A.No.8122 of 2019
in C.S.No.625 of 2018

SENTHILKUMAR RAMAMOORTHY ,J.

This application is filed to direct the respondent to provide security for the suit claim.

2. I heard the learned counsel for the applicant and the learned counsel for the respondent.

3. The learned counsel for the applicant submitted that the applicant is a landlord and the respondent was the tenant in the premises of the applicant. He further submitted that the applicant was required to pay a sum of Rs.12,80,000/- per month as rent along with service tax of Rs.1,58,208/- per month aggregating to a sum of Rs.14,38,208/- per month. He further submitted that the said rent was not paid for the period commencing from 01.05.2013 and ending on 18.07.2016. As a consequence, the learned counsel submitted that the total rental dues for the above mentioned period is a sum of Rs.5,58,24,008/-. In addition, the learned counsel submitted that the machinery and equipment had been damaged by the respondent and that a sum of Rs.51,29,438/- was expended towards repairing the said equipment and machinery. Moreover, electricity charges of Rs.8,87,640/- had not been paid and that, therefore, after adjusting the security deposit of

Rs.1,28,00,000/-, a sum of Rs.4,90,41,086/- is due and payable by the applicant, which along with interest, aggregates to a sum of Rs.6,64,86,276/-, which is the suit claim.

4. The learned counsel for the applicant submitted that in view of the non-payment of rental dues and the expenses incurred in repairing the machinery and equipment, the respondent is liable to provide security for the suit claim. Otherwise, he submitted that the applicant would be deprived of the fruits of the decree that may be obtained in the suit.

5. In response, the learned counsel for the respondent submitted that the claim is barred by limitation because it relates to rental arrears for the period from 01.05.2013 to 18.07.2016, whereas, the plaint was presented in July 2019. He further submitted that the suit claim includes the claim for damages in respect of expenses incurred towards repairing equipment and machineries and therefore, no orders should be passed under Order XXXVIII Rule 5 C.P.C. In support of his submissions the learned counsel referred to the judgment rendered in ***Raman Tech. and Process Engg.Co. and another vs. Solanki Traders*** reported in (2008) 2 SCC 302 and, in particular, para 5 thereof wherein it was held that:

> "The power under Order 38 Rule 5 C.P.C is a drastic and extraordinary power. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order

> 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-Court settlements under threat of attachment."

6. On the above basis, the learned counsel for the respondent submitted that this application is liable to be dismissed.

7. The records were examined and oral submissions of both sides were considered carefully.

8. The principal contention of the learned counsel for the respondent is that the claim is barred by limitation because it related to the rental dues from 01.05.2013 to 18.07.2016. The relationship of landlord and tenant in this case arises out of a rental agreement dated 04.12.2013, which was for a period of 11 months with an option to renew the said agreement. It is also evident from the documents on record that the respondent filed a RCOP for fair rent and the said petition was dismissed for default on 07.09.2016. In these facts and circumstances, no definitive conclusions can be drawn at this stage in regard to whether the claim is barred by limitation and such a

determination can only be made at the time of final disposal. It is evident from the documents on record that a substantial part of the suit claim, i.e. to the extent of Rs.5,58,24,008/- plus electricity charges of Rs.8,87,640/- constitute prima facie a debt due and payable by the respondent to the applicant. Moreover, the respondent has categorically stated in para 14 of the counter that the Company has become non-operational for the past four years and is not engaged in any business activities. Consequently, it is clear that the apprehension of the applicant that the respondent would defeat the fruits of decree by alienating or disposing of assets is well founded.

9. Therefore, this application is allowed and the respondent is directed to provide security for a sum of Rs.5,00,00,000/- (Rupees Five Crore only) to the applicant on or before 20.01.2020.

05.12.2019

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SENTHILKUMAR RAMAMOORTHY ,J.

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