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C.S. No.365 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. No.365 of 2011

Sir Abirami Films

rep. by its sole Proprietor

Mr.N.Thulasiram

No.C-52, 4th Cross street East

Thillai Ngar, Trichy- 14

... Plaintiff

Vs.

1. M/s.Cinema Paradise rep by its sole proprietor

Mr.Sakthi chidambaram

No.108, Durai Arasan Street

Saligramam, Chennai

2. M/s.Ekaveera Creations rep. by its sole Proprietor

Mr.V.Ramesh Babu

No.1/7, Masilamani Street

Madava Apartments,

T.Nagar, Chennai – 600 017

... Defendants

The Managing Director, SUN TV

Network Limited, Murasoli Maran

Towers, No.78, MRC Nagar Main

Road, MRC Nagar, Chennai-28.

... Garnishee



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Prayer: This Civil Suit filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of C.P.C., praying to pass judgment and decree as follows:

(i) directing the defendants jointly and severally to pay the damage sum of Rs.1,83,01,780.55/-.

(ii) directing the defendants jointly and severally to pay interest 12% p.a. for the sum of claimed in prayer (i) from the date of the plaint till the realization and;

(iii) directing the defendants to pay the costs of the suit.

For Plaintiff	:	Ms.V.Ananthi for Mr.K.Mohanamurali
For D1 & D2	:	Set ex-parte on
For Garnishee	:	Mr.B.K.Girish Neelakandan

JUDGMENT

This suit is filed by the plaintiff for recovery of a sum of Rs.1,83,01,780.55 Ps. from defendants 1 and 2 together with interest at 12% per annum for the said sum claimed, from the date of the plaint till realization and to direct the defendants to pay costs.



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2. The averments made in the plaint is as follows;

(i) The plaintiff is carrying on business as a film distribution in the name and style of Sir Abirami films at Trichy. In the course of business, he obtained distribution rights of feature film "Kaaval Karan" been directed by Mr. Siddik and starred by actor Mr.Vijay and Ms.Asin and the Music by Mr.Vidyasagar. The said film was originally produced by the 2nd defendant. About 1st week of July 2010, the 1st defendant represented that he now holds absolute right of the said film and to commercially exploit. The 1st defendant also authorized and offered the distribution rights of the said film including Trichy and Thanjavur (TT Area) to the plaintiff. It was promised that the said feature film would be released in the year 2010 Diwali. Calculating the period of release, the Director's reputation, the star cast of Mr.Vijay as Hero of the said film, the plaintiff accepted the offer of the 1st defendant to procure the commercial and theatrical exhibition rights of Trichy and Thanjavur area on the mutual terms and condition agreed



between the plaintiff and the 1st defendant.

(ii) On 14.07.2010, the plaintiff and the 1st defendant entered into an agreement consisting of regular terms of Commercial and Theatrical exhibition rights of the said film "Kaval Kaaran" for the whole Trichy and Thanjavur area for the period of 5 years from the 1st date of release of the said feature film. As per the terms, the plaintiff has to pay Rs.3,00,00,000/- towards contract. Accordingly, at the time of entering into an agreement Rs.1,00,00,000/- was paid through RTGS. The plaintiff also paid to the 1st defendant Rs.50,00,000/- vide demand draft. Since the said film was not released in the year 2010 Diwali, the 1st defendant agreed to pay interest at a sum of Rs.28,50,000/- which was agreed to be adjusted in the payment of the balance sum of Rs.1,50,00,000/-. Thus the amount payable to the 1st defendant was Rs.1,21,50,000 at the time of delivery of print. Subsequent to that terms of agreement dated 14.07.2010, the 1st defendant changed the name of the said film from "Kavalkaaran" to "Kavalan" and in this regard,



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an instrument dated 17.12.2010 was also entered between the plaintiff and 1st defendant.

(iii) The plaintiff was eagerly awaiting for the release of the said feature film "Kavalan". Against the terms originally agreed, the consideration payable was increased from Rs.3,00,00,000/- to Rs.3,10,00,000/-. However Rs.14,00,000/- was calculated towards interest. After giving credit to a same, it was agreed that the plaintiff shall pay Rs.1,17,50,000/- and to take delivery of film. This understanding also found in the subsequent instrument dated 17.12.2010. After receipt of the said sum of Rs.1,17,50,000/-, the plaintiff was directed to pay Rs.5,00,000/- to Vijaya Theatre, Tanjavur, by the 1st defendant and accordingly on 07.01.2011, the plaintiff paid the said sum to Vijaya Theater, Tanjavur. Thus Rs.1,12,50,000/- becomes payable by the plaintiff to the 1st defendant and the commission cost for theater booking shall be fixed at 5% on that the print Qube and U.S.O publicity shall be undertaken



by the 1st defendant. In the mean while, the plaintiff understood that the 1st defendant has not settled the dues with 2nd defendant. It was also understood that the 2nd defendant also started claiming on the rights over the prints of the feature film "Kavalan". It is also understood that various other persons in the cine filed, were trying to enter fresh agreement for distribution rights in the same area for which the plaintiff has already entered into agreement with the 1st defendant. The defendants have also started entertaining third party in an attempt to deprive the plaintiff's right.

