

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2016

PRONOUNCED ON : 01.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S.No.901 of 2005

Bharathi Airtel Limited,
"Oceanic Tower"
101, Santhome High Road, Santhome,
Chennai – 600 028,
Rep by its Authorized Signatory
R.Sunil Raj
(Amended as per Order dated 15.02.2008
in Appl.No.760 of 2008) ...Plaintiff

.Vs.

M/s.Tarapore & Co,
A Registered Partnership Firm,
Represented by its Partner
Mr.Dinshaw K.Parakh
Dhun Building,
827, Anna Salai, Chennai – 600 002.
(Amended as per Order dated 15.02.2008
in Appl.No.760 of 2008) ..Defendant

PRAYER : Civil suit filed praying for judgment and decree against the defendant as follows:-

(a) Directing the Defendant to pay a sum of Rs.14,81,282/- to the Plaintiff'

(b)Granting interest at the rate of 12% per annum on Rs.13,52,346/- from this date till date of payment.

(c)Direct the Defendant to pay costs of the above Suit.

For Plaintiff : Mr.Karthik Sehsadri
for M/s.Iyer & Thomas

For Defendant : Mr.R.Murari,
Senior Counsel,
for Mr.K.K.Muralikrishnan

J U D G M E N T

The civil suit is filed by the plaintiff M/s.Bharathi Airtel Limited., praying to direct the defendant to pay a sum of Rs.14,81,282/- to the Plaintiff with interest @ 12% per annum on the principal sum of Rs.13,52,346/- from the date of suit till the date of payment.

2. It is averred in the plaint as follows:-

2(i). The defendant is the owner of a portion of a property called "Tarapore Towers". On the basement, ground, mezzanine floors of the said building a company name was Crompton Greaves Limited. It had taken the premises on lease to the extent of 2946, 4660 and 2150 square feet by a lease agreement dated 08.12.1994 amended on 15.03.1995 for the period from 01.03.1995 to 29.02.2000 on a monthly lease rental of Rs.2,34,405/-. The said company had paid a deposit of Rs.14,06,430/- (Rs.Fourteen Lakhs six thousand four hundred and thirty only) under the said lease agreement.

2(ii).The said company had entered into a Joint Venture Agreement with three other companies namely, DSS Enterprises Pvt Limited, Bellsouth Internaml Inc., Millicom Inc,. These companies are formed a company called Skycell Communications Limited. The said company was formed for the purposes of providing Mobile Telephone Services in the Chennai circle having acquired a License from the Government of India. The said Skycell Communications Limited was entered into an agreement with the defendant to take on lease the Basement, Ground, Mezzanine floors that had been previously occupied by Crompton Greaves Limited. The said company had took a small portion additionally on the ninth and tenth floors to the extent of 155 and 222 square feet pursuant to a lease agreement executed at Chennai on 22.03.2000, on a monthly rent of Rs.2,81,286/-.

2(iii).It was agreed that a sum of Rs.14,06,430/- lying with the defendant from the deposit given by Crompton Greaves Limited to the defendant could be kept in deposit with the defendant as part of the lease deposit provided by Skycell Communications Limited. In addition to that, the said company was also paid an additional deposit of Rs.2,81,286/- towards the lease deposit paid by it to the defendant. Thus, the defendant under the terms of the lease Agreement dated

22.03.2000 held a sum of Rs.16,87,716/- as Security Deposit which the defendant agreed to repay upon termination/determination of the said Agreement.

2(iv).The Lease agreement was provided that the lessee would pay sum of Rs.2,81,286/- towards the monthly rent to the premises taken on lease. That the sum of Rs.14,06,430/- paid by Crompton Greaves Limited and a sum of Rs.2,81,286/- paid by Skycell Communications Limited would be treated as the amount received from the lessee as Security Deposit and the entire deposit of Rs.16,87,716/- shall be returned to the lessee at the time of termination of the lease agreement.

2(v).The lease agreement provided that the property would be used for business purposes only. The lessee was permitted to permit any of its group or associate companies to use the leased premises after concurrence of the lessor. The agreement further provided that the lessor was allowed to enter into the leased property at all reasonable times to inspect the condition thereof after giving advance notice in writing.

3.The lessee was permitted to erect "a Tower Antenna" and a small DG Set (Diesel Generator Set) for emergency purposes on the roof top of

the 10th floor as required for its switching system. The lease agreement was to be in force for a period of 5 years from 01.03.2000 to 28.02.2005. Either party had a right to terminate the lease agreement by giving three months notice in writing to the other. The lessee was agree to vacate the premises in case of violation of any of the terms and conditions of the lease and hand over the vacant possession of the premises to the lessor or otherwise the lessor will have the right to re-enter the premises and take possession thereof without prejudice to their claims.

3(i).Subsequent to the said agreement, Skycell Communications Limited came to be acquired by Bharti Cellular Limited. The said company was subsidiary of Bharti Televentures Limited (amended by Bharti Airtel Limited). The name of Skycell Communications Limited came to be changed to Bharti Mobinet Limited. The said Bharti Mobinet Limited was thereafter amalgamated with Bharti Cellular Limited which got amalgamated with Bharti Televentures Limited (amended by Bharti Airtel Limited), the Plaintiff.

3(ii).It was pertinent to note that the defendant had not undertaken any maintenance activity on the premises taken on lease by the plaintiff or the plaintiff's predecessor in interest. The Plaintiff had

taken all steps to keep the premises in good order and condition and if any minor modifications were made to make the premises usable by the plaintiff, the same was carried out with the consent of the defendant. The plaintiff had also paid the monthly rentals diligently without any delay.

