



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.01.2022

Pronounced on 27.01.2022

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AS.No.691/2018 & CMP.No.19170/2018

Smt.K.Lalitha

... Appellant / Defendant

Versus

Metropolitan Transport Corporation Ltd

rep.by its General Manager

[Administration]

Pallavan House

Anna Salai, Chennai 600 002.

...Respondent/Plaintiff

Prayer:- Appeal Suit filed under Section 96 CPC read with Order 41 Rule 1 CPC against the decree and judgment dated 11.12.2017 made in OS.No.3383/2012 on the file of the learned VI Additional Judge, City Civil Court, at Chennai.

For Appellant :Mr.Udayakumar
for Mr.P.Venugopal

For Respondent :Mr.M.Chidambaram

JUDGMENT

- (1) The defendant in the suit in OS.No.3383/2012 on the file of the learned VI Assistant Judge, City Civil Court, Chennai, is the appellant herein.
- (2) The respondent-Metropolitan Transport Corporation Limited, as plaintiff, filed the suit in OS.No.3383/2012 for recovery of a sum of Rs.10,50,945/- with interest at the rate of 18% per annum.
- (3) The plaintiff-Corporation has invited tenders from the public seeking prospective licensees in respect of few



WEB COPY

shops within T.Nagr Bus Terminus belonging to MTC. The plaintiff-Corporation accepted the offer of the defendant and allotted a vacant land at T.Nagar Bus Terminus which is an extent of 120 sq.ft. The license was granted for running a tea stall.

- (4) Both the plaintiff and the defendant entered into an Agreement on 22.02.2006. As per the said Agreement, license fee was fixed at Rs.37,000/- per month for the first 11 months commencing from 10.09.2006. For the second spell of 11 months, the license fee is enhanced and the escalation was agreed to 20% and for the third spell of 11 months, the fee payable was by enhancing 25% of the from the fee payable for the previous spell of 11 months.
- (5) Though it is the case of the plaintiff that the defendant was regular in paying the monthly license fee till July 2007, the defendant failed to pay the license fee on the ground that the fee fixed was so high and therefore, she was unable to pay the said License fee. Even before the expiry of the first spell of 11 months, the defendant filed a suit in OS.No.4821/2007 before the learned VI Additional Judge, City Civil Court, Chennai, for permanent injunction restraining the respondent herein from interfering with the peaceful possession and running of the tea stall. The suit is also for a declaration that Clause 2[24] of the terms and conditions containing in the Agreement is null and void.
- (6) From the reading of the plaint in the suit in OS.No.4821/2007, the prayer would only indicate that the suit is for an injunction restraining the respondent herein from interfering with the possession of the appellant in respect of the shop portion in the front side of the ground floor facing the right under due process of law. From the language employed in the prayer, the suit is not for an injunction restraining the respondent herein from evicting the tenant otherwise than due process of law. However, the prayer was understood by the respondent herein as if the tenant prayed for permanent injunction restraining the respondent herein from evicting the appellant otherwise than due process of law.
- (7) Though it is stated in the plaint itself that the suit was ultimately dismissed on merits on 22.01.2009, the decree in the earlier suit in OS.No.4821/2007 is otherwise. It is seen from the judgment and decree that the decree for



permanent injunction was granted, however on condition that the appellant herein shall pay the entire arrears of license fee within three months from 22.01.2009. Therefore, the suit was partly decreed.

WEB COPY

- (8) For convenience, the relevant portion of the judgment and decree dated 22.01.2009 made in OS.No.4821/2007 is extracted below:-

“இறுதியாக வாதியின் தாவாவில் அவர் கோரிய விளம்புகை பரிகாரம் பொறுத்து இவ்வழக்கு தள்ளுபடி செய்யப்பட்டும், வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பொறுத்து வாதி பிரதிவாதிக்கு செலுத்த வேண்டிய அனைத்து நிலுவைத் தொகைகளையும் இன்று 22.01.2009 முதல் மூன்று மாத கால கெடுவிற்குள் செலுத்தும்பட்சத்தில் வாதிக்கு மேற்படி பரிகாரம் கிடைக்கத்தக்கதென இந்த வழக்கு பகுதியாக அனுமதிக்கப்பட்டு தீர்ப்பளிக்கப்படுகிறது. வழக்கின் தன்மை மற்றும் சூழ்நிலைகளை கருத்தில் கொண்டு அவரவர் செலவு தொகைகளை அவரவரே ஏற்க வேண்டுமென உத்தரவிடப்படுகிறது.”

