THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24.04.2024

JUDGMENT DELIVERED ON : 05.06.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No. 928 of 1999

The Board of Trustees of
Chennai Port Trust rep.by
its Chairman, Chennai – 600 001. .. Plaintiff

Vs.

1. Chokhani International Ltd.,
rep.by its Chairman and Managing Director,
Shri Jagdish Chokhani,
Chokhani House,
D-3/2, Okhla Industrial Area,
Phase II, New Delhi – 110 020.

2. Miss.A.Rodrigues,
Court Receiver, High Court, Mumbai,
Bank of India Buildings,
2nd floor, M.G.Road,
Mumbai – 400 023.

3. ICICI Limited,
No.1, Cenotaph Road,
Chennai – 600 018,
rep.by its Senior Vice President
P.Ananda Krishna Kumar .. Defendants

[Third defendant impleaded as per order dated 30.07.2001 in A.No.2803 of 2001 and time extended as per order dated 17.07.2019]

[Defendant Nos.2 and 3 are removed as per order dated 14.12.2023 in C.S.No.928 of 1999.]

Prayer:-

Civil Suit has been filed under Order VII Rule 1 CPC, 1908, read with Order IV Rule 1 of O.S.Rules of Madras High Court prays for a judgment and decree against the defendants :

a) directing the first defendant to pay to the plaintiff the sum of Rs.5,72,36,432.44/- together with interest at 18% per annum on Rs.3,83,01,957.44 from the date of plaint till repayment in full;

b) directing the first defendant to pay the cost of the suit.

c) directing the second defendant to handover the land and water area leased to the first defendant as per the agreement dated 16.12.87 to the plaintiff.

For Plaintiff : Mr.Niranjan Rajagopalan

For Plaintiff : Mr.Niranjan Rajagopalan

For Defendants : Mr.T.V.Badrinarayanan
for D1

JUDGMENT

The suit is instituted by the plaintiff against the first defendant-Company for recovery of a sum of Rs.5,72,36,432.44/-, together with interest at 18% per annum on Rs.3,83,01,957.44/- from the date of plaint till repayment in full and costs and also direct the second defendant to handover the land and water area leased to the first defendant as per the Lease Agreement dated 16.12.1987 to the plaintiff.

2. The plaintiff is the Board of Trustees of the Chennai Port Trust, which is a statutory body constituted under the Major Port Trusts Act, 1963. The first defendant – Chokkani International Limited is the contesting defendant. The second defendant is the Court Receiver, Bombay High Court, for realisation of the debts of the first defendant due to the third defendant. The third defendant is the creditor of the first

3. The averments made in the plaint are as follows:-

3.1. The plaintiff and the first defendant entered into a lease Agreement for an extent of 8,097 sq.mts of land area and for an extent of 43,600 sq.mts of water area, for a period of 29 years on 16.12.1987 for setting up Dry Dock for ship repairs. As per the said Agreement, the first defendant agreed to pay a sum of Rs.30,70,787/- per annum for the land area and Rs.63,72,140/- per annum for water area, totalling Rs.94,42,927/-. As per Clause 11 of the said Agreement, licence fee is subject to an upward revision of 20% once in three years and as per Clause 12 of the said Agreement, the licence fee shall be paid in advance i.e., one month before the commencement of the year for which the amount is due. If the first defendant fails to comply with the said terms, the plaintiff has right to stop the operation of the facilities and confiscate the properties of the first defendant. Further, as per Clause 9 of the said Agreement, the first defendant is liable to pay the service charges to the plaintiff as per the prevailing plaintiff's scale of rates.

plaintiff as per the prevailing plaintiff's scale of rates.

3.2. The first defendant took possession of the land and water area on 14.11.1988. The first defendant paid the yearly licence fee for the first ten years, after repeated concessions shown by the plaintiff. The first defendant made several defaults in payment of licence fee. Thereafter, the first defendant has not paid XI and XII years licence fee, even after repeated reminders, dated 03.03.1997, 06.05.1997, 09.06.1997, 02.08.1997, 18.09.1997, 04.12.1997, 02.01.1998, 20.03.1998 and 06.05.1998 and legal notice dated 29.01.1998. The first defendant/Company, vide letter dated 30.03.1998, had admitted their liability, however they failed to honour the commitments. Therefore, the plaintiff was constrained to stop the services with effect from 31.03.1998.

