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C.S.(Comm.Div.)No.71 of 202



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.(Comm.Div.)No.71 of 2021

M/s.Vijay Stereophonic Sound Studio,
a Partnership firm
rep by power Agent Mrs.M.Bharathi,
No.25, 3rd Street, Kumaran Colony,
Vadapalani, Chennai 600 026

..Plaintiff

Vs

Latha
Defendant

...

Prayer: Complaint under Order IV Rule 1 of O.S.Rules read with Order VII Rules 2 of C.P.C read with Section 2(1)(C)(VII) of the Commercial Courts Act, praying to pass a judgment and decree against the defendant

a) To direct the defendant to pay a sum of Rs.1,92,17,187/- (Rupees one crore ninety two lakhs seventeen thousand one hundred and eighty seven only) as on 28.04.2021 towards arrears in rent of the



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schedule mentioned property. Future interest on the principle @ 24% from the date of plaint till the date of payment.

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(b) To direct the defendant to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) towards the damage cause to the structure, microphones, accessories, acoustics, electrical etc in the scheduled premises.

(c) For cost of this suit.

For Plaintiff : Mr.Manjunath Karthikeyan
for Mr.S.R.Raghunathan

For Defendant : Served – No Appearance

JUDGEMENT

The suit before this Court is filed for a direction to the defendant to pay a sum of Rs.1,92,17,187/- as on 28.04.2021 towards the arrears of rent in respect of the suit schedule property together with future interest and a sum of Rs.10,00,000/- towards the damages caused to the structure and the amenities thereon.



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2. PLAINTIFF CASE:

(i) It is the case of the plaintiff, which is a partnership firm, that it is the absolute owner of the property, which is more fully described in the schedule to the plaint and hereinafter referred to as the suit property. The defendant had approached the plaintiff and evinced interest in taking the suit property on lease.

(ii) After negotiations, the plaintiff and the defendant had entered into a Lease Deed dated 23.09.2014 for a period of 11 months commencing from 16.09.2014. The lease has been periodically extended and the last of such extension vide Lease Agreement dated 01.07.2017 was for a period of 11 months ending on 11.05.2018.

(iii) The plaintiff would submit that under the Lease Agreement dated 01.07.2017, the defendant had agreed to pay a monthly rental of



Rs.1,80,000/- for the premises and Rs. 50,000/- towards amenities, totalling a sum of Rs. 2,30,000/- that was payable together with GST on or before the 15th of every succeeding English calendar month. The plaintiff would submit that the defendant had deposited a sum of Rs.17,50,000/- towards the interest-free security deposit. The case of the plaintiff is that, right from the inspection, the defendant has only been making part payment towards the rent and has been continuously in default in paying the rents. Therefore, after the period of lease coming to an end on 21.05.2018, the same had not been renewed, and the plaintiff had requested the defendant to pay the accumulated rent and vacate the premises.

(iv).The plaintiff would submit that after the repeated reminders and requests, in the month of July 2018, the defendant, with an intent to liquidate its liabilities, had issued 49 cheques totalling a sum of Rs.67,38,127/-. Thereafter, on the specific request of the defendant, the cheques were presented for encashment on 02.08.2018. However, they



were all returned with an endorsement of "funds insufficient," as evidenced by the return memo dated 03.08.2018. A legal notice dated 29.08.2018 was issued by the plaintiff, calling upon the defendant to pay the amounts due under the cheques to avoid proceedings under Section 138 of the Negotiable Instruments Act. Since there was no response and an evasive reply notice dated 14.09.2018 had been issued, the plaintiff had proceeded to file 17 complaints under Section 138 of the Negotiable Instruments Act before the III Fast Track Court, Saidapet. Thereafter, by notice dated 09.10.2018, the plaintiff had demanded the defendant to hand over the vacant possession of the suit property and settle the rental arrears. Despite receipt of the same, the defendant had not come forward to clear its dues. The plaintiff, vide email dated 27.05.2020 had sent a statement of accounts indicating the rental arrears to the defendant, which showed an outstanding sum of Rs.1,31,51,804 as on 31.03.2020. There was no response to the same. The plaintiff had also filed an application in R.L.T.O.P.No.136 of 2020 under Section 21(2)(a) and Section 21(2)(b) of the Tamil Nadu



Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017, as amended by Act XXXIX of 2018, seeking recovery of possession and the rental arrears.

