



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 07TH DAY OF JUNE 2022

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.A.No.275 of 2022

and

Arb.A.No.111 of 2022

In the matter of Arbitration &
Conciliation Act, 2016

And

In the matter of Film Finance
Agreement Between M/s. Common
Man Presents and B. Pradeep Dated
25.06.2017.

B. Pradeep,
S/o. Bhagchand,
Aged about 40 years,
66/70, Palani Andavar Koil Street,
Vadapalani,
Chennai – 600 026.

... Applicant

-Vs-

1. M/s Common Man Presents,
A Partnership Firm,
represented by Mr. B.Ganesh, partner,
No.34/24, Rajendra Street, Thiru Nagar,
Valasaravakkam, Chennai - 600 087.

2. Ravi Prasad Film Labs Private Limited,
No.18, Porur Somasundaram Street,
North Usman Road,
T Nagar,
Chennai - 600 017.

<https://hcservices.ecourts.gov.in/hcservices/>

3. QUBE Cinema Technologies Pvt. Ltd.,



No.42, Ranga Road,
Mylapore, Chennai - 600 004.

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4. UFO Moviez India Ltd.,
No.178/3 & 4, J.B.Tower,
Kumaran Colony Main Road,
Vadapalani, Chennai - 600 026.

5. Arha Media & Broadcasting Pvt. Ltd.,
Plot No.1265, Road No.36,
Jubilee Hills Checkpost Metro Station,
Hyderabad, Telangana - 500 034.

***6. M/s. Abhishek Films,
Rep. by its Partner,
Mr.P.Ramesh,**

***Flat No.8C, KGYES Veda Ranghaa Nivas,
8th Floor, No.22/97, Dr.Ambedkar road,
4th Avenue, Ashok Nagar,
Chennai - 600 083.**

**(6th Respondent impeaded as per order dated 27.05.2022 in
Arb.Appl.No.110 of 2022)**

... Respondents

Original Application praying that this Hon'ble Court be pleased to grant an Interim injunction restraining the Respondents, its men, agents or any person acting on their behalf from in any manner exploiting, releasing, screening distributing or exhibiting the movie titled "Ayangaran" starring Mr.G.V.Prakash Kumar in any medium including but not limited to theatrical screening or through "Over the Top" (OTT) platforms pending disposal of the arbitration proceedings between the Applicant and 1st Respondent.



Arb.A.No.111 of 2022:-

M/s.Abhishek Films,

Rep. by its Partner,

Mr.P.Ramesh,

Flat No.8C, KGYES Veda Ranghaa Nivas,

8th floor, No.22/97, Dr.Ambedkar Road,

4th Avenue, Ashok Nagar,

Chennai - 600 083.

...Applicant/Proposed 6th Respondent

versus

1. Mr.Pradeep,

S/o. Mr.Bhagchand,

66/20, Palani Andavar Koil Street,

Vadapalani, Chennai – 600 026.

...1st Respondent/Applicant

2. M/s. Common Man Presents,

A Partnership Firm,

Rep. by Mr. B.Ganesh, partner,

No.34/24, Rajendra Street, Thiru Nagar,

Valasaravakkam, Chennai - 600 087.

3. Ravi Prasad Film Labs Private Limited,

No.18, Porur Somasundaram Street,

North Usman Road, T.Nagar,

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Vadapalani, Chennai - 600 026.

6. Arha Media & Broadcasting Pvt. Ltd,

Plot No.1265, Road No.36,

Jubilee Hills Check Post Metro Station,

Hyderabad, Telangana - 500 034.

...Respondents/Respondents



WEB COPY Arbitration Application praying that this Hon'ble Court be pleased to Vacate the interim injunction granted by this Hon'ble Court by an order dated 11.05.2022 in respect of releasing the movie titled as "Ayangaran" through OTT (Over the Top) Platform or otherwise.

This Original Application alongwith this Arbitration Application having been heard on 27.05.2022 in the presence of Mr.P.Giridharan for Mr.Arun C.Mohan, Advocates for the applicant in O.A.No.275 of 2022 and for the 1st respondent in Arb.Appln.No.111 of 2022 and Mr.A.K.Jayaraj, Advocate for the 1st respondent in O.A.No.275 of 2022 and for the 2nd respondent in Arb.Appln.No.111 of 2022 and Mr.T.Thiageswaran for M/s.Waraon and Sai Rams, Advocates for the 6th respondent in O.A.No.275 of 2022 and for the applicant in Arb.Appln.No.111 of 2022 and upon reading the Judge's Summons and the Affidavit of P.Ramesh filed in Arb.Appln.No.111 of 2022 and the order dated 11.05.2022 made in O.A.No.275 of 2022 and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said advocates for the parties hereto, and this Court having observed that the interim order dated 11.05.2022 is vacated to the extent it puts an embargo



applicant to work out a remedy in the arbitration proceedings to be initiated in terms of the aforesaid Film Finance Agreement dated 25.06.2017 against the first respondent producer, rights of the applicant quay the first respondent is to be decided in the light of the subsequent Addendum Agreement signed on 12.05.2022 between them, and nothing survives for further orders in this O.A.No.275 of 2022, and **it is ordered as follows:-**

That the order of interim injunction granted in pursuance of the order dated 11.05.2022 made in O.A.No.275 of 2022 restraining the respondents therein from releasing the movie on any other platforms be and is hereby vacated.

2) That the O.A.No.275 of 2022 do stand closed.

3) That there shall be no costs.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 07TH DAY OF JUNE 2022.

Sd/-

ASSISTANT REGISTRAR (Comm. Cases)

//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.



