

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2020

Pronounced on : 14.08.2020

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

O.A.No.264 of 2020

and

A.No.1642 of 2020

in

C.S.No.165 of 2020

O.A.No.264 of 2020:-

Across Films LLP
Represented by its partner
Prabhu Venkatachalam Partner
No.18, Saravana Street,
T.Nagar,
Chennai – 600 017.

... Applicant

Vs.

1.Two Moviebuffs LLP
Represented by its Designated Partner,
P.S.Raghunathan.
Old No.16, New No.6,
Vishwanathan Street,
R.A.Puram,
Chennai – 600 028.

2.ZEE 5

Represented by its authorized representative,
Alpha Centre Essel House,
3rd floor, No.150 & 151,
North Usman Road,
T.Nagar
Chennai – 600 017.

... Respondents

A.No.1642 of 2020:-

Two Moviebuffs LLP
Represented by its Designated Partner,
P.S.Raghunathan.
Old No.16, New No.6,
Vishwanathan Street,
R.A.Puram,
Chennai – 600 028.

... Applicant/1st Defendant

Vs.

1.Across Films LLP
Represented by its partner
Prabhu Venkatachalam Partner
No.18, Saravana Street,
T.Nagar,
Chennai – 600 017.

... 1st Respondent/Plaintiff

2.ZEE 5

Represented by its authorized representative,
Alpha Centre Essel House,
3rd floor, No.150 & 151,
North Usman Road,
T.Nagar
Chennai – 600 017.

... 2nd Respondent / 2nd Defendant

Prayer in O.A.No.264 of 2020:- This application filed under Order XIV Rule 8 of O.S Rules Order III Rule 1 of the O.S.Rules Order XXXIX Rule 1 and 2 of C.P.C., praying to grant a interim injunction restraining the defendant themselves their respective proprietors/ directors/ partners servants, agents all persons from telecasting the move “THITTAM POATTU THIRUDURA KOOTAM” in the 2nd defendant's Television/Satellite channel proposed to release on 24.07.2020 or any other subsequent date in any other without settling the plaintiff debt amount as agreed in document dated 12.09.2019 pending disposal of the above civil suit.

Prayer in A.No.1642 of 2020:- This application filed to vacate the ad-interim injunction granted on 22.07.2020 in O.A.No.264 of 2020 in C.S.No.165 of 2020 and pass such further or other orders as this Court may deem fit and necessary in the facts and circumstances of the case.

For Plaintiff : Mr.Karthikeyan Sekar

For D1 : Mr.Aravind Pandian, Senior Counsel,
for Mr.M.Sivavarthanan

For D2 :Mr.Rajesh Ramanathan & Mr.S.Diwakar

ORDER

C.S (Commercial Division) No.165 of 2020 had been filed by the plaintiff, Across Films LLP, represented by its partner, Prabhu Venkatachalam, against Two Moviebuffs LLP, represented by its Designated Partner, P.S.Raghunathan and ZEE 5, represented by its authorized representative, seeking a judgment and decree of permanent injunction restraining the defendants from telecasting the movie “Thittam Poattu Thirudura Kootam” in the Television / Satellite channel of the 2nd defendant on 24.07.2020 or on any other subsequent date in any other channel without settling the debt amount of the plaintiff as agreed in document dated 12.09.2019 and also for costs of the suit.

2. It is pertinent to point out that the plaintiff has not quantified the “debt amount” but has rather cast a burden on the Court to examine the document dated 12.09.2019 and determine the “debt amount”. It is also pertinent to point out that in paragraph 11 of the plaint, the plaintiff has averred that separate leave of this Court under Order II Rule 2 CPC to file a suit for recovery of dues is sought and that the Court may permit the plaintiff to do so. However, no such application has been filed. Naturally, the Court has not granted any permission to institute a separate suit seeking the recovery of dues.

3. Along with the suit, the plaintiff filed O.A.No.264 of 2020, seeking an interim injunction restraining the defendants from telecasting the movie “Thittam Poattu Thirudura Kootam” in the channel of the 2nd defendant on 24.07.2020.

