

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 29TH DAY OF OCTOBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.4124 of 2017

in

C.S.No.157 of 2011

M/s.Bohemian Destinations Pvt Ltd.,

Rep.by its Managing Director

Mr.N.G.George

No.7, Khader Nawaz Khan Road

Chennai 600 006.

..Applicant/Plaintiff

Vs.

R.Balakumar

3, Crescent Street

ABM Avenue

Chennai -28.

..Respondent/Defendant

Application praying that this Hon'ble Court be pleased to club the suits in C.S.No.157 of 2011 and C.S.No.54 of 2015 and order for joint trial pending before this Hon'ble Court.

This Application coming on this day before this court for hearing the court made the following order:

This application prays for clubbing of suits in CS. No.157 of 2011 and C.S.No.54 of 2015 and an order for joint trial of both suits.

2. The parties are common in both suits. CS. No.157 of 2011 has been filed by a company (the lessee) arraying the lessor with whom a Registered Lease Agreement for commercial use of the premises at Old No.38, New No.64, Rukmani Street, Kalakshetra Colony, Besant Nagar, Chennai 90 had been entered into on 01.07.2008 for a period of ten years, as defendant.

3. Issues have been framed on 22.09.2014 in CS. No.157 of 2011 as listed hereunder:

i. Whether the plaintiff is liable to claim compensation and damages to a tune of Rs.50,00,000/-

ii. Whether the plaintiff is entitled for mandatory injunction?

iii. Whether the defendant committed breach of the clauses set out in the Lease Deed dated 30.04.2008 entered into between the plaintiff and the defendant?

iv. Whether the Plaintiff is entitled for declaration that the Plaintiff is not liable to pay rents in view of the breach committed by the defendant?

v. Whether the plaintiff is entitled to seek declaration that the Lease Deed dated 30.04.2008 is binding on the defendant?

vi. Whether the defendant has acted as per the Lease Deed dated 30.04.2008 entered between the plaintiff and the defendant?

vii. Whether the defendant has valid sanctioned plan for commercial usage in respect of the suit schedule property?

viii. Whether the plaintiff was able to use the suit schedule property as per the Lease Deed dated 30.04.2008?

ix. Whether the defendant is liable to pay cost?

x. Whether the plaintiff is liable to pay compensatory cost for filing false and vexatious suit?

xi. To what other reliefs the parties are entitled to?

4. C.S.No.54 of 2015 is a cross suit filed by the lessor arraying the lessee as the defendant. Issues and additional issues have been framed on 24.10.2018 after the hearing of A.Nos.7779 and A.No.7780 of 2018 as under:

1. Did the plaintiff commit breach of the clauses set out in the lease deed dated 30.04.2008 entered between the plaintiff and the defendant?
2. Is the plaintiff not entitled for monthly rents from the defendants as claimed, particularly in the light of the order of the Supreme Court dated 08.05.2012?
3. Did plaintiff act as per the lease deed dated 30.04.2008 entered between the plaintiff and the defendant?
4. Is the plaintiff entitled for the suit claim?
5. Is not the plaintiff entitled to recover the damages?
6. Has the defendant caused damage to the building?
7. Is the defendant not liable to pay service tax under lease deed dated 30.04.2008?
8. Is the defendant entitled to sublet the premises and collect amounts by way of rent apart from advance?

9. Has not the defendant obstructed delivery of the possession to prevent the order of eviction?

10. Whether the defendant is estopped by his conduct and in view of the orders passed by all the three courts including the Supreme Court is the defendant bound to pay the rent?

11. Whether the defendant was in possession of the premises on the date of filing the suit CS.No.54 of 2015?

12. Is defendant liable to pay cost?

5. According to the applicant, the lessee/plaintiff in C.S.No.157 of 2011, CS. No.54 of 2015 has been filed by the lessor merely as a counter blast to advance a money claim as against the lessee. By order in Application No.2217 of 2017 in CS. No.157 of 2011 dated 05.07.2017 this Court has ordered trial in the suit to be conducted on a day-to-day basis in the following terms:

The matter is being posted for trial before Additional Master on 19.07.2017 and the learned Additional Master is to conduct trial on a day to day basis and if at all any adjournment is required not more than 3 working days shall be given. The Learned Master shall also ensure for conducting the trial and for completion of the same. On completion of trial, the matter may be posted before this Court.

