

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.764 of 2014

M/s.Sun TV Network Ltd.,
Rep. by its Authorised Signatory,
Mr.M.Jyothi Basu,
Murasoli Maran Towers,
73 MRC Nagar Main Road,
MRC Nagar, Chennai - 28.

...Plaintiff

.Vs.

M/s.Kichu Flims,
Represented by its Proprietor,
Mr.Jagadish Chandran,
Golden Heights, #12-D, Blossom Cochin Road,
Excel Lane, Elamkulam,
Kadavanthara, Cochin- 682 020.

... Defendant

Plaint filed under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 of the Rules of the High Court of Madras, Original Side, 1956 praying for:

a) recovery of a sum of Rs.1,43,02,400/- (Rupees One Crore Forty Three Laksh Two Thousand and Four Hundred only) [{the sum being the advance paid (Rs.36,45,000/-) and interest at the rate of 24% p.a from

06.11.2012 to 20.08.2014 (Rs.15,30,900/-), the sum being the 2nd advance amount paid (Rs.36,45,000/-) and interest at the rate of 24% p.a from 19.11.2012 to 20.08.2014 (Rs.15,30,900/-), the sum being the 3rd advance amount paid (Rs.24,30,000/-) and interest at the rate of 24% p.a from 29.11.2012 to 20.08.2014 (Rs.10,20,600/-) and the sum of Rs.5,00,000/- as liquidated damages}] as against the defendant with future interest at 24% per annum from date of filing of the suit and till date of realization for principal amount and

b) to pay costs.

For Plaintiff : Mrs.M.Sneha
for Mr.B.K.Girish Neelakantan
For Defendant : Set exparte on 25.04.2018

JUDGMENT

The plaintiff has come up with the above suit seeking recovery of a sum of Rs.1,43,02,400/- due being the advance amount paid to the defendant for satellite rights pertaining to a malayalam movie “VENALODUNGATHEY”.

2. According to the plaintiff, the plaintiff which is a leading Television Network in South India after broadcasting channels in South Indian languages is also engaged in production and distribution of movies. The plaintiff in the course of its business entered into an assignment agreement to acquire copyright of films for Satellite Television Broadcast as well as Terrestrial Television Broadcast. The defendant representing itself as the producer and exclusive copyright holder of the film title “VENALODUNGATHEY” approached the plaintiff for assignment of copyright of the said film. An assignment agreement was entered into between the plaintiff and the defendant on 29.10.2012, wherein, the defendant agreed to assign exclusive copyright in respect of the Satellite Television Broadcasting, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and all other rights connected with exhibition of the said film for a period of 99 years.

3. As per Clause 2 of the said agreement, the consideration for the

entire transaction was fixed at Rs.1,35,00,000/- inclusive of all applicable taxes. The plaintiff had agreed to pay an advance of Rs.40,50,000/- on the date of the agreement, a sum of Rs.36,45,000/- was actually paid on 06.11.2012, after deducting tax payable at source. It was also agreed that a further sum of Rs.40,50,000/- to be paid on completion of shooting of the film and the same was paid on 19.11.2012, on receipt of the letter to the defendant dated 05.11.2012 (Ex.P3) stating that the shooting has been completed. It was further agreed that Rs.27,00,000/- shall be paid during the post-production of the said film and the same was paid on 29.11.2012, upon information by the defendant on 27.11.2012 (Ex.P6). The balance of Rs.27,00,000/- was agreed to be paid after general theatrical release of the film and on handing over the duly confirmed lab letter by the concerned lab in favour of the plaintiff along with the Censor Certificate and the Digital Intermediate data files of the film.

4. The tentative date of release of the film was fixed as 14.12.2012 and telecast rights will commence from 14.06.2013 in India. According

to Clause 20 of the said agreement, if the release of the film is delayed more than 90 days from the date of tentative release viz., 14.12.2012, the plaintiff would have a right to exercise its option to cancel the assignment agreement. The defendant had agreed and undertook to pay all the advance paid by the plaintiff along with the interest at the rate of 24% per annum and it was further agreed that the defendant should pay a sum of Rs.5,00,000/- towards liquidated damages if the plaintiff exercises its option to cancel the agreement due to failure on the part of the defendant to honour its commitment on general release.

5. The plaintiff would claim that the defendant had failed to release the movie even after expiry of 90 days from the date of tentative release. The plaintiff issued a legal notice on 24.06.2014, calling upon the defendant to repay the advance amount of Rs.1,08,00,000/- with interest at 24% per annum and liquidated damages that was fixed at Rs.5,00,000/-. The notice did not evoke any response from the defendant. Hence, the plaintiff is before this court seeking to recover a sum of Rs.1,38,02,400/- with future interest at 24% from the date of the

suit till date of realization, along with Rs.5,00,000/- as liquidated damages.

6. Though the defendant was served, it did not chose to enter appearance to contest the suit.

7. Upon passing of the Commercial Courts Act, 2015, the Commercial Division had taken cognizance of the suit on 11.04.2018. Thereafter, the defendant was set exparte on 25.04.2018. The suit was posted for exparte evidence.

