THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM:

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

O.S.A.Nos.133 and 134 of 2021
and
C.M.P.Nos.6015, 6016, 6075 & 6076 of 2021,
5900 & 5901 of 2022 and 19140 of 2023

1.M/s.Kondaduvom Entertainment,
Represented by its Partner,
89-A, Habibullah Road,
T.Nagar, Chennai – 600 017.

2.P.Madan

3.S.Venkataramanan

4.Goutham Vasudev Menon

5.Reshma Ghatala ...Appellants in both OSAs

Vs.

M/s.Acolyte Soft Pvt. Limited
Rep. by its Authorised Singnatory,
Badri Kasthuri,
102/36, Defence Officers Colony,
Ekkatuthankal,
Chennai – 600 032. ...Respondent in both OSAs

Prayer: Original Side Appeals filed under Section 13(1) of the Commercial Courts Act, 2015 read with Clause 15 of the Letters Patent to set aside the judgment and decree dated 07.01.2021 passed in A.No.2441 of 2020 in C.S.No.149 of 2020 and to set aside the judgment and decree dated 07.01.2021 passed in C.S.No.149 of 2020.

For Appellants : Mr.Abdul Hameed, Senior Counsel for M/s.AAV Partners

For Respondent : Mr.K.Ravi, Senior Counsel for M/s.Rugan & Arya

COMMON JUDGMENT

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

These two appeals are at the instance of the defendants in C.S.(Comm.) No.149 of 2020 challenging the order passed in A.No.2441 of 2020 and the consequent decree in the suit.

2. The suit was laid by the plaintiff/ respondent herein seeking a money decree for a sum of Rs.1,94,90,136/- with subsequent interest at 18% from the date of suit till date of realization. The claim was based on a settlement entered into during the pendency of an earlier suit in C.S.(Commercial) No.513 of 2019 between the same parties, wherein also the plaintiff had sought for a money decree for recovery of a sum of Rs.1,50,00,000/- with future interest.

The factual backdrop is as follows:-

3. The defendants who were engaged in the business of production of movies had approached the plaintiff through one of its partners for a loan of Rs.1,50,00,000/- sometime during the August 2018. The plaintiff advanced the monies on 28.09.2018 and 29.09.2018 at Rs.50,00,000/- and Rs.1,00,00,000/- respectively. On 26.09.2019 the defendants issued a cheque for a sum of Rs.1,50,00,000/-. Upon presentation the cheque bounced on the stated ground of "Insufficiency of funds".

4. Thereafter, the plaintiff issued a notice to the defendants and launched a suit in C.S.(Comm. Div.) No.513 of 2019. In the said suit an order was passed injuncting the defendants from releasing the picture titled "Ennai Nokki Payum Thotta". During the pendency of the said suit, in November 2019 a settlement was arrived between the parties, wherein, the defendants 1 to 4 undertook to pay this sum of Rs.1,50,00,000/- after the release of the movie. On the basis of the said settlement a joint memorandum of compromise was filed into Court signed by the learned counsel for the parties and the suit was dismissed as settled out of Court.

5. In compliance with the undertaking made in the settlement reached on 27.11.2019, the 4th appellant alone issued a cheque dated 26.01.2020 for a sum of Rs.1,50,00,000/-. The said cheque was also dishonoured on presentation and it was returned on 20.04.2020. It is claimed by the plaintiff that the defendants had instructed the plaintiff to lodge the cheque for payment after 17th April 2020. Soon thereafter a notice was issued by the plaintiff on 14.05.2020 demanding payment and there was no reply to the said notice.

6. The plaintiff came up with the present suit in C.S.(Comm.) No.149 of 2020. In the said suit there was an order of injunction granted restraining the defendants from releasing another movie by name "Nenjam Marappadhillai". Those interlocutory applications for injunction and vacate injunction were heard and disposed of. A conditional order was passed directing the defendants to furnish security to the tune of Rs.50,00,000/- and upon compliance with the said condition, the defendants allowed to release the movie "Nenjam Marappadhillai". It is at this point in time, the plaintiff filed instant application in I.A.No.2441 of 2020 seeking a summary judgment under Order 13-A(2) of the Code of Civil Procedure as amended by the Commercial Courts Act, 2016.

7. The said application was resisted by the defendants contending that there were several loan transactions between the parties and payments that were made on account were adjusted by the plaintiff in various accounts. According to the defendants, if proper accounts are taken, they may not owe any money to the plaintiff. It was also contended that the agreement dated 27.11.2019 was entered into under duress. There was another contention to the effect that the 5th appellant in the suit viz., Reshma Ghatala had retired from the partnership and therefore she is not liable for the suit amount. It was also pointed out that she was not a party to the agreement dated 27.11.2019.

8. The learned Single Judge who heard the application concluded that there is no need for another trial in the suit, since the suit itself is based on dishonour of the cheque which was issued pursuant to the compromise entered into. The learned Single Judge also found that the defence set up by the defendants in the suit is a moon shine and the defendants have no real prospect of succeeding in the suit. On the said finding, the learned trial Judge allowed the application under Order 13-A(3) and decreed the suit as prayed for. The defendants are on appeal.

9. We have heard Mr.Abdul Hameed, learned Senior Counsel appearing for M/s.AAV Partners for the appellants and Mr.K.Ravi, learned Senior Counsel appearing for M/s.Rugan and Arya for the respondent.

10. Mr.Abdul Hameed, leaned Senior Counsel appearing for the appellants would vehemently contend that there are very serious triable issues in the suit and therefore the learned Single Judge was not right in granting a summary judgment against the defendants. Drawing our attention to the earlier suit and certain documents that were filed before the Arbitrator in certain other connected proceedings, where the plaintiff has admitted that there were several transactions between the plaintiff, its Group Companies and the defendants and the amounts that were repaid by the defendants were credited to several other accounts would invite us to conclude that there is a triable issue in the suit and therefore grant of decree under Order 13(A) is not justified.