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ARS
14.06.2022

O.A.No.275 of 2022
and
Arb.A.No.111 of 2022

ORDER

DATED : 07.06.2022

THE HON'BLE MR. JUSTICE
C.SARAVANAN

FOR APPROVAL : 21.06.2022

APPROVED ON : 22.06.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.05.2022
Pronounced On	07.06.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN****O.A.No.275 of 2022**

and

Arb.A.No.111 of 2022

B.Pradeep

... Applicant

Vs.

- 1.M/s.Common Man Presents,
A partnership firm,
represented by Mr.B.Ganesh, Partner,
No.34/24, Rajendra Street,
Thiru Nagar, Valasaravakkam,
Chennai – 600 087.
- 2.Ravi Prasad Film Labs Private Limited,
No.18, Porur Somasundaram Street,
North Usman Road,
T Nagar, Chennai 600 017.
- 3.QUBE Cinema Technologies Pvt. Ltd.,
No.42, Ranga Road,
Mylapore, Chennai – 600 004.
- 4.UFO Moviez India Ltd.,
No.178 / 3 & 4, J.B.Tower,
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6.M/s.Abhishek Films,
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Flat No.8C, KGYES Veda Ranghaa Nivas,
8th Floor, No.22/97, Dr.Ambedkar Road,
4th Avenue, Ashok Nagar,
Chennai 600 083.

... Respondents

(The sixth respondent impleaded vide order dated
27.05.2022 in Arb.A.No.110 of 2022)

Judges summon filed under Order XIV Rule 8 OS Rules read with
Section 9 of Arbitration and Conciliation Act, 1996, to grant an interim
injunction restraining the respondents, its men, agents or any person acting
on their behalf from in any manner exploiting, releasing, screening
distributing or exhibiting the movie titled “Ayangaran” starring
Mr.G.V.Prakash Kumar in any medium including but not limited to
theatrical screening or through “Over the Top” (OTT) platforms pending
disposal of the arbitration proceedings between the Applicant and first
Respondent.

For Applicant : Mr.P.Giridharan
for Mr.Arun C Mohan

For R1 : Mr.A.K.Jayaraj

For R6 : Mr.T.Thiageswaran
for M/s.Waraon and Sai Rams

**ORDER**

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In O.A.No.275 of 2022, the applicant has prayed for grant of an interim injunction restraining the respondents, its men, agents or any person acting on their behalf, in any manner, from exploiting, releasing, screening distributing or exhibiting the movie titled "Ayangaran" starring Mr.G.V.Prakash Kumar in any medium including but not limited to theatrical screening or through "Over the Top"(OTT) platforms pending disposal of the arbitration proceedings between the applicant and the first respondent.

2. An interim order came to be passed by this Court on 11.05.2022. In terms of the aforesaid order, the first respondent / Common Man Presents (hereinafter referred to as the first respondent producer) was directed to comply with the following requirements:-

"...5.By balancing the equities, the following interim arrangement is made;-

(i)The first respondent is directed to establish an interest bearing fixed deposit account for a sum of Rs.1.25 crore in an nationalized bank to the credit of O.A.No.275 of 2022. Such account shall be in the name of the Registrar General of this Court, and shall be for an initial term of one year. The fixed deposit shall be made within two weeks from the date of receipt of a copy of this order. The original FD receipt shall be deposited with the Registrar General and a copy thereof shall be provided forthwith to the applicant.



(ii) Subject to the fulfillment of the above condition subsequent, the respondents are permitted to release the move in theaters only immediately.

(iii) The respondents are restrained from releasing the movie on any other platforms until further orders.

(iv) The applicant shall comply with Section 9(2) of the Arbitration and Conciliation Act, 1996.

6. Issue notice to the other respondents i.e., respondents 2 to 5, returnable on 08.06.2022.

7. List on 08.06.2022."

3. After the interim order was passed by this Court on 11.05.2022 in O.A.No.275 of 2022, addendum agreement dated 12.05.2022 appears to have been signed between the applicant and the first respondent producer and in the said agreement, the first respondent producer appears to have acknowledged that a sum of Rs.2,41,88,445/- was due as on date from the first respondent producer in terms of Film Finance Agreement dated 25.06.2017 and that the first respondent producer had agreed to pay a sum of Rs.50,00,000/- out of the theatrical revenue on or before 30.05.2022 and Rs.50,00,000/- on release of the film in the OTT platform through RTGS. The aforesaid addendum agreement dated 12.05.2022 states that any default by the first respondent would entitle the lender, i.e. the applicant, to seek



further exploitation of the said film on any medium/platform and that the remaining outstanding Rs.1 Crore will be paid on or before the release of the feature film titled 'Idhu Vedhalam Sollum Kathai' being produced by the first respondent producer . Clause 4 of the agreement reads as under:-

"4.This addendum agreement would be placed before the Hon'ble Madras High Court, and the terms shall be binding between the parties, and the legal proceedings on date shall be disposed off recording the representations of the Borrower stated hereinabove. This shall not in any manner prejudice any remedy available to the Lender for any future default under the Film Finance Agreement dated 25th June 2017 and this addendum agreement."

4. After the aforesaid order was passed on 11.05.2022 and the certified copy of the order was issued on 12.05.2022, the applicant in O.A.No.275 of 2022 issued a letter dated 12.05.2022, wherein, the applicant has stated as follows:-

"Kindly note that we have no objection to the release of the film "Ayangaran" on any medium including theatrical release, OTT and satellite as per our understanding and settlement with its producer M/s COMMON MAN PRESENTS dated 12th May 2022."

