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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :17.12.2020

Pronounced on :23.12.2020

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No.1243 of 2019

and

C.M.P.No.26850 of 2019

Narayana Iyer

... Appellant/Defendant

/versus/

M/s Anandammal Adheena Trust,

rep.by its President,

P.Selvanathan,

No.5, Pondy Main Road,

Villianur, Pondicherry 605 110.

... Respondent /Plaintiff

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.13 of 2019 dated 05.11.2019 on the file of the Principal Sub Judge(FAC), the Additional Sub Judge, Puducherry in confirming the judgment and decree in O.S.No.465 of 2002 dated 14.03.2018 on the file of the 2nd Additional District Munsif, Puducherry.

For Appellant :Mrs.V.Srimathi

For Respondent :Mr.P.Dinesh Kumar

JUDGMENT

(The case has been heard through video conference)

The second appeal arises from the suit for ejectment of the defendant from the suit property, delivery of vacant possession after removing the superstructure and for recovery of arrears of rent. The defendant is the appellant.

2.The suit property belongs to M/s Anandammal Adheena Trust. The appellant entered into a lease agreement with the erstwhile Trustees and in occupation of the suit land. The lease between



the Trustees and the appellant was renewed on 03/07/1985 for a further period of 17 years. After giving credit to the advance of Rs.300/- received by the Trust under the earlier lease agreement, additional advance of Rs.200/- received under the new lease. On termination of the lease, the Trust agreed to return Rs.500/-. The total money received as advance, without interest. The appellant was permitted to put up structure and carry on business, on condition he should remove the superstructure and hand over the vacant possession on expiry of the lease. The rent was fixed at Rs.120/- p.m payable on or before 5th of every succeeding month. In event of default in payment of rent, the Trust is entitled to have the lease agreement terminated and recover the possession.

3.On the death of Mr.Thirugnanasambandham, the Former President of the Trust, Mr.P.Selvanathan was appointed as President of the Trust, as per the scheme decree passed in O.S.No.1 of 1998 by the Principal District Judge at Pondicherry. On 09/01/2002 through a letter the appellant was informed that he has defaulted in paying the rent from October 1997 and requested to pay the rent. The appellant failed to pay the rent and continue to commit default. Thereafter, notice through lawyer was issued to deliver the possession of the suit property free from superstructure by 03/07/2002. The notice dated 02/06/2002 was received by the appellant on 08/06/2002 but the appellant did not reply or complied with the demand. Hence the suit for ejectment and consequential relief.

4.The appellant admitting the occupation of the suit property as a leasee under the Trust, contested the suit stating that his father Seetharama Iyer entered into the lease agreement with the plaintiff Trust in the year 1973 and developed the site by constructing residence and a Hotel. Seetharama Iyer died intestate in the year 1985 leaving his wife and 5 sons. The appellant is one among the five sons. He is continuing the business and in possession of the suit property. When the dispute and quarrel arose among the Trustees of the Landlord Trust, the appellant filed the suit for permission to deposit rent for the said property, until the dispute among the Trustees get settled. The said suit in O.S.No.31/1986 was allowed and the appellant was regularly paying the rent.

5.Later, the Trustees made public that their dispute is resolved and one of the Trustee Mr.Thirugnanasambandam is the person authorised to receive the rent for and on behalf of the Trust. Hence, the rent deposited was withdrawn by Thirugnanasambandam and he started collecting the rent from the



appellant. The said Thirugnanasmabandam died in the year 1997. The other Trustees Selvanathan, Adhi Narayanan, Annamalai and Vasudevan were receiving the rent during 1997 and 1998. Thereafter, a rival group consisting of Saminathan Pillai, Vaidyanathan and Kannabiran claiming as Trustees of the landlord Trust started collecting rent from the tenants between the end of 1998 and the middle of 1999. After the death of Saminathan Pillai again dispute arose between the trustees. The tenants including the appellant was not able to identify the true representative of the trust and hence, he could not tender the rent. There is no cause of action for laying the suit.

6.The trial Court framed the following issues:-

- 1.Whether the signatory to plaint has any locustandi to file this suit?
- 2.Whether the plaintiff is entitled for the relief of eviction of the defendant from the suit property as prayed for?
- 3.Whether the plaintiff is entitled for the arrears of rents as prayed for?
- 4.To what relief?

