

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.11.2016

PRONOUNCED ON: 21.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.11 of 2009

Haja Mohideen, Proprietor  
M/s.Meta Audio, Chennai-2

Plaintiff

Vs

S.V.Thangaraj, Proprietor  
M/s.Uva Sree Creations, Chennai-2

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Mr.K.Harishankar

For Defendants : Mr.V.Deenadayalan

#### JUDGEMENT

This civil suit has been filed to pass a judgement and decree, against the Defendant:-

- a) directing the Defendant to pay the Plaintiff a sum of Rs.49,98,500/- (Rupees forty nine lakhs ninety eight thousand and five hundred only) with interest at 24% p.a on Rs.30,50,000/- from the date of the plaint till the date of realisation.
- b) granting permanent injunction restraining the Defendant from releasing the picture ENGAL ASAAN, starring Vijayakanth and others, without settling the dues to the Plaintiff in a sum of Rs.49,98,500/-.
- c) directing the Defendant to pay the costs of the suit.

2. The plaint averments are that the Plaintiff is in the business of financing for production of cinematograph films and acquiring various copy rights in Tamil cinematograph films. During the course of the business, the Defendant, who is a Producer of the Tamil films, had approached the Plaintiff, requesting finance for his film titled MEESAI MADHAVAN. The Plaintiff had agreed to lend a sum of Rs.10 lakhs and this was done on 27.1.2004 partly in cash and partly by cheque. The Defendant had agreed to pay the interest at the rate of 24% p.a. and undertook that the entire amount will be repaid by June 2004. The Defendant had also created a charge in favour of the Plaintiff over the satellite television rights and distribution rights in the areas of Chengalput, North Arcot and South Arcot Districts. However, the Defendant did not complete the production and requested further finance and accordingly, a sum of Rs.7,50,000/- was paid by cash by the Plaintiff on 14.7.2004. The Defendant had also issued a cheque in favour of the Plaintiff for the total sum of Rs.17.50 lakhs. The Defendant had also issued a letter of undertaking on 14.7.2004, promising to repay the entire amount with interest before the release of the film. The film was released in December 2004. But, the Defendant was unable to settle the amounts borrowed. The Defendant then had promised that he would settle the dues with interest before the release of his next film titled ENGAL ASAAN, starring Vijayakanth. A promissory note was executed by the Defendant on 20.2.2006, treating the entire amount of Rs.17.50 lakhs as principle amount and undertaking to return the same with interest at 24% p.a. from 20.2.2006 till the date of repayment. It had been further stated that a

further sum of Rs.13 lakhs was borrowed and a promissory note was also executed. Though the film ENGAL ASAAN was proceeding at a very slow rate, the Defendant had been promising that the amounts will be repaid before the release of the film. Since the Defendant appeared to have evaded payment, the Plaintiff had issued a legal notice, demanding the money on 18.7.2008. The Defendant did not send any reply. The Plaintiff had, therefore, filed the suit for recovery of a sum of Rs.49,98,500/- with interest at 24% p.a. on Rs.30,50,000/- from the date of the plaint till the date of realisation.

3. In the written statement, the Defendant had denied the allegations made in the plaint. It had been stated in the written statement that the agreement dated 27.1.2004 had been altered and the Plaintiff had substituted the pages numbers 2 and 3 of the original agreement with the single fabricated page as page (2). The Defendant had been forced to sign in blank paper and this was used to create the said document. The Defendant had admitted the receipt of Rs.10 lakhs and the charge over satellite television rights and distribution rights in the areas of Chengalput, North Arcot and South Arcot Districts. The Defendant, however, had stated that the Plaintiff received from the Defendant and his wife, several blank papers, stamp papers, white sheets, green sheets and promissory note papers, with the signatures of the Defendant and his wife, jointly and separately and also the letter heads of M/s.Uva Sree Creations and also in the blank cheques with the Defendant's signatures. These papers had been misused to extract money from the Defendant. It had been further stated that the Defendant had discharged all the dues to the

Plaintiff on 13.11.2004 and the Plaintiff also gave necessary document of letter dated 13.11.2004 to M/s.Gemini Colour Laboratory. This was with reference to the Tamil colour film MEESAI MADHAVAN, which is the subject matter of the agreement dated 27.1.2004. The Plaintiff had promised to return all the signed blank papers, promissory notes and cheques, but in spite of the repeated reminders, he did not do so. The Defendant had denied that he received a further a sum of Rs.7,50,000/- on 14.7.2004 and also denied the issuance of cheque for Rs.17.50 lakhs on 14.7.2008. The Defendant had not issued any letter of undertaking. It had been further stated that the Plaintiff has been harassing the Defendant to extract money.

