



O.S.A.No.131 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.No.131 of 2020

P.Ponnuchamy

.. Appellant

Vs

1.M/s.UTV Motion Pictures,
A Division of UTV Software Communications Ltd.,
rep. by its Authorized Signatory
Govind Dhananjeyan,
No.5, Kush Kumar Road,
Nungambakkam,
Chennai-600 034.

2.A.L.Vijay Anand

.. Respondents

Prayer: Appeal filed under Section 13 of the Commercial Courts Act, 2015 read with Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decreetal order dated 11.2.2020 made in A.No.9660 of 2020 in C.S.No.620 of 2012.



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For the Appellant : Mr.J.Ravikumar
For the Respondent : Mr.Satish Parasaran
Senior Counsel
for M/s.Meghana Nair
for respondent No.1

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This original side appeal is directed against the order dated 11.2.2020 passed by the learned Single Judge in A.No.9660 of 2019 in C.S.No.620 of 2012.

2. Learned counsel for the appellant submitted that the appellant/plaintiff has filed a suit, being C.S.No.620 of 2012, for declaration to declare the movie "Thandavam" produced by the first defendant and directed by the second defendant starring Actors Vikram and Anushka and others as an infringement of the appellant's exclusive copyright in his literary work "Vikramaditan" and for permanent injunction restraining the defendants, their men, agents, servants or any one acting under them from seeking censor



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certificate for or distributing, exhibiting, telecasting the movie "Thandavam" in any language or dealing with the above said movie in any manner except with written license from the plaintiff.

3. Learned counsel further submitted that the first defendant filed its written statement on 6.8.2019 denying the averments made by the appellant/plaintiff and during the pendency of the suit, the appellant/plaintiff has filed an application in A.No.9660 of 2019 for inserting the following prayers in the prayer portion of the plaint:

"v) to direct the 1st Defendant to pay a sum of Rs.36,00,000/- towards royalty for the script of the plaintiff used in making the movie "Thandavam".

vi) to direct the 1st Defendant to render true account of profits made by the 1st defendant by selling the rights of the movie to the Satellite Channel and online media partners such as Netflix, YouTube and Amazon Prime Video, etc, and/or by selling the rights of the movie for remake and dubbing in the Telugu Language or such other language(s)."



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4. Learned counsel for the appellant/plaintiff would submit that, opposing the prayer, the first defendant has filed a detailed counter-affidavit on 21.1.2020.

5. Learned counsel for the appellant/plaintiff then submitted that there is an enabling provision in Section 40 of the Special Relief Act, 1963, which clearly speaks that where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim. However, the learned Single Judge disallowed the application giving an adverse finding that the appellant/plaintiff has slept over the matter for almost nine long years and suddenly woke up from deep slumber to file an application for the purpose of amending the prayer. When Section 40 of the Specific Relief Act, 1963 enables the plaintiff to amend the plaint, it is absolutely untenable on the part of the learned Single Judge in dismissing the application of the appellant.



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6. The further submission of learned counsel for the appellant is that in view of the dismissal of the application, the appellant/plaintiff has been put to irreparable prejudice and, therefore, the impugned order of the learned Single Judge is liable to be set aside.

7. In reply, Mr.Satish Parasaran, learned Senior Counsel appearing for the first respondent submitted that the argument of learned counsel for the appellant/plaintiff that by virtue of Section 40 of the Specific Relief Act, 1963, the plaintiff can be permitted to move an application to amend the plaint at any stage of the proceedings, would send a wrong signal inasmuch as the plaintiff has slept over the matter for almost a decade keeping the suit pending all these years. Therefore, the learned Single Judge, after appreciating the delaying tactics of the appellant/plaintiff, rightly dismissed the application, which does not call for an interference.

8. We find merits in the submissions made by learned Senior Counsel for the first respondent. When the appellant/plaintiff has filed a suit in C.S.No.620 of 2012 for the relief aforesaid, it is not known as to why he has moved an application in A.No.9660 of 2019



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after a long gap of nine years. Since the application for amendment was filed long after the dismissal of the application seeking interim injunction on 26.9.2012 and as the appellant/plaintiff has been exploiting the copyright in the movie "Thandavam" continuously and uninterruptedly for more than 9 years, a finding has been given by the learned Single Judge that all along the appellant/plaintiff did not deem it fit to amend the prayer.

9. The law relating to allowing of amendment applications is encapsulated by the Hon'ble Supreme Court of India in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another***, cited in ***2022 SCC OnLine SC 1128***, in and by which, it is categorically held that the Court has to take into account the overall facts and circumstances of the case, and exercise its discretion as to whether the amendment has to be allowed or not and the Court can also consider the factor as to the application being beyond the period of limitation, though limitation itself may not be a factor. In this case, the learned Judge after considering the overall facts and circumstances of the case has exercised the discretion to disallow the amendment and we do not find any infirmity in the



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conclusion arrived at by the learned Single Judge. Therefore, the original side appeal fails and it is dismissed accordingly. There will be no order as to costs. Consequently, C.M.P.No.6256 of 2020 is closed.

(T.R., ACJ.) (D.B.C., J.)
20.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Sub Assistant Registrar
Original Side
High Court, Madras.



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