IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
27~08~2020	04-09~2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.No.1256 & 1257 of 2020 and
CMP.No.8322 & 8323 of 2020

M/s.Shraddha Enertainment
Rep.by its Partner Badri Kasturi
No.2, Seaface Road,
Palavakkam, Chennai 600041. ...Appellant/Applicant/Claimant
[in both CMAs]

-vs-

1. M/s.Kondaduvom Entertainment,
   A Partnership firm, rep.by its
   Partner Mr.Gautham Vasudev Menon
   69A, Habibullah road, T.Nagar,
   Chennai 600017.

2. Mr.Gautham Vasudev Menon
   69A, Habibullah road, T.Nagar,
   Chennai 600017.

3. Ms.A.ReshmaGhatala
   Flat No.2 A.B,
   21, Sivaganga Road, Nungambakkam,
   Chennai 600034.

4. S.Venkataramanan
   Old No.15, New No.44 & 45, Rathinam Street,
   Gopalapuram, Chennai 600086

5. Mr.Madan Pandy
   69A, Habibullah road, T.Nagar,
   Chennai 600017.

...Respondents/Respondents/Respondents
[in both CMAs]

Prayer: Civil Miscellaneous Appeals filed under Order XLIII Rule 1(r) read with Section 104 of Civil Procedure Code and Section 37 of the Arbitration and Conciliation Act, to set aside the order dated 01.07.2020 in Application Nos.19 and 20 in Claim Statement No.5 of 2020 passed by the Arbitral Tribunal and allow the said Application Nos.19 and 20 of 2020.

For Appellant : Mr. Sathish Parasaran
Senior Counsel for
M/s.R.Ayshwarya for
M/s. Rugan and Arya.

For Respondents : Mr. A. Abdul Hameed for
M/s. AAV Partners

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals are filed, challenging the order passed by the Learned Arbitrator in dismissing the applications filed for interim measures under section 9 of the Arbitration and Conciliation Act.

2. In Application Nos.19 and 20 of 2020 two reliefs are claimed by the Applicant. One is injunction restraining Respondents 1 to 5 from opening any Bank Account, either in their individual or joint names and or in the names of any entity in which any or all of them are in control and other relief is to direct the Respondents 1 to 5 to disclose the names and details of all banks where they hold accounts whatsoever operated by them either individually or jointly with one another or with 3rd parties, in their names or in the names of their proprietary concerns, firms, companies and file all such statements of accounts from 1st July 2016 till 25th May 2020 pending disposal of the arbitral proceedings.

3. The learned Arbitrator dismissed the applications by holding that there is no prima facie liability as a loan to the respondents and also held that injunction relief sought to opening bank account is an extraordinary remedy and further held that there is no averment anywhere to bring any nexus to the bank accounts to compel the Respondents to make any such disclosure. Similarly held that there are parallel accounts, that event the power under Order 38 Rule 5 of CPC cannot be invoked in a given case. While arriving such a conclusion the learned Arbitrator has also gone into the validity of Memorandum of Compromise dated 25.11.2019 and held that there is no loan transaction, the relationship appears to be Principal and Agent between the parties. Aggrieved over the same present appeals are filed.

4. Along with these Appeals, similar nature of applications have filed for interim measure restraining the Respondents 1 to 5 from opening or operating any bank account either in their individual or joint names and/or in the names of any entity in which any or all of them are in control pending disposal of the appeal and seeks direction to Respondents 1 to 5 to disclose the

names and details of all banks where they hold any account whatsoever operated by them either individually or jointly with one another or with third parties in their names or in the names of their proprietary concern, firms, companies and file statements of 11 such accounts from 1st July 2016 till 25th May 2020 pending disposal of the Appeal.

