

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.09.2021

Orders Pronounced on : 13.09.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.1012 of 2021
and
Application No.2166 of 2021
in
Civil Suit No.93 of 2021

1. Mr.P.S.Mohan, S/o Late P.N.Shanmugham
2. Mr.P.S.Saravanan, S/o Late P.N.Shanmugahm
3. Mr.N.Muthukrishnan, S/o Late Mr.M.Natarajan
4. Ms.Uma Natarajan, D/o Late Mr.M.Natarajan
5. Mr.N.Balamutukumaran, S/o Late Mr.M.Natarajan

.. Applicants in Appln.No.1012 of 2021/plaintiffs in C.S.No.93 of 2021

Vs.

M/s.Vectone India Mobile Services Private Limited,
Having its Registered Office at
"Sai Sadan", T.S.No.125 (North Phase)
SIDCO Thiru.Vi.Ka.Industrial Estate,
Ekkaduthangal, Chennai-600 032,
Rep. by its Managing Director

.. Respondent in Appln.No.1012 of 2021 / defendant in C.S.No.93 of 2021

Page No.1/22

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

Judge's Summons under Order XIV Rule 8 of the Original Side (O.S) Rules of this Court, read with Order XXXVIII Rule 5 of the Civil Procedure Code (CPC) and Application No.1012 of 2021 is filed to direct the respondent to furnish security for a sum of Rs.1,31,25,396/-, either by a Bank Guarantee or any immovable property for a value of a suit claim within a time that may be fixed by this Court that may be sufficient to satisfy the ensuring decree, failing which, pass an order of attachment before judgment, of the moveable assets belonging to the respondent-Company, as detailed in the Schedule of Property, lying in their office situated at "Sai Sadhan" (2nd Floor) T.S.No.125 (North Phase) SIDCO Thiru.Vi.Ka.Industrial Estate, Ekkaduthangal, Chennai-600 032, pending disposal of the main suit.

Schedule of property

The list of items:

1. UPS Units (Uninterrupted Power Supply) - 120 Nos.
2. Server and Switches for Server Rack
3. Telephone Systems
4. Access Control
5. Laptops - 120 Nos.
6. C.C.T.Vs. - 283 Nos.
7. Televisions - 150 Nos.
8. Projectors - 60 Nos.

lying in their office situated at "Sai Sadhan" (2nd Floor), T.S.No.125 (North Phase) SIDCO Thiru.Vi.Ka.Industrial Estate, Ekkaduthangal, Chennai-600 032.

=====

M/s.Vectone India Mobile Services Private Limited,
Having its Registered Office at
"Sai Sadan", T.S.No.125 (North Phase)
SIDCO Thiru.Vi.Ka.Industrial Estate,

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

Ekkaduthangal, Chennai-600 032,
Rep. by its Managing Director

.. Applicant in Appln.No.2166 of 2021/defendant in C.S.No.93 of 2021

Vs.

1. Mr.P.S.Mohan, S/o Late P.N.Shanmugham
 2. Mr.P.S.Saravanan, S/o Late P.N.Shanmugahm
 3. Mr.N.Muthukrishnan, S/o Late Mr.M.Natarajan
 4. Ms.Uma Natarajan, D/o Late Mr.M.Natarajan
 5. Mr.N.Balamutukumaran, S/o Late Mr.M.Natarajan
- .. Respondents in Appln.No.2166 of 2021 / plaintiffs in C.S.No.93 of 2021

Judge's Summons under Order XIV Rule 8 of the Original Side Rules of this Court, read with Sections 17 and 49 of the Registration Act, 1908, Section 33 of the Stamp Act, 1899, read with Order 13 Rule 8 and Section 151 of the CPC, 1908, and Application No.2166 of 2021 filed praying to order that the lease deed, dated 12.07.2018 is inadmissible as evidence and further impound the same.

