

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.06.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.430 of 2015

B.S.Rao

.. Appellant/Appellant/Plaintiff

Vs.

K.V.S.Prasad

.. Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 07.10.2014 made in A.S.No.285 of 2013 on the file of the V Additional City Civil Court, Chennai, confirming the judgment and decree dated 19.06.2013 made in O.S.No.1864 of 2012 on the file of the XI Assistant City Civil Court, Chennai.

For Appellant : Mr.V.Bhiman for
M/S.Sampathkumar and Associates

For Respondent : Mr.B.Thirumalai

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 07.10.2014 made in A.S.No.285 of 2013 on the file of the V Additional City Civil Court, Chennai, confirming the judgment and decree dated 19.06.2013 made in O.S.No.1864 of 2012 on the file of the XI Assistant City Civil Court, Chennai.

2.The appellant is the plaintiff and respondent is the defendant in O.S.No.1864 of 2012 on the file of the XI Assistant City Civil Court, Chennai. The appellant filed the said suit for recovery of a sum of Rs.3,30,750/- together with interest @ 12% per annum from the respondent. According to the appellant, the respondent offered to take non-residential premises of the appellant bearing Door No.B5, "Noah's Towers, First Floor, 2nd Avenue, Anna Nagar East, Chennai, measuring 1225 sq.ft. for his clinic on 20.04.2009 on a monthly rent of Rs.36,750/- and advance payable is Rs.3,70,000/-. Respondent issued cheque dated 20.04.2009 for a sum of Rs.3,70,000/- drawn on Indian Overseas Bank, Chennai - 112 and the tenancy commenced on the same day. The cheque issued by the respondent was dishonoured on presentation and returned to the appellant on 22.04.2009 with an endorsement as 'insufficient funds'. The respondent requested the appellant to present the cheque after he made the funds ready. Since

the appellant did not hear anything from the respondent, he presented the cheque for second time and the same was dishonoured on 15.06.2009 with the same endorsement. The respondent without paying any rent abandoned the petition premises during last week of January 2010. As the respondent unlawfully left the premises by removing all his articles leaving the doors open, the appellant has taken possession of the suit property in order to avoid anyone trespassing into the property. The respondent sent notice dated 12.04.2010 through his counsel to the appellant with false statement and the appellant sent reply dated 20.04.2010 through his counsel demanding a sum of Rs.3,30,750/- being the rental arrears for nine months. To intimidate the appellant, the respondent gave a false complaint before the Inspector of Police, K-4, Anna Nagar Police Station, Chennai. After enquiry, the complaint was closed. Even then, the respondent demanded compensation from the appellant by threatening him that he would give complaint to the police against the appellant and his advocate before the Bar Council. The intention of the respondent is to make unlawful gain by not paying the sum of Rs.3,30,750/- towards arrears of rent. In the said circumstances, the appellant has filed the said suit for the relief stated above.

3.The respondent filed written statement and denied all the averments made in the plaint. According to the respondent, the monthly rent for the petition premises was fixed at Rs.63,000/- and advance amount of Rs.6,30,000/- was paid to the appellant immediately by cheque. The appellant returned the cheque and requested the respondent to pay the said sum by cash. The respondent paid Rs.2,60,000/- by cash immediately and issued cheque for a sum of Rs.3,70,000/- for the remaining amount. The appellant did not wait for the respondent to arrange funds and presented the cheque, which was dishonoured. Subsequently, the respondent paid a sum of Rs.3,70,000/- by cash. Due to trust, the respondent did not take away the cheque given for Rs.3,70,000/- from the appellant. The respondent paid Rs.63,000/- every month by cash. In the month of February 2010, the appellant along with one Peter had stolen the goods worth Rs.20,00,000/- belonging to the respondent after taking key from the respondent on the pretext that he wanted to show the premises to a buyer. The respondent was driven pillar to post to take legal action against the appellant, which he was evading by influencing the police. The police registered the case only after this Court passed orders dated 23.08.2010 and 27.02.2012. Even after registering the case, the police did not proceed to investigate the case and file report. This Court by order dated 27.02.2012 directed the police to investigate the matter and file final report. The police did not arrest the appellant, who was accused No.1 in the F.I.R. In view of the legal action taken by the respondent, the appellant filed suit after a gap of 3 years. The appellant did not return the advance amount of Rs.6,30,000/- given by the respondent. The

respondent is unable to take legal action as he was not having any document to substantiate his case.

4. Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned Trial Judge, the appellant examined himself as P.W.1 and marked nine documents as Exs.A1 to A9. The respondent examined himself as D.W.1 and marked three documents as Exs.B1 to B3. The learned trial Judge considering the pleadings, oral and documentary evidence and admission of the appellant that originally, rent was fixed at Rs.63,000/- per month and respondent gave cheque for Rs.6,30,000/-, the appellant and the respondent entered into rental agreement and the same is available with him and failed to produce the same, dismissed the suit holding that the appellant has not approached the Court with clean hands and suppressed many facts.

5. Against the said judgment and decree dated 19.06.2013 made in O.S.No.1864 of 2012, the appellant has filed A.S.No.285 of 2013 on the file of the V Additional City Civil Court, Chennai.

6. The learned First Appellate Judge framed necessary points for consideration. The learned First Appellate Judge independently considering the materials available on records, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the First Appeal confirming the judgment and decree passed by the Trial Court.

7. Against the said judgment and decree dated 03.08.2013 made in A.S.No.285 of 2013, the present Second Appeal is filed by the appellant/plaintiff.

8. At the time of admitting the Second Appeal, the following substantial questions of law have been framed:

"(a) Whether the Courts below are right in dismissing the suit as well as the appeal claiming for arrears of rent?"

(b) Whether the Courts below are right in rejecting the claim of the appellant for non-filing of the rental agreement?

(c) Whether the Courts below is right in dismissing the claim of the appellant when the respondent had not filed any Income Tax returns for the payment in cash?"

9. The learned counsel appearing for the appellant contended that the Courts below have erred in dismissing the suit and First Appeal on the ground that the appellant has failed to file rental agreement. The reasoning of the Courts below that the appellant did not initiate any proceedings under Section 138 of the Negotiable Instruments Act and filed suit nearly after 3 years, after rental arrears due from the respondent, is erroneous. The Courts below failed to see that the respondent has admitted that a sum of Rs.12,60,000/- given to the appellant is an unaccounted black money and on that admission, the Courts below should not have come to the aid of

the party in an illegal transaction as per the following judgment of the Hon'ble Apex Court reported in 2004(12) SCC 83 (G.Pankajakshi Amma and others v. Mathai Mathew (dead) through legal heirs and another).;

"10. There is any reason also why the impugned judgment cannot be upheld. According to the 1st respondent these transactions were to be unaccounted transactions. According to the 1st respondent, all these amounts are paid in cash. If these are unaccounted transactions then they are illegal transactions. No Court can come to the aid of the party in an illegal transaction. It is settled law that in such cases the loss must be allowed to lie where it falls. In this case as these are unaccounted transactions, the Court could not have lent its hands and passed a decree. "

The respondent failed to establish that he has paid cash for the returned cheque. In support of his contention, the learned counsel for the appellant has relied on following judgment of this Court reported in 2003(2) CTC 31 (M/S. Jayam Company, represented by its partner Ramasamy nadar, old No.2, new No.4, Nainar nadar road, Mylapore, Chennai-4 and another);

"9. In appreciation of these evidences, the trial Judge without attaching the least importance for the legality on the subject that whenever the bounced cheques are produced before the Court for having returned, the same to the complainants on account of 'insufficiency of funds', the presumption of liability as given under Section 139 of the Negotiable Instruments Act in favour of the holder of the cheque is that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque of the nature referred to in Section 138 of the Act for discharging in whole or in part of any debt or other liability. This aspect has never been dealt with by the trial Court at all in its judgments, as a result of which the trial Court has highlighted that the complainants have not produced any record for payment of money, but have vaguely alleged that in the month of December, 2000 between 10th and 15th, the amount has been paid to the accused and would wonder such huge amounts have been given without sufficient records."

