IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.01.2025

Pronounced on : 28.01.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.645 of 2019

Mr.Thiagarajan Kumararaja
M/s.Tyler Durden and Kino First,
Sole Proprietorship,
Having its office at:
No.6, 3rd Street, R.E. Nagar,
Porur, Chennai - 600 116. ... Plaintiff

vs.

1.East West Dream Works Entertainment LLP,
Having its office at:
129, B, 1st Floor,
7th Street, AVM Avenue,
Virugambakkam, Chennai - 600 092.

2. Alchemy Vision Works,
Having its office at:
Flat No.101, 1st Floor,
Plot No.24, BldgChaurang Siddhi,
Sector 34, C Village, Owe-Khargar,
Panvel, Raighad, Mumbai - 410 206. ... Defendants

PRAYER: Plaint filed under Order VII Rule 1 of C.P.C., 1908 and Order IV Rule 1 of Original Side Rules for the following reliefs:

a. Directing the Defendants to pay a sum of Rs.3,15,51,647/- which includes Rs. 3,10,85,367/- due from the Defendant jointly and/or severally along with interest at the rate of 18% per annum amounting to Rs. 4,66,280/- until the date of filing of the suit.

b. Directing the Defendants to pay further interest of 18% per annum from the date of this Plaint to the date of realization on the sum of Rs. 3,10,85,367/-.

c. Directing the Defendants to pay the cost of this suit.

For Plaintiff	:	Mr. M.V. Swaroop
For Defendants	:	Mr.S.R. Rajagopal, Senior Counsel for R. Sathish Kumar, Mr.C. Ramesh

JUDGMENT

This suit is one in which both parties to the dispute blame each other of having committed breach of contract.

2. The plaintiff and the first defendant had entered into a Film Investment Agreement dated 06.10.2017, under which certain sums of money were to be invested by the first defendant for the production of

the Tamil film by name, "THE SUPER DELUXE" by the plaintiff. The plaintiff claims that a total sum of Rs.4,00,00,000/- ought to have been invested by the first defendant as per the Film Investment Agreement dated 06.10.2017, but the first defendant invested only Rs.2,35,00,000/- due to which the plaintiff claims that he suffered losses.

3. The plaintiff also claims that being an investment agreement, the first defendant is only entitled for investment returns as per the terms and conditions of the Film Investment Agreement dated 06.10.2017. According to the plaintiff, whatever income was received by the plaintiff through sale of Tamil Nadu Theatrical Rights for the film "THE SUPER DELUXE", the plaintiff had given the returns to the first defendant as per the terms and conditions of the Film Investment Agreement dated 06.10.2017.

4. According to the plaintiff, no moneys are due and payable by the plaintiff to the first defendant, but, instead, it is only the first defendant, who has failed to invest the balance sum of Rs.1,65,00,000/- with the plaintiff as per the terms and conditions of the Film Investment

Agreement dated 06.10.2017, who is liable to pay the said sum together with interest as claimed in the plaint. The plaintiff, therefore, has made a suit claim of Rs.3,15,51,647/-, which includes Rs.3,10,85,367/- from the defendant jointly and severally together with interest at the rate of 18% per annum, amounting to Rs.4,66,680/- till the date of filing of the suit.

5. On the other hand, the first defendant has made a counter claim for a sum of Rs.1,00,00,000/- together with interest against the plaintiff, by claiming that since as per the terms of the Film Investment Agreement dated 06.10.2017, the first defendant is entitled to 40% of the amounts mentioned in the agreement entered into between the plaintiff and "Y Not X Marketing and Distribution LLP", which discloses Rs.10,00,00,000/-, which the plaintiff claims to have entered into, the defendants are entitled to 40% of the said amount as per the terms and conditions of the Film Investment Agreement dated 06.10.2017, which works out to Rs.4,00,00,000/-, out of which the plaintiff has repaid only Rs.3,00,00,000/-. Since there remains a balance of Rs.1,00,00,000/-, which according to the first defendant is the sum due and payable to them, they have made a counter claim against the plaintiff for a sum of

Rs.1,00,00,000/- together with interest in the suit.

6. Based on the pleadings of the respective parties, the following issues were framed by this Court on 12.03.2020:

"a) Whether the plaintiff is entitled to the sum of Rs.3,15,51,647/- with interest as claimed in the suit?

b) Whether the plaintiff is entitled to the interest for the suit claim?

c) Whether the defendant is entitled to a sum of Rs.1,00,00,000/- with interest at the rate of 24% p.a. from the date of counter claim till date of realization?

d) To what other reliefs, are the parties entitled to?"

