



C.S.No.796 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 22.08.2023

CORAM:

THE HON'BLE MS.JUSTICE P.T.ASHA

C.S. No.796 of 2015

M/s. Jayalakshmi Estates,
Rep by its Managing Partner,
Mr.B.Ramesh Kumar,
Old Door No.8, New Door No.29,
Jayalakshmi Estates,
Haddows Road,
Chennai 600 006

...Plaintiff

VS.

Access Atlantech Edutainment (India)ltd.,
Rep by his Chief Operating Officer,
Mr.Ratish Babu,
“Nijapadam”,
6/9, Damodaran Street,
Mayor Ramanathan Salai,
Chetpet,
Chennai 600 031

... Defendant

PLAINT FILED UNDER ORDER IV Rule 1 of O.S.Rules
read with Order VII Rule 1 of C.P.C praying to pass a judgment and
decree against the defendant:



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a) Directing the defendant to pay a sum of Rs.1,38,24,941.19

(Rupees one crore thirty eight lakhs twenty four thousand nine hundred and forty one and nineteen paise only) to the plaintiff which sum is due to the plaintiff as on date of filing of this suit together with 24% interest on the said sum till the realization of the same in favour of the plaintiff and;

(b) To award costs of the suit.

For Plaintiff : Mr.V.Chandrababu
For Defendant : Mr.Thomas T.Jacob

JUDGMENT

The suit is filed for the following reliefs:

(a) Directing the defendant to pay a sum of Rs.1,38,24,941.19 (Rupees one crore thirty eight lakhs twenty four thousand nine hundred and forty one and nineteen paise only) to the plaintiff which sum is due to the plaintiff as on date of filing of this suit together with 24% interest on the said sum till the realization of the same in favour of the plaintiff and;



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(b) To award costs of the suit.

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2.The plaintiff had entered into a registered Lease Deed dated 09.05.2008 with the defendant under which they had leased out the properties situate in 4th and 6th floors of Door No.29 (Old No.8, Jayalakshmi Estate, Haddows Road, Chennai 600 006). The lease was for a non residential purpose and the monthly rent was a sum of Rs.4,83,000/- payable on or before 07th of English Calender month in advance. In addition to the monthly rental, the defendant was liable to pay the monthly maintenance of Rs.3.35/- per sq.ft, which was subsequently enhanced to Rs.5/- per sq.ft with effect from 01.01.2010. Apart from these payments, a revised tax was also payable. The lease was initially for a period of 3 years commencing from 03.05.2008 to 02.05.2011 with no rental clause. The lease deed further provided that in the event of the rents not being paid in time, the plaintiff could levy interest at 24% on the rental arrears from its due date till the date of realization.



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3.It is the case of the plaintiff that the defendant was highly irregular in the payment of both the monthly rental as well as the maintenance charges. Just prior to the expiry of the lease period, the plaintiff had sent a letter to the defendant requesting them to deliver the vacant possession of the demised premises on or before 02.05.2011 and to clear the rental arrears and maintenance charges which was a sum of Rs.25,34,970/- as on 27.04.2011. The defendant had paid the aforesaid sum on 28.05.2012, but failed to vacate the demised premises and hand over the vacant possession to the plaintiff. In addition, the defendant stopped paying the rent and the maintenance charges as also the service tax from the months of May 2011 to September 2012.

4.In the light of the continuing arrears, the plaintiff had filed an eviction petition against the defendant in R.C.O.P.No.1941 of 2012 on the file of the XII Small Causes Court, Chennai seeking eviction on the ground of wilful default and two other grounds. In the said rent control proceedings, the plaintiff had taken out an



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interim application under Section 11(1) r/w Section 11(4) of the Tamil Nadu Building (Lease and Rent Control) Act, 1973, for a direction to the defendant to deposit the arrears of rent, maintenance charges, and service tax totalling a sum of Rs.1,11,64,094/- together with interest at 24%, totalling a sum of Rs.26,79,382/- in all, totalling a sum of Rs. 1,38,43,472/-.

5. The defendant had entered appearance and filed a counter denying his liability to pay the enhanced maintenance charges from Rs.3.25 per sq.ft to Rs.5 per sq.ft with effect from January 2010. The other amounts were not disputed by him. Since there was no contest by the defendant with reference to the remaining amount and as there was no proof to show that the defendant was only liable to pay a sum of Rs.3.25sq.ft to Rs.5 per sq.ft as maintenance charges, the Rent Controller had allowed the application and directed the defendant to deposit a sum of Rs.1,22,66,863.56/- towards the arrears of rent, maintenance charges and service tax for the period May 2011 to August 2012 on or before 10.07.2013. The learned



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Rent Controller had not accepted the plaintiff's case on the ground that the plaintiff had failed to prove that the maintenance charges was enhanced to Rs.5 per sq.ft. per month from Rs.3.25 per sq.ft and therefore, had calculated the maintenance charges at Rs.3.25 per sq.ft. per month. Although the defendant had suffered an order, they had not sought to make the payments and therefore, the Rent Controller by order dated 18.07.2013 had directed the defendant to vacate and hand over the vacant possession of the property on or before 07.10.2013.

6.Meanwhile, the defendant had vacated and handed over the vacant possession of the property to the plaintiff on 07.10.2013. However, they had not cleared the arrears and as on September 2013, the defendant was due and owing a sum of Rs.2,23,94,125/- which constituted the arrears of rent from May 2011 to September 2013. The plaintiff would further submit that since the Rent Controller had not accepted the claim of Rs.5/- per sq.ft with reference to the maintenance charges, they were restricting the claim



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only to Rs.3.25/- per sq.ft in respect of the premises and has therefore restricted their claim to arrears of rent and other charges for the period commencing from September 2012 to September 2013 at Rs.1,38,24,941.19/- .

