(2015) 08 MAD CK 0144

In the Madras High Court

Case No : O.S.A. No. 157 of 2015

S.V.D. Jeevanand APPELLANT

Vs

NIC Arts and Others RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Citation : (2015) 08 MAD CK 0144

Hon'ble Judges : T.S. Sivagnanam, J;G. Chockalingam, J

Bench : Division Bench

Advocate : S. Parthasarathy, Senior Counsel for A.L. Gandhimathi, for the Appellant; A. Abdul Hameed for AAV Partners, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J—This appeal by the plaintiff in C.S. No. 568 of 2015, is directed against the order in O.A. No. 715 of 2015, filed for grant of an order of temporary injunction restraining the respondents/defendants from releasing the Tamil Feature Colour Film "Vaalu" till the first respondent/first defendant pays and discharges a sum of Rs. 1,00,00,000/- with the interest at the rate of 18% per annum from the date of plaint till the date of realisation.

2. The learned Single Judge by the impugned order dated 04.08.2015, dismissed the application on the ground that the appellant/plaintiff has not made out a prima facie case for grant of interim injunction. In this appeal, the parties shall be referred to as per the description in the Suit.

3. The plaintiff filed the Suit for recovery of a sum of Rs. 1,00,00,000/- with interest at the rate of 18% per annum and for decree of permanent injunction to restrain the defendants from releasing the said film till the amount is discharged. The plaintiff is stated to be the owner of a theatre complex in Madurai and a financier advancing loans to producers of Tamil feature films. It is stated that the first defendant is a producer who approached the plaintiff to finance the production of the film "Vaalu"? and an agreement was entered into on

03.04.2013 at Madurai.

4. The plaintiff would state that in terms of the agreement, the first defendant acknowledged the receipt of a sum of Rs. 1,00,00,000/- and undertook that the film will be released within one year from the date of the agreement or if the release is postponed, he will repay the amount with interest and that he will not release the film unless he repays the principal and interest. The plaintiff would further state that he had approached the first defendant time and again for payment, but he was not favoured with satisfactory reply and on coming to know that the film is to be released on 17.07.2015, has approached this Court and filed the Suit for the aforementioned relief. Along with the Suit, the plaintiff filed an application for interim injunction in Application No. 715 of 2015. In the affidavit filed in support of the application the gist of the plaint averment has been reiterated.

5. The first defendant resisted the application for interim injunction by filing a counter denying the execution of the loan agreement, dated 03.04.2015, the signature therein and stating that the document is forged and fabricated for the sake of making a false claim. It was further stated that it is inconceivable that a sum of Rs. 1,00,00,000/- had been advanced by the plaintiff, a financier without any receipt, promissory note, security, cheques etc., and the mode of payment of Rs. 1,00,00,000/- has not been disclosed and though the alleged agreement states that the amount is payable together with interest, the Suit has been filed forgoing interest which is inconceivable. It was further stated that the stamp paper on which the agreement was prepared is dated 14.03.2013, purchased in the name of the first defendant from a stamp vendor at Madurai, executed at Madurai and witnessed by a person from Chennai. All these would go to show that the document is a fabricated document. Further it was submitted that no demand was ever made by the plaintiff from 2013 and for the first time, the present demand is made in spite of the plaintiff being aware of the release date of the movie as early as March 2015 and has moved the Court at the 11th hour, which clearly shows the intention of the plaintiff. Further it is submitted that the plaintiff is a close blood relative of Thiru.P.S. Senthurpandian who is the plaintiff in another Suit, namely, C.S. No. 567 of 2015. Further, it is submitted that the relief of interim injunction if granted would amount to granting the main relief in the Suit. It is further submitted that the first defendant has incurred huge expenditure by way of production cost, advertisement expenditure, expenditure towards audio release and he has sold the rights to various third parties and the film is scheduled to be released and the person who acquired the right has incurred huge expenditure, theatres have been blocked and the overseas prints have been despatched and at this stage any injunction if granted that too, in a Suit for recovery of money the interest of the first defendant and his clients would be greatly prejudiced.

6. The plaintiff filed a reply affidavit to the counter stating that even a verification by a naked eye of the signatures contained in other admitted

documents would show that the loan agreement is not a fabricated document. Further it is submitted that there is a negative covenant in the agreement which prohibits the release of the film till the loan amount is repaid.