3(iii).The Plaintiff gave notice of termination of the tenancy on 21.07.2004 and accordingly handed over vacant possession of the premises on 28.10.2004. Immediately upon vacating the premises the Plaintiff had handed over the keys to the premises to Mr.Dinshaw K.Parakh, the Managing Partner of the Defendant on 28.10.2004. He refused to accept the keys stating that the premises required certain repairs, and unless the Plaintiff sets them right he would not accept the keys. Mr.Dinshaw K.Parakh, did not specify what repair work had to be done or he had not quantified the amount that was required to carry out on such repair work. The Plaintiff insisted upon a Joint Inspection of the premises to make sense of the allegations of "Repair Work", and accordingly Mr.G.Sashikumar from the Plaintiff's side and Mr.Ravichandran from the Defendant's side jointly inspected the premises on 01.11.2004 for alleged damage. The list of work to be carried out was listed out jointly, but the First Defendant refused to sign the paper, and asked the Plaintiff to send it by post. Thereafter, the Plaintiff issued

a letter dated 02.11.2004 in good faith, hoping the matter would come to an end. However, the Defendant by the letter dated 15.11.2004 accused the Plaintiff falsely of not handing over possession of the premises and claimed that the lease continued. The Defendant claimed that the Plaintiff must restore the premises in the same condition as was leased out to them at the time of the Plaintiff's occupation nearly 5 years prior thereto. The Defendant had not indicated what was the damage the required to be restored by the Plaintiff.

3(iv).Subsequent to the Defendant's letter dated 15.11.2004, the Plaintiff's representatives again met Mr.Dinshaw K.Parakh of the Defendant to hand over the keys which he refused. This was followed by a letter dated 20.12.2004 wherein the defendant had made out an imaginary and exaggerated statement of accounts amounting to Rs.12,20,000/- showing a valuation which looked more like it was for the construction of a new building altogether and not for any repairs. The damage shown was highly exaggerated and several items listed in the statement were not even part of any damage that was noted nor were they required to be done in the Joint Inspection of 01.11.2004. Several items mentioned did not even relate to damage allegedly suffered. Instead of, it was only a luxury cosmetic surgery to give the premises a new and modern look at the expense of the Plaintiff. Several of them

were simple wear and tear and entirely the Defendant's responsibility as a landlord.

3(v).The Plaintiff had sent a reply on 05.01.2005 stating firstly, that in the matter of keys they have always been ready and willing to hand over the keys but it was the Defendant who was refusing to accept them on some ground or the other. The Plaintiff had clearly reiterated that the issue of damages was different from the issue of the keys and that the Defendant should inform them in writing the date, time and place and manner in which they were ready to take back the keys.

4.Secondly, the Plaintiff informed the Defendant that they would get the damage assessed by an independent valuer and were ready and willing to complete the work as per the report of an independent valuer. The Plaintiff also reiterated that vacant possession of the premises was in fact handed over to the Defendant on 28.10.2004 itself when the keys were handed over to the Plaintiff and was refused by the Defendant. The Plaintiff requested an independent valuer, M/s.Farwood Industries Limited, to carry out the assessment work of the repairs needed at the premises. The independent valuer assessed the same at Rs.3,35,370 which amount the Plaintiff was and is ready and willing to pay. In the alternative the Plaintiff was also willing to carry out the work mentioned

by the independent valuer, with the permission of the Defendant.

4(i).The Defendant has not till date given the go-ahead permitting to carrying out of the work as per the independent valuer's report. Despite repeated demands the Defendant continues to retain the Security Deposit of the Plaintiff. On 28.04.2005 a notice was sent by the plaintiff's lawyer by RPAD stating the aforesaid facts and also calling upon the Defendant to repay the Security Deposit of Rs.16,87,716/-, the Plaintiff along with interest of 12% from 28.10.2004 till the date of payment. The Defendant received the notice and with a view to willfully delay matters issued an interim reply dated 13.05.2005 stating that the Defendant's lawyers were not available to reply. Thereafter on 02.07.2005 the Defendant issued a reply through their lawyers and *inter alia* denied the various contentions of the Plaintiff and claimed that the Plaintiff was required to pay an exaggerated sum of Rs.22,88,886/- till June 2005 and continue to pay rent at rate of Rs.3,37,543/- per month from July 2005 although the Plaintiff had already vacated the leased premises.

4(ii).Considering the facts and circumstances, it is clear that the Defendant is not ready to take the premises back on some pretext or the other. The Defendant is attempting to retain the huge amount of

Security Deposit of the Plaintiff and is making unjust demands towards future rents etc., when the Plaintiff had handed over vacant possession of the premises even as early as 28.10.2004. If really the Defendant was interested in resolving the problem, the Defendant would have clearly accepted the keys and thereafter raised a claim of damages after adjusting the Security Deposit. The Plaintiff had always been ready and willing to carry out repair work as per the Joint Inspection work of 01.11.2004 and as per the report of the independent engineers. The Defendant is avoiding this with ulterior motive of making unjust demands. The Plaintiff is entitled to the refund of the Security deposit of Rs.16,87,716/-. The Defendant can at best adjust the sum of Rs.3,35,370/- to be spent towards the repair works on the premises. Hence the Plaintiff is suing for the recovery of the balance of Rs.13,52,346/- after giving credit to the amount of Rs.3,35,370/- as assessed by the independent valuer and subsequent interest of Rs.1,28,936/- calculated at the rate of 12% on Rs.13,52,346/- from 28.10.2004 till 17.08.2005.

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5.The contentions in the Written Statement filed by the defendant are follows:-

5(i). The Plaintiff have failed to advert to certain important and relevant facts, which facts would clearly establish that the Plaintiff is not

entitled for refund of security deposit as prayed for and on the contrary it is the Plaintiff who is liable to compensate the Defendant for the expenses incurred by the Defendant towards carrying out repair works to the premises and also towards lease rentals outstanding for the period commencing from October 2004 till 22.02.2006, when the keys were actually handed over to the Plaintiff by the orders of this Court.

