

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.03.2019	Delivered on 27.03.2019
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CORAM:

THE HONOURABLE MR. **JUSTICE R.SUBRAMANIAN****C.S.No.348 of 2014**

J.V.J.Subramaniam

... Plaintiff

Vs

M/s. Indian Oil Corporation,
Rep. By its
Chief Divisional Retail Sales Manager,
Chennai Divisional Office,
500, Anna Salai, Chennai 600 018.

... Defendant

Prayer : Complaint filed under Order VII Rule 1 of the Code of Civil Procedure 1908, read with Order IV Rule 1 of the Original Side Rules, praying for the following judgment and decree:-

- (a) directing the defendant to pay a sum of Rs.1,41,33,000/- with interest @ 12% per annum from the date of plaint till the date of realisation to the plaintiff;
- (b) directing the defendant to pay the cost of the suit

For Plaintiff : Mr.A.E.Ravichandran

For Defendant : Mr.A.L.Somayaji, Senior Counsel
for AAV Partners

JUDGMENT

The suit is for recovery of arrears of rent for the period from 01.02.1998 to 01.09.2013.

2. The averments made in the plaint are as follows:

The plaintiff is the owner of the property situate at Old No.108, New No.30, Sri Thyagaraya Road, (Pondy Bazar) T.Nagar, Chennai 600 017, measuring an extent of 4818 sq.ft. The property originally belonged to the mother of the plaintiff Tmt.J.Sarojini Devi, who had executed a settlement deed dated 23.09.2004 settling the property on the plaintiff. The property was leased out to the defendant for a period of 20 years from 24.10.1968 for putting up a petroleum outlet. The lease was renewed for a further period of 10 years from 01.02.1988 to 03.01.1998 by way of a lease deed dated 10.12.1990. The rent payable was fixed at Rs.4,500/- per month for the first five years i.e., upto 31.01.1993 and for the next five years it was fixed at Rs.5,000/- per month and an advance of Rs.27,000/- was paid by the defendant. The said lease deed provided for renewal of the lease for the further period of 10 years on the terms to be agreed upon, however, there was no further renewal. There were negotiations regarding

renewal of the lease at a higher rent. During the course of the negotiations, the parties had several rounds of discussions and the defendant sent a proposal to the Ministry of Petroleum on 14.07.2006, wherein the defendant had agreed for paying higher rent as follows:

FINAL NEGOTIATION

“On our repeated persuasion, Shri J.V.J.Subramaniam came forward for negotiation on 10th November '05. After prolonged negotiation, he finally agreed for the following rental terms:

From	To	Rental p.m. (Rs.)	Financial outgo
01/02/98	31/01/00	53,000/-	12,72,000/-
01/02/00	31/01/02	67,000/-	16,08,000/-
01/02/02	31/01/04	67,000/-	16,08,000/-
01/02/04	30/06/05	80,000/-	13,60,000/-
01/07/05	31/01/08	95,000/-	28,50,000/-
			86,98,000/-

3. However, the terms agreed upon during the final negotiations were not implemented in view of certain differences that arose between the parties. While things stood thus, the plaintiff terminated the lease by his letter dated 06.10.2009 with effect from 30.10.2008. The defendant sent a

reply to the said notice raising several untenable allegations. However, the fact that the defendant had agreed to pay rents as stated above was admitted in the said notice.

4. Upon termination, the mother of the plaintiff Tmt.J.Sarojini Devi, who had retained the right to collect the rents from the property, under the settlement deed, filed WP 943 of 2010 in this Court, seeking recovery of possession and for payment of arrears of rent amounting to Rs.1,07,88,000/-. During the pendency of the Writ Petition, the mother of the plaintiff J.Sarojini Devi, died. Thereafter, the defendant agreed to purchase the property for a total consideration of Rs.9,59,80,000/- and pursuant to the said agreement, a sale deed also came to be executed by the plaintiff in favour of the defendant on 04.09.2013. The fact that the defendant had purchased the property and the sale deed came to be executed was brought to the notice of this Court and this Court disposed of the Writ Petition by an order dated 02.01.2014, leaving it open to the plaintiff herein to take appropriate steps for recovery or arrears of rent. Pursuant to the said liberty, the plaintiff issued a legal notice on 12.03.2014 demanding arrears of rent with effect from 01.02.1998 to 01.09.2013. Though the said notice was received by the defendant there was no reply. Hence the plaintiff had come forward with the above suit seeking recovery

of arrears of rent.

5. The suit is resisted by the defendant contending that there was no agreement to pay higher rent. The letter dated 14.07.2006 would not amount to an agreement to pay the higher rent. It is the further contention of the defendant that the suit is barred by limitation. It is also contended that in the absence of any agreement the plaintiff cannot seek a recovery of rent. On the above contentions, the defendant sought for dismissal of the suit.

