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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

O.A.No.343 of 2021
in C.S.No.195 of 2021

Mr. Sanjay A.Wadhwa, Proprietor,
M/s Arjundas Pokardas,
42, Old No.80, New Avadi Road,
Kilpauk, Chennai – 600 010.

....Applicant/Plaintiff

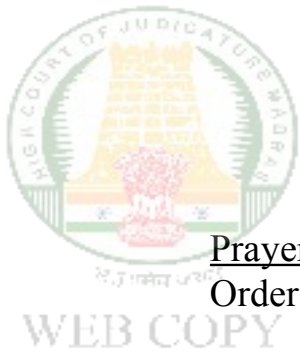
Vs

1.Mr. Jayalal N menon, Proprietor,
M/s Backwater Studios
No. 25/ 1022, MM Building,
Near Stone Bridge,
Alappuzha – 688 011.

2. M/s Chand Creations,
Represented by its Managing Partner
Mr. J. Sarathchandran Nair
T.C.7- 1385-1,
Vettamukkil Chandramangalam,
Thirumala.P.O.,
Trivandrum-695 006.

3. Prasad Digital Film Laboratories
(A division of Prasad Productions Pvt. Ltd.)
58, Arunachalam Road, Saligramam,
Chennai- 600 093.

...Respondents/Defendants



Prayer: Application filed under order XIV Rule of O.S. Rules read with Order XXXIX Rule 1&2 of CPC praying for the following:

a) to treat this application as urgent.

b) To grant an order of interim injunction restraining the Respondents, their men, agents, servants or persons acting on their behalf or claiming through them from interfering with the Applicant's copyrights in any manner, including by releasing in any medium the Malayalam cinematograph film “Pappu”, now titled “Ambalamukkike Visheshngal” starring Gokul Suresh, Marina Michel, Sudheer karamana and others, directed by Jayaram kailash.

For Applicant : Mr.K.Hari Shankar

For Respondent : Mr.T.S.Baskaran for R2

O R D E R

In the application filed by the plaintiff seeking an ad interim injunction restraining the respondents, their men and agents from releasing the movie, originally named as “PAAPU” and later re-named as “Ambalamukkile Visheshangal”, this Court has initially granted injunction and later made it absolute, since the defendants did not file counter inspite of several adjournments. Thereafter, counter has been filed by the respondents to vacate the interim order and the said counter is taken as application to vacate the interim order and the learned counsels have been heard today.



plaintiff entered into a Finance Agreement with the first defendant promising to pay upto Rs.50 lakhs for the production of the movie then named as “PAAPU”, which was supposed to be completed on or before 30.10.2017. But the first defendant, who had entered into this agreement, as the producer of the movie, could not complete the movie by 30.10.2017.

3. Pursuant to the Agreement dated 21.08.2017, the first defendant has given a letter to the Prasad Lab where the film was supposed to be processed, informing the lab that he has created a charge over the movie with the plaintiff and therefore, till the charge has cleared, he will not release the movie or cause to release the movie either in India or overseas. The receipt of this letter also been acknowledged by lab vide letter dated 22.08.2017.

4. Whiles, it has now been brought to the knowledge of the plaintiff by the first defendant himself that his co producer, who is the second defendant herein, has renamed the movie “Ambalamukkile Visheshangal” and proposed to release it. Based on the e-mail dated 18.03.2021, the present suit has been filed seeking a money decree to an



extent of Rs.1,61,50,000/- with interest at the rate of 36% and to declare the plaintiff as paramount charge holder over the sound negatives and all copyrights of the movie.

5. In the counter filed by the second defendant, it is contended that it is a collusive suit between the plaintiff and the first defendant to stop the release of movie. In fact, even before the plaintiff advanced any money whatsoever under the Finance Agreement dated 21.08.2017, this defendant has advanced a sum of Rs.40 lakhs to the first defendant on 29.04.2017. Thereafter, another sum of Rs.20 lakhs was received by the first defendant for the commencement of the production work and later, when he said that he has no sufficient fund to complete the production of the movie and offered to assign all the rights over the movie, the Assignment Agreement dated 09.10.2017 was entered, wherein the entire right over the movie such as copyrights, Worldwide Theatrical rights, Broadcasting through World Satellite Television and all other rights were assigned to him.

6. Thereafter, he paid the script writers, actors, directors, photographers, etc., for completion of the movie renaming as



“Ambalamukkile Visheshangal”. The post production work of the movie was carried out at Lal Media Arts Lab at Cochin . The censor board has certified the movie on 02.03.2021 fit for public view. Knowing that the movie was about to be released during the month of April 2021, the suit has been filed by the plaintiff at the instigation of the first defendant to extract money from the second defendant.

