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C.S.(Comm.Div.)No.45 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

PRONOUNCED ON: 13.12.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.(Comm. Div.)No.45 of 2021

and

O.A.No.504 of 2021

and

A.No.2952 of 2021

Mr.Thirumalai Murugan Aurnachalam

...Plaintiff

Vs.

1.Mr.K.Rajaraman

2.Mr.K.Rajaraman,

Proprietor of Ethical Soul Films

No.7/119, Dasarathan 3rd Sterrt,

Baskar Colony, Virugambakkam,

Chennai - 600092.

...Defendants

PRAYER: **Plaint** is filed under order 4 Rule 1 of Madras High Court O.S. Rules, Order VII Rule 1 and Order XXXVIII of the Code of Civil Procedure, 1908 read with Section 29(1)(c)-(i), (xi), (xiii), (xv) and (xviii), Section 7 & 12 of the Commercial Courts Act, 2015, praying



for the following judgment and decree:-

A. An injunction restraining the defendants from in any manner, directly or indirectly dealing with and/or alienating any rights/interests in any present, ongoing and/or future projects pertaining to any web-series, TV series, mini-series, short films, documentaries, feature films and/or any directed and/or recorded and/or filmed content that the defendants are directly or indirectly a party to, until clearance of the dues payable to the plaintiff

B. Directing the defendants to pay the plaintiff a sum of Rs. 1,00,00,000/- (Rupees One Crore being the amount paid by the plaintiff to the defendants under the agreement dated 21.02.2018 entered into between the parties along with Rs. 36,00,000/-(Rupees Thirty Six Lakhs) as interest at the rate of 12% Per Annum from 290 March 2018 along with further interest thereon at 24% per annum from the date of the suit till the date of realization;

C. Directing the defendants to pay the costs of the suit, and

D. to pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Mr.T.Mohan, Senior Counsel for
M/s.K.Premchandar



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For Defendants : Mr.R.Rajendran

JUDGMENT

The above suit is filed for the following reliefs:-

A. An injunction restraining the defendants from in any manner, directly or indirectly dealing with and/or alienating any rights/interests in any present, ongoing and/or future projects pertaining to any web-series, TV series, mini-series, short films, documentaries, feature films and/or any directed and/or recorded and/or filmed content that the defendants are directly or indirectly a party to, until clearance of the dues payable to the plaintiff.

B. Directing the defendants to pay the plaintiff a sum of Rs.1,00,00,000/- (Rupees One Crore) being the amount paid by the plaintiff to the defendants under the agreement dated 21.02.2018 entered into between the parties along with Rs. 36,00,000/-(Rupees Thirty Six Lakhs) as interest at the rate of 12% Per Annum from 29 March 2018 along with further interest thereon at 24% per annum



from the date of the suit till the date of realization;

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Plaintiff's Case:-

2. It is the case of the plaintiff that he is a successful entrepreneur in the United States of America and the CEO of a Technology Company. The 1st defendant is a classmate of the plaintiff from his high school. The 1st defendant represented to the plaintiff that he is running a proprietary concern called Ethical Soul Films which produces films. He had requested the plaintiff to invest in the company.

3. In the year 2018, the plaintiff entered into a Memorandum of Understanding (MoU) with the defendants for the production of a film ***"Naale Variyile Oru Kadhal Kadhai/Production No. 1"***. The plaintiff was to be the co-producer and the plaintiff agreed to invest a sum of Rs.1,00,00,000/- (Rupees One Crore). It is the case of the plaintiff that this sum of Rs.1,00,00,000/- (Rupees One Crore) was



invested by him spread over several tranches. After receiving the money, the 1st defendant started avoiding the plaintiff by ignoring his calls and messages.