7.On the side of the plaintiff, 2 witnesses examined and 8 exhibits marked. On the side of the defendant, one witness and one exhibit marked.

8.Regarding the locus standi of Selvanathan to file the suit on behalf of the Trust, the trial Court relied upon Ex.A-4 and Ex.A-5, which are the certified copy of the Judgment and decree in O.S.No.1/1998, where the Court has appointed Selvanathan as an Administrator of the plaintiff Trust. It is held that the suit by Selvanathan as representative of the landlord Trust is maintainable.

9.The plaintiff document Ex.A-1-lease deed dated 01/07/1985, Ex.A-2 the quit notice dated 02/06/2002, Ex.A-3 the postal acknowledgment card indicating the appellant received the quit notice on 08/06/2002 and the silence on the part of the appellant, after receipt of the quit notice was considered by the trial Court to hold that the appellant is liable to deliver the possession of the suit property, in view of the termination of the lease on the ground of default of rent as well as on the ground of efflux of lease period.



10.The subsequent lease agreement marked as Ex.B-1 dated 05/01/1990 for a period of 21 years commencing from 01/01/1990 alleged to have executed by the then trustee Thirugnanasambandam was not believed by the Court. The trial Court held that, the reason for executing fresh lease deed Ex.B-1 without cancelling the existing lease deed Ex.A-1 in force is not explained by the appellant. The existence of the subsequent lease deed Ex.B-1 is not disclosed in the written statement. If the subsequent lease deed was in force, the same ought to have been disclosed by the appellant, when he received the quit notice or ought to have mentioned about it in the written statement. Introducing the document belatedly during the cross examination of PW-1, who was the subsequent trustee appointed under the Court scheme decree create suspicion about Ex.B-1.

11.Regarding default in payment of rent the trial Court held that there is no proof for deposit of rent pursuant to the decree passed in O.S.No.31/1986 and also the appellant himself has admitted that he is not paying any rent since 1997, but ready to deposit. In view of the said admission, it was held that, if the defendant (appellant herein) is really bonafide, he ought to have taken steps to pay/deposit the arrears of rent. Having failed to prove his bonafide, the suit was allowed granting the relief of eviction, recovery of possession and arrears of rent.

12.The statutory appeal in A.S.No.13/2019 filed before the Additional Subordinate Court at Pondicherry was dismissed confirming the trial Court judgement.

13.Being aggrieved by the judgment and decree of the Courts below, the present second appeal is filed on the ground that the Courts below erred in relying upon Ex.A-4 and Ex.A-5 the judgment and decree in O.S.No.1/1998. The said judgment is not binding on the appellant, since it is a compromise decree in which they are not party. The decree of eviction contrary to the tenor of the registered lease deed under Ex.B-1 is contrary to law. The bonafide of the appellant to pay the rent though proved through the suit O.S.No.31/1986 filed for deposit of the rent, the Courts below has erroneously held against the appellant as if the appellant has not proved his bonafide.

14.The learned counsel for the appellant submitted that, the suit is not filed by all the trustees. The suit is pre-mature in the light of Ex.B-1. The trustees refused to receive the rent.



The Courts below ought to have held that the plaintiff trust is estopped from pleading default in payment of rent. The bonafide of the tenant taking steps to deposit the rent disbelieved, in spite of the suit O.S.No.31/1986 filed for deposit of rent.

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15.The learned counsel appearing for the appellant referred sections 46 and 47 of the Indian Trust Act and the following judgments in support of the plea that the plaintiff lacks locus standi to initiate the proceedings in O.S. 465/2002.

(1)Duli Chand v. Mahabir Pershad Tirlok Chand Charitable Trust reported in [AIR 1984 Delhi 145];

(2)V.Chandrasekaran and Ors. v. Venkatanaiker Trust and Ors. Reported [2017(1) CTC 56];

(3)Ayapadi Chavadi Dharmam v. Habibunnisa and Ors. reported in [(2019) 1 MLJ 301];

16.Also, referred Section 62 of the Indian Contract Act and submitted that, the subsequent lease deed Ex.B-1 substitutes the earlier contract. Suit laid based on the old contract, suppressing the later contract is unsustainable. In the light of Ex.B-1, the old contract gets obliterated or wiped out. It dies and cannot confer any cause of action. The following judgments were relied to buttress the above arguments.

