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A.Nos.2705 & 4895 of 2022
in C.S.No.932 of 2015

A.Nos.2705 & 4895 of 2022

in

C.S.No.932 of 2015

(Comm. Suit)

M.SUNDAR, J

This common order will now dispose of captioned two applications. In this order, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.

2. Defendant in the main suit is the applicant in both captioned applications and Mr.D.Prabhu Mukunth Arunkumar, learned counsel on record is before this Commercial Division. Sunstar Hotels and Estates Private Limited is the plaintiff in the main suit and Mr.P.K.Rajagopal, learned counsel on record is before this Commercial Division.

3. Captioned suit has been filed with a prayer for recovery of Rs.5,00,00,000/- and it is predicated on a plea that this sum was advanced by plaintiff to the defendant towards making of a cinematograph film.

4. It is not necessary to be detained by facts, in other words, it is not necessary to dilate further on facts though various proceedings that have been made in interlocutory applications in captioned suit which have been listed along with C.S.No.701 of 2018, which has been filed by one



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AADNAH ARTS against the same defendants including two others under similar circumstances.

5. In various common proceedings that were made in interlocutory applications in these two suits, captioned C.S.No.932 of 2015 has been referred to as 'senior suit' and C.S.No.701 of 2018 has been referred to as 'junior suit'. The same will continue to be used in the instant order also for the sake of convenience and clarity.

6. Proceedings made in the listings on 28.09.2022, 29.09.2022, 11.10.2022, 13.10.2022, 17.10.2022 and 04.11.2022 read as follows :

Proceedings dated 28.09.2022 :

'Read this in conjunction with and in continuation of earlier proceedings made by Hon'ble predecessor Judge in the listing on 25.08.2022.

2. There are two suits, namely, 'C.S.No.932 of 2015' [hereinafter 'senior suit' for the sake of convenience] and 'C.S.No.701 of 2018' [hereinafter 'junior suit' for the sake of convenience].

3. The common factor in the senior and junior suits is one 'Thirupathi Brothers Film Media (P) Ltd.,' [hereinafter 'said Company' for the sake of convenience and clarity]. This Commercial Division is informed that the said Company is a producer of cinematographic films and there are multiple money



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claims against said Company. This Commercial Division expresses no opinion or view on these claims in these proceedings now.

4. Suffice to say that both senior and junior suits are money suits by two different plaintiffs. In the senior suit, there is one plaintiff and sole defendant. Mr.P.K.Rajagopal, learned counsel for plaintiff and Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for sole defendant are before this Commercial Division. In the junior suit, Mr.Niranjana Rajagopalan of M/s.G.R.Associates (Law Firm) for the plaintiff and Mr.K.Dhananjayan, learned counsel for all the three defendants are before this Commercial Division.

5. To be noted, Mr.Aravind Subramaniam for KTV Kannan, Mr.R.Parthasarathy, learned counsel representing Mr.Sundarajamukund for PVP Capital Limited, Ms.AL.Ganthimathi for Baba Films, Mr.A.Chidambaram for MeenaBai and Co., are before this Commercial Division. This Commercial Division is informed that applications have been taken out by these counsel and they also have many claims qua said Company.

6. It may not be necessary to be detained by detailed facts any further or in other words, it may not be necessary to delve in great detail on facts as A.No.2705 of 2022 is now gravitating towards a



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consensus. To be noted, A.No.2705 of 2022 has been taken out by said Company (through Mr.D.Prabhu Mukunth Arun Kumar) with a prayer for release of a 'Cinematographic film titled Idam Porul Yaeval' (hereinafter 'said movie' for the sake of convenience and clarity). All the aforementioned learned counsel submit that it would be desirable to appoint a Administrator for release of said movie so that the proceeds of the collection are available in a Escrow account or by way of deposit in this Court, distribution or withdrawal of which will be subject to the decision of this Court in the senior and junior suits. This is the consensus which A.No.2705 of 2022 is gravitating towards.

7. In the next listing which shall be tomorrow, an Administrator shall be appointed with requisite directions, the parties can file affidavits / memos (if so desired) before the next listing.

List tomorrow. List on 29.09.2022.'

Proceedings dated 29.09.2022 :

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing yesterday [28.09.2022], which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made by Hon'ble predecessor Judge in the listing on



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25.08.2022.

