



C.S.No. 59 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2025

PRONOUNCED ON : 05.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No. 59 of 2021

Lyca Productions Private Limited,
Rep. by its Authorised Signatory
Mr. Neelkant Narayanpur
No.55, Vijayaraghava Road,
T.Nagar, Chennai – 600017
Tamil Nadu

...Plaintiff

Vs

Vishal Krishna Reddy
The Sole Proprietor of M/s. Vishal Film Factory,
No.73, 1st Street, Kumaran Colony,
Vadapalani, Chennai- 600026
Tamil Nadu

... Defendant



C.S.No. 59 of 2021

WEB COPY

PRAYER: Suit is filed under Order IV, Rule 1 of the High Court Original Side Rules read with Order VII Rule 1 of CPC,

(i)Directing the defendant to pay the plaintiff a sum of Rs.30,05,68,137/- (Rupees Thirty Crores Five Lakhs Sixty Eight Thousand One Hundred and Thirty Seven Only), with interest at 30% p.a., on the principal amount of Rs.21,29,00,000/- from the date of the plaintiff till realisation;

(ii)Direct the defendant to pay the costs of this suit; and

(iii)Pass such further or other orders as it deems fit in the circumstances of the case and thus render justice.

For Plaintiff : Mr. V.Raghavachari
Senior Counsel
For M/s. Hema Srinivasan

For Defendants : Mr. A.K.Sriram
Senior Counsel
For Mr. M.Arun.



C.S.No. 59 of 2021

WEB COPY

JUDGEMENT

The above suit is filed for a recovery of a sum of Rs.30,05,68,137/- together with interest at 30 % p.a on the principal sum of Rs.21,29,00,000/- together with costs.

Plaintiff's case:

2. The plaintiff is a leading production house in South Indian Film Industry and is engaged in production, distribution and marketing of several high budget movies like 2.0, Dharbar, Indian 2 to name a few. The defendant is a sole proprietary concern which had been established in the year 2013 by Mr.Vishal Krishna Reddy an actor in the Tamil Film Industry. The defendant is also engaged in production and distribution of cinematic works.



C.S.No. 59 of 2021

WEB COPY

3. It is the case of the plaintiff that the defendant had produced the movie named "Marudhu" in the year 2016 and for financing the same he had entered into a loan arrangement with M/s.Gopuram Films represented by Mr. Anbu Chezhian. A sum of Rs.21.29 Crores was borrowed by the defendant from the said M/s.Gopuram Films. However, the defendant was unable to service the said loan. Therefore, he had requested the help from the plaintiff to settle this outstanding to M/s.Gopuram Films and promising to repay the same to the plaintiff with interest. Trusting the words of the defendant, the plaintiff had taken over the loan of Rs.21.29 Crores being the principal with interest at 30% per annum.

4. The plaintiff and the defendant had thereafter reduced into writing their terms of agreement under a loan agreement dated 21.09.2019. The defendant had promised to repay Rs.7 Crores one



C.S.No. 59 of 2021

week prior to the release of the film tentatively titled as Thupparivalan
WEB COPY

II on or before 31.03.2020. It was also agreed that in case film was not released then the loan amount would be cleared by 31.12.2020.

5. The plaintiff would further submit that the first instalment was due on or before 24.03.2020 ie., a week prior to the expected release of the movie Thupparivalan II as the same was slated for release on 31.03.2020. The payment was not made and the plaintiff came to learn that the shooting of the film could not be completed owing to certain financial issue of the defendant. Therefore, the movie could not be released on 31.03.2020. Therefore, as per the terms of the agreement the loan amount was repayable on or before 31.12.2020.

6. In the meantime, the plaintiff's business was greatly affected on account of Covid 19 situation owing to which the production of several high budget movies had come to stand still and the employees



C.S.No. 59 of 2021

WEB COPY who were dependent on the plaintiff for their salaries had to be still

paid. In this background the non payment of the dues by the defendant was also causing great impact on the plaintiff's finances.

7. The plaintiff would submit that as per the terms of the loan agreement in case of a inability to repay the same the defendant was required to notify the plaintiff which the defendant had not done. The plaintiff had issued a letter dated 21.08.2020 reminding the defendant about his obligations under the loan agreement and calling upon them to repay the loan amount on or before 31.12.2020. This letter was returned with the caption "*addressee left without instructions*". Another letter dated 03.09.2020 was attempted to be served on the defendant which is also returned on 15.09.2020 with the caption "*Door Locked*".



C.S.No. 59 of 2021

WEB COPY

8. Thereafter, the plaintiff sent an e-mail dated 18.09.2020 requesting the defendant to give details of its new office address for which also there was no response. The reminder letters were also attached to the e-mail dated 18.09.2020. Even after expiry of the period for repayment the defendant did not come forward to clear its dues. That apart, the attempts to contact him in person and over phone proved futile. Therefore, the plaintiff issued a notice by e-mail dated 12.02.2021 pointing out that the defendant had defaulted in the repayment of the loan.

9. The plaintiff would submit that as on date of the institution of the suit a sum of Rs.30,05,68,137/- was payable by defendant to the plaintiff, towards the principal amount a sum of Rs.21.29 Crores was due and towards interest a sum of Rs.8,76,68,137/-. In this backdrop the plaintiff came to learn through newspaper, articles and online



C.S.No. 59 of 2021

WEB COPY
articles that the defendant had produced and acted in a movie titled

"Chakra" and the same was slated for theatrical release on 19.02.2021 in the four southern languages, namely, Tamil, Telugu, Kannada and Malayalam. The defendant had himself taken to his twitter handle to announce the same. The audio tracks of the movie had also been launched under the music label of the defendant, V Music.