4. It had been further stated in the written statement that the Plaintiff had not explained why he had not encashed the cheque for Rs.17.50 lakhs and he had also suppressed the same in the suit. It had been further stated that the film MEESAI MADHAVAN was released on 23.12.2004 only because the Defendant had settled all the dues to the Plaintiff on 13.11.2004. The film ENGAL ASAAN, starring Vijayakanth was a different production and it commenced only in December 2008. The Defendant denied that he had executed any promissory note for the Plaintiff. He further denied the allegation of receipt of Rs.13 lakhs and execution of further promissory note. The Plaintiff had not created any charge over the film ENGAL ASAAN. It had been further stated that the Defendant is not due and liable to the Plaintiff for any amount. It had been further stated that since the Plaintiff agreed to withdraw the legal notice, the Defendant did not send any reply in writing. The Defendant

repeatedly claimed that the Plaintiff had misused the blank papers by fabricating the same by fraudulent and illegal manners. The Defendant had also levelled allegations against the character of the Plaintiff, which are not germane to the suit. The Defendant finally prayed that the suit should be dismissed.

5. On perusal of the rival pleadings of the parties, by order dated 18.08.2011, the following issues were framed for determination:-

1. Whether the promissory note allegedly executed by the Defendant in favour of the Plaintiff on 20.2.2006 for a sum of Rs.17.50 lakhs is true, genuine and supported by consideration?
2. Whether the Plaintiff lent a sum of Rs.13 lakhs to the Defendant for the production of the feature film ENGAL ASAAN on the promise to repay the said amount with interest at 24% per annum before the release of the said film?
3. Whether the suit claim is barred by limitation?
4. Whether the Plaintiff is entitled to a decree for a sum of Rs.49,98,500/- towards the principal and interest till the date of filing of the suit?
5. Whether the Plaintiff is entitled to a future interest at the rate of 24% p.a. on Rs.30,50,000/- from the date of the plaint till realisation?
6. Whether the Plaintiff is entitled to a permanent injunction restraining the Defendant, his men, agents, servants or persons acting on his behalf from releasing the picture ENGAL ASAAN without settling the suit claim?
7. To what other relief the Plaintiff is entitled to?

6. Both the parties, to substantiate their rival claims, had let in oral and documentary evidence. On the side of the Plaintiff, the Plaintiff had examined himself as PW.1 and one R.Govindaraju, as PW.2 and marked Exs.P1 to P10. On the side of the Defendant, the Defendant was examined as

DW.1 and Ex.D1 to D24 were marked.

7. This court heard the arguments advanced by the learned counsel on either side and also considered the materials placed on record.

8. During the trial, the Plaintiff had examined two witnesses, namely, PW.1 and PW.2. However, PW.1, the Plaintiff did not come forward to be cross examined and consequently, no credence attached to his evidence. Similarly, PW.2 was also cross examined, but at the end, after sufficient long period of cross examination, he did not come again to the court.

9. Even before discussing the various issues and considering the oral and documentary evidence, it has to be mentioned that the issue (6) relating to the film ENGAL ASAAN does not survive no more, since it had already been released.

10. Further, this court must express its deep anguish and displeasure in the manner, in which the witnesses, who are the actually guests of the court, had been treated in the witness box. Both sides had shown extreme reluctance to confront the witnesses with the documents relating to the suit. On the other hand, question after questions were asked of both PW.1 and PW.2 with respect to the activities of PW.1 and his alleged brushes with law. They are totally irrelevant factors and even if PW.1 had lived on the edge, the Defendant had thought it fit to do business with him and in fact, sought his financial help. At that time, the Defendant did not think about the previous history of the life of PW.1, but only when a demand is made, the suit has been filed. This court has to express its opinion that putting questions particularly,

scurrilous questions, which are irrelevant to the issues at hand, would not advance the case of either party. Even with respect to the cross examination of DW.1, it must be pointed out that his friendship or otherwise with any particular actor will not advance the fact whether the Plaintiff had established his case. The Plaintiff must prove his case by filing documents and confronting the Defendant with such relevant documents, in which he had admitted to certain facts.

