistance.

4. The applicant further states that since the applicant had already locked in the project decided to take over the said film and entered into an agreement with the respondents 1 and 3 on 15.09.2017. As per the agreement, the applicant is the owner of the subject film with absolute rights in and over all properties relating to the said film. However, since the applicant was new to the business of film production, the second respondent agreed to execute and manage all on-site production work and for which, he was paid Rs.20,00,000/-. The said Karthik Naren agreed to direct the said film for the applicant and also assigned all rights in and over the story and screenplay of the film in favour of the applicant for a consideration of Rs.75,00,000/-.

5. The petitioner would state that the shooting

commenced on 16.09.2017 and it was completed on 14.11.2017 and the applicant had invested more than Rs.8,50,00,000/- for production of the said film. It is alleged that the second respondent had created a document vesting certain rights of the subject film in favour of the third parties and received substantial sum of Rs.4.2 Crores from them. When the applicant questioned the second respondent for the misdeed, the second respondent undertook to pay the entire sum of Rs.4.2 Crores and also assured to pay the said amount to the applicant on 31.05.2018 or before the release of another film "Dhruva Natchatiram" together with interest at 12% per annum. The second respondent executed a letter dated 28.02.2018 to confirm the undertaking and the same was countersigned by the partners of the first respondent firm.

6. It is the case of the applicant that the said film could not be released in view of the injunction granted in O.A.No.1070 of 2017, which was filed by one Mr.K.Punniyamoorthy, under Section 9 of the Arbitration and Conciliation Act. The applicant herein got impleaded himself as one of the respondent in O.A.No.1070 of 2017 and when the matter was listed for hearing, the said K.Punniyamoorthy withdrew the original application unconditionally. Thereafter, when the applicant attempted to book theatres for releasing the movie Naragasooran all

over Tamil Nadu, the applicant came to know that the Film Distributors Association, had instructed the Theatre Owners not to permit the release of "Naragasooran" without their clearance. Hence, no Distributor was coming forward to take the rights of the Naragasooran film and no theatre was prepared to screen "Naragasooran".

7. The applicant would allege that as per the undertaking letter dated 28.02.2018 and the agreement dated 26.05.2018, the respondents failed to settle his account. But, in the meanwhile, the respondents 1 to 5 entered into an agreement dated 30.11.2016, with the Sun Power Solar Technick Pvt. Ltd., and borrowed heavily and pledged the film Dhruva Natchatiram and secured the amount of Rs.16 Crores. The said Company had obtained an order in O.A.No.878 of 2018 and in respect of the same film, an arbitration case in A.F.90 of 2019 is pending. The applicant would further allege that K.Punniyamoorthy had obtained an injunction against the release of "Dhruva Natchatiram" and collusively entered into MOU on 31.03.2008. Hence, the present application.

8. A detailed counter affidavit has been filed by the third respondent disputing the allegations made against the respondents. It is stated that after execution of the letter dated 28.02.2018 and the agreement dated 26.05.2018 between the applicant and the

first respondent, all issues relating to the liabilities concerning the movie "Naragasooran" is closed and does not survive any more. The injunction application in O.A.No.1070 of 2017 filed by K.Punniyamoorthy in respect of the movie "Naragasooran" was withdrawn on 05.04.2018 pursuant to the Memorandum of Understanding entered into between the said K.Punniyamoorthy and the fourth respondent.

9. In the counter, it is stated that M/s.Ondraga Entertainment represented by its proprietor Mr.Goutham Vasudev Menon and M/s.Ondraga Entertainment Pvt. Ltd. had conceived the project "Naragasooran" and the same was being produced by M/s.Knight Nostalgia Filmotainment, represented by its proprietor Mr.Manikandan. M/s.Ondraga Entertainment and M/s.Ondraga Entertainment Pvt. Ltd. raised a sum of Rs.4.2 Crores by pledging their rights over the movie "Naragasooran", however, they were not able to complete the movie. Hence, they approached the applicant to take over the project and thereupon an agreement dated 15.09.2017 was entered into between the applicant on the one hand and M/s.Ondraga Entertainment and M/s.Ondraga Entertainment Pvt. Ltd. on the other hand. The aforesaid liability was not made part of the terms of the agreement. In terms of the agreement dated 26.05.2018, the second respondent paid a sum of

Rs.1,07,00,000/- to the applicant on 30.07.2018 by RTGS and cleared the liability of Rs.90,00,000/- due to M/s. United India Exporters. Pursuant to which, the applicant had sold the overseas rights to M/s.Anak Exports Pvt. Ltd. for a consideration of Rupees One Crore.