3.3 The first defendant is a habitual defaulter in paying the dues from the beginning, even though on many instances, the plaintiff's Board has permitted the first defendant to pay the licence fee in instalments. In spite of many concessions shown, the first defendant has not responded

Receiver was appointed by the Bombay High Court on 12.08.1998, as the first defendant/Company had not honoured their commitments made to the third defendant. Therefore, the plaintiff had to terminate the licence on 17.08.1999 with effect from 31.03.1998 as per Clause 13 of the Agreement. The first defendant sent a reply dated 05.10.1999, requesting the plaintiff to withdraw the termination of the Agreement. The plaintiff, by their letter dated 15.10.1999, stated that the first defendant's request cannot be acceded to. While that being so, the second defendant had the possession of the licenced premises from 12.08.1998 till 07.07.2004 restraining the plaintiff from leasing out the area, thereby causing further losses. Hence, the plaintiff has filed the present suit against the first defendant for recovery of a sum of Rs.5,72,36,432.44/- together with interest at 18% per annum on Rs.3,83,01,957.44/- from the date of plaint till repayment in full and for costs.

4. The first defendant/Chokhani International Limited filed Written Statement denying the allegations contained in the plaint and raised issues of limitation in respect of certain claims. They have stated that the

Statement denying the allegations contained in the plaint and raised issues of limitation in respect of certain claims. They have stated that the first defendant is funded by promoters, Public Issues and financial institutions, viz., ICICI, IDBI and IFCI. The first defendant also undertook to repair the plaintiff's floating crafts and dredger Coleroon at the lowest price for adjustment against the licence fee bills to the extent of 50%. Had the arrangement been used on regular basis the outstanding would have been much less. From April 1998, the plaintiff started creating problems for normal functioning of the shipyard and also not issuing the entry passes to the workers of the first defendant, even when the work was in progress on the Naval and Merchant Vessels belonging to Indian Government. Further, at the end of June 1998, the plaintiff stopped entry of 95% of the employees of the first defendant/Company, working on the shipyard and instructed the first defendant not to take Vessels for repair work. Hence, after April 1998, the plaintiff has no right whatsoever to levy any fee on the first defendant. While that being so, on 12.08.1998, the second defendant took possession of the assets of the first defendant/Company and entry of the first defendant was stopped first defendant/Company with *mala-fide* intention instructing them not to send their Vessles to the first defendant for repair. Because of the said act of the plaintiff, the first defendant/Company has faced huge financial loss, approximately in a sum of Rs.15 crores. Hence, the first defendant/Company is having right to claim Rs.15 crores from the plaintiff towards damages. Further, the first defendant/Company defends each claim raised by the plaintiff as follows :

(i) As regards claim item No.1, XI year license fee of Rs.1,63,18,000/- and interest amount of Rs.80,77,410/-, there is no agreement with regard to the interest, least of all the rate of interest, nor is it legally claimable.

(ii) As regards claim item No.2, XII year license fee of Rs.1,63,18,000/- and interest amount of Rs.51,40,170/-, these amounts are not payable, as the plaintiff abruptly and unilaterally stopped services to the yard and stopped the functioning of repair works with effect from 01.04.1998 and further, no interest is payable for the reason aforesaid.

(iii) As regards claim item No.3, the alleged license fee for 979 sq.mts of excess area occupied from August 1989 to March 1998, being

(iii) As regards claim item No.3, the alleged license fee for 979 sq.mts of excess area occupied from August 1989 to March 1998, being Rs.44,93,795.19/- and interest amount of Rs.48,68,253/-, the first defendant did not occupy any excess area at any time and in any event, it is time barred claim.

(iv) As regards claim item No.4, leave license fee from 1993 to 1998, amounting of Rs.2,78,160/-, and interest amounting to Rs.2,16,965/-, the way-leave license is part of agreement in Clause 4. The first defendant had right to widen the road, at its costs for approach to North Groyne.

(v) As regards claim item No.5, for 1000 sq.mts of open space beyond container terminal from February 1998 to March 1998, being Rs.22,000/- and interest amounting to Rs.6,765/-, the first defendant denies using the alleged open space.

(vi) As regards claim item No.6 for 100 sq.mts for switch gear room constructed North of Groyne wall from February 1998 to March 1998, being Rs.2,200/- and interest amounting to Rs.676/-, the first defendant denies using the alleged open space and non-constructed

(vii) As regard claim item No.7, for service charges of Port Fire Service being Rs.4,25,790/- and interest amounting to Rs.4,02,372/-, the first defendant is not liable to pay the fire service charges, as this is the duty of the Port Trust to provide Port Fire Service, which was rendered to a third party Coast Guard Ship Varaha. The first defendant was in no way responsible to the accident, nor privy to the alleged fire service rendered.

(viii) As regards claim item No.8, water charges from November 1995 to August 1998, being Rs.3,42,165/- and interest amounting to Rs.1,51,589/- the first defendant denies the allegation and that they purchased water from outside at unreasonable price. Hence, the first defendant is not liable to pay water charges. Further, this claim is also barred by limitation.

(ix) As regards claim item No.9, for levelling charges for dumped waste and unserviceable materials being Rs.1,01,847.25/- and interest amounting to Rs.70,275/- the first defendant has not dumped any waste and unserviceable materials. In any case, it is also barred by limitation.

