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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2022
CORAM :

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

O.S.A. (CAD) .No.39 of 2022
and C.M.P.Nos.4196 & 4198 of 2022

1. M/s.24 AM Studios Private Limited
rep by its Managing Director R.D.Raja
having office at
No.9, Spring Field Apartments,
Jagannathan Road, Nungambakkam,
Chennai - 600 034
residing at
W-380/3, Hessonate Hamlet Flats,
East Main Road, Anna Nagar West Extension,
Chennai - 600 101.

2. Sivakarthikeyan

3. M/s.KJR Studios,
rep by its Managing Director
Kotapadi J.Rajesh
Apartment No.9, Flat No.5, Ranga Prasad,
No.5, Binny Road, Poes Garden,
Chennai - 600 086.

...Appellants

Vs.

1. Divya M.Jain
rep by her Power of Attorney Mohankumar

2.M/s.Sun TV Networks Limited,
rep by its Authorized Signatories
C.Sembian Sivakumar
K.Shanmugam
having office at Murasoli Maran Towers,
No.73, MRC Nagar Main Road,
MRC Nagar, Chennai - 600 032.

...Respondents

Appeal filed under Order XXXVI Rule 1 of the Original
Side Rules read with Clause 15 of the Letters Patent, Section 13
(1) of the Commercial Courts Act against order dated 05.10.2021
made in O.A.No.478 of 2021 in C.S.No.39 of 2021.



Prayer in O.A. No. 478/2021 in C.S. no. 39/2021:

Original Application has been filed under order XIV, Rule 8 of O.S. Rules read with order XXXIX Rule, 1 and 2 of CPC, praying an order of Interim Injunction restraining the Respondents/Defendants, their men, agents, servants or any other person or persons claiming through them from releasing/theatrical exploitation in respect of Tamil Satellite Television Rights in India of the Film Production No.5 (Colour) pending disposal of the above suit should not be passed.

For Appellants : Mr.Dhanaram Ramachandran

For Respondents : Mr.Om Prakash, Senior Counsel
for Mr.A.Damodaran (R1)

J U D G M E N T

(JUDGMENT WAS MADE BY M.DURAI SWAMY, J.)

Challenging the order passed in O.A.No.478 of 2021 in C.S.No.39 of 2021, the defendants 1, 3 & 4 have filed the above Original Side Appeal.

2.The 1st respondent/plaintiff filed the suit in C.S.No.39 of 2021 for perpetual injunction restraining the defendants from releasing in any form in respect of Tamil Satellite Television Rights in India of the film Production No.5 (Colour) - Ayalan without the consent and concurrence of the plaintiff and from doing any other act amounting to infringement of the plaintiff's copyright pursuant to the Finance Agreement dated 09.08.2018 between the plaintiff and the 1st defendant.

3.It is the case of the 1st respondent/plaintiff that originally the 1st defendant/1st appellant was the producer of the Tamil Talkie Picture currently titled as Production No.5 (Colour) - Ayalan and the 2nd appellant/3rd defendant is the hero of the said film. The 2nd respondent/ 2nd defendant is the assignee of the World Satellite TV Broadcast Rights, Direct to Home (Direct Satellite) Broadcast, Terrestrial Television Broadcast and other rights connected therewith, including the rights to telecast in all channels of Doordarshan in respect of the film titled as Production No.5 (Colour) - Ayalan, starring the 2nd appellant as the hero of the said film. The 3rd appellant/4th defendant is the present owner and producer of the said Tamil film, which was assigned by the 1st respondent to the 3rd appellant. Further, it is the case of the 1st respondent/plaintiff that for the purpose of availing financial



assistance, the 1st appellant approached her to render financial assistance for the said film by pledging the exclusive copyright of the said film in respect of Tamil Satellite Television Rights in India and agreeing the request of the 1st appellant/1st defendant, the 1st respondent/plaintiff entered into a Finance Agreement with the 1st appellant on 09.08.2018.

4. According to the 1st respondent, the total finance availed towards pledging the exclusive copyright of the film in respect of the Tamil Satellite Television Rights in India was Rs.7 crores. Based on the said Finance Agreement dated 09.08.2018, the 1st appellant and the 2nd appellant jointly executed a promissory note on 09.08.2018, promising to repay the said amount with interest at the rate of 24% per annum. Prior to the Finance Agreement dated 09.08.2018 entered into between the 1st respondent and the 1st appellant, the 1st appellant entered into an Assignment Agreement dated 02.02.2018 with the 2nd respondent assigning the Satellite rights and other exploitation rights for entire world for a perpetual period for a valuable consideration of Rs.20 crores plus GST, out of which, a sum of Rs.10 crores plus GST has been paid to the 1st appellant by the 2nd respondent as advance. Thereafter, by letter dated 29.05.2019, the 1st appellant wrote to the 2nd respondent requesting that out of the balance consideration of Rs.10 crores plus GST, pay a net sum of Rs.4,35,00,000/- directly to the 1st respondent as per Clause 4(b) and 4 (c) of the Assignment Agreement dated 02.02.2018 and also requested the 1st appellant to withhold a sum of Rs.2 crores along with a sum of Rs.65 lakhs out of the GST amount.