6. On the above pleadings, the following issues were framed:

1. Whether the plaintiff is entitled to arrears of rent for the period from 01.02.1998 to 01.09.2013 amounting to Rs.1,41,33,000/- from the defendant on the basis of letter dated 14.07.2006?

2. Whether the claim for arrears of rent is barred by limitation?

3. Whether the purchase of the property by the defendant would amount to extinguishment of the right of the plaintiff to rent?

7. At trial, the plaintiff was examined as P.W.1. He has produced Exhibits P1 to P10. One K.Judson, authorised signatory of the defendant Corporation was examined as D.W.1, and the Power of Attorney executed by the Corporation authorising him to lead evidence was marked as Ex.D1.

8. I have heard Mr.A.E.Ravichandran, learned counsel appearing for the plaintiff and Mr.A.L.Somayaji, learned Senior Counsel appearing for M/s.AAV Partners.

Issue Nos 1 to 3:

9. All the Issues are taken up together as they are interlinked.

10. The plaintiff would base his claim for arrears of rent on the letter dated 14.07.2006, written by the defendant to Under Secretary to Government of India, wherein the defendant had stated that after negotiations the rental terms were agreed. The relevant portion of the letter which has been marked as Ex.P3, reads as follows:

“On our repeated persuasion, Shri

J.V.J.Subramaniam came forward for negotiation on 10th November '05. After prolonged negotiation, he finally agreed for the following rental terms:

From	To	Rental p.m. (Rs.)	Financial outgo
01/02/98	31/01/00	53,000/-	12,72,000/-
01/02/00	31/01/02	67,000/-	16,08,000/-
01/02/02	30/01/04	67,000/-	16,08,000/-
01/02/04	30/06/05	80,000/-	13,60,000/-
01/07/05	31/01/08	95,000/-	28,50,000/-
			86,98,000/-

Further, in his letter dated 14.11.05, he added new conditions like:

- a) Lease will expire on the midnight of 31/01/08 with no further extension.*
- b) 10 months advance rental (refundable) to be paid i.e., Rs.9.5 lakhs*
- c) Penalty clause will be incorporated by which IOC will pay Rs.10.lakhs per month, if it fails to hand over the land in a peaceful and vacant possession from the date of expiry of the lease.*
- d) The lease will not permit any residential construction nor*

permit to sub-let to any other organisation not relevant.

The said documents further states as follows:

“As regards the contention of Shri J.V.J. Subramaniam regarding our still paying low rentals of Rs.0.90 per sq.ft., we wish to advise that IOC has been continuing to pay Rs.5,000/- per month pending the finalization of the rental terms during negotiation. The payment of Rs.5,000/- per month is also being accepted under protest by the owner and the arrears will be paid as soon as the terms are agreed.”

11. According to the learned counsel for the plaintiff, this contents of the letter dated 14.07.2006 would prove, beyond reasonable doubt, that there was in fact in agreement between the plaintiff and the defendant on the quantum of rent payable by the defendant for its continued occupation of the property. Admittedly, the lease period expired on 03.01.1998, thereafter, the defendant could at best be held to be a tenant holding over. The plaintiff and his predecessor have been receiving the rent of Rs.5,000/- per month under protest.

12. Though the quantum of rent was agreed, there was no final agreement between the parties, since the plaintiff had required certain other conditions, which were not acceptable to the defendant. However, the fact remains that the defendant continued in possession as a tenant holding over till the date of his purchase of the property under Ex.P7, Sale deed dated 04.09.2013. Therefore, the defendant is liable to pay at least damages for use and occupation for the period during which, it was in occupation of the property as a tenant holding over.

13. Mr.A.E.Ravichandran, learned counsel appearing for the plaintiff would strenuously contend that having agreed to pay rent at a particular rate with effect from 01.02.1998 on 14.07.2006, the defendant cannot be heard contend that it is not liable to pay the rent, inasmuch as the agreement was not finally concluded.

14. Per contra, Mr.A.L.Somayaji, learned Senior Counsel appearing for the defendant would strenuously contend that in the absence of a concluded contract, the plaintiff has no right to maintain a suit for recovery of rent. The plaintiff's suit being one for recovery of rent simplicitor, the same is liable to be dismissed, inasmuch as there is no agreement for payment of rent between the parties. While conceding the

fact that the defendant had in fact agreed to pay higher rent, vide letter dated 14.07.2006, Mr.A.L.Somayji, learned Senior Counsel appearing for the defendant would submit that the said letter dated 14.07.2006 at best could be treated as an offer and in absence of an acceptance, there is no concluded contract and as such, the defendant cannot be made liable to pay the rent as demanded by the plaintiff that too from 01.02.1998.

