

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 18TH DAY OF JANUARY 2018

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

A. Nos.2405 & 3416 of 2017
in
C.S. No.286 of 2017

C.S. No. 286 of 2017 and A. No.2405 of 2017:-

Tvl.T.K.K.N.N.Vysya Charities,
Rep. by its Managing Trustee,
Mr.D.V.S.Prasad,
New No.83, Venkatarangam Pillai Street,
Triplicane, Chennai-05. .. Applicant/Plaintiff

-Versus-

1. M/s.Shanthi Engineering Works,
Rep. by Mr.Vijay, Managing Partner,
2. Mr.A.Sreenivas, Partner,
M/s.Shanthi Engineering Works,
1 & 2 are at Old No.36, New No.83,
Venkatarangam Pillai Street,
Triplicane, Chennai-5.
3. Mrs.J.Visalakshi, Partner,
M/s.Shanthi Engineering Works,
Plot No.37, Old door No.4, New Door No.7,
Rama Rao Road, Mylapore, Chennai-600 004.
4. Mrs.Gayathri Gupta, Partner,
M/s.Shanthi Engineering Works,
Old No.36, New No.83,
Venkatarangam Pillai Street,
Triplicane, Chennai-5. ... Respondents/Defendants

A. No.2405 of 2017:-

Application praying that this Hon'ble Court be pleased to pass an order of directing the respondents/defendants to furnish security to the value of the suit claim of Rs.79,16,475/- failing which an order of attachment before

judgement attaching the immovable property comprised in No. Plot No.37, Old door No.4, New Door No.7, Rama Rao Road, Mylapore, Chennai-600004 and the movables in suit schedule property at No.83, Venkataram Pillai Street, Triplicane, Chennai-5, to protect the interest of the Petitioner/Plaintiff public trust pending disposal of the above suit.

A. No.3416 of 2017:-

1. M/s.Shanthi Engineering Works,
Rep. by Mr.Vijay, Managing Partner,
2. Mr.A.Srinivas,
M/s.Shanthi Engineering Works,
1 & 2 are at Old No.36, New No.83,
Venkatarangam Pillai Street,
Triplicane, Chennai-5.
3. Mrs.J.Visalakshi,
M/s.Shanthi Engineering Works, Partner,
Plot No.37, Old door No.4, New Door No.7,
Rama Rao Road, Mylapore, Chennai-600 004.
4. Mrs.Gayathri Guptha, Partner,
M/s.Shanthi Engineering Works,
Old No.36, New No.83,
Venkatarangam Pillai Street,
Triplicane, Chennai-5. ... Applicants

-Versus-

Tvl.T.K.K.N.N.Vysya Charities,
Rep. by its Managing Trustees,
Mr.D.V.S.Prasad,
New No.83, Venkatarangam Pillai Street,
Triplicane, Chennai-05. ... Respondent

Application praying that this Hon'ble Court be pleased to grant stay of all further proceedings in C.S. No.286 of 2017.

These applications coming on this day before this court for hearing the court made the following order:-

A.No.2405 of 2017 has been filed by the Plaintiff in CS.No.286 of 2017, seeking an order, directing the Respondents/ Defendants in CS.No.286 of 2017 to furnish security to the value of the suit claim of a sum of Rs.79,16,475/-, failing which to pass an order of attachment before judgement to attach the immovable property comprised in Plot No.37, Old Door No.4, New Door No.7, Rama Rao Road, Mylapore, Chennai-4 and the movables in the Schedule property at No.83, Venkatrangam Pillai Street, Triplicane, Chennai-5.

2. A.No.3416 of 2017 has been filed by the Defendants in CS.No.286 of 2017, seeking to stay of all further proceedings in in CS.No.286 of 2017.

3. CS.No.286 of 2017 has been filed by the Plaintiff, T.K.K.N.N.Vysya Charities, represented by its Managing Trustee, D.V.S.Prasad, for a judgement and decree against the Defendants for a sum of Rs.79,16,475/- towards damages/arrears of rent for unauthorised use and occupation of the property from March 2014 from the date of termination of the tenancy till the date of institution of the suit and for future rent and damages.