5. The factual back ground leading to file these appeals is also recorded as follows:

5.a. The 1st Respondent is a firm and the Respondents 2 to 5 are its partners. They are jointly in the business of production of cinematograph films under various banners, namely Ondraga Entertainment, Ondraga Entertainment Private Ltd., Kondaduvom Entertainment and Escape Artists Motion Pictures. The appellant directly and through its sister concerns have been lending money to the Respondents. Thereby they have received money either directly or through various banners as stated above. The 2nd Respondent in fact having obtained assignment of a story and screenplay of the film `Naragasooran`, approached the Appellant to finance the film `Naragasooran` on certain agreed terms. After inaugural pooja, the 2nd Respondent requested the Appellant to take over the entire production of the said film, since the film `Naragasooran` was yet to commence. Accordingly agreement dated 15.09.2017 came into existence. As per the agreement the Appellant become the owner of the film `Naragasooran` with absolute rights. Since the appellant was new to the business of film production, the 2nd Respondent agreed to execute and manage all on-site production work and in consideration whereof, the 2nd Respondent was paid a sum of Rs.20 lakhs. One Karthik Naren also assigned all rights in and over the story and screenplay of the film `Naragasooran' in favour of the Appellant and agreed to direct the film 'Naragasooran` for a total consideration of Rs.75 lakhs.

5.b. The Appellant has invested for production of the said film `Naragasooran` more than Rs.8,50,00,000/-. They have also obtained certificate from the Censor Board. Though the title was originally registered by M/s. Knight Nostalgia Filmomotainment Ltd., subsequently the same was transferred and re-registered in the name of one of the partners of the Appellant. When the matter stood thus, third party has filed an application before the Court and obtained injunction restraining the respondents from releasing the film `Naragasooran` without making the Appellant as a party. Thereafter, the Appellant came to know that the Respondents 2 to 5 misrepresenting as if they were the producer of the film and had obtained various money from certain third parties to the tune of Rs.4.2 Crores. Thereafter Respondents 1 to 5 requested the Appellant to treat such advances as a loan, repayable to the Appellant and agreed to repay the same together with interest before 31.5.2018. The Respondents also executed an agreement dated 26.05.2018 admitted to repay the Appellant a sum of Rs.4.2 Crores on or before 30.09.2018. However, they have failed to honour their commitment to repay the loan of Rs.4.2 Crores. In the meanwhile, brother of one of the partners of the Appellant also advanced a huge loan of more than Rs.24 Crores to Respondents 1 to 5.

5.c Thereafter, another agreement also came to be executed between the parties on 1.10.2016. The film `Naragasooran` was to be released on 31.08.2018 but was delayed owing to the above actions of the Respondents. Thereafter the Appellant initiated legal proceedings in respect of agreement dated 26.05.2018. The Respondents had undertaken to repay Rs.4.2 Crores to the Appellant. Ultimately, the Memorandum of Compromise also entered between the parties on 25.11.2019, wherein the Respondents agreed to pay a sum of Rs.6,83,50,710/- and also issued a cheque in favour of the Appellant. Hence it is the main contention of the Appellant that in entire business transaction the Respondents acknowledged liability to the tune of Rs.6,83,50,710/- on 14.04.2020. Hence, for recovery of the above amount the dispute was referred.

6. In the counter, the main contention of the Respondents is that the alleged Memorandum of Compromise is the result of vitiating circumstance and came to existence when the film `Enai Nokki Paayum Thotta` (ENPT) was to be released. Therefore, entire compromise was the result of the threat and coercion and not voluntary. The movie `Naragasooran` was produced by the Appellant. The only liability was the amount of Rs.4.2 Crores and repayment of loan Rs.1.7 Crore and Rs.2.25 Crore were not given to credit. According to them only a sum of Rs.25 lakhs alone to be given. Hence, it is their contention that they have paid the amount to the Appellant.

7. The movie could not be released despite censor certificate only because of unrealistic terms that the claimant laid down with theatre owners and distributors. The initial investment of the 2nd Respondent for the making of the film has also got struck. The barrage of suits and arbitration actions initiated at the instance of the brother of the appellant have been vindictive without due credit to the several payments totalling over Rs.17 Crore. The Appellant himself has filed a suit in CS.No.46 of 2018 relating to his alleged right over the film DN and questioning the agreement amonst the respondents as not binding on him. The claimant and his brother Satyan Kasturi who is associated with M/s.Sun Power Solar Technic, his wife Radha Krishnaswamy who is the partner with her husband in M/s.Acolyte have mired the respondent in needless litigations

and caused loss to the respondents in delay of release of ENPT and stalling the release of a costly production in DN.