5. The aforesaid letter has been issued to first to fifth respondents in O.A.No.275 of 2022 who arrayed as respondents. On 12.05.2022, the applicant has signed an Addendum Agreement with the first respondent producer. On the following date i.e. on 13.05.2022, the counsel on record



for the applicant in O.A.No.275 of 2022 issued another letter to the first to fifth respondents in O.A.No.275 of 2022. In the said letter, it has been stated as follows:-

"We write on behalf of our client Mr.Pradeep S/o Bhagchand, aged about 40 years, 66/70, Palani Andavar Koil Street, Vadapalani, Chennai 600 026. On instructions, we herewith confirm that our client has no objection to the release of the film "Ayangaran"on any medium including theatrical release, OTT and satellite as per our client's understanding and settlement with its producer M/s COMMON MAN PRESENTS dated 12th May 2022."

6. Another email dated 23.05.2022 was issued by the learned counsel for the applicant, wherein, it has been stated as follows:-

"We write on behalf of our clients Mr.Pradeep S/o Bhagchand, aged about 40 years, residing at 66/70, Palani Andavar Koil Street, Vadapalani, Chennai 600 026.

We bring to your urgent attention the following facts:

1.Our client was due to be settled Rupees Fifty Lakhs as per his understanding dated 12th May 2022 with M/s Common Man Presents upon theatrical release, failing which our client retained his rights to seek injunctive relief for any further exploitation of the film "Ayangaran". This amount has not been settled till date, and our client is therefore rescinding his No Objection letter dated 13th May 2022, and there can be no further exploitation of the said film.

2.It is also placed on record that the Hon'ble Madras High Court has restrained any release on OTT till further orders of the Hon'ble Court vide order dated 11th May 2022. Needless to state, this

order is irrevocably binding on all respondents to the application and any release would certainly tantamount to deliberate contempt of the order of the Hon'ble Court.

We therefore, call upon all parties herein to cease forthwith any further exploitation of the feature film, "Ayangaran" in compliance with the orders of the Hon'ble High Court dated 11th May 2022."

7. The applicant has claimed rights over the film 'Ayangaran' produced by the first respondent/Common Man Presents, in terms of Film Finance Agreement dated 25.06.2017, as per which, the first respondent producer appears to have taken a loan for a sum of Rs.1,17,00,000/- (Rupees One Crore Seventeen Lakhs Only) from the applicant. As per the recital of the said agreement, the first respondent producer has acknowledged having received a sum of Rs.49,47,000/- as on that date. According to the applicant, the first respondent producer had pledged the rights in favour of the applicant in terms of clause 4 from the said agreement dated 25.06.2017 which reads as under:-

"4.Security

The Borrower herewith pledges the Rights (including but not limited to theatrical, satellite and digital/OTT rights) for all languages in the Film as security for the Loan borrowed. The said Rights shall bests exclusively with the Lender until the discharge of all amounts due herein, including principal, interest and costs. The discharge of the entirety of the the consideration in Clause 3 hereinabove to the strict satisfaction of the Lender in writing shall be a strict condition precedent

to the exploitation of any of the Rights in the Film, and the reasonableness of the same is duly acknowledged by the Borrower herein.”

8. It is submitted that on account of several factors including outbreak of Covid-19 pandemic, the release of the movie was delayed and that the first respondent producer defaulted in making repayment of the amounts lent under the aforesaid agreement. It is the further case of the applicant that the first respondent producer has also acknowledged that an amount of Rs.78,47,000/- as due in its letter dated 01.06.2020.

9. Aggrieved by the above developments, Arbitration Application No.110 of 2022 was moved by M/s.Abhishek Films for impleading itself as the sixth respondent in O.A.No.275 of 2022 and Arb.A.No.111 of 2022 has been filed for vacating the interim order dated 11.05.2022 in respect of the said film through OTT (Over the top) platform or otherwise. M/s.Abhishek Films was impleaded as sixth respondent vide order dated 27.05.2022 in Arb.A.No.110 of 2022. The said application was also heard.

10. The learned counsel for the sixth respondent has filed a typed set of documents. It is stated that the sixth respondent Abhishek Films had earlier entered into a finance agreement with the first respondent producer on 09.01.2017 to an extent of Rs.3 Crores for completion of the said film



wherein, the first respondent producer agreed to create a first and paramount charge over the entire rights.

11. The learned counsel for the sixth respondent submits that the first respondent producer was however unable to repay the amount of Rs.3 Crores lent in terms of the aforesaid finance agreement dated 09.01.2017. It is further submitted that after the aforesaid agreement was signed on 09.01.2017, the first respondent producer has also issued a letter dated 09.01.2017 to the second respondent Lab, whereby, the first respondent has acknowledged that the first respondent has signed into a Financial Agreement with the sixth respondent on 09.01.2017 and has agreed to create a First and Paramount charge over the entire rights of the film, for the area of Entire World including India in respect of the World Theatrical Rights, World and Indian Satellite Rights, Dubbing and Remaking Rights in all other Indian Languages, i.e. Telugu, Malayalam, Kannada, Hindi and all other Northern Indian Languages Rights.

12. The learned counsel for the sixth respondent further submits that to this effect, the second respondent Lab has also acknowledged the same to the sixth respondent by their letter dated 12.01.2017. The learned counsel for the sixth respondent further submits that the content of the letter dated



12.01.2017 of the first respondent has been extracted and that in the aforesaid letter of the second respondent and that the sixth respondent had expressed no objection in allowing the first respondent to handle the daily negatives, rushes for editing and for due completion of the said picture up to first copy and Censor.

