

O.A.No.478 of 2021
in
C.S.(Comm.Div.)No.39 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :30.09.2021	Pronounced on:05.10.2021
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Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

O.A.No.478 of 2021
in
C.S.No.39 of 2021

Ms.Divya M.Jain,
D/o S.Mohankumar,
No.51, Hunters Road,
Choolai,
Chennai 600 112.
Rep.by its Power of Attorney,
S/o Seshmal,
Having Office at No.18, Hunters Road,
Choolai, Chennai 112. .. Applicant

/versus/

1.M/s 24M STUDIOS PRIVATE LIMITED,
Rep.by its Managing Director,
Mr.R.D.Raja,
Son of Deivendran,
Having Office at No.9, Spring Field Apartments,
Jagannathan Road,
Nungambakkam,
Chennai 600 034,
Residing at

W-380/3, Hessonate Hamlet Flats,
East Main Road,
Anna Nagar West Extension,
Chennai 600 101.

2.M/s Sun TV Networks Limited,
Rep.by its Authorised Signatories,
Mr.C.Sembian Sivakumar,
Mr.K.Shanmugam,
Having Office at Murasoli Maran Towers,
No.73, MRC Nagar Main Road,
MRC Nagar, Chennai 600 028,
Chennai 600 032.

3.Mr.Sivakarthikeyan,
Having Office at Noo.1/2,
Lakshmipuram Main Road,
Andavar Nagar, Vadapalani, Chennai 600 026.

4.M/s KJR STUDIOS
Rep.by its Managing Director,
Mr.Kotapadi J.Rajesh,
Apartment No.9, Flat No.5, Ranga Prasad,
No.5, Binny Road, Poes Garden,
Chennai 600 086.

... Respondents

Prayer: Original Application has been filed under Order XIV, Rule 8 of O.S.Rules read with Order XXXIX Rule, 1 and 2 of C.P.C., praying an order of interim injunction restraining the respondents/defendants, their men, agents, servants or any other person or persons claiming through them from releasing/theatrical exploitation in respect of Tamil Satellite Television Rights in

India of the Film Production No.5 (colour) pending disposal of the above suit should not be passed.

For Applicant :Mr.E.Om.Prakasah, Senior Counsel for
Mr.A.Damodaran

For Respondents :Mr.Dhanaram Ramachandran for
M/s D.R.Law Chambers for R1,R3 & R4
Mrs.M.Sneha for R2

ORDER

(This case has been heard through Video Conferencing)

The suit is filed for declaration of copyright over the Tamil Satellite Television Rights in India and for an order of perpetual injunction restraining the defendants from releasing/theatrical exploitation in respect of the Film Production No.5 (colour) “AYALAN”, in Tamil without the consent and concurrence of the applicant/plaintiff.

2.Pending suit, interim injunction is sought in the O.A.No.478 of 2021 apprehending that the first respondent intend to release the movie without discharging the finance avail from the plaintiff and in breach of pleade.

3. Pleadings:

The case of the applicant/plaintiff is that, the first defendant was the Producer of the suit subject film 'AYALAN'. For the production expenses, the first defendant borrowed Rs.7 crores from the plaintiff and pledged the Tamil Satellite Television Right of the said film. The first defendant had assigned to the second defendant the worldwide copyright from the first defendant in respect of the film 'AYALAN'. The third defendant is the Hero of the said film. The fourth defendant is the present assignee from the first defendant. The first defendant without paying the money borrowed, through the fourth defendant trying to release the movie. Hence, the suit.

4.As per plaint, on 09/08/2018, the plaintiff Ms.Divya M.Jain and the first defendant M/s 24AM Studios Private Limited, who was the Producer of the film titled 'AYALAN' starred by the 3rd defendant, entered into an financial agreement. Under this financial agreement, For the production of the movie, the first defendant availed financial assistance from the plaintiff for a sum of Rs.7

crores. As security, the first defendant pledged the exclusive copyright of the film 'AYALAN' in respect of Tamil Satellite Television Rights in India.

5.The first defendant assigned the World Satellite Television Broadcasting Rights, Direct to Home Broadcast, Terrestrial Television Broadcast and all other rights connected and incidental to the second defendant on 02/02/2018 for a consideration of Rs.20 crores plus GST. Out of Rs.20crores, Rs.10 crores paid by the 2nd defendant. In respect of the balance Rs.10 crores, by letter dated 29/05/2019, the first defendant wrote to the second defendant to pay a net sum of Rs.4,35,00,000/- directly to the plaintiff and pay the balance Rs.2,65,00,000/- to the plaintiff, after the first defendant comply the GST liability. A supplementary agreement dated 04/06/2019 was entered between first defendant and the second defendant under which they mutually agreed to change their terms of payment . While fact being so, with an malafide intention to deceive the plaintiff, the first defendant has assigned the copyright of the said film to the 4th defendant, for a huge consideration. The said act is in collusion to defeat the lawful claim of the plaintiff.

