



A.No.10 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2023

Pronounced on : 12.01.2024

CORAM

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

Appeal (CAD) .No.10 of 2023

and

C.M.P.No.18246 of 2023

K.Aranganathan

... Appellant

Versus

1.Aramex India Private Limited (Branch Office)
represented by its Manager,
Achutham 1st Street,
Ekkathuthangal, Chennai-32.

2.Aramex India Private Limited (Head Office)
represented by its Managing Director,
No.821, Solitaire Corporate Park,
Andheri Ghatkopar Link Road,
Chakala, Andheri (East)
Mumbai-400 072.

... Respondents

PRAYER : This Appeal is filed under Section 13(1) of Commercial Courts Act, praying to set aside the Judgment and Decree dated 02.08.2022 made in C.O.S.No.166 of 2022 on the file of Commercial Court at Egmore, Chennai and allow this appeal.

1/26



A.No.10 of 2023

WEB COPY For Appellant : Mr.R.Thirugnanam
For Respondents : Mr.M.S.Seshadri

JUDGMENT

P. DHANABAL, J

This Appeal has been preferred as against the Decree and Judgment passed in C.O.S.No.166 of 2022 on the file of Commercial Court, Egmore dated 02.08.2022, whereby the trial Court dismissed the suit and allowed the counter claim in part by directing the plaintiff to pay a sum of Rs.3,73,390/- (Rupees three lakh seventy three thousand three hundred and ninety only) to the defendant with interest at the rate of 12% per annum from the date of plaint (i.e. 13.8.2018) till the date of decree (i.e., 2.8.2022) and thereafter with subsequent interest at the rate of 6% per annum .

2. As against the said Decree and Judgment the plaintiff has filed this appeal.

The gist of the plaint averments:

The plaintiff is the owner of the premises of an extent of 4743 sq.ft in Plot No.1, Poomagal Street, Ekkattuthangal, Chennai. The second defendant is the Head Office and its Branch Office is the first defendant.

2/26



A.No.10 of 2023

The defendants were inducted as a tenant in the year 2006 and after a decade, the lease period was extended for five years commencing from 31st March, 2016. The defendant had made a security deposit of Rs.13,50,000/- and the plaintiff had accepted it. Further the rent was fixed at Rs.90,000/- in the year 2006 which was periodically enhanced and finally it was at Rs.1,81,500/- per month from 1st April 2017.

(i) The defendants have not paid rent from August 2017 to January 2018 for a period of six months which comes to the tune of Rs.10,89,000/-. after deducting 10% of TDS Rs.1,89,000/-. The defendant is liable to pay a sum of Rs.1,59,860/- towards water and Rs.13,200/- towards electricity charges. While so, the plaintiff issued a letter on 28.8.2017, terminating the lease agreement and informed that they shall vacate the premises on 28.10.2017. But the defendants did not vacate and handed over the premises on 28.10.2017 as mentioned in the notice.

(ii) Per contra, the defendants handed over the physical portion of the property only in the month of January 2018. On inspection, the plaintiff came to know that the defendants have extensively damaged the building and the plaintiff carried out the repairs, after informing the



A.No.10 of 2023

defendants through letter dated 9.1.2018 and spent a sum of Rs.18,95,300/-. The above said repair works were done through M/s.Nandhini Building Contractor and the amount was paid to the said contractor after deducting TDS of Rs.18,960/-. Therefore, the defendants are liable to pay a sum of Rs.17,02,060/- to the plaintiff towards damages, after deducting the amount in the security deposit of Rs.13,50,000/-. Hence the plaintiff claimed a sum of Rs.17,02,060/- together with further interest at the rate of 24% per annum from the date of plaint till the realisation and for costs. The plaintiff issued a notice to the defendants on 27.02.2018 through his advocate and the same was acknowledged by the defendants and then the defendants also issued a reply on 12.03.2018 with false averments.