(1)Nalini Singh Associates v. Prime Time -IP Media Services Ltd., reported in [153 (2008) Dlt 174];

(2)Muppala Venkata Subbayya v. Desiraju Venkata Krishna Sarma reported in [AIR 1967 AP 44];

(3)Ratna Commercial Enterprises Ltd., v. Vasu Tech Ltd., and Ors., reported in [Manu/DE/3168/2009];

(4)Samyak Projects Private Limited v. Ansal Housing & Construction Limited reported in [2019 IIIAD (Delhi) 269].

17.Alleging that the plaintiff had suppressed the existence of Ex.B-1. For suppression of fact, per se the plaintiff is dis-entitled to lay the suit. For the said proposition, the learned counsel for the appellant rely upon the following judgments.



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- (1)Udai Chand v. Shankar Lal and Ors. reported in [AIR 1978 SC 765];
- (2)Seemax Construction (P) Ltd. v. State Bank of India and Ors. reported in [AIR 1992 Delhi 197];

18.The learned counsel for the respondent submitted that, the suit by the Court appointed the administrator/trustee is maintainable. The appellant, who has admitted the status of P.Selvanathan as Court appointed Administrator and one of the trustee of the landlord trust, cannot question his locus standi. The subsequent lease deed Ex.B-1 dated 05/01/1990 executed by the former Trustee late Thirugnanasambandam never pleaded or proved by the appellant. The existence of Ex.B-1 was suppressed by the appellant and was marked during the cross examination of PW-1, without any pleading regarding the subsequent lease deed and why he entered into the subsequent lease deed in the year 1990, when the period of lease under the earlier lease deed expired only on 30/06/2002. For argument sake even assuming that, the subsequent lease deed Ex.B-1 in supersession of the earlier lease deed Ex.A-1 have any legal force, in both the lease deeds, the right of pre-mature eviction is vested with the land lord in case of default in rent. The appellant faulted in paying rent since 1997. The earlier notice dated 09/01/2002 to pay the arrears (Ex.A-6) was not responded by the appellant. Thereafter, the quit notice Ex.A-2 mentioning the arrears of rent was issued and for that notice also, the appellant did not respond. In the written statement, though the appellant stated that they offered to pay rent and ready to pay the rent, never proved the bonafide by action. Further, he has admitted the rental default before the Court during cross examination. Hence, there is no merit in the appeal.

19.On hearing the learned counsels and on perusal of the records, the following Substantial Questions of Law are formulated for consideration:-

- 1)Whether it is mandatory for all the trustees to join together to institute a suit on behalf of a Trust?
- 2)Whether the suit is pre-mature in the light of the registered lease deed executed by the Trust in favour of the appellant under Ex.B-1 ?



20. Substantial Question of Law- 1:

The learned counsel appearing for the appellant rely upon the judgment of the Delhi High Court reported in AIR 1984 Delhi 144 [Duli Chand v. Mahabir Pershad Trilok Chand Charitable Trust], wherein it is stated that a trust is not a legal entity. All Trustees in law are owners of the property. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation, which has a legal existence of its own and therefore, can appoint an agent. A Trust is not in this sense a legal entity. In this judgment, the Delhi High Court, after referring Sections 46 and 47 of the Indian Trusts Act, 1882 and the Full Bench Judgment of the Gujarat High Court reported in Atmaram Ranchhodbhai -vs- Gulamhusein Gulam Mohiyaddin and another [AIR (1973) Guj. 113 (FB)] held that, unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees. Finally, the Delhi High Court however concluded that, the suit filed by one of the trustees without joining the other trustees is mere a blunder, negligence or inadvertance. For the reason, the plaintiff shall not be forced to withdraw the suit and file a fresh suit. It is suffice to implead the co-trustees by way of the amendment and proceed.