10. The plaintiff would submit that under the terms of the loan agreement particularly Clause (4) therein the plaintiff had the first lien over all titles and interests in the defendant's future film projects and its associated rights, produced or financed by the defendant, the proprietary concern or by the proprietor himself, until the full and final settlement of the plaintiff's dues.

11. The plaintiff would submit that the OTT rights with reference to the film "Chakra" had been given to Amazon Prime and the entire



C.S.No. 59 of 2021

WEB COPY amounts have been collected by the defendant without paying the

plaintiff. Likewise, the world wide distribution rights had also been given to the United India Exporters and the plaintiff was in the dark about the other agreements that the defendant had entered into in respect of the subject matter. The plaintiff also did not know what payment had been received by the defendant.

12. The plaintiff would submit that since the defendant had not come forward to settle dues after the due date despite receiving the payments for the film "Chakra" the plaintiff has come forward with the instant suit.

Written Statement of the defendant:

13. The defendant apart from denying the various allegations contained in the plaint would submit that the entire suit is based on the distorted facts. He would deny his liability to repay the suit claim. The



C.S.No. 59 of 2021

WEB COPY
defendant would submit that the suit has been filed with a cooked up

case just on the eve of the release of the film "Chakra" in order to arm twist him.

14. It is the case of the defendant that the film "Marudhu" was not produced by him but by Mr. Anbu Chezhian of M/s.Gopuram Films, Madurai and the proprietor of the defendant concern had only acted as an hero in the said film. He would deny the borrowing of a sum of Rs.21.29 Crores from M/s.Gopuram Films for financing the film "Marudhu".

15. The defendant would submit that they did have some finance dealings with Mr. Anbu Chezhian of M/s.Gopuram Films in connection with production business for which Rs.12,00,00,000/- was due, which the defendant would submit that the plaintiff company had taken over and settled. However, in the written statement it has been wrongly



C.S.No. 59 of 2021

WEB COPY stated that the defendant company had undertaken to take over and

settle dues. This fact cannot be denied by the plaintiff in view of the agreement dated 02.05.2018 entered into between the defendant and the plaintiff regarding the rights of another film of the defendant, Sandakozhi 2. In this agreement the defendant had undertaken to settle dues to Mr. Anbu Chezhian of M/s.Gopuram Films at the time of the release of next film Thupparivalan II.

16. It is the case of the defendant that neither in the agreement dated 02.05.2018 nor in the suit agreement dated 21.09.2019, the plaintiff had advanced any money directly to the defendant. Therefore, the defendant would call upon the plaintiff to prove that they have settled the dues of Mr. Anbu Chezhian of M/s.Gopuram Films and furnish details as to the date, amount and the mode of payment. The defendant would submit that the plaint is absolutely silent in this regard.



C.S.No. 59 of 2021

WEB COPY

17. Further, the defendant would submit that the plaintiff had obtained their signature on a one sided agreement prepared by themselves and the proprietor of the defendant had signed the agreement dated 21.09.2019 without perusing the entire Clauses contained therein and reposing total trust upon the plaintiff company. The defendant would submit that they had not expected any foul play on the part of the plaintiff.

18. The defendant would deny the agreement regarding the repayment of the amount of Rs.21.29 Crores in two tranches. They would further make a submission that the plaintiff cannot take advantage of the cut off period shown in the agreement as 31.12.2020 in view of the Covid 19 situation. They would submit that this has to be treated as a force majeure Clause. Therefore, the time for payment is deemed to have been waived.



C.S.No. 59 of 2021

WEB COPY

19. In fact, it is the case of the defendant that there is no cause of action for claiming the amount. The defendant would further submit that the interest claimed at 30% p.a. is usurious and highly exorbitant. Therefore, the defendant would pray that the suit be dismissed.

Rejoinder of the plaintiff:

20. The plaintiff had filed a rejoinder inter alia denying the defendant's contention that there was no proof on the side of the plaintiff to show discharge of the loan to Mr. Anbu Chezhian of M/s.Gopuram Films. The plaintiff would submit that the payments had been made to Mr. Anbu Chezhian on behalf of the defendant at the behest and with the knowledge of the defendant. The defendant had not raised any demur when the payments were made and had not contended that no amounts were due from them to Mr. Anbu Chezhian.



C.S.No. 59 of 2021

WEB COPY

21. The plaintiff would submit that the amounts had been paid on

behalf of the defendant to Mr. Anbu Chezhian as follows:

(i) 09.04.2019 - Rs.3 Crores transferred by

NEFT to M/s. Gopuram Films.

(ii) 29.05.2019 - Rs.3 Crores 15 Lakhs

transferred by NEFT by plaintiff to M/s. Gopuram Films.

(iii) 03.08.2019 - Rs.15 Crores transferred by

RTGS by plaintiff to M/s. Gopuram Films.

(iv) 13.08.2019 - Rs.32,50,000/- transferred

by NEFT by plaintiff to M/s. Gopuram Films.

In all a sum of Rs.21,47,50,000/- was paid which

included balance interest of Rs.14,00,000/-.



C.S.No. 59 of 2021

WEB COPY

22. The plaintiff would submit that their ledger statement and bank statement for the relevant period would reinforce the above fact. It is their contention that recital C and Clause 3 of the suit loan agreement would clearly show that the plaintiff had taken over and repaid a sum of Rs.21.29 crores to Mr. Anbu Chezhian of M/s.Gopuram Films. The plaintiff would further submit that the loan agreement dated 02.05.2018 has no relevance to the instant suit.

