

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.S.No. 42 of 2011

The state of Tamil Nadu Rep. by

1. The Secretary,
Tamilnadu Legislative Assembly,
Secretariat, Chennai 9.

2. Joint Secretary,
Tamilnadu Legislative Assembly,
Secretariat, Chennai 9.

...Appellants

VS.

N.Sekar

...Respondent

Appeal suit has been filed under Section 96 of the Civil Procedure Code, against the judgment and decree of the learned Additional District & Sessions Court, FTC-IV, Chennai in OS.No.5014 of 2002 dated 27.11.2006.

For Appellants : Mr.Guna Sekaran
Additional Government Pleader

For Respondent : Mr.S.Arifudeen Ali Ahamed

J U D G M E N T

The plaintiffs in OS. No.5014 of 2002 are the appellants. The said suit was filed for recovery of a sum of Rs.9,47,154/- with interest at 24% per annum from the date of the plaint till the date of recovery.

2. The case of the plaintiffs is that the defendant was a caterer who was awarded the contract for running a Non-Vegetarian canteen in the New Legislators Hostel, Omanthurar Government Estate, Chennai 600 002. Since the first highest bidder was not willing to take the contract, the defendant who was the second highest bidder at Rs.11,70,000/- per annum, was awarded the contract to run the canteen. Originally the lease was for a period of one year and renewable every year upto 1999-2000. The defendant has paid the lease amount of Rs.11,70,000/- for the first three years in two installments and from 01.09.1999 to 31.08.2000, the defendant paid a revised lease amount of Rs.11,80,000/- per annum. Since the lease agreement was not renewed for the year 2000-2001, the defendant was called upon to execute a lease deed. The defendant was unwilling to execute the lease deed claiming that the business has

come down and he was unable to pay lease amount at the rate of Rs.11,80,000/-per annum. Therefore, the plaintiffs have required the defendant to vacate and handover the possession of the canteen by its letter dated 18.12.2000. On 20.12.2000, the defendant requested the plaintiff to give him a permission to run the canteen for the period 2000-2001. However, the defendant did not come forward to execute a renewal lease deed or vacate the canteen premises. The defendant filed a suit in OS. No.4840 of 2001 before the II Asst. City Civil Court, Chennai, and obtained an interim injunction and continued to run the canteen. The Interim order of injunction was a conditional order and after complying with the condition the defendant was running the canteen.

3. The plaintiffs have filed an Appeal against the order granting an interim injunction in CMA No.5 of 2002. By order dated 22.04.2002 the IV Additional City Civil Judge, Chennai, directed the defendant to pay 50% of the lease amount on or before 22.04.2002. The defendant however did not comply with the said condition. The C.M.A came to be allowed on 07.06.2002, vacating the order of injunction. Thereafter, the plaintiffs took possession of the premises

on 15.06.2002.

4. According to the plaintiffs the defendant has not paid the lease amount for the period 01.09.2001 to 15.06.2002, being the date on which the premises was taken possession by the plaintiffs. The plaintiffs have also claimed that certain furniture in the premises were damaged and claimed a sum of Rs.27,990/- from the defendant towards 50% of the cost of repairs. Therefore, the suit was filed for recovery of the lease amount for the period from 01.09.2001 to 15.06.2002 at the rate of Rs.11,80,000/- per annum and for a sum of Rs.27,990/- towards half the cost of repairs of the damaged furniture.

5. The plaintiffs also deducted a sum of Rs.15,000/- which was paid by the defendant towards the caution deposit from the total claim and claimed a sum of Rs.9,47,154/- as the amount due on the date of the suit.

6. The suit was resisted by the defendant contending as follows:

While admitting that he was the second highest bidder for Rs.11,70,000/- per annum, the defendant would submit that the business became unviable because of the action of the plaintiffs. The defendant would claim that when he was awarded the lease he was the only person having Non-Vegetarian Canteen inside the premises. According to the defendant, after the award of the contract the new MLA's Hostel was constructed wherein kitchens were provided in each room of the Legislator. Two other canteens were allowed to be opened, which resulted in dwindling of the business beyond expected levels. The alleged damaged cost of the furniture was also denied.

7. On the above pleadings, the learned Trial Judge framed the following issues:

1. *Whether the plaintiffs are entitled to a decree for a sum of Rs.9,47,154/- with interest at 24% per annum?*
2. *To what other relief the plaintiffs are entitled to?*

8. It is seen from the records that P.W.1 was examined on the side of the plaintiffs and the defendant has examined himself as

D.W.1 and Exhibits A1 to A8 were marked, however, no documents were filed on the side of the defendant.

