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C.S.No.403 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2023

PRONOUNCED ON : 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.403 of 2020
(Comm.Suits)

V.Sudhakar

... Plaintiff

VS

M/s Indian Oil Corporation Ltd.,
No.500, Anna Salai, Teynampet,
Chennai – 18.

... Defendant

Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure and under Section 7 of the Commercial Courts Act, 2015 (4 of 2016), praying for,

(a) Directing the Defendant to pay a sum of Rs.5,00,00,000 (Rupees Five Crores Only) towards damages for use and occupation of the schedule property from the period April, 2006 till February, 2020 together with future interest at the rate of 24% per annum from the date of filing of the Suit till the date of realization of the amount.

(b) Directing the Defendant to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs) towards cost of excavation, storage charges and also security



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charges for the equipments of defendant lying in the Suit schedule property from March 2020 till 24/07/2020.

(c) Pass such further or other Orders as this Hon'ble Court may deem fit and proper and render justice.

(d) Cost of the suit.

For Plaintiff : Mrs.Chithra Sampath
Senior Advocate
for M/s.Mohammed Irfan Ali

For Defendant : Mr.M.Vijayamehanath
for M/s.AAV Partners

J U D G E M E N T

The present suit has been filed by the plaintiff seeking damages for use and occupation of the suit property to the tune of Rs.5,00,00,000/- (Rupees Five Crores only) and for other reliefs.

2. According to the plaintiff, he is the owner of the land measuring an extent of 1437 sq.mts (15,450 sq.ft) situated at Old No.94, New No.76, G.N Chetty Road, T.Nagar, Chennai. In the year 1965, the defendant entered into a Lease Agreement with father of the plaintiff in respect of the suit property. As per the terms of Lease Agreement, the property was let out to the defendant for the purpose of running a petrol retail outlet. The lease period was initially



fixed for 10 years i.e., from 14.04.1965 to 13.04.1975. It also contained a provision for automatic renewal of lease for a further period of 10 years upto 13.04.1985.

3. The father of the plaintiff died on 05.09.1977 and thereafter, there was a partition in the family of the plaintiff among legal heirs of plaintiff's father. The suit property fell into the share of the plaintiff and the lease in respect of the suit property was attorned in favour of the plaintiff. The defendant was running a petroleum outlet in the suit property through its dealer namely M/s Friendly Service Co. The said dealer M/s Friendly Service Co., is a Partnership Firm consisting the plaintiff and his two sons as partners.

4. Subsequently, by way of registered Lease Deed dated 29.06.1987, a portion of the property was surrendered to the plaintiff and lease was renewed in respect of remaining portion with retrospective effect from 13.04.1985 to 12.04.2006. The subject matter of the fresh lease is shown as the suit property in the schedule to the plaint. The lease between the plaintiff and defendant got expired by efflux of time on 12.04.2006. As plaintiff and defendant failed



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to agree for extension of lease, the plaintiff took possession of the suit property from dealer of the defendant namely M/s Friendly Service Co. The plaintiff sent a telegram dated 13.04.2006 to defendant requesting them to remove the equipment and materials from the suit property. It is also claimed by the plaintiff that despite taking possession of the suit property, he could not enjoy the property effectively, due to the failure of the defendant in removing their equipments and materials used for running the petroleum retail outlet.

5. Thereafter, in order to squat on the property, the defendant filed a suit in C.S.No.305 of 2006 before this Court seeking mandatory injunction for renewal of lease for a further period of 20 years. Pending the suit, the defendant filed an applications in O.A.No.348 of 2006 and A.No.1700 of 2006 seeking for injunction restraining the plaintiff from entering, obstructing or interfering with the defendant in running the petroleum outlet in the suit property. In the said applications, this Court passed an order dated 28.04.2006 directing dealer M/s Friendly Service Co., to run the petroleum outlet under the supervision of the defendant.



