



Arb.Appln.No.71 of 2023 in OA.No.131 of 2023
and
Arb.Appln.No.70 of 2023 in OA.No.130 of 2023

KRISHNAN RAMASAMY, J.

These applications are filed to vacate the interim order already granted by this Court on 21.02.2023 in OA.Nos.130 and 131 of 2023.

2. When the above Original Applications came up for hearing on 21.02.2023, this Court after hearing the parties has passed the following order:

"These applications were filed to grant an order of interim injunction restraining the respondent from releasing the Tamil feature color scope Picture THUGS featuring Hridhu Haroon and others, directed by Brinda, pending adjudication/conclusion of the Arbitral Proceedings initiated by the applicant vide Arbitration notice dated 18.02.2023 to the respondent.

2. The respondent is in the business of producing and releasing the film in the name and style of "Thameen Films". In the year 2018, the respondent had entered into a Minimum Guarantee Agreement dated 05.09.2018. Thereafter, on



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20.09.2018, he entered into another agreement, viz., *Temporary Transfer of Copy Rights Agreement for the purpose of distribution and to release the film "Saamy 2" by the applicant.*

3. *In terms of the said agreement dated 20.09.2018, the applicant deposited a sum of Rs.4.5 Crore for Kovai distribution rights and Rs.4.25 Crore for Chengalpattu distribution rights. As per the said agreement dated 20.09.2018, the said deposits shall be refunded, if the applicant is unable to reach the target of Rs.4.5 Crore for Kovai distribution and Rs.4.25 Crore for Chengalpattu distribution and if the applicant reached the target, the amount deposited with the respondent will not be refunded.*

4. *According to the applicant, the applicant was not able to reach the said target of Rs.4.5 Crore and Rs.4.25 Crore. As far as Kovai distribution is concerned, there is a shortage of Rs.2.10 Crores and as far as Chengalpattu distribution is concerned, there is a shortage of 2.62 Crores. Therefore, the respondent is liable to refund the said deposits to the applicant.*

5. *The Clause 12 of the Temporary Transfer of Copy Rights Agreement dated 20.09.2018 states as follows:*

"12. The Right Holder also agreed that the Distributor share received from the screening theatres does not satisfy the Total Security Deposit Amount plus Commission and expenses incurred for the said



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Distribution, if any, then the Right Holder shall pay to the Distributor such shortfall within a maximum of 45 days from the date of the general release of the said film. In the event of falling to make the payment the balance amount will bear interest of 36% (Thirty Six percent P.A.) from the said date. He also hereby irrevocably agrees that he will not release any other picture produced by him or distributed by him without settling the Distributor dues. The condition shall also apply to any film produced, released or distributed to some Third Party by the Right Holder."

By referring the aforesaid clause of the agreement dated 20.09.2018, the learned counsel for the applicant would submit that if the applicant is unable to reach the target within 45 days from the date of release of the film "Saamy 2", the respondent shall return the said deposits and the respondent undertook to not to release any of the pictures produced by him or distributed by him without settling the applicant. The film "Saamy 2" was released on 21.09.2018 and the 45 days period was completed on 10.11.2018. So far the respondent has not released any film. However, now the respondent had came out with an advertisement that he is going to release "Thugs" film on 24.02.2023.

6. Further, it was contended by the learned counsel for the applicant that releasing the said film without returning the deposits to the applicant is totally contrary to the clause 12 of the aforesaid agreement dated 20.09.2018. Therefore, he prays this Court to grant an interim injunction restraining the respondent from releasing the said film.



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7. Heard the learned counsel for the applicant and perused the materials available on record.

8. The applicant has made out a prima facie case and the balance of convenience is in favour of the applicant.

9. There shall be an order of interim injunction.

10. Issue notice to the respondent, returnable by 27.02.2023. Private notice is also permitted.

11. Post these applications on 27.02.2023."

3. Mr.T.Thiageswaran, learned counsel appearing for M/s.Waraon & Sai Rams, learned counsel for the applicant viz., M/s.H R Pictures would submit that the film "THUGS" is produced by the applicant. The second respondent, who is the husband of the Managing Partner of M/s.H R Pictures, is nothing to do with the M/s.H R Pictures. The interim order, dated 21.02.2023 was obtained as if the film was produced by the second respondent.

