

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.06.2021

Pronounced on: 02.07.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.No.2625 of 2020
in C.S.No.388 of 2019

M/s.Bharani Pictures Private Limited,
Rep. by its Manager,
Ramakrishna Bhatt,
S/o.late A.Narayana Bhatt,
No.57, N.S.K.Salai, formerly Arcot Road,
Saligramam, Chennai – 600 093.

... Applicant

/versus/

1. Aditya Music (India) Private Limited,
Rep. by its Managing Director,
3-5-1091/7, Venkateswara Colony,
Narayanguda, Hyderabad,
Telangana – 500 029.

2. T.Ramesh,
C/o.R.Parthasarathy Rao,
No.12, Valmiki Street,
T.Nagar, Chennai – 600 017.

3. R.Parthasarathy Rao,
S/o.R.Venkatrao,
No.12, Valmiki Street,
T.Nagar, Chennai – 600 017.

... Respondents

Prayer in A.No.2625 of 2020

Judge's summons under Order XIV and Rule 8 of Original Side Rules under Order XI Rule 5 of C.P.C as amended by Act 4 of 2016.

- a). This application should not be treated as urgent?
- b). To grant leave to the plaintiff to produce the documents mentioned in the list of documents set out in the Judges summons and to receive the same in evidence.

For Plaintiff : Mr.P.L.Narayanan

For D1 : Mr.Adithya Reddy

For D2 : Mr.T.E.Krishna

For D3 : *set exparte* (30.09.2019)

ORDER

This Application is filed to receive additional documents after settlement of issues in the suit filed for declaration of ownership the copyright in the suit mentioned Cinematography films.

2. The applicant/plaintiff is a private limited company incorporated in the year 2015. It claims ownership over the suit scheduled cinematography films

produced by M/s.Bharani Pictures Limited which is a partnership firm. In the plaint, it is stated that the plaintiff company is the producer and copyright holder of the films. This averment is strongly denied by the defendants in their written statement. The specific issue is also framed to decide whether the plaintiff is the producer of the disputed films. On framing of the issues, the suit is ripe for trial. At this juncture, this application is filed to receive 8 additional documents which are the deeds of partnership of M/s.Bharani Pictures Private Limited, reconstitution deeds and certificate of incorporation of the plaintiff Company.

3. In the affidavit filed along with this application, the applicant had stated that while preparing the proof affidavit of PW-1, it was noticed that the documents mentioned in the application were omitted to be mentioned and annexed along with the plaint. These documents were left out to be included in the plaint when they moved the suit emergently with the bare minimum documents in support of the suit claim.

4. The respondent in their counter had opposed the application on the ground that the application to receive additional document is filed belated after the suit adjourned for Case Management Hearing. No valid reason stated for non-

production of these documents at the earliest. The documents are not supported by pleadings. The veracity and genuineness of the alleged documents sought to be introduced are seriously doubtful. The application is in violation to the provisions of Order XI Rule 3 and Rule 4 of C.P.C as amended in respect of Commercial suit. In case of urgent filing, leave should have been sought to file additional documents and should have been filed within 30 days. Having declared on oath by way of the Statement of Truth in terms of Order XI Rule 3 of C.P.C, that all the documents in power and possession have been disclosed and no leave obtained to file additional document at later point of time, the application to receive additional document after framing of issues cannot be entertained. The suit was filed three years after paper publication of public notice and more than one year after the exchange of pre-suit notice. Therefore, the urgency clause to excuse not filing all the document in power and possession is not available to the plaintiff/applicant.

5. The learned counsel for the applicant, in support of his submission, relied upon the orders passed by this Court in applications filed by the plaintiff in two other suits of similar nature. Also, he relied upon the judgment of the Hon'ble Supreme Court in *N.C.Bansal -vs- Utter Pradesh Financial Corporation and another* reported in *2018(2) SCC 347*.

6. The Learned Counsels for the first and second respondents referring the amended provisions of Code of Civil Procedure in respect of Commercial Suit, sought dismissal of the application on the ground of delay and non compliance of Order XI Rule 3 and 4. Regarding the two orders relied by the learned counsel for the applicant, it was pointed out that both the orders were passed without any reference to Order XI of C.P.C as amended by the Commercial Courts Act, 2015. The *N.C.Bansal* judgment cited supra also not applicable to this case since that case was not a commercial suit.