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6. By virtue of the above said order passed by this Court in injunction applications, M/s Friendly Service Co., was allowed to carry on business in the suit property. The suit filed by the defendant was later transferred to the City Civil Court, Chennai on pecuniary jurisdiction and renumbered as O.S.No.12780 of 2010. Later on, it was dismissed on 18.03.2016. Challenging the dismissal of the suit, the defendant filed an appeal before this Court in A.S.No.589 of 2016. Pending appeal also as per the interim order passed by this Court, the above said M/s Friendly Service Co., was allowed to run the petroleum outlet under the supervision of the defendant till the disposal of the appeal. The said appeal was dismissed on 27.02.2020.

7. After dismissal of the appeal, the plaintiff sent a letter dated 11.03.2020 to the defendant informing them that there was no obligation on the part of the plaintiff to allow the functioning of the retail outlet in the suit property and directed the defendant to remove its equipments lying in the suit property within a week from the date of receipt of the said letter. The defendant was also informed that failure to remove the equipments would make it liable to pay demurrage charges. Though the defendant received the



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notice, there was no response from them. The defendant sent a letter dated 30.05.2020 to the plaintiff enclosing a cheque for a sum of Rs.8,96,500/- towards rent from July-2006 to March-2020. The plaintiff sent a reply to the defendant stating that the said amount was received without prejudice to the rights of the plaintiff and the amount had been appropriated towards the part of the amount payable by the defendant under the head damages for use and occupation.

8. Even after disposal of the appeal, the defendant failed to remove the machineries and equipments from the suit property and hence, the plaintiff incurred huge expenditure in safeguarding the equipments and excavating the other equipments embedded on earth. Finally, the dismantled equipments, tanks and accessories were removed by the defendant only on 24.07.2020. The defendant is also liable to pay a sum of Rs.10,00,000/- towards expenditure incurred by the plaintiff in this regard. The defendant even after expiry of the lease period on 12.04.2006, exploited the suit property for commercial purpose and hence, the defendant is liable to pay a damage for use and occupation to the plaintiff which has been calculated at



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Rs.11,64,53,000/- for a period from April 2006 to February 2020. However, the plaintiff restricted his claim to a sum of Rs.5,00,00,000/-. On these pleadings, the plaintiff sought for recovery of damages from the defendant as prayed for.

9. The defendant filed a written statement and resisted the suit on the ground that the dealership of the defendant retail outlet was given to a partnership firm namely M/s Friendly Service Co., in which the plaintiff was one of the partner. It is averred by the defendant that the plaintiff collusively issued a letter dated 13.04.2006 stating that dealer surrendered the possession of the leasehold premises to the plaintiff. Under the dealership agreement, dealer is not entitled to hand over the alleged possession of the premises when the same vested with the defendant. It is further averred in the written statement of the defendant that the defendant was constrained to file suit in C.S.No.305 of 2006 only due to the threats and unlawful acts of the plaintiff seeking to interfere with the peaceful possession and enjoyment of the defendant over the leasehold property. The allegation in the plaint as if, there was no fresh dealership agreement with the defendant was denied. The



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dealership agreement with M/s Friendly Service Co., is perpetual in nature and it remains valid till it is terminated at the instance of either of the parties to the dealership agreement. It was also submitted that the explosive license over the suit property was renewed upto 31.12.2020.

10. It is further averred in the written statement that the rental amount was paid to the plaintiff as per the previously agreed terms of lease as plaintiff failed to come forward for any negotiation to finalise the rental amount. The plaintiff did not raise any claim for alleged damages during the period from 2006 to 2020. The entire benefits of the dealership was enjoyed by the plaintiff as partner of the dealership firm. The defendant has been in possession and enjoyment of the property from 2006 to 2020 as per the interim orders passed by this Court and the plaintiff never raised or claimed damages for use and occupation during that period. Since the plaintiff along with his brother benefited from the profits earned out of operation of the retail outlet not entitled to any damages from the defendant. Even according to the case of the plaintiff, there was no tenancy between the plaintiff and defendant from 2006 to 2020 and hence, the claim of the plaintiff on the basis



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of the rental value is not maintainable. The defendant has not caused any injury or damage to the suit property and hence, not liable to pay any damages. The plaintiff has not sustained any loss or injury during the period from 2006 to 2020 and he was enjoying the profits arising out of dealership. On these pleadings, the defendant sought for dismissal of the suit.

