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A NO. 5305 of 2024
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-01-2025

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THE HONOURABLE MR JUSTICE S. S. SUNDAR

A NO. 5305 of 2024

&

A NO. 7804 of 2019

The Official Trustee Of Tamil Nadu
High Court Campus Chennai 104.

Applicant(s)

Vs

Raja Mohamed and another
S/o.Abdul Kadar, No.4/7, Muthu Naicken
Street, Mannady, Broadway, Chennai 1. and
another

Respondent(s)

A NO. 7804 of 2019

The Official Trustee Of Tamil Nadu
High Court Campus Chennai 104.

Applicant(s)

Vs

Raja Mohamed And Another
CHENNAI and another

Respondent(s)

For Applicant : Mr.N.Ramanathan

For Respondents: Mr. T.Ayyasamy for R2



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ORDER

The premises bearing Door No.197 at N.S.C Bose Road measuring an extent of 392 sq.ft was originally let out to the tenant/first respondent. Even though the first respondent has not been paying any rent in respect of the premises, it appears that he was collecting huge amount from the second respondent. It is admitted by the first respondent also. By virtue of orders passed by this Court, the property had been taken possession by the Administrator.

2. The Administrator, after taking possession of the property, has filed the above application in A.No.7804 of 2019 to hold that the respondents are jointly and severally liable and directed them to pay the applicant a sum of Rs.19,54,978/- being the loss caused to the Trust Estate of V.Thiruvendathan Chetty with interest at the rate of 9%.

3. Though the first respondent was served through substituted service, there is no representation for the first respondent. However, the second respondent has filed a counter affidavit stating that there is no privity of contract between AG & OT and the second respondent. While admitting that the second respondent was inducted as a tenant under first respondent under a franchise agreement, the second respondent contend



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that he was paying a monthly rent of Rs.79,350/- to the first respondent without any default. It is further contended that the first respondent was never doing business in the premises and it was only the second respondent who was doing the business. However, knowing that the first respondent has some problem with the Trust, the second respondent terminated the franchise agreement dated 17.02.2017 and key was handed over to the first respondent. Since the franchise agreement itself was cancelled and the key was handed over to the first respondent, who in turn had surrendered possession of the demised premises to the petitioner on 21.08.2019, from the admitted case pleaded by the first respondent and the learned AG & OT, there is no privity of contract between learned AG & OT and the second respondent, who took the property from the first respondent. However, as a custodian of the property, he owes certain obligations to the owner of premises.

4.In the entire counter affidavit, the respondent has not stated the amount of rent fixed by the first respondent. There is no sub-lease in this case. Even on the admission of second respondent, there is no privity of contract nor privity of estate between the petitioner and second respondent and the petitioner cannot proceed against the second respondent. Since the second respondent had already paid substantial



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amount to the first respondent, the petitioner cannot proceed against the second respondent after securing the possession of premises from the first respondent. As the proceedings were initiated against the first respondent for getting vacant possession and possession of the property was secured by the AG & OT, this Court is unable to make the second respondent liable for rental arrears. However, the first respondent is directed to pay a sum of Rs.19,54, 978/- with interest at 9% from the date of application within a period of two weeks. In case the first respondent fails to pay the amount as directed, it is open to the petitioner to initiate recovery proceedings without delay. Proceedings shall also be initiated for contempt for wilful disobedience of this order in case no amount is paid as directed.

This petition is disposed of with the above direction.

30-01-2025

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S.S.SUNDAR, J.

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