3. The gist of written statement averments:

The defendants filed written statement stating that the suit is not maintainable and it is wholly misconceived and filed against non existent persons in Aramex India Private Limited. The Aramax India Private Limited was inducted as a tenant and an advance of Rs.13,50,000/- paid as refundable interest free security deposit in favour of the plaintiff and the plaintiff is liable to refund the security deposit after the expiry of



A.No.10 of 2023

lease. The lease was terminated on 28.8.2017 by the defendants by notice sent to the defendants and the premises was vacated on 4.12.2017. At the time of handing over the property to the plaintiff, he has not raised any objections regarding the alleged damages caused to the building. While so, on 8.12.2017, the plaintiff addressed an email to the defendants demanding payments amounting to Rs.12,32,000/- to allegedly renovate the schedule premises. In the said email, the plaintiff also demanded payment of alleged outstanding rents for the months August 2017 to December 2017 at the rate of Rs.2,00,000/- (Rupees Two lakhs only) per month and outstanding water and electricity charges.

(i) Further the plaintiff vide an email dated 14.12.2017 made further unconscionable demands seeking compensation for water motor and other movable properties allegedly missing from schedule premises. The plaintiff with a mala fide intention of misappropriating the security deposit furnished by the defendants in 2016 increased his illegal demands from Rs.12,32,000/- to Rs.19,15,000/- towards alleged repair of the schedule premises.

(ii) Furthermore, the plaintiff vide an email dated 30.12.2017 inter alia demanded that defendants pay him rent also for the month of



A.No.10 of 2023

December 2017 on the ground that the defendants had not handed over the schedule premises, though they vacated the premises on 4.12.2017.

(iii) The defendants vide a letter dated 11.1.2018 authorized the plaintiff to deduct Rs.7,84,080/- from the security deposit towards rents for the months of August 2017 to November 2017 and a sum of Rs.1,59,860/- towards water and other related charges. Thereby, the defendants called upon the plaintiff to refund the balance security deposit of Rs.4,06,060/- to them. Till date, the plaintiff failed to return the balance advance amount and thereby, the defendants raised the counter claim.

4. Based on the above said pleadings and hearing both sides the trial Court has framed the following issues:

(i) Whether the plaintiff is entitled to recover the suit amount with interest and cost as prayed for?

(ii) Whether the defendant is entitled to recover a sum of Rs.4,79,151/- together with interest at 18% as counter claim from the plaintiff?

(iii) Whether the suit filed by the plaintiff is liable to be dismissed as against the defendant with costs?

6/26



A.No.10 of 2023

(iv) To what other reliefs is the plaintiff is entitled to?

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5. To prove the case of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A1 to A9 were marked. On the side of the defendants, D.W.1 was examined and Exs.D1 to D5 were marked.

6. After evaluating the oral and documentary evidence adduced on either side, the trial Court dismissed the suit without cost and counter claim made by the defendants was allowed in part by directing the plaintiff to pay to the defendants a sum of Rs.3,73,390/- with interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter with subsequent interest at the rate of 6% per annum.

7. Aggrieved by the above said judgement and decree passed by the trial Court, the present appeal has been filed by the plaintiff on the following grounds:

(1) The trial Court has failed to take into consideration the oral evidence of P.W.1 and P.W.2 and the appellant has clearly proved the damage caused to the demised premises by the respondents.

(2)The trial Court has failed to take into consideration that the appellant has sent a letter dated 09.01.2018 under Ex.A.4 to the respondents directing to depute their officials to notice the



A.No.10 of 2023

repair/rectification work being done at their cost and the same was admitted by D.W.1 in his evidence.

(3) The trial Court has failed to take into consideration that the D.W.1 in his evidence, has admitted that the receipt of the letter dated 09.01.2018 viz., Ex.A4 by the respondents and he deposed that he did not know that any representative was sent to inspect the repair work.

(4) The trial Court has failed to take into consideration that the appellant has paid Rs.18,95,270/- to the P.W.2 for repair/rectification work done by him through City Union Bank, Koilambakkam Branch and the same has been proved under Ex.A9 viz., Statement of Account.

(5) The trial Court has failed to take into consideration that the appellant has filed the Suit claiming the damages amount after the work was done and hence there is no need to appoint an Advocate Commissioner.

