

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

S.A.No.1174 of 2001

and

Cross Objection in S.A.No.32 of 2002

S.A.No.1174 of 2001

- 1.The Tamilnadu Water Supply & Drainage Board, a body Corporation Constituted by the Govt. of Tamil Nadu with its Head Office at Chepauk, Madras and rep. by its Managing Director.
 - 2.The Superintending Engineer (Coimbatore and Nilgiris Divn.) Tamil Nadu Water Supply & Drainage Board No.82 III St. Tata Bad
 - 3.The Executive Engineer, Tamil Nadu Water Supply and Drainage Board H.A.D.P.Divn. Udhagamandalam
- Appellants/

Appellants/Defendants

Vs.

- 1.P.Janakiamma
- 2.N.P.Balakrishna Menon @ Balan Menon (died)
- 3.Jayashree Balan
- 4.Roop Menon
- 5.Padmini Alson
- 6.Madhu Krishnan Menon
- 7.Vijay Balan
- 8.Sajay Balan
- 9.Sathya Balan

(RR3 to 9 brought on record as LRs of the deceased 2nd respondent vide order 29.07.2003 made in CMP.No.14325/2002) ...Respondents/
Respondents/
Plaintiffs

PRAYER: The Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 22.03.2001 made in A.S.No.9/99 on the file of the District Judge and the Appellate Authority of the Nilgiris at Udhagamandalam, modifying the Judgment and Decree dt.24.12.1997 made in O.S.No.9/97 on the file of the Subordinate Judge, Udhagamandalam.

For Appellants : M/s.Thamizharasi
For Respondents : M/s.K.K.Muralidharan
for R1, R3 to R9

R2 - died steps taken

Cross Objection in S.A.No.32 of 2002

1.P.Janakiamma

2.N.P.Balakrishna Menon @ Balan Menon ...Cross Objectors/
Respondents in SA

Vs.

1.The T.W.A.D.Board,

A body Corporation constituted by the Govt.
of T.N. Having its head office at
Chepauk, Madras and represented by its M.D.

2.The Superintending Engineer
(Coimbatore and Nilgiris Division)
T.W.A.D.Board No.82, III Street
Tatabad, Coimbatore

3.The Executive Engineer T.W.A.D. Board
M.A.D.P.Division, Udhagamandalam ...Respondents/Appellants
in SA

PRAYER: Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure and set forth the objections to the decree appealed from viz.

For Ist Cross objectors: Mr.K.K.Muralidharan
Cross Obj-2- died steps not taken
For Respondents : Mrs.Thamizharasi

COMMON JUDGMENT

The unsuccessful defendant TWAD Board, Coimbatore (hereinafter referred to Board) who has lost before the Courts below, filed second appeal.

2.The sum and substance of the averments of plaint are as follows:

The first plaintiff, as the executor of the Last Will and Testament of late A.Narayana Menon, is the owner of the building bearing Door No.172, situated at Ettines Road, Ootacamund more particularly described in the schedule and hereinafter referred to the "suit building", together with the appurtenant. The second plaintiff is the son of the first plaintiff and he is in the management of the suit building and also the proprietor of the business known as "Hotel Elk Hill" situated in the ground floor of the suit building.

3.The first defendant Board took on lease from the plaintiffs, the ground and first floor portion of the suit building bearing Door No.172 of Ootacamund Municipality. The Rental letter dated 31.03.1986, between the second plaintiff and the defendants is filed herewith and monthly rent for the said premises was fixed at Rs.2,400/- as evidenced by the rental letter.

4.The defendants had also taken on lease the appurtenant land from the plaintiffs on a monthly rental of Rs.3,000/- but the same is not the subject matter of this suit.

5.On 10.12.1986, the officials of the defendants had unloaded and stacked between 80 to 100 tonnes of Departmental cement belonging to the defendants, in the upstairs portion of the suit building and as a result of such negligent and unauthorised, illegal action of the defendants, the entire first floor of the building collapsed under stress caused by the weight of the cement load. The defendants' men had caused the cement to be stocked in spite of the fact that the building was let out for the purpose of office.

6.The second plaintiff brought out the above facts to the notice of the defendants, and the defendants had assured the plaintiffs that the building would be restored to its original condition, or in the alternative, the value of the damages would be paid to the plaintiffs. However, the defendants have slept over the matter, and they have neither restored the building to its original good condition nor paid any damages to the plaintiffs till date.

