

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.533 of 2018
and
C.M.P.No.13456 of 2018

M.Ramalingam

..Appellant/Defendant

vs.

P.Jhansi

..Respondent/Plaintiff

Appeal filed under Section 96 of of the Civil Procedure Code read with Order XLI Rule 1 of the C.P.C., against the decree and judgment dated 31.10.2017 passed in O.S.No.10834/2010 by the Learned VII, Additional Judge, City Civil Court, Chennai, partly decreeing the said suit, filed by the respondent herein praying for recovery of money and damages and praying to setaside the said decree and judgment.

For Appellant : Mr.G.Saravanan

For Respondent : M/s.Thanjai P.N.Chizhian

J U D G M E N T

The appeal suit is directed against the judgment and decree passed in O.S.No.10834 of 2010 dated 31.10.2017.

2. The defendant is the appellant in the present suit and the respondent plaintiff instituted a suit for recovery of a sum of Rs.10,87,500/- with interest at the rate of 12% per annum from the date of plaint till the date of realization and a sum of Rs.10,00,000/- towards damages and for costs.

3. The parties are referred as per the ranking in the Trial Court.

4. The facts in brief set out in the plaint are as follows:

The plaintiff is the proprietrix of J.S.P Automotive a dealer for two wheeler vehicles, sales and service in the city. The plaintiff states that for the purpose of opening a new service centre in Kilpauk area under the name J.S.P.Honda

Service Centre, for which the plaintiff got the dealership signed a contract with Honda Motor Cycle and Scooters India Private Limited. The plaintiff was in search of suitable place for starting the business in Kilpauk area, Chennai and after receiving information that the land and a small superstructure thereon at Door No.68/155, Millers Road, Kilpauk, Chennai - 600 010 was available for such commercial use, the plaintiff met the owner of the premises, the defendant herein, through a common contract. The defendant agreed to lease out the said land and building after construction according to the requirement and specification of the plaintiff and suitable for running the showroom/service centre. The defendant agreed to lease out 1300 sq.ft constructed area in the ground floor and 1500 sq.ft in the first floor and 600 sq.ft in the second floor with all amenities, fixtures and fittings. It was further agreed between the plaintiff and the defendant that the owner shall complete the construction within four months from 5.6.2008 when an unregistered agreement was executed by them and the lease period shall be five years from the date of delivery of portion of the building and the monthly rent shall be Rs.95,000/- and that will be increased to 10% after two years and the plaintiff agreed to pay Rs.15,00,000/- as advance and security deposit. The plaintiff paid Rs.10,00,000/- towards advance to the defendant and the plaintiff is ready to pay the balance Rs.5,00,000/- at the time of completing the construction within four months from 5.6.2008. The defendant was purposely delaying the construction with a motive and the plaintiff could not commence the business on the date fixed and was suffering heavy loss. On the other hand, the defendant having utilized the sum of Rs.10,00,000/- paid by the plaintiff for construction of the building put up a major portion of the building and had also obtained a lease deed from the plaintiff in and by which the rent was fixed at Rs.95,000/- per month and the defendant had managed to obtain a loan for Rs.17 lakhs from the Karur Vysys Bank and thus benefited himself at the expense of the plaintiff leaving the plaintiff in lurch. The defendant, it is learnt from reliable sources and from the contents of his lawyers reply notice to the plaintiff's legal notice dated 17.2.2009 that he has no idea or interest in completing the work required which was formed the basis of the agreement and he has cleverly obtained a loan of Rs.17,00,000/- from the bank showing the said lease agreement and he is now searching for another tenant for a higher rent and also not coming forward to register the lease deed. The plaintiff states that if the defendant had completed the construction and made it ready for occupation, the plaintiff would have opened the showroom and service centre on time and would have earned not less than Rs.3,00,000/- per month and because of the delaying tactics played by the defendant, the plaintiff was incurring heavy loss. Therefore, the plaintiff issued a lawyer notice dated 17.2.2009 pointing out in detail

the unfinished work in the building and pressing the defendant to complete all the unfinished work and deliver possession of the building for immediate occupation. The plaintiff was always ready and willing to perform the agreement and take the tenancy, the defendant was deliberately evading to perform his part of the agreement and became avaricious and was arranging to lease out the building to another party for a higher rent. The plaintiff states that in response to her notice dated 17.2.2009, the defendant sent a reply on 27.2.2009 containing full of false allegations. Hence, this suit for recovery of a sum of Rs.10,87,500/- with interest at 12% per annum from the date of plaint till payment and a sum of Rs.10,00,000/- towards damages and for costs.

