IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 05th DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.S.No.153 of 2013

M/s.R.S.Infotainment (P) Ltd.,
Rep. by its Director Mr.R.Jayaraman,
S/o.Sri.A.Ramanujam,
No.16, Bhagavadan Street,
Flat No.5, Goodwill Apartments,
T.Nagar, Chennai – 600 017. ... Plaintiff

vs.

1.M/s.Photon Factory
Rep. by its Partner,
Gautham Vasudev Menon,
No.205, Lloyds Road,
Royapettah, Chennai – 600 014.

2.M/s.Escape Artists
Rep. by its Partner P.Madan,
No.205, Lloyds Road,
Royapettah, Chennai – 600 014.

3.Gautham Vasudev Menon
S/o.Prabhakrishnan
No.205, Lloyds Road,
Royapettah, Chennai 600 014.

4.P.Madan
S/o.A.Pandi
No.205, Lloyds Road,
Royapettah, Chennai 600 014.

... Defendants

Civil Suit praying that this Hon'ble Court may be pleased to

(a) Order and Decree that the Defendants 1,3 and 4 do pay the Plaintiff a sum of Rs.9,53,50,000/-.

(b) Grant costs of the suit.

This Civil Suit having been heard on 14.03.2022 in the presence of Mr.V.Anand for M/s.B.Ramesh Babu Advocates for the plaintiff herein and Mrs.Chitra Sampath, Senior Counsel for Mrs.Revathi Manivannan for M/s.Anand Abdul & Vinodh Associates, Advocates for the defendants 1 & 3 herein and upon reading the plaint filed herein and the other exhibits therein referred hereto and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that although interest has been claimed at 24% per annum by relying upon clause 4 of the Agreement, it was previously concluded that clause 4 is not directly applicable, bearing in mind the interest rates prevailing at the relevant point of time, the fact that this is a claim for damages and that the Plaintiff is not blameless, interest is awarded at the rate of 12% per annum from 11.05.2010 until the date of payment, apart from damages and interest, the Plaintiff is entitled to costs, such costs should cover the entire court fee of Rs. 9,57,050/- and about Rs.2,50,000/- towards lawyer's fees and other expenses for

prosecuting the suit and this is rounded off as Rs.12 lakhs, and

<u>it is ordered and decreed as follows</u>:-

That the defendants 1, 3 & 4 herein, do pay to the plaintiff herein, a sum of Rs.10,31,85,343/- (Rupees Ten Crores Thirty One Lakhs Eighty Five Thousand Three Hundred and Forty Three only) with interest at the rate of 12% per annum on the sum of Rs.4,25,00,000/- (Rupees Four Crores Twenty and Five Lakhs only) from this date till the date of payment.

2. That the defendants herein, be and are directed to pay to the plaintiff herein a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as costs and the said amount includes Court fee of Rs.9,57,050/- (Rupees Nine Lakhs Fifty Seven Thousand and Fifty only) lawyer's fees and other costs.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 05th DAY OF APRIL 2022.

Sd./-
ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KY

13.04.2022

C.S.No.153 of 2013

DECREE:

DATED : 05.04.2022

THE HON'BLE MR. JUSTICE
SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 27.04.2022

APPROVED ON: 27.04.2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	14.03.2022
Judgment pronounced on	05.04.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Civil Suit No.153 of 2013

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Rep. by its Partner P.Madan,
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Royapettah, Chennai – 600 014.

3.Gautham Vasudev Menon
4.P.Madan ... Defendants

The suit has been filed under Order IV Rule 1 of the High Court Original Side Rules read with Order VII Rule 1 of CPC to order and decree that the Defendants 1,3 and 4 do pay the Plaintiff a sum of Rs.9,53,50,000/- and for costs of the suit.

For Plaintiff : Mr.V.Anand
for M/s.B.Ramesh Babu

For Defendants : Mrs.Chitra Sampath,
Senior Advocate
for Mrs.Revathi Manivannan
for M/s.Anand Abdul & Vinodh
Associates for D-1 and D-3.

