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A.Nos.1195 & 1196 of 2024 in
C.S.No.347 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.Nos.1195 & 1196 of 2024
in C.S.No.347 of 2017

In both Applications:

Mr.Prakash Raj, Proprietor,
Carrying on business under the name
and style of M/s.Prakash Raj Productions,
At No.21/9, Balaraman Road,
Adyar, Chennai-600 020.

And also at Tulliove Apartments,
Door No.610, 16/1, Arunachalam Road,
Saligramam, Chennai-600 093.

... Applicant

-VS-

M/s.Prasad Productions Pvt. Ltd.,
Represented by its Authorised Signatory,
No.28, Arunachalam Road,
Saligramam, Chennai-600 093.

... Respondent

COMMON PRAYER: Judge's Summons filed under Order XIV Rule
8 of O.S. Rules Read With Order XXXVII Rule 4 and Section 151



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C.P.C. to set aside the decree dated 21.11.2019 passed in C.S.(Comm.)No.347 of 2017 and also to grant interim stay of execution of the decree dated 21.11.2019 in the above suit pending disposal of the application for setting aside the decree.

For Applicant : Mr.Chidambaram Athinamilagi

For Respondent : Mr.P.H.Aravind Pandian, Senior Counsel
for Mr.S.Raghunathan

ORDER

The suit was filed as a summary suit for recovery of a sum of Rs.1,58,89,109/- with interest at 24% per annum on the principal sum of Rs.75 lakhs from the date of plaint till the date of decree. The suit summons was served on the defendant on 18.05.2017. Upon receipt of suit summons, the defendant entered appearance through learned counsel on 07.06.2017. In or about August 2017, the plaintiff filed an application (A.No.5467 of 2017) for issuance of a decree as prayed for in the suit. Thereafter, the defendant filed three applications seeking: condonation of delay in filing the leave to defend application; leave



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to defend; and conversion of the summary suit into an ordinary suit.

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By order dated 16.08.2019, the suit was determined to be a commercial dispute as per Section 2(1)(c) of the Commercial Courts Act, 2015.

2. The defendant was directed to deposit a sum of Rs.50 lakhs to the credit of the suit by order dated 01.10.2019. The defendant failed to make such deposit. By order dated 23.10.2019, the matter was posted for hearing on 08.11.2019. On 08.11.2019, Application Nos.6928 & 6929 of 2017, which were filed to condone the delay in filing the leave to defend application and seeking leave to defend, were dismissed on the grounds of failure to deposit the sum of Rs.50 lakhs and that there is no substantial defence. Thereafter, by judgment dated 21.11.2019, the suit was decreed with interest at the rate of 7% per annum from the date of decree till the date of realisation.

3. The defendant filed appeals against the orders passed in



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Application Nos.6928 & 6929 of 2017 (O.S.A.Nos.33 & 34 of 2021).

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Such appeals were filed in April 2021. By judgment dated 16.11.2023 in the said appeals, the appeals were dismissed, without going into the merits thereof, by granting leave to the appellant to seek remedy before the single Judge. On such basis, the present applications have been filed to set aside the decree dated 21.11.2019 and to stay the execution of the decree dated 21.11.2019.

Counsel and their contentions

4. Oral arguments on behalf of the applicant were advanced by Mr.Chidambaram Athinamilagi and on behalf of the respondent/plaintiff by Mr.P.H.Aravind Pandian, learned senior counsel, and by Mr.S.Raghunathan, learned counsel.

5. The first contention of Mr.Chidambaram was that the summons, as received by the defendant, was not in conformity with Order XXXVII of the Code of Civil Procedure, 1908 (the CPC) read



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with Order VII Rule 1 of the Original Side Rules, 1994 (the OS Rules).

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Such submission was made on the basis that the summons prescribed a period of six weeks to respond thereto instead of 10 days. In support of the contention that the specification of a wrong date in the summons vitiates proceedings, learned counsel relied upon the judgment of this Court in *S.Srinivasan and another v. P.Bhakthavatsulu Naidu*, AIR 1953 Madras 909 (*S.Srinivasan*). The next contention of Mr.Chidambaram was that the order rejecting the leave to defend application was not on merits and that such order was issued solely on the ground that the defendant failed to deposit a sum of Rs.50 lakhs in terms of order dated 01.10.2019. Since the decree dated 21.11.2019 was consequential thereto, learned counsel contended that such decree was also not on merits.