5. The appellant defendant denied the allegations and disputed the contentions set out in the plaint and filed the written statement as under:

The defendant submits that the plaintiff has cunningly suppressed a material fact in the plaint that she has already filed two suits in O.S.No.1863/2009 on the file of XIII Assistant Judge, and O.S.No.4877/2009 on the file of II Assistant Judge. The defendant states that during May 2008, he planned to put up construction in the land belonging to him and situated in Millers Road and at that time, the plaintiff approached him and represented that she was in need of the property for starting service centre for Honda two wheelers and convinced the defendant with her sweet words that she would take care of the entire constructions through her engineer and also assured to make an advance payment of Rs.15,00,000/- for lease of the property for rent. The defendant believed the words of the plaintiff and subsequently, the defendant was summoned to the office of the plaintiff at Anna Nagar and was made to believe that the plaintiff would pay a monthly rent of Rs.95,000/- and make Rs.15,00,000/- as advance immediately. The defendant who has studied only upto V standard that too in a Tamil Medium and who is not conversant with English, was made to put signature in an agreement which was already made ready by the plaintiff by that time. Since the defendant did not find any reason to suspect the bonafide of the plaintiff, he put his signature without knowing and understanding the contents of the said agreement. Immediately after a week, the plaintiff showed her true colour by stating to dictate terms to the defendant without even making any advance much less Rs.15,00,000/- as agreed by her and her husband Mr.S.Ponraj. Only after much persuasion, the plaintiff started to pay the advance amount in piecemeal manner causing much hardship to the defendant in proceeding with the construction. The plaintiff also, with some ulterior motive ill advised the engineer to slow down the work. Since the said engineer is the plaintiff's man, he sincerely followed the plaintiff's advice and as a result, there was

complete deterioration in his performance. It is further stated that the defendant never agreed to put up construction in the 2nd floor as there is no sanction for the same. This is also known to the plaintiff as she is in possession of the sanctioned building plan. This being so the said covenant has been introduced by the plaintiff taking advantage of the illiteracy of the defendant. Whatever it may be this itself will prove that the agreement is void as the said covenant is impossible of performance and also on the reason that the contract is vitiated by fraud and misrepresentation on the part of the plaintiff. The defendant states that he never agreed to execute the construction work as described by the plaintiff in the plaint. Hence, the defendant denies the allegations with regard to the so called incompleteness of certain works. All of them are fertile imaginations of the plaintiff. It is only the defendant, who is put to hardship and not the plaintiff. The plaintiff is only benefited as she has not paid even a single pie towards rent. A copy of the plaintiff's notice was sent to the bankers of the defendant and the same clearly proves the evil intention of the plaintiff. In fact, it amounts to defamation as the plaintiff has intended to tarnish the image of the defendant in the eyes of third parties. Hence, the plaintiff is liable to pay damages of Rs.10,00,000/- which is appropriated from the amount paid by the plaintiff to the defendant. The contract is null and void, the same is not binding on the defendant. The defendant further submits that there was no necessity for him to enter into any lease agreement without any one even before the premises became ready for occupation. The reason for entering into lease agreement is only the promise made by the plaintiff to make the advance security deposit of Rs.15,00,000/-. But the plaintiff, never made the payment as agreed by her and her husband and paid the amounts as and when she wished, that too, after making the defendant run to her place atleast ten times for getting a single payment. The plaintiff deliberately delayed the payment, that too without making the advance security deposit in one lump sum, with some ulterior motive, only to put the defendant in a corner as he was to meet the construction costs and liable to pay huge installments to the bank towards repayment of the loan and thereby to purchase the property from the defendant at a throw away price. This is evident from the fact that the plaintiff, by filing two previous suits on vexatious and false grounds and making interlocutory applications for some untenable reliefs with an evil intention to see that the defendant does not enjoy his property. Hence, there is no bonafide in the claim made by the plaintiff. No prudent man will be interested in keeping the premises vacant without getting any rent. Hence, if at all the plaintiff's intention was genuine, she could have occupied the property which was ready by then and should have started paying the rent. The plaintiff is not entitled to speak about the loan as it is between the bank and the defendant. The

