

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.08.2021

Pronounced on : 18 .08.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

A.No.2339 of 2021
in C.S.No.59 of 2021

Lyca Productions Private Limited,
Rep. by its Authorised Signatory Mr.Neelkant Narayanpur,
No.55, Vijayaraghavar Road,
T.Nagar, Chennai – 600 017,
Tamil Nadu ... Applicant/Plaintiff

/versus/

Mr.Vishal Krishna Reddy,
The Sole Proprietor of M/s.Vishal Film Factory,
No.73, 1st Street, Kumaran Colony,
Vadapalani, Chennai – 600 026,
Tamil Nadu ... Respondent/Defendant

Prayer in 2339 of 2021:- This Application is filed under Order IV Rule 8 of Original Side Rules read with Order XII Rule VI of the Code of Civil Procedure, 1908.

- a). Why the above application should not be treated as urgent?
- b). Why this Hon'ble Court should not be pleased to pass a Judgment on admission under Order XII Rule 6 directing the respondent to pay the

applicant/plaintiff a sum of Rs.30,05,68,137/- (Rupees Thirty Crores Five Lakhs Sixty Eight Thousand One Hundred and Thirty Seven Only), with interest at 30% p.a., on the principal amount of Rs.21,29,00,000/- from the date of plaint till realisation.

c). To direct the respondent to pay the costs of this suit especially in light of the respondent's conduct.

For Applicant : M/s.Hema Srinivasan

For Defendant : Mr.A.Chidambaram

ORDER

The Applicant herein is the plaintiff in the suit filed for recovery of Rs.30,05,68,137/- alleged to be due from the respondent/defendant under the loan agreement dated 21.09.2019.

2. The plaintiff in this case is M/s.Lyca Productions Private Limited. The defendant is Mr.Vishal Krishna Reddy. Since in this order several other applications filed along with the plaint are to be referred for better clarity parties are described by their name.

3. The case of the Plaintiff M/s.Lyca Production Private Limited is that, the Defendant Mr.Vishal Krishna Reddy, is a film actor-cum-producer. In the year 2016, for production of his film 'Marudu' he availed loan for one Mr.Anbu Cheizan of Gopuram Films, a sum of Rs.21,29,00,000/- (Rupees Twenty One Crores Twenty Nine Lakhs only). Mr.Vishal was unable to repay his loan to Gopuram Films, hence approached the plaintiff M/s.Lyca Production Private Limited, for takeover of the loan. Accordingly, a loan agreement dated 21/09/2019 was entered between M/s.Lyca Production Private Limited and Mr.Vishal. Wherein, Mr.Vishal agreed to pay M/s.Lyca to pay the principal of Rs.21.29 crores with 30% p.a., as per the terms of the recital found in the agreement dated 21.09.2019.

4. The relevant clause in the said agreement reads as below:-

"RECITALS"

C. Based on mutual understanding, Lyca has taken over a loan availed by VFF from Gopuram Films/Anbu Chezian (referred as "Original Lender") together with interest accrued thereon amounting to INR 21.29 crores

(Rupees Twenty One Crores and Twenty Nine Lakhs Only).

The Parties agreed that Lyca shall keep VFF free and harmless against any claim or demand if any made by the Original Lender on VFF. VFF shall settle the loan taken over by Lyca on terms agreed as per this Agreement.

3. LOAN AMOUNT AND INTEREST COST

Clause 3.1 VFF agrees to repay an amount of Rs.21.29 Crores (Rupees Twenty One Crores Twenty Nine Lakhs Only) being the loan amount availed by VFF from the Original Lender taken over by Lyca along with an interest rate of 30% p.a. calculated on diminishing balance basis accruing from 1st October 2019 till the date of full, final and actual settlement of the outstanding amounts that are owed by VFF to Lyca, subject to the terms and conditions mentioned in this Agreement and the other Loan Documents (hereinafter referred to as "Loan Agreement").

3.2. It is further agreed that VFF shall be liable to repay the Loan Amount with interest as agreed within the Repayment Period (defined below) in the manner agreed herein.

Clause 4. OTHER TERMS

Lyca shall have a first lien as a collateral security on all the rights, titles and interests in all the future film projects and its associated rights, produced or financed by VFF or Vishal Krishna till such time the Loan Amounts are fully settled by VFF. Lyca shall be and hereby is authorized to take all action and execute all documents, instruments, certificates and writings necessary or appropriate to carry out the foregoing.

....