6. The third contention of Mr.Chidambaram was that the Court is empowered to set aside the decree under special circumstances in terms of Rule 9 of Order VII of the OS Rules. In this connection,



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reliance was placed on the judgment of the Hon'ble Supreme Court in *TVC Skyshop Limited v. Reliance Communication and Infrastructure Limited*, (2013) 11 SCC 754. The last contention of Mr.Chidambaram was that the suit claim is not confined to amounts advanced by the plaintiff to the defendant towards financing the production of the movie, but also includes alleged payments due for post production services provided by the plaintiff to the defendant. In this connection, learned counsel referred to clauses 9 and 11 of the Memorandum of Understanding dated 27.04.2013 (the MoU). By further referring to letters dated 03.06.2014 and 08.08.2014 from the plaintiff to Prasad Film Laboratories, learned counsel contends that a total sum of Rs.2,98,58,476/- was paid by the defendant to the plaintiff, whereas credit was only given for a sum of Rs.2,30,00,000/- as per the statement of accounts submitted by the plaintiff. When viewed cumulatively, learned counsel contends that the above qualify as special circumstances under Rule 9 of Order VII of the OS Rules.

7. In response to these contentions, learned senior counsel for



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the plaintiff referred to the MoU and to letters 15.06.2013, 03.10.2013 and 15.10.2013 from the defendant requesting for disbursements.

Learned senior counsel also referred to letters dated 03.06.2014 and 08.08.2014 from the defendant with regard to the admitted principal outstanding of Rs.75,00,000 after giving credit to the last payment of Rs.25,00,000. He further referred to the notice dated 23.03.2015 from the plaintiff to the defendant with regard to the failure by the defendant to make necessary funds available to honour the post-dated cheques. By focussing attention on the lawyer's notice dated 16.04.2016 and the reply from the defendant's lawyer dated 09.05.2016, learned senior counsel contended that the defendant admitted the liability of Rs.75 lakhs towards principal even in such reply.

8. The next contention of learned senior counsel was that the decree was issued on 21.11.2019 and that the defendant filed the appeals after the lapse of about 1 ½ years solely with a view to thwart



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execution of such decree. As regards the summons issued by the Registry, learned senior counsel contended that such summons was issued in Form 13-B, as mandated by Order VII Rule 3 of the OS Rules, and that the defendant was not prejudiced in any manner by specifying a period of six weeks, instead of 10 days, to respond to such summons. He also pointed out that the leave to defend application was not filed within six weeks and was instead filed on 12.09.2017.

9. By way of rejoinder, learned counsel for the defendant pointed out that a sum of Rs.50 lakhs was deposited earlier. He reiterated that the suit claim covers post production expenses by relying on letter dated 23.03.2015 from the plaintiff to the defendant. He also relied on the judgment of the Hon'ble Supreme Court in *B.L.Kashyap and Sons Limited v. JMS Steels and Power Corporation and another*, (2022) 3 SCC 294 (*B.L.Kashyap*), to contend that leave to defend is liable to be granted once the defendant raises a triable issue.



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By referring to the judgment of the Supreme Court in *B.Janakiramaiah Chetty v. A.K.Parthasarathi and others*, 2003 SCC Online SC 482, he contended that a decree which is not passed on the merits of the case is an *ex parte* decree. He also relied on the judgment of the Supreme Court in *Assistant Commissioner, Commercial Tax Department v. M/s. Shukla & Brothers*, SLP (C) No.16466 of 2009, to underscore the requirement of a reasoned order in judicial and quasi judicial proceedings.

Discussion, analysis and conclusions

10. As stated at the outset, the suit claim is for a sum of Rs.1,58,89,109/- along with interest on the principal sum of Rs.75 lakhs at 24% per annum from the date of plaint till the date of decree. Such suit claim was laid on the basis of the MoU between the parties. The MoU provided for the financing of the production of the movie “UN SAMAYAL ARAYIL” by the plaintiff to the extent of Rs.3 crores. Clause 5 of the MoU enables deduction of interest at 24% per



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annum for the first three months while making disbursements and also specifies that interest would be payable at the same rate for the period beyond three months. As contended by learned counsel for the defendant, clause 11 deals with post production services. Several letters pertaining to the request for disbursement of installments in terms of the MoU have been placed on record. The plaintiff has also placed on record the letter dated 08.08.2014, wherein the defendant agreed to pay the balance sum of Rs.75 lakhs as early as possible. The reply dated 09.05.2016 from the defendant's lawyer to the plaintiff's lawyer also records that the defendant agreed to settle the balance of Rs.75 lakhs in due course.