allegations in para 7 has been made only on presumption and surmises. It was only the defendant who was put to loss and hardship by the illegal conduct of the plaintiff. The allegations contained in para 8 and 9 of the plaint do not deserve any reply as they are borne out by records. The plaintiff has only repeated her false allegation with a view to enrich herself by illegal means. The defendant submits that the so called tripartite agreement referred by the plaintiff in para 10 of the plaint was only to ensure the repaying capacity of the defendant to the bank. It has nothing to do with the voidability of the lease agreement in question. The question of committing a "serious breach of contract" does not arise as the agreement itself is void on various reasons as narrated above. The allegation in support of the claim for damages are also false. It was only the defendant, who was put to severe mental agony and loss of reputation. Further, the defendant has made special nature of construction in the property so as to cater to the need of the plaintiff like ramp to the 1st floor, separate staircase, vertical pillar less hall, big compound wall embedded with granite stone with big gates, costly flooring tiles, front elevation for show room, high roof level, special wiring and numerous electrical points and separate pipeline and overhead tank for water washing etc., Only because of that, the defendant had to incur heavy construction costs. All the said works are not needed for any other tenant and the defendant has to demolish the ramp and remodel the structure for which he has to incur heavy expenditure there. Hence, it is the plaintiff who has to pay damages to the defendant and it is not otherwise. The defendant is not liable to pay damages to the plaintiff and even the security deposit has to be adjusted towards damages for loss of reputation suffered by the illegal conduct of the plaintiff in having sent a copy of the lawyer's notice to the bankers of the defendant, and towards remodelling of the property. Hence, the defendant is not liable to pay any amount to the plaintiff. In any event, the defendant is not liable to pay interest. There is no cause of action for the suit and the suit is vexatious one and it is liable to be dismissed.

6. The trial Court framed the issues as to whether the plaintiff is entitled for a sum of Rs.10,00,000/- with interest at the rate of 12% per annum from the date of plaint till payment; whether the plaintiff is entitled for a another sum of Rs.10,00,000/- towards damages and to what other relief the plaintiff is entitled for.

7. On the side of the plaintiff, the plaintiff herself was examined as P.W.1 and Ex.A1 to Ex.A10 were marked. On the side of the defendant, he was examined as D.W.1 and Ex.B1 and B.2 were marked.

8. The trial Court considered the documents as well as the evidences placed by the parties to the lis and accordingly, made a finding with reference to Issue No.1 that the relief asked for in each of the suits are different and therefore, the cause of action is also different and accordingly, the contention of the appellant defendant that the plaintiff instituted the suit without getting permission of the Court to file a fresh suit is unacceptable. The plaintiff could able to prove that she had entered into an unregistered agreement with the defendant on her agreeing to pay an advance amount of Rs.15,00,000/- and to occupy the vacant land with building constructed thereon within 4 months to suit auto mobile service centre and in pursuance of the agreement, she paid Rs.10,00,000/- on various dates, the vouchers for payment of Rs.10,00,000/- are marked as Ex.A1 to Ex.A6. From Ex.A1 to Ex.A6, it is evident that on 28.05.2008, Rs.1,00,000/-, on 07.07.2008, Rs.3,00,000/-, on 22.07.2008, Rs.3,00,000/-, on 26.09.2008, Rs.1,00,000/-, on 26.09.2008, Rs.1,00,000/- and on 15.10.2008, Rs.1,00,000/- had been paid through cheques. The payments regarding a sum of Rs.10,00,000/- as well as the execution of the unregistered agreement are admitted by the defendant. Ex.A7 is the notice given by the plaintiff to defendant, calling upon him to co-operate in completing the construction work and the reply notice given by the defendant's counsel is marked as Ex.A8 and the rejoinder given by the plaintiff marked as Ex.A9 and photographs of the building is marked as Ex.A10.

