

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23-11-2017

CORAM:

THE HON/BLE MR. JUSTICE RAJIV SHAKDHER
AND

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

O.S.A.No.43 of 2017

M/S.R.K.V.Studios (P) Ltd.,
Rep.by its Managing Director,
R.K.Venkatathiri

Having Office at 317-G, NSK Salai,
Vijaya Garden,Vadapalani
Chennai 600026.

...Appellant/Defendant

Vs.

M/s. Vijaya Medical and Educational Trust
Rep.by its Managing Trustee,
Having office at (old No.180),New No.434,
NSK Salai, Vadapalani,
Chennai 600026.

...Respondent/Plaintiff

Original Side Appeal is filed under Order 36 Rule 1 of O.S.Rules
r/w clause 15 of the Letter Patent to set aside the judgment and
decree dated 27.06.2016 made in Application No.5221 of 2014 in
C.S.No.105 of 2011 and allow the OSA with costs.

For Appellant : Ms.P.M.Subhadra for G.Jermiah

For Respondent : Mr.T.S. Bhaskaran

JUDGMENT

(Judgment of the Court was made by N. SATHISH KUMAR, J.)

1. Assailing the judgment and decree of the learned Single Judge, for delivery of vacant possession of the suit property along with the theatre equipment to the plaintiff/respondent herein, the defendant/appellant herein, has filed the present appeal. The brief facts leading to institution of this original side appeal is as follows:

1(a). The appellant/defendant was, originally, lessee under Messrs.Vijaya Productions Pvt. Ltd., by virtue of the lease deed dated 05.10.1998. The period of lease was seven years, commencing from 01.10.1998. Though, initial rent was fixed at Rs.25,000/- for the first two months, thereafter, monthly rent was fixed at Rs.45,000/- . The further conditions incorporated were to increase the rent at 15% after three years, and

thereafter to enhance rate of increase in rent to 20% in the seventh year. Pending the lease period, the original owner M/s. Vijaya Productions Pvt. Ltd., had transferred the rights over the suit property to the respondent/plaintiff herein, in the year 2002. The appellant/defendant had attorned the tenancy in favour of the respondent/plaintiff on 10-05-2002. After the expiry of the original lease, on 13.02.2008, the lease was further extended for a period of five(5) years from 4.10.2005. After the expiry of the above period, the respondent/plaintiff trust sent a letter dated 7.11.2008, requesting the appellant/defendant to vacate and deliver possession of the suit property by 30.01.2009. The appellant/defendant vide letter dated 21.11.2008, sought further time in vacating the suit property and also requested the respondent/plaintiff to consider the extension of lease period from 4.10.2010. He has also assured that he will deliver vacant possession of the suit property before the expiry of lease period i.e., 4-10-2010. Thereafter, despite several reminders, the appellant/defendant continued in possession and gaining time for delivery of vacant possession along with equipments and damages.

1(b). The appellant/defendant has taken a stand in the written statement, inter alia, contending that the lease was only in respect of movable property and further, the lease agreement had not been registered. The suit filed, based on the unregistered lease agreement, is not maintainable in law and notice under Section 106 of the Transfer of Property Act was not issued. That apart, he has also taken a stand to the effect that, the respondent/plaintiff is not the owner of the suit property. He has also invested huge amount in the suit property. The claim for damages at the rate of Rs.3,60,000/- per mensem is exorbitant and highly excessive. It is also the case of the appellant/defendant that, he, originally, sought for renewal for a period of ten years, but the respondent/plaintiff has granted five years only. Accordingly, he resisted the suit.

1.(c). When the suit was pending before the learned single Judge, two applications were taken out by the respondent/plaintiff. First, for issuance of direction to pay a sum of Rs.1,54,35,000/- being the arrears for the use and occupation of the suit property by the appellant/defendant from November 2010 to July 2014 and also continue to pay a sum of Rs.3,60,000/- per month, pending the suit till the final disposal. Second, to pass a judgment and decree on admission based on the appellant's/defendant's letter dated 21.11.2008.