JUDGMENT

The suit is filed for recovery of a sum of Rs.9,53,50,000/- from the first, third and fourth Defendants. The Plaintiff entered into an Agreement dated 27.11.2008(the Agreement) with the first Defendant, which is a partnership firm in which the third and fourth Defendants are partners. The second Defendant is not a party against whom relief is prayed for. Therefore, the first, third and fourth Defendants are collectively referred to in this judgment as the Contesting Defendants. Under the Agreement, the Plaintiff engaged the services of the first Defendant to produce a Tamil movie, which was described as Production No.6 since it was untitled. The Agreement provided that the first Defendant should commence production of the movie on 10.12.2008 and complete the entire production of the first print before 05.04.2009. The Agreement provided for the payment of a sum of Rs.13,50,00,000/- by the Plaintiff to the first Defendant towards funding the cost of production as per the schedule set out in clause 2 thereof. In clause 3, it was recorded that the Plaintiff had paid an advance amount of Rs.2,50,00,000/- which was acknowledged by the first Defendant. In case the first Defendant did not complete the movie by the first week of April 2009, the Agreement provided for the payment of interest by the first Defendant at 24% per annum on the entire sum of Rs.13,50,00,000/- until the date of completion and handing over of the first copy of the movie to the Plaintiff. The Plaintiff was declared as the producer of the movie and the negative right holder. In terms of and pursuant to the Agreement, the Plaintiff paid the first Defendant a sum of Rs.4,25,00,000/- in the aggregate, including the sum of Rs.2,50,00,000 which was acknowledged therein. The receipt of the said sum in several tranches was acknowledged by the first Defendant by counter signing, in acceptance, a letter dated 12.02.2010 from the Plaintiff to the first Defendant (the Letter). According to the Plaintiff, the first Defendant did not commence production of the movie. The suit for recovery of a sum of Rs.9,53,50,000/- was filed in the above facts and circumstances.

2. The Plaintiff states that the receipt of the sum of Rs.4,25,00,000/- was acknowledged by the Contesting Defendants. In spite

of receiving the said amount, the Contesting Defendants did not take any steps to proceed with the production of the movie. Therefore, the Plaintiff asserts that the Contesting Defendants committed breach of the Agreement. Before filing the present suit, the Plaintiff filed a suit in O.S.No.451 of 2013 on the file of the 8th Assistant City Civil Court at Chennai seeking to prevent the first, third and fourth Defendants from undertaking, commencing or releasing movies of third parties before completing the movies of the Plaintiff. In the said suit, the Plaintiff applied for and obtained leave to sue for damages by filing a separate suit. The Plaintiff states that the Agreement provides for payment of interest at 24% per annum on amounts received by the first Defendant, and, therefore, the Plaintiff is entitled to interest at 24% per annum on the sum of Rs.4,25,00,000/-. The Plaintiff also asserts that it is entitled to default interest on the total sum of Rs.13,50,00,000/- from 10.12.2003 to 05.04.2009. Thus, the Plaintiff claims an aggregate sum of Rs.9,53,50,000/-

3. The Defendants deny these claims. The first and third Defendants filed a common written statement. Likewise, the second and fourth Defendants filed a common written statement disclaiming liability and involvement in the relevant transactions. The first and third Defendants

state that the Agreement provided that the Plaintiff should pay a sum of Rs.13,50,00,000/- as per the schedule set out in clause 2 thereof. After paying the first installment of Rs.2,50,00,000/-, the said Defendants state that the Plaintiff defaulted in paying the second installment of Rs.2,50,00,000/- on 05.12.2008. Consequently, it is stated that the said Defendants did not have the necessary funds to continue with the production of the movie. The first and third Defendants admit receipt of the sum of Rs.4,25,00,000/-, but assert that the Plaintiff committed breach of the Agreement by not making further payments. The said Defendants also state that they were permitted to work on other projects such as "Vinnai Thandi Varuvaya" and Production No.2. Subsequently, at the request of the first Defendant, Photon Kathaas Production Pvt. Ltd., re-started production of the movie by infusing funds. The Defendants assert that Production No.6, which was originally intended to be produced with Mr.Silambarasan as the hero, was proceeded with by casting Mr.Jeeva as the hero under the revised tentative title, “Nithya”, which was subsequently changed and the movie was released on 14.12.2012 under the title, "Nee Thane En Pon Vasantham".

4. In view of the successful release of the movie "Nee Thane En Pon Vasantham", the first and third Defendants state that their obligations, if

any, towards the Plaintiff were fulfilled. Consequently, it is stated that the Plaintiff is not entitled to the suit claim. By way of preliminary objections, the Defendants state that the suit is liable to be dismissed under Order II Rule 2 CPC because the Plaintiff only obtained leave to file a suit for damages and not a suit for recovery of an alleged debt. In addition, the Defendants plead that the suit is barred by limitation since the cause of action arose on 05.04.2009, which is the scheduled date of completion of production under the Agreement.

5. Based on these pleadings, the following issues were framed by order dated 25.11.2013:

> 1. Whether the Plaintiff has paid the amounts agreed to be paid under the Agreement dated 27.11.2008 to the first Defendant as per the time schedule contemplated under the Agreement dated 27.11.2008?
>
> 2. Whether the time schedule contemplated for payment of money under the Agreement dated 27.11.2008 is the essence of the contract entered between the Plaintiff and the first Defendant?
>
> 3. Whether Agreement dated 27.11.2008, contemplates reciprocal promises?

4. Whether the Plaintiff has committed breach of the terms agreed under the Agreement dated 27.11.2008?

5. Whether the payments received by the first Defendant was expended by the first Defendant in the production of the movie?

6. Whether, non-payments of money as per the time schedule contemplated under the Agreement dated 27.11.2008, has resulted in stalling/delaying to production of the movie and later in abandonment of the production of the movie?

