

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2016

CORAM

THE HON'BLE MR. JUSTICE **N.SATHISH KUMAR**

C.S.No.589 of 2013

The Member Secretary,
Chennai Metropolitan,
Development Authority,
Thalamuthu Natarajan Building,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

...Plaintiff

Vs.

M/s.Durga Arts
Rep by its proprietor S.Palani
No.42, Sithi Vinayagar Koil Street,
T.Nagar, Chennai - 600 017.

...Defendant

Prayer:- Complaint filed under Order IV Rule 1 of High Court Original Side Rules read with Order VII Rule 1 of Civil Procedure Code, 1908, directing the defendant to pay a sum of Rs.26,30,738/- as on 31.03.2011 along with interest at the rate of 18% per annum from the date of complaint till the date of realization and for cost.

For Plaintiff : Mr.N.Sampath

For Defendant : Set Ex-parte on 19.09.2016

O R D E R

The suit has been filed for recovery of a sum of Rs.26,30,728/- with interest at 18% per annum from the date of complaint till the date of realisation. It is the

CMDA which constructed a Bus Terminus at Koyambedu. In view of the new Bus Terminus constructed thereon, the Government of Tamil Nadu has planned to shift the bus terminus from Parrys Corner to Koyambedu i.e., newly constructed bus terminus and to generate revenue for maintaining the Bus Terminus, the plaintiff made various plans and leased out the right of advertising and landscaping at CMBT (newly constructed bus terminus). The plaintiff issued the tender notice No.2/2002-2003 dated 06.09.2002. The defendant was the successful bidder in the tender processes and paid Rs.1,00,01,003/- as bid amount for the lease period from 26.02.2003 to 25.03.2004. In respect of the same, lease agreement was also entered into between the plaintiff and the defendant on 26.02.2003. At the time of expiry of lease period, the defendant made a request periodically to extend the lease period with 5% enhancement over and above the previous lease amount. The lease period was extended from 01.09.2008 to 31.08.2009 as per the request of the defendant for a lease amount of Rs.1,41,84,090/-. In spite of repeated reminders, the defendant had remitted only an amount of Rs.50,00,000/- as on 05.01.2009. Thereafter, defendant did not comply with the condition No.14 of the tender document i.e., the defendant has to get proper license from statutory regulatory authorities such as ESI, PF etc. Hence, show cause notice was issued on

05.01.2009 as to why action should not be initiated against the defendant for terminating the lease. The defendant has paid only Rs.27,00,135/- as on 18.06.2009. Subsequently, on 05.05.2010, the plaintiff issued a notice to the defendant to remit the arrears of Rs.23,19,094/- as on 31.03.2010.

2. The defendant remained ex-parte. PW1 Executive Engineer of CMDA was examined. Ex.P.1 to Ex.P.8 was marked and in the evidence, tender and the lease agreement entered into between the plaintiff and the defendant was stated. Inspite of the repeated demands, the defendant has failed to pay the amount. Ex.P.1 is the attested photocopy of the G.O.No.208 dated 20.08.2002 of the Housing and Urban Development Department. Ex.P.2 is the attested photocopy of the tender notice dated 06.09.2002. Ex.P.3 is the attested photocopy of the lease agreement dated 26.02.2003. Ex.P.4 is the attested photocopy of the show cause notice dated 05.01.2009. Ex.P.5 is the attested photocopy of the termination letter dated 09.07.2009. Ex.P.6 is the attested photocopy of the notice issued to the defendant showing the pending lease amount as on 31.03.2011 dated 05.05.2010. Ex.P.7 is the attested photocopy of the statement showing the pending lease amount as on 31.03.2010. Ex.P.8 is the authorisation letter dated 14.11.2016. The lease

agreement clearly shows the lease was for a period of one year. The lease agreement was executed in terms of the tender notice Ex.P2. It appears that the defendant has also deposited Rs.1,41,84,090/- as per Ex.P.4 and the lease was renewed periodically.

Further, the defendant was not prompt in paying the lease amount. Ex.P5 letter dated 09.07.2009 shows that the defendant is due for a sum of Rs.32,73,647/-. Subsequently as per Ex.P.6, total due from the defendant is at Rs.23,19,049/- as on 31.03.2010. The statement showing the pending lease amount, rent & electrical consumption charges after adjusting the auction amount as on 31.03.2010 which is marked as Ex.P7.

3. From the above documents, it is clear that the defendant having entered into the lease and further got it renewed, failed to pay the amount as per the terms agreed between them. Further, the defendant has not challenged the plaintiff's evidence as PW1. Hence it can be safely held that plaintiff has proved its case before this Court and it is certainly entitled for recovery of amount as prayed for in the plaint.

The suit is decreed as prayed for, with interest at 6% p.a. from the date of filing of suit till the date of realisation. No costs.

sd/.N.S.K.J

22.12.2016

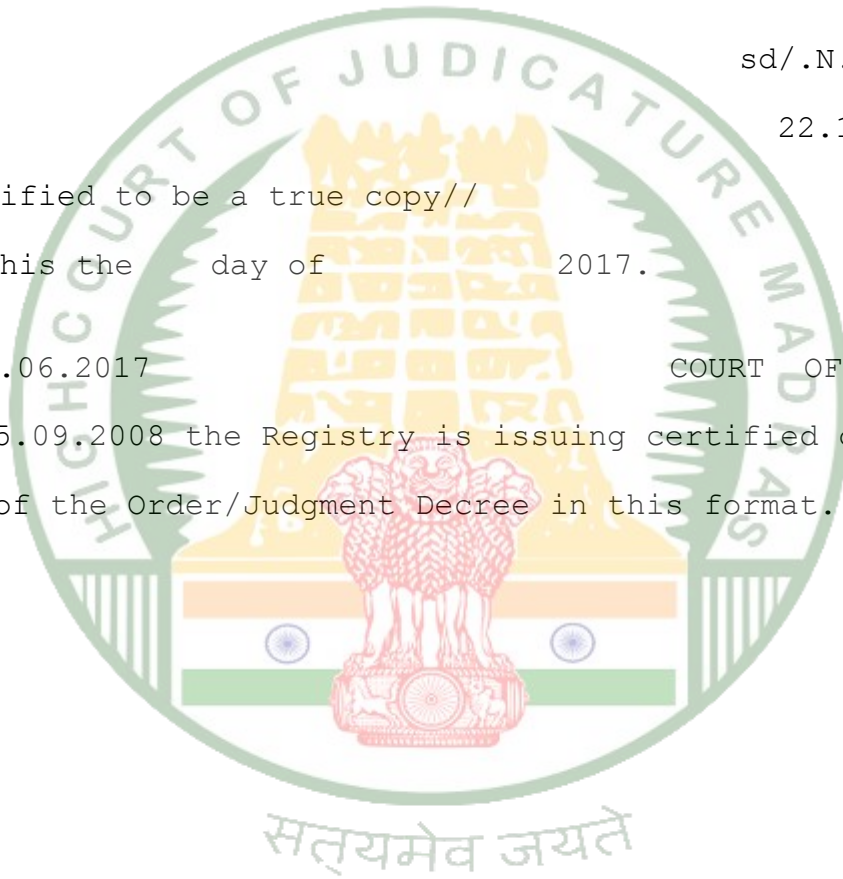
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Dated this the day of 2017.

P.M./09.06.2017

COURT OFFICER

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



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