

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2017

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

A.S No.721 of 2010 &
M.P.No.1 of 2010

1.Purushothamalal Thirad

2.M.Deendayal Thirad

3.M/s. Cabco Paradise (P) Ltd.
Rep. by its Managing Director
Mr.Purushotham Lal Thirad
No.D-33, Anna Nagar East
Chennai - 600 103. ... Appellants/Defendants

Vs.

1.Lakshmi ...1st Respondent/Plaintiff

2.M/s. Aburupam & CO
Rep. by its Partner
Mrs.S.Kalavathy & Mrs. S.Lakshmi
No.66, P.V.Koil Street
Chennai - 600 012. ...2nd Respondent/2nd Defendants

Appeal filed under Section 96 of the Code of Civil Procedure judgment and decree dated 17.12.2009 made in O.S.No.2075 of 2006 on the file of Additional District Judge (Fast Track Court No.2), Chennai.

For Appellants : Mr.A.Ramesh Kumar
For Respondents : Mr.P.K.Sivasubramanian
JUDGMENT

Challenging the judgment and decree passed in O.S.No.2075 of 2006 on the file of Additional District Court (Fast Track Court No.2), Chennai, the defendants have filed the above appeal.

2. The respondents-plaintiffs filed the suit in O.S.No.2075 of 2006 for recovery of a sum of Rs.7,44,000/- together with interest at the rate of 15% per annum from the date of plaint till the date of realization.

3.1 It is the case of the plaintiffs that the defendants entered into a lease agreement on 17.11.2000 and agreed to pay

a monthly rent of Rs.10,000/- from 01.12.2000 for a period of 11 months and Rs.12,000/- per month from 01.12.2001 onwards. The defendants also entered into a Hire Agreement dated 17.11.2000 for the movables, viz., furniture, generator, etc., and agreed to pay the Hire charges of Rs.40,000/- per month from 01.12.2000 for a period of 11 months and also at Rs.50,000/- per month from 01.12.2001 onwards.

3.2 Since the defendants defaulted in paying the monthly rent and hire charges for the movables, the plaintiffs initiated eviction proceedings in R.C.O.P.No.992 of 2003 and at the time of enquiry, the defendants had vacated the premises on 30.01.2004 without paying the arrears of rent and hire charges due from 01.12.2000 to 30.01.2004.

3.3 According to the plaintiffs, after adjusting the advance amount of Rs.5,00,000/- paid at inception, the balance payable is Rs.12,40,000/- towards rent and hire charges. However, the plaintiffs are restricting their claim by way of arrears for the period 01.02.2003 to 30.01.2004 for a period of 12 months amounting to Rs.7,44,000/-, which the defendants failed to pay. In these circumstances, the plaintiffs have filed the suit for recovery of a sum of Rs.7,44,000/- together with interest.

4. The defendants in their written statement has stated that the plaintiffs are liable to pay a sum of Rs.36,76,047.53 to them and therefore, they are not liable to pay any amount to the plaintiffs. Further, the defendants have stated that proceedings under section 138 of the Negotiable Instrument Act was initiated against the plaintiffs for the dishonour of cheques for a sum of Rs.9,17,120.53. Further, the defendants have stated that after adjusting a sum of Rs.7,44,000/-, the plaintiffs are liable to pay the balance amount of Rs.29,32,047.53.

5. Before the trial court, on the side of the plaintiff, P.W.1 was examined and 9 documents, Ex.A-1 to Ex.A-9 were marked and on the side of the defendants, D.W.1 was examined and 15 documents, Ex.B-1 to Ex.B-15 were marked.

6. The Trial Court after taking into consideration, the oral and documentary evidences let in by the parties, decreed the suit as prayed for.

7. Aggrieved over the judgment and decree of the Trial Court, the defendants have filed the above appeal.

8. Heard Mr.A.Ramesh Kumar, learned counsel appearing for the appellants and Mr.P.K.Sivasubramanian, learned counsel appearing for the respondents.

9.1 On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that though the defendants have contended that the plaintiffs are liable to pay a sum of Rs.29,32,047.53, the defendants have not filed any counter claim in the present suit. When the defendants have contended that the plaintiffs are liable to pay the said amount, they should have filed the counter claim. The defendants have also admitted that they are liable to pay a sum of Rs.7,44,000/- to the plaintiffs towards rental arrears and arrears of hire charges. However, the defendants contention is that the said sum of Rs.7,44,000/- should be adjusted in the outstanding amount payable by the plaintiffs. For adjusting the said amount from the amount which is alleged to be payable by the plaintiffs, the defendants should have filed the counter claim and sought for set off against the plaintiffs.