2. *There are two suits, namely, 'C.S.No.932 of 2015' [hereinafter 'senior suit' for the sake of convenience] and 'C.S.No.701 of 2018' [hereinafter 'junior suit' for the sake of convenience].*

3. *The common factor in the senior and junior suits is one 'Thirupathi Brothers Film Media (P) Ltd.,' [hereinafter 'said Company' for the sake of convenience and clarity]. This Commercial Division is informed that the said Company is a producer of cinematographic films and there are multiple money claims against said Company. This Commercial Division expresses no opinion or view on these claims in these proceedings now.*

4. *Suffice to say that both senior and junior suits are money suits by two different plaintiffs. In the senior suit, there is one plaintiff and sole defendant. Mr.P.K.Rajagopal, learned counsel for plaintiff and Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for sole defendant are before this Commercial Division. In the junior suit, Mr.Niranjan Rajagopalan of M/s.G.R.Associates (Law Firm) for the plaintiff and Mr.K.Dhananjayan, learned counsel for all the three defendants are before this Commercial Division.*

5. *To be noted, Mr.Aravind Subramaniam for KTV Kannan, Mr.R.Parthasarathy, learned counsel representing Mr.Sundarajamukund for PVP Capital Limited, Ms.AL.Ganthimathi for Baba Films, Mr.A.Chidambaram for MeenaBai and Co., are before this Commercial Division. This Commercial Division is informed that applications have been taken out by these counsel and they also have many claims qua said Company.*

6. *It may not be necessary to be detained*



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by detailed facts any further or in other words, it may not be necessary to delve in great detail on facts as A.No.2705 of 2022 is now gravitating towards a consensus. To be noted, A.No.2705 of 2022 has been taken out by said Company (through Mr.D.Prabhu Mukunth Arun Kumar) with a prayer for release of a 'Cinematographic film titled Idam Porul Yaeval' (hereinafter 'said movie' for the sake of convenience and clarity). All the aforementioned learned counsel submit that it would be desirable to appoint a Administrator for release of said movie so that the proceeds of the collection are available in a Escrow account or by way of deposit in this Court, distribution or withdrawal of which will be subject to the decision of this Court in the senior and junior suits. This is the consensus which A.No.2705 of 2022 is gravitating towards.

7. In the next listing which shall be tomorrow, an Administrator shall be appointed with requisite directions, the parties can file affidavits / memos (if so desired) before the next listing.

List tomorrow. List on 29.09.2022.'

2. The same set of learned counsel are before this Commercial Division today also. Some of the parties have filed affidavits regarding appointment of an Administrator and others on instructions, reiterated the earlier proceedings. Be that as it may, Mr.Niranjan Rajagopalan of M/s.G.R.Associates (Law Firm) points out that he has instructions to say that there are reasons to believe that the producer has already alienated the audio rights qua said movie. To be noted, earlier proceedings dated 28.09.2022 are to be read as an integral part and parcel of this



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order and therefore, short forms and abbreviations used in the earlier proceedings shall continue to be used in the instant proceedings also.

3. Owing to the aforementioned submissions, Mr.K.C.Krishnamoorthy, Advocate, a member of this bar, having office at No.45, Law Chamber, High Court, Chennai-600 001 (Mobile No.99623 39968) is appointed as Commissioner to monitor and oversee release/collections qua said Movie.

4. However, owing to the submission made by Mr.Niranjan Rajagopalan, it is necessary that the Commissioner first files a preliminary report in this Court about the rights, credits and liabilities qua said movie. It is open to the Commissioner to bring to the notice of this Court any other fact that is relevant for the lis. Counsel for plaintiff in both senior and junior suits shall favour the Commissioner with one set of all the papers in the suits.

5. All the parties before this Court undertake to cooperate and render assistance to the Commissioner besides providing requisite details unconditionally.

6. The release of said movie under monitoring by the learned Commissioner will be decided after perusal of the interim report which shall be filed by the learned Commissioner before this Commercial Division in the next listing.

7. Initial remuneration of learned Commissioner is fixed at Rs.1,00,000/- (Rupees one lakh only). This sum of Rs.1,00,000/- shall be paid by the four claimants (as captured in paragraph 5 of 28.09.2022 proceedings) in equal moieties of



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Rs.10,000/- and the balance of Rs.60,000/- shall be paid by the two plaintiffs in the senior and junior suits at the rate Rs.30,000/- (Rupees Thirty thousand only) each.

