IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2022**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

O.A.No.671 of 2022

Axess Film Factory,
A Partnership Firm,
Represented by its Managing Partner,
Mr.G.Dilli Babu,
Having Office at No.52,
2nd Floor, Kannamal Street,
Kannabiran Colony, Saligramam,
Chennai - 600 093. ... Applicant

vs.

Picture House Media Limited,
Plot No.83 & 84,
Punniah Plaza, Road No.2,
Banjara Hills, Hyderabad - 500 034. ... Respondent

PRAYER: Original Application filed under Order XIV, Rule 8 of the O.S.Rules Read With under Section 9(2)(a)(d) of the Arbitration and Conciliation Act, 1996, pleased to grant an order of interim injunction restraining the Respondent by themselves or by their Partners or successors of business, servants, agents, representatives, assignees and all other persons from releasing the film "ORI DEVUDA" through direct theatrical release or in any OTT platforms or through any satellite TV, pending disposal of the Arbitration.

For Applicant	:	Mr.Vijayan Subramanian
For Respondent	:	Mr.R.Parthasarathy for M/s.Sundarraja Mukund

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ORDER

The applicant seeks to restrain the respondent from releasing the film ORI DEVUDA in theatres, satellite TV or OTT platforms pending disposal of the arbitral proceedings.

2. The applicant states that a Film Remake and Dubbing Rights Agreement in Perpetuity dated 05.02.2020 (the Agreement) was entered into

by and between the applicant and the respondent. The consideration specified for the assignment of remake and dubbing rights of the movie OH MY KADAVULE under the Agreement was a sum of Rs.1.75 Crores plus applicable GST. Both parties agree that a sum of Rs.1.57 crores was paid on the date of execution of the Agreement and that a sum of Rs.17.5 lakhs was deducted as TDS.

3. After noticing that the sum of Rs.17.5 lakhs had not been remitted to the Income Tax Department and was therefore not reflected in Form 26AS, the present application is instituted.

4. Learned counsel for the applicant made the following submissions:

(i) The sum of Rs.17,50,000/- was admittedly deducted as TDS but was not remitted to the Income Tax Department. Two reasons are mentioned in the counter for non remittance. The first reason is an alleged oral agreement that the applicant will bear the sum of Rs.17.5 lakhs as a discount. The second reason is that the applicant did not provide the sound recording although the same was included within the scope of assignment.

Learned counsel for the applicant submits that both these reasons are completely untenable and liable to be rejected. He points out that the respondent did not address any communication to the applicant with regard to the alleged oral agreement. By referring to the Agreement, he points out that music rights were expressly excluded and that music rights include sound recordings.

(ii) Section 19(4) of the Copyright Act, 1957 was made inapplicable and therefore the respondent is in a position to exploit the copyright even after the lapse of one year.

(iii) By referring to the OTT assignment agreement dated 06.06.2022, he pointed out that a sum of Rs.8.55 crores was received as consideration therein.

5. For all the above reasons, he submitted that the respondent should be restrained from releasing the movie on satellite TV and OTT platforms or, in the alternative, the respondent should be directed to remit the sum of Rs.17,50,000/- into an escrow account pending arbitral proceedings.

6. Learned counsel for the respondent refuted these contentions. The first submission of learned counsel was that the applicant has approached the Court belatedly. The sum of Rs.17.5 lakhs was deducted while paying the sum of Rs.1.57 crore on 05.02.2020. The said sum was deducted for reasons specified in paragraphs 6 and 7 of the counter. Although the deducted amount was not reflected in Form 26AS pertaining to the financial year 2019-20, 2020-21 and 2021-22, this application has been filed shortly before the film was scheduled for theatrical release. The second contention was that the affidavit does not contain averments with regard to the financial position of the respondent and, in particular, the inability of the respondent to pay the sum of Rs.17.5 lakhs. Therefore, it was submitted that the application is liable to be rejected.

7. This application has been presented prior to the issuance of a notice under Section 21 of the Arbitration and Conciliation Act, 1996. The claim of the applicant for Rs.17.5 lakhs arises on account of the non remittance of the said sum by the respondent to the Income Tax Department. If such sum had been remitted to the Income Tax Department, the applicant would have

been entitled to claim credit in respect thereof. As such, the subject of this application is clearly a monetary claim.

8. The total consideration specified in the Agreement is Rs.1.75 crore plus GST. As against this sum, admittedly, a sum of Rs.1.57 crores was received on 05.02.2020. In addition, the sum of about Rs.21 lakhs was paid as GST. Therefore, the monetary claim in respect of which the present application is filed forms a small proportion of the total consideration specified in the Agreement.

9. As correctly contended by learned counsel for the respondent, the applicant has not made averments to satisfy the requirements of Order XXXVIII CPC, which would be applicable if the applicant intends to secure the monetary claim. Even as regards the requirements of Order XXXIX CPC, it should be noticed that under Section 41 of the Specific Relief Act, 1963, injunctive relief is not granted if the applicant can be monetarily compensated. Since this is a money claim, there is a little doubt that the applicant can be monetarily compensated if the applicant succeeds in arbitral

proceedings. The applicant has approached the Court about 2-1/2 years after the sum of Rs.17.5 lakhs was deducted. As stated earlier, the sum of Rs.17.5 lakhs represents a small proportion of the total consideration. When these facts and circumstances are considered cumulatively, the balance of convenience is clearly not in favour of granting the relief prayed for.

10. For reasons set out above, this application is liable to be rejected. Accordingly, O.A.No.671 of 2022 is dismissed without any order as to costs by leaving it open to the applicant to initiate arbitral proceedings in respect of the monetary claim.

01.11.2022

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Index : Yes / No
Internet : Yes / No

SENTHILKUMAR RAMAMOORTHY,J

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