7.The damage was caused to the building as a direct result of the illegal storage of cement as stated above. The plaintiffs estimated the material damage to the suit building at Rs.1,75,000/- as detailed in the second schedule to the plaint.

8.The material damage to the suit building has been assessed by the plaintiff with the help of qualified Engineers in the presence of the defendants' deputed departmental engineers. The plaintiffs letters dated 23.06.1988 and 05.09.1988, by registered post, reminding the defendants for payment are filed herewith. In fact, several letters have been sent to the defendants.

9.The plaintiffs also filed a Xerox copy of the correspondence of the third defendants to the second defendant with the copy addressed to the second plaintiff, dated 13.11.1987, which makes it

clear that the defendants have admitted their liability for the damages to the suit building.

10.Since the defendants did not come forward to restore the building nor paid any amount towards damages in spite of their assurances, the plaintiffs issued legal notice to the defendants 1 to 3 on 24.04.1989 setting out the above facts and also calling upon the department to depute an official on their behalf to assess the actual damages. This letter was followed up by a reminder dated 07.11.1989. The said notices and postal acknowledgements are filed herewith.

11.The copy of the defendants' correspondence, endorsed to the plaintiffs by the third defendant on 09.11.1989 is also filed herewith to show that the matter was being discussed at length in the departments of the defendants without positive action being taken on the same. Thereafter, the Asst. Executive Engineer of the defendants' department Thiru.K.Swaminathan, was officially deputed by the defendants to assess the damages as late as on 29.11.1989, as per the memo of the defendants, the Xerox copy of which was endorsed to the plaintiffs.

12.On 29.11.1989, the assessment of damages was carried out by the expert (engineer) nominated by the plaintiffs in the presence of the defendants' nominated engineer Thiru.Swaminathan and the said report is endorsed by the Asst. Executive Engineer, Mr.Swaminathan, of the defendants' department. The estimate of

the damages was worked out by the said expert engineer appointed by the plaintiff at Rs.1,75,000/- for the building.

13. On 30.11.1989, the defendants handed over possession of the suit building occupied by them and the plaintiffs took possession without prejudice to their claim for damages. The plaintiffs have filed the letter given to them by the said deputed engineer of the defendants, with regard to the estimate for damages for the building. The detailed plans for the same have been taken by the defendants and will be called for at the time of trial.

14. The plaintiffs further state that apart from the material damages to the building which have been tentatively set out in the plaintiffs' legal notice dated 24.04.1989, the collapse of the first floor of the suit building also led to the entire business of the second plaintiff, known as "Elk Hill Hotel" being paralysed, since the first floor collapsed upon the hotel being run in the ground floor. The plaintiffs were unable to realize any income from the business from the date of the damage to the building viz. 10.12.1986. The plaintiffs estimated their loss of earnings which is a direct result of the damages caused to the building by the defendants' officials at Rs.75,000/- for the said three years, at Rs.25,000/- per annum, which is a modest estimate. The hotel business is a thriving one in Ooty; however, they restrict their claim on this count to Rs.25,000/- per annum. The plaintiffs have also suffered heavy loss due to damage caused to their furniture as a result of the said collapse of the building caused by the defendants. The plaintiffs estimate this claim at Rs.20,000/-.

15. The defendants are the persons in charge of the Board's operations and payments, and they are liable to pay the damages as claimed herein by the plaintiffs, since they have caused the damages to the building, leading to loss of business as well, on account of their wanton destructive act of storing the cement bags in the suit building through their own officials.

16. Since the defendants have failed to settle the damages claimed by the plaintiffs in spite of promises by them and reminders from the plaintiffs, the plaintiffs are constrained to file the suit for recovery of the same.

17. The sum and substance of the averments of the written statement filed by the defendants are:

There are no records to show their ownership of the building and for management authorization. The house owner demanded Rs.2,400/- per month but the same was not accepted by the Board till date. The repair work of the suit building had already been carried out. The value fixed by the plaintiffs is not accepted, since the age of the building is old and any such kind of building will collapse in nature. It could not be as that the building collapsed by improper loading of cement bags alone.

18.The defendants stated that the assessment was done by expert engineer of plaintiff in the presence of Thiru K.Swaminathan, AEE who was deputed by the Board. At the time of assessment, value has not been discussed at all. The value furnished is a later thought and as such this could not be accepted.