List on 11.10.2022.'

Proceedings dated 11.10.2022:

'Read this in conjunction with and in continuation of earlier proceedings made in A.No.2705 of 2022 in C.S.No.932 of 2015 in the previous listing on 29.09.2022.

2. Same set of learned counsel are before this Commercial Division today also.

3.Mr.K.C.Krishnamoorthy, learned Advocate Commissioner is also before this Commercial Division. As regards paragraph 7 of the earlier proceedings dated 29.09.2022, this Commercial Division is informed that except one of the claimants, all other claimants and two plaintiffs have discharged their obligations qua Commissioner's remuneration. Let the lone claimant ensure that the Commissioner's remuneration is paid forthwith.

4. Learned Commissioner, pursuant to earlier proceedings dated 29.09.2022, has filed a preliminary report dated 10.10.2022. This Commercial Division is informed that all the learned counsel concerned have been favoured with a copy of the preliminary report. Mr.Niranjana Rajagopalan, learned counsel for plaintiff in junior suit i.e., C.S.No.701 of 2018 advertizing to preliminary report submits that the first defendant has represented to the learned counsel that the lien is to the



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extent of Rs.2 crores whereas according to him, lien is for the entire suit claim (to be noted, suit claim in C.S.No.701 of 2018 is Rs.16.91 Crores). As paragraph 5 and the tabulation therein of the Advocate Commissioner's preliminary report is only a record of the submission made by the two learned counsel for the first defendant, this is not to be treated as an objection to the preliminary report. However, it is made clear that the extent of lien will be a matter which is left open for being tested at the time of making orders regarding distribution of funds post release of movie concerned.

5. All the learned counsel submit that in the next listing further directions can be issued to the learned Advocate Commissioner qua release of the movie concerned. For these purpose, all the learned counsel agreed that they will circulate necessary draft directives in tune and tandem with industry practices.

6. Let the same be done before next listing.

List day-after-tomorrow. List on 13.10.2022.'

Proceedings dated 13.10.2022 :

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 11.10.2022, same set of learned counsel are before this Commercial Division.

2. Ms.S.Rekha, learned counsel for 12th claimant (PVP Capital Limited) requests for a short accommodation to get



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*further instructions and revert to this Court. Request
acceded to.*

List on Monday. List on 17.10.2022.'

Proceedings dated 17.10.2022 :

*Read this in conjunction with and in continuation of
earlier orders made in the previous listing on 29.09.2022 in
A.No.2705 of 2022 in 'C.S.No.932 of 2015' [hereinafter 'senior
suit' or 'I suit' for the sake of convenience and clarity] and the
same is as follows:*

*'Read this in conjunction with and in
continuation of earlier proceedings made in the
previous listing yesterday [28.09.2022], which
reads as follows:*

*'Read this in conjunction with and in
continuation of earlier proceedings made by
Hon'ble predecessor Judge in the listing on
25.08.2022.*

*2. There are two suits, namely, 'C.S.No.932 of
2015' [hereinafter 'senior suit' for the sake of
convenience] and 'C.S.No.701 of 2018' [hereinafter
'junior suit' for the sake of convenience].*

*3. The common factor in the senior and
junior suits is one 'Thirupathi Brothers Film Media
(P) Ltd.,' [hereinafter 'said Company' for the sake of
convenience and clarity]. This Commercial
Division is informed that the said Company is a
producer of cinematographic films and there are
multiple money claims against said Company. This
Commercial Division expresses no opinion or view
on these claims in these proceedings now.*

*4. Suffice to say that both senior and junior
suits are money suits by two different plaintiffs. In
the senior suit, there is one plaintiff and sole*



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defendant. Mr.P.K.Rajagopal, learned counsel for plaintiff and Mr.D.Prabhu Mukunth Arun Kumar, learned counsel for sole defendant are before this Commercial Division. In the junior suit, Mr.Niranjana Rajagopalan of M/s.G.R.Associates (Law Firm) for the plaintiff and Mr.K.Dhananjayan, learned counsel for all the three defendants are before this Commercial Division.

