

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.01.2020

Pronounced on: 07.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Original Application No.1182 of 2019 and
Application No.9877 of 2019
in C.S.No.735 of 2019

M/s.DMY CREATION SDN. BHD.,

No.9, Gombak Heights,
Taman Sri Gombak,
Batu Caves 68100, Selangor,
Malaysia.

Represented by its Director,
Mr.Aloysius Pillai @ Alex

Camp at:

New No.17/1, First Floor,
Sriram Nagar, South Street, Alwarpet,
Chennai – 600 018.

... Applicant/Plaintiff
in both cases

/versus/

M/s.LYCA PRODUCTIONS PRIVATE LIMITED.,

No.55, Vijayaraghava Road,
T.Nagar,
Chennai – 600 017.

Represented by its Director.

... Respondent/Defendant
in both cases

Prayer in Original Application No.1182 of 2019:-

Judges summons filed under Order XXXIV Rule 1 of O.S Rules under
Order XXXIX Rule 1 & 2 of C.P.C:-

To grant an order of interim injunction restraining the
respondent/Defendant, their men, agents, representatives or sister concerns,

distributors or anybody claiming through them or under them from in any manner exhibiting exploiting and or distributing the film titled as "DARBAAR" starring Rajinikanth world wide as described in the schedule mentioned in the Judges Summons, pending disposal of the above suit.

Prayer in Application No.9877 of 2019:-

Judges Summons filed under Order XIV Rule 8 of O.S Rules under Order XXXVIII Rule 5 r/w Section 151 of C.P.C:-

To direct the respondent to furnish security to the Applicant's suit claim of Rs.23,70,05,222/- (Rupees Twenty Three Crores Seventy Lakhs Five Thousand Two Hundred and Twenty Two) together with interest thereon, failing which the order of attachment of the positive and negatives and digital storage of the film titled as "DARBAAR" starring Rajinikanth, as described in the schedule mentioned in the Judges Summons, pending disposal of the above suit.

For Applicant : Mr.M.Bhasker
in both cases for Mr.S.Feroz Khan

For Respondent : Mr.V.Raghavachari
in both cases for Hema Srinivasan

COMMON ORDER

Original Application No.1182 of 2019 is filed by the plaintiff for interim injunction restraining the respondent/Defendant, their men, agents, representatives or sister concerns, distributors or anybody claiming through

them or under them from in any manner exhibiting exploiting and or distributing the film titled as "DARBAAR" starring Rajinikanth world wide as described in the schedule mentioned in the Judges Summons, pending disposal of the above suit.

2.Application No.9877 of 2019 is filed to direct the respondent to furnish security to the Applicant's suit claim of Rs.23,70,05,222/- (Rupees Twenty Three Crores Seventy Lakhs Five Thousand Two Hundred and Twenty Two) together with interest thereon, failing which the order of attachment of the positive and negatives and digital storage of the film titled as "DARBAAR" starring Rajinikanth, as described in the schedule mentioned in the Judges Summons, pending disposal of the above suit.

3.Case of the applicant/plaintiff:

The applicant/plaintiff is a film Distributor at Malaysia and a member of the South Indian Film Exporters Association (SIFEA). The Respondent/Defendant is a film producer company based at Chennai. The applicant and the respondent entered into an agreement for exhibition and distribution rights for the movie titled "2.0" starred by Rajinikanth for the territory of Malaysia on 11.12.2017. The consideration for the distribution right was fixed as Rs.20,00,00,000/- (Rupees Twenty crores). The applicant paid the

said agreed amount through bank transactions, in three instalments, on various dates, as under:-

<i>Date of transaction</i>	<i>Amount</i>
17.12.2007	Rs.5,00,00,000/-
20.12.2007	Rs.7,00,00,000/-
10.01.2008	Rs.8,00,00,000/-
Total	Rs.20,00,00,000/-