9. Though the appellant defendant contended that the defendant was made to put her signature without knowing the contents, all the clauses stated by the plaintiff are almost admitted by the defendant also. Though the defendant agreed to put up construction to suit her auto mobile service centre business for which she is having a dealership signed by the Honda Motor Cycles Private Limited, the defendant deliberately did not expedite the work of construction and purposely left the building without completing the construction work and it is further stated as per the agreement, construction is to be completed within four months period from the date of entering of the unregistered document. However, the defendant did not perform his part of the agreement within the time limited agreed, which resulted in the plaintiff losing the dealership from the Honda Motor Cycles Private Limited. However, the defendant has stated that the suit itself is not maintainable for the reason that the plaintiff already filed two suits. The trial Court found that in respect of the other two suits, the cause of action is entirely different and with reference to the present suit, the cause of action is a fresh one and therefore, the suit can be entertained.

10. As far as Issue No.2 is concerned, the trial Court found that the plaintiff contended that by utilizing the advance amount of Rs.10,00,000/- and also the lease deed entered into between the plaintiff and the defendant, the defendant was able to get a loan of Rs.17,00,000/-. However, he did not comply with the requirements, which was agreed by him in the unregistered lease agreement. Though the defendant benefited by the agreement, he made the plaintiff to suffer heavy damages by not performing his part of the agreement. Thus, the plaintiff claimed that she is entitled for the damages to the tune of Rs.10,00,000/-. It is contended that she incurred nearly Rs.20,00,000/- and however, she has registered her claim before the trial Court as Rs.10,00,000/- for damages.

11. With reference to the pleadings in this regard by the plaintiff and the defendant, the trial Court found that absolutely there is no evidence to prove the damages incurred by the plaintiff. In the absence of any such evidences to establish the actual damages, the trial Court is right in arriving a conclusion that the plaintiff is not entitled for the damages.

12. With reference to Issue No.3, the trial Court decreed the suit in part with costs, directing the defendant to pay a sum of Rs.10,87,500/- towards rental advance with interest at the rate of 12% per annum from the date of plaint till the date of realization.

13. The learned counsel appearing on behalf of the appellant mainly contended that the defendant cannot read English and the agreement was prepared in English. Therefore, the defendant was unaware of certain conditions and it was not explained at the time of signing. Further, it is contended that the defendant had taken all the efforts to complete the building and it is because of the plaintiff, he could not able to finish the building within the time limit and this apart, he constructed the building to suit the needs of the plaintiff as it was agreed that the plaintiff has proposed to conduct an auto mobile service centre in the building. It is stated that the building itself is constructed and suit the needs of the plaintiff and the defendant had invested a huge amount for the purpose of running the auto mobile business and now, it would be very difficult for the appellant defendant to find out a suitable tenant and he sustained loss and therefore, the judgment and decree is liable to be set aside.

14. Per contra, the learned counsel appearing on behalf of the respondent plaintiff reiterated that there is terms and conditions of the unregistered lease agreement is unambiguous and even during the cross-examination before the trial Court, the appellant defendant had agreed the conditions and therefore,

there is no reason to interfere with the findings of the trial Court. In fact, the trial Court arrived a conclusion that the appellant defendant had violated his part of the contracted as per the unregistered lease agreement and accordingly, directed to refund the advance amount paid by the respondent plaintiff.

15. This Court is of the considered opinion that the unregistered lease agreement is admitted by the parties. The advance amount of Rs.10,00,000/- paid by the respondent plaintiff is to the appellant defendant is also admitted. The construction was unable to be completed within the stipulated time. Therefore, the plaintiff could not able to commence the auto mobile business as per her proposal and she could able to establish that because of the fact that the building was not ready within the time limit. She lost her dealership with Honda Motor Cycles Private Limited. When these facts are clearly established before the trial Court and the cause of action for the present suit is entirely different and independent, the trial Court has not committed any perversity or infirmity with reference to the decree passed. The trial Court further rightly rejected the claim for damages. When the contract itself has not been fructified and the appellant defendant was unable to complete the building within the time limit and the respondent plaintiff also has not commenced the business, the trial Court arrived a conclusion that the respondent plaintiff is not entitled for the damages.