23. That apart, by virtue of the recitals in Clause 10.4 of the loan agreement dated 21.09.2019 all prior agreements and understandings stood superseded. The allegation that the plaintiff has not directly paid the defendant but had only undertaken to settle the dues was denied as vague and baseless.



C.S.No. 59 of 2021

WEB COPY

24. The plaintiff would submit that not only was the loan taken over by them but the same has also been repaid by them to M/s.Gopuram Films. Further, such a stand has not been taken earlier by the defendant in their counter affidavit to the interim applications. The plaintiff would submit that the fact that Mr. Anbu Chezhian had not made any claim against the defendant is by itself yet another proof that the dues to Mr. Anbu Chezhian by the plaintiff has been fully discharged. The allegation of the defendant that there is no clarity as to how the suit amount has been arrived at was also termed as false and untenable since the plaintiff has clearly set out the fact that the suit claim was the principal sum of Rs.21.29 Crores together with interest at 30% p.a.

25. The plaintiff would further submit that the defendant was not rushed into signing the agreement and that it was only after considering



C.S.No. 59 of 2021

the terms of the agreement in detail that both parties set their respective
WEB COPY

signatures on the agreement. The defense now put forward by the defendant regarding its reliance on Covid 19 and force majeure Clause was termed as misplaced as the event had not dithered the defendant from producing or acting the movie "Chakra" and other movies. The defendant who has not responded to the plaintiff's demand for repayment vide letter dated 21.08.2020 now attempting to evade payment under the force majeure Clause. The defendant who has denied the agreement as one sided is trying to rely upon the force majeure Clause. The plaintiff had therefore sought that the suit be decreed.

Issues:

26. The following issues have been framed by this Court:

(i) Has not the defendant breached his obligations under the loan Agreement dated 21.09.2019?



C.S.No. 59 of 2021

WEB COPY

(ii) Whether the plaintiff had fulfilled their promise and discharged the loan at the time of takeover of the loan of the defendant with M/s. Gopuram Films as per the Loan Agreement dated 21.09.2019 entered into among the plaintiff and the defendant and if so when and in what mode?

(iii) Are not the Clause Nos. 3.2, 5.3 and 5.4 contained in the Loan Agreement dated 21.09.2019 entered into among the plaintiff and the defendant illegal and unenforceable in law being against the Public Policy?

(iv) Whether the suit is a pre-matured one in view of the Force Majeure Clause (Clause No. 13.3) of the Loan Agreement dated 21.09.2019 entered into among the plaintiff and the defendant?

(v) Whether the plaintiff is entitled to recover from



C.S.No. 59 of 2021

WEB COPY

the defendant a sum of Rs.30,05,68,137/- (Rupees Thirty Crores Five Lakhs Sixty Eight Thousand One Hundred and Thirty Seven Only), with interest at 30% p.a., on the principal amount of Rs.21,29,00,000/- from the date of plaint till realisation?

(vi) Whether there is any cause of action for the plaintiff to file a suit?

(vii) Whether proper Court fee has been paid in the above suit?

(viii) Whether the plaintiff is entitled to interest as prayed for?

(ix) Whether the plaintiff is entitled to costs?

(x) To what other reliefs are the parties entitled to?

27. The plaintiff had examined their General Manager Accounts,

Mr.Rajasekaran Natarajan as PW1 and through him they have marked



C.S.No. 59 of 2021

WEB COPY Ex.P.1 to P.13. The proprietor of the defendant concern was examined

as DW1 and Ex.D1 to Ex.D6 were marked through him. Court exhibits Ex.C1 and Ex.C.2 have also been marked.

Submissions:

28. Though both sides had submitted elaborate oral submissions, these submissions have been reduced into written arguments and this Court is referring to these written arguments.

Submission of the plaintiff:

29. After narrating the facts of the case and the defense, the plaintiff would set out the salient features of the loan agreement, which has been marked as Ex.P.4, relevant for arriving at a decision in the above suit. In recital C it has been provided that the plaintiff has taken over the loan availed by the defendant from the M/s.Gopuram Films / Mr. Anbu Chezhian, who has been referred to as the original money



C.S.No. 59 of 2021

WEB COPY lender together with interest accrued thereon amounting to a sum of

Rs.21.29/- crores. The plaintiff had undertaken to pay the above sum to the original lender and the defendant had undertaken to settle the loan to the plaintiff.

30. Clause 3 of the agreement deals with the loan amount and the interest cost, wherein the parties had agreed that the defendant would repay the sum of Rs.21.29 cores together with interest at 30% p.a., calculated on the diminishing balance basis accruing from 01.10.2019 till its full and final payment by the defendant to the plaintiff. The defendant had also undertaken to repay the same within the repayment period.

31. Clause 5 deals with the repayment period where under the defendant was required to pay the sum of Rs.7 Crores atleast a week prior to the release of the film which has been tentatively titled as



C.S.No. 59 of 2021

WEB COPY Thupparivalan II, which was expected for a release on or before

31.03.2020. In case the film did not release on the given date the defendant was required to pay the entire amount on or before 31.12.2020.

32. Clause 4 provides for collateral security in the form of a lien for all the future film projects and associated rights produced or financed by the defendant till such time as the loan amounts are settled.

