



C.S.(Comm. Div.) No.307 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S (Comm. Div.) No.307 of 2023 and

O.A.No.1054 of 2023 and

A.No.6582 of 2023

M.Gopalakrishnan

Proprietor, M.V.M. Traders

No.18, 4th Cross Street, Trustpuram

Kodambakkam, Chennai - 600 024

... Plaintiff

Vs.

1. P.K.Ram Mohan,

Proprietor, Kalpataru Pictures.

No.24, Flat No.F1, AVM Street,

Saligramam, Chennai - 600 093

2. Qube Cinema Technologies Private Limited,

rep. by its Managing Director

No.42, Dr. Ranga Road

Mylapore, Chennai - 600 004

3.Sun TV Network Limited,

represented by its Managing Director,



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Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai – 600 028.

(The suit as against the Defendant No.3 is dismissed
as not pressed as per order dated 19.02.2024 in
O.A.No.1054/2023 and A.No.6582/2023)

... Defendants

Prayer: The suit filed under Order IV Rule 1 of O.S.Rules read
with Order VII Rule 1 C.P.C.1908, praying to pass judgment and decree as
follows:

a) directing the 1st defendant to pay the plaintiff a sum
of Rs.5,00,00,000/- (Rupees five crores only), along with a
further interest calculated at the rate of 24% per annum on
the principal sum of Rs.2,68,00,000/- (Rupees two crores
and sixty eight lakhs only) from the date of this plaint till the
date of realization of the amount and,

b) granting an order of permanent injunction
restraining the defendants or anyone claiming under them
from exhibiting or dealing with the schedule mentioned film
in any manner without first discharging the duties payable to
the plaintiff.

For Plaintiff : Mr.K.Surendar

For D1 : Set Ex-parte on 24.04.2024

For D2 : Set Ex-parte on 19.02.2024

For D3 : Dismissed as not pressed vide order
dated 19.02.2024



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JUDGMENT

This suit is filed for directing the 1st defendant to pay the plaintiff a sum of Rs.5,00,00,000/- along with further interest calculated at the rate of 24% per annum on the principal sum of Rs.2,68,00,000/- from the date of plaint till the date of realization and for permanent injunction restraining the defendants or anyone claiming under them from exhibiting or dealing with the schedule mentioned film in any manner without first discharging the duties payable to the plaintiff.

2. The averments made in the plaint is that the plaintiff is a financier and has been providing financial assistance to his customers through his proprietorship entity namely, 'MVM Traders'. The plaintiff has been carrying on his business for more than fifteen years and as such, has earned enormous good will and reputation owing to his impeccable integrity and credibility in the conduct of his business. The 1 defendant is a film producer by profession and has been carrying on his business under



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the name and style of 'Kalpataru Pictures'. During April, 2017, the 1st defendant had approached the plaintiff seeking for a loan citing urgent financial requirements for producing a film. In the ordinary course of business, the plaintiff had also sanctioned a loan to an extent of Rs.5,00,00,000/- (Rupees five crores only), which was to be released in favour of the 1st defendant as required by him from time to time. The 1st defendant further assured to repay the loan within a period of 18 months, along with an interest calculated at the rate of 36% per annum, as per the prevailing market rate.

(i) Accordingly, a Finance Agreement was entered into between the plaintiff and the 1st defendant on 15.04.2017 recording the terms and conditions of the above said arrangement. Based on the said Agreement dated 15.04.2017, the plaintiff had started to disburse the loan amount in parts as requested by the 1st defendant and had released a total sum of Rs. 1,80,00,000/- (Rupees one crore and sixty lakhs only) on various dates



