

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.01.2020

Pronounced on: 10.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Application No.4180 of 2019
in C.S.No.662 of 2018

M/s.Zee Entertainment Enterprises Limited,
Represented by its Director,
23-B, 1st and 2nd Floor,
Olympia Plantina, Sidco Industrial Estate,
Guindy, Chennai – 600 032.

... Applicant

/versus/

1.Mr.Nirmal Kumar Maheswari
18, Crescent Part Street,
T.Nagar, Chennai – 600 017.

2.Firoz A Nadiadwala,
Sole Proprietor,
M/s.Base Industries Group,
Plot No.20, Barkat Gulmohar
Cross Road, No.5, JVPD Scheme,
Mumbai – 400 049.

3.Oyeeee Media Ltd.,
Represented by its Director,
A201, 2nd Floor, New Link Road,
Crystal Plaza, Oshiwara, Andheri West,
Mumbai – 400 053.

4.Eros International Media Ltd.,
Represented by its Director,
901/902, Supreme Chambers,
Off. Veera Desai Road,
Andheri (West),
Mumbai – 400 053.

... Respondents

Prayer:-

Judges summons filed under Order XIV Rule 8 of O.S Rules read with Order VII Rule 11 of C.P.C.,

To reject the plaint as against the 2nd defendant.

For Applicant : Mr.Jose John for
M/s.King and Partridge

For 1st Respondent : Mr.S.Vasudevan

For 4th Respondent : Mr.Jayesh B.Dolia, for
M/s.Aiyar & Dolia

ORDER

The suit is filed for recovery of Rs.10,40,62,500/- and interest based on the Article of Agreement and Confirmation of Dues Payable to Financier dated 3/9/2013 executed by the first defendant in favour of the plaintiff.

2. The application is filed by the second defendant to reject the plaint on the ground that the plaint lack 'cause of action' and contrary to exclusive jurisdiction clause contained in the agreement dated 03/09/2013.

3. The brief facts averred in the plaint is that, the first respondent/plaintiff is a financier and distributor of films. The first defendant approached the plaintiff at Chennai for finance to produce the movie "POWER"

and borrowed loan of Rs.2 core. The first defendant gave a letter dated 01/06/2011 to the lab confirming the fact that the first respondent/plaintiff will be repaid the loan amount with interest before the Hindi feature film 'POWER' is released in Rajasthan circuit. The production of the film 'POWER' did not progress much and could not be released and the first defendant could not pay the money borrowed. So, after fresh negotiation, the plaintiff and the first defendant entered into an Article of Agreement on 03/09/2013 as well as confirmation of dues modifying the repayment clause by agreeing to pay a total sum of Rs.5,39,61,250/- by 10/05/2015 instead of two months prior to the release of the feature film "WELCOME BACK".

4. Without paying the dues payable to the plaintiff, the first defendant tried to sell its rights in the movie 'WELCOME BACK' to third parties. A public notice was published in the Trade Magazine "SUPER CINEMA" issue dated 04/07/2015 by advocate Mr.R.M.Azim without disclosing the name of his client that, his client intend to secure exclusive assignment of all copy rights, performers rights, title and all other rights in the Hindi Feature Film "WELCOME BACK" excluding the audio rights for exploitation, exhibition, distribution, broadcasting and communications thereof for the territory of India for a term of 10 years from the date of theatrical release of the said film. On seeing this public notice, the plaintiff issued his objections letter dated 08/07/2015 through his lawyer. The first defendant, thereafter agreed to pay the total dues

of Rs.5,50,00,000/- to the plaintiff as follows:-

"a). Rs.2,50,00,000/- to be paid by the 3rd defendant on or before 05.08.2015.

b). Rs.50,00,000/- to be paid by the 1st defendant on or before 15.09.2015.

c). Balance sum of Rs.2,50,00,000/- to be paid by the 1st defendant on or before the movie release of "HERA PHERI-3, produced by the 1st Defendant."

5. Pursuant to this agreement, the first defendant instructed the 4th defendant through his letter dated 27/07/2015 to pay a sum of Rs.2,50,00,000/- directly to the plaintiff on behalf of the first defendant. Induced by the agreement, the plaintiff consented for release of the Hindi feature film "WELCOME BACK". While so, the 2nd defendant expressing his intention to acquire exclusive rights (linear and non-linear) of the said film gave a public notice in the website "completecinema.co.in" and trade magazine "Complete Cinema" on 28/11/2015. The plaintiff immediately submitted its written objections on 01/12/2015. Despite objection of the plaintiff, the 2nd defendant issued another public notice in the same website and trade magazine on 19/12/2015 circulated in Chennai directing all claims in respect of the Hindi Feature Film "WELCOME BACK" to be made only to the 3rd and 4th

defendants and informed having acquired all linear (exclusive) and non linear (non exclusive) exploitation rights of the film from 4th defendant, its proposal to telecast the film on its TV channel "ZEE CINEMA" on 26/01/2016.

