

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.967 of 2010

S.Ganesan

..Appellant/Defendant

vs.

Erode Corporation,
Represented by its Commissioner,
Corporation Buildings,
Brough Road,
Erode.

..Respondent/Plaintiff

Appeal under Section 96 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.55 of 2008 by the I Additional District Judge, Fast Track Court-I, Erode dated 30.06.2010.

For Appellant : Mr.B.Nedunchezhiyan

For Respondent : Mr.M.Rajamathivanan

J U D G M E N T

The appeal suit is filed, challenging the judgment and decree dated 30.06.2010 passed in O.S.No.55 of 2008. The defendant is the appellant in the First Appeal. The respondent plaintiff is Erode Corporation, who instituted the suit before the Trial Court.

2. The respondent plaintiff filed the suit for recovery of money. The appellant defendant was the successful bidder in the auction conducted by the respondent plaintiff for collecting the rent for the years 2004-2005 for Nethaji Daily Market, R.K.V.Road, Erode for a sum of Rs.50,55,555/-. The term of the appellant defendant commenced from 01.06.2004. Thus, he was permitted to collect the rent for the period from 01.06.2004 to 31.03.2005 and proportionately the auction amount was reduced to Rs.42,12,960/-. Apart from the auction amount, the appellant defendant has to pay Rs.10,41,750/- towards the salary for the cleaning workers, Rs.10,000/- as auction deposit for electricity and Rs.1,00,000/- as security deposit. Thus, the appellant defendant has to pay a total sum of Rs.53,64,710/- to the respondent plaintiff. After adjusting the payments under various heads, the appellant defendant was continue to pay a sum of

Rs.13,90,061/- to the respondent plaintiff. The respondent plaintiff made repeated demands and the final notice was issued on 17.04.2006. The defendant failed to pay the demanded amount and filed W.P.No.24470 of 2006, challenging the demand notice dated 17.04.2006. The said writ petition was dismissed by the Hon'ble High Court on 30.09.2006. Thereafter, the appellant defendant has filed a Civil Suit in O.S.No.68 of 2007 for a permanent injunction and the same was pending during the relevant point of time. Under those circumstances, the respondent plaintiff instituted the suit for recovery of the due amount of Rs.13,90,661/- with interest at the rate of 18% per annum from the date of default.

3. The appellant defendant denied the averments in the plaint by stating that he was a successful bidder and entrusted to collect rent for the years 2004-2005 for Nethaji Daily Market and the term of agreement commenced with effect from 01.06.2004. The appellant defendant denied that the due amount as demanded by the respondent plaintiff is false. The appellant defendant admitted that he filed a writ petition and the same was dismissed by the High Court. The O.S.No.68 of 2007 filed for an injunction, was decreed in favour of the defendant. The appellant states that there was no contract for payment of interest and the occupants of the market refused to pay the rent and they moved the Court, disputing the rent fixed by the respondent plaintiff. In spite of the loss, the appellant defendant paid a sum of Rs.1,36,800/- to the respondent plaintiff. The allegation of the appellant defendant is that the plaintiff Corporation did not assisted the defendant to collect the rent amount from the vendors. The defendant appellant engaged casual labourers and on account of the non-cooperation on the part of the respondent plaintiff, the appellant defendant sustained monetary loss and therefore, requested the trial Court to dismiss the suit.

4. The Trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to recover the amount
- 2) Whether the suit is maintainable?

5. With reference to the second issue regarding the maintainability of the suit, the trial Court considered the written statements filed by the defendant appellant, stating that O.S.No.68/2007 was decreed on 18.03.2008. However, the trial Court has examined Ex.A23, wherein the said civil suit was dismissed for default on 03.09.2009. Therefore, there is no substance in this regard made by the defendant in the written statement. In view of the fact that there is no decree, prohibiting the plaintiff from filing the present suit, the suit can be maintained and accordingly, the trial Court entertained the suit and proceeded with Issue No.1 on merits.

6. It is an admitted fact that the defendant was a successful bidder in the auction conducted by the plaintiff for collecting the rent for the years 2004-2005 for Nethaji Daily Market, R.K.V.Road, Erode for a sum of Rs.50,55,555/-. The defendant was permitted to collect the rent for the period from 01.06.2004 to 31.03.2005 and the auction was proportionately reduced to Rs.42,12,960/-. As per the terms and conditions of auction (Ex.A1), the Municipality will appoint 14 workers for cleaning purposes and 2 watchman for security purposes and the lessee has to pay a sum of Rs.12,50,100/- towards salary for the abovesaid workers. In view of the fact that the lease period was reduced to ten months, the defendant has to pay Rs.10,41,750/- towards salary for the cleaning workers. Apart from the above said amounts as per Ex.A1, the defendant has to pay Rs.10,000/- towards security for electricity and Rs.1,00,000/- towards security deposit. The aforesaid deposits will be refunded after the expiry of the lease period. The trial Court made a finding that since the lease period expired, the plaintiff cannot claim the above amounts. However, the trial Court found that the defendant has to pay a sum of Rs.42,12,960/- towards auction sum and Rs.10,41,750/- towards salary for the cleaning workers and a total sum of Rs.52,54,710/-. As per the accounts maintained by the plaintiff, which is marked as Ex.A25, the defendant has paid a total sum of Rs.39,50,000/- on various dates. In view of the fact that the lease amount has not been paid in time, the plaintiff has charged a sum of Rs.5,351/- as interest.

