



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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P.VELMURUGAN. J

Already, by order dated 27.07.2023 in Application No.3792 of 2023 in C.S.No.564 of 2015, defendants 2 to 4 were brought on record as legal heirs of the deceased first defendant. Accordingly, the cause title of the plaint was amended. Now, the present application is filed to amend the plaint at paragraph 16-a, b, c and d., which in the original plaint is at paragraph 13-a, b, c and d., as per the particulars of Amendment as follows:

After the paragraph 16 to add paragraphs 16a ,16b, 16c and 16d:

16 a. However, the additional documents filed now will show that the film is being exploited by various third parties in various platforms affecting the suit relief as prayed for. However, the Defendants have not disclosed the persons to whom the copyrights have been licenced or assigned. The movie in its entirety including short clippings are being exploited in various online platforms including Tentkotta, Amazon, Simplysouth, YouTube, Zee5. It is relevant to note at this juncture that the movie was released on 14.08.2015 and the exploitation rights of the Plaintiff commenced from 22.11.2015. The 1 Defendant has breached the terms of the Assignment Agreement due to which the Plaintiff has not been able to commercially exploit the movie despite parting away with substantial consideration. Therefore, the Plaintiff seeks compensation in addition to specific



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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16 b. The Plaintiff submits that the advance consideration of Rs.2,75,00,000.00 was utilised for the production of the film and the Plaintiff ought to have been assigned the satellite rights on 22.11.2015. The Defendants have committed breach of the terms. The Plaintiff is therefore entitled to compensation in addition to specific performance for the period from 2.11.2015, being the end commencement date for broadcast of from 12 the date of actual performance by the Defendants on account of the breach.

16 c. In terms of the Agreement the Plaintiff is entitled to interest at the rate of 24% p.a. on the sum advanced, ie, Rs. 2,75,00,000/- from 22.11.2015 being the date of telecast commencement rights of the Plaintiff, to the date of specific performance by the Defendants. The balance consideration of Rs.2,75,00,000/- payable by the Plaintiff may be set off from the amount of compensation payable by the Defendants and specific performance decreed.

16 d. Assuming without admitting, that the 1 Defendant has not assigned the film to any third parties, no bona fide action has been exercised by the Defendants to restrain such third parties from infringing the copyrights of the film. The relief of specific performance claimed in the suit was assignment of the rights in the Film on exclusive basis. This relief today is no longer available in its entirety as sought in view of multiple rights that subsists with other third parties and even if granted, would be on non-exclusive basis to the Plaintiff. Therefore, in the event this Hon'ble Court comes to a conclusion that specific performance is not grantable, the Defendants are liable to pay compensation towards breach of the Assignment Agreement ie., refund of sum of Rs.2,75,00,000/- along with interest at 24% p.a. from the date of payment to its realization and liquidated damages of Rs.30,00,000/- in terms of Clause 19 of the Assignment Agreement as a consequence of the breach of the terms of the Assignment Agreement.



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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Paragraph 17:

17. on 05.07.2014 when the plaintiff called upon the defendant for the specific performance of the agreement dated 16.05.2012, on 09.07.2014 when the defendant replied with false averments, on various dates when the defendant approached various third parties for assigning of copyright of the said movie in favour of third parties and subsequent.

To be amended as:

17. ... on 05.07.2014 when the plaintiff called upon the defendant for the specific performance of the agreement dated 16.05.2012, on 09.07.2014 when the defendant replied with false averments, on various dates when the defendant approached various third parties for assigning of copyright of the said movie in favour of third parties and subsequently when the 1 Defendant has assigned the rights in favour of third parties and when the Plaintiff to came to know recently of exploitation of rights by third parties in YouTube, Amazon, Tentkotta, SimplySouth, Zee5 and various other dates and is subsisting as on date.

Paragraph 19:

The plaintiff values the suit for the purpose of court fee and jurisdiction as Rs. 5,50,00,000/- u/s. 42(e) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 read with appendix 1-A of the High Court fees Rules, 1956 and paid Rs. 5,53,525/-.

