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O.S.A.(CAD)No.18 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.(CAD)No.18 of 2023

Mr.C.S.Padam Chand

.. Appellant

v

1. K.Shibu

Proprietor Thameem Films
No.42/2, Avanthika Apartment
Flat No.F1, Vellalar Street
Kodambakkam, Chennai 600 024

2. M/s H.R.Pictures

Rep. by its Managing Partner
Mrs.Mumthas Muhammad
TC 89/2951-1, Thycaud PO
Thiruvanthapuram 695 014
and Branch Office
at 29B, Gandhi Nagar Main Road
Alwarthirunagar, Valasaravakkam
Chennai 600 087

.. Respondents



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Memorandum of Grounds of Original Side Appeal under Order XXXVI, Rule 1 of the Madras High Court Original Side Rules and Section 13 of the Commercial Courts Act read with Clause 15 of the Letters Patent, against the order of the learned single Judge passed in A.No.70 of 2023 in O.A.No.130 of 2023 dated 23.02.2023 on the file of the Original Side of this Court.

For Appellant :: Mr.T.R.C.Vengatesh for
My Lord Law Associates

For Respondents :: Mr.P.L.Narayanan
Senior Counsel for
Mr.K.M.Sriram for R1
Mr.T.Thiageswaran for R2

JUDGMENT

(Judgment of the Court was made by D.Bharatha Chakravarthy,J.)

This original side appeal is filed aggrieved by the order of the learned single Judge dated 23.02.2023 in Application No.70 of 2023 in Original Application No.130 of 2023, in and by which the relief prayed for by the appellant by way of an application under Section 9 of the Arbitration and Conciliation Act stood rejected.

2. The brief facts leading to the filing of the appeal is that originally the respondent in the application, namely, the first respondent in the original



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side appeal, Mr.K.Shibu, as the Proprietor of Thameem Films, entered into a Minimum Guarantee Agreement dated 05.09.2018 and an agreement of Temporary Transfer of Copyrights dated 20.09.2018 with the appellant, namely, C.S.Padam Chand undertaking to make good the loss in respect of the release of his earlier movie 'Saamy 2'. According to the appellant, without making good the loss, the first respondent, namely, K.Shibu had advertised and was planning to release the movie by name 'Thugs' without fulfilling the obligation under the earlier agreement and hence, arbitration was invoked and an application under Section 9 of the Arbitration and Conciliation Act was filed for grant of an order of interim injunction restraining the respondent from releasing the feature film called 'Thugs'. Though there was an injunction, which was granted initially, the second respondent in the appeal, namely, H.R.Pictures got impleaded itself and after considering the contentions of the parties, considering the fact that the censorship certificate stood in the name of the firm H.R.Pictures and its partners, which does not include the first respondent, the learned single Judge vacated the order. Aggrieved therefor, the present appeal is filed. In



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the interregnum, it is also now pleaded before us that the movie has already been released.

3. The learned counsel for the appellant would submit that 'H.R.Pictures' is a farce entity which is created and included in the later stage of the film to hoodwink the creditors and even the advertisements which were produced before the learned single Judge and before this Court, do not even show the name of H.R.Pictures and it is a calculated device of the first respondent to evade payments to the creditors like the appellant. The learned counsel pleaded that unless further exploitation of the rights of the film, such as release in OTT platforms are not restrained, there will be no security whatsoever for the appellant and he will be left high and dry even if he is granted an award.

4. Per contra, Mr.P.L.Narayanan, learned Senior Counsel appearing for the first respondent would submit that the first respondent is a popular name in the industry and he was the author of the film and therefore his



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name was shown in the advertisements. However, he has got nothing to do with the production, as he already went broke. Since his son wanted to act in the film, his wife, using her investment and other means, had produced the film and it is only the partnership firm named H.R.Pictures, which is the producer of the film and he has got no right in respect of the said film. Apart from the above said partnership firm H.R.Pictures, the movie was also partnered by one Jio Studios which also made investments. Therefore, when the first respondent has no right whatsoever in respect of the film and since he has also got a case on merits to contest before the Arbitrator, he would submit that no relief can be granted to the appellant.

5. The learned counsel appearing on behalf of the second respondent would submit that the partnership deed, which is produced before this Court, dated 23.09.2020, clearly would show that the first respondent, namely, K.Shibu is not the partner in H.R.Pictures. The censorship certificate of the movie clearly stands in the name of H.R.Pictures only. In that view of the matter, even if it is the claim of the appellant that the first



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respondent only had set up the H.R.Pictures, still, the application under Section 9 would not lead the appellant to any relief, as he has to only file a suit by including the H.R.Pictures or its partners as parties and get the relief. When the second respondent is not a signatory to the arbitration agreement and when no relief can be granted by the Arbitrator as against them, the interim relief as against H.R.Pictures is incorrect and therefore, he would pray to dismiss the O.S.A.(CAD) No.18 of 2023.

6. We have carefully considered the rival submissions made on either side and perused the material records of the case. Firstly, when all along, during the course of production of the movie, the name of Shibu, the first respondent is promptly shown as the first name in all the advertisements, which would clearly portray him as though he is producing the movie, prima facie, we are of the view that only to evade his liability in the earlier agreement, which are cited supra, the movie is released in the name of the second respondent and others. Therefore, it is for the Arbitrator to go into the merits of the matter and give a finding as to whether the movie belongs



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to Shibu alone. If a party to arbitration, ex-facie enters into some arrangement with a third party, so as to render the entire arbitration proceedings nugatory or to make the arbitration award remain only in paper, then, such protection can be granted to the claimant in the Arbitration against such ingenuity by way of appropriate orders under Section 9 of the Arbitration and Conciliation Act and it cannot be pleaded that such prohibitory orders cannot be against the person who is not a party to the arbitration agreement. For the purpose of securing the appellant in the event of he getting an award from the Arbitrator, since a statement has been made by the learned Senior Counsel for the first respondent itself that the first respondent is completely broke, so as not to leave the appellant in complete lurch, since the movie has also been exploited for its major part, that is, the movie has already been released in cinemas and only the release in the OTT platform is yet to take place, we are of the view that the following order needs to be passed in the above O.S.A.(CAD) No.18 of 2023, so as to safeguard the rights of the appellant as also of the other parties:-

- (1) The O.S.A.(CAD) No.18 of 2023 is partly allowed.
- (2) The first respondent, namely, K.Shibu is directed to furnish security



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to the sum of rupees two crore sixty lakhs by way of any immovable security or in the form of bank guarantee, within a period of two weeks from today. In the event of furnishing of the security, there shall be no injunction or prohibitory order, as against the release of the OTT rights, in respect of the film titled 'Thugs'.

- (3) Till such time security is furnished by the first respondent, there shall be an order of interim injunction as against the release of the movie 'Thugs' on any OTT platform or exploitation of any further rights in respect thereof;
- (4) The appellant is directed to take steps to commence arbitration by filing appropriate application within a period of four weeks from the date of receipt of a copy of the order;
- (5) Needless to state that the first respondent will be entitled to contest on all aspects of the matter including the aspect relating to the alleged forgery of the agreement before the Arbitrator.

Consequently, C.M.P.No.5432 of 2023 is closed. There shall be no order as to costs.

Speaking/Non speaking order

(T.R.,A.C.J.) (D.B.C.,J.)

Index : yes/no

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To
The Sub Assistant Registrar (O.S.)
High Court, Madras



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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

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