33. It is the plaintiff's case that the defendant had neither repaid the loan amount nor notified the plaintiff about their inability to repay as provided under the Clause 6 of the agreement. Therefore, the plaintiff was constrained to issue a reminder to the defendant which also could not been served on the defendant on two occasions and ultimately the plaintiff had sent the notice through e-mail. Therefore, the plaintiff was forced to file the above suit.



C.S.No. 59 of 2021

WEB COPY

34. The plaintiff would submit that the defendant had not pressed three issues, namely issue Nos. iii, iv and vi. Therefore, this Court is called upon to return a finding only with regard to the remaining issues (i), (ii), (v), (vii), (viii), (ix) and (x). Issue No.i, ii, v and viii are connected.

35. The plaintiff would make the following submissions with reference to issue No.1. The plaintiff would submit that the defendant had breached the following Clauses of the agreement namely Clause 5.1 and 5.2 which are the Clauses for repayment and interest. In the counter statement to OA.No.98 and 129 of 2021 and A.No.555 & 556, 789 & 790 of 2021 (Ex.C.1), the defendant has admitted that he has entered into the suit agreement dated 21.09.2019 with the plaintiff to take over the finance availed by them from Mr.Anbu Chezhian. In the said counter the defendant has further admitted the repayment schedule



C.S.No. 59 of 2021

given in Clause 5 of the agreement.
WEB COPY

36. In paragraph No.7 of the said counter the defendant has further submitted that he was always ready and willing to perform his obligations under the said agreement and repay the amounts that was to be arrived at after mutual discussion and fixing a rescheduled time limit for payment at the time of release of the movie Thupparivalan II. Therefore, in its first defence to the plaintiff's claim, the defendant has admitted the agreement, borrowing, repayment schedule and has expressed his readiness and willingness to perform his obligations, as a result the defendant has not only admitted the borrowing but also expressed his readiness and willingness to repay the same. However, this defense is completely given a go by when the written statement is filed.



C.S.No. 59 of 2021

WEB COPY

37. In the written statement for the first time the defendant denied the liability and called upon the plaintiff to prove the payment of the dues to the original lender Mr. Anbu Chezhian. The plaintiff has discharged this onus cast upon them by marking Ex.P.2 series and Ex.P.3. There is however no document forthcoming from the defendant to show repayment to the plaintiff. That apart, the defendant has breached Clause 6 of the agreement which clearly stipulates that in the event of the defendant not being able to repay the loan amount he has to notify the plaintiff. Therefore, the plaintiff would submit that there is a clear breach of obligations cast upon the defendant under the loan agreement dated 21.09.2019.

38. As regards Issue No.2, *whether the plaintiff had fulfilled their promise and discharged the loan at the time of takeover of the loan of the defendant with M/s.Gopuram Films as per the Loan Agreement*



C.S.No. 59 of 2021

dated 21.09.2019 entered into among the plaintiff and the defendant
WEB COPY

and if so when and in what mode? The plaintiff would submit that the original lender was paid by the plaintiff in four tranches between April and August 2019 as evidenced by Ex.P.2 series. After the payment, the plaintiff and the defendant had entered into a loan agreement dated 21.09.2019. Therefore, when the loan agreement was signed the amounts had already been paid to the original lender.

39. When the agreement is silent about the time line for paying the original lender but contains the time line for repayment by the defendant it would clearly show that the amounts had been disbursed to the original lender even prior to the plaintiff and defendant entering into the loan agreement.

40. The plaintiff would submit that the reason why the payments to Mr. Anbu Chezhian had not been clearly set out in the plaint was on



C.S.No. 59 of 2021

WEB COPY account of the fact that the payment was made only at the behest and

with the knowledge of the defendant. Thereafter, the said fact has been rectified in the rejoinder, wherein the plaintiff has set out in clear detail the date, mode and amounts that they had repaid. It is on this account that in the initial defense (Ex.C.1) the defendant has admitted the repayment to the original lender and has also undertaken to repay the same to the plaintiff. The plaintiff has also provided the proof of the payment by exhibiting Ex.P.2, Ex.P.3 and Ex.P.12 series.

41. The defendant as D.W.1 has also admitted that after 2019 there has been no demand from the said Mr. Anbu Chezhian. He would state that no legal notice was issued by Mr. Anbu Chezhian only on account of the long standing relationship between them. Therefore, the plaintiff would submit that it is crystal clear from Ex.P.2, 3 and 12 that the plaintiff had discharged his obligations under the loan agreement dated 21.09.2019.



C.S.No. 59 of 2021

WEB COPY

42. Issue No.5, *Whether the plaintiff is entitled to recover from the defendant a sum of Rs.30,05,68,137/- (Rupees Thirty Crores Five Lakhs Sixty Eight Thousand One Hundred and Thirty Seven Only), with interest at 30% p.a., on the principal amount of Rs.21,29,00,000/- from the date of plaint till realisation?* In the light of the plaintiff proving the payment to Mr. Anbu Chezhian Issue No.5 has to be answered in favour of the plaintiff.

43. With reference to Issue No.8 relating to interest, the plaintiff would contend that in Clause 3 of the agreement, Ex.P.4 the defendant had agreed to repay Rs.21.29 Crores along with interest at 30% p.a. At no point in time was there any objection on the part of the defendant. While so, for the first time in Ex.C.1 counter affidavit and written statement the defendant sought to claim that the interest is usurious. The plaintiff would submit that this is a generally accepted interest rate



C.S.No. 59 of 2021

in cinema industry and it is the rate which the original lender was being
WEB COPY

paid. Further, the defendant in his cross examination has clearly admitted that it is the same rate that Mr. Anbu Chezhian was charging him.

