



WEB COPY



A.No.5513 of 2023

A.No.5513 of 2023
in C.S.No.21 of 2023

C.V.KARTHIKEYAN, J.

The application has been filed seeking to reject the plaint taking advantage of Order VII Rule 11 (a) and (d) of C.P.C.

2. The application has been filed by the defendants in the suit. There are two defendants and it can be safely said that they could be the Indian Bank at Venkatapuram Branch, Ambattur, Chennai. The plaintiff had let out the premises belonging to him at Old No.36, New No.50, North Park Street, Venkatapuram, Ambattur, Chennai – 53 to the 2nd defendant on tenancy basis. The tenancy was initially for a period of 5 years. It was extended for a further period of 5 years. The rent was also increased. Finally, the last rent payable and agreed to be paid was a sum of Rs.8,794/-. Complaining that the rent was not the fair rent, the plaintiff had filed R.C.O.P.No.10 of 2005 seeking the Rent Controller to determine the fair rent for the premises. Simultaneously, the plaintiff had also filed R.C.O.P.No.9 of 2005 seeking eviction of the 2nd defendant herein. The Rent Controller passed an order of eviction. Thereafter, the 2nd defendant had filed an appeal before the appellate



A.No.5513 of 2023

authority. It is informed that the appellate authority confirmed the order of eviction. Thereafter, the 2nd defendant filed Revision Petition before this Court in C.R.P.(NPD).No.3180 of 2010. It is stated that on 19.12.2017, a learned Single Judge of this Court again upheld the order of eviction. This would evidently mean that the 2nd defendant was continuing to occupy the premises by a thin strand. There was no legal justification for continuing to occupy the premises. The 2nd defendant vacated the premises on 02.06.2018 since the arrears of rent accumulated and the new enactment had come into place, after getting permission, the plaintiff has taken recourse to Section 10 of the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017. Thereafter, the plaintiff filed W.P.No.11017 of 2021.

3. The issue had therefore been narrowed down to payment of arrears since the 2nd defendant had vacated the premises and handed over vacant possession on 02.06.2018. With respect to the arrears of rent, it was crystalized at a total sum of Rs.83,78,290/-. A joint memo of compromise was entered into between the plaintiff and the defendants, wherein this arrears of rent had been acknowledged by the defendants. The defendants thereafter in four separate instalments paid a sum of Rs.32,14,507/-. They



A.No.5513 of 2023

were due and payable a sum of Rs.51,63,783/-. In the joint memo of compromise, it had been stated that they would so pay the said amount, provided the plaintiff herein withdraws all pending petitions wherever they were pending, including W.P.No.11017 of 2021. Contending that the plaintiff herein did not withdraw the said petitions or the appeals or even the Writ Petition, the defendants contended that there was therefore no obligation on them to pay Rs.51,63,783/-.

4. Imposing a condition on the plaintiff to withdraw any litigation lawfully instituted could neither be accepted by this Court nor could it be stated that said condition is primary and that the payment of arrears of rent would be subject to withdrawal of the litigations. Whether the plaintiff withdraws the litigation or proceeds with the litigation, the obligation of a tenant to pay the arrears of rent is primary. Having utilized and benefitted from occupation, the defendants have to pay the arrears of rent. They had agreed that the arrears of rent was Rs.83,78,290/-. In four instalments, they paid just about 1/3rd of the arrears. They still held back a balance of Rs.51,63,783/-. Irrespective of pending litigations, the defendants must come forward to pay this amount. They hung on to a statement in the compromise



A.No.5513 of 2023

that the plaintiff herein would withdraw all pending litigations.

5. The plaintiff had thereafter instituted the suit.

6. The grievance of the learned counsel appearing for the applicants/defendants is that without prior notice this particular suit had been filed seeking interest for the unpaid amount right from the date of the occupation. If it is now narrowed down to the question of the claim and not to the legality of the claim, then, the claim made by the plaintiff could be examined during the course of trial when the defendants can also produce their statement as to how much they have paid and should pay or what should be claimed from them. This would automatically mean that the plaintiff has a lawful claim against the defendants, but probably not for the sum as stated in the plaint. The very purpose of trial is to elucidate the sum which the defendants should pay to the plaintiff or whether the defendants have discharged their entire obligation. The learned counsel for the applicants/defendants placed reliance on an observation of a learned Single Judge who apparently had heard the issue on 08.01.2024 and stated that he was of the *prima facie* view that the respondents, indicating the plaintiff have



A.No.5513 of 2023

not complied with the conditions as agreed in the joint memo of compromise and since the amount had already been paid, the question of claiming interest would not arise.

7. There are two aspects which have been observed by the learned Single Judge. The first is that the plaintiff has not kept up his part of the obligation namely to withdraw existing litigations. The second is that the defendants have already paid the amount. To the second issue, the learned counsel for the plaintiff states that only after notice had been issued in this application and after the institution of this suit, the defendants have actually paid the amount. Therefore, it is clear that the amount had been paid with delay. The plaintiffs are entitled to claim interest for such delay.

8. With respect to the first observation of the learned Single Judge that the plaintiff had not withdrawn the litigations and therefore, the defendants have not complied with the conditions agreed by them, would be a triable issue wherein the plaintiff will have to be given an opportunity to explain as to why they did not withdraw the litigations. But as observed earlier, whether the litigations are withdrawn or not, any tenant and as a



A.No.5513 of 2023

matter of fact, every tenant will have to pay the rents as agreed to be paid by them for occupying premises. The defendants have not complied with that particular primary condition.

9. The issue has now narrowed down to the actual claim made by the plaintiff. That claim is a triable issue. The plaintiff can justify it and defendants can question such justification. Those are issues which can be adjudicated only after evidence is tendered. The plaint cannot be rejected on these grounds. Hence, the application stands dismissed.

gsa

04.07.2024
(1/2)



WEB COPY



A.No.5513 of 2023

C.V.KARTHIKEYAN,J.

Gsa

A.No.5513 of 2023
in C.S.No.21 of 2023

04.07.2024
(1/2)