

In the High Court of Judicature at Madras

Dated:01.11.2018

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The Honourable Dr.JUSTICE ANITA SUMANTH

C.S. No. 285 of 2006

1. S.Mehdi Ispahani
2. S.Ali Ispahani
3. S.Mohamed Ispahani Plaintiffs

Vs.

Girdharilal Chandak & Brothers (HUF)
Represented by its Kartha
Mr.Yogendra Chandak Defendant

PRAYER: PLAINT filed under Order VII Rule 1 of the C.P.C. read with
Order IV Rule I of the O.S.Rules praying for

- (i) the defendant to pay a sum of Rs.93,11,071.00 to the
plaintiffs
(ii) the defendant to pay the cost of this suit.

For Plaintiffs : Mr.R.Balachander

For Defendant : K.V.Sundararajan

J U D G M E N T

The suit has been filed praying for a judgment and decree directing the defendant to pay a sum of Rs.93,11,071/- to the plaintiff along with costs of the suit.

2. Mr.R.Balachander, learned counsel appears for the plaintiffs and Mr.K.V.Sundararajan, learned counsel appears for the defendant and both have been heard in detail.

3. The plaintiff is the owner of the property bearing Door No.35, Anna Salai, Chennai – 600 002 ('suit premises' in short). The suit premises was originally owned by one Mr.S.Ismail Ispahani and his brother Mr.S.J.Ispahani. Upon the demise of Mr.S.Ismail Ispahani, his son Mr.S.Mohamed Ispahani (3rd plaintiff) herein succeeded to his interest. The defendant become a tenant in the suit premises under Mr.S.J.Ispahani and the 3rd plaintiff herein. Mr.S.J.Ispahani passed away on 06.11.1980 upon which his widow Mrs.S.J.Ispahani @ Shahrbanu Begum and her sons, arrayed as plaintiffs 1 and 2, succeeded to his estate.

4. The third plaintiff herein along with Mrs.S.J.Ispahani has filed RCOP. No.2480 of 1988 on the file of XIV Small Causes Court, Chennai for fixation of fair rent in the suit premises.

5. During the pendency of the RCOP Mrs.S.J.Ispahani passed away and plaintiffs 1 and 2 were recognized as her legal heirs. An order was

passed on 24.04.2004 in the aforesaid RCOP for fixation of fair rent at Rs.31,591/- per month. Aggrieved by the aforesaid order, RCA No.627 of 2004 was preferred and the plaintiffs filed a cross appeal in RCA No.716 of 2004 seeking enhancement of fair rent. Both the RCAs were heard together and by a common judgment dated 26.04.2005, the appeal filed by the defendant was dismissed and the appeal filed by the plaintiffs was allowed, enhancing the fair rent to a figure of Rs.43,084 to be paid from the date of filing of RCOP.

6. Since the amount remained unpaid, the plaintiffs, issued a legal notice to the defendant on 30.08.2005, calling upon him to make the remittance of the arrears of fair rent computed at a figure of Rs.84,49,136/- for the period 01.09.1988 to 31.08.2005 within a period of two (2) weeks from the date of receipt of the notice. The amount was computed after giving credit to the rents received and certain other amounts stated to have been paid by the defendant to various statutory authorities. The notice could not be served upon the respondent and was subsequently sent under Certificate of Posting on 16.09.2005. A reply was received from the defendants' counsel on 30.09.2005 denying the liability to pay as demanded by the plaintiffs.

7. In the meanwhile, as against the judgment in the Rent Control Appeals dated 26.04.2005 the defendant preferred two petitions for Revision in CRP Nos.1657 & 1658 of 2005 that were admitted on 28.10.2005. No interim stay of the order appeared against was sought for

at the time of admission. This Court directed the defendant to deposit the

arrears of rent of a sum of Rs.85 lakhs to the credit of the RCOP on or before 31.01.2006. The Court further directed that the deposit be transferred to an interest bearing Fixed Deposit to be renewed till disposal of the Civil Revision Petitions.

8. The aforesaid order of this Court was carried in appeal to the Supreme Court in SLP (Civil) Nos.25728 & 25729 of 2005 that stood dismissed on 03.01.2006. The order of the High Court dated 28.10.2005 directing the defendant to deposit a sum of Rs.85,00,000/- has thus become final, but has unfortunately not been complied with till date.

