

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 14TH DAY OF SEPTEMBER 2021

THE MASTER

C.S. No.3 of 2020

Dr. C.H. Venkateswara Rao,
S/o. Mr. Chandraiah,
New No. 136, Old No. 61,
Greenways Road,
Chennai 600 028.

Mrs C.H. Suseela Rani,
W/o. Dr.C.H. Venkateswara Rao,
New No. 136, Old No. 61,
Greenways Road,
Chennai 600 028.

Mr. K.Sailendra Kumar,
S/o. Dr.C.H. Venkateswara Rao,
New No. 136, Old No. 61,
Greenways Road,
Chennai 600 028.

... Plaintiffs

Vs.

M/s. Maris Enterprises Private Limited,
(formerly Maris Construction Private Limited)
represented by its Managing Director,
Mr. R.Nandakumar,
Regd Office at No.49, First Main Road,
Mandaveli, Chennai 600 028.

Also at

Greenways Road Extension,
First Floor, R.A.Puram,

Chennai 600 028.

...Defendant

Civil Suit praying that this Hon'ble Court be pleased to pray for a judgment and decree against the defendant;

a) for a recovery of sum of Rs.1,36,41,529/- (Rupees One Crore Thirty Six Lakhs Forty One Thousand Five Hundred and Twenty Nine Only) with subsequent interest at 24% per annum on the said sum from the date of plaint to till the date of realization.

(b) for the cost of this suit.

This Suit coming on this day before this Court for hearing in the presence of Mr.K.V.Babu, Advocate for the plaintiff herein and upon reading the plaint filed herein and, it is ordered and decreed as follows:-

That the defendant herein, do pay to the plaintiff herein, a sum of Rs. 1,92,05,777.87/- (Rupees one crore Ninety Two lakhs five thousand seven hundred and seventy seven and paise eighty seven Only) with subsequent interest at the rate of 24 % per annum On the sum of Rs.1,36,41,529/- (Rupees One Crore Thirty Six Lakhs Forty One Thousand Five Hundred and Twenty Nine Only) from this date till the date of realisation.

2. That the defendant herein, do pay the plaintiff herein, the costs of

this suit as and when taxed by the taxing officer of this Court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
14th DAY OF SEPTEMBER 2021.

Sd/-
ASSISTANT REGISTRAR(O.S.I)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies
of the Orders/Judgments/Decrees in this format.

EVK

14/09/2021

C.S. No.3 of 2020

ORDER

DATED : 14.09.2021

THE MASTER

FOR APPROVAL: 01/10/2021

APPROVED ON: 05/10/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Civil Suit praying that this Hon'ble Court be pleased to pray for a judgment and decree against the defendant;

a) for a recovery of sum of Rs.1,36,41,529/- (Rupees One Crore Thirty Six Lakhs Forty One Thousand Five Hundred and Twenty Nine Only) with subsequent interest at 24% per annum on the said sum from the date of plaint to till the date of realization.

(b) for the cost of this suit.

This suit coming on this day before this court for hearing the court made the following order:-

1. This summary suit has been filed under Order VII Rule 1 of Original Side Rules read with Order XXXVII of CPC to pass a judgment and decree against the defendant for a recovery of sum of Rs.1,36,41,529/- (Rupees One Crore Thirty Six Lakhs Forty One Thousand Five Hundred and Twenty Nine Only) with subsequent interest at 24% per annum on the said sum from the date of plaint till the date of realization.

2.1. The case of the plaintiffs is that,

The plaintiffs are the owners in respect of the property bearing Plot No.5, Anna Salai, consisting of 1650 sq. ft. in the first floor which was purchased by plaintiffs from its predecessor in title namely M/s.

Vijayakumar Batter Company Private Limited. The defendant was originally inducted as a tenant in the premises by M/s.Vijayakumar Battery Company Private Limited. The defendant was paying rent much lesser than the fair rent prevailing in the locality. The plaintiffs filed a Rent Control Original Petition in R.C.O.P.No.1489 of 2008 on the file of XI Small Causes Court, Chennai for fixation of the fair rent. Fair rent was fixed. It was not challenged by way of a Revision. The said order has attained finality and the defendant is bound to pay the fair rent fixed by the court.

2.2. The defendant failed to pay the fair rent as fixed by the court. Owing to the failure on the part of the defendant to pay the Fair Rent fixed by the court, this suit has been instituted for the recovery of the dues payable. As on date of plaint, the total amount due and payable by the defendant is Rs.1,36,41,529/- together with interest @ 24 % per annum from the date of plaint till the date of realization. Hence the suit may be decreed as prayed for.

