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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 18TH DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

O.A. No.86 of 2022
and
Arb Appln .No.68 of 2022

In the matter of Section 9 of the
Arbitration and Conciliation Act,
1996
and
In the matter of dispute between
Mr.Doss Sivakarhikeyan and
Mr.K.E.GNANAVELRAJA
and
In the matter of Agreement dated
06.07.2018

MR.D.SIVAKARTHIKEYAN
D-101, Purva Jade Apartments,
170, Arcot Road, Valasaravakkam,
Chennai - 600 087.

..Applicant
in both applications

-Vs-

1. Mr.K.E.GNANAVELRAJ,
Sole Proprietor of Aadnah Arts,
No.13/6, Block No.140, Second Floor,
Thanikachalam Road,
T.Nagar, Chennai - 600 017.

2. M/S STUDIO GREEN FILMS PRIVATE LIMITED,
Represented by its Authorized Representative,
Block No.140, No.13/6,



Second Floor,
Thanikachalam Road, T.Nagar,
Chennai-600 017.

3. THE INCOME TAX OFFICER,
Non Corporate Ward-10(6),
Income Tax Department,
121, Nungambakkam High Road,
Chennai - 600 034.

..Respondents
in both applications

O.A. No.86 of 2022:

Original Application praying that this Hon'ble Court be pleased to grant an order of Interim Injunction restraining the 1st and 2nd Respondents or any other person or persons claiming under their name or on their behalf from exploiting or dealing with in any manner including but not limited to transferring of any rights to distributors, Over-the-top platforms or making any further investment in the production of films presently titled as “Rebel”, “Chiyaan 61” and “Pathu Thala” by whatever name called in future pending disposal of the arbitration.

Arb. Appln. No.68 of 2022.:

Application praying that this Hon'ble Court be pleased to direct the 1st Respondent to furnish security for a total principal sum of Rs.4,82,46,609/- being the actor remuneration and TDS due pending under the Agreement dated 06/07/2018 within a timeframe as may be fixed by this



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In the captioned applications, 'O.A.No.86 of 2022' [hereinafter 'said OA' or 'injunction application' for the sake of convenience and clarity] has been presented with a prayer for interim injunction qua claiming or transferring any rights to distributors, over-the-top platforms or making any further investment in production of films titled 'Rebel', 'Chiyan 61' and 'Pathu Thala' and 'Arb.Appln.No.68 of 2022' [hereinafter 'said Arb.Appln' or 'security application' for the sake of convenience and clarity] is with a prayer for a direction to furnish security.

2. Mr.Sricharan Rangarajan, learned counsel appearing on behalf of Ms.Anu Ganesan, counsel on record for applicant in both the captioned applications submits as follows:

(i) Applicant is a cine artist;

(ii) Applicant entered into an 'agreement dated 06.07.2018' [hereinafter 'said agreement' for the sake of convenience and clarity] with first respondent regarding a Tamil Cinematographic Film titled 'Mr.Local' [hereinafter 'said movie'



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(iii) The total remuneration payable to the applicant under said agreement (for playing leading role in said movie) is Rs.15 Crores (as captured in Clause 3 of said agreement captioned 'CONSIDERATION') to be paid at various stages/trenches qua making of said movie, last of the payments is Rs.1 Crore and the same ought to have been paid before theatrical release of said movie;

(iv) Theatrical release of said movie did happen on 17.05.2019 but only 11 out of aforementioned 15 crores was paid and Rs.4 crores remained/remains unpaid;

(v) Thereafter the applicant has been repeatedly following up for payment of aforementioned balance consideration with the first respondent. Averments regarding such repeated follow up is captured in paragraph No.10 of the support affidavit. The payment was not forthcoming from first respondent in spite of repeated follow up but as a bolt from the blue the applicant was slapped with a notice under Section 226(3) of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] being notice dated 01.02.2022 as the first respondent had not paid the sums/tax deducted as TDS at source for the aforementioned 11 crores part payment;



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(vi) Aforementioned notice under IT Act was assailed by the applicant by a writ petition being W.P.No.2592 of 2022 *inter alia* arraying first respondent in captioned applications as 6th respondent in writ petition, notice was ordered in the said writ petition on 08.02.2022 and the same is pending. Though learned counsel mentioned that notice was ordered on 08.02.2022, on verification in the website it was found that notice was ordered only on 10.02.2022;

(vii) In the aforesaid circumstances, a huge sum of about Rs.91 Lakhs odd was actually deducted from the account of applicant and this is the trigger for the captioned applications;

(viii) Regarding manifest intention to arbitrate, (owing to aforementioned trigger) necessary averments have been made in paragraph No.13 of the support affidavit is learned counsel's say;

(ix) Aforementioned deduction is regarding 'Assessment Years' ['said AYs'] 2019-2020 and 2020-2021;

(x) In the light of the aforementioned trigger, the captioned applications were presented in this Court on 16.02.2022;

(xi) First respondent has incorporated a company and that



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company is the second respondent (page No.93 of typed set of papers to demonstrate that first respondent is a Director in second respondent-company);

(xii) Second respondent-company is now in the process of making three Tamil Movies titled as 'Rebel, Chiyaan 61 and Pathu Thala' [hereinafter 'said upcoming movies' for the sake of convenience and clarity];

(xiii) Advertisements pertaining to said upcoming movies are at page Nos.95, 96 and 97 of typed set of papers;

(xiv) Arbitration clause in said agreement is Clause 10 and the same reads as follows:

'10. MISCELLANEOUS:

a) Governing law:

(i) Any and all disputes and differences that may arise between the parties, pursuant to the terms of this Agreement, or its interpretation hereof, shall be referred to the arbitration of a Sole Arbitrator to be mutually appointed by the Parties hereto. The said Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The award of the arbitration proceedings will be final and binding on both parties to the Agreement. The venue of the Arbitration shall be Chennai. The Arbitration proceedings shall be conducted in English.



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(ii) *This Agreement shall be subject to the Laws of India and appropriate Courts of Chennai.*

b) Severability:

In the event that any provision hereof shall be held to be invalid or unenforceable due to any reason, the said provision shall be modified to the extent necessary, and in any event, such invalidity or unenforceability shall have no effect upon the remaining provisions or terms and conditions hereof.

c) Any variations or amendment to this Agreement shall be in writing and signed by both parties.'

(xv) The above serves as an Arbitration Agreement between the parties (applicant and first respondent) being Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned counsel's further say;

3. Besides purported unpaid dues qua remuneration for said movie, theatrical release of which has already happened, the applicant is now suffering further loss of money owing to deduction by the Income Tax Department which in turn is attributable to first respondent not depositing TDS, though the deductor is in the capacity and character of trustee qua deducted sums.



4. In the light of the narrative thus far (supra), *prima facie* case made out for issue of notice.

5. Issue notice to respondents returnable by 28.02.2022. Private notice permitted. Private notice through electronic modes of communications (subject to proof being demonstrated) also permitted. Learned counsel on record is also permitted to serve on the standing counsel for third respondent. Likewise, learned counsel is also permitted to serve on counsel (if any) if 6th respondent in W.P.No.2592 of 2022 has entered appearance through counsel.

6. List on 28.02.2022.

Sd/.M.S.J.
18.02.2022

//Certified to be a true copy//
Dated at Madras this the day of 2022.

SU./24.02.2022

COURT OFFICER(O.S.)

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