IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.12.2020

Pronounced on : 14.12.2020

CORAM

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

O.A.No.483 of 2020
in
C.S.No.264 of 2020

Abirami Mega Mall Private Limited,
No.4, Kasthuri Estate, 2nd Street,
Poes Garden,
Chennai - 600 086.
Represented by its Chief Executive Officer
Dr.P.Srinivasan

... Applicant / Plaintiff

Vs.

1.Clapboard Production
A partnership firm
Represented by its Partner,
Ms.Gomathi Sathyamurthi
9H, Block 3, Ceebros Shymala Garden,
Arcot Road, Saligramam,
Chennai - 600 093.

2.Vansan Movies
A partnership firm
Represented by its Partner,
Mr.S.Sutharsan
Flat No.4B, 2nd Floor,
Plot No.11, 50 feet main road,

MRK Nagar, Kolapakkam,
Chennai – 600 048.

3.YSR Films Private Limited
No.20/10, Lake Area,
6th Cross Street,
Nungambakkam,
Chennai – 600 034.
Represented by its Director,
Yuvan Shankar Raja ... Respondents / Defendants

Prayer:- This original application filed under Order XIV Rule 8 of O.S Rules read with Order XXXIX Rules 1 and 2 and Section 151 of C.P.C., praying to grant an ad interim injunction restraining the Defendants, its men, agents, or any other person acting on its behalf from directly releasing the feature film titled "Maamanidhan" in Over the Top Platforms or any such similar platforms without the completion of 60 days from its first and general theatrical release as mentioned in clause 12 of the Feature Film Distribution Agreement dated 22.06.2020, pending disposal of the Suit.

For Applicant / Plaintiff : Mr.Arun C.Mohan

For R1 / D1 : Mr.V.T.Narendiran

For R2 / D2 : Mr.G.Veerapathiran

For R3 / D3 : Mr.P.S.Raman, Senior Counsel,
For Mr.Vijayan Subramanian.

ORDER

This Application has been filed by the plaintiff in the suit, seeking an order of interim injunction restraining the Defendants from directly releasing the feature film “Maamanidhan” in Over the Top Platforms or any other similar platforms without the completion of 60 days from its first and general theatrical release.

2. The Plaintiff, Abirami Mega Mall Private Limited, has filed the suit against the Defendants, Clapboard Production, a partnership firm and Vansan Movies, another partnership firm and YSR Films Private Limited, seeking permanent injunction restraining the Defendants from directly releasing the feature film “Maamanidhan” in OTT platforms or any other similar online / internet website / application / platforms without the completion of 60 days from its first and general theatrical release as mentioned in Clause 12 of the Feature Film Distribution Agreement dated 22.06.2019 or in the alternative, for direction to the Defendants to jointly and severally and pay a sum of Rs.1,22,50,000/- being the principal advance paid by the Plaintiff under the Feature Film

Distribution Agreement dated 22.06.2019 together with interest at 18% per annum from 22.06.2019 till the filing of the suit and also for costs of the suit.

3. The 3rd Defendant, YSR Films Private Limited, was the producer of the cinematograph film "Maamanidhan". The 3rd Defendant assigned the theatrical and satellite release rights to the 2nd Defendant, Vansan Movies, which is a partnership firm. The 2nd Defendants assigned the commercial and theatrical exhibition rights of the movie on Royalty Minimum Guarantee Basis for the State of Tamil Nadu and for Pondicherry and for Chittor District, by a Letter of Arrangement dated 21.06.2019 to the 1st Defendant. The 1st Defendant entered into a Feature Film Distribution Agreement dated 22.06.2019 with the Plaintiff under which the Plaintiff had acquired the Distribution Rights to distribute, exhibit and exploit the movie in Chennai City. The 1st Defendant was responsible for supplying the required number of digital prints of the movie as censored by the Central Board of Film Certificate for exhibition to the Plaintiff. The 1st Defendant was required to take care of the entire publicity expenses. The Plaintiff had paid a sum of Rs.1,00,00,000/- as advance to the 1st Defendant on 22.06.2019. The Plaintiff was entitled to

10% (excluding tax) of the revenue. The Plaintiff was also entitled to collect the expenditure incurred and also reimburse themselves a sum of Rs.1,00,00,000/- from the collections of the movie. If there was a deficit, the 1st Defendant was requested to reimburse the deficit. Under Clause 12 of the said agreement entered into between the Plaintiff and the 1st Defendant it was provided that the 1st Defendant will have the right to screen the picture over satellite channels, Doordarshan channels at any time after completion of 60 days from its first and general release of the movie.