=====

For applicants in A.No.1012 of 2021 and
respondents in A.No.2166 of 2021: Mr.Rathina Asohan

For respondent in A.No.1012 of 2021 and
applicant in A.No.2166 of 2021: Mr.Bharadwajaramasubramaniam

=====

WEB COPY

ORDER

The applicants in A.No.1012 of 2021 are the plaintiffs in the suit in C.S.No.93 of 2021 and the respondent is the defendant in the suit.

2. The suit has been filed for the following prayers:

- (a) to direct the defendant to pay to the plaintiffs a sum of Rs.1,31,25,396/- together with interest @ 18% per annum on Rs.1,20,33,481/- from the date of filing the suit till the date of realisation in full, and
- (b) to pay the costs of the suit to the plaintiffs.

3. The facts and circumstances which gave rise to the filing of the suit and the applications are stated hereunder.

WEB COPY

4. The case of the applicants/plaintiffs is that they are the absolute owners/land-lords of the office premises measuring 9680 Sq.Ft. on the third

floor of the I.T. Commercial Building, known as "MPL Silicon Towers" (fourth floor - as per the sanctioned plan) bearing Door No.149, Velacherry-Tambaram Road, Pallikaranai, Chennai-601 302.

5. The respondent/defendant-Company was inducted as a tenant under the applicants occupying the above premises pursuant to a lease deed, dated 12.07.2018 for a period of 72 months with lock-in period of initial three years from 23.07.2018 to 22.07.2021 on a monthly rent of Rs.5,80,800/-, initially, with an annual escalation at 5% on the said rent, plus applicable Goods and Services Tax (GST) @ 18% on the rent. The said monthly rent was exclusive of monthly maintenance charges payable towards common amenities, to be payable to the maintenance agency, electricity consumption charges payable to TANGEDCO (Tamil Nadu Generation and Distribution Corporation) and water tax consumption charges to the local body.

6. According to the applicants, the respondent paid a sum of Rs.34,84,800/- as refundable interest-free security deposit. The respondent-

Company had been irregular in payment of monthly rents from July 2018 till February 2020. However, the respondent has been very prompt in paying the monthly charges to the maintenance agency regularly, fearing that any failure to pay the monthly charges would result in withdrawing of service in the common area. Similarly, the respondent-Company also used to pay the electricity charges without fail fearing disconnection of service.

7. The starting point of the dispute that arose between the applicants/plaintiffs and the respondent/defendant, was that, from the month of March 2020 (being the rent payable on or before 07.04.2020), the respondent/defendant failed to pay the monthly rents. On the other hand, a legal notice was issued on behalf of the respondent on 20.04.2020 to the applicants, making certain allegations that the applicants have failed to fulfil their part of the obligation in terms of the lease agreement, like garbage disposal, maintenance of Air-Conditioners (ACs), allotment of car park, etc. On the basis of the allegations, the lease agreement, dated 12.07.2018 came to be terminated during the lock-in period, which in fact, was to expire only

on 23.07.2021. Apart from terminating the lease agreement, claim towards damages of Rs.1 crore was also made by the respondent/defendant.

8. The applicants, on their behalf, sent a reply on 02.05.2020, refuting all the allegations of the respondent in their notice dated 20.04.2020 and informed the respondent/defendant that terminating the lease agreement unilaterally without sufficient cause, amounted to breach of Clause 2(B) read with 16(A) of the lease deed dated 12.07.2018. According to the said clause, the parties have mutually agreed that for the entire lock-in period of three years from 23.07.2018 to 23.07.2021, the respondent was liable to pay monthly rents and the maintenance charges. It also appeared that a rejoinder was also sent on behalf of the respondent/defendant on 13.05.2020, wherein the applicants were informed that the respondent would be vacating the demised premises not later than 20.07.2020 and further stated that there was no violation of Clause 2(B) or 16(A) of the lease deed dated 12.07.2018.