3. After registration of plaint summons was ordered to issue to the defendant. Summons was served on defendant and he made appearance. After entering appearance, the summons for the Judgment was served on 28.01.2020 to the defendant. The application seeking leave to defend was filed by the defendant with delay condone application and the delay was condoned on payment of cost.

4.1. The defence of the defendant is that,

The plaintiffs have calculated the difference between the fair rent and the contractual rent up to December 2019 from July 2008. The defendant handed over possession to the plaintiffs as early as on 01.11.2016. If the alleged difference between the contractual rent and the fair rent is calculated from July 2008 to October 2016 then the amount will be much less than the pecuniary jurisdiction of this Court. This court has no pecuniary Jurisdiction to try this suit.

4.2. The plaintiffs have calculated service tax on the difference between the fair rent and the contractual rent at a constant rate whereas on different dates different rate was prevailing as Service tax. By calculating the service tax at the constant rate, the plaintiffs have inflated the figure and have tried to merge both the amounts to bring the suit.

4.3. The plaintiffs have tried to club two different causes of action in one suit i.e. The claim for the difference between the fair rent and contractual rent, interest on it and service tax amount. The service tax amount is a separate cause of action and it will be a separate claim which cannot be clubbed along with the claim for the difference between the fair rent and contractual rent as there was no agreement for payment of service tax.

4.4. The plaintiffs have calculated interest at the rate of 24 %

per annum which was never agreed between the parties. When the award reaches finality and thereafter as per the act if applicable then the plaintiffs have to give notice calling upon to pay the difference between the fair rent and the contractual rent within 15 days and if the fair rent is applicable and if it is paid within 15 days from the date of the receipt of the notice then there cannot be any interest on that amount. The rate of interest charged was exorbitant. The fair rent even if applicable had become payable only after the disposal of the RCA and when it reached finality. Though it has to be paid from the date of the filing of the RCOP it becomes payable only after award reached finality without prejudice.

4.5. The land on which the building which was the subject matter of RCOP and RCA does not belong to the plaintiffs. The land belongs to WAKF board and thus the Rent Control Act is not applicable. The plaintiffs have purchased the property from their predecessor in title i.e. One Mr. Vijaya Kumar who had no right to sell the property. Hence leave to defend the suit may be granted.

5. At this juncture, it is relevant to point out the procedure to try summary suits.

Institution of summary Suits.- (1) *A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—*

(a) a specific averment to the effect that the suit is filed under this Order;

(b) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(c) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

(Under Order XXXVII of the Code of Civil Procedure, 1908)”.

(2) The summons of the suit shall be in form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(3) The defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

Procedure for the appearance of defendant.- *(1) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexure thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in court an address for service of notice on him.*

(2) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(3) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a prepaid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(4) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other Form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(5) The defendant may at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the court or judge to be just;

Provided that leave to defend shall not be refused unless the court-is-satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious:

Provided further that, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.

(6) At the hearing of such summons for judgment,—

(a) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the court or judge may direct him to give such security and within such time as may be fixed by the court or judge and that, on failure to give such security within the time specified by the court or judge or to carry out such other directions as may have been given by the court or judge, the plaintiff shall be entitled to judgment forthwith.

(7) The court or judge may, for sufficient cause shown by the defendant, excuse the delay the defendant in entering an appearance or in applying for leave to defend the suit.

6. And also it is relevant to point out the guidelines issue by the Hon'ble Supreme Court in the case of [M/s.Mechalec Engineers and Manufacturers v. M/s.Basic Equipment Corporation](#) reported in AIR 1977 Supreme Court 577. The Hon'ble Supreme Court laid down the principles while dealing the applications leave to defend, grant to be followed. The following principles are to be followed while considering the question of granting leave to defend:

(a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.

26. As per the order of the Hon'ble Apex Court, if the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend. If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

7. In this case, the summons for Judgment was duly served on the defendant. The defendant filed application seeking leave to defend the suit in A.No.1683 of 2021 which was dismissed on 03.09.2021 on merits.

8. In the leave to defend application this court has decided that the defendant does not have any defence in the suit. The defences raised by the defendant are not really triable issues. The defendant has no bonafide, probable or plausible defence in this suit. This court ordered accordingly in the leave to defend application and dismissed the application. As a consequence the plaintiffs are entitled to leave to sign Judgment as per procedure and they are entitled to decree as prayed for.

9. In the result, the suit is decreed against the defendant that the defendant do pay the plaintiffs a sum of Rs.1,36,41,529/- (Rupees One Crore Thirty Six Lakhs Forty One Thousand Five Hundred and Twenty Nine Only) with subsequent interest at 24% per annum on the said sum from the date of plaint till the date of realization and the costs of this suit as fixed by the taxing officer.

Sd./-THE MASTER

14/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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