



C.S.No.113 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Civil Suit No.113 of 2022

- 1.M/s.Rayala Corporation Pvt., Ltd.,
Represented by its Managing Director, Mr.Ranjit Pratap,
No.144/7, Rayala Techno Park,
Rajeev Gandhi Salai (OMR), Kottivakkam,
Chennai – 41.
- 2.M/s.Vira Properties Pvt., Ltd.,
Represented by its Director Mr.Gulam Dastagir,
Rayala Tower, New No.158 (Old No.781) Anna Salai,
Chennai – 2. ... Plaintiffs

versus

- 1.M/s.Benz Vaccations Club Public Limited,
Represented by its MD. Mr.Benz Saravanan
New No.158 (781 – 785), Rayala Tower,
2nd floor, Anna Salai, Chennai -2.
- 2.M/s.Benz Vaccations Club,
Represented by its President,
Mr.A.Thanajayan, New No.158 (781 – 785),
Rayala Tower, 2nd floor,
Anna Salai, Chennai – 2. ... Defendants



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Prayer: The Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure read with Order IV Rule 1 of the Original Side Rules, seeking to pass a Judgment and decree against the defendants, directing the defendants to deliver and handover vacant possession of the suit schedule mentioned premises i.e., the 2nd floor premises measuring a built up area of 11,195 sq.ft with 11 car parkings (six covered and 5 open car parkings) and common amenities of the premises called “Rayala Towers” bearing No.158 (781 – 785), Anna Salai, Chennai – 2 and also directing the defendants to pay the sum of Rs.1,93,30,946/- being arrears of rent, license fee, maintenance charges and EB charges due till April 2022 (after deducting security deposit) and also directing the defendant to pay the future damages for use and occupation at the same rate of Rs.10,00,000/- per month, from 01.05.2022 till the date of vacating and handing over vacant possession and for the cost of the suit.

For Plaintiffs : Mr.K.P.Ashok

For defendants : Summons served (No appearance)

JUDGMENT

The suit had been filed seeking a direction against the defendants to deliver and handover vacant possession of the suit schedule properties, namely 2nd floor premises with built up area of 11,195 sq.ft with 11 car parkings, which include 6 covered car parkings and 5 open car parkings



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and also the common amenities in the premises called “Rayala Towers” at No.158 (781 – 785) Anna Salai, Chennai 600 002 and also for a direction against the defendants to pay the arrears of rent, license fee, maintenance charges and Electricity charges, due till April 2022, which comes to Rs.1,93,30,946/- after adjusting the security deposit which was to a sum of Rs.21,83,025/- as per the Lease agreement entered into between the plaintiffs and the defendants, dated 01.08.2013.

2. The 1st and 2nd defendants had been served on 13.07.2022. They had not filed the written statement. They had been set ex-parte on 09.09.2022. The plaintiffs were directed to tender evidence. Accordingly the plaintiffs examined Mr.Gulab Dastagir, Director of the 2nd plaintiff and he also filed exhibits P1 to P17.

3. Heard, Mr.K.P.Ashok, learned counsel for the plaintiffs.

4. Mr.K.P.Ashok, learned counsel for the plaintiffs took this Court through the averments in the plaint.



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5. The case of the plaintiffs is that they had entered into an agreement on 01.08.2013 with the defendants with respect to taking on lease by the defendants of the 2nd floor portion measuring 11,195 sq.ft together with (six covered and five open) car parking spaces and also common amenities in the premises at “Rayala Towers” at No.158 (781 – 785) Anna Salai, Chennai 600 002. The monthly rent was agreed at Rs.3,63,838/- from 10.10.2013 with gradual increase and finally from 01.10.2019 at Rs.4,81,161/-. It was specifically agreed for the rents would exclude Goods and Services Tax, Electricity Charges and other utility charges which have to be paid directly by the defendants. The defendants have also agreed to pay the maintenance charges at Rs.4.50 per sq.ft in accordance with the area under their occupation.

6. The 1st defendant specifically had represented that they are a company running a club namely Benz Vacations Club at several places in Tamil Nadu and the premises which was the subject matter of the suit was taken lease as their corporate office.



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7. The plaintiffs have complained that the defendants have been chronic defaulters in payment of rents. Thereafter, the 1st plaintiff issued a letter on 14.01.2020, terminating the agreement in view of the breach of agreement particularly, the breach relating to the payment of the lease amounts. There was a discussion entered into by the defendants with the plaintiffs.

8. It is further complained by the plaintiffs that the defendants had sublet the premises to various anti-social elements and since there was a direct violation of the terms of lease, the plaintiffs, issued another letter on 12.03.2020, calling upon the defendants to vacate and pay the arrears of rent of Rs.33,34,306/- which was due after adjustment of the security deposit.