4. The plaintiff would submit that there was no progress as undertaken in the Memorandum of Understanding (MoU) for over 2 years. Despite being the co-producer, the plaintiff was not updated about the details of the project. On the contrary, the defendant kept giving false assurances to the plaintiff. In the month of January 2020, the plaintiff sought for the return/refund of the money invested by him as there was no progress in the production. Initially, the defendants agreed to immediately refund the money on or before March 2020. However, till March 2021 not a single penny was paid to the plaintiff. On 02.03.2020, 06.03.2020 and 10.09.2020, the plaintiff had requested for a refund of the money invested by him as he was in urgent need of money. The defendants had responded by admitting the receipt of the money and undertaking to repay it with interest. On 10.09.2020, the defendants informed the plaintiff that the money that



was given for the production of the movie had been diverted by him to a joint account with a friend.

5. On 02.10.2022, the 1st defendant informed the plaintiff through a WhatsApp message that he had returned from Coimbatore with a cheque for Rs.75,00,000/- and land documents worth Rs.40,00,000/-. However, the same did not translate into the 1st defendant making any payment to the plaintiff. Thereafter, by letter dated 22.10.2020, the plaintiff called upon the 1st defendant to refund the sum of Rs.1,00,00,000/- (Rupees One Crore) together with interest at 12% per annum from January 2020 on or before 05.11.2020. To this letter, there was no response. This constrained the plaintiff to issue a legal notice dated 09.11.2020. This notice was received by the 1st defendant on 11.11.2020 and once again there was no response to the same. The plaintiff would submit that the defendants have committed a fraud and had cheated the plaintiff into investing the money without actually proceeding with the production of the movie. He would



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submit that there has been a breach of trust. Therefore, the plaintiff has come forward with the above suit.

6. The defendants who had entered appearance did not file any written statement and their right to file a written statement stood forfeited. However, this Court had permitted them to cross-examine the plaintiff and to submit their arguments.

Issues:-

7. From the pleadings, the only issue that arises for consideration is ; *Whether the plaintiff is entitled to a decree as prayed for?*

8. The plaintiff had examined himself as P.W.1 and had marked Ex.A.1 to A.10. He has been extensively cross-examined by the defendants. The records would show that the defendant who had been served with the notice had not filed the written statement within a



period of 120 days as provided under the Act. The defendants were also set ex parte on 22.07.2022 and they had taken out an application for setting aside the ex parte order. Thereafter, by order dated 09.12.2022, this Court has held that the written statement cannot be filed beyond the prescribed period of limitations as per the decision of the Hon'ble Supreme Court Reported in **2019 (12) SCC 210 – M/s.SCG Contracts India Pvt. Ltd. Vs. K.S.Chamankar Infrastructure Pvt. Ltd.** Thereafter, the matter was directed to be posted before the Additional Master-II for recording of evidence. It appears that on 30.01.2023 this Court had permitted the defendant to cross-examine the plaintiff's witness.

Submissions:

9. Mr.T.Mohan, learned Senior Counsel appeared on behalf of Mr.K.Premchandar, learned counsel who had appeared on behalf of the plaintiff. Apart from the oral arguments of the learned Senior Counsel, the plaintiff has also filed written arguments. The sum and substance of the submission of the plaintiff is that the plaintiff had



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filed the suit for recovery of money on the basis of a valid contract entered into between the plaintiff and defendants, namely, the MoU dated 21.02.2018 which has been marked as Ex.P.1.

10. It is the argument of the learned counsel for the plaintiff that the contract, namely, MoU had been entered into after several email communications had crisscrossed between the plaintiff and the defendants. Ex.P.2 (emails communication between the plaintiff and the defendants) contains the proposal communicated by the defendants in accordance with Section 2(a) of the Indian Contract Act, 1872 and the same has been accepted by the plaintiff in accordance with Section 2(b) of the Indian Contract Act, 1872 for a valid consideration. Therefore, there is a valid agreement between the plaintiff and the defendants as contemplated under Section 2(e) of the Indian Contract Act, 1872.

