IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942

RFA.No.705 OF 2013

AGAINST THE JUDGMENT IN OS 293/2010 DATED 31-10-2012 OF SUB COURT, MANJERI

APPELLANTS/PLAINTIFFS:

1 PULLIKAL MUHAMMED HAJI
AGED 68 YEARS
S/O.HASSAN HAJI, P.O.CHERUR, CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

2 PULIKAL ABDUL AZEEZ
AGED 43 YEARS
S/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

3 PULIKAL ISMAIL
AGED 39 YEARS
S/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT, REP.BY POWER OF ATTORNEY HOLDER PULIKAL MUHAMMED HAJI (1ST APPELLANT IN RFA).

4 PULIKAL THOUFEEQ
AGED 36 YEARS
S/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

5 PULIKKAL SAMEERA
AGED 33 YEARS
D/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

6 PULIKAL MUMTHAZ
AGED 31 YEARS
D/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

7 PULIKAL SHAREEFA
AGED 27 YEARS
D/O.MUHAMMED HAJI, CHERUR P.O., CHERUR AMSOM,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADVS.
SRI.G.SREEKUMAR (CHELUR)
SRI.K.DILEEP

RESPONDENTS/DEFENDANTS:

1 SAKTHI AUTOMOBILES
AS REPRESENTED BY ITS GENERAL MANAGER (A UNIT
OF ABT INDUSTRIES LTD, SAKTHI FINANCE BUILDING,
DR.NANJAPPA ROAD, COIMBATORE-641018.

2 ABT INDUSTRIES LTD
AS REPRESENTED BY ITS MANAGING DIRECTOR, SAKTHI
FINANCE BUILDING, DR.NANJAPPA ROAD, COIMBATORE-
641018.

(R2 IS SET EPARTY VIDE ORDER DATED 6/2/2019)

R1 BY ADV. SRI.SHERRY J. THOMAS

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02-12-2020, THE COURT ON 04-12-2020 DELIVERED THE FOLLOWING:

Dated this the 4th day of December, 2020

J U D G M E N T

The plaintiffs' suit for arrears of rent for plaint A and B schedule buildings was dismissed by the learned Sub Judge, Manjeri, in O.S.No.293/2010. Being aggrieved by the impugned judgment and decree dated 31.10.2012, the plaintiffs have filed this appeal.

2. Plaint A and B schedules are the ground floor and first floor of the same building owned by the plaintiffs. The defendants are the tenants of the building inducted in the year 1999 under an unregistered lease deed.

3. The lease in respect of both floors expired on 30.4.2004. The lease was created for a period of five years on a monthly rent of Rs.25,000/- for A schedule and monthly rent of Rs.15,000/- for B schedule. It was agreed that there shall be an

automatic revision of the existing rent at the rate of 10% on completion of every succeeding year. The plaintiffs admit having received rent for the entire lease period of five years. They admit that an advance rent of Rs.12 lakhs was received in 1999.

4. The defendants surrendered the keys of the building on 31.7.2010 and till then they admittedly continued tenancy. The contention of the plaintiffs is that after the expiry of lease period of five years, the defendants continued tenancy by holding over the same terms and conditions as to tenancy and therefore were liable to pay increased rent of 10% of existing rent on completion of every succeeding year till the actual vacation of premises. Since they failed to pay the increased rent at 10% from 1.9.2005 inspite of repeated demands, the instant suit for arrears of rent was

filed after sending suit notice.

5. Defendants contend that they paid the entire rent till the date of surrender as on 31.7.2010 and nothing remained due from them. According to them, they are not liable to pay rent at 10% of successive year as done till 30.4.2004. It is contended that the monthly rent paid on and after 30.4.2004 was Rs.58,564/- and beyond the said rate, the defendants were not liable.

6. The court below examined PW1 and received Exts.A1 to A5 in evidence on the side of the appellants. On the side of the defendants, DW1 was examined and Exts.B1 and B2 were admitted in evidence.