10. The learned counsel appearing for the respondent contended that the rent was fixed at Rs.63,000/- per month and not Rs.36,750/-. Similarly, advance amount is Rs.6,30,000/- and not Rs.3,70,000/- as alleged by the appellant. Only at the instance of the appellant, the respondent paid amount by

cash and appellant did not issue any receipt on the ground that no receipt would be issued for cash payment. The appellant stole the goods of the respondent worth Rs.20,00,000/- during February 2010 and locked the premises. Due to his influence, the police did not register the complaint given by the respondent against the appellant. Only as per the order of this Court, the complaint given by the respondent was registered and police investigated the matter after this Court directed to investigate and file final report. Only when the respondent issued notice through his counsel to the appellant on 12.04.2010, the appellant sent a reply containing defamatory allegations. The respondent has given complaint against the appellant's advocate to the Bar Council for making such allegations. The appellant has to pay a sum of Rs.50,00,000/- as damages. Only to wriggle out of his liability, the appellant has filed the suit after 3 years of alleged rent due. The appellant at no point of time demanded the payment of advance or rent, which shows there is no arrears of rent. The appellant suppressed the material facts and the Courts below have rightly dismissed both the suit and the First Appeal and prayed for dismissal of the Second Appeal.

11. Heard the learned counsel for the appellant as well as respondent and perused the materials available on record.

12. Substantial questions of law (a) and (b):

"(a) Whether the Courts below are right in dismissing the suit as well as the appeal claiming for arrears of rent?

(b) Whether the Courts below are right in rejecting the claim of the Appellant for non-filing of the rental agreement?"

(1) The appellant has filed the suit for arrears of rent for a sum of Rs.3,30,750/- for nine months. According to the appellant, the monthly rent fixed was Rs.36,750/- and advance amount is Rs.3,70,000/-. On the other hand, it is the case of the respondent that monthly rent is Rs.63,000/- and advance amount is Rs.6,30,000/-. The respondent paid advance amount paid by cash as per the request made by the appellant. Similarly, he paid monthly rent of Rs.63,000/- by cash as requested by the appellant. The appellant did not issue any receipt for the amount paid in cash. In view of the rival contentions, it is for the appellant to prove the quantum of monthly rent agreed upon by the appellant and respondent. The appellant in the cross-examination has stated that originally, monthly rent agreed was Rs.63,000/- and advance payable was Rs.6,30,000/-. He deposed that at request of the respondent, monthly rent was reduced to Rs.36,750/- and advance amount is Rs.3,70,000/-. The appellant has not mentioned about these facts in the plaint or in the chief-examination. Similarly, he admitted that rental agreement was entered into between the appellant and respondent. The appellant did not disclose this fact either in the plaint or in his chief-examination. Only in the cross-examination, he has stated that there is a rental

agreement between the parties and the same is available with him.

(2) When the dispute is with regard to quantum of rent and advance payable, it is for the appellant/landlord to prove the quantum of rent by acceptable evidence. The best evidence to prove the same is rental agreement. The appellant in the cross examination has admitted that he is having the rental agreement, but failed to produce the same before this Court. The failure on the part of the appellant to produce rental agreement, which is the best evidence to decide the quantum of rent and advance payable, the Courts below have rightly drawn adverse inference against the appellant. There is no error in the reasoning of the Courts below to arrive at such conclusion. The appellant also did not take any action for non-payment of advance as well as rent by the respondent. For nine months, he did not make any demand on the respondent to pay such huge arrears. He also did not take any action, till the respondent issued notice and took criminal proceedings and make complaint to the Bar Council against the appellant's counsel. The Courts below have considered all these aspects along with other materials and dismissed both the suit as well as First Appeal. There is no error of law warranting interference by this Court with the judgment and decree of the Courts below. Both the substantial questions of law (a) and (b) are answered against the appellant.