7. Whether the Plaintiff in the absence of having failed to effect payments subsequent to the payment of Rs.25,00,000/- on 12.01.2009 is entitled to seek for the reliefs claimed in the suit?

8. Whether in the absence of a firm commitment from the Plaintiff to infuse/disburse funds, subsequent to the payment of Rs.25,00,000/- on 25.01.2009, the Plaintiff is entitled to seek for production of the movie by the first Defendant much less the money claims made in the Plaint?

9. Whether the terms of the letter dated 12.02.2010 is enforceable in law?

10. Whether the letter dated 12.02.2010 could be construed as part of the Agreement dated 27.10.2008 as claimed by the Plaintiff?

11. Whether the Agreement dated 27.10.2008 has been given up/abandoned by the Plaintiff and Defendant?

12. Whether with the release of the movie "Nee Thane En Pon Vasantham", the liability of the Defendants if any under the Agreement dated 27.11.2008 and as referred in letter dated 12.02.2010 stands discharged?

13. Whether the Plaintiff is entitled to interest at the rate of 24% p.a. on the sum of Rs.4,25,00,000/-?

14. Whether the claim of damages by the Plaintiff against these Defendants is sustainable?

15. Whether the suit, as framed, is maintainable without obtaining leave of the Court under Order II Rule 2 C.P.C.?

16. Whether the suit is barred by limitation?

17. Whether there is any cause of action for filing the suit?

18. To what other reliefs, the parties are entitled to?

6. Both parties adduced oral and documentary evidence. The Plaintiff adduced evidence through Mr.S.Elred Kumar, who was examined as P.W.1. The Defendants adduced evidence through Mr.Gautham Vasudev Menon, who was examined as D.W.1. Exs.P1 to P9 were marked through P.W.1 and Exs.D1 to D36 were marked through D.W.1.

7. Although 18 issues were framed, these issues may be subsumed in about five categories. These categories are: (i) preliminary issues such as the alleged bar under Order II Rule 2(3) of the Code of Civil Procedure, 1908 (the CPC), limitation and whether cause of action exists (Issues 15-17); (ii) issues relating to rights, obligations and liabilities arising out of the Agreement (Issues 1-8 and 11); (iii) issues relating to rights, obligations and liabilities arising out of the Letter, including its impact on the Agreement (Issues 9 and 10); (iv) whether the Plaintiff or the Defendants or both committed breach of the Agreement read with the Letter and the implications thereof (Issues 5, 8,12 and 14); and (v) the reliefs that parties are entitled to (Issues 13 and 18). While no issue was framed on whether the Contesting Defendants committed breach of the Agreement, such issue is at the heart of the suit, as framed, and should be considered. Even out of these categories, the second and third categories should be consolidated and dealt with because the issues are interrelated.

Preliminary objections

8. Since three preliminary objections were raised by the Defendants, the issues relating thereto are addressed first. Issue 15 is whether the suit, as framed, is maintainable without obtaining leave of the

court under Order II Rule 2 (3) of the the CPC. The Plaintiff filed I.A.No.1069 of 2013 in O.S. No.3128 of 2013 before the 8th Assistant City Civil Court at Chennai seeking leave to sue for damages for breach of the Agreement. By order dated 22.01.2013, leave was granted to the Plaintiff to sue for damages as follows: "permitted". In view of the said order, the question that arises for consideration is whether the present suit is a suit for damages. If so, the objection by the Defendants on this count would not be tenable; otherwise, the objection would be meritorious. In several paragraphs of the plaint such as paragraphs 11, 12 and 13, the Plaintiff alleged breach of the Agreement by the Contesting Defendants. It is sufficient to extract from paragraph 13:

> "....The act of breach of the terms of the agreement dated 27.11.2008 read with the modification dated 12.02.2010 is nothing but a deliberate act and hence the defendants 1, 3 and 4 are liable for paying liquidated damages for breach of contract on the sums ascertained above which totals to Rs.9,53,50,000/-. Therefore the plaintiff is left with no other alternative but to file this suit for recovery of the said amount."

From the above, it is evident that the suit is framed as a suit for breach of contract and for recovery of damages in respect of such breach. Hence, Issue 15 is decided in favour of the Plaintiff and against the Defendants.

9. Issue 17 is whether there is any cause of action for filing the suit and Issue 16 is whether the suit is barred by limitation. Since both these issues are closely entwined, they are dealt with jointly. In the cause of action paragraph, the Plaintiff sets out the bundle of facts which give the right of action. The first event referred to therein is the Agreement. The Plaintiff also refers to the dates on which payments were made to the first Defendant. The communication dated 12.02.2010 by which the Contesting Defendants acknowledged receipt of the sum of Rs.4.25 crore and agreed to fulfill obligations under the Agreement was also referred to. The Contesting Defendants contended that the Agreement provides that the movie should be completed by handing over the prints on or before 05.04.2009. On such basis, it is stated that the cause of action arose on 05.04.2009 and that the suit should have been filed on or before 04.04.2012. Since the suit was presented on 06.03.2013, it is contended that the suit is barred by limitation.