- (9) It is specifically stated in the plaint in the present suit that the defendant without paying any license fee, was running the shop till 09.06.2009. Admittedly, the appellant did not pay any license fee from August 2007 to 09.06.2009. Hence, the suit was laid for recovery of a sum of Rs.9,99, 179/- towards license fee from August 2007 to 09.06.2009 and a sum towards service tax and EB tax totalling to a sum of Rs.10,50,945/-.

- (10) The suit was contested by the appellant/defendant on the following grounds:-

- (a) The suit is hopelessly barred by limitation as the amount towards arrears of license fee for the period from 10.09.2006 to 09.06.2009 is barred by limitation.
- (b) In view of the arbitration clause contained in the Agreement dated 22.02.2006, the suit for recovery of license fee is not maintainable.
- (c) As per the Agreement dated 22.02.2006, the license fee for the first spell of 11 months was fixed at Rs.37,000/- and thereafter, there was no renewal of the Agreement. Since there was no renewal, there was no agreement for paying the license fee for the further spells. Therefore, the claim that the appellant/defendant is liable to pay the lease amount / license fee with enhancement of 20% for the second spell or 25% for the third spell, cannot be claimed by the respondent/plaintiff and the Agreement as such, cannot be enforced.



(14) This Court heard the rival submissions and also perused the materials placed before it.

(15) The points that arise for consideration in this Appeal Suit are as follows:-

- a) Whether the suit is maintainable before the Civil Court in view of the Arbitration Agreement?
- b) Whether the suit is barred by limitation? and
- c) Whether the plaintiff is entitled to recovery of arrears of license fee as per the terms of Agreement?

(16) The respondent/plaintiff has constructed shelter and shops for the benefit of different passengers on various Bus Terminals. Therefore, as it in practice the Corporation called for tenders for the purpose of permitting eligible members from the public to have a tea stall, newspaper and other petty shops for serving the public as well as the drivers and conductors of the plaintiff-Corporation.

(17) It is not in dispute that the monthly license fee was fixed at the rate of Rs.37,000/- per month for a period of first 11 months commencing from 10.09.2006 to 09.08.2007. Similarly, the second and third spells will be for the block period of 11 months, thereafter. Therefore, the license though granted originally for a period of 11 months, there is a clause for renewal of license fee and enhancement of for the second and third spells. There is no dispute with regard to the arrears of license fee as claimed. Though there is no dispute with regard to the Arbitration clause in the Agreement, the appellant herself chose to file the first suit in OS.No.4821/2007 for injunction and for declaration of the invalidity of a clause in the Agreement particularly. Though the present suit was filed in the month of January 2012, the written statement was filed only in the month of December 2012. Before filing the written statement, no objection was raised relying upon the arbitration clause. When the defendant did not approach the Trial Court for referring the dispute to the Arbitrator before filing of written statement, the Court need not refer the dispute before the Arbitrator as per the arbitration clause. Therefore, the Trial Court is right in rejecting the contention raised by the appellant/defendant with regard to the maintainability of the suit despite the Arbitration clause in the agreement.



WEB COPY

(18) The next contention of the appellant is regarding the law of limitation. It is admitted that the license fee is payable for every month. Since the period of default as per the plaint is from 10.08.2007 to 09.06.2009, it is contended by the learned counsel for the appellant that the suit for recovery of arrears of license fee can be laid only if the period of default is within the period of three years. Since the present suit is filed in January 2012, the whole suit cannot be dismissed as one barred by limitation even if Article 42 of Schedule to Limitation Act to be applied. Here there is no question of tenancy and therefore, the suit claim cannot be treated as one for arrears of rent. Admittedly, the license is not renewed after the first spell, i.e., after 10.08.2007. Hence the claim should be treated either as one for use and occupation of the licensed premises or for compensation of the breach of agreement between the plaintiff and the defendant. Since the obligation of defendant to pay the premises arises out of an agreement the present suit is governed by Article 55.

(19) A peculiar circumstance in the present case is noted by this Court. The previous suit was dismissed as it was assumed by both sides in the present appeal. From the certified copy of the judgment in OS.No.4821/2007, the relevant portion of the judgment has already been extracted in the earlier paragraphs. As pointed out, the suit was partly decreed. The suit for injunction was decreed subject to the condition that the plaintiff in that suit pays the arrears of license fee within three months from the date of judgment, i.e., 22.01.2009.

(20) By virtue of the judgment in the earlier suit, the plaintiff /respondent herein could not have presented the suit before the time granted by the Lower Court for payment of arrears of license fee. Though the decree is conditional, this Court is of the view that the present suit filed within three years from the date of the judgment and decree in the earlier suit is within time.