11. Based on the pleadings, the following issues were framed by this Court on 01.11.2021:-

- “(1)Whether the defendant had not removed the machineries which are lying in the suit property of the plaintiff and thereby liable to pay damages towards storage, security, evacuation and other charges?*
- (2) Whether the defendant is liable to pay the damages to the plaintiff for use and occupation of the suit schedule property as per the market value for the period 2006 to 2020?*
- (3) Whether the defendant entitled to occupying the suit property from 2006 to 2020 without paying any rent in the light of the interim order passed by the High Court in the connected suit C.S.No.305 of 2006 on the file of the High Court later transferred to City Civil Court renumbered as O.S.No.12780 of 2010 before the II Additional City Civil Court, Chennai?*
- (4)What other reliefs?”*



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12. During the trial, on behalf of the plaintiff his son was examined as

PW.1 and the Chartered Engineer/Registered Valuer was examined as PW.2

and 16 documents were marked on behalf of the plaintiff as Exs.P1 to P16.

On behalf of the defendant, the Chief Manager (Retail Sale) of the defendant's Divisional Office was examined as DW.1 and 3 documents were marked on their behalf as Exs.D1 to D3.

13. The learned Senior Counsel appearing for the plaintiff submitted that the lease agreement between the plaintiff and defendant got expired as early as April-2006 and inspite of the intimation by the plaintiff, the defendant failed to remove the equipments and allowed the plaintiff to utilise the property as per his wish. From the date of expiry of lease, the possession of the defendant is unauthorised one and therefore, the defendant is liable to pay damages for use and occupation of the property. The learned Senior Counsel further submitted that the defendant by filing a civil suit against the plaintiff and obtaining an order for continuation of the retail outlet in the suit property effectively prevented the plaintiff from using the same and earning the rental income as per the market rate. The learned Senior Counsel by



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taking this Court to the evidence of PW.2/Chartered Engineer-Registered

Valuer and her report Ex.P15, submitted that as per the report filed by PW.2,

the defendant is liable to pay damages at the rate of 5% per annum on the guideline value of the property and consequently, the amount payable by the defendant was arrived at 9,65,52,200/-. However, the plaintiff restricted his claim to Rs.5,00,00,000/-. The learned Senior Counsel also submitted that inspite of intimation by the plaintiff to remove the equipments after termination of legal proceedings, the defendant failed to do so and therefore, the defendant is liable to pay Rs.10,00,000/- towards cost of excavation, storage charges and security charges for the equipments of the defendant lying in the suit property from March 2020 to till its removal by the defendant on 24.07.2020. In support of her contention, learned Senior Counsel relied on the following judgments:-

(i) ***Bharat Petroleum Corporation Ltd., vs. Friend-in-need Society*** reported in ***2018 (1) CTC 641***.

(ii) ***Sumer Corporation vs. Vijay Anant Gangan and others*** reported in ***2022 SCC Online SC 1548***.



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(iii) ***ATMA RAM PROPERTIES (P) LTD., vs. FEDERAL MOTORS***

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14. Per contra, the learned counsel appearing for the defendant submitted that, even as per the plaintiff document Ex.P2, the possession of the property was handed to the plaintiff as early as 13.04.2006 and in such circumstances, the claim for damages under the head 'use and occupation' is not maintainable. The learned counsel further submitted that as per the interim order passed by this Court under Ex.P5, the Partnership Firm M/s Friendly Service Co., in which the plaintiff is a partner was allowed to run the retail outlet of the defendant in the suit property as a dealer. The plaintiff as a partner of the dealer which operated retail outlet in the suit property all along from 2006 to 2020 earned considerable amount as a commission for each litre petrol/diesel sold and hence, the claim for use and occupation is liable to be negated. The learned counsel further submitted that defendant all along failed to make any claim for use and occupation and has come up with the present suit once the defendant on its own paid rent for the period from 2006 to 2020 based on the agreed rent. The learned counsel further submitted that



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the plaintiff in its letter dated 04.06.2020 agreed to adjust the rental arrears sent by the defendant towards damages for use and occupation and consequently, the plaintiff is estopped from claiming damages in the present suit.