11. The plaintiff has also placed on record the statement of account. The said statement of account records debits towards amounts advanced by the plaintiff to the defendant, interest and TDS. The aggregate value of such debits is Rs.3,56,64,164.27. After giving credit to aggregate receipts of Rs.2,55,00,000/-, which includes

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a sum of Rs.25 lakhs paid on 18.08.2014, the suit claim of Rs.1,58,89,109/- was computed.

12. The question that arises for consideration in the above factual matrix and the developments after the suit was filed is whether there are special circumstances justifying the setting aside of the decree and the stay of execution proceedings. Order VII Rule 9 of the OS Rules, which deals with post-decree applications, is as under:

“R.9 After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court deems fit.”

The first contention of learned counsel for the applicant/defendant is that the suit summons was defective and that this justifies interference. The factual position is admitted, namely, that the suit summons was issued in Form 13 B but specified a period of six weeks



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instead of ten days to respond to such suit summons. The suit summons was served on the defendant on 18.05.2017. Thereafter, the defendant filed the vakalat through learned counsel on 07.06.2017 and filed applications, including the leave to defend application, on 12.09.2017. The prescription of six weeks to respond to the summons would have justified interference if the defendant had approached the Court within the said six weeks period and contended that he did not approach the Court within ten days because the summons wrongly specified six weeks. In fact, in the judgment of this Court in *S.Srinivasan*, which was relied upon by learned counsel for the defendant, an error was committed in the summons and the leave to defend application was filed on the 11th day. In those circumstances, this Court held that the summons was misleading and qualified as a special circumstance. Since the fact situation in the present case is substantially different, the said judgment does not advance the cause of the defendant.

13. Learned counsel for the defendant also contended that the



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order rejecting the leave to defend application and the order issuing the decree were not on the merits. The order dated 01.10.2019 records that after hearing learned counsel for the parties, the defendant is directed to deposit a sum of Rs.50 lakhs to the credit of the suit. No other reasons were set out in the said order. On 08.11.2019, the Court noticed that the defendant failed to deposit the sum of Rs.50 lakhs as directed by order dated 01.10.2019. Both on the ground of such non deposit and on the ground that there is no substantial defence, the applications to condone the delay in filing the leave to defend application and the application for leave to defend were rejected. The decree was issued thereafter pursuant to the judgment dated 21.11.2019. The judgment records similar reasons for decreeing the suit.

14. The law with regard to an application for leave to defend was refined by the Supreme Court in *IDBI Trusteeship Services Limited v. Hubtown Limited*, (2017) 1 SCC 568 (*IDBI Trusteeship*). In paragraph



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17 of the said judgment, the Supreme Court held as under:

“17. Accordingly, the principles stated in paragraph 8 of Mechelec case will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case, as follows:

17.1 If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit;

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend;

17.3 Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that



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such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith;

17.6 If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

15. The above judgment instructs that amounts admitted by the defendant as payable to the plaintiff should be directed to be paid as



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a pre-condition for the grant of leave to defend. As regards disputed amounts, it follows from *IDBI Trusteeship* that a court considering such application could be presented with defences falling within a range or spectrum. At one end of the spectrum, if the defence is substantial, the application is liable to be allowed without conditions. At the other, if the defence is frivolous and no genuine triable issues are raised, the application is liable to be rejected. Between these ends, lies the area where judicial discretion and balancing play a larger role. The guidance provided for cases falling in this mid-zone is as follows. If the defendant raises triable issues indicating that such defendant has a fair or reasonable defence, leave is required to be granted unconditionally. If triable issues are raised but the court of first instance has doubts about the tenability of the defences, leave to defend is required to be granted on terms. Lastly, if the defence raised is plausible but improbable, leave to defend is to be granted on more stringent terms, including with regard to interest. The later judgment, *B.L.Kashyap*, reiterates the same principles while holding



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that allowing such application is the rule and rejecting it the exception. The next aspect is to be considered is the category into which this case falls.

16. As adverted to earlier, by letter dated 08.08.2014, the defendant agreed to pay a sum of Rs.75 lakhs as early as possible. In relevant part, the defendant states as under in letter dated 08.08.2014:

"We are very much thankful to you for considering our request for the accomodation of Rs.1,00,00,000/- (Rupees One Crore Only/-) at the time of release of the said picture.

We are unable to make the above payment as agreed due to various reasons beyond our control. We are arranging to make the part payment of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only/-) towards the above account and the remaining balance amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only/-) will be settled to you as early as possible."

The above document indicates that there is an admission as regards the sum of Rs.75 lakhs.