11. The learned counsel for the plaintiff would draw the



attention of the Court to certain admissions in the WhatsApp messages which have been marked as Ex.P.5 series, wherein, the 1st defendant had categorically admitted the receipt of the sum of Rs.1,00,00,000/- (Rupees One Crore). The 1st defendant had also acknowledged that production of the movie had not commenced and had undertaken to repay the amount with interest. Thereafter, he would point out the various messages sent by the plaintiff to the defendant requesting the defendant to furnish him with details about the status of the project. On 20.01.2020, the plaintiff had sent a WhatsApp message stating that they should try to lock something by the end of the month otherwise, the defendant should return the money back to the plaintiff. He had also stated that though he is interested in investing in another project however at that juncture he required money as he was in a tight spot.

12. The learned counsel for the plaintiff would also point out the various messages from the defendant wherein he has undertaken to refund the money to the plaintiff. In a message dated 10.09.2020, the



defendant has for the first time, admitted that he had put the amount given by the plaintiff in a joint account alongwith a trusted friend and that this issue would be sorted out by the 25th of the said month and that he would refund/return the money which he has kept for over 2 years.

13. Thereafter, under a WhatsApp message dated 02.10.2020, the defendant had informed the plaintiff that he had returned from Coimbatore and that he had got cheques for Rs.75,00,000/- and land documents worth Rs.40,00,000/-. He would get this Rs.75,00,000/- between the 15 and 17 of the said month and the balance Rs.25,00,000/- by the end of the month. He also stated that he had given the land to a friend either for a sale or for a pledge to get the money which he would transfer to the plaintiff. Therefore, the learned counsel would submit that the defendant has not only acknowledged the receipt of the money but has also stated that the same would be refunded to the plaintiff with interest.



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14. The learned counsel would rely upon the judgement of the Hon'ble Supreme Court reported in **(2010) 3 SCC 1 –Trimex International FZE Limited Vs. Vedanta Aluminium**, wherein the Hon'ble Supreme Court while considering the aspect of a valid contract which has been concluded over the electronic mail has observed as follows:-

"49. [...] Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract so entered into or implemnetation thereof, even if the formal contract has never been initialled."

15. The factum of the contract having been finalized between the parties is evident from a perusal of Ex.P.5, the WhatsApp conversations between the plaintiff and the defendants from 18.02.2018 to 27.02.2018. Therefore, it is the contention of the



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learned counsel that Ex.P.1 and P.2 would clinchingly prove the existence of the valid contract and the terms thereon.

16. As per the terms of the contract, which has been entered into between the plaintiff and the defendant, the obligation of the plaintiff as per this agreement, namely, the MoU was only to be an investor and consequently a co-producer. It was the defendant who was the only line producer. The plaintiff had undertaken that there will not be any production or marketing arrangements/agreements/tie-ups or MoU with any other concerns without the defendant's prior approval. The parties had decided that time would be the essence of the contract.

17. As regards the obligations of the defendant, the defendant was required to roll out the production of the movie. The defendant had also undertaken that there will not be any production or marketing arrangements/agreements/tie-ups or MoU with any other concerns without the plaintiff's prior approval and once again it was reiterated that the time was the essence of the arrangement. The parties had also



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agreed that the ownership right of the movie would be 1/3rd in the name of the plaintiff and 2/3rd would be that of the defendant. The ownership rights were over the TN Theatrical Rights, FMS, Telugu Rights, Karnataka Rights, Kerala Rights, satellite Rights, online rights and any other possible rights.

18. It is the case of the plaintiff that he had performed his part of the contract by investing the sum of Rs.1,00,00,000/- (Rupees One Crore)s in 12 tranches spread over a period of 1 month. To prove the investment, the plaintiff has marked Ex.P.3 and P.4, which are the plaintiff's bank statements of ICICI Bank. Ex.P.3 and P.4 have been duly certified with the certificate under section 65 B of the Evidence Act. Therefore, it is the contention of the plaintiff that through documentary and oral evidence, the plaintiff has established the agreement between the parties and the fact that the defendant has



admitted the receipt of the money and had undertaken to refund the same with interest. Therefore, the learned Counsel would submit that the suit has to be decreed.