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1(d). The learned Single Judge considered the documents and also Ex.P.10, a letter sent by the appellant/defendant dated 21.11.2008, and held that the appellant/defendant had admitted to deliver possession of the suit property and that the

admission was clear and unambiguous. Based on the admission made, the learned Single Judge proceeded to pass a judgment on admission. The learned Single Judge also took note of the earlier order passed by this Court in directing the appellant/defendant to pay the contractual rent at the rate of Rs.45,000/- from November 2010 till the date of order. The application filed i.e. A.No.1910 of 2016 for seeking extension of time for paying the arrears, was also taken note of by the Single Judge. It is relevant to extract the order passed by learned single Judge in A.No.1910/2016 dated 11.4.2016 .

"This Court, by an order, dated 14/3/2016, in Application Nos.5220 and 5221 of 2015 has prima facie found that the respondent/defendant has to pay the contractual rent at the rate of Rs.45,000/- per month from November 2010, till date, without prejudice to its rights and contentions in the main suit.

2. The learned counsel appearing for the applicant seeks six weeks time to pay the contractual rent, in the form of Demand Draft or Banker's Cheques.

3. This application is strongly opposed by the learned counsel for the respondent.

4. Since the suit is of the year 2011, so far, defendant has not paid any amount. Hence, a short time may be granted to comply with the orders of the Court.

5. In the light of the fact pleaded by the learned counsel for the applicant, this Court is inclined to grant time and accordingly, time is granted till 7/6/2016, to pay the contractual rent.

6. Call on 8/6/2016 for reporting compliance."

1.(e). Despite the fact that the Court had granted time till 07.06.2016 to pay the admitted contractual rent at the rate of Rs.45,000/- per month, the appellant/defendant did not comply with the said direction. As a matter of fact the appellant/defendant counsel has fairly submitted before the Single Judge that, the said order could not be complied with. Taking into consideration of all the oral and material admission made by the appellant/defendant, to vacate and deliver the suit property to the respondent/plaintiff in his letter dated 21.11.2008, learned single judge exercised the power under Order XII Rule 6 of C.P.C., and allowed the Application No.5221 of 2014 and granted judgment and decree in favour of the respondent/plaintiff. However, insofar as the application filed to claim damages was concerned, the learned Single Judge dismissed the application for damages and relegated parties to a fresh suit. Aggrieved by the judgment and decree passed under Order XII Rule 6 of C.P.C., directing delivery of possession, the present appeal has been filed.

7. After admission of the appeal neither the admitted rent nor damages for the use and occupation is deposited by the

appellant/defendant. When the matter was posted on 18.04.2017 before the First Bench, a junior counsel appearing on behalf of the learned counsel Mr.G. Jeremiah sought for an adjournment. The First Bench of this Court on that date passed the following order:

"An adjournment has been sought by a junior counsel on the ground of personal difficulties of Mr.G. Jeremiah, learned counsel on record for the appellant.

We are informed that the appeal has already been adjourned on three earlier occasions. As a last chance, we adjourn the appeal till 25.04.2017. It is made clear that no further adjournment shall be granted at the instance of the appellant."

8. Thereafter, it appears from the daily orders of this Court, on 08.06.2017 an impleading petition being in C.M.P.No.7599 of 2017 was filed. On that ground, the appeal was adjourned to 29.06.2017. When the matter came before this Court on 7.7.2017, this Court had passed the following order :

"1. Since, Mr.G.Jeremiah, learned counsel for the appellant, was not available in pre-lunch session, though his junior Mr.P.Chandrasekar, learned Advocate, was present, we asked Ms.Chitra Sampath, learned Senior Counsel, instructed by Mr.T.S.Baskaran, to address arguments on behalf of the respondent.

2.Mr.G. Jeremiah, who is now present in Court, (i.e., in post-lunch session), does not dispute that use and occupation charges, which were required to be paid, at the rate of Rs.45,000/- per month, have not been paid after 4th October, 2010, save and except for one payment made in April, 2013.

3. In these circumstances, we call upon the appellant to deposit the entire arrears of rent on or before the next date of hearing.

4. we may also note that the record shows that a similar opportunity was given by the learned Single Judge via order dated 14.03.2016. However, despite leeway being granted, in this behalf, the appellant failed to deposit the arrears qua use and occupation charges.

5. Further, we make it clear that there is no stay on the execution of the impugned judgment and decree.

6. In case, the deposit directed hereinabove is not made, Mr.R.K.Venkatathiri, the Managing Director of the Appellant Company shall remain present in the Court on the day of next hearing.