9. Though the defendant has been making claims towards payments effected by him on behalf of the plaintiff to the Corporation and towards arrears of property tax, it was unclear as to the quantum of the amount remitted. As such, a letter was issued on 08.02.2006 by the second plaintiff to the Corporation of Chennai seeking a statement as to the quantum of remittances made by the defendant. The Corporation, by letter dated 17.02.2006 appears to have conveyed that a sum of Rs.17,000/- has been paid by the defendant between 07.11.2003 to 17.06.2005 towards arrears of property tax on behalf of the plaintiff. The defendant has also paid a sum of Rs.1,36,000/- to the Chennai Metropolitan Water Supply and Sewerage Board on 15.02.2000 (Rs.80,000/-) and 09.08.2003 (Rs.56,000/-) towards water and sewerage tax for the period 1/1992-93, 2/1992-93, 1/1993-94, 2/1993-94, 1/1994-95, 1/1997-98, 1/1997-98, 2/1997-98 and 1/1998-99.

10. Thus the defendant is liable, in all, to pay a sum of Rs.87,56,724/-, being rent of a sum of Rs.90,90,724/- (01.09.1988 to 31.03.2006 at the rate of Rs.43,084/- per month) less a sum of Rs.3,34,000/- being rent at the rate of 1,000/- per month for the period between 01.09.1988 and 30.09.2003 as well as a sum of Rs.1,53,000/- being the amounts remitted to the statutory authorities, amounting in all to a sum of Rs.87,56,724/-.

11. The case of the plaintiff before me in the plaint is that the aforesaid amount of Rs.87,56,724/- is liable to paid as arrears of fair rent. An amended plaint has been filed on 01.06.2016 wherein, the claim made in the suit stands enhanced to a sum of Rs.93,11,091/-. The enhancement is based on the dismissal of the Civil Revision Petitions on 21.10.2015. According to the plaintiffs it was only at this juncture that the amount of rental arrears stood actually crystallized. Thus, an amended plaint enhancing the original amount claimed by an amount of Rs.5,54,347/-, being rent for the period 01.04.2006 to 26.04.2007 at the rate of Rs.43,084/-, came to be filed.

12. The suit has been contested by filing of a written statement as well as Additional Written Statement in November 2006 and June 2007 respectively. Defences taken are to the effect that the suit is premature and that the defendants have themselves spent several lakhs of rupees towards repairs and maintenance. A separate suit has been filed by the defendants against the plaintiffs making a money claim of an amount of

<http://www.judis.nic.in> Rs.4,50,00,000/-. Though a plea had been made for joint hearing of the

suit filed by the defendants along with the present one, the prayer had been rejected against which decision no appeal has been filed. I must state at this juncture that learned counsel for the defendant before me does not, fairly, raise any serious defence as against the main suit prayer.

13. As far as enhancing of the suit claim is concerned, the defendant would state that the rental amounts had attained finality even at the time when the suit was originally filed and there is thus no justification whatsoever for the plaintiffs not having raised a claim in entirety at the first instance and tarrying till 2016 to do so. According to the defendants, the additional claim was barred by limitation, liable to be rejected as such.

14. As far as levy of interest is concerned, the defendants argue that no interest has been claimed either in the plaint originally filed or in the amended plaint filed in 2016. The request for interest by way of oral submissions is, according to them, wholly improper, belated and ought not to be entertained. Moreover, no Court Fee has been paid in regard to the interest prayed for.

15. On the basis of the pleadings, the following issues have been framed as extracted below:

- i) Whether the defendant is liable to pay a sum of Rs.93,11,071/- towards arrears for rent as claimed by the plaintiff?
- (ii) To what relief, the parties are entitled to?

16. Since the issue on payment of interest has been raised by the learned counsel for the plaintiff only now, I frame the following issue as an additional issue in the light of Order XIV Rule 5 of the CPC.

'Whether the defendant is liable to pay interest on the suit claim of Rs.93,11,071/- ?.'

17. On the side of the plaintiff, the Power of Attorney of the second plaintiff was examined as P.W.1 and has marked the following exhibits.

S.No.	Ex.No.	Date	Details
1	P1	25.07.2003	Power of Attorney given by P2 in favour of P.W.1
2	P2	26.04.2005	Certified Copy of the decree passed in R.C.A.No.716 of 2004
3	P3	30.08.2005	Copy of the lawyers' notice issued by the plaintiffs to the defendant
4	P4	30.09.2005	Copy of the defendants' reply notice
5	P5	28.10.2005	Certified copy of the order in C.R.P.No.1657 & 1658 of 2005
6	P6	03.01.2006	Order dated 03.01.2006 in SLP Nos.25728-25729 of 2005
7	P7	09.08.2003	Xerox copy of the property tax receipt
8	P8	15.02.2000	Xerox copy of the water tax receipt
9	P9	08.02.2006	Copy of the letter sent by the 2 nd plaintiff to Assistant Revenue Officer, Corporation, Madras.
10	P10	17.02.2006	Reply sent by ARO
11	P11	21.01.2015	Certified copy of the order in C.R.P.Nos.1657 & 1658 of 2005
12	P12	21.01.2015	Certified copy of the decree in C.R.P.Nos.1657 & 1658 of 2005

On the side of the defendant, the defendant was examined as D.W.1. No documents were marked on the side of the defendant.

