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C.S.No.369 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.S.No.369 of 2020

M/s.Sun TV Network Ltd.
Rep. by its authorised signatory
Mr.M.Jyothibasu
Murasoli Maran Towers
No.73, MRC Nagar,
Chennai – 600028.

... Plaintiff

Vs.

Landmark Media Pvt Ltd,
Rep. by its Directors
Old No.34, New No.7,
Jayalakshmipuram 1st Street
Nungambakkam,
Chennai - 600034.

...Defendant

Prayer: Complaint has been filed under Order IV Rule 1 O.S. Rules R.w Sec. 2(1) (c) (i) R/w 1st Proviso of Section 7 of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016 & Order VII Rule 1 and 2 of of CPC, for the following reliefs:-



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a) Directing the defendant to pay a sum of Rs.6,38,32,511/-

(Rupees six crores thirty eight lakhs thirty two thousand five hundred and eleven only)

b) Direct the defendant to pay interest on the said sum of Rs.6,38,32,511/- from 15.05.2019 till the date of realisation.

c) Cost of the suit

(d) And pass any further similar other orders as this Hon'ble court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : M/s.R.Palaniandavan

For Defendants : No appearance



J U D G E M E N T

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The plaintiff which is a leading television network in South India has filed the suit claiming for the following reliefs:-

a) Directing the defendant to pay a sum of Rs.6,38,32,511/- (Rupees six crores thirty eight lakhs thirty two thousand five hundred and eleven only)

b) Direct the defendant to pay interest (no percentage asked for) on the said sum of Rs.6,38,32,511/- from 15.05.2019 till the date of realisation.

Plaintiff's case:-

2. It is their case that the main revenue of the plaintiff is derived from the advertisements that are telecast between programmes in its channel. These advertisements are either directly given to the plaintiff by the parties themselves, namely manufacturers, retailers etc; or through agents. Where the advertisement are released through agents, the liability to pay the plaintiff solely rest on the agents.



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3. It is the case of the plaintiff that the defendant is an advertising agency and its Directors are one Mr.Abdul Kader Basayir and Mrs. Sabeela Abdul Kader. Based on their clients request, they have been placing release orders to the plaintiff for telecasting advertisements. Based on these release orders, the plaintiff has also been running these commercials as per the agreement. The release orders would contain the date and time for the telecast, the advertisement of the clients to be telecast etc. The plaintiff would thereupon quote their charges and on the acceptance by the defendant, the advertisements are telecast.

4. It is the case of the plaintiff that in terms of this agreement, the defendant had issued release orders in respect of the following clients:- 1. Aachi Masala Foods Pvt. Ltd., 2. Annai Dates, 3. Annai Foods Pvt Ltd, 4.Bharath Scans Pvt Ltd., 5. Chennai Amirta International Institute, 6. Chennai Amirtha International Institute, 7. Dindigul Thalapakatti Restaurant, 9. M/s.SGR 777 Foods Pvt. Ltd., 10. M/s.Akshaya Finance, 11. Mega Channel Bazzar, 12. Noni Bio-tech Pvt



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Ltd, 13. Peri Institute of Technology, 14. Sahitya Agencies, 15. Southern Academy of Maritime Studies, 16. Sree Ram & Co., 17. Sri Ram and Co., 18. Sri Sakthi Balaji Oil Mills and 19. Vini Cosmetics Pvt Ltd. As per these release orders, the plaintiff had also telecast the advertisements in its channel at the time, date and duration as set out in the Defendant's release orders and raised invoices on various dates for such advertisements based on the agreed amount. It is also the case of the plaintiff that these release orders and invoices of the defendant had been admitted and acknowledged by the defendant.

5. The plaintiff has further submitted that the defendant was highly irregular in the payments of the invoices. Since the defendant was a long-standing client, the plaintiff despite the non-payment had continued to telecast the commercials. Several requests were made by the plaintiff for the payments of the invoices to which there has been no response. In the year 2017, the plaintiff had requested the defendant to pay the amount as they were facing auditing difficulties. The defendant accepted the outstanding amount and promised to pay the same but



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however failed to do so. Once again, on the request of the plaintiff, the defendant had admitted and accepted a due of Rs.6,40,77,510.30/-on 15.05.2019 and had promised to pay the same. The defendant had subsequently paid a very meagre amount and thereafter has not made any payments. The plaintiff has set out the amounts due towards the advertisements of each of these clients of the defendant and the sum total that was due and payable was a sum of Rs.6,38,32,511/-. Since the defendant had failed to make the payment, the plaintiff is before this Court.

6. The attempts to serve the defendant had failed and this Court had permitted the plaintiff to take substituted service on to the defendant. Accordingly, substituted service was effected on the defendant in one issue of Tamil Daily Dinakaran dated 17.12.2021 and thereafter the defendant was set ex parte by orders of this Court dated 10.07.2023.



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7. By order dated 01.08.2023, this Court had framed the following issues:-

i) Whether the defendant has defaulted in making payment amounting to a total sum of Rs.6,38,32,511/- to the plaintiff for broadcast of advertisements?

ii) Whether the plaintiff is entitled to recover a sum of Rs.6,38,32,511/- from the defendant?

iii) Whether the plaintiff is entitled to any other reliefs and if so, what relief(s)?

