O.A.No.585 of 2020 & A.No.2695 of 2020
in
C.S.(Comm.Div) No.310 of 2020

SENTHILKUMAR RAMAMOORTHY, J

The suit is filed for recovery of a sum of Rs.1,27,52,194/- along with interest at 36% p.a. on the principal claim of Rs.81,13,717/- from the date of plaint till realization. In the said suit, the plaintiff has filed two interim applications. By the first application, the plaintiff seeks an interim injunction to restrain the respondent from assigning the theatrical, satellite and OTT rights in respect of the movie 'Djinn'. The second application is to furnish security for the suit claim and for attachment before judgment in the event of default in furnishing security.

2. The plaintiff relies upon the License Agreement dated 11.10.2019 (the License Agreement) in order to substantiate its claim. In particular, the plaintiff contends that the License Agreement provides for the payment of a minimum guarantee payment of Rs.65 lakhs plus GST to the plaintiff in its capacity as licensor. In addition, the plaintiff relies upon clause 4.6 of the License Agreement which provides for the apportionment of proceeds from the distribution of the movie 'Kaithi' in Kerala through the

licensee/defendant. The plaintiff contends that clause 4.6 provides for the adjustment of proceeds first towards minimum guarantee payment and next towards specified expenses. Upon adjustment towards the aforesaid items of expenditure, it is contended that the overflow amount was required to be apportioned between the plaintiff and the defendant on 50:50 basis. For such purpose, the plaintiff points out that the defendant was required to submit accounts within three weeks from the date of general theatrical release of the movie in the licensed territory. In terms thereof, it is stated that the income and expenditure statement was provided by the defendant to the plaintiff, *albeit* belatedly. As per such income and expenditure statement, the plaintiff contends that a sum of Rs.3,54,07,357/- was realized. After setting off permissible expenses, it is stated that a sum of Rs.2,77,27,435/- was available for apportionment between the plaintiff and the defendant. The plaintiff also points out that the applicable GST was payable by the defendant both in respect of the minimum guarantee payment and the apportioned amount. On such basis, the plaintiff submits that a sum of Rs.1,06,13,717.32 was payable by the defendant to the plaintiff. After giving credit to a sum of Rs.25 lakhs which was paid by the defendant to the plaintiff, the plaintiff submits that a sum of Rs.81,13,717/- was the net outstanding. After reckoning interest thereon as well as the GST dues as per the License Agreement, a total claim of Rs.1,27,96,207/- is made. By adverting to the statement of income and expenditure and the e-mail of 07.10.2020, the plaintiff submits that the only issue on which there was divergence between the plaintiff and the defendant is the sum of Rs.27,72,743.46 towards distribution commission. According to the plaintiff, the defendant is not entitled to adjust distribution commission as per the License Agreement.

3. The claim made by the plaintiff is refuted by the defendant on about three grounds. The first ground is that the License Agreement is not valid because it was not signed jointly by the two partners, and that the managing partner has not signed the same. The second ground is that the said Agreement was not executed at the place and on the date indicated therein. The main contention on the merits of the claim is that there was an oral agreement between the parties in terms of which a sum of Rs.1,40,00,000/- was to be adjusted against dues arising out of an earlier transaction between the parties pertaining to the Tamil film 'NGK'. The defendant contends that the plaintiff willfully suppressed material facts and

is, therefore, not entitled to equitable relief. The defendant also contends that the minimum guarantee payment was made even prior to the execution of the License Agreement, whereas the plaintiff has not disclosed these material facts. In response to these contentions, the plaintiff points out that the License Agreement does not refer to the transaction relating to the movie 'NGK'. As regards the payment of a sum of Rs.65 lakhs towards minimum guarantee payment, the Agreement sets out the manner in which the said amount was paid by the defendant.

4. On consideration of the rival contentions, the question that arises is whether the plaintiff is entitled to interim relief and, if so, the nature of such relief. The suit claim is founded on the License Agreement and the income and expenses statement provided by the defendant to the plaintiff in terms thereof. On perusal of the said documents, it appears that the admitted position is that a sum of Rs.3,54,07,357/- was collected pursuant to the release of the movie 'Kaithi' in the licensed territory of Kerala. The expenditure of Rs.76,79,922/- is also admitted. As regards the distribution commission of Rs.27,72,743.46, it appears *prima facie* that this is not an expenditure provided for in the License Agreement. The License Agreement

also appears to provide for payment of GST by the licensee in respect of amounts paid by the licensee. Therefore, a strong *prima facie* case is made out as regards the suit claim.

5. Both in the written statement and in the counter to these applications, the only defence on merits appears to be on the basis of the earlier transaction relating to the movie 'NGK'. Such transaction is not referred to in the License Agreement. All the other grounds on which the defendant endeavours to resist the suit claim are with regard to the alleged invalidity of the License Agreement because it was not executed by the managing partner. On perusal of the partnership deed dated 30.10.2014, clause-7 thereof describes both the partners as working partners. Clause-10 provides for joint operation of bank accounts but no limitation has been imposed with regard to the right of one of the partners to execute agreements on behalf of the firm. The partnership firm appears to be a registered partnership firm as per the registered certificate enclosed by the plaintiff and the suit is filed by such registered partnership firm. Therefore, the objection to the execution of License Agreement is not tenable.

6. The defendant is a sole proprietor who carries on business in the State of Kerala. There is no indication that the defendant has assets within the jurisdiction of this Court. Besides, as indicated earlier, a strong *prima facie* case has been made out with regard to the suit claim and the defences raised appear tenuous. In the circumstances, the apprehension of the plaintiff that it would be left with a paper decree unless the suit claim is secured is a reasonable apprehension.

7. Therefore, it is necessary to secure the suit claim. At the same time, it should be recognized that the interim order restraining the release of the film 'Djinn' shuts off the revenue stream of the defendant. Hence, the equities should be balanced pending disposal of the suit. Towards such end, the following directions are issued:

> *(i) Both parties shall enter into an escrow agreement with a scheduled bank, whereby such scheduled bank shall be constituted as an escrow agent.*
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> *(ii) All monies received by the defendant in respect of the movie 'Djinn", including from theatrical, satellite or OTT*

release or from any assignment of the above or other rights, shall be remitted only into the escrow account.

(iii) From and out of amounts remitted into such escrow account, the defendant shall be permitted to withdraw a maximum of 50% of amounts credited at any time to meet expenses.

(iv) Once a sum in excess of Rs.1.25 crore is collected in the escrow account, subject to retention of Rs.1.25 crore in such escrow account, the defendant is permitted to withdraw the remainder.

(v) Both parties are directed to establish the escrow account within two weeks from the date of receipt of a copy of this order.

(vi) The movie is permitted to be released or assigned only after and subject to the parties executing the escrow agreement incorporating the terms indicated above.

Both these applications are disposed of in the above terms.

03.03.2022

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