

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.03.2017

Coram:

The Hon'ble Mr. Justice N.SATHISHKUMAR

Appeal Suit No. 679 of 2014
and

M.P.No.1 of 2014 and C.M.P.No.16191 of 2016

1. Tamil Nadu Industrial Investment Corporation Limited, rep. by its Branch Manager, Madras South Branch, No.480, Anna Salai, First Floor, Nandanam, Chennai-600 035.
2. Tamil Nadu Industrial Investment Corporation Limited, rep. by its Managing Director, No.692, Anna Salai, Nandanam, Chennai-600 035. .. Appellants/
Defendants 1 & 2

Versus

S.Periannan ..Respondent/Plaintiff

Appeal Suit filed under Order 41 Rule 1 of Civil Procedure Code read with Section 96 of Civil Procedure Code, against the Judgment and decree passed in O.S.No.13479 of 2010 by the learned IV Additional Judge, City Civil Court at Chennai dated 30.07.2013

For Appellants .. Mr.K.Magesh

For Respondent .. Mr.V.Thillaisamy

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JUDGMENT

This Appeal Suit is filed as against the judgment and decree passed in O.S.No.13479 of 2010 by the learned IV Additional Judge, City Civil Court at Chennai dated 30.07.2013, directing the appellants herein to pay the arrears of rent from 1.11.1993 to 14.02.2003 at Rs.7500/- per month deducting the rent already paid.

2. The brief facts of the plaintiff's case is as follows:- The plaintiff leased out the industrial shed of an extent of 2060 sq. ft. belonging to him to one S.Vijayakumar, Proprietor Sri Vijayaraj Industries on a monthly rent of Rs.7500/- under lease agreement dated 1.11.1993. The defendants advanced loans to the said Vijayakumar and upon his committing default in repayment of the loan, the defendants foreclosed the loan under notice dated 8.9.1992 and initiated action under Section 29 of the Tamil Nadu Industrial Investment Corporation Act. The said Vijayakumar filed W.P.No.14406 of 1994 and it was dismissed by this Court. Writ Appeal 1075 of 1994 filed by the said S.Vijayakumar challenging the said order of dismissal of writ petition was also dismissed by judgment dated 21.07.1997. The plaintiff was not a party to those proceedings. In the meanwhile possession of the unit of the said S.Vijayakumar viz., Vijayaraj Industries was taken over by the defendants herein on 24.03.1994. Without giving information to the plaintiff who is the owner of the industrial shed the industrial shed was kept under lock and key and in a sealed condition by the defendants. Though the lessee of the plaintiff S.Vijayakumar, the defendants having taken over possession of the unit with all assets and liabilities has become duty bound to pay the monthly rents due for the shed to the plaintiff as owner thereof. Thus, the defendants are liable to pay Rs.7500/- per month to the plaintiff from March 1994. Plaintiff demanded payment of monthly rent and minimum electricity charges from defendants under letters dated 24.10.1994, 10.11.1995, 21.02.1997 and by lawyer's notice dated 13.09.1996 and by personally meeting the various officers at all levels and when all his efforts failed, he was constrained to file W.P.No.14490 of 1997 seeking direction to the defendants for the same relief and the said writ petition was dismissed. The appeal preferred by the plaintiff in W.A.No.1285 of 1997 was allowed by Judgment dated 19.02.2002 declaring that the plaintiff is legally entitled to receive the arrears of rent and the defendants are duty bound to pay Rs.7500/- per month towards monthly rental for the industrial shed. The plaintiff also demanded the rental arrears from the defendants. The defendants paid Rs.23,167/- on 31.08.1999 towards arrears of rent from 26.09.1997 till 31.08.1999 calculated at the rate of Rs.1000/- per month and the defendants also continued to pay Rs.1000/- per month till they handed over the keys of the shed to the plaintiff through post on 20.02.2003. The electricity charges of Rs.1,89,0000/- for the period from March-April 1994 till February 2003 is due and payable by the defendants. The plaintiff estimated the damages at Rs.2,04,000/-. The plaintiff calculated the arrears of rent at Rs.7,49,833/- after deducting Rs.60,167/- paid by the defendant periodically at the rate of Rs.1000/- per month. The plaintiff calculated the interest of Rs.3,88,715/- @ 18% per

annum. The plaintiff claims Rs.2,00,000/- towards mental agony. In all the defendants are liable to pay a sum of Rs.17,31,548/-.