4. Due to abnormal delay in release of the movie '2.0', the applicant wanted to cancel the agreement dated 11.12.2017 and to get back the money paid to the respondent. However, after series of discussions and meetings between the applicant and the respondent (Distributor and Producer), the applicant agreed to finance the respondent to meet out the pre-production expenses, after coming to know that the delay was due to fund crunch. It was mutually agreed by the parties that the applicant will advance fund of Rs.12 crores and the Producer (respondent) will pay interest at the rate of 30% for the money received. It was agreed by the parties that, the interest will be paid by the producer every month for the entire money received till the release of the film '2.0' and thereafter, for Rs.12 crores advanced for pre-production expenses. It was also mutually agreed to favour the applicant with the upcoming films. The respondent never paid the interest as agreed. Based on the said understanding, further sum of Rs.2,00,00,000/- was paid on 25.01.2008, Rs.3,00,00,000/- on 30.01.2008 by the applicant. Totally, a sum

of Rs.25,00,00,000/- was advanced to the respondent by the applicant expecting the right of exhibition and distribution at Malaysia of the movie '2.0' and subsequent upcoming movies of the respondent.

5. Meanwhile, the applicant and the respondent entered into a Memorandum of Understanding on 28.05.2018 for the exhibition and distribution rights for the upcoming film titled "KAALA". The price for the rights were left to be decided in due course. Later, taking into consideration of the loan amount advanced by the applicant, the respondent chosen not to mention the price/consideration for the sale of the exhibition and distribution rights for the film "KAALA" for the territory of Malaysia and worked out with a formula of exhibiting the movie, and upon the generated collections, less expenses and 10% distribution charges, shall raise invoice in the name of the applicant and remit the proceeds after reconciliation of accounts.

6. According to the applicant, the movie "KAALA" was released on 06.06.2018. The gross collection for the movie was Rs.4,38,36,320/-. The final cost fixed was Rs.2,70,47,521/-. The said amount was adjusted towards the interest payable to the applicant. Likewise, another movie by name "CHEKKA SIVANDHA VAANAM" produced by the respondent was released on 27.09.2018 and was distributed in Malaysia by the applicant. The gross collection for that movie was Rs.2,69,82,150/-. The price for that movie was fixed as

Rs.1,50,00,000/- by the respondent and adjusted to the interest payable. The respondent produced another movie by name "VADA CHENNAI" and released it on 17.10.2018 in Malaysia through the applicant. As per the formula of sharing the proceeds of collection, the gross collection as per the final collection report was Rs.90,69,916/- and the price for the movie was fixed as Rs.60,64,744/-. However, the respondent sought for higher price and raised invoice for Rs.75,00,000/- and same was agreed by the applicant to pay the extra amount claimed by the respondent.

7.Before the release of this movie "2.0" the applicant gave a sum of Rs.5,00,00,000/- on 22.11.2008 and Rs.2,00,00,000/- on 28.11.2018 to the Respondent. Thus, as on 28.11.2018, the respondent was liable to pay Rs.38,92,83,334/- (Rs.20,00,000/- paid to the exhibition and distribution right of movie "2.0", Rs.12,00,00,000/- paid as loan for pre and post production expenses of the movie "2.0" and Rs.6,92,83,334/- towards the interest at the rate of 30%). On release of the movie "2.0" on 29.11.2008, the money payable for the loan and interest was Rs.18,92,83,334/- after reconciliation of the account.

8.Based on the mutual agreement, the respondent continued to give the right of distribution to the applicants the subsequent movies produced by it. The applicant was given the distributorship for the movie 'MAARI 2' produced by the respondent which was released on 21.12.2018. The sale price for this

movie was not fixed by the respondent. As per the formula of sharing collection, the price fixed for loyalty was Rs.1,50,00,000/- based on the gross collection of Rs.2,59,54,883/-. Likewise, for the movie "VANDHA RAJAVATHAN VARUVEN" produced by the respondent and released on 01.02.2019 the applicant was given the distributorship at Malaysia and invoice for Rs.69,46,644/- was raised by the respondent.