7.It appears that the defendant had filed a written statement with the delay of 80 days in representing the written statement and to condone the delay of 46 days in filing the written statement in A.Nos.7473 and 7474 of 2018. The learned Master, by order dated 28.02.2019, had dismissed these applications stating that the written statement had to be filed on or before 120 days and cannot be filed thereafter. The matter was listed before this Court and thereafter it appears that the defendant had filed a petition to condone the delay of 876 days in filing the written statement and to accept the same before the Court. By order dated 05.07.2019, this application was dismissed and the matter was fixed for trial. The Court had permitted the defendant to cross examine the witness. The plaintiff had examined their managing partner, B. Ramesh Kumar, as P.W.1



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on 11.07.2019, through whom, the proof affidavit was filed into court, and the chief examination and marking of Ex.P1 to P3 were done. Thereafter, it appears that the said B.Ramesh Kumar had passed out and an application was moved to eschew his evidence and permit his son, R.Rajiv Bolla to depose before this Court. By order dated 02.12.2020, this Court had passed an order stating that P.W1 had been examined and Exs.P1 to P3 had been marked and therefore, the Court was not inclined to eschew the evidence and observed that the orders could be passed in the application only after examining the evidence that would be adduced by the further witnesses of the plaintiff. Thereafter, the records would show that the plaintiff had taken out an application in A.No.456 of 2021 seeking a direction to file the additional documents, which were the Certificate of Lease dated 09.05.2008, Authorisation copy of the Partnership Deed dated 01.04.2020 and the Authorisation Letter dated 31.12.2020. By order dated 02.03.2021, the Court had allowed the documents to be received in evidence subject to admissibility, proof and relevancy and the matter was once again



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sent back to the learned Additional Master-II for continuation of evidence. P.W2 was examined and Exs. P4 to P6 were marked.

8.The only issue that arises for consideration is whether the plaintiff is entitled to recover the money as claimed by them.

9.The learned counsel on both sides have filed their written arguments. The plaintiff has reiterated the contents of the plaint and had argued that in the Rent Controller Proceedings itself, the defendant had admitted the lease between themselves and the plaintiff and to pay the monthly rental of Rs.4,83,000/- apart from the maintenance charges at Rs.3.25 per sq.ft together with service tax. It is also argued that the order passed by the Rent Controller had attained finality since there was no appeal filed by the respondent against the said order.



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10.Per contra, the learned counsel appearing on behalf of the defendant that though in his written statement had contended that the plaintiff was not entitled to claim the rental arrears, the maintenance charges and service tax and also put forward a contention that the plaintiff had failed to prove that the defendant had occupied their premises from September 2012 to September 2013. They had also contended that Ex.P2 which is the decree in M.P.No.407 of 2012 in R.C.O.P.No.1941 of 2012 is not a proof of the defendant's occupation of the premises. They had also questioned the veracity and validity of Ex.P3-letter evidencing the handing over of possession by the defendant to the plaintiff. The defendant had once again questioned the basis on which the rent, maintenance charges, service tax etc., are claimed, when according to the defendant, these contentions have not been proved by the plaintiff. They had also in their written arguments contended that there is no document to prove the service tax has been paid by the plaintiff to the Government and that no document has been marked to prove the payment of service tax apart from interest at 24%. However, from the oral arguments,



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the only argument that had been put forward by the learned counsel for the defendant was that the Commercial Division does not have the jurisdiction to entertain the suit since there is no subsisting agreement between the plaintiff and the defendant, as even according to the plaintiff, the period of lease had come to an end on 02.05.2011. Therefore, he would submit that there was no agreement on the date of filing of the suit.

11.Heard the learned counsels on either side and perused the materials available on record.

12.The oral arguments of the defendant's counsel cannot be countenanced for the simple reason that the plaintiff is basing his claim on the Lease Agreement dated 09.05.2008 (Ex.P6) and the eviction order that has been passed against the respondent as evidenced by Exs.P1 and P2. Section (2) (i) (c) (vii) of the Commercial Courts Act, 2015 would clearly apply to the case on hand as there is an agreement with reference to the immovable



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property and the immovable property is used as a commercial building. Admittedly, the defendant has vacated the premises on 07.10.2013 as evidenced by the learned counsel for the defendant in Ex-P3 letter dated 07.10.2013 evidencing the handing over the vacant possession to the plaintiff by the defendant. The Rent Controller has rejected the plaintiff's claim that the monthly maintenance charges was a sum of Rs.5/- per sq.ft and had only granted maintenance charges at Rs.3.25 per sq.ft per month which is the basis on which the plaintiff had calculated the suit claim. The defendant has neither got into the box to refute the contention of the plaintiff nor have been able to elicit any admissions from P.W2 in cross in their favour. From Exhibits P1, P2, P3 and P6, it is clearly evident that the defendant has been put in possession of the property as a lessee and the monthly rent payable was a sum of Rs.4,83,000/- for both floors together with maintenance charges of Rs.3.25 per sq.ft per month and service tax as well. The defendant has committed a default in the payment of these amounts and suffered an eviction order. Therefore, the issues are answered in favour of the



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plaintiff. Accordingly, the suit is decreed with costs.

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