3. The brief facts of the defendants case is as follows:- One M/s Sri Vijayaraj Industries, Madras-34, represented by its proprietor S.Vijayakumar was sanctioned two term loans and soft loan during 1982 and 1984 for setting up a power coating unit at the premises belonging to the plaintiff. The said S.Vijayakumar entered into a lease agreement with the plaintiff for taking the premises on lease at a rent of Rs.1000/- per month. The borrower defaulted in repayment and hence the hypothecated assets were taken possession on 24.03.1994 by the defendants. An auction was conducted for sale of the assets on 18.08.1994 and a bid of Rs.57,000/- was received for the assets which was not confirmed since it was too low. In the meanwhile the plaintiff issued lawyer a notice on 13.09.1996 to the defendants and to the borrower S.Vijayakumar claiming arrears of rent. The writ petition filed by the plaintiff was dismissed. The defendants have been paying the sum of Rs.1000/- every month regularly till the possession was handed over to the plaintiff on 11.02.2003. The suit is liable to be dismissed for non-joinder of the borrower, who is the necessary and proper party in the suit for the reason that Lease Agreement has been entered into between the plaintiff and the borrower. Hence prayed for dismissal of the suit with costs.

4. Based on the above pleadings, the learned trial Judge has framed the following issues:-

(i) Whether the plaintiff is entitled the suit claim with interest as prayed for?

(ii) Whether the suit is hit on the ground for non-joinder of the borrower who is said to have been necessary party?

(iii) Whether the plaintiff is estopped from claiming of arrears of rent as against the finance?

(iv) Whether the plaintiff is entitled to claim any arrears of rent?

(v) To what other relief?

5. On the side of the plaintiff P.W.1 was examined and Exs. A1 to A14 were filed. On the side of the Defendants D.W.1 and D.W.2 were examined and Exs.B1 to B8 were marked.

6. The learned trial Judge after considering the oral and documentary evidence has decreed the suit in part holding that the plaintiff is entitled the amount in respect of the arrears of rent from 1.11.1993 to 14.02.2003 at Rs.7500/- per month deducting the rent already paid. In respect of other reliefs the learned trial Judge has dismissed the suit with proportionate costs. Hence the appeal by the defendants.

7. The only ground urged by the learned counsel for the Appellants is that though the Division Bench of this Court by its judgment dated 19.02.2002 in W.A.No.1282 of 1997, has directed the Appellants/defendants to pay rent to the Respondent/Plaintiff, the suit itself has been filed beyond the period of three years and further the arrears of rent is also claimed for more than ten years, which is not permissible in law.

8. Learned counsel appearing for the Respondent would contend that if he is permitted to withdraw amount of Rs.2,54,325/- already deposited by the Appellants/Defendants to the credit of O.S.No.13479 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai, being the rent payable for three years, pursuant to the conditional order passed by this Court in M.P.No.1 of 2014 in A.S.No.679 of 2014, he has no issue in this appeal.

9. Learned counsel for the Appellants has also submitted that he has no serious objection to permit the Respondent/Plaintiff to withdraw the amount deposited by them to the credit of O.S.No.13479 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai. However, he prays that the appeal itself may be disposed of.

10. In view of the above submissions, the only point arises for consideration in this appeal is:

Whether the plaintiff is entitled to claim arrears of rent beyond three years of time?

11. The point:- Admittedly, the dispute between the Appellants and the Respondent has been ended in the Judgment rendered by the Division Bench of this Court in W.A.No.1282 of 1997 dated 19.02.2002. However, the amount has not been deposited. Subsequently, suit has been filed in the year 2006 beyond the period of three years, claiming the arrears of rent for more than 8 years.

12. Since the learned counsel for the Respondent confines his relief only to the limited extent of permitting him to withdraw the amount of Rs.2,54,325/- already deposited by the Appellants/Defendants to the credit of O.S.No.13479 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai, being the rent payable for three years, pursuant to the conditional order passed by this Court in M.P.No.1 of 2014 in A.S.No.679 of 2014, this Court is of the view that there is no impediment to permit the Respondent/Plaintiff to withdraw the said amount. However, this Court is of the view that the Respondent/Plaintiff is not entitled to claim arrears of rent for more than three years.

13. Accordingly, the judgment and decree of the trial Court directing the Appellants herein to pay the arrears of rent to the Respondent/Plaintiff beyond the period of three years is set aside and the appeal is disposed of. No costs. Consequently, M.P.No.1 of 2014 and C.M.P.No.16191 of 2016 are closed.

14. The learned trial Judge is directed to issue cheque for a sum of Rs.2,54,325/- already deposited by the Appellants/Defendants to the credit of O.S.No.13479 of 2010 on the file of the IV Additional Judge, City Civil Court, Chennai, being the rent payable for three years, together with accrued interest if any, in favour of the Respondent/plaintiff, within a period of 15 days, on the application filed by the Respondent/Plaintiff.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. IV Additional Judge,
City Civil Court, Chennai.
2. The Section Officer, VR Section
High Court, Madras-104.

+1cc to Mr.V.Thillaisamy, Advocate, S.R.No. 16706

+1cc to Mr.K.Magesh, Advocate, S.R.No.16479

nm(co)
rmp(20/03/17)

A.S.No.679 of 2014

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