5. REPAYMENT

5.1 Both parties agree that the Loan Amount shall be repaid by VFF to Lyca in the following manner:

a. Rs.7,00,00,000/- (Rupees Seven Crores Only), towards the Loan Amount, i.e., towards Rs.21.29 crores plus the interest accrued until such date) atleast one week prior to the release of the film, that is tentatively titled as "Thupparivalan II" and that is expected to release on or before 31st March 2020.

b. Balance amount together with accrued interest on or before 31st December 2020 ("Repayment Period").

5.2 The Parties further expressly agree that in case VFF fails to release the film, that is tentatively titled as "Thupparivalan II" then VFF shall be liable to pay the entire Loan Amount within the Repayment Period i.e. 31st

December 2020. [emphasis added].

5.3. The Parties expressly agree and acknowledge that in case VFF fails to pay the first tranche of Rs. 7,00,00,000/- (Rupees Seven Crores only) one week prior to the release of Thupparivalan II (tentatively titled), without prejudice to Lyca's rights and remedies as contained herein, it shall also be entitled to all legal, equitable and injunctive reliefs and remedies including but not limited to obtaining stay of release of Thupparivalan II (tentatively titled) by obtaining injunctive orders from appropriate Court of Law and VFF waives its rights to challenge any such remedy as Lyca may seek against VFF in this regard.

5.4 In case there is failure or breach on the part of VFF to pay the Loan Amount within the Repayment Period, Lyca shall be entitled to proceed against VFF for the recovery of the amount including but not limited to obtaining any injunctive reliefs against release of any films to be released by VFF after the Repayment Period and VFF waives its rights to challenge any such remedy as Lyca may seek against VFF in this regard.

.....

6.1 During the term of this Agreement and until the obligations of VFF have been fulfilled to the satisfaction of

Lyca, VFF undertakes to notify Lyca of any fact, matter or circumstance which would cause adverse effect on the repayment of the Loan Amount or result in breach of representations and warranties of VFF.

.....

8.9 VFF shall indemnify Lyca against, and must pay Lyca on demand for, any and all losses, demands, costs, expenses, actions, and claims of whatsoever nature arising from or in connection with breach of any terms of this Agreement”

5. The suit came to be filed alleging that the Movie **Thupparivalan-II** supposed to be released on or before 31.03.2020 not yet released. Rs.7,00,00,000/-which is supposed to be paid one week before the release of movie **Thupparivalan II** not paid. The balance amount which is supposed to be paid on or before 31.12.2020 also not paid by Mr.Vishal. Attempts to contact the defendant failed. The notice of demand through speed post to the defendant address returned as ‘door locked’. e-mails sent to the defendant did not evoke any response.

6. While so, M/s.Lyca Productions Private Limited, came to know

that Mr.Vishal is likely to release his movie titled 'CHAKRA' on 19.02.2021. As per clause 4 of the Loan Agreement dated 21.09.2019, M/s.Lyca have lien over all the movies and future products of Mr.Vishal which includes the movie 'CHAKRA' until full settlement of the dues owned to M/s.Lyca Productions Private Limited.

7. Along with the plaint, M/s.Lyca Productions Private Limited, had also filed Application No.98/2021, for interim injunction restraining Mr.Vishal, his men and agents from releasing or exhibiting the movie “CHAKRA” in theatres and Over-the-Top (OTT) or any other media.

(i). Application No.555 of 2021, for an order directing Mr.Vishal and his men and agents, to deposit all the amount received or receivable in relation to the film 'CHAKRA'.

(ii). Application No.556 of 2021, for an order directing Mr.Vishal to furnish security to the suit claim amount, failing which, the order of attachment of the positive/negative and digital storage of the film titled 'CHAKRA'.

(iii). Original Application No.129 of 2021, for an order of injunction

restraining Mr.Vishal or his agents from receiving any funds directly or indirectly in relation to the movie 'CHAKRA'.

(iv). Application No:789 of 2021, to grant an order directing Mr.Vishal to disclose on oath all personal assets owned by him.

(v). Application No:790 of 2021, for a direction to Mr.Vishal to disclose on oath details of all agreements entered with regard to the movie 'CHAKRA' or any part thereof, including dubbing rights in other Indian languages. Injunction restraining Mr.Vishal or his agents from receiving any funds directly or indirectly in relation to the movie CHAKRA.

