

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

FAO.No. 231 of 2014 ()

(AGAINST THE ORDER IN I.A.NO.1640 OF 2013 IN O.S.NO.419/2013 DATED
11/4/2014 OF SUB COURT, TRIVANDRUM)

APPELLANT(S)/RESPONDENTS/DEFENDANTS:

1. UEI GLOBAL EDUCATION PVT. LTD.
(CIN NO U55101DL2006PTC 188685)
(FORMERLY KNOWN AS BERGGRUEN HOSPITALITY PVT. LTD)THROUGH ITS
ADMINISTRATION EXECUTIVE,
CAPITAL MARK, NEAR MODERN BOOK CENTER,
GANDHARI AMMANKOVIL ROAD, PULIMOOD JN,OFF: MG ROAD
TRIVANDRUM 695 001

2. CENTRE MANAGER,
UEI GLOBAL EDUCATION PVT LTD 1ST FLOOR, TNS CHAMBER,
CAPITAL MARK, NEAR MODERN BOOK CENTER,
GANDHARI AMMANKOVIL ROAD, GANDHARI AMMANKOVIL ROAD,
PULIMOOD JN, OFF M.G ROAD, TRIVANDRUM 695 001

BY ADVS.SRI.V.B.UNNIRAJ
SMT.R.S.GEETHA
SMT.P.ANITHA

RESPONDENT(S)/PETITIONERS/PLAINTIFFS:

1. T.S.ASHOK, AGED 46 YEARS,
S/O.LATE SH V.T NAIR, R/O.GOVINDAM, TC 4/248-5,
KURAVANKONAM, THIRUVANANTHAPURAM, KERALA 695 003

2. T.LEKHA, AGED 43 YEARS,
W/O.SH.T.S ASHOK, R/O. GOVINDAM, TC 4/248-5
KURAVANKONAM, THIRUVANANTHAPURAM, KERALA 695 003

R1,R2 BY ADV. SRI.S.SREEKUMAR (SR.)
R1,R2 BY ADV. SRI.P.PRIJITH
R1,R2 BY ADV. SRI.A.JANI (KOLLAM)

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

F.A.O. No. 231 of 2014

Dated this the 20th day of July, 2015

JUDGMENT

Sunil Thomas, J.

The appellants are the defendants in O.S.No.419/2013 of Sub Court,Thiruvananthapuram in a suit for recovery of money.

2. The suit was instituted by the plaintiffs for recovery of a sum of Rs.57 Lakhs due as arrears of rent. The building, having an extent of 4848 square feet in a commercial building, was let out to the appellants herein by an agreement dated 11/07/2007. RCP No.71/2009 was laid by the landlords who are the plaintiffs herein for eviction on ground of arrears of rent. The matter was settled thereafter. It is alleged that thereafter there was further default in payment of arrears and RCP No.36/2012 was laid on ground of arrears of rent. It was allowed and an amount of Rs.57,77,258/- is due. Execution proceedings were initiated. In the present suit for recovery of the above amount, the plaintiffs filed I.A. No.1640/2013

seeking attachment of the bank account of the appellants/defendants on the ground that they were removing all movable items. The court below, after giving an opportunity to show cause, by the impugned order dated 11/4/2014 ordered attachment of the account of the appellants/defendants maintained in the bank. This is assailed in this appeal.

3. Heard both sides and examined the records.

4. It is seen that there had been a series of litigation between the parties wherein the landlords had been seeking recovery of arrears. In fact, the earliest of the rent control petition was settled between the parties. Even thereafter, it is seen that the appellants herein committed default of rent which dragged to the subsequent proceedings as RCP No.36/2012 and the present suit as O.S.No.419/2013. It is also seen that the parties moved this Court in O.P.No.1717/2013 for appropriate relief. In spite of the above, the huge amount of Rs.57,77,258/- is due. It was in the above circumstances, the plaintiffs sought for attachment of the bank account of the defendants.

5. It appears that in reply to the show cause notice few contentions were taken up by the defendant. The main

contention was that the plaintiffs had disconnected water supply to the tenanted premises. Yet another contention taken up in the appeal memorandum was that a counter claim of about Rupees Five Crores have been set up by the defendants in the above suit. It appears that the amount of Rs. 57 Lakhs or a part of it is an adjudicated amount due to the plaintiffs. This is resisted by setting up a plea of disconnection of water connection alleged to have occurred in the year 2011. It is an issue which appears to have never been adjudicated or decided in favour of the defendants. Hence, the above contention is without any basis. As against the claim of Rs.57 Lakhs a counter claim is allegedly set up in a suit instituted at the instance of the plaintiffs in the present suit. Evidently, the defendants had never approached the court earlier, seeking any claim against the plaintiffs and hence, the present counter claim is not based on any adjudicated right of the defendant. Hence, at present it can only be considered that it was set up only as a ground for resisting the suit and the attachment. In spite of sufficient opportunity granted to the defendants to show cause as to why security shall not to be furnished, they have neither

shown any valid cause or furnished security. Admittedly, the rent seems to be in arrears since long. It is also seen that the impugned order of attachment was passed on 11/4/2014. In spite of the lapse of one year since then, no substantial prejudice is seen caused to the defendants by the above order. Hence, the balance of convenience favours maintaining the order of attachment.

There is no merit in this appeal, which is, accordingly, dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge
Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

