

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

Civil Suit No.838 of 2010

M/s. Southern Triple A Investments Pvt. Ltd.,
Rep. By its Director, Mr. Natarajan Anbumani,
Flat No.8, Saravanalayam,
New No.33 (Old No.19), P.S.Sivasamy Salai,
Mylapore, Chennai - 600 004 ... Plaintiff

vs.

M/s. OMNE Agate Systems P Ltd.,
Rep. By its Managing Director,
Mr. K.R.Ilanghovan, 2nd Floor,
Murugesu Naicker Complex,
No.99, Greaves Road, Chennai - 600 006 ... Defendant

This Civil Suit filed under Order IV Rule 1 of the
Original Side Rules read with Order VII Rule 1 of the CPC
praying for a decree and judgment against the defendant:

a) for a direction directing the defendant to pay a
sum of Rs.26,60,968/- as on August, 2010, together with
future interest @ 24% per annum, being the occupation of
the premises for commercial purpose from August, 2010 to
till date of realization of the entire claim; and

(b) for the cost of the suit.

For Plaintiff :Mr.K.V.Babu
For Defendant :Mr. R.Subramanian

J U D G M E N T

Judgment reserved on :06.04.2015

Judgment pronounced on :30.04.2015

This Civil Suit has been filed seeking recovery of arrears of rent to the extent of Rs.26,60,968/- as on August 2010, together with future interest @ 24% per annum.

2. The plaintiff is a Private Limited Company and it is the owner of the property bearing Old Door No.20, New Door No.4, Govindarajapuram, I Street, Adyar, Chennai - 20, with building measuring an extent of 4720 sq.ft.,

2.1. The defendant was inducted as a tenant, by virtue of two lease agreements: (a) dated 30.06.2008 for lease of premises and (b) dated 01.06.2008, for lease of amenities. The lease period was two years, commencing from 01.07.2008 to 30.06.2010. Rs.71,980/- was payable per month towards rent and the same amount is payable towards charges for amenities, for the first year and for the second year, the amount was Rs.79,178/- each.

2.2. The defendant defaulted in the payment of rent and charges for amenities from November 2008. That compelled the plaintiff to file RCOP No.700 of 2009 before IV Small Causes Court, Chennai, for eviction on the ground of willful default in the payment of rents. In an application filed under Section 11 (4) of the Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960, the Court directed the defendant to pay arrears to the extent of Rs.11,51,680/-.

2.3. The defendant filed RCA No.474 of 2009 on the file of XVII Small Causes Court, Chennai, in which the defendant was directed to handover keys before the Court on 19.01.2010. The said order was not complied with and therefore, the plaintiff moved an Application for eviction for not complying with the order passed. An order of eviction came to be passed on 20.06.2010 and two months time was granted for the defendant to vacate and handover possession. The defendant neither preferred Appeal nor handed over possession. That made the plaintiff to file the Execution Petition in E.P.No.254 of 2010 and possession was taken through Court. The defendant did not also pay arrears of electricity charges to the tune of Rs.57,752/-.

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Hence, this suit for recovery of arrears of rent has been filed.

3. The defendant contested the suit mainly on the following grounds:-

(i) This Court has no pecuniary jurisdiction to decide the issue. The plaintiff has wantonly raised the value of the claim in order to bring the suit within the

jurisdiction of this Court. If the amount of advance paid, namely, Rs.14,39,600/- is adjusted from the arrears of rent and Rs.6,89,636/- is deducted towards the amounts spent for interior decoration, the plaintiff can claim only Rs.7,49,964/-; in which case, this Court will not have pecuniary jurisdiction, as the claim would be below Rs.25,00,000/-.

(ii) The defendant is entitled to get adjustment of the amount of Rs.6,89,636/-, which is the amount spent towards interior decoration.

(iii) The defendant had paid an amount (rental and amenities) at Rs.14,39,600/- (Rs.7,19,800/- and Rs.7,19,800/-) towards advance. As per law, the plaintiff can claim only one month rent as advance and therefore, as the plaintiff has no right to retain more than Rs.71,980/-, the plaintiff has to adjust the balance of advance amount from the arrears of rent.

(iv) The plaintiff is not entitled to claim any interest on the arrears of rent as there is no agreement to pay interest.

4. The following issues came to be framed by this Court:-

1. Whether this Court has got pecuniary jurisdiction to try the suit?
2. Whether the adjustment of advance amount towards the rent, after calculation of interest on the arrears of rent and adding thereto with the arrears of rent is justified?
3. Whether the defendant is liable to pay service charges as claimed by the plaintiff?
4. Whether the plaintiff is entitled to recover a sum of Rs.26,60,968/- towards the arrears of rent?
5. Whether the plaintiff is entitled to interest @ 24% per annum?
6. To what other relief, the plaintiff is entitled to?

5. The suit has been filed for recovery of arrears of rent. The relationship between the parties as landlord and tenant is not in dispute. Only with regard to quantum of rent payable, there is a dispute.

5.1. It is the case of the defendant that, as a lessee, he has spent a sum of Rs.6,89,636/- towards interior decoration and this amount has to be deducted from the arrears of rent payable by him.

5.2. But it is the case of the plaintiff / landlord

that even though the defendant was permitted to carryout interior decoration, he was so permitted, only to do it at his cost and therefore, the defendant is not entitled to seek any deduction on account of the same.