8. The learned counsel appearing for the appellant/plaintiff would contend that the appellant/plaintiff is the owner of the suit property and he leased out it to the respondents/defendants and entered into lease agreement on March 31st 2016 and the same was extended for 5 years.



A.No.10 of 2023

As per the agreement, the monthly rent was fixed as Rs.90,000/- in the

year 2006 and it was periodically enhanced and finally it was fixed at Rs.1,81,500/- per month from 1st April 2017. Further the appellant/plaintiff received from the respondents/defendants a sum of Rs.13,50,000/- towards security deposit which is repayable without interest. But the respondents/defendants have not paid the rent from August 2017 to January 2018. The respondents/defendants have to pay a sum of Rs.10,89,000/- towards the rent and further, they are liable to pay a sum of Rs.1,59,860/- towards electricity consumption charges. While the facts are being so, on 28.08.2017, the appellant/plaintiff issued a letter terminating the lease by informing that they shall vacate the premises on 28.8.2017, but they have not vacated the premises and only handed over the premises in the month of January 2018. On inspection, the appellant/plaintiff came to know that the respondents/defendants have damaged the building and thereby, he spent for a sum of Rs.18,95,300/-. The above said repair work was made through M/s.Nandhini Building Contractor. Therefore, the respondents/defendants are liable to pay a sum of Rs.17,02,060/- i.e., after deducting the security deposit amount. Therefore, the

9/26



A.No.10 of 2023

appellant/plaintiff issued a notice to the respondents/defendants on 27.02.2018 through his advocate and the same was acknowledged by the respondents/defendants and then the respondents/defendants also issued a reply on 12.03.2018 with false averments.

8.1. In order to prove the case of the appellant/plaintiff, P.W.1 and P.W.2 were examined and marked Exs.A1 to A9. The appellant/plaintiff has deposed about the pleadings and liability of the respondents/defendants. The evidence of P.W.1, P.W.2 and Ex.A1 to A9, clearly proved the case of the appellant/plaintiff, but the trial Court failed to consider the evidence of P.W.1. The appellant/plaintiff has proved the damages caused to the property. Further, the appellant/plaintiff has sent a letter dated 09.01.2018 under Ex.A4 to the respondents/defendants to depute their officials to notice the repair work being done at their cost and the same was also admitted by D.W.1. Further, the appellant/plaintiff also issued notice to the respondents/defendants about the damages caused by the respondents/defendants and to repair the above said damages intimated them through letter dated 15.12.2017/Ex.A2. Further, D.W.1 also admitted the removal of wooden cabins and wires, which

10/26



A.No.10 of 2023

were installed, 3 inches depth inside the walls. The above said evidences

clearly shows the expenses incurred by the appellant/plaintiff towards the damages caused by the respondents/defendants for a sum of Rs.18,95,300/-. But the trial Court failed to consider the above said aspects and erroneously dismissed the suit. Further, the respondents/defendants are not entitled to claim interest for the counter claim made by them as there is no contract entered between the appellant/plaintiff and the respondents/defendants. Therefore, the Judgment and Decree passed by the trial Court by dismissing the suit is liable to be set aside and the suit is liable to be decreed in favour of the appellant/plaintiff with cost by allowing this appeal.

9. The learned counsel appearing for the respondents/defendants would contend that the relationship between the parties as landlord and tenants is admitted and the terms of rental agreement also admitted. The respondents/defendants already issued notice to terminate the lease period through letter dated 28.08.2017 and thereby, vacated the premises on 4.12.2017 and the same was also intimated to the appellant/plaintiff.

Thereafter, the premises were taken over by the appellant/plaintiff and no

11/26



A.No.10 of 2023

demands made by the appellant/plaintiff towards the alleged damages

caused to the building by the respondents/defendants. In fact there was no damages caused to the building as alleged by the appellant/plaintiff and already the respondents/defendants issued letter dated 11.01.2018 to the appellant/plaintiff to deduct Rs.7,84,080/- from the security deposit towards rent for the months of August 2017 to November 2017 and a sum of Rs.1,59,860/- towards water and other related charges and to repay the security deposit a sum of Rs.4,06,060/-. But the appellant/plaintiff has not refunded the above said amount and he filed the suit with false averments. Further, the respondents/defendants also filed a counter claim in the suit claiming a sum of Rs.4,06,060/- with interest at the rate of 18% from 4.12.2017, totally Rs.4,79,151/-.