9.The applicant aggrieved by the refusal of the respondent to give the distribution rights for the upcoming movie 'DARBAAR' produced by the respondent and slotted to be released on 09.01.2020, is before this court stating that, the respondent as on the date of plaint liable to pay Rs.23,70,05,222/- towards the interest payable for the delayed release of the movie "2.0" and towards the principal and interest on loan amount of Rs.12 crores advanced to the respondent for post production expenses of the said movie after defraying the price payable towards the distribution rights of the films 'KAALA', 'CHEKKA CHIVANDHA VAANAM', 'VADA CHENNAI', 'MAARI-2', AND 'VANTHA RAJAVATHAN VARUVEN'.

WEB COPY

10.The contention of the applicant is that, the respondent has borrowed heavily from private financiers for the production of the movie 'DARBAAR' starred by Rajinikanth. If he is allowed to release the movie without discharging the loan due to the applicant, it is difficult to recover the same. As

mutually agreed, the respondent ought to have either cleared the loan or given the distribution rights for exhibition of the film 'DARBAAR' in Malaysia. In spite of several negotiations with the respondent and mediation by the South Indian Film Exporters Association (SIFEA) the Association meant for resolving disputes of this nature, the respondent has failed to clear the loan before release of the movie "DARBAAR" or give the distribution right. Hence, the SIFEA has given letter dated 17.12.2019 suggesting to take legal proceedings since, the possible steps to call the management of M/s.Lyca Productions Private Limited (respondent) for resolving the issue was unsuccessful.

11.Case of the Respondent:

The respondent has entered his appearance through Counsel and filed counter affidavit denying the allegations and liability. According to the respondent, the suit is bereft of details, unsupported by any pleadings or documents to support the contentions. The suit based on the premise that, the respondent availed loan from the applicant and liable to repay is fictitious. The respondent company is financially sound and there is no need to avail loan from the applicant. Further, the affidavit filed in support of the application is sworn by one Mr.Aloysius Pillai at Malaysia without notarization, hence the suit has to be dismissed.

12.On fact, the respondent has stated that, the suit is filed by the

applicant/ plaintiff with malafide motive to harass the respondent and to arm twist. The applicant was given the distribution right for the movies '2.O' and 'KAALA' in the model of outright assignment for the period of 10 years for consideration of Rs.20,00,00,000/- and Rs.12,00,00,000/ respectively. The distribution right of other movies such as 'CHEKKA CHIVANDHA VAANAM', 'VADA CHENNAI', 'MAARI-2', and 'VANTHA RAJAVATHAN VARUVEN' were based on the amounts realised and declared by the applicant.

13.The applicant has made huge profit in the above movies through the distribution right but failed to pay the amount to the respondent. As on date, the applicant is liable to pay a sum of Rs.1,45,33,961/- to the respondent. As per the agreement dated 11.12.2017 entered between the applicant and the respondent in respect of the distribution rights for the movie '2.O', the applicant agreed to pay Rs.20,00,00,000/-. But, before the release of this movie, 'KAALA' was likely to released, so, the applicant wanted the rights of exhibition of 'KAALA' and requested that a sum of Rs.12 crores from the amount already paid to the respondent shall be used towards the consideration for 'KAALA'. After the release of the movie 'KAALA', the applicant paid Rs.5 crores on 22.11.2018 and Rs.2 crores on 28.11.2018 for the movie 2.O as per the agreement dated 11.12.2017. The applicant after receiving the film rights upfront, defaulted in making payments to the respondent for several other movies. Inspite of repeated mails and total sum of around Rs.1.59 crore is still

pending from the applicant. Therefore, the respondent has decided not to give the distribution right to the applicant to the subsequent movies "KAAPPAAN" and "DARBAAR".