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17. Learned counsel for the defendant contended that such admission was qualified in as much as payments were made not only towards repayment of the loan but also towards post production and other services. The reply dated 09.05.2016 from the defendant's lawyer to the plaintiff, which is pertinent to this issue, reads, in relevant part, as under:

"1.My Client states that he had paid a sum of Rs.2,98,58,476/- towards the total outstanding of the Principal and interest and also lab charges amounting to Rs.3,98,58,476/- as on the date of release of the picture, and requested for accommodation of Rs.1,00,00,000/- and your client also agreed to for the same and later since the entire balance of Rs.1,00,00,000/- could not be repaid in full my client paid a sum of Rs.25,00,000/- and agreed to settle the balance of Rs.75,00,000/- in due course.

2. Therefore my client states that he has to pay only a sum of Rs.75,00,000/- towards the loan account and Lab Charges as on 03.06.2014 but your client had claimed a total sum of Rs.1,26,03,563/- with interest from December



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2013 and the interest calculation arrived at by your clients in this regard is also on the face of it incorrect."

Even proceeding on the assumption that the admitted liability also covers post production expenses as asserted above, the above documents clearly contain an admission of liability of Rs.75,00,000/- as on 03.06.2014. The dispute raised is only with regard to interest for the period prior thereto.

18. On examining the statement of accounts of the plaintiff, it is noticeable that the aggregate debits of Rs.3,56,64,164/- was arrived at after reckoning interest for certain periods. Thereafter, after providing credit to the aggregate sum of Rs.2,55,00,000/-, the outstanding of Rs.1,01,64,164/- was arrived at. By applying interest on the said sum, the suit claim has been computed. This indicates *prima facie* that interest has been capitalised. On examining the MoU, it appears *prima facie* that the plaintiff does not seem to have the power to impose compound interest. To that extent, with regard to



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computation of the aggregate sum claimed, the defendant would have an arguable case. For this reason and because the principles laid down in *IDBI Trusteeship* and other relevant cases were not taken into account earlier, the defendant has established that there are special circumstances warranting interference, albeit subject to putting the defendant on terms, under Rule 9 of Order VII of the OS Rules.

19. Thus, since there is a clear admission as regards the liability of Rs.75,00,000/- as on 03.06.2014, the said sum should be deposited along with reasonable interest thereon from 04.06.2014 as a condition precedent to allow the defendant to contest the suit. More than 10 years have elapsed since 03.06.2014. By taking into account the admittedly commercial nature of the financing, even if simple interest at 10% per annum is applied on Rs.75,00,000/-because of the *prima facie* compounding referred to above (instead of the contractual rate of 24% per annum), the amount payable as on date would double. The interest of justice warrants that security be provided at least to



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this extent. By taking into account all the aforesaid facts and circumstances and the earlier deposit of Rs.50,00,000/-, the following directions are issued:

(i) The defendant shall create an interest bearing fixed deposit account in the name of the Registrar General of this Court in any public sector bank to the credit of the suit for a sum of Rs.1,00,00,000/- (Rupees one crore only). Such fixed deposit account shall be established within 45 days from the date of receipt of a copy of this order for an initial period of one year but auto renewable for further periods until disposal of the suit.

(ii) Upon establishing such fixed deposit account, the original fixed deposit receipt shall be deposited with the Registrar General and a copy thereof shall be served on learned counsel for the plaintiff.

(iii) Once the original fixed deposit receipt is deposited with the Registrar General and a copy thereof served on learned counsel for the plaintiff, the decree dated 21.11.2019 shall stand set aside and the



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defendant shall be permitted to defend the suit albeit subject to undertaking to cooperate in the expedited conclusion thereof.

(iv) Similarly, upon the above actions being completed, the execution proceedings shall be set aside. Until the time limit for making the above deposit expires, the execution proceedings are stayed.

(v) In the event of default in complying with the above condition, it is made clear that the decree shall *ipso facto* continue in operation and the plaintiff would be at liberty to continue to prosecute the execution proceedings.

(vi) If the deposit is made in terms of this order, it will be open to the plaintiff to apply to withdraw the entire amount deposited (i.e. an aggregate sum of Rs.150 lakhs) subject to providing security by



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way of bank guarantee to the satisfaction of the Registrar General.

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20. These applications are disposed of on the above terms. List the suit on 13.11.2024 for further directions with regard to the expedited disposal thereof. There will be no order as to costs.

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Neutral Citation: Yes / No

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To

The Registrar General,
High Court, Chennai.



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SENTHILKUMAR RAMAMOORTHY,J

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