(v) While so on 28.08.2020, the defendant had sent a letter expressing her intention to vacate the premises. The plaintiff sent a reply dated 09.09.2020, requesting the defendant to pay the rental arrears before she vacated and also seeking the date on which she intended to vacate and hand over the possession to the plaintiff. The plaintiff had also requested the defendant to provide them access to inspect the premises to note down the wear and tear and also called upon her to produce the list of equipment available in the premises. However, this list was not produced.

(vi) Thereafter, on 14.09.2020 the defendant has sent a notice to the plaintiff stating that she had vacated the premises on 01.09.2020. Thereafter when the plaintiff had inspected the property, the plaintiff



had discovered the air conditioning unit, which weighed 8.5 ton, was damaged beyond repair and that apart, there was damage to the building and loss of equipment. The plaintiff had assessed damages to the structure and accessories to the tune of Rs.10,00,000/-. The plaintiff apprehends that the defendant would allude to and defraud the plaintiff by not paying the rental arrears. Hence, the suit.

3. The plaintiff had attempted to effect service upon the defendant at the last known residence. However, the same could not be effected. Therefore, this Court by an order dated 06.01.2023 had ordered substituted service to the defendant through paper publication in one issue of Makkal Kural dated 10.09.2022 and the said publication has also been taken. The defendant was set *ex-parte*. Even after the paper publication was effected, the defendant had not appeared before the Court and thereafter, the matter was listed for *ex-parte* evidence by orders of this Court dated 30.03.2023.



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4. The plaintiff had examined P.W.1 who is the power agent of the plaintiff and marked Exs. P1-P17. P17 is the Account ledger for the years 2014 to 2020.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PLAINTIFF:

5. The learned counsel for the plaintiff, apart from setting out the facts of the case, had submitted that under Ex.P1-Lease Agreement dated 23.09.2014, the plaintiff had put the defendant in possession of the suit property on mutually agreed terms for a period of 11 months. This lease Agreement was being extended and the last of such lease deeds dated 01.07.2017 was marked as Ex.P2. This agreement had come to an end on 31.05.2018. The rent in respect of the suit property, which was originally a sum of Rs.1,25,000/- with amenity charges of Rs.50,000/- was enhanced in the last of the lease agreements to a sum of Rs.1,80,000/- and amenity charges of Rs.50,000/- in all, totalling a



sum of Rs.2,30,000/-. A ledger account was filed for the years 2014 to 2020 as Ex.P17. Since there was no renewal of the lease agreement dated 01.07.2017, the same automatically expired by efflux of time on 31.05.2018. It is also contended by the plaintiff that in part liquidation of her liabilities, the defendant had issued 49 cheques totalling a sum of Rs.67,38,127/- which, on being presented, has been returned with an endorsement “funds insufficient”. A Criminal complaint was filed on the file of the III Fast Track Court, Saidapet, which was marked as Ex.P6. Ex.P10-E-mail dated 27.05.2020 specified that if the defendant did not revert back for clarification, discrepancy or denial in respect of the statement of account produced by the plaintiff within 15 days, it would be deemed that they had accepted the statement of accounts.

ISSUES:

6.On the arguments advanced by the leaned counsel for the plaintiff, the issues for consideration in the above suit are;

(i) Whether the plaintiff is entitled to the relief as



claimed for;

(ii) Whether the plaintiff is entitled to the arrears

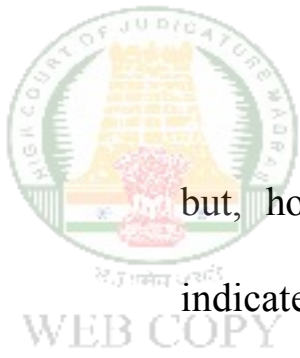
*from the year 2014 when the suit is filed only in the year
2021.*

DISCUSSIONS:

7. Exs.P1 and P2 are the Lease Agreements and a perusal of the Ex-P2 dated 01.07.2017 would show that the total rent for the premises was a sum of Rs.2,30,000/- per month being a sum of Rs.1,80,000/- towards the premises and Rs.50,000/- towards the amenity charges. A perusal of Ex.P4 would indicate that the defendant had issued 49 cheques towards the part liquidation of her outstanding liability towards the arrears of rent and these cheques had been dishonoured. She has therefore acknowledged her liability. Ex.P5 is the reply notice which has been sent by the defendant to the plaintiff, in which, a stand is taken that the lease rental per month was not a sum of Rs.2,30,000/-. The defendant, however, in the said notice would admit that a sum of