4. In the plaint, it had been further stated that initially it was represented that the movie would be released in the theatres in July, 2019. However the defendants informed that there was some delay. Thereafter, Covid -19 virus broke out and the Government shut all the theatres from the month of March, 2020. The Plaintiff claimed that they came to know that the Defendants are attempting to surpass the agreement with the Plaintiff and directly release the movie in OTT platforms. Claiming that this is a direct violation of Clause 12 of the agreement, the Suit had been filed seeking permanent injunction or in the alternate, for a direction to pay a sum of Rs.1,22,50,000/- together with interest at 18% per annum.

5. This Application came up for consideration on 09.10.2020 and an order of ex-parte interim injunction was granted till 28.10.2020. Thereafter, the Defendants entered appearance. The 1st and 3rd Defendants had filed the counter. The Plaintiff also filed a reply to the counter filed by the 3rd Defendant. There was a representation by the learned counsel on behalf of the 2nd Defendant.

6. In the counter filed by the 1st Defendant, it had been stated that the 1st Defendant had entered into an agreement with Plaintiff on 22.06.2019 for commercial and theatrical exhibition rights of the movie "Maamanidhan" and the movie cannot be exhibited in the theatres owing to the closure of the theatres by the State Government. They admitted that they received a sum of Rs.1,00,00,000/- from the Plaintiff and stated that the amount had been given to the 2nd Defendant and they were informed that the 2nd Defendant had also paid the amount to the 3rd Defendant.

7. As stated, the 2nd Defendant not file any counter.

8. The 3rd Defendant filed a counter stating that the 3rd Defendant was the producer of the movie "Maamanidhan" and the 2nd Defendant approached the 3rd Defendant for outright sale of the movie. An Outright Agreement dated 09.11.2018 had been entered into with the 2nd Defendant. The total consideration was fixed at Rs.10,25,00,000/- + GST. It was stated that the 2nd Defendant did not pay the total consideration but had paid only a sum of Rs.5,50,00,000/-. It was stated that there was a Clause for termination and since the 2nd Defendant had not paid the balance sum of Rs.4,75,00,000/-, the agreement was terminated by a termination notice dated 24.10.2019. It was stated that from that date, the 2nd Defendant had lost all their existing rights over the said movie. It was therefore stated that the Plaintiff who claims right from the 1st Defendant who in turn claims right from the 2nd Defendant whose agreement with the 3rd Defendant had been canceled, cannot now seek an order of injunction. It was therefore, stated that the Application should be dismissed.

9. The Plaintiff filed a rejoinder and it had been stated that the 3rd Defendant had admitted to the relationship between the parties and the

agreements entered into between them and therefore, the balance of convenience was in favour of the Plaintiff and that the Plaintiff would be heavily prejudiced and put to irreparable injury if the interim injunction was not confirmed.

10. Heard arguments advanced by Mr.Arun C.Mohan, learned counsel for the Plaintiff and Mr.G.Veerapathiran, learned counsel for the 2nd Defendant and Mr.P.S.Raman, Senior Counsel, for Mr.Vijayan Subramanian, learned counsel for the 3rd Defendant.

11. The entire controversy surrounds the theatrical release of the movie "Maamanidhan". The 3rd Defendant is the producer of the said movie. The 3rd Defendant had entered into an agreement with the 2nd Defendant on 09.11.2018, which was termed as Outright Agreement. By the agreement, the 2nd Defendant was assigned rights on an Outright Basis, the Worldwide Theatrical Rights (including India), Telugu Language Remake and Dubbing Rights, Kannada Language Remake and Dubbing Rights, Malayalam Language Remake and Dubbing Rights and other rights, which had not been retained by the 3rd Defendant. The 3rd Defendant had retained the Worldwide Satellite and Digital Rights,

which was already sold to Zee Entertainment Enterprises Limited, by agreement dated 19.04.2018 and Hindi and other North Indian Languages Dubbing and Remake Rights and Worldwide Music Rights in all Languages. The total consideration for assigning of such rights to the 2nd Defendant was Rs.10,25,00,000/- + GST. This was to be paid in three Tranches.

12. At any rate, the entire amounts have to be paid before the Worldwide Theatrical general release of the movie.

13. Clause 22 provided for Termination. Clause 22.1, related to termination of the agreement by the Assignor without notice, if the Assignee namely, the 2nd Defendant did not fulfill the payment terms as mentioned in the agreement. Clause 23 provided the manner in which the agreement is to be terminated namely, through a written notice via., Registered Post to the 2nd Defendant. It was further provided that by such termination, all rights exploited and executed further by the 2nd Defendant would stand invalidated as on the date of notice.