19. He would also rely upon the judgement of the Delhi High Court reported in ***2018 SCC OnLine Delhi 6949 - ICICI Bank Limited Vs. Surbhi Gupta*** relating to the receipt of evidence in the form of electronic records. The learned counsel would submit that every exhibit had been marked in the presence of the defense counsel who had no objection for the marking of the same.

20. Per contra, the arguments that had been advanced on the side of the defendants can be broken down as follows:

a) That the contract has not been terminated as contemplated under Article 5.2 of the MoU as to date the plaintiff has not issued a termination letter and therefore the request for refund is premature;

b) The plaintiff has signed the contract after fully



comprehending the contents, more so, when a draft copy was forwarded initially for their approval;

c) The allegation of the plaintiff that he has not received any updates is absolutely erroneous, in light of the specific admission of P.W.1 that after the MoU had been signed updates were being given to the plaintiff;

d) The terms of the contract contemplates the procedure for termination and this procedure has not been followed by the plaintiff and therefore the suit for recovery apart from being premature is also not maintainable.

21. The learned counsel for the defendants would submit that even the legal notice that has been issued does not spell out termination but is simplicitor a notice for recovery of money. Therefore, he would submit that the plaintiff is not entitled to be compensated.



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22. The learned counsel for the defendants has relied upon the following judgments :-

i. 2002 (2) CTC 151 - Dr.K.Padmanabhan and another Vs. W.S.Nisha.

ii. (2000) 7 SCC 120 - Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and Others.

iii. (2021) 10 SCC 401 - Kalpraj Dharamshi and Another Vs. Kotal Investment Advisors Limited.

iv. (2022) 2 SCC 25 - Union of India and Others Vs. N.Murugesan and Others.

v. 2018 SCC OnLine Del 6949 - M/s. ICICI Bank Limited Vs. Surbhi Gupta.

vi. 2023 SCC OnLine Sc 871- Bhim Rao Baswanth Rao Patil Vs. K.Madan Mohan Rao and Others.



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23. The learned counsel for the plaintiff has replied to these arguments by pointing out the various WhatsApp messages under which the defendants had undertaken to refund the amounts as they were unable to move forward with the contract. That apart, the question of termination would not arise since the conduct of the defendants would clearly show that they have breached the terms of the contract. Even pending the suit, when the defendants were directed to furnish security, they had not complied with the same. Therefore, the argument that the suit is premature as there is no termination of the contract does not hold water.

Discussion:-

24. It is an axiomatic principle of law that in order to support the evidence or argument, the party has to necessarily set out their pleadings in writing. The defendants have not filed their written statement. However, this Court had permitted them to cross-examine the plaintiff's witness and make their submission.



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25. The plaintiff has filed this suit for recovery of a sum of Rs.1,00,00,000/- (Rupees One Crore) and also for an injunction. The plaintiff would submit that he has entered into Ex.P.1, MoU dated 31.02.2018 with the 1st defendant who is also the proprietor of Ethical Soul Films for producing a film and he has invested a sum of Rs.1,00,00,000/- (Rupees One Crore) in this regard. The film was titled as ***“Naale Variyile Oru Kadhal Kadhai”*** The plaintiff has invested the agreed sum of Rs.1,00,00,000/- (Rupees One Crore) on different dates. The MoU clearly spells out that the plaintiff is investing in the production of the movie as a co-producer.

26. A perusal of the MoU would further show that the total cost of the movie was fixed at a sum of Rs.3,00,00,000/- (Rupees Three Crore) and the ownership rights in respect of this film was to be held equally and the profit sharing was on the basis of the investment. The plaintiff having invested Rs.1,00,00,000/- (Rupees One Crore) was entitled to a 1/3rd share and the defendant who was to invest the



balance sum of Rs.2,00,00,000/- (Rupees Two Crore) was entitled to a $\frac{2}{3}$ rd of the profits.

