

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 19TH DAY OF NOVEMBER 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

O.A. Nos.540 and 541 of 2020

In the matter of Arbitration &
Conciliation Act 1996
and
Dispute arising under the First
Copy Agreement between
M/s.Aadnah Arts and Thirupathi
Brothers Films Media (P) Limited
and Mr.N.Lingusamy dated
03.11.2015.

M/S.AADNAH ARTS,
SOLE PROPRIETOR
MR.KE. GNANAVELRAJA,
S/o.K.Eswaran, Block No.140,
Door No.13/6, 2nd Floor,
Thanikachalam Road,
T.Nagar, Chennai - 600 017.

..Applicant

-Vs-

1. M/S.THIRRUPATHI BROTHERS FILM MEDIA (P) LTD.
Represented by its Director Mr.Subash Chandra Bose,
Having Registered office at No.16,
Lamech Street, Janaki Nagar,
Valsarawakkam, Chennai - 600 087.

2. MR.N.LINGUSAMY,
Having Registered office at No.16,
Lamech Street, Janaki Nagar,
Valsarawakkam, Chennai - 600 087.

3. MR.SUBASH CHANDRA BOSE

Director of M/s.Thirupathi Brothers Film Media (P) Ltd,
Having Registered office at No.16,
Lamech Street, Janaki Nagar,
Valsarawakkam, Chennai - 600 087.

..Respondents

Original Application praying that this Hon'ble Court be pleased to pass an order of injunction restraining the Respondents or their assignees or their agents or anyone claiming under them from selling/assigning/licensing/ telecasting/streaming/exhibiting other language rights of the movies produced/acquired viz Deepavali, Pattalam, Kumki, Ivan Veramadiri, Goli Soda, Manjapai, Vazhaku En 18/9, Saturanga Vettai, Anjaan, Vannajigina, Uthama Villain, Rajnimurugan.

O.A.No.541 of 2020:

Original Application praying that this Hon'ble Court be pleased to pass an order of injunction restraining the Respondents or their assignees or agents or anyone claiming under them from transferring/assigning/licensing/ selling/releasing the movie "IDAM PORUL YAEVAL" starring Vijay Sethupathi, Vishnu Vishal and others directed by Seenu Ramasamy, "NAAN THAAN SIVA" starring Vinoth,

RARAJASEKAR” starring Mathivanan, Subiksha, Sruthi Hariharan and others directed by Balaji Sakthivel produced by the Respondents 1 to 3 in any medium or platform including the Theatrical Exhibition, over the Top (OTT) Platform, Digital Mediums, online servers, Satellite Channels and platforms or through any other modes or mediums.

These Original Applications coming on this day before this court for hearing the court made the following order:

Reserved on : 11.11.2020

Delivered on : 19.11.2020

ORDER

The applicant, a film producer, distributor and promoter has invoked the jurisdiction of this Court under Section 9(ii)(d) of the Arbitration and Conciliation Act, 1996 (herein after called the 'Act') seeking:

a) OA.No.540 of 2020

An injunction restraining the respondents or their assignees or their agents or anyone claiming under them from selling/assigning/licensing/telecasting/streaming/exhibiting other language rights to the movies which are detailed in the Judge's summons.

b) OA.No.541 of 2020

an injunction restraining them from releasing the Movies, *Idam Porul Yaeval, Naan Thaan Siva and Rarajasekar*.

2. Since a common affidavit has been filed for both the applications, a common order is being pronounced.

3. The applicant has approached this Court on the following facts:

3.1. It is his case that the first respondent, which is a Private Limited Company, had been started by the second respondent and his brother, the 3rd respondent. The applicant would submit that originally the respondents have produced the movie 'Rajini Murugan' for which the applicant had entered into a Deed of Assignment dated 19.01.2015, in and by which, he had obtained the Exclusive Theatrical Exploitation rights throughout the State of Tamil Nadu. The said right had been purchased by the applicant by paying a sum of Rs. 10,00,00,000/- (Rupees Ten Crores Only). The Assignment Deed provided a Schedule of payment and according to the applicant he had adhered to the said Schedule. Meanwhile the second respondent had run into a huge financial loss, as a result of which, his debtors were not allowing him to release the movie 'Uthama