8. The matter was directed to be listed before the Additional Master II on 08.08.2023 and 09.08.2023 for examining P.W.1 and marking of documents.



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Submission:-

9. It is the contention of the learned counsel for the plaintiff that the plaintiff and the defendant have a running account and the defendant who is an advertisement agency had entered into an agreement with the plaintiff for telecasting the advertisements for their clients and the defendant has acknowledged their debt as is evident from Ex.P.2 and Ex.P.3. Considering the fact that there is an acknowledgement on 15.05.2013 to the tune of Rs.6,40,77,510.30/-, the suit has to be decreed in favour of the plaintiff.

10. Heard the learned counsel appearing on behalf of the plaintiff.

Discussion:-

11. P.W.1 had entered the box and has filed the proof affidavit which is nothing but a reproduction of the contents of the plaint. The following Exhibits have been marked:- ExP.1 is a Board Resolution



dated 29.05.2015. The certified true copy of the extract of the Board Resolution of the plaintiff dated 29.05.2015 had authorised the deponent to appear on behalf of the plaintiff company before any Court of law. The Resolution also authorised the deponent to depose on behalf of the 1st respondent company. Ex.P.2 is a xerox copy of the alleged letter dated 10.01.2017 sent by the plaintiff to the defendant in which it is stated that the records of the plaintiff would show an outstanding of Rs.8,76,45,429/- from the defendant. Under the heading confirmation a seal has been affixed. Ex.P.3 is another letter dated 15.05.2019 issued by the plaintiff to the defendant seeking a confirmation of the outstanding as on 15.05.2019. The letter has an enclosure containing a bill wise outstanding list. The letter would state that a sum of Rs.6,40,77,510.30/- is due from the defendant as per the billing up to 30.04.2017. There is no confirmation of this outstanding. Once again the same is only a xerox copy. It is surprising that the plaintiff has not been able to produce the originals when this is supposed to be a letter of acknowledgement. The 4th document (Ex.P.4) is the legal notice said to have been issued to the defendant, however, there is no proof of service



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on the defendant. In fact, the letter though addressed to the defendant has been copied to the 19 entities whose advertisement the plaintiff had aired for the defendant. The acknowledgement cards and the return covers have been marked as Ex.P.5 and a perusal of the notice which has been sent to the defendant would show that the same has been returned with the endorsement “no such addressee”. Therefore, the legal notice Ex.P.4 has not been served on the defendant.

12. The suit has been filed for recovery of money on the various contracts that have been entered into between the defendant and the plaintiff. It is the categoric case of the plaintiff in para. No. 4 of the plaint that the telecast was made on the basis of release orders that are issued by the defendant. However, none of these release orders have been filed into Court. This assumes significance since it is the case of the plaintiff that on the basis of these release orders the plaintiff would submit quotes and only on the acceptance of the same the advertisement would be telecast. However, neither has the release order been filed nor the quotations for each of these advertisements that have been telecast.



Therefore, there is no proof to show what was the rate that was agreed between the parties.

13. Further, the plaint is absolutely silent about the period when these telecast had taken place. The plaint is totally bereft of the details as to when the advertisement of 19 clients of the defendant had been telecast by the plaintiff. The plaintiff has also pleaded that the invoices were raised by them on various dates. None of these invoices have been filed into Court. The two documents which the plaintiff relies on as an acknowledgement cannot be looked into as both of them are xerox copies and as already stated the signature and seal in Ex.P.2 does not inspire confidence as the date is not visible as also the signature. As regards Ex.P.3, the defendant has not acknowledged the liability stated therein. Therefore, Ex.P.3 would also not advance the case of the plaintiff.

14. Though the suit is one for recovery of money based on accounts, the plaintiff has not deemed it fit to file the statement of



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accounts which to a very great extent would have thrown light on the plaintiff's case. The statement of accounts would also provide the details as to the dates from which these amounts are outstanding and the dates when the demand for recovery of these amounts have been made to verify as to whether the claim has become time barred. The first of the acknowledgement is on 10.01.2017 and the suit itself has been filed only on 11.12.2010. The plaintiff makes it appear as if payment have been received between Ex.P.2 and Ex.P.3. However, as already stated, the details of statement of accounts are not before this Court and neither the evidence available before this Court. Therefore, the Issues Nos.(i), (ii) and (iii) are answered against the plaintiff and the suit is dismissed. No costs.

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Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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APPENDIX

List of witness examined on the side of the Plaintiff:-

1. Mr.Jyothibasu (P.W.1)

List of Exhibits marked on the side of the Plaintiff:-

<i>Ex.No.</i>	<i>Date</i>	<i>Description of document</i>
P.1	29.05.2015	Original Board Resolution
P.2	10.01.2017	Copy of letter seeking confirmation/acknowledgment of outstanding dues
P.3	15.05.2019	Office Copy of letter seeking confirmation/acknowledgment of outstanding dues
P.4	10.10.2019	Office Copy of Legal Notice sent to the Defendant with a copy of the clients of the Defendant.
P.5	-	Postal receipts, Acknowledgment Cards and returned envelopes

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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P.T. ASHA, J.

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