9. According to the respondent/defendant, Clause 19 (force-majeure) of the lease agreement was being invoked by them. Eventually, the applicants furnished a statement of liability to the respondent/defendant, amounting to Rs.1,19,20,469/- payable by them, in case the Company chooses to vacate the demised premises either on 20.07.2020 or by 31.07.2020.

10. According to the applicants/plaintiffs, the respondent/defendant-Company, in April 2020 itself, decided to move their office from the demised premises, which was only 9,680 Sq.Ft., to a bigger commercial space to run their business, as the respondent appeared to have felt that the present extent of 9,680 Sq.Ft, was insufficient for them.

11. The sum and substance of the case of the applicants is that in order to avoid the liability under the lease deed, dated 12.07.2018, by terminating the lease before the expiry of the lock-in period, the respondents had come up with unfounded, baseless allegations against the

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

applicants/plaintiffs by issuing legal notice on 20.04.2020. The decision of the respondent to shift the premises, was on account of their own business requirement and not because of any failure to provide any services from the side of the applicants in terms of the lease agreement, dated 12.07.2018. Therefore, the present suit has been filed for recovery of money, with interest, as stated supra.

12. The present O.A.No.1012 of 2021 is filed for furnishing security, fearing that the respondent/defendant will alienate the assets of the Company or go for liquidation any time, in which event, the applicants/plaintiffs would not be in a position to realise the fruits of any decree to be passed against the respondent/defendant. According to the applicants, they have bright chance of success in the suit and pending disposal of the sale, their rights need to be safeguarded and protected.

13. Per contra, the case of the respondent/defendant-Company is that the termination of the lease by them was because of the failure on the part of

the applicants/plaintiffs to provide them the service as indicated in their legal notice, dated 20.04.2020. According to them, certain crucial services to be provided by the applicants, were not provided which had a crippling effect on the business of the Company and the over-all operation of the Company had been affected. In the counter affidavit filed by the respondent, the sequence of events which led the termination of the lease, has been stated in paragraphs 19 and 20, which are extracted hereunder:

"19. **Re Paragraph No.7:** As regards the averments in this paragraph, it is surprising that, while the Plaintiffs have mentioned of failure to pay rents from April 2020, they have conveniently concealed the fact that the Defendant on several occasions prior to such period, had brought to the notice of the Plaintiffs, the issues relating to Air-Conditioners, Car Parking and compliance of the Leased Premises with Health and Safety Regulations. The Plaintiffs had committed gross breach of their obligations relating to the above. The earliest communication in this regard, dated 19.06.2019, addressed by the Defendant to the Plaintiffs, mentions all the details of the breach by the Plaintiffs in respect of the Leased Premises viz-a-viz Air Conditioners, Car Parking and compliance of the Leased Premises with Health and Safety Regulations. The Plaintiffs for reasons best known to them, have conveniently concealed the above fact from this Hon'ble Court and also not

submitted the said communications before this Hon'ble Court with an obvious intention to misguide and defraud this Hon'ble Court. It is to be noted that, the said email was sent to the Plaintiffs only after the said issues were repeatedly raised with the Plaintiffs in March, April and May, 2019. I state that the Plaintiffs did not take any steps whatsoever to address the critical issues faced by the Defendant and were in complete disregard to the same. This wilful failure of the Plaintiffs to attend to these grievances despite notification, is a clear breach of Clauses 7(B) and 8(E) of the Lease Deed by virtue of which the Plaintiffs, being the Lessors, are cast upon the duty to ensure that the house-keeping facilities are regularly and efficiently provided without interruption. It is pertinent to state that the defective air conditioners, their faulty installation and the resultant water seepage from the ceiling not only damaged the computer systems and other important files but also caused considerable hindrance to the Defendant in using the Leased Premises, thereby causing financial loss for the Defendant. Circumstance such as non-availability of a fully functional air-conditioned conference rooms for meetings with the clients; and other critical maintenance issues as identified *supra*, thereby rendering the Leased Premises not fully ready or functional for commercial use. It is pertinent that while the Covid-19 crisis demanded highly sanitized and hygienic workspace, the Leased Premises was uninhabitable due to the poor maintenance by the Plaintiffs. Therefore, the Defendant was constrained to terminate the Lease Deed *vide*