44. The plaintiff would further submit that under the Tamil Nadu Money Lenders Act, 1957 and the Tamil Nadu Prohibition of Exorbitant Interest Act, hereinafter called the Exorbitant Interest Act, would not cover the loan beyond Rs.10,000/-. They would rely upon the Judgement of the Hon'ble Supreme Court reported in **2010 2 LW 75 – *Indiabulls Financial Services Ltd Vs. M/s. Jubilee Plots and Holdings Pvt., Ltd.***, Therefore, the plaintiff would justify the claim of the interest at 30% p.a.

45. The plaintiff has also addressed arguments on the issues which have not been pressed by the defendant. However, this Court



C.S.No. 59 of 2021

WEB COPY does not intend traversing the same as the defendant has given up their

defense that the loan agreement was illegal and unenforceable and against public policy, the suit is pre-matured one in view of force majeure Clause and there is no cause of action for the suit.

46. The plaintiff would submit that without any pleading the defendant has marked Ex.D.5 and Ex.D.6 agreements all of which have no relevance to the present issue. The plaintiff has also referred to the cross examination of PW1 regarding the board resolution Section 65 B affidavit with reference to the Board Resolution in favour of Mr.Neelakant Narayanpur to institute the suit and PW1 Mr.Rajasekaran.

47. The plaintiff would submit that nowhere in the counter or in the written statement have the defendant taken out such a defense. Therefore, the allegations with reference to the board resolution being



C.S.No. 59 of 2021

WEB COPY dated after the proof affidavit is signed by PW1 is nothing but an

attempt to create confusion in the minds of Court. Once again this defense has been taken after the filing of the counter statement and marking of the documents.

48. The plaintiff would rely upon the Judgement reported in **1996 SCC Online Bom 563 – Central Bank of India Vs. Tarseema Compress Wood Manufacturing Company** and **2012 SCC Online Del 1508 – Pawan Kumar Dalmia Vs. HCL Infosystems Ltd.** From the aforesaid Judgements it can be deduced that even without a Board resolution a party could give evidence.

49. With reference to the contentions of the defendant regarding the Section 65 B certificate, Ex.P.2, that the plaintiff had not examined any one as witness and the person who has signed the Section 65 B certificate has not been examined as witness, the plaintiff would submit



C.S.No. 59 of 2021

that there was no requirement to examine the person who has signed
WEB COPY

Section 65 B certificate as the witness.

50. As regards the issue No.7, Whether proper Court fee has been paid in the above suit? the plaintiff would submit that the suit has been valued at Rs.30,06,68,137/-. The plaintiff would submit that ad valorem Court fee has been paid. The plaintiff would further submit that the only security that the plaintiff has managed to obtain is a sum of Rs.2.6 crores which has been deposited by Stone Bench Creations Pvt., ltd., which in the event of suit be decreed could be released to the plaintiff. The plaintiff therefore sought to have the suit decreed.

51. The learned senior counsel for the plaintiff relied upon the following Judgements in support of his arguments:

(i) 1996 SCC Online Bom 565 – Central Bank of India Vs. Tarseema Compress Wood Manufacturing



C.S.No. 59 of 2021

WEB COPY

Company and others.

(ii)1996 (6) SCC 660 – United Bank of India Vs.

Naresh Kumar and others.

(iii)2008 (17) SCC 491 – Bachhaj Nahar Vs. Nilima

Mandal and Another.

(iv)2010 – 2 – LW – 75 - Indiabulls Financial Services Limited Vs. M/s.Jubilee Plots and Housing Private Limited.

(v)2012 SCC Online Del 1508 – Pawan Kumar Dalmia Vs. M/s.HCl Infosystems Ltd., and others.

(vi)A.Nos.1293 and 1295 of 2019 – A.R.Ravichandran and another Vs. M/s.Magnitute Realtors and Probuild Pvt., Ltd., and another dated 26.03.2019.



C.S.No. 59 of 2021

WEB COPY

Submission of the defendant:

52. The defendant would submit that the argument of the plaintiff that the defendant had borrowed money from Mr. Anbu Chezhian of M/s.Gopuram Films to meet the production of the movie which released on 2016 is totally false. The movie was produced by Mr.Anbu Chezhian of M/s.Gopuram Films and the defendant is nowhere connected with its production. Therefore, the genesis for the suit claim is non existent. That apart, the defendant would submit that the plaintiff has suppressed the earlier agreement dated 02.05.2018 Ex.D.5 and Ex.D.6.

53. The defendant would submit that the plaintiff had undertaken to takeover the loan of the defendant to settle Mr. Anbu Chezhian with respect to a sum of Rs.12 Crores. This fact has been suppressed in their plaint. The defendant would further submit that the plaintiff was



C.S.No. 59 of 2021

unable to state as to when the loan arrangement between defendant and
WEB COPY

Mr. Anbu Chezhian had taken place, what was the principal amount and the interest component therein and how funds were transferred by the plaintiff to Mr. Anbu Chezhian.

54. The defendant would submit that since the original loan was a sum of Rs.12 Crores there is a suspicion with reference to the present claim of a sum of Rs.21.29 Crores which is stated to be due to Mr. Anbu Chezhian of M/s.Gopuram Films and that the said sum had been repaid.

55. That apart, the payments as evidenced by Ex.P.4 has been made much prior to the loan agreement dated 21.09.2019. Further, the alleged loan and its repayment was scheduled during the Covid 2019 when the entire business particularly film industry had been worst hit. The only document that supports the loan is Ex.P.4 agreement. Ex.P.2



C.S.No. 59 of 2021

series relates only to a single day's transaction of the plaintiff's bank
WEB COPY

account.