(iv) The plaintiff was always ready and willing to pay the balance sum of Rs.1,12,50,000/-. It was at that time the 1st defendant also started negotiating the foreign rights and the same would result releasing of the film on different areas in different dates. The plaintiff invested Rs.1,97,50,000/- eagerly awaiting the date of release of the said film as he as borrowed from various sources to keep the contract. In fact, it was at that time the plaintiff found that the defendants started acting cunningly



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behind the interest of the distributors. Hence, the plaintiff was forced to file C.S.No.37 of 2011 before this Court for "permanent injunction restraining the defendants 1 and 2 from alienating in any manner transferring the distribution right of commercial and theatrical exhibition in (old) Trichy and (old) Tanjavur areas for the period of 5 years commencing from the date of its first and general release with respect to the Tamil Feature Film" Kaavalan" contrary to the distribution agreement dated 14.07.2010 entered between the plaintiff and the 1st defendant. The plaintiff also took O.A. No.57 of 2011 for interim orders. The above said suit together with other suits in C.S.No. 21 of 2011 (M/s.Cine Time Entertainment represented by its Proprietor Vs. M/s.Cinema Paradise and 3 others), C.S.No.28 of 2011 (Mr.T.Jayamoorthy Proprietor, Thnangam Movies Vs. Mr. Sakthi Chidambaram Proprietor, Cinema Paradise and 2 others), C.S.No.29 of 2011 (Mr.G.Kannan Proprietor G.K. Films Vs. Mr. Sakthi Chidambaram and 2 others), C.S.No.36 of 2011 (M/s.Ekavera Creations Vs. M/s.Tantra



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Incorporated Pvt. Ltd., rep. by its Chairman Mr.J.K.Saravanan Krishnasamy and 3 others), C.S.No.39 of 2011 (Sri Vishali Film rep. by its partner Mr. J.Kumaresan Vs. M/s.Cinema Paradise represented by its Sole Proprietor Mr.Sakthi Chidambaram) were jointly heard. An interim order was passed by this Court on 12.01.2011 including the suit filed by the plaintiff in C.S.No.37 of 2011 holding that in so far as C.S.No. 37 of 2011 is concerned, the producer and the plaintiff have come to a temporary arrangement. The claim of the plaintiff is that he had distribution rights for Trichi and Tanjore areas for a sum of Rs.3,00,00,000/- and that he had already paid nearly two third (2/3rd) of the amount leaving only a balance of Rs.1,12,50,000/-. Therefore, upon the plaintiff making the payment of the sum of Rs.1,12,50,000/- (Rupees one crore twelve lakhs and fifty thousand only) to the producer, the producer shall hand over the distribution rights to the plaintiff in C.S.No.37 of 2011 in so far as the Trichi and Tanjore areas are concerned. It is made clear that laboratory



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shall release the print to the producer only if the fixed deposit receipts indicated in the previous paragraph are deposited with them. Once the deposit of F.D. receipts is made with them, the lab shall release the prints.

(v) After passing an order mentioned above on 12.01.2011, the cases were heard again on 20.01.2011 i.e. the C.S. Nos. 942, 956 of 2010, C.S. Nos.21, 28, 29, 36, 37, 39, 52 & 53 of 2011 were also jointly heard. At the time of hearing, it was reported that C.S.942 of 2010 C.S.Nos.21, 28, 29, 39 of 2011 was recorded with compromise. However, C.S. No.956 of 2010, 36, 37, 52 & 53 of 2011 were kept in pending.

(vi) It is found that Rs.41,00,00,000/- were involved in the said feature film "Kavalan" in which the plaintiff has been made as a scape goat by the defendants there by making false assurances and made him to part Rs.3,10,00,000/-. By virtue of the order dated 20.01.2011, the plaintiff was directed to send periodical weekly report of the collection and commission and expenditure. The internal understanding between defendants and



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collusive activities were commented before this Court in the order dated 20.01.2011. Pursuant to the said order, the plaintiff periodically sent the weekly statement on 25.01.2011, 31.01.2011, 07.02.2011 14.02.2011, 21.02.2011, 28.02.2011, 07.03.2011, 14.03.2011 and 16.03.2011. The statement of account has been received by the defendants without any demur or comment.

