



C.S.(Comm.Div.)No.37 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

C.S.(Comm.Div.)No.37 of 2023

PVR Inox Limited,
Rep. By its authorized signatory
Opposite Gundecha Symphony,
Andheri (west),
Mumbai – 400 053

.. Plaintiff

-VS-

Thirukumaran Entertainment,
Sole Proprietorship
Rep. By Mr.Chandrasekaran Vijayakumar
Chennai.

.. Defendant

PRAYER: Civil Suit is filed under Order IV Rule 1 of High Court
O.S. Rules and Order VII Rule 1 of CPC and Section 7 of the Commercial
Courts Act, 2015, praying;



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(a) for a direction to the defendant to pay to the plaintiff a sum of Rs.1,83,81,809/- together with interest thereon at the rate of 18% per annum on the principal amount of Rs.1,83,81,809/- from the date of filing of the suit till the date of realization in full; and

(b) to direct the defendant to pay costs of the suit to the plaintiff.

For Plaintiff : Mr.Abishek Jenasenan

For Defendant : Mr.Vijayan Subramanian

JUDGMENT

The suit has been filed for recovery of a sum of Rs.1,83,81,809/- together with interest at 18% per annum from the date of filing of the suit till the date of realization. The plaintiff has also sought for costs of the suit from the defendant.

2. The plaintiff is a public limited company owning several theatres. The defendant is a producer of cinematographic films. The films produced by the defendant are also screened in the theatres owned by the plaintiff. The defendant has to pay certain payments to the plaintiff in respect of the



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films produced by the defendant and screened in the plaintiff's theatres. The plaintiff and the defendant have entered into a Memorandum of Settlement dated 18.11.2021 (MoS), under which, the defendant had agreed that a sum of Rs.1,83,81,809/- is due and payable by the defendant to the plaintiff and in case the defendant fails to repay the said sum, the plaintiff shall have lien over the said film and entitled to exploit the said film on its own or through third parties. The plaintiff has contended that as per the Memorandum of Settlement (MoS) dated 18.11.2021, the defendant has assured the plaintiff that the release the film “Kottravai” shall not be delayed beyond April, 2022. According to the plaintiff, despite the undertaking given by the defendant, till date, the said film “Kottravai” is yet to be released. Under those circumstances, the plaintiff has filed this suit seeking for recovery of a sum of Rs.1,83,81,809/- from the defendant together with interest at 18% per annum from the date of the suit till the date of realization.

3. The defendant's right to file written statement has been forfeited, since the same has not been filed within the statutory period.



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4. The plaintiff's authorized representative Mr.Sunil Narvekar was examined as a witness on behalf of the plaintiff (PW1). He has also filed a proof affidavit reiterating the contents of the plaint. Through PW1, the following documents were marked as exhibits:-

<i>Exhibit</i>	<i>Description</i>
P1	The original board resolution and authorization letter of the authorised signatory dated 02.06.2021 and 20.11.2023
P2	The photocopy of the order of Amalgamation of SPI with PVR Limited dated 23.08.2019
P3	The photocopy of the order of Amalgamation of PVR Limited with Inox Leisure Limited dated 12.01.2023.
P4	The photocopy of the deal memos pertaining to the cinematographic film “24” and deal memo pertaining to cinematographic film “Maayavan” dated 16.04.2016, 06.05.2016 and 11.12.2017.
P5	The printout of the ledger accounts of the defendant maintained by the plaintiff from 01.04.2015 to 01.12.2018.
P6	The printout of the business statement for the cinematographic films “24” and Maayavan”.
P7	The printout of the E-mail from SPI to defendant seeking refund to the remaining advance amounts along with annexures dated 16.08.2018.
P8	The office copy of the legal notice sent by plaintiff to the defendant along with the tracking details dated 15.03.2021
P9	The office copy of the legal notice sent by plaintiff to the defendant along with the tracking details dated 25.10.2021
P10	The photocopy of the reply dated 01.11.2021 to legal notice dated 25.10.2021 by the defendant.
P11	The office copy of the rejoinder dated 15.11.2021 to the reply sent by the plaintiff along with enclosures.