9. It must also be stated that the nefarious activities of the defendants by illegal usage of the tenanted premises were also reported in the newspapers on 11.03.2020 and 12.03.2020 and the extract of the report in the Hindu Newspaper on 12.03.2020 had been specifically stated in the plaint.



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10. The plaintiffs then suffered the consequences of the lock down owing to the Covid-19 pandemic, which commenced on 24.03.2020.

Thereafter, on 16.12.2020, a fresh agreement had been entered into between the plaintiffs and the defendants wherein, the plaintiffs had permitted the defendants to use the premises for a further period of 2½ months from 16.12.2020 with a strict condition to vacate the premises on expiry of the said period of 2½ months.

11. However, the defendants did not do so and as a matter of fact, they had filed the suit in O.S.No.4911/2020, before the City Civil Court at Chennai against the Director of the plaintiffs. It had been stated that the plaintiffs are taking steps to seek rejection of the plaint. It had been further stated that though the defendants have been directed to vacate the premises and more specifically since the permissive license which was granted for a period of 2½ months on 15.12.2020 had expired, and since the defendants had not paid the arrears of rent, the plaintiffs had filed this present suit seeking termination of the tenancy, seeking handing over of vacant portion and seeking payment of arrears of rent.



12. With respect to the arrears of rent which are payable, the learned counsel Mr.K.P.Ashok, to his credit, had very fairly stated that in the subsequent agreement, dated 16.12.2020, the plaintiffs had waived the arrears but had placed a condition on the defendants that they should vacate the premises within a period of 2 ½ months. They had not so vacated. Therefore, it is claimed that the lease amount for the period of 16 ½ months till the date of filing of the suit at the rate of Rs.5,67,770/- + GST at 18% per annum should be paid by the defendants.

13. As stated, the defendants had taken a conscious decision not to appear before the Court. They did not file their written statements and they had not taken up any defence.

14. In the evidence adduced, P.W.1, the Director of the 2nd plaintiff's Company had filed his proof affidavit and had urged that the suit should be decreed as prayed for in the plaint.

15. Along with the proof affidavit, the plaintiffs had also marked the resolutions of the 1st and 2nd plaintiffs as Exs.P1 and P2, the lease



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agreement between the plaintiffs and defendants dated 01.08.2013 as Ex.P3, the Notice dated 14.01.2020 as Ex.P4, the agreement between the parties dated 20.01.2020 as Ex.P5, the Notice dated 12.03.2020 as Ex.P6, the copy of the legal notice issued dated 13.08.2020 as Ex.P7, the minutes of meeting between the parties on 15.10.2020 as Ex.P8, the notice dated 27.11.2020 as Ex.P9, the letter issued by the defendants dated 02.12.2020 as Ex.P10 and the reply as Ex.P11. The Cancellation of the Lease Agreement namely Ex.P3 by a fresh agreement dated 16.12.2020 was marked as Ex.P13. The leave and licence agreement was marked as Ex.P14. The final termination notice was marked as Ex.P15.

16. The Court had raised an issue whether since the agreement had not been registered it could be enforced by this Court and further when a specific act had been introduced by the legislature relating to the tenancy issues between the landlord and tenant, namely the Tamil Nadu Regulation of Rights and Responsibilities of Landlord and Tenants Act, 2017, the relief sought in the plaint could be maintained or not.



17. With respect to the issue of the agreement being unregistered and not adequately stamped, the learned counsel relied on a Judgment of the Hon'ble Supreme Court, reported in **1997 (1) Law Weekly 763 [Sathish Kumar vs Zarif Anmed and others]** wherein, the Hon'ble Supreme Court had held as follows:

“4.The only question that arises for consideration is: whether the unregistered lease deed is admissible in evidence? Sec 17 (1) (d) of the Registration Act postulates thus:

“(1)the following document shall be registered if the property to which it relates is situate in a district in which, and if it may have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian Registration Act 1877, or the Indian Registration Act, 1908 comes into force, namely

(d)leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.”

5.”Instrument” has been defined in Section 2(14) of the Indian Stamp Act, 1899 postulating that



“(I) instrument includes every document by which any right or liability is, or purports to be created, transferred, limited, extended extinguished or record.

6.Section 3 of the Transfer of Property Act, 1882 (for short the 'TP Act') also defines “instrument” to mean a non-testamentary instrument. Section 107 of the TP Act regulates how lease is to be made. The first part thereof provides that a lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. The second part thereof gives exception to the first part and provides that all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

7.The question, therefore, that arises is: whether a lease of immovable property from month to month or for 11 months is a compulsorily registrable document, though it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act? A conjoint reading of the first part of Section



107 read with Section 17(1)(d) of the Registration Act, as extracted herein before, does indicate that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent should be made only by a registered instrument and all other instruments, though reduced to writing and possession is delivered thereunder, are not compulsorily registrable instruments.