6. The present application was filed on 24.07.2018 as a result of which trial in C.S.No.157 of 2011 is yet to commence.

7. The Application is stiffly contested on the ground that the prayers in the two suits are entirely different and distinct and there is absolutely no basis for the present prayer seeking a joint trial. According to the applicant, clubbing and joint trial ought to be ordered only in those cases where two conflicting decrees incapable of being put in execution are passed.

8. The following decisions are relied upon by the learned counsel for the respondent:

(i) *Premier Tyres Limited Vs. Kerala State Road Transport Corporation* (AIR 1993 SC 1202).

(ii) *M.Subramaniam and Ors V. C.Chottabhai & Co. By partner Chandubhai c. Patel and ors* (Madras High Court) (1990-1 LW 182),

(iii) *K.A. Perumalsamy Vs. A. Kandasamy and another* (Madras High Court) (2001 (4) CTC 297)

(iv). *H.Hamid and another Vs. (Maulvi) Abdul Ghani and another* (Patna High Court) (Manu/BH/0129/1932),

(v) *Satish Chandra Ghosh vs. SmtSrba Mangala Dutta and another* (Tripura Judicial Commissioner Court) (1970 AIR (Tripura) 89),

(vi) *Bhopo Fakirbhai (minor) and another Vs. Bail Mani D/o.Jijibhai Bechardas and others* (Gujarat High Court) (1961 AIR (Gujarat) 92: 1961GLR 179).

9. The question of whether clubbing of suits and joint trial is to be ordered is a matter touching upon the inherent jurisdiction of the Court. In considering the question, the Court will take into account whether such joint trial would be expedient and convenient both from the view point of commonality of issues that arise as well as the procedure to be adopted in the disposal of the suits.

10. One of the objections raised is that the prayers in the two suits are entirely different and distinct. The prayers in CS. No.157 of 2011 are as follows:

" a) pass a Judgement and Decree directing the Defendant to pay a sum of Rs.32,00,000/- as compensation and damages to the Plaintiff on account of the loss suffered till date by the Plaintiff and further directing the Defendant to pay a sum of Rs.1,00,000/- per month as future damages and compensation from the date of filing of the suit.

b) Pass a Judgment and Decree directing the defendant to strictly adhere with the terms and conditions entered between the Plaintiff and the defendant in the Lease Agreement dated 30.04.2008 in respect of the property bearing Old No.38, New No.64, Rukmani Street, Kalakshetra Colony, (Tiger Varadhachary Road), besant Nagar, Chennai - 600 090;

c) Pass a Judgment and Decree directing the defendant to sign all the papers concerning the approval of the building for commercial purpose to submit them to the Corporation of Chennai and to take all necessary steps for sanctioning the commercial approval in respect of old No.38, New No.64, Rukmani Street, Kalakshetra Colony, (Tiger Varadhachary Road), Besant Nagar, Chennai 90.

d) Pass a Judgment and Decree declaring that the Defendant is not entitled to collect rents from the plaintiff for the period from July 2008 in respect of premises bearing old No.38, New No.64, Rukmani Street, Kalakshetra Colony, (Tiger Varadhachary Road), Besant Nagar, Chennai 90.

e) Pass a Judgement and Decree declaring the the Lease Deed executed on 30.04.2008 between the Plaintiff and the Defendant is binding on the Defendant in respect of the premises bearing in respect of old No.38, New No.64, Rukmani Street, Kalakshetra Colony, (Tiger Varadhachary Road), Besant Nagar, Chennai 90.

f) Pass a Judgment and Decree of a permanent injunction restraining the Defendant, his men, servants, agents and all persons claiming under him from claiming the monthly rent from the Plaintiff in respect of the premises bearing in respect of old No.38, New No.64, Rukmani Street, Kalakshetra Colony, (Tiger Varadhachary Road), Besant Nagar, Chennai 90.

g) Directing the defendants to pay cost of the entire proceedings.

