

(2012) 11 MAD CK 0234

In the Madras High Court

Case No : A. No. 4170 of 2012 in O.A. No. 588 of 2012 in C.S. No. 483 of 2012
and A. No. 2517 of 2012 in A. No. 4508 of 2011 in O.A. 505 of 2011
in C.S. No. 402 of 2011

Sun Tv Network Ltd Murasoli Maran Tower 73 Mrc Nagar Main
Road Chennai 28

APPELLANT

Vs

M.V.R.S. Prasad 8-3-988 AT 44 and 45 201 Second Floor
Samanyu Residency Hyderabad, C. Romesh Babu Proprietor
Ekaveera Creations 17 Masilamani St 3rd Floor T Nagar
Chennai, Sakthi Chidambaram Proprietor Cinema Paradise
108 Duraisan St First Floor Chennai 93 and Prasad Film
Laboratories

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2012) 11 MAD CK 0234

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma

1. The plaintiff/applicant has moved this application under Order XIV Rule 8 of the O.S. Rules r/w Order XXXIX Rule 1 & 2 of the CPC for interim injunction restraining respondent no. 1, Sun TV Network Ltd., its agents and servants, any person and every person claiming through it or under it from in any manner exhibiting exploiting and/or distributing the copy right in the Tamil feature film "Kaavalan" starring Vijay and Asin and others in its Television Network or in any other Television Network, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and/or in any form of satellite telecasting or broadcasting by means of wireless diffusion and communication to the public all over the world pending disposal of the suit. The plaintiff/applicant filed a suit for permanent injunction, restraining respondent no. 1, Sun TV Network Ltd., its agents and servants, any person and every person claiming through it or under it from in any manner exhibiting exploiting and/or distributing the copy right in the

Tamil feature film "Kaavalan" starring Vijay and Asin and others in its Television Network or in any other Television Network, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and/or in any form of satellite telecasting or broadcasting by means of wireless diffusion and communication to the public all over the world.

2. The plaintiff/applicant is the Cinema Financier, who advanced loan to Thiru C. Ramesh Babu, a producer of Tamil Film "Kaavalan" and at the time of advancing loan, a charge was created over copyright in the film to be exploited. The film was processed at Prasad Film Laboratories/respondent no. 4.

3. As already noticed above, the producer of the film created charge in favour of plaintiff/applicant, which was confirmed by the Film Laboratories in respect of territories in which the suit film was to be exploited. On 12.12.2010, a request was made by the respondent no. 2 for issuance of letter of permission to the respondent no. 4 for assignment of the copyright in the suit film for satellite territory in favour of the 1st respondent.

4. In the letter addressed to respondent no. 4, it was clearly mentioned that on repayment of loan amount together with interest, the producer would produce a letter of clearance from the said financiers to effect that all dues are fully cleared and to transfer the negatives and effect delivery of release prints. It was also undertaken that the producer shall not create any other lien or charge in future and issue any commitment letters on the above said picture without confirmation from the financiers. They also undertook not to change the laboratory.

5. Receipt of this letter was duly confirmed by the Prasad Film Laboratories. It was on 12.12.2010 that the plaintiff/applicant issued no objection to the producer to assign the world satellite and electronic media rights to M/s. Sun Network Ltd., Chennai as per the instructions of the producer. It was made clear that final clearance can be obtained after the producer clearing the financiers dues in full and final settlement.

6. The plaintiff/applicant therefore while giving no objection certificate did not given up this charge on the satellite right etc. Thereafter the Laboratories issued a letter dated 13.12.2010 clearly stating that the right created in favour of the defendant no. 1 was subject to clearance of laboratories" dues and clearance of advance amount due to the Laboratories and also clearance letter from M.V.R.S. Prasad, i.e. finance charge holder on the negatives and other rights of the film "Kaavalan".

7. On 31.01.2011, the plaintiff/applicant forwarded the statement of account qua the film "Kaavalan" for the period ending 31.01.2011. In the statement, it was stated that a sum of Rs. 2,47,40,000/- (Rupees Two Crores Forty Seven Lakhs and Forty Thousand only) was due and it is on receipt of the said amount, clearance would be issued for satellite and electronic media rights for the above said picture.

