



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A (MD) No.236 of 2015

John William

.. Appellant / Appellant/ Plaintiff

Vs.

1.The Regional Manager,
I.O.B. Central Office,
Anna Salai,
Chennai.

2.The General Manager,
I.O.B. Regional Office,
Vetturnimadam, Nagercoil,
Kanyakumari District.

3. The Branch Manager,
I.O.B. Nadaikkavu Branch,
Nadaikkavu, Methukumpal Village,
Vilavancode Taluk,
Kanyakumari District.

... Respondents /Respondents 1 to 3/
Defendants 1 to 3

Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree made in A.S.No.6 of 2013 dated 26.03.2014 on the file of the Subordinate Judge, Kuzhithurrai confirming the Judgment and decree passed in O.S.No.81 of 2007, dated 04.10.2012 on the file of the II Additional District Munsif, Kuzhithurrai.

For Appellant : Mr.G. Ramanathan

For respondents : No appearance

JUDGMENT

The appellant, who is the plaintiff in O.S.No. 81 of 2007 has come up with this Second Appeal challenging the dismissal of



his suit for damages against the Bank and for termination of the lease hold on the expiry of the lease period.

2. The plaintiff originally filed a suit for permanent injunction restraining the defendants Bank from effecting the shifting of its office from the plaintiff's property to any other property and for recovery of Rs.70,000/- with 12% interest.

3. Pending suit, the Bank vacated the premises and handed over the possession to the plaintiff. Therefore, both the Courts below dismissed the suit for the relief of permanent injunction on the ground that the relief does not survive. As regards the claim of the plaintiff for damages, the Courts below found that the plaintiff has not established that he has suffered damages to the tune of Rs.70,000/-. Reliance was placed by the Courts below on the report of the Advocate Commissioner which disclosed that the damages that were pointed out, were all routine in nature and the repair works that have been done are due to usual wear and tear on the above findings, the Courts below had dismissed the suit. Hence, the plaintiff is on appeal.

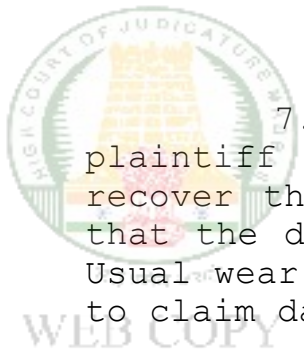
4. Though the respondents have been served, they have not appeared either in person or through counsel duly instructed.

5. At the time of admission, the following substantial questions of law have been framed:

1. Whether the Courts below are correct in dismissing the suit relying on particular a clause in the agreement Ex.A1?

2. Whether the Courts below are correct in rejecting the claim of damages of Rs.70,000/- without any reason?

6. Mr.G.Ramanathan, learned counsel appearing for the appellant would vehemently contend that the Courts below were not right in dismissing the suit as a whole and it should have seen that repair works are required to be done to enable the plaintiff to put the building in shape for use. Therefore, according to him, the Courts below should have atleast granted the damages as found by the Commissioner. The lease is a matter of contract. The lease deed Ex. A1 specifically provided that the lessee is entitled to vacate the premises even during the currency of lease or on the expiry of the entire lease period. Clause 4(i) of the lease deed also states that if the Lessees are desirous of vacating the premises before the expiry of the lease period, they shall be at liberty to do so, on giving three months notice and they shall not be liable for payment of rent for the unexpired portion of the lease period.



7. There is nothing in the lease deed which enables the plaintiff to claim damages that he had incurred. In order to recover the damages from the tenant, the landlord has to prove that the damages were caused by extraordinary acts of the tenant. Usual wear and tear will not give cause of action to the landlord to claim damages against the tenant.

8. The Commissioner's Report on the other hand, discloses that whatever the damages that have been caused are due to routine user and not due to any special act done by the defendant Bank. Therefore, I am of the considered view that the Courts below were right in concluding that in view of the Clause 4(i) of the lease deed agreement, the plaintiff cannot seek the relief of injunction or damages.

9. The Courts below have also found that there is no proof for the quantum of damages claimed by the plaintiff. Hence, the substantial questions of law are answered against the appellant. The Second Appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

trp
To

1. The Subordinate Judge, Kuzhithurrai

2. The II Additional District Munsif, Kuzhithurrai.

Copy to
The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

S.A (MD) No.236 of 2015
25.01.2021

KM(18.05.2021) 3P 5C