



WEB COPY



C.R.P.No.1771 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1771 of 2024

and

C.M.P.No.9348 of 2024

M/s.Designer Dresses (P) Ltd.,
Represented by its Director Mr.S.Rajagopalan,
A 203, Gary Shott,
No.4, Bishop Garden Extension,
R.A.Puram, Chennai – 600 028.

... Petitioner

Vs.

M/s.G.R.Natarjan & Co.,
Represented by its Partner Mr.N.Sriram,
No.1, Jawaharlal Nehru Stret,
T.Nagar, Chennai – 600 017.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the decree and order passed in I.A.No.3 of 2022 on the file of the XX Additional City Civil Court, Chennai and grant unconditional leave to the petitioner herein.

For Petitioner : Mr.Niranjan Rajagopal

For Respondents : Mr.N.Ramakrishnan

ORDER



C.R.P.No.1771 of 2024

WEB COPY

The petitioner/defendant in O.S.No.5850 of 2022 filed I.A.No.3 of 2022 to grant leave to defend the suit which was dismissed by the XX Additional City Civil Court, Chennai by order dated 19.01.2024. Against which, the present petition is filed.

2.The contention of the learned counsel for the petitioner is that the petitioner filed the petition under Order XXXVII Rule 3 r/w. Rule 151 CPC claiming the present suit is not maintainable under summary procedure. the suit is not accommodated by any copy of agreement. Summary procedure cannot be invoked for recovery of amount passed by the order of the Court. The respondent/plaintiff had not filed any partnership deed along with the plaint and the suit ought to have been filed by two partners together, which is not the case herein. The petitioner earlier filed a suit in O.S.No.5237 of 2015 for injunction to restrain the defendant from installing the name board and display board blocking and obstructing the view of the petitioner showroom in the suit property. During the tenancy period, the respondent/landlord not allowed the petitioner/tenant to carry on his business peacefully, gave several hindrance and obstacles. In the year 2018



C.R.P.No.1771 of 2024

after informing the respondent the petitioner spent around Rs.25 lakhs for renovating the leased premises. The earlier renovation was done in the year 2000 to a limited extent at the cost of Rs.9 lakhs which was also spent by the petitioner/tenant, which the respondent/plaintiff agreed to set off in the rent and on the assurance of the respondent/landlord, the petitioner incurred heavy expenditure. The rental dues which was communicated to the petitioner on 15.04.2022 was with suppression of these facts and further, the petitioner made a deposit of Rs.2.57 lakhs to TANGEDCO as security deposit as demanded by the Electricity Department. The permanent fixtures and structures installed in the leased premises is to the tune of Rs.20 lakhs and when the petitioner was forced to vacate the premises, these expenditures not calculated and given proper set off. On the other hand, the respondent projected the petitioner as defaulter and instituted the suit and obtained a decree which was contested all levels, finally the petitioner lost the case upto Apex Court and vacated the premises, handed over the premises but made a claim for the expenditure incurred for renovation, putting up permanent structures, security deposit made to TANGEDCO and other expenses, suppressing all these facts, the respondent/landlord referring to the earlier tenancy agreement making huge claims and increased the rent



C.R.P.No.1771 of 2024

with interest clause, filed the present suit for recovery of Rs.51,59,698/- from the petitioner. He further submitted that the earlier litigation and filing of cases between the petitioner and the respondent in R.C.O.P.No.1603 of 2003, R.C.A.No.221 of 2005, C.R.P.(NPD).Nos.1294 of 2011 & 449 of 2013 and Special Leave Petition in SLP.Nos.19171-19172 of 2021 have to be looked into and thereafter only, orders can be passed in the present suit and cannot be summarily dispose the suit, needs detailed deliberation. Hence, the present petition is filed to grant leave to defend the suit.

3.In support of his contention, the learned counsel for the petitioner relied upon the judgment of this Court in the case of ***Palaniappa Chettiar vs. S.A.Chidamabram Chettiar [C.R.P.No.653 of 1964 dated 30.07.1964]***, wherein it is held that it is not for the Trial Court to go into the question whether the defence set up is true or not. He also relied upon the decision of this Court in the case of ***Shivsu Canadian Clear International Limited, Shivsu Towers vs. Freightan Global Logistics Private Limited*** reported in ***2013 (3) CTC 305*** for the point that order of dismissal of application to defend the suit can be challenged under Article 227 of the Constitution of India without waiting for decree. He further relied upon the decision of the



C.R.P.No.1771 of 2024

Hon'ble Supreme Court in the case of ***Santosh Kumar vs. Bhai Mool Singh***

reported in ***AIR 1958 SC 321***, wherein the Apex Court held that the test is to see whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the defendant are established, there would be a good or even a plausible defence on those facts.

4.The learned counsel further submitted that in this case, the Trial Court without considering these facts held that the petitioner/tenant from 18.08.2000 under a lease agreement and the petitioner accepted the respondent as landlord, hence it had concluded that the petitioner/tenant is estopped from questioning the partnership of the respondent/plaintiff and observed that the dispute in difference in rental arrears on a written agreement between the parties have already been decided and attained finality by reaching upto the Apex Court. It further observed that the petitioner/defendant had not filed any prima facie proof to show that he had incurred the said expenses for the leased premises and hence, concluded that there is no triable issue involved in the suit, which is not proper, only during trial, necessary documents can be produced. Hence to set aside the impugned order.