4. It is the case of the Plaintiff that the Plaintiff is a Public Trust established for the purposes of promoting welfare of the Vysya Community living in and around Triplicane, Chennai-5. It has been functioning for the past

over 150 years. The property of the Plaintiff Trust is located in a predominantly commercial and well developed area. The Trust is governed by a scheme framed by the orders of this Court in CS.No.330 of 1910 and later modified subsequently by the orders of this Court. The suit property was rented out to the Defendants and they had altered and demolished the portions of the building. This was without the knowledge of the Plaintiff. The Plaintiff had initiated steps to fix the fair rent for the tenants in the adjacent property and the fair rent was fixed at Rs.22,090/- for the property having an extent of 481.25 sq.ft. The land value in that case was taken as Rs.1,00,00,000/- per ground. The Defendants are in unauthorised occupation since the tenancy had been terminated by letter dated 18.1.2014 with effect from 19.3.2014. The Plaintiff has decided to demolish and put up a new construction in the property. A joint development project in this regard was approved by this Court in A.No.5088 of 2013 in CS.No.439 of 1977. The Defendants were called upon to vacate and deliver vacant possession. However, they did not do so. There were also proceedings in the City Civil Court and also in the Small Causes Court as between the Plaintiff and the Defendants. It has been further stated that since the tenancy was terminated, the occupation of the tenants is illegal and unauthorised. It is under these circumstances that the Plaintiff had filed the

suit, seeking payment of damages and arrears of rent and also future rent/ damages and costs.

5. The suit had been contested by the Defendants. This Court had passed orders on earlier occasions. This Court had directed the Defendants to indicate as to the reasonable rent, which they would pay since the present rent was very less. The Defendants offered to pay the rent at the rate of Rs.1.50 per sq.ft. The rate offered by the defendants is rejected by this Court since even on the face of it, it was very low.

6. There was also an argument through out that the defendants had put up a superstructure, but in this regard earlier application under Section 9 of the Madras City Tenants Protection Act, has been rejected by this Court. Consequently, this Court had appointed an Engineer to determine the fair rent of the premises. The Engineer had also inspected the property and forwarded a report. The defendants had also appointed an Engineer and had determined the fair price of the premises. These are all aspects, which have to be decided at the time of trial.

7. The present application, as stated above, has been filed to furnish security to the value of the suit claim. In the Counter filed by the defendants, they have reiterated that they have put up a superstructure. They have denied the validity of the letter, seeking termination

of tenancy. They have also stated that the allegation that the building has become old is false and they have stated that there are 35 tenants and as on date, there are still 15 tenants from the period 2007. They have also mentioned about the suit in the City Civil Court, Chennai. They have actually claimed that this Court cannot proceed with any adjudication, since the suits in the City Civil Court, Chennai are pending and it is for that the reason, according to them, that they have filed the applications, as stated above, seeking stay of all further proceedings of the present suit.

8. The main ground, on which, the applications had been filed to stay all further proceedings of the present suit, is that the defendants have filed suits before the City Civil Court, Chennai, seeking an order of permanent injunction, restraining the present plaintiff from interfering with their peaceful possession and enjoyment of the suit property. They have further stated that they have also filed a civil miscellaneous appeal as against the dismissal of the interlocutory application. They have stated that since the parties of both the suit in the Civil City Court, Chennai and the present suit are one and the same and since the subject matter is also the same, the present suit should be stayed, till the disposal of the suit in the City Civil Court, Chennai.

9. A counter has been filed by the Plaintiff to the application filed to stay of all further proceedings in the present suit, stating that this stand is taken up by the defendants only in the year 2017 for the first time even though the earlier suit had been instituted in the year 2014. It had been stated that the present applications are only an attempt to protract the proceedings and consequently, it had been stated that the application should be dismissed.