7.Learned counsel appearing for the second defendant submitted that the first defendant had never informed about his commitment with the plaintiff regarding this movie either while borrowing Rs.40 lakhs during the month of March 2017 or while assigning their right during the month of October 2017. For nearly four years, neither the plaintiff has informed about the alleged charge. Waiting till the completion of the movie, the present suit is filed at the eleventh hour before release with certain documents purported to be a deed of finance agreement creating charge over the movie.

8.The learned counsel submitted that there is no document to show payment made to the first defendant by the plaintiff except an agreement to advance financed upto Rs.50 lakhs. The probable date of



repayment was linked to the date of release which was tentatively expected to be by 30.10.2017. In the plaint, there is no explanation why the plaintiff has not proceeded against the first defendant thereafter. There is no evidence to show the exact amount advanced to the first defendant. There is no document to show that the movie is processed by the Prasad Lab so as to give effect to the lab letter issued by the first defendant and the undertaking of the Lab Management dated 21.08.2017 and 22.08.2017 respectively.

9. In response to the above submission, the learned counsel for the plaintiff submitted that the statement of account filed along with the plaint reflects the payment made to the first defendant and those payments were through bank transaction and nowhere, the first defendant had denied the receipt of the said money. The second defendant, who conveniently claimed right over the movie based on the assignment deed dated 09.10.2017, had not placed any document to show his bonafideness or prior enquiry about the financial commitment entered by the first defendant with any other individual or institution. The Agreement dated 29.04.2017, which is purported to be executed prior to the finance agreement with the plaintiff and the endorsement made behind that



document on 02.11.2017, if read with the alleged Assignment Agreement dated 09.10.2017, the manipulation by the second defendant over the said transaction will clearly get manifested. Hence, sought for the confirmation of the interim order.

10. This Court being prima facie satisfied of the case had already granted interim injunction on 09.06.2020. The material relied by the plaintiff viz., the Finance Agreement dated 21.08.2017 and the statement of account from 22.08.2017 to 15.11.2017, would prima facie show that money has been transferred from the plaintiff to the first defendant. Pursuant to the agreement dated 21.08.2017, the veracity of the statement of account can be tested during the course of trial. But there is no material to infer that no money was paid to the first defendant pursuant to the finance agreement dated 21.08.2017. Therefore, on the payment of money by the plaintiff to the first defendant pursuant to this Agreement, it becomes enforceable and the lab letter dated 21.08.2017, given by the first defendant will bind the first defendant are sufficient to infer that a charge over the movie had come into effect.

11. It is the case of the defendant that the movie not been



processed by the Prasad Lab and the movie name has been changed from “PAAPU” to “Ambalamukkile Visheshangal” and he is the person, who fully funded for the production of the movie. It would have been so, if there is no agreement dated 29.04.2017 executed between the first defendant and the second defendant, which indicates the first defendant has advanced loan of Rs.40 lakhs for completion of the said movie on profit sharing basis.

12.The finance agreement dated 21.08.2017 entered between the plaintiff and the first defendant, carries a specific recital that the borrower needs Rs.50 lakhs for the production and completion of the movie “PAAPU” starred by Gokul Suresh, Marina Michel, Sudheer Karamana and others, directed by Jayaram Kailash and offering to repay the amount so advanced on or before the release and delivery of the print or prints or any material of the said picture to anyone and secured the repayment of the same in full by paramount charge over the entire negative rights of the film including the release prints overseas and satellite rights. The first defendant also had represented to the first plaintiff that there is no charge, lien, pledge, claim or any other encumbrance or commitment or attachment over the said film. Having



said so in unequivocal term, any assigned of right by the first defendant in favour of the second defendant will certainly be subject to the terms of the finance agreement and the commitment of the first defendant to the plaintiff that he will not release the movie or assign the movie to anybody without clearing the dues.

13. In the said circumstances, this Court finds that as pointed out by the learned counsel for the defendant, what the due payable is to be proved by the plaintiff by way of evidence. At the same time, the plaintiff has made out a case that money to be paid based on the finance agreement and according to him, it is the suit claim and for that purpose, he rely on the statement of accounts which is as on date to be considered in the absence of any other contra evidence either by the first defendant or by the second defendant.

14. In the abovesaid facts and circumstances, this Court is of the view that the interim order passed by this Court on 09.06.2021, later made absolute on 19.07.2021, is to be continued.



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15. For the reason stated above, this Court is of the view that the order of interim injunction dated 09.06.2021 and 19.07.2021 does not require re-consideration. No order as to costs.

Sd./-G.J.J
17.08.2021

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

COURT OFFICER(O.S.)

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JJ 06/09/2021