
(2014) 02 MAD CK 0203

In the Madras High Court

Case No : Original Application No. 36 of 2014 and Application No. 6328 of 2013
in C.S. No. 214 of 2013

Giriguja Films Inter National Private Limited

APPELLANT

Vs

R.R.R. Movies, M/s. Magic Frames and Gemini Laboratory

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 02 MAD CK 0203

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : Waraon and Sairams, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The applicant/plaintiff filed O.A. No. 36 of 2014 for interim injunction restraining the respondents from in any manner releasing the film titled as "Pulivaal" and consequentially, restraining the third respondent from in any manner delivering the release print of the film "Pulivaal" without first settling the suit amount due and payable to the applicant by the first respondent pending disposal of the above suit. Application No. 6328 of 2013 was filed to direct the first respondent for furnish security to the extent of Rs. 1,38,00,000/- pending disposal of the above suit.

2. The applicant/plaintiff filed the suit C.S. No. 214 of 2013 for recovery of Rs. 1,38,00,000/- with future interest @ 12% p.a., from defendants 1 and 2 and for permanent injunction restraining the defendants 1 to 3 from in any manner releasing the film titled as "Chennaiyil Oru Naal" without settling the said amount due and payable to the plaintiff.

3. The case of the plaintiff as stated in the plaint in brief is as follows:-

On 30.3.2010, the plaintiff entered into an agreement with the first defendant to produce the film titled as "Vidiyal". The total consideration for completing the film was fixed at Rs. 4.25 crores and the first defendant acknowledged the receipt of

Rs. 67,00,001/- from the plaintiff. The first defendant was not able to complete the film even after the receipt of Rs. 91,00,000/-, and therefore, after negotiation, the plaintiff and the first defendant arrived at settlement by which the first defendant agreed to be the producer of the film, "Vidiyal" and agreed to repay Rs. 91,00,000/- to the plaintiff. The first defendant and the plaintiff entered into two agreements on 2.2.2011 and one agreement is titled as finance agreement for a sum of Rs. 19,00,000/- by which the first defendant agreed to repay the said sum of Rs. 19,00,000/- at the time of release of the said picture of "Vidiyal". For the balance amount of Rs. 72,00,000/-, the first defendant entered into an outright royalty agreement dated 2.2.2011 with the plaintiff under which the first defendant agreed to assign the exclusive right of the said film "Vidiyal" on outright royalty basis for the entire areas of NSC for a period of 5 years from the date of release of the said picture. As the first defendant failed to produce the film "Vidiyal", the plaintiff demanded the first defendant to repay the amount. After negotiation, the second defendant assured that the first defendant and the second defendant would settle the amount at the time of releasing of their film "Chennaiyil Oru Naal". The film "Chennaiyil Oru Naal" was scheduled to be released on 29.03.2013 and the defendants 1 and 2 did not evince any interest in settling the dues before the release of the film "Chennaiyil Oru Naal" and therefore, the suit was filed for the relief as stated above.

4. In Application O.A. No. 36 of 2014, it is stated that the applicant/plaintiff filed O.A. No. 211 of 2013 and Application No. 1523 of 2013 against the respondents for interim injunction restraining the respondents therein from releasing the film "Chennaiyil Oru Naal" without first settling the applicant and also for attachment of the negative of the film "Chennaiyil Oru Naal". An order was passed by this Court in O.A. No. 211 of 2013 and 1523 of 2013 directing the first respondent to produce the total collection report of the film "Chennaiyil Oru Naal" and thereafter, the first respondent filed an affidavit with an undertaking that he would complete the film "Vidiyal" by 31.12.2014 and stated reasons for the extension of time to complete the film "Vidiyal". Thereafter, no steps were taken by the respondents who are husband and wife to complete the film "Vidiyal" and they also diverted the funds received from the applicant for shooting the film "Vidiyal" in other projects. The respondents 1 and 2 are co-producing the film "Pulivaal" along with Listin Stephen and the film "Pulivaal" is scheduled to be released on 07.02.2014. If the respondents 1 and 2 were permitted to release the film without settling the dues to the applicant, the applicant would be put to severe hardship and therefore, the Application for injunction and attachment were filed.

5. Respondents 1 and 2 filed a common counter affidavit stating that the film "Pulivaal" is produced by M/s. Magic Frames, a partnership firm and the partnership firm was not impleaded in the Application O.A. No. 36 and A. No. 6328 of 2013. It is also stated that the funds borrowed from the applicant by the first respondent was utilised only for the production of the film "Vidiyal" and it has nothing to do with the production of the film "Pulivaal". It is also stated that

the applicant is entitled to claim reimbursement of the amount only at the time of release of "Vidiyal" and not at the time of release of any other film and even as per the agreement dated 02.02.2011, the first respondent agreed to repay Rs. 19,00,000/- before the release of "Vidiyal" and Rs. 72,00,000/- was also agreed to be adjusted at the time of release of the film "Vidiyal" and in respect of the same relief, O.A. No. 211 of 2013 and Application No. 1523 of 2013 were filed on similar allegations and those Applications were closed by this Court holding that the applicant is not entitled to the relief prayed for as the cause of action for the filing of the suit has nothing to do with the release of the film "Chennaiyil Oru Naal" and therefore, the present Applications are also liable to be dismissed.