7. Re-notify the matter on 14.07.2017."

9. On 14.07.2017, this Court has passed the following order:

"1. We are informed by the learned counsel for the Appellant Company that the arrears of use and occupation charges have not been deposited.

2. We have indicated in our order dated 07.07.2017, that in case, the arrears of use and occupation charges are not deposited, the Managing Director of the Appellant Company Mr.R.K. Venkatathiri, will remain present in Court.

2.1. Learned counsel for the Appellant Company says that Mr.R.K. Venkatathiri, could not remain present in Court today, as there is, in the offing, a marriage in the family, which is to be held in the first week of August 2017.

2.2. According to us, this is not a good enough reason for either not paying the arrears of use and occupation charges, or for not remaining present in Court. Furthermore, there is no application filed for dispensation with the appearance of Mr.R. Venkatathiri, in Court, today.

3. Issue notice to Mr.R.K.Venkatathiri, as to why contempt proceedings ought not to be initiated against him.

4. At request, re-notify the matter on 21.07.2017."

10. On 21.07.2017, this Court has also passed the following order:

"O.S.A.No.43 of 2017

1. Mr. Jeremiah, Advocate, has filed a memo dated 21.07.2017 today.

2. A perusal of the averments made in the memo makes it clear that, he has informed the Managing Director of the appellant company that notice has been issued by this Court as to why contempt proceedings ought not to be initiated against him.

2.1.To be noted, the Managing Director of the appellant company is, one, Mr.R.K.Venkatathiri,. We have not, as yet, received the report of service, having effected to him.

3.Furthermore, Mr.Jeremiah, seeks to be discharged from his obligation to appear for the appellant company.

3.1. In these circumstances, leave, as sought by Mr.Jeremiah, is granted. He will no longer be burdened with obligation to appear for the appellant company.

4.Since, service is awaited qua Mr.R.K.Venkatathiri, list the matter for further orders on 04.08.2017.
C.M.P.NO.7599 of 2017
in O.s.A.No.43 of 2017
(application for impleadment)

5. After some arguments, learned counsel for the petitioner, seeks to withdraw the captioned petition.

6. Accordingly, the captioned petition is dismissed as withdrawn."

11. On 4.8.2017, this court again passed the following order, since the appellant/defendant was evading the service of notice.

"1. The report of the bailiff dated 03.08.2017, shows that service could not be effected on Mr.R.K.Vankatathiru, the Managing Director of the appellant company, as he was purportedly "out of station".

2. Ms.Chitra Sampath, learned senior counsel, who appears for the respondent says, that Mr.Jeremiah, Advocate, in his memo dated 21.07.2017 had indicated that information with regard to the intiation of contempt proceedings had been furnished to Mr.R.K. Venkatathiri.

2.1. Learned counsel says that, it is quite clear that Mr.R.K.Venkatathiri, is avoiding service.

3. In these circumstances, we are incliuned to issue, once again, fresh notice to Mr.R.K.Venkatathiri. Service of notice, though, will be effected via the concerned Station House Officer.

4. In order to effectuate service on Mr.R.K.Venkatathiri, learned counsel for the respondent will furnish all known address of Mr.R.K.Venkatathiri to the registry.

5. Re-notify the matter on 18.08.2017."

12. On 8.8.2017, following orders were passed:

"1. As per the report of the Registry, service has not been effected, as yet, on Mr.R.K.Venkatathiri.

2. The reportof the Inpsector of Police posted at R-1, Mambalam police Station, which was received on 18.08.2017, is on record.

3. Re-notify the matter on 29.08.2017.

4. The concerned Inspector of Police shall remain present in Court on the next date of hearing."

13. Again on 29.08.2017, the following orders were passed:

"1. Ms.M.Subhadra, advocate, who is present in Court says she represents Mr.R.K.Venkatathiri.

2. The Inspector of Police, posted at R-1, Mambalam Police Station, is also not present in Court today despite our order dated 18.08.2017.

3. Prima facie, this amounts to contempt of Court.

3.1. Issue notice to the Inspector of Police posted at R-1 Mambalam Police Station.

3.2. The registry will serve the order, passed today, on the Inspector of Police posted at R-1 Mambalam Police Station via special courier.