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until 07.01.2019. Although the Agreement dated 15.04.2017 stipulated repayment of the loan dues within a period of 18 months along with interest, the 1st defendant failed to settle the loan account in terms of the said Agreement. The defendant represented that he had already commenced works for a movie titled as "NAA NAA" starring Sarathkumar, Sasikumar and others with music composed by Harasha Vardhan Rameshwar and directed by N.V. Nirmal Kumar, and requested for further financial assistance and extension of time for repayment of the dues. Thus, as per the request of the 1st defendant, another Finance Agreement was entered into between the plaintiff and the 1st defendant on 19.07.2019, whereby the loan limit was revised as Rs.3,50,00,000/- (Rupees three crores and fifty lakhs only) and vide Clause 5 of the Finance Agreement dated 19.07.2019, a first and paramount charge over the entire rights of the schedule mentioned film titled, 'NAA NAA' was created in favour of the plaintiff and the 1st defendant was obligated not to create any



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third party rights pertaining to the schedule mentioned film without the written consent of the plaintiff. Subsequent to the said Agreement dated 19.07.2019, the plaintiff had released a further sum of Rs.88,00,000/- (Rupees eighty eight lakhs only) to the 1 defendant as requested by him on various dates.

(ii) Thus, the plaintiff had totally released a sum of Rs.2,68,00,000/- (Rupees two crores and sixty eight lakhs only) to the 1st defendant as against the schedule mentioned film. At the time of the final disbursal done on 04.09.2021, the 1 defendant had issued a confirmation letter to the plaintiff acknowledging the debt and promising to settle the entire loan dues before release of the schedule mentioned film. Although the 1 defendant had agreed to repay the loan along with interest in a prompt manner without any delay, he has been extremely irregular in repayment and the last payment has been made by him on 22.10.2022 for a sum of Rs. 10,00,000/- (Rupees ten lakhs only). After the said date, despite repeated



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demands made by the plaintiff, the 1st defendant has not made any payment towards the loan dues and as per the statement of account filed herewith, there is a total outstanding of Rs.6,04,13,939.74/- (Rupees six crores four lakhs thirteen thousand nine hundred and thirty nine and paise seventy four only) due and payable by the 1st defendant to the plaintiff as on 30.11.2023, which is inclusive of the interest as mutually agreed upon under Clause 3 of the Finance Agreement dated 19.07.2019.

(iii). The plaintiff has learnt that without settling the loan dues, the 1st defendant has fraudulently assigned the rights pertaining to the schedule mentioned film titled 'NAA NAA' in favour of the 2nd and 3rd defendants without the knowledge and consent of the plaintiff, in utter contravention of Clause 5 of the Finance Agreement dated 19.07.2019. The 1st defendant had categorically undertaken to settle the loan dues payable to the plaintiff before the theatrical release of the schedule mentioned film. The plaintiff holds a prior charge over the rights of the schedule mentioned



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film and the defendants cannot derive any commercial advantage through the schedule mentioned film without first settling the loan dues payable to the plaintiff.

(iv). The 1st defendant has been deliberately evading the plaintiff's demands for settlement of the loan dues and the 2nd and 3rd defendants are attempting to gain commercial advantage through the schedule mentioned film despite knowing about the charge created thereon in favour of the plaintiff. The plaintiff had also initiated pre-suit mediation under Section 12A of the Commercial Courts Act, 2015 before the competent authority viz, the Tamil Nadu State Legal Services Authority, Chennai in TNSLSA No.5052/PIMS/98/2023 on 28.08.2023. However, since the defendants were not coming forward to participate in the mediation proceedings, the same was closed by way of a Non-starter Report dated 26.10.2023.

(v). The plaintiff understands that the 1st defendant is attempting for theatrical release of the schedule mentioned film without discharging the



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dues payable to the plaintiff. Further, the rights pertaining to the schedule mentioned film Including satellite rights, OTT rights, etc. have been assigned to the 2nd and 3rd defendants, in utter contravention of Clause 5 of the Finance Agreement dated 19.07.2019 and the proceeds thereof has been appropriated by the 1 defendant. Since the plaintiff holds first and foremost charge over the Schedule mentioned film, the defendants do not have any right or authority to deal with the schedule mentioned film without first discharging the debts payable to the plaintiff. Hence, the plaintiff is now constrained to institute the present suit for recovery of the loan outstanding from the 1st defendant and for an order of injunction restraining the defendants from dealing with the schedule mentioned film without first discharging the dues payable to the plaintiff.