To be amended as:

The plaintiff values the suit for the purpose of court fee and jurisdiction u/s. 42 (e) R/w Section 22 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 read with appendix 1-A of the High Court fees Rules, 1956 as follows:



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

Prayer	Value in Rs.	Court Fees in Rs.
Prayer a (paid as per appendix 1-A)	5,50,00,000/-	5,53,525/-
Prayer c (ii)	2,01,34,521/-	6,04,036/-
Prayer c (iii)	30,00,000/-	90,000/-
Total	7,81,34,521/-	12,41,561/-

Paragraph 20:

20. The plaintiff therefore, prays for a judgment and decree in favour of the plaintiff and against the defendant.

a) For specific performance directing the defendant to assign The copyright of the Tamil feature film "VAALU" featuring Simbu, Hansika Motwani, Santhanam and others in favour of the Plaintiff as per clause 3 of the agreement dated 16.05.2012 on the failure of the defendants this Honourable Court may be pleased to assign the copyright of the Tamil feature film "VAALU" featuring Simbu, Hansika Motwani, Santhanam and others in favour of the Plaintiff as per clause 3 of the agreement dated 16.05.2012 in favour of the Plaintiff.

b) to pay cost and

c) pass any further similar other orders as this Honourable court may deem fit and proper in the circumstances of the case and thus render justice.

To be amended as:

20. The Plaintiff therefore prays for a judgment and decree in favour of the plaintiff and against the defendants:



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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a) For specific performance directing the Defendants to assign the copyright of the Tamil feature film "VAALU" featuring Simbu, Hansika Motwani, Santhanam and others in favour of the Plaintiff as per clause 3 of the agreement dated 16.05.2012 on the failure of the Defendants this Honourable Court may be pleased to assign the copyright of the Tamil feature film "VAALU" featuring Simbu, Hansika Motwani, Santhanam and others in favour of the Plaintiff as per clause 3 of the agreement dated 16.05.2012

b) To pay compensation to the Plaintiff being interest at the rate of 24% p.a. on the sum of Rs.2,75,00,000/- from the date of commencement of exploitation rights, ie., 22.11.2015, to the date of specific performance by the Defendants.

c) Alternatively, to:

i) direct the Defendants to jointly and severally pay a sum of Rs.2,75,00,000/- being the consideration paid by the Plaintiff for breach of obligations under the Assignment Agreement dated 16.05.2012 in terms of Clause 19 of the Assignment Agreement,

ii) direct the Defendants to jointly and severally pay a sum of Rs.1,03,88,219/- being interest at the rate of 24% p.a. on Rs. 1,37,50,000/- from 17.05.2012 to 10.07.2015, being the date of Plaint, and a sum of Rs.97,46,302/-being interest at the rate of 24% p.a. on Rs. 1,37,50,000/- from 27.07.2012 to 10.07.2015, the date of the Plaint;

ii) direct the Defendants to jointly and severally pay further interest at the rate of 24% p.a. from the date of Plaint till date of realization thereof.



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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iv) direct the Defendants to pay Rs.30,00,000/- towards liquidated damages in terms of in terms of Clause 19 of the Assignment Agreement.

d) to pay costs; and

e) pass any further similar other orders as this Honourable court may deem fit and proper in the circumstances of the case and thus render justice.

2. It is seen that the applicant has filed the present suit for specific performance as per clause 3 of the agreement dated 16.05.2012. After filing of the written statement and also after the commencement of trial, the present application is filed to amend the plaint for alternative relief of compensation, refund of advance amount already paid by the plaintiff and also for liquidated damages.

3. The respondents have filed counter and they have stated that the suit was filed in the year 2015 and the said agreement is of the year 2012. After filing of the written statement even in the year 2015 and also after filing of the Case Management Schedule, now the plaintiff has filed the present application only to protract the trial and that the claim made by the applicant/plaintiff is barred by limitation.



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

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4. The learned counsel for the applicant/plaintiff submitted that though the suit is filed for specific performance, later the applicant/plaintiff came to know that the respondents have violated certain conditions and therefore, the present application is filed to amend the plaint. He also drew the attention of this Court to proviso to Section 21(5) of the Specific Relief Act and he also placed reliance of the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another reported in 2022 SCC Online SC 1128.***

5. The learned counsel for the respondents submitted that the agreement itself is of the year 2012 and the suit is in the year 2015. Immediately, the written statement was also filed and subsequently, the affidavit of Admission/Denial, draft issues were filed and based on which, this Court also framed issues and posted the case for trial. At this stage, the applicant has filed the present applicant in order to protract the trial. Further, this application is filed not only to amend the relief of damages but they have sought for multi various reliefs which are not permissible in the amendment especially after a period of limitation. Therefore, the application has to be dismissed.