3.3. Furthermore, a copy of the order, passed today, will also be served on the Assistant Commissioner of police, T. Nagar.

4. Re-notify the matter on 01.09.2017."

14. On 1.9.2017 the following order has been passed:

1.Mr.G. Prabhu, the concerned Inspector of Police, posted at R-1 Mambalam Police Station, T.Nagar, Chennai-600017, is present in Court.

2.Mr.P.S.Siva Shanmugasundaram, learned Special Government Pleader, who represents him, says that Mr.G. Prabhu, is apologetic for not being present in Court on 18.08.2017 and 29.08.2017.

3.An affidavit dated 31.08.2017, along with typed set of document dated 01.09.2017, has been filed, in Court, today, to render explanation in that behalf.

4. Mr.Siva Shanmugasundaram, says the affidavit and the documents filed along with it will indicate the steps taken to effect service on Mr.R.K. Venkatathiri.

5. Having regard to the reasons given in the affidavit, we are persuaded not to take the matter in further, insofar as Mr.G.Prabhu is concerned.

6.Ms.M.Subhadra, who appears for the appellant and also Mr.R.K. Venkatathiri, says that a Special Leave Petition has been filed against one of the orders passed by this Court.

7. Learned Counsel further says that, the Supreme Court has stayed the order, though neither the copy of the SLP, nor the order passed by the Supreme Court has been furnished to the Court. The counsel has also not been able to inform us as to which order of this Court has been assailed in the SLP.

8. List the matter on 5.9.2017.

9. The counsel for the appellant will also place before the Court, the copies of the SLP as well as the order of the Supreme Court. Copies of the same will be furnished to the counsel for the respondent."

15. On 5.9.2017, this Court has passed the following order:

"1. Today, a memo dated 04.09.2017, has been filed by the counsel for the appellant Mr.M.Subhadra.

2. Inter alia, in the first paragraph of the memo, it has been stated that the Supreme Court, vide its order dated 01.09.2017, passed in SLP(C) No.21806 of 2017, has stayed all further proceedings in O.S.A.No.43 of 2017. The memo is accompanied by a copy of the order passed by the Supreme Court.

3. A perusal of the order shows that the Supreme Court has issued notice, which is made returnable within four weeks and furthermore, stayed the operation of the impugned order for a period of three weeks. The order impugned in the SLP is dated 14.07.2017. Therefore, what is stated in the memo filed by the appellant is clearly inaccurate.

4. Ms.M.Subhadra, Advocate, concedes as much and says that she will make amendments in this behalf.

5. Accordingly, re-notify the matter on 04.10.2017, to await the out come of the S.L.P.

6. We may also note that on the previous date i.e., 01.09.2017, we had asked the counsel for the appellant to file a copies of the SLP paper book; a direction which has not been complied as yet.

7. Counsel for the appellant will do the needful before the next date of hearing."

16. On 10.10.2017 the following order was passed by this Court:

"1. We are informed by Ms.Subhadra, that the matter in the Supreme Court is posted for hearing on 23.10.2017.

2. Counsel for the respondent affirms the position.

3. Accordingly, at request, re-notify the matter on 07.11.2017."

17. On 7.11.2017, this Court has passed the following order:

1. We are informed that the Special Leave Petition (SLP) preferred against our order dated 14.07.2017, has been dismissed.

1.1. We have been shown a copy of the order dated 23.10.2017, passed in S.L.P.(C) No.21806 of 2017 by Mr.T.S. Baskaran, who appears for the respondent.

1.2. A perusal of the copy of the order shows that the appellant, who was the petitioner before the Supreme Court was represented by a counsel and therefore in the ordinary course the appellant should be aware of the order passed by the Supreme Court.

2. In the proceedings held on 10.10.2017, we adjourned the matter to today, i.e., 07.11.2017, to await the outcome of the proceedings in the Supreme Court.

2.2. This order was passed in the presence of Ms. Subhadra, learned counsel for the appellant.

3. Despite the aforesaid position obtaining in the matter, there is no representation on behalf of the appellant.

4. The record shows that vide order dated 14.07.2017, we had issued notice to Mr.R.K.Venkatathiri, the Managing Director of the appellant company to show cause as to why contempt proceedings ought not to be initiated against him.

