



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.04.2024

PRONOUNCED ON : 25.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 368 of 2018

1. Mr. Rajesh Kumar Dash
2. Miss. Rupali Nayak ... Plaintiffs

Vs.

1. A.Rahamathunnisa
2. Mrs.M.K.S Mariam Abidha
3. Ms.M.K.S.Sharifa
4. Mrs.A.A.Adabiya
5. Mrs. S.A.Farida Bakir
6. Mrs.S.A.Shamsul Laha ...Defendants

Prayer : Suit filed under Order VII Rules 1 & 2 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to



a) direct the defendants jointly and severally to pay a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) towards consolidated damages and compensation, which was spent in setting up the business failed to be performed due to the interference of the defendants,

b) direct the defendant jointly and severally to pay a sum of Rs.25,00,000/- towards loss of business due to the defendants defaults to cooperate to conduct business,

c) direct the defendants jointly and severally to refund the security deposit amount of Rs.9,00,000/- (Nine Lakhs only) along with interest @ 24% paid at the time of induction of the tenancy,

d) direct the defendants jointly and severally to pay a sum of Rs.3,11,550/- towards cost of dismantling and removal of interior, stocks and stores at the instance of the defendants, and

(e) to pay the cost of the suit.

For plaintiffs : Mr.K.Sathiyamurthi

For Defendants : Dr.C.K.Syed Shaffi
(set exparte)



work could not be completed. Thereafter, the main door was also not provided till 02.12.2016.

3. It had been further stated that there was also interference in the placing of the display board in the sidewall. It was also contended that the Manager of the defendants had demanded commission to be paid to him. The plaintiffs further stated that right from the beginning, there was inference and obstruction either directly or indirectly from establishing the business. The plaintiffs spent substantial amounts to provide, internal structural arrangements. Every effort was taken to popularise the business. The entire ground floor was leased out to the plaintiffs and they claimed they had a right to display and advertise their business in the ground floor, but this was also prevented. The monthly rent was determined at Rs.1,75,000/- per month. It was stated that the plaintiffs had invested a sum of Rs.75/- lakhs in the premises. It was stated that the business could not even commence owing to the act of the defendants in preventing the plaintiffs from establishing the business. The plaintiffs had suffered substantial loss.

4. The defendants also filed R.C.O.P.Nos. 1172 of 2017 and 1173 of 2017 before the XIV Court of Small Causes at Chennai for eviction on the



ground of wilful default in payment of rent. Thereafter, the plaintiffs had taken a decision to vacate the premises and they handed over the keys and surrendered vacant possession. The plaintiffs suffered further expenses of Rs.3,11,550/- towards dismantling the interior structures put up by them. Thereafter, both the Rent Control Original Petitions were dismissed by an order dated 12.01.2018 since the plaintiffs vacated the premises. It had been contended that the plaintiffs had no other option but to vacate the premises since the defendant did not give necessary conducive atmosphere for continuing with the business. The business which commenced in December 2016 came to a halt in February 2017. It was under those circumstances that the plaintiffs had filed the suit for recovery of loss suffered by them from the defendants.

5. It had been stated that the plaintiffs had been conducting a similar business at Alwarpet in a much smaller area and had earned substantial profit which they lost when they opened up the new showroom at Chetpet. The plaintiffs therefore sought a Decree as stated.

6. The defendants filed their written statement wherein they denied all the averments made in the plaint. They very strongly denied that their manager had interfered with the business operations of the plaintiffs. They



denied that there was interference in the business of the plaintiffs. They stated that the plaintiffs had failed to pay the rent for 12 months from January 2017 till December 2017. They stated that the plaintiffs were chronic defaulters in payment of rent, maintenance and electricity charges from January 2107 till December 2017.

7. The defendants had filed R.C.O.P.Nos. 1172 & 1173 of 2017 before the XIV Small Causes Court at Chennai seeking eviction of the plaintiffs and to recover the amounts due from the plaintiffs, they had also filed O.S.No. 1592 of 2018 before the IX Additional City Civil Court at Chennai and O.S.No. 1599 of 2018 before the VI Assistant City Civil Court at Chennai. They denied the expenses said to have been incurred by the plaintiffs. They stated that the Court of Small Causes had directed the plaintiffs to hand over vacant possession and accordingly, the keys were handed over in open Court. The defendants specifically denied that they were liable for any of the suit claim. They stated that there was no obstruction for the business of the plaintiffs. They therefore stated that the suit should be dismissed.

