

<i>Reserved on</i>	<i>23-01-2019</i>
<i>Pronounced on</i>	<i>30-01-2020</i>

**A.No.2656 of 2017
in C.S.No.916 of 2008**

R.SURESH KUMAR, J

This application has been filed for a prayer to fix the damages payable by the respondents / defendants in respect of the suit property in C.S.No.916 of 2008 from 01.06.2008 to 16.11.2016 (102 months) at Rs.3,00,000/- per month and after the decree, i.e., from 17.11.2016 onwards till delivery of possession at the rate of Rs.9,50,000/- per month.

2. The following facts give rise to filing of this application :

(i) The applicant / plaintiff filed the suit in C.S.No.916 of 2008 before this Court for a Judgment and Decree to recover the possession of the suit schedule property from the respondents / defendants and also seeking a decree against the defendants to pay a sum of Rs.9,00,000/- as damages for the illegal use and occupation of the land in the plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai - 600 007, commencing from 01.06.2008 at the rate of Rs.3,00,000/- per month and to be paid till the possession is handed over by the defendants to the plaintiff.

(ii) After trial, the final Judgment and Decree was made by this Court on 16.11.2016, thereby the suit was decreed in respect of recovery of possession and other related issues. In so far as the issue relating to recovery of damages are concerned, this Court has framed Issue Nos. 3 and 4, which are also answered in favour of the plaintiff, i.e., the applicant herein. To appreciate the said aspect, the Judgment of this Court, dated 16.11.2016 in respect of Issue Nos.3 and 4, i.e., damages at para no.38 of the Judgment is extracted hereunder :

"Issue No.2 pertaining to entitlement of plaintiff for possession is also answered against the defendants and in favour of the plaintiff. Defendants are liable to vacate and hand over vacant possession of the demised land. Issue No.3 and 4 pertaining to damages are partially answered in favour of the plaintiff to the extent that the plaintiffs are entitled to damages but they have to establish the quantum of damages by letting in oral and documentary evidence by taking out a separate application. Issue No.5 is answered holding that the defendants have paid arrears of rent for three years as per submissions made at the Bar."

(iii) Thus the learned Judge by passing the Judgment and Decree, has answered Issue Nos.3 and 4, pertaining to damages, by holding that, such issue for damages were partially answered in favour of the plaintiff to the extent that the plaintiff was entitled to damages.

(iv) However the learned Judge has not quantified the damages to be recovered from the defendants and in this regard, the learned Judge has said that, the plaintiff has to establish the quantum of damages by letting in oral and documentary evidence by taking out a separate application.

(v) Therefore pursuant to the said part of the Judgment and Decree referred to above in the suit, in order to establish the quantum of damages to be recovered from the respondents / defendants, the applicant / plaintiff has come out with the present application with the aforesaid prayer.

3. This application came up for hearing before a learned Judge on 20.04.2018, where the learned Judge has passed the following order :

"The present application has been filed seeking for fixing damages payable by the respondents/defendants as per the decree passed by this Court in C.S.No.916 of 2008 from 01.06.2008 to 16.11.2016.

2. According to the plaintiff, he has filed the suit against the respondents/defendants for the following reliefs :

(i) to quit and hand over vacant possession to the plaintiff of the land in the plaintiff's premises, bearing No.3, Ritherdon Road, Vepery, Chennai and morefully described in the schedule ;

(ii) to pay to the plaintiff a sum of Rs.27,000/- towards arrears of rent for the years 2005, 2006 and 2007 @ Rs.9,000/- per annum, in respect of the land in the plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai - 7.

(iii) to pay to the plaintiff a sum of Rs.9,00,000/- as damages for the illegal use and occupation of the land in the plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai - 600 007, commencing from 01.06.2008 onwards, @ Rs.3,00,000/- per month and to be paid till the possession is handed over by the defendants to the plaintiff :

(iv) to pass an order of mandatory injunction directing the defendants to remove any buildings, errections, pumps, installations, pipe-lines or any other fixtures/structures erected or placed on the

land in the plaintiff's premises bearing No.3, Ritherdon Road, Vepery, Chennai -7 and other reliefs.