5(ii).The Defendant vehemently denies the statement that the Plaintiff had vacated possession of the premises on 28.10.2004 and claimed refund of Security Deposit from the Defendant. It is further denied that the Plaintiff offered to hand over the keys to Mr. Dinshaw K.Parakh who was then a partner of the Defendant on 28.10.2004 and he had refused to accept the same. In fact Mr. Dinshaw K.Parakh who was advanced in years and frail in health at the point of time, was not attending office except on very special occasions and it is therefore obvious that such contention is exfacie incorrect.

5(iii).The Defendant further submits that in terms of Clause 21 of the Lease Agreement dated 22.03.2000, the Plaintiff had agreed not to do anything which would be detrimental to the Defendant's interests or to the property and to handover the premises in the same condition in which it has been taken except for normal wear and tear.

5(iv).If therefore, the Plaintiff wanted to terminate the tenancy and to hand over possession thereof, it would be incumbent on the Plaintiff to comply with the said conditions and restore the premises to the same condition in which it was taken. Further in terms of Clause 5 of the lease agreement the deposit amount of Rs.16,87,716/- was to be returned to the Plaintiff at the time of termination of lease without any interest but after deducting *inter alia* any damages to the property.

5(v).The Plaintiff for the purposes of their business had effected substantial changes to the property and therefore in terms of the aforesaid clauses, the Plaintiff were bound to restore the premises under their occupation to the original condition. The Plaintiff could neither purport to hand over vacant possession nor could they seek a refund of the Security deposit.

5(vi).Therefore, the statement that they had vacated possession or sought to hand over keys to Mr. Dinshaw K.Parakh are all totally incorrect. The Plaintiff were in possession of the premises and were retaining the keys in respect of the said premises until 22.02.2006. It is further denied that the Defendant have not specified repair works or quantified the amounts required to carry out such works. The other statements that Joint Inspection was carried out in the premises are of

no avail. The Plaintiff being fully aware that major repair works would have to be undertaken in respect of the premises, refrained from undertaking such work. So, the Plaintiff defaulted in complying with their obligations under the Lease Agreement.

5(vii). It is reiterated that the Plaintiff had not handed over the possession of the premises to the Defendant until 22.02.2006. Further, since the Plaintiff were purporting to terminate the lease, the Defendant by letter dated 20.12.2004, enclosed an estimate for carrying out repairs to restore the portion occupied by the Plaintiff to its original condition. The Defendant in the said letter had pointed out that after taking into account rents and the cost of repairs and after adjusting the same against the Security Deposit, a sum of Rs.2,49,110/- was payable by the Plaintiff and the Plaintiff were accordingly called upon to pay such amount to the Defendant. It was also pointed out that the rent would be calculated at an increased rate till the keys were handed over to the Defendant officially after the Plaintiff had complied with the above.

5(viii). However, the Plaintiff had taken no action in this regard but have sought to address letters to the Defendant raising totally untenable contentions. It is denied that the estimate provided by the Defendant is exaggerated or is intended to give a new and modern look to the

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estimate would clearly negate such statement and would establish that the items covered by such estimate are the bare necessities required to be undertaken to restore the premises to its original condition.

5(ix).With regard to the averments contained, the Plaintiff's vide letter dated 05.01.2005 was duly replied to by the Defendant on 12.01.2005 in which the Defendant had clearly and categorically denied that the Defendant had refused to accept the keys. It was further pointed out therein that the additions and alternations carried out by the Plaintiff to the premises were carried out on the specific understanding that while vacating the premises all such alterations and additions would have to be removed by the Plaintiff and the premises would be handed over in the same condition as it was leased out.

5(x).As the Plaintiff were refusing to do so, the Defendant had deputed their Engineer who had estimated the cost of the same at Rs.12,20,000/- and therefore the Plaintiff were called upon to either restore the premises to its original shape or accept the valuation made by the Defendant's Engineers, and that the handing over of the premises would only be after settling such issues and that the Plaintiff would be a tenant till then.

6.With regard to the further averments contained, the Plaintiff with reference to the unilateral assessment purported to be carried out by M/s.Farwood Industries Ltd., without notice to the Defendant is of no basis whatsoever and the Defendant reject and repudiate any such assessment.

6(i).The Defendant also vehemently denies that they were evasive and caused delay or stalled the return of the Security deposit. The Defendant's consistent stand had been that the Plaintiff were bound and obliged to comply with the conditions of the Lease agreement mentioned above, before they can purport to terminate the lease, which however the Plaintiff have failed and neglected to do.

6(ii).In view of the aforesaid, the question of the Defendant permitting the Plaintiff to carry out the work as per such 'Independent Valuer's' Report will not arise as alleged to Plaintiff and neither is the Defendant bound to return the Security Deposit amount until the Plaintiff fulfilled their obligations under the lease agreement.

6(iii).The Defendant is therefore under no obligation to pay the Plaintiff a sum of Rs.16,87,716/- or any other amounts. On the contrary, the Plaintiff is bound and liable to pay the Defendant the sum of

Rs.22,88,886/- till June 2005 as per the statement of Account annexed herewith and the Defendant through their Counsel's notice dated 02.07.2005 had called upon the Plaintiff to effect payment of the above amount within 7 days from the date of receipt of the said notice and had indicated therein that in the event of the Plaintiff's failure to effect payment, the Defendant would be at liberty to commence appropriate legal proceedings against the Plaintiff's failure to effect payment, the Defendant would be at liberty to commence appropriate legal proceedings against the Plaintiff for recovery of the above amount with interest at 12% per annum from the respective due dates.

6(iv).In addition, the Plaintiff were also called upon to continue paying the Defendant, rent at the rate of Rs.3,37,543/- per month from July 2005, till the date they vacate the premises after duly complying with their obligations under the lease agreement. However, the Plaintiff did not comply with the above legitimate demand of the Defendant and have filed the present suit distorting the facts.