8. Section 49 of the Registration Act prohibits receiving in evidence certain types of documents. It reads as under:

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall

(a) affect any immovable property comprised therein, or

(c) be received as evidence of any transaction affecting such property or conferring such power;

unless it has been registered:”

The proviso is not applicable to the facts in this case and, therefore, it is not necessary to look into the exceptions engrafted vis-a-vis receipt of a document comprising of three circumstances



mentioned therein, namely, unregistered document used for enforcement of specific performance under the Specific Relief Act or used as an evidence of part performance of the contract under Section 53-A of the TP Act or using evidence for collateral transactions. The combined effect of all the provisions is that an unregistered lease deed executed from month to month for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a tenant, is not a compulsorily registrable instrument and, therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property.

9.The High Court, therefore, was not right in reaching the conclusion that an unregistered document is inadmissible in evidence and cannot be looked into for the purpose of effecting the rights as landlord and tenant created under the document.”

18. This Court had also raised a doubt regarding applicability of the new Act namely, the Tamil Nadu Regulation of Rights and Responsibilities



of Landlord and Tenants Act, 2017 and particularly, with respect to an unregistered document.

19. The learned counsel relied on the Judgment of a learned Single Judge of this Court reported in **2022 1 Law Weekly 752 [S.Muruganandam vs. J.Joseph]** wherein, a learned Single Judge had stated that even after introduction of the Act, if an agreement had been entered into and the same has not registered, then, the provisions of the Act could not apply, but a Civil Suit would be maintainable. The ratio laid down therein, is applicable.

20. The learned Single Judge had stated as follows:

“23.c. As regards tenancies which are created after the New Act, where there is no registered instrument, the landlord will have recourse only to the Transfer of Property Act to sue for eviction.”

21. It is therefore insisted by Mr.K.P.Ashok, learned counsel for the plaintiffs that the plaintiffs have made out a case for grant of the reliefs sought.



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22. However, the relief with respect to the arrears of rent, the relief can be granted only for the period of 16 ½ months till the date of filing of the suit and thereafter, at the rate of Rs.5,67,770/- + GST at 18% for Rs.1,02,199/-.

23. In view of these facts, the suit is partly decreed.

(i) The relief 'a' is granted namely, a direction given to the defendants to deliver and hand over vacant possession of the suit schedule property. Time to vacate and handover possession is three months from this date.

(ii) With respect to the relief 'b' the suit is partly decreed and a decree granted for a sum of Rs.1,10,54,489/- till the date of filing of the suit and thereafter, at the rate of Rs.6,69,969/- per month till the actual handing over of the possession or taking over of possession by the plaintiffs.

(iii) The plaintiffs are also entitled for the costs of the suit.

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Index:Yes/No
Speaking Order : Yes/No
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List of Witnesses Examined:

1. Mr.Gulam Dastagir (PW1)

List of Exhibits Marked:

1. Ex.P1 is the Original board resolution of the 1st plaintiff company, dated 27.07.2022.
2. Ex.P2 is the Original board resolution of the 2nd plaintiff company, dated 27.07.2022
3. Ex.P3 is the Original lease agreement between the plaintiffs and the defendants, dated 01.08.2013.
4. Ex.P4 is the office copy of the notice issued by the plaintiffs to the defendants, dated 14.01.2020 with postal receipt.
5. Ex.P5 is the Original written minutes of meeting signed by both parties, dated 20.01.2020.
6. Ex.P6 is the Office copy of the notice issued by the 1st plaintiff to the defendants, dated 12.03.2020.
7. Ex.P7 is the Office copy of the legal notice issued by the 1st plaintiff counsel to the defendants, dated 13.08.2020.
8. Ex.P8 is the Original written minutes of meeting signed by both parties, dated 15.10.2020.
9. Ex.P9 is the Office copy of the notice issued by the 1st plaintiff to the defendants, dated 27.11.2020 and acknowledged by the defendants.
- 10.Ex.P10 is the Original letter issued by the defendants to the 1st



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plaintiff, dated 02.12.2020.

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- 11.Ex.P11 is the Office copy of the reply issued by the 1st plaintiff to the defendants, dated 07.12.2020.
12. Ex.P12 is the Original acknowledgment card, dated 08.12.2020.
- 13.Ex.P13 is the Original cancellation of lease agreement between plaintiffs and the defendants, dated 16.12.2020.
- 14.Ex.P14 is the Original Deed of leave and licence between the plaintiff and the defendants, dated 16.12.2020.
- 15.Ex.P15 is the Office copy of the final termination notice issued by the plaintiff counsel to the defendants, dated 28.03.2022.
- 16.Ex.P16 Series (2 nos) is the original acknowledgment cards.
- 17.Ex.P17 is the Original reply issued by the defendants counsel to the plaintiffs counsel, dated 19.04.2022 with postal cover.

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C.V.KARTHIKEYAN,J.,

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