Issues Nos.2 and 3:-

15. As per the admitted case of the parties, the Lease Agreement between the plaintiff and defendant under Ex.P1 got expired on 13.04.2006. As per the terms of Ex.P1, the tenure of the lease was fixed from 13.04.1985 to 12.04.2006. Under Ex.P1, the rent was fixed as Rs.4,000/- per month for the period from 13.04.1985 to 12.04.1995. The rent for the period from 13.04.1995 to 12.04.2001 was fixed Rs.5,000/- per month. The rent for the period from 13.04.2001 to 12.04.2006 was fixed Rs.5,500/- per month.

16. A perusal of Ex.P1 would clearly establish that the lease period was over by efflux of time on 12.04.2006. It is admitted case that the lease was not renewed by mutual consent of the parties. There is no evidence



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available on record to suggest that the defendant was holding over as a lessee.

The telegram sent by the plaintiff to the defendant under Ex.P3 would make it clear that the jural relationship of lessor/lessee came to an end on 12.04.2006. Under the said telegram, plaintiff directed the defendant to remove all the materials belonging to the defendant available in the suit site. In spite of telegram to that effect the defendant failed to take back the materials. On the contrary, the defendant approached this Court by filing C.S.No.305 of 2006 seeking a mandatory injunction directing the plaintiff herein (arrayed as defendant therein) to renew the lease for a further period of 20 years from 13.04.2006. The defendant also sought for a permanent injunction restraining the plaintiff herein and the dealer M/s Friendly Service Co., which was represented by the plaintiff herein in his capacity as Managing Director of the said firm, restraining them from interfering with plaintiff's possession and enjoyment of the leasehold property.

17. Pending the above said suit, an interim order was passed under Ex.P5, by consent of both the parties, directing continuation of the retail outlet in the suit property by the dealer M/s Friendly Service Co. A perusal of



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Ex.P5 would make it clear that the said interim arrangement was made by consent of both the parties plaintiff and defendant. By virtue of the interim order, the Partnership Firm in which the plaintiff is a partner was allowed to run retail outlet of the defendant in the suit property. Subsequently, the suit was transferred to City Civil Court, Chennai and renumbered as O.S.No.12780 of 2010. The said suit was dismissed on merits found from Ex.P6. The appeal filed by the defendant challenging the said judgment and decree came to be dismissed by this Court as found in Ex.P7. Thereafter, a communication was sent by plaintiff to defendant requesting them to remove their equipments under Exs.P8 and P9. The defendant on its part sent a letter to the plaintiff under Ex.P10 enclosing a cheque for Rs.8,96,500/- towards the rent from the year July-2006 to March-2020. The rent was calculated by the defendant at the agreed rate of Rs.5,500/- per month under Ex.P1. In response to the said letter of the defendant under Ex.P10, the plaintiff sent a reply to the defendant under Ex.P11, wherein it was stated that the amount sent by the defendant was appropriated towards damages for use and occupation of the property from 2006 to 2020. It was also mentioned by the plaintiff under Ex.P11 that the said amount was accepted without prejudice.



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Therefore, the contention raised by the learned counsel for the defendant that by accepting rent sent by the defendant, the plaintiff is estopped from maintaining a suit seeking damages for use and occupation cannot be accepted.