8. On the basis of the above pleadings, the Court had framed the following issues:-

“1. Whether the defendants being the owner of



the property had caused the delay in handing over the premises taken on lease to cause loss to the plaintiffs in their business activities or not?

2. Whether the plaintiff had invested heavily for the purpose of providing the interior for the showroom intended to be opened in the premises belongs to the defendants or not?

3. Whether the defendants purposefully evaded to provide display provisions for the purpose of the business of the plaintiff resulted in delay in commencing the business or not?

4. Whether the defendants are liable to pay the compensation or damages for the delays caused in handing over and not co-operating inaugurate the business in the premises belongs to the defendants or not?

5. Whether the plaintiff had suffered business loss due to the conduct of the defendants in delaying the terms and conditions of the lease entered into and for which the defendants are liable to equate the business loss of the plaintiff?



6. Whether the defendants are liable to refund the security deposit collected towards the lease to the sum of Rs.9,00,000/- with interest or not?

7. To what other reliefs the parties are entitled?”

9. During the course of trial, the first plaintiff Rajesh Kumar Dash was examined as PW-1. He marked Ex.P-1 the lease agreement dated 01.06.2016 between the first plaintiff and the defendants and Ex.P-2 the lease agreement dated 01.06.2016 between the second plaintiff and the defendants. He also marked Exs. P-3, P-4, P-5 and P-6 which are letters sent by the first plaintiff to the defendants and also marked Exs. P-7 and P-8 which are the petition and counter filed in R.C.O.P.No. 1172 of 2017. He also filed Exs. P-9, P-10 which are the exchange of legal notices. He also marked Ex.P-12 the bills and receipts for removing the interior works and stocks, labour charges and transportation expenses along with cash ledger extract. Ex.P-13 was the balance sheet and profit and loss account for the years 2015, 2016 and 2017. He also marked Ex.P-14 photographs of the interior decoration, Ex.P-15 the consolidated expenses towards purchase of goods and setting up furniture and



Ex.P-16 the details of transportation charges.

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10. The witness was also cross examined on behalf of the defendants.

11. Thereafter, on the side of the defendants, M.K.S.Shariffa the third defendant was examined as DW-1. She filed her proof affidavit and was also cross examined by the counsel for the plaintiffs. She did not mark any documents. The witness did not appear to subject herself for further cross examination. The matter was therefore posted before the Court.

12. On 12.03.2024, a learned Single Judge of this Court had set the defendant exparte.

13. The matter was then listed for arguments.

14. Heard arguments advanced by Mr.K.Sathiyamurthi learned counsel for the plaintiffs.

15. The learned counsel pointed out that the plaintiffs had taken on lease the premises owned by the defendants and had spent extensively



towards interior decoration and furnishing. He further contended that however, the defendants did not permit the business activity to commence immediately. They caused delay in handing over the premises. Thereafter, even though the plaintiffs had spent a lot of money towards interior of the show room, the defendants purposefully evaded to provide display provisions for the business of the plaintiffs. The learned counsel pointed out that documents on these aspects have been filed.

16. The learned counsel further stated that the defendants had filed Rent Control Petitions seeking eviction even before the stipulated period of 5 years. The plaintiffs had no other alternate but to hand over the keys during the Court proceedings. He however contended that the plaintiffs had suffered substantial loss in taking on lease the premises and in furnishing them. The learned counsel pointed out that the loss suffered by the plaintiffs was a direct result of the conduct of the defendants in firstly delaying in the opening of the shop and secondly in not providing necessary fixtures and other items for the opening of the shop. It has been further contended by the learned counsel that after the plaintiffs had vacated the premises, they had no other option but to seek damages from the defendants for the loss suffered. It was on that basis that the suit had been filed.



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17. As stated, the defendants had been set exparte.

18. But however, since substantial evidence is available on record, this Court is vested with authority to pronounce Judgment.