3. This Court, by judgment dated 16.11.2016 decreed the suit.

4. As per Clause 2 of the decree, the quantum of damages has to be decided by letting in oral and documentary evidence by taking out a separate application. Hence, the present application has been filed by the plaintiff.

5. The learned counsel appearing for the plaintiff submitted that for deciding the quantum of damages, the matter may be posted before the learned Master for taking evidence. The learned counsel appearing for the defendants has no objection for the same.

6. In the above circumstances, Registry is directed to send the matter before the learned Additional Master -II for recording evidence. The learned Additional Master-II is directed to complete the recording of evidence on or before 31.07.2018.

7. The learned counsel for the plaintiff submitted that since he did not seek any relief against the second respondent/second defendant, he has given up the second respondent and he has also made an endorsement to that effect. Hence, the second respondent is given up in the present application."

4. Accordingly, the application has been referred to the learned Master for recording evidence towards establishment of the quantum of the damages recoverable from the respondents / defendants by the applicant / plaintiff.

5. Accordingly on behalf of the applicant / plaintiff, P.W.1, one Mr.H.E.Wilkins filed proof affidavit and accordingly, he was cross-examined by the respondents / defendants and his deposition during cross-examination was recorded on 14.06.2018.

6. Except the said oral evidence of P.W.1, no other oral evidence was let in on behalf of the applicant / plaintiff.

7. On behalf of the respondents / defendants, i.e., first respondent / first defendant, a memo, dated 02.07.2018 was filed, where, the first respondent / first defendant has stated that, it has no oral evidence to be let in in this application, therefore accordingly, the evidence of both sides were closed.

8. It is pertinent to be noted that, no documentary evidence had been filed by both sides especially the applicant / plaintiff in support of its claim to quantify the damages as has been claimed by it.

9. After having completed the recording of evidence, the application has been posted before this Court for hearing. On behalf of the applicant / plaintiff, Mr.N.D.Bahety and for the first respondent / first defendant Mr.O.R.Santhanakrishnan made their submissions.

10. I have considered the said submissions made by the learned counsel for both sides and I have perused the materials placed before this Court.

11. On the side of the applicant / plaintiff, they very much rely upon the oral evidence let in on their behalf by P.W.1. Therefore in order to appreciate the said oral evidence of P.W.1, dated 14.06.2018, the relevant portion of such evidence of P.W.1 in the cross-examination is extracted hereunder:

As of now, I am not able to recollect what documents I have seen. I have given up D2, Prasad Agencies, in the present application. I do not remember whether any evidence was given by D1, Corporation. (Witness corrects himself and states that he does not remember the details of the evidence given by D1). I have given the figures etc., but I have not filed documents for the same. It is true that I have

claimed Rs.3 lakhs as damages, per month, till the case is decreed, which was on 16.11.2016. When the court closed the E.P., possession was handed over; I do not remember the exact date. It is true that I have not asked for future damages in the plaint, but I have asked for the same only in the application. Witness adds : as long as the stay they are bound to pay. It is true that I have not produced any document to support the guideline value of Rs.2600/- per Sq.ft. in 2008. I have not produced any document to show that annual value works out to Rs.37,12,800/-, or that the monthly rent works out to Rs.3,09,40,000/- per month. I have personal knowledge of what I have stated in para 5 of the proof affidavit. It is true that D1 Bharat Petroleum has not stated that the market value is Rs.70 lakhs per ground, as stated by Prasad Agencies by DW1. I have not filed any document in this case to support my stand that Pandey Paan House is paying Rs.6500/- per month for occupation for 96 sq.ft. It is true that the claim of rent of Rs.8,50,729/- per month for 11,900 sq.ft is not based on any document, but I claimed so in my proof affidavit. It is true that no evidence is filed to prove that in 2016, the guideline value

Rs.8,000/- per sq.ft. I do not agree with your suggestion that the claim of Rs.1,14,24,000/- (annual value) and the monthly rent value of Rs.9,50,000/- is not supported by any proof. (witness given his deposition dated 06.12.2012) it is true that I have spoken about Pandey Paan House. But it is not my tenant. Prasad Agencies have deposed in the evidence that Pandey Paan House was paying the said amount as rent every month. It is true that in para-7 I have not stated from who, information has been got. I do not agree with your suggestion that, due to non filing of any document, I am not entitled to the damages claimed in para 9 of my proof affidavit.