9.1. In order to rebut the evidence of the appellant/plaintiff, D.W.1 was examined and Exs.D1 to D5 were marked. The appellant/plaintiff side witness P.W.1 also admitted the vacating of premises by the respondents/defendants but not raised any objection immediately after vacation and after a lapse of considerable time, he issued notice and further the appellant/plaintiff also issued pre-suit and the same was also

12/26



A.No.10 of 2023

suitably replied by the respondents/defendants. The appellant/plaintiff

has not filed any appeal as against the counter claim and thereby, he admitted the claim of the respondents/defendants for a sum of Rs.3,73,390/- with interest at the rate of 12% per annum from the date of plaint to decree and thereafter 6% from the date of decree till the realisation. Therefore, the above said appeal is liable to be dismissed. The trial Court after taking into consideration of all the evidences adduced on both sides, correctly dismissed the suit and partly allowed counter claim.

10. This Court heard both sides and perused the records. Upon hearing both sides, perusing the records, the judgment of the trial Court, grounds of appeal, the points for determination in this appeal are:

1.What is the quantum of arrears of rent payable to appellant/plaintiff by the respondents/defendants.

2.Whether the respondents/defendants caused any damages to the appellant/plaintiff's property.

3.Whether the appellant/plaintiff has incurred a sum of Rs.18,95,300/- towards the repair of the building.

4.Whether the appellant/plaintiff is entitled to the relief as against the defendant for the payment of Rs.17,02,460/- with interest at the rate



A.No.10 of 2023

of 25% per annum as prayed for in the plaint.

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5. Whether the appeal is to be allowed or not.

6. To what other relieves the parties are entitled?

Point No.1: In respect of quantum of arrears of rent:

In this case, there is no dispute that the appellant/plaintiff is the owner of the property and the respondents/defendants are tenants. There is no dispute with regard to the quantum of rent and the advance received by the appellant/plaintiff. Both parties agreed that lastly the rent was fixed as Rs.1,81,500/- and the advance amount was paid as Rs.13,50,000/-.According to the appellant/plaintiff, the respondents/defendants have not paid rent from August 2017 to January 2018. The appellant/plaintiff has calculated the rent amount towards six month rent of Rs.10,89,000/- after deducting 10% T.D.S i.e., Rs.1,89,000/- it would come a sum of Rs.9,80,100/-. Further the respondents/defendants have to pay a sum of Rs.1,59,860/- towards water charges and Rs.13,200/- towards electricity charges. Further, the respondents/defendants have to pay a sum of Rs.9,80,100/- to the Government on T.D.S account. The respondents/defendants caused damages to the building for sum of Rs.18,95,300/- and the

14/26



A.No.10 of 2023

appellant/plaintiff got repaired the building with above said amount and thereby, after deducting all these amount, the respondents/defendants have to pay a sum of Rs.17,02,460/-.

(i)According to the appellant/plaintiff the respondents/defendants have to pay the rent from August 2017 to January 2018. But the respondents/defendants contention is that they issued notice to the appellant/plaintiff to vacate the premises on 28.10.2017 but they were unable to vacate the premises and they only vacated the premises on 04.12.2017. In this context P.W.1 in his evidence, stated that "ஜூலை 2017 வரை பிரதிவாதி தாவா சொத்து வாடகை தாரராக இருந்தார் என்றால் சரிதான். 04.12.2017 பிரதிவாதி நிறுவன ஊழியர் வெங்கடேசன் என்பவர் தாவா சொத்தின் சாவியை என்னிடம் ஒப்படைத்தார் என்றாலும்,அன்றே நான் தாவா சொத்தை பார்வையிட்டேன் என்றால் சரியல்ல. மேற்கூறிய வெங்கடேஷ் பிரதிவாதி தாவா சொத்தை காலி செய்து விட்டதாக எனக்கு தொலைபேசியின் மூலம் தகவல் தெரிவித்ததால் அதன் சாவியை என்னிடம் ஒப்படைக்கவில்லை."