Rs.2,30,000/- as rent was payable only for the 12 months preceeding the issue of the notice and not from 23.09.2014 as claimed in the notice-Ex.P4. She had also taken the stand that she is the proprietor of one Alpha Media, and her husband runs the business for her. She would submit that she is in the habit of signing the blank cheques, which apparently have been given by her husband to the plaintiff and these cheques have been misused. Ex.P6 is the petition that has been filed before the III Fast Track Court, Saidapet which goes to show that the proceedings had been initiated under Section 138 of Negotiable Instruments Act against the defendant. Thereafter, under Ex.P7, the plaintiff had issued a notice calling upon the defendant to vacate and hand over the possession of the premises and pay a sum of Rs.87,91,718/- which includes the interest for the period from 16.09.2014 to 30.09.2018 along with a sum of Rs.2,30,000/- every for month till the date of handing over of possession. Under Ex-P8, the plaintiff had enclosed an invoice showing the total arrears of Rs.1,18,94,804/-, The said notice has been received by the defendant,



but, however there was no response to the same. Ex.P16 would indicate that the defendant has vacated and handed over the vacant possession to the plaintiff. The plaintiff has also marked Ex.P17 which is the statement of accounts. The defendant admittedly has been in arrears which is clearly evident from her very reply-Ex.P5 dated 14.09.2018 wherein she has clearly admitted that she has been in arrears of the monthly rental of Rs.2,30,000/- for the past 2 months meaning from September 2017 onwards. The plaintiff has claimed the arrears from the year 2014 itself and the suit has been filed only in the year 2021. Therefore, the plaintiff is entitled to claim the arrears only for the period of 3 years immediately preceeding the filing of the suit. Therefore, this Court, by order dated 01.09.2023, had directed the plaintiff to submit a concise statement of accounts. The plaintiff has submitted the statement of accounts, which also includes the ledger entries showing the payments received from the plaintiff and the outstanding arrears. A perusal of the same would clearly indicate that the plaintiff is due and owing a sum of Rs.1,48,15,044/- being the



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arrears of rent of Rs.1,19,47,616/- together with interest from 01.07.2017 to 30.04.2021 totalling sum of Rs.28,64,428/-. The plaintiff is therefore entitled only to the aforesaid sum and not the suit claim of a sum of Rs.1,92,17,187/-.

8.Taking into account the fact that the plaintiff has proved the lease as well as the arrears, and in the light of the admission of the defendant in Ex.P5, the suit is partly decreed. The plaintiff is entitled to a sum of Rs.1,48,15,044/- together with the interest at 12% from the date of plaint till the date of realisation. No costs.

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Index : Yes/No

Speaking order/non-speaking order

srn



APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
P.W.1	Ms.M.Bharathi

II. Exhibits :

Ext.P1	Original Lease Agreement dated 23.09.2014.
Ext.P2	Original renewed lease agreement dated 01.07.2017
Ext.P3	Certified copy of special Power of Attorney dated 12.12.2019.
Ext.P4	Certified copy of statutory notice under Section 138 of N.I.Act dated 27.08.2018.
Ext.P5	Certified copy of reply notice issued by the defendant dated 14.09.2018.
Ext.P6	Certified copy of complaint in C.S.No.682-688 of 2019 dated 12.10.2018.
Ext.P7	Certified copy of legal notice issued by the applicant to the respondent dated 09.10.2018.
Ext.P8	Original letter addressed by the plaintiff to the defendant dated 01.11.2019.
Ext.P9	Original letter addressed by the plaintiff to the defendant dated 02.12.2019.
Ext.P10	E-mail addressed by the plaintiff to the defendant dated 27.05.2020
Ext.P11	Certified copy of application in R.L.T.O.P.No.136 of 2019 December 2019.



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Ext.P12	Original letter addressed by the defendants to the plaintiff dated 28.08.2020.
Ext.P13	Original letter addressed by the plaintiff to the defendant dated 09.09.2020.
Ext.P14	Original letter addressed by the defendant stating to have vacated the premises dated 14.09.2020
Ext.P15	Original letter addressed by the plaintiff to the defendant seeking for rental arrears, EB Bill and handing over of the key dated 15.10.2020.
Ext.P16	Original letter addressed by the defendant to the plaintiff dated 09.04.2021.
Ext.P17	Account ledger 2014 to 2020 (under section 65B affidavit of the Indian Evidence Act filed and recorded)

List of witness examined on the side of the Defendant:- -NIL

List of documents marked on the side of the Defendant:- -NIL



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P.T.ASHA, J.,

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