Notice of Termination dated April 20, 2020. The Force Majeure Clause under Clause 19 of the Lease Deed entitles the Defendant to terminate the Lease Deed and where invoked, the rent payable also ceases to be payable in the event of the Leased Premises or any part thereof is damaged or destroyed or becomes unfit for use due to unforeseen circumstances or civil disturbance or act of God etc., as stipulated in the said clause, where such damage or destruction is not being appropriately remedied to the satisfaction of the Lessee (i.e., the Defendant herein).

20. Re Paragraphs No.8 to 10: I submit that the contention of the Plaintiffs that the termination of the Lease Deed by the Defendant before the expiry of the Lock-in-period is a breach of Clause 2(B) read with Clause 16(A) of the Lease Deed is ill-founded, self-serving and therefore, unsustainable. It is necessary to state that the Force Majeure Clause under Clause 19 of the Lease Deed entitles the Defendant to terminate the Lease Deed and where invoked, the rent payable also ceases to be payable in the event of the Leased Premises or any part thereof is damaged or destroyed or becomes unfit for use due to unforeseen circumstances or civil disturbance or act of God etc., as stipulated in the said clause, where such damage or destruction is not being appropriately remedied to the satisfaction of the Lessee (i.e., the Defendant herein). I state that the Defendant is thus entitled to terminate the Lease Deed invoking the said clause for the unremedied damages and the callous and negligent nature of the Plaintiffs. I submit that though Clause 16-A of the Lease Deed

permits the Lessee to terminate the Lease Deed only after the expiry of the Lock-in period as stipulated under Clause 2-B, it is important to point out to Clause 16-C of the Lease Deed which permits the Lessee to terminate the Lease Deed in the event of breaches by the Lessor and where no remedial measures are taken by the Lessor (i.e., the Plaintiffs) within 30-days-notice period. It is pertinent to note that, the Defendant had notified the Plaintiff of their breaches as early as 19.06.2019 and the Plaintiff had not taken any steps to remedy the same. I state that the Notice of Termination was issued only after the Defendant endured avoidable hardships and compulsions and helplessly so, that mandated vacating the Leased Premises. I state and submit that the Plaintiff's claim for monthly rents till the end of lock-in period, i.e., for the months of March 2020 through July 2021 even after being served with the Notice of Termination dated April 20, 2020 and also accepting the delivery of vacant possession of the Leased Premises on August 1, 2020 in a good condition, is contrary to the understanding of the parties as recorded in the Lease Deed, excessive and clearly vexatious."

सत्यमेव जयते

WEB COPY

14. According to the respondent/defendant, there were certain duties cast upon by the applicants/plaintiffs (lessors), which duties had not been discharged by the applicants. According to them, the applicants have

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

committed gross breach of their obligations, particularly, in regard to the issues relating to the Air-Conditioners (ACs), car parking and the complaints relating to the health and safety regulations. According to the respondent/defendant-Company, in their earliest communication, dated 19.06.2019 addressed to the applicants, the details of the breach committed by the applicants, had been set out, however, there was no response or action forthcoming from the applicants. Only in the said circumstances, the respondent was forced to terminate the lease agreement, fearing loss of reputation of their business.

15. On behalf of the respondent/defendant, two other legal contentions have been raised in the counter affidavit, one is that the present application does not specify the requirements as laid down under Order 38 Rule 5 of the Civil Procedure Code (CPC) and the other is that they have been enjoying sound financial condition and in fact, the applicants/plaintiffs themselves have averred in their application that for accommodating their business interest, the respondent moved to a bigger accommodation from

their earlier 9,680 Sq.Ft. That itself would be a clear indication of the fact that the respondent-Company was aiming higher business potential by shifting their office to a bigger accommodation.