10. As concluded earlier, the suit is framed as a suit for alleged breach of contract. The period of limitation for a suit for breach of contract is governed by Article 55 of the Schedule to the Limitation Act, 1963 (the Limitation Act). Under Article 55, the period of limitation would run from

any of the following dates depending on the nature of breach: (i) the date of breach; or (ii) if there are successive breaches, from the date of occurrence of the breach in respect of which the suit is instituted; or (iii) if there is a continuing breach, from the date the breach ceases. In this case, the Agreement specified that the production of the movie would be commenced by the first Defendant on 10.12.2008 and completed before 05.04.2009. The consequence of not completing the movie by 05.04.2009 is not specified in the Agreement. By the Letter (Ex.P2), it was recorded that the payment of the sum of Rs.4.25 crore is only towards Production No.6 and is unrelated to the movie "Vinnai Thandi Varuvaya". The Letter also records that the Contesting Defendants would work simultaneously on three projects, namely, "Vinnai Thandi Varuvya", Production No.2 and Production No.6, and that these movies would be completed on schedule as planned before the Contesting Defendants commence direction of movies of other parties. This Letter was signed and accepted by the partners of the first Defendant. The Letter was executed on 12.02.2010, which is beyond the deadline specified in the Agreement. Therefore, it is clear that parties agreed to act in accordance with the Agreement in spite of the expiry of the time limit specified therein. It should be noticed that no revised time limit is specified in the Letter. In the absence of a revised time limit, as per

Section 46 of the Indian Contract Act, 1872 (the Contract Act), the obligation should be fulfilled within a reasonable time. The Explanation to Section 46 indicates that what is reasonable is a question of fact to be decided with reference to the specific facts. Given that the original time limit was about four months under the Agreement, a further two to three months from the date of the Letter would be reasonable time. At a minimum, there is sufficient basis to conclude that the alleged breach occurred after 12.02.2010. Even if the period of limitation is computed from 12.02.2010, it would expire on 11.02.2013. The plaint discloses that it was presented on 08.02.2013, which is within the period of limitation, even if computed from the date of the Letter. Therefore, on the basis of the pleadings and exhibits on record, even without examining and drawing conclusions on the merits of the contentions of the adversaries, the suit is not barred by limitation. As regards cause of action, the Plaintiff has set out the events giving rise to his right of action at paragraph 14 of the plaint. On the basis of these events, the Plaintiff has filed the suit by asserting that the Contesting Defendants committed breach of contract. It was previously concluded that the suit is framed as a suit for breach of contract. Therefore, it cannot be said that the Plaintiff does not have the cause of action for filing the suit. Issues 16 and 17 are decided in favour of the Plaintiff and against the Defendants.

The merits

11. All the issues in the second and third categories (Issues 1-11) are dealt with by consolidation. The first issue relates to whether the Plaintiff paid the amounts agreed to be paid under the Agreement as per the time schedule specified therein. Clause 2 of the Agreement specified that the aggregate sum of Rs.13.5 crore should be paid in five installments between 27.11.2008 and 05.03.2009. The Letter sets out the manner in which the sum of Rs.4.25 crore was paid by the Plaintiff to the first Defendant, represented by its partners, the third and fourth Defendants. If the dates of payment are compared with the Schedule in clause 2 of the Agreement, it is clear that the Plaintiff did not make payments in accordance with the time schedule specified in the Agreement. Issue 2 pertains to whether the time schedule for payment is the essence of the contract between the Plaintiff and first Defendant. The Agreement does not state that time is of the essence of the contract. It also does not specify the consequences of non-compliance with the time limit. On the contrary, by the Letter, which is a communication issued about 10 months after the expiry of the time limit under the Agreement, the parties agreed to perform their respective obligations under the Agreement. This is a clear indication that time is not of the essence of the Agreement. In any event, the principal consequence of time being of the essence of the Agreement is that the time

limits specified in the Agreement would be construed as a condition and, as a corollary, the Agreement may be terminated by the aggrieved party if such condition is breached. In the case at hand, neither party terminated or even purported to terminate the Agreement.

12. The 3rd issue relates to whether the Agreement contemplates reciprocal promises. As in the case of any contract, the Agreement contains reciprocal promises: the core reciprocal promises being the promise of the Plaintiff to fund the production of Production No.6 to the extent of Rs.13.5 crore and the promise of the first Defendant to commence production by 10.12.2008 and complete production by 05.04.2009. The critical question is whether the Agreement specifies the order of performance of these reciprocal promises and, if not, which obligation should be performed first in the natural course of events and to what extent before the reciprocal obligation of the counter party is required to be fulfilled in part or wholly. As per Section 52 of the Contract Act, if the order of performance of reciprocal obligations is specified in the contract, it should be performed in that order; otherwise, it should be performed in that order which the nature of the transaction requires. While the Agreement does not expressly prescribe the order of performance of obligations by the Plaintiff and the first Defendant, clauses 1 and 2 contain a clear indication. As per clause 1,