27. As per Article 5 of the MoU which deals with the termination clause, it has been stated that the MoU could be terminated by either party by giving six month's notice to the other party and by giving a compensation that would be mutually agreed upon by both parties. However, in case of violation of any of the terms of the MoU, in such an event, the party not in default may issue a prior notice to the other party for rectifying the default and if the same is not rectified the person issuing the notice can terminate the MoU without giving any notice. Therefore, in the instant case, the trigger point for the plaintiff to seek a refund of the money invested by him was two fold. Firstly, the defendant has not shown any progress whatsoever with the project and secondly, the amount that had been invested by the plaintiff for the production of the movie has been diverted to a joint account of the defendant and his friend. This is a clear case of a breach of trust and cheating. The fact that the money



has been diverted is clear from the WhatsApp message (Ex.P.5 series dated 10.09.2020), wherein the defendant has stated as follows and he had also agreed to pay interest:-

[9/10/20, 7:08:43 PM] Rajaraman K:
*Machi...somethings got messed up here... like you trusted me, I trusted my friend(idiot) and we have put in a joint account and due to corona, some other complications happened...everything will be sorted out by 25 th of this month and I will send the money by this month end...in two or three months, **I will send some money as interest for this money which I had kept for more than two years...as far as my career is concerned**, I got lot of opportunities through mgr and by line producing sethum aayiram ponn...I am starting a project with sundar c in this year's end and with yogibabu next year...I know that I have put you in pressure but it is not intentional...I am available at*



any time and I don't want this to become a misunderstanding... last time I was in total mess when you messaged me...i have sorted out everything now...

*[9/10/20,,7:10:21 PM] Thiru Arunachalam made :
Shall we file a law suit on your friend. I hate people cheating.*

[9/10/20, 7:12:02 PM] Rajaraman K: I have given time till 25 th...if not, I have all arrangements with the police people...

[9/10/20, 7:12:38 PM] Thiru Arunachalam: Too bad mappilai. I feel like an idiot now.

[19/10/20, 7:13:46 PM] Thiru Arunachalam: Did he take the entire 1 crore ?

[19/10/20, 7:16:21 PM] Rajaraman K: Yes...we put in a joint account...

[19/10/20, 7:16:36 PM] Thiru Arunachalam: But I moved the money to only ethical soul films



[9/10/20, 7:20:02 PM] Rajaraman K: Yes machi...the bank people told that the money has to be in one account and another friend also invested one crore... so the plan was to raise money for garment business and movie..."

Therefore, the defendant has himself admitted that the money which was given by the plaintiff for the production of a movie has been diverted by the defendant.

29. Further, the defendant has himself volunteered to return the money that too with interest. In response to the plaintiff's WhatsApp message dated 01.03.2020, the defendant has responded that he would send the same. The conversation is extracted herein below:-

*[3/1/20, 6:08:38 PM] Thiru Arunachalam:
Rajarama - can you send the money back to my icici
da. I need it to close something out in a tight project. I
need it urgently now. After may 2020 I should have*



more money to invest in projects da. If something happens in between on your side I'll find a way to support you. But i need the money now. Please transfer. Thanks.

[3/2/20, 5:36:41 PM] Rajaraman K : Ok machi...I am in Coimbatore now...will come on Thursday to chennai...will process on Friday

[3/6/20, 12:25:32 PM] Rajaraman K: Machi...send ur account no details...

30. Further, the said assurance has been reiterated in their WhatsApp conversation held on 28.09.2020 to which the defendant has responded by WhatsApp message dated 02.10.2020 which reads as follows:-

*[9/28/20, 8:07:11 PM] Thiru Arunachalam:
Macchi. I need the money back da. Last we spoke you
said sep 25th.*



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*[10/2/20, 04:31 AM] Rajaraman K: I returned from
Coimbatore today*

*morning only...I got cheques for 75 lakhs and a land
document worth 40lakhs...will get 75 lakhs between 15
th and 17th of this month and the balance 25 lakhs
within the end of this month...I have given the land
either for sale or pledge to another friend who deals
with real estate...if I get money before that, I will
transfer it to you...*

31. Therefore, the arguments made by the learned counsel for the defendants that the suit for recovery of money is premature on account of the fact that there is no termination of MoU cannot be countenanced for the simple reason that the defendant has himself volunteered to return the money and that apart the money which was paid for the production of the movie, has without the permission of the plaintiff been diverted to some third party.