Therefore, from the above said evidence, it is clear that P.W.1 admitted that the staff of the respondents/defendants informed him over phone that the premises was vacated by the respondents/defendants. At the same time, D.W.1 in his evidence stated that on 04.12.2017 itself the premises was vacated and handed over to the appellant/plaintiff, but the



A.No.10 of 2023

appellant/plaintiff denied the handing over the property but he admitted

that had knowledge about the vacating premises. Therefore, the respondents/defendants are liable to pay rent from August 2017 to December 2017(Rs.1,81,500 x 5 = 9,07,500/-). As stated above, the respondents/defendants have to pay a sum of Rs.9,07,500/- towards arrears of rent to the appellant/plaintiff. The trial Court also in its judgment came to a fair conclusion that since the respondents/defendants vacated the property only on 04.12.2017, they have to pay rent for the month of December. Therefore, the respondents/defendants have to pay rent till the period of vacating the premises.

Point Nos. 2 and 3: With regard to damages caused to the building and repair charges:

As far as the damages are concerned, the claim of the appellant/plaintiff is that he incurred a sum of Rs.18,95,300/- towards the damages and he engaged the contractor one M/s.Nandhini Building Contractors. In this context he examined P.W.2, and P.W.2 also stated about the repair works done by him. But P.W.2 in his cross examination stated that "நான் பில்லிங் கான்டிராக்டர் ஆக 25 வருடமாக பணி செய்து வருகிறேன். பல பழைய கட்டிடங்களை புதுபித்து கட்டியுள்ளேன். வாதி என்னை



A.No.10 of 2023

தாவா சொத்துக்கு முதன்முதலாக 15.12.2017 அழைத்து சென்றார். என்னுடைய கருத்துபடி அந்த கட்டிடம் சுமார் 20 வருட பழைய கட்டிடம். நான் அந்த கட்டிடத்தை பார்த்து வந்த பிறகு தான் வாதிக்கு கொட்டேஷன் கொடுத்தேன். என்னிடம் காட்டப்படும் நந்தினி பிள்டர்ஸ் சம்மந்தப்பட்ட கொட்டேஷன் நான் கொடுத்தது தான். அது வா.சா.ஆ.2 ஆகும்.”

Therefore, from the evidence of P.W.2, it reveals that the appellant/plaintiff had taken the witness P.W.2 to the building on 15.12.2007 and after inspection, he gave a quotation/ Ex.P2. On perusal of Ex.P2, it reveals that the date of issue of Ex.A2 is 15.12.2017, but the estimate contain the date as 10th December 2017. Therefore, the evidence of P.W.2, with regard to the issue of quotation is improbable and unbelievable. When P.W.2 inspected the property on 15.12.2017, how it is possible to give a quotation pre-dated 10.12.2017. Hence the evidence of P.W.2 is doubtful and not acceptable. Further the appellant/plaintiff has not filed any bills with regard to the payments made to P.W.2. Therefore, the appellant/plaintiff has failed to prove that he incurred a sum of Rs.18,95,300/- towards repair the building.

(i) But at the same time D.W.1, in his cross examination stated thus "நான் 2009-ல் போகும் போது 75 பாகம் ஆக அந்த இடம் பலகைகளாக பிரிக்கப்பட்டது. ஒவ்வொரு cabin க்கும் தனி தனியாக ஓயரிங் மற்றும் டெலிபோன்



A.No.10 of 2023

வசதிகள் தனி தனியாக இருந்தது. அந்த ஓயர்கள் எல்லாம் சுவரோடு சேர்ந்து தான் இருந்தது. டிசம்பர் 2016-ல் அந்த இடத்தை காலி செய்யும் போது அந்த மின் இணைப்பு அனைத்தையும் பிரித்து எடுத்துவிட்டோம். அவ்வாறு பிரித்து எடுக்கும்போது தரைகள் எல்லாம் முழுமையாக உடைந்து விட்டது என்றால் சரியல்ல. ஓயரிங் பன்னும் போது சுவரில் 3 இன்ச் அகலம் 3 இன்ச் ஆழம் அளவிற்கு தான் ஓயரிங் செய்து இருந்தோம். அவ்வாறு பிரிக்கும் போது எல்லா ஓயர்களையும் சுவர்ரை உடைத்து தான் எடுத்துக்கொண்டு சென்றேன் என்றால் சுவர் உடையவில்லை.”