5. To be noted, Mr.Aravind Subramaniam for KTV Kannan, Mr.R.Parthasarathy, learned counsel representing Mr.Sundarajamukund for PVP Capital Limited, Ms.AL.Ganthimathi for Baba Films, Mr.A.Chidambaram for MeenaBai and Co., are before this Commercial Division. This Commercial Division is informed that applications have been taken out by these counsel and they also have many claims qua said Company.

6. It may not be necessary to be detained by detailed facts any further or in other words, it may not be necessary to delve in great detail on facts as A.No.2705 of 2022 is now gravitating towards a consensus. To be noted, A.No.2705 of 2022 has been taken out by said Company (through Mr.D.Prabhu Mukunth Arun Kumar) with a prayer for release of a 'Cinematographic film titled Idam Porul Yaeval' (hereinafter 'said movie' for the sake of convenience and clarity). All the aforementioned learned counsel submit that it would be desirable to appoint a Administrator for release of said movie so that the proceeds of the collection are available in a Escrow account or by way of deposit in this Court, distribution or withdrawal of which will be subject to the decision of this Court in the senior and junior suits. This is the consensus which A.No.2705 of 2022 is gravitating towards.

7. In the next listing which shall be tomorrow, an Administrator shall be appointed with requisite directions, the parties can file affidavits / memos (if so desired) before the next listing.

List tomorrow. List on 29.09.2022.'



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2. *The same set of learned counsel are before this Commercial Division today also. Some of the parties have filed affidavits regarding appointment of an Administrator and others on instructions, reiterated the earlier proceedings. Be that as it may, Mr.Niranjana Rajagopalan of M/s.G.R.Associates (Law Firm) points out that he has instructions to say that there are reasons to believe that the producer has already alienated the audio rights qua said movie. To be noted, earlier proceedings dated 28.09.2022 are to be read as an integral part and parcel of this order and therefore, short forms and abbreviations used in the earlier proceedings shall continue to be used in the instant proceedings also.*

3. *Owing to the aforementioned submissions, Mr.K.C.Krishnamoorthy, Advocate, a member of this bar, having office at No.45, Law Chamber, High Court, Chennai-600 001 (Mobile No.99623 39968) is appointed as Commissioner to monitor and oversee release/collections qua said Movie.*

4. *However, owing to the submission made by Mr.Niranjana Rajagopalan, it is necessary that the Commissioner first files a preliminary report in this Court about the rights, credits and liabilities qua said movie. It is open to the Commissioner to bring to the notice of this Court any other fact that is relevant for the lis. Counsel for plaintiff in both senior and junior suits shall favour the Commissioner with one set of all the papers in the suits.*

5. *All the parties before this Court undertake to cooperate and render assistance to the Commissioner besides providing requisite details unconditionally.*

6. *The release of said movie under monitoring by the learned Commissioner will be decided after perusal of the interim report which shall be filed by the learned Commissioner before*



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this Commercial Division in the next listing.

7. Initial remuneration of learned Commissioner is fixed at Rs.1,00,000/- (Rupees one lakh only). This sum of Rs.1,00,000/- shall be paid by the four claimants (as captured in paragraph 5 of 28.09.2022 proceedings) in equal moieties of Rs.10,000/- and the balance of Rs.60,000/- shall be paid by the two plaintiffs in the senior and junior suits at the rate Rs.30,000/- (Rupees Thirty thousand only) each.

List on 11.10.2022.'

2. Pursuant to the above proceedings, learned Advocate Commissioner in the next listing on 11.10.2022 filed a preliminary report dated 10.10.2022 and this Commercial Division made proceedings in the listing on 11.10.2022 and the same is as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in A.No.2705 of 2022 in C.S.No.932 of 2015 in the previous listing on 29.09.2022.

2. Same set of learned counsel are before this Commercial Division today also.

3. Mr.K.C.Krishnamoorthy, learned Advocate Commissioner is also before this Commercial Division. As regards paragraph 7 of the earlier proceedings dated 29.09.2022, this Commercial Division is informed that except one of the claimants, all other claimants and two plaintiffs have discharged their obligations qua Commissioner's remuneration. Let the lone claimant ensure that the Commissioner's remuneration is paid forthwith.