14.It is alleged in the counter that the contention of the applicant that a sum of Rs.12 crores was given by them as loan is neither supported by MoU nor any other document filed by the plaintiff. As per class 5 of the agreement dated 11.07.2017 entered between the applicant and the respondent in respect of the movie 2.O, the vendor (respondent) shall not liable to pay any compensation or damages and the time for delivery shall be deemed to have been automatically extended until the vendors (respondent) shall be in a position to deliver such print. Hence, the contention of the applicant that the respondent agreed to pay interest for the money received towards consideration of selling the exhibition right in the movie 2.O is false and concocted story.

15.Admittedly, movie 2.O was released on 09.11.2018 and the respondent received the rights of exhibition within Malaysia in terms of the agreement dated 11.12.2017. The agreement does not contain any provision for payment of interest or compensation for any delay. Therefore, the contention of the applicant that the respondent offered to pay interest for the funding of Rs.20 crores with interest @ 30% is contrary to the agreement

terms. The respondent also denies the averment made in the application that Rs.12 crores was advanced as loan for pre and post production expenses incurred for the movie 2.O.

16.According to the respondent, the sum of Rs.12 crores is the amount paid by the applicant towards exclusive rights for exhibition of the movie KAALA. The agreement dated 28.05.2018 and email dated 04.06.2018 would prove that Rs.12 crores was received by the respondent only towards the exclusive right of exhibition of film KAALA and not as loan.

17.The allegation that the respondent obtained loan from the applicant is evidently and clearly false especially considering the background and financial position of the respondent. Having failed to satisfy the ingredient to grant interim injunction, it is contended by the learned counsel for the respondent that the applications have to be dismissed. The learned counsel would further submit that the movie DARBAAR has been produced by investing Rs.220 crores and if interim injunction is granted, the respondent will be put to irreparable loss and suffering. Further, the applicant having failed to fulfil the ingredients necessary to grant the relief of interim injunction, under Order XXXIX C.P.C., the Original Application and the Application are liable to be dismissed.

18.Heard the learned counsel for the applicant and the learned counsel

for the respondent. Documents filed in support of the respective parties perused.

19.The receipt of Rs.32 crores from the applicant is candidly admitted by the respondent. While the applicant says that out of Rs.32 crores, Rs.20 crores was paid towards the outright purchase of the distribution right for the movie '2.O' and Rs.12 crores was given as loan. The respondent claims that Rs.20 crores was paid towards the distribution right of movie 2.O and Rs.12 crores was paid for distribution right of movie KAALA based on the model of outright assignment for a period of 10 years. In this connection, both the applicant and the respondent relied upon the agreement for the movie titled 2.O dated 11.12.2017 wherein, the vendor/respondent has agreed to sell the commercial/non commercial rights of exploitation, exhibition and distribution in respect of the movie 2.O in and languages Tamil, Telugu and Hindi for a period of 10 years commencing from the date of first general release of the movie in India.

20.The counter foils of the bank challans relied by the applicant indicates that he has made payments to the respondent on the following dates, in the following manner:-

<i>Date of payment</i>	<i>Bank Details</i>	<i>Currency Conversion Difference</i>	<i>Actual sent in crores</i>	<i>"2.O" Release dated</i>	<i>Days delayed</i>	<i>Simple Interest @ 30%</i>
17.12.2017	Axis Bank – 915020020400207	4,99,99,800	5.00	29.11.2018	348	1,45,00,000
20.12.2017	Axis Bank – 915020020400207	6,93,64,132	7.00	29.11.2018	345	2,01,25,000
10.01.2018	Axis Bank – 915020020400207	7,99,99,800	8.00	29.11.2018	324	2,16,00,000
25.01.2018	Utsmaya Global Mandiri	1,99,03,211	2.00	29.11.2018	309	51,50,000
30.01.2018	Karunamoorthy-Advances	3,00,00,000	3.00	29.11.2018	304	76,00,000
22.11.2018	CMB Bank	4,96,34,550	5.00	29.11.2018	7	2,91,667
28.11.2018	PT Bank	1,97,65,679	2.00	29.11.2018	1	16,667
		31,86,67,172	32.00			6,92,83,334