13. The learned counsel for the sixth respondent further submits that having financed the aforesaid amount, the first respondent producer failed in making any payment and therefore, the first respondent producer assigned the rights in the aforesaid film in favour of the sixth respondent by an Assignment Agreement dated 11.04.2022 for a total sum of Rs.3.30 Crores. The learned counsel for the sixth respondent submits that the following rights have been assigned in favour of the sixth respondent by the first respondent as detailed below:-

- “(1) Airborne Rights*
- (2) Hotel Rights*
- (3) Internet Rights - Download to Own Rights, Download to Rent Rights, Broadband Rights, Online Distribution Rights*
- (4) Mechanical Synchronization Right*
- (5) Mobile Telephone Rights - Download to Own Mobile Rights, Download to Rent Mobile Rights*
- 6. Non-Commercial Exploitation Rights*
- 7. Non-Theatrical Rights*
- 8. Public Performance Rights*
- 9. Publicity Rights*



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10. Syndication Rights

11. Clip Rights

12. "IPTV Rights" or "Internet Protocol Television Service Rights"

13. Ship Rights - Synchronization Rights, Soundtrack Recording Rights, Syndication Rights, Subtitling Rights, Surface Transport Rights - Mechanical forms of Re-production including Videogram Rights

19. Other Rights"

14. It is further submitted that pursuant to the assignment agreement, the sixth respondent has assigned the following rights to the fifth respondent on OTT platform:-

Deal Terms

<i>S.No.</i>	<i>Terms</i>	<i>Particulars</i>
4	Assigned Rights	The Assignor hereby assigns and transfers to the Assignee during the Term and within the Territory (as set forth in Schedule C) on an exclusive basis, the Assigned Rights (as set forth in Schedule C) in the Permitted Languages (as set forth in Schedule C) in relation to and for exploitation of the Assigned Film (as set forth in Schedule B).

SCHEDULE -C

Assigned Rights

1. During the Term and within the Territory, the following rights in the Assigned Film in the Permitted Languages shall stand assigned to the Assignee;

<i>Sr.No.</i>	<i>Assigned Rights</i>	<i>Exclusive/ Non-Exclusivity</i>	<i>Remarks</i>
1)	Non-Linear Rights	Exclusive	NIL



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The rights below are assigned to the Assignee * for the purpose of exploiting the Assigned Rights above.

2)	Ancillary Rights	Exclusive	NIL
3)	Promotion Rights	Exclusive	The Assignee shall have a right to exploit the Promotion Rights 11 (Eleven) days before the start Date.

Permitted Languages	<i>Original Production Language: Tamil Dubbing Rights: Telugu, Malayalam and Kannada Subtitling Rights: All languages of the World including Indian languages</i>
Runs	Unlimited
Territory	Entire Universe

* fifth respondent

15. The learned counsel for the sixth respondent is aggrieved by the order dated 11.05.2022 insofar as the order restrains the first respondent producer from releasing the movie on any other platform until further orders, as the sixth respondent's rights under the Finance Agreement dated 09.01.2017 and the two subsequent Assignment Agreements, i.e. Assignment Agreement dated 11.04.2022 entered between the first and sixth respondent and Assignment Agreement dated 27.04.2022 entered between



the fifth and sixth respondents, have not been factored.

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16. It is further submitted that the Film Finance Agreement dated 25.06.2017 signed between the applicant and the first respondent may have been intended for another film produced by the first respondent producer starring Madhavan and others which was to be directed by Sarkunam and that same has also been acknowledged by the second respondent/Lab in their letter dated 05.09.2017. It is submitted that the said Film Finance Agreement dated 25.06.2017 cannot be even otherwise operated, as the first respondent producer has not executed any document for furnishing lab letter for the film 'Ayangaran' in favour of the applicant and that the signatures which were perhaps obtained in blank sheets from the first respondent producer have been misused by the applicant.

17. The learned counsel for the first respondent producer confirms the same that the agreement has been misused to hijack the rights over the film 'Ayangaran' though the applicant never financed to the said film.

18. On query from the Court whether there are documents to substantiate the payment of Rs.3 Crores to the first respondent producer by

the sixth respondent, the learned counsel for the sixth respondent has



produced copy of bank statement to show that Rs.3 Crores was financed on various dates as detailed below:-

<i>Sl.No.</i>	<i>Date</i>	<i>Amount</i>
<i>1</i>	<i>17.03.2017</i>	<i>50,00,000.00</i>
<i>2</i>	<i>12.01.2017</i>	<i>50,00,000.00</i>
<i>3</i>	<i>24.01.2017</i>	<i>50,00,000.00</i>
<i>4</i>	<i>14.06.2017</i>	<i>15,00,000.00</i>
<i>5</i>	<i>16.06.2017</i>	<i>40,00,000.00</i>
<i>6</i>	<i>16.06.2017</i>	<i>60,00,000.00</i>
<i>7</i>	<i>11.08.2017</i>	<i>50,00,000.00</i>

19. Supplementing the arguments advanced by the sixth respondent, the learned counsel for the first respondent producer further submits that the first respondent producer has suffered immense loss on account of the proceedings that have been initiated before this Court and the order dated 11.05.2022. It is submitted that pursuant to the Addendum Agreement dated 12.05.2022, a sum of Rs.30 Lakhs was paid and another sum of Rs.20,00,000/- was paid and that the first respondent producer is heavily bleeding and is unable to recoup the amount, as the applicant has created a negative buzz in the market and doubt in the mind of the theatre owners and viewers of the film by filing the above O.A. and therefore, the theatre did not receive adequate number of footfall. It is submitted that the opening



was batched up completely. It is submitted that the Addendum Agreement was signed in desperation to ensure that there is no further delay in release of the movie as the first respondent producer had already committed for release of the movie on 12.05.2022 by making suitable agreements with theatres and by announcing to the world.

20. The first respondent producer has further produced a copy of the letter dated 27.05.2022, wherein, it is stated that a sum of Rs.20 Lakhs has been settled through one Ravindran of Libra Production to the applicant by cheque given in favour of Mr.Mannan (Secretary of Tamil Film Producer council) though it is disputed by the applicant.

