

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 15th DAY OF MARCH 2021

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

O.A. No.53 of 2021
and
A.No. 331 of 2021
in
C.S. No.35 of 2021

SPM Arts LLP
Represented by its Designated Partner,
Sanjay Kumar Lalwani,
Having its Office at
No.66B Seeyalam,
1st Street, F1, 1st Floor,
Villivakkam, Chennai 600 049

... Applicant/Plaintiff
(O.A. No.53 of 2021 and
A.No.331 of 2021)

-Versus-

1.Chakri Chigurupati,
Proprietor,
Sri Kanaka Durga Chalana Chitra,
Having Office at:
No.8-3-973/1,
Sri Durga Splendor, 1st Floor
Srinagar Colony,
Hyderabad – 500 073.

2.B.Kumar,
Proprietor,
Bangalore Kumar Films,
Having Office at
7/8, T N Somanna Complex,
2nd Cross, Gandhi Nagar,

Bangalore – 560 009.

Also at:

No.9/41, 57th Street,
10th Sector, KK Nagar,
Chennai 600 078.

3.Mohandas Pai,
Proprietor,
Dheeraj Enterprises,
No.245, 5th Cross, 5th Block,
3rd Phase, BSK 3rd Stage,
Bangalore – 560 085.

4.Qube Cinema Technologies Pvt. Ltd.
No.1034, Dr.Rajkumar Road,
Rajajinagar 4th Block,
Bangalore – 560 010.

5.Zee Entertainment Enterprises Limited,
Represented by its Director,
Having Regional Office at
No.39, 3rd Floor,
United Mansions, MG Road,
Bangalore – 560 001.

6. Aditya Music (India) Private Limited,
Represented by its Director,
Having Registered Office at
3-5-1091/7, Venkateshwara Colony,
Narayanaguda, Hyderabad,
Telangana 500 029.

... Respondents/Defendants
(O.A. No.53 of 2021 and
A.No.331 of 2021)

O.A. No.53 of 2021:-

Original Application praying that this Hon'ble Court be pleased to pass an order of Interim injunction restraining the Respondents/Defendants, their men, agents or anyone claiming under them or acting on their behalf from the release of the feature Film “Shadow” (Kannada) morefully described in the schedule hereunder, either by theatrical release or by Over the Top Platforms (OTT) release or in any manner whatsoever pending disposal of the present suit.

A.No.331 of 2021:-

Application praying that this Hon'ble Court be pleased to pass a conditional order of attachment before judgment directing the 1st Respondent/1st Defendant for the suit claim of Rs.1,09,87,570/- (Rupees One Crore Nine Lakhs Eighty Seven Thousand Five Hundred and Seventy only) within a time to be fixed by this Hon'ble court failing which pass an order of attachment before judgment, the schedule mentioned property namely the feature Film “Shadow”, morefully described in the Schedule hereunder.

These applications coming on this day before this court for hearing,

the Court made the following order:

Both these applications had been filed by the plaintiff in the suit. The relief sought in O.A.No.53 of 2021 is for an interim injunction restraining the defendants, their men, agents or anyone claiming under them or acting on their behalf from the release of the feature film 'Shadow' (Kannada) either through theatrical release or by over the top platforms pending disposal of the present suit. The relief sought in A.No.331 of 2021 is to pass a conditional order of attachment of judgment directing the 1st defendant to make a payment of Rs.1,09,87,570/- within a time frame fixed by the Court failing which to attach the mentioned feature film 'Shadow'.