the production of the movie was to commence on 10.12.2008 and be completed before 05.04.2009. Clause 2 required the first and second installments to be paid by the Plaintiff by 05.12.2008, which is before the scheduled commencement date. Thus, the payment obligation, as regards the first two installments, precedes the reciprocal obligation to undertake production. The third to fifth installments were to be paid between 05.01.2009 and 05.03.2009; therefore, keeping in mind the completion date, it is clear that the reciprocal obligation of commencing production was required to be undertaken pending receipt of those installments. Once production work was underway, the payment obligation as regards the third to fifth installments would be triggered and would operate concurrently. This also stands to reason because money is required to commence production but further payments may be made commensurate with progress. Based on the above analysis, if the Agreement were to be construed on a standalone basis, the prior breach was by the Plaintiff. The impact of the Letter on the performance of obligations under the Agreement was considered earlier in the context of limitation, and remains to be considered from the perspective of Issues 9 and 10.

13. The Letter was issued on 12.02.2010, which is much after the expiry of the deadline for the payment of the last installment as well as the

deadline for completion of production of Production No.6. Since the Letter was signed by the Plaintiff and counter signed by the third and fourth Defendants on behalf of the first Defendant, it leads to the inference that the Plaintiff, on the one hand, and the Contesting Defendants, on the other, were ready and willing to perform their respective obligations under the Agreement notwithstanding non-compliance with time limits specified therein for fulfillment of obligations. While on this subject, it should be noticed that the Letter was signed on 12.02.2010, which was more than one year after the last installment of Rs.25,00,000/- was received by the Contesting Defendants. Thus, the Letter undoubtedly had the effect of absolving and condoning non-compliance with time limits under the Agreement. Indeed, even in subsequent correspondence, there is nothing to indicate that the first Defendant did not proceed with the production only on account of non-receipt of further payments from the Plaintiff. Besides, the first Defendant admittedly received, albeit belatedly, an aggregate sum of Rs.4.25 crore from the Plaintiff. Upon receipt thereof, the first Defendant had two options: commence production notwithstanding the shortfall of Rs.75,00,000/- (the first and second installments were required to be of Rs.2.5 crore each as per the Agreement, thereby aggregating to Rs.5 crore) and call upon the Plaintiff to pay the remainder; or appropriate amounts equivalent to expenses incurred, if any, from and out of the aggregate sum

received, refund the remainder, terminate the Agreement and claim damages. But neither option was exercised; instead, the first Defendant retained the amount received. In this context, it is pertinent to reiterate that the terms and conditions in the Letter were accepted by the Contesting Defendants more than one year after the receipt of the last installment of Rs.25,00,000/- from the Plaintiff. In these circumstances, the retention of the amount received would amount to breach of the Agreement read with the Letter unless the Contesting Defendants establish that they commenced production of the movie and expended the amount received for such purpose. Towards such end, the Contesting Defendants set up two, seemingly incompatible, defences: the sum of Rs.4.25 crore was expended in producing the movie; and Production No.6 was proceeded with and completed as "Nee Thane En Ponn Vasantham". Therefore, the issues relating thereto should be examined.

14. Issue 5 relates to whether the payments received by the first Defendant were expended by the first Defendant in the production of the movie. Issue 12 pertains to the release of the movie "Nee Thane En Pon Vasantham" and whether the liability of the Defendants stands discharged by virtue thereof. Since these issues are interrelated, they are dealt with jointly but issue 12 is addressed first. The movie "Nee Thane En Pon

Vasantham" was produced pursuant to an Agreement dated 06.07.2011 between Photon Kathaas Production Pvt. Ltd., the Plaintiff and the third Defendant (the Agreement dated 06.07.2011). The Agreement dated 06.07.2011 was exhibited as part of Ex.P7. It deals with a movie titled as "Nithya" and specifies the consideration therefor as a sum of Rs.13.27 crore. On perusal thereof, there is nothing therein that connects the said movie to Production No.6. Even the communications between the first Defendant and Photon Kathaas Private Limited, by way of letters dated 30.06.2011 and 02.07.2011, which were exhibited as part of Ex.P7, relate to the movie "Nithya" and not Production No.6. In any event, the Plaintiff was not privy to these communications and did not acknowledge receipt thereof. The subsequent Agreement dated 06.11.2011 refers to the Agreement dated 06.07.2011 and the renaming of "Nithya" as "Nee Thane En Ponn Vasantham", but does not refer to Production No.6 in any manner. The schedule of payment in the said Agreement also does not refer to or provide for a set-off of the sum of Rs.4.25 crore, which was received by the first Defendant from the Plaintiff with respect to Production No.6. In the absence of any evidence that Production No.6 was renamed as "Nithya", the Letter (Ex.P2) - which expressly records the understanding between the parties that the sum of Rs.4.25 crore was paid for purposes of producing the untitled movie called Production No.6 and should not be used for producing any other movie – assumes significance. In sum, the Contesting

Defendants have failed to establish that the amounts advanced by the Plaintiff for Production No.6 were used for producing "Nee Thane En Pon Vasantham". Thus, issue 12 is decided in favour of the Plaintiff and against the Contesting Defendants.