6. Claiming that, having full knowledge of the plaintiff's right under the agreement dated 03/09/2013 and letter dated 27/07/2015, the defendants 2 to 4 have acquired the rights in the Hindi feature film "WELCOME BACK" and the said transactions are not bonafide transaction, the present suit is filed narrating how cause of action arose at Chennai.

7. The 2nd defendant who claims exhibition and exploitation right of the said film acquired through the 4th defendant, has filed this application to reject the plaint claiming that the plaintiff has not established any cause of action arising within the territorial jurisdiction of this Court. More particularly, referring the document dated 03/09/2013 which is the Article of Agreement entered between the plaintiff and the first defendant in respect of the movie "WELCOME BACK", the applicant contends that parties have agreed that in case of any dispute or differences, the same shall be referred to jurisdiction of Mumbai Courts only. When the exclusive jurisdiction is conferred to Mumbai Courts and the defendants including the 2nd defendant are carrying on business within the territorial jurisdiction of Mumbai Courts, suit filed in Chennai stating that the branch office of the 2nd defendant is at Chennai will not confer

jurisdiction to this Court, since, none of the transactions stated in the plaint took place within Chennai.

8. It is alleged in the affidavit filed in support of this application that the plaintiff has misled the Court and filed the suit simply to drag the defendants who are based in Mumbai to Chennai for convenience of the plaintiff alone. Lack of jurisdiction and exclusive jurisdiction clause contained in agreement dated 03/09/2013 are pegged for rejecting the plaint.

9. The learned counsel for the applicant relying upon the judgment of the Calcutta High Court rendered in ***Isha Distribution Housing Pvt Limited -vs- Aditya Birla Nuva Ltd and others*** (AIR 2016 Cal 332) would submit that by the reason of forum selection clause contained in the Articles of Agreement, the situs of the action on breach of the said agreement shall only be the forum agreed by the parties and none other forum. In this case, the situs of action shall exclusively be MUMBAI Courts and not the Court in Chennai.

WEB COPY

10. The learned counsel for the applicant also relies on the judgement of the Hon'ble Supreme Court in ***T.Arivanandam -vs- T.V.Satyapal*** reported in ***(1977 (4) SCC 467)*** to buttress his submission that the first respondent/plaintiff by clever drafting has created the illusion of a

cause of action but reading of the plaint manifestly does not disclose any right to sue.

11. Per contra, the learned counsel for the first respondent/plaintiff reading out the averments made in the plaint submitted that, lien was created upon the feature film WELCOME BACK for the loan advanced to the first defendant. The 4th defendant agreed to pay Rs.2,50,00,000/- towards part discharge of the loan but sold the rights to 2nd defendant. The 2nd defendant channel has telecasted the film in its channel "ZEE CINIMA" on 26/01/2016 which was viewed through out the world including Chennai. The 2nd defendant though having its registered office at Mumbai, it is also having office at Chennai. The first respondent/plaintiff has demonstrated in para 25 of the plaint as to how the cause of action arise within the territorial jurisdiction of this Court. Therefore, the suit laid before this Court is maintainable.

12. The learned counsel for the first respondent/plaintiff would also submit that the fourth defendant has filed his written statement. The other defendants have not questioned the jurisdiction of this Court. Therefore, leave cannot be revoked partly as against the applicant/2nd defendant alone. To buttress this submission, he relies on the judgment of the Hon'ble Supreme court rendered in **Madhav Prasad Aggawal and another Vs. Axis Bank Ltd** (2019(7) SCC 158).

