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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Appeal (CAD) No.4 of 2023
and
C.M.P.No.1718 of 2023

S.P.Ramamurthi ...Appellant

Vs.

T.Rajender @ Vijaya T.Rajender ...Respondent

Prayer: Original Side Appeal filed under 13(1) of the Commercial Courts Act, against the judgment and decree in C.O.S.No.1086 of 2022 dated 03.09.2022 on the file of the Commercial Court at Egmore, Chennai.

For Appellant : Mr.Avinash Wadhwani
For Respondent : Mr.R.Shanmugam

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the judgment and decree of the Commercial Court, Chennai made in Commercial Suit No.1086 of 2022.

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2.The plaintiff, who is appellant herein sued for recovery of a sum of Rs.31,00,000/- + Rs.3,75,000/-, being the money allegedly due as minimum guarantee and the commission of 15% of it. According to the plaintiff, it entered into an agreement to finance a movie that was produced by the defendant on 30.12.1998. Under the agreement, the plaintiff agreed to pay Rs.59,00,000/- to the defendant and the defendant apart from agreeing to part with the rights to exhibit the movie in certain territories, also agreed to repay whatever balance is left out of that Rs.59,00,000/- after adjusting the collection from the movie which the plaintiff termed as minimum guarantee. Contending that he was also able to realize only a sum of Rs.28,00,000/ by exhibiting the movie, the plaintiff sued for recovery of Rs.31,00,000/- and the commission of Rs.3,75,000/-.

3.The defendant resisted the suit contending that there was no such agreement for repayment. The defendant also relied upon the following clause in the agreement:-

"The Minimum Guarantee Amount shall mean non-refundable or returnable by the Producers to the Distributors under any circumstances once the release positive prints being supplied / delivered to the Distributors for release purpose."

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to contend that it was made clear that the plaintiff would not be entitled to seek return of the minimum guarantee amount and it shall always remain non-refundable.

4.On the above pleadings, the learned Commercial Judge framed the following issues:-

1.Whether the suit is barred by limitation?

2.Whether the Minimum Guarantee Agreement dated 30.12.1998 contemplates any guarantee by the defendant as to the minimum collection?

3.Whether the plaintiff is entitled to seek refund of any portion of the amount paid towards the compliance of the obligation under the Minimum Guarantee Agreement in respect of the Tamil feature film "Monisha En Monalisa?

4.Whether the plaintiff is entitled to a decree for the recovery of a sum of Rs.31,00,000/- as the balance of the minimum guaranteed amount from the defendant and Rs.3,75,000/- towards 15% commission as per the terms of the Minimum Guarantee Agreement?

5.Whether the plaintiff is entitled to interest on the amount claimed by the plaintiff?

6.To what relief the plaintiff is entitled.

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5.At trial, the plaintiff was examined as P.W.1 and Exs.A1 to A5 were marked. The defendant was examined as D.W.1. The learned Trial Judge, on appreciation of the contents of the agreement, agreed with the defence set up by the defendant and concluded that, there was no promise to repay the minimum guarantee amount in the event the plaintiff does not recover the entire advance paid by exploiting its right to exhibit and hence the plaintiff is not entitled to a decree. On the said conclusion, the learned Trial Judge dismissed the suit.

6.Mr.Avinash Wadhwani, learned counsel appearing for the appellant would contend that the agreement is a not a conclusive one, it is subject to the custom and practice prevailing in the film industry and therefore, he would implore us to take note of the custom prevailing in the film industry and direct return of the minimum guarantee amount.

7.Contending contra, Mr.R.Shanmugam, learned counsel for the respondent would submit that there is no proof of such subsisting custom as claimed by the appellant / plaintiff. He would also submit that the contract being very clear, there is no scope of any other interpretation. We have

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considered the rival submissions.

8.The following point arises for determination in the appeal:-

Whether there was promise by the defendant to repay the balance amount called the minimum guarantee in the event of collections from the movie do not make up the minimum guarantee amount.

9.The following two clauses in the agreement are material:-

i) *"The Minimum Guarantee Amount shall mean non-refundable or returnable by the Producers to the Distributors under any circumstances once the release positive prints being supplied / delivered to the Distributors for release purpose."*

ii) *7(a) First adjust all the Minimum Guarantee amount referred to in clause No.2 supra, (which the plaintiff has paid to defendant)*

b) Secondly adjust 15% (fifteen) commission on the M.G.amount referred to in (a) above;

c) Thirdly adjust any amount spent towards additional print and publicities.

d) Thereafter and through the remaining period of the agreement all earnings be equally shared between the parties hereto i.e., 50% to the producer and 50% to the Distributor

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herein; Producers share shall be remitted by means of demand drafts payable at Madras along with monthly statement;

10.A reading of the above two clauses would very clearly demonstrate that there is no promise by the defendant to make good the deficit that may accrue after the exhibition rights of the movie are exploited by the plaintiff. Clause 4 extracted supra would clearly indicate that there was no obligation on the part of the defendant to repay the deficit. Clause 7 only sets out the modus of appropriation of amounts that are realized by exhibiting the movie. Both these clauses do not indicate any promise by the defendant to make good the collection. Hence, we answer the point for determination against the appellant. This Appeal is therefore, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
19.02.2024

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Internet:Yes
Index:No
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Nuetral Citation :No

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To:-

The Commercial Court,
Egmore, Chennai.

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