7. The plaintiff has let in oral and documentary evidence. But the defendants have let in oral evidence alone as no documents were marked as exhibits on their side.

8. The sole proprietor of the plaintiff, one Mr.Thiagarajan Kumararaja was examined as a witness (PW1). He filed proof affidavit

on behalf of the plaintiff and through him, the following documents were marked as exhibits on the side of the plaintiff:

Date	Nature of Document	Ex. No.
06.10.2017	Film Investment Agreement entered into between the plaintiff and the first defendant	P1
-	Photocopy of the Bank Statement for the account maintained by the plaintiff for the period from 11.10.2017 to 16.10.2017, 01.01.2018 to 10.03.2018 and 04.06.2018 and 30.06.2018	P2
09.02.2019	Photocopy of the Film Theatrical Distribution Agreement entered into between the plaintiff and the "Y Not X Marketing and Distribution LLP"	P3
-	Photocopy of the Bank Statement for the account maintained by the plaintiff for the period from 02.02.2019 to 15.04.2019	P4
-	E-mail communications between the plaintiff and the defendants and third parties	P5 (series)
16.09.2019	Office copy of the legal notice sent by the plaintiff through its counsel to the defendants	P6
-	Certificate filed under Section 65-B of the Indian Evidence Act	P7

Exs.P2, P4 and P5 were marked as exhibits subject to the objection raised by the defendants' counsel. The plaintiff's witness (PW1) was cross examined by the defendants' counsel.

9. The defendants' witness was one, Mr.R.Cheralathan, who is the partner of the first defendant. Mr.Cheralathan, the partner of the first defendant also filed his proof affidavit dated 07.07.2022 in support of the defendants' case. The defendants did not file any documents on their side. The defendants' witness Mr.Cheralathan was cross-examined by the plaintiff's counsel.

10. Heard Mr. M.V. Swaroop, learned counsel for the plaintiff and Mr.S.R. Rajagopal, Senior Counsel for Mr.R. Sathish Kumar and Mr.C. Ramesh for learned counsel for the defendants.

11. The learned counsel for the plaintiff drew the attention of this Court to the Film Investment Agreement dated 06.10.2017, which is the contract entered into between the plaintiff and the first defendant and would submit that the first defendant has committed breach of contract since they did not invest Rs.4,00,00,000/- with the plaintiff as per the terms and conditions of the said agreement. He also drew the attention of this Court to the Film Theatrical Distribution Agreement dated

09.02.2019 entered into between the plaintiff and "Y Not X Marketing and Distribution LLP" and would submit that the plaintiff had given the returns to the first defendant as per the terms and conditions of the Film Investment Agreement dated 06.10.2017 by paying 40% of the amount received by the plaintiff through the Film Theatrical Distribution Agreement dated 09.02.2019 and therefore, the plaintiff is not liable to pay any money to the first defendant. Further, he would submit that as per the terms and conditions of the Film Investment Agreement dated 06.10.2017, entered into between the plaintiff and the first defendant, the first defendant ought to have made a total investment of Rs.4,00,00,000/- with the plaintiff. But they invested only a sum of Rs.2,35,00,000/-, that too belatedly and therefore, there became a necessity for the plaintiff to file this suit, seeking recovery of the suit claim after issuance of legal notice to the defendants.

12. The learned counsel for the plaintiff also drew the attention of this Court to the legal notice issued by the plaintiff's counsel to the defendants, which was marked as an exhibit on the side of the plaintiff during Trial. To substantiate the plaintiff's claim, the learned counsel for

the plaintiff drew the attention of this Court to the bank statements filed by the plaintiff, which were marked as exhibits for the purpose of establishing that only a sum of Rs.2,35,00,000/- was received by the plaintiff, though the first defendant had agreed to invest with the plaintiff a total sum of Rs.4,00,00,000/-.

13. The learned counsel for the plaintiff claims that the agreement entered into between the plaintiff and the first defendant is only an investment agreement and is not a finance agreement. According to the learned counsel for the plaintiff, the plaintiff has fulfilled their part of the contract and it is only the first defendant, who has committed breach of contract by not providing the whole investment as agreed upon by them under the Film Investment Agreement dated 06.10.2017.