Counter Claim of the Defendant:

7.The Defendant submits that by reason of the failure of the Plaintiff to comply with their obligations under the Lease Agreement necessitating the carrying out of repairs by the Defendant and the fact

that the Plaintiff has remained in possession till 22.02.2006. The Plaintiff are liable to pay rentals to the Defendant apart from compensating such repair charges.

8.The narration and basis of such counter claims have been set out in detail in the earlier portion of this written statement.

9.The Defendant submits that the Plaintiff is thus liable to pay the Defendant a sum of Rs.56,28,074/- as on 28.02.2007 as per the details furnished below:-

a.Rent due from October 2004 to February 2005 (Rs.2,81,286*5)	Rs.14,06,430.00
b.Rent due from March 2005 to February 2006-20% increase on Rs.2,81,286/- (Rs.3,37,543*12)	Rs.40,50,516.00
c.Estimated cost of repair works	Rs.12,20,000.00
d.TDS deducted for 2004-05 TDS certificates issues	
3,45,978	
3,10,142	
	Rs. 35,836.00
	Rs.67,12,782.00
e.Less: 6 months Rent Advance Received (Rs.2,81,286*6)	Rs.16,87,716.00
	Rs.50,25,066.00

f.Add:Interst from 01.03.2006 to

28.02.2007 for 12 months @ 12%	Rs. 6,03,008.00

Balance Amount Receivable	Rs.56,28,074.00

11. Based on the pleadings of both the parties, documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 02.04.2008 :-

1. Whether the Plaintiff is entitled to a decree for a sum of Rs.14,81,282/- with interest at 12% p.a on the Principal amount of Rs.13,52,346/- as prayed for?

2. Whether the defendant is entitled to a decree for a sum of Rs.56,228,074/- with interest at 12% p.a. on the principal amount of Rs.50,25,066/- towards a counter claim made in the written statement?

3. Whether the plaintiff is liable to compensate the defendant for the expenses incurred by the defendant towards carrying out the repair works to the demised premises or not?

4. Whether the plaintiff is liable to compensate the defendant towards lease rentals outstanding for the period commencing from October 2004 till 22.2.2006,

when the keys were handed over pursuant to the orders of the Court?

5. Whether in terms of Clause 21 of the lease agreement dated 22.3.2000, the plaintiff had handed over the demised premises to the defendant in the same condition in which it has been handed over by the Plaintiff?

6. Whether the substantial changes effected by the plaintiff causes damage to the property?

7. Whether in terms of Clause 5 of the lease agreement, the deposit amount of Rs.16,87,716/- was to be returned to the plaintiff only after deducting inter alia any damages to the property as contended by the defendant?

8. Whether the plaintiff complied with their obligations under the lease agreement before terminating the tenancy?

9. Whether the Plaintiff can insist that the unilateral assessment carried out by M/s Farwood Industries Ltd without notice to the defendant as correct assessment of damages or not?

10. Whether the plaintiff is liable to pay a sum of

Rs.22,88,886/- till June 2005 as per statement of Account annexed with the plaint?

11. Whether the plaintiff is under the obligation to pay an increased rent of Rs.3,37,543/- as per the terms of the agreement from July 2005 till 22.2.2006 apart from compensating repair charges?

12. To what relief, the plaintiff is entitled?

11. After completion of pleadings and framing of issues, during trial, on the side of the plaintiff PW1 and PW2 were examined and marked Exs.P1 to P17. On the side of the defendant, the defendant was examined as DW1 and marked Ex.D1.

12. Heard the rival submissions made on both sides and perused the materials available on record.

13. The case of the Plaintiff is that the defendant is the owner of a portion of a property called "Tarapore Towers" and the Plaintiff is the tenant. As per the lease agreement dated 22.03.2000 between the predecessors of the Plaintiff and the defendant and the monthly rent was fixed at Rs.2,81,286/- and the lease period is from 01.03.2000 to 28.02.2005 for which the plaintiff gave a deposit of Rs.16,87,716/- to the

defendant. The lease can be further extended beyond 28.02.2005 on terms mutually agreed upon by the lessor and the lessee, subject to minimum enhancement in right of 20% over the existing rent. If the lessee fails to exercise the right of renewal, the lease shall automatically terminate on 28.02.2005. As per clause 5 of the agreement entire deposited amount shall be refunded to the lessee at the time of termination of lease without any interest after deducting any arrears towards rent, MES consumption charges, any damages to the schedule property or to the amenities provided thereon. The plaintiff without any delay paid the rent to the defendant till the 28.10.2004. Before the expiry of leave period i.e., on 28.02.2005, the Plaintiff gave notice of termination of tenancy on 21.07.2004 and handed over the vacant possession of premises on 21.10.2004. Immediately upon vacating the premises, the Plaintiff had handed over the keys of the premises to Mr.Dinshaw K.Parakh, the Managing partner of the defendant on 28.10.2004. He refused to accept the key stating that premises require certain repairs, and unless the plaintiff sets them right he would not accept the keys. However, Dinshaw K.Parakh did not specify what repair work to be done or he had not quantified the amount that was required to carry out such repair work. The plaintiff insisted upon joint inspection of the premises to make sense of the allegations of "Repair work" and accordingly Mr.G.Sashikumar from the Plaintiff's side and