21. In V.Chandsekaran and others v. Venkatanaicker Trust and others reported in [2017 (1) CTC 56], this Court following the Delhi High Court judgment and the Full Bench Judgment of the Gujarat High Court, referred in the Delhi High Court judgment, dismissed the suit for ejection filed by the Manager representing the Trust. In this case, the Court held that the suit has not been laid by the Trustees, it has been laid by the Manager representing the Trust. To show that the Manager is empowered to lay the suit on behalf of the Trust, no material is forthcoming.

22. The third judgment relied by the learned counsel appearing for the appellant is also by this Court reported in (2019)1 MLJ 301 [Ayapadi Chavadi Dharmam v. Habibunniss and others]. Here again the suit was filed by the Manager of the Trust and no material placed on record to show that the Manager had been empowered to lay the suit on behalf of the appellant Trust. As such trust not being a legal entity, the suit filed by the Manager of the Trust held not maintainable.



23. In all these three judgments cited supra, the dictum of the Hon'ble Supreme Court laid in Abdul Kayum -vs- Mulla Alibhai reported in [AIR 1963 SC 309] and the Full Bench of the Gujarat High Court in Atmaram Ranchhodbhai -vs- Gulam husein Gulam Mohiyaddin and another in reported in [AIR (1973) Guj 113] are the foundation cases followed and relied.

24. The facts in Abdul Kayum case in short is, in the year 1908, a School in Burhanpur was established by certain members of Daudi Bohra community in the name of "Madrasai Faizi Hakimia" to impart religious and secular education. For the benefit and advantage of this school, one Abdul Hussain Abdullali Faizullabhai Muchhala made a waqf of certain properties. The existence 12 members of the school trust were made trustees of the waqf. Few months later, another trust consisting of 6 members came into existence for the benefit of the same school. Later, in the year 1917, dispute arose between the trustees and a new society by name "Madarasai Hakimia and Coronation Society". Then, 4 Daudi Bohra Muslims joined together and filed suit to frame a scheme under Section 92 of the Civil Procedure Code, alleging that the defendants, who claim to be the trustees of Hakimia Society are not validly appointed trustees and the duty of the original trustees cannot be divested or delegated to the newly formed society. The original trustees appointed by Muchhala who made a waft of his properties at Bombay were later impleaded. In the said context, referring Sections 46 and 47 of the Indian Trust Act, the Hon'ble Supreme Court held that,

"(16) There cannot, in our opinion, be any doubt about the correctness of the legal position that trustees cannot transfer their duties, functions & powers to some other body of men and create then trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust; but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The rules against renunciation of the trust by a trustee and against delegation of his functions by a trustee are embodied, in respect of trusts to which the Indian Trusts



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Act applies in Ss.46 and 47 of that Act. These sections run thus:-

"46.A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principle Civil Court of Original Jurisdiction, or (b) if the beneficiary is competent to contract, with his consent or (c)by virtue of a special power in the instrument of trust.

47.A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless(a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c)the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

25.By reading the Gujarat High Court Full Bench Judgment rendered in the year 1973, we find that when order of reference to the Full Bench of the Gujarat High court regarding, whether some only out of several co-trustees can effectively determine a tenancy by giving notice to quit and whether a suit to evict a tenant can be filed by one or more co-trustee without joining other co-trustees in the suit, the Full Bench of the Gujarat High court in Atmaram Ranchhodbhai -vs- Gulam husein Gulam Mohiyaddin and another reported in [AIR (1973) Guj. 113] relying upon Man Mohan Das -v- Janaki Prasad reported in [AIR 1945 623]; and Abdul Kayum -vs- Mulla Alibhai reported in [1963 SC 309] case, has held that,

"11.We are, therefore, of the view that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining the other co-trustees."

26.Therefore, from the facts of the cases cited and the dictum laid by the Hon'ble Supreme Court, it is to be seen first, whether the plaintiff has stated in the plaint his authority to represent the Trust. Next, whether such authorisation is permissible in law. Above all, whether the representative of the trust has laid the suit truly to protect the interest and intention of the trust.