8. Earlier, this Court, on considering the averments made in the Applications No.555 of 2021 & 556 of 2021 and Original Application No.98 of 2021, passed the following order on 18.02.2021:-

“8. Mr. Satish Parasaran, learned Senior Counsel

invited the attention of the Court to the agreement termed as Loan Agreement dated 21.09.2019 which had been entered into between the plaintiff and the defendant. The learned Senior Counsel placed special emphasis on the fact that a loan of Rs.2.29 crores had been agreed as having been received by the defendant herein not directly from the plaintiff but as received from Anbu Chezhan of Gopuram Film which loan the plaintiff had taken over. The covenants with respect to the repayment of the loan was also pointed out by the learned Senior Counsel. More importantly, the learned Senior Counsel also pointed out the following terms in the agreement under the sub-heading 'Other Terms' in Clause 4, namely,

“Lyca shall have a first lien as a collateral security on all the rights, titles and interests in all the future film projects and its associated rights, produced or financed by VFF or Vishal Krishna.....”

9. Placing reliance on this covenant, the learned Senior Counsel stated that one of the said future film as on September 2019 was the present movie “CHAKRA” which is scheduled to be released on 19.02.2021.

10. Granting injunction from release of a movie a day

or two prior to its release is frowned upon by Courts in general. Ofcourse, it is an order granted when the plaintiff makes out a prima facie case. But it has to be balanced with the hardships such an order would cause to the promotional steps taken to ensure successful release of the movie in the theatre. Several theatre would have been blocked, advances would have been paid, in this instance in theatres across South India since the movie is also to be released in Telugu, Malayalam and Kannada and also World Wide wherever there is a substantial population of Indian diaspora. All these efforts would come to nought if the film is injuncted from being released. There would also be much loss which would be caused to the producers and to the various other stakeholders who are dependent on the release of movie in theatres not to mention the general public, who are very much interested in watching movies in the theatres. The sanctity of the agreement however, has also to be upheld. There had been a specific covenant by the defendant that the amount would be repaid. Such covenant had not been adhered to by the defendant. It is clear that the defendant had not repaid any amount towards the loan of Rs.21.29 crores. It must be pointed out that the defendant had benefited by such loan which was advanced at a time when he produced the movie MARUDHU and had the effect of releasing him from financial constraints.

11. Balancing all these facts, I would rather instead of granting injunction against the release of the movie grant an order to direct the defendant as follows:-

(1) To furnish to the Court a statement with respect to the collections of the theatrical release of the movie “CHAKRA” from 19.02.2021 till 05.03.2021 in all theatres in India and World Wide in Tamil, Telugu, Kannada and Malayalam languages release of the movie. This statement of accounts should be filed in Court on or before 10.03.2021;

(2) The defendant to disclose by way of an affidavit the agreements entered into for release of the movie “CHAKRA” in OTT platforms. This affidavit is to be filed on or before 10.03.2021.”

9. Consequence to the above interim order, the defendant Mr.Vishal forwarded a statement of accounts with respect to revenue earnings through the theatrical release of the movie 'CHAKRA' and an affidavit stating that, he had not entered into any agreement for release of the movie in OTT platforms. Recording the same, this Court, on 18.03.2021, passed the following order:-

“3. An affidavit has also been filed by the defendant

wherein he had stated that he had not entered into agreement for release of the movie in OTT Platforms. If any agreement is entered into a copy of the same shall be filed and an affidavit should be filed the details of the agreement, the parties to the agreement and the consideration for the same. Even if agreement is entered into for release of the movie through satellite television, similar disclosures shall be made by way of an affidavit.”

10. At this juncture, the plaintiff M/s.Lyca Productions Private Limited, has filed the Application No.2339 of 2021, to pass a judgment on admission under Order XII Rule 6 of C.P.C and direct Mr.Vishal, to pay the suit claim along with interest at the rate of 30% till the realisation.