(vii) The defendants also failed to protect the copyright of the film Kavalan, resulting in pirated compact disc freely made available as evident from Crime Nos.170 & 171 of 2011 dated 08.02.2011 on the file of Fort Police Station, Trichy and Crime Nos.216 & 217 of 2011 dated 19.02.2011 on the file of Fort Police Station, Trichy.

(viii) The plaintiff having parted with their hard earned money, the defendants are liable to make good the loss suffered by the plaintiff as per the trade practice and the terms agreed between themselves. All along, from 14.7.2010 onwards - the date of entering into the agreement, the



defendants have not fulfilled their obligations as per the terms resulting in physical and mental torture to the plaintiff. Throughout their business carrier in the past decades, the plaintiff never came across the humiliation suffered by them because of the collusive and fraudulent activities of the defendants.

(ix) In this regard, on 29.03.2011, the plaintiff issued a lawyer's notice to the defendants along with the statement dated 16.03.2011 clubbing all the expenditure as per the agreement entered between the plaintiff and defendants. Under the trade practice and under the usual distribution commissions were deducted. However the plaintiff as suffered a loss of Rs.1,83,01,780.55 from the defendants hand. The plaintiff demanded sum of Rs.1,83,01,780.55 through the said lawyer notice dated 29.03.2011 to the defendants and the same was received by the defendants. But they neither replied nor repaid the said sum of Rs.1,83,01,780.55/-.

(x) The plaintiff filed the statements for the picture 'Kavalan' from



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14.01.2011 to 12.03.2011 as documents. The same worked out to Rs.3,08,43,146/-. The statement dated 16.03.2011 may also be treated as part and parcel of this plaint.

(xi) This Court was also pleased to secure the sum to the claimants in the connected suits in view of the collusive pleading between the defendants. Now, in order to safeguard the claim of the plaintiff, it is mandatory for the plaintiff to make the same pleading by taking out appropriate application in this regard. If the claim of the plaintiff is not secured, the plaintiff will be put to great hardship. In fact the plaintiff has borrowed from various sources to realize the sum secured under the distribution agreement. Now, all the money lenders are at present pressurizing the plaintiff for the repayment of the said sum. At this stage, the plaintiff is left with no other alternative remedy except filing the present suit for damages.

3. Since the defendants had not filed the written statement within



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the stipulated time, they were set ex- parte by this Court on 01.04.2024.

4. In order to substantiate the claim, the plaintiff was examined as P.W.1. He has reiterated the averments made in the plaint in his proof affidavit and marked 22 documents as Ex.P.1 to Ex.P.22 in which, Ex.P.1 is the photocopy of the distribution agreement dated 14.07.2010 entered into between the plaintiff and the 1st defendant; Ex.P2 is the photocopy of the letter dated 17.12.2010 entered into between the plaintiff and the 1st defendant; Ex.P3 is the photocopy of yet another letter entered into between the plaintiff with the owner of Vijaya Theatre dated 07.01.2011; Ex.P4 is the photocopy of the suit in C.S.No.37 of 2011 against defendants 1 and 2; Ex.P5 is the certified copy of the common order dated 12.01.2011 in O.A.No.35 of 2011 in C.S.No.21 of 2011 etc. cases; Ex.P6 is the photocopy of the common order dated 20.1.2011 in O.A.No.56 of 2011 in C.S.No.36 of 2011 etc cases; Ex.P7 is the office copy of the first week statement dated 25.01.2011 sent by the plaintiff to the second defendant;



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Ex.P8 is the office copy of the second week statement dated 31.01.2011 sent by the plaintiff to the second defendant; Ex.P9 is the office copy of the third week statement dated 07.02.2011 sent by the plaintiff to the second defendant; Ex.P10 is the office copy of the fourth week statement dated 14.02.2011 sent by the plaintiff to the second defendant; Ex.P11 is the office copy of the fifth week statement dated 21.02.2011 sent by the plaintiff to the second defendant; Ex.12 is the office copy of the sixth week statement dated 28.02.2011 sent by the plaintiff to the second defendant; Ex.P13 is the office copy of the seventh week statement dated 07.03.2011 sent by the plaintiff to the second defendant; Ex.P14 is the office copy of the eighth week statement dated 14.03.2011 sent by the plaintiff to the second defendant; Ex.P15 is the statement of account dated 16.03.2011 sent by the plaintiff to the second defendant; Ex.P16 is the photocopy of the first information report for the pirated compact disc lodged by the Trichy Fort Police Station in Crime No.170 of 2011 dated 08.02.2011;