5. Upon considering the pleadings and the other documents, the

5. Upon considering the pleadings and the other documents, the following issues have been framed by this Court on 04.02.2020 :

> "(i) Whether the first defendant is liable to pay the plaintiff the license fee of sum of Rs.3,83,01,957/- which is due along with 18% interest calculated till 31.10.1999, of sum of Rs.1,89,34,475.00 amounting to a total of Rs.5,72,36,432.44 ?
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> (ii) Whether the second defendant has handed over the possession of the land and water area to the plaintiff on 07.07.2004 as per the order of the DRT-I, Mumbai dated 29.06.2004 ?
>
> (iii) Whether the item mentioned in para 3, 4, 7, 8 and 9 of para 18 of the amended plaint barred by limitation ?
>
> (iv) Whether the plaintiff is entitled for the interest at the rate of 18% on the license fee due, from 31.01.1999 till date ? and
>
> (v) To what other relief is plaintiff entitled ?

6. After framing of issues, during trial, on the side of the plaintiff, one G.S.Chitrappa was examined as P.W.1 and 50 documents were

Ex.D1.

7. The learned counsel for the plaintiff submitted that as per Ex P-1/lease agreement dated 16.12.1987, the first defendant has to pay a sum Rs.94,42,927/- per annum for the land and water area as licence fee. As such, the licence fee for the first year was payable from 02.03.1987 and the subsequent dues were payable from 1st February of the respective years. Further, the said amount is subject to escalation of 20% once in three years as per Clause 11 of said agreement and the licence fee shall be payable in advance one month before the commencement of the year as per Clause 12 of the agreement. As per said agreement, the first defendant has paid licence fee for the first ten years, however, he did not pay the licence fee for XI and XII years, which comes to Rs.1,63,18,000/- and Rs.1,63,18,000/- respectively. Hence, the plaintiff sent a communication dated 16.01.1997 (Ex.P-23) to the first defendant demanding payment of a sum of Rs.166.83 lakhs, on or before 01.02.1997 for the XI year licence fee and also sent a letter dated 03.03.1997 (Ex.P-24) pointing out that the balance of licence fee for X

01.02.1997 for the XI year licence fee and also sent a letter dated 03.03.1997 (Ex.P-24) pointing out that the balance of licence fee for X year is yet to be paid and that the entire due for the XI year licence fee remains to be paid. On 30.03.1998 (Ex.P-33), time was requested for payment of dues for the years 1997-98 and 1998-99. The aforesaid reply and acknowledgment came in response to the notice of the plaintiff/Port Trust on 20.03.1998 (Ex.P-32), wherein action was contemplated to invoke the rights under Clauses 12 and 13 of the agreement. While that being so, the plaintiff had received a notice from the second defendant/Receiver appointed by the Bombay High Court by judgment dated 26.11.1997 in Suit No.4109 of 1997 to take over the assets of the first defendant/Company. Therefore, the plaintiff had issued a legal notice (Ex.P-44) to the first defendant to pay the dues within 10 days from the date of receipt of notice. The first defendant, vide reply dated 26.07.1998 (Ex.P-45) admitted the liability in respect of the licence fee due for XI and XII years, water charges and switchgear room constructed charges. However, the first defendant had denied the other claims i.e., licence fee for excess area, way-leave licence fee, licence fee for 1000 said agreement.

8. The learned counsel for the plaintiff further submitted that in the cross examination of P.W.1, he has deposed that they have not denied the liabilities but only expressed their inability to make payment due to their financial constraints. The learned counsel for the plaintiff further submitted that as per Ex.P-33, Ex.P-45 and other communications, the liability of the first defendant stands proved and therefore, the plaintiff is entitled to a decree as prayed for. Admittedly, the dock was taken possession by the second defendant/Court Receiver and third defendant/Bank and hence, the plaintiff/Port Trust could not utilise the said portion for the period after termination of the first defendant's licence.

9. The learned counsel for the plaintiff further submitted that insofar as interest rate is concerned, it is based upon the scale of rates prevalent then in accordance with the Major Ports Act, 1963. Taking into consideration the fact that Ex.P-1/lease agreement is a commercial

prevalent then in accordance with the Major Ports Act, 1963. Taking into consideration the fact that Ex.P-1/lease agreement is a commercial arrangement and by non-performance of the same, the Port Trust has negative consequences facing loss, and hence, the percentage of interest claimed is justifiable. Further, the first defendant/Company had questioned the claims made in paragraph Nos. 3,4,7, 8 and 9 of Sl.No.19 of the claim statement. With regard to Claim No.3, i.e., for payment of lease charges for occupation of excess area, the first defendant had denied the liability, both on merits as well as on limitation. In respect of the claim made in Exs.P-29 to P-32, the first defendant did not deny the liability, vide communication dated 09.06.1998. In Ex.P-41, the first defendant admits the occupation of excess land. The only dispute is with regard to the rate that is to be applied, as the first defendant/Company claimed that the said portion, though fenced, was not utilised productively. He further submitted that the issue of occupation of excess area had come to the knowledge of the plaintiff only in the year 1995 vide Ex.P-18. Hence, the cause of action for recovery of the aforesaid issue of occupation of excess area, commences only from 1995. Owing to