7. In Ex.B1 notice, the plaintiff has admitted that some of the shop owners have not paid the rent to the defendant and the defendant has not paid a sum of Rs.1,36,800/- to the plaintiff Municipality. In the notice itself, the plaintiff directed the shop owners to pay the said amount to the Municipality directly. The trial Court found that once the Municipality sent a notice to the occupants to pay the rent directly to the Municipality, then the plaintiff cannot expect the defendant to recover the said amount directly from the shop owners. Thus, the defendant is entitled to deduct the said amount of rent of Rs.1,36,800/- from the amount of Rs.13,10,061/-. Accordingly, the balance amount would be Rs.11,73,261/-. Ex.A1 itself clearly states that the default amount would carry interest at the rate of 18% per annum. Relying on the said document, the trial Court arrived a conclusion that the plaintiff is entitled to recover a sum of Rs.11,73,261/- with interest at the rate of 18% per annum from 01.04.2005 till the date of decree and thereafter, at the rate of 6% per annum till the date of realisation. Accordingly, the suit was decreed that the defendant is directed to pay a sum of Rs.11,73,261/- with interest at the rate of 18% per annum from 01.04.2005 till the date of decree and thereafter, at the rate of 6% per annum till the date of realisation. Proportionate cost is also directed to be paid.

8. Considering the findings as well as considering the arguments made on behalf of the appellant and the respondent, this Court is of an opinion that the admitted facts are that the defendant was the successful bidder and entrusted with the job of collection of rent in Nethaji Daily Market. He was collecting the rent. However, some occupants had not paid rent punctually and as far as those portion of rent is concerned subsequently, the Corporation itself sent a notice to the occupants to pay the rent directly. Under those circumstances, the trial Court rightly deducted the said disputed sum of Rs.1,36,800/-. As far as the other admitted facts are concerned, the trial Court arrived a conclusion that the defendant is liable to pay Rs.11,73,261/- with interest at the rate of 18% per annum. As per Ex.A1, the payment of interest was agreed between the parties as far as the collection of rent was also admitted and the period for which the lease was granted was also admitted. In view of the fact that there is no much controversy in respect of these admitted facts. The findings of the trial Court is not perverse and in consonance with the documents and evidences produced by the respective parties. When the facts regarding the bidding and collection of rent and the adjustments made with reference to the accounts maintained based on the documents are considered by the Trial Court in right perspective, there is no reason for this Court to interfere with the findings of the Court as the case of the defendant was rightly considered. With reference to the amount, which were not collected, wherein the plaintiff has issued notice to the occupants to pay the rent directly to the Corporation. These all are the aspects, which were considered by the Trial Court in right perspective.

9. Under these circumstances, this Court do not find any infirmity as such in respect of considering the documents placed by the parties and the reasonings are cogent and under these circumstances, this Court is not inclined to interfere with the judgment and decree of the trial Court.

10. Accordingly, the judgment and decree dated 30.06.2010 passed in O.S.No.55 of 2008 stands confirmed and consequently, A.S.No.967 of 2010 stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

Kak

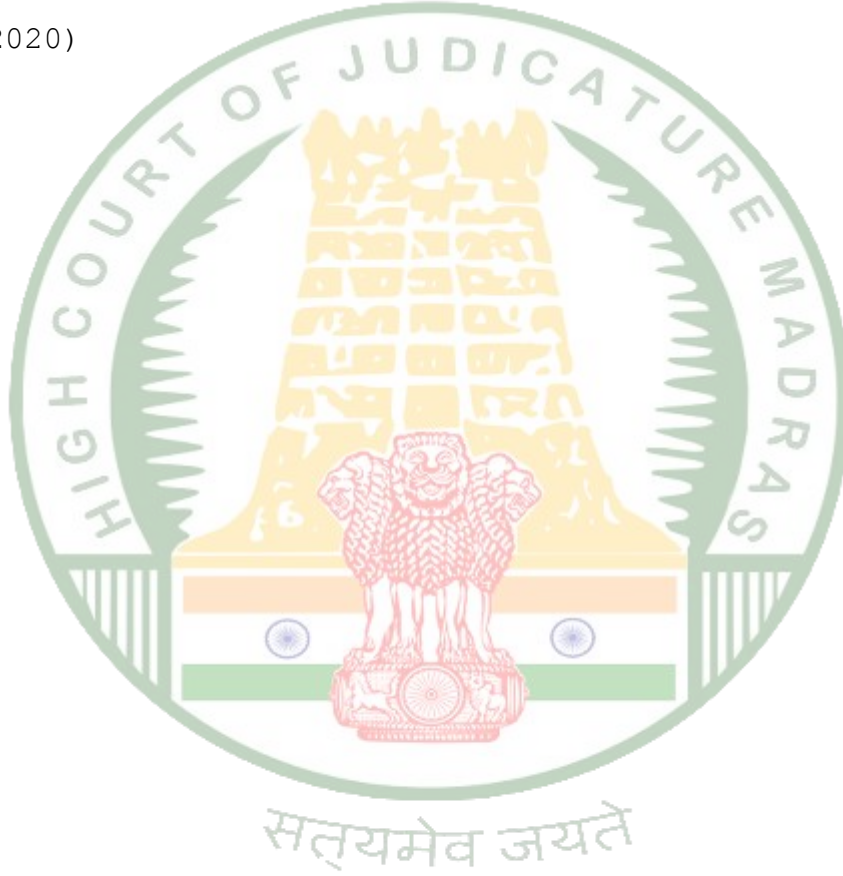
To

The I Additional District Judge,
Fast Track Court-I,
Erode.

+1cc to Mr.Rajamathivanan, Advocate, S.R.No. 103512
+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No. 104259

A.S.No.967 of 2010

RSI (CO)
GN (23/09/2020)



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