7. The learned Single Judge held that the execution of the loan agreement has been denied by the first defendant and therefore, the initial burden is on the plaintiff to prove the document, which is a matter for evidence and that the plaintiff has not filed any supportive documents to substantiate their plea and the Court cannot decide the genuineness of the loan agreement at this stage for grant of any interim relief. Accordingly, by the impugned order the application for interim injunction was dismissed.

8. The learned Senior counsel appearing for the appellant submitted that on a mere comparison of the signatures would show that the document is genuine and at the stage when an application for interim injunction is prayed for, the Court cannot discard the document relied on by the plaintiff. To support such arguments, reliance was placed on the decision of the Hon''ble Supreme Court in Dhariwal Industries Ltd. and Another Vs. M.S.S. Food Products, AIR 2005 SC 1999 : (2005) 2 JT 505 : (2005) 30 PTC 233 : (2005) 3 SCC 63 . It is further submitted that if the film is released then the plaintiff would not be able to recover the loan amount and the plaintiff is not insisting for payment of the money to the plaintiff, but the same may be retained in deposit till the Suit is decided in order to secure the claim of the plaintiff.

9. The learned counsel appearing for the first defendant reiterated the stand taken in the counter affidavit filed in Application No. 715 of 2015, and submitted that the Suit is for recovery of money and an application for interim injunction is not maintainable and already the overseas prints have been despatched, the cubes have been handed over to third parties, theatres have been blocked and the trial screening is to be done today (13.08.2015) and the movie is to be released tomorrow(14.08.2015) Further, it is submitted that since 2013, no claim was made by the plaintiff though the first defendant has released other films in the interregnum. Further, it is submitted that already the rights have been purchased by M/s. Chimbu Cine Arts and all transactions have been completed and if any injunction is granted at this juncture, it would work serious hardship.

10. Heard the learned counsels appearing for the parties and perused the materials placed on record.

11. The Suit filed by the appellant/plaintiff is for recovery of money and for consequential decree of permanent injunction. The Suit is based on a loan agreement dated 03.04.2013. The plaintiff''s case is that a sum of Rs. 1,00,00,000/- was paid to the first defendant under the loan agreement and the first defendant undertook to repay the loan with interest and not to release the said film until he repays the loan. The loan agreement is being seriously disputed by the first defendant and he would term it to be a forged and fabricated document. Inconsistencies pointed out which are seen from the document in

question being, the loan agreement is said to have been executed at Madurai, on a Rs. 100/- no-judicial stamp paper purchased in the name of the first defendant from a stamp vendor at Madurai. The first defendant admittedly has his place of business at Chennai, even as per the loan agreement. The loan agreement is said to have been signed in the presence of one R.Thirupathi, who is said to reside in Chennai. The first page of the loan agreement is on an non-judicial stamp paper and page 2 & 3 are on a letter pad of NIC Arts, Vadapalani, Chennai-600 026. These discrepancies have not been explained by the plaintiff in their reply affidavit to the counter filed by the first defendant in application No. 715 of 2015. Their only contention is that this Court should compare the signature contained in the loan agreement with that of the admitted signature, which we are not inclined to accede to, owing to the discrepancies pointed out.

12. In our view the issue as to whether the loan agreement is a valid document or a forged or fabricated document cannot be examined at an Interlocutory stage based on affidavit and the plaintiff has to prima facie establish that they have a valid and binding transaction with the first defendant. On perusal of the loan agreement and the discrepancies pointed out we are prima facie not convinced about the genuinity of the transaction. However, this is only a prima facie view and it is well open to the plaintiff to establish during trial that the document is a valid document. We are inclined to take a such stand in the light of the fact that there are no other supportive document to substantiate the claim of the plaintiff for payment of Rs. 1,00,00,000/-. This is a relevant factor which was rightly taken into consideration by the learned Single Judge while declining to grant the relief of interim injunction.

13. The decision in the case of Dhariwal Industries (supra), arose out of a Suit for infringement/passing of and while considering the facts of the said case, the Hon''ble Supreme Court took note of the fact relating to prior user of the trademark which was based on the documents exhibited before the Trial Court and the Hon''ble Supreme Court affirmed the view taken by the High Court that there cannot be a wholesale condemnation of the documents produced by the plaintiff as forged. In our view the observations made by the Hon''ble Supreme Court are relatable to the facts of the said case and the documents which were exhibited before the trial Court which are deed of assignment, affidavit etc. Thus, the decision of the Hon''ble Supreme Court is clearly distinguishable on facts.

14. Hence for all the above reasons the appellant has not made any case for interference and the appeal fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.