12. The very same cross-examination, i.e., the evidence let in by P.W.1 has been heavily relied upon by the learned counsel appearing for the first respondent / first defendant and in fact, in their counter, in this application, they simply reproduced the cross-examination of P.W.1 and reiterated that, since the P.W.1 himself has stated that, he has not filed any document in support of the claim with regard to the guideline value or market value of the property in question, for the purpose of calculating the damages for mesne profit, the basis on

which the applicant / plaintiff claimed the damages by quantifying it in this application is shattered and therefore the said claim cannot be made, as the quantum has not been established by the applicant / plaintiff, the learned counsel for the first respondent / first defendant contended.

13. However the learned counsel appearing for the applicant / plaintiff has submitted that, based on the guideline value only the annual rental has been calculated and the period on which the first respondent / first defendant has been in possession of the suit property, they have to pay the damages as in this regard, the Court has already decreed the suit declaring that, the applicant / plaintiff is entitled to get damages from the first respondent / first defendant.

14. So long as the first respondent / first defendant had been in possession and till it hands over the vacant possession of the property, they are liable to pay the damages which has already been calculated and quantified by the applicant / plaintiff based on the guideline value, therefore the said amount as claimed by the applicant / plaintiff in this application shall be paid by the first respondent / first defendant, the learned counsel for the applicant / plaintiff contended.

15. In support of their contentions, though learned counsel appearing for both sides have relied upon some of the decisions of the Court of law, I am not going to refer to those decisions for coming to the conclusion on the issue raised in this application.

16. The reason being that, in so far as the entitlement of getting compensation from the defendants, though it had been confirmed and upheld by this Court, in the decree referred to above, the learned Judge has specifically directed the applicant / plaintiff to establish the quantum of damages by letting in oral and documentary evidence by taking out a separate application.

17. In this regard, it is to be noted that, though oral evidence had been let in on behalf of the applicant / plaintiff, it is their own admission on the part of the applicant / plaintiff, i.e., P.W.1, while cross-examination that, no document whatsoever has been filed in support of his oral contention.

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18. As to the quantum of damages, the very basis as claimed by the applicant / plaintiff is the guideline value and even the guideline value either in the year 2008 or in the year 2016, i.e., Rs.2,600/- per

sq.ft in 2008 and Rs.8,000/- per sq.ft in 2016 is not supported by any documentary evidence.

19. It is further to be noted that, if at all these quantum of Rs.2,600/- or Rs.8,000/- in the year 2008 and 2016 respectively in respect of the suit property as a guideline value per sq.ft, is the basis for arrival of annual rental, certainly that figure could have been arrived by the applicant / plaintiff only based on some documents. The guideline values for the properties are declared and published from time to time by the Governmental authorities of the concerned department and such a declaration is nothing but a public document and therefore in this regard, the applicant / plaintiff could have very well obtained those documents and produced before this Court.

20. It is further to be noted that, this Court in the decree has specifically directed the applicant / plaintiff to establish the quantum of damages by letting in oral and documentary evidence by taking out a separate application and for the said purpose, the present application has been moved by the applicant / plaintiff and for the purpose of recording such evidence, it was posted before the learned Master. The applicant / plaintiff, though has chosen to let in oral evidence through

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P.W.1, what has been stated in the examination in chief by way of proof affidavit has been completely shattered by the evidence of the very same P.W.1 in the cross-examination, as he candidly admitted that, no documents whatsoever has been produced by the applicant / plaintiff side in support of the guideline value of the property in question both in the year 2008 and in the year 2016.

