

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.36437 of 2015

T.M.Ramalingam

.. Petitioner

Vs.

1. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Coimbatore Regional Office, HP House,
18/3, Big Bazaar Street,
Coimbatore-641 001.

2. S.Sathya

.. Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent to pay a sum of Rs.8,45,412/- (Eight lakhs forty five thousand four hundred and twelve) with subsequent interest to the petitioner as per Clause 3(h) lease deed dated 28.12.2005.

* * *

For Petitioner : Mr.K.Sudhakar

For Respondents: Mr.O.R.Santhanakrishnan for R1
Mr.C.Munusamy for R2

O R D E R

The petitioner seeks a direction to the first respondent to pay arrears of rent.

2. There was a lease deed between the petitioner and the second respondent dated 30.11.2005 registered as document number 4974 of 2005 for a period of 29 years. On the strength of the same, the second respondent entered into an agreement of lease with the first respondent on 28.12.2005 (mentioned as 24.12.2005 in some pages and 26.12.2005 in some other pages), registered as document No.254 of 2006 for the same period, i.e., 29 years

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commencing from 01.11.2005, on certain terms, including the monthly rental with periodical enhancement till 31.10.2034. The second respondent failed to pay the rent for certain period, that is, August 2010, July 2011 and from 01.04.2012 to 30.09.2013. Thereafter, the second respondent issued a cheque bearing number 289158 for a sum of Rs.14,885/-, which was, on deposit for collection, returned with an endorsement funds insufficient.

3. The petitioner also claimed that a sum of Rs.96,693/- claimed to have been deducted towards TDS charges was not deposited with the Income Tax Department. The petitioner alleged that he sought for the first respondent to pay the rent in terms of class 3(h) of the lease agreement. Since there was no proper response, he issued a legal notice dated 10.03.2015 to the first respondent. The petitioner claimed that the arrears of rent mounted to Rs.8,45,412/- and he also stated that he had given a representation dated 20.10.2015 in this regard. According to the petitioner, since there is no response from the first respondent, he had instituted the instant writ petition with the aforesaid prayer.

4. Denying the allegations and the claim of the petitioner, the first respondent filed a counter affidavit dated 27.01.2016 stating that the first respondent, on the basis of the letter of the petitioner dated 25.12.2011 about the non-receipt of the rental amount from the second respondent, invoked clause 3(h) of the lease agreement dated 28.12.2005 and resumed paying the rent to the petitioner from 01.10.2013 onwards and it had also sent a letter dated 06.06.2014 to the petitioner in this regard informing that a sum of Rs.1,48,842/- has been transferred to the petitioner's account towards rent for the period from 01.10.2013 to 31.05.2014. The first respondent also advised the petitioner to take up the issue of arrears of rent with the second respondent for the earlier period, as it had no outstanding to the second respondent. The first respondent Corporation also sent a suitable reply on 04.11.2005 to the representation of the petitioner dated 20.12.2015 and hence, the petitioner could have no grievance against the first respondent and thus, the first respondent sought for dismissal of this writ petition.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. There is no dispute that the petitioner is the head lessor ; the second respondent is the lessee ; and the first respondent is the sub lessee. At the outset, it is to be stated

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that the first respondent owes no amount to either the petitioner or the second respondent as arrears of rent. On the other hand, the second respondent failed to discharge her liability to the petitioner and was in arrears of rent for certain period, i.e., August 2010, July 2011 and from 01.04.2012 to 30.09.2013. Admittedly, the second respondent issued the cheque for a sum of Rs.14,885/-, which was returned with the endorsement "funds insufficient", but there is no record to show that the petitioner had initiated any criminal prosecution against the second respondent under the Negotiable Instruments Act, 1881. Further, the issuance of the cheque itself goes to show that the second respondent admitted the liability and also the receipt of rent from the first respondent.

7. As stated above, though the rent for the months of August 2010 and July 2011 were not paid the petitioner kept quiet for sometime, without taking any action and only issued the notice to the first respondent on 25.12.2011, a copy of which is not produced before this Court conveniently by the petitioner. Even thereafter, the petitioner had chosen to send another notice to the first respondent only on 10.03.2015 seeking the arrears of rent for the default committed by the second respondent, which was followed by a rejoinder notice dated 11.04.2015. The petitioner himself sent another representation on 20.10.2015.

8. At this juncture, it is relevant to state that clause III 6 of the agreement dated 30.11.2005, which was entered into between the petitioner and the second respondent, was suitably incorporated as clause 3(h) in the lease agreement dated 28.12.2005 entered by the first respondent with the second respondent, on the strength of the former lease deed and the said Clause reads as follows :

"As per Clause III-Point 6 in Page 10 in the lease deed doc No.4974 of 2005 dated 30/11/2005 (hereinafter called Head Lease) between Mr.T.M.Ramalingam (the head lessor) and Ms.S.Sathya (the lessee), the said lessee covenanted that the lease hold rights of sub-lessee, M/s.Hindustan Petroleum Corporation Limited shall not be taken away in case of any failure to comply with any terms and conditions of the head lease by the lessee therein and in case of such a contingency, the sub-lessee (M/s.Hindustan Petroleum Corporation Limited) shall step into the shoes of the lessee therein by paying the rentals agreed to be paid by the lessee to the head lessor. Arrears of rentals, if any, payable by the lessor herein (lessee in the head lease) to the head lessor and so paid by the sub-

lessee to the head lessor, shall be recovered by the sub-lessee from the lessor herein (lessee in the head lease) by adjusting the moneys due and payable, if any, and/of by making specific claim against the said lessor herein."

9. However, taking note of the default on the part of the second respondent, the first respondent invoked clause 3(h) of the agreement dated 28.12.2005 and commenced to pay the arrears of rent directly from 01.10.2013, which was also communicated to the petitioner vide letter dated 06.06.2014 by the first respondent and the first respondent has categorically stated the same in the counter-affidavit. In the counter-affidavit, the first respondent also informed the second respondent to work out his remedies in the manner known to law, as per his contractual obligations with the second respondent and not against the first respondent.

10. From the above, it is clear that the first respondent could not have been mulcted with the liability to pay the arrears of rent, which was otherwise paid to the second respondent and it is open to the petitioner to redress his grievance with the second respondent in accordance with law.

11. In the result, this writ petition fails and the same is liable to be dismissed and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Coimbatore Regional Office, HP House,
18/3, Big Bazaar Street,
Coimbatore-641 001.

MG(CO)
CB(19/10/2020)

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