18. It is seen from Ex.P5, interim order passed by this Court by consent of both the parties, the Partnership Firm, in which plaintiff is a Managing Partner, was allowed to run the retail outlet in the suit property. The learned counsel for the defendant submitted that when plaintiff was earning profits by running retail outlet in his capacity as a partner of the firm, he is not entitled to maintain a suit for recovery of damages for use and occupation. The Partnership Firm in which plaintiff is a partner was allowed to run the retail outlet only as a retailer under the defendant. The running of the retail outlet by the said firm is only on behalf of the defendant. In fact, even in the interim order passed by this Court, the defendant was allowed to supervise the running of retail outlet. Therefore, it cannot be said that the plaintiff was in effective control of his property on his own.



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19. On the other hand, the plaintiff was allowed to run retail outlet as retailer under the defendant and for the services rendered by firm in which the plaintiff is a partner, it earned commission for each litre petrol/diesel sold. Hence, the commission earned by the firm is only for the services rendered to the defendant as a retailer. The same cannot be construed solely as profits earned by the plaintiff by putting his property for prudent use. Therefore, the defendant is deemed to be in use and occupation of the suit property and consequently, the defendant is liable to pay damages for use and occupation to the plaintiff. However, the physical possession of suit property remained with the retailer, in which plaintiff was one of the partner. The plaintiff was able to earn commission for each litre of petrol/diesel sold only as retailer of defendant. Hence, plaintiff also got benefit by use and occupation of the defendant. Therefore, the commission earned by plaintiff in his capacity as partner of retailer firm is an important factor, which shall be taken into consideration while determining the quantum of profits. It is noteworthy to mention that the interim order passed under Ex.P5 was passed with the consent of plaintiff. He never raised any objection regarding profits earned by defendant at that point of time. Further, Partnership Firm is not a different



personality as distinguished from individual partners. It has no separate corporate personality. The firm is only a collective name given to a group of individuals who agreed to share the profits of business. Here, firm entered into retailership agreement with the defendant and through that business earned profits, in which plaintiff also has share. Therefore, plaintiff received substantial benefit out of use and occupation by defendant.

20. This issue can be viewed in another angle also. After culmination of the legal proceedings initiated by it in the year 2020 by dismissal of an appeal filed by it, the defendant on its own, in it's wisdom thought it appropriate to pay rent for the period 2006 to 2020 and despatched a cheque for a sum of Rs.8,96,500/- to the plaintiff under Ex.P10. The said amount was calculated on the basis of agreed rent between the plaintiff and defendant under Ex.P1. When defendant itself thought it should be appropriate to pay rent to the plaintiff for use and occupation from 2006 to 2020, it is not open to the defendant to contend that plaintiff is not entitled to maintain an action for recovery of damages in view of the fact that the Partnership Firm of the plaintiff was allowed to run a retail outlet in the suit property. However, in the



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absence of any Lease Agreement between the parties, the amount payable by defendant for use and occupation cannot be termed as a rent but it should be treated as damages. In view of the discussions made earlier, I hold that the defendant is liable to pay damages for use and occupation to the plaintiff from April-2006 to March-2020. Therefore, the Issues Nos.2 and 3 are answered accordingly in favour of the plaintiff and against the defendant.

21. The next question that arises for consideration is the quantum of the profits to be paid by the defendant to the plaintiff for use and occupation for the relevant period. The damages for use and occupation has to be calculated based on the income, the property is likely to fetch if it is let out by the plaintiff to a third party. It is the specific contention of the plaintiff that due to filing of the suit by the defendant and its failure to remove the equipments put up in the suit property, the plaintiff was prevented from entering into lease with any other third party for market rent. When suit is filed by the plaintiff seeking recovery of damages for use and occupation, it is incumbent on him to prove what would be the market rent of the suit property which it is likely to fetch during the relevant period 2006 to 2020. In order to



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establish the same, the plaintiff examined a Chartered Engineer/Registered Valuer as PW.2 and she filed a report calculating annual rent for the suit property at the rate of 5% of the value of the property calculated at guideline value. The valuer in her evidence, stated that reasonable rate of return for the suit property is 5% per annum on the value of the property based on the said calculation. She concluded that the defendant was liable to pay Rs.9,65,52,200/- towards use and occupation from April-2006 to March-2020.