15. I have considered the rival submissions.

16. No doubt true that the plaintiff had filed the suit as one for recovery of arrears of rent based on letter dated 14.07.2006. As rightly pointed out by Mr.A.L.Somayaji, learned Senior Counsel appearing for the defendant, the letter dated 14.07.2006 cannot be treated as a concluded contract between the parties and therefore, the plaintiff cannot claim recovery of arrears of rent from the defendant. At the same time, the fact that the defendant was in possession of the property till the date of execution of the sale deed in its favour under Ex.P7 on 04.09.2013 as a lessee holding over cannot be brushed aside. The defendant is liable to pay damages for use and occupation. The damages for use and occupation will have to be decided by the Court on the basis of evidence available on record.

17. Mr.A.L.Somayaji, learned Senior Counsel would however point out to the cross-examination of P.W.1 and submit that the P.W.1 had admitted that he has not made a written demand for payment of rent at the time of execution of the sale deed on 04.09.2013. D.W.1 the Chief Manager, Retail Sales of the defendant Corporation had deposed in his evidence that the subject property is situate in T.Nagar, which is a prime commercial area. He has also deposed that the Corporation had let out the portion of the property to State Bank of India for running a automated teller machine (ATM). D.W.1 in his cross-examination has deposed as follows:

"It has also been agreed by the defendant company, that the plaintiff had negotiation with the defendant company regarding the lease. As per the counter affidavit, marked as Ex.P6, it is true that based on the Government Valuers report, the rental value for 4,840 sq.feet which was rented out to the defendant company was fixed at Rs.1,14,000/- per month. It is true that in para 9 of the counter affidavit, that the defendant company was willing to pay 8% of market value of the leased

property as rental. But the plaintiff was asking 12% of the guideline value."

18. The above evidence would show that the defendant Corporation had agreed to pay 80% of the market rent which was fixed at Rs.1,14,000/- by the Government valuer. In Ex.P6 which is the counter affidavit filed by the Corporation in the Writ Petition it is admitted that the negotiations for rent were made based on the Government valuer report, which had arrived at the monthly rent at Rs.1,14,000/- at 8% of the assessed value of the land. The said statement has also been accepted by D.W.1 in his evidence extracted above. Even though, the plaintiff cannot claim any amount as rent the plaintiff is definitely entitled to damages and for use and occupation for the period during which, the defendant was in occupation of the land as a tenant holding over. From the evidence available, particularly from Ex.P3, the letter dated 14.07.2006, it is clear that the defendant had agreed to pay a rents at the rates specified in Ex.P3 for various periods.

19. According to Ex.P3, the rent for the period from 01.07.2005 to 31.01.2008 was fixed at Rs.95,000/- per month. The defendant was in

possession of the property till the execution of the sale deed on 04.09.2013. Therefore, I am of the considered opinion that the damages for use and occupation payable by the defendant for its occupation of the property could be reasonably fixed at Rs.95,000/- per month, considering the fact that the defendant itself had agreed to pay Rs.95,000/- as monthly rent for the period from 01.07.2005 to 31.01.2008.

20. The next question that arises is the question of limitation. While Mr.A.L.Somayaji, learned Senior counsel appearing for the defendant would strenuously contend that the suit is barred by limitation. Mr.A.E.Ravichandran, learned counsel appearing for the plaintiff would submit that the limitation for recovery of rent would start from the day on which the rent is agreed or fixed. According to him, since there was no agreement between the parties for payment of rent at a particular rate, the suit is in time. I am unable to agree with the said contention of the learned counsel appearing for the plaintiff. The limitation for recovery of rent is 3 years and it starts from the date on which the rent becomes due.

21. Mr.A.E.Ravichandran, would invite my attention to the judgment of the privy council in **Raja Rangayya Appa Rao Bahadur v. Bobba. Sriramulu and others**, reported in **Vol 31 Indian Appeals 17**,

wherein the Privy Council considered the limitation for payment of rent and concluded that the limitation does not run till the rate of rent is ascertained under the *Madras Rent Recovery Act (VIII of 1865)*.

22. Article 52 of the *Limitation Act, 1963*, provides for a period of 3 years for recovery of rent. The relevant Article for recovery of rent under the *Limitation Act, 1877* was Article 110. The said Article also provided for a period of 3 years, from the date on which the rent became due. In the case before the Privy Council relied upon by the learned counsel appearing for the plaintiff, the proceedings for determination of rent under the *Madras Rent Recovery Act (VIII of 1865)* were pending and therefore the Privy Council held that the Limitation for recovery of rent started running only from the date on which the rent was fixed by the authority under the *Madras Rent Recovery Act (VIII of 1865)*. Therefore, in my considered opinion, the said judgment cannot be applied to the facts of this case.