32. In his WhatsApp message dated 23.03.2020, the 1st defendant had assured the plaintiff that he would deposit the amount on Friday. The defendant had also undertaken to pay interest on the money. The plaintiff has proved the payment of the sum of Rs.1,00,00,000/- (Rupees One Crore) to the defendant and the receipt of the same has been admitted by the defendant. It is also admitted that the amount had been sent to the defendant for investing in the production of the movie. The project had not progressed beyond the point of the investment which is evident from the fact that the plaintiff has not been apprised about the progress and to his inquiries regarding the update, the defendant has responded without any concrete roadmap. The plaintiff had made a query relating to the update on 17.07.2018, to which a reply had been sent that he would get the full cash and the project would start next month. Once again, on 10.11.2018 to a query relating to the update, the defendant had responded that the project would commence on 18th November and the project pre-production and script would be finalized in a week. However, contrary to these statements, in his WhatsApp message



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dated 09.10.2020, the defendant had himself informed the plaintiff that he had diverted the funds. This is clearly a case of breach of trust and cheating. Therefore, in these circumstances, Article 5 of the MoU has been complied with. The plaintiff had issued a letter and thereafter issued a legal notice asking the defendants to repay the amount which had not been done and therefore, there was no necessity to terminate the MoU.

33. Therefore, the issue framed supra is answered in favour of the plaintiff and the plaintiff is entitled to recover a sum of Rs.1,00,00,000/- (Rupees One Crore). As regards the relief of injunction, the plaintiff has not come forward with any particular project which was underway on the side of the defendants and the injunction appears to be a blanket injunction. Such an injunction cannot be granted and therefore, the 1st relief for injunction is rejected. However, the plaintiff is entitled to recover the sum of Rs.1,00,00,000/- (Rupees One Crore) together with interest @ 6% p.a. from 01.03.2020 till the date of payment. The above suit is partly



decreed with costs. Consequently, the connected applications are closed.

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13.12.2023

Index : Yes/No
Speaking Order/non-speaking Order
Neutral Citation: Yes/No
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APPENDIX



List of witness on the side of the Plaintiff:

P.W.1 - Mr.Thirumalai Murugan Arunachalam

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - Printout of the MoU between the plaintiff and the defendnat dated 21.02.2018.

Ex.P.2 - Printout of the emails between the plaintiff and the defendants along with attachment from 20.02.2018 to 07.03.2018.

Ex.P.3 - Printout of the ICICI bank statement proving transfer from the plaintiff to the defendant.

Ex.P.4 - Printout of the statement of account of the plaintiff along with transaction details.

Ex.P.5 - Printout of the transcript of the Whatsapp conversation between the plaintiff and the 1st defendant from 2018 to 2020.

Ex.P.6 - Printout of the email issued by the plaintiff to the 2end defendant dated 22.102020.

Ex.P.7 - Office copy of the legal notice issued by the plaintiff to the defendant dated 09.11.2020 along with acknowledgment card and postal receipts.

Ex.P.8 - Printout of the screenshots of the 1st defendant's Facebook page.

Ex.P.9 - Affidavit under Section 65B of the Evidence Act



filed in respect of Exx.P.1, P.4, P.5, P.6, P.7 and P.8.

Ex.P.10 - Affidavit under Section 65B of the Evidence Act
filed in respect of Exs.P.2, P.3 and P.4.

List of witness examined on the side of the Defendant:- -NIL

List of documents marked on the side of the Defendant:- -NIL



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C.S.(Comm.Div.)No.45 of 2

P.T. ASHA, J,

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Pre-Delivery Judgment
in
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13.12.2023