

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Wednesday, the 3rd day of August 2022 / 12th Sravana, 1944WP(C) NO. 24067 OF 2022PETITIONER:

JOSE KURUVINAKUNEL@KURUVINAKUNNEL KURUVACHAN, AGED 70 YEARS,
S/O.JOSEPH, KURUVINAKUNNEL, MLAPARAMBIL, EDAMATTOM KARA, POOVARANI
P.O., PALA, KOTTAYAM DISTRICT.

RESPONDENT:

1. UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, GOVERNMENT OF INDIA, SHASTRI BHAVAN, NEW DELHI - 110 001.
2. CENTRAL BOARD OF FILM CERTIFICATION (CBFC), A STATUTORY BODY FORMED UNDER THE MINISTRY OF INFORMATION AND BROADCASTING, FILMS DIVISION COMPLEX, PHASE -1 BUILDING, 9TH FLOOR, DR.G.DESHMUKH MARG, MUMBAI - 400 026, REPRESENTED BY ITS CHAIRMAN.
3. CHAIRMAN, CENTRAL BOARD OF FILM CERTIFICATION (CBFC), MINISTRY OF INFORMATION AND BROADCASTING, FILMS DIVISION COMPLEX, PHASE -I BUILDING, 9TH FLOOR, DR.G.DESHMUKH MARG, MUMBAI - 400 026.
4. CHIEF EXECUTIVE OFFICER, CENTRAL BOARD OF FILM CERTIFICATION (CBFC), MINISTRY OF INFORMATION AND BROADCASTING, FILMS DIVISION COMPLEX, PHASE-I BUILDING, 9TH FLOOR, DR.G.DESHMUKH MARG, MUMBAI - 400 026.
5. REGIONAL OFFICER, REGIONAL OFFICE, CENTRAL BOARD OF FILM CERTIFICATION (CBFC), A STATUTORY BODY FORMED UNDER MINISTRY OF INFORMATION AND BROADCASTING, 1ST FLOOR, CHITRANJALI STUDIO COMPLEX, TIRUVALLAM, THIRUVANANTHAPURAM - 695 027.
6. JINU VARGHESE ABRAHAM, AGED 37 YEARS, S/O.V.V.ABRAHAM, FLAT NO.12C, SFS KIGDOM APARTMENTS, NEAR CHOICE SCHOOL, THRIPUNITHURA, ERNAKULAM - 682 301.
7. LISTIN STEPHEN, AGED 34 YEARS, S/O.STEPHEN, R/AT MUNDIYILKUNNEL HOUSE, UZHAVOOR - 686 634, HAVING OFFICE AT DOOR NO.2704, KOLAPARAMBIL BUILDING, SOUTH JANATHA ROAD, PALARIVATTOM, ERNAKULAM - 682 025.
8. PRITHVIRAJ PRDUCTIONS LLP, FLAT NO.4, ASSET CASA GRANDE, MALIEKAL ROAD, THEVARA, ERNAKULAM - 682 013 REPRESENTED BY ITS MANAGING PARTNER, SUPRIYA VIJAY MENON @ SUPRIYA MENON.
9. SHAJI KAILAS, AGED 56 YEARS, S/O.SIVARAMAN NAIR, THEJAS, HOUSE NO.69, KAIRALI NAGER, KURUVANKONAM, KOWDIAR, THIRUVANANTHAPURAM - 695 003.
10. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, MINISTRY OF HOME AFFAIRS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 690 001.
11. DIRECTOR GENERAL OF POLICE, POLICE HEADQUARTERS, VELLAYAMBLAM, THIRUVANANTHAPURAM - 695 010.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to issue an order of injunction restraining the respondents 6 to 9

from screening and releasing the movie "Kaduva" in full or in parts or its trailers, teasers or songs, or by changing its name, in theaters or any other media/OTT platform/social media pages etc. in audio or video form on the strength of Ext.P8, pending writ petition and direct the respondents 10 and 11 to ensure compliance.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S KODOTH SREEDHARAN, CHACKOCHEN VITHAYATHIL Advocates for the petitioners, ASSITANT SOLICITOR GENERAL OF INDIA for the R1 to R5 and GOVERNMENT PLEADER for R10 & R11, the court passed the following:

V.G.ARUN, J.

===== W.P.

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Dated this the 03rd day of August, 2022

ORDER

Heard the learned Counsel for the petitioner, learned CGC and the learned Counsel appearing for the party respondents.

2. Learned Counsel appearing for the party respondents submitted that the OTT rights of the movie 'Kaduva' has already been sold to third party and the movie is likely to be released through OTT platform on 04.08.2022.

3. Learned Counsel for the petitioner contended that, insofar as the Board of Film Certification has passed Ext.P8 order based on the direction of this Court in Exts.P5 and P6 judgments, the party respondents are bound to ensure that the directions in Ext.P8 are complied with, even when the movie is exhibited through

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OTT platform. In support of the contention, reliance is placed on Section 79 of the Information and Technology Act, 2000 and decision of the Apex Court in **Google India Private Limited v. Visaka Industries [(2020) 4 SCC 162]**.

4. I find considerable force in the contention urged on behalf of the petitioner. The Board of Film Certification having considered all aspects and issued the directions at Ext.P8, the party respondents are bound to ensure compliance when their movie is released in theatres or through OTT mode. Therefore, even if OTT rights of the movie is sold, that can only be subject to the above condition. In such circumstances, respondents 6 to 9 are directed to ensure that, while exhibiting the movie 'Kaduva' through OTT platform, the directions in Ext.P8 are scrupulously complied with.

I am informed that the mechanism for regulating exhibition of movies through OTT

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platforms, is yet to be finalised. This is an aspect which requires serious deliberation and prompt action. The learned CGC shall cause a counter affidavit/statement to be filed by the first respondent, detailing the steps taken in this regard.

Post after two weeks.

Sd/-

**V.G.ARUN
JUDGE**

Sc1/03.08.2022

APPENDIX OF WP(C) 24067/2022

Exhibit P5 TRUE COPY OF THE JUDGMENT IN WPC NO.20920/2022 DATED 28/6/2022 BY THIS HON'BLE COURT.

Exhibit P6 TRUE COPY OF THE JUDGMENT IN WA. NO.812/2022 DATED 04/7/2022 BY THIS HON'BLE COURT.

Exhibit P8 TRUE COPY OF THE ORDER DATED 5/07/2022 BY THE 5TH RESPONDENT.