16. According to the respondent, as per Order 38 Rule 5 CPC, it is incumbent upon the applicant to show a prima-facie case that the respondent-Company was not in a sound financial condition, in the event of the plaintiff succeeding in the suit, they would not be able to recover the suit claim. The averment must be supported by clinching materials and information. A vague statement in the plaint or in the affidavit filed in support of the applications, suggesting balance of convenience in their favour, cannot be the basis for exercise of extraordinary power under Order 38 Rule 5 CPC.

17. According to the respondent/defendant, the lease deed being an unregistered document, the same is inadmissible in evidence, in view of the restriction imposed under Section 49(c) of the Registration Act, 1908. As

the entire case being premised on the lease agreement, the very claim of the applicants, itself, is questionable and doubtful and in that view of the matter, furnishing security by the respondent as insisted upon by the applicants herein, would not arise.

18. Heard the learned counsel appearing for the parties who reiterated the above facts and perused the pleadings/materials placed on record.

19. According to the learned counsel for the applicants/plaintiffs, the respondent/defendant-Company is not having sufficient wherewithal to sustain themselves for a longer period and in such circumstances, the interest of the applicants is to be secured by directing the respondent/defendant to furnish security in respect of the suit claim.

20. In fact, the learned counsel for the applicants/plaintiffs attempted to bring it to the notice of this Court the financial details of the respondent/defendant-Company as on March 2019, which appeared to be

showing in minus net-worth. Likewise, the learned counsel attempted to impress upon this Court with the financial statement of the respondent-Company for the Financial Year 2019-2020. However, this Court is not inclined to get into the nitty-gritty of the facts and figures relating to the financial soundness or otherwise of the respondent-Company. These are all matters which cannot be decided on the basis of some statements made across the bar with the copies of financial statements, in the form of typed set of papers filed along with the application. The financial soundness or otherwise of the Company, cannot be decided on the basis of such self-serving documents, as the figures and the contents of the documents need to be established by letting in evidence. In any case, even according to the applicants/plaintiffs, the respondent-defendant/Company had moved out to a larger accommodation, in which case, there can be a valid presumption that the respondent-Company as on date is operational and growing concern. Even otherwise, the entitlement of the suit claim by applicants/plaintiffs itself, has been seriously challenged on various factual and legal grounds on behalf of the respondent/defendant, as stated above.

21. Whether at all the respondent is still liable to pay the monthly rents for the remaining lock-in period, when the vacant portion of the demised premises had been handed over to the applicants by July/August 2020 itself, is a matter to be decided in the final determination of the suit proceedings.

22. As rightly contended by the learned counsel for the respondent/defendant, the amount of Rs.34,84,800/- was lying with the applicants being refundable interest-free security deposit paid by the respondent/defendant and that amount was sufficient enough to take care of the rents payable by the respondent from the months of March 2020 to July 2020.

23. Apart from the fact of availability of interest free security deposit of a sum of Rs.34,84,800/- with the applicants/plaintiffs, and presumed to be appropriated as arrears of rent, it is admitted that the vacant possession

has been handed over to the applicants on 1st August, 2020 itself, and the delivery of vacant possession of the leased premises, had also been acknowledged and accepted by the applicants/plaintiffs in good condition.

24. In view of the above admitted facts, the claim for furnishing of security to protect the interest of the applicants, pending disposal of the present suit, cannot be countenanced, either in law or on facts.

25. Moreover, on behalf of the respondent/defendant, legal contentions have been raised as to the satisfaction of the requirements laid down under Order 38 Rule 5 CPC. Although attempts have been made by the applicants to draw the attention of this Court about the financial unsoundness of the respondent-Company, this Court is not persuaded or is convinced with the same, as the materials which are relied upon, are hardly reliable for taking a definite stand in favour of the applicants.

26. In any event, when the basis of the claim of the applicants, itself,

appears to be shaky and rickety, on a prima-facie consideration, the question of exercising the discretion of this Court under Order 38 Rule 5 CPC, does not arise in this case.

