IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal No.200 of 2017
Against
Application No.1793 of 2011
in
in C.S.NO.450 of 2003

M/s.Hindustan Petroleum Corporation Limited,
Rep.by its Chief Regional Manager,
Thalammuthu Natarajan Building,
Gandhi Irwin Road,
Egmore, Chennai-600 008. ... Appellant

Vs.

S.M.M. Mohideen Wakf-Alal-Aulad,
rep.by the Muthavalli,
S.M.S. Abdul Khader,
No.24, Soorappa Mudali Street,
Triplicane,
Chennai 600 005. ..Respondent

Original Side Appeal is filed under Order XXXVI Rule 1 of O.S.Rules R/W Clause 15 of the Letter Patent against the judgment and decree dated 10.11.2016 made in A.No.1793 of 2011 in C.S.No.450 of 2003.

For Appellant : Mr.O.R.Santhanakrishnan
For Respondent : Mr.Mukundan

JUDGMENT
(Judgment of the Court delivered by N. ANAND VENKATESH, J)

This Original Side Appeal has been filed by the appellant Corporation aggrieved by the order passed in A.No.1793 of 2011 in C.S.No.450 of 2003 dated 10.11.2016.

2.The brief facts that are necessary for the purpose of deciding this OSA are ; The respondent filed the suit for recovery of possession and for past and future mesne profits against the appellant Corporation on the ground that the period of lease came to an end on 05.01.1987 and thereafter the appellant did not vacate and hand over possession of the property to the respondent and that the property which is an extent of 8255 sq.ft. and is situated in a primate locality in the city was illegally occupied by the appellant.

3.During the pendency of the suit, the respondent filed applications for a direction to the appellant to pay the suit claim and also towards mesne profits. By an order dated 23.02.2006, this Court directed the appellant Corporation to pay Rs.25,000/- p.m. as damages from 01.04.2000 to 31.03.2003 for a period of 70 months and Rs.25,000/- as damages per month from 01.04.2003 to 28.02.2006 and continue to pay Rs.25,000/- p.m. from 01.03.2006 till the disposal of the suit. It is reported that this order has been complied with by the appellant Corporation.

4.Ultimately the suit came to be decreed on 22.09.2010 directing the appellant Corporation to vacate and hand over possession within three months and the respondent was permitted to file an application under Order 20 Rule 12 CPC for fixation of the mesne profits. It is seen from the records that the appellant Corporation vacated and handed over possession of the property to the respondent on 02.12.2012.

5.Thereafter, the respondent filed A.No.1793 of 2011 for the passing of a final decree to fix the mesne profits from 01.04.2000 till the date of handing over of the possession. The parties have let in evidence and documents have also been marked in order to assess the value of the property and fixing the mesne profit payable by the appellant Corporation.

6.The respondent has marked Exs.P-2 to P-13 which are the sale deeds pertaining to properties situated in near by location adjacent to the suit property. The learned Single Judge on appreciation of the oral evidence as well as the documents marked on the side of the respondent and also based on the memo of calculation filed by the respondent, was pleased to fix the total amount towards past and future mesne profits at Rs.1,18,06,020/-. This order was passed in the application on 10.11.2016 and aggrieved by the same, the present OSA has been filed.

7.The learned counsel for the appellant would submit that none of the sale deeds marked on the side of the respondent should have been taken into consideration by the learned Single Judge on the ground that the parties to the document have not been examined and the value that has been mentioned in the sale deeds cannot be taken on the face of it. In short, the learned counsel for the appellant would state that the guideline value by itself cannot be the basis for fixing the value of the suit property. The learned counsel for the appellant further submitted that when the suit property was filed in the year 2003, the respondent by way of an averment in the plaint has categorically stated that the running rate is Rs.5/- per sq.ft. for the period from 01.04.2000 to 30.04.2003 and the learned Single Judge for this period should not have calculated the mesne profit at the rate of Rs.2,30,770/- p.m. The learned counsel for the appellant further submitted that the learned Single Judge went by the memo of calculation filed by the respondent without independently assessing the value of the suit property. Finally, the learned counsel would submit that the learned Single Judge ought to have taken into consideration the payment of Rs.17,50,000/- and Rs.35,25,000/- paid by the appellant Corporation pursuant to the order dated 23.02.2006 in the applications and weightage should have been given for these payments.

