

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.783 of 2014

1.M/s.Radhalakshmi

2.Ramesh Boopathy

... Appellants/Plaintiffs

Vs.

M/s.Indus Heaters

Represented by its Proprietor,

Mr.D.Suresh,

Son of Durairaj,

Having Works at RM 20,

Teleflo Mini Industrial Estate,

No.3/88, Mount Poonamallee Road,

Ramapuram, Chennai - 600 89.

... Respondent/Defendant.

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgement and decree dated 21.08.2012 and made in A.S.No.4 of 2012 on the file of the learned Principal District Judge, Tiruvellore as against the judgement and decree dated 08.07.2011 made in O.S.No.5 of 2009 of the learned Subordinate Judge, Poonamallee.

For Appellants

: Mr.P.Subba Reddy

For Respondent

: Set exparte vide order
dated 10.03.2015.

JUDGEMENT

The plaintiffs in O.S.No.5 of 2009 on the file of the learned Subordinate Judge, Poonamallee are the appellant herein. The respondent is the defendant in the suit. The said suit was filed for recovery of possession and to direct the defendant to pay a sum of Rs.7,500/- towards rent arrears for two months (June 2008); to direct the defendant to pay a sum of Rs.43,500/- (5 months damages minus deposit) towards for the wrongful use of the suit premises for the month of July, August, September and November 2008 and to direct the defendant to pay a sum of Rs.22,500/- per month towards future damages for the wrongful use of the suit premises for the month of December 2008 till the date of delivery of the suit premises. The trial Court decreed the suit thereby granting the relief of recovery

of possession and also directing the defendant to pay a sum of Rs.7,500/- towards arrears of rent for the month of June 2008; directing the defendant to pay a sum of Rs.43,500/- towards damages and Rs.22,500/- per month as a damages for wrongful use and occupation of the suit premises. As against the same, the defendant filed an appeal in A.S.No.4 of 2012. By decree and judgement dated 21.08.2012, the First Appellate Court dismissed the appeal in part thereby confirming the decree for recovery of possession but modified the decree by reducing the quantum of damages from Rs.22,500/- to Rs.7,500/- per month. As against the decree for recovery of possession, the defendant filed a second appeal in S.A.No.245 of 2013 before this Court. By judgement dated 05.04.2013, this Court dismissed the said second appeal thereby confirming the decree for recovery of possession.

2.As against the decree and judgement of the First Appellate Court in A.S.No.4 of 2012, reducing the quantum of damages from Rs.22,500/- to Rs.7,500/-, the appellants have come up with this second appeal.

3.The case of the plaintiffs/appellants are as follows:-

The suit property was leased out by the appellants herein to the respondent herein for a monthly rent of Rs.5,750/- per month for the first three years and thereafter, @ Rs.7,500/- per month for the subsequent years. The said lease was terminated by the plaintiffs/appellants by issuing notice dated 09.06.2008. Even after termination of the tenancy, the defendant did not vacate and hand over vacant possession of the suit property to the plaintiffs. Therefore, the plaintiffs have filed O.S.No.5 of 2009 for the reliefs as mentioned herein above.

4.The case of the defendant is that, he is not liable to vacate and hand over vacant possession of the suit property to the plaintiffs and he is also not liable to pay damages as prayed for by the plaintiffs in the suit and according to him, the suit is liable to be dismissed.

5.Based on the above pleadings, the trial Court framed appropriate issues. On the side of the plaintiffs, the second plaintiff was examined as P.W.1 and as many as 17 documents were exhibited. On the side of the defendant, he was examined as D.W.1 and as many as three documents were exhibited.

6.Having considered all the above, the trial Court decreed the suit for recovery of possession and also directed the defendant to pay a sum of Rs.22,500/- per month towards damages for use and occupation. The First Appellate Court has reduced the said quantum of damages from 22,500/- to Rs.7,500/-. That is how the appellants/plaintiffs are before this Court with this second appeal.

7. When this second appeal came up for admission on 08.08.2014, this Court has framed the following substantial question of law:-

"When the lease deed was executed specifying the monthly rent of Rs.7,500/- payable by the tenant, the respondent herein with an increase of Rs.30/- per sq.ft. once in three years, after the said condition was accepted by the trial court, whether it is open to the appellate court to reduce even the contractual without even contra evidence?"

8. This second appeal came up for hearings before this Court on 12.02.2015, 19.02.2015, 28.02.2015, 04.03.2015 and 10.03.2015. On all these days, the respondent did not make appearance. Therefore, by order dated 10.03.2015, this Court set the respondent exparte in this second appeal. The matter was again adjourned for few hearings.

9. Today, I have heard the learned counsel for the appellants and I have also perused the records carefully.

10. Admittedly, decree for recovery of possession has been confirmed by this Court in S.A.No.245 of 2013 and the same has reached finality. Even after that, from the date of termination of lease, the defendant has been in occupation of the suit property and therefore, he is liable to pay damages. The First Appellate Court fixed the damages @ Rs.7,500/- per month and against which, the defendant has not filed any appeal.

11. Admittedly, the monthly rent as agreed upon by both parties was Rs.7,500/- per month. It is on this basis, the First Appellate Court has reduced the damages from Rs.22,500/- to 7,500/- per month. Monthly rent cannot be equated to the damages, because, the occupation of the defendant now, is not legal. Even after the termination of the lease and passing of the decree for eviction which has become final, the defendant has not vacated the suit property and handed over vacant possession to the plaintiffs.

12. The plaintiffs have produced Exs.A.10 to A.16 which are the documents relating to the rent paid for similar buildings near the suit property. Having regard to the same, the trial Court fixed the rent and damages @ Rs.22,500/-. For the purpose of quantifying the damages, there cannot be any golden scale in the hands of the Court so as to decide and it is on approximation and out of inference only the said damages was reduced by the First Appellate Court from Rs.22,500/- to Rs.7,500/-. Going by the escalation of the rental value of the properties in Chennai city, in my considered opinion, the First Appellate Court ought to have granted some more amount as damages i.e., more than Rs.7,500/- per month.

13.Having regard to the above, based on the evidence available on record, I am of the view that directing the defendant to pay Rs.10,000/- per month towards damages would meet the ends of justice. Accordingly, the decree and judgement of the First Appellate Court requires to be modified.

14.In the result, the second appeal is allowed in part and the decree and judgement of the First Appellate Court in A.S.No.4 of 2012 on the file of the learned Principal District Judge, Tiruvellore dated 21.08.2012, is modified thereby decreeing the suit for damages for wrongful use and occupation of the suit property @ Rs.10,000/- per month instead of Rs.7,500/- as fixed by the First Appellate Court. There shall be no order as to cost in this Second Appeal.

jbm

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1.The Subordinate Judge,
Poonamallee.

2.The Principal District Judge,
Tiruvellore.

+ 1 cc to M/s.P.Subba Reddy, Advocate SR 14363

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