21. Therefore based on such oral evidence, that too by way of P.W.1, this Court cannot come to a conclusion that, the amount claimed by the applicant / plaintiff can be the actual quantum to be fixed as damages recoverable from the first respondent / first defendant.

22. But at the same time, the first respondent / first defendant cannot escape from the clutches of law without paying any damages to the applicant / plaintiff for the use and occupation of the suit schedule property even after termination of the lease, since the suit has been decreed in this regard.

23. In this context, it is further to be noted that, there has been a calculation memo filed by both the applicant / plaintiff and the first

respondent / first defendant. In order to appreciate the same, the calculation memo filed by the first respondent / first defendant, dated 23.08.2018 is extracted hereunder :

"Calculation submitted by 1st Respondent / 1st Defendant

The base for calculation is taken as 29,400 p.m, as on March 2018.

Annual rent at 16% depreciation in 2008-09 is Rs.92770/- (ref. table below)

At the depreciation rentals following is the calculation :

For 1st five years (2008-2013)

$$= \text{Rs.}92770 * 5 = \text{Rs.}463850$$

For 2nd five years (2013-2018)

@ 25% escalation = Rs.115962 * 5 = Rs.579811

Total for 10 years (2008-2018) = Rs.463850 + Rs.579811

$$= \text{Rs.}1043661, (\text{say Rs.}10.5 \text{ lakhs})$$

	29400
Rental	
2017-18	3,52,800
2016-17	3,04,138
2015-16	2,62,188
2014-15	2,26,024
2013-14	1,94,848
2012-13	1,67,973
2011-12	1,44,804
2010-11	1,24,831
2009-10	1,07,613
2008-09	92,770

Dated at Chennai, this 25th day of July 2018."

24. In respect of the said calculation by way of proof affidavit on behalf of the applicant / plaintiff, P.W.1 has stated the following in his proof affidavit, dated 05.06.2018 which reads thus :

"5. I state that in the year 2008 the Guideline value of the suit schedule land was at Rs.2,600/- per sq.ft., and the total land value for 11,900 sq.ft., therefore, works out to Rs.3,09,40,000/- and calculated at the annual return thereof at 12% as accepted by the Income Tax, Rent Control etc., the annual value works out to Rs.37,12,800/- and the monthly rent thereof works out to Rs.3,09,400/-.

6. I state that even according to D.W.1 as admitted in his cross on 08.10.2013 on page 32 of the deposition, the market value of the land will be about @ Rs.70 lakhs per ground and accordingly, the land value therefore, for 11,900 sq.ft., (approx 4.958 grounds) works out to Rs.3,47,08,333/- and the annual return thereof @ 12% works out to Rs.43,65,000/- and the monthly rent thereof works out to Rs.3,47,083/-.

7. I state that according to the rental value of a shop in another portion of our very same premises, and on the very same road and at a

distance of just 200 feet from the suit property, the same has been sub-let to one M/s. Pandey Paan House on a rental of Rs.6,500/- per month for a shop area of 96 sq.ft., and calculated accordingly, the approx. monthly rental value for 11,900 sq.ft., would therefore, work out to Rs.8,05,729/- per month, with only a very meager amount being towards the cost of construction of 96 sq.ft.

8. I state that in the plaint, we have only claimed a sum of Rs.3,00,000/- per month as damages, but after the passing of the decree on 16.11.2016, the damages will be about Rs.9,50,000/- per month, calculated @ Rs.8,000/- per sq.ft., as per the guide line value in the year 2016 and amounting to Rs.9,52,00,000/- for 11,900 sq.ft., and the annual return thereof @ 12% amounting to Rs.1,14,24,000/- and the monthly rent at Rs.9,50,000/- for the suit property.