21. The learned counsel for the first respondent producer further submits that after securing the order and creating a negative buzz in the market about the film 'Ayangaran', the first respondent producer issued a letter dated 12.05.2022 contrary to the order of this Court on 11.05.2022 and thereby, jeopardized the rights of the first respondent producer. It is further submitted that the counsel who represented the applicant also sent a contradictory letter dated 13.05.2022 in variance of the order stating that the respondent had no objection for release of the film on any medium



settlement with producers on 12.05.2022.

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22. Opposing the application for modifying the order dated 11.05.2022, the learned counsel for the applicant submits that the rights of the applicant stood preserved by virtue of the Film Finance Agreement dated 25.06.2017 and that an indefeasible right was created in favour of the applicant. As far as the subsequent rights assigned by the first respondent producer on 11.04.2022 and 27.04.2022 is concerned, the learned counsel for the applicant has drawn attention to Section 18(2) of the Copyrights Act, 1957 and submits that no such rights exist as on date, as such rights come into force only at the expiry of 28th day from the theatrical release of the film in terms of the respective assignment agreements dated 11.04.2022 and 27.04.2022 signed between the first respondent & sixth respondents and the fifth & sixth respondents respectively.

23. In this connection, the learned counsel for the applicant has drawn attention to Deed of Assignment Agreement dated 27.04.2022 entered between the fifth and sixth respondents which reads as under:-

<i>Sl. No.</i>	<i>Terms</i>	<i>Particulars</i>
<i>1.</i>	<i>Execution Date of this</i>	<i>27th April 2022</i>



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	Agreement	
2.	Assigned Film(s)	<i>As mentioned in Schedule-B</i>
3.	Languages pertaining to Assigned Film(s)	<i>Assignor's grant of the Assigned Rights in the Assigned Film shall be restricted to the Tamil language (notwithstanding Sub-Titling and Dubbing rights that are spelled out separately in this Agreement)</i>
4.	Assigned Rights	<i>The Assignor hereby assigns and transfers to the Assignee during the Term and within the Territory (as set forth in Schedule C) on an exclusive basis, the Assigned Rights (as set forth in Schedule C) in the Permitted Languages (as set forth in Schedule C) in relation to and for exploitation of the Assigned Film (as set forth in Schedule B).</i>
5.	Permitted Languages for Sub-Titling	<i>The Assignee shall be permitted to exploit the Subtitling Rights in all the worldwide languages including all the Indian languages and English.</i>
6.	Permitted Languages for Dubbing	<i>The Assignee shall be permitted to exploit the Dubbing Rights (as defined below) in the following languages: (i)Telugu (ii) Malayalam (iii)Kannada</i>
7.	Term	<i>The term of this Agreement shall be commencing from the <u>Effective Date and expiring on the End Date</u> (as set forth in Schedule C), unless terminated by the Parties in accordance with the provisions hereof. For the sake of clarity, the Assignee shall exploit the Assigned Rights (as set forth in Schedule C) of the Assigned Film from the Start Date (as set forth in Schedule B) in accordance with the terms and conditions of this Agreement</i>
8.	Assigned Territory	<i>Entire Universe</i>
9.	Delivery Timelines of	<i>Assignor shall deliver the Link</i>



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	Materials, Link Documents and Promotional Material	Documents prior to execution of this Agreement (“Link Delivery Date”) and in accordance with the terms and conditions of this Agreement. Assignor shall deliver the Materials (including sub-titling tracks if applicable), and Promotional Material (collectively “Source Material”) no later than 15 days from the date of execution of this Agreement (“Source Delivery Date”) and in accordance with the terms and conditions of this Agreement. Link Documents and Source Material, as mentioned in Schedule D, are collectively referred to herein as Delivery Materials. In the event of Assignor's failure to deliver the Source Materials by the Source Delivery Date, Assignor shall be liable to pay a penalty of 2% of the Assignment Fee, for each day of delay. It is clarified that Assignor's obligations under this Clause are in addition to any obligations set forth (e.g., Indemnity, Termination etc.) in the remainder of this Agreement.
10.	Source Materials	The Source Materials shall be in accordance with the technical specifications, and the sub-titling tracks, if applicable, shall be in accordance with the technical specifications in Schedule D
11.	Assignment Fee and Payment Term	11.1 In consideration of the Assigned Rights assigned under this Agreement by the Assignor to the Assignee, the Assignee agrees to pay the Assignor an aggregate sum of INR 3,60,00,000/- (Indian Rupees Three Crores Sixty Lakhs only) (“Assignment Fee”) inclusive of all taxes and levies exclusive of Goods and Services Tax (“GST”)



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11.2 The Assignment Fee shall be payable in the following manner:

11.2.1 INR 1,00,000 (Indian Rupees One Lakh) shall be payable within 15 (Fifteen) days upon execution of the Agreement by the Parties.

11.2.2 INR 1,43,60,000 (Indian Rupees One Crore Forty-three Lakhs and Sixty Thousand only) shall be payable subject to Assignee's receipt of (a) of all Delivery Materials including the sub-titling tracks, if applicable, comply with the technical specifications; (b) the Promotional Materials as per the standards and requirements of the Assignee; (c) the Source Material by the Link Delivery Date and the Source Delivery Date respectively; and (d) copy of the CBFC certificate certifying the Assigned Film to be fit for unrestricted viewing i.e. or "U"/"A"/"UA" Category and within 15 (Fifteen) days after technical and quality clearance by the Assignee;

11.2.3 INR 2,15,40,000 (Indian Rupees Two Crores Fifteen Lakhs Forty Thousand only) of the Assignment Fee shall be payable within 60 (Sixty) days from the date of streaming of the Assigned Film(s) by the Assignee.