22. There is no evidence available on record to suggest the market rent likely to be fetched by the suit property during the relevant period. The plaintiff has not produced any Lease Deeds in respect of the neighbouring properties to prove the prevailing market rent of the property which a willing lessor is ready to accept and willing lessee is ready to pay.

23. The learned Senior Counsel for the plaintiff by relying on judgment in ***Bharat Petroleum Corporation Ltd., vs. Friend-in-need Society*** reported in ***2018 (1) CTC 641*** submitted in that case Division Bench of this



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Court adopted a yardstick of 12% per annum on value for property to assess profits. Close scrutiny of said judgment would show this Court observed that if annual return was calculated at 12% per annum, the rental value would come to Rs.127 per sq.ft. However in that case High Court granted damages only at Rs.36.50/- per sq.ft. In that case lease deed was unregistered and hence, it was not taken into consideration by this Court. However, in the case on hand there is a registered lease deed specifying rent. The plaintiff is a party to the same. Therefore, I am inclined to fix profits payable by defendant based on agreed rent between parties under Ex.P1. Further, as discussed in earlier paragraphs, plaintiff benefited from use and occupation of defendant as he was a partner in the retailer firm which actually run the retail out let in suit property under defendant. Hence, plaintiff cannot expect this Court to fix fanciful rate of profits based on it's market value or value calculated on the basis of guideline value. Hence, evidence of PW.2 and report filed by her cannot be basis for calculation of profits in the peculiar facts and circumstances of case, where plaintiff got benefit from use and occupation by defendant. It is clear from Ex.P5, but for use and occupation by defendant, the plaintiff would not have got an opportunity to run retail out-let and earn



commission for every litre of petrol/diesel sold in his capacity as partner of retailer firm. Hence, I would like to fix profits payable by defendant by taking into account agreed rent between the parties under Ex.P1, by increasing the same periodically once in three years. The property is located at prime locality in the City of Chennai. It is seen even prior to 2006 plaintiff was allowed to run retail out let of defendant. Because of said reason only the plaintiff would have agreed for very moderate rent of Rs.5,500/- from 2001 to 2006. Further, Ex.P5 order was passed with consent of plaintiff. A perusal of Ex.D1 and D2 would suggest volume of sale of petrol and diesel in retail out-let run by plaintiff in suit property during 2006 to 2020 and commission earned by him. The same would not have been possible but for use and occupation by the defendant. Hence, I proceed to fix profits payable by defendant by taking into consideration the agreed rent between the parties.

24. A perusal of Ex.P15 valuation report filed by PW.2 would suggest that PW.2 calculated five different rental values for the block period of every three years namely April-2006 to March-2009, April-2009 to March-2012, April-2012 to March-2015, April-2015 to March-2018 and April-2018 to



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March-2020. PW.2 in her report calculated annual rent for the suit property during April-2006 to March-2009 at Rs.23,75,000/-. It was calculated at the rate of 5% on the value of the land based on prevailing guideline value. Therefore, as per the report of PW.2, the monthly rent for suit property was fixed Rs.1,97,916/- for April-2006 to March-2009.

25. As mentioned earlier, the lease period under Ex.P1 expired on 12.04.2006. Under Ex.P1, both the plaintiff and defendant agreed the rent for suit property upto 12.04.2006 was Rs.5,500/-. Therefore, under Ex.P1 plaintiff himself agreed the rent for the suit property was Rs.5,500/- for the previous month March-2006. However, if the method adopted by PW.1 is accepted, the rent for the suit property for the next month namely April-2006 would be Rs.1,97,916/-.