8. It is the case of the plaintiff/applicant that respondent no. 3 i.e. Sakthi Chidambaram was attempting to create some cloud over the copyright ownership in the suit film with which the plaintiff/applicant is not concerned. It was pointed out that the plaintiff/applicant holds clear charge over the negatives and copyright of the negatives, which cannot be exhibited till clearance of the dues to the plaintiff/applicant.

9. A number of litigations were initiated against the producer before release of film and it was under the direction of this Court, that major portion of the amount due to the plaintiff/applicant was paid, but total dues were not paid.

10. It is also submitted that interim order passed by this Court on 12.01.2011 in O.A. Nos. 35 of 2011 in C.S. No. 21 of 2011 and batch of cases was a conditioner order, which stipulated the payment of money to the plaintiff/applicant as well as to the charge holder namely the processing laboratory/4th respondent or entering into an arrangement with the plaintiff/applicant and the 4th respondent.

11. It was on the request of the producer of the film, that the plaintiff/applicant agreed to receive payment from the 1st respondent while permitting the film to be released out of the laboratory for the general release of the film during the Pongal festivals.

12. The 1st respondent thereafter paid a sum of Rs. 2,32,50,000/- (Rupees Two Crores Thirty Two Lakhs and Fifty Thousand only) through the Bank of 2nd respondent after deducting the TDS. The amount of Rs. 2,47,50,000/-(Rupees Two Crores Forty Seven Lakhs and Fifty Thousand only) was also released in favour of the third respondent. The amount was thereafter transferred from the account of the 3rd respondent to the account of the 2nd respondent for transfer in favour of the plaintiff/applicant.

13. It is alleged that at no point of time, the 4th respondent refused to release the film to respondent no. 1 and only insisted on getting no objection certificate from the plaintiff/applicant. It is submitted that the 1st respondent is wrongly contending that 4th respondent is refusing to release the prints because of the dispute between the 2nd and 3rd respondent.

14. It is the case of plaintiff/applicant that the applicant had advanced a sum of Rs. 9,75,00,000/-(Rupees Nine Crores Seventy Five Lakhs only) with interest @ 24% p.a. and the interest payable on the date of filing of suit was Rs. 1,29,04,000/- (Rupees One Crore Twenty Nine Lakhs and Four Thousand only) out of which the respondent no. 2 has paid a sum of Rs. 8,56,64,000/- (Rupees Eight Crores Fifty Six Lakhs and Sixty Four Thousand only) before release of film on 15.01.2011 and the balance due payable is Rs. 2,47,40,000/- (Rupees Two Crores Forty Seven Lakhs and Forty Thousand only) along with interest @ 24% p.a. from February 2011 till date.

15. The 1st respondent also filed C.S. No. 402 of 2011, wherein it is pleaded that after entering into the assignment agreement with Sakthi Chidambaram/3rd

respondent on 27.11.2010, Prasad Film Laboratories/respondent no. 3 had assigned the copyright, and that the plaintiff/applicant had also given no objection letter for the assignment of the copyright of the film to it. Respondent no. 4 had also undertaken to make available the negatives of the said film Kaavalan to the SUN TV Network Ltd, but subject to clearance of all their laboratory under production use and clearance of advance amount due to them in respect of the film and also clearance letter from the plaintiff/applicant.

16. It was admitted that the laboratory holds first and paramount charge and possessory lein over the negatives, positive prints etc of the above said picture towards collection of liabilities. It was submitted that unless this Hon''ble Court directs the Prasad Laboratories to hand over the negatives (both picture and sound) positive prints and release prints of the movie Kaavalan to the SUN TV Network, much hardship will be caused which cannot be compensated in terms of money.

17. The prayer was made to direct the 4th respondent to hand over the negatives (both picture and sound), positive prints and release prints of the movie Kaavalan to the SUN TV Network, and pass further or other orders. In the suit, application for mandatory injunction was filed for directing Laboratory/4th respondent to release the prints for telecasting the film. This application was moved fully knowing that respondent no. 4 could not have released the print without clearance from the applicant/plaintiff, as the plaintiff/applicant held the charge of satellite and electronic media rights. Inspite of this, no objection letter was not obtained from the applicant/plaintiff.

18. The respondent no. 1 telecasted the suit film on 01.05.2012 in its Network, by using illegal prints. But, the applicant/plaintiff did not take any action against respondent no. 1 in view of interim injunction granted in favour of 1st respondent in C.S. No. 402 of 2011.

