

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

O.S.A.No.16 of 2022

R.Sampath Kumar ... Appellant
Vs.

The Official Trustee of Tamil Nadu,
Madras High Court,
Chennai. ... Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of the Letters Patent against the order made in A.No.4328 of 2021 in C.S. No.204 of 1940 dated 17.12.2021.

Prayer in A.No.4328 of 2021:

Judges summon issued under Order XIV Rule 8 of the Original Side Rules read with Section 151 of the Code of Civil Procedure Prayed to direct the respondent to quit and deliver the vacant possession of premises at D.No.180, Jawaharlal Nehru Street, Tiruvallur within a time frame.

For Appellant : Mr.A.Sriram for
M/s.A.S.Kailasam and Associates

For Respondent : Mr.M.R.Jothimanian

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

The Original Side Appeal has been filed by the appellant against the order dated 17.12.2021 made in A.No.4328 of 2021 in C.S. No.204 of 1940.

2.Learned counsel appearing for the appellant submitted that the property bearing Door No.180, situated at Jawaharlal Nehru

Road, Thiruvallur Town has been administered by the respondent herein and the same was taken on lease by the appellant by way of filing an Application in A.No.3645 of 2006 in C.S. No.204 of 1940, which came to be allowed by this Court on 13.08.2007, by granting lease for a period of six years starting from 01.09.2007 on a monthly rent of Rs.15,000/- and this Court further directed the appellant to deposit a sum of Rs.2,00,000/- as security deposit for the due performance of the obligation under the contract of lease. Learned counsel appearing for the appellant further submitted that as the copy of the order dated 13.08.2007 was received by the appellant only on 29.09.2007, the security deposit was made only on 12.10.2007. As directed by this Court, the lease could not be executed in time and therefore, the appellant was not able to hand over the possession. Hence, the appellant took out an application in A.No.4838 of 2008 in A.No.3645 of 2006 in C.S. No.204 of 1940 seeking to modify the order dated 13.08.2007 and this Court, by order dated 23.01.2009 modified the order dated 13.08.2007 in respect of the commencement of tenancy, whereby the date of the original tenancy i.e. 01.09.2007 was modified as 01.01.2009 and directed the appellant to deposit a sum of Rs.50,000/- over and above the sum of Rs.2,00,000/- that was already paid as security deposit. This Court, while observing that if the appellant deposits the said sum of Rs.50,000/- on or before 31.01.2009, the respondent shall execute the lease deed in favour of the appellant and the lease shall commence from 01.01.2009 on a monthly rent of Rs.15,000/-, directed the A.G.&O.T. to hand over possession of the above mentioned property on such deposit of Rs.50,000/- + Rs.15,000/- being the monthly rent from January 2009. Pursuant to the modification order dated 23.01.2009, a sum of Rs.50,000/- was deposited by the appellant on 28.01.2009 and subsequently, a lease agreement for a period of six years commencing from 01.01.2009, came to be executed by the Official Trustee in favour of the appellant on 19.06.2009. Learned counsel for the appellant further submitted that after taking the above property for lease, availing finance from many people, incurring a sum of Rs.20,00,000/-, the appellant had put up a false ceiling and running a hotel business under the name and style of 'Hotel Vasavi Jeeva Bhavan'. While so, by letter dated 06.11.2014, the Official Trustee had informed the appellant that the period of lease was coming to an end on 31.12.2014 and directed the appellant to quit and deliver the vacant possession on or before the above said date. In the above circumstances, the appellant took out another Application No.8475 of 2019 before this Court seeking to extend the lease period for a further tenure of six years and the same was allowed by this Court on 08.11.2019, directing the appellant to pay a sum of

Rs.25,000/- as lease rent per month for a period of three years commencing from 01.01.2020 to 31.12.2022 and observing that the lease thereafter shall be extended by the respondent for a further period of three years from 01.01.2023 at the rate of Rs.30,000/- per month. In the meanwhile, the appellant had been paying the rent promptly.

