

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 12TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No.366 of 2021
in
C.S.No.345 of 2020

M/s.YSR Films Private Limited,
represented by its Director Mr.Irfan Malik (M-36 yrs),
having office at No.20/10, Lake Area,
6th Cross Street, Nungambakkam,
Chennai-600 034. ..Plaintiff

Vs

1.M/sVansan Movies,
Represented by Partner, Mr.S.Sutharsan,
having their office at Flat No.4,
2nd Floor, Plot No.10, 50 ft Main Road,
MRK Nagar, Kolapakkam,
Chennai-600 048.

2.The Tamil Nadu Film Producers council,
Represented by Mrs.Manjula,
No.606, Anna Salai,
Thousand Lights, Chennai-600 006. ..Defendants

A.No.366 of 2021:

M/sVansan Movies,
Represented by Partner, Mr.S.Sutharsan,
having their office at Flat No.4,
2nd Floor, Plot No.10, 50 ft Main Road,
MRK Nagar, Kolapakkam,
Chennai-600 048.

..Applicant/1st Defendant

Vs

1.M/s.YSR Films Private Limited,
represented by its Director Mr.Irfan Malik
Having office at No.20/10, Lake Area,
6th Cross Street, Nungambakkam,
Chennai-600 034.

..1st Respondent/Plaintiff

2.The Tamil Nadu Film Producers council,
Represented by Mrs.Manjula,
No.606, Anna Salai,
Thousand Lights, Chennai-600 006. ..2nd Respondent/2nd Defendant

Application praying that this Hon'ble Court be pleased to grant an order of stay of all further proceedings of the suit in C.S. (Commercial Division) No.345 of 2020 pending on the file of this Hon'ble Court.

This Application coming on this day before this court for hearing, the Court made the following order:

This application has been filed by the first defendant in the suit under Section 8(1) of the Arbitration and Conciliation Act,1996 and also invoking Section 151 of Civil Procedure code seeking to grant an order of stay of all further proceedings in the present suit and refer the issues to arbitration before the second defendant, namely, Tamil Nadu Film Producers Council. Even proceeding further, the learned counsel for the applicant was requested to issue notice to the second respondent since they had not appeared and an affidavit has been filed indicating that notice was sent. Mr.G.Veerapathiran, learned counsel for the applicant further stated that notice has been returned with an endorsement “refused by the second respondent”. In view of that fact, it is clear that the second respondent is not interested in participating in

the present schedule proceedings.

2. Be that as it may, Section 8 of the Arbitration and Conciliation Act, 1996 makes it as a pre-condition that whenever any request is made seeking to refer the parties to arbitration then, the said agreement or a certified copy of the agreement should be filed in Court.

3. It is an admitted position that no such agreement has been filed in Court. Even if it is not an agreement in writing in Section 7 of the Act it has been explained that an arbitration agreement exists, if it is contained in a document signed by the parties, an exchange of letters, telex telegrams or other means of telecommunication (including communication through electronic means) which provide a record of the agreement or an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

4. Here in the instant case, resort to arbitration had not even been discussed between the parties. The second respondent/second defendant was invited only to act as a mediator.

5. My attention has been drawn to the averments made in the affidavit filed in support of OA.No.649 of 2020 wherein the plaintiff has stated that

the first defendant along with his wife Mrs.Vani had approached the second defendant and a letter had been given by Mrs.Vani that they would agreed to receive a sum of Rs.5,50,00,000/- to settle the issue between the parties.

6. At this juncture, it is only be worthwhile to examine the facts which created necessity for the plaintiff to institute the present suit. The plaintiff, a production company, had intention to produce movies and decided to produce a movie “MAAMANITHAN.”. The first defendant had approached the plaintiff and requested outright sale of the said film. The plaintiff agreed to the said offer and decided to sell the movie on outright basis to the first defendant. Plaintiff and the first defendant entered into an agreement on 09.11.2018. The first defendant was granted a) Worldwide theatrical rights b) Telugu language remake and dubbing rights c) Kannada remake and dubbing rights d) Malayalam remake and dubbing rights. The total consideration was fixed at Rs.10,25,00,000/- + GST. It is an admitted fact that the first defendant had paid a sum of Rs.5,50,00,000/-. They have not paid the balance amount of Rs.4,75,00,000/-. Non payment of the said amount led to disputes between the parties and the agreement to be terminated. Thereafter the suit has been instituted seeking permanent injunction against the first defendant restraining them from claiming any rights with respect to the movie “MAAMANITHAN”. Interim application was also filed on the same lines. Pending the said application, the present

application seeking to refer the parties to arbitration has been filed.

7. Both the learned counsels stated that it is common in trade that where there is a dispute of this nature, the second defendant Tamil Nadu Film Producers Council would normally be approached seeking to address the issue and redress the grievance of the respective parties. In this case, they had approached the second respondent. The first defendant was represented by his wife Mrs.Vani. A letter had been given by Mrs.Vani that the first defendant would settle the issue on payment of Rs.5,50,00,000/- with interest of Rs.3,00,00,000/-. The plaintiff had however agreed to return back Rs.5.50 crores. They disputed the claim for interest. They disputed any reference to any arbitration. Since there has been no agreement for reference to arbitration, the parties have not specifically agreed to refer the disputes to arbitration. This Court cannot advice and force them to go before arbitration to settle the issues. At the most, the Court can refer the matter before mediation but that is not the present scope of the application. The arbitration agreement has also not been filed. The extended definition under Section 7 of the Act is not attracted. There is absolute no piece of paper which indicates that the parties have decided to settle issues through arbitration. Even the second defendant can only mediate the issues. They cannot arbitrate the issues since there is no provision or any clause, whereby

the parties have decided to refer the disputes which arise out of the agreement through arbitration.

8. It is reiterated by Mr.Veerapathiran, learned counsel for the applicant the fact that the second defendant/second respondent had appointed a mediator Mr.JSK Sathish Kumar. Those proceedings had come to a natural end.

9. When there is no specific agreement referring disputes to arbitration, it would be highly improper to call upon the parties to resort to an alternative dispute method which is covered by a statute. Parties cannot seek Arbitration without any clause in the agreement. It would not be proper for the Court to direct them to go through arbitration process. Accordingly the application is dismissed.

WEB COPY

Sd/-C.V.KJ
12.03.2021

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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