(vi). The total dues payable by the 1st defendant to the plaintiff stands at Rs.6,04,13,939.74/- (Rupees six crores four lakhs thirteen thousand nine hundred and thirty nine and paise seventy four only) as on



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30.11.2023, which is inclusive of the principal dues and the interest as mutually agreed upon under Clause 3 of the Finance Agreement dated 19.07.2019. However, the plaintiff hereby restricts his claim to a sum of Rs.5,00,00,000/- (Rupees five crores only).

3. The suit summons were served to the defendants. Despite service of summons on the second defendant, no one entered appearance on their behalf and therefore, the second defendant was set ex-arte by this Court on 19.02.2024. Though the first defendant represented through their counsel, they had not filed the written statement within the stipulated period and therefore, the first defendant was set ex-parte by this Court on 24.04.2024. The suit was already dismissed as against the third defendant as not pressed on 19.02.2024.

4. In order to substantiate the claim of the plaintiff, the proprietor of the plaintiff firm was examined as P.W.1; the witness to the finance agreement was examined as P.W.2 and the witness to the promissory note



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was examined as P.W.3 and 9 documents were marked through P.W.1 as Ex.P.1 to Ex.P.9 in which, Ex.P.1 is the original finance agreement dated 15.04.2017; Ex.P.2 is the original promissory note dated 10.02.2018 executed by the 1st defendant; Ex.P.3 is the original finance agreement dated 19.07.2019; Ex.P.4 is the original confirmation letter issued by the first defendant dated 04.09.2021; Ex.P.5 is the online copy of Bank statement of accounts; Ex.P.6 is the original statement of accounts; Ex.P.7 is the original non-starter report dated 26.10.2023; Ex.P.8 is the online copy of movie posters dated 04.12.2023; Ex.P.9 is the online copy of screen shot of the third defendant's website dated 04.12.2023.

5. On a perusal of the averments made in the plaint and the proof affidavit filed by the witnesses and also the documents marked on the side of the plaintiff, this Court finds that the plaintiff has proved their claims. As stated above, the suit was already dismissed as against the 3rd defendant as not pressed on 19.02.2024.



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6. Therefore, the suit is decreed as prayed for with costs and interest at the rate of 24% per annum from the date of plaint till the date of decree and thereafter 12% from the date of decree till the date of realisation. The time period for payment is three months.

7. Consequently, connected applications are closed.

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(1/2)

List of witnesses examined on the side of the plaintiff: 3 Witnesses

1. M.Gopalakrishnan - P.W.1
2. C.Sabari Kumar - P.W.2
3. Yogaraj - P.W.3

List of documents marked on the side of the plaintiff: 9 Documents

S. No.	Exhibits	Dated	Description of the Documents
1	Ex.P.1	15.04.2017	Original finance agreement
2	Ex.P.2	10.02.2018	Original promissory note executed by the 1st defendant



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S. No.	Exhibits	Dated	Description of the Documents
3	Ex.P.3	19.07.2019	Original finance agreement
4	Ex.P.4	04.09.2021	Original confirmation letter issued by the first defendant
5	Ex.P.5		Online copy of Bank statement of accounts (Affidavit under Section 65B of the Indian Evidence Act filed and recorded);
6	Ex.P.6		Original statement of accounts
7	Ex.P.7	26.10.2023	Original non-starter report
8	Ex.P.8	04.12.2023	Online copy of movie posters (Affidavit under Section 65B of the Indian Evidence Act filed and recorded);
9	Ex.P.9	04.12.2023	Online copy of screen shot of the third defendant's website (Affidavit under Section 65B of the Indian Evidence Act filed and recorded).

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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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No



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P.VELMURUGAN. J.

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