

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **05.04.2023**

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

O.S.A.(CAD).No.73 of 2022
and
C.M.P.No.9395 of 2022

Vishal Krishna Reddy,
Residing at No.73, Kumaran Colony,
1st Street, Vadapalani, Chennai – 600 026.

... Appellant

Versus

M/s. Lyca Productions Private Limited,
Rep.by its Authorised Signatory Mr.Neelkant Narayanpur,
No.55, Vijayaraghava Road,
T.Nagar, Chennai – 600 017.
Tamilnadu.

... Respondent

Prayer : Original Side Appeal filed under Clause 15 of Letters Patent, against the fair and decretal order dated 08.03.2022 in O.A.No.35 of 2022 in C.S.No.59 of 2021 passed by the learned Single Judge.

For Appellant : Mr.A.Chidambaram

For Respondent : Mr.V.Ragavachari, Senior Counsel
for Mrs.Hema Srinivasan

JUDGMENT

D.Bharatha Chakravarthy. J.,

A. The Appeal :

This Original Side Appeal is directed against the order of the learned Single Judge, dated 08.03.2022 in O.A.No.35 of 2022 in C.S.No.59 of 2021, by the Respondent. In this judgment, the parties are referred to as per their array in the Suit.

B. The facts of the case:

2. The brief facts leading to the filing of the appeal is that by a loan agreement dated 21.09.2019, the plaintiff and the defendant agreed that the plaintiff will take over the loan of the defendant with the third party by name, *Gopuram Films/Anbu Cheziyan* to the tune of Rs.21.29 crore and the defendant should pay the said sum to the plaintiff, with interest at the rate of 30% per annum, calculated on diminishing balance. Alleging that the defendant did not pay the amount as per the payment schedule mentioned in the loan agreement the plaintiff filed the above suit, claiming recovery of a total sum of Rs.30,5,68,137/- with further interest at the rate of 30% per annum with a principal sum of Rs.21.29 crore.

2.1 In the said suit, earlier an application was filed in A.No.2339 of 2021, praying for a decree on admission which was dismissed, holding that the admission alleged on the part of the defendant was not clear and categorical. The application in O.A.No.35 of 2022 was filed for an interim injunction restraining the respondent/defendant from in any manner releasing his movie “*VEERAME VAGAI SUDUM*” and the application in A.No.350 of 2022, was filed for a direction that all amounts received or receivable in respect of the said film to be deposited into the Court. The said applications were taken up for disposal and by a common order dated 08.03.2022, after considering the contentions by both sides, the learned Single Judge directed the respondent/defendant to establish an interest bearing in the Fixed Deposit Account in a Nationalised Bank in the name of the Registrar General, Madras High Court, for a sum of Rs.15 crore to the credit of the suit, and further directed such fixed deposited amount shall be for an initial period of one year and it should be renewed until the disposal of the suit, and further consequential directions were also issued. Paragraph No.10 of the common order dated 08.03.2022 passed by the learned Single Judge is extracted hereunder:-

“10. In the result, these applications are disposed of on the following terms without any order as to costs:

(i) The respondent is directed to establish an interest bearing fixed deposit account in a nationalised bank in the name of the Registrar General, Madras High Court, for a sum of Rs.15 crore to the credit of the suit. Such fixed deposit shall be for an initial period of one year, and should be renewed until disposal of the suit.

(ii) Upon establishing the fixed deposit, the original fixed deposit receipt shall be deposited with the Registrar General and a copy thereof shall be provided to the applicant/plaintiff.

(iii) Such fixed deposit shall be established within a period of three weeks from the date of receipt of a copy of this order.

(iv) The fixed deposit shall be subject to the outcome of the suit.

(v) The applicant is permitted to produce the additional documents subject to objections by the respondent, including with regard to relevance and proof. The respondent shall file the statement of admission/denial in respect of the additional documents within two weeks.

(vi) List the suit on 22.03.2022.”

Aggrieved by the same, the present Original Side Appeal is filed by the respondent therein.

C. The Submissions:

3. Heard, *Mr.A.Chidambaram*, learned Counsel for the appellant and *Mr.V.Ragavachari*, learned Senior Counsel appearing for the respondent.

3.1 *Mr.A.Chidambaram*, learned Counsel for the appellant would submit that the plaintiff does not have a *prima facie* case at all inasmuch as the defendant did not borrow any amount from the plaintiff. The plaintiff only had undertaken to take over the loan of the defendant to a third party. That being the situation until and unless the plaintiff has discharged the loan, there was no cause of action for the plaintiff to file the suit. He would further submit that the order of the learned Single Judge was also based on certain additional documents, which were not at all produced by the plaintiff at the time of filing of the suit. Therefore, the learned Judge ought not to have relied upon those additional documents.

3.2 Relying upon his written statement, in particular paragraph No.6, the defendant contended that at no point of time, the plaintiff had advanced any money directly to the defendant. Learned Counsel would contend that the learned Judge ought not to have ordered to deposit the sum of Rs.15 crore. Further, the learned Counsel would submit that the plaintiff themselves are not clear as to what was the exact amount paid by

them as there is discrepancy in the averments made and the calculation sheet furnished by them. Therefore, he would pray that the appeal be allowed and the order of the learned Single Judge should be set aside.