56. The defendant would further submit that there is no document to show the take over of the loan and that the money is settled to Mr. Anbu Chezhian. He would further submit that there is an ambiguity in the plaint with reference to the alleged loan transaction between the defendant and the said Anbu Chezhian and the statement of the loan by the plaintiff to Mr. Anbu Chezhian.

57. The defendant had also raised the issue of maintainability by contending that the plaintiff company is incorporated under the Companies Act having a corporate personality. Therefore, the plaintiff has to comply with the provisions of Order XXIX of the CPC, namely that the person who has signed and verified the plaint should be so authorised in accordance with law and secondly that either an



C.S.No. 59 of 2021

WEB COPY authorisation nor a board resolution is required for the institution of the

suit. They have also called upon the the Court to adverse for non examination of Mr.Neelakant Narayanpur, who has signed the plaint and the original resolution.

58. Further, PW1 had no direct knowledge about the suit transaction and he was not part of the company when the transaction took place. Therefore, the defendant would submit that he is not a competent person to depose on behalf of the plaintiff company. The defendant would submit that the claim of interest at 30% p.a. is usurious as the admitted rate of interest is much lesser. He therefore sought for the dismissal of the suit.

59. In support of the above contentions the learned senior counsel would rely upon the following Judgements:

(i) **AIR 1968 SC 1413 – Gopal Krishnaji Ketkar Vs.**



C.S.No. 59 of 2021

WEB COPY

Mohamed Haji Latif and others.

(ii) 1998 – 1 – LW – 195 - Indian Commerce and

Industries Private Ltd., Vs. Swadharma Swarajya Sangha.

(iii) 1998 – 1 – LW – 203 - Swadharma

Swarajya Sangha Vs. Indian Commerce and Industries

Private Ltd.,

Discussion:

60. The plaintiff seeks recovery of money from the defendant on the ground that the plaintiff has taken over the loan due by the defendant to Mr. Anbu Chezhian of M/s.Gopuram Films and that the said amount of Rs.21.29 crores has been repaid under four tranches as evidenced by Ex.P.2 series. The defendant has countered this claim stating that no amount has been directly advanced by the plaintiff to the defendant and that the plaintiff has to prove that the sum of Rs.21.29 Crores was paid to Mr. Anbu Chezhian.



C.S.No. 59 of 2021

WEB COPY

61. Though the defendant had admitted the signature in Ex.P.4 agreement he would submit that he had not read all the Clauses and had signed the same purely based on trust. Further, in view of the Covid situation the force majeure Clause has kicked in and therefore the repayments stood waived. In the course of the arguments the defendant had not pressed Issue No.3, 4 and 6. Therefore, this Court has to return findings with reference to the following issues:

(i) Has not the defendant breached his obligations under the loan Agreement dated 21.09.2019?

(ii) Whether the plaintiff had fulfilled their promise and discharged the loan at the time of takeover of the loan of the defendant with M/s. Gopuram Films as per the Loan Agreement dated 21.09.2019 entered into among the plaintiff and the defendant and if so when and in what mode?



C.S.No. 59 of 2021

WEB COPY

(v) Whether the plaintiff is entitled to recover from the defendant a sum of Rs.30,05,68,137/- (Rupees Thirty Crores Five Lakhs Sixty Eight Thousand One Hundred and Thirty Seven Only), with interest at 30% p.a., on the principal amount of Rs.21,29,00,000/- from the date of plaint till realisation?

(vii) Whether proper Court fee has been paid in the above suit?

(viii) Whether the plaintiff is entitled to interest as prayed for?

(ix) Whether the plaintiff is entitled to costs?

(x) To what other reliefs are the parties entitled to?

62. In order to answer these issues this Court has to consider if the plaintiff has proved that the loan agreement dated 21.09.2019 which is entered into between the plaintiff and defendant has been



C.S.No. 59 of 2021

WEB COPY breached by the defendant. The defendant has taken out different

stances / defense at different stages in the counter to OA.No.98 and 129 of 2021 and A.Nos.555, 556, 789 and 790 of 2021 marked as Ex.C.1.

The defendant has made the following submissions in paragraph No.3 of the said counter:

“It is true that I had entered into the subject agreement dated 21.09.2019 with the applicant / plaintiff in connection with the take over of the finance availed by me from the said Mr. Anbu Chezhian regarding the loan of Rs.12/- Crores and another sum of Rs.3 Crores totalling in all Rs.15 Cores availed by me for my business.

63. In paragraph No.4 the defendant has further stated as follows:

“I further submit that it cannot be denied by the applicant / plaintiff that the suit agreement was entered



C.S.No. 59 of 2021

WEB COPY

into by them only because of the fact that I am a reputed and successful actor in the Tamil and Andhra cinema industry for the past several years having good market and guaranteed business and as such only with the specific agreement and understanding that the loan amounts would be repaid in two tranches Viz., Rs.7 Crores before the release of the Film Thupparivalan II under production at that time which was scheduled for expected release by 31.03.2020 and the balance payable by 31.12.2020 without any further security. ”

64. In paragraph No.7 the defendant has stated as follows:

“I submit that any how I am always ready and willing to perform my obligations under the subject agreement and repay whatever amounts that may be arrived at after mutual discussions and fixing the



C.S.No. 59 of 2021

WEB COPY

rescheduled time limit for repayment at the time of release of the film Thupparivalan II which I hope before the end of this year and the balance within the outer limit that may be agreed to."