21.The said payments on the said dates not disputed by the respondent. The first contentious issue between the parties is that "whether Rs.12 crores was paid to the respondent for exhibition and distribution outright assignment of movie KAALA for a period of 10 years, or it is a loan for interest". The next contentious issue is "whether the applicant is entitled for any interest for the money paid to the respondent". Thirdly, it has to be decided, "whether the applicant paid the price for the movies "CHEKKA SIVANDHA VAANAM, VADA CHENNAI, MAARI – 2 and VANDHA RAJAVADHAN VARUVEN" exploited by them at Malaysia on the respective dates mentioned.

22.In respect of the first contentious dispute regarding the movie KAALA,

the applicant contents that initially, they entered into a Memorandum of Understanding (MoU) for the movie KAALA on 28.05.2018 on the model of outright assignment for a period of 10 years. The price was not decided by the parties and they agreed to decide the price in due course. Later, the parties decided to work with formal in exhibiting the movie and upon the generated collections less expenses and 10% distribution charge shall raise invoice in the name of the applicant company after re-conciliation of their account. The said movie was thus, released on 06.06.2018 and generated collection of Rs.4,38,36,320/- and the final cost for the movie was fixed at Rs.2,70,47,521/-. Whereas, the respondent would state that the distribution right for movie KAALA was on outright sale of exhibition right at the cost of Rs.12 crores for which, the respondent relied upon its email communication dated 04.06.2018 to the applicant and the agreement dated 04.06.2018. The email communication reads as below:-

"We hereby wish to inform you that we have received a sum of Rs.20,00,00,000/- (Rupees Twenty Crores Only) towards the move '2.0' and a sum of Rs.2,00,00,000/- (Rupees Two crores only) from M/s.Utsmaya Global Mandiri, Indonesia on your behalf, totalling a sum of Rs.22,00,00,000/- (Rupees Twenty Two Crore Only), in which a sum of Rs.12,00,00,000/- (Twelve Crore Only) has been adjusted towards the assignment of Kaala film in your favour for the area of Entire Malaysia as per the agreement

dated 04th June 2018. Further, the balance has been kept on account with us, which shall be adjusted in future project.

Kindly acknowledge your acceptance of the above by signing and sharing this letter with us through email.

Thanking you,

With regards

For Lyca Productions Pvt. Ltd.

Agreed and Confirmed

For DMY CREATION

SDN.BHD"

23.The agreement entered into between the respondent and the applicant dated 04.06.2018 reads as below:-

"M/s.LYCA PRODUCTIONS PRIVATE LIMITED, represented by its Director Mr.Neelkant Narayanpur, having their office at No.55, Vijayaraghava Road, T.Nagar, Chennai – 600 017. (the Vendor/Producer) of the One Part.

AND

M/s. DMY CREATION SDN. BHD., Company Registration No:1245616-P, address at No.73B, Jalan Prima SG, 3/1, Taman Prime Sri Gombak, Batu Vaves – 68100, mailing address at No.9, Gombak Heights, Taman Sri Gombak, Batu Caves 68100, Selangor, Malaysia, represented by Mr DATO' Mohamed Yusoff @ DMY, Telephone No.+60127666410, Email id:ka.yusoff@gmail.com, of the other Part.

NOW IT IS HEREBY AGREED BY AND BETWEEN the parties hereto as follows:

1. The Vendor/Producer agrees to sell the commercial/non-commercial rights of exploitation, exhibition and distribution in respect of the following pictures as specified hereunder for a period of 10 years commencing from the date of first general release of the assigned film in India, hereinafter referred to as the "Sale for the territory of Malaysia, hereinafter referred to as "the territory".