15. In support of the expenditure incurred towards Production No.6, the Defendants relied upon Exs.D16 to Ex.D36. The Plaintiff cross examined D.W.1 with regard to the genuineness of Exs.D16 to Ex.D36. In course of examination of D.W.1, the Plaintiff objected to several vouchers being exhibited in evidence because they do not bear the name and signature of the third Defendant. The following questions and answers in course of the cross-examination of D.W.1 on 12.02.2015 are set out below:

> "During the year 2008 – 2009, I am the authorised signatory for the first Defendant M/s.Photon Factory. In Exs.D23(series) to D34(series), series of vouchers, the signatures found in the vouchers as authorised signatory of D1 firm are not my signatures except the receipt dated 27.11.2008 found in Ex.D30(series). The document dated 27.11.2008 in Ex.D30(series) looks like a receipt and not a voucher.

Question: Whenever a person issues a receipt the original of the receipt is with the drawee and not with you?

Answer : May be the said original receipt came back to us. I am not sure.

Answer: It is correct to state that the essence of the written statement in paragraph Nos.27 to 33 of my written statement is to the effect that production No.6 is film titled "Nithya" and later released as "Nee Thane En Pon Vasantham".

The following questions and answers from the cross-examination of D.W.1 on 03.03.2015 are set out below:

Answer: It is correct to state the suit agreement Ex.P1 dated 27.11.2008 has nothing to do with the film "Nithya" or "Nee Thane En Pon Vasantham".

Question: You have not filed the agreements with the artists engaged under Ex.P1 though various vouchers and other bills have been produced only with the specific objective of suppressing materials evidence from the court.

Answer : There are no agreement entered with artists.

Question : I suggest to you that it is in your habit to engage artist under specific agreement or written call sheet.

Answer : It is not entirely true. It is the very recent practice. Many actors still do not agree to sign agreements.

The following questions and answers from the cross-examination of D.W.1 on 07.07.2015 are set out below:

Question : You earlier said that only in the case of 3rd party producers pooja is done. But in these two photographs pertaining Ex.P9(series), you have Thilak as well as seen meditating in a soulful manner. Therefore, your earlier statement that you do not do pooja for your films is an utter falsehood.

Answer : I strongly deny the suggestion. I am not an atheist but a strong believer in God.

16. The evidence adduced by the Contesting Defendants to establish that monies were expended for the production of the untitled

movie called Production No.6. is unconvincing for more than one reason: several vouchers are unsigned; D.W.1 admitted that he was not the signatory of the vouchers; D.W.1 admitted that no pooja was performed to mark the commencement of production; and, most importantly, D.W.1 admitted that no agreements or written call sheets were entered into with any of the artists engaged in the production of the movie. Besides, there is nothing to indicate that such expenditure was incurred towards this movie and not other productions. This aspect assumes greater significance because of the alternative and incompatible contention that the sum of Rs.4.25 crore was used to produce "Nee Thane En Ponn Vasantham". On considering all these aspects cumulatively, it is concluded that the evidence adduced by the Contesting Defendants with regard to alleged expenditure incurred towards Production No.6 is unreliable, and that there is nothing on record that indicates that the Contesting Defendants commenced production of Production No.6. Consequently, Issue 5 is decided against the Contesting Defendants.

17. Issue 7 relates to whether the Plaintiff is entitled to seek the reliefs claimed in the suit in spite of not making any further payments after the payment of Rs.25,00,000/- on 12.01.2009. Issue 8 pertains to whether the Plaintiff is entitled to seek production of the movie or the money claim

in spite of not infusing further funds subsequent to the payment of

Rs.25,00,000/- on 25.01.2009. Issue 14 pertains to whether the Plaintiff's claim for damages is sustainable. Once it is concluded that the Contesting Defendants did not commence production of the movie, the Contesting Defendants are not entitled to retain the money. From the perspective of the Plaintiff, the Plaintiff paid a sum of Rs.4.25 crore to the first Defendant for purposes of producing a movie. As a result of retaining the money but not commencing production of the movie, at a minimum, the Plaintiff suffered a loss to the extent of Rs.4.25 crore. While considering earlier issues, it was concluded that the Contesting Defendants did not fulfill their obligations under the Agreement as modified by the Letter. On issue 5, it was concluded that the first Defendant did not establish that it incurred expenditure on Production No.6 and, on Issue 12, it was concluded that the Contesting Defendants failed to prove that Production No.6 was completed and released as "Nee Thane En Ponn Vasantham". As a consequence of these conclusions, the factual position is that the first Defendant received a sum of Rs.4.25 crore from the Plaintiff but failed to take any steps for the production of the movie. Although the continued production may have been hindered by the non-infusion of further funds, since no steps were taken by the Contesting Defendants to produce the movie, it is clear that the Contesting Defendants committed breach of the Agreement read with the

Letter. As a consequence thereof, the Plaintiff becomes entitled to damages.