7. Heard the Learned Counsel for the applicant and the respondents 1 and 2.

8. The suit filed by the Company claiming ownership over the copyright of the suit films. To substantiate the claim that they are the producer of the suit films, the plaintiff refer about the censor certificate and the certificate given by the Film Chamber of Commerce. However, in the plaint, there is no reference about the additional documents sought to be introduced. In the written statement filed as early as September 2019, it has been specifically stated that the copyrights of the schedule films were assigned by Dr.Bhanumathi Ramakrishna in

her capacity as proprietary concern and the plaintiff which is a recently incorporated company can have no claim over such works. Nearly two years after the plaint, after framing issues this application is filed. Some explanation is given for the belated filing of the documents but in strict sense the reasoning does not satisfy the requirement mentioned in Order XI Rules 3, 4 and 5 of C.P.C., which reads as below:-

Order XI Rule 3 of C.P.C:-

3. Costs of interrogatories:- *In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.*

Order XI Rule 4 of C.P.C:-

4. Form of interrogatories:- *Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.*

Order XI Rule 5 of C.P.C:-

5. Corporations:- *Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may*

apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

9. However, on perusal of the documents sought to be introduced, we find they are documents pertaining to the transformation of the Partnership firm (M/s.Bharani Pictures) into private Limited Company (M/s.Bharani Pictures Private Limited (the plaintiff herein). It is not the case of the applicant that these documents were not in their possession at the time of filing the suit. It is the specific case of the applicant that these documents were omitted to file along with the plaint, since the suit was filed urgently to curb the infringement. Even now only photocopies of the document filed and not the original. The defendants takes strong objection about its admissibility.

10. Considering the rival submissions and taking note of the fact that in the other two suits filed by the same plaintiff for similar relief, the applications to receive additional documents were allowed on condition without advertng to the embargo under Order XI of amended C.P.C, this Court for the of sake uniformity and consistency allow this application.

11. The applicant is directed to pay costs of Rs.10,000/- to each of the

defendants 1 and 2, within a period of 15 days from the date of this order. The listed documents shall be taken on file only if it is admissible in evidence, subject to proof and relevancy.

12. In the result, the *Application is Allowed* on the above terms. Post the suit for further proceedings on 28.07.2021.

02.07.2021

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

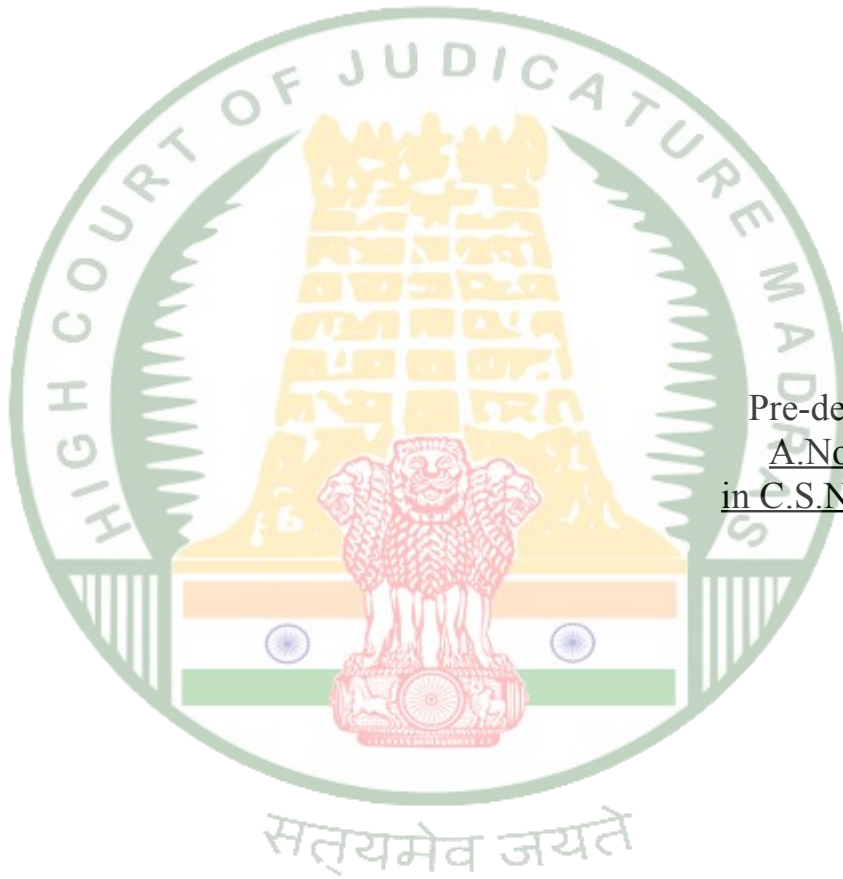
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Dr.G.Jayachandran,J.

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Pre-delivery order in
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