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A.Nos.4254 and 4255 of 2023 in
C.S.No.113 of 2022

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N.SATHISH KUMAR, J.

The present application No.4254 of 2023 has been filed by the applicants / defendants to set aside the exparte decree dated 19.10.2022 in the suit in C.S.No.113 of 2022 passed against them.

2. Heard the learned counsel on either side and perused the documents.

3. On going through the affidavit filed in support of the application No.4254 of 2023 it is averred that though the applicants have engaged a counsel to defend the case, the previous counsel has not properly acted, therefore, when the applicants have verified the status of the case in the month of December, 2022, they were shocked to know that decree was passed on 19.10.2022 as against the applicants. Therefore, the present counsel has been engaged and the applicants have good case to defend, hence seeks to set the exparte decree passed.



A.Nos.4254 and 4255 of 2023 in
C.S.No.113 of 2022

WEB COPY

4. The suit has been filed for recovery of possession of the suit property, besides the arrears of rent payable by the applicants / defendants. On an earlier occasion, viz., 10.11.2023, when the matter was taken up, it is brought to the notice of this Court by the respondents / plaintiffs that admitted arrears of rent is more than Three Crores. However, the same has been not disputed by the applicants herein. Therefore, an opportunity has been given to the applicants to pay the admitted arrears.

5. Pursuant to the same, an affidavit has been filed by the applicants / defendants. According to the said affidavit, the admitted rent payable is only Rs1,68,48,635/- accordingly, an affidavit filed by the applicants as per agreement dated 01.08.2013, the monthly rent payable by them is only Rs.4,81,469/- whereas, the respondents / plaintiffs pleaded that as per agreement for lease and license dated 16.12.2020, rent has been enhanced to Rs.6,69,969/- per month. However, the applicants / defendants disputed the said agreement on the ground that the same came into existence by coercion.



A.Nos.4254 and 4255 of 2023 in
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WEB COPY

6. Be that as it may, the fact remains that earlier there was admitted agreement of the year 2013, as per that agreement, the rent payable per month is Rs.4,18,4691/- and the applicants have admitted rent arrears to the tune of Rs.1,68,40,635/-. Thereafter, a sum of Rs.50,00,000/- [Rupees Fifty Lakhs only] has been paid before this Court and time is also sought to pay the remaining amount. However, the same has not been deposited.

7. It is to be noted that in pursuant to the exparte decree, when the execution application is filed and Junior bailiffs went to the place of the suit property to execute the decree, some third parties raised objections, as if they were in possession of the entire property. Therefore, this Court has posed the question to the applicants on 15.03.2024, when the matter came up before this Court, at that stage, the learned counsel appearing for the applicants would submit that they are in possession of the property, then, this Court made it clear that if the applicants are in possession of the property, they will have to pay arrears, as per admitted agreement of the year 2013 and directed that if they are in possession of the property they have to deposit admitted rent as per admitted agreement. At that stage,



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C.S.No.113 of 2022

the learned counsel appearing for the applicants sought time to get instructions. When the matter is listed today, it is the specific stand of the learned counsel of the respondents / plaintiffs that the applicants are still in possession of the property.

8. In such view of the matter, if the applicants are in possession of the property, without even paying any rent, even as per agreed /admitted agreement in the year 2013, it is nothing but depriving the right of the owner to enjoy the property. One cannot be allowed to take undue advantage to squat over the property, that are commercial in nature, that too situated in the city like Chennai. Further, without paying any rent, for many years and exploiting the property for some other purpose and benefiting from that property, and denying the fruits of the benefits to the owner, such conduct of the applicants cannot be encouraged by the court of law. Therefore, it is clear that the applicants have not paid rent. When the applicants have already suffered exparte decree, unless they deposit the admitted arrears though it may amount to onerous conditions, they cannot be allowed to squat on the properties by allowing exparte decree set aside.



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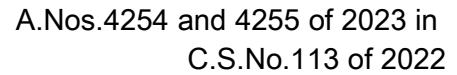


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C.S.No.113 of 2022

9. Therefore, this Court is of the view that without paying any rent or deposits or admitted arrears for many years, as a matter of right, the applicants are not entitled to seek the relief to set aside the decree passed against them.

9. Further, the reasons assigned in the Application No.4254 of 2023 to set aside the exparte decree is also false. The very vague details making allegations against the erstwhile counsel is made without any substance. The allegation has been made as if the erstwhile counsel is not protecting the interest of the applicants by not filing vakalath in time. In the entire affidavit, there is no details or even names of the counsels, who have been engaged by the applicants at the earlier point of time. Except general and vague allegations, even without naming the counsel, the applicants have averred that the erstwhile counsel has not filed vakalath, such allegation has been pressed into service for filing the present applications.

10. Considering the above, this Court is not satisfied with the



Let the Execution Proceedings shall proceed as per Law.

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25.03.2024