4. The suit was moved on making urgent mentioning on 22.07.2020 and an order of interim injunction had also been granted. Subsequently, on receipt of notice, the 1st defendant, Two Moviebuffs LLP, had filed A.No.1642 of 2020, seeking to vacate the order of injunction. The 2nd defendant have filed a counter in O.A.No.264 of 2020.

5. Heard arguments advanced by Mr.Karthikeyan Sekar, learned counsel for the plaintiff, Mr.Aravind Pandian, learned Senior Counsel for Mr.M.Sivavarthanan, learned counsel for the 1st defendant and Mr.S.Diwakar, learned counsel for the 2nd defendant.

Background Facts:-

6. In the plaint and in the affidavit filed in support of O.A.No.264 of 2020, the plaintiff has stated that the 1st defendant had proposed to make a movie by name “Thittam Poattu Thirudura Kootam” and had approached the plaintiff for investment and production. A request was made to advance a sum of Rs.1,70,00,000/-. The movie was released in theatres on 27.09.2019. The plaintiff stated that they had paid a total sum of Rs.2,19,15,000/- as investment and production for the said movie. The plaintiff also stated that the 1st defendant had repaid a total sum of Rs.1,43,95,100/- and the last date of payment was on 23.03.2017. Thereafter, the 1st defendant avoided making any payment. The plaintiff, then filed a complaint before the Commissioner of Police, Chennai, on 22.01.2018.

7. Thereafter, the 1st defendant had announced the release of the movie in the theatre on 27.09.2019 by “SDC Picturez” another company. In order to resolve the disputes, an Understanding was executed on 12.09.2019. Thereafter, the plaintiff issued No Objection Certificate on 12.09.2019 and the movie, as stated, was released on 27.09.2019. Among the terms of the Understanding signed by the parties

were that the 1st defendant will pay a sum of Rs.60,00,000/- before the release of the movie and a sum of Rs.10,00,000/- after the release of the movie on receipt of the said amount from “SDC Picturez” and would pay a sum of Rs.1,70,00,000/-, from the income received from the theatrical collections, after adjusting the expenses of “SDC Picturez”. It was further agreed that if there was any further balance to be paid, it shall be paid by the 1st defendant before the release of their another movie by name 'Daavu', which was scheduled to be released on 14.02.2020. It was further agreed that if there is a delay in the release, then interest @ 36% per annum will be payable from March 2020.

8. The plaintiff claimed that though the movie was released in the theatres, subsequent payments as agreed were not paid by the 1st defendant. The immediate cause for instituting the suit was an information received by the plaintiff that the 1st defendant had entered into an agreement with the 2nd defendant to release the movie in the Television / Satellite channel of the 2nd defendant. It was under these circumstances, that the suit was filed and an order of interim injunction was sought. The order of interim injunction as stated above was also granted on 22.07.2020.

9. A.No.1642 of 2020 has been filed by the 1st defendant to vacate the order of interim injunction. It was stated that the actual amount paid by the plaintiff to the 1st defendant was Rs.1,89,15,000/-. It was further stated that the plaintiff, misusing the name of the film, had borrowed a sum of Rs.30,00,000/- from R.K.Shah, HUF, financier in Mumbai, and since that amount was not repaid, the said financier had instituted Arbitration proceedings before the Mumbai High Court. It was stated that the 1st defendant was repaying the amounts to the said financier, pursuant to a loan agreement dated 30.09.2019.

10. It was further stated that the 1st defendant had repaid a total sum of Rs.2,76,50,100/- to the plaintiff. It was further specifically stated that the 1st defendant also transferred money through Online Internet Banking transaction, a sum of Rs.24,25,000/- on 26.10.2016, a sum of Rs.18,00,000/- on 28.12.2016 and a sum of Rs.92,00,000/- on 13.04.2017. It was stated that the plaintiff had actually acknowledged the said transactions. It was also stated that the plaintiff had issued No Objection Certificate for theatrical release of the movie only because, there were no amounts due payable by the 1st defendant. It was also stated that, at that time, signed stamp papers and blank papers were

demanded by the plaintiff for issuing undertaking affidavit to the film distributors association and the 1st defendant had also given such signed stamp papers and blank papers. It was very specifically stated that the document dated 12.09.2019, which is the basis for the claim of the plaintiff is a forged document prepared on the signed stamp papers and signed blank papers.