8. The respondents also took a stand that the Appellant had committed a breach of compromise terms, and hence unhinged the respondent from all obligations of liability. Therefore, the alleged compromise had become unenforceable. The only remedy would be to seek for accounts. The learned Arbitrator after considering the submissions and materials, has not granted interim relief as sought for. Challenging the same these appeals have been filed.

9.a. Mr.Sathish Parasaran, learned Senior Counsel has vehemently contended that the learned Arbitrator has gone beyond the scope of reference and recorded the finding by holding that the agreement is not a result of the loan transaction and only as a principal against his agent which is contrary to the documents. It is his further contention that such a finding will affect the merit of the case, that order cannot be sustained in law. The very agreement itself indicate that the respondents have also consciously executed the contract. Therefore, the alleged coercion and without free consent has no relevance at all.

9.b.It is his further contention that the alleged repayment of loan is also not correct. Multiple accounts have opened and the accounts shown as the payment in one account also show in different account . The scheme played by Respondents clearly expose the fraud on the part of the second respondent. Hence his contention that the learned Arbitrator's finding is beyond the scope of reference and if it is allowed to continue nothing would remain to arbitrate. Learned counsel also placed much reliance on various documents along with typed set and submitted that the Arbitrator's order is liable to be interfered.

10. Mr. Abdul Hameed, learned counsel for the respondents submitted that the learned counsel for the Appellant has placed new facts before this Court which cannot be entertained. The learned Arbitrator after taking note of entire submissions, considered the pleadings and documents, found that the interim measures sought for by the Appellants are not maintainable. Hence it is his contention that from the nature of the documents, financial transactions and various other proceedings between the parties, the learned Arbitrator rightly found that there is no loan transaction. Learned Arbitrator finding does not require any interference. The conduct of the parties also relevant in this matter. Agreement dated 25.11.2019 caused an obligation on both sides. In the event of non performance of obligation, the same could have been enforced by the Appellant or terminated and claimed damages. The dispute is only in

respect of the movie `Naragasooran` and the amount has been paid, there is no liability. Hence, it is his contention that the prayers sought for in the interim applications cannot be granted and the appeal is liable to be dismissed.

11. Though elaborate submissions were made and attempt was also made by the applicant, they filed a similar applications seeking interim relief, this court is of the view that when the arbitrator has already rejected such a relief, which was challenged before this Court in the appeal, again seeking similar prayer by way of interlocutory applications cannot be maintainable. Since the very order of the learned Arbitrator dismissing the interim measure, is the subject matter of the main appeal itself. Therefore, this Court is of the view that those applications filed by the Appellant are not maintainable. Therefore, the appeal itself can be decided.

12. It is also to be noted that the nature of the reliefs sought before the learned Arbitrator are interim measures. One is injunction restraining the Respondent from opening or operating any bank account either in their individual or joint names and/or in the names of any entity in which any or all of them are in control and the other is to direct Respondents 1 to 5 to disclose the names and details of all banks where they hold any account whatsoever operated by them either individually or jointly. The first relief sought by the appellant is in the nature of restraining the person from carrying on trade and business and such relief cannot be granted in the name of interim measure. In this regard, the learned Arbitrator in his order has observed as follows:

> "23. Is the relief of injunction possible? The relief through restraint against opening any new accounts with any bank or withdrawal of money from any bank is neither here nor there. If the money held with the banks is the money wrongly stashed away by stealth or deceit or held in trust for the claimant, the restraint could operate as constituting a justifiable protection. There is no discovery elicited through subpoena or otherwise of when the amounts were deposited, the amounts in deposit and tracing the deposits to receipts obtained by sale of rights of Nargasooran movie. Can the second relief of directing disclosure of details of amounts of the amounts to be equated with discovery proceedings? No. There are inherent limitations to discovery process under Order XI CPC. The bank accounts themselves ought to be documents relied on for establishing facts stated in the claim statement,

or the facts that ought to be established at the trial must have bearing on the deposits with the banks. There is no averment any where to bring any nexus to the bank accounts to compel the respondent to make any such disclosure. The only instance when a disclosure of properties which are not even the subject matter of litigation could arise in proceedings after decree under Order 21 Rule 41 CPC. This is an extraordinary remedy. It is indeed the preliminary step forwards execution of the decree. It will be premature to hasten the process, even on a very strong prima facie case to give direction for a disclosure."