11. **Issue (1):** This issue related to the advance of Rs.17.50 lakhs and execution of promissory note by the Defendant in favour of the Plaintiff on 20.2.2006. A reading of the pleadings shows that the Plaintiff is involved in financing film productions. The Defendant is involved in producing films and he required funds. In the initial stage, at the time of production of a movie called MEESAI MADHAVAN, the Defendant had approached the Plaintiff, seeking a loan of Rs.10 lakhs towards production of the film MEESAI MADHAVAN. Ex.P1 is the agreement called Area Charge Agreement on Satellite Rights, in the areas of Chengleput, North Arcot and South Arcot Districts including Pondicherry territories. This agreement signed by the Plaintiff and the Defendant had been entered into between M/s.Uva Sree Creations, a sole Proprietary concern of the Defendant and M/s.Meta Audio, a sole proprietary concern of the Plaintiff. It is the contention of the Defendant that there are originally three pages in the suit agreement and the Plaintiff had taken away the 2<sup>nd</sup> and 3<sup>rd</sup> pages and reinserted a different page 2. However, even though PW.1 was in the witness box on two dates, namely on 28.8.2012 and again on

14.9.2012 and PW.2 was in the witness box on 3.1.2013, 10.1.2013, 5.2.2013 and 8.4.2013 and had subjected himself to cross examination, not even a single question was asked with respect to this and the allegations which are found in the written statement that the Plaintiff had obtained the signatures in blank papers, blank promissory notes, blank cheques, not only from the Defendant, but also from his wife. In the absence of any such cross examination of the Plaintiff witness, I hold that Ex.P1 is a binding agreement in the nature of the business carried on between the Plaintiff and the Defendant. According to Ex.P1, the details of advance of Rs.10 lakhs is clearly given. It was given as payment of Rs.5 lakhs by cash on the date of Ex.P1 and payment of Rs.5 lakhs by cheque no.657452 dated 27.1.2004. The date of the agreement is also 27.1.2004. I therefore hold that the Defendant had, on 27.1.2004, borrowed a sum of Rs.10 lakhs towards production of the film MEESAI MADHAVAN.

12. Ex.P2 is the letter written by the Defendant and acknowledging the receipt of the sum of Rs.10 lakhs in the terms mentioned in Ex.P1, namely, by cash Rs.5 lakhs and by cheque Rs.5 lakhs. In Ex.P2, the Defendant had further stated that a further sum of Rs.7,50,000/- had been received on 14.7.2004 and consequently, the total amount received towards the production of the film MEESAI MADHAVAN came to Rs.17.50 lakhs. This document having been signed by the Defendant and the Defendant not having chosen to confront the Plaintiff with the details of this document during the cross examination has to be accepted as true. Consequently, it is seen that the Defendant had actually borrowed a sum of Rs.17.50 lakhs from the Plaintiff

towards the production of his film MEESAI MADHAVAN. It is the further case of the Defendant that he had settled the said amount and it was only subsequent to such settlement that the film was actually released. To this, he had produced Ex.D1 and Ex.D2. Ex.D1 is the xerox copy of a letter written by the Plaintiff dated 13.11.2004 to M/s.Gemini Colour Laboratory, stating that the producer, namely, S.V.Thangaraj had settled all the dues with respect to the film MEESAI MADHAVAN. Even though it is a xerox copy of the document, again Ex.D1 was never challenged as to its genuineness during the cross examination.

13. Ex.D2 is the original letter written by M/s.Gemini Colour Laboratory dated 12.1.2009. It is stated in the said letter as follows:-

“TO WHOMSOEVER IT MAY CONCERN

This is to confirm that as per our record, M/s.Uva Sree Creations, Jayalakshmi Complex, #5, Muthukrishnan Street, Pondi Bazar, T.Nagar, Chennai 600017, the producers of the film MEESAI MADHAVAN (Tamil-Colour) vide their letter dated 27.1.2004, had created a charge on the territorial areas of Satellite, Chingleput, North Arcot, South Arcot (including Pondicherry), as popularly known in the film trade, in favour of M/s.Meta Audio, #37, Wallers Road, Off Mount Road, Chennai 600002.

Consequently, M/s.Meta Audio, vide their letter dated 13.11.2004, had confirmed to us that the above producers have cleared all their dues. They had further stated that the letter of M/s.Uva Sree Creations is treated as cancelled and they have further expressed their 'No Objection' in our transferring back all the rights mentioned above back in favour of the Producers. A copy of the letter issued from M/s.Meta Audio is enclosed herewith.

For GEMINI COLOUR LABORATORY

Authorised Signatory.”