5. In view of the aforesaid circumstances, fresh notice will issue to Mr.R.K.Venkatathiri to show cause as to why contempt proceedings ought not to be initiated against him.

5.1. Mr.R.K.Venkatathiri shall remain present on the next date of hearing.

5.2. The Registry will have the order passed today, by us, served on Mr.R.K. Venkatathiri, by a special messenger. In case police aid is required, the Special messenger will take recourse to the same.

6. Re-notify the matter on 17.11.2017."

18. On 17.11.2017 this Court has passed the following order:

"1. After we issued notice to Mr.R.K.Venkatathiri on 07.11.2017, Ms.Subhadra has re-emerged in the case to represent him.

2. The learned advocate was not present on 07.11.2017 before us, even though she was present in the Supreme Court on the day when the SLP was dismissed.

3. The date in the captioned appeal was also known to Ms.Subhadra

4.Today, Ms.Subhadra has filed across the bar, a petition to dispense with the appearance of the appellant.

5. The application is accompanied by a certificate of Medway Hospital. As per the said certificate, Mr.R.K. Venkatathiri was admitted to the hospital on 15.11.2017.

6. The certificate says that Mr.R.K. Venkatathiri, is diabetic and require cardiac evaluation.

7. Ms. Subhadra says that she has instructions to convey to the Court that the appellant will remain present in Court on the next date of hearing.

8. Re-notify the matter on 23.11.2017."

19. Today, 23.11.2017, the appellant/defendant is present and he expressed his inability to pay the amount and stated that he is not the tenant of the suit property and he is no way connected with the suit property and that only his wife is in possession of the suit property.

19.1. The appellant/defendant on being asked, declined to pay even the admitted contractual amount as per the Single Judge order dated 11.04.2016. सत्यमेव जयते

19.2 In view of the above statement of the appellant/defendant, we asked the learned counsel for the appellant/defendant to argue the appeal on merits to give quietus to this appeal. The learned counsel for the appellant/defendant expressed her inability to assist in the matter. On the other hand counsel for the respondent/plaintiff insisted that the appeal be heard and disposed of on merits.

19.3. Given this position we examined the record in our own and heard the counsel for the respondent/plaintiff as well as the appellant/defendant.

20. The stand of the appellant/defendant is that, since the lease deed of the year 1998, is unregistered, while its tenure exceeds a period of one year, the suit is not maintainable. Further, the stand taken is, which was reiterated by the appellant/defendant before us, today, is that, respondent/plaintiff was not the owner of the suit property and hence, the suit is not maintainable for recovery of possession from him at least. In sum, this was not a case in which the learned Single Judge ought to have exercised power under Order XII Rule 6 of the Civil Procedure Code, 1908 (CPC).

21. Whereas the learned counsel appearing on behalf of the respondent/plaintiff vehemently contended that having entered into lease agreement and paid the rent, the appellant/defendant is now estopped from taking stand that he is not the tenant. That apart, the tenancy expired in 2010 itself, and even thereafter, admitted contractual rent of Rs.45,000/- as per the lease agreement, was not paid. Besides, the conduct of the appellant/defendant clearly shows that, he has taken undue advantage of the litigation and enjoyed the suit property by earning huge amount from it. Despite the directions of this Court to deposit the arrears for use and occupation, he has not complied with the order of the Court. Hence, the learned counsel submitted that the appeal had no merit. The learned single judge had rightly exercised the jurisdiction under Order XII Rule 6 of CPC and passed the Judgement and decree and hence he prayed for dismissal of the appeal.

22. The points, which arise for consideration in this appeal are as follows:

(i) whether the judgment and decree passed by the single Judge by exercising the power under Order XII Rule 6 of CPC is in accordance with law?

(ii) Whether the appellant/defendant is entitled to deny the title of the lessor?

(iii) Whether the suit is not maintainable in view of the non-registration of the lease deed of the year 1998?

Points:

23. On a perusal of the judgment of the Single Judge and document relied upon by the parties, it can be seen that the trial has already begun in the suit. The records also show that the exhibits were also marked. The learned Single Judge considering Ex.P.10 letter dated 21.11.2008 found that the appellant/defendant has not only admitted the landlord and tenant relationship but also admitted that he would vacate the suit property on or before 04.10.2010. The learned single Judge

has also found that the admission made by the appellant/defendant in writing is unequivocal and unambiguous and hence exercised the power under Order XII Rule 6 of CPC and passed a judgment and decree for delivery of possession of the suit property.