Mr.Ravichandran from the defendant's side jointly inspected the premises on 01.11.2004 for alleged damage. The list of work to be carried out was listed out jointly, but, the first defendant refused to sign the paper and asked the plaintiff to send it by post. Thereafter, the Plaintiff issued a letter dated 02.11.2004, in good faith hoping that the matter would come to an end. However, the defendant by the letter dated 15.11.2004 accused the plaintiff falsely of not handing over the possession of the premises and claimed that the lease continued. The defendant claimed that the plaintiff must restore the premises in the same condition as was let out to them at the time of plaintiff's occupation nearly five years prior thereto. The defendant had not indicted what was the damage required to be restored by the plaintiff. It is the further case of the plaintiff that subsequent to the Defendant's letter dated 15.11.2004, the Plaintiff's representatives again met Mr.Dinshaw K.Parakh of the Defendant to hand over the keys which he refused. This was followed by a letter dated 20.12.2004, wherein the defendant had made out an imaginary and exaggerated statement of accounts amounting to Rs.12,20,000/-, showing a valuation which looked more like it was for the construction of a new building altogether and not for any repairs. The damage shown was highly exaggerated and several items listed in the statement were not even part of any damage that was noted nor were they required to be done in the Joint Inspection on 01.11.2004. Several items mentioned

did not even relate to damage allegedly suffered. Instead of, it was only a luxury cosmetic surgery to give the premises a new and modern look at the expense of the Plaintiff. Several of them were simple wear and tear and entirely the Defendant's responsibility as a landlord. Further, the plaintiff informed the Defendant that they would get the damage assessed by an independent valuer and were ready and willing to complete the work as per the report of an independent valuer. The Plaintiff also reiterated that vacant possession of the premises was in fact handed over to the Defendant on 28.10.2004 itself when the keys were handed over to the Plaintiff and was refused by the Defendant. The Plaintiff requested an independent valuer, M/s.Farwood Industries Limited, to carry out the assessment work of the repairs needed at the premises. The independent valuer assessed the same at Rs.3,35,370/- which amount the Plaintiff was and is ready and willing to pay. In the alternative the Plaintiff was also willing to carry out the work mentioned by the independent valuer, with the permission of the Defendant. But, the Defendant has not permitted to carry out the work as per the independent valuer's report. Despite repeated demands the Defendant continues to retain the Security Deposit of the Plaintiff. On 28.04.2005 a notice was sent by the plaintiff's lawyer by RPAD stating the aforesaid facts and also calling upon the Defendant to repay the Security Deposit of Rs.16,87,716/-, the Plaintiff along with interest of 12% from 28.10.2004

till the date of payment. The Defendant received the notice and with a view to willfully delay matters issued an interim reply dated 13.05.2005 stating that the Defendant's lawyers were not available to reply. Thereafter on 02.07.2005 the Defendant issued a reply through their lawyers and *inter alia* denied the various contentions of the Plaintiff and claimed that the Plaintiff was required to pay an exaggerated sum of Rs.22,88,886/- till June 2005 and continue to pay rent at rate of Rs.3,37,543/- per month from July 2005 although the Plaintiff had already vacated the leased premises. Therefore, it is clear that the defendant is not ready to take the premises back on some pretext or the other and is attempting to retain the huge amount of Security deposit of the plaintiff and is making unjust demands. Therefore, the plaintiff has filed the present suit seeking for the aforesaid relief.

14. The defendant has denied the averments made in the plaint. The defendant though admitted that the plaintiff Company paid Security Deposit of Rs.16,87,716/- as per the lease agreement and denies the statement that the plaintiff had vacated possession of the premises on 28.10.2004. It is further stated that as per clause 5 of the agreement, the plaintiff has to hand over the premises in good condition and the deposit amount of Rs.16,87,716/- was to be returned to the plaintiff at the time termination of lease without any interest but after deducting

inter alia any damages to the property. The defendant further denies that the plaintiff vacated the possession or sought to hand over the keys to Mr.Dinshaw K.Parakah. It is further stated that the plaintiff has not handed over the key and continued to be in possession and not carried out repair work and only after direction by this Court the defendant had handed over the keys. Therefore till such time, the defendant is not entitled for getting rent from the plaintiff and the plaintiff is liable to pay the rent as per Ex.P2-Agreement. It is stated that the plaintiff has not paid the rent from September 2004 to June 2005 nor handed over the key. Therefore, the defendant claimed the rent for October 2004 to February 2005 @ Rs.2,81,286/- which comes to Rs.14,06,430/-, after lease period subsequently from March 2005 till the February 2006 i.e,from date of handing over the key, the defendant is entitled to enhance rent at 20% on Rs.2,81,286/- i.e., monthly rent of Rs.3,37,543/- which comes to Rs.40,50,560/- and estimated cost of repair works to Rs.12,20,000/-, TDS deducted for 2004-2005 to 3,45,978/-, TDS certificate issued for Rs.3,10,142/- which comes to Rs.35,836/- and total claim of the defendant worked out to Rs.67,12,782/- after deducting the security deposit of Rs.16,87,716/-, the Plaintiff is liable to Rs.50,25,066/- for which interest thereon from 01.03.2006 to 28.02.2007 @ 12% per annum, which comes to Rs.6,00,308/- and therefore the Plaintiff is liable to pay a sum of

Rs.56,28,074/-. Therefore, the defendant need not pay any amount and direct the plaintiff to pay the aforesaid sum. Hence, the defendant prays to dismiss the suit and allow the counter claim.