Villain' starring Mr. Kamal Haasan. The first respondent had approached the applicant with a request to help them out of the problem by extending a financial help. The applicant therefore funded another sum of Rs.10,00,00,000/-(Rupees Ten Crores Only) to the first respondent on 01.05.2015 and a Letter of Understanding was entered into on the said date. As per this Understanding, a sum of Rs. 9,00,00,000/- (Rupees Nine Crores only) was to be utilised for the movie 'Uthama Villain' and the remaining Rs.1,00,00,000/- (Rupees One Crore only) was to be utilised as a remuneration to the second respondent for writing and directing the movie under the applicant's banner with Mr. Kamal Haasan in the lead role. In fact, a Letter of the same date was given by the respondents stating that M/s.Raajkamal Films International had informed them that Mr. Kamal Haasan would be available for story discussion in the second week of May, 2015. On the basis of this assurance, a sum of Rs.10,00,00,000/-(Rupees Ten Crores only) was disbursed. Since the respondents had not kept up their promise, the applicant had filed a suit before the Commercial Division of this Court in CS (Commercial Division) No.701 of 2018, for recovering a sum of Rs.11,20,00,000/-(Rupees Eleven Crores Twenty Lakhs only) and the respondents have also entered appearance and filed their written statement. The said suit is pending Trial.

3.2. On 01.05.2015, the respondents had given another Letter of Understanding in respect of the movie 'Rajini Murugan' for which the applicant had paid a consideration of Rs.9,00,00,000/- (Rupees Nine Crores only) for its distribution throughout the State of Tamil Nadu out of the agreed sum of Rs.10,00,00,000/-. The said sum of Rs.9,00,00,000/- its detailed to have been paid in the following manner.

a) a sum of Rs.6,35,00,000/- (Rupees Six Crores Thirty five Lakhs only) was paid directly to the respondents by the applicant.

b) a sum of Rs. 1,40,00,000/- (Rupees One Core Forty Lakhs only) was paid to M/s. Mega Super Good Films towards the money owed by the respondents to the said M/s. Mega Super Good Films.

c) Rs. 1,00,00,000/- (Rupees One Crore only) paid by the applicant to M/s. EROS for and on behalf of the respondents.

d) Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) towards advertisement charges to M/s. Channel Advertisement Agents for and on behalf of the respondents.

3.3. Meanwhile, the respondents had created several commitments in respect of the theatrical rights of the Movie 'Rajini Murugan' after it was assigned to the applicant and therefore they had requested the applicant to relinquish the rights that the applicant had acquired in respect of the said

Movie so as to enable them to release it. In pursuance of this Agreement, a Memorandum of Understanding and a First Copy Agreement, both dated 03.11.2015 were entered into between the applicant and the respondents, in and by which, the earlier Agreement dated 19.01.2015 was cancelled and the same was substituted to produce and deliver on First Copy basis of the Bilingual film starring Mr. Karthi Sivakumar in Tamil and Telugu for a valuable consideration of Rs.21,50,00,000/- (Rupees Twenty One Crore Fifty Lakhs only). The sum of Rs.9,00,00,000/-, which was already paid for the movie 'Rajini Murgan' was adjusted towards this consideration of Rs.21,50,00,000/-. Though the intention of the parties was to announce the production of the new movie immediately, however, on account of the pre-occupation of the second respondent with his previous films and on his specific request an Addendum dated 28.11.2015 was entered into in respect of the Agreement dated 03.11.2015.

3.4. The applicant would submit that the respondents have failed to perform their commitments undertaken by them under the various agreements which are:

a) producing of Movie on behalf of the applicant having Mr. Kamal Haasan in the lead role.

b) Writing, directing and producing on behalf of the applicant a Movie starring Mr. Karthi Sivakumar.