11.3 The Assignment Fee is exclusive of applicable taxes but subject to deduction of tax at source (TDS) as per Income Tax Act, 1961 and shall be paid subject to receipt of correct and valid invoice from the Assignor.

11.4 If all or any of the Assigned Rights mentioned in Schedule C are not available for exploitation or may result



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		<i>in contest or objection from a third party or the same are not available for exploitation during the Term of this agreement or throughout the Term in the Assigned Territory or parts of the Assigned Territory then the Assignment Fee payable in respect of such Assigned Rights or exploitation in such Territory shall be revised appropriately and any portion of the Assignment Fee already paid will be adjusted proportionally against such revised/curtailed enjoyment rights in the sole discretion of the Assignee. The Assignee will have the sole discretion to either revise the Assignment Fee or to terminate the Agreement as per Clause 11 of this Agreement.</i>
12.	<i>Holdbacks Period and Obligations of the Parties</i>	<i>A. Assignor's Holdback obligation:</i> <i>1. Prior to and at any time during the period of 100 (One Hundred) days from the date of theatrical release of the Assigned Film, the Assignor agrees to hold back and shall not exploit and shall not permit or license exhibit, distribute or otherwise exploit the Linear Rights as outlined in Schedule E on any mode and medium in Tamil and or any language, format or version throughout the world. Further, Parties agree that Assignor shall be only entitled to start exploitation of Publicity Rights as mentioned in Schedule E only prior to 7(seven) days, before the expiry of the holdback period of 100 (One Hundred) days as mentioned in the foregoing clause (Linear Rights and Publicity Rights are together herein referred to as "Holdback Rights").</i> <i>2. In any event the Assignor agrees that Assignee shall have 72(Seventy-Two) days of exclusive right to exploit Assigned Rights of the Assigned Film. The Parties agree that Assignor shall</i>



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holdback exploitation of the Holdback Rights till the expiry of the respective hold back period and after the expiry of the hold back period, the Assignor may exploit the Holdback Rights in the Assigned Film, provided that such exploitation does not violate, or conflict with, the Assigned Rights of the Assignee in the Assigned Film(s). Notwithstanding anything stated in this Agreement, in case of any conflict/overlap between the Assigned Rights of the Assignee and any/all of the Holdback Rights granted to third parties post expiry of hold back period, the Assigned Rights of the Assignee shall always prevail, with the relevant conflicting Holdback Rights and any use of the same being invalid, illegal and subject to being immediately ceased by such third parties.

*B.Assignee's Holdback obligation:
Assignee shall start streaming of the Assigned Film(s) only after the expiry of 28(Twenty-Eight) days from the theatrical release of the Assigned Film(s) and further shall start exploitation of Promotional Rights, only 11 (days) prior to streaming date of the Assigned Film. Further, it is agreed that parties may mutually agree to revise the foregoing obligation of the Assignee and reduce holdback period as mentioned herein (in writing).*

24. The learned counsel for the applicant also referred to schedule B to the said agreement, as per which, theatrical release date is on or before 31.05.2022 and the start date is 28th day from the theatrical release date. It is therefore prayed that the rights do not exist as on date.



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25. I have considered arguments advanced by the learned counsel for the petitioner and the respondents.

26. The issue that arises for consideration is whether the applicant has made out a *prima facie* case on merits for continuance of the order dated 11.05.2022 of this Court in O.A.No.275 of 2022 and whether the rights claimed by the applicant in terms of Film Finance Agreement dated 25.06.2017 and the Addendum Agreement dated 12.05.2022 can come in the legitimate way of the rights of the sixth respondent under Finance Agreement dated 09.01.2017 signed between the first respondent producer and the sixth respondent and the subsequent two Assignment Agreements dated 11.04.2022 and 27.04.2022 referred to *supra*.

27. The facts on record indicate that the first respondent producer of the film 'Ayngaran' has entered into multiple Finance Agreements with different persons. The facts on record also indicate that the earlier suit in C.S.No.283 of 2019 was filed by one C.P.Sunil Raj, Proprietor of M/s.Mishri Movies against the first respondent producer and Sri Dhanalakshmi Pictures, in respect of Hindi dubbing rights for the film



‘Ayngaran’. The said suit is pending before the Commercial Division of this Court. It appears that the first respondent producer has also sold the dubbing rights in Hindi to the second defendant therein, i.e. Dhanalakshmi Pictures on 06.04.2017.

28. It also appears that first defendant therein, i.e. first respondent herein as the producer of the film has also sold the Hindi dubbing rights to the said plaintiff C.P.Sunil Raj, Proprietor of M/s.Mishri Movies for a valid sale consideration on 06.06.2017. There are few averments regarding the genuineness of the said agreement dated 06.06.2017 in the said proceedings as is evident from a reading of the interim order dated 04.09.2019 passed to maintain the status-quo in respect of Hindi dubbing rights alone for the subject film while giving rights to the first respondent producer to release the movie.

29. As far as the rights of the applicant are concerned, the rights flow is from a Film Finance Agreement dated 25.06.2017 which contains an arbitration clause. Prior to that, the sixth respondent who has been impleaded, has entered into a Finance Agreement dated 09.01.2017 with the first respondent producer by parting a sum of Rs.3,00,00,000/- (Rupees Three Crores) for the production of the aforesaid film. Under the aforesaid



Agreement, the first respondent producer had agreed to create a “**First and Paramount Charge**” over the entire rights of the film, for the area of Entire World including India. Charges created are in respect of the following rights:-

- i. World Theatrical Rights
- ii. World and Indian Satellite Rights
- iii. Dubbing and Remaking Rights in all other Indian Languages, i.e. Telugu, Malayalam, Kannada, Hindi and all other Northern Indian Languages Rights.