15. Issue Nos. 1,5,6,8,9 :-

(i) The relationship of the parties are not in dispute. The fact that the plaintiff and the defendant entered into lease agreement and the Security Deposit paid at Rs.16,87,716/- are not in dispute and the monthly rent paid at Rs.2,81,286/- from 01.03.2002 to 28.02.2005 are also not disputed. The said amount was paid till September 2005 also not disputed. According to the plaintiff, during the lease period he terminated the lease by giving notice of termination of tenancy on 22.07.2004 and accordingly handed over the premises on 28.10.2004 and immediately upon vacating the premises the plaintiff had handed over the key of the premises to one Mr.Dinshaw K.Parakh on 28.10.2004 but the defendant refused to accept the key stating that the premises required certain repairs and unless the plaintiff sets them right he would not accept the keys. However, Mr.Dinshaw K.Parakh did not specify what repair works to be carried out or he had not quantified the amount that was required to be carried out for such repair work. The Plaintiff insisted upon inspection of the premises and accordingly Mr.G.Sashikumar from the plaintiff's side and Mr.Ravichandran from the defendant's side

conducted joint inspection on 01.11.2004 for alleged damages. The list of work to be carried out was listed out jointly, but the defendant refused to sign the paper and asked the plaintiff to send it by post. Thereafter, the plaintiff issued a letter dated 02.11.2004 and however, the defendant by the letter dated 15.11.2004 accused the plaintiff falsely of not handing over the possession of the premises and claimed that the lease continued. In order to prove the contention, on the side of the plaintiff initially one Vasantha Kumar Senior Manager- Legal and Regulatory of the Plaintiff Company was examined in Chief as P.W.1. Subsequently since he left the Company, one R. Sunil Raj, Deputy Manager- Legal of the Plaintiff Company was examined as P.W.1 and marked the documents Ex.P1 to P17 and reiterated the averments made in the plaint. On the side of the Plaintiff, one Harish Rangarajan- Manager -Legal and Regulatory of the plaintiff Company was examined as P.W.2. From the averment of the plaint and evidence of P.W.1 and P.W.2 and Ex.P1, the relationship of the parties are not disputed and the lease period from 01.03.2002 to 28.02.2005 is also not disputed and the monthly rent of a sum of Rs.2,81,268/- and the Security Deposit made by the plaintiff to the defendant at Rs.16,87,760/- also not disputed. So according to the plaintiff before the expiry of the lease period of 28.02.2005 he terminated lease and gave notice on 21.07.2004 and also expressed his intention to vacate the premises on 28.10.2004 and also vacated the

same and handed over the key to the defendant, but the defendant refused to receive the key stating that the premises requires certain repair works and unless the same is set right by the plaintiff, the key will not be accepted. Further in Ex.P6 dated 02.11.2004, it is seen that the plaintiff has expressed their willingness to handover the possession by 28.10.2004 and it is informed that joint inspection was carried out with the defendant's representative Mr.Ravichandran and certain damages have been noticed and communicated to the defendant in the form of hand letter and requested the defendant to repay the Security Deposit of Rs.16,87,716/-, for which the defendant has sent reply under Ex.P7, by which it is stated that the lease is not terminated and further demanded the plaintiff to produce the last paid electricity bill and relevant receipt in support of their having paid the electricity charges till the date of vacating the premises. Further the defendant sent Ex.P8, claiming damages. Once the plaintiff terminated the lease and ready to handover the possession and as such notice of termination was issued, two months notice was also given, the defendant has to accept the same. In case of any damages they should find out the damages and direct to do the repair work and hand over the premises in good condition if failed to do the same they have to deduct the amount from the security deposit. Even as per the clause 5 of Ex.P2, it is clearly stated that deposit shall be refunded to the lessee after deducting any arrears towards rent, MES

Consumption charges, any damages to the schedule property or to the amenities provided thereon. Therefore, it is the duty of the defendant to accept the termination and receive the key and in case of any repair works or damages, they can point out the same and ask the plaintiff to carry out the same. If he fails to carry out the same within the stipulated time and if the said amount is over and above the security deposit then they can claim the damages. Whereas, in this case despite the notice being sent by the plaintiff terminating the lease and though the plaintiff has stated that they jointly inspected the property with one Ravichandran from the defendant side on 01.11.2004 and list of work to be carried out was listed out jointly, the defendant had refused to sign in the list of damages and asked the plaintiff to sign. Thereafter, the plaintiff issued a letter dated 02.11.2004 and the defendant also accepted the said letter. But they have not denied the fact that their representative one Ravichandran had conducted joint inspection. As far as damages is concerned, as stated by the plaintiff, the defendant Mr.Dinshaw K.Parakh denied to receive the key stating that the premises required certain repairs, unless the plaintiff carried out the said repair work, the key will not be accepted. Though the plaintiff specifically stated that Mr.Dinshaw K.Parakh did not specify or quantify any amount for the repair work, the plaintiff insisted upon the joint inspection of the premises to find out what are all the repair works to be carried out, on the side of the defendant

representative of the Defendant one Mr.Ravichandran participated in the joint inspection and at that time the list of repairing work to be carried out was listed out jointly.

(ii) From Ex.P6 letter issued by the plaintiff to the defendant shows the list of work to be carried out. Though the plaintiff has stated that one Ravichandran has participated in the joint inspection, in Exs.P7 and P8, the defendant has not denied the same and the defendant has stated that the last paid electricity bill and relevant receipt in support of their having paid the electricity charges till the date of vacating the premises has to be produced and though they have stated in Ex.P8, amount payable by the plaintiff for the repair work, the defendant has not examined the person who has given estimation of repair work and simply copy of the annexure is enclosed and the defendant has not examined the witness and prove the same. Further, though the plaintiff sent Ex.P6 dated 02.11.2004 giving the list of repair works to be carried out, the defendant under Ex.P7 has not stated that what was the estimate for repair work and thereafter, after one month he sent a reply on 20.12.2004 in which he has enclosed the copy of the estimate for repair work which comes to Rs.12,20,000/-. When the plaintiff sent a notice dated 02.11.2004, the defendant should have immediately assessed the repair work to be carried out or quantify the amount that