Ex.P-45. He further submitted that in respect of Claim No.4, being the way-leave licence the first defendant had admitted the availability of limitation from 25.11.1996 to 25.11.1998. Further, as per Clauses 8(ii) and 8(iii) of the agreement, the first defendant is liable to pay the incidental and statutory levies. Further, for Claim No.7, the charges have been sought for vide Ex.P-32 dated 20.03.1998 and in reply (Ex.P-33) on 30.03.1998, the first defendant has stated that the matter is being pursued with the Coast Guard for early remittance to the Port Trust and the liability towards the Port Trust had not been denied. Insofar as water supply in Claim No.8 is concerned, the liability to pay water charges had been acknowledged in reply notice Ex.P-45 on 26.11.1998. In fact, the same constitutes an agreement under Section 25(3) of the Indian Contract Act. Therefore, the said claim is within limitation and the same was admitted by the first defendant/Company.

10. Insofar as the issue of levelling charges i.e., Claim No.9 is concerned in Ex.P-13 dated 19.05.1994, the Port Trust had requested the first defendant/Company to remove the materials, which had not been

concerned in Ex.P-13 dated 19.05.1994, the Port Trust had requested the first defendant/Company to remove the materials, which had not been done. Therefore, the plaintiff has proved the liability of the first defendant/Company by oral and documentary evidence. Further, none of the documents have been questioned or denied by the first defendant/Company. Further, the statement made by D.W.1, only fortifies the stand of the plaintiff. Hence, the learned counsel for the plaintiff prayed that the suit may be decreed as prayed for.

11. The learned counsel appearing for the first defendant/Company submitted that as regards Claim Nos.1 and 2, which are license fee claims of Rs.2,43,95,410/- and Rs.2,14,58,170/- inclusive of interest respectively, barring entitlement to interest, there is no dispute that the plaintiff and the defendant entered into a lease agreement dated 16.12.1987 for an extent of 8097 sq.mts of land area and 43,600 sq.mts of water (sea) area inside the Chennai Port Trust premises, with certain terms and conditions for the specific purpose of establishing the ship repair facilities at Chennai Port Trust limit for a period of 29 years. The

all required imported and indigenous installations, machineries, Hull workshop, mechanical machine shop, material storage sheds and administrative office buildings within the allotted land area of 8097 sq.mts and two floating dry docks and concrete wharf within the allotted water area of 43600 sq.mts for an initial total cost of Rs.75 crore.

12. The learned counsel appearing for the first defendant/Company further submitted that the first defendant had paid licence fee in full as per the terms of the said agreement for 10 years i.e., up to February 1996 and in the plaint, the plaintiff also admitted the same. The first defendant repaired 240 Vessels of Indian and Foreign shipping companies, Indian Coast Guard and Indian Navy for the period from 1990 to 1998. The first defendant had also repaired the plaintiff's own Dredger Vessel Celeron and adjusted the part of the repair costs towards the payment of licence fee and the same is acknowledged in Paragraph No.9 of the amended plaint. Due to liberalisation Policy of Indian Government and due to devaluation of Indian Currency from around 1994-95, the first defendant started incurring heavy loss and financial

Government and due to devaluation of Indian Currency from around 1994-95, the first defendant started incurring heavy loss and financial crunch. Therefore, the first defendant/Company was unable to pay XI year licence fee of Rs.1,63,18,000/- which was due on 01.02.1997 and the same is Claim No.1 of the amended plaint. Subsequently, Ex.P-1 was terminated by the plaintiff with effect from 31.03.1998 by their letter dated 17.08.1999 (Ex.P-46) and the plaintiff was forced to shut down all operations and business activities of the first defendant/Company. Ex.P-35 bears evidence for the conduct of plaintiff disallowing exercise of any right of the first defendant/Company as a licencee. Hence, as regards Claim No.2 for XII year licence fee, principal of Rs.1,63,18,000/- is not payable in full, but only for two months of February and March, 1998 amounting to Rs.27,19,666/- only is payable.

13. The learned counsel for the first defendant further submitted that Question No.53 in cross examination of P.W.1 dated 05.03.2020 about the termination of licence and discontinuation of service and Questions 110 to 119 and 143 to 149 in cross examination about the

by P.W.1. Further Claims 1 and 2 relating to licence fee are also to be weighed against the financial enrichment that is admittedly being earned by plaintiff out of the world class infrastructural installations mainly in wharf and hull which were created at substantial costs by letting them out to Cost Guard. In this regard Questions in cross of P.W.1, Nos.7 to 10, 41 to 44 and questions 151 to 167 establish plaintiff's profitable enjoyment of the assets left behind. Though Clause 13 of Ex.P-1 agreement states about the licensor's unilateral and one sided rights, such a clause, on the face of it is unconscionable and unjust, which has the characteristics of imposing the will of one party that dispenses with valuable resources at its disposal. Though the first defendant/Company has not filed the set-off or counter claim, the plea of unconscionable terms of contract is rooted also in the principle of "*ex debito justitiae*".