5. Further, according to the 1st respondent, while the facts being so, she came to understand that the 1st appellant with the malafide intention to deceive the amount lawfully paid by her, had assigned the copyrights of the said film to the 3rd appellant by receiving huge amount from them with a view to cause wrongful loss to her. The plaintiff contended that the acts of the 1st appellant and the 2nd respondent in not repaying the loan amount of Rs.7 crores availed by them, through the 2nd appellant, amounts to cheating. The 1st respondent also contended that the copyright of the film vests with her as envisaged under the Copyright Act, 1957 and therefore, any 3rd party, that reproduces the work or any substantial portion thereof, without the consent and concurrence of her, infringes the rights under the Copyright Act.

6. In the suit, the 1st respondent/plaintiff took out an application in O.A.No.478 of 2021 seeking for an order of



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interim injunction restraining the respondents/defendants from releasing/theatrical exploitation in respect of the Tamil Satellite Television Rights in India of the film Production No.5 (Colour) - Ayalan, pending disposal of the suit. In the affidavit filed in support of the petition, the 1st respondent/plaintiff reiterated the averments stated in the plaint. The defendants filed their counter, wherein it has been stated that the 1st defendant/1st appellant is the producer of the film Ayalan. Further, the defendants contended that the letter dated 29.05.2019 was issued by the 1st defendant to the 2nd defendant with the consent and knowledge of the plaintiff, wherein the 2nd defendant was instructed to discharge the plaintiff's loan on behalf of the 1st defendant. Further, the defendants contended that the plaintiff is not holding exclusive copyright of the film. Further, there is no assignment of copyright as envisaged under Sections 18 and 19 of the Copyright Act. Further, it has been averred that the 1st defendant had assigned the entire copyright exclusively to the 2nd defendant on 02.02.2018, therefore, could not have pledged the Satellite Rights and the other rights to the plaintiff on 09.08.2018. The defendants also disputed the averments stated in the affidavit filed in support of the application by the plaintiff.

7.The learned Single Judge, taking into consideration the case of both sides, granted an order of interim injunction restraining the defendants from releasing the movie Ayalan in any form, either in theatres or through Satellite without obtaining No Objection Certificate from the plaintiff. Challenging the order passed by the learned Single Judge, the defendants 1, 3 & 4 have file the above Original Side Appeal.

8.Heard Mr.Dhanaram Ramachandran, learned counsel appearing for the appellants and Mr.Om Prakash, learned Senior Counsel appearing on behalf of Mr.A.Damodaran, learned counsel for the 1st respondent.

9.On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the 1st defendant borrowed a sum of Rs.7 crores from the plaintiff and executed an Agreement dated 09.08.2018. The said Deed was caption as "Finance Agreement". On a reading of the Finance Agreement, it is clear that the 1st defendant borrowed a sum of Rs.7 crores by pledging the copyright viz., the exclusive copyright of the film Ayalan in respect of Tamil Satellite Television Rights in India, which includes broadcast in any form or system. Further, it has been recited in the said Finance Agreement that the theatrical



exploitation of the film can be done only after obtaining "No Objection Certificate" from the plaintiff. It has also been recited that any transaction entered with regard to the Satellite rights in India for the said film will have to be notified to all parties concerned, including the plaintiff.

10.As already stated, the defendants 1 and 3 had also executed a pro-note for a sum of Rs.7 crores in favour of the plaintiff. The Finance Agreement does not speak about the rate of interest or the terms of repayment. The pledging of the exclusive copyright of the film in respect of the Tamil Satellite Television Rights in India, should be construed as a charge over the copyright for the financial assistance rendered to the 1st defendant. It is also clear from the Finance Agreement executed on 09.08.2018 that the 1st defendant has not whispered a single word about the assignment of entire Satellite broadcasting rights to the 2nd defendant/ 2nd respondent on 02.02.2018. When it is the case of the 1st defendant that the assignment was made in favour of the 2nd defendant/2nd respondent as early as on 02.02.2018, they chose not to mention the same in the Finance Agreement dated 09.08.2018. The learned Single Judge, taking into consideration all these aspects, rightly came to the conclusion that the balance of convenience is in favour of the plaintiff. It is pertinent to note that after the alleged assignment was made in favour of the 2nd defendant, the 1st defendant borrowed a sum of Rs.7 crores from the plaintiff. Knowing fully well that they have assigned the right to the 2nd defendant, the 1st defendant has also created a charge upon the right which they had already assigned in favour of the 2nd defendant.

11.With regard to the maintainability of the suit as a commercial dispute, the learned Single Judge observed that the dispute, though is not a suit touching upon any intellectual property/intangible right directly, the copyright pledged and the purpose for which the finance extended to the 1st respondent requires interpretation of the documents, since they all primarily deal with the exploitation of the copyright in the movie Ayalan. Taking into consideration Section 2(1)(c)(i) and (xvii) of the Commercial Courts Act, the learned Single Judge held that the suit is maintainable as commercial dispute. Taking into consideration all these aspects, the learned Single Judge has rightly granted an order of injunction.



12. For the reasons stated above, we do not find any ground to interfere with the order passed by the learned Single Judge. The appeal is liable to be dismissed. Accordingly, the Original Side Appeal (CAD) is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

To

The Sub Assistant Registrar
Original Side Section
High Court, Madras 104.

O.S.A. (CAD) .No.39 of 2022
and C.M.P.Nos.4196 & 4198 of 2022

PA (CO)
SP (30/03/2022)