14. On the other hand, the learned counsel for the defendants would submit that the suit filed by the plaintiff is a false and a frivolous suit. According to him, only as an afterthought to prevent the first defendant from recovering their legitimate claim of Rs.1,00,00,000/-, the plaintiff has filed this pre-emptive suit. According to him, only due to the

delay on the part of the plaintiff to produce the feature film "THE SUPER DELUXE", which was also pointed out by the first defendant to the plaintiff through various e-mails, the first defendant was compelled not to invest the entire sum of Rs.4,00,00,000/- with the plaintiff. He also drew the attention of this Court to the relevant clauses in the Film Investment Agreement dated 06.10.2017 and would submit that it is clear from those clauses that the first defendant was not obligated to invest the entire amount of Rs.4,00,00,000/- with the plaintiff and it is also made clear in the agreement that, in case the first defendant does not invest the total sum of Rs.4,00,00,000/-, the plaintiff is liable to refund whatever amount the first defendant had invested together with interest. According to him, since the plaintiff has admitted that they had entered into Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP", the first defendant had made a counter claim of Rs.1,00,00,000/- together with interest against the plaintiff only in accordance with the terms of the Film Investment Agreement dated 06.10.2017. However, at the same time, he would submit that the first defendant was not made aware of the said contract dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" by the plaintiff. He also drew the attention of this Court to the deposition of PW1 and DW1 as well as the documents, more particularly, the e-mail communications between the plaintiff, defendants and third parties, which were marked as Ex.P5 to substantiate the defendants' case.

Discussion:

15. The burden of proof under the Indian Evidence Act makes it clear that the party, who asserts a fact must prove it. This means, that the party who wants the Court to believe something must provide evidence to support their claim.

16. In the case on hand, the plaintiff claims that as per the terms and conditions of the Film Investment Agreement dated 06.10.2017 (Ex.P1), the first defendant had agreed to invest Rs.4,00,00,000/- with the plaintiff for the production of the feature film "THE SUPER DELUXE". But, however, the first defendant invested only a sum of Rs.2,35,00,000/-, which caused loss to the plaintiff. Whether the aforesaid statement of the plaintiff is correct or not, can be ascertained by referring to the relevant clauses in the Film Investment Agreement dated

06.10.2017 (Ex.P1). The relevant clauses of the aforesaid agreement (Ex.P1) are as follows:

*" 2. **Provision of Investment:***

...

*3. **Terms of investment:***

a) If the Tamil Nadu Theatrical Rights are sold for a consolidated sum of Rs.10,00,00,000/- (Rupees Ten Crore Only) or less, the Investor shall be paid 40% of the same.

b) If the Tamil Nadu Theatrical Rights are sold for more than Rs.10,00,00,000/- (Rupees Ten Crore Only), the Investor shall be paid Rs.4,00,00,000/- (Rupees Four Crore Only) plus 50% of the amount of the sale consideration exceeding Rs.10,00,00,000/-.

c) TDKF without consent from East West Dream Works Production will not enter into any agreement with Distribution or Film Production house for sale of Tamilnadu Theatrical Rights.

d) ...

e) If the investment is not made in time as stipulated in Clause 2, or if any disputes arise between the parties during the course of the completion of the Film, the parties agree that the amount advanced until that point shall be returned by TDKF to the Investor without any interest once the Tamil Nadu Theatrical Rights are sold by TDKF.

f) ..."

17. As seen from the aforementioned clauses, it is clear that the investor (the first defendant herein) had agreed to invest with the plaintiff to the extent of Rs.4,00,00,000/- in four stages. The phrase, "To the extent" makes it clear that the first defendant was not obligated to invest the entire Rs.4,00,00,000/- with the plaintiff. The subsequent clause found in the terms of the investment viz., clause 3 (e) makes it abundantly clear that the first defendant was not obligated to invest Rs.4,00,00,000/- and non investment of the said amount of Rs.4,00,00,000/- would not amount to breach of contract. To provide an

option for the first defendant to come out of profit sharing in respect of the production of the film "THE SUPER DELUXE", the first defendant under clause 3 (e) has the option to seek for recovery of the advance amount paid by them to the plaintiff if the investment is not made by them as per the terms and conditions stipulated in clause (2) of the Film Investment Agreement dated 06.10.2017. Clause 3 (e) of Ex.P1 makes it clear that if the investment is not made on time or any dispute arises between the parties, the parties agree that the amount advanced until that point shall be returned by the plaintiff to the first defendant without any interest once the Tamil Nadu Theatrical Rights are sold by the plaintiff.

18. In the case on hand, the plaintiff has admitted that they have sold the Tamil Nadu Theatrical Rights for the film "THE SUPER DELUXE" to a party by name "Y Not X Marketing and Distribution LLP" under a Film Theatrical Distribution Agreement dated 09.02.2019, which has been marked as Ex.P3. There is no evidence produced by the plaintiff to prove that, only with the consent of the defendants, the plaintiff had entered into a Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" (Ex.P3),

though the plaintiff contends in his deposition that through phone calls, the first defendant was informed about the same. The defendants' witness (DW1) through his deposition has also denied the said statement made by the plaintiff. No iota of evidence has been produced by the plaintiff before this Court to prove that the first defendant had prior knowledge about the contract entered by the plaintiff dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" for the sale of Tamil Nadu Theatrical Rights for the film "THE SUPER DELUXE". The plaintiff has failed to discharge his initial burden of proof to prove that the defendants had knowledge about the plaintiff having entered into a Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP". Therefore, the question of profit sharing as per the terms and conditions of the Film Investment Agreement dated 06.10.2017 (Ex.P1) between the plaintiff and the first defendant does not arise.