4. Learned Commissioner, pursuant to earlier proceedings dated 29.09.2022, has filed a preliminary report dated 10.10.2022. This Commercial Division is informed that all the learned counsel concerned have been favoured with a copy of the preliminary report. Mr.Niranjan Rajagopalan,



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learned counsel for plaintiff in junior suit i.e., C.S.No.701 of 2018 aversing to preliminary report submits that the first defendant has represented to the learned counsel that the lien is to the extent of Rs.2 crores whereas according to him, lien is for the entire suit claim (to be noted, suit claim in C.S.No.701 of 2018 is Rs.16.91 Crores). As paragraph 5 and the tabulation therein of the Advocate Commissioner's preliminary report is only a record of the submission made by the two learned counsel for the first defendant, this is not to be treated as an objection to the preliminary report. However, it is made clear that the extent of lien will be a matter which is left open for being tested at the time of making orders regarding distribution of funds post release of movie concerned.

5. All the learned counsel submit that in the next listing further directions can be issued to the learned Advocate Commissioner qua release of the movie concerned. For these purpose, all the learned counsel agreed that they will circulate necessary draft directives in tune and tandem with industry practices.

6. Let the same be done before next listing.

List day-after-tomorrow. List on 13.10.2022.'

3. Thereafter, in the previous listing on 13.10.2022, one of the claimants i.e., 12th claimant (PVP Capital Limited) requested for a short accommodation to get further instructions.

4. Ms.Tanushree Arvind, learned counsel along with Ms.Rekha S, for the 12th claimant who is before this Commercial Division brings to the notice of this Commercial Division two aspects of the matter and they are as follows:

(a) It would be desirable to opt for a distributor who charges the least or most competitive rates i.e., in terms of percentage of collection. The percentage of collection charged



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by distributor may not be the lone determinant. Therefore, this Commercial Division deems it appropriate to leave it to the discretion of learned Advocate Commissioner to choose the distributor considering all the determinants including one that would be most beneficial for all concerned more particularly two plaintiffs and claimants;

(b) Learned counsel submits that the trailer / teaser for the movie which we are concerned with in public domain shows one particular entity as distributor;

5. Learned Advocate Commissioner is at liberty to give suitable directives to the producer to do the needful in this regard before further trailers / teasers and certainly before release.

6. All the claimants who are represented by the counsel before this Commercial Division have, on instructions from their respective clients given consent for this order and it is submitted that the consent is de hors any legal proceedings or interim order which the claimants might have already obtained. As regards claimants who are not before this Commercial Division and if any other claimants surfaces, learned Advocate Commissioner shall call for no objection from such claimants particularly claimants who figured in the tabulation given by first defendant producer company in both suits who have not come before this Commercial Division in spite of notice being served.

7. Learned Advocate Commissioner shall also ascertain the lab as well as the entity which has digital version (referred to



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as 'Qube' in Industry Parlance) about any other orders or legal proceedings from any other legal fora and ensure that there is no impediment in this regard. It is always open to learned Advocate Commissioner to come before this Commercial Division and to seek further directions in the event of such impediments.

8. Further remuneration for learned Advocate Commissioner will be decided in the next listing.

9. List four weeks hence. List on 14.11.2022.'

Proceedings dated 04.11.2022 :

Captioned application has been taken out by the first defendant in the I suit (C.S.No.932 of 2015).

2. Read this in conjunction with and in continuation of earlier proceedings made in A.No.2705 of 2022 in C.S.No.932 of 2015 (I suit) and A.Nos.7858 and 7859 of 2018 in C.S.No.701 of 2018 (II suit) being proceedings dated 17.10.2022. In the listing on 12.07.2022, Hon'ble predecessor Judge has captured the list of claimants by way of a tabulation and the same is as follows:

Sl.No.	Party Name
1.	A.B.Balaji, 73A, Rameshwaram Nagar, Anchu Kallu Moodu Kollam-691012
2.	M/s.Sun Star Hoteles & Estates Pvt. Ltd No.16/3, Vidhoyodya, 1 st Cross Street, T.Nagar, Chennai-17.
3.	M/s.MeenaBai & Co, No.34, Co-operative Colony, Alwarpet, Chennai-600 018
4.	Mr.Chukkapalli Prasad Lalitha Bloom Fields, No.1/61/BV/11-A, Khajiguda, Hyderabad.
5.	M/s.Green Byte Technology P Ltd, Plot No.48-193/93/11, Silicon Valley, Madhapur, Hyderabad
6	K.T.V.Kannan, No.48, Old No.310, Thambu Chetty Street,