3.5. Though the respondents had undertaken to commence the shooting of the movie with the actor Karthi Sivakumar in the year 2016, however a letter dated 04.06.2016 was issued by the respondents requesting the applicant to wait till the conclusion of the shooting of the Movie, 'Sandakozhi 2'. The respondents had also categorically admitted the promise that the new movie starring actor Karthi Sivakumar would be commenced as soon as Santhakozhi 2 is completed.

3.6. The applicant would submit that as per the terms of the Addendum Agreement dated 28.11.2015, the respondents had agreed that if they fail to commence the production of the film starring Karthi Sivakumar by July 2016 or if they fail to get his confirmation letter, then in the event of the announcement of any other film/another activity done by the 3rd respondent like production, direction, releasing and acquiring of rights in any other film, the applicant would have a first charge/lien on all rights in respect of the subsequent films to be produced/directed/acquired by the first respondent.

3.7. In light of this stipulation, the applicant would submit that they have a right over all the films, movie production, etc., directed by the respondents and which are detailed in the application OA.No.540 of 2020.

3.8. Since the respondents were not coming forward to comply with the terms of the Agreement and as they owed a sum of Rs. 21,40,00,000/- (Rupees Twenty One Crores Forty Lakhs only) to the applicant, the applicant was constrained to invoke the Arbitration Agreement contained in the First Copy Agreement dated 03.11.2015.

3.9. The applicant would submit that the respondents 1 to 3 had acknowledged the liability to the tune of Rs.35,00,00,000/- (Rupees Thirty Five Crores only) and had entered into a Deed of Personal Guarantee and Indemnity dated 26.11.2015. The above sum has been arrived at as follows:

- a) Rs.10,00,00,000/- to the applicant for releasing of the movie 'Uttama Villain'
- b) Rs. 9,00,00,000/- paid for the movie 'Rajini Murugan'
- c) Rs. 14,00,00,000/- as Personal Guarantee and Indemnity for complying with the terms of the Agreement and Letters of Understanding dated 1.05.2015, 03.05.2015, 03.11.2015 and 26.11.2015.

3.10. The applicant would submit that without settling their dues, the respondents are taking steps to sell the movie 'Idam Porul Yaeval', 'Naan Thaan Siva' and 'Ra Rarajasekar' to an online platform. The third respondent tweeted that the movie would also have a theatrical release post the lockdown. This is a total violation of the obligation cast upon the respondents under the Agreement dated 03.11.2015 and the Addendum dated 28.11.2015. Therefore, the applicant would seek for an order of injunction.

4. Similarly the applicant has come to know that the respondents intent to produce/acquire the following movies:

- a) *Deepavali*
- b) *Pattalam*
- c) *Kumki*
- d) *Ivan Veramadiri*
- e) *Goli Soda*
- f) *Manjapai*
- g) *VazhakuEn 18/9*
- h) *SaturangaVettai*
- i) *Anjaan*
- j) *Vannajigina*

k) Uthama villain

l) Rajnimurugan

which they are trying to sell in an other language. Therefore the respondents have to be injuncted as prayed for.

4.1. The respondents have filed a counter affidavit inter alia contending that though an Agreement for Rs.10,00,00,00/- was entered into in respect of the Theatrical Exploitation of the Movie 'Rajini Murugan', however, in reality, only a sum of Rs.4,85,00,000/- was paid by the applicant to the respondents. The respondents would submit that it is the applicant who had approached them for the Distribution Rights for the film 'Uthama Villian' and the allegation that the respondents had approached him is absolutely false.

WEB COPY

4.2. The respondents would contend that the applicant had obtained their signature in several blank stamp papers/blank letter heads and blank papers and it is these blank papers which are now being utilised to create the Letters/Agreements. The Memorandum of Understanding and First Copy

the respondents and the respondents would submit that the same is totally false.

4.3. The respondents would submit that no amount whatsoever has been paid by the applicant to the respondents as alleged. The Addendum Agreement dated 28.11.2015 is also a fabricated document, which the applicant created making use of the blank stamp papers. The respondents would also deny having acknowledged their liability of Rs. 35,00,00,000/- and the alleged Deed of Personal guarantee and Indemnity dated 26.11.2015 in which the same is incorporated. The respondents would submit that the entire case has been filed on the basis of the forged and fabricated documents and that the applicants are guilty of approaching the Court with unclean hands.