C.R.P.No.1771 of 2024

WEB COPY

5.The learned counsel for the respondent filed his counter and submitted that the respondent granted lease of the commercial property in the ground floor of the building, namely, Rajamani Complex situated at Old No.144, New No.40, North Usman Road, T.Nagar, Chennai-600017 to the petitioner/defendant under a lease agreement dated 18.08.2000 for a monthly rent of Rs.50,000/- which was to be enhanced to Rs.55,000/- per month after a period of one year and Rs.57,750/- per month after the second year. The petitioner paid an advance of Rs.5,00,000/- to the respondent/plaintiff under the said lease agreement dated 18.08.2000. Subsequently, the petitioner defaulted in payment of monthly lease rental and failed to make payment of the enhanced rent as agreed. Thereafter, the respondent filed R.C.O.P.No.1603 of 2003 under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, for fixation of fair rent for the leased premises. The Rent Controller by judgment and decree dated 31.01.2005 allowed the petition by fixing the fair rent for the premises as Rs.62,317/- per month. The petitioner filed R.C.A.No.221 of 2005 challenging the judgment and decree and the same was disposed of on 25.01.2011 by the Rent Control Appellate Tribunal by re-fixing the fair rent as Rs.60,937/- per



month. The respondent/landlord filed C.R.P.(NPD).No.1294 of 2011 before this Court and the same was dismissed on 06.03.2020 confirming the order passed in R.C.A.No.221 of 2005 fixing the fair rent at Rs.60,937/- per month. The differential rent per month is Rs.10,937/-. Starting from the month of August 2021 till the petitioner vacating the premises in March 2022, the amount payable works out to Rs.24,49,888/- towards principal and interest @ 12% on the said sum works out to Rs.27,23,313/-, thus the petitioner is liable to pay a total sum of Rs.51,59,698/- to the respondent. Hence filed the above suit.

6.The learned counsel further submitted that the summary suit is filed only for recovery of arrears of rent, the facts averred by the petitioner is not relevant to this case. The petitioner's claim that they have spent more than Rs.20 lakhs for renovating the shop and the communication dated 15.04.2022 are denied. The rental advance earlier paid adjusted towards arrears and thereafter only, claim made. The letter dated 15.04.2022 not received by the respondent and the petitioner not produced any evidence for service of such letter. It is an after thought, created for the purpose of the case. He further submit that the petitioner having come forward seeking set



C.R.P.No.1771 of 2024

off would prove that the petitioner admits his liability towards the respondents. In fact the unilateral decision of the petitioner to make alteration and modification in the premises in the name of renovation caused damages, the respondent/landlord incurred heavy expenditure to rectify the damages. He further submitted that in C.R.P(NPD).Nos.1294 of 2011 and 449 of 2013, they have reserved their right to claim damages in the separate suit. The respondent sent a legal notice on 09.11.2021 calling upon the petitioner to pay the suit claim but not replied by the petitioner. The present petition is filed after the respondent filed execution petition in E.P.No.444 of 2024. Since the suit already decreed, if at all the petitioner is aggrieved they have to file an appeal by paying necessary Court fee and not by a civil revision petition. He further submitted that the contention of the petitioner might gain some steam prior to introduction of Sub-rules (4), (5) and (6) in Rule 3 of Order XXXVII of the Code since in the unamended provision of Rule 3, there was no compulsion for making any deposit as a condition precedent to grant of leave to defend the suit, by virtue of the second proviso to Sub-rule (5). The said provision was altered to the extent that the deposit of any admitted amount is now a condition precedent for grant of leave to defend the suit filed under Order XXXVII of the Code. Hence, prayed for



C.R.P.No.1771 of 2024

dismissal.

WEB COPY

7.In support of his contention, the learned counsel for the respondent relied upon the decision of the Apex Court in the case of ***Southern Sales & Services and others vs. Sauermilch Design & Handels GMBH*** reported in ***(2008) 14 SCC 457***, wherein the Apex Court held that earlier concept of granting unconditional leave when a triable issue is raised on behalf of the defendant, has been supplemented by the addition of a mandate which has been imposed on the defendant to deposit any amount as admitted before leave to defend the suit can be granted.

8.Considering the submissions made and on perusal of the materials, it is seen that the respondent filed a suit in O.S.No.5856 of 2022 under Order XXXVII Rule 1 CPC seeking judgment and decree directing the petitioner/defendant to pay to the respondent/plaintiff a sum of Rs.51,59,698/- from the date of the plaint with future interest and other reliefs. In this summary suit, the respondent annexed eight documents, namely, (1) Petition in R.C.O.P.No.1603 of 2023 filed under Section 4 of



C.R.P.No.1771 of 2024

Tamil Nadu Buildings (Lease and Rent Control) Act, (2) Decree and Judgment in R.C.O.P.No.1603 of 2003, (3) Decree and Judgment in R.C.A.No.221 of 2005, (4) Order in C.R.P(NPD).Nos.1294 of 2011 and 449 of 2013, (5) Legal notice issued by the respondent/plaintiff, (6) Web copy of the order in SLP Nos.19171-19172 of 2021, (7) Rent and interest calculation and (8) Letter of authorization. The Lower Court on the averments made and on perusal of the documents found that the relationship between the petitioner as erstwhile tenant and landlord not in dispute. As also fixation of fair rent confirmed upto the Apex Court, hence for recovery of fair rent, suit is filed which needs no further deliberation. In view of the same, this Court finds no reason to interfere with the order passed by the XX Additional City Civil Court, Chennai in I.A.No.3 of 2022.

9.Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed

29.07.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse



WEB COPY



C.R.P.No.1771 of 2024



WEB COPY



C.R.P.No.1771 of 2024

M.NIRMAL KUMAR, J.

cse

To

The XX Additional Judge,
City Civil Court,
Chennai.

C.R.P.No.1771 of 2024

29.07.2024