10. It is further stated that as the applicant after entering into agreement dated 26.05.2018 agreed to receive the sum before the release of the movie "Dhruva Natchatiram" does not have any locus to maintain the present application and the movie "Dhruva Natchatiram" being produced at the cost of nearly Rs.100 Crores is almost complete and it is scheduled for release in the month of January 2020.

11. In the counter of the third respondent, it is stated that the movie "Ennai Nokki Paayum Thotta" (ENPT) is being produced by the third respondent since 2016, even before the movie "Naragasooran" was commenced for production. The said movie is not included in the agreement dated 26.05.2018. There are 13 creditors / lenders, whose loans / funds are associated with the movie ENPT and the total outstanding is approximately Rs.83 Crores. The third respondent had reached a settlement with the creditors / lenders to repay a portion of the loans prior to the release of the movie ENPT. The rights of several third parties are invovled

and if the an interim relief is granted, the same would not only affect the movie but also all the Artists / Technicians / others connected with the movie and their careers / life would be affected / ruined. Further, negotiations with theatres, such as Sathyam, Devi, Albert etc., in Chennai and various other theatres throughout Tamil Nadu, Kerala and Karnataka for blocking by Distributors for release is going on and at this juncture if injunction is granted, the Producer / Distributors / Theatre Owners will incur huge loss. The respondents would suffer irreparable injury, which could not be compensated in terms of money and on the other hand if injunction is dismissed, the applicant could also be compensated by way of damages and hence, prayed for dismissal of the application.

12. Mr.K.Ravi, learned counsel representing M/s.Rugan and Arya, learned counsel for the applicant would urge that the applicant is the absolute and exclusive owner of the Tamil Film titled “Naragasooran” and this fact has been admitted by the second respondent in his counter filed in O.A.No.1070 of 2017. However, taking advantage of the fact that the second respondent was the paid executive and on-site in charge of the production of the said film, he unauthorisedly sold valuable rights in and over the said film to the third

parties and thereby received Rs.4.2 Crores and misappropriated the same.

13. It is further contended that the respondents 2 to 5, who are the partners of the first respondent issued a letter dated 28.02.2018, promising to pay the sum of Rs.4.2 Crores on or before 31.05.2018 together with interest at 12% per annum or before the release of the movie titled "Dhruva Natchatiram", but they failed to keep up those words even after extension of time by a subsequent agreement dated 26.05.2018.

14. It is the contention of the learned counsel for the applicant that there is no certainty that the film Dhruva Natchatiram would be released as per schedule, in view of pendency of litigations against the said film. The film is not an adequate security for the applicant. Therefore, this application is filed since the liability is not disputed. According to the learned counsel, the applicant has made out a prima facie case for grant of interim order and the balance of convenience is also in favour of the applicant.

15. Mr.A.Abdul Hameed, learned counsel representing M/s.AAV Partners, learned counsel for the third respondent would argue that M/s.Ondraga Entertainment had created liability of Rs.4.20 Crores for the movie "Naragasooran" and the first respondent had agreed to

clear the liability before the release of the movie "Dhruva Natchatiram". Moreover, out of the sum of Rs.4.20 Crores, Rs.1 Crore 97 Lakhs was already settled and the balance amount of Rs.2 Crores and 23 Lakhs will be paid to the applicant before the release of the movie "Dhruva Natchatiram", which was produced at the cost of Rs.100 Crores.

16. The learned counsel would submit that the shooting of the movie "Dhruva Natchatiram" is completed in all aspects and at present, post production works such as dubbing, editing, EFX etc., is going on. The movie is worth about 100 Crores, but the liability of the movie is not exceeding Rs.60 Crores and the movie is slated for release in December 2019 or by January 2020.

17. The learned counsel by citing the decision in the case of ***Sundaram BNP Paribas Home Finance Limited vs. Mir Ali*** [*MANU/TN/0015/2012*] would submit that since the claim of the applicant is fully secured with the movie "Dhruva Natchatiram", no further relief can be sought for under Section 9 of the Arbitration and Conciliation Act that too against the movie "Ennai Nokki Paayum Thotta", which is produced by the third respondent, who is the proprietor of Escape Artists Motion Pictures.