13. Substantial question of law (C):

"Whether the Courts below is right in dismissing the claim of the appellant when the respondent had not filed any Income Tax returns for the payment in cash?"

The respondent has stated that he paid amount in cash and the same is not accounted in the books of account and he has not disclosed the same in the income tax returns. Even though the respondent has violated the statutory provisions by paying cash and not accounted in the income tax returns, the same will not enable the appellant to get the decree as prayed for, as he is also a party to the said illegal action. When the amounts paid in cash are not accounted in the account books and income tax returns, the Courts have rightly dismissed the claim of the appellant on the ground that the appellant failed to prove the quantum of rent and filed suit only to escape from the criminal proceedings initiated by the respondent. In view of the same, the substantial question of law (c) is also answered against the appellant.

14. In the result, the Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

LPP/kj

To

- 1.The V Additional Judge, City Civil Court, Chennai.
- 2.The XI Assistant Judge, City Civil Court, Chennai.

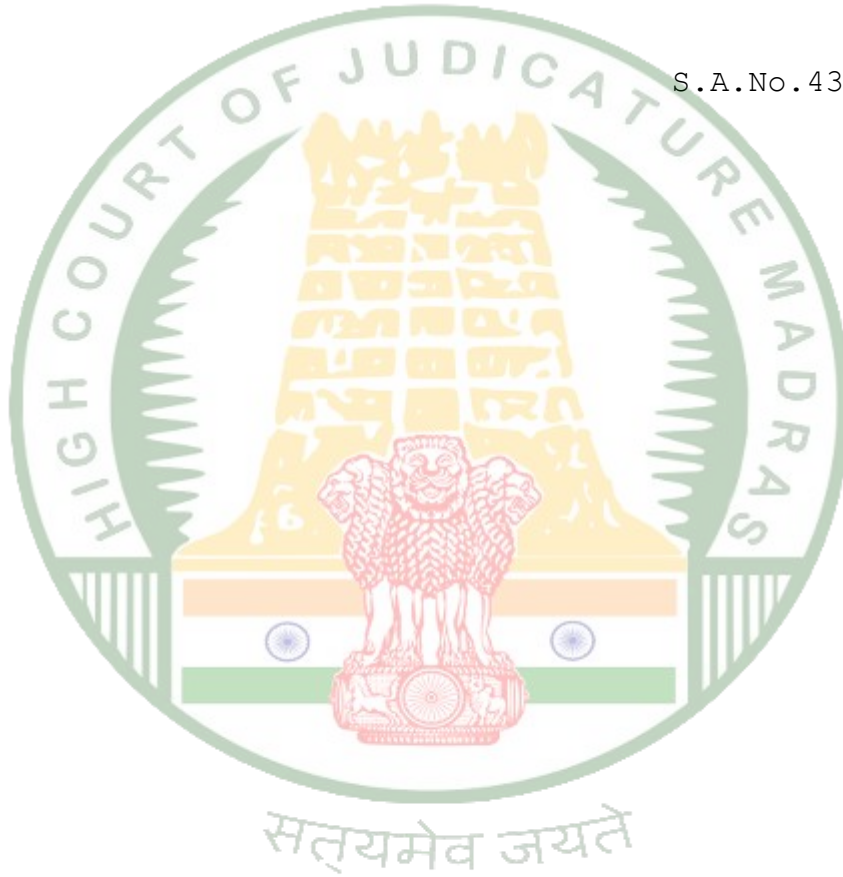
+1cc to M/s.Sampathkumar & Associates Sr.No.39275

+1cc to Mr.S.Nagarajan, Advocate Sr.No.39011

GJII(CO)

sm:23.7.2018

S.A.No.430 of 2015



WEB COPY