3.Learned counsel for the appellant further submitted that the property leased is for an extent of 4.75 grounds along with a built up area of 2914 sq.ft., wherein the appellant has been running a hotel business. While so, the appellant, during the month of February 2020, put up a temporary shed in the vacant land, which is also under the appellant's occupation as part of the lease agreement, but, not a concrete structure. Thereafter, on 17.03.2020, an inspection has been conducted on the property and on 19.03.2020, the appellant received a notice from the respondent calling upon him to demolish the additional semi construction and in failure, to terminate the lease. Due to the pandemic situation, the appellant was not in a position to give a suitable reply. While so, another inspection was made, in which, the appellant orally intimated about the order dated 13.08.2007 in A.No.3645 of 2006, showing the commencement of tenancy. Though the same is only a steel shed and not an additional construction, vide notice dated 04.08.2021, the respondent called upon the appellant to appear in person on 16.08.2021 to show cause as to why action should not be initiated for not paying rent from April 2021 to July 2021, amounting to Rs.1,00,000/-. Subsequent to the notice, the appellant appeared in person on 18.08.2021 and submitted the registration certificate issued by the competent authority for running the shop. Thereafter, the appellant has also paid the rent from April 2021 to July 2021 vide Cheque No.679145 drawn on PNB Bank, Thiruvallur and the same has been realised on 19.10.2021. Despite the same, the respondent issued a termination order dated 21.10.2021, wherein the lease standing in favour of the appellant was terminated by the respondent with effect from 31.10.2021 and directed the appellant to hand over the vacant possession of the land on or before 01.11.2021.

4.Learned counsel for the appellant further submitted that the said termination order was challenged before this Court in Application No.3943 of 2021 and the respondent has also preferred three Application Nos.4327, 4328 and 4329 of 2021 for a direction to the appellant to pay damages, to quit and deliver vacant possession of the leased property and in case of failure, to hand over the vacant possession and for a direction to take possession with the help of police. This Court, by order dated

17.12.2021, while observing that the appellant had violated the conditions of the lease by putting up an un-authorised construction and subletting the premises, allowed the Application Nos.4328 and 4329 of 2021 filed by the respondent, directing the appellant to hand over the vacant possession of the property within one month from the date of receipt of a copy of the order and in case of failure, the respondent shall take possession of the property with the assistance of police. Aggrieved by the same, the appellant is before this Court.

5.A report dated 21.02.2022 has been filed by the Official Trustee of Tamil Nadu, the respondent herein stating that initially, the subject property along with the movables, kept in the choultry, was leased out to the appellant on a monthly rent as per order passed by this Court in A.No.4838 of 2008 in A.No.3645 of 2006 in C.S. No.204 of 1940 vide lease agreement dated 23.01.2009 with effect from 01.01.2009 with certain conditions and on inspection of the property by the Estate Clerk, vide report dated 18.03.2020, it has been stated that the appellant had put up a new construction upto 800 sq.ft. on the left side of the existing building, without obtaining any permission from the respondent, thereby, violating the lease conditions, which reveals that he is about to sub let the portion, built by him. Therefore, a notice was issued, calling upon him to demolish the additional construction put up by him immediately and in case of failure, to terminate the lease. But the appellant has not removed the additional construction put up by him, despite several reminders made by the respondent. Since the appellant had violated the order passed by this Court by sub-letting and also putting construction, without getting any prior permission, the respondent terminated the lease in favour of the appellant with a direction to hand over the vacant possession.

6.Heard both sides.

7.It is seen from records that the appellant, being a Lessee of the land in question, belonging to the Official Trustee of the Tamil Nadu, was granted the extension of lease from 01.01.2020 to 31.12.2022, as per the order passed by this Court on 08.11.2019. Secondly, the appellant has also put up a steel shed, without seeking prior permission from the respondent. Originally, the property in question was leased out to the appellant by order dated 13.08.2007 for a period of 6 years commencing from 01.09.2007 on a monthly rent of Rs.15,000/- with a further direction that the appellant shall deposit a sum of Rs.2,00,000/- as security deposit. Since the copy of the order