6. Separate counter filed by the first and fourth defendants. In the counter of the first defendant, it is stated that the suit is not maintainable. The plaintiff has not come to Court with clean hands. In fact, the first defendant is the Producer of the film "AYALAN". The second defendant is the assignee of the satellite rights and other exploitation rights for the entire world, as per the agreement dated 02/02/2018. The third defendant is the Hero playing the lead role. The fourth defendant is only the distributor for the film and not the present owner of the film as alleged by the plaintiff. The agreement dated 09/08/2018 by the first defendant with the plaintiff is in respect of finance availed and not in respect of assignment of any right. In the said transaction, the 3rd defendant, who play lead role in the film "AYALAN" have no role. The alleged execution of promissory note by the 1st and 2nd defendants is false. Prior to the finance agreement, the first defendant entered into an assignment agreement dated 02/02/2018 with the 2nd defendant, subsequently entered into the financial agreement with the plaintiff and borrowed Rs.7 crores on 09/08/2018.

7.The letter dated 29/05/2019 was issued by the first defendant to the second defendant with the consent and knowledge of the plaintiff wherein the second defendant is instructed to discharge the plaintiff loan on behalf of the first defendant. On this note, the first and second defendants have also entered into a supplementary agreement dated 04/06/2019. As per the Finance Agreement dated 02/02/2018 and the Supplementary Agreement dated 04/06/2019, the 2nd defendant is to pay the plaintiff Rs.7 crores being the loan amount. The plaintiff concurrence to the letter dated 29/05/2019 and the supplementary agreement dated 04/06/2019 will go to show that the plaintiff had accepted the terms of the documents. The plaintiff as financier lend Rs.7 crores and agreed to receive it, as per the time schedule mentioned in the first defendant letter dated 29/05/2019 and the supplementary agreement dated 04/06/2019. Having agreed to the said terms, the plaintiff has no cause of action to institute the suit or application. There is no assignment between the first and the fourth defendants. The plaintiff is not holding the exclusive copyright of the said film, as averred. It is erroneous to state that, the plaintiff is the assignee/owner of the copyright in the said movie. There is no assignment of copyright as envisaged under Sections 18 and 19 of the Copyrights

Act. The plaintiff has no right to claim the copyright as her own and sue the defendants for infringement.

8.In the counter affidavit filed by the 2nd respondent/2nd defendant, it is stated that both the suits and the application are not maintainable neither in law nor on facts. The first defendant being the producer of the suit movie had by way of letter dated 01/02/2018 had informed the lab about the assignment of copyright in favour of the second defendant. Pursuant to this, the first defendant and the second defendants had entered into an assignment agreement dated 02/02/2018 with the second defendant in respect of all rights exclusively for a consideration of Rs.20 crores and Rs.10 crores paid deducting TDS. The second defendant agreed to pay the balance amount in two instalments i.e Rs.3 crores on completion of 50% of the production and Rs.7 crores on the day prior to the theatrical release of the movie. On 29/05/2019, in modification to the agreement dated 02/02/2018, the first defendant gave a letter directing the second defendant to pay Rs.4,35,00,000/- to the plaintiff and Rs.2,65,00,000/- to one M/s MSM Movie Traders. Later, in the supplementary agreement dated 04/06/2019, the first defendant and the second

defendant agreed to pay Rs.4,35,00,000/- to the plaintiff, after general theatrical release of the suit film. Rs.2 crores and Rs.65 lakhs which were part of GST was also agreed to be paid to the plaintiff on condition that the condition in Clause 4 of the agreement dated 02/02/2018 is complied with. The 2nd defendant agreed to pay the plaintiff the sum of Rs.7 crores, after the theatre release and after the first defendant hands over the lab letter, censor certificate, and discharge GST liability.

9.The first defendant had assigned the entire copyright exclusively to the second defendant on 02/02/2018, therefore, could not have pledged the satellite rights and other rights with the plaintiff on 09/08/2018. The plaintiff can never have the rights to the world satellite rights, since the same has been assigned to the second defendant much earlier to 09/08/2018. Even if the claim of the plaintiff regarding the satellite right in Tamil in India is to be accepted, it can never stall the release of the movies in the theatres. The balance of convenience and prima facie case is not in favour of the applicant/plaintiff for granting interim injunction.