14. The learned counsel appearing for the first defendant further submitted that in Ex.P-1 there is no clause for levying interest for default or delayed payment of licence fee and hence, the claim of interest at 18% per annum is not sustainable and therefore, the plaintiff is not entitled to

or delayed payment of licence fee and hence, the claim of interest at 18% per annum is not sustainable and therefore, the plaintiff is not entitled to the sum of Rs.51,40,170.00/- and Rs.80,77,410.00/- claimed as interest in respect of these two claims. Insofar as Claim No.3 is concerned the licence fee for the alleged occupation of excess area of 979 sq.mts is for the period from August 1989 to March 1998, however, the first defendant denied the same. Ex.P-17 and Ex.P-41 show that there is a clear dispute in this regard and that this area and the dispute, do not fall under the scope of Ex.P-1, stating that there is no encroachment, but natural formation of boundary of licensed area and that, no equipment or material lies in the alleged excess area. Further, the plaintiff has failed to establish the occupation of the area in excess of the licensed portion. In any case, it is barred by limitation, since this suit was filed on 25.11.1999, which is about 10 years after the alleged occupation of excess area. Therefore, the first defendant is not liable for payment of licence fee of Rs.44,93,795.19/- and interest of Rs.48,68,253.00/- as claimed in the plaint.

North Groyne, which is clearly mentioned in Clause 4 of Ex.P-1 and hence, no additional amount is payable. Since there is no amendment of Ex.P-1 for the alleged way-leave licence fee or any separate agreement, this claim cannot be made under Ex.P-1/lease agreement. Therefore, Claim No.4 for payment of licence fee of Rs.2,78,160.00/- and the interest of Rs.2,16,965.00/- are not permissible either on merits or even otherwise, as it is time barred, since the suit was filed on 25.11.1999, which is more than six years after the alleged transgression. Further, Claim Nos.5 and 6 of the plaint pertain to the alleged occupation of 1000 sq.mts open space beyond the fence of container terminal and 100 sq.mts for switchgear room construction respectively. These allegations of excess occupation are not admitted by the first defendant/Company and it is time barred and they also do not form part of Ex.P-1.

16. The learned counsel for the first defendant further submitted that the plaintiff should have initiated separate penalty proceedings with regard to all unauthorised and excess area claim and the same are not falling under the scope of Ex.P-1. The plaintiff also had powers under

regard to all unauthorised and excess area claim and the same are not falling under the scope of Ex.P-1. The plaintiff also had powers under Public Premises Act to seek necessary relief. Such claims include Claim Nos. 3, 4, 5 and 6. Hence, the burden of proof with regard to these claims have not been discharged. The first defendant is not liable for payment of licence fee of Rs.22,000/- and Rs.2,200/- respectively for Claims 5 and 6 and also corresponding interest Rs.6765.00/- and Rs.676.00/-. Further, Claim No.7 of the plaint pertains to alleged service charges of Port Fire Service to the ship CGS Varaha on 19.08.1994, belonging to Indian Coast Guard. There is no specific clause in Ex.P1 about providing port fire services and therefore, Claim No.7 does not fall under Ex.P-1. Further, it was specifically provided on 19.08.1994 for Indian Coast Guard ship Varaha at the request of them. The service was not rendered to the first defendant/Company. There is also no record of any sort for rendering such service to the first defendant and related tariff for the quantum of claim. The Coast Guard is the answerable party, which is not made as a party to the present suit. Further, the cross examination of P.W.1 relating to questions 16 to 29 and 45 to 50, establish the first defendant's case against the said claim.

17. The learned counsel appearing for the first defendant further submitted that as far as Claim No.8 in respect of the alleged water charges from November 1995 to August 1998 is concerned, the first defendant denies any outstanding in this regard. In fact, the first defendant had to purchase water from outside, as the supply was irregular. The plaintiff has not established the dues based on any record for quantum of supply and amount payable. The claim for Rs.3,42,165/- and the interest Rs.1,51,589/-, are not payable by the first defendant.

18. The learned counsel appearing for the first defendant further submitted that Claim No.9 pertains to levelling charges of Rs.1,01,847.25/- and the interest of Rs.70,275.00/- near incinerator area, where the first defendant dumped the waste and unserviceable materials as per Ex.P-19 is not payable, as apart from the allegation being denied, there being no record for the plaintiff's claim on merits, it is barred by

limitation as the claim is made on 25.11.1999 and it is not forming part of Ex.P-1.