23. Mr.A.E.Ravichandran, learned counsel would also draw my attention to the judgment of a Division Bench of this Court in ***The State of Tamil Nadu, rep. by its Collector of Madras v. M.Kazim Khaleeli and 7 others***, reported in **1993 (1) LW 667**. The said case arose out of proceedings for fixation of fair rent under the *Tamil Nadu Buildings (Lease*

and Rent Control) Act, 1960. The Division Bench held that the cause of action to sue for recovery of fair rent arose only on the date on which the fair rent was fixed and therefore, the suit filed within 3 years from the date of fixation of fair rent was in time. The Division Bench while holding so has also relied upon the judgment of the Privy Council, referred to *supra*.

24. The said judgment of the Division Bench also would not apply in the case on hand, inasmuch as, there is no proceeding for fixation of fair rent in the case on hand. Therefore, the plaintiff would be entitled to recovery of rent only for a period of 3 years, prior to the date of the filing of the suit. The suit was filed on 28.04.2014. Therefore, the plaintiff would be entitled to damages for use and occupation, only with effect from 28.04.2011. The property was sold by the plaintiff to the defendant on 04.09.2013 under Ex.P7 sale deed. Therefore, the liability to pay damages for use and occupation ceases with effect from the date of the sale. Thus, the plaintiff would be entitled to recovery of damages for use and occupation from 28.04.2011 to 03.09.2013 only. I have already concluded that the plaintiff would be entitled to a sum of Rs.95,000/- per month as damages for use and occupation for the period from 28.04.2011 to 03.09.2013, ie., 28 months and 6 days. The suit in respect of the earlier period is clearly barred by limitation.

25. Mr.A.L.Somayaji, learned Senior Counsel appearing for the defendant would submit that since the defendant had become the owner of the property on execution of the sale deed dated 04.09.2013, the plaintiffs right to seek damages for use and occupation has ceased. I am unable to accept the said contention. The sale deed was admittedly executed on 04.09.2013, the defendant becomes the owner of the property only on and from the said date. Till the execution of the sale deed, the defendant was in possession of the property only as the tenant holding over and therefore, it cannot avoid the liability to pay damages for use and occupation.

26. For the foregoing reasons, the issues raised are answered as follows:

Issue No.1: The plaintiff would be entitled to recover damages for use and occupation at the rate of Rs.95,000/- per month for the period of 28 months and 6 days between 28.04.2011 to 03.09.2013.

Issue No.2: The suit with reference to the recovery of rent for the period from 01.02.1998 to 27.04.2011 is barred by limitation.

Issue No.3: The purchase of the property by the defendant under the sale deed dated 04.09.2013 would not absolve it of the liability to pay damages for use and occupation for the period prior to the execution of the sale deed.

27. In fine the suit is decreed

(a) Directing the defendant to pay a sum of Rs.26,79,000/- towards damages for use and occupation for the period from 28.04.2011 to 03.09.2013.

(b) The sum of Rs.26,79,000/- will carry interest at 12% per annum from the date of the suit till date of decree and at 6% thereafter till date of realisation.

(c) The plaintiff will be entitled to proportionate costs.

27.03.2019

jv
Index: No
Internet: Yes
Speaking order

List of Witnesses examined on the side of the plaintiffs:

PW1 - J.V.J.Subramaniam

List of Witnesses examined on the side of the Defendants:

DW1 - K.Judson

List of Exhibits marked on the side of the Plaintiffs:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex.P1	10.12.1990	Original Lease deed
2	Ex.P2	23.09.2004	Certified copy of settlement deed
3	Ex.P3	14.07.2006	Copy of the Proposal sent by the defendant to the Ministry of Petroleum and Natural Gas.
4	Ex.P4	04.09.2006	Copy of the Letter sent by the Ministry of Petroleum and Natural Gas, New Delhi.
5	Ex.P5	-	Copy of the Affidavit filed by the plaintiff in WP No.943 of 2009
6	Ex.P6	04.06.2012	Certified copy of counter affidavit filed by the defendant in WP No.943 of 2009.
7	Ex.P7	04.09.2013	Certified copy of Sale deed
8	Ex.P8	02.01.2004	Certified copy of Order in WP No.943 of 2010
9	Ex.P9	12.03.2014	Copy of Legal notice sent by the plaintiff to the defendant
10	Ex.P10	13.03.2014	Original Acknowledgements

List of Exhibits marked on the side of the Defendants:

Sl. No.	Exhibits	Date	Description of Documents
1	Ex.D1	01.06.2016	Photo copy of the General Power of Attorney

jv

27.03.2019

To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.



WEB COPY

R.SUBRAMANIAN,J.

jv



Pre Delivery Judgment
C.S.No.348 of 2014

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27.03.2019