11. The prayers in CS. No.54 of 2015 are as follows:

- a) Directing the defendant to pay a sum of Rs.1,13,69,770/- to the plaintiff;*
- b) Directing the defendant to pay the cost of the suit.*

12. Learned counsel for the respondent fairly agrees that the resolution of the disputes raised in both civil suits would hinge upon an interpretation of the clauses in Lease deed dated 30.04.2008.

13. Both suits raise money claims, and other issues that overlap. A perusal of the pleadings in C.S.No.157 of 2011 is to the effect that the lessor has not complied with various obligations set out in lease deed dated 30.04.2008.

14. There is also an allegation to the effect that necessary statutory approvals to operate a commercial outlet in the property were not procured by the lessor. Notices had been issued by the Corporation and duly conveyed to the lessor despite which nothing had been done by him in that regard. As a result, according to the lessee, part of the leased premises had been sealed by the Corporation and rendered unusable. The lessee also alleges that substantial amounts had been spent in renovation, interiors and other works in the leased premises. Since the lessor had refused to perform his obligation to execute the documents necessary for the lessee to obtain necessary approvals, only 50 per cent of the leased premises could be utilised by it.

15. C.S.No.54 of 2015 proceeds on the basis that the plaintiff had committed willful default in payment of rent. The lessor had initiated proceedings for recovery of rent which have traveled to the Supreme Court in S.L.P.No.1435 of 2012. By order dated 01.05.2012, the S.L.P. had been dismissed by the Supreme Court, granting 4 weeks time from the date of order to the lessee to deposit the whole of the arrears of rent failing which it would face the consequences of non-payment.

16. The allegation in C.S.No.54 of 2015 is also that leased premises had been sublet and significant amounts were being collected by the lessee. Apart from rental arrears, service tax as well as taxes deducted at source were due to be paid by the lessee to the lessor.

17. Pursuant to the order of the Supreme Court as aforesaid, the lessor had moved the Rent Controller who had directed the lessee to vacate the premises by its order dated 15.06.2012. Possession was taken by the lessor with great difficulty.

18. As far as the payment of arrears of rent is concerned the matter appears to have attained finality by virtue of the order of the Supreme Court dated 08.05.2012.

19. It is, however, the quantification of the arrears which is a matter in issue and which can be decided only by the resolution of the contra claims put forth by the parties

necessarily to be heard together, in order to quantify the liability of the parties towards each other.

20. Thus, in my considered view, the two suits should be heard together in order that the decrees passed could take into account the conflicting claims of both parties and arrive at a final resolution as to the liability of the parties towards each other. The commonality of the issues involved is apparent and the issues revolve around the interpretation of the same document.

21. Since the prayers in suit as well as the issues framed overlap and arise from conflicting interpretation of the same agreement, viz., lease deed dated 30.04.2008, a joint trial would certainly be in the interest of both parties.

22. The objection expressed is to the effect that joint trial can be ordered only if conflicting decrees are passed that cannot be put into execution. This situation would however, not arise in the present case and the argument is clearly incorrect in the light of the commonality of issues that arise in the two suits. As noted by me in the paragraphs above, the transaction involved in both suits is a single one and all issues raised in both suits overlap. In the aforesaid circumstances, I am of the considered view that joint trial, as prayed for is liable to be ordered.

23. The cases cited relate to the bar of res judicata in terms of section 11 of the CPC. The cases are inapplicable to the present case and the apprehension is misconceived as it is

and a common judgement and two separate decrees are passed, to contest the decrees separately by way of two intra court appeals.

24. Since trial in respect of CS. No.157 of 2011 has been referred to the file of learned Additional Master I, the issues in CS. No.54 of 2015 are also referred to learned Additional Master I, who will conduct a joint trial in respect of both suits. Such joint trial shall be conducted on a day to day basis as far as possible and shall be completed within a period of three (3) months from the date of first hearing. The parties shall present themselves before the learned Additional Master I on 20.11.2018 to commence the process of trial.

25. This Application is allowed.

Sd./- A.S.M.J.

29.10.2018

//Certified to be a true copy//

Dated this the _____ day of _____ 2018.

DL/14.11.2018

COURT OFFICER

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