19. The learned counsel appearing for the first defendant further submitted that the first defendant/Company has handed over the possession to the second defendant/Court Receiver in 1998, pursuant to an order of Bombay High Court. Subsequently, the plaintiff has also taken possession of the licensed water and land area, along with all immovable assets of the first defendant/Company in the year 2003 itself, through a Receiver appointed by the Debts Recovery Tribunal (DRT), Mumbai. Thereafter, the plaintiff has let out to Coast Guard the Concrete Wharf, Hull workshop established by the first defendant at commercial rate of licence fee. Thus, the plaintiff is enriching itself since 2003, out of the assets left behind by the first defendant/Company. As a Public Sector Entity, the plaintiff should be fair and equitable even in contractual transactions with its subject. The plaintiff/Board of Trustees of Chennai Port Trust shall file an account of its earnings from the assets of the first defendant so as to strike balance to its claim against the first defendant

and the earnings that it had realised from the valuable assets of the first defendant/Company taken over by it under an inequitable term of Ex.P-1. Hence, the learned counsel for the first defendant prayed that this suit may be dismissed.

20. Heard both sides and perused the materials available on record.

21. **Issue Nos.1 and 4 :**

The case of the plaintiff is that the plaintiff and the first defendant entered into a sale agreement (Ex.P-1) for an extent of 8,097 sq.mts of land area and 43,600 sq.mts of water area, for a period of 29 years. As per the said agreement, the first defendant agreed to pay a sum of Rs.30,70,787/- per annum for the land area and Rs.63,72,140/- for water area per annum, totalling to Rs.94,42,927/-. Further, as per Clause 11 of the said agreement, the licence fee is subject to an upward revision of 20% once in three years and also the said licence fee shall be paid in advance i.e., one month before commencement of the year and the same is also shown in Clause 12 of the said agreement. If the first defendant fails to comply with the said terms, the plaintiff has the right to stop the operation of the facilities and confiscate the properties of the first defendant. As per Clause 9 of the said agreement, the first defendant is liable to pay service charges to the plaintiff as per the prevailing scale of rates fixed by the plaintiff. Accordingly, the first defendant/Company has also took possession of the land and water area on 14.11.1988. The first defendant has paid yearly licence fee for the first ten years, after repeated concessions shown by the plaintiff. Thereafter, the first defendant did not pay the licence fee for XI and XII years, even after repeated demands made by the plaintiff on several occasions. Therefore, the plaintiff sent a legal notice on 12.10.1998 and the same is marked as Ex.P-44, for which, the first defendant has also sent a reply notice/Ex.P-45 on 26.07.1998, by admitting the agreement/Ex.P-1 and non-payment of licence fee for XI and XII years and also admitted Claim Nos.6 and 8. Therefore, the first defendant under Ex.P-45 admitted the plaintiff's Claim Nos.1, 2, 6 and 8. However, the first defendant denied Claim Nos.3, 4, 5, 7 and 9. Thereafter, the plaintiff also terminated the said licence by sending termination letter (Ex.P-46) to the first defendant on 17.08.1999 and the first defendant has also sent replies for the same and the same are marked as Exs.P-47 and P-48. Therefore, a conjoint reading of the pleadings and oral and documentary evidence of both parties, it is seen that the first defendant/Company had admitted the licence and also admitted the non-payment of licence fee for XI year due of Rs.1,63,18,000/- and XII year due of Rs.1,63,18,000/- and also admitted the other Claim Nos.6 and 8. Therefore, the admitted facts need not be proved.

22. Further, the first defendant undertook to pay 50% of the outstanding amount of XI and XII years licence fee and the balance amount would be paid in six installments of Rs.27 lakhs each and also they undertook to pay amount due for Claim Nos.6 and 8. However, the first defendant denied the other claims on the reason that Claim No.4 itself is barred by limitation and they are not liable to pay.

23. As far as service charges are concerned i.e. Claim No.7, it is only payable by the Coast Guard and not by the first defendant. Though the first defendant sent a reply notice/Ex.P-45 to the plaintiff for the

Claim notice Ex.P-44, however, the plaintiff has not sent any reply or re-joinder to show as to how the first defendant/Company is liable to pay and that the other claims are not barred by limitation.