27. In the instant case, the ejectment suit filed in the name of the Trust through its President P.Selvanathan. The said Selvanathan is one of the trustee and he was appointed as Administrator by the Court to the trust and its property. In the plaint, the appointment of P.Selvanathan as the Administrator of the Trust by the Principal District Court at Pondicherry in O.S.No.31/1998 in the scheme decree is stated and also proved through Ex.A-4 and Ex.A-5. No contra evidence to disprove this fact placed by the defendant/appellant herein.

28. The three judgments cited above by the learned counsel appearing for the appellant on facts either laid by a Trustee without satisfying the Court that the instrument of the Trust authorise him to lay the suit (or) the person, who has laid the suit in the plaint, failed to mention his authority to file the suit on behalf of the Trust (or) by a person claiming himself as manager of the Trust but without any supporting documents. Whereas, the case in hand is factually different from the cases cited. The plaint in this case has been laid by the Court appointed Administrator and disclosed the said fact in the plaint. Therefore, non-joinder of the other trustees will not take away the legal right as well as the responsibility vested on P.Selvanathan as a trustee to protect the interest of the trust.

29. The primordial duty and responsibility of a Trustee is outlined in Sections 13 and 15 of the Indian Trust Act, 1882 as below:-

- a) To protect the title of the trust property. Maintain and defend all such suits, and other steps to protect and preserve the Trust property.
- b) To deal the trust property as carefully as a man of ordinary prudence would deal with such property.

30. In addition, under Section 36 of the Act, general authority to the Trustee to do all acts, which are reasonable and proper for the realisation, protection or benefit of the trust property is conferred. Sections 46 and 47 of the Indian Trust Act, 1882, deals with renoucement or delegation of office or duties. These two Sections have no application in so far as facts of the present case. Since the suit being laid by the trustee, who was appointed as the Administrator of the Trust in the scheme decree and he has neither renounced his power or delegated his duty. In fact, he has exercised his duty to



protect the trust property as mandated under Section 13 of the Indian Trust Act, 1882.

31. The learned counsel for the appellant submitted that, the decree in O.S.No.1 of 1998 was a compromise decree and the appellant is not a party to it. This plea has no legal basis. Compromise decree is no different from decree passed after contest. In the dispute between the trustees regarding the management of the trust, the tenants under the trust are not necessary party.

32. A Trust is not a juristical body. It has to be represented through a human agency. In this case, the Trust is represented through P.Selvanathan, who is the President/Trustee, the Court appointed administrator. His interest and responsibility in protecting the trust property is not in question from any quarters including the appellant. Only his action to file the suit is questioned for the reason that other trustees have not explicitly joined hand with him. This contention was not considered in favour of the appellant by the Courts below because, the suit is against the defaulter of rent payable to the Trust and on that score to recover the possession of the Trust property.

33. It is not the case of the appellant that the committee of trustees did not give consent to file the suit or there was disagreement among the trustees or the suit filed by a person not authorised as per the terms of the Trust. In the absence of any such reason or proof to that effect, a bald plea of questioning the locus standi of the President of the Trust who represent the Trust is unsustainable. The first Substantial Question of Law is thus answered in negative.

34. It is stated in the second appeal that, the subsequent lease agreement Ex.B-1 has superseded the earlier lease deed. Since the period of lease under this document is for 21 years commencing from 01/01/1990, it is contended by the learned counsel for the appellant that as per Ex.B-1 the lease period expires only on 31/12/2011. Suppressing this fact, based on the old lease agreement Ex.A-1, as if the lease period expired and due to efflux of time, the suit is filed for eviction. While the period of lease is in force till 31/12/2011, the suit presented on 08/08/2002 and taken on file on 02/09/2002 is without cause of action. The pre-mature termination of the lease is bad in law and the Courts below failed to appreciate Ex.B-1 in proper perspective.