Name of the Picture : KAALA
Language : Tamil
Rights : Exclusive Theatrical Rights
Non Exclusive TV, Satellite,
VCD & DVD Rights
Period : 10 years from the date of General
release of the said picture in India.
Price : Rs.12,00,00,000/- (Rupees Twelve
Crores only)
Special Terms : TV/Satellite Telecast shall be done
only on completion of 24 Hrs of
the First TV/Satellite Telecast
in India in respective language."

24.In this connection, the learned counsel for the applicant submitted that the letter and the agreement does not bear the signature of the applicant or its representative and these two documents are concocted documents by

the respondent to mislead the Court.

25. On perusal of the letter/email of the respondent dated 04.06.2018 and the agreement relied by the respondent, this Court finds that both the documents are unsigned. While in the agreement dated 11.12.2017 entered between the applicant and the respondent, for the movie '2.0' and in the MoU dated 28.05.2018, the representatives of the respective parties have signed, whereas in the agreement dated 04.06.2018 for the movie 'KAALA' which is relied by the respondent, neither of parties to the agreement have signed. Therefore, the respondent version that the distribution rights for the movie 'KAALA' was fixed as Rs.12 crores is doubtful. Hence, there is force in the submissions of the applicant, in this regard.

26. Next, regarding the interest claimed for the entire amount paid, it can be assertively held that the applicant is not entitled for interest for Rs.20,00,00,000/- paid for the movie '2.0' in view of clause 5 of the agreement dated 11.12.2017. Whereas regarding the balance 12 crore, it shall be based on production of evidence. The price claimed to be paid by the applicant for the four other movies sold on collection basis and the counter claim of Rs.1,45,33,961/- payable by the applicant in connection with the other movies namely, CHEKKA SIVANDHA VAANAM, VADA CHENNAI, VANDHA RAJAVATHAN VARUVEN and MAARI 2 is yet another contentious issue need to

be addressed.

27.In the said circumstances, the apprehension of the applicant that if the movie DARBAAR produced by the respondent allowed to be released, the recovery of money *prima facie* payable to the applicant will be delayed or even become impossible, cannot be ignored as baseless.

28.In the counter affidavit, the respondent claims as against Rs.4,39,66,651/- payable by the applicant for the distribution rights of the four movies, Rs.1,45,33,961/- is still payable by the applicant for the distribution rights given on the basis of collection. The four movies covered under this arrangement are (1)CHEKKA SIVANTHA VAANAM; (2)VADA CHENNAI; (3)MAARI 2 and (4)VANDHA RAJAVATHAN VARUVEN. If the claim of the applicant that the movie KAALA was also given distribution right based on collection ultimately found to be correct and amount payable for that will be Rs.2,70,47,521/- then, after defraying a sum of Rs.7,10,14,172/-, the money still held by the respondent will be Rs.4,90,85,528/-. This all depends upon whether Rs.12 crores received by the respondent is towards the outright assignment of exhibiting and distribution right of the movie 'KAALA' or the loan advanced for interest. This issue is to be decided during trial. But as an interim measure, the right of the applicant who has *prima facie* established his interest has to be protected.

29.The learned counsel for the respondent would submit that injunction

relief cannot be granted for mere asking and there must be some strong case for irreparable loss, if interim injunction not granted. He would further submit that, the balance of convenience is more in favour of the respondent who has invested heavily in the production of the movie DARBAR and had widely advertised that the said movie will be released on 9th January 2020 worldwide.

30.No doubt, mere *prima facie* case not sufficient to grant injunction in the matter of this nature. By injuncting the release of movie and keeping the film in shelf without being exhibited and exploited will highly prejudice the producer (respondent). In support of the above submission, the learned counsel would also rely upon the judgment of this Court in ***R.M.Subbiah, Proprietor, R.M.S Pictures and another v. N.Sankaran Nair and another*** (1978 SCC Online Mad 158).