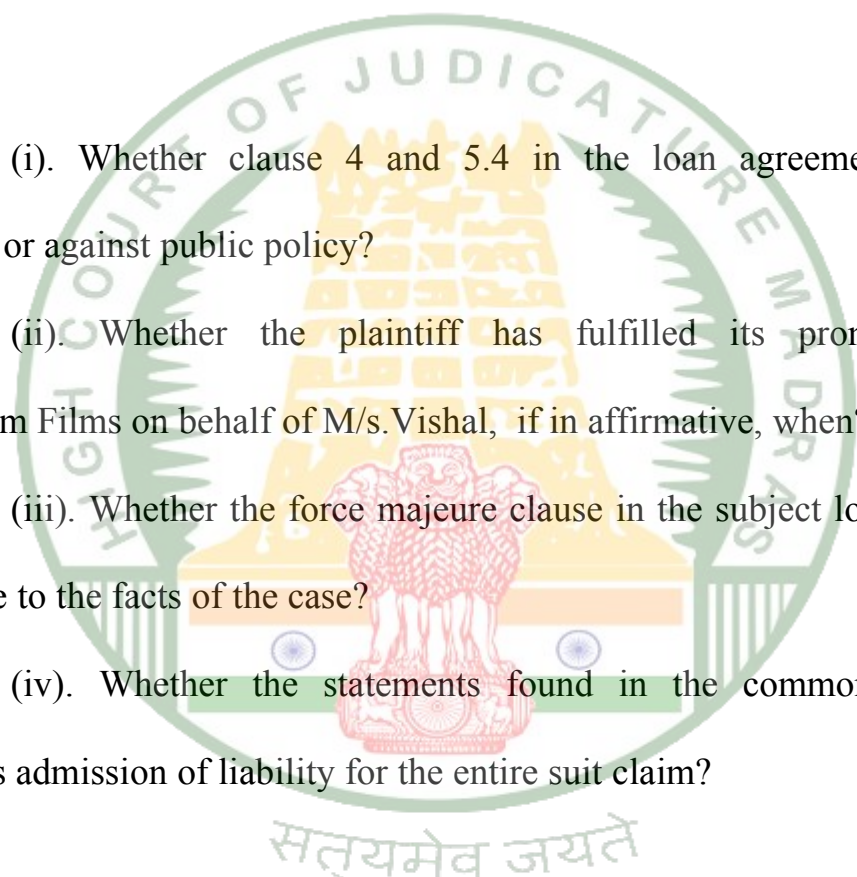
11. In the affidavit filed in support the Application No.2339/2021, the applicant/plaintiff M/s.Lyca Productions Private Limited, at paragraph No.8 had extracted certain portions of the common counter-affidavit dated 17.03.2021 filed by Mr.Vishal in the other pending applications as a 'admission of liability.' This Application is filed, as if those admission are for the entire liability claimed under the suit and those admissions are clear, unequivocal and sufficient to pass a decree as prayed in the suit by invoking Order XII Rule 6 CPC.

12. Certain sentences in paragraph Nos.4, 5 and 7 of the counter affidavit of Mr.Vishal dated 17.03.2021 are the basis upon which M/s.Lyca Production Private Limited, pray for decree on admission. Whereas, in the counter filed by M/s.Vishal Krishna Reddy in this application, it is stated that, there are several terms under the loan agreement, one among them is the complete discharge of due payable by Mr.Vishal to Anbu Chezian of M/s.Gopuram Films. In the plaint, it is only stated that, the said loan was taken over by M/s.Lyca Productions Private Limited, but silent about its discharge. The agreement dated 21.09.2019 was signed by him on the bonafide belief that M/s.Lyca Productions Private Limited, will discharge the loan. Neither in the plaint or otherwise, the settlement of due towards M/s.Gopuram Films disclosed so far. Except a general statement admitting the execution of the agreement, no unequivocal admission of entire liability is made by the defendant. Besides, it is also contended that, the production of the movie Thupparivallan-II is stopped due to lock down imposed on breakdown of pandemic. In view of force majeure clause in the agreement, there is no cause for the suit to maintain.

13. Heard the Learned Counsel for Applicant and the Learned

Counsel for the respondent.

14. The pleadings read in entirety, on the face, does raise several questions of law and fact. To mention few:-

- 
- (i). Whether clause 4 and 5.4 in the loan agreement is legally enforceable or against public policy?
 - (ii). Whether the plaintiff has fulfilled its promise to pay M/s.Gopuram Films on behalf of M/s.Vishal, if in affirmative, when?
 - (iii). Whether the force majeure clause in the subject loan agreement is applicable to the facts of the case?
 - (iv). Whether the statements found in the common counter of Mr.Vishal is admission of liability for the entire suit claim?

15. To get a decree for entire suit claim, this Application is filed by cherry picking certain sentences in the counter affidavit of Mr.Vishal. The reading of the counters filed by Mr.Vishal this Court finds no unequivocal, admission of liability, that too for the entire suit claim.

16. The applicant suit is based on the loan agreement dated 21.09.2019 and most of the Applications filed by the applicant are centred around clause 4 of the said agreement. In this application, the few lines in the beginning of paragraph No.3 is extracted. These admissions are about the fact that, he entered into loan agreement dated 21.09.2019 and his loan of Rs.15 crores availed from Mr.Anbu Chezian. However, in the same paragraph Mr.Vishal has sworn that, *'to put it short, I may not be liable for the entire suit claim of Rs.21.21 crores and it is also to be pointed out that the applicant/plaintiff (M/s.LYCA PRODUCTIONS PVT LTD) had not even disclosed any break up details in the plaint as to how they have arrived at the suit claim.'*

17. Likewise, the undertaking given by Mr.Vishal, in paragraph No.7, that *"in the event of rescheduling the repayment on arriving at amount to be paid, I am ready to settle the same at the time of release of the film THUPPARIVALAN-II"* is not an unconditional, unequivocal admission of entire suit claim, but subject to reschedule of payment after arriving the amount to be paid.

