

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.337 of 2012

in

O.S.No.7487 of 2010

& Mp.No.1 of 2012

M/s. Next Link Pvt. Ltd.,

No.23-24, Second Floor,

Infantry Road, Bangalore - 560 001.

..Appellant/Defendant

vs

1.N.Ramachandran

S/o. G.Narayanaswamy

2.R.Rajesh Babu,

S/o. N.Ramachandran

both having their address at Plot No.50,

Door No.6, First Main Road,

Alwarthirunagar Annexe,

Chennai - 600 087.

..Respondents/Plaintiffs

Appeal under Section 96 of the Code of Civil Procedure, 1908, read with Order 41, Rule 1 of the Code of Civil Procedure, 1908 against the judgment and decree made in O.S.No.7487 of 2010 on the file of the Additional District and Sessions Judge (Fast Track Court III) Chennai dated 07.07.2011.

For Appellant : Mr.K.F.Manavalan

For Respondents: Mr.P.B.Ramanujam

for R1 & R2

J U D G M E N T

The appeal suit on hand is filed to set aside the judgment and decree dated 07.07.2011, passed in O.S.No.7487 of 2010.

2. The defendant in the suit is the appellant before this Court. The contention of the plaintiff/respondent are that the plaintiffs are the joint owners of a portion in the first floor of premises bearing door No.626 (old No.501), JVL Plaza, Anna Salai, Teynampet, Chennai-18. The defendant/appellant was a tenant under the plaintiffs on a monthly rent of Rs.48,218/-. The purpose of tenancy was non-residential and it was calculated according to English Calendar month.

3. The rent was being paid by the defendant which is very low when compared to the locational advantages regarding the suit premises. The plaintiffs initiated fair rent proceedings in RCOP No.800 of 2007 on the file of XI Court of Small Causes, Chennai. Pending the said proceedings for fixation of fair rent, the defendant had chosen to vacate the premises and hand over vacant possession to the plaintiff. The learned XI Judge, Small Causes Court, Chennai, fixed the fair rent at Rs.93,924/- per month, though the plaintiffs claimed Rs.2,96,688/- as monthly rent. The plaintiffs have filed RCA 36/2010 on the file of the VIII Court of small causes, Chennai. The defendant has also chosen to file an Appeal by filing a condone delay petition. Plaintiffs has stated that at the time of vacating the premises, the defendant had caused extensive damage to the suit premises. Immediately the plaintiffs engaged the services of a reputed Civil Engineer who inspected the suit premises and submitted his report. Relying on the said report of the Civil Engineer, the plaintiffs assessed the damages as not less than Rs. 11,00,113/-. A legal notice was issued by the plaintiffs to the defendant on 28.04.2009, calling upon to pay Rs. 11,00,113/- towards damages caused to the suit premises. A reply was issued by the defendant denying the liability. Thus, the plaintiff was constrained to institute a Civil Suit claiming damages.

4. The defendants in their written statement denied the averments in toto. It is contended by the defendant that they were in occupation of the premises as a tenant, more specifically, at JVL Plaza, First floor, Anna Salai, Teynampet, Chennai-18, under erstwhile Landlord and before the purchase of the said premises by the plaintiffs. Earlier one Mr.Kodanda Rami Reddy and Mrs.A. Bharathi Reddy were the Landlords with whom the defendants entered into a Lease Agreement on 13.12.2003, for the monthly rent of Rs.41,928/- together with a rental advance of Rs.2,51,568/-. The total period of lease commencing on the signing of the Agreement was 3 years reviewed every 3 years thereafter with an increment of 15% in rent and maintenance charges specifically not to exceed 15%. Subsequently the plaintiffs had purchased the premises in May 2005 and directed that from the month of May 2005 onwards the rent had to be paid to Mr.N.Ramachandran and Mr.R.Rajesh Babu, the plaintiffs in the suit, on the same terms including that the advance would incurred with the new owners. The plaintiffs were never aware of any of the cost incurred by the defendants on the fixtures, partitions and other interior works made at the commencement of the lease which was all carried out by the defendant and all the bills and payment vouchers are available for establishing the actual cost. The defendant has stated that the plaintiffs have not come with clean hands before the Trial Court and none of the

claims have been remotely substantiated by independent methods of valuation and the same Engineer who had given the report for fixation of fair rent for the Landlord has only submitted this estimate for the loss claimed in this suit.