18. Having heard learned counsel, my decision in relation to each of issues, those framed originally as well as additionally, and based upon the

pleadings in suit, Exhibits filed and the detailed submissions advanced, is set out below.

19. To be fair to learned counsel for the defendant, no arguments has been raised as against the money claimed in suit and framed as Issue 1 above, and rightly so, seeing as the liability in respect of the fair rent payable and the quantum thereof has attained finality in the light of Exhibits P6, P11 and P12. Thus, the suit, in so far as it relates to the claim of rent, is liable to be decreed in favour of the plaintiffs and I do so. At this juncture, I restrict my conclusion aforesaid only to the amount of Rs.87,56,724/- as an objection has been taken by the defendant to the enhancement of the claim to Rs.93,11,071/-.

20. As far as the enhancement of the suit claim is concerned, no specific issue has been framed in regard thereto. Notwithstanding the same, since a specific claim has been raised by the plaintiff vide the amended plaint that has also been contested by the defendant on merits, I proceed to decide the same on merits. I agree with the defendant that, having filed the suit on 03.04.2006 when the Civil Revision Petitions were still pending, there was no reason for the plaintiff to have waited till 2016 to raise the claim in respect of the period 01.04.2006 to 26.04.2007. The argument taken by the plaintiffs is that they were awaiting the decisions in CRP Nos.1657 & 1658 of 2005 that were rendered only on 21.01.2015. I am not convinced by this explanation.

21. Upon taking possession of the suit property on 26.04.2007

there was nothing that prevented the plaintiff from raising the additional

claim for an amount of Rs.5,54,347/- immediately and there appears no justification for the plaintiff to have waited till 2016 to have done so. The only justification advanced was that the plaintiff was awaiting disposal of the CRPs. However, if at all one were to await disposal of the Civil Revision Petitions to raise the additional claim, the same logic would apply in regard to the original claim as well. There is thus clearly no justification for the plaintiff to have waited ten (10) years to raise the claim for enhancement.

22. The enhanced claim relates to the period 01.04.2006 to 26.04.2007 and any claim for the aforesaid period ought to have been filed within the period of limitation set out under the Limitation Act 1908. The defendant having been evicted on 27.04.2007, the claim ought to have been filed within three (3) years therefrom. This was however not done and the plaintiff waits till 2016 to raise the additional claim. Incidentally, even the argument that the plaintiff was awaiting the result of the CRPs is not acceptable since the decisions in CRP were rendered on 21.01.2015 whereas the amended plaint was filed only in March 2016. If at all the plaintiffs were really awaiting the result of the CRPs for crystallisation of the rental amounts, there was still no reason to wait for a further year and a quarter to seek the enhancement. Thus, the enhancement sought is clearly an afterthought and barred by limitation. The prayer for enhancement of the suit claim by an amount of Rs.5,54,347/- is thus liable to be rejected and I do so.

23. Coming to the question of interest, it is true that neither the original nor the amended plaint filed on 01.06.2016 raise a claim for interest. However, the provisions of Section 34 of CPC deal with levy of interest in the following terms as extracted hereunder:

34. Interest.— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit,² [with further interest at such rate not exceeding six per cent. per annum as the Court deems reasonable on such principal sum], from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

(2) Where such a decree is silent with respect to the payment of further interest ² [on such principal sum] from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

24. The Court is vested with wide discretion to grant interest as it deems fit or reasonable. In the present case, admittedly, the arrears of rent have been quantified in the decree passed in RCA as early as on 26.04.2005. This Court, while admitting the Civil Revision Petitions on 28.10.2005, has specifically directed the defendant to deposit a sum of Rs.85 lakhs to the credit of the RCOP on or before 31.01.2006, the sum to be invested till the disposal of the Civil Revision petitions. Admittedly, the defendant is in violation of the aforesaid order which has not been complied with till date.

25. In the above circumstances, I am inclined to direct the defendant to pay interest at the rate of 6% on the rental arrears of Rs.85 lakhs from 28.10.2005 being the date of order of this Court till date of payment of the same.

26. The Principal, of a sum of Rs.87,56,724/- along with interest at the rate of 6% on a sum of Rs.85,00,000/- will be paid by the defendant along with costs of a sum of Rs.1,00,000/- within four (4) weeks from the date of receipt of a copy of this order. The plaintiff shall pay applicable Court Fee upon the interest awarded within a period of one (1) week from the date of receipt of a copy of this order.

27. The suit is decreed in the above terms.

01.11.2018

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Dr.ANITA SUMANTH,J.

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