

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

RFA.No. 591 of 2013 ()

AGAINST THE JUDGMENT IN OS 91/2009 of THE SUB COURT,ERNAKULAM
DATED 28-02-2013

APPELLANT(S)/DEFENDANT:

AMEER ALI
S/O.LATE.USUF, MALIAKKAL SALMANS, S.R.M.ROAD
PACHALAM, ERNAKULAM - 682 012.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S)/PLAINTIFF:

G.DILEEP RAJ
S/O.GOPALAN, CITY MANAGER
M/S.MEDPLUS HEALTH SERVICE PVT. LTD., 39/4641
R.MADHAVAN NAIR ROAD, RAVIPURAM, KOCHI -16
POWER OF ATTORNEY HOLDER OF G.MADHUKAR REDDY
DIRECTOR, MEDPLUS HEALTH SERVICE PVT.LTD., 707,
TARAMANDAL COMPLEX, SAIFABAD, HYDERABAD - 500 004.

BY ADV.SRI.P.THOMAS JOSEPH (PALLIVATHUCKAL)

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**ANTONY DOMINIC &
P.V.ASHA, JJ.**

R.F.A.No.591 of 2013

Dated this the 7th day of December, 2015.

J U D G M E N T

P.V.ASHA, J.

The appellant has approached this Court challenging the judgment and decree in O.S.No.91 of 2009 on the file of the court of Sub Judge, Ernakulam. The plaintiff in the suit was the tenant of the building owned by the defendant, who is the appellant herein. Ext.A1 deed was executed on 15.3.2008 between the plaintiff and defendant, leasing out the building to the plaintiff for a period of 11 months on monthly rent at the rate of Rs.35,000/- and advance payment of Rs.3 lakhs towards security deposit.

2. The case of the plaintiff was that the defendant did not carry out any repair work in the building despite requests and he was not in a position to occupy the building and carry on his business in medicines. Therefore plaintiff issued Ext.A2 notice terminating the lease agreement w.e.f.

1.7.2008. Plaintiff got the estimate for renovation of the building, from an approved valuer, according to which, a sum of Rs. 3,33,850/- was the amount required. Plaintiff thereafter demanded return of security amount. The suit was filed since the security deposit was not returned.

3. The defendant filed written statement admitting the execution of lease deed and receipt of security deposit but denying the allegation as to the pathetic condition of the building and the alleged notice of termination. According to the defendant, the building was in good condition and plaintiff carried out his business there and continued in possession till the key of the building was handed over on 5.6.2009 and hence rent was due from him till 5.6.2009. According to the defendant, the total amount due towards rent is a sum of Rs. 3,85,000/- and after adjusting the security deposit of Rs. 3 lakhs, a sum of Rs. 85,000/- was due from the plaintiff.

4. Plaintiff had sent notice dated 1.7.2008 for terminating the lease. Another notice was issued on

15.7.2008, which was returned unserved with the endorsement "absent". The subsequent notice was returned with endorsement "addressee out of India". After making several requests to the defendant to return the security amount, as no action was taken, plaintiff filed the suit praying for a decree of return of the security amount of Rs.3 lakhs.

5. The case of the appellant is that the plaintiff returned the key only on 5.6.2009 and therefore rent is due to him for the period till 5.6.2009 and accordingly a total sum of Rs.3,85,000/- is due to him, and after deducting the security deposit, only a sum of Rs.85,000/- is due to the plaintiff. In the meanwhile, the defendant has also filed O.S.No.247/12 praying for a decree for payment of the arrears of rent, against the plaintiff herein. It is pointed out that the petition for joint trial was filed but it was unsuccessful.

6. The main issue considered by the court below was with respect to the admissibility of claim for adjustment

raised by the defendant and as to the entitlement of the plaintiff for the amount as claimed.

7. From the side of the plaintiff, A1 to A8 documents were marked. The power of attorney holder of the plaintiff was examined as PW1 ; whereas, on behalf of the defendant, no oral evidence was adduced. Exts.B1 and B1(a) postal acknowledgment cards were marked. When the case was listed for trial, the defendant was absent. It is seen that the case was posted on several days for trial from 14.2.2013 onwards, ie., on 14.2.2013, 15.2.2013, 16.2.2013, 18.2.2013, 19.2.2013 and 23.2.2013 for the evidence of the defendant. Except the fact that Exts.B1 and B1(a) documents were marked through PW1 on 14.2.2013, the defendant did not adduce any evidence. At the same time, an interlocutory application was filed as I.A.No.998/13 requesting for adjournment of the case on the ground that the defendant was working abroad. It was also stated that O.S.No.247/12 filed by defendant against plaintiff was pending before the Additional Munsiff court, Ernakulam, for recovery of arrears

of rent and that the transfer petition filed by the defendant was pending. The court below, being dissatisfied with the conduct of the defendant, closed the evidence and decreed the suit on the basis of the documents A1 and A8 as well as the oral evidence adduced through PW1.

8. We heard the learned Counsel appearing on either side and considered the contentions after examining the pleadings and the evidence on record.

9. The court below found that the lease was terminated w.e.f. 1.7.2008 on issuance of A2 notice, which was issued by the City Manager of the plaintiff, to the defendant. The reasons in Ext A2, for terminating the lease were, (1) poor drainage as per Health Department rules, (2) slanting of walls, (3) low height ceiling, (4) water coming inside the building during rainy seasons and (5) due to wet walls, no electrical equipment could be used in the building in question.

10. The court below found that plaintiff issued Ext A2 notice followed by A4 and A5 notices requesting for refund

of the security amount and intimating termination of lease. It was only on 25.3.2009 that the defendant sent a notice to plaintiff informing that security deposit cannot be returned. The court below found that lease of the building got terminated with effect from 1.7.2008 and defendant did not approach the plaintiff for receiving the key. Moreover, the expert Engineer, in ExtA3 valuation report, had confirmed the defects stated by the plaintiff and valuation to carry out the repair works was fixed at Rs.3,33,850/-. The court below therefore found that the defendant did not make any arrangement for repairing the building and therefore the security deposit ought to have been returned on getting intimation regarding the termination of lease. On the basis of the documentary as well as oral evidence adduced by the plaintiff, the court below arrived at a finding that the plaintiff was entitled to realise the security deposit of a sum of Rs.3 lakhs along with interest @ 12% per annum from 1.7.2008 till realisation.

11. The case of the appellant, is that the court below ought to have adjourned the trial of the case, so that, both the suits could be tried together. According to him, though rent was due from the plaintiff upto 5.6.2009, no amount is due to the plaintiff, on the other hand only a sum of Rs.85,000/- is due to him after adjusting the security deposit made by the plaintiff.

12. But we find no material to substantiate the case of the defendant. The defendant has not adduced any evidence to show that the building was in a condition, that the plaintiff could conduct his business. It is seen that the plaintiff demanded termination of lease by notice dated 1.7.2008. It is also found that the plaintiff was not in a position to carry on his business and hence to occupy the building. The plaintiff has proved the condition of the building leased out to him. Defendant did not adduce any evidence to prove the contrary. Going by the evidence on record, we are of the view that, the court below was perfectly right in decreeing the suit.

In the above circumstances, we dismiss the appeal and there shall be no order as to cost.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

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P.A. to Judge