

A.Nos.2023 and 2024 of 2020
in
C.S.No.413 of 2019

DR.G.JAYACHANDRAN,J.

Heard the learned counsel for the plaintiff/applicant, who has taken out these applications to strike off the defense and pass summary judgment.

2. The suit was filed seeking permanent injunction restraining the first defendant from dealing with the plaintiff's copyright over the film "Dillukku Dhuddu" alleging attempt of infringement of copyright by the first defendant and the other consequential reliefs including payment of Rs.1,00,01,000/- as liquidated damages.

3. This Court, considering the relief sought in the suit and the prayer in the interlocutory application O.A.No.649 of 2019 vide order dated 11.07.2019, being convinced about the prima facie case made out by the plaintiff and the balance of convenience in its favour, granted interim injunction for a limited period. Thereafter, the first defendant had entered appearance and filed an affidavit of undertaking dated 14.08.2018 that he

will make payment of Rs.15,00,000/- to the plaintiff by way of a cheque and the interim order against him may be vacated. Recording the undertaking and the issuance of the cheque drawn on ICICI Bank in favour of the plaintiff for Rs.15 lakhs, this Court has vacated the interim injunction order dated 11.07.2019. This order was passed by this Court on 14.08.2019. Thereafter, it was brought to the notice of this Court that the cheque given by the first defendant, based on which the interim injunction was vacated, was bounced on presentation. The first defendant submitted before this Court that due to financial difficulty, he was not able to honour the cheque. Taking note of the fact, this Court instead of proceeding against the first defendant for breach of undertaking, had given a breather to him to pay Rs.3 lakhs on the same day and till such payment, the interim order already granted will be restored.

3.In the present applications to strike off the defense and to pass summary judgment, the plaintiff has brought to the notice of this Court inspite of specific undertaking and its breach by the first defendant and the concession shown by this court for the first defendant to make payment on the subsequent date, till date, the first defendant paid only Rs.4,50,000/- and after giving an affidavit of undertaking to this Court that he will give a

schedule of payment, had failed to appear before this Court on the subsequent hearing but continuously exploiting the copyright of the movie by telecasting the same in OTT platform and other modes.

4. On perusal of the petition and the earlier orders passed by this Court, this Court is convinced that the first defendant just to get over the interim order passed by this court on 11.07.2019 had given a false promise on 14.08.2019 to get the interim order vacated and thereafter, had consciously failed to pay the agreed amount and only after much delay, a sum of Rs.3 lakhs paid on 25.09.2019 and another sum of Rs.1,50,000/- on 11.11.2019. The undertaking given by the first defendant and subsequent breach disentitled him to contest the matter. Hence, it is fit case to strike off the defense. Accordingly, Application No.2024 of 2020 is allowed.

5. Order VIII A CPC as amended by the Commercial Courts Act enables the Court to pass summary judgment. Under the facts and circumstances narrated above, this Court finds that this is a case, where the first defendant who had admitted by way of undertaking to pay a sum of Rs.15 lakhs, had not paid the money in entirety and paid only Rs.4,50,000/- as on date. So, summary judgment in part is passed for a sum of

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Rs.10,50,000/- as against the suit claim of Rs.1,00,01,000/- as damages.

The summary judgment is passed under Order VIII A Rule 2(a). For rest of the relief, suit shall proceed. Meanwhile, the interim order passed by this Court on 11.07.2019 is restored. Accordingly, Application No.2023 of 2020 is allowed.

Post the suit on 22.06.2021 for further proceedings.

20.04.2021

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