8. One Mr.Jyothibas S/o.Late Murugesan was examined as PW1. He had filed his proof affidavit and Ex.P1 to Ex.P8 were marked on the side of the plaintiff. Ex.P1 is the original Board Resolution authorising the deponent of the proof affidavit to depose on behalf of the plaintiff. Ex.P2 is the original Assignment Agreement dated 29.10.2012. Ex.P3 is the letter from the defendant to the plaintiff dated 05.11.2012 informing the plaintiff that the shooting has been completed. Ex.P4 and Ex.P5 are

the payment vouchers evidencing payment of advance. Ex.P6 is the letter dated 27.11.2012 from the defendant to the plaintiff seeking payment of installment of 20% of the agreed amount. Ex.P7 is the original payment voucher evidencing payment of a sum of Rs.27,00,000/-. Ex.P8 is the notice issued by the plaintiff calling upon the defendant to repay the advance amount paid with interest and liquidated damages.

9. The evidence of PW1 coupled with above documents produced would prove the case of the plaintiff. The defendant has not come forward to defend the suit. Considering the above evidence, I am of the considered opinion that the plaintiff has established the suit claim and is entitled to a decree as prayed for.

10. In fine, the suit is decreed as prayed for a sum of Rs.1,43,02,400/- along with interest at the rate of 24% per annum on Rs.1,38,02,400/- from the date of the plaint till the date of decree and interest at the rate of 6% per annum thereafter till date of payment with

costs.

28.04.2021

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Index : No

Internet : Yes

Speaking order/ Non-speaking order

List of the witnesses examined on the side of the plaintiff:

PW1 – M.Jyothibasu

List of Exhibits marked on the side of the plaintiff:

Sl. No.	Exhibits	Description	Dated
1	Ex.P1	Original Board Resolution authorising the deponent of the proof affidavit to depose on behalf of the plaintiff	14.11.2011
2	Ex.P2	Original Assignment Agreement	29.10.2012
3	Ex.P3	Letter from the defendant to the plaintiff informing the plaintiff that the shooting has been completed	05.11.2012
4	Ex.P4	Payment vouchers evidencing payment of	06.11.2012

Sl. No.	Exhibits	Description	Dated
		advance.	
5	Ex.P5	Payment vouchers evidencing payment of advance.	19.11.2012
6	Ex.P6	Letter from the defendant to the plaintiff seeking payment of installment of 20% of the agreed amount	27.11.2012
7	Ex.P7	Original payment voucher	29.11.2012
8	Ex.P8	Notice issued by the plaintiff	24.06.2014

List of the witnesses examined on the side of the defendant: Nil

List of Exhibits marked on the side of the defendant: Nil

28.04.2021

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R.SUBRAMANIAN, J.

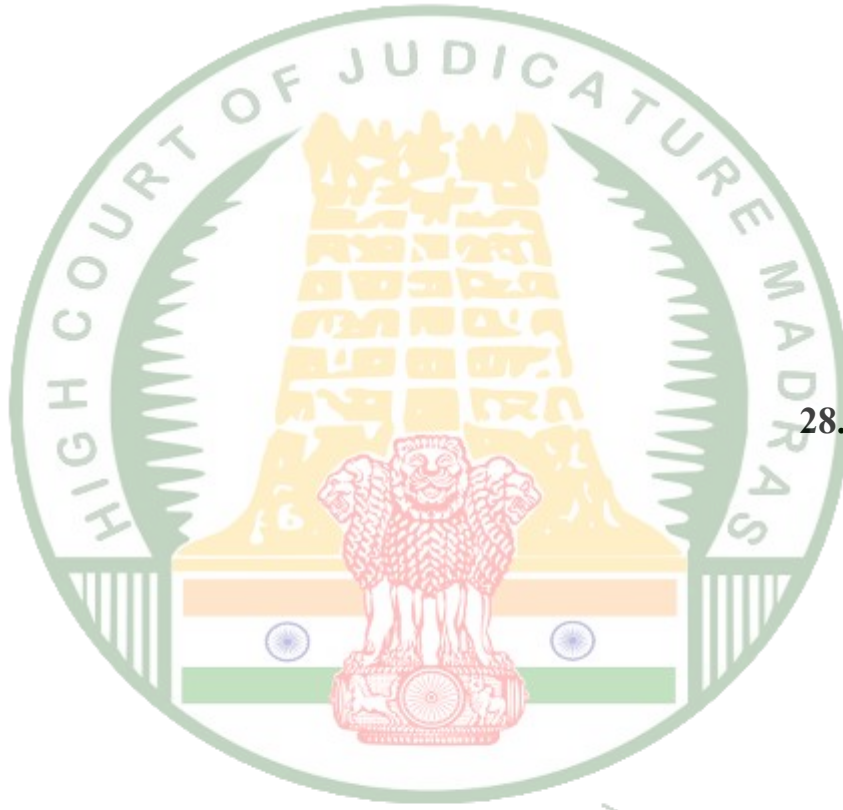
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