9. I, therefore, most respectfully pray that this Hon'ble Court may be pleased to fix the damages as prayed for by us, from 01.06.2008 to 16.11.2016 (102 months) @ Rs.3,00,000/- per month and from 17.11.2016 till 22.03.2018 (17 months) @ Rs.9,50,000/- per month, with our costs and pass such further or other orders

as may be deemed fit and proper in the circumstances of the case."

25. Though in the proof affidavit of P.W.1, it has claimed the damages at the rate of Rs.3,00,000/- p.m., from 01.06.2008 to 16.11.2016 and Rs.9,50,000/- from 17.11.2016 till 22.03.2018, the guideline value which is the very basis for calculating for such quantified amount of damages on behalf of the applicant / plaintiff itself has not been proved by filing any document to that effect and this factor has been admitted by the applicant / plaintiff in the cross examination, dated 14.06.2018, which has already been extracted herein above.

26. At this juncture, this Court feel that, since the first respondent / first defendant in the calculation memo, dated 25.07.2018 has admitted a sum of Rs.10.5 lakhs, the said amount has to be paid as admitted damages to the applicant / plaintiff. In so far as this admitted amount of damages is concerned, there can be no quarrel.

27. However, beyond this admitted amount of Rs.10.5 lakhs, the higher damages as has been claimed by the applicant / plaintiff is concerned, this Court feels that, the basis has not been proved by the applicant / plaintiff by letting documentary evidences. It is one of the pre-condition that, the quantum of damages has to be established by the applicant / plaintiff by letting evidences especially documentary evidence by taking out a separate application. In this regard, though attempt has been made by the applicant / plaintiff by taking out this application, only oral evidence has been made, which has been denied by the first respondent / first defendant and contra to the oral evidence, i.e., examination in chief, P.W.1 has stated that, he has not filed any documents in support of his claim while cross examination and therefore the said oral evidence, i.e., examination in chief made by P.W.1 cannot be taken as an evidence to establish the quantum of damages as has been directed at para 38 of the Judgment referred to above.

28. However, this Court feel that, the applicant / plaintiff may be entitled for still higher damages than the said admitted amount of Rs.10.5 lakhs, but, what shall be the said higher compensation has not so far been quantified and this Court is also not in a position to

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quantify the same based on the available evidence as admittedly there has been no documentary evidence in this regard on the side of the applicant / plaintiff.

29. Therefore in the circumstances, this Court feel that, apart from the admitted amount of Rs.10.5 lakhs damages, for higher compensation or damages, it is open to the applicant / plaintiff to establish its case and for the said purpose, instead of driving the applicant / plaintiff to once again make out an application before this Court, I am of the view that, the parties can be relegated to an arbitration proceedings, wherein the possibility of establishing the case on the side of the applicant / plaintiff towards the quantum of higher compensation than Rs.10.5 lakhs can very well be explored.

29. In the result, while disposing this application, this Court passes the following orders :

(i) That the first respondent / first defendant shall pay a sum of Rs.10.5 lakhs, being an admitted amount, as per their calculation memo, dated 25.07.2018 submitted by them before this Court, to the applicant / plaintiff within a period of thirty days from today.

(ii) In so far as the further or higher compensation than the said amount of Rs.10.5 lakhs, it is open to the applicant / plaintiff to invoke the provisions of Arbitration and Conciliation Act and for the said purpose both parties are at liberty to refer the matter to an Arbitrator to be appointed by mutual consent or by way of an Arbitral Tribunal consisting of three Arbitrators, out of which one shall be appointed by each party and the Presiding Arbitrator to be appointed by both the Arbitrators to be appointed by the parties, before whom the only issue with regard to higher damages apart from Rs.10.5 lakhs now ordered to be paid to the applicant / plaintiff by this order can very well be decided in accordance with the provisions of Arbitration and Conciliation Act.

With these orders and directions, this application is disposed of.
However, there shall be no order as to costs.

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Index : Yes / No

Speaking order / Non-speaking order

Note :
Issue order copy on 03.02.2020

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R.SURESH KUMAR, J

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**order
in
A.No.2656 of 2017
in
C.S.No.916 of 2008**

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