30. It appears that pursuant to the above Agreement, the first respondent producer has also confirmed the arrangement with the second respondent Lab vide letter dated 09.01.2017 which has been duly acknowledged by the second respondent Lab by their letter dated 12.01.2017. The Film Finance Agreement dated 25.06.2017 with the applicant is subsequent in time. It is not backed with a similar Lab Letter of the second respondent. The applicant has not produced any such Film Lab Letter or confirmed existence of such Lab Letter which appears to be an accepted practice for securing the rights in film under production in favour of the financier, to ensure that there is no violation of rights of the financier.

31. The film was to be released on 12.05.2022. The applicant has



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rushed to the Court on 11.05.2022 by filing this O.A. perhaps knowing fully well that there were prior arrangements between the sixth respondent and the first respondent producer & the sixth and fifth respondents. Otherwise, there was no necessity for impleading the fifth respondent, to whom, the sixth respondent has assigned the rights under the Assignment Agreement dated 27.04.2022.

32. The fact that the applicant has not filed any Film Lab Letter from the second respondent also shows that the applicant may have suppressed the material facts before this Court while securing interim order dated 11.05.2022. Clause 5 of the Film Finance Agreement dated 25.06.2017 entered between the applicant and the first respondent producer also raises suspicion as the applicant has not executed any documents / papers by furnishing the Lab Letter in the name of the applicant by the second respondent.

33. The case of the sixth respondent appears to be probable inasmuch as at about the same time, by a letter dated 05.09.2017, the first respondent producer has confirmed having taken a financial assistance from the applicant for an untitled Tamil film starring Madhavan and others directed by Mr.Sarkunam and to that effect, the second respondent Lab has also given a Lab Letter dated 05.09.2017. In the said letter, it has been stated as



follows:-

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The above arrangement is further subject to that we hold the first and paramount charge, possessory lien over the Digital Master, DPX files, release prints etc., of the above said Tamil picture “Production No.4” towards collection of M/s.Abhishek Films – Negative financier, M/s.Raviprasad Unit – Outdoor unit dues & M/s.Raviprasad Film Lab dues. Please note that we do not have any negatives / positives / digital format of the above said film in our Laboratory.

34. These facts have not been brought to the knowledge of this Court when the order was passed on 11.05.2022. That apart, the applicant has also not impleaded the sixth respondent perhaps knowing fully well that the sixth respondent appears to have the entire rights and had agreed to create the “**First and Paramount Charges**” in the film ‘Ayangaran’, for which, the second respondent has also issued a Film Lab Letter dated 12.01.2017 in favour of the sixth respondent.

35. Though the order has secured the interest of the applicant by asking the first respondent to establish a interest bearing Fixed Deposit Account for a sum of Rs.1.25 crore in a nationalized bank to the credit of this O.A.No.275 of 2022 giving rights to the first respondent producer to

release the movie in theatre, the order restraining the respondents from



releasing the movie in any other platform until further orders, impinges on the rights of the sixth respondent under the Agreements dated 11.04.2022 and 12.05.2022.

36. Though the applicant has reserved the rights by seeking injunctive relief against the first respondent producer in case of default, such rights cannot over ride or trample upon a pre-existing rights of the sixth respondent.

37. The first respondent is also guilty of not bringing to the notice of this Court regarding the various agreements signed and about the pre-existing rights in favour of the sixth respondent under Finance Agreement dated 09.01.2017 and the subsequent Assignment Agreement dated 11.04.2022. Perhaps the first respondent producer was desperate to have the film released on 12.05.2022 and to ensure that the collateral arrangement with various theatres for release of the movie was not jeopardized.

38. That apart, so called rights under the Film Finance Agreement dated 25.06.2017 pledges the right in the film 'Ayngaran'. There was no assignment of copyright. On the day when the Film Finance Agreement dated 25.06.2017 was signed, the said film was under production.



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39. The right of the applicant is purportedly in terms of Section 172 of the Contracts Act, 1872 r/w Section 18 (1) & (2) of the Copyrights Act, 1957. These provisions read as under:-

<i>Section 172 of the Contract Act, 1872</i>	<i>Section 18 of the Copyrights Act, 1957</i>
<i>172. “Pledge” “pawnor”, and “pawnee” defined.— The bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor is in this case called the “pawnor”. The bailee is called the “pawnee”.</i>	<i>“18. Assignment of copyright. -(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:</i> <i>Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.</i> <i>(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the</i>

<i>Section 172 of the Contract Act, 1872</i>	<i>Section 18 of the Copyrights Act, 1957</i>
	<i>provisions of this Act shall have effect accordingly.”</i>

40. As Section 173 of the Contract Act, 1872, a pawnee can retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

41. For better understanding, it would also be useful to refer to a definition of 'Sale' in Section 2(7) of the Sale of Goods Act, 1930 which reads as under:-

“goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

42. As per Section 2(3) of the Sale of Goods Act, 1930, goods are said to be in a “deliverable state” when they are in such state that the buyer would under the contract be bound to take delivery of them.



43. As per Section 148 of the Contract Act, 1872, a 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

44. There cannot be a pledge of right in a non-existing film. It was however open for the first respondent producer to assign the copyright in the film under production. However, there was no assigned in favour of the applicant under Section 18(2) of the Copyright Act, 1957.

45. Pledging of right cannot be countenanced in absence of physical delivery. Prima facie, the Film Finance Agreement dated 25.06.2017 signed with the applicant cannot be construed to mean that there was bailment of the rights in the film under production as the bailment contemplates the physical delivery of goods either for the purpose of performance of the service under Section 148 of the Contract Act, 1872 or the physical delivery as a security under Section 172 of the Contract Act, 1872. There was no goods in existence on 25.06.2017.