Issue No.I:

19. The plaintiffs had entered into two separate agreements with the defendants relating to lease of the ground floor of premises bearing No. 9/17, Mc.Nicholas Road, Chetpat, Chennai, for their business purposes. The defendants had collected a sum of Rs.9/- lakhs as advance. The first plaintiff had paid a sum of Rs.6/- lakhs and the second plaintiff had paid a sum of Rs.3/- lakhs towards the said advance. The lease agreements were entered on 01.06.2016. There were separate two lease agreement, one entered by the first plaintiff and the other entered by the second plaintiff. These two lease agreements have been marked as Exs.P-1 and P-2. The terms and conditions in both the documents are similar. It had been stipualted that the lease period would be for a period five years from 01.06.2016 till 31.05.2021. The rents payable was dertermined at Rs.1,20,000/- per month for the period between



20. The plaintiffs were permitted to make interiors, internal wooden partitions, install air conditions put up paints and false ceiling also put up any electronic gadget for their convenience. They were never obligated not to make up structural alterations, and they could do so after obtaining permission. The defendants retained the right to issue a notice to vacate giving 15 clear days if there was any breach of terms and conditions. It had been further provided that if any dispute arisen between the parties, the dispute shall be referred to an arbitrator to be appointed in accordance with the provisions of the Arbitration and Conciliation Act 1996.

<https://www.mhc.tn.gov.in/judis>



defendants failed to provided infrastructure as agreed. Even the main door was not provided and fixed till 02.12.2016. With respect to the rent which is payable by the plaintiffs, it was admitted during the cross examination that the plaintiffs had paid rent only up to January 2017. They stopped payment of rent from February 2017 till December 2017.

22. The fact that the plaintiffs had been put in possession is not denied or disputed. It is only contended that though the plaintiffs were in possession, they could not utilise the premises for the business purpose. It is contended that they were permitted to use it for business purpose only from December 2016. During cross examination however it had also been admitted that the plaintiffs had paid the rent from August 2016 till December 2016. The plaintiffs had therefore given contrary statements with respect to the actual date of possession.

23. In the written statement, it had been stated that the plaintiffs were given two months of lock in period before the payment of rent. It is seen that the two months expired in July 2016 and from August 2016 till December 2016, the plaintiffs had paid the rent. In the proof affidavit, however, the plaintiffs have stated that they were put in effective possession only from



December 2016. The plaintiffs have therefore not clearly established that there was delay in handing over of possession.

24. With respect to the reason for paying the rent from August 2016, the answer by PW-1 during cross examination is as follows:-

“Q: In your plaint you mention that the entire premises has been handed over only in the month of December 2016 but you have paid the rent from the month of August 2016. Why this deviation?”

A: They have requested they could not have manpower to make ready premises to hand over in order.

Q: Is it correct to say that you have agreed to paid the rent from August, 2016 to December 2016.

A: Yes. Rent was paid.”

25. It is thus seen that by payment of rent in August 2016, the plaintiffs had acknowledged taking possession of the premises. The defendants have also not claimed the rent for June and July 2016. In view of that particular fact, I hold that the plaintiffs have not established that the defendants had caused delay in handing over the premises. The issue is answered against the plaintiffs.

**Issue No.2:**

26. It is the main contention of the plaintiffs that they had invested substantial amounts towards putting up interior for the show room. They had marked Ex.P-12 which is the bills and receipts for removing the interior works and cost and labour / transportation. They also marked Ex.P-14 the photographs of the interior decoration. Ex.P-15 is the consolidated expenses towards purchase of goods and setting up furniture for display of materials. Ex.P-16 gives the details of transportation charges for removing / shifting from the show room.

27. The learned counsel for the plaintiffs pointed out these documents and stated that in the expectation that the defendants would permit the plaintiffs to conduct business without interference, the plaintiffs had invested heavily in putting up interior show room. Ex.P-12 is the series of bills issued by X in World for shifting vehicle and by S.K.Travels and Transportation. These are all dated December and January 2017-2018. These documents do not reflect the expenditure involved for putting up the show room. Ex.P-14 are the photographs of the interior of the show room. There is no document to show that necessary certificate under Section 65(B) of the Indian Evidence Act, 1872 had been produced. Thus these photographs are not admissible in