(21) In the plaint in the present suit, the respondent herein / Corporation has pleaded in the cause of action paragraph in the following manner:-

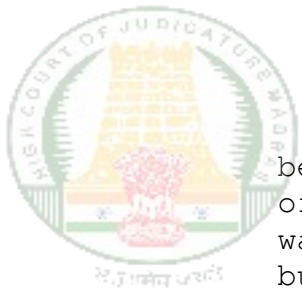
'8.The cause of action for the suit arose at Chennai, i.e., within this Hon'ble Court jurisdiction, on 10.09.2006 to 09.08.2007 when



WEB COPY

the initial licence period was fixed at the rate of Rs.37,000/- p.m., to run the Tea Shop at T.Nagar Bus Terminals, on 22.12.2006 when both the plaintiff and the defendant have entered agreement ; August 2007 when the defendant has committed default in paying the monthly licence fee to the plaintiff ; on 10.08.2007 to 09.07.2008 when the 2nd spell period of licence ; on 10.07.2008 to 09.06.2009 when the 3rd spell period of licence ; 09.06.2009 when the defendant has vacated the shop ; on 01.08.2007 when the defendant has instituted a suit, OS.No.4821/2007 before the VI Assistant City Civil Court, Chennai for permanent injunction against the plaintiff herein ; on 22.01.2009 when the defendant's suit OS.No.4821/2007 was dismissed on merits ; on 06.10.2009 when the decree and judgment was made ready ; 07.10.2009 to October 2010 when the plaintiff demands the arrears of licence fee from the defendant who acknowledged the same over phone and not paid and the cause of action continuously subsequently.''

- (22) The conduct and attitude of the appellant/defendant in the present case was not alright, right from the beginning. After entering into an agreement knowing fully well her obligations under the terms of agreement, the appellant failed to remit the license fee for the period of 22 months. The appellant is carrying on business in the premises owned by the respondent-Corporation. Though the learned counsel for the appellant contended before this Court that the appellant did not carry on business till the completion of license period, this Court found that the appellant/defendant has not raised a plea. Though the period of license was not extended, it appears that the appellant/defendant was carrying on business in the premises of the respondent-Corporation till the period of license as per the agreement without paying any amount as per agreement. It is also to be pointed out that a pre-suit notice was issued by the respondent-Corporation to the appellant. In the notice, the respondent - Corporation specifically stated that the defendant was carrying on business till the end of license period, i.e., 09.06.2009. The statement of fact referred to in the notice was not denied by the appellant in her reply notice dated 19.11.2011. Though it is stated that license will



WEB COPY

be terminated automatically upon expiry of the first spell of 11 months and the claim is barred by limitation, there was no factual dispute with regard to carrying on the business by the appellant till the end of the license period [09.06.2009]. When the agreement was in force, the appellant challenged the clause 24 and sought for permanent injunction restraining the respondent herein from interfering with the appellant's peaceful possession and enjoyment of the licensed shop. In the suit, the defendant took a stand which is quite contrary to the obligation / promise, she had made at the time of agreement. After getting the property by making her offer, the appellant is liable to pay license fee till the period of license is completed. Though there was no renewal, the respondent - Corporation could not initiate any action in view of the pendency of the previous suit. It is admitted by the tenant herself that the respondent - Corporation could not take any action for eviction on account of the pendency of the civil suit filed by her. After filing the suit for permanent injunction with a peculiar prayer and obtaining decree for injunction on condition to pay arrears of license fee, it is not open to the defendant to raise a plea of limitation. From the date of disposal of earlier suit, the present suit is well within the period of limitation.

- (23) The next contention is the dispute with regard to quantum. One of the submissions of the learned counsel for the appellant is that the respondent - Corporation is not entitled to the license fee as per the terms of Agreement after the expiry of the first spell as there was no renewal of license. This contention is untenable. Even on the termination of the Agreement, the respondent - Corporation is entitled to collect the amount towards damages for use and occupation or for compensation due to breach of agreement. In the present case, the Agreement provides for recovery of the amount in case of default, calculated at the rate of premium agreed.
- (24) In view of the foregoing discussions, this Court is unable to find any valid ground to interfere with the judgment and decree of the Court below.



WEB COPY

(25) In the result, the Appeal Suit fails and the same is dismissed confirming the judgment and decree dated 11.12.2017 passed in OS.No.3383/2012 by the learned VI Assistant Judge, City Civil Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

AP
To

1.The VI Assistant Judge,
City Civil Court, Chennai.

2.The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.D.Gopinathan, Advocate Sr.4646
+1cc to Mr.M.Chidambaram, Advocate Sr.4558

AS.No.691/2018

ssd[co]
srg 04/03/2022