5. An agreement was drawn on 19.07.2005 by the plaintiffs, wherein lease rental between the two parties was maintained at Rs.41,928/- till 12.12.2006 and from 13.12.2006 the rent was increased to Rs.48,928/- to be paid equally to the plaintiffs. As such the above conduct was denoting that the plaintiffs were aware that Rs.48,928/- monthly rent was the market rate prevalent as late as July 2005 which was signed on Stamp paper by both the plaintiffs. The defendant has been dragged into this unnecessary litigation claiming for damages for the reasons not known to defendant and particularly without any reliable records.

6. The Trial Court framed the following issues:-
"1. Whether there was any damages on 30.3.2003 when the suit premise was handed over to the plaintiffs by the defendant?
2. Whether the plaintiff is entitled for an amount of Rs. 11,00,113/- as a cost of damage caused to the building is correct?
3. Whether the plaintiff is entitled for any interest to the damage amount?
4. What relief the plaintiffs are entitled?"

7. With reference to issues 1 and 2, the Trial Court considered the proof affidavit and marked Ex.A1 to A5 documents and also examined one more witness PW2 Engineer who has estimated the cost of damages. The defendant also examined himself and marked Ex.B1 to B8. The Trial Court considered the cross examination of the plaintiff and taken as a vital portion for the purpose of deciding issues 1 and 2. The Aluminium fixtures, tiles and other partitions were also considered. During the cross examination, the plaintiffs deposed that he was not aware of the fact regarding the additional works including partition and tiles were fixed in the rented out premises. Taking note of the deposition of the plaintiffs, the Trial Court further considered the fact that the plaintiffs have not chosen to bring the previous owner to let evidence to prove the claim of the plaintiffs which is a vital point to claim damages.

8. At this juncture, this Court has to consider on one hand, the Trial Court relied on the cross examination of the plaintiffs and on the other hand, made a finding that in the absence of examining the previous owner with whom the original lease agreement was entered into between the defendant and the

previous owner which is to be established regarding the nature of the additional fixation of partition, aluminium sheets, glasses etc. When the Trial Court arrived a conclusion that the previous owner of the building was not examine and the plaintiffs had not taken any initiative to examine the previous owner of the premises. The assessment made by the engineer of the plaintiffs cannot be taken as a sole evidence as he is the civil engineer appointed by the plaintiffs himself and it is further contended by the defendant that the said engineer was also given his report for fixation of fair rent in the Court proceedings. Thus, the Trial Court also had a doubt with regard to the reliability of the report of the civil engineer marked by the plaintiffs as a vital document. While raising such a doubt in between the Trial Court proceeded by holding that the compensation as it is cannot be granted. The plaintiffs have claimed the compensation of about Rs. 11,00,113/- and the Trial Court arrived a conclusion that the plaintiffs had not established for grant of the entire compensation as sought for in the plaint and decided the issue in favour of the defendant by holding that the plaintiffs have not established through the documents as well as evidences for grant of the entire compensation, based on the report of the civil engineer report. However, in the concluding portion, the Trial Court formulated an opinion that when the floor is divided and the aluminium division and the glasses are fitted, when it is removed by the defendant naturally, some damages should have caused, but as not estimated by the PW2 vide EX A2. Hence, the cost of the damages instead of Rs. 11,00,113/- per square feet taking into consideration, totally Rs.2,00,000/- is granted. Here this Court has to consider the manner in which the decision was taken by the Trial Court.

9. As far as the suit for damages are concerned, the assessment of the damages and the quantum of value must be based on some concrete evidence. Damages cannot be granted based on certain presumptions or based on the findings that naturally some damages should have occurred. Whether actually the damages were occurred or not must be the issue and such issues are to be adjudicated at the Trial Court with reference to the documents and evidences produced by the parties. In a Civil Suit, presumptive award of damages are impermissible. Such presumptive award of compensation is dangerous. The Trial Court cannot formulate an opinion of its own by arriving a conclusion that there is a possibility of damage on account of removal of certain fixtures and awarding damages is certainly cannot be permitted as it is beyond the scope of the legal principles settled in the matter of award of damages in Civil Suits. Findings of the Trial Court reveals that the compensation of Rs.2,00,000/- is granted as the Trial Court is of an opinion that natural damages would have occurred on account of removal

of certain fixtures, which was installed by the defendants in the premises. Thus, such a presumption is not only impermissible and the quantum of damages assessed is also not based on any documents or evidences. There is no findings to the extent that on what basis the compensation is quantified as Rs.2,00,000/-. There is no definite evidence to establish that the compensation of Rs.2,00,000/- can be arrived on account of even such natural damages if any occurred. Thus, the award of damages is unguided and not based on established principles or the evidences and documents placed before the Trial Court.