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28. Ex.P-15 is the consolidated statement for purchase and setting up of furniture. There are several documents which are extracts from printouts. There are also several invoices. It is seen that these invoices and bills start from August 2016. They go up to February 2017. The plaintiffs cannot therefore blame the defendants if they were to delay in purchasing the interior show room items. More over, none of these bills have been proved in manner known to law by summoning atleast one person from anyone of the shops which had issued the bills and receipts. They have not been proved in manner known to law. The cross examination of PW-1 in this regard is as follows:-

“Q: I put it to you that you have spend Rs.75,00,000/- towards the consolidate damage for a small portion and then Rs.25,00,000/- towards your business loss so totally Rs.1,00,00,000/- your have lost your self for the a small rental premises is it acceptable?

A: Yes. It is not a small place and small business.

Q: You have told that towards spend business loss consolidate damage of Rs.1,00,00,000/- have you submitted this account towards this damages and busines loss to the income tax department?



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A: Yes. It will be shown in the Income Tax Return.

Q: I put it to you that so you have that this expenditure of Rs.75,00,000/- have been mentioend in your income and loss statement submitted to your chartered accountant?

A: The amount has been shown as per accounting standard by my auditor.

Q: I put it to you that you have told that you spend Rs.75,00,000/- towards consolidate damages of the small portion. Are you having bank statement for the drawl of amount of Rs.75,00,000/- in different dates?

A: Auditor certify balance sheet was submitted along with details of the expenditure.

Q: So I put it to you that you have not able to produce your bank statement for the expenditure of Rs.75,00,000/-.

A: It will be submitted if rquired.

Q: I put it to you that whatever your claim it seems to be fraudulent and fabricated and it is lable to dismiss your suit. What do you say?"

29. The witness had stated that the plaintiffs had suffered a consolidated loss of Rs.1/- crore. He contended that the bank statements had been provided for the drawal of Rs.75/- lakhs on different dates. But however, no such bank statement had been produced before the Court. The



invoices produced had also not been proved in manner known to law to establish their genuinity and that the plaintiffs had invested in putting up the interior decoration. It must also be mentioned that they had not paid the rent from January 2017 till December 2017.

30. The plaintiffs, having failed to discharge their obligation to pay the rent cannot turn around and point fingers on the defendants. The bills produced, have not been proved in manner known to law. The evidence of PW-1 is insufficient to hold that the plaintiffs had invested heavily for the purpose of providing the interiors for the showroom. I hold that the plaintiffs had failed to prove this issue. Accordingly, this issue is answered against the plaintiffs.

Issue No.3:

31. It is the contention of the palintiffs that the defendants had evaded to provide display provisions for the business of the plaintiffs. It must also be kept in mind that it was the duty of the plaintiffs to put up interiors. They were given the benefit of not paying the rent for two months. Thereafter, there was an obligation to pay the monthly rent of Rs.1,20,000/-. The burden



to put up interiors and commence the business cannot be shifted on the defendants. The plaintiffs cannot complain about the conduct of the defendants.

32. During the cross examination of DW1 when this particular issue was put, the answer of DW-1 is as follows:-

“Q61: till February 2017 the plaintiff has not started his business in the rental premises since you have not provided any facilities to the plaintiff.

A: I deny. Witness adds: Then why did he pay the rent from August 2016.

Q62: Due to your non compliance and not rectifying the requirements of plaintiff which shows that the plaintiff has not commenced his business in the rental premises where as you have not replied and respond to any of his letter.

A: I deny.”

33. The plaintiffs have not given credible explanations for payment of



rent from August 2016. They had however taken a decision not to pay any rent from January 2017. There is no evidence to produce that the defendants had deliberately evaded to provide display provisions except for the statements made. No independent witness had been produced to speak about this particular aspect of delay. I hold that the plaintiffs had failed to prove this particular issue. The issue is answered against the plaintiffs.

Issue No.5:

34. The plaintiffs had produced as their document the balance sheet and profit and loss account for the years 2015-2016 and 2017. These statements had been prepared by the Sabapathy and Dhandapani, Chartered Accountants. In the absence of examining those Chartered Accountant, the document has to be rejected as not having been proved in manner known to law. The basis on which the amounts have been arrived at is not known. The sources for the expenses and for providing the amounts has not been disclosed. The bills for each one of the expenses had not been produced. The said statement has no evidenciary value. There are no further evidence produced about the loss suffered by the plaintiffs except once again the bills for transportation of the interior materials. But those documents will have to



be considered in the light of the fact that the plaintiffs had not paid the rent from December 2017 onwards.