14.Based on the said agreement, the 2nd Defendant had entered into a Letter of Arrangement with the 1st Defendant. By such Letter of Arrangement, the 2nd Defendant was granted the commercial and theatrical exhibition rights of the movie "Maamanidhan on Royalty Minimum Guarantee Basis for the State of Tamil Nadu and for Pondicherry and for Chittor District, for a period of six months from the first and general release of the movie. The 2nd Defendant had agreed to pay a sum of Rs.10 Crores as Minimum Guarantee Amount + all royalty, printing expenses and all publicity expenses as agreed + GST. It was provided that a further agreement shall be entered into between the parties namely, the 2nd and 1st Defendants, regarding the payment terms conditions and the mode of payment and that the general release date would also be decided mutually.

15.Based on the Letter of Agreement, the 1st Defendant had entered into a Feature Film Distribution Agreement with the Plaintiff. The Plaintiff was categorized as a Distributor to distribute the film in the territories of Chennai City. Mutual rights had been granted and it was stated that an advance of Rs.1,00,00,000/- is to be paid by the Plaintiff to the 1st Defendant. The general release date was fixed as July – 2019 and if the movie had not been released not later than from the said scheduled date of the general release, then the advance would be repaid with interest. It was also stated that the 1st Defendant would have the power to screen the picture over the satellite channels, Doordarshan channels, at any time after the completion of 60 days from the first and general theatrical release of the movie.

16. Mr.Arun C.Mohan, learned counsel for the Plaintiff strongly relied on the above agreement, which the Plaintiff had entered into with the 1st Defendant and stated that the agreement was as practiced in the trade in the movie industry and therefore, the Plaintiff had an existing right to ensure that the movie is not exploited by any other mode, particularly through OTT platform till the expiry of 60 days from the first date of general release of the movie in the theatres. The learned counsel stated that the movie could not be released in the theatres in July – 2019 owing to the fact that the Censor Certificates was not provided. Thereafter, the Covid – 19 pandemic had set in and the Government had shutdown all the theatres. The learned counsel stated that the theatres are only now being opened and therefore, the denial of the rights to exhibit the movie would seriously cause loss and hardship to the Plaintiff.

17. In the counter affidavit of the 1st Defendant it had been admitted that the 1st Defendant had entered into an agreement with the Plaintiff and that the 1st Defendant had received a sum of Rs.1,00,00,000/- from the Plaintiff.

18. Mr.G.Veerapathiran, The learned counsel for the 2nd Defendant also admitted the agreements and stated that the 2nd Defendant had entered into an agreement with the 1st Defendant.

19. Both the 1st and 2nd Defendant apparently, supported the claims of the Plaintiff.

20. Mr.P.S.Raman, learned Senior Counsel for the 3rd Defendant however stood alone. He had a task in hand to refute the allegations of not only the Plaintiff but also to assert that the admissions of the 1st and 2nd Defendants would be of no avail and cannot come to the rescue of the Plaintiff.

21.The 3rd Defendant was the producers of the movie. They are the first copyright owners. They had entered into the agreement, termed as an

Outright Agreement with the 2nd Defendant on 09.11.2018. Even in the said agreement, they had retained the Worldwide Satellite and Digital Rights, which they had however already sold to Zee Entertainment Enterprises Limited by an agreement dated 19.04.2018. Under the agreement with the 2nd Defendant, the 2nd Defendant had to pay a sum of Rs.10,25,00,000/- + GST to the 3rd Defendant. It is claimed by the 3rd Defendant that the 2nd Defendant had paid only a sum of Rs.5,50,00,000/- and a sum of Rs.4,75,00,000/- was is due and payable. Since the amount was not paid, the 3rd Defendant invoked Clauses 22 and 23 of the Agreement and had terminated the agreement with the 2nd Defendant. A notice in accordance with the stipulations dated 24.10.2019 had also been issued. If the agreement is terminated, then further rights created by the 2nd Defendant would be invalid. This would automatically mean that the rights created by the 2nd Defendant in favour of the 1st Defendant and the further right created by the 1st Defendant in favour of the Plaintiff would no longer exist as the rights granted to the 2nd Defendant had been withdrawn and terminated by the 3rd Defendant. Even though in the plaint, the Plaintiff had not stated that they are aware of such termination, inclusion of the alternate prayer for recovery of money implies that they were aware of the said termination.