18. Order XII Rule 6 of C.P.C, do empowers Court to pass decree in case of admissions of facts either orally or in writing in the pleadings or otherwise. When a statement is made by a party, and such statement is brought before the Court in an Application under Order XII Rule 6 of C.P.C., showing it as admission of liability. The person, who has made the admission has to be given sufficient opportunity to explain the said admission. Subject to the satisfaction of the explanation, Court can pass a decree or decline to pass decree as prayed in the application. Whatever mode the admission made, if satisfies Section 18 to 23 of the Contracts Act, then such statements may be considered for deciding the application filed under Order XII Rule 6 of C.P.C. In short Court should be satisfied that the admission must be unequivocal, unconditional, made without any force, coercion and duress and enforceable under law.

19. In the instant case, certain statements of Mr.Vishal in the common counter affidavit are made with a rider that the due payable is subject to the proof of discharge of his loan towards M/s.Gopuram Films, subject to reconciliation of accounts, subject to release of his movie THUPPARIVALAN-II so on and so

forth. It does not fall within the scope of unequivocal admission of entire suit claim.

20. Therefore, this Application for decree on admission is not only devoid of merits, the affidavit of Mr.Neelakant Naryayanpur S/o.Mr.Sangappa Narayanpur filed in support of M/s.Lyca Productions Private Limited, is a misrepresentation of statement on record. Hence, this ***Application is dismissed*** with cost of Rs.5,00,000/- payable to the respondent/defendant Mr.Vishal.

Index : Yes
Internet : Yes/No.
Speaking order/Non-speaking order

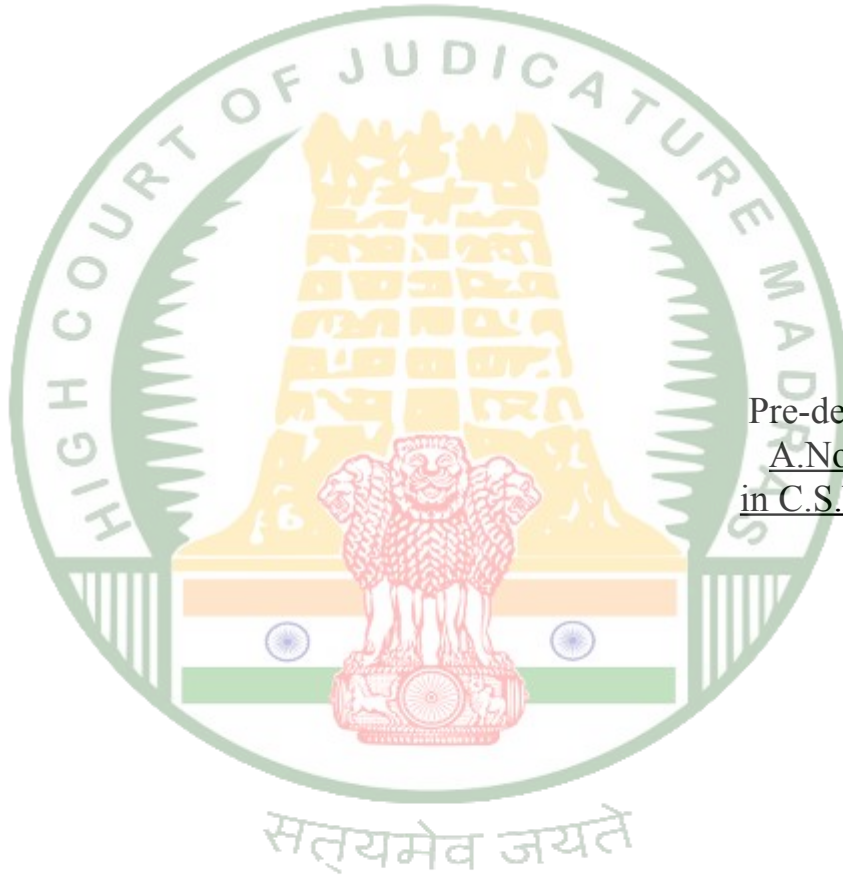
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& A.No. 2339 of 2021
in C.S.No.59 of 2021

Dr.G.Jayachandran,J.

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Pre-delivery order in
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