35. In view of these facts, I hold this issue has again not been proved by the plaintiffs. It is held against the plaintiffs.

Issue No.6:

36. It is seen from the records that the defendants had also instituted R.C.O.P.Nos. 1172 & 1173 of 2017 for eviction on the ground of wilfull default in the payment of rent. The plaintiffs thereafter handed over vacant possession and therefore the Rent Control Petitions were dismissed by order dated 12.01.2018. For the entire year 2017, the plaintiffs did not pay a single paisa towards rent. If the plaintiffs are entitled for return of the advance amount, they should have placed it as a claim before the Rent Controller. But they had handed over the keys without any demur. Even though the documents are not available, it had been stated by the learned counsel for the plaintiffs that the defendants had also filed suits for recovery of the rental amounts. In that particular suit, the plaintiffs can seek refund of the advance amount against the claim of the defendants. In view of this particular fact,



again, I hold that the plaintiffs are not entitled for refund of the advance amounts. This issue is answered against the plaintiffs.

Issue Nos. 4 & 7:

37. In view of the reasons stated and the answers to the issues aforementioned, I hold that the defendants are not liable to pay any compensation to the plaintiffs for alleged loss suffered.

38. With respect to Issue No.4, I hold that the defendants are not liable to pay any compensation or damages. The issue is answered in favour of the defendants.

39. With respect to issue No.7, I hold that necessarily the suit has to be dismissed. However, taking into consideration that there are other litigations between the parties, I would refrain from granting costs.

40. In the result, the suit is dismissed but however without costs.



25.04.2024

Vsg

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking Order

1. List of Witnesses Examined

1. P.W.1 – Mr. Rajesh Kumar Dash

2. DW1- Ms.M.K.S.Shariffa

2. List of Exhibits Marked on the side of the Plaintiffs:-

1. Ex.P1 is the lease agreement between the first plaintiff and the defendants dated 01.06.2016;

2. Ex.P2 lease agreement between the second plaintiff and the defendants dated 01.06.2016;

3. Ex.P3 letter sent by the first plaintiff to the defendants dated 11.10.2016;

4. Ex.P4 letter sent by the first plaintiff to the defendants along with acknowledgment card dated 02.11.2016;

5. Ex.P5 letter sent by the first plaintiff to the defendants along with acknowledgment card dated 20.02.2017;

6. Ex.P6 letter sent by the first plaintiff to the defendants along with acknowledgment card dated 07.04.2017;

7. Ex.P7 petition filed in R.C.O.P.No. 1173 of 2017 on the file of XIV Judge, Small Causes Court, Chennai, dated 17.07.2017;



8. Ex.P8 counter filed by the plaintiff in RCOP Nos. 1172 of 2017 and 1173 of 2017 on the file of XIV Judge, Small Causes Court, Chennai, dated 10.01.2018;
 9. Ex.P9 legal notice sent by the defendants advocate to the plaintiffs (2 Nos) dated 03.02.2018;
 10. Ex.P10 reply notice sent by the plaintiffs advocate along with AD Cards dated 03.03.2018;
 11. Ex.P11 copy of the Watts app chat between first plaintiff and the defendant's manager;
 12. Ex.P12 Bills and Receipts for removing the interiors works and stocks, labour and transportation along with cash ledger extrect 26.12.2017 to 09.01.2018;
 13. Ex.P13 Balance Sheet and profit and loss sheet for the year 2015, 2016 and 2017;
 14. Ex.P14 photographs of the interior decoration (...Nos) dated 2016-2017;
 15. Ex.P15 consolidated expenses towards purchase of goods and setting up furniture fro display of materials along with invoice details dated August 2016 to June 2017;
 16. Ex.P16 details of transportation charges for removing / shifting from chetpet showroom dated 26.12.2017 to 09.01.2018.
3. List of Exhibits Marked on the side of the defendants:-

-Nil-



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C.V.KARTHIKEYAN, J.

Vsg

Pre-Delivery Judgment made in

C.S.No. 368 of 2018

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