

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

O.S.A.No.116 of 2020 and C.M.P.No.5343 of 2020

M/s.Exemplarr World Wide Limited
Represented by its Managing Director
Mrs.Ranjini Reddy, W/o Sri G.R.K.Reddy
39/25, Steeple Reach, Wing A, 4th Floor
Cathedral Road, Chennai 600 086, also at
Marg Swarnabhoomi, Amirta Research and
Renovation Tech Park, Seekanakuppam
Cheyyur, Kancheepuram District-603 305.Appellant

Vs.

1.G.Jawahar
2.G.AswiniRespondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1/11 of Original Side Rules/w clause 15 of letters patent to set aside the fair and decreetal order dated 05.12.2019 passed in A.No.8122 of 2019 in C.S.No.625 of 2019 on the file of this Court.

Prayer in A.No 8122/19 C.S.No.625/19: Application praying that this court be pleased to direct the Respondent/Defendant company to furnish security for the suit claim for proper adjudication.

For Appellant : Mr.D.Baskar

For Respondent : Mr.G.Vijayakumar

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

The present appeal has been filed by the appellant / tenant M/s.Exemplarr World Wide Limited, aggrieved by the order dated 05.12.2019 passed by the learned Single Judge, directing the appellant / tenant to provide security for a sum of Rs.5,00,00,000/- (Rupees Five Crores only) to the applicant on or before 20.01.2020 in terms of Order XXXVIII Rule 5 of Civil Procedure Code. The reasons assigned by the learned Single

Judge in the impugned order are quoted below for ready reference.

"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 Crores only) to the applicant on or before 20.01.2020.

2. Learned counsel for the appellant / tenant has urged before us that there was no averment made in the application filed by the lessor that the lessee who has already handed over possession of the suit premises in question to the lessor in the eviction Suit on 18.07.2016, that the lessee will go away from the jurisdiction of the Court or has no means to square up the liability towards arrears of rent, which was claimed for the period 01.05.2013 to 18.07.2016 and therefore, the order passed by the learned Single Judge under Order XXXVIII Rule 5 to provide security to the applicant is not sustainable and deserves to be interfered by this Court in the present appeal.

3. Learned counsel for the appellant relied upon the decision of the Coordinate Bench of this Court in "Global Plastics -Vs- T.K.K.N.N.Vysya Charities" reported in 2019 (2) MWN (Civil) 409, and submitted that such furnishing of the

security cannot be ordered on mere apprehension. He also submitted that in the eviction proceedings, the parties agreed that no arrears will be claimed by the lessor.

4. Learned counsel for the lessor supported the impugned order.

5. Having heard the learned counsel for the parties, we are satisfied that the order passed by the learned Single Judge is perfectly justified and meets the ends of justice in terms of Order 38 Rule 5 of C.P.C. The fact that the vacant possession of the premises in question has been handed over to the lessor on 18.07.2016 does not mean that the lessor is not entitled to claim the arrears of rent, for which purpose the present suit has been filed by the lessor before the learned Single Judge. Order 38 provides for securing the interest of the applicant even before judgment and therefore the learned Single Judge has rightly directed to provide security for a sum of Rs.5,00,00,000/- against the sum of Rs.6,64,86,276/-, claimed as arrears of rent for the period 01.05.2013 to 18.07.2016 for a property used for commercial purposes situated at Door No.141, Rajiv Gandhi Salai, Old Mahabalipuram Road, Kottivakkam, Chennai.

6. We do not find any reason to interfere with the order. The present appeal filed by lessee is devoid of any merits and the same is accordingly dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

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

+1cc to M/s.D.Baskar, Advocate, S.R.No.19847

+1cc to M/s.G.Vijayakumar, Advocate, S.R.No.20085

O.S.A.No.116 of 2020

RP(CO)
RN(28/05/2020)