9. Considering the evidence on record the learned Trial Judge concluded that the claim for damages to the furniture has not been proved and therefore, the plaintiffs are not entitled to any amount under the said head. As regards the arrears of lease rent the learned Trial Judge found that even on the admission of P.W.1, the claim was exaggerated. No doubt, that the defendant had taken the premises on lease for a period of three years at Rs.11,70,000/- per annum i.e., from 01.09.1996 to 19.09.2000. Admittedly, the lease ended on 31.08.2000 and there was no further renewal thereafter. The defendant did not agree for a renewal at a particular rate. But he sought for an injunction and obtained an injunction restraining the plaintiffs from interfering with his possession subject to said conditions and since he did not comply with the condition the injunction order was vacated and the plaintiffs took possession of the canteen on 15.06.2002. The suit claim is on the basis that the defendant is liable to pay a sum of Rs.9,47,154/- towards the lease amount, for its occupation between the period 01.09.2001 to

15.06.2002. It is not in dispute that the defendant has paid the lease amount as agreed up to 31.08.2000. For the year 2000-2001, according to the plaintiffs themselves, the defendant has paid a sum of Rs.11,50,000/- after deducting the agreed amount of Rs.30,000/-. This is also not in dispute that no lease amount was fixed for the period after 31.08.2001. The trial Court took note of the evidence of P.W.1 that after 15.06.2002 the yearly rent payable is Rs.60,000/-. Therefore, the learned Trial Judge concluded that the plaintiffs are not entitled to the suit claim. The learned Trial Judge, however, directed the plaintiffs to fix a fair rent considering the fact that they are getting only Rs.60,000/- per annum as rent for the same premises from 15.06.2002.

10. Aggrieved by this decree, the plaintiffs are on appeal.

11. I have heard Mr.Guna Sekaran, learned Additional Government Pleader appearing for the appellants and Mr.S.Arifudeen Ali Ahamed, the learned counsel for the respondent.

12. The following points arise for determination in this appeal.

Whether the plaintiffs are entitled to a decree for a sum of Rs.9,34,164/- for the period of 9½ months between 01.09.2001 to 15.06.2002 and calculated at the rate of Rs.11,80,000/- per annum?

On the point:

13. It is not the case of the plaintiffs that the defendant had agreed to pay at the rate of Rs.11,80,000/- per annum for his occupation between 01.09.2001 to 15.06.2002. The original lease was for a period for one year extendable up to 13.08.2000, at the rate of Rs.11,70,000 per annum. It is not in dispute that the defendant has paid the agreed lease amount for that period. When the lease was renewed for one more year i.e., from 2000 to 2001 the defendant had agreed to pay Rs.11,50,000/- per annum and he paid that amount also and there is no dispute on that. The dispute relates only from the period 01.09.2001 to 15.06.2002. It is not the case of the plaintiffs that the defendant had agreed to pay at a particular rate for his occupation during that period. No doubt, the occupation was protected by an order of injunction in Civil proceedings. P.W.1 in his evidence has clearly admitted that the same canteen has been

let out for an yearly rent at Rs.60,000/- from 15.06.2002. The reason is that a new Legislators hostel has come up, which provided independent kitchen for all the members of the legislative assembly in their respective rooms. Apart from that two other canteens have also come up in the same complex, which is resulted in monopoly being whittled down and this had logically resulted in the loss of business and it is only due to the reduction in the business, the plaintiffs themselves have fixed the rent for the same canteen from 15.06.2002 at Rs.60,000/- per annum. Therefore, I find that the claim of the plaintiffs for rent at the rate of Rs.11,80,000/- per annum is unjust and unreasonable. It is admitted that from 15.06.2002, the rent is fixed at Rs.60,000/- per annum i.e., Rs.5,000/- per month, and if rent is calculated for the 9½ months at Rs.5000/- per month the rent payable would be Rs.47,500/-. In the absence of any contract the defendant cannot be directed to pay at the rate agreed by him for the years 1996 to 2000. Therefore, I find that the plaintiffs would be entitled to a decree for a sum of Rs.47,500/- at the rate of Rs.5,000/- per month for the period from 01.09.2001 to 15.06.2002.

14. Of course, the plaintiffs have claimed interest at 24% and the said claim is very high. Considering the bank interest that is prevailing in that period, the plaintiffs would be entitled interest at 9% per annum on the sum of Rs.47,500/- from the date of the suit till the date of decree and thereafter at 6% till date of realization. It is stated that a sum of Rs.15,000/- has been deposited by the defendant at the time of entering into an agreement. The same is also admitted by the plaintiffs themselves. Therefore, the defendant would be liable to pay only a sum of Rs.32,500/-.

15. In the result, the appeal is allowed in part. There will be a decree for a sum of Rs.32,500/- with interest at 9% per annum from the date of the suit till the date of decree and 6% thereafter till the date of realization. There will be no order as to costs.

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04.08.2017

Index: No
Internet: Yes
Speaking order
jv

To
The Additional District & Sessions Court,
Fast Track Court-IV,
Chennai.



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R.SUBRAMANIAN,J.

Jv



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