was required to carry out the repair work. Though the plaintiff terminated the lease on 20.10.2004, having kept quite for two months the defendant sent a reply under Ex.P8 claiming damages. Therefore, once the plaintiff has terminated the lease and sent the estimate cost for the repair work and asked the defendant to repay the Security Deposit of Rs.16,87,716/-, after deducting the sum of Rs.3,35,370/- towards damages, the defendant simply enhanced the rent from the date of expiry of the lease period. When the plaintiff stated that he handed over the key, it is the duty of the defendant to accept the key and work out the damages and other things, if at all happened and they can withhold the amount and give specific date for repair and withdrawal of Security Deposit after deducting the damages, within the stipulated period he has to repay the security deposit. But in this case the defendant has stated that the plaintiff has not handed over the key and continued to be in possession and not carried out the repair work and only after the direction by this Court, the defendant had handed over the keys. It is stated that the plaintiff has neither paid the rent from September 2004 to June 2005 nor handed over the key. Therefore, the defendant has claimed the rent for October 2004 to February 2005 , after lease period subsequently from March 2005 till the February 2006 i.e,from date of handing over the key, the defendant has claimed enhancement of 20% over the existing rent.. According to the plaintiff, he sent a notice and if

at all the defendant wants to claim damages he should have immediately assessed the repair work and quantified the amount, but the defendant has failed to do so. Therefore, under such circumstances the plaintiff proved this claim through oral and documentary evidence. Therefore, the above issues are answered in favour of the plaintiff and as against the defendant.

16. Issue Nos.2,3,4,7,10 and 11 :-

The relationship of the parties are not in dispute. The fact that the plaintiff and the defendant entered into lease agreement and the Security Deposit paid at Rs.16,87,716/- are not in dispute and the monthly rent paid at Rs.2,81,286/- from 01.03.2002 to 28.02.2005 are also not disputed. The said rent was paid till September 2005 also not disputed. Further, the notice sent by the plaintiff is also admitted. According to the defendant, since there was material alteration, unless the same is set right by the plaintiff, the key will not be accepted and it is further stated that the defendant is entitled to enhance rent at 20% on Rs.2,81,286/- i.e., monthly rent of Rs.3,37,543/- which comes to Rs.40,50,560/- and estimated cost of repair works to Rs.12,20,000/-, TDS deducted for 2004-2005 to 3,45,978/-, TDS certificate issued for Rs.3,10,142/- which comes to Rs.35,836/- and total claim of the defendant worked out to

Rs.67,12,782/- after deducting the security deposit of Rs.16,87,716/-, the Plaintiff is liable to Rs.50,25,066/- for which interest thereon from 01.03.2006 to 28.02.2007 @ 12% per annum, which comes to Rs.6,00,308/-. Though the plaintiff subsequently stated that he terminated the lease and handover the key to the Managing partner Mr.Dinshaw K.Parakh, he refused to receive the same. Further, what repair work has to be carried out and quantified amount for such repair work were also not listed. Therefore, in the absence of the same, the case of the plaintiff has to be accepted and even as per the lease agreement, the plaintiff sent the termination notice Ex.P6 and on a combined reading of plaint, Ex.P2 and Ex.P6, it is seen that plaintiff has clearly proved the case. After receiving notice the defendant should have sent the reply by stating what repair work has to be carried out and ought to have given time to carry out the said work and in case of failure on the part of the plaintiff, the defendant is entitled to the amount as stated supra and the plaintiff is entitled for damages. But, in this case a perusal of the records shows that when the notice of termination was given on 21.07.2004 and expressed their willingness to vacate the premises and handed over the same on 28.10.2004, the defendant can only claim the damages not more than that. First the defendant has to give opportunity to the plaintiff to carry out the work within stipulated time and if he failed to do so, then only he is entitled to claim the amount

as per the lease deed. In this case no demand was given to the plaintiff to carry out the repair work and even as stated by the plaintiff the defendant has not specified the repair work to be carried out. In the absence of the same, the defendant is not entitled to claim the amount as mentioned in the counter claim and the plaintiff is entitled to a sum of Rs.13,52,346 /- from the defendant. Hence, the aforesaid issues are answered in favour of the plaintiff and as against the defendant.

17. Issue No.12:

All the issues are answered against the defendant and in favour of the plaintiff. Since the damages claimed by the defendant is rejected stating that the plaintiff paid a sum of Rs.16,87,716/- as Security Deposit and further the plaintiff has proved that he vacated the premises and during joint inspection the independent valuer assessed the costs of repair work for the damages caused at Rs.3,35,370/- which amount the Plaintiff is liable to pay. Therefore, after deducting a sum of Rs.3,35,370/- from the Security Deposit of a sum of Rs.16,87,716/-, the plaintiff is entitled to get the balance amount of Rs.13,52,346/- with interest @ 12% per annum from the date of plaint till the date of Judgment and after the judgment, the plaintiff is entitled to 6% per annum from the date of Judgment till the date of realisation.

18. In the result, this suit is decreed as indicated above and the counter claim filed by the defendant is dismissed. However, considering the facts and circumstances of the case, the respective parties shall bear their own costs.

01.12.2020.

Index : Yes/No
Internet : Yes/No
jas/arr

List of Witness examined on the side of the plaintiffs

C.Vasanth kumar - PW1
R.Sunilraj - PW2
Harish - PW3

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	General Power of Attorney	-----
2.	P2	Copy of Lease Agreement	22/03/2000
3.	P3	Copy of fresh certificate from Deputy Registrar of companies	3/10/2001
4.	P4	Certificate of registration given by Assistant Registrar of companies	-----
5.	P5	Copy of the order in C.P.Nos.287,288 and 289 of 2004	-----
6.	P6	Copy of letter from Plaintiff to defendant	-----

7.	P7	Letter sent by defendant to plaintiff	15/11/2004
8.	P8	Letter sent by defendant to Plaintiff	20/12/2004
9.	P9	Copy of the letter sent by plaintiff to defendant	05/01/2005
10.	P10	Letter sent by defendant to Plaintiff	12/01/2005
11.	P11	Copy of report of independent valuer Farwood Industries Limited	03/02/2005
12.	P12	Report of S.Venkatesan	-----
13.	P13	Copy of report of Ultra Interiors	-----
14.	P14	Letter from defendant to Plaintiff	02/04/2005
15.	P15	Copy of Legal Notice	28/04/2005
16.	P16	Interim reply by defendant	13/05/2005
17.	P17	Reply Notice	02/07/2005