16. This being the factum established, this Court do not find any perversity or infirmity in respect of the decision arrived and such a decision is arrived in consonance with the documents and evidences placed by the respective parties before the trial Court.

17. However, the trial Court committed an error in respect of the refund of advance amount along with the interest. The Principal amount is Rs.10,00,000/- (Rupees Ten Lakhs only). The suit was instituted to recover a sum of Rs.10,87,500/- (Rupees Ten Lakhs Eighty Seven Thousand and Five Hundred only) along with the interest as on the date of institution of the suit. In detail, as on the date of plaint, a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) was the Principal amount and Rs.87,500/- (Rupees Eighty Seven Thousand and Five Hundred only) was the interest accrued. Therefore, the further interest from the date of plaint to till the date of decree, must be for the Principal amount of Rs.10,00,000/- and not for Rs.10,87,500/- as ordered by the trial Court. Thus, the same is to be corrected. Accordingly, the appellant / defendant is directed to pay the plaint amount of Rs.10,87,500/- (Rupees Ten Lakhs Eighty Seven Thousand and Five Hundred only) and pay interest for the Principal amount of Rs.10,00,000/- (Rupees Ten Lakhs only) at the rate of 12% per

annum from the date of plaint till the date of realisation.

18. With these modifications, the judgment and decree dated 31.10.2017 passed in O.S.No.10834 of 2010 is confirmed. Consequently, A.S.No.533 of 2018 stands allowed in part. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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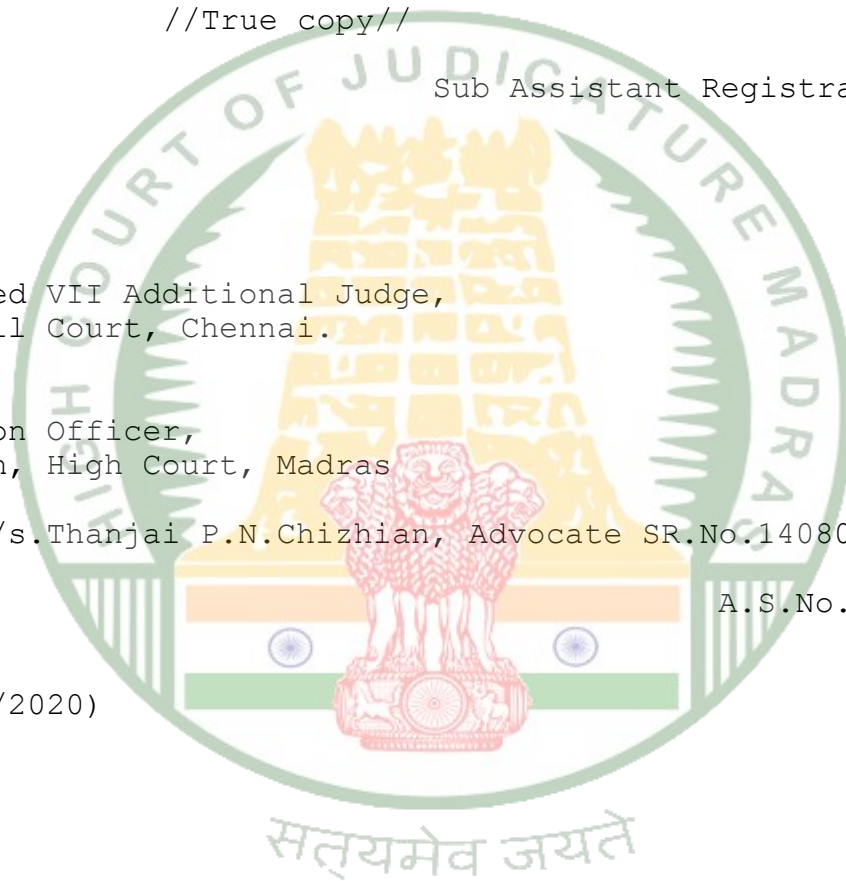
To
The Learned VII Additional Judge,
City Civil Court, Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to M/s.Thanjai P.N.Chizhian, Advocate SR.No.14080

A.S.No.533 of 2018

SVI (CO)
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