18. The learned counsel further added that the jurisdiction of this Court under Section 9 of the Act can be invoked during the pendency of the proceedings, but the applicant has not invoked the arbitration proceedings till date. The respondent had already arranged for blocking of theatres in Tamil Nadu, Kerala Andhra Pradesh and Karnataka for release of the movie on 06.09.2019. Ticket booking have also began on 02.09.2019. The Overseas rights, Satellite and Digital rights, Telugu and Hindi remake rights, have been sold and the Overseas prints have also been uploaded on 03.09.2019 to various Countries such as Australia, Dubai, US, UK etc., for screening on 06.09.2019. So if at this stage, the application is ordered, the movie will be affected and Producers, Distributors, Theatre Owners and respondents will incur huge loss, which could not be compensated and ascertained in terms of money. It is the submission of the learned counsel for the third respondent that M/s.Shraddha Entertainment has not made out a case and the balance of convenience is on the side of the respondents and if the interim order is granted, the respondents would be put to irreparable loss and hardship and prayed for dismissal of the application.

19. Heard the rival submission and perused the

materials available on record.

20. The only issue arise for consideration in this application is whether the applicant is entitled for attachment before judgment in respect of the movie "Ennai Nokki Payum Thota".

21. In the present case, it is not in dispute that pursuant to the agreement dated 15.09.2017, the applicant took over the production of the film "Naragasooran" and invested huge amount for production of the said film. It is the case of the applicant that he is the absolute owner of the film, however without his consent and knowledge, the second respondent sold the rights of the film to the third parties by receiving a sum of Rs.4.2 Crores and thereafter, agreed to return the amount along with interest. It is also the case of the applicant that even after completion of the said movie "Naragasooran", it could not be released in view of the interim order obtained by Mr.K.Punniyamoorthy.

22. It is contended by the respondents that the liability of Rs.4.2 Crores was created even before the applicant took over the production of the film "Naragasooran", but somehow, it was not referred in the

agreement dated 15.09.2017. It is next contended by the applicants that even though charge is created over "Dhruva Natchatiram", it is not sufficient security to satisfy the claim of the applicant and therefore an attachment before judgment is required in respect of the movie "Ennai Nokki Payum Thota". The respondents have come with a specific case that the value of the film "Dhruva Natchatiram" is Rs.100 Crores and the entire production is completed and the film is likely to be released in the month of December 2019 or January 2020.

23. It is not in dispute that the agreement consists of arbitration clause and hence this application has been filed under Section 9 of the Arbitration and Conciliation Act. A plain reading of the Section would made it clear that a party may, before or during the arbitral proceedings or at any time after making of the arbitral award, but before it is enforced can apply for interim measures.

24. A perusal of the case papers would show that this application came to be filed in the month of July 2019. The learned counsel for the third respondent has contended that in respect of the agreement dated 26.05.2018, the applicant has not so far issued a notice

to file an arbitration case. The learned counsel for the applicant though denied the arguments of the learned counsel for the respondents, however, he is not in a position to produce any material to show that in respect of the agreement dated 26.05.2018, an arbitration case has been filed or preliminary steps have been initiated to file a case.

25. Be that as it may, this Court has to consider whether the applicant has established a case for grant of interim measure. It is settled principles of law that the order of attachment is not to be granted in a routine /causal and mechanical manner unless the Court is satisfied that the defendant with an intent to obstruct or delay the execution of any decree is about to dispose of the whole or part of his property or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court. The Hon'ble Apex Court in 2007 6 SCC 798 held that in case of arbitration proceedings, application of Code of Civil Procedure is not mandated, but in Court proceedings, even though it relates to arbitration, Code of Civil Procedure will be applicable.