WEB COPY

31.This Court is convinced by the submission made by the learned counsel appearing for the respondent regarding grant of injunction. However, under equity, the right of the applicant who has made out a *prima facie* case should also be protected. Hence, these two applications are disposed of with the following directions:-

(i)The defendant/respondent shall deposit a sum of Rs.4,90,00,000/- (Rupees Four Crores and Ninety Lakhs only) to the credit of Civil Suit (Commercial Division) No.735 of 2019 on the file of this Court or in alternate, furnish bank guarantee in favour of the Registrar General, High Court, Madras.

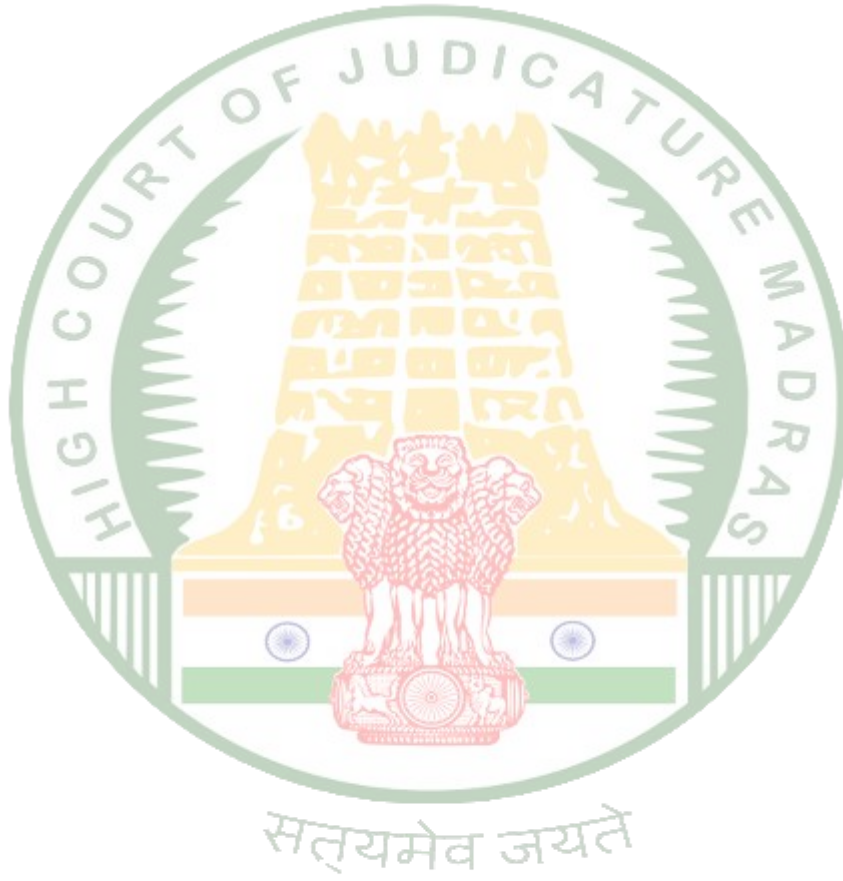
(ii)Till the deposit of the said amount or furnishing of bank guarantee, the respondent/defendant, their men, agents, representatives or sister concerns, distributors or anybody claiming through them or under them are restrained from in any manner exhibiting, exploiting and or distributing the movie titled DARBAAR starring Rajnikanth anywhere within the territory of Malaysia.

07.01.2020

Index :Yes/No
Speaking Order/Non-speaking order

bsm/jbm

Note:- Issue today (07.01.2020)



WEB COPY

Dr.G.Jayachandran,J.

jbm



Pre-delivery order in
Original Application No.1182 of 2019
& Application No.9877 of 2019
in C.S.No.735 of 2019

07.01.2020

WEB COPY