Along with the letter, no objection given by the Plaintiff which is actually Ex.D1 has been enclosed. A reading of Ex.D1 shows that in so far as the business dealings with respect to the film MEESAI MADHAVAN is concerned, the Plaintiff had recorded full satisfaction and had further stated that the producers have cleared all the dues. These four documents being only relevant documents with respect to issue (1) established the following facts:-

1. That the Defendant had borrowed a sum of Rs.10 lakhs initially and a further sum of Rs.7,50,000/- towards the production of the film MEESAI MADHAVAN.
2. That the suit movie was actually released.
3. That prior to such release, the Gemini Colour Laboratory had stated that they confirmed that the Financier, namely, the Plaintiff had informed them that the producer, namely, the Defendant had cleared all the existing dues.

In such circumstances, it is purely on these documents, I hold that even though it is true that the Plaintiff had lent a sum of Rs.17.50 lakhs to the Defendant, the Defendant had discharged the said amount. Consequently, issue (1) is answered to the effect that the Defendant had executed the suit promissory note for a sum of Rs.17.50 lakhs, which is Ex.P3, but had discharged the said amount and there can be no liability fastened on the Defendant with respect to the said borrowal. Accordingly, issue (1) is answered.

14. **Issue (2):** This issue relates to a entirely different movie ENGAL ASAAN for which again the Plaintiff has alleged that the Defendant had borrowed amount from him towards production cost. To establish this fact, the Plaintiff has filed Ex.P4, which is a promissory note dated 21.8.2006 for a sum

of Rs.13 lakhs. This promissory note has been witnessed by PW.2 also. The Plaintiff had also produced Ex.P5 which is a letter written by the Defendant in which he had stated that he had received a sum of Rs.13 lakhs by cash on the date of the said letter, namely, 21.8.2006 and also confirmed that the earlier amount relating to purely with respect to the film MEESAI MADHAVAN of Rs.17.50 lakhs was unsettled. This is in direct contrast to the letter of M/s.Gemini Colour Laboratory as produced in Ex.D2 and also the confirmation by the Plaintiff that the financial had settled the dues. There being inadequate cross examination on these aspects, I hold that the finding with respect to issue (1) cannot be negated even though in Ex.P5 there is a reference that the amount of Rs.17.50 lakhs is unsettled. With respect to Ex.P5, the only consideration which has been passed is payment of Rs.13 lakhs and this is towards the production of the film ENGAL ASAAN. This payment is also supported by a promissory note Ex.P4. In fact, the Plaintiff had also issued a notice with respect to this and produced the same as Ex.P7. Even though the Defendant claimed that several blank papers had been received by the Plaintiff, having not chosen to cross examine the witness of the Plaintiff on these aspects on the dates when the Plaintiff's witnesses were present and available for cross examination, I hold that the Defendant is liable to the Plaintiff for a sum of Rs.13 lakhs from the date of borrowal, namely, 21.8.2006. In Ex.D4, the promissory note, the Defendant had agreed to pay back the said sum on demand at interest at 24% p.a. Consequently the Defendant is liable to the Plaintiff for the said sum of Rs.13 lakhs from the date of borrowal, namely, 21.8.2006 till the date of the

plaint and thereafter at 6% p,a, till realisation.

15. **Issue (3):-** This issue relates to the claim that the suit is barred by limitation. There has been no argument advanced by the Defendant as to how the suit claim is barred by limitation. This court is upholding the claim of the Plaintiff with respect to the loan advanced on 21.8.2006. A perusal of the records shows that the Plaintiff had filed the suit on 5.1.2009. Consequently, the suit being within three years from the date of lending the amount, I hold that the claim is not barred by limitation. Accordingly, this issue is answered in favour of the plaintiff.

16. **Issues (4) and (5):-** With respect to these issues, I held in issues (1) and (2) that the claim of the Plaintiff towards a sum of Rs.17.50 lakhs is negated and the claim of the Plaintiff for a sum of Rs.13 lakhs is upheld. Consequently, this court holds that the Plaintiff is entitled for a decree for a sum of Rs.13 lakhs with interest at 24% p.a. from the date of borrowal, namely, 21.8.2006 till the date of the Plaint and thereafter, at the rate of 6% p.a. till the date of realisation.

17. **Issue (6):-** As stated above, this issue does not survive.

18. **Issue (7):-** The Plaintiff is entitled for the costs.

19. In the result, this civil suit is partly allowed with costs. The suit is decreed in part for a sum of Rs.13 lakhs with interest at 24% p.a. from the date of borrowal, i.e. 21.8.2006 till the date of the plaint, namely, 5.1.2009 and thereafter, at the rate of 6% p.a. till the date of realisation. Time for payment is three months.

21.12.2016

Index:Yes/No  
Web:Yes/No  
Srcm

To:

The Record Keeper, VR Section, High Court, Madras

C.V.KARTHIKEYAN, J.

Srcm

Pre-Delivery Judgement in  
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