

In the High Court of Judicature at Madras

Dated: 21.07.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER
and

The Honourable Mr.JUSTICE ABDUL QUDDHOSE

O.S.A.No.114 of 2017
& C.M.P.No.7702 of 2017

M/s.Hale and Healthy Corporation,
represented by its Managing Partner
Mr.Giri Murhukrishnan
No.2/396, 2nd Street, Srinivasapuram
Thiruvanmiyur, Chennai - 600 041.

..... Appellant

Vs

1. Dr.P.Kannan

2. The Chennai Speciality Pharmacy
represented by its Proprietor, Deepa

3. Sai Diagnostics
represented by its Proprietor Gopinath

..... Respondents

Appeal filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent Act against the order and decretal order dated 22.11.2016, passed in A.No.4640 of 2016 in C.s.No.648 of 2016 on the file of this Court.

For Appellant : Mr.S.Bhargavan

For Respondents : Mr.Kabir, S.C.
for Mr.S.S.Swaminathan - R1
R2 and R3 - given up

J U D G E M E N T

(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal against the judgment and order dated 22.11.2016.

2. The appellant, in effect, is aggrieved by the observations made in the impugned judgment and order, to the effect that he should pay the admitted rent, commencing from November, 2016. Learned Judge has, however, indicated that the admitted rent will be paid, on or before 5th day of every English Calendar month, till the disposal of the Suit.

2.1. To be noted, this order came to be passed, in the background of respondent No.1, moving an application seeking a direction for furnishing a security by the appellant herein, to the extent of the Suit claim, i.e., 68,37,000/-.

2.2. Learned Single Judge, however, noted that no such direction was called for, as respondent No.1 was not a creditor.

2.3. Furthermore, learned Judge observed that a sum of Rs.45,00,000/- was available with respondent No.1.

3. The record placed before us shows that, pursuant to an agreement dated 16.6.2014, entered into between respondent No.1 and the appellant herein, a sum of Rs.45,00,000/- was made over by the appellant, in the form of refundable security deposit.

3.1. This fact is noted in clause 5 of the aforementioned agreement. To be noted, the very same clause further goes on to state that the security deposit would be refunded to the appellant at the time of handing over of the subject premises in tenantable condition, after deducting arrears of rent, costs, if any, incurred by respondent No.1, towards alteration or damage caused to the suit premises.

4. Quite clearly, the arrangement was, that Rs.45,00,000/- would remain with respondent No.1, till such time, the aforementioned eventuality arose and that, the amounts would be made over to the appellant, after making adjustments, if any, which may be called for, on account of arrears of rent etc.

5. The appellant, has, in these proceedings, conveyed to us, that the sum of Rs.45,00,000/-, has already been adjusted by him towards rent.

5.1. This fact, it appears, was not brought to the notice of the learned Single Judge, when the impugned judgement and order was passed.

6. Mr.Kabir, who appears for respondent No.1, says that he will take appropriate steps, in that behalf, and if, necessary, move the Court, once again, for appropriate relief.

7. Having said so, in so far as the grievance of the appellant is concerned, we are of the firm view, that the grievance is completely misplaced. The appellant cannot continue to enjoy the benefits of the suit premises without paying the use and occupation charges. According to us, no interference is called for with the impugned judgement and order.

8. The captioned appeal is, accordingly, dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid to respondent No.1, within a period of one (1) week from the date of receipt of a copy of the order.

9. Consequently, the connected Miscellaneous Petition is also dismissed. However, there will be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar
Original Side,
High Court, Madras.

+1cc to M/s.Bhargavan, Advocate, S.R.No.51448

+1cc to M/s.Swaminathan, Advocate, S.R.No.51541

O.S.A.No.114 of 2017
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MG (CO)
CU (07/08/2017)