6. Learned Senior Counsel, Mr. T.V. Ramanujan, submitted that as per the outright royalty agreement dated 02.02.2011, the first respondent has to produce the film "Vidiyal" and the outright royalty in the area of entire NSC in respect of the said film "Vidiyal" was given to the applicant and there is no time frame fixed for completing the film and taking advantage of such fact, the first respondent has not taken any steps to complete the film. The learned Senior Counsel also submitted that the contract has also become impossible performance as the actress, Sneha got married and was not willing to act in the film and therefore, when the contract becomes impossible of performance, it is a void contract and therefore, the applicant is entitled to claim that amount from the first respondent and therefore, the applications are filed for the relief prayed for. He also submitted that if the first respondent failed to complete the film "Vidiyal", it may not be possible for the applicant to realise the money and admittedly, the money was received by the first applicant and therefore, he is bound to repay the amount and therefore, orders are to be passed as prayed for in the Applications.

7. Learned Senior Counsel further submitted that as per another agreement dated 02.02.2011, Rs. 19,00,000/- was paid as finance for the production of "Vidiyal" and therefore, in any event, the first respondent has to repay Rs. 19,00,000/- with interest and to that extent attachment may be ordered.

8. On the other hand, Mr. P.H. Arvind Pandian, learned Senior Counsel, has submitted that the same argument was advanced in O.A. No. 211 of 2013 and Application No. 1523 of 2013 and by order dated 24.10.2013, this Court closed the application for injunction holding that the cause of action for filing the suit was not relatable to "Chennaiyil Oru Naal". He therefore submitted that similarly, the cause of action for the suit was not relatable to the film "Pulivaal" and on that ground his application for injunction is liable to be rejected. He also submitted that outright royalty agreement dated 02.02.2011 cannot be stated to be void on the ground of impossibility of performance and 50% of the film production was over and the first respondent also filed an affidavit of undertaking to complete the film "Vidiyal" by 31.12.2014 and also stated reasons for getting time till 31.12.2014 and therefore, it cannot be stated that the film "Vidiyal" cannot be produced and that the agreement has become void. He also submitted

that in respect of Rs. 19,00,000/- payable under the finance agreement, as per the clauses mentioned in that agreement, the amount is liable to be repaid at the time of release of "Vidiyal" and before that, the applicant cannot enforce the same.

9. According to me, the present Applications are devoid of merits. As rightly submitted by the learned Senior Counsel Mr. P.H. Arvind Pandian, prayer sought for in these Applications have nothing to do with the prayer sought for in the suit. Though C.S. No. 214 of 2013 was filed for recovery of Rs. 1,38,00,000/- with future interest, a reading of the plaint makes it clear that the amount was claimed on the basis of two agreements dated 02.02.2011, namely, purchase agreement and outright royalty agreement. The applicant agreed to adjust the sum of Rs. 72,00,000/- as total royalty consideration for the film "Vidiyal" on outright basis in the are of entire NSC. Though the film is not progressed as expected, the first respondent offered an undertaking to produce and complete the film on or before 31.12.2014. That Undertaking was not denied and no objection was taken by the applicant earlier regarding that undertaking. Further, it cannot be accepted that the production of the film "Vidiyal" has become impossible due to refusal on the part of heroine. As a matter of fact, there is no allegation in the affidavit by the applicant that the heroine refused to act or the film was dropped or the first respondent is not going to complete the film. Further, as per the finance agreement dated 02.02.2011, Rs. 19,00,000/- was repayable before the release of the film "Vidiyal". Therefore, at this stage, it cannot be stated that the production of the film "Vidiyal" has become impossible or the first respondent is not going to produce the film or dropped the production of the film and therefore, he is liable to repay the amount borrowed for the production of that film. A contract become void only when the contract is incapable of performance. At this stage, it cannot be stated that the agreement to produce the film "Vidiyal" has become impossible of performance and therefore, it is not open to the applicant to realise the said sum by seeking an order of injunction in respect of the film "Pulivaal" which is jointly produced by the respondents 1 and 2 with the third defendant. Further, by order dated 24.10.2013, this Court closed the Application for injunction holding that the cause of action for filing the suit was not relatable to the film "Chennaiyil Oru Naal" and the same reason applies for the film "Pulivaal". Considering all these aspects, I am of the opinion that the applicant has not made out any prima facie case for passing an order of injunction or attachment. In other words, before 31.12.2014, the application has no cause of action for filing these Applications.

In the result, the Applications are dismissed.