19. It is thus submitted that the plaintiff/applicant has prima facie case and the balance of convenience is also in favour of the applicant/plaintiff, and that the applicant/plaintiff would suffer irreparable loss ad injury if temporary injunction is not granted as prayed.

20. The application is opposed by the respondent no. 1, by pleading that the application is not maintainable in law, and deserves to be dismissed for the reasons that the applicant/plaintiff has approached this Court with unclean hands by suppressing the material facts and earlier orders of this Court. It is submitted that there is no pending litigation with respect to the suit film.

21. It is further case of the respondent no. 1, that the plaintiff/applicant was aware of the earlier order passed by this Court. It is submitted that the Hon''ble Court vide order dated 12.01.2011 in O.A. No. 35 of 2011 and batch in C.S. No. 21 of 2011 had ordered the producer to make direct payment of the amount due to M/s. Prasad Laboratories as well as M.V.R.S. Prasad and after making the payment or entering into settlement with the Laboratory, the plaintiff/applicant

can release the films to the producer to enable him to release picture on 14.01.2011. The charge of the applicant/plaintiff thus stood vacated.

22. It is also submitted that the suit with regard to copyright of film is still pending adjudication. It is the case of the respondent no. 1 that it is the absolute and exclusive copyright holder of the film for terrestrial television broadcast, satellite television broadcast, direct to home broadcast, direct satellite service and all other rights connected therewith including exhibition of the film by means of wireless diffusion and by wire for communication to the public through television for the entire world.

23. The agreement in this regard was entered into on 27.11.2010 between the SUN TV Network and Sakthi Chidambaram, which was witnessed by the producer of the film.

24. It is also stand of the respondent no. 1 that several disputes are pending in this Court with regard to the film in which respondent no. 1 is not a party. That though defendant no. 1 was not a party in the earlier proceedings, but in the order dated 09.02.2011 passed by this Court in O.A. no. 56 of 2011 and A. No. 296 and 530 of 2011 in C.S. No. 36 of 2011, in A. Nos. 385 and 386 of 2011 in C.S. No. 52 of 2011 and O.A. No. 75 of 2011 in C.S. No. 53 of 2011, a detailed observations have been recorded regarding assignment agreement dated 27.11.2010 in favour of the respondent no. 1.

25. The Hon"ble Court had declined the injunction prayed for by Raj Television with regard to the satellite television broadcast copyright on the ground that satellite copyright had been assigned to the 1st respondent, which was also admitted by the respondents, therefore, agreement dated 27.11.2012 was binding to be acted upon.

26. The respondent no. 1 also filed C.S. No. 402 of 2011 in this Court against respondents 2 to 4 for a permanent injunction restraining the defendants, their men and agents or servants or anybody claiming through or under them from in any manner interfering with the rights of the plaintiff in the copyright of the film Kaavalan regarding the exclusive copyright in respect of satellite television broadcast, direct to home broadcast, direct satellite service and all other rights connected therewith, including exhibition of the picture by other means. That interim order was also passed in O.A. No. 505 of 2011 to be operative till disposal of the suit, and this order was subject to 1st respondent depositing the balance amount of Rs. 2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs only) in the Court.

27. It is submitted, that the order of this Court has been complied with and a sum of Rs. 2,75,00,000/-(Rupees Two Crores Seventy Five Lakhs only) has been deposited in this Court. The applicant/plaintiff has got himself impleaded in O.A. No. 2704 of 2011 in C.S. No. 402 of 2011 and also filed application for payment out of the deposited amount of Rs. 2,75,00,000/- (Rupees Two Crores Seventy Five Lakhs only) deposited by the 1st respondent.

28. It is submitted that the 2nd respondent herein was hand in glove with the applicant in withdrawing the amount earlier deposited in favour of respondent no. 3. It is further submitted that the applicant/plaintiff is also aware of the fact that the respondent no. 1 had entered into an assignment agreement with the 3rd respondent assigning the satellite right of the film to the respondent no. 1, which is also accepted and admitted by respondent no. 2. It was in pursuance to the said agreement, that the consideration for the assignment of copy right of the film was fixed at Rs. 5,50,00,000/- (Rupees Five Crores Fifty Lakhs only) and half of the amount was paid to the third respondent, which admittedly stands transferred to the 2nd respondent, who in turn remitted it to the applicant/plaintiff.