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<i>Exhibit</i>	<i>Description</i>
P12	The photocopy of the Memorandum of Settlement between plaintiff and the defendant dated 18.11.2021.
P13	The photocopy of the cheques dated 28.02.2022 issued by the defendant in favour of the plaintiff bearing Cheques No. 000475 600053024 0006367 29 and bearing cheque No. 000476 600053024 006367 29 along with return memos dated 10.03.2022.
P14	The office copy of the section 138 notice sent by plaintiff to the defendant along with tracking details dated 25.03.2022.
P15	The photocopy of the reply dated 10.04.2022 to section 138 by the defendant.
P16	The photocopy of section 138 complaint filed before Saidapet Metropolitan Magistrate, Chennai.
P17	The office copy of the legal notice issued to defendant calling upon them to repay the monies along with tracking and original acknowledgment dated 08.12.2022

The defendant's counsel has also cross-examined the plaintiff's witness.

5. Heard Mr.Abishek Jenasenan, learned counsel for the plaintiff, and Mr.Vijayan Subramanian, learned counsel for the defendant.

6. The learned counsel for the plaintiff drew the attention of this Court to the acknowledgment of liability given by the defendant under the MoS dated 18.11.2021 (Ex.P12). As seen from the acknowledgment of liability, the defendant has admitted that a sum of Rs.1,83,81,809/- is due



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and payable by the defendant to the plaintiff. The same is also not disputed by the learned counsel for the defendant.

7. The learned counsel for the plaintiff would further submit that since the subject movie, namely, “Kottravai” has not been released despite the assurance given by the defendant under the MoS dated 18.11.2021 (Ex.P12) that the said movie will be released before April, 2022, the plaintiff is seeking recovery of the outstanding amount, as acknowledged by the defendant in the MoS dated 18.11.2021 (Ex.P12).

8. The learned counsel for the defendant would submit that the movie is likely to be released in June, 2024, and therefore, the question of granting a decree for money as prayed for by the plaintiff at this stage is pre-mature. To this submission, the learned counsel for the plaintiff drew the attention of the Court to the undertaking affidavit filed into this Court by the defendant on 01.04.2023, under which, the defendant has given an undertaking that the film “Kottravai” is expected to release before September, 2023. He would further submit that the defendant has flouted



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the said undertaking also and till date, the film “Kottravai” is yet to be released. Therefore, he would submit that the plaintiff is entitled for money decree as prayed for in this suit, as the plaintiff cannot wait indefinitely for the release of the subject movie “Kottravai”.

DISCUSSION:

9. Admittedly, neither the payment of Rs.1,83,81,809/- due and payable to the plaintiff under the MoS dated 18.11.2021 (Ex.P12) has been paid nor the defendant has released the subject movie “Kottravai”. Despite the assurance given by the defendant in the MoS dated 18.11.2021 (Ex.P12) that the said movie shall be released before April, 2022, and the subsequent undertaking given by the defendant before this Court on 01.04.2023 through an affidavit, wherein the defendant has once again re-assured that the film “Kottravai” will be released before September, 2023, the said film is yet to be released.

10. When the said sum of Rs.1,83,81,809/- became due and payable, even according to the defendant, latest by April, 2022, the date for release



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of the subject movie “Kottravai”, necessarily, the plaintiff cannot wait endlessly to recover its dues and need not wait for the defendant to release the movie “Kottravai” for getting their payment. The MoS dated 18.11.2021 (Ex.P12) and the affidavit of undertaking dated 01.04.2023 would conclusively prove the plaintiff's suit claim, wherein they have sought for recovery of a sum of Rs.1,83,81,809/- from the defendant.

11. Being a commercial transaction, the plaintiff is certainly entitled to get interest from the defendant for the delayed payment. Though the plaintiff has claimed 18% interest, considering the nature of the transactions and the financial difficulty expressed by the defendant through the submission made by the learned counsel for the defendant, this Court awards interest at 8% per annum.

12. For the foregoing reasons, the suit is decreed as prayed for by directing the defendant to pay the plaintiff a sum of Rs.1,83,81,809/- together with interest at 8% per annum from the date of filing of the suit till the date of realization. The defendant is also directed to pay the costs of the



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suit to the plaintiff. In view of the money decree passed in favour of the plaintiff, it is made clear that the lien, which they are having over the subject movie “Kottravai”, stands extinguished.

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Index:yes/no

Neutral citation: yes/no

Speaking/non-speaking
rkm

Plaintiff's witnesses:

Mr.Sunil Narvekar - PW1

Documents exhibits on the side of the plaintiff:-

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ABDUL QUDDHOSE, J.

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