6. Whether this contention of the plaintiff can be accepted is the issue to be considered.

6.1. Under Ex.D-2, which is the communication from the plaintiff to the defendant, in which it has been specifically mentioned that structural modifications can be done without affecting the structural stability of the building and that it can be done at the cost of the defendant. The relevant lines in the communication reads as under:-

"Further I am told that you would prefer some modifications to the inside of the building. As long as these modifications do not affect the structural stability of the building, we do not have, in principle, objection. However, these modifications will be permitted by us, after our structural engineer studies your proposed modifications and if found, not to affect the structures. ***These will have to be done at your cost.***"

6.2. Under Ex.D-3 the defendant has replied that the modifications will be done at the cost of the defendant.

Therefore, the defendant is not entitled to ask for adjustment of this amount from the arrears of rent. Having admitted that, the defendant will do the alterations at his own cost, the defendant is estopped from contending that he is entitled to adjustment of that amount from the rent payable.

6.3. It is the claim of the defendant that the amount paid by him towards advance for rental and amenities at Rs.14,39,600/- (Rs.7,19,800/- and Rs.7,19,800/-) has to be repaid to him and if this amount is adjusted towards arrears of rent, the amount to be payable by him would be less and in that event, this Court will not have jurisdiction.

6.4. It is an admitted fact that the defendant has paid a sum of Rs.14,39,600/- towards advance. Therefore, the defendant is entitled to deduction of that amount from the arrears of rent payable. The plaintiff has given deduction in the calculation, but the calculation has been made by compounding the interest. Therefore, a separate calculation has to be made, while giving deduction to the advance amount paid.

7. The contention of the learned counsel for the defendant is that this Court has no pecuniary

jurisdiction.

7.1. This contention is unacceptable, for, there is no material to show that the plaintiff has wantonly raised the claim so as to bring the suit within the jurisdiction of this Court. According to the calculation made by him, the value is more than Rs.25 lakhs. The claim for deduction, made by the defendant, may be legally acceptable or may not be acceptable. Even in this case, the claim for deduction, on account of advance paid has been accepted by this Court, while the reduction claimed on account of money spent for decoration has not been accepted. Therefore, when the amount claimed by the plaintiff is within the jurisdiction of this Court, the contention that this Court has no pecuniary jurisdiction cannot be accepted.

8. The next contention of the learned counsel for the defendant is that the plaintiff is not entitled to interest at the rate of 24% per annum, in respect of the arrears of rent payable.

8.1. No doubt, the rental agreement did not provide for payment of interest. But, the rent payable has remained unpaid for a long time. Had it been paid in time, the plaintiff might have utilized the money and

earned profit out of it. Therefore, because of the delay in payment, the defendant is liable to pay interest. May be the rate of interest claimed can be said to be high. But the defendant is liable to pay the arrears with reasonable rate of interest, especially when the defendant failed to hand over the key as promised, but has driven the plaintiff to the extent of filing an Execution Petition to get possession. The defendant is liable to repay the rental arrears with 12% interest per annum, which is the normal commercial rate of interest offered by Banks.

8.2. From which period, the arrears of rent is payable is yet another issue.

8.3. It is not in dispute that the rent was due and payable from November 2008 and it is also not in dispute that possession was taken by the plaintiff, through Court, only on 26.08.2010. Therefore, the rent payable by the defendant was for the period from November 2008 to August 2010. Hence, the rent and amenities payable would be Rs.31,67,120/- (Rs.71,980/- + 71,980/- x 22 months).

8.4. The plaintiff can retain advance amount which shall be equal to only one month's rent and amenities, i.e., Rs.1,43,960/- (Rs.71,980/- + Rs.71,980/-).

Therefore, the balance has to be adjusted towards arrears of rent, i.e., Rs.12,95,640/- (Rs.14,39,600/- - Rs.1,43,960/-). Deducting that from the arrears of rent, the balance payable would be Rs.18,71,480/- (Rs.31,67,120/- - Rs.12,95,640/-).

8.5. As already noted, even though the rental agreement is not filed, as the transaction being commercial in nature, this Court is of the view that the interest payable on the amount would be at 12% per annum. If that is calculated, the total amount payable would be Rs.20,96,058/- (Rs.18,71,480/- x 12% = Rs.2,24,578/-).

8.6. The defendant did not pay the electricity charges which made the plaintiff to spend money for reconnection charges also. Therefore, the defendant is liable to pay a sum of Rs.57,752/- towards arrears of electricity charges. If the same is included, the amount payable would be Rs.21,53,810/- (Rs.20,96,058/- + Rs.57,752/-).

8.7. The rent payable is taxable at the hands of the landlord / plaintiff, as his income. As per the statutory requirement, this income is deducted at Source. Therefore, TDS is payable only by the plaintiff, who receives the rent, and not by the defendant, who pays the

rent. Hence, the plaintiff cannot ask for amount paid towards TDS from the defendant.

9. In the result, to the extent indicated above, this Civil Suit is decreed, i.e., for a sum of Rs.21,53,810/-, with interest at 12% per annum, from September 2010 till the date of realization. No costs.

sd/.S.V.J

30.04.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/12.06.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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