65. Therefore, from the aforesaid averments contained in a affidavit sworn to by the defendant he has not only admitted the execution of agreement dated 21.09.2019 but has also reiterated the terms of repayment. However, he would contend that the end amount has to be worked out through mutual discussion. In the written statement this defense has been given a total go by and a defense is raised that money was not directly paid by the plaintiff to the defendant and in the light of the force majeure Clause payment should be waived.

66. In the course of evidence the defendant would contend that the plaintiff and the defendant had entered into two prior assignment



C.S.No. 59 of 2021

WEB COPY agreements marked as Ex.D.1 and Ex.D.2 which agreements do not

find reference in the agreement Ex.P.4. A perusal Ex.D.1 and Ex.D.2 would indicate that the assignment of the theatrical rights of the films Irumbu Thirai and Sandai Kozhi 2 had been given by the defendant to the plaintiff.

67. Towards the consideration for these two agreements the plaintiff was to pay a sum of Rs.15 Crores to Mr. Anbu Chezhian of M/s.Gopuram Films. However, Ex.P.4 agreement is simplicitor a loan agreement, the recitals of which would indicate that the plaintiff had taken over the loan due by the defendant to Mr. Anbu Chezhian of M/s.Gopuram Films and that the same had been repaid as evidenced by Ex.P.2 series. This agreement is admitted by the defendant. Consequently, he has admitted his outstanding to Mr.Anbu Chezhian. However, the defendant has not produced any evidence whatsoever to prove that he has repaid the said sum either to the plaintiff or to the



C.S.No. 59 of 2021

said Mr.Anbu Chezhian.

WEB COPY

68. On the contrary the defendant has chosen to take a stand that the force majeure Clause in the agreement has to be applied in the light of the Covid 19 pandemic. Therefore, the terms of the agreement dated 21.09.2019 has been breached. Therefore, Issue No.1 has to necessarily be answered in favour of the plaintiff.

69. As regards Issue No.2, the plaintiff has filed Ex.P.2 series to show that sum of Rs.21.29 Crores has been paid by them to M/s.Gopuram Films and the statement of account Ex.P.3 would also reflect the same. The defendant as D.W.1 has admitted that there has been no claim against him by Mr. Anbu Chezhian of M/s.Gopuram Films to date. Therefore, taking into consideration the admissions made in Ex.C.1 counter affidavit, Ex.P.2 and Ex.P.3 coupled with the fact that there has been no demand from Mr. Anbu Chezhian it has to



C.S.No. 59 of 2021

be concluded that the plaintiff has cleared the dues of the defendant to
WEB COPY

Mr. Anbu Chezhian. Therefore, Issue No.2 is also answered in favour of the plaintiff.

70. Issue Nos.5 and 8 would go together. In the light of the findings rendered in respect of Issue Nos. 1 and 2, issue No.5 has to be answered in favour of the plaintiff stating that the plaintiff is entitled to recover the principal amount of Rs.21.29 crores from the defendant.

71. As regards Issue No.8 with regard to the rate of interest at 30% p.a., it is the case of the defendant that the said amount is usurious and violative of provisions of the Exorbitant Interest Act. In this regard the plaintiff has produced the Judgement of this Court reported in **2010 - 2 - LW - 75 - Indiabulls Financial Services Limited Vs. M/s.Jibilee Plots and Housing Private Limited.** This was also a case where interest was charged at 33% p.a and the respondent had



C.S.No. 59 of 2021

WEB COPY questioned the same stating that it was violative of provisions of the

Exorbitant Interest Act. The learned Judge of this Court after discussing Section 2 (6) of the Act which deals with definition of loan and the exorbitant interest went on to observe as follows:

“18. In order to obviate the lower middle class people, particularly the salaried servants and wage earners from the exploitation of the money lenders, such a provision has been made, it has been declared by this Court in the above decision. In the instant case, crores and crores of rupees had been advanced by the revision petitioners to the respondents. The rate of interest has been reportedly levied only in terms of the contract agreed between the parties. Neither the Tamil Nadu Money Lenders Act, 1957 nor the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 has any application to the loan transactions of this nature. Those two Acts address the grievance of the gullible public who borrow small loan on usurious interest slapped on them and not for the mammoth loan transactions of this magnitude based on negotiable instruments.”



C.S.No. 59 of 2021

WEB COPY

72. That was also a case where the defendant sought to strike off the plaint on the ground that the interest claimed is contrary to the provisions of the Exorbitant Interest Act. In the aforesaid case the petitioner therein before this Court had also moved the Special Court constituted under the Exorbitant Interest Act. Therefore this Court proceeded to strike off the plaint on the ground that the revision petitioners had abused the process by approaching the Special Court as well.

73. In the instant case the defendant has signed the dotted lines agreeing to pay interest at 30% p.a. On the basis of this agreement the plaintiff has also paid the huge sum of Rs.21.29 Crores to the said Mr. Anbu Chezhian of M/s. Gopuram Films. After having promised the plaintiff that the amounts would be repaid with interest at 30% p.a. the defendant is now attempting to renege on his agreement.