2.The plaintiff, SPM Arts LLP, represented in this suit by its Designated Partner, Sanjay Kumar Lalwani, has instituted the present suit seeking a Judgment and Decree primarily against the first defendant and also incidently against the 2nd defendant from releasing the movie 'Shadow' in Kannada either through theatres or through over the top platforms and have also sought relief against the 1st and 2nd defendants to jointly and severally pay the plaintiff a sum of Rs.1,09,87,570/- together with interest at 24% per annum on Rs.50,00,000/- from the date of the plaint till the date of realization and also for costs of the suit.

mentioned that the 1st defendant, Chakri Chigurupati, Proprietor, Sri Kanaka Durga Chalana Chitra, is said to be the producer of the movie 'Shadow'. The 2nd defendant, B.Kumar, Proprietor, Bangalore Kumar Films, somehow seems to have entangled in the transactions between the plaintiff and the 1st defendant but has no direct role either in the production of the movie or in any other aspect with respect to the movie. But he has still being impleaded the reasons for which the Court shall be examining a little later on. The 3rd defendant, Mohandas Pai, Proprietor, Dheeraj Enterprises, is the individual under whose banner the movie 'Shadow' was released at the time of institution of the suit. The 4th defendant, Qube Cinema Technologies Pvt. Ltd., appears to have a role in the theatrical release of the movie. The 5th defendant, Zee Entertainment Enterprises Limited, is the platform provider for over the top platform release of the movie. The 6th defendant, Aditya Music (India) Private Limited, is the entity through which the audio of the movie was to be released at the time of institution of the suit.

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4. Even though the 3rd to 6th defendants have been impleaded as parties, it can be safely presumed that they had been impleaded primarily under Order I Rule 5 of the Code of Civil Procedure, 1908 as defendants who are interested in the progress and orders passed in the suit.

5.The main grievance of the plaintiff is as against the 1st defendant.

This grievance had arisen owing to an agreement dated 25.06.2018 said to have been entered, into according to the learned counsel for the plaintiff, between the plaintiff and the 1st defendant. The original of the said agreement had been filed into the Court. A perusal of the said agreement indicates that it is an agreement termed as Assignment of Entire World Satellite in all Indian languages. The said agreement dated 25.06.2018 had been entered between the 1st defendant, M/s.Sri Kanaka Durga Chalana Chitra, a sole proprietorship entity and represented by its proprietor Chakri Chigurupati who was termed as the Assignor in the said agreement and the plaintiff, SPM ARTS LLP, represented by its partner Sanjay Lalwani who had been termed as the Assignee in the said agreement.

6.By the said agreement, under Clause 1, the Assignor had granted exclusive rights with respect to the Entire World Satellite Rights in all Indian languages (Tamil, Telugu, Malayalam, Hindi and all North Indian Languages) with further comprehensive rights with respect to the movie 'Shadow' which is stated to be a Kannada feature film and which had been mentioned in the schedule. The sale consideration of Rs.25,00,000/- had been agreed to be paid to the Assignor and an advance of Rs.5,00,000/- had been paid by the Assignee to the Assignor.

7.It had also been covenanted in Clause 5 of the agreement that the assignment shall be absolute with right to broadcast the movie through satellite television broadcast namely, direct satellite broadcast, in-flight, Airborne, Terrestrial Television through Cable / Via Cable TV, Wire, Wireless or through any other forms.

8.The plaintiff also lays a claim on a Finance Agreement dated 09.07.2018. The original agreement had also been filed as document to the plaint and a perusal of the same shows that it had again been entered between M/s.Sri Kanaka Durga Chalana Chitra represented by its proprietor Mr.Chakri Chigurupati, in effect the 1st defendant herein who was termed as borrower and the plaintiff, M/s.SPM ARTS LLP, represented by its partner Sanjay Lalwani who was termed as lender. By this agreement the plaintiff had agreed to lend an amount of Rs.50,00,000/- to the 1st defendant. It was also indicated that an advance of Rs.25,00,000/- had been paid through RTGS to Bangalore Kumar Films, who is the 2nd defendant herein, according to the instructions received at the time of signing the agreement. Again this borrowal / lending was with specific reference to the Kannada movie 'Shadow'.

9. Clause 6 is a negative clause of the said agreement which is sought to be enforced by way of the present suit namely, that the 1st defendant shall not release the said movie along with all satellite rights either by themselves or through anybody else without repaying the loan amount along with interest to the plaintiff. The plaintiff therefore claims a right of lien over the said movie 'Shadow' and claims that the lien shall continue till the amounts due to the plaintiff are settled.