10.In the counter affidavit filed by the 4th respondent/4th defendant it is averred that, there is no cause of action for the plaintiff to maintain the suit. The plaint and the application are devoid of truth and factually incorrect. The 4th defendant is not a necessary party. In the affidavit filed in support of the original application No: 478/2021, false and malicious averments are made. The claim of the plaintiff that she is the owner and proprietor of the copyrights and Satellite Television Rights in India of the films Production No.5 (colour) “AYALAN” is false and amounts to intentional and wilful misrepresentation of facts. The fourth defendant is only the distributor of the movie and not the assignee. No assignment of copyright made in favour of the 4th defendant. The first look of the movie show “KRG Studios Release” and not “KRG Studios Present”. This fact is well known to the plaintiff. The allegation that the defendants conspired together to deprive the plaintiff is false and denied. The 4th defendant is a bonafide distributor and the plaintiff is fully aware of it. For the loan availed by the first defendant, the fourth defendant cannot be harassed.

11.On perusal of the pleadings and the oral submission made by respective counsels, this Court do hereby pass the following order:-

Mr.Om Prakash, larned Senior Counsel appearing for the appellant/plaintiff states that the for the finance extended, the consideration is not interest but the right to exploit the satellite rights in India. Drawing the attention of this Court pleaded that the agreement dated 09/08/2018 does not say anything about the repayment of the finance assistance or interest rate for the money given, therefore, going by the meaning given for Copyright of Cinematograph Film in Section 14 (d) of the Act, the instant suit is filed for infringement.

12.The meaning of copyright in cinematograph film as defined under Section 14 of the Copyrights Act indicates that the producer of a cinematograph film can slice the copyright into pieces and assign, sell, give it on hire a particular part of the copyright. In the instant case, the first defendant / first respondent who is the producer of the movie had created charge on the subject movie pledging the Tamil Satellite Television Rights in India.

13.The case of the defendants is that, the first defendant executed the financial agreement in favour of the plaintiff on 09/08/2018. The pronote alleged to have been executed by the first and third defendant is a forged document. Even before borrowing loan from the plaintiff, the first defendant has assigned the exclusive world Satellite telecast right to the second defendant. The lab letter dated 01/02/2018 and the Assignment Agreement dated 02/02/2018 proves the above prior assignment. Therefore, the intention of the first defendant, while executing the financial agreement with the first defendant, was not to assign any copyright for the Tamil Satellite Television Rights in India. The subsequent agreements and letter correspondence between the first and second defendants clearly discloses the borrowing and the commitment to repay the same to the plaintiff in the particular manner. The subsequent understanding through the letters and supplementary deeds dated 29/05/2019 and 01/06/2019 respectively are with the knowledge of the plaintiff. Therefore, the plaintiff cannot restrain the defendants from dealing with the copyrights over the subject movie and the attempt to release it in theatres and through satellites.

14.It is the admitted case of the parties that first respondent/first defendant borrowed Rs.7 crores from the applicant/plaintiff and executed the agreement dated 08/09/2018. In this agreement. the preamble says that the first defendant herein (producer) had approached the plaintiff (financier) to avail financial assistance by pleading the exclusive copyright of the said film in respect of Tamil Satellite Television Rights in India. The said deed is captioned as “Financial Agreement”. However, the recitals shows that it is a financial agreement coupled with pledge of the copyright. The terms of the agreement as found in Clauses 1, 3 and 4, indicates that the subject matter of the pledge is the exclusive copyright of the film “AYALAN” in respect of Satellite Television Rights in India, which includes all broadcast in any form or systems. The producer has agreed that the theatrical exploitation of the said film, can be done only after obtaining a ‘No Objection Certificate’ from the financier. Any transaction entered with regard to the satellite rights in India for the captioned film, will be notified to all parties concerned, including the plaintiff. It is also pertinent to note that, on the same day, the first and third defendants had jointly and severally executed a pronote for Rs.7 crores in favour of the plaintiff. Neither in the financial agreement nor in the pronote, there is no whisper about rate of interest or terms of repayment.

Therefore, the pledge of exclusive copyright of the film in respect of Tamil Satellite Television Rights in India is to be considered as a charge over the copyright for the financial assistance rendered to the producer and not an assignment or sale or hire. Further, the agreement permits the producer, his successor and assignee to transact the satellite rights in India for the said film, on condition that they should notify to the plaintiff such transaction. It is also to be noted that, by no stretch, the pledge of the satellite rights in India will convey to the plaintiff the right to exploit it. Therefore, the question of infringement of copyright will not arise in the given facts and circumstances of the instant case.