4.4. They would submit that even according to the fabricated Agreement, the applicant has a right only to the future movies and not to the movies, which have already been produced and directed. Therefore, on these grounds, the respondents had sought to have the applications dismissed.

5. When the matter had come up on 22.10.2020, this Court had directed notice to the respondents. The respondents have also entered appearance through their counsel after receiving notice from this Court. They have also filed their counter statement which has been briefly extracted supra:

6. Mr. V. C. Janardhanan, learned counsel, who addressed the court for and on behalf of the counsel for the applicant, would apart from reiterating the contents of the application, submit that under Clause iv (d) of the Addendum Agreement dated 03.11.2015, the respondents have acknowledged the right of the applicant to have a lien/first charge in respect of future productions post July 2016 and it is on account of this Clause that the applicant has moved this Hon'ble Court.

6.1. He would further submit that as regards the payments and undertaking to produce the films Starring Karthi Shivakumar, the respondents who had signed on the dotted lines are now reneging on their commitments. He would draw the attention of the Court to the various correspondence issued by the applicant and respondent. In the email dated 28.08.2015 issued by the first respondent, the first respondent has promised

11.02.2015 which has been terminated before the release of the Movie Rajni Murugan. He would also draw the attention of the Court to the balance sheet entries of the respondents where the respondents have themselves acknowledged the liability due to the applicant herein. He would also point out the letter dated 04.06.2016 wherein the first respondent had confirmed their liability to repay the sum of Rs. 9,00,00,000/- together with interest at the rate of 36 per cent till the date of announcement of the untitled film of Karthi Sivakumar. He would therefore submit that despite such a categorical admission, the said amounts have not been settled, therefore the injunctions as sought for should be ordered.

7. Per contra, Mr. A.R.L. Sundaresan, learned Senior Counsel appearing on behalf of the counsel for the respondents, would submit that all the agreements, which are the basis of the respondents' claim, are fabricated. It is on the basis of such fabricated documents that the entire claim has been based. He would further submit that the sum of Rs. 9,00,00,000/- had been paid in the year 2015 and the claim made in the year 2020 is clearly barred by limitation. Therefore, on this ground the applications deserve to be dismissed. He would further submit that the very same cause of action, as pleaded in these applications, is raised in the suit

suit. Therefore, on the ground of re-litigation also the applications deserve to be dismissed.

7.1. The learned Senior Counsel would submit that as per the respondents, the sum of Rs.9,00,00,000/- has not been paid in full and therefore the claim of Rs. 9,00,00,000/- is contrary to the admitted facts.

7.2. He would submit that even as per the balance sheet entry of the respondent only a sum of Rs. 6,08,88,111/- for the year ending 31.03.2019 was shown as outstanding against Distribution Rights for the year ending 31.03.2019 which would clearly show that the claim of Rs. 9,00,00,000/- is totally false.

7.3. The learned Senior Counsel would therefore submit that a person seeking injunction should come to Court with clean hands and the applicant having suppressed the true facts, is not entitled to the equitable relief of injunction.

8. Heard the counsel and perused the papers.

9. The main objection to the claim is:

- a) Documents have been fabricated
- b) Amounts, as claimed have not been paid.

9.1. Coming to the above defences regarding the fabrication of documents and non payment of amounts a narration of the following sequence of events is necessary to appreciate the above argument.

9.2. According to the applicant, the first agreement that was entered into between the applicant and the respondents was the Deed of Assignment dated 19.01.2015 in respect of the Movie 'Rajni Murgan'. In the affidavit filed in support of the applications, the applicant would submit that under the Deed of Assignment, a Schedule of payment was mentioned and the applicant had made the payments as per the said schedule.

9.3. On perusing the Deed of Assignment dated 19.01.2015, it is seen that payment had to be made in the following manner.

- a) Rs.4,00,00,000/- on the date of the signing of the Agreement.
- b) Rs.5,00,00,000/- upon mutually agreed dates as and when required

for the progress and the completion of the film.