10. The defendants have also filed a reply to the said counter and they have once again reiterated the averments made in the affidavit filed in support of their applications. They have stated that the only aim of the plaintiff is to somehow throw out the defendants from possession, by using unlawful and illegal methods. They have once again reiterated that the issues are substantially the same and that therefore stated that the applications to stay all further proceedings in the present suit must be allowed.

11. I have carefully considered the arguments of the learned counsel for the Plaintiff and the Defendants.

12. The plaintiff is a Public Charitable Trust. The plaintiff is the owner of the suit property. The earlier attempt of the defendants, seeking title over the superstructure had been negated by this Court. The defendants were in occupation in their capacity as tenants.

The tenancy has been terminated by the Plaintiff by their letter dated 18.01.2014 with effect from 19.03.2014.

13. It is the specific stand of the Plaintiff that the tenants are in illegal occupation of the suit premises. There was an attempt made by the Court, calling upon the defendants to pay a reasonable rent till the suit is adjudicated. However, the defendants have come forward to pay the rent at the rate of 1.50 per sq.ft. This was held to be totally unreasonable. Therefore, this Court had to verify the probable fair rent of the premises and accordingly, appointed an Engineer to inspect and give a report. The Engineer had also inspected and given a report. The fair rent is that an excess of the rent, which is now being paid or claimed by the plaintiff. The genuineness of the rent and correctness of the report will have to be decided during the trial.

14. In the present application filed by the Plaintiff, as stated above, the plaintiff seeks an order directing the defendants to furnish security to the value of the suit claim, failing which to order attachment before judgement for attachment of immovable property at Plot No.37, Old Door No.4, New Door No.7, Rama Rao Road, Mylapore, Chennai-600 004 and movables lying on the suit property at New No.83, Venkatarangam Pillai Street, Triplicane, Chennai - 600 050.

15. The defendants have taken a very hostile stand in the entire proceedings. They have freely used the word 'illegal' to any order passed by the Court. They have claimed that they are in lawful possession. However, it is only just and necessary that they come forward to furnish security to the value of the suit claim. This is all the more important, because the defendants have been attempting to protract the proceedings. They have filed applications under Section 10 of the CPC, though, there is no relevance in issues between the suit in the City Civil Court, Chennai and in the present suit. As a matter of fact, the proceedings in the City Civil Court, Chennai had also gone adversely against the defendants herein.

16. It is also seen that the Plaintiff being a Trust had also approached this Court, seeking to demolish the superstructure and rebuild the superstructure. This Court had an occasion to examine the legality of such proposal and also granted permission in A.No.5088 of 2013 in C.S.No.439 of 1977. Consequently, the Plaintiff has every right to call upon the defendants to vacate and hand over vacant possession.

17. The defendants are in continuous occupation. It is natural that they will have to pay the damages/rent to the Plaintiff. The suit is based on such claim. In view of the stand taken by the tenants, it is only justifiable that

the Plaintiff apprehends that the defendant would vacate and evade any further judicial process. Under these circumstances, particularly when there is a reasonable apprehension that the defendants might vacate the premises to the disadvantage of the plaintiff and also remove the movables, the defendants have to be called upon to furnish security to the value of the suit claim.

18. Accordingly, A.No. 2405 of 2017 is allowed, as prayed for. A.No.3416 is dismissed. No costs. The Respondents/ Defendants are directed to furnish security to the value of the suit claim of Rs.79,16,475/- (Rupees seventy nine lakhs sixteen thousand four hundred and seventy five only) on or before 15.02.2018, failing which, there shall be an order of attachment before judgement to attach the immovable property, comprised in Plot No.37, Old Door No.4, New Door No.7, Rama Rao Road, Mylapore, Chennai-4 and the movables in the Schedule property at No.83, Venkatrangan Pillai Street, Triplicane, Chennai-5, without any further reference.

Sd/ C.V.K.J
18.01.2018

//Certified to be a true copy//

Dated this the day of 2018

jj 19/01/2018
From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

COURT OFFICER