11. It was also stated that Mr.Ramjee Narasiman, Proprietor of First Copy Pictures had filed a suit for recovery against the plaintiff and the 1st defendant and others in C.S.No.573 of 2019, with specific reference to the sum of Rs.92,00,000/- mentioned above which was transferred through Online Banking transaction to the plaintiff herein. It was also stated that the said suit was withdrawn as settled out of Court and an agreement was entered into by the 1st defendant with the said Ramjee Narasiman and the satellite and digital rights of the film “Thittam Poattu Thirudura Kootam” was assigned to Ramjee Narasiman. Thereafter, since the 1st defendant effected payments to Ramjee Narasiman, the satellite and digital rights were re-assigned to the 1st defendant. Therefore, it was stated that the 1st defendant had every right to enter into an agreement with the 2nd defendant granting permission for

telecasting the movie “Thittam Poattu Thirudura Kootam”. It was also stated that the documents filed by the plaintiff are self-contradictory and as an illustration, the amount mentioned in the compliant given to the Commissioner of Police by the plaintiff was pointed out and it was Rs.5,00,00,000/-, whereas, in the plaint, the plaintiff had stated that they have paid a sum of Rs.2,19,15,000/-. The discrepancies in other documents were also pointed out. It was stated that since the satellite and digital rights of the film had been assigned to the 2nd defendant, they had every right to exploit the movie by telecasting the same in their television network.

12. Even though entirely new sets of facts have been pleaded by the 1st defendant in the said application, the plaintiff had not deemed it necessary to file a counter to the said application.

13. The 2nd defendant had filed a counter in O.A.No.264 of 2020. In the said counter, quite apart from stating other facts, they have stated that the 2nd defendant as described in the plaint is not a legal entity and only an Online Streaming Platform. It was also stated that the address of the 2nd defendant given in the plaint is totally imaginary and it

was specifically stated that there is no concern of Zee functioning from that address. It was also stated that the suit does not disclose any cause of action against Zee. It was further stated that Zee was not a party to any of the transactions between the plaintiff and the 1st defendant. It was further stated that Zee, by an agreement dated 11.05.2020, with retrospective effect from 01.03.2020, had acquired exclusive right for OTT telecast and exploitation of the movie “Thittam Poattu Thirudura Kootam” and had paid a sum of Rs.45,00,000/- as consideration to the 1st defendant. It was stated that the promotional materials were released by Zee as early as on 09.07.2020 and the plaintiff had come to the Court at the last minute and that the order of injunction had put the 2nd defendant to much loss and hardship.

14. The plaintiff, the 1st defendant and the 2nd defendant also filed copies of documents to substantiate their respective claims.

15. I have carefully considered the materials on record and the arguments advanced.

16. The plaintiff has filed the suit seeking permanent injunction restraining telecast of the movie “Thittam Poattu Thirudura Kootam” in the Television / Satellite channel of the 2nd defendant. The plaintiff has not stated that they are the copyright holders nor have they stated that they have an existing right over the movie to seek an order of permanent injunction. The basis for the claim of the plaintiff is that, they had advanced a sum of Rs.2,19,15,000/- on various dates towards the production of the said movie to the 1st defendant and that the 1st defendant had repaid only a sum of Rs.1,43,95,100/- and the last date of payment was 23.03.2017. This fact is false to the knowledge of the plaintiff.

17. I called for the records in C.S.No.573 of 2019, which had been filed by Ramjee Narasiman, Proprietor of First Copy Pictures against the 1st defendant, plaintiff and eight others. In that plaint, the plaintiff therein, Ramjee Narasiman had very specifically stated that he had paid the sum of Rs.92,00,000/- on 13.04.2017, by way of RTGS from his personal account after deducting Rs.8,00,000/- towards interest charges for four months vide Yes bank bearing A/c.No.032490100004422, to the plaintiff herein, with specific reference

to the production of the movie “Thittam Poattu Thirudura Kootam”. The plaintiff had not mentioned about the said payment either in the plaint or in the affidavit filed in support of O.A.No.264 of 2020.

