Application No.482 of 2022
in
C.S.(Comm Div)No.90 of 2021

SENTHILKUMAR RAMAMOORTHY,J

The suit was filed as a summary suit for recovery of a sum of Rs.77,75,000/- as debt and an additional sum of Rs.27,75,000/- as compensation along with future interest thereon. In the said suit, the defendants have presented this application seeking unconditional leave to defend.

2. Learned senior counsel for the applicants/defendants states that the suit was filed on the basis of an assertion that a loan was extended by the plaintiff to the defendants. By drawing reference to an email of 11.05.2018, he points out that the plaintiff had attached a Distribution Agreement dated 11.05.2018 and called upon the defendants to execute and return the said agreement to the plaintiff. He also draws reference to paragraph 7 of the affidavit in support of the application, wherein the applicants/defendants stated that the email with the attachments were received and, thereupon, the defendants signed the agreement and handed over the same to the plaintiff. By referring to the counter of the plaintiff to this application, he points out

that the plaintiff admits sending the draft agreement by email to the second applicant and, in fact, does not deny that the agreement was signed by the applicants and sent back to the respondent/plaintiff.

3. The next contention is that the agreement envisaged the payment of an aggregate sum of Rs.1,25,00,000/- to the applicants and that the plaintiff did not pay the balance of Rs.75,00,000/-. The third contention is that the suit claim is not within the pecuniary jurisdiction of this Court and that the plaintiff has included a claim for Rs.27,75,000/- as compensation purely for purposes of filing the suit before this Court.

4. For reasons set out above, the applicants state that they are entitled to unconditional leave inasmuch as they have set up substantial defences or, at a minimum, triable issues.

5. Learned counsel for the respondent/plaintiff, on the other hand, submits that the Distribution Agreement was never signed by the plaintiff. In fact, by referring to the counter he submits that the plaintiff decided not to execute the Distribution Agreement. He submits that the suit claim arises

out of a loan and that the discussions with regard to a Distribution Agreement were only intended by way of security. He points out that promissory notes were executed by the defendants in relation to the loan and that two cheques for sums of Rs.25,00,000/- each were issued. These cheques were dishonoured, upon presentation, because of insufficient funds. He also refers to emails exchanged on 10.02.2019 and 15.02.2019, whereby the defendants assured the plaintiff that the liability would be discharged.

6. The law with regard to the grant of leave to defend was re-stated in *IDBI Trusteeship Services Limited v. Hubtown Limited (2017) 1 SCC 568(**IDBI Trusteeship**)*. In a nutshell, the Hon'ble Supreme Court held that unconditional leave should be granted either if a substantial defence is set up or if triable issues are raised. On the other hand, if a plausible but improbable defence is raised, conditional leave to defend should be granted. If a frivolous or vexatious defence is raised, the leave to defend application should be dismissed.

7. If the above principles were applied to this case, the applicants/defendants have placed before the Court the email and draft

Distribution Agreement. The draft Distribution Agreement discloses that the plaintiff was required to pay an aggregate sum of Rs.1,25,00,000/- to the applicants/defendants. This was in relation to the Tamil movie "Jagajala Killadi" and its distribution within the territories of Chennai city and Chengelpat. Although the admitted position is that this agreement was not executed by the plaintiff, it is clear from the affidavit and counter affidavit filed by the parties that the preparation and dispatch of the agreement by the respondent/plaintiff and the execution thereof by the applicants/defendants are not denied by the respondent/plaintiff. These facts were not disclosed in the plaint. While judicial notice may be taken of the fact that it is typical in the film industry for these types of agreement to be executed even as forms of security, at a minimum, a triable issue has been raised by the applicants.

8. The applicants also contended that the suit claim does not fall within the pecuniary jurisdiction of this Court. In specific, reference was made to the averment in the plaint that the applicants/defendants orally agreed to pay as compensation, a sum equal to the amount of interest payable. Although the claim for compensation could arguably be construed as a claim for damages, once again this raises a triable issue. Consequently,

in light of the principles laid down in ***IDBI Trusteeship***, the applicants/defendants are entitled to leave, albeit subject to filing the written statement and cooperating in the expeditious disposal of the suit.

9. Accordingly, Application No.482 of 2022 is allowed by granting leave to the defendants defend the suit. The defendants are directed to file their written statement on 04.08.2022. List the suit and pending applications on 04.08.2022.

14.07.2022

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