Under Section 73 of the Contract Act, a party has to satisfy the following requirements to make a successful claim for damages: (i) breach of contract; (ii) loss; (iii) the causal connection between the breach and loss; and (iv) quantum of loss. In this case, the admitted position is that the first Defendant received a sum of Rs.4.25 crore from the Plaintiff for the production of Production No.6. The failure of the Contesting Defendants to undertake production constitutes breach of the Agreement read with the Letter. While both the Plaintiff and the Defendants, albeit for different reasons, made an attempt to characterise the suit claim as an action for recovery of a debt, this contention cannot be countenanced because neither the Agreement nor the Letter provide for repayment of the sum of Rs.4.25 crore by the Contesting Defendants. Consequently, this amount can only be claimed by the Plaintiff on the ground that the Contesting Defendants reneged on the contractual commitment to commence production of the movie. As a consequence of such breach, at a minimum, the Plaintiff suffered a loss of the amount advanced to the first Defendant, i.e. the sum of Rs.4.25 crore, which represents the measure of damages. Although the Plaintiff claimed default interest on Rs.13.5 crore, such claim is completely untenable because the Plaintiff only funded the production to the extent of Rs.4.25 crore. Since the said amounts were paid to the first Defendant on

various dates between 27.11.2008 and 12.01.2009, the Plaintiff was deprived of any benefit from the payment of the sum to the first Defendant for a considerable period of time. Therefore, Issues 7, 8 and 14 are decided in favour of the Plaintiff and against the Contesting Defendants. This concludes the discussion and adjudication of Issues 1-12 and 14.

18. Issues 13 and 18 remain to be examined. Issues 13 and 18 pertain, respectively to: whether the Plaintiff is entitled to interest at the rate of 24% p.a. on the sum of Rs.4.25 crore; and the other reliefs to which the parties are entitled. The Plaintiff relies upon clause 4 of the Agreement. Clause 4 prescribed interest at 24% p.a. on Rs.13.25 crore from April 2009 till the date of completion and handing over of the first copy of the movie to the Plaintiff. On examining clause 4, it is clear that it provides for the payment of interest on the entire sum of Rs.13.50 crore and not a part thereof. The second aspect is that such interest is payable until the date of completion and handing over of the first copy of the movie. The Contesting Defendants did not even commence production of the movie. Therefore, clause 4 is not directly applicable. However, it is an indication of the understanding between the parties with regard to the applicable rate of interest in case of default. The transaction between the parties is undoubtedly commercial and, therefore, the Plaintiff would be entitled to interest at a commercial rate. Nonetheless, It should be borne in mind that

this is not an action for recovery of debts but a claim for damages. Therefore, interest becomes payable only from the date of breach. By virtue of the Letter, which was accepted by the first Defendant, the time for completion of production was extended without agreeing upon or specifying a revised deadline. Therefore, a reasonable time is implied. Given the fact that the Agreement envisaged production in about four months, a reasonable extension would be in the region of 2 to 3 months from 12.02.2010. Applying the said yardstick, the Contesting Defendants should have started production at least by 11.05.2010. In view of the non-payment of further sums as per the Agreement, the Contesting Defendants may have been justified in not completing the movie, but there is no justification for retaining the money and not commencing production thereof. Therefore, the sum of Rs.4.25 crore should carry interest from 11.05.2010. Although interest has been claimed at 24% per annum by relying upon clause 4 of the Agreement, it was previously concluded that clause 4 is not directly applicable. Bearing in mind the interest rates prevailing at the relevant point of time, the fact that this is a claim for damages and that the Plaintiff is not blameless, interest is awarded at the rate of 12% per annum from 11.05.2010 until the date of payment. Apart from damages and interest, the Plaintiff is entitled to costs. Such costs should cover the entire court fee of

Rs. 9,57,050/- and about Rs.2,50,000/- towards lawyer's fees and other expenses for prosecuting the suit. This is rounded off as Rs.12 lakhs.

19. In the result, the suit is decreed by directing the first, third and fourth Defendants to pay the Plaintiff a sum of Rs.4.25 crore with interest thereon at 12% per annum from 11.05.2010 till the date of payment. In addition, the said Defendants are directed to pay a sum of Rs.12,00,000/- as costs. The said amount includes court fee of Rs.9,57,050/-, lawyer's fees and other costs.