13. The cause of action capsulised in paragraph No.25 of the
plaint, reads as below:-

25. The cause of action arose at Chennai, where the plaintiff financed a sum of Rs.2,00,00,000/- to the 1st Defendant for the Hindi Film "Power", where the monies are repayable, on 06.06.2011 when the Film Lab issued a letter for confirming the lien for the Hindi Film "Power" at Chennai, where in order to repay the money with interest due on 03.09.2013 when the 1st Defendant and Plaintiff entered into Articles of Agreement and continuation of Agreement by which the 1st Defendant undertook to pay the Plaintiff at Chennai, a sum of Rs.5,39,61,250/- before the release of Hindi feature Film "WELCOME BACK", when the 1st defendant issued several post dated cheques in favour of the plaintiff for the said amount at Chennai, when the 1st defendant did not pay the said amount but issued a public notice on 01.07.2015 in Trade Magazine "Super Cinema" circulated at Chennai, where the plaintiff issued a objection through his lawyer letter dated 08.07.2015 setting out the claim of the plaintiff and annexing the documentary proof of his claim, on 27.07.2015 the 1st defendant issued two letters to the plaintiff at Chennai agreeing to pay the total dues of Rs.5,50,00,000/- by three instalments and the 3rd defendant directing it to pay the plaintiff a sum of Rs.2,50,00,000/- on or before 05.08.2015 and issued post dated cheques at Chennai dated 25.08.2015 and 15.09.2015 to enable release of the Hindi feature film "WELCOME BACK" in

theatres, where the said post dated cheques were returned and dishonoured at Chennai, where the 1st defendant issued a legal notice dated 27.08.2015 at Chennai, on 04.09.2015 when the Hindi feature film "WELCOME BACK" was released at Chennai and other places without paying the dues to the Plaintiff, on 22.09.2015 when the 1st defendant substituted the dishonoured cheque with another cheque dated 25.08.2015 for Rs.2,25,00,000/- and paid a part payment at Rs.25,00,000/- to the plaintiff at Chennai, where the Plaintiff came to know that the 1st defendant seeking to sell the Satellite rights of the Hindi feature film, on 30.10.2015 the plaintiff caused a public notice in the Trade Magazine "Complete Cinema" informing the public that it had a first lien on the Satellite rights of the said film, on 28.11.2015 when a public notice was issued by the 2nd defendant in the website "completecinema.co.in" and the Trade Magazine "Complete Cinema" circulated at Chennai, informing that the 2nd defendant is in the process of acquiring of the Hindi feature film "WELCOME BACK" and invited objection within 7 days from persons having claims etc., on the film, on 24.11.2015 and 26.11.2015 when the two cheques of the 1st defendant were returned dishonoured at Chennai, on 01.12.2015 the plaintiff submitted its written objections by a legal notice enclosing the agreement dated 03.09.2013 and letter dated 27.07.2015, on 19.12.2015 when another public notice was issued by the 2nd defendant in the same website and Trade Magazine circulate at Chennai directing all claims to be made only the 3rd and 4th defendants by persons having claim over the Hindi feature film "WELCOME

BACK” and proposed to telecast the said film on its channel “ZEE CINEMA” at Chennai and other places on 26.01.2016, where the Plaintiff issued a legal notice dated 16.12.2015 at Chennai and subsequently.

Clause 12 of the Letters Patent reads as below:-

12. Original jurisdiction as to suits:- *"And We do further ordain that the said High Court of Judicature at Madras, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of property the sued for does not excited hundred rupees."*

14. To maintain the suit within the jurisdiction of this Court, Clause 12 of Letters Patent mandates, either the subject property should be within the jurisdiction of this Court or the defendant should ordinarily carry on business

within the jurisdiction of Chennai or cause of action or part cause of action should have arisen within the jurisdiction of this Court.

15. The suit is filed for recovery of money advanced for commercial purpose namely production of feature film titled as "Welcome Back." While the plaintiff and the 1st defendant entering into an agreement, it has been expressly agreed by them that all the dispute shall be referred to jurisdiction of Mumbai Courts.

16. For laying the suit at Chennai, the plaintiff claims that he is carrying on business at Chennai and the 2nd defendant having its branch at Chennai. The movie titled as "Welcome Back" was telecasted by the 2nd defendant was seen by viewers at Chennai.

17. As pointed by the Learned Counsel for the 2nd defendant that, the lab letter was issued at Mumbai. The Agreement and confirmation of dues are all executed at Mumbai.

18. In this case, though the 2nd defendant's Branch Office having at Chennai, the main registered Office is at Mumbai. All the defendants are carrying on business only at Mumbai. The 2nd defendant Branch Office at Chennai, had no privity of contract with the plaintiff to give cause of action.