10. Under this circumstances, this Court has to consider whether such a quantification of damages by the Trial Court can be approved in this appeal. Undoubtedly, some damages would have happened while removing the fixtures, however the fact remains that the plaintiffs was subsequent buyer of the property and there was no separate lease agreement between the plaintiffs and the defendant. Under those circumstances, what was the actual understanding between the erstwhile owner and the defendant was not made available and more specifically, the erstwhile owner was not examined as the witness in the Civil Suit. Probably if the erstwhile owner is examined, then the plaintiffs would be in a position to establish his case for claim of damages. Admittedly, the erstwhile owner was not examined and the Trial Court also raised a doubt in this regard. Thus the Trial Court has committed an error in fixing the quantum of compensation and further committed perversity in respect of the arrival of a conclusion regarding the damages if any cost.

11. The presumptive conclusion arrived cannot be approved and all such conclusions regarding the damages actually cost and the quantum of amount to be ascertained must be based on the documents and evidences and no such documents or evidences are available, nor filed by the parties to the suit.

12. Thus, this Court has no hesitation in coming to the conclusion that the judgment of the Trial Court is perverse and not based on any acceptable evidences or documents. Consequently, the judgment and decree dated 07.07.2011, passed in O.S.No.7487 of 2010 is set aside and the A.S.No.337 of 2012 stands allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

s/d-

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Sub-Assistant Registrar

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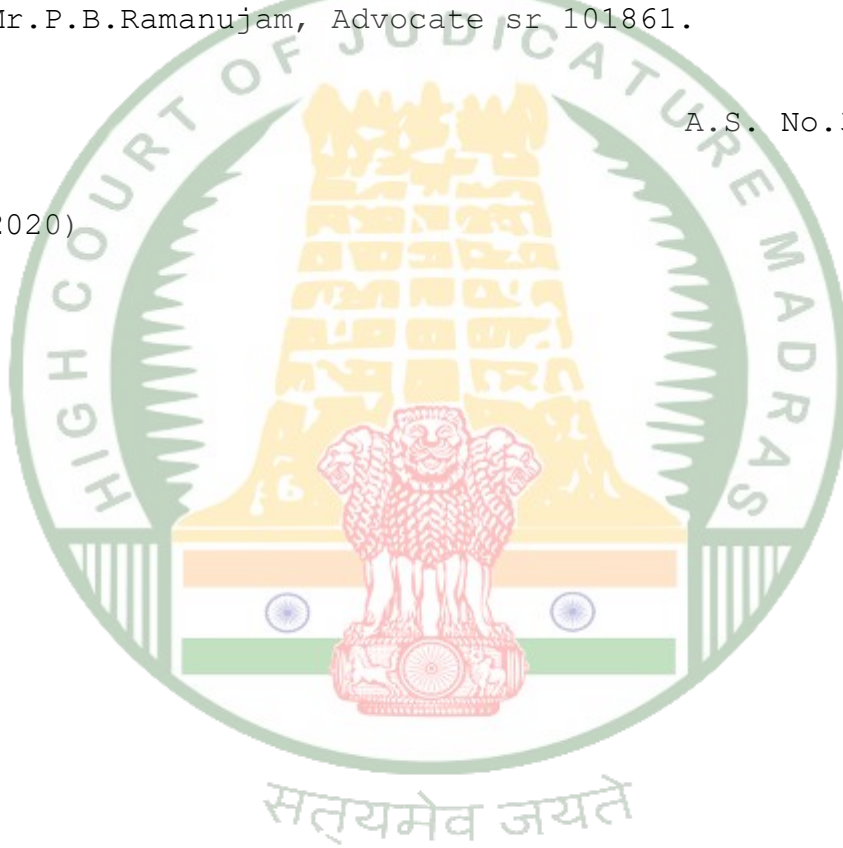
1.The Additional District and Sessions Judge
Fast Track Court III
Chennai

Copy to
The Section officer
VR Section
High Court, Madras 104.

+1 Cc to Mr.K.F.Manavalan, Advocate sr 101899
+1 Cc to Mr.P.B.Ramanujam, Advocate sr 101861.

A.S. No.337 of 2012

GJ(CO)
SP(20/08/2020)



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