19.Since the damages were cleared immediately, the question of affecting the business does not arise. Most of the furniture and wooden materials were removed by the second plaintiff and his members. Damage for furniture of Rs.20,000/- is not accepted. The building is not a stable one. The damage occurred not by want of destructive act. Since the plaintiffs did not come for reasonable settlement, the suit was filed but not by the fault of the Board.

20.The defendant states that the rent which is due is eligible as per procedure will be settled as soon as the rent sanctioned by the competent authority. The damages cannot be accepted for the value demanded. The damages were caused by the failure of sidewall, which was of poor construction.

21.The defendants further state that the building was collapsed due to the structure of poor quality, construction by mud mortar and the age of the building and improper maintenance. Hence the damages claimed for the reported value is not accepted.

22.After elaborate discussions and upon perusal of the documents, the Trial Court decreed the suit as prayed for, against which the appellant/defendant had preferred an appeal before the First Appellate Court. However, the First Appellate Court modified the order and reduced the award amount from Rs.2,70,000/- to Rs.1,90,000/-, as against which, the defendants' Board has filed the present second appeal.

23.The plaintiffs have also filed cross objection, claiming Rs.80,000/- which was refused by the First Appellate Court and after paying the court fee, the cross objection has been filed along with the second appeal.

24.At the time of admission, the Court has framed the following substantial questions of law:

1.Whether the suit is barred by limitation?

2.Whether the Appellate Court was right in granting interest from 16.12.1986 at the rate of 12% per annum?

25.Heard the learned counsel appearing on either side.

26.The learned counsel appearing for the appellant / TWAD Board submitted that the plaintiffs filed a suit for damages caused to the suit building and for the loss of business and furniture. The plaintiffs have rented the suit building for the purpose of office to the defendants / TWAD Board, for a monthly rent of Rs.2,400/-.

27.The learned counsel further submitted that a hotel was run in the ground floor by the plaintiffs. The first floor collapsed on 10.12.1986 at about 10.30 p.m. The defendants were the tenant in the suit premises and caused damages to the suit building only to some extent, but, the amount claimed by the plaintiffs is excessive and the defendants are not bound towards the loss of business and furniture, as the suit building was very old and the building was allowed to be occupied by the defendants. The plaintiffs have not objected the defendants storing construction materials in the suit building. With the consent of the plaintiffs, cement bags were stored in the first floor. On 10.12.1986, the suit building suddenly collapsed due to the age of the building and not due to the storage of the cement bags. However, the suit was filed by the plaintiffs for the same only after two years.

28.The suit building collapsed due to the bad condition of the building and improper maintenance of the plaintiffs. Apart from the above, the valuation report was filed by the plaintiffs' engineer only after two years. The said valuation was not assessed immediately after the collapse of the building. Hence, the valuation report filed by the plaintiffs is

not acceptable and the plaintiffs have not established their case for future loss and damages of furniture.

29. Without considering the above, the Trial Court as well as the First Appellate Court decreed the suit in favour of the plaintiffs which is not sustainable and the award amount and the interest awarded by the Trial Court and the First Appellate Court are highly exorbitant.

30. Per Contra, the learned counsel appearing for the respondents / plaintiffs would submit that the plaintiffs have entered into a rental agreement with the defendants Board only for the office purpose and the rental letter has been marked as Ex.A1.

31. The defendants' Board occupied the premises only for office purpose and without the consent of the plaintiffs, they have loaded cement bags and construction materials, but the same was not

objected by the plaintiffs. Due to heavy storage of cement bags and other construction materials, the entire building collapsed on 10.12.1986.

32. Immediately, the defendants' officials assured the plaintiffs that the building would be restored to its original condition, or in the alternative, the value of the damages would be paid to the plaintiffs. Accordingly, the plaintiffs have marked all the acceptance of the defendants' officials as exhibits before the Trial Court and the First Appellate Court.

33. Apart from the above, DW1 has also admitted that the suit building was taken only for office purpose. DW1 further accepted that when the cement bags were loaded on the first floor of the suit premises, the entire building was collapsed.

34. The material damage to the suit building has been assessed and the valuation was prepared by the plaintiffs with the help of qualified Engineers in the presence of the defendants' deputed departmental engineers and the same was not objected by them.