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Sl.No.	Party Name
	Mannadi, Chennai-1
7	M/s.Tag Entertainment Pvt Ltd No.1, 2 nd Lane, B.N.Road, T.Nagar, Chennai-600 017
8	Aadhna Arts No.23, Astalakshmi Nagar, 10 th Street, Aalapakkam, Chennai-116
9	Eros International Media Limited, 147/11, 3 rd Floor, Rajparies Trimeni Towers G.N.Chetty Road, T.Nagar, chennai-600 017
10	Baba Films 36/52, Devangar School Street, RS Puram, Coimbatore-641 002
11	Futura Finance No.27, Erulappan Street, Purasaiwalkam, Chennai
12	M/s.PVP Capital Limited, Registered Office at No.2, Harrington Road, KRM Centre, 9 th Floor, Chetpet, Chennai-600 003

3. To be noted, the term 'claimant' is used loosely albeit for convenience. Captioned application has now become necessary in the light of additional preliminary report of learned Advocate Commissioner dated 31.10.2022 is plaintiff counsel's say. All other counsel concerned were before this Commercial Division.

4. From the submissions made, it comes to light that learned Advocate Commissioner has suggested two dates for release of suit movie and they are 11.11.2022 and 18.11.2022.

5. However, advertng to the tabulation captured by Hon'ble predecessor Judge in 12.07.2022 proceedings, it is submitted that issue now is, owing to stand taken by claimants who are Serial Nos.9 and 11, namely, Eros International Media Limited, and Futura Finance.

6. Mr. Jayesh B. Dolia of M/s. Aiyar and Dolia (Law Firm)



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for Serial No.9 [hereinafter 'Eros' for the sake of convenience and clarity] and Mr.P.L.Narayanan, learned counsel for Serial No.11 [hereinafter 'Futura' for convenience] are before this Commercial Division.

7.As regards Eros, a compromise recorded in a pre-arbitration application under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] being compromise dated 12.10.2015 before a Hon'ble single Judge of a Bombay High Court in Arbitration Petition (L) No.1799 of 2015 was brought to the notice of this Commercial Division. Learned counsel for Eros submits that it is just a 3rd party lien but the terms make it clear that payment of Rs.3 Crores to Eros by the first defendant in both suits (I and II suits) as well as producer and Director is a condition precedent for release of suit movie. Learned counsel also submits that they have no office in T.Nagar, Chennai - 17 and therefore, notice served to that address is of no avail. This is disputed by Mr.Prabhu Mukunth Arunkumar, learned counsel. This will be 'examined' before ensuing listings with the assistance of 'Assistant Registrar-I' ['AR-I'].

8. As regards Futura also, a similar issue has propped up. Learned counsel submits that Futura has not been served with Court notice whereas learned counsel for plaintiff Mr.D.Prabhu Mukunth Arunkumar submits that private notice has been duly served. This will also be examined in a similar manner.

9. To facilitate the above examination AR-I of this Court is requested to put up a note on aforementioned service aspect qua



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two Eros and Futura before this Commercial Division in the next listing.

10.It is open to Eros and Futura to file a counter affidavit in captioned application, if so desired and if so advised. It is also open to the two entities to pursue the possibility of release of suit movie between today and next listing.

List on 09.11.2022 along with connected suit and applications. Registry to send this case file to AR-I for doing the needful.

7. Pursuant to aforementioned 04.11.2022 proceedings, Registry has placed before this Court the service particulars and a scanned reproduction of the same is as follows :



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THE HON'BLE MR.JUSTICE M.SUNDAR

It is respectfully submitted that pursuant to the orders of the Honourable Court dated 4.11.2022, the records in respect of service of Court Notice and private Notice against (1) Eros Media International Limited, 201, Kailash Plaza, Plot No.A-12, Opp.Laxmi Industrial Estate, Link Road, Andhri (West), Mumbai- 400 053 and (2) Futura Finance, No.27 Erulappan Street, Purasawalkam, Chennai – 600 003 are perused.

