

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.No.895 of 2020
and A.Nos.8399 and 8400 of 2019
and O.A.No.997 of 2019
in C.S.No.479 of 2015

M/s.TAG Entertainment (P) Ltd.,
Represented by its Senior Vice President,
Mr.V.Sivaraj,
No.1, 2nd Lane, B.N.Road,
T.Nagar, Chennai – 600 017.

... Applicant/Plaintiff

Vs

Chimbu Cine Arts,
rep. by its proprietor,
Mr.T.Rajentherr,
No.4A Hindi Prachar Sabha,
T.Nagar, Chennai – 600 017.

...Respondent/Defendant

Prayer: Application filed to direct the defendant to pay the plaintiff the interest payable @ 30% per annum calculated on the outstanding from the date of plaint to till date of realization.

For Applicant : Mr.M.Kalayanaraman

For Respondent : Mr.T.T.Thiageswaran
for M/s.Waraon & Sai Rams

JUDGMENT

This application has been filed to direct the defendant to pay the plaintiff the interest payable @ 30% per annum calculated on the outstanding from the date of plaint to till date of realization.

2.It is the contention of the applicant that the compound interest at the rate of 30% per annum from the date of agreement to be paid by the defendant. However, while filing the suit above compound interest was omitted to be claimed. Therefore, the same has to be included in the suit to claim the said interest. Hence seek an amendment in the plaint.

3.Disputing the above contention of the learned counsel for the plaintiff that the suit has been originally filed for a sum of Rs.2,66,87,502 including the interest as on date of the suit.

4.The original amount was borrowed Rs.2.50 crore, the suit has been filed for a sum of Rs.2,66,87,502/- including interest as on date of plaintiff and subsequent interest never claimed in the suit. On the applications filed by the applicant/defendant

in A.No.465 of 2016, the entire suit amount has been deposited and subsequently the same has been withdrawn by the plaintiff. Such view of the matter, the present application is barred under Order 2 Rule 2 and also the operation of the Limitation law.

5.Heard both sides.

6.Primarily the amendment sought to be made in the suit to include the compound interest at 30% per annum on the basis of the lending agreement said to have been entered between the parties. Originally the suit has been filed for recovery of a sum of Rs.2,66,87,502/- and there is no subsequent interest whatsoever claimed in the prayer.

7.The suit has been laid in the year 2015. It is also not disputed that based on the order there was a direction given to the defendant to release the movie before the particular date of time in the event of failure movie not be released as directed by this Court, the defendant was directed to furnish a security for the suit amount as per the orders of this Court in A.No.3934 of 2015, order dated 20.07.2015. However, the defendant has not released the movie and subsequently has filed an application A.No.465 of 2016 admitting the liability and for passing a decree for the suit amount

and sought a permission to deposit the entire suit amount.

8.This Court by its order dated 04.02.2016 allowed the application and permitted the defendant to deposit the entire suit amount as per the orders of this Court. A demand draft for a sum of Rs.2,66,87,502/- has drawn by the defendant and deposited before this Court. As the plaintiff at that point of time, refused to receive the amount was ordered to be deposited in the Reserve Bank by this Court. Thereafter, it appears that the plaintiff filed an application through other counsel and withdrawn the entire suit amount. These are all the admitted facts. Now the present application is filed to include compound interest as per the agreement dated 22.07.2014 the same has to be included in the suit.

9.I am at last to understand as to how the application is maintainable at this stage. For a simple reasons that the suit itself was disposed by an order dated 04.02.2016 in A.No.465 of 2016, the suit has been filed for recovery of specific amount namely Rs.2,66,87,502/- not only for the principal but also interest outstanding as on date of suit. Subsequent interest as per the agreement has never claimed in the suit.

10.When the suit amount was ordered to be deposited in its entirety and permission was granted to the defendant to deposit the amount. The amount has been

deposited by the defendant which was realised by the plaintiff. It is too late for the plaintiff to come up with this application to contend that the compound interest has been omitted in the suit.

11. Even assuming that as per the agreement, the plaintiff entitled to such interest. It is noted that the same has never claimed in the suit and omitted to claim the same in the original suit. When the plaintiff relinquished any right or any claim at the time of the original cause of action and he has not sought any leave of the Court for the same to claim at a later point of time present application barred under Order 2 Rule 2 of Code of Civil Procedure.

12. It is also to be noted that the suit has been laid in the year 2015 and the application has been filed in the year 2019, the suit appears to be disposed on 04.02.2016 itself. Therefore, such application for amendment filed after 3 years cannot be entertained by this Court. The plaintiff having realized the entire decree amount cannot be permitted to take undue advantage on the ground of earlier contract which was admittedly relinquished or waived by the plaintiff himself at the time of filing suit.

13. Such view of the fact that this Court does not find any merits in this

applications. Accordingly, all the applications are disposed and since the defendant himself filed an application A.No.465 of 2016 and which was allowed the above application primarily filed for passing a decree for the suit which was allowed.

14.This Court is of the view that the suit itself disposed and the suit could have not been kept pending on the file.

15.Accordingly, nothing survives in the suit along with all the applications. No costs.

01.12.2020

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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N.Sathish Kumar, J.

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