4. The learned counsel would submit that the first respondent filed the Original Applications under Section 9 of the Arbitration and Conciliation Act invoking arbitration clause in terms of the agreement dated 20.09.2018. However, in the said agreement either the M/s.H R Pictures or the partners



of the M/s.H R Pictures are parties to the proceedings. Therefore, he would submit that by providing wrong information, the first respondent obtained the above interim order.

5. He would further submit that the M/s.H R Pictures is going to release the film in Tamil on 24.02.2023 and already the film was released today in Telugu. In the event, if the film is not released tomorrow in Tamil, the film may be dubbed and released in the website, which will incur huge loss to the applicant. Hence, he prayed to vacate the interim injunction.

6. Mr.S.Parthasarathy, learned Senior Counsel appearing for Mr.K.Karthikeyan, learned counsel for the second respondent would submit that his client owned the production house viz., Thameen Films and he is disputing the agreement dated 20.09.2018 said to have been executed by him with the first respondent, which is a forged one. After receipt of the interim injunction, his client filed a criminal complaint against the first respondent. He further submitted that as per the agreement, the present film is not produced by him and it is produced by M/s.H R Pictures and granting interim injunction against the second respondent will noway prevent the M/s.H R Pictures from releasing the Film.



WEB COPY 7. In reply, Mr.C.P.Sivamohan, learned counsel appearing for M/s.My Lord Law Associates, learned counsel for the first respondent would submit that M/s.H R Pictures was formed in the year 2020 and this was formed by the wife and son of the second respondent with an intention to defeat the claim of the first respondent against the second respondent. However, he would submit that if the sale proceeds are permitted to deposit before the Court, he has no objection in releasing the film.

8. I have considered the submissions made on either side and perused the materials available on record.

9. Today, certain facts are brought before this Court to the effect that the second respondent is not the one who is going to release the film, but he is only a writer of the said film. However, the film is going to be released by M/s.H R Pictures. It is an admitted fact that the partners of M/s.H R Pictures are the son and wife of the second respondent. Merely, because of the fact that the son and wife of the second respondent are partners in the M/s.H R Pictures, the first respondent cannot approach this Court under Section 9 of the Act under the pre-text that only to defeat his claim, the second



respondent formed M/s.H R Pictures with his wife and son as partners. Even if it is so, the first respondent has obtained the interim order without impleading M/s.H R Pictures, which is not justified.

10. In the advertisement itself, it has been clearly stated that the film is going to be released by M/s.H R Pictures. However, the first respondent without brought to notice of the same before this Court has obtained the interim order. Further, in the present case, the applicant is not a party to the said agreement, dated 29.09.2018. To obtain an interim order under Section 9 of the Act against any person, they must be a party to the agreement. As the applicant is not a party to the agreement and the relief is sought against a third party, the right course for seeking relief by the first respondent is to approach the Civil Court. Further, the scope of Section 9 of the Act is very limited and the same can be invoked only if all the parties in the application are parties to the agreement. Further, in the present case, even to substantiate that M/s.H R Pictures was formed by the wife and the son of the second respondent with the intention to defeat the claim of the first respondent, no documents have been produced by the first respondent. However, on perusal of the materials produced with regard to the financial arrangement made by the M/s.H R Pictures from the third parties, it is very



clear that they arranged money on their own and produced the film. On the other hand, the first respondent is not able to produce any document or bank statement to show that the applicant and the second respondent are one and the same. Even assuming that those documents are produced, it is not a case under Section 9 of the Act, but the right course is to approach the Civil Court.

11. In such view of the matter, this Court vacates the interim injunction already granted by this Court on 21.02.2022 in OA.Nos.130 and 131 of 2023. Accordingly, these applications are disposed of and O.A.Nos.130 of 2023 and 131 of 2023 are dismissed.

23.02.2023

Note: Issue order copy today.
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