29. In clause-4 of the agreement dated 27.11.2010, it has been specifically admitted that no charge, lien or mortgage is existing with respect to the film. It is also stand of the respondent no. 1 that after receipt of part consideration from respondent no. 1 towards assignment of the satellite rights, letter of permission was issued by the applicant/plaintiff, and that subsequent to the Court order, the movie Kaavalan was released. Therefore, respondent no. 1 has become absolute assignee of the satellite right of the movie. After obtaining the satellite right of the movie, the SUN TV Network intended to pay the balance consideration, but there were various claims from different persons, therefore, the 2nd respondent had also approached the Commissioner of Police, by filing a criminal complaint.

30. It is submitted that since there are various claims on the balance consideration, the 1st respondent was left with no other option, but to file C.S. No. 402 and obtained stay by filing O.A. No. 505 of 2011 after depositing the balance consideration amount in the Court. In the suit, the applicant/plaintiff has got himself impleaded as party. The stand of the plaintiff/applicant, that he has charge or lien over the film, is thus legally not sustainable in law in view of the orders passed by this Court.

31. It is also the stand of respondent no. 1, that there is no privity of contract between the applicant and 1st respondent. If 2nd respondent owes any money to the applicant/plaintiff, then it cannot curtail the right of the respondent no. 1. That 1st respondent having paid the entire sale consideration, therefore, cannot be restrained from telecasting the move, that too, after the order of injunction, by this Court.

32. It is also submitted that the applicant and the 2nd respondent in collusion failed to withdraw money from the Court, which is deposited by respondent no. 1. Furthermore, by suppressing the fact that the 1st respondent was granted interim injunction, has filed this suit and obtained stay.

33. It is thus submitted that the suit C.S. No. 483 of 2012 is filed in collusion, even though there is no privity of contract between the 1st respondent and the applicant.

34. It is also the case of respondent no. 1 that there is no dispute with respect to

assignment of satellite right to respondent no. 1. The negatives of the film were released to respondent no. 1 as per the orders of this Court dated 02.02.2011.

35. That the remedy with the plaintiff/applicant is to recover the amount from the respondent no. 2 by filing a suit for recovery of amount. It is submitted that respondent no. 2 has already filed A. No. 2517 of 2012 to vacate the interim injunction granted in favour of the respondent no. 1 in O.A. No. 505 of 2011 in C.S. No. 402 of 2011, knowing fully well that such application is not maintainable.

36. The stand of the respondent no. 1 finally is that there is no privity of contract between the applicant and 1st respondent, as it has paid the entire sale consideration towards assignment rights, and further has interim injunction order in its favour. Thus having paid the total sale consideration, the application, moved applicant/plaintiff is outcome of evil design and collusion, thus, deserves to be rejected.

37. A. No. 4170 of 2012 has been moved for vacation of order of interim injunction granted by this Court on 27.07.2012 in O.A. No. 588 of 2012 in C.S. No. 483 of 2012.

38. The affidavit filed in support of this application is identical to oppose injunction application.

39. It may be noticed here that respondent no. 2 has also filed A. No. 2517 of 2012 in C.S. No. 402 of 2011, for vacation of stay in favour of respondent no. 1. The ground taken for vacation of stay is that the Chief Executive Officer of the respondent no. 1 had assured that the balance sum of Rs. 2.75 Crores less TDS will be paid by the 1st respondent to the financier M.V.R.S. Prasad or to the 2nd respondent if the charge is cleared. It is pleaded in the application, that respondent no. 2 was in know of the fact that respondent no. 4 could not release the negatives and prints to respondent no. 1, in absence of clearance from financier. It is admitted in the application filed by respondent no. 2 that the financier, i.e. plaintiff in C.S. 483 of 2012, held charge over the satellite rights/ territories and in absence of no objection certificate, the injunction in favour of respondent no. 1 is liable to be vacated.

40. It is submitted by producer that for want of payment to financier by respondent no. 1 SUN TV Network, he is being burdened with interest @ 24% on the balance outstanding.

41. A. No. 4508 of 2011 has been moved by Mr. MVRS Prasad to withdraw a sum of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only) out of the amount deposited by respondent no. 1 and lying to the credit in that suit in this Court.

