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O.S.A.(CAD).No.168 of 2022

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.(CAD).No.168 of 2022
and C.M.P.Nos.21763 and 21768 of 2022

Axess Film Factory,
A Partnership Firm,
represented by its Managing Partner
G.Dilli Babu ... Appellant

Versus

Picture House Media Limited,
Plot No.83 & 84,
Punniah Plaza, Road No.2,
Banjara Hills, Hyderabad - 500 034. ... Respondent

Prayer : Original Side Appeal - Commercial Appellate Division filed under Section 13(1) of Commercial Courts Act, of 2015 and Order XXXVI Rule 1 of the Original Side Rules of the High Court of Madras to set aside the fair and decretal order, dated 01.11.2022 in O.A.No.671 of 2022 on the file of this Court and allow the Original Side Appeal.

For Appellant : Mr.Vijayan Subramanian

For Respondent : Mr.R.Parthasarathy, Senior Counsel
for Mr.M.Sundarraja Mukund



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JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This appeal is directed against the order, dated 01.11.2022 passed by the learned Single Judge in O.A.No.671 of 2022, thereby, dismissing the application filed under Section 9(2) of the *Arbitration and Conciliation Act, 1996* (hereinafter referred to as '*Act*'), refusing the prayer of interim injunction restraining the respondent or its agents / representatives or assignees from releasing the film '*Ori Devuda*' through direct theatrical release or in any O.T.T platforms or through any satellite T.V, pending disposal of the arbitration.

2. The case of the appellant is that by an agreement, dated 05.02.2020, Telugu rights, in respect of the subject matter film titled "*Oh My Kadavule*" in Tamil, was assigned and of the total sale consideration of Rs.1.75 crores, a sum of Rs.1.57 crores was paid and the balance amount was withheld on the pretext of *TDS* . However, the amount deducted was not paid to the income-tax account of the appellant. Under such circumstances, when the appellant made a demand, unnecessarily, the



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respondent had made a dispute about the same and therefore, the appellant is invoking arbitration. After issuance of notice, the above application under Section 9 of the Act is filed.

3. The application was resisted by the respondent stating that even though, originally, the amount was sought to be withheld as Tax Deducted at Source, subsequently, in view of the loss caused to the respondent, there is readjustment of the account and therefore, no amount is payable.

4. The learned Single Judge, after considering the contentions of the parties, considered the fact that of the total consideration, the appellant herein has received 90% of the amount and therefore, in respect of the balance sum, when it is invoking arbitration, there was no necessity for grant of injunctive relief or to pass an attachment before the judgment. After duly deciding the liability in the arbitration, the amount can be recovered. Aggrieved by the same, the present intra-Court appeal is laid before this Court.



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5. Heard *Mr.Vijayan Subramanian*, learned Counsel appearing on behalf of the appellant and *Mr.R.Parthasarathy*, learned Senior Counsel appearing on behalf of the respondent.

6. *Mr.Vijayan Subramanian*, learned Counsel, appearing on behalf of the appellant, would submit that it can be seen that there was no dispute whatsoever at the time of assignment or payment of the sale consideration. The amount of Rs.17,50,000/- was withheld only towards 10% *TDS* deposit. After withholding the amount in the pretext of Tax Deducted at Source, the respondent has failed to deposit the same. This is a clear case of violation of the agreement and once the film is exploited by all means, it would be totally a futile exercise to recover the amount due and therefore, the learned Single Judge ought to have passed an order of injunction or in the alternative, directed the respondent to furnish security for the said amount.

7. The learned Counsel would submit that even though, subsequently, the film has been released on O.T.T platform, still the satellite rights are yet to be exploited and therefore, they must be enjoined from further



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exploitation of the rights in the film or in the alternative, be directed to provide security for the claim amount.

8. Opposing the said submissions, *Mr.R.Parthasarathy*, learned Senior Counsel appearing on behalf of the respondent, taking this Court through the reply notice given by them, would point out that the amount is disputed and that the amount is not payable as portrayed by the learned Counsel for the appellant. He would submit that even though the respondent has filed the application under Section 9 of the *Act*, till date, the appellant has not shown any interest in commencing the arbitration proceedings. The alleged notice dated 14.11.2022, which was issued subsequently to the order of the learned Single Judge, dated 01.11.2022, is not at all received by them. Even before this Court, no proof whatsoever has been filed in respect thereof. He would submit that even though no interim order has been passed by this Court, still the principle that the steps should have been taken to commence arbitration proceedings within 90 days has to be applied to the present situation and the application under Section 9(2) of the *Act* is also liable to be dismissed on that ground also.



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9. We have considered the rival submissions made on either side and perused the material records of the case. At the outset, it can be seen that the appellant has received 90% of the total consideration for assignment. Now the dispute is in respect of the balance 10%. In view thereof, we are in agreement with the findings of the learned Single Judge that the balance of convenience to be in favour of the respondent when it comes to the matter of release of the film on O.T.T platform or exploiting the further rights of the film.

10. Further, the appellant has issued notice for constitution of Arbitral Tribunal only after the order of dismissal of the learned Single Judge. Even the receipt of the said notice is denied by the respondents. In any event, the appellant can re-issue the said notice and the parties can expedite the constitution of Arbitral Tribunal so that the matter can be decided on merits. In that view of the matter, we find that it would cause irreparable prejudice and hardship to the respondent if injunction is granted restraining it from further exploitation of the satellite rights or any other rights as the very value of the film may diminish and would become otiose. Similarly, when 90% of the amount has already been received and the sum



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receivable even as per the appellant is only Rs.17,50,000/-, we are not able to agree with the learned Counsel for the appellant that in the event of they getting a favourable award from the Arbitral Tribunal, it would become difficult to realise the same.

11. Therefore, finding no merits, this Original Side Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs



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