C.S.No. 59 of 2021

WEB COPY

74. As observed in the Judgement in Indiabulls case supra, the loan amount runs into several crores and the learned Judges held that the attempt of the defendant to take refuge under the Exorbitant Interest Act and the Tamil Nadu Money Lenders Act, cannot be countenanced. The learned Judge in the Indiabulls case has also held that these two Acts would not apply to the money lenders who advanced loans on the basis of Negotiable Instruments exceeding Rs.10,000/- Therefore, applying the ratio of the above case, to the case on hand Issue Nos.5 and 8 are answered in favour of the plaintiff. The defendant is liable to pay interest 30% on Rs.21.29 crores from the date of agreement, namely 21.09.2019 till the date of payment. Therefore, Issue No.8 is also answered in favour of the plaintiff.

75. A perusal of the plaint indicates that the suit has been valued at Rs.30,05,68,137/- and the Court fees has been paid on the aforesaid



C.S.No. 59 of 2021

sum. Therefore, Issue No.7 is also answered against the defendant.
WEB COPY

76. As regards the Issue No.9 - *Whether the plaintiff is entitled for cost?* Despite the legal notice and reminder letters the defendant has failed to respond to the same. If the defendant was not liable to pay the said amount he would have immediately responded to these notices stating that he did not owe any amount to the plaintiff. In fact under Ex.P.4 agreement the defendant is obliged to notify the plaintiff in case he is not in a position to repay the amount on time.

77. The conduct of the defendant from the beginning of the suit proceedings appears to be evasive. By order dated 18.08.2021 in OA.No.98 and 129 of 2021, this Court directed the defendant to submit a monthly statement of account of the theatrical collections for the movie "Chakra" and to deposit 50% of the collections of the said movie to the credit of the suit. However, this direction was observed in the



C.S.No. 59 of 2021

WEB COPY breach and after the defendant was directed to file a memo of

compliance he sought to justify the non compliance on the ground that the movie did not run well after 18.08.2021. Thereafter by order dated 08.12.2021 the defendant was directed to file an affidavit taking a stand as to whether the movie "Chakra" run theatres beyond 05.03.2021 and to provide this details on its collections. The defendant on oath stated that after 05.03.2021 the movie "Chakra" was not screened which was found to be false on the basis of the defendant's own tweet dated 15.03.2021 celebrating 25th day of the theatrical run of "Chakra".

78. Further, a perusal of Ex.C.2 report of the auditors would also indicate that the defendant has not been forthcoming with his bank statement, statement of accounts etc. This clearly indicates that the defendant who had received the money after the filing of the suit has not chosen to clear even a part of the plaintiff's dues. Therefore, it is the case where cost has to be imposed upon the defendant and Issue



C.S.No. 59 of 2021

No.9 is answered in favour of the plaintiff.
WEB COPY

79. Therefore, the suit is decreed as prayed for with costs and the Registry is directed to release to the plaintiff the sum of Rs.2.6 Crores deposited by Stone Bench Creations Pvt., ltd., to the credit of the suit CS.No.59 of 2021 together with accrued interest and this sum shall be adjusted towards the dues payable by the defendant under the decree.

05.06.2025

kan

Index : Yes/No
Speaking order/non-speaking order



C.S.No. 59 of 2021

WEB COPY

List of witness on the side of the Plaintiff:

P.W.1 - Mr. Rajasekaran

List of Exhibits marked on the plaintiff's side:

Ex.P.1 - Boar Resolution authorising PW1 to give evidence

Ex.P.2 - Bank statement of Applicant Company showing repayment of loan on behalf of the respondent.

Ex.P.3 - Ledger statement of Applicant Company showing repayment of loan on behalf of the respondent.

Ex.P.4 - Loan Agreement dated 21.09.2019.

Ex.P.5 - Reminder letter issued by the plaintiff to the defendant.

Ex.P.6 - Tracking receipt from the Website of India Post reflecting return of the reminder letter sent by the plaintiff to the defendant.

Ex.P.7 - Email from the plaintiff to defendant requesting new address of the defendant.

Ex.P.8 - Email from the plaintiff to defendant attaching the



C.S.No. 59 of 2021

reminder letter dated 21.08.2020.

WEB COPY

Ex.P.9 - News articles and tweet of the defendant relating to release of the movie Chakra.

Ex.P.10 - Notice issued by the plaintiff to the defendant pointing out default in repayment.

Ex.P.11 - Copy of tweet posted by the defendant.

Ex.P.12 - Certificate under Section 65 B of the Indian Evidence Act.

Ex.P.13 - Copy of the plaint in CS (Comm Div).No.332 of 2023.

List of Witness on the side of the Defendant:

D.W.1 - Mr. Vishal Krishna Reddy

List of Exhibits marked on the Defendant's side:

Ex.D.1 - Signature found in the agreement between the plaintiff and defendant.

Ex.D.2 - Signature found in the agreement between the plaintiff and defendant.

Ex.D.3 - Letter dated 21.09.2018 by the plaintiff to the



C.S.No. 59 of 2021

WEB COPY

defendant.

- Ex.D.4 - Letter from Commercial Tax Dept. to the plaintiff dated 22.04.2024.
- Ex.D.5 - Assignment Agreement dated 02.05.2018.
- Ex.D.6 - Assignment Agreement dated 02.05.2018.

- Ex.D.7 - Notice to produce dated 22.08.2024.
- Ex.D.8 - Email Correspondence dated 19.07.2019.

List of Exhibits marked on the side of the Court:

- Ex.C.1 - Common counter affidavit in OA.No.98 of 2021 & A.Nos.555 & 556 of 2021.
- Ex.C.2 - Auditor's report.



C.S.No. 59 of 2021

WEB COPY

P.T.ASHA, J,

kan

C.S.No. 59 of 2021

05.06.2025

56/56