11. The learned Senior Counsel would also further submit that the application does not state that it has been filed under Order 13(A)(4) seeking a summary judgment, which is not in compliance with the provisions of Order 13(A)(4) and therefore the application ought to have been dismissed. Yet another plea that is taken by the learned Senior Counsel is that the application has been filed even before service of summons in the suit hence it is pre-mature.

12. Contending contra, Mr.K.Ravi, learned Senior Counsel appearing for the respondent would submit that the very suit is filed on the basis of the settlement entered into during the pendency of the another suit. Drawing our attention to the fact that the earlier suit viz., C.S.(Comm.) No.513 of 2019 was withdrawn on the basis of the settlement entered into and the cheque in question was issued pursuant to the said settlement, the defendants cannot be allowed to deny the liability under the cheque.

13. The learned Senior Counsel would also point out that by entering into settlement during the pendency of C.S.(Comm.) No.513 of 2019, the defendants were able to release the movie which was subject matter of the suit and having obtained an advantage of releasing the movie by agreeing to pay they cannot now be heard to contend that the amount that was agreed to be paid was not actually due.

14. The learned Senior Counsel would also further submit that there is a specific and categoric undertaking in the agreement between the parties dated 27.11.2019 where they had agreed to pay a sum of Rs.1,50,00,000/- with interest and cheque was also issued consequent upon such agreement.

15. We have considered the rival submissions.

16. We are unable to persuade ourself to agree with the contentions of the learned Senior Counsel for the appellants. The fact that there was an earlier suit in C.S.(Comm.) No.513 of 2019 against the defendants by the very same plaintiff seeking recovery of monies is not in dispute. The fact that there was a settlement agreement entered into in the said suit on 27.11.2019 is not in dispute. The fact that the suit was dismissed as withdrawn upon such settlement agreement is also not in dispute. The cheque was issued by the 4th appellant in discharge of the debt that was acceded to or acknowledged in the joint memorandum of compromise filed in C.S.(Comm.) No.513 of 2019 is also not in dispute. We therefore do not think it is open to the defendants to contend that they had paid certain monies even prior to the compromise and those monies if accounted properly would show that nothing is due from them.

17. Once the liability is acknowledged and an agreement is entered into, based on which the suit is withdrawn, the party to such agreement cannot be heard to contend that the amount that was agreed to be paid was not due. If we are to allow such a plea, it will be encouraging a re-litigation and will be a premium for illegality. We therefore do not think that the defendants can be heard to contend that the amount that was agreed to be paid on 27.11.2019 was not due and payable.

18. Yet another factor which impels us to hold against the appellants is their conduct. By agreeing to pay a sum of Rs.1,50,00,000/- with interest on 27.11.2019 they derived advantage of releasing the movie and having taken that advantage, they cannot be heard to contend that the money was not due to them.

19. The other objections raised by the learned Senior Counsel are only procedural. The application was filed on 13.08.2020. The summons in the suit were served on 21.10.2020. The application was actually heard some time in November 2020 and disposed of by the learned Single Judge on 07.01.2021. Therefore, it cannot be said that the application was heard before service of summons on the defendants. The learned Judge has gone into the pleadings as well as the evidence that was available before him and has concluded that the defendants have no chance of succeeding in the suit even if it goes for trial.

20. No doubt, there are certain observations in the proceedings before the Arbitrator which was launched by the Sister Concern of the plaintiff regarding the nature of the transaction between the parties. The learned Single Judge has rightly refused to look into those proceedings since they were not made part of the record before him. We do not think we will be justified in looking into those documents and conclude that there are certain triable issues in the suit. We are of the firm view that a party which derives an advantage at a settlement by making the other party withdraw the legal proceedings, that party cannot be allowed to wriggle out of the liability by raising technical defences.

21. Finally Mr.Abdul Hameed, learned Senior Counsel appearing for the appellant would submit that at least the 5th appellant Reshma Ghatala who is not a party to the settlement dated 27.11.2019 should not be made liable. Whether she is a party to the settlement or not, if she is a partner of the 1st appellant firm, she would be liable to the answer the claim since the decree is against the 1st appellant. Of course, if she had ceased to be a partner of the 1st appellant firm she may not be liable. It will be open to her to show that she was not a partner at the relevant point of time in the execution proceedings and if the executing Court finds that she is not a partner, she will be exonerated from the execution proceedings.

22. The next contention of Mr.Abdul Hameed, learned Senior Counsel is the quantum of interest that is levied. The learned Single Judge granted 18% interest from 28.09.2018 i.e., the date of the original borrowing till date of realization. Though the learned Senior Counsel for the appellants would contend that the interest granted is exorbitant, considering the fact that the loan itself was borrowed by persons in the movie field, the interest rates are always higher considering the risk that is taken by the financiers who finance movie productions. We however find that the interest after the decree at 18% is on the higher side. We are therefore of the opinion that the interest post decree can be reduced to 12% instead of 18%.

23. The appeal is, therefore, **disposed of** with a partial modification of the decree granted by the learned Single Judge by reducing post decree interest to 12%. The plaintiff would be entitled to the suit claim with interest at 18% per annum from 28.09.2019 till date of decree and from the date of decree till date of payment at 12% per annum. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.S.M., J.) **(R.S.V., J.)**
13.02.2024

dsa
Index : No
Internet :Yes
Neutral Citation : No
Speaking order

<u>Note</u>: Registry to issue a decree by 20.02.2024
(Issue Order copy by 20.02.2024)

R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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