10. Thereafter, the plaintiff has also filed a series of bank statements indicating the payment of amounts to the 1st defendant. These amounts had been paid to the 1st defendant, according to the plaintiff owing to a letter given by the 1st defendant to the plaintiff dated 07.07.2018. The original of the said letter had also been filed as a document along with the plaint. By this letter, the plaintiff claims that the 1st defendant had indicated that the amounts should be transferred to the bank account of the 2nd defendant, Bangalore Kumar Films. It is therefore the contention of the learned counsel for the plaintiff that in view of such specific instructions given by the 1st defendant, the plaintiff had forwarded the amounts to the bank account of the 2nd defendant and in view of non-repayment of the said amounts and in view of the further fact that steps had been taken to release the movie

and the suit has also instituted.

11.It is the further grievance of the plaintiff that though in the first few initial promotional posters which can also be termed as first look posters, the name of the plaintiff was given, in the subsequent posters the names of the 1st and 2nd defendants alone were retained. This is also a cause for institution of the suit.

12.Along with the suit, the Original Application came up for consideration and this Court by an order dated 04.02.2021 granted an order of ex-parte interim injunction restraining the movie from being released in either theatres or through over the top platforms. In the said order itself the Court had indicated that if good cause is shown by the defendants, then the plaintiff would be called upon to bear the loss and damages which might have accrued to any third party. I am informed that however on 05.02.2021, the movie had been released in theaters and the cause of action therefore survives only with respect to release or restrain from release of the movie through over the top platforms. To that extent, the 5th defendant Zee Entertainment Enterprises Limited, would be a necessary party, since the 1st defendant appears to have entered into an agreement with the said 5th defendant for release of the movie through their platform.

13.The court will now to examine whether the plaintiff has made out a prima facie case and whether the balance of convenience is still in favour of the plaintiff and whether a restraint order should be passed restraining the release of the movie through over the top platform, particularly in the platform provided by the 5th defendant.

14.On issuance of notice, Mr.S.Sivaraman had entered appearance on behalf of the first defendant and a counter has also been filed. In the counter affidavit, the three documents which the plaintiff relies namely the Assignment Agreement dated 25.06.2018, the Finance Agreement dated 09.07.2018 and very specifically the letter dated 07.07.2018 said to have been issued by the 1st defendant have all been denied, disputed and questioned. It is the contention of the learned counsel, that as a matter of fact, the plaintiff and the 2nd defendant had an earlier series of transactions which are also reflected in the documents and that they had not been specifically averred in the plaint. It had been stated that the suit is a collusive suit between the plaintiff and the 2nd defendant and it is the 1st defendant who has suffered by the order of injunction.

15.The learned counsel for the 1st defendant pointed out the

09.07.2018 and stated that the entity Sri Kanaka Durga Chalana Chitra, though named in the agreement, does not find place at the signatory column at the bottom of the pages. It had been stated that the signature of the 1st defendant was found but he had not signed as proprietor of Sri Kanaka Durga Chalana Chitra. It was also stated that there is yet another signature of M/s.Bangalore Kumar Film by presumably by the 2nd defendant and the learned counsel wondered the necessity for the signature by the 2nd defendant in an agreement which is neither binding on the 2nd defendant nor executed by the 2nd defendant and nor to which the 2nd defendant is a party either directly or indirectly. It was therefore stated that the entire agreements had been created by the plaintiff and by the 2nd defendant and that the 1st defendant had been caught in between their collusive act. With respect to the letter dated 07.07.2018, again a very specific stand had been taken both in the counter and also in the arguments advanced, that the said letter is a false and fabricated one.

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16.To this the learned counsel for the plaintiff stated that the plaintiff can never be privy to the bank account of the 2nd defendant and it was the 1st defendant who knew the bank account of the 2nd defendant and who disclosed the said bank account.