26. In the decision relied on by the learned counsel

for the third respondent, the Division Bench has held as follows:

> *"12. Section 9 of Arbitration and Conciliation Act enables the parties to approach the Court for certain interim measure of protection in respect of the enumerated remedies available thereon. Section 9 of the Act contemplates interim measure to protect and secure the amount in dispute in arbitration. In respect of any direction/interim measure of protection [Section 9(ii)(b)(d)&(e)], the Court may pass appropriate order as may appear to the Court to be just and convenient. For passing interim order to the garnishee/order of the interim measure of protection, the applicant has to prove that the Respondent is intending to defeat, delay, obstruct the execution of the Award. While considering the grant of interim measure of protection and power under Section 9 of Arbitration and Conciliation Act and observing that Section 9 is not totally independent of the principles for grant of interim injunction, in AIR 2007 SC 2563 [ADHUNIK STEELS LTD. V. ORISSA MANGANESE AND MINERALS PVT. LTD.], the Supreme Court held as under:-*
>
> > "14. .... When the grant of relief by way of injunction is, in general, governed by the Specific Relief Act

and Section 9 of the Act provides for an approach to the court for an interim injunction, we wonder how the relevant provisions of the Specific Relief Act can be kept out of consideration. For the grant of that interim injunction has necessarily to be based on the principles governing its grant emanating out of the relevant provisions of the Specific Relief Act and the law bearing on the subject. Under Section 28 of the Act of 1996, even the arbitral tribunal is enjoined to decide the dispute submitted to it, in accordance with the substantive law for the time being in force in India, if it is not an international commercial arbitration. So, it cannot certainly be inferred that Section 9 keeps out the substantive law relating to interim reliefs. .....

18. It is true that the intention behind Section 9 of the Act is the issuance of an order for preservation of the subject-matter of an arbitration agreement. ...... But, at the same time, whether an interim measure permitting Adhunic Steels to carry on the mining operations, an extraordinary measure in itself in the fact of the

attempted termination of the contract by O.M.M. Private Limited or the termination of the contract by O.M.M. Private Limited, could be granted or not, would again lead the court to a consideration of the classical rules for the grant of such an interim measure. Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf. Similarly, whether the attempted termination could be restrained leaving the consequences thereof vague would also be a question that might have to be considered in the context of well settled principles for the grant of an injunction. Therefore, on the whole, we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well known principles governing the grant of an interim injunction that generally govern the courts in this connection. So viewed, we have necessarily to see whether the High Court was justified in refusing the interim injunction on the facts and in the circumstances of the case."

The Supreme Court thus held that provision of Section 9 of Arbitration and Conciliation Act is to be based on the principles governing the provisions of the Specific Relief Act and is not totally an independent of the provisions of Civil Procedure Code.

13. In ADHUNIK STEELS LIMITED V. ORISSA MANGANESE AND MINERALS PVT. LTD. [AIR 2007 SC 2563] and ARAVIND CONSTRUCTION V. KALINGA MINERAL CORPORATION [(2007) 6 SCC 798], the Supreme Court drew the distinction between applicability of Code of Civil Procedure in the arbitration proceedings and in a Court proceedings relating to arbitration. In case of arbitration proceedings, application of Code of Civil Procedure is not mandated; but in Court proceedings, even though relate to arbitration, Code of Civil Procedure will be applicable, insofar as, it does not stand excluded. Observing that the conclusive words of Section 9 "....... and the Court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" clearly suggest that the normal rules that govern the Court in the grant of interim orders is not sought to be jettisoned by the provision, in ADHUNIK STEELS LIMITED, the Supreme Court held as under:-

"10. It is true that Section 9 of the Act speaks of the court by way of an interim measure passing an order for protection for the preservation, interim custody or sale of any goods, which are the subject matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient. The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was dehors the accepted principles that governed the grant of an interim injunction. Same is the position regarding the appointment of a receiver since the Section itself brings in, the concept of 'just and convenient' while speaking of passing any interim measure of protection. The concluding words of the Section, "and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision. Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act." [underlining added]

14. Relying upon the decision in ADHUNIK STEELS LIMITED, in MANU/TN/2871/2011 [A-1 BIZ SOLUTIONS CHEENAI REP. BY ITS CHIEF EXECUTIVE OFFICER UJWAL RAO V. CASCADE BILLING CENTER INCORPORATED REP. BY ITS PRESIDENT DEV ANDERSON], the Division Bench of this Court in which one of us was a member # Justice R.Banumathi held as under:-

"9. ...... It is well settled law that security can be ordered only in cases where the other party is likely to abscond or there is positive evidence to show that the other party is taking steps to dispose of the property with an intention to deceive or defeat the decree or award to be passed by the Courts or Tribunal. In this case, the Respondent being a company, it is not possible for them to abscond so easily or they could dispose of their asset immediately. Therefore, the conclusion arrived at by the learned Judge that the present application has been filed by the Appellant only to pressurise the Respondent to settle the amount is well founded. It is needless to mention that filing of an application under Section 9 of the Act can be entertained by this Court only in exceptional case and this is not a case where this Court find it fit and proper to entertain the application of the Appellant." ....