35. Regarding suppression of existence of Ex.B-1, no one can blame the respondent/Trust. The appellant herein had conveniently kept in secret the documents and thought fit to produce during the trial. The document has been executed between the appellant and one Thirugnanasambandam the former trustee of the plaintiff Trust. No evidence to prove the said lease deed was accepted and acted upon. No proof to show that Thirugnansambandam was authorised by the other trustees to enter upon the said agreement. No proof to satisfy why a new lease agreement when the existing lease is in force. Further more, the suppression of the lease deed is no way advantage to the plaintiff trust. Since the suit for eviction filed not on the ground of efflux of time alone, it was primarily pegged on the ground of default in payment of rent. The appellants who had the knowledge and possession of the lease deed Ex.B-1, ought to have placed before the Court at the earliest. Having suppressed the document and introducing it belatedly only force to draw adverse inference against the appellant. Therefore, the two judgments viz., (1) Udai Chand v. Shankar Lal and Ors. reported in [AIR 1978 SC 765] and (2) Seemax Construction (P) Ltd., v. State Bank of India and Ors. reported in [AIR 1992 Delhi 197] referred by the appellant regarding suppression of fact really is in favour of the respondent and not for the appellant.

36. Substantial Question of Law-2:

Principle of Novation:

At the outset, whether Ex.B1 is a document worthy for consideration itself a doubtful. It was introduced in the course of trial without any backing of pleadings. The said lease agreement Ex.B1 alleged to have been executed by erstwhile trustee. No proof to show the consent or knowledge of the co-trustees. No minutes produced authorising Thirugnanasambandam to execute Ex.B1. Nothing pleaded or said about the reason for Ex.B1 when Ex.A1 is in force. When all the issues raised about the maintainability of the suit filed by single trustee more aptly apply to Ex.B1 executed by single trustee, keeping aside all these legal issues regarding the evidentiary value of Ex.B1, this Court wishes to test whether the principle of novation will apply to the facts of the case of Ex.B1 is valid.

37. Referring Section 62 of the Indian Contract Act, 1872, the learned counsel on relying upon the following judgments submitted that in view of Ex.B-1, the suit filed based on the earlier lease agreement is not maintainable.

(1) Nalini Singh Associates v. Prime Time -IP
Media Services Ltd., reported in [153 (2008)
Dlt 174];



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(2) Muppala Venkata Subbayya v. Desiraju Venkata Krishna Sarma reported in [AIR 1967 AP 44];

(3) Ratna Commercial Enterprises Ltd., v. Vasu Tech Ltd., and Ors., reported in [Manu/DE/3168/2009];

(4) Samyak Projects Private Limited v. Ansal Housing & Construction Limited reported in [2019 IIIAD (Delhi) 269].

38. Let us analyse the case laws cited one after another to know how far the principle of novation supports the case of the appellant.

39. The judgment in Muppala Venkata Subbayya v. Desiraju Venkata Krishna Sarma reported in [AIR 1967 AP 44] is in respect of recovery of money, based on pro-note and subsequent suit, based on cheque issued to discharge the promote debt. The application of the principle 'Accord and Satisfaction' dealt in this case. Unlike the facts of the case in hand, the parties in the case cited placed before the Court the facts about the earlier agreement leading to issuance of promote and the subsequent facts leading to issuance of cheque and pleaded before the Court to decide whether the principle of novation applies.

40. In Nalini Singh Associates v. Prime Time-IP Media Services Ltd., reported in [153(2008) DLT 174] referring Section 62 of the Indian Contract Act, the Arbitrator comparing the earlier agreement containing arbitration clause and the subsequent MOU containing termination clause, the arbitrator awarded Rs.26.81 lakhs to the claimant applying the principle of accord and satisfaction. When the said award came to be challenged before the Delhi High Court under Section 34 of the Arbitration Act, it was held that,

"19. Section 62 of the Contract Act allows novation, rescission, modification and alteration of an earlier contract with a new agreement or even alteration of an earlier agreement. It gives rights to parties to put a contract to an end or terminate it. Under the new agreement or upon amendment of an earlier contract, prior rights of the parties are extinguished and new rights and obligations come into existence. Original contract is discharged or modified and substituted by the new



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obligations under the new contract or as a result of amendment. Unless the new contract is void or unenforceable or the amended terms are unenforceable, a party cannot revert back to the original contract. Original contract can get revived in two cases : firstly, when the new contract is unenforceable or void and secondly, when the terms of novation itself provide that original contract can be revived and the said clause becomes applicable. In case these two conditions are not satisfied, the original contract gets obliterated or wiped out. It dies and cannot confer any cause of action. Section 62 is based upon the principle that a contract is the outcome of a mutual agreement and it is equally open to the parties to mutually agree to bring the said contract to an end, enter into a new contract or modify the earlier contract. Contractual obligations can be modified by mutual consent. Parties can vary the terms of the contract and absolve a party from the original obligations. Once Section 62 of the Contract Act applies, parties are bound by the terms and conditions mentioned in the second contract or the amended terms and not by the first contract. Breach of the subsequent contract will not revive the original contract, unless intention of the parties is to the contrary. The question is of intention of the parties, when they enter into second contract or modify earlier terms."