35. Accordingly, the Trial Court arrived at a conclusion and fixed the award amount as Rs.1,75,000/- for damages to the suit building and since the plaintiffs could not carry out their hotel business for three years, Rs.75,000/- was awarded as future loss and Rs.25,000/- for loss of furniture and utensils.

36. However, the First Appellate Court without considering the findings of the Trial Court, reduced the award amount from Rs.2,70,000/- to Rs.1,90,000/-, which is not sustainable and the judgment of the First Appellate Court reducing the award amount from Rs.2,70,000/- to Rs.1,90,000/- is perverse, hence, the plaintiffs have filed the cross objection along with the second appeal.

37. On a perusal of the material records it is clear that the plaintiffs had granted permission to the defendants' Board for their occupation in the suit premises for a monthly rent of Rs.2,400/- and the same is evident from Ex.A1, a rental letter issued by the second plaintiff in favour of the defendants. Though, the letter did not specify that it is only for the office purpose and not for storage of materials, the defendants' Board loaded cement bags in the first floor of the building, after which the entire building collapsed and had caused damages to the ground floor which was in occupation of the plaintiffs.

38. The plaintiffs had issued legal notice which is Ex.A2 and acknowledgement which is Ex.A3 and the independent engineer's valuation report is Ex.A11. On the side of the defendants' Board, one of the employees was examined as DW1, wherein he had admitted that the monthly rent for the premises was Rs.2,400/-. The suit building was utilized by the defendants for storing the materials. When the suit building collapsed, he admitted that they had stored cement bags at that particular day in the first floor.

39. Since the plaintiffs have filed a suit for damages, it is the duty of the plaintiffs to prove the damages and they relied on Ex.A15. As per Ex.A15, the first defendant's engineer has written a letter to the plaintiffs. In that letter, it was specified that storing of cement bags was not the reason for the collapse of the building.

40. Thereafter, the defendants' Board vacated the premises on 30.11.1989, but one day earlier on 29.11.1989, the plaintiffs visited the suit property along with their engineer and a report was prepared. The defendants' Board, after receipt of the report, had written a letter to the plaintiffs. In that letter it is specifically indicated as follows:

"The damages as enumerated by your chartered Engineer M.J.M. Williams, B.E., has been verified to the extent of the damages mentioned therein. Cost estimate when submitted will be subjected to departmental verification for settlement".

41. On a perusal of the contents of the letter, the plaintiffs have brought to the notice of the defendants, the damages caused to the suit building by them. As per the evidence of DW1, he has not justified the extent of damages. In his cross examination, he had admitted that after the storage of cement bags, the hotel/suit building collapsed. Therefore from the evidence of DW1 and other documents, it is very clear that the building collapsed when the cement bags were loaded to the first floor of the building.

42. On a perusal of the entire materials, it makes it clear that the cause for the collapse was due to the storage of cement bags in the first floor. The compensation awarded by the Trial Court is Rs.2,70,000/-. However, the First Appellate Court has reduced the damages from Rs.2,70,000/- to Rs.1,90,000/-. The First Appellate Court, in order to justify the reduction of the damages has liberally reduced the compensation amount to Rs.1,90,000/-.

43. On a perusal of the plaint, the plaintiffs have claimed Rs.1,75,000/- towards the damages of the building and Rs.75,000/- towards future loss of business and Rs.25,000/- towards damages of furniture and utensils. The First Appellate Court, after analyzing the ingredients that the plaintiffs have not marked any documents to prove their future business profits for 3 years and damages to the furniture and utensils, awarded a total compensation of Rs.1,90,000/- for damages and the loss of business.

44. In view of the above discussion, I do not find any error or infirmity in the judgment passed by the First Appellate Court and the substantial questions of law are answered against the appellants/defendants. Consequently, I do not find any merit in the cross objection filed by the plaintiffs.

45.In the result, the second appeal is dismissed. Consequently, the cross objection is also dismissed. The judgment and decree dated 22.03.2001 made in A.S.No.9/99 on the file of the District Judge and the Appellate Authority of the Nilgiris at Udhagamandalam is confirmed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To.

1.The District Judge
& the Appellate Authority of the Nilgiris
Udhagamandalam

2.The Subordinate Judge
Udhagamandalam

+1 cc to Mr.K.K.Muralidharan Advocate sr 12031

+1 cc to Mrs.S.Thamizharasi Advocate sr 12091

S.A.No.1174 of 2001
and
Cross Objection in
S.A.No.32 of 2002

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