

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **17.01.2018**

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.831 of 2017
and C.M.P.No.22412 of 2017

1. Indian Bank
 Represented by its
 Chief Manager and
 Authorised Officer,
 55/1, 100 Feet Road,
 J.N.Salai, Vadapalani,
 Chennai 600 026.

2. The General Manager,
 Indian Bank,
 Circle Office,
 55, Ethiraj Salai,
 Chennai 600 008

Appellants

...
 ..VS..

C.Dakshinamurthy

Respondent

सत्यमेव जयते

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 22.08.2017 in A.S.No.250 of 2015 on the file of the 19th Additional Judge Court at Chennai, confirming the decree and judgment dated 26.06.2015 in O.S.No.789 of 2011 on the file of the 14th Assistant City Civil Court at Chennai.

For Appellants : Mr.T.V.Ramanujam, Senior Counsel
for Mr.B.Murugavel
For Respondent : Mr.P.B.Balaji

J U D G M E N T

Aggrieved by the unanimous decisions of the Courts below, the defendants, which is the Bank, have preferred the above Second Appeal.

2. The suit is filed by the plaintiff for delivery of vacant possession of the property mentioned in the suit schedule; for damages for use and occupation from 01.11.2010 to 21.12.2010; and further to pay Rs.4,000/- per day towards damages till the date of delivery of possession. The plaintiff is the owner of the suit property and the defendant, after inspecting the same, requested the plaintiff to let out of the same for the business on a monthly rent of Rs.43,549/- per month inclusive of all amenities and exclusive of electricity consumption charges. The tenancy is a non-residential one and commenced from 29.05.2006. As the building itself was constructed in the year 2006, the provisions of Tamil Nadu Buildings (Lease and Rent Control) Act 1960 is not applicable, since the building is less than five years old. Hence, a notice of termination was issued on 10.10.2010 calling upon the defendants to deliver the vacant possession of the suit

property besides claiming the damages.

3. The suit was resisted by the defendants-Bank contending that the suit was not maintainable, as the building was more than five years old. The appellants / defendants also putforth their contention that the plaintiff had borrowed loan from it and they were merged and re-phased at request of the plaintiff. As the plaintiff was irregular in payments, the defendants had sent a statutory notice under Section 13(2) of the SARFAESI Act. Thus contending, sought for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and one more witness was examined as P.W.2 and marked Exs.A1 to A17. On the side of the defendants-Bank, one Mr.T.Dhanaraj was examined as D.W.1 and one Mr.M.Raja was examined as D.W.2 and Exs.B1 to B3 were marked.

5. Based on the above pleadings, the Courts below had concurrently held that the building was less than five years old on the date of cause of auction for the suit and decreed the suit. Aggrieved by the same, the above Second Appeal has been filed by the Bank/Defendants/Appellants.

6. Heard the learned counsel for the appellants-Bank and the learned counsel for the respondent-plaintiff and perused the materials available on record.

7. The main contention of the defendants is that as the building is more than five years old, the suit filed, as such, is not maintainable and the plaintiff ought to have resorted to Rent Control Proceedings. To substantiate their contention, reliance was placed on Ex.B-3-letter dated 24.11.2004, wherein, the plaintiff/respondent had offered the premises for rent to the appellants at Rs.15 per sq.ft in the ground floor and Rs.14 per sq.ft in the first floor. Though the said offer was accepted by the defendants in the year 2004, their actual occupancy was only in the year 2006. The plaintiff had put up a new construction, after pulling down the whole structure, which was earlier occupied by one M/s.Murugan Stores. Thereafter, the present structure was put up as per the specifications of the Bank including a strong room for them. The construction was completed in the year 2006 and the defendants had occupied only in the year 2006. The plaintiff had substantiated the same by producing the tax assessment receipts, which goes to show that the demised premises was assessed to the tax only in the year 2006. Once the building is said to be less

than five years old, Section 30(1) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960 would come to effect. Ex.A-17 is the report of the Chartered Engineer, which was obtained for the purpose of assessing the market value of the property. Incidentally, the said report also mentions about age of the building as four years. The said report corroborates the claim of the plaintiff. Thus the Courts below had concurrently held that the building was less than five years old and the plaintiff is entitled for exemption under Section 30(1) of the Tamil Nadu Buildings (Lease and Rent Control), Act 1960 and thus the suit is filed as maintainable.

8. The notice issued under Section 13(2) of the SARFAESI Act by the defendants has got no relevance, as the cause of auction for the suit is entirely different. When the jural relationship of landlord and tenant is established and the age of the building also is found to be less than five years, the plaintiff had laid the suit correctly before the Civil Court for ejection. If the parties parties otherwise had any other transaction beyond scope of the suit, the same cannot be canvassed here. Thus the Courts below had concurrently held that the plaintiff is entitled for a decree for eviction and also damages as prayed for.

9. Learned Senior Counsel appearing for the appellants/defendants prayed for time to vacate the premises. Though the learned counsel for the plaintiff/respondent submitted that the appellants/defendants have already fixed another premises for shifting. Though the learned counsel for the appellants sought for one year time to vacate the premises, the learned counsel for the respondent agreed to grant time till 30.09.2018. Accordingly, while confirming the judgment and decree of the Courts below, time till 30.09.2018 is granted for the appellants to vacate the premises.

10. In fine, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.01.2018

Index: Yes/No

Internet: Yes/No

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To

1. The 19th Additional Judge, Chennai
2. The 16th Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, V.R.Section, High Court, Madras

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PUSHPA SATHYANARAYANA.J

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