17. In view of the facts narrated above, there appears to be a total divergence on basic fundamental facts on the agreements which the plaintiff relies on. The said agreements have been strongly disputed by the 1st defendant. The signature of the 1st defendant is disputed. The signature of the 1st defendant is also disputed in the letter, whereby the 1st defendant is said to have authorized transfer of money to the account of the 2nd defendant. It is claimed by the learned counsel that the 1st defendant had not received any consideration. It had been stated that the statement made during the course of arguments by the learned counsel for the plaintiff that subsequent to the order of interim injunction a sum of Rs.25,00,000/- had been paid also not correct.

18. All these documents will therefore have to withstand the test of cross-examination. Once the signatures are disputed, then naturally, the burden shifts on the plaintiff to establish that there was consensus ad idem between the parties to the agreement and that the agreement does not suffer by way of any imputations regarding false signatures or signatures appended without the knowledge of the 1st defendant and more particularly imputing reasons as to why the 2nd defendant had signed the documents, when the 2nd defendant is not a party to the said documents. The plaintiff has some explanation to tender. These explanations can be given by the

plaintiff only when he grazes the witness box and the veracity of the agreements and the signatures to the agreement are questioned. Only then can the Court come to a conclusion based on evidence which is adduced by the parties. When there is a doubt regarding establishment of a prima facie case, then there cannot be any further enquiry into balance of convenience or with respect to loss and hardship.

19. The plaintiff will first have to establish their rights granted under the agreement dated 25.06.2018. The plaintiff will then have to establish that there was a Finance Agreement with the 1st defendant. The plaintiff will also have to establish that the 1st defendant had granted permission to transfer amounts to the bank account of the 2nd defendant. Only when the plaintiff establishes all these facts, can there be any further order passed against any one of the defendants. At this juncture, restraining the release of the movie, may not be appropriate. I am informed that the movie had already been released in the theaters. Then it is only a matter of formality if it is also released in over the top platforms.

20. However, it would only be appropriate that the Court also issues further directions to the 1st defendant to maintain accounts with respect to the theatre collections from the movie 'Shadow' which had been released

on 05.02.2021 and also disclose the agreement entered into primarily with the 5th defendant, Zee Entertainment Enterprises Limited, with respect to over the top platform release of the said movie. The 1st defendant has to file necessary statement of accounts once every three months and the said accounts will have to be filed in Court with an advance copy given to the plaintiff. The said accounts are to be filed after obtaining necessary certificate from a Chartered Accountant and the plaintiff will have every right to question the said accounts.

21. In effect the suit is now reduced to a suit for money for the advance paid and therefore I hold that evidence is required to establish that the amounts were paid and that amounts were received and valid agreements were entered into and there was an obligation on the 1st defendant to repay the amounts. The issues with respect to release of the movie 'Shadow' does not survive any more, in view of the fact that the agreements relating to the said movie are strongly disputed by the defendants. The plaintiff will have to withstand the test of cross-examination relating to the veracity and genuinity of the agreements.

22. At any rate, if the 1st defendant discloses the accounts, then the plaintiff will have reasonable opportunity of trying to seek security but primarily, only if the agreements are established in manner known to law.

As on date, the documents filed in Court will have to cross the test of admissibility, the test of relevancy and the test of proof and also will have to be proved in the manner known to law. More importantly, they will have to cross the test of genuinity. Only when the plaintiff is able to cross all these stages can the plaintiff reasonably expect enforcement of those agreements. Till then, both the plaintiff and the other parties to the suit will have to await the nature of evidence tendered by them.

23. In view of these facts, I do not think it would be appropriate to extend the injunction order granted any further in O.A.No.53 of 2021.

24. With respect to A.No.331 of 2021 since the 1st defendant has raised very fundamental questions relating to the agreement now relied on by the plaintiff, imposing conditional order again may not be appropriate. The suit against the 1st defendant and 2nd defendant for recovery of money still survives and the plaintiff while adducing evidence can seek necessary relief at that particular point of time but, passing of any interim orders may not be proper.

25.In view of the above reasons, both the applications in O.A.No.53 of 2021 and A.No.331 of 2021 are dismissed. No order as to costs.

Sd/-C.V.K.J
15.03.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

JJ 22/03/2021 COURT OFFICER(O.S.)
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