41. The instant suit would have been hit by the principle of novation, if the suit filed only based on efflux of time, provided the execution of subsequent lease deed Ex.B-1 extending the lease period is proved in the manner known to law. The instant suit is based not only on the ground of efflux of time but also on the ground of rental default. Both under Ex.A-1 and under Ex.B-1, there is a clause conferring the right to terminate the lease on default of rent. There is no alteration of term as far as default clause. The plea of novation would have carried merit if Ex.B-1 had no default clause and the appellant pleaded at the earliest point of time placed Ex.B1 and proved Ex.B1 was acted upon. When the terms of the subsequent contract is no different from the terms of the earlier contract, except the period of lease, why a new contract not answered by the



appellant. Particularly, when right to terminate the lease prematurely in case of rental default is common in both the agreement, the appellant by producing Ex.B-1 belatedly can gain nothing. Hence, observation made in the judgments cited by the appellant's counsel is of no assistance to the appellant.

42.The Ex.B-1 executed by the erstwhile Trustee not disclosed by the appellant at the first given opportunity, which arose when he received the quit notice. Even in the written statement, he has not revealed about this document. It is a fact within his knowledge. When the previous lease was in force upto 30/06/2002, the reason for executing a fresh lease on 01/01/1990 not explained by the appellant. Further, the belated attempt to file additional written statement after 12 years of the institution of the suit also not satisfactorily explained by the appellant. Hence, both the Courts below have declined to entertain new facts during trial, which were not pleaded. However, during the cross examination of PW-1 the lease agreement was introduced and marked as Ex.B-1. The Courts below have perused the recital of Ex.B-1 and had rightly concluded that, even in Ex.B-1, the Trust had reserved the right to terminate the lease pre-maturely in case of default of rent. The suit for eviction is not only filed on the ground of efflux of time but also for default in payment of rent. The landlord Trust, after duly terminating the lease had instituted the suit as per the terms of contract. If not on the ground of efflux of time, on the ground default the judgment of the Courts below are bound to sustain, if default of rent is proved.

43.Ultimately, the question narrow downs to the fact whether there was default in payment of rent. No evidence placed before the Court to prove the payment of rent after 1997 till the institution of suit and also thereafter. Pending second appeal, the appellant as additional typeset had produced the photocopy of the demand draft dated 23/12/2019 and a covering letter of the appellant to show that he has tendered a sum of Rs.38,100/- towards the rental arrears for the period from 1997 to December 2019. This is subsequent to the filing of the second appeal on 09/12/2019. Instead of tendering the rent every month or at least, when he received the notice demanding the rental arrears(Ex.A-6 dated 0/01/2002), the wisdom to pay the landlord has fallen upon the tenant/appellant only after suffering decree of eviction by two Courts. By the time, the default period has crossed 23 years. Therefore, either way, whether under Ex.A-1 or under Ex.B-1, the tenant who is the defaulter is liable to be evicted following due process of law. In this case, the suit has been laid after causing notice as per law and the appellant has not offered any plausible reason, why he should not be evicted



for default in paying the rent. The suit is therefore not prematurely laid or without casue of action.As a result, the Second Substantial Question of Law also answered in negative.

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44.In the result, the Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To:

- 1.The Principal Sub Judge(FAC),
The Additional Sub Judge,
Puducherry.
- 2.The 2nd Additional District Munsif,
Puducherry.

+lcc ot Mr.D.Ravichander, Advocate Sr.42920
+lcc to Mr.V.Raghavachari, Advocate Sr.42832

S.A.No.1243 of 2019
and
C.M.P.No.26850 of 2019

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