15.However, the recitals actually found in the financial agreement and terms not found or missing in the agreement are very critical to decide the balance of convenience. The recitals in the agreement dated 09/08/2018 discloses: (a) the plaintiff holds a charge over the subject movie in respect of Tamil Satellite Telecase Rights in India; (b)the plaintiff reserves right to be notified about the subsequent transactions of the movie; and (c) the requirement of his prior consent for the release of the movie in theatres. If the assignment of entire satellite broadcasting right to the second defendant on 02/02/2018 is true, then the first

defendant, while borrowing Rs.7 crores from the plaintiff, ought to have disclosed the same to the plaintiff and made clear in the deed that what assigned to the second defendant is exclusive of the Tamil Satellite Telecasting Right in India. Therefore, the balance of convenience is in favour of the plaintiff, who has bonafidely advanced finance to the first defendant, even without claiming any interest for the money advanced, based on the charge over the Satellite Telecast Right in India.

16.The first defendant, after assigning the right to the second defendant, had admittedly borrowed Rs.7 crores from the plaintiff. Knowing well that he has assigned the right to the second defendant, had created charge upon the right which he had already alienated. He has not notified the plaintiff the subsequent transaction which he is supposed to do as per Clause 3 of the finance agreement. Under Clause 4 of the agreement, he or his assignee cannot release the subject movie with his consent by way of no objection. If the subject movie is released through theatres without the NOC of the plaintiff, it will cause irreparable loss to the applicant/plaintiff.

17.Regarding the maintainability of the suit as commercial dispute, this Court is of the view that, the dispute though is not a suit touching upon any intellectual property/intangible right directly, the copyright pledged and the purpose for which the finance extended to the first defendant, requires interpretation of the documents, since they all primarily deals with the exploitation of the copyright in the movie 'AYALAN.' Therefore, on harmonious reading of Section 2(1)(c)(i) and (xvii) of the Commercial Courts Act, this Court holds that the suit is maintainable as commercial dispute.

18.As a result, the respondents/defendants are restrained from releasing the subject movie 'AYALAN' in any form either in theatres or through satellite, without obtaining NOC from the plaintiff. ***Accordingly, this Original Application No.478/2021 is allowed on the above terms. No costs.***

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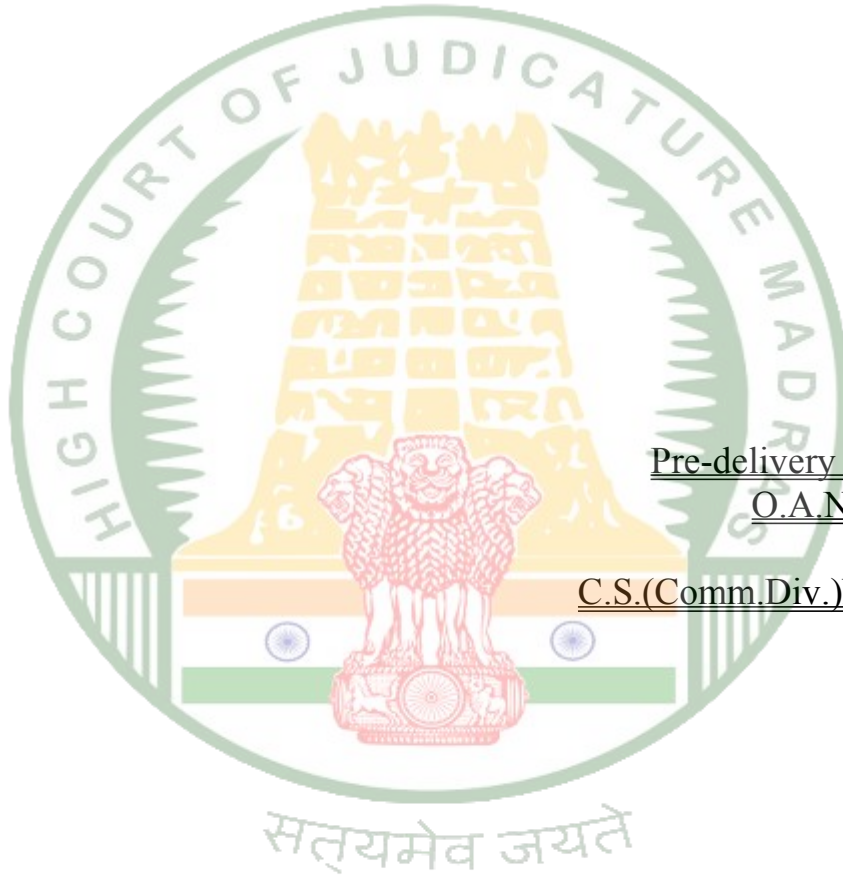
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Index:yes/no
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DR.G.JAYACHANDRAN,J.

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