7. The court below dismissed the claim of the appellants for the increased rent at the rate of 10% for every successive year subsequent to 30.4.2004 holding that existence of such right was

not established by them. This finding of the court below and consequential dismissal of the suit are challenged by the learned counsel for the appellants.

8. I heard the learned counsel appearing on both sides.

9. The sole question that remains for consideration is whether appellants are entitled to increased rent at 10% as claimed by them. The finding of the court below is that the lease deed cannot be relied on to prove the right of the appellants and liability of the defendants since it was not registered. Relying on a decision reported in **Chandrakala v. Soman (2004 KHC 1148),** it was held that the conditions as to periodical revision of rent for a term exceeding two years cannot be proved on the basis of unregistered lease deed as it hit by Section 49 of the Indian Registration

Act, 1908.

10. The fact that tenancy continued till the keys of the building were surrendered on 31.7.2010, is admitted by the defendants. What is disputed is their liability for payment of revised rent at 10% every succeeding year. According to the appellants, in as much as the defendants have been paying the monthly rent with increase of 10% every succeeding year, they were liable to pay rent under the same terms and conditions for the subsequent period as well, despite no fresh lease deed was executed between the parties. This, in any view, is purely a question which has to be decided on facts as well as evidence. Only because rent deed was unregistered and inadmissible in evidence, the case advanced by the appellants cannot be rejected outright without appreciating the overall evidence adduced by the parties.

11. The defendants in their written statement have raised a contention that they continued to occupy the tenanted premises under an oral agreement with appellants to pay monthly rent @ Rs.58,564/- only, which was the same rate of rent payable on the date of expiry of original lease period. If this case is proved, no doubt, appellants may not succeed in claiming payment of increased rent at 10%. This aspect was not examined by the court below on merits. The testimonies given by PW1 and DW1 were not taken into account in resolving the material issue which arose between parties. Instead a superficial view was taken to the effect that since the lease was unregistered, appellants' claim must fail. This approach appears to be erroneous and therefore itself the finding of the court below is liable to be set aside. Irrespective of whether the lease was registered or

not, it is an undisputed fact that defendants were paying monthly rent at revised rate of 10% every successive year till 30.4.2004. Even after 30.4.2004, tenancy admittedly continued till 31.7.2010. Though no registered lease deed was executed for the subsequent period, what was the understanding between parties as to the rate of monthly rent payable is a matter which ought to have been examined by the court below on evidence adduced by the parties and broad probability of the case. I may not be misunderstood as being convinced of appellants' claim at all. I only say that the issue was not appreciated from the right perspective by taking into the evidence and taking a proper decision.

12. It is seen that the appellants claimed arrears of rent to be set off against the advance amount of rent of Rs.12,00,000/- received by them.

It seems that the defendants sought leave of the court to amend the written statement and incorporate a counter claim for recovery of advance amount paid to the landlords. On leave sought being refused, the defendants took up the matter before this Court in OP(C)No.1032/2013, in which after setting aside the order passed by the trial court, the defendants were allowed to raise the counter claim in the suit. A direction was also given to trial court by order dated 29.7.2013 to dispose of the counter claim. It is seen that the trial court happened to dispose of the suit before the order passed in OP(C)No.1032/2013 was passed by this Court. That means, the impugned judgment and decree were passed by the trial court without having had the opportunity of examining the merit of the counter claim ordered to be considered in the suit. This is, no doubt, a legal reason which justifies

this Court to interfere with the impugned judgment and decree and remand the matter back to the trial court for fresh consideration.

13. In the result, this appeal is allowed and the judgment and decree of the court below are set aside. The matter is remitted back to trial court to dispose the issues arising between the parties in the suit as well as counter claim, in the light of the observations made above and in accordance with law. It is made clear that the trial court will be at full liberty to decide the issues before it, untrammelled by the observations made in this judgment.

The appellants will get refund of the court fee paid in the appeal. The parties will appear before the trial court on **04.01.2021**. There will be a direction to the court below to dispose of this matter within a period of three months from the

date of receipt of a certified copy of this judgment.

All pending interlocutory applications are closed.

Sd/-

T.V.ANILKUMAR
JUDGE

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