4. *Per contra*, Mr.V. Ragavachari, learned Senior Counsel appearing for the respondent would submit that as per the agreement, it is crystal clear that the plaintiff had undertaken the loan amount of the defendant and the defendant has to repay the same as per Clause 5 of the agreement. As a matter of fact, the entire due to the said *Gopuram Films* was discharged to the tune of Rs.21.29 crore and the evidence of payment of the said money through banking transactions has clearly been provided by filing the extract of the Statements of Accounts. Therefore, the contentions of the learned Counsel that the plaintiff has not paid the amount is factually incorrect and the plaintiff has pleaded about the payment of the money in paragraph No.5 of the plaint, which reads as follows:-

*"5. It is submitted that the Defendant had produced a movie by the name of "Marudhu" in the year 2016. For the purpose of financing the film "Marudhu", the Defendant appeared to have had some loan arrangement from an entity by the name of Gopuram Films (hereinafter referred to as "**Original Lender**") represented by Mr. Anbu Chezhan and had obtained a loan for a sum of Rs 21,29,00,000/- (Rupees Twenty One Crore Twenty Nine Lakh only) from the*

*said entity. Plaintiff states that the Defendant had however been unable to repay the said loan and the Plaintiff understood that the Defendant was under considerable pressure because of this. The Defendant sought urgent help from the Plaintiff herein in paying this loan and promised that the Defendant would repay the said Amount with interest thereon to the Plaintiff. Believing the promises of the proprietor of the Defendant who is also a well-known actor, the Plaintiff in good faith agreed pay the outstanding dues of the Defendant to the said Gopuram Films by taking over the loan of Rs. 21.29 crores (Rupees Twenty One Crores Twenty Nine Lakhs only), being the principal along with interest accrued thereon at 30% p.a. till then. The Plaintiff therefore had provided timely assistance to the Defendant in his hour of need based on the assurances and promises made by the Defendant. The terms of the repayment of the Loan to the Plaintiff was recorded under a Loan Agreement dated 21 September 2019 (hereinafter referred to as the "**Loan Agreement**")."*

4.1 Under these circumstances, he would submit that when the plaintiff had helped the defendant in the need of the hour by immediately advancing money, which is crucial in the movie business, after availing the benefit, dishonestly the defendant has not repaid the amount, hence, there is more than a prima facie case.

4.2 Learned Senior Counsel would also rely upon paragraphs Nos.3 and 7 of the counter-affidavit filed in respect of the applications

whereunder there are admissions as to entering the suit agreement and the defendant wanted only the repayment to be re-scheduled and some further negotiations in the matter. Therefore, he would submit that in the teeth of the admissions by the defendant, no exception can be taken by the order passed by the learned Single Judge.

5. We have considered the rival submissions made on either side and perused the material records of the case.

6. The execution of loan agreement dated 21.09.2019 is admitted. *Prima facie*, from the Bank Statements produced by the plaintiff, it is clear that the sum of Rs.21.29 crore has been paid to the said *Gopuram Films/Anbu Cheziyan*, therefore, it is *prima facie* clear that the defendant is liable to pay the said sum to the plaintiff. As a matter of fact, the applications for a decree on admission were dismissed only on the ground that there is no clear and categorical admission of liability on the part of the defendant. However, that will not bar the applications filed by the plaintiff under Section 151 C.P.C., and under Order XXXIX Rule 1 of

C.P.C., to secure the money decree.

7. The learned Single Judge after considering the totality of the circumstances and after considering the commercial costs, held that the endeavour has to be made to make sure that the litigant claiming the relief should be in a position to realise the substantive claim within a reasonable time. In this case, where the defendant was permitted to release and receive monies due in respect of the earlier movie, titled 'Chakra' and further when had proceeded to release the second movie 'Veeramae Vaagai Soodum' and realised the money, considering the fact that the defendant had undertaken not to do so without discharging the dues of the plaintiff and when the application is filed for a direction to deposit all the sums receivable in respect of the movie into Court and when the defendant had received the amounts in respect of the movie to the tune of about Rs. 23 Crores, balancing the interests of both sides, had only ordered to deposit a sum of Rs.15 crore, by way of Fixed Deposit to the credit of the Registrar General, High Court, Madras. However, the learned Single Judge has not specified the consequence of non compliance in the Order itself. To that extent it is necessary to modify the order of the Learned Single Judge by adding Clause (iv-a) to the order. It can be seen that as per Clause- 4 of the suit

loan agreement, the plaintiff has the first lien as collateral security on all the rights, titles, interests in all the future film projects and its associated rights, produced or financed by VFF or Vishal Krishna till such time the loan amounts are fully settled. Thus, there shall be a clause (iv-a) to the effect that failing compliance of the above direction, there shall be an injunction against the defendant from in any manner releasing in cinemas or OTT platforms or in any mode whatsoever all or any of the feature films/ film projects produced or financed by the defendant in any manner whatsoever, pending disposal of the suit. Thus, while we do not find any merit in the appeal, it is necessary to add the above default clause in the order.

D. The Result :

8. In the result,

(i) O.S.A.(CAD) No. 73 of 2022 is disposed off by modifying the order of the Learned Single Judge;

(ii) However, the following Clause (iv-a) is added to the Common Order of the Learned Single Judge dated 08.03.2022 in O.A. No.35 of 2022 :

“(iv-a) failing compliance of the above direction, there shall be an injunction against the defendant from in any manner releasing in

cinemas or OTT platforms or in any mode whatsoever all or any of the feature films/ film projects produced or financed by the defendant in any manner whatsoever, pending disposal of the suit”

iii. There shall be no orders as to costs. Consequently, the connected miscellaneous petition is closed.

(T.R., ACJ.) (D.B.C., J.)
05.04.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking / Non-Speaking order

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