13. Similarly the learned Arbitrator has also negatived the other relief under Order 38 Rule 5 of CPC and also discussed the vigor of relief sought and held that to give any such relief the provision under Order 38 Rule 5 of CPC has to be satisfied. As there was no allegation made in this regard no such allegations were made the other reliefs also negative. The reasoning of the learned Arbitrator rejecting the interim measure does not require any interference in view of this court.

14. Though various allegations made, the learned Senior Counsel for the Appellant placed much reliance on the agreement dated 25.11.2019 said to be the Memorandum of Compromise. To contend that the Respondent has agreed to pay a sum of Rs.6,83,50,710/- and issued a cheque. Though, on the face of the agreement, it is appeared that the respondents have agreed to pay the said amount, the contention of the Respondents is that there were many transactions between the parties and the payment also made besides the agreement is also result of coercion etc., Even though there is a written contract, when the party pleads that any of the circumstances fall within the ambit of proviso to Section 92 of Indian Evidence Act, such allegation can be seen only in the trial. It is for the parties to substantiate/prove their stand at the time of trial before the Arbitrator. Therefore, merely on the basis of such agreement when the serious of dispute raised by other side, the memorandum of agreement alone can not be taken note of at this stage to conclude that there was an acknowledgment of debt and those things are the matter of evidence. Therefore, this Court is unable to express any view over the merits of those documents. If any discussion on merits or demerits of the documents by this Court will have a serious impact on the Arbitral proceedings.

15. Similarly it is also to be noted that, the only apprehension of the learned senior counsel is that the learned

Arbitrator has recorded the finding as to the document, that there is only a principal and agent relationship. Such finding conclusively determine the entire issue now. It will have a serious impact on the merits of the matter. Therefore, submitted that the finding recorded by the learned Arbitrator is beyond the scope of contract. This Court is of the view that the learned Arbitrator has recorded only a prima facie finding. If any prima facie finding recorded at the stage of interlocutory application, the same will not have any bearing on the merits. It is also well settled that while grant of interlocutory injunction, the basic being the non expression of opinion as to the merits of the matter by the courts. Though the learned Arbitrator recorded prima facie finding as to the nature of the documents, this Court is of the view that since there are rival contentions with regard to the payment and alleged discharge and acknowledgment of liability etc., all these facts are matter of evidence. Therefore without testing the veracity of the allegations and documents and without proof of the documents even the prima facie finding with regard to the documents will have an impact on the final decision. In such view of the matter, this Court is of the opinion that the learned Arbitrator findings recorded in Application Nos.19 and 20 of 202 in Claim Statement No.5 of 2020 as to the nature of the relationship viz., principal to principal basis with a third party in para 17,18, 19, 20, 21 and 22 are set aside.

16. However, the learned Arbitrator reasoning for rejecting the interim measure recorded in his order does not require any interference. In appeal, the order of the Arbitrator has to be seen in the light of the provisions of the Arbitration and Conciliation Act. This Court cannot sit as an appellant Judge to re-appreciate entire materials. Therefore, rejecting the prayer of interim measures does not require any interference, except to an extent as indicated above.

17. Accordingly, these appeals are partly allowed. The findings of the Arbitrator as to the nature of the relationship viz., principal to principal basis with a third party in para 17,18, 19, 20, 21 and 22 in Application Nos.19 and 20 of 2020 in Claim Statement No.5 of 2020 are alone set aside. Let the parties be appeared before the Learned Arbitrator and the learned Arbitrator decide the dispute within a period of six months from the date of receipt of copy of this Order. CMP.No.8322 & 8323 of 2020 are dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

+2cc to M/s.AAV Partners, Advocate in SR.NO..29214

Common Judgment in :
C.M.A.Nos.1256 & 1257 of 2020
and CMP.No.8322 & 8323 of 2020

RSV(CO)
RV(05/11/2020)