dated 13.08.2007 was received by the appellant only on 29.09.2007, he was able to make the security deposit only on 12.10.2007. Hence, the Application No.4838 of 2008 in Application No.3645 of 2006 in C.S. No.204 of 1940 seeking to modify the order dated 13.08.2007 was filed by the appellant, so as to enable him to pay the lease amount from 01.04.2008. This Court, by order dated 23.01.2009 modified the date of commencement of the tenancy from 01.09.2007 to 01.01.2009 and the said period of 6 years came to an end on 31.12.2014. However, from 01.01.2015, the appellant has been carrying on the business by remitting the lease rent at the rate of Rs.15,000/- per month. This Court, considering the escalation of price, directed the appellant to pay a sum of Rs.25,000/- as lease rent per month for a period of three years from 01.01.2020 to 31.12.2022 with an observation that the lease in favour of the appellant shall be extended by the respondent for a further period of three years from 01.01.2023 at the rate of Rs.30,000/- per month.

8.Now, the controversy arisen between the parties would show that after the lease was granted in favour of the appellant, while running the restaurant/hotel, the appellant has put up a temporary steel shed at the right side of the restaurant/hotel, utilising the open space. Secondly, he has not even executed the lease deed, seeking renewal from 01.01.2020 till 31.12.2022. Therefore, the respondent was of the view that the appellant has no interest in continuing the present place as a Lessee.

9.Learned counsel appearing for the appellant submitted that the appellant has been making the enhanced rent of Rs.25,000/- per month and the same has been received by the respondent, which has given the impression that the appellant's request for renewal has been accepted. However, he sought for a week's time to move a fresh application seeking renewal of the lease, as ordered by this Court from 01.01.2020 till 31.12.2022 and after expiry of that period, he would also, as indicated by this Court, seek for further renewal for a period of three more years with enhanced rent of Rs.30,000/- per month.

10.Learned counsel for the respondent has produced photographs to impress upon the Court that the appellant has violated the lease condition by putting up a temporary steel shed, without obtaining prior permission from the respondent.

11.In reply, learned counsel appearing for the appellant submitted that the appellant has not put up any pucca construction and it is only a temporary steel shed, which is

removable in nature at any time. Therefore, he was under the impression that no prior permission is required.

12.We are able to see from the photographs that only a temporary shed has been put up to run the provisional/vegetable shop. The allegation of sub letting has been denied by the learned counsel for the appellant. We are also not able to find any particular name mentioning the sub lessee or sub tenant. Therefore, the arguments advanced by the learned counsel for the respondent that the appellant has to pay additional rent for using the open space, where he has put up a construction, cannot be acceptable. In this regard Clause No.1 of the Lease Deed dated 19.06.2009 is extracted as under:

'1.The Lessor agree to let and the Lessee agrees to take the premises morefully described in the Schedule hereunder for a term of six years to be computed from the 1st day of January 2009 at the rent of Rs.15000/- (Rupees Fifteen thousand only) per month for the premises to be payable to the Lessor and such rent shall be payable by 10th of every following month of English Calendar.'

13.A perusal of the above clause shows that the Lessor agrees to let and the Lessee agrees to take the premises more fully described in the Schedule mentioned property for a term of six years and thereafter, the appellant has become Lessee of the respondent for the entire 4.75 grounds of the land. Therefore, the appellant is entitled to utilise the open space, but, shall take prior permission before putting up even temporary construction, for which, the appellant sought for a week's time to move an application before the respondent.

14.Therefore, we grant a week's time to the appellant to approach the respondent with an application seeking permission to regularize the temporary steel shed put up in the right sight of the restaurant/hotel and to renew the lease for a period of three years from 01.01.2020 to 31.12.2022 for a sum of Rs.25,000/-. If any such application is filed by the appellant, the same shall be considered by the respondent, on merits and as per law.

15.With the above direction, the appeal stands disposed of.
No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+2cc to M/s.A.S.Kailasam Associates, Advocate Sr.19461
+1cc to Mr.M.R.Jothimanian, Advocate Sr.20052

O.S.A.No.16 of 2022'

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srg 29/07/2022