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A.No.2523 of 2022

**Application Nos.2523 & 2753 of 2022
in
C.S.No.123 of 2020**

SENTHILKUMAR RAMAMOORTHY J.,

The suit was filed for recovery of a sum of Rs.1,20,95,560/-. The suit claim comprises a sum of Rs.99,25,920/- towards rental dues + GST + service tax for the period from 01.04.2018 to 30.09.2019; a sum of Rs.11,69,640/- towards interest on the above mentioned sum; and a sum of Rs.10,00,000/- as damages for loss of reputation and the like.

2. An application to provide security for the suit claim was filed and a sum of Rs.42,00,000/- was deposited based on orders passed by this Court. By filing a payment out application, the said sum of Rs.42,00,000/- was released to the plaintiffs. Thereafter, the suit was decreed *ex parte*. When the defendants applied to set aside the *ex parte* decree, the defendants were directed to deposit 50% of the decree amount, i.e. a sum of Rs.60,47,780/-. The said sum was deposited. The defendants filed their written statement along with counter claims for an aggregate sum of Rs.3,25,00,000/-. The said counter claims consist of interest on the advance



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paid by the defendants, the amount deducted as TDS but not remitted to the

Income Tax Department and claims for damages under several heads.

According to the defendants, the aggregate loss incurred by them is a sum of Rs.4,57,85,054/-, but the counter claims are restricted to a sum of Rs.3,25,00,000/-.

3. These two applications are presented in the above facts and circumstances. In application No.2753 of 2022, the applicants seek payment out of a sum of Rs.60,47,780/-, which was deposited by the defendants to the credit of the suit. In application No.2523 of 2022, the plaintiffs seek exclusion of the counter claim of the defendants.

4. In support of these applications, learned counsel for the applicants submit that the defendants admittedly did not pay rent from 01.01.2018 onwards. This resulted in the institution of the suit. Even for the period subsequent to 30.09.2019, the defendants have failed to pay rent and the amounts due and payable as on date are in the region of Rs.3,00,00,000/-. Since the sum of Rs.60,47,780/- represents an admitted debt due and



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payable to the plaintiffs, it is contended that the application for payment out of the said sum is liable to be allowed. As regards the counter claims, it is asserted that the said counter claims are not maintainable before this Court and that such counter claims are an afterthought since there was no reference thereto in the counters filed previously.

5. In response, learned counsel for the defendants submits that the defendants initially paid a sum of Rs.42,00,000/- to the plaintiffs and thereafter deposited a sum of Rs.60,47,780/- to the credit of the suit. Apart from the above, it is submitted that an immovable asset of the defendants was attached by order dated 12.02.2021. The value of the said asset was about Rs.8,50,00,000/- in 2021 and the current market value is in the region of Rs.12,00,00,000/-.

6. As against the principal claim of about Rs.99,25,920/-, including GST and service tax, a sum of Rs.42,00,000/- was received by the plaintiffs. A deposit of Rs.60,47,780/- is available to the credit of the suit and an immovable asset of the defendants is under attachment. When the above



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facts are taken into account, the suit claim is more than adequately secured.

Therefore, Application No.2753 of 2022 is liable to be and is hereby dismissed.

7. As regards Application No.2523 of 2022, the applicants/plaintiffs seek to exclude the counter claims. On perusal of the written statement with counter claims, it is evident that the defendants have made aggregate counter claims of Rs.3,25,00,000/- by paying a sum of Rs.3,28,525/- as court fee. Although a substantial portion of the counter claims consists of claims for damages and there is no debt due and payable as on date in respect thereof, the counter claims cannot be excluded on that ground or on any other ground canvassed by the plaintiffs. Therefore, Application No.2523 of 2022 is also dismissed.

List the main suit on 13.02.2023 for the parties to file draft issues.

06.02.2023

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