List of Witness examined on the side of the defendant

R.Deenadayalan - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	Ex.D1	Letter of Authorisation	31/07/2013

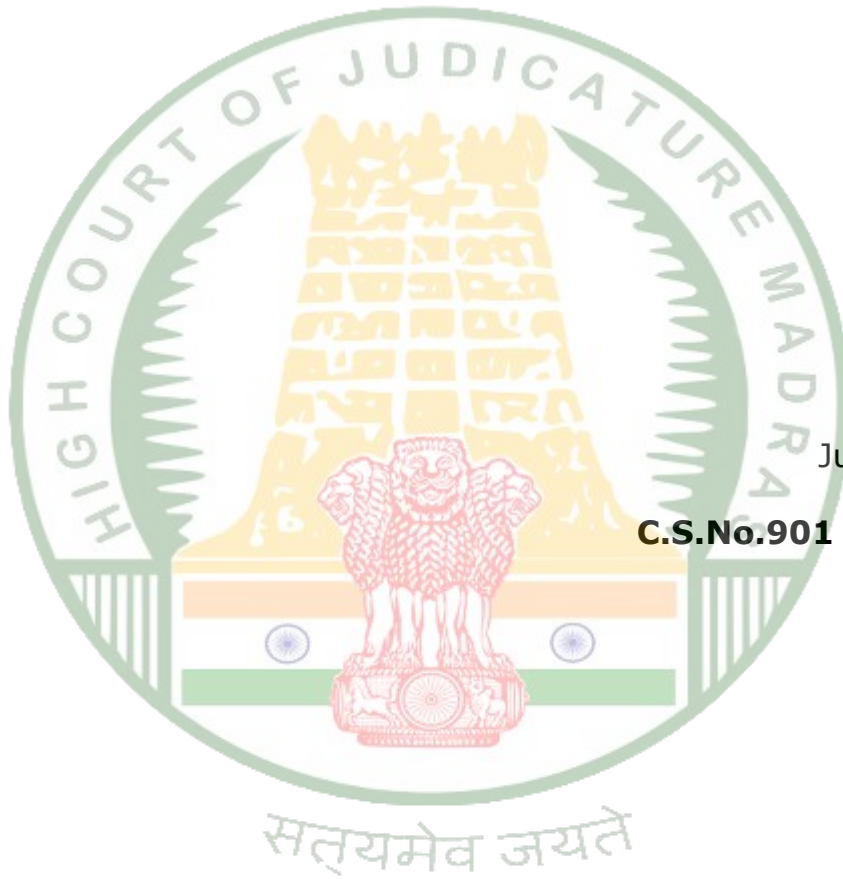
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01.12.2020.
(P.V.J.)

C.S.No.901 of 2005

P. VELMURUGAN, J.

jas/arr



Judgment in

C.S.No.901 of 2005

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01.12.2020.

**Pre Delivery Judgment
in C.S.No.901 of 2005**

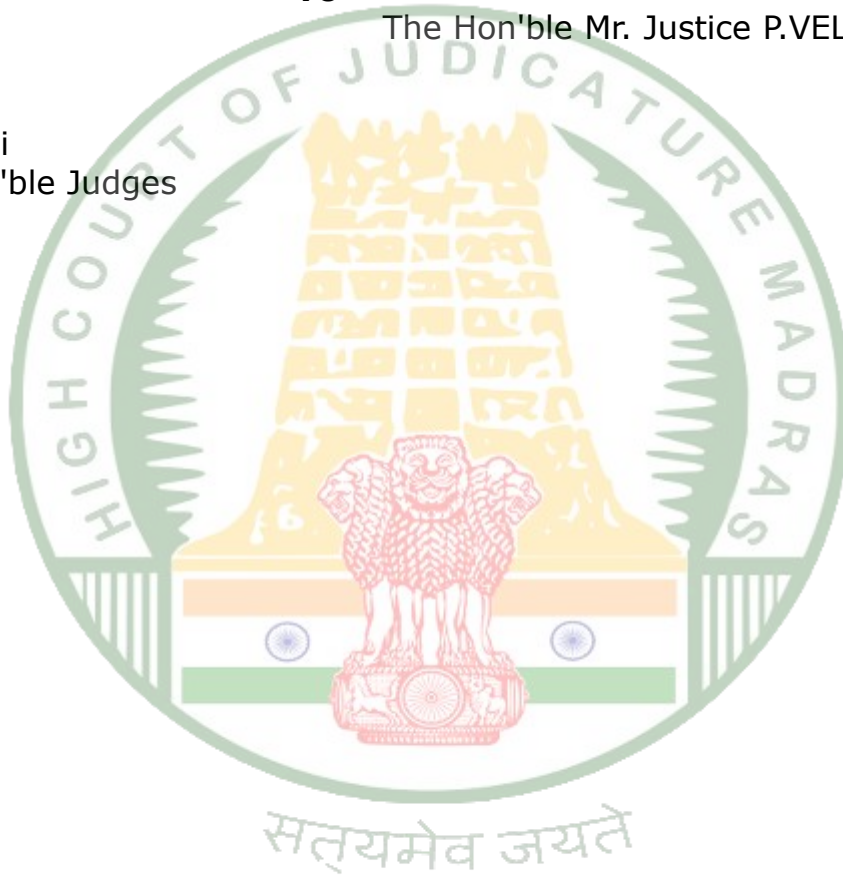
To

The Hon'ble Mr. Justice P.VELMURUGAN

From

A.R.Revathi

P.S. to Hon'ble Judges



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