18. Among the documents produced, the defendant had also produced the bank statement of the plaintiff's current account in City Union Bank, Mandaveli Branch in A/c.No.CA-10049155 and the transfer of the said Rs.92,00,000/- is also reflected. Further, it has been pointed out that the plaintiff had given the No Objection Certificate for the theatrical release of the movie and such a certificate had been given only since all dues had been paid to the plaintiff. This averment is more probable as the plaintiff, at that point of time, should have raised objections that unless the amounts due are paid, they would not give the No Objection Certificate.

19. A further fact to be taken into consideration is the specific averment in the affidavit filed by the 1st defendant in support of A.No.1642 of 2020, that quite apart from the amounts mentioned paid by Ramjee Narasiman, a further sum of Rs.24,25,000/- had been paid to the saving account of Gayathri W/o. Narendran Jayavelu, a friend of the

plaintiff on 26.10.2016 and a further sum of Rs.18,00,000/- was paid by Chenciah, a friend of the father of the 1st defendant on 28.12.2016 to the current account of the plaintiff. These two facts have not been mentioned in the plaint.

20. In the complaint given to the Commissioner of Police, the plaintiff had stated that they have paid a sum of Rs.5,00,00,000/- to the 1st defendant. Documents to substantiate the said amount have not been filed by the plaintiff. As stated, the suit is for permanent injunction and the plaintiff had not crystallized the amount due. The plaintiff had called upon the Court to examine the document dated 12.09.2019, and thereafter, determine the amount due to the plaintiff. It is made clear that this is an exercise which should be undertaken only by the plaintiff.

21. The entire conduct of the plaintiff does not inspire confidence. There has been suppressions in the plaint. There has been an averment that application under Order II Rule 2 CPC is being filed seeking leave of the Court to institute a separate suit for recovery of the amount due, but, no such application had been filed, till the date of hearing the arguments in these applications. The plaintiff appears to be a fortune

hunter and has neither made out a prima facie case nor is there any balance of consideration in their favour. The plaintiff has not come to Court disclosing all material facts. The plaintiff has not stated that the 1st defendant had been promoting the release of the movie from 09.07.2020, but rather, had not given any date in the cause of action paragraph, but had only stated that the 2nd defendant had announced that the movie would be released on 24.07.2020. The order of injunction had been obtained by suppressing vital facts before the Court.

22. Therefore, I have no hesitation in dismissing O.A.No.264 of 2020 and vacating the order of interim injunction and allowing A.No.1642 of 2020.

23. I further hold that costs of Rs.50,000/-(Fifty Thousand only) payable separately to both the 1st and 2nd defendants must also be imposed. Costs to be paid on or before 28.08.2020 and a compliance affidavit to be filed before this Court on or before 02.09.2020.

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14.08.2020

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Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

Note:-

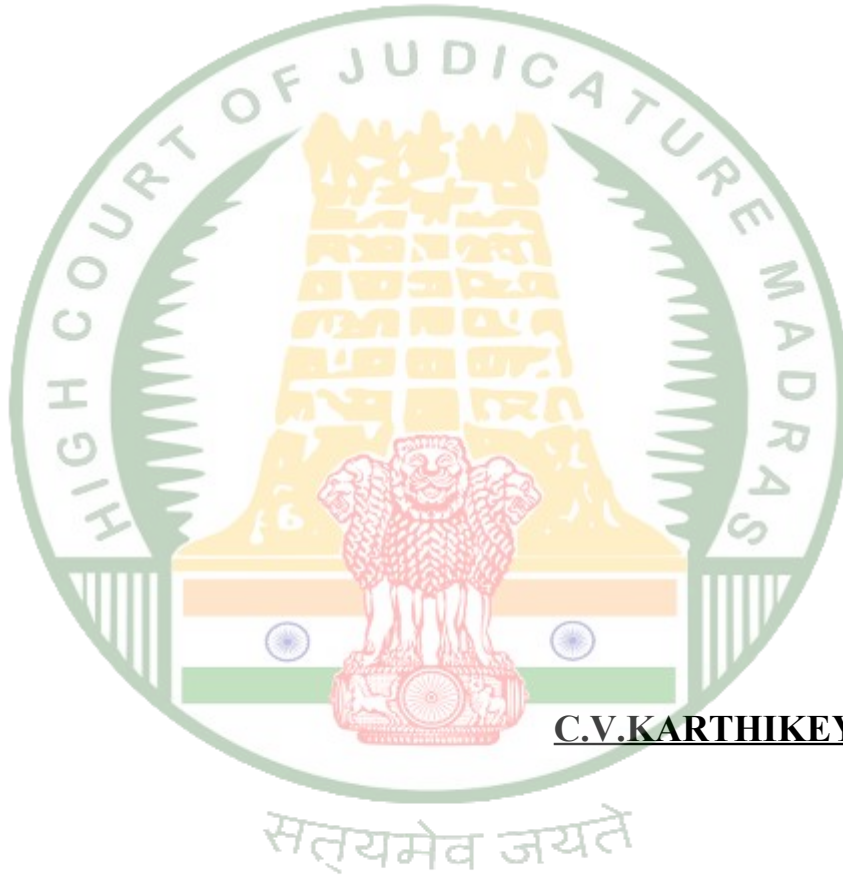
After the order was pronounced, a representation was made by the learned counsel for the plaintiff seeking a little consideration on the costs imposed.