Therefore, from the evidence of D.W.1, it reveals that the wires were installed inside the wall about the depth of 3 inches and the same were removed, at the time of vacating the premises. Further, there should be some damages to the walls, when the wires were removed, since they were placed 3 inches depth inside the wall. Therefore, the respondents/defendants are liable to pay the charges for repair. Though the appellant/plaintiff has not filed any documents to prove the exact amount for the repairing works this Court is of the opinion that the balance amount after deducting the rent and the electricity and water charges admitted by the respondents/defendants can be adjusted for the above said damages.

(ii) In this context, the trial Court in the judgment after discussing the evidence of P.W.1 states that P.W.1 admitted that after vacating the premises he made inspection and the respondents/defendants also

18/26



A.No.10 of 2023

intimated about the vacating the premises on 15th December 2017 and

he made inspection in the property thereby the respondents/defendants proved that they handed over the property to the appellant/plaintiff and the appellant/plaintiff also made inspection on 15.12.2017. Further the appellant/plaintiff failed to take steps for appointment of commissioner to prove the damages caused to the property and thereby, the appellant/plaintiff failed to prove the damages caused by the respondents/defendants. It is true that the appellant/plaintiff failed to take steps for appointment of commission to find out the damages caused to the building. But at the same time the ordinary prudent man can infer that where the wires were placed 3 inches inside the wall and the same were removed later, the wall should be damaged. However, the trial Court without considering that at the time of vacating the premises, the respondents/defendants removed the wires which were installed inside the walls to a depth of 3 inches thereby certainly caused some damages to the property dismissed the suit and the same is unsustainable. In this context the appellant/plaintiff also issued notice to the respondents/defendants calling upon them to repair the damages and depute a person to see the damages, but no reply was issued by the

19/26



A.No.10 of 2023

respondents/defendants. D.W.1, himself admitted the installation of wires,

in the wall and fixing cabins in the floor and the same were removed at the time of vacating the premises. The said aspects have not been considered by the trial Court. Therefore, as discussed supra, this Court is of the opinion that the respondents/defendants caused damages to the building while vacating the premises.

(iii) Now coming to the quantum of damages, the appellant/plaintiff has not produced any document to show the exact quantum of the damages caused to the building however as admitted by D.W.1, there should be some damages in the walls and the floor. In the absence of any proof, it is appropriate to adjust the damages from the advance amount paid by the respondents/defendants, after deducting the rent and other charges payable by the respondents/defendants.

(iv) According to the respondents/defendants, they consented to deduct a sum of Rs.7,84,080/- from the advance of Rs.13,50,000/- and the balance amount of Rs.4,06,060/- has to be refunded to them, but the defendant vacated the premises only on 04.12.2017 and thereby they have to pay rent for the month of December also. This Court also in the

20/26



A.No.10 of 2023

point No.1 already decided that the respondents/defendants have to pay

the arrears amount of Rs.9,07,500/- towards rent to the appellant/plaintiff. Even according to the admission made by the respondents/defendants, one month rent of Rs.1,81,500/- has to be deducted from the above said security deposit amount for the month of December and thereby the amount would come to a sum of Rs.4,42,500/- ($\text{Rs.13,50,000} - 9,07,500 = 4,42,500/-$). Further the respondents/defendants also admitted the due of electricity and water charges and the same also have to be deducted from the said amount of Rs.4,42,500/-. Before the trial Court, the respondents/defendants have filed counter claim and the trial Court also allowed the counter claim for a sum of Rs.3,73,390/- but unfortunately the appellant/plaintiff has not filed appeal against the counter claim and the appellant/plaintiff has to pay the said counter claim amount to the respondents/defendants. In the said circumstances, it is appropriate to award a sum of Rs.3,75,000/- towards damages to the appellant/plaintiff to meet the ends of justice. The remaining amount i.e., $\text{Rs.4,42,500} - 3,75,000 = \text{Rs.67,500/-}$ can be adjusted for the water, electricity and other charges.