24. As far as the rate of interest is concerned, though the first defendant/Company states that there is no agreement for payment of interest at the rate of 18%. Since it is a commercial transaction, the first defendant took the land and water area from the plaintiff/Port Trust for establishing the service center and repairing work shop, as the case may be and they have also paid the licence fee regularly up to 10 years. Total period of agreement is 29 years and 20% of licence fee would be enhanced once in three years and the first defendant paid up to 10 years and further they had not paid the amount for XI and XII years and also other dues and hence, the plaintiff had sent a claim notice and also after receiving the same, a reply has also been received from the first defendant. In the meanwhile, the plaintiff also terminated the lease. Since the first defendant/Company borrowed money from the Bank and they took regular proceedings before the DRT and that DRT had also

appointed a Receiver, who took the property of the first defendant. Subsequently, the first defendant neither surrendered nor handed over the possession and had also not paid the lease amount. Therefore, the plaintiff was constrained to file the suit for recovery of money. Initially the plaintiff had impleaded D3/Bank as a party to the suit, subsequently, D3 was removed from the suit proceedings by order dated 14.12.2023. Now the first defendant alone is contesting the suit. As already stated, when once the first defendant admitted that they entered into the agreement with the plaintiff and they did not pay the licence fee for XI and XII years and also admitted that they have not paid the amount due for other Claim Nos.6 and 8, the first defendant is liable to pay the amount due under the suit.

25. As far as interest is concerned, Ex.P-1/Lease Agreement does not say about the quantum of interest. Since it is a commercial transaction, the first defendant is liable to pay interest at the rate of 18% from the date it fell due till the date of filing of this suit and 15% from the date of filing of this suit till the date of decree and 12% from the date

of decree till the date of payment in full.

26. As far as Claim No.3 is concerned, the first defendant has stated that it is barred by limitation and as far as other claims i.e. Claim Nos.4, 5, 7 and 9 are concerned, the plaintiff has not proved their case. It is the duty of the plaintiff to prove the claims by adducing necessary oral and documentary evidence. Admittedly, as far as Claim Nos.3, 4, 5, and 9 are concerned, the plaintiff has not proved the same. The plaintiff made Claim No.3 i.e. licence fee for the excess occupied area of 979 sq.mts due from August 1989 to March 1998 is Rs.44,93,795.19/- and interest is Rs.48,68,253/-; Claim No.4 i.e., Way-leave licence fee due from 1993 to 1998 is Rs.2,78,160/- and interest is Rs.2,16,965/-; Claim No.5 i.e. licence fees due for 1000 sq.mts of open space beyond fence of container terminal from February 1998 to March 1998 is Rs.22,000/- and the interest is Rs.6,765/-; and Claim No.9 i.e., levelling charges near the incinerator area, where the firm has dumped the waste and unserviceable materials is Rs.1,01,847.25/- and interest is Rs.70,275/-. Though the plaintiff has pleaded and sent claim notices, the first defendant also

admitted the other claims i.e. Claim Nos.1, 2, 6 and 8, however, the first defendant/Company denied the other claims. Any-how, it is for the plaintiff to establish the same. Admittedly, the said claims, which were denied by the first defendant had not been covered under Ex.P-1/Agreement. Therefore, in the absence of the terms of the agreement and especially when the first defendant denied the claims, it is the duty of the plaintiff to prove the same.

27. Therefore, from the aforesaid materials, this Court finds that, since the plaintiff made claims under 9 heads and this Court finds that the plaintiff/Port Trust has proved their case. Since the first defendant/Company had admitted the claims i.e. Claim Nos.1, 2, 6 and 8. The plaintiff need not prove those claims that since the admitted facts need not be proved. Therefore, the plaintiff is liable to pay the claim amount under Claims Nos.1, 2, 6 and 8. As far as claim Nos.3, 4, 5, 7 and 9 are concerned, the plaintiff has not proved their case.

28. It is settled proposition of law that the plaintiff has to prove the

case on its own strength and they cannot take advantage of the loop-holes left by the defendants.

29. When the first defendant/Company has especially denied those heads, this Court finds that the first defendant is liable to pay to the plaintiff under the above said four heads i.e., Claim Nos.1, 2, 6 and 8 and the claims under other heads are rejected. Accordingly, issue Nos.1 and 4 are answered accordingly.

30. **Issue No.2**

As far as Issue No.2 is concerned, on a reading of the plaint averments and written statement and also oral and documentary evidence, it is clear that the plaintiff took possession of the licensed water and land area, along with all immovable assets of the first defendant/Company. In this regard, this Court had already elaborately dealt with the same and the above said issue has already been decided by this Court vide order dated 14.12.2023 and also defendants 2 and 3 have been deleted from the array of parties in the suit and therefore, this Issue need not be decided once again. Since the plaintiff/Port Trust had taken over the land and also they have made a claim only for XI and XII years, as far as the relief sought for regarding money and possession is concerned the same had become infructuous. This Issue is answered accordingly.

31. **Issue No.3 :**

As far as Issue No.3 is concerned, as already stated, the plaintiff/Port Trust has made their claims under nine heads and as discussed in the earlier issues, the four claims have been admitted by the first defendant/Company and the remaining five claims have been denied by them. In four claims, the first defendant mainly denied on the ground of limitation and the said claims are barred by limitation and other claim i.e. Claim No.7 is concerned the Coast Guard is only liable to pay the same. As already stated, when once the first defendant has denied the above said five claims, it is for the plaintiff to prove the same in accordance with law.