- c) Rs.1,00,00,000/- before the theatrical release of the said film .

9.4. The second Agreement is the Letter of Understanding dated 01.05.2015 entered into between the applicant and the first respondent represented by the third respondent. In this agreement, the applicant would submit that a total sum of Rs. 7,35,00,000/- has been paid on various dates on mutually agreed instalments. This Letter of Understanding is in respect of the Distribution Agreement for the film 'Rajni Murugan'. There is another Letter of Understanding dated 03.05.2015 once again entered into between the applicant and the first respondent represented by the third respondent and the second respondent as a Confirming Party. This agreement also relates to the Distribution Agreement with reference to the Tamil Film Rajini Murugan. In this Agreement, it is stated that a sum of Rs. 8.75 Crores has been transferred on mutually agreed instalments and a sum of Rs. 25 lakhs has been set aside for repayment to Channel Advertisement Agency. There is no pleading as to when an additional sum of Rs. 1,40,00,000/- has been paid after 01.05.2015, particularly when under a letter dated 30.04.2015, which the first respondent had addressed to the Super Good Films Private Limited, and which has been counter signed by the applicant, the first respondent had informed the said Super Good Films Private Limited that the sum of Rs.1,40,00,000/- would be paid by the applicant to them. The respondent has not produced any document

whatsoever to show that this sum of Rs.1,40,00,000/- has been paid by them to Super Good Films Pvt. Ltd. or the sum of Rs. 25 lakhs has been paid to the Challenge Advertisement Agency. Therefore, in the absence of any document to show that a sum of Rs. 9 Crore had been paid by the applicant to the respondents, there is an element of doubt about the said payment. This doubt is further confirmed on a reading of the letter dated 03.11.2015 said to have been executed by the second respondent, in and by which, the following schedule has been given.

"1. A Schedule payment of Rs.4,00,00,000/- (Rupees Four Crores only) was paid to Thirupathi Brothers on 19th of January 2015;

2. A Schedule payment of Rs.50,00,000/- (Rupees Fifty Lakhs only) was paid to M/s.Thirupathi Brothers on 31st of January 2015;

3. A Schedule payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) was paid to M/s.Thirupathi Brothers on 23rd of March 2015;

4. A Schedule payment of Rs.10,00,000/- (Rupees Ten Lakhs only) was paid to M/s.Thirupathi Brothers on 26th of March 2015;

5. A Schedule payment of Rs.1,50,00,000/- (Rupees One Crore and Fifty Lakhs only) was paid to M/s.Thirupathi Brothers on 30th of April March

2015;

6. *A Schedule payment of Rs.1,40,00,000/- (Rupees One Crore and Forty Lakhs only) was paid to Super Good Films rep. By Mr.RB Choudary on behalf of M/s.Thirupathi Brothers;*

7. *A Schedule payment of Rs.1,00,00,000/- (Rupees One Crore only) was paid over the part of lien charges to Eros for the film Uthama Villain on behalf of M/s.Thirupathi Brothers;*

8. *A Schedule payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) was paid to Challenge Advertising Agency on behalf of M/s.Thirupathi Brothers;"*

9.5. Therefore as per the above schedule, as on 30.04.2015, a sum of Rs.6,75,00,000/- had been paid in instalments, whereas the Letter of Understanding dated 01.05.2015 would state that a sum of Rs. 7,35,00,000/- had been paid on 01.05.2015. Thereafter the letter dated 03.05.2015 would state that a sum of Rs.8.75 Crores has been paid. Therefore, there is a lot of ambiguity with reference to the amount that is actually paid by the respondents to the applicant. This also raises a doubt about the aforestated documents. The contents of the affidavit regarding payment does not also correspond with the payments detailed in the various documents.

10. Therefore on a conspectus of the above, it is clear that the applicant has not made out a prima facie case for the grant of the orders of injunction. Consequently OA.Nos.540 and 541 of 2020 stand dismissed.

Sd/.P.T.A.J.
19.11.2020

//Certified to be a true copy//

Dated this the th day of 2020.

su.01.12.2020

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



WEB COPY