(v)Therefore, as discussed above, this Court is of the opinion that



A.No.10 of 2023

the trial Court has failed to consider the above said aspect and wrongly came to a conclusion that the appellant/plaintiff is not entitled to any damages.

(vi) In view of the above said discussion, the appellant/plaintiff is entitled to a sum of Rs.3,75,000/- towards damages to the property. The appellant/plaintiff has failed to prove the amount of Rs.18,95,300/- incurred towards the repair for the building. Thus the points 2 and 3 are answered.

Point No.4: In respect of suit claim for recovery of money:

Already this Court in the previous point discussed about the entitlement of the appellant/plaintiff to the damages caused to the building by the respondents/defendants. The appellant/plaintiff's claim is a sum of Rs.17,02,460/-, but the appellant/plaintiff failed to prove the above said damages through sufficient evidences. However, this Court already in the previous point discussed that the appellant/plaintiff is entitled to a sum of Rs.3,75,000/- towards damages. Therefore, the appellant/plaintiff is not entitled to decree for a sum of Rs.17,02,460/- but only entitled to decree for a sum of Rs.3,75,000/-. Thus the point No.4 is answered.



A.No.10 of 2023

Point No.5: Whether this appeal is to be allowed or not?

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The trial Court has dismissed the appellant/plaintiff's claim for damages by holding that the appellant/plaintiff failed to take steps for appointment of Advocate Commissioner to ascertain the damages and the evidence of P.W.2 is not sufficient to prove the damages caused to the building. The trial Court has failed to consider that the damages caused by the respondents/defendants while vacating the premises by removing the wires and cabins. Further D.W.1 himself admitted that the wires were fixed in the wall with a depth of 3 inches and they were removed. While so, the above said damages have not been considered by the trial Court. Though the appellant/plaintiff has failed to prove the exact amount incurred by him, this Court already came to a conclusion that the appellant/plaintiff is entitled to a sum of Rs.3,75,000/-. Thereby, the judgment of trial Court is liable to be set aside.

(i) In the trial Court, the respondents/defendants have claimed counter claim and in the counter claim, the trial Court has awarded a sum of Rs.3,73,390/- with interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter 6% interest. But the appellant/plaintiff has not preferred any appeal as against the counter

23/26



A.No.10 of 2023

claim filed by the respondents/defendants. In the absence of filing any

separate appeal as against the counter claim, the appellant/plaintiff is bound to pay the above said counter claim money to the respondents/defendants for a sum of Rs.3,73,390/-. In view of the above, the parties can adjust their amount. Therefore as discussed supra this appeal is to be allowed with regard to damages. Thus the point No.5 is answered.

Point No.6: To what relieves the parties are entitled?

As discussed in the points Nos. 1 to 5, the appellant/plaintiff is entitled to decree for a sum of Rs.3,75,000/- towards damages and the parties shall bear their own cost.

11. In the result, this appeal is allowed and the decree and judgment passed in C.O.S.No.166 of 2022 on the file of Commercial Court, Egmore dated 02.08.2022 are set aside. The suit is partly decreed in favour of the plaintiff and the defendants are directed to pay a sum of Rs.3,75,000/- towards the damages caused to the property of the plaintiff with interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter subsequent interest at the rate of 6 % per



A.No.10 of 2023

annum till the realisation. No costs. Consequently, connected
miscellaneous petition is closed.

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[D.K.K., J.,] [P.D.B., J.,]
12.01.2024

Index:Yes/No
Speaking/Non-Speaking Order
mpa

To

The Commercial Court, Egmore.

D.KRISHNAKUMAR, J.,
and
P.DHANABAL, J.,

mpa

25/26



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A.No.10 of 2023

Pre-delivery Judgment in
Appeal (CAD) .No.10 of 2023
and
C.M.P.No.18246 of 2023

12.01.2024