8.Per contra, the learned counsel for the respondent would submit that the suit property is located in a prime area and is surrounded by a number of business establishments, super market, cinema theatre, - residential apartments etc, and the appellant Corporation was illegally occupying this prime area in spite of the expiry of the lease. The learned counsel would further submit that the respondent would be entitled to 12% of the value of the suit property as rental value per year towards the damages for use and occupation. The learned counsel for the respondent further submitted that even though the memo of calculation filed by the respondent was taken into consideration by the learned Single Judge, 50% from the total value was straight away slashed and what was ultimately given as against a claim of Rs.2,64,17,010/- was only a sum of Rs.1,18,06,020/-. Therefore, the learned counsel would submit that there is no ground to interfere with the order passed by the learned Single Judge.

9.We have considered the rival submissions and also the materials placed before us. The first submission made by the appellant that the learned Single Judge ought not to have taken into consideration the documents filed on the side of the respondent for fixing the value of the suit property, deserves to be straight away rejected. The Court at the time of fixing the value of the suit property must have some basis to start the process of determining the mesne profits. The sale deeds that were marked and the guide line value that was marked were all public documents which are registered in the Sub Registrar Office. The appellant did not let in any contra evidence nor did the appellant file any documents to disprove the value stated in the sale deeds. Therefore, this Court finds that the learned Single Judge was perfectly right in taking into consideration the documents marked before the Court in order to determine the value of the suit property.

10.Similarly, the learned Single Judge did not entirely take the value submitted by the respondent in its memo of calculation and has slashed 50% which according to this Court is a reasonable exercise done by the learned Single Judge to arrive at the value of the suit property. After all in cases of this nature some amount of assumptions and approximation must be done while arriving at the value of the suit property. It cannot always be done with a mathematical accuracy.

11.This Court directed the learned counsel for the respondent to consider revising the memo of calculation by taking Rs.5/- p.sq.feet for the period from 01.05.2000 till 30.04.2003 and Rs.10/- per sq.ft. for the period from 01.05.2003 till 31.01.2012. The revised calculation was placed before this Court which shows that the total damages comes to a sum of Rs.1,04,51,100/-. This Court found this calculation more reasonable taking into consideration the area in which the property is situated and also on the ground that this will balance the situation and make it more reasonable for both the parties. Out of a sum of Rs.1,04,51,100/- the appellant Corporation has already paid [Rs.9,00,000/- = Rs.25,000 x 36 months], [Rs.26,25,000/- = Rs.25,000 x 105 months] by virtue of interim order passed by this Court while admitting the OSA. The appellant Corporation has also deposited a sum of Rs.59,03,010/- before this Court. If all these amounts are taken into consideration, the balance amount payable by the appellant Corporation will be a sum of Rs. 10,23,090/-.

12.In view of the above this Court passes the following order:

(i)The appellant Corporation is directed to pay the respondent directly a sum of Rs.10,23,090/- within a period of eight weeks from the date of receipt of copy of this order.

(ii)The respondent is permitted to withdraw a sum of Rs.59,03,010/- which has been deposited by the appellant pursuant to the order passed by this Court, dated 22.08.2017, along with the interest that has accumulated in the fixed deposit in which the registry has invested this amount.

(iii)There shall be no order as to costs.

13.Accordingly, this Original Side Appeal is disposed of with the above directions.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kp

TO

1. The Sub. Asst. Registrar,
Original Side,High Court
Madras.

2. The Sub Assistant Registrar,
Accounts Section, High Court, Madras.

+ 1 cc to MR. O.R. Santhanakrishnan, Advocate Sr.38597
+ 1 cc to Mr. Mukundan, Advocate Sr.39026

O.S.A.No.200 of 2017
against
A.No.1793 of 2011
C.S.No.450 of 2003

KGK(CO)
EU(11/08/2018)