From the Court Notices in A.No.2705 of 2022 in C.S.(Comm.Div.) No.932 of 2015 sent to the above said (1) Eros Media International Limited, Mumbai and (2) Futura Finance, Chennai, which are submitted at Flags 'A' and 'B', they were returned on 17.8.2022 and 18.8.2022 respectively.

The Court Notice was addressed to Eros Media International Limited of Chennai address and the same was returned on 17.8.2022 by the Bailiff with the endorsement as under:-

"Notice is returned unserved. On enquiry being made by me on the said address and it is reported that said Company had vacated from the said Address. Hence Notice returned unserved."

As far as the Court Notice addressed to Futura Finance, No.27 Erulappan Street, Purasawalkam, Chennai – 600 003, there is a spelling mistake of the name of firm i.e., "Futura Finance" instead of "Futura Finance" and the same was also returned on 18.8.2022 by the Bailiff with the endorsement as under:-

"Notice is returned unserved. On enquiry being made by me and it is reported that there is **No such Erulappan Street**, above said address given herein. Hence, this notice returned unserved."

However, as per the Affidavit of service filed in respect of Private Notice to the above said two firms, which is at **Flag 'C'** and the Returned Unclaimed Cover and acknowledgment filed in S.R.No.31511 dated 8.11.2022, which is addressed to



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Eros Media International Limited of Mumbai, and submitted at Flag 'D' it is noticed that the notice addressed to Eros Media International Limited, Mumbai, it was delivered on 10.8.2022 and the notice addressed to Futura Finance, No.27 Euleppan Street, Purasawalkam, Chennai - 600 003, it was not served and returned with endorsement 'Door Locked' on 5.8.2022 and 6.8.2022. It is endorsed on the returned cover 'D & ID'. The said initials may represent 'Door Locked and Intimation delivered'.

From the above, the following facts emerge:

- (1) The Court Notices addressed to the above two firms were not served and returned.
- (2) As far as the service of Private notice, service is completed in respect of Eros International Limited of Mumbai, and
- (3) The private Notice in respect of Futura Finance, Chennai is returned with endorsement as 'Door locked'.

Most Respectfully submitted:


8/11/2022
Assistant Registrar (C.S-I)

8. Today, all the aforementioned 12 claimants are represented by their respective counsel. As regards S.No.11, 'Futura', learned counsel representing Mr.PL.Narayanan submits that their interest stands protected *inter alia* in the light of aforementioned 17.10.2022 proceedings and therefore, they have no objection to release of '*said movie*' by Advocate Commissioner subject to the conditions put in place by this Commercial Division. That leaves this Commercial Division with only one of the claimants namely 'Eros'. Mr.Jayesh B.Dolia of M/s.Aiyar and Dolia (Law Firm) for 'Eros' pointed out that he has filed his objections along with annexures.



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9. The thrust of the submission of learned counsel is predicated on an order dated 12.10.2015 (in Arbitration Petition (L) No.1799 of 2015) made by Hon'ble High Court of Judicature at Bombay.

10. To be noted, as already alluded to in the previous proceedings, the aforementioned order of the Bombay High Court is one that has been made in a pre-arbitration application under Section 9 of 'the Arbitration and Conciliation Act, 1996' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity].

11. It is to be noted that aforementioned order is a consent order. Adverting to Clause 2.3 in Consent Terms, it is submitted that *inter alia* the defendant in captioned suit have jointly, severally and irrevocably agreed and undertaken that they would not release the cinematograph film '*Idam Porul Yaeval*' ('said movie') in any part of territory of world including India till payment of Rs.3.0 crores to the petitioner (Eros International Media Limited) is made. To be noted, Clause 2.3 reads as follows :

"2.3 Respondent Nos. 1,2 and 3 agrees and undertakes to pay Rs.3 Crores to the petitioner on or before 30.11.2015 and in any case no later than 15.12.2015. Respondent Nos.1,2 and 3 without prejudice to the



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foregoing jointly and severally and irrevocably agree and undertake to secure the said sum of Rs.3 Crores by creating a lien and charge (as against the existing lien and charge of Rs.1.75 Crores) on the Film "Idam Porul Yaeval" and all their Prints, Digital Materials, Masters Materials and KDMs of the said Film to the extent of Rs.3 Crores in favour of the Petitioner with Respondent Nos. 1,2, and 3 jointly and severally irrevocably agreeing and undertaking not to release the said Film. "Idam Porul Yaeval" in any part of the Territory of world including India till the payment of Rs.3 Crores to the Petitioner will all Designated Laboratory and Digital Service Providers including but not restricted to Respondent Nos.4 to 11 restrain from parting with Prints, Digital Materials, Masters Materials/Licenses/KDMS or any part of the said Film "Idam Porul Yavel" to any party (parties) including but not limited to Theatrical Digital Service Providers, Cinema(s) / Theater(s) / Multiplex(es) / Satellite and Digital Operators."