Sd./- S.K.R.J
05.04.2022

Plaintiff's witness:

1.Mr.Elred Kumar : P.W.1

Defendants' witness:

1.Mr.Gautham Vasudev Menon : D.W.1

Documents exhibited by the Plaintiff:

Sl.No	***Exhibits***	***Date***	***Particulars of Documents***
1.	Ex.P1	27.11.2008	Agreement between the Plaintiff and Defendants 1,3 and 4.
2.	Ex.P2	12.02.2010	Original variation letter and acknowledgment of liability between the Plaintiff and the Defendants 1,3 and r.
3.	Ex.P3	-	Advertisement for release of the audio recording of the film "Kedi Billa Killadi

Sl.No	Exhibits	Date	Particulars of Documents
			Ranga" by the Defendants 2 and 4 .
4.	Ex.P4	22.01.2013	Certified copy of the order dated 22.01.2013 in I.A.No.1069 of 2013 in O.S.No.3128 of 2013 on the file of the VIII Asst. City Civil Court, Chennai.
5.	Ex.P5	02.01.2013	Resolution of the Plaintiff company authorising the other Director to file the suit.
6.	Ex.P6	-	Authorisation letter to give evidence before this Court.
7.	Ex.P7	-	Entire Types set of papers
8.	Ex.P8	-	Caveat summons (series)
9.	Ex.P9	-	Photographs (series)

Documents exhibited by the Defendants:

Sl. No.	Exhibits	Date	Particulars of Documents
1.	Ex.D1	19.03.2014	Letter
2.	Ex.D2	-	Certified copy of the plaint in O.S.No.451 of 2013
3.	Ex.D3	-	True copy of the suit summon filed in C.S.No.153/2013
4.	Ex.D4	-	Certified copy of the Application No.1217 of 2003 in C.S.No.153 of 2013.
5.	Ex.D5	-	Certified copy of the short submissions filed in A.No.1217 of 2013 in C.S.No.153 of 2013.
6.	Ex.D6	-	True copy of the reply to the short submissions filed in A.No.1217 of 2013 in C.s.No.153 of 2013
7.	Ex.D7	06.07.2011	Agreement between the Plaintiff and Photon Kathas Private Limited.
8.	Ex.D8	-	Copy of the Agreement
9.	Ex.D9	09.02.2013	Authorization letter
10.	Ex.D10	-	Copy of Film Advertisement (series).
11.	Ex.D11	-	Photocopy of the Award given to D.W.1 by the Government of India.
12.	Ex.D12	-	Copy of the script of the production No.6
13.	Ex.D13	-	Copy of the video footage CD of Production No.6
14.	Ex.D14	-	Certified copy of certificate of Incorporation of

Sl. No.	Exhibits	Date	Particulars of Documents
			M/s.Photon Kathaas productions private limited.
15.	Ex.D15	14.02.2011	Letter address by D.W.1 to M/s.Photon Kathaas Productions Pvt Limited.
16.	Ex.D16	15.02..2011	Letter sent by M/s.Photon Kathaas Productions Private Limited to the first Defendant.
17.	Ex.D17	03.05.2011	Letter addressed by D.W.1 to M/s.Photon Kathaas Productions Private Limited.
18.	Ex.D18	04.05.2011	Letter sent by M/s.Photon Kathaas Productions Private Limited to the first Defendant.
19.	Ex.D19	30.06.2011	Letter addressed by D.W.1 to M/s.Photon Kathaas Productions Private Limited.
20.	Ex.D20	02.07.2011	Letter sent by M/s.Photon Kathaas Productions Private Limited to the first Defendant.
21.	Ex.D21	04.01.2012	Letter addressed by D.W.1 to M/s.Photon Kathaas Productions Private Limited.
22.	Ex.D22	05.01.2012	Letter sent by M/s.Photon Kathaas Productions Private Limited to the first Defendant.
23.	Ex.D23	-	Original vouchers towards expenses incurred during the month of April, 2008.
24.	Ex.D24	-	Original vouchers towards expenses incurred during the month of May,2008.
25.	Ex.D25	-	Original vouchers towards expenses incurred during the month of June,2008.
26.	Ex.D26	-	Original vouchers towards expenses incurred during the month of July,2008.
27.	Ex.D27	-	Original vouchers towards expenses incurred during the month of August,2008.
28.	Ex.D28	-	Original vouchers towards expenses incurred during the month of September,2008.
29.	Ex.D29	-	Original vouchers towards expenses incurred during the month of October,2008.
30.	Ex.D30	-	Original vouchers towards expenses incurred during the month of November, 2008.
31.	Ex.D31	-	Original vouchers towards expenses incurred during 01.12.2008 to 07.12.2008.
32.	Ex.D32	-	Original vouchers towards expenses incurred for the period from 08.12.2008 to 18.12.2008.

Sl. No.	*Exhibits*	*Date*	*Particulars of Documents*
33.	Ex.D33	-	Original vouchers towards expenses incurred for the period from 19.12.2008 to 31.12.2008.
34.	Ex.D34	-	Original vouchers towards expenses incurred during the month of January, 2009.
35.	Ex.D35	12.01.2009	Original receipt dated 12.01.2009 signed by D.W.1
36.	Ex.D36	11.08.2014	Original certificate issued by the Chartered Accountant

Sd./- S.K.R.J
05.04.2022

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.