32. The claim of the plaintiff is made only based on

Ex.P-1/ Lease Agreement. Admittedly the above said four claims have been covered under the said lease agreement/Ex.P-1 and other one claim regarding fair possession is concerned the first defendant is not in possession and only in the DRT proceedings, the Bank took possession and though the first defendant/Company has stated that they are not liable to pay, however, the plaintiff has to prove those claims and the plaintiff cannot take advantage of the loop-holes of the case of the first defendant and it is for the plaintiff/Port Trust to prove the same based on their own materials. Under these circumstances, as already discussed above, issue No.3 is answered accordingly.

33. <u>Conclusion :</u>

In fine, the suit is decreed in part and the first defendant/Company is liable to pay the amount under four claims i.e., Claim Nos.1, 2, 6 and 8 as discussed in Issue Nos.1 and 4 and the first defendant has to pay 18% interest from the date it fell due till the date of filing of the suit and 15% from the date of filing of the suit till the date of decree and 12% from the date of decree till the date of payment in full. The first defendant/Company is directed to pay the decree amount within three months from the date of receipt of a copy of this judgment, with proportionate costs. Consequently, connected pending applications, if any, are closed.

05.06.2024

Index:Yes/No
Speaking order : Yes / No
Neutral Citation : Yes/No
ms

List of Witness examined on the side of the plaintiff

G.S.Chitrappa - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Lease Agreement	16.12.1987
2.	P2	Letter of taking over possession of land water area from the plaintiff	14.11.1988
3.	P3	Letter demanding payment	12.03.1991
4.	P4	Letter demanding payment	27.02.1992
5.	P5	Letter demanding payment	25.11.1992
6.	P6	Letter demanding payment	26.12.1992
7.	P7	Letter demanding payment	19.05.1993
8.	P8	Letter demanding payment	24.09.1993
9.	P9	Letter demanding payment	07.01.1994
10.	P10	Letter demanding payment	01.03.1994
11.	P11	Letter demanding payment	13.04.1994
12.	P12	Letter demanding payment	09.05.1994
13.	P13	Letter directing the first defendant to remove the rubbish and material	09.05.1994
14.	P14	Letter demanding payment	24.01.1995
15.	P15	Notice demanding the payment of dues	15.03.1996
16.	P16	Letter demanding payment	27.03.1996
17.	P17	Letter regarding the possession of land area	21.07.1995
18.	P18	Reply	22.07.1995
19.	P19	Letter regarding the dumped materials	10.01.1996
20.	P20	Letter demanding the payment	25.01.1996

21.	P21	Letter demanding payment	25.06.1996
22.	P22	Letter demanding payment	16.01.1997
23.	P23	Letter demanding payment	16.01.1997
24.	P24	Letter demanding payment	03.03.1997
25.	P25	Letter demanding payment	06.05.1997
26.	P26	Letter demanding payment	02.08.1997
27.	P27	Letter demanding the amount for excess area	12.09.1997
28.	P28	Letter demanding the payment	18.09.1997
29.	P29	Letter demanding payment	04.12.1997
30.	P30	Letter demanding payment	02.01.1998
31.	P31	Notice demanding the payment of dues	29.01.1998
32.	P32	Letter demanding the payment of dues	20.03.1998
33.	P33	Letter admitting the dues	30.03.1998
34.	P34	Reply asking the first defendant to settle the dues	06.04.1998
35.	P35	Letter informing stoppage of service	30.04.1998
36.	P36	Letter informing the bad performance of 1st defendant	30.04.1998
37.	P37	Letter requesting permission for payment in installment	06.05.1998
38.	P38	Reply	11.05.1998
39.	P39	Letter requesting to extend the Service	15.05.1998
40.	P40	Reply	30.05.1998
41.	P41	Letter requesting reduction of Charges of excess area	09.06.1998
42.	P42	Letter regarding entry permits	10.06.1998
43.	P43	Letter informing about the appointment of the receiver	11.08.1998
44.	P44	Notice claiming the dues	12.10.1998
45.	P45	Reply	26.11.1998
46.	P46	Termination Notice	17.08.1999

47.	P47	Reply sent by the first defendant	05.10.1999
48.	P48	Reply letter sent by the first defendant	15.10.1999
49.	P49	Common Order of the Debt Recovery Tribunal – I at Mumbai in O.A.No.1945 of 1999	30.06.2015
50.	P50	Authorization letter on behalf of Mr.G.S.Chitrappa	01.10.2019

List of Witness examined on the side of the defendants

S.Chellappa - DW1

List of documents marked on the side of the defendants

SL.No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Certified true copy of the board resolution	28.12.2022

05.06.2024

P.VELMURUGAN, J.

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C.S.No.928 of 1999

05.06.2024