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A.S.No.521 of 2022
and CMP.No.19180 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No.521 of 2022
and
CMP.No.19180 of 2022

P.Ganesh

.. Appellant

Vs.

K.S.Hemant Kumar

.. Respondent

PRAYER : Appeal Suit is filed under Section 96 of the Code of Civil Procedure, against the Judgement and Decree dated 21.03.2022 made in O.S.No.1180 of 2016, on the file of the XIX Additional City Civil Court, Chennai.

For Appellant : Mr.S.Umapathy

For Respondent : Mr.Sandeep Shah

for M/s.Shah and Shah

J U D G M E N T

The appeal has been filed to set aside the Judgment and Decree dated 21.03.2022 made in O.S.No.1180 of 2016, on the file of the XIX Additional City Civil Court, Chennai.



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2. The brief facts of the case are as follows:

The plaintiff is the owner of house and ground bearing 34, Karpagambal Nagar, Mylapore, Chennai-600 004, the plaintiff and the defendant entered into a rental agreement dated 19.04.1984 whereby the contractual monthly rent agreed at Rs.2,990/-. The plaintiff filed an appeal before the Rent Controller Court in RCOP No.1676 of 2005 and the same was allowed by fixing the monthly rent at Rs.7,557/- by order dated 04.11.2006. Aggrieved by the said order, the plaintiff preferred an appeal R.C.A.No.1129 of 2006 and the defendant also preferred an appeal in RCA.No.436 of 2007. By order dated 08.10.2014, the learned Small Causes Judge, re-fixed the fair rent to Rs.13,878/- p.m, from the date of RCOP i.e., 19.08.2005. The fair rent therefore calculated from the said date and as such as Rs.13,878/- X 125 months works out Rs.17,34,750/-.

3. Further according to the plaintiff it was agreed by the defendant as he has to pay water charges of Rs.11,650/- for the period of 233 months at the rate of 50/- per month. The plaintiff would further contend that the defendant had removed the water pump without the knowledge of the



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plaintiff and the approximate cost of the said motor pump is Rs.5,000/- which also the defendant wilfully failed and neglected to pay. However, the defendant has been making irregular payment at the rate of Rs.2,990/- p.m. The plaintiff has after giving credit of the said amount from February 2005 to November 2015, a sum of Rs.13,77,650/- stands due.

4. According to the plaintiff the order of the Appellant Authority reached finality on 08.10.2014 and the defendant has not preferred any revision against the said order. Apart from that eviction proceedings are proceeded before the Rent Control Tribunal. Therefore, the suit has been filed for recovery of the amount due from the defendant. Hence the case.

5. The learned counsel for the defendant denied the entire allegations of the plaintiff except by admitting that the plaintiff is the owner of the property referred in the plaint. The contractual rent at the rate of Rs.2,990/- per month initially and fixing of fair rent by the Rent controller at the rate of Rs.7,557/- is also admitted. Further it has been admitted that the Appellant Authority has fixed the fair rent at the rate of Rs.13,878/-. The only dispute



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with regard to the water charges claimed by the plaintiff amounting a sum of Rs.11,650/- at the rate of Rs.50/- per month. According to the defendant the same is exorbitant. It is also denied that the defendant removed the water pump without the knowledge of the plaintiff. The irregular payment of Rs.2,990/- is also false and the defendant has been making regular payment till date. But the plaintiff in order to caught hold the defendant have wilful default keeping himself the cheques without remitting same. Therefore, the calculation given by the plaintiff is wrong. The pendency of the eviction proceedings are admitted. However, it is denied that the defendant has not preferred Civil Revision Petition. The defendant has filed CRP before this Court in CRP.No.249 of 2016 along with stay petition in which notice has been ordered to the plaintiff herein. Therefore according to the defendant the order of the Appellant Authority is not reached finality. It is denied that the plaintiff requested the defendant to pay the amount due. The plaintiff has well known the pendency of the CRP before this Court.

6. To prove the defence on the side of the plaintiff P.W.1 was examined and Ex.A1 & Ex.A2 were marked and on the side of the defendant D.W.1 was



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examined and Exs.B1 to B4 were marked.

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7. On hearing both sides, the learned trial Judge decreed the suit, that the plaintiff is entitled for the part of the suit relief for a sum of Rs.13,61,000/- after deducting the water charges and motor pump charges claimed by the plaintiff and the admitted rent paid so for of Rs.3,73,750/- together with nominal interest at the rate of 9% p.a. from the date of plaint till the date of decree and thereafter 6% p.a. and the plaintiff is not entitled for any other relief. In the result, the suit is partly decreed and the defendant is directed to pay a sum of Rs.13,61,000/- together with interest @ 9% p.a. from the date of plaint till the date of decree and thereafter @ 6% p.a. till its realization. By challenging the said judgement, the defendant has preferred this appeal.

8. Heard, Mr.S.Umapathy, learned counsel for the appellant and Mr.Sandeep Shah learned counsel for the respondent and perused the materials available in the record.



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9. When the matter is taken up for hearing, today, the learned counsels on both sides appeared and submitted that before the Mediation, the matter has been settled through settlement agreement on 27.04.2023, and the same also enclosed along with the mediation report. Based on the settlement agreement, on 15.05.2023 the appellant was vacated the premises and paid arrears of Rent for a sum of Rs.13 lakhs by way of DD.No.024786, Rs.3,00,000/-, Dt.25.04.2023, AXIS Bank, RA Puram, Chennai and DD.No.000194, Rs.10,00,000/-, Dt.01.06.2023, Equitas Small Finance Bank and also received by the land lord, to that effect the matter was settled.

10. Since the matter is settled out of Court, the appeal suit is dismissed as settled out of Court. The Mediation report dated 02.06.2023 shall form part of the decree. The appellant is also entitled to refund of the Court fee paid before this Court. Consequently, connected Miscellaneous petition is closed.
No costs.

28.06.2023

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Index : Yes/No
Speaking Order: Yes/No



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To

- 1.The XIX Additional Judge, City Civil Court,
Chennai.
- 2.The Section Officer,
VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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