24. We have also seen the record, particularly the documents, which were marked before the Single Judge. Ex.P.1, lease agreement is executed between the appellant/defendant and the respondent/plaintiff. The said document shows that the appellant/defendant was inducted as a lessee for a period of seven (7) years with effect from 01.10.1998. According to the appellant/defendant, the leased properties are only movable properties, nothing to do with the immovable property. In this regard, Ex.P.1 lease agreement, when carefully perused, the contention of the appellant/defendant that, the lease for only in respect of movable properties cannot be true. In fact, the lease advance for the theatre viz., the building was also paid. In addition to this Ex.P.3 attornment notice dated 22.04.2002, clearly states that entire Vijaya Garden Theatre has been transferred to Vijaya Medical and Educational Trust by the then owner Vijaya Productions Limited and requested the appellant/defendant to pay the rent directly to the Vijaya Health Centre. Ex.P.4 dated 10.5.2002 indicates that the appellant/defendant was not only aware of the transfer of Vijaya Garden Theatre ownership, but also agreed to pay the rental charges directly to Vijaya Health Centre with effect from April 2002. A perusal of letter dated 25.04.2004 (Ex.P.5), written by the appellant/defendant Mr.R.R. Venkatathiri, Managing Director of M/s. R.K.V.Studios would show that the lease agreement pertained to not only movable properties but also took within its fold immovable properties. The above letter also adverts to the condition of the theatre roof, parking area and bad condition of pathways, studio front areas etcetra. Thereafter, it appears, the respondent/plaintiff had sent a letter to the appellant/defendant to vacate the premises and handover the land and buildings to the Trust on or before 31st January 2009, in response to which the appellant/defendant had replied vide his letter (Ex.P.10) dated 21.11.2008 stating therein that he would shift the studio before 04.10.2010. All these documents clearly show that the lease agreement was entered into not only in respect of the movable properties but also qua immovable property. Though, the lease deed is an unregistered one and not admissible in evidence, we are of the view that the presumption that a lease of less than one year got created by conduct of parties remained un-rebutted.

25. In this regard, the Honourable Apex Court in its three Judges decision reported in 2001 I L.W. 244 (Antony vs. K.C.Ittoop) has held as follows:

"Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality. Non registration of the document causes only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains un-rebutted." (emphasis is ours)

From the documents referred above, it could be seen that the appellant/defendant continued in possession and paid rent till 2010 without any demur as tenant holding over. Therefore, the contention of the appellant/defendant that the suit is not maintainable, cannot be countenanced.

26. Ex.P.7 letter addressed to the respondent/plaintiff by the appellant/defendant dated 12th February 2005, in which, the appellant/defendant himself sought extension of lease for a further period of seven (7) years. Accordingly, under Ex.P.8 lease was extended for five (5) years from 04.10.2005. In Ex.P.10 dated 21.11.2008, the appellant/defendant while replying to the letter dated 17.11.2008 sent by the respondent/plaintiff, has clearly admitted that he will take immediate steps to find out suitable place to shift his studio and if he could get such a place even before the extended period (4.10.2010), he would shift his place and would inform in time. Therefore, once the appellant/defendant had accepted the respondent/plaintiff as landlord or lessor, he cannot now deny the title of the lessor, in fact he is estopped from making such claim under Section 116 of the Indian Evidence Act.

27. Since the appellant/defendant initially had agreed to vacate the suit property and thereafter taken a different stand, the learned single Judge had exercised power under Order XII Rule 6 of C.P.C., The provision under Order XII Rule 6 is extracted below :

"6. Judgment on admissions.-

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

28. The learned single Judge has also taken into consideration the specific pleading of the plaintiff with regard to the categorical admission of the defendant to vacate the suit property on or before 4.10.2010 with reference to his letter dated 21.11.2008. The above pleadings have not been denied in the written statement. Further, Ex.P.10 dated 21.11.2008 is also not denied by the defendant. Therefore, when the facts pleaded in plaint are not specifically denied in the written statement, such facts are nothing but deemed admission on the part of the appellant/defendant. Taking note of the evasive denial in the written statement coupled with Ex.P.10 i.e., letter of the appellant/defendant, we are of the view that it is indeed a case of categorical admission on the part of the person who admitted the relevant facts via his own document in the first instance.