46. I am therefore unable to countenance as to how there could have



been a pledge of a right in a movie under production under the provisions of the Contract Act, 1872. If there was a valid pledge of “goods”, pawnee can retain the goods pledged, not only for the payment of a debt or for the performance of a promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

47. A pledge which is contract of bailment contemplates that delivery of the goods in physical form is sine qua non. Thus, under the Film Finance Agreement dated 25.06.2017, there cannot be pledge of right without actual delivery of the negative. However, that would not mean that the applicant had no rights to recover the amount paid to the first respondent producer as the creditor. It has an independent right which can be exercised by the applicant. However, such right will be subject to the prior rights. The action of the first respondent producer was not a bonafide inasmuch as the existence of any of the prior Agreement has not been informed to the Court on 11.05.2022 when the order was passed in this O.A.No.275 of 2022. It only shows that the first respondent producer was desperate for ensuring the release of the film.



eleventh hours itself shows that the application was not a bonafide and was intended to pressurize the first respondent producer from releasing the film after the first respondent produced and had committed to release the film on 12.05.2022. The existence of Finance Agreement dated 09.01.2017 with the sixth respondent has not been disclosed.

49. That apart, after the interim order was obtained on 11.05.2022, an Addendum Agreement dated 12.05.2022 was signed with the first respondent, whereby, the first respondent has acknowledged a sum of Rs.2,41,88,445/- as due and the first respondent borrower has agreed to pay a sum of Rs.50,00,000/- as a first tranche out of theatrical revenue for the feature film 'Ayngaran' on or before 30.05.2022 and another sum of Rs.50,00,000/- by way of RTGS, to release the said film on satellite and OTT platform. Thus, order of this Court has been allowed to be diluted by the applicant and first respondent producer.

50. Though the Addendum Agreement dated 12.05.2022 also states that a sum of Rs.2,41,88,445/- was due, other clauses in the Addendum Agreement states that the balance due to be paid is only Rs.2,00,00,000/-, i.e. a sum of Rs.50,00,000/- as the first tranche from theatrical revenues to be paid on or before 30.05.2022 and a sum of Rs.50,00,000/- to be paid by



way of RTGS, subject to which, the first respondent producer was entitled to release the film 'Ayangaran' through satellite and OTT platform and the remaining outstanding of Rs.1,00,00,000/- to be paid before release of the film 'Idhu Vedhalam Sollum Kathai' featuring Ashwin K., Guru Somasundaram, Abhay Deol, Aishwarya Rajesh and others, directed by Rathindran R Prasad.

51. That apart, on the same day, i.e.12.05.2022, the applicant also issued a letter to all the respondent other than the sixth respondent which states that he had no objection for release of the film 'Ayangaran' on any medium including the theatre, OTT and also satellite under an understanding reached on the same day. This was also followed by a letter dated 13.05.2022 of the counsel for the applicant. However, on 23.05.2022, the applicant has taken a u-turn by invoking the content of the Addendum Agreement dated 12.05.2022 since the first tranche of Rs.50,00,000/- had not been allegedly paid.

52. Considering the fact that there was a pre-existing arrangement between the first respondent producer and the sixth respondent and considering the fact that the applicant has not stated all the material facts that would have been relevant for the Court to decide as to whether the



interim order was to be granted or not, I am to vacate the interim order as it impinges on the rights of the sixth respondent from releasing the movie on any other platform until further orders.

53. The rights of the applicant was protected by the order of this Court which was allowed to be diluted as the applicant himself was in a hurry to get money by putting pressure on the first respondent producer to sign in the Addendum Agreement dated 12.05.2022.

54. In my view, the rights of the third party like sixth respondent to release the movie in other platform cannot be trampled upon. Both the applicant and the first respondent producer have not been truthful to the Court when the interim order has been passed. The interim order which has been passed by this Court on 11.05.2022 has to be therefore modified.

55. Since both the applicant and the fifth respondent are guilty of suppression of material facts, I am inclined to allow the application filed by the sixth respondent insofar as the rights of the sixth respondent under the Finance Agreement dated 09.01.2017 read with Assignment Agreements dated 11.04.2022 and 27.04.2022 for release of the film in the OTT



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56. Though the first respondent producer has stated that the first installment of Rs.50,00,000/- has been paid and is denied by the applicant, I am not inclined to give my opinions on the same as these are subsequent to the orders of this Court on 11.05.2022.

57. Suffice to state that the applicant can recover the balance amount due under the Agreements signed from the first respondent producer in accordance with law by invoking arbitration clause without impinging on the rights of the third party such as the sixth respondent herein and the plaintiff and the defendant in C.S.No.283 of 2019. The order of this Court was allowed to be diluted by the applicant by signing the Addendum Agreement dated 12.05.2022 .

58. In the light of the above, the interim order dated 11.05.2022 is vacated to the extent it puts an embargo on the respondents to release the film on OTT platform, with liberty to the applicant to work out a remedy in the arbitration proceedings to be initiated in terms of the aforesaid Film Finance Agreement dated 25.06.2017 against the first respondent producer.

Rights of the applicant quay the first respondent is to be decided in the light of the subsequent Addendum Agreement signed on 12.05.2022 between



them.

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59. Nothing survives for further orders in this O.A.No.275 of 2022.

Therefore, this O.A.No.275 of 2022 is closed. Arb.A.No.111 of 2022 filed by the sixth respondent for the vacating the interim order dated 11.05.2022 is allowed. No cost.

Sd/-C.S.N.J.
07.06.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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