22. The learned counsel for the Plaintiff had relied on ***(2018) 11 SCC 508, Nabha Power Limited (NPL) V. Punjab State Power Corporation Limited (PSPCL) and Anr.,*** more particularly to paragraph 49, which is extracted below:-

> *"**49.** We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. It is this ground rule which is the basis of The Moorcock [The Moorcock, (1889) LR 14 PD 64 (CA)] test of giving "business efficacy" to the transaction, as must have been intended at all events by both business parties. The development of law saw the "five condition test" for an implied condition to be read into the contract including the "business efficacy" test. It also sought to incorporate "the Officious Bystander Test" [Shirlaw v. Southern Foundries (1926) Ltd. [Shirlaw v. Southern Foundries (1926) Ltd., (1939) 2 KB 206 : (1939) 2 All ER 113 (CA)]]. This test has been set out in B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings [B.P. Refinery (Westernport) Proprietary Ltd. v. Shire of Hastings,*

1977 UKPC 13 : (1977) 180 CLR 266 (Aus)] requiring the requisite conditions to be satisfied: (1) reasonable and equitable; (2) necessary to give business efficacy to the contract; (3) it goes without saying i.e. the Officious Bystander Test; (4) capable of clear expression; and (5) must not contradict any express term of the contract. The same penta-principles find reference also in Investors Compensation Scheme Ltd. v. West Bromwich Building Society [Investors Compensation Scheme Ltd. v. West Bromwich Building Society, (1998) 1 WLR 896 : (1998) 1 All ER 98 (HL)] and Attorney General of Belize v. Belize Telecom Ltd. [Attorney General of Belize v. Belize Telecom Ltd., (2009) 1 WLR 1988 (PC)] Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regard to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract."

23. The learned counsel stated that the Court should give a reasonable and equitable reading to the agreement between the parties to uphold business efficacy. However, by the very same observations, it had also been held that the explicit terms of the contract are always the final word with regard to the intention of the parties. The explicit words of any contract are with respect to the clauses relating to payment of consideration and, if there is default in payment of consideration, with respect to termination.

24. In the instant case, in the agreement between the 3rd Defendant and the 2nd Defendant there was a specific clause with respect to payment of consideration namely, a sum of Rs.10,25,00,000/- + GST payable by the 2nd Defendant to the 3rd Defendant in three Tranches. It is the specific case of the 3rd Defendant that only a sum of Rs.5,50,00,000/- had been paid. The 2nd Defendant had not filed a counter denying that claim or rather claiming that they had paid the entire amount. If there has been default in payment by the 2nd Defendant, then the 3rd Defendant is entitled to terminate the contract. They did so. Mr.P.S.Raman, learned Senior Counsel vehemently justified the termination. He claimed that the 3rd

Defendant's right to termination was inherent in the agreement with the 2nd Defendant. I agree.

25. Whether this act of termination was mala-fide or bona-fide is to be tested only during trial. Whether the 2nd Defendant had intention of making the entire payment and for bona-fide reasons could not make payment is again to be tested during trial. Whether there was an existing contract between the two has to be tested during trial. Whether the Letter of Arrangement dated 21.06.2019 fulfills all the requisite conditions for a valid and lawful agreement is again an issue to be tested only during trial. Whether termination of the agreement between the 3rd and 2nd Defendants would result in withdrawal of all rights granted by the 2nd Defendant to the 1st Defendant and consequently to the Plaintiff are issues which will have to be tested only on appreciation of evidence.

26. A prima facie case cannot therefore be said to have been laid by the Plaintiff. The Plaintiff is adequately protected by the inclusion of the alternate prayer in the Suit, which relates to claim of the advance paid to the 1st Defendant.

27.In view of these complicated issues which have to be determined it would only be advisable to invite the parties to come to the witness box and speak for themselves. To repeat, even in the judgment relied on by the learned counsel for the Plaintiff, the Hon'ble Supreme Court very specifically stated that "the explicit terms of a contract are always the final word with regard to the intention of the parties".

28. As understood, the explicit words in Film Industry are only with respect to the payment of consideration and making of profit. The 2nd Defendant has defaulted in making payment. They cannot claim any better right and cannot claim that the rights which they have granted further will have to be upheld. The Letter of Arrangement itself will have to stand the test of appreciation, when it is marked as a document during trial. These are issues which can be determined only when the parties come forward and adduce evidence. The Court cannot presume and assume the intentions between the parties. The Court cannot also advance or subscribe reasons for non-payment of the entire consideration by the 2nd Defendant to the 3rd Defendant. These are issues which are to the direct knowledge of the parties to the Suit. It would only be proper that they are given an opportunity to express the facts to their knowledge.

29. In view of these reasons, I hold that it would not be appropriate for the Court to extend the order of injunction and accordingly, the order granted on 09.10.2020 is interfered with and vacated. The Application is dismissed.

30. No order as to costs.

14.12.2020

smv
Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

C.V.KARTHIKEYAN, J.,
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Pre-delivery order made in

O.A.No.483 of 2020
in
C.S.No.264 of 2020

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