26. This appear to be exorbitant to this Court, Ex.P1 is the best evidence to assess the rental value of the suit property. The plaintiff was party to the said document. He consciously agreed for the rent of Rs.5,500/- per month for the period 2001 to 2006. The terms of Ex.P1 would suggest at the



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inception in the year 1985, the rent was fixed as Rs.4,000/- per month and after 10 years, from 1995, it was agreed to enhance the rent to Rs.5,000/- per month and 6 years thereafter, from April-2006 onwards, it was agreed the rent should be enhanced as Rs.5,500/- per month. Therefore, this Court deems it appropriate to enhance agreed rent of Rs.5,500/- per month at the rate of 15% once in a block period of 3 years and calculate the damages for use and occupation accordingly. The details of the calculation is given below:-

Sl. No.	Period	15% Enhanced Amount		Amount Payable	
1	May 2006 – April 2009	5500+825	Rs.6325	6325 x 36	Rs.2,27,700
2	May 2009 – April 2012	6325+949	Rs.7274	7274 x 36	Rs.2,61,864
3	May 2012 – April 2015	7274+1091	Rs.8365	8365 x 36	Rs.3,01,140
4	May 2015 – April 2018	8365+1255	Rs.9620	9620 x 36	Rs.3,46,320
5	May 2018 – September 2020	9620+1443	Rs.11063	11063 x 29	Rs.3,20,827
Total					Rs.14,57,851

Under Ex.P12, the defendant already paid a sum of Rs.8,96,500/- and the same has been accepted and appropriated towards use and occupation of the defendant. Therefore, after adjusting the said amount, the plaintiff is entitled



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to a sum of Rs.5,61,351/- from the defendant, for use and occupation from May 2006 to September 2020.

27. Therefore, the plaintiff is entitled to get Rs.14,57,851/- from the defendant towards damages for use and occupation for the period May-2006 to the date of filing of the suit namely September-2020. The plaintiff is entitled to decree for the same under the head damages for use and occupation.

Issue No.1:-

28. It is the case of the plaintiff inspite of his letter under Ex.P8 dated 11.03.2020 requesting the defendant to remove its equipments found in the suit property under Exs.P8 and P9, defendant failed to remove the same. It is the case of the plaintiff that he incurred huge expenditure to safeguard the equipments and he also spent his own money for removing the equipments embedded in the suit property. The equipments, tanks and accessories removed and dismantled by the plaintiff was taken away by the defendant only on 24.07.2020. The plaintiff claim a sum of Rs.10,00,000/- under the



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head storage and excavation charges. Ex.P12 is a document relied by the plaintiff to support his case that he incurred an expenditure of Rs.10,00,000/- towards excavation of the defendant's equipments and also towards security charges. Ex.P12 is series of receipts for various payments allegedly made by the plaintiff in favour of one A.Kumar and Rajesh.

29. A perusal of Ex.P12 would suggest the receipt was issued in the name of Friendly Service Co, Indian Oil Dealers in which plaintiff is a partner. The receipt says amount was received from M/s Friendly Service Co. The receipt bears the seal of Friendly Service Co. If really receipt issued by the recipients namely A.Kumar and Rajesh, there is no necessity to affix the seal of Friendly Service Co. It should have been issued in the names of said A.Kumar and Rajesh. The person engaged by the plaintiff for removal of the equipments and securing the same namely A.Kumar and Rajesh were not examined by the plaintiff to prove the payment. The Lakshmi Vilas Bank's passbook page annexed with Ex.P12 would suggest that various payments made to third parties by M/s Friendly Service Co. Even in the said passbook, there is no entry as if, the payment was made to A.Kumar and Rajesh.



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30. In such circumstances, based on Ex.P12, we cannot come to a conclusion that the plaintiff incurred expenditure of Rs.10,00,000. In fact, when suggestion was put to PW.1 in question No.47 that Ex.P12 would not have any legal effect and it could not be relied on, the plaintiff's witness responded by saying that he did not know. Therefore, Ex.P12 is liable to be rejected. However, when DW.1 was confronted in cross examination, he admitted that tanks in the suit property were removed out of ground by the dealer. He also admitted that the equipments can be removed from underground only by engaging cranes, concrete breakers and other accessories. When DW.1 was questioned what would be the charges for undertaking the exercise of removing the two tanks, he answered that approximately Rs.50,000/- would be the charges. When DW.1 was questioned what would be the cost of removing other equipments found in the suit property, he answered that removal of canopy would cost of Rs.1,50,000/- and other items would be the costs Rs.50,000/-. Therefore, from the answer of DW.1 to question Nos.11 and 12 in cross examination, we can safely come to a conclusion that removal of the equipments of the defendants from underground would cost atleast Rs.2,50,000/-. Therefore, this Court comes to



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a conclusion that the plaintiff is entitled to a decree for Rs.2,50,000/- towards cost of excavation and storage charges. Issue No.1 is answered accordingly.