27. As rightly contended on behalf of the respondent/defendant, a mere suggestion of balance of convenience in favour of the applicants/plaintiffs, is only a trite expression, which cannot be taken on the face value, unless it is supported by clinching materials and evidence. In this case, there is hardly any material, which could be considered worthy that can tilt the scales of balance in favour of the applicants.

28. Further, the legal contentions as to the non-registration of the crucial document, namely the lease deed, dated 12.07.2018, is also to be taken into consideration, as to the admissibility of the claim made by the applicants/plaintiffs herein. In any event, the legality of the documents, is a matter for consideration in the suit proceedings, but, at the same time, on a prima-facie consideration, this Court is of the view that no case has been

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

made out by the applicants/plaintiffs for grant of relief as prayed for in A.No.1012 of 2021 for furnishing security.

29. Accordingly, A.No.1012 of 2021 is dismissed. No costs.

30. List A.No.2166 of 2021, along with C.S.No.93 of 2021, for hearing on 04.10.2021.

Index: Yes/no

Speaking Order: Yes

cs

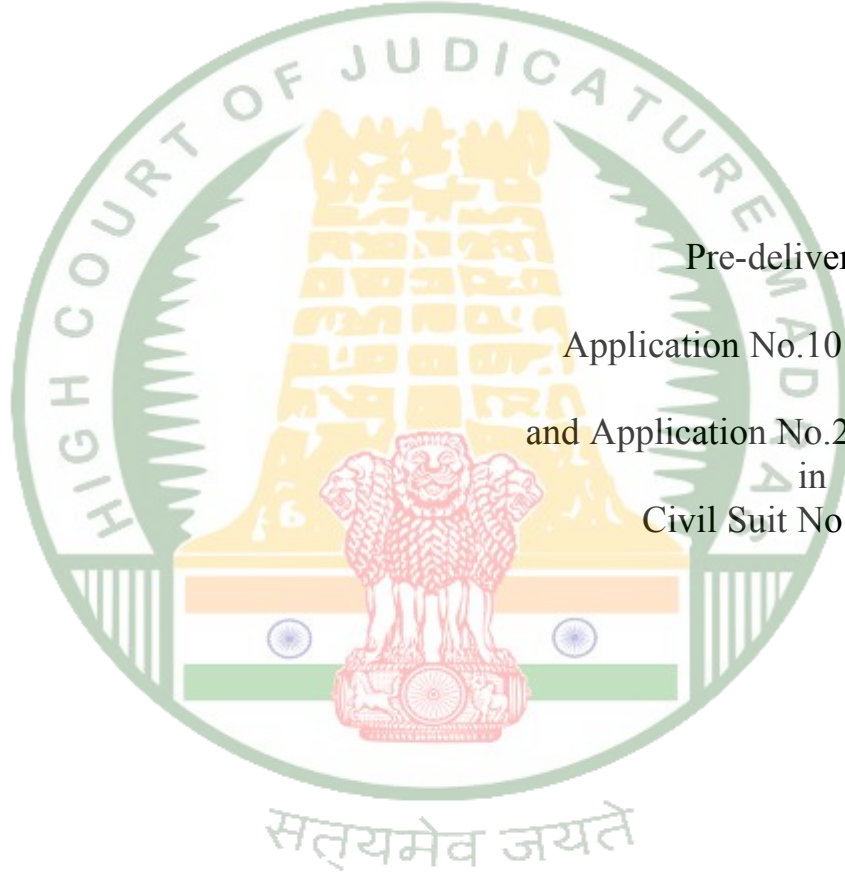
1309.2021

WEB COPY

Appln.Nos.1012 and 2166 of 2021
in Civil Suit No.93 of 2021

V. PARTHIBAN, J

CS



Pre-delivery Order in
Application No.1012 of 2021
and Application No.2166 of 2021
in
Civil Suit No.93 of 2021

Orders pronounced on 13.09.2021

WEB COPY