2. It was stated that owing to the prevalent COVID-19 pandemic, it would be difficult for the plaintiff to comply with the costs imposed.

3. I heard the learned Senior Counsel for the first defendant, who also had instructions from the counsel on record and I also heard the learned counsel for the second defendant.

4. Taking into consideration, the representation made, the costs imposed is reduced to Rs.25,000/- payable to both the first and second defendants instead of Rs.50,000/- as originally directed to both the first and second defendants.

14.08.2020



C.V.KARTHIKEYAN, J.,

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O.A.No.264 of 2020 and A.No.1642 of 2020 in C.S.No.165 of 2020

Pre-delivery order made in

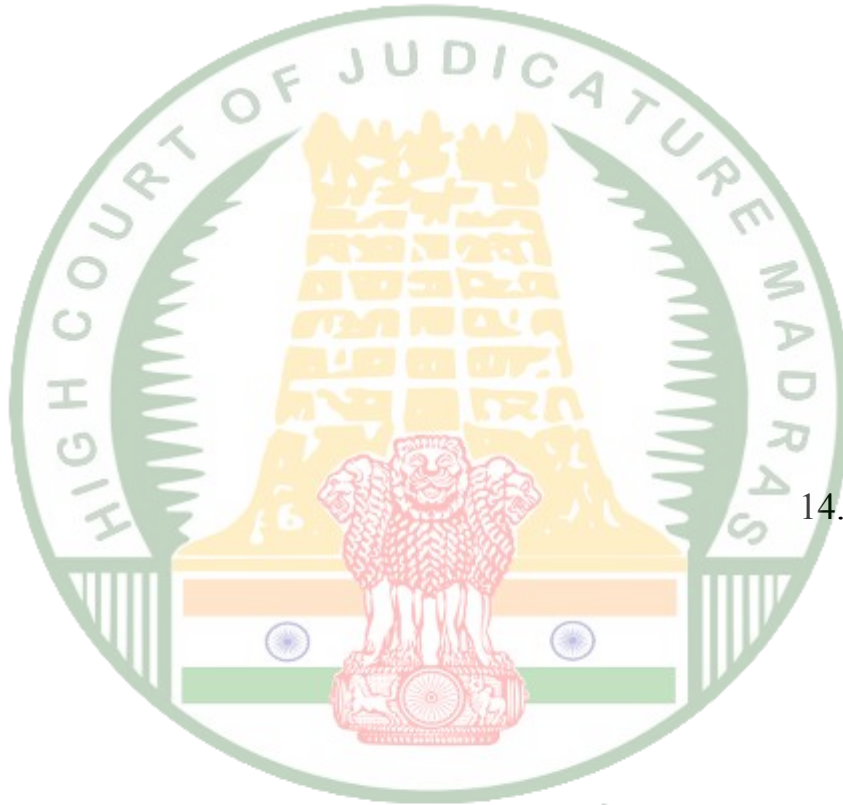
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14.08.2020

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