19. The terms and conditions of the Film Investment Agreement dated 06.10.2017 (Ex.P1) makes it clear that only with the knowledge of the defendants, the plaintiff can enter into such an agreement (Film

Theatrical Distribution Agreement) and make the defendants bound by the profit sharing ratio as stipulated under the terms and conditions of the Film Investment Agreement dated 06.10.2017 (Ex.P1). Therefore, the suit claim, for the foregoing reasons, has to be rejected:

a) The defendants did not agree unconditionally to invest Rs.4,00,00,000/- with the plaintiff in respect of the production of the film "THE SUPER DELUXE" under the Film Investment Agreement dated 06.10.2017 (Ex.P1);

b) The defendants were not made aware by the plaintiff that the plaintiff will be entering into the Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" in respect of the sale of Tamil Nadu Theatrical Rights over the film "THE SUPER DELUXE";

c) The exchange of communications between the plaintiff and the defendants, which have been marked as Ex.P5 also does not reveal that the defendants were made aware by the plaintiff that the plaintiff will be entering into a Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" (Ex.P3) in respect of the sale of Tamil Nadu Theatrical Rights over the film "THE SUPER

DELUXE". Though certain communications between the plaintiff and the defendants with regard to the sale of Tamil Nadu Theatrical Rights have been exchanged, it is an admitted fact that the signed copy of the Film Theatrical Distribution Agreement dated 09.02.2019 (Ex.P3) with "Y Not X Marketing and Distribution LLP" was never sent to the defendants by the plaintiff immediately after the same was entered into.

20. In respect of the counter claim made by the defendants against the plaintiff for a sum of Rs.1,00,00,000/- together with interest, the said counter claim also does not deserve any merit for the following reasons:

a) The defendants cannot blow hot and cold. They claim that they are not aware that the plaintiff had entered into a Film Theatrical Distribution Agreement dated 09.02.2019 with "Y Not X Marketing and Distribution LLP" (Ex.P3). But, at the same time, they claim returns out of the very same agreement for which the counter claim has been made by them against the plaintiff in the suit;

c) Except for letting in oral evidence in respect of their counter claim, they have not filed any documentary evidence in support of their counter claim;

d) The defendants have also not Summoned the "Y Not X Marketing and Distribution LLP" as a witness with whom the plaintiff claims to have entered into a Film Theatrical Distribution Agreement dated 09.02.2019 (Ex.P3);

e) The investments made by the defendants with the plaintiff for a sum of Rs.2,35,00,000/- was also made belatedly and not as per the stipulated dates mentioned in the Film Investment Agreement dated 06.10.2017 (Ex.P1). The defendants have also been paid Rs.3,00,00,000/- by the plaintiff for a total investment of Rs.2,35,00,000/- made by the defendants and therefore, it is not a case where the defendants have not received any return for their investment;

f) The burden of proof in respect of the counter claim is on the defendants. They have to discharge their burden by letting in relevant oral and documentary evidence to prove their counter claim. Having failed to discharge their burden by letting in oral and documentary evidence supporting their counter claim, the question of awarding counter claim to the defendants as prayed for in the suit does not arise.

21. Both the parties viz., the plaintiff and the defendants have failed to discharge their burden of proof in support of their respective claims in the suit. The suit claim and the counter claim does not deserve any merit. Hence, both the suit claim and the counter claim are dismissed. No Costs.

28.01.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes
ab

List of Witness examined on the side of the Plaintiff:

Mr.Thiagarajan Kumararaja (PW1)

List of the Exhibits marked on the side of the Plaintiff:

Date	Nature of Document	Ex. No.
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-	Photocopy of the Bank Statement for the account maintained by the plaintiff for the period from 02.02.2019 to 15.04.2019	P4
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16.09.2019	Office copy of the legal notice sent by the plaintiff through its counsel to the defendants	P6
-	Certificate filed under Section 65-B of the Indian Evidence Act	P7

List of Witness examined on the side of the Defendants:

Mr.R.Cheralathan (DW1)

28.01.2025

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ABDUL QUDDHOSE, J.

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pre-delivery judgment
in C.S. No.645 of 2019

28.01.2025