

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF FEBRUARY 2020

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A. No.9510 of 2019

and

C.S.No.299 of 2019

STAR MUSIC

New No.14, Old No 46/1,
Kannadasan Street,
T. Nagar, Ch-17

Represented by its

Partner, Mr. Poonam Chand

...APPLICANT/PLAINTIFF

-VS-

THENANDAL STUDIO LTD

No.15 Old No.8, Lake Area, 5th Street,
Nungambakkam,
Chennai-600 034

Also at:

No.8 Eighty Feet Road,
Saligramam, Devar Thottam,
Chennai 600 093.

..RESPONDENT/DEFENDANT

A.No.9510 of 2019:

Application praying that this Hon'ble Court be pleased to reopen the Applicant/Plaintiffs evidence and to allow additional witness on behalf of Applicant/Plaintiff.

C.S.No.299 of 2019:

a. Civil Suit praying that this Hon'ble Court be pleased to granting a permanent injunction restraining the defendant from uploading the video of the 'Mersal' audio launch event available at <https://www.youtube.com/watch?v=LTXfSTfz3m8&t=280s> on YouTube or any other internet platform.

b. To directing the defendant to remove the video of the 'Mersel' audio launch event available at <https://www.youtube.com/watch?v=LTXfSTfz3m8&t=280s> from YouTube or any other internet platform or website where the video has been uploaded permanently.

c. To directing the Defendant to pay the Plaintiff a sum of Rs.4,00,000/- towards license granted by the Plaintiff to the Defendant for using the Plaintiff's sound recordings at the ground event and the satellite broadcast of the ground event. OR

d. To alternatively, directing the Defendant to pay the Plaintiff a sum of Rs.5,12,064/- towards the outstanding amount of Rs.4,03,200/- along with interest of 18% per annum amounting to Rs.1,08,864/-.

e. To directing the Defendant to pay the further interest of 18% per annum from the date of this plaint till the date of realization of the sum of Rs.5,12,064/-

f. to directing the defendant to pay the costs of this suit.

These application and civil suit coming on this day before this court for hearing the court made the following order:-

This application is filed by the plaintiff to reopen and allow him to adduce additional witnesses on his behalf.

2. The contention of the plaintiff is that while recording the deposition of PW1, certain statements were not properly recorded leading to ambiguity. The learned counsel has endorsed without noticing the same at the first instance. However, on getting the print out of the deposition, certain answers in the cross examination have been improperly recorded, which has caused immense hardship and deprived the right and prove his claim. Hence he wants to reopen and record the additional witnesses. The plaintiff has also filed an additional affidavit pointing out that the statements which according to him was wrongly recorded.

3. Going through those portions of deposition, this Court finds that the witnesses having signed the content recorded by the Additional Master cannot at later point of time disputed the content recorded. If there was any erroneous recording of statement that should have been brought to the notice of the Additional Master before signing the deposition or the said protest should have been given immediately to the Additional Master for him to go through the deposition and if there is any erroneous recording, he could have rectified the same when the matter was fresh in his memory.

4. Having failed to do so, allegation at later point of time cannot be accepted. At the same time, the undertaking given by the learned counsel for closing the witness on the side of plaintiff is not an end of the matter if for some reason the party intend to adduce further witnesses and if the reason to adduce further witnesses is reasonable and acceptable, the request cannot be rejected. This is one such case where the plaintiff is of the opinion that he has to examine further witnesses.

5. Though in the affidavit filed in support of the application the plaintiff has not mentioned whom he has to examine as the additional witnesses, the learned counsel would state that he wants to examine the person who has conversed the transaction between the plaintiff in respect of copy right of the movie which are subject matter of the present suit.

6. The learned counsel for the defendant has filed his counter, wherein, he submits that reopening and examining additional witnesses will amount to filling the lacuna and the allegations that the statement of PW1 was wrongly recorded by the Additional Master not only incorrect but also mischievous and scandalous. PW1 after deposing waited for almost 15 months and only after thoroughly reading the deposition and pointing out typographical errors, the

counsel and the defendant being satisfied signed the deposition.

7. As pointed out, this Court is not inclined to take the theory of the plaintiff regarding the evidence recorded by the Additional Master since no protest was made soon after the recording of statement. However for other reasons, to reopen and examination of further witness on the side of plaintiff is allowed. Liberty is given to the plaintiff to examine additional witness. The said witness shall be present on 25.02.2020 before the Additional Master and the Additional Master shall examine the witnesses. The examination of defendant side witnesses shall be commenced after completion of recording of evidence of PW2. Process of examination of witnesses shall be completed by 17.03.2020.

8. Post the matter on 20.03.2020.

Sd/.DR.G.J.J.

11.02.2020

//Certified to be a true copy//

Dated this the day of 2020.

COURT OFFICER

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

WEB COPY