42. In support of this application, it is pleaded that Mr. M.V.R.S. Prasad has charge over the negatives and print of the film as also record of satellite rights. Therefore, he is entitled to withdraw an amount of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only) being

admittedly due, as per the admission of respondent no. 2.

43. From the submissions of the respective parties, it is proved that respondent no. 1 has been assigned satellite right by producer as per the agreement entered into between the producer and respondent no. 1, i.e. agreement dated 27.11.2010. At the same time, it is also proved that Mr. M.V.R.S. Prasad, the plaintiff/applicant in C.S. No. 483 of 2012 has charge over negatives and satellite rights to recover the amount due from the respondent no. 2 and that the permission to assign satellite right in favour of respondent no. 1 was subject to clearance of dues to the financiers and laboratory.

44. It is also admitted case of the parties that no objection issued by the applicant/plaintiff and the letter issued by the respondent no. 4 for release of satellite right was subject to clearance of amount due to the financiers as well as the applicant/plaintiff.

45. This Court, while permitting release of film also clearly stipulated that this was subject to clearance of dues of the applicant/plaintiff and the laboratory or entering into the settlement with them.

46. Therefore, the applicant/plaintiff is successful in proving, that he has prima facie case for grant of injunction. It is also proved that the balance of convenience is in favour of the applicant/plaintiff and that in view of subsisting charge, if the injunction granted is vacated, he is likely to suffer irreparable loss and injury.

47. However, at the time of argument, it was admitted by the learned counsel appearing on behalf of the applicant/plaintiff i.e. financier, the purchaser/respondent no. 2, as also the learned counsel for respondent no. 1, i.e. SUN TV Network, that an amount of Rs. 2,75,00,000/- (Rupees Two Crores and Seventy Five Lakhs only) is lying deposited in this Court. It is also not disputed that respondent no. 1 has paid the total consideration and nothing is due from respondent no. 1 towards purchase of satellite right under the agreement. That the applicant/plaintiff, i.e. Mr. M.V.R.S. Prasad has moved an application No. 4508 of 2011 in C.S. No. 402 of 2011 for permission to withdraw a sum of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only) as outstanding balance out of the deposited amount by respondent no. 1.

48. In A. No. 2517 of 2012 in C.S. No. 402 of 2011, respondent no. 2 has not disputed that the amount is due and payable to the applicant/plaintiff in C.S. No. 483 of 2012. Learned counsel for the respondent nos. 1 & 2 also did not oppose the request of the applicant/plaintiff for withdrawal of amount of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only) and to permit the respondent no. 1 to have the satellite right as also the right to exhibit, exploit, distribute the copy right in the Tamil feature film "Kaavalan" in its Television Network or in any other Television Network, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and/or

in any form of satellite telecasting or broadcasting by means of wireless diffusion and communication to the public all over after receipt of all payments by the applicant/plaintiff.

49. In view of the stand taken by the respective parties, the applications are disposed of as under:

i) That the injunction order passed by this Court in O.A. No. 588 of 2012 shall stand vacated, on release of a sum of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only), by this Court out of the amount deposited by respondent no. 1 in C.S. No. 402 of 2011;

ii) A. No. 4508 of 2011 in C.S. No. 402 of 2011 for permission to withdraw the amount of Rs. 2,42,05,500/- (Rupees Two Crores Forty Two Lakhs Five Thousand and Five Hundred only) is allowed. The Registry is directed to release this amount to Mr. M.V.R.S. Prasad out of the amount deposited by SUN TV Network in C.S. No. 402 of 2011.

iii) A. No. 4170 of 2012 in C.S. No. 483 of 2012 filed by respondent no. 1 for vacation of interim injunction is dismissed as having been rendered infructuous.

iv) A. No. 2517 of 2012 in C.S. No. 402 of 2011 is ordered to be dismissed, in view of the admission by the applicant/respondent no. 2, that respondent no. 1 has deposited the full consideration amount in terms of the agreement, and that the amount is due and payable to the applicant/plaintiff in C.S. No. 483 of 2012.

v) O.A. No. 505 of 2011 in C.S. No. 402 of 2011 the injunction order granted in favour of respondent no. 1 is made absolute, pending disposal of the suit.

It is made clear, that any observation or finding recorded herein above is only for the purposes of disposal of interim applications and be not taken to be opinion on merit of the dispute raised in the pending suits between the parties, which is to be decided after the parties are allowed to lead evidence. No costs.