29. Though in the appeal stage, the appellant has taken a specific stand that by virtue of subsequent letter dated 25.10.2010, he had impliedly retracted the undertaking letter dated 21.11.2008. Such letter dated 25.10.2010 is neither seen the light of the day nor is marked. In this regard there is no pleading in the written statement with regard to the retraction of the undertaking given by him vide letter dated 21.11.2008. Therefore, the contention of the appellant at the appeal stage that, vide letter dated 25.10.2010 he had impliedly retracted the undertaking to vacate the premises on or before 04.10.2010, has no basis at all. As pointed out, letter dated 25.10.2010 is neither filed nor referred in the pleadings. Whereas the letter dated 25.09.2010 was marked as Ex.P.14. Even scanning the entire letter dated 25.09.2010, what he has requested was for further extension of leave. The said letter does not whisper about retraction of the earlier undertaking given vide his letter dated 21.11.2008 (Ex.P.10). Therefore, we are of the view, that admission made by the appellant/defendant in Ex.P.10 is categorical and unambiguous.

30. The object of the Rule i.e. Order XII Rule 6 is to enable the party to obtain a speedy judgment atleast to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. Under Order XII Rule 6 of C.P.C. , the Court may at any stage of the suit either on an application of a party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit. In a judgment reported in the case of Rajiv Srivastava v. Sanjiv Tuli

and Anr., [119 (2005) DLT 2002 (DB) the Delhi High Court has held as follows:

"10. The use of the expression 'otherwise' in the aforesaid context came to be interpreted by the Court. Considering the expression the Court had interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also de hors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties' statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matter in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein....."

31. Admittedly, the lease expired in the year 2010 itself by efflux of time. Thereafter, appellant/defendant never paid any amount towards rent from November 2010, despite the directions by the learned single Judge.

32. Even at the appeal stage, despite the directions by this Court on various occasions, the appellant/defendant for some reasons or other, avoided making payment and protracted the proceedings. The order passed by this Court extracted in the earlier part of this judgment clearly exposes the conduct of the appellant/defendant. His conduct is nothing but dishonest only to take undue advantage to get himself enriched. The appellant/defendant is squatting on the property even without paying a single paise for last several years. Whereas, now at the appeal stage the appellant/defendant in utter disregard to his own admission in his letter dated 21.11.2008 and also other correspondences, as seen by us, has taken a different stand that he is not the tenant of the suit property at present, only his wife is in possession of the suit property. This conduct, prima facie, establishes that the appellant/defendant has taken advantage of the litigation in all these years and has squatted on the suit property despite the categorical admission by appellant/defendant that he would vacate the suit property. Appellant/defendant has used the court process as a convenient lever to retain illegal possession indefinitely.

33. Order XII Rule 6 of the C.P.C. permits the Court to pronounce the judgment on admission at any stage without waiting for the determination of any other questions. This is a simple suit for recovery of possession of suit property after the

expiry of the lease by efflux of time. As long as the appellant/defendant continued as lessee, there was no whisper whatsoever made questioning title of the Landlord/Lessor. Only when the lease expired, the appellant/defendant introduced a patently false plea with the view to squat on the suit property, despite his own admission to vacate the suit property on or before 04.10.2010. Though the unregistered lease deed expired originally on 4.10.2005 after a period of seven (7) years, on the request of the appellant/defendant to extend the lease agreement for a further period of seven (7) years, it was extended for five (5) years from 4.10.2005, as per Ex.P.8 dated 13.2.2008. Till such time, the appellant/defendant continued as lessee and paid rent without any demur. All the while, landlord and tenant relationship existed between the parties and no issue with regard to the title was raised. This position continued to obtain even after the expiry of the extended period of tenancy. It is only after the respondent/plaintiff sought to seek possession of the suit property, that the appellant/defendant raised the question of title.

34. In our opinion, in any event, to seek relief of possession it is sufficient to show that there is a landlord and tenant relationship and that the respondent/plaintiff need not show that he had title in the suit property.