9.2 D.W.1 also admitted that he is liable to pay the rental arrears and the arrears of hire charges from 01.12.2000 to 31.01.2004. When D.W.1 had admitted that the defendants are liable to pay the said amount, the Trial Court had rightly decreed the suit as prayed for. However, while decreeing the suit, the Trial Court had awarded interest at the rate of 15% per annum from the date of filing of the suit till the date of realization. I am of the view that the Trial Court should have awarded interest at the rate of 15% per annum from the date of filing of the suit till the date of the decree and awarded interest at the rate of 6% per annum from the date of decree till the date of realization. The award of interest at the rate of 15% per annum from the date of the plaint till the date of realization is liable to be modified.

10. In these circumstances, I am inclined to interfere only with regard to the award of interest by the Trial Court. Accordingly, the suit is decreed as follows:

The defendants are liable to pay a sum of Rs.7,44,000/- together with interest at the rate of 15% per annum from the date of the suit i.e. 27.02.2006, till the date of the decree i.e. 17.12.2009 and at the rate of 6% per annum from the date of decree i.e. 17.12.2009 till the date of realization.

The judgment and decree of the Trial court are modified as stated above. The appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Rj
To

1. The Additional District Judge
(Fast Track Court No.2), Chennai.

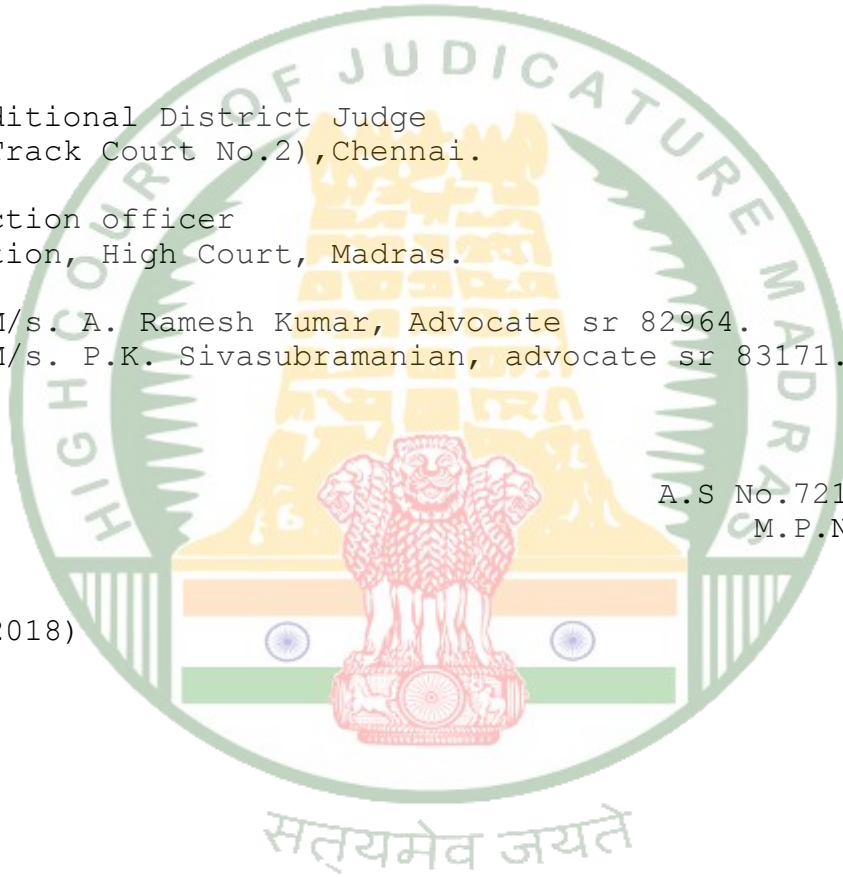
2. The Section officer
VR Section, High Court, Madras.

+1 CC to M/s. A. Ramesh Kumar, Advocate sr 82964.

+1 Cc to M/s. P.K. Sivasubramanian, advocate sr 83171.

A.S No.721 of 2010 &
M.P.No.1 of 2015

CNR(CO)
SP(09/01/2018)



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