In the facts and circumstances of the case, the plaintiff is entitled to get cost of the suit from the defendant.

31. In view of the discussions made above, the suit is partly decreed as follows:-

(i) The defendant is directed to pay a sum of Rs.8,11,351/- to the plaintiff.

(ii) The defendant is directed to pay costs of the suit to the plaintiff.

28 .06.2023

Index : Yes
NCC : Yes
dm



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List of witnesses examined on the side of the plaintiff:-

1. P.W.1-Mr.V.S.Rajesh – Son of the Plaintiff
2. P.W.2-Ms.B.S.Ushadhevi – Chartered Engineer/Registered Valuer

List of documents marked on the side of the plaintiff:-

Sl. No.	EXHIBITS	DESCRIPTION
1.	P1	The photocopy of the Lease Agreement dated 29.06.1987 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
2.	P2	The photocopy of the Letter dated 13.04.2006 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
3.	P3	The photocopy of the Telegram dated 13.04.2006 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
4.	P4	The photocopy of the Plaint in CS No.305/2006 on the file of Hon'ble High Court, marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
5.	P5	The photocopy of the order in OA 348/2006 and A.No.1700/2006 in C.S.No.305/2006 dated 28.04.2006 on the file of the Hon'ble High Court marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
6.	P6	The photocopy of the Judgment and Decree dated 18.03.2016 on the file of II Additional Judge, CCC marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
7.	P7	The Webcopy of the Order in AS. No. 589/2016 and CMP Nos.15952 and 15634 of 2016 and CMP No.19361/2016 dated 27.02.2020 on the file of Hon'ble High Court marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
8.	P8	The photocopy of the letter dated 11.03.2020 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
9.	P9	The photocopy of the letter dated 29.05.2020 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
10.	P10	The photocopy of the letter dated 17.03.2020, marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)



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Sl. No.	EXHIBITS	DESCRIPTION
11.	P11	The photocopy of the letter dated 04.06.2020 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
12.	P12	Ex.P12 (Series) (10 Nos.) are the original vouchers with bank statement
13.	P13	The photocopy of the Confirmation given by defendant company dated 24.07.2020 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
14.	P14	The Webcopy of the guideline value for the period of 01.04.2003 to 31.07.2007 marked with subject to objection. (Learned counsel for the defendant objected to mark the document on the ground that it is a photocopy)
15.	P15	The original Land Valuation Report with annexure marked with subject to objection. (The learned counsel for the defendant objected on the ground that the document is not relevant and it has been created for the purpose of filing the suit and subsequent to the suit. PW1 is not the author of the document).
16.	P16	The original Authorization Letter dated 08.04.2022.
		Ex.P7 and Ex.P14 are marked along with under Section 65B is submitted.

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

1. D.W.1-Mr.Y.Sarath Babu - Chief Manager (Retail Sale) of the defendant's Divisional Office

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

Sl. No.	EXHIBITS	DESCRIPTION
1.	D1	The Sale Volume of the plaintiff from 2006 to 2020 marked with subject to objection.
2.	D2	The Commission earned by the plaintiff on February 2020 marked with subject to objection.
3.	D3	The photocopy of the Power of Attorney executed by the defendant in favour of Shri Y Sarath Babu marked with subject to objection. (Original Seen and returned)



WEB COPY



C.S.No.403 of 2020

S.SOUNTHAR, J.

dm

Pre-delivery Judgment in
C.S.No.403 of 2020
(Comm.Suits)

28.06.2023