35. Admittedly as discussed above, the documents of the appellant/defendant speaks volumes about the existence of a relationship as landlord and tenant. Therefore, having enjoyed the property as a lessee, it is strange to contend that the respondent/plaintiff has no title to the suit property. Such contention of the appellant/defendant cannot be permitted in law. He is estopped from questioning the title of the landlord. Hence, we are of the view that the conduct of the appellant/defendant is nothing but only to protect his possession, which became illegal in his hands after expiry of the relationship between them as landlord and tenant. The appellant/defendant has failed to pay even the arrears despite the direction by this Court, his possession as on date is neither of tenant holding over nor of tenant at sufferance. His possession is that of a trespasser. Therefore, the contentions of the appellant/defendant raised in this appeal, has no legs to stand on.

36. Therefore, we are of the view that, learned single Judge taking into consideration the averments of the appellant/defendant with regard to his own admission made in the Ex.P.10 letter dated 21.11.2008, has rightly exercised the power under Order XII Rule 6 of the C.P.C. and accordingly passed the judgment and decree. We are not persuaded by the contention of the appellant/defendant to the contrary. We find

that appellant/defendant has abused the process of law only to retain his illegal possession of the suit property. Therefore, we have not the least hesitation in saying that the appellant/defendant's stand is nothing but full of falsehood and hence deserves to be rejected. The points are answered accordingly.

37. In view of the above, the appeal is dismissed with costs.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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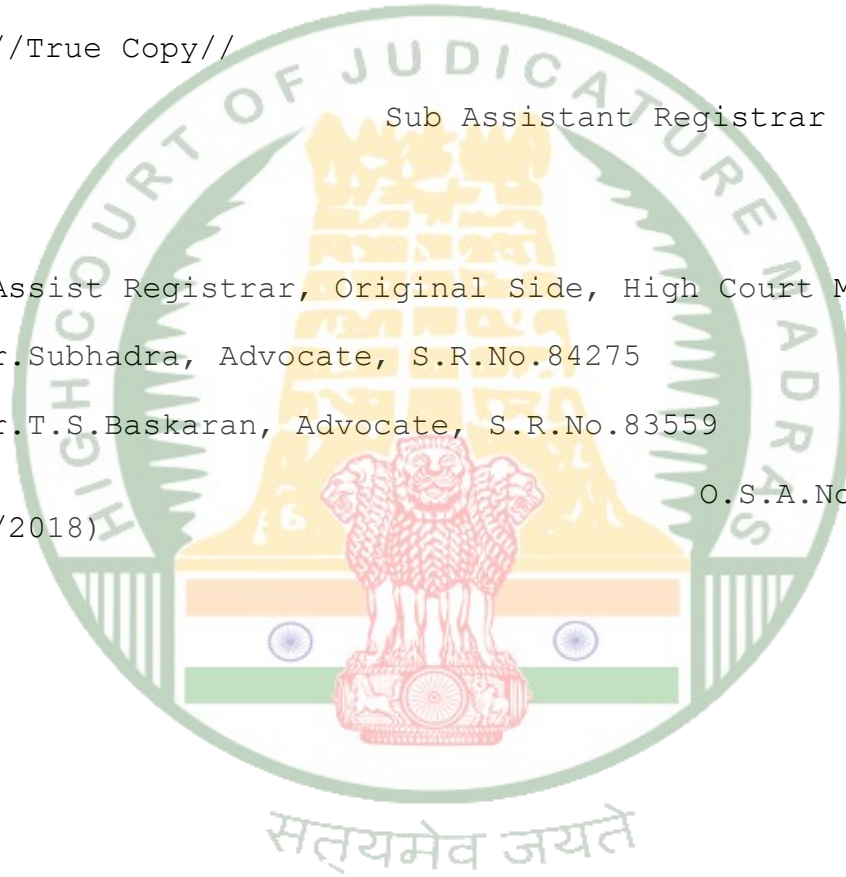
The Sub Assist Registrar, Original Side, High Court Madras.

+1cc to Mr.Subhadra, Advocate, S.R.No.84275

+2cc to Mr.T.S.Baskaran, Advocate, S.R.No.83559

O.S.A.No.43 of 2017

RRK(19/01/2018)



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