

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. NO.2522 OF 2015

&

M.P.NO.1 OF 2015

1.Kapoor Furnishing Fabrics,
Rep.by its Partner,
Sowkath Rai Kapoor,
135, Peters Road, Chennai - 600 086.
2.Sowkath Rai Kapoor
3.Ravi Rai Kapoor
4.Roshan Lal
5.Rajesh Kapoor
6.Anil Kapoor
7.Sushil Kapoor
8.Rajiv Kapoor ..Appellants/Defendants

-Versus-

Sarkar E-Abbasi Ashurkana-E.Mubarak
Wakf (also known as Thousand Lights Charities)
Rep.by its Muthawali, Mehdi Ali,
210, Anna Salai,
Chennai - 600 006. ..Respondent/Plaintiff

PRAYER : Civil Miscellaneous Appeal filed under Order XLIII Rule 1(c) of C.P.C., against the fair and decretal order dated 01.10.2015 passed in I.A.No.129 of 2015 in O.S.No.7121 of 2012 on the file of the XV Additional City Civil Court, Chennai.

For Appellant : Mr.K.Vijayaragavan

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the impugned judgment and decree passed in I.A.No.129 of 2015 dated 01.10.2015 by the XV Additional City Civil Court, Chennai, refusing to set aside the exparte decree and judgment dated 30.04.2013 passed in O.S.No.7121 of 2012.

2.Learned counsel for the appellants would submit that the respondent / plaintiff filed a suit praying for a judgment and decree against the defendants /appellants to quit and deliver vacant possession of the demised shop at No.135, Peters Road, Chennai, with further direction to pay damages for use and occupation at the rate of Rs.9000/- per day from the date of the plaint till the date of handing over the possession. A detailed written statement was filed taking a stand admitting the fact that they received a demand notice dated 15.03.2012. However, made it clear that there was inconvenience on the part of the first defendant to pay the rent for a period of three months due to recession and outstanding debts to be received by the first defendant from its customers, for which, the plaintiff / respondent informed the first defendant herein that they will adjust the rent from the advance and permitted the first defendant to pay the rent later along with April month rent.

3.Although the first defendant faced a several financial recession, huge outstanding debts and some personal inconvenience because of which the first defendant made a request to extend time for paying monthly rents for the months between June, 2012 and September, 2012, for the reasons best known to the Trial Court exparte order was passed on 15.03.2012 subsequently exparte decree was passed on 30.04.2013. Immediately, thereafter an application under order XI Rule 7 of the CPC r/w Section 151 CPC was moved mentioning the sufficient reasons. But the learned Trial Court has refused to appreciate the genuine problem faced by the first defendant. Finally, the application was wrongly rejected on the ground that the appellants had failed to show sufficient cause, he pleaded. Adding further the learned counsel submitted that the Trial Court has erroneously rejected the aforesaid petition, namely, I.A.No.129 of 2015 seeking for a prayer to set aside the exparte decree and judgment dated 30.04.2013, without any valid reason, hence, the same is liable to be interfered, he pleaded.

4.The respondent / plaintiff being a religious Public Charitable Wakf has let out the demised shop to the appellants / defendants on a monthly rent. Since the appellants had committed willful default in payment of rent and also caused huge outstanding rental arrears of Rs.2,70,000/- for the period December 2011 to February 2012 and also for additional deposit of Rs.4,40,000/- issued demand notice to clear the above but the appellants neither replied nor complied with the notice. As a result, notice of termination dated 17.08.2012 was issued against the appellants directing them to vacate, quit and deliver vacate possession of the demised shop at No.135, Peters Road, Chennai. Finally, filed a suit. Again, the appellants did not choose to appear either in person or through counsel. Hence, they were set exparte on 18.03.2013.

5.E.P.No.3281 of 2013 has been filed on the file of IX Assistant City Civil Court, Chennai and delivery was ordered on 11.11.2013 and thereupon, the respondent took steps to execute the warrant. In paragraph 12 of the affidavit filed by the appellants, it was pleaded that subsequent to the return of warrant in E.P.No.3281 of 2013, the appellants approached the respondent and informed him that the learned counsel for the respondent would withdraw the suit and then Execution Petition was also withdrawn in July 2014. The Court below finding that the appellants was not true to their statement because there cannot be question of withdrawing the suit once notice has been served on the appellants in the execution petition, rightly dismissed the petition filed under Order IX Rule 13 r/w Section 151 of C.P.C. seeking to set aside the exparte decree and judgment dated 18.03.2013 in O.S.No.7121 of 2012. Therefore, this Court finds no infirmity in the order and hence, the Civil Miscellaneous Appeal fails and is dismissed. However, there is no order as to costs. Consequently, connected M.P.No.1 of 2015 is closed.

sri

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The XV Additional Judge, City Civil Court, Chennai.

+ 1 cc to Mr.K.Vijayaragavan, Advocate Sr 61711.

COPY TO;- The Registrar, City Civil Court, Chennai.

TEJ/CO
KR/16/12

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