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Ex.P17 is the photocopy of the first information report for the pirated compact disc lodged by the Trichy Fort Police Station in Crime No.171 of 2011 dated 08.02.2011; Ex.P18 is the certified copy of the first information report for the pirated compact disc lodged by the Trichy Fort Police Station in Crime No.216 of 2011 dated 19.02.2011; Ex.P19 is the certified copy of the first information report for the pirated compact disc lodged by the Trichy Fort Police Station in Crime No.217 of 2011 dated 19.02.2011; Ex.P20 is the office copy of the legal notice dated 29.03.2011 sent by the plaintiff's counsel to defendants 1 & 2 along with two postal receipts; Ex.P21 is the original postal acknowledgment card signed by the 1st defendant; and Ex.P22 is the original cover returned by the second defendant.

5. A perusal of the plaint, the proof affidavit and the above documents marked through P.W.1, shows that the plaintiff has proved their claim.



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6. Therefore, the suit is decreed as prayed for with costs. Both defendants 1 and 2 are jointly and severally liable to pay the suit claim with 12% interest from the date of the plaint till the realization.

16.04.2024
(1/2)

List of Witnesses Examined on the side of the Plaintiff: 1 Witness

N.Thulasiram -P.W.1

List of documents marked on the side of the plaintiff: 22 Documents

S. No.	Exhibits	Dated	Description of the Documents
1	Ex.P.1	14.07.2010	Photocopy of the distribution agreement entered between the plaintiff and the 1st defendant
2	Ex.P.2	17.12.2010	Photocopy of the letter entered between the plaintiff and the 1st defendant



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S. No.	Exhibits	Dated	Description of the Documents
3	Ex.P.3	07.01.2011	Photocopy of the letter plaintiff with owner of Vijaya Theater
4	Ex.P.4	11.01.2011	Photocopy of the plaint in C.S.No.37 of 2011 plaintiff against the defendants
5	Ex.P.5	12.01.2011	Certified copy of the common order in plaintiff against OA.No.57 of 2011 in defendants C.S.No.37 of 2011
6	Ex.P.6	20.01.2011	Photocopy of the common order in plaintiff against OA.No.57 of 2011 in defendants C.S. No.37 of 2011
7	Ex.P.7	25.01.2011	Office copy of the 1st week statement plaintiff to 2nd defendant
8	Ex.P.8	31.01.2011	Office copy of the 2nd week statement plaintiff to 2nd defendant
9	Ex.P.9	07.02.2011	Office copy of the 3rd week statement plaintiff to 2nd defendant
10	Ex.P.10	14.02.2011	Office copy of the 4th week statement plaintiff to 2nd defendant
11	Ex.P.11	21.02.2011	Office copy of the 5th week statement plaintiff to 2nd defendant
12	Ex.P.12	28.02.2011	Office copy of the 6th week statement plaintiff to 2nd defendant
13	Ex.P.13	07.03.2011	Office copy of the 7th week statement plaintiff to 2nd defendant
14	Ex.P.14	14.03.2011	Office copy of the 8th week statement plaintiff to 2nd defendant



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S. No.	Exhibits	Dated	Description of the Documents
15	Ex.P.15	16.03.2011	Office copy of the statement of account plaintiff to 2nd defendant
16	Ex.P.16	08.02.2011	Photocopy of the FIR for the pirated C.D. Lodged by Fort in Cr. No.170/2011 Police station
17	Ex.P.17	08.02.2011	Photocopy of the FIR for the pirated C.D. Lodged by Fort in Cr. No.171/2011 Police station
18	Ex.P.18	19.02.2011	Certified copy of the FIR for the pirated C.D. Lodged by Fort in Cr. No.216/2011 Police station
19	Ex.P.19	19.02.2011	Certified copy of the FIR for the pirated C.D. Lodged by Fort in Cr. No.217/2011 Police station
20	Ex.P.20	29.03.2011	Office copy of the lawyer's notice sent by the plaintiff's counsel to defendants along with 2 postal receipts
21	Ex.P.21	31.03.2011	Original postal acknowledgment card signed by 1st defendant
22	Ex.P.22	01.04.2011	Original returned cover returned by the 2nd defendant



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List of Witnesses Examined on the side of the defendants: **NIL**

List of documents marked on the side of the defendants: **NIL**

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(2/2)

Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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