(underlining made by this Court to supply emphasis)

12. Learned counsel for 'Eros' would submit that aforementioned order is operating and this was not brought to the notice of this Commercial Division when the aforementioned earlier proceedings were made. Learned counsel submitted that owing to aforementioned order, the



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release of 'said movie' cannot happen until Rs.3.0 crores is paid to 'Eros'.

13. Responding to aforementioned contention, Mr.D.Prabhu Mukunth Arunkumar, learned counsel for defendant pointed out that aforementioned order is an interim measure under Section 9 of 'A and C Act'. It was also submitted that it was made on 12.10.2015, which is prior to 23.10.2015 when large scale amendments to 'A and C Act' kicked in. Learned counsel submits that this means that ***Firm Ashok Traders*** principle, i.e., ratio laid down by Hon'ble Supreme Court in '***Firm Ashok Traders and Another Vs. Gurumukh Das Saluja and Others*** reported in ***(2004) 3 SCC 155'*** would apply. Learned counsel *inter alia* drew the attention of this Court to paragraph No.17 of ***Firm Ashok Traders case*** and submitted that the above interim arrangement cannot operate for seven years. It was submitted that the distance of time as between such an order and commencement of Arbitration cannot destroy the proximity of relationship of two events between which it exists and elapses. Paragraph 17 reads as follows :

*There are two other factors which are weighing heavily with us and which we proceed to record. As per the law laid down by this Court in **Sundaram Finance Ltd. [(1999) 2 SCC 479 : AIR 1999 SC 565]** an application under Section 9 seeking interim relief is*



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*maintainable even before commencement of arbitral proceedings. What does that mean? In **Sundaram Finance Ltd.** [(1999) 2 SCC 479 : AIR 1999 SC 565] itself the Court has said: (SCC p. 488, para 19)*

It is true that when an application under Section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings.

*Section 9 permits application being filed in the court before the commencement of the arbitral proceedings but the provision does not give any indication of how much before. The word “before” means, inter alia, “ahead of; in presence or sight of; under the consideration or cognizance of”. The two events sought to be interconnected by use of the term “before” must have proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or “within-sight” certainty. The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the court that the arbitral proceedings are actually contemplated or manifestly intended (as **Sundaram Finance Ltd.** [(1999) 2 SCC 479 : AIR 1999 SC 565] puts it) and are positively going to commence within a reasonable time. What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity*



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of relationship of the two events between which it exists and elapses. The purpose of enacting Section 9, read in the light of the Model Law and UNCITRAL Rules is to provide “interim measures of protection”. The order passed by the court should fall within the meaning of the expression “an interim measure of protection” as distinguished from an all-time or permanent protection.

(underlining made by this Court to supply emphasis)

14. Considering the principle of Comity of Courts, this Commercial Division is of the considered view that the above argument is to be made by the above counsel before Bombay High Court. It is open to the learned counsel to do the needful in this regard. It would not be appropriate for this Commercial Division to consider this argument, discuss the same and give its dispositive reasoning, as the same may lead to varying the order made by another Hon'ble High Court. Therefore, this Commercial Division refrains itself from any discussion or dispositive reasoning on the aforementioned rival submissions.

15. In other words, all rights and contentions of both sides i.e., 'Eros', first defendant and obviously other claimants and other parties to the suit are left open. Though obvious, it is made clear, it is open to the parties to approach Bombay High Court.

16. Captioned applications are disposed of as closed, albeit making



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it clear that it is open to the parties to come back to this Commercial
Division with a proper plea even if that means same/similar prayers.

17. Rights and contentions will stand preserved albeit qua
proceedings before Bombay High Court. There shall be no order as to
costs.

ds

15.11.2022
(2/3)



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M.SUNDAR, J

ds

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