6. Admittedly, the applicant has filed the above suit only for specific



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

performance based on the agreement dated 16.05.2012 and he has not claimed either refund of amount or damages.

7. It is settled proposition of law that in a suit for specific performance, unless the plaintiff sought for the relief of refund of advance money or any other alternative relief of compensation, they are not entitled to. Proviso to Section 21 (5) of Specific Relief Act says that at any stage of the proceedings, incase the plaintiff had not claimed such alternative reliefs of refund of advance money, compensation and damages that can be claimed at any stage.

8. The learned counsel for the applicant drew the attention of this Court to paragraph No.60 of the above referred judgment which is extracted as follows:-

"60. The aforesaid provisions of the Act 1963 were duly considered by the Bombay High Court in the case of Kahini Developers Pvt. Ltd. v. Mukesh Morarjipanchamatia, eported in (2013) 3 Mah LJ 440, Dr. Justice D.Y. Chandrachud, (as His Lordship then was), speaking for the Bench, very lucidly and in the most erudite manner explained is under:

"9. The object of the legislature in introducing the proviso to sub-section (5) of section 21 and to sub-section (2) of section 22 was to obviate a multiplicity of the proceedings. In Babu Lal v. Hazari Lal, (1982) 1 SCC 525 AIR 1982 SC 818 the Supreme Court noted that the legislature "has given ample power to the Court to allow amendment of the plaint at any stage." (At para 20 page 825), This, the Supreme Court held, would include even the stage of execution, The Supreme Court also held



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A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

that a mere contract for sale or for that matter, a decree for specific performance does not confer title on the buyer and that title would pass only upon execution of the decree. While discussing the issue of limitation, the Supreme Court held as follows:

"If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the Petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law Courts always abhor." (At para 21 page 825)

*10. The same view was taken by the Supreme Court in a later judgment in *agdish Singh v. Natthu Singh*, (1992) 1 SCC 647: AIR 1992 SC 1604: "So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under section 21 of*



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case section 73 of the Contract Act is invoked. This amendment is under the discipline of R.17, 0.6, C.P.C. The fact that sub-section (4) in turn, invokes section 73 of the Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction." (At para 10 page 1608)

In the decision in Shamsu Suhara Beevi (supra), while holding that the High Court had erred in granting compensation under section 21, in addition to the relief of the specific performance in the absence of a prayer to that effect, the Supreme Court held that a prayer could have been made to that effect either in the plaint or by amending the plaint at any later stage of the proceeding to include the relief of compensation in addition to the relief of a specific performance. The plaint, however, in that case, was never amended and the order of the High Court was, therefore, held to be in error. These principles have also been noticed in a judgment of a learned Single Judge of this Court in Manohar Dhundiraj Joshi v. Jhunnulal Hariram Yadao, 1983 Mah LJ 369.

9. In this case, this application is filed only to amend the plaint for alternative reliefs which would only form part of the plaint. Mere amending the plaint would not cause any prejudice to the respondents/defendants and that the



A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

plaintiff has to prove their claim and other factual aspects. Even if the plaint is amended and the alternative reliefs form as part of the plaint, the respondents/defendants can take all their defense during trial in the suit.

10. Therefore, this application is allowed. The respondents/defendants are at liberty to take all their defense during trial.

11. Registry is directed to carry out necessary amendment and the applicant/plaintiff is directed to pay necessary Court fee and also file the amended copy of the plaint on or **before 20.06.2024.**

12. List the suit in C.S. No.564 of 2015 on 25.06.2024.

13. Further, Registry is directed to de-link the suit in C.S. No.775 of 2015 and list the same on 25.06.2024.

10.06.2024

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Note Issue order copy on 18.06.2024.



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A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

P.VELMURUGAN. J.

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A.No.2481 of 2024 in C.S. No.564 of 2015 and
C.S.No.775 of 2015

A.No.2481of 2024 in
C.S. No.564 of 2015 and
C.S775 of 2015

10.06.2024