"Cause of action" involves several material facts. The facts which are not material could not constitute cause of action. The cause of action has to be seen in the context of narration of facts as found in the plaint. Choice of forum to institute a suit, though may be available to the plaintiff, when the plaintiff himself by a written agreement with the 1st defendant had agreed for the exclusive jurisdiction to the Court at Mumbai, then the plaintiff cannot involve in forum hunting. This Court is of the view that, the contention raised by the 2nd defendant is sustainable.

19. It is well settled legal position that cause of action is a bundle of material facts which are necessary for the plaintiff to prove his case in order to entitle him to succeed in a given case. However, each and every fact pleaded in the plaint does not ipso facto lead to conclusion that those facts give rise to cause of action within the Court's territorial jurisdiction. The facts pleaded must have a nexus or relevance so as to show that the Court where the suit has been filed is the proper Court of jurisdiction. Facts, which have no bearing with the *lis* or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction. ***In M/s.Kusum Ingots and Alloys Ltd. v. Union of India and Anr: (2004) 6 SCC 254*** Supreme Court observed that if a small fraction of cause of action accrued had arisen within the territorial jurisdiction of a particular High Court, it was not bound to entertain the petition. It would be sufficiently empowered to refer the petition

to the Court where substantial cause of action had arisen and it would be more convenient to adjudicate the matter.

20. Public notice published in Trade magazine "Complete Cinema" circulated in Chennai is not an integral part of cause of action. For that purpose, this Court rely upon the judgment in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others** reported in **[(1994) 4 SCC 711]**, which has observed:-

"Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made representations demanding justice from Calcutta on learning about the rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to the tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hazira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta and

received a reply thereto at Calcutta would not constitute an integral part of the cause of action”

21. The plaint returned to be presented before the Court at Mumbai, which has jurisdiction. In the result, the Application filed for revoke the leave is allowed.

10.01.2020

Index :Yes
Speaking Order/Non-speaking order

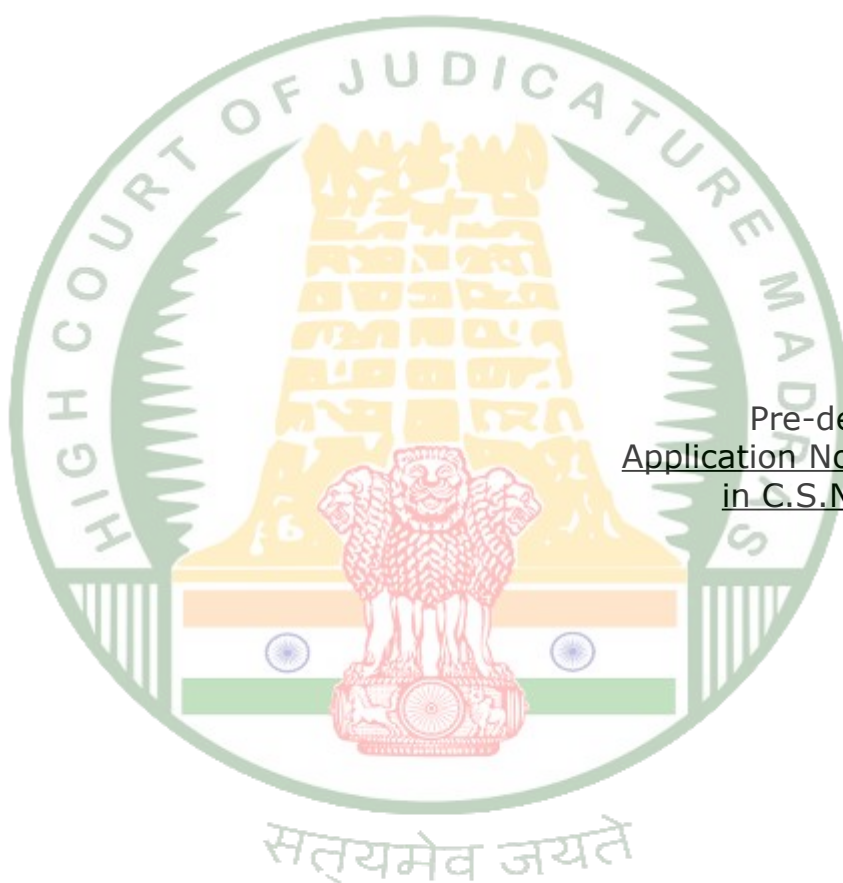
bsm



WEB COPY

Dr.G.Jayachandran,J.

bsm



Pre-delivery order in
Application No.4180 of 2019
in C.S.No.662 of 2018

WEB COPY

10.01.2020