11. Therefore, it is evident from the decision of the Honourable Supreme Court that wherever the powers of the Court are invoked with the objective of supporting the arbitration, the Courts must act cautiously. The Court would not be justified in granting interim orders

and relief merely for the asking of it. In fact, if a similar analogy is worked out in case of attachment of immovable property and seeking security under Order 38 Rule 5 of Code of Civil Procedure, the Honourable Supreme Court as well as this Court have time and again held that the intention of the parties to deprive the other party from enforcing the decree should be manifestly clear, pleaded, proved and orders of attachment cannot be granted as a matter of routine. The same principle will also apply to the cases governing Section 9 of the Act. ....."

19. For securing the loan amount, 1st Respondent had also executed promissory note dated 30.1.2010. Attachment under Order 21, Rule 46 CPC - garnishee proceedings could be ordered only when it is not secured by any negotiable instrument. In the present case, loan amount advanced to 1st Respondent is not only secured by mortgage, but also by promissory note. When the debt is sufficiently secured, Appellant cannot seek for prohibitory order against the garnishee. Appellant is not entitled to any interim measure of protection under Section 9 of Arbitration and Conciliation Act and the learned Judge has rightly dismissed the *application and we do not find any reason warranting interference with the order of learned Judge and the appeal is liable to be dismissed.”*

27. For better appreciation, the order 38 Rule 5 is extracted hereunder:

“5. Where defendant may be called upon to furnish security for production of property.-

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of this Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property

required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void."

28. In the matter on hand, it is not disputed that pursuant to the letter, dated 28.02.2018, out of total sum of Rs.4.2 Crores, the second respondent paid totally a sum of Rs.1 Crore 97 Lakhs to the applicant and one M/s. United India Exporters and for the remaining amount charges created over the film "Dhruva Natchatiram". It is not out of place to mention here that this application has been filed in respect of the agreement dated, 26.05.2018 in respect of film "Dhruva Natchatiram" and there is no agreement between the applicant and the respondents for the movie "Ennai Nokki Payum Thota". The learned counsel for the contesting respondents have categorically stated that before this Court that the remaining liability of the applicant will be discharged prior to the release of the movie "Dhruva Natchatiram"

29. From the perusal of the averments, it is evident that in the application not even allegations have

been made to satisfy the ingredients of Order 38 Rule 5. It may be true that in violation of the agreement, dated 15.09.2017, the respondents could have sold some of the rights of the film "Naragasooran" to the third parties without the knowledge of the applicant, but that does not mean that by filing this application, the applicant is entitled for an order of attachment before judgment.

30. The Division Bench of this Court in the case of ***M.Padmini vs. M.Anandhan reported in 2014 (3) CTC 792*** has observed follows:

> *"9. It is a trite proposition of law that merely making a bald allegation that the plaintiff is given to understand that the defendant is going to sell the property through real estate agents may not be sufficient and there must a specific averment or allegation made. In the absence of any specific allegation it is well settled by the Hon'ble Apex Court as well as by this Court that extra-ordinary remedy should not be granted. It is true that the Court is vested with powers to exercise power under Order 38 Rule 5 CPC. But, it remains to be stated that if it is a fit case, it should be exercised. It is an extra ordinary power and such power should not be*

exercised mechanically. The Courts have held that it must be used strictly in accordance with the rules. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt.

10. Therefore, in the light of the above facts and law, we are satisfied that the respondent/plaintiff has not satisfied the ingredients of Order 38 Rule 5 CPC in order to obtain an order of attachment."

31. Keeping in view the principles laid down in the decisions referred above and also considering the facts of this case that when the liability is sufficiently secured, in my considered opinion, the applicant is not entitled to any interim measure of protection under Section 9 of the Arbitration and Conciliation Act. In such view of the matter, the application fails and the same is dismissed. However, there shall be no order as to costs.

Sd/.M.K.K.S.J
05.09.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/06.09.2019 COURT OFFICER
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgement Decree in this format.