



WEB COPY

A.No.543 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 24.02.2025	PRONOUNCED ON 01.04.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.543 of 2025
in
C.S.No.125 of 2024

M/s.Subiksha Housing (P) Ltd.,
Rep., by its Managing Director,
Mr.K.Balaji
Having office at
D.No.3/2, Lambeth Avenue,
Off Bawa Road, Abiramapuram,
Chennai – 600 018.

... Applicant/Plaintiff

vs.

1.Tmt.Sathyavathi

2.Mr.T.Krishnakumar

3.Mr.T.Premkumar

4.T.Karpagam

... Respondents/Defendants

For Applicant : Mr.K.V.Babu

For Respondents : Mr.E.C.Ramesh for RR1 & 2



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ORDER

This instant application has been filed to direct the respondents/defendants to deposit the security deposit and rents being the share of the Applicant/plaintiffs to the credit of this suit.

2. Heard Mr.K.V.Babu , learned counsel appearing for the applicant and Mr.E.C.Ramesh learned counsel appearing for the respondents 1 & 2.

3. The learned counsel appearing for the applicant would submit that the present Suit had been filed for a relief of partition of the plaintiff 5/6th share over the Suit Mentioned property, which was given to him by way of a specific performance granted by this Court in a judgment and decree in C.S.No.570 of 2013, based upon which sale deed has also been executed by this Court on 26.03.2024, pursuant to an order passed in E.P.No.50 of 2023, dated 15.03.2024. He would submit that the property in question is in occupation of various tenants and hence, he had sought for the accounts to be given by the defendants. They had failed to produce the said accounts and hence, he had come out with the present Application. Further, he would submit that the



applicant has been benefited by the sale deed executed by this Court, pursuant to the order made in E.P., with regard to the 5/6th share of the property. The defendant owning only 1/6th share, are enjoying the entire rents, that are paid by the tenants. That apart, he would submit that certain portions of the property are in possession of the defendants and they are also entitled to pay the 5/6th portion of the rent to the applicant on the same market value, they had tenanted out the premises to other third parties. Therefore, he would seek the respondents to deposit the security deposit as well as the rent received from the tenants.

4. The learned counsel appearing on behalf of the respondents 1 & 2 would submit that the applicant is not at all entitled for a decree of specific performance and that an Intra Court Appeal against the said judgment and decree in O.S.A.No.94 of 2024 is pending before the Division Bench of this Court. He would also submit that the applicant has not paid the full value of the Suit property and has not knocked down the same at a very cheap price. He had also claimed that the Court by its judgment and decree had failed to consider the right of redemption with the defendants. Therefore, he would submit that the rights of the applicant is only subject to the result in



O.S.A.No.94 of 2024, and in any event, the respondents are confident of success in the same, and in such an event, the applicant would not be entitled for 5/6th share in the rent and if the same is paid to him, it would cause severe prejudice to the respondents and therefore, he would seek to dismiss the Application.

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

6. Admittedly, in the present case pursuant to the judgment and decree made in C.S.No.570 of 2013, a sale deed had been executed in favour of the applicant by the Assistant Registrar of the Court in compliance to the order dated 15.03.2024 in E.P.No.50 of 2023. Even though an Intra Court Appeal had been preferred, no interim orders had been granted. Further, the various allegations made by the learned counsel appearing for the respondents relating to the errors in the judgment and decree in C.S.No.570 of 2013, cannot be agitated in the present application or even in the present Suit. The same could be only be agitated before the Appellate Court. This Court also executed a sale deed in the execution proceedings. In such an event, this Court is *prima facie*



satisfied that the applicant would be entitled to 5/6th share of the rents that are being received from the tenants in the property.

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7. It is to be noted that by order dated 30.10.2024, in Application No.2808 of 2024, this Court had directed the respondents to furnish the details of the tenants, the advance amounts/security deposit and the rents received from the various tenants occupying the portions of the Suit schedule property. The said order was not complied with and thereafter, the applicant had taken out an application in A.No.6260 of 2024, for appointment of an Advocate Commissioner to ascertain the details of the tenants, security deposit and rents being paid in respect of the Suit Schedule property. By order dated 11.12.2024, this Court had also appointed an Advocate Commissioner by issuing necessary warrant.

8. The learned Advocate Commissioner had also filed a report indicating that in the Suit property five portions are being used as commercial property, in which two portions had been let out to the tenant and 3 is being retained by the second respondent in which he is carrying on commercial venture and in the first floor portion has been used as a residential house by the second respondent. The report of the learned Advocate Commissioner indicates that



the two properties rented out by the second respondent, fetches a rent of Rs.70 and Rs.53 per sq.ft., respectively. The applicant had taken the least value and has also calculated the rent for the remaining portions that is in occupation of the second respondent and as sought for the payment of 5/6th share of rent, which the applicant would be entitled. Even assuming that the lowest rents could be accepted for calculating the rent that is to be payable by the second respondent in respect of portion is in occupation, this Court is unable to comprehend the value of Rs.53 per sq.ft., for the first floor residential premises, which is being paid by the one of the tenants for a commercial purpose.

9. In such view of the matter, this Court is of the view that the value fixed with respect to the first floor residential portion can be valued at the 50% of the said amount. The respondents cannot wriggle out of his liability to pay rent to the applicant, as the applicant has been declared to be the owner of the 5/6th share by way of a specific performance decree, which has also been executed by an execution of sale deed in its favour. Hence, the second respondents are directed to deposit the 5/6th share received from two tenants in respect of two portions and also deposit 5/6th value of the rents so calculated at



A.No.543 of.



the rate of Rs.53 per sq.ft., in respect of the portions in which they carry out a commercial venture and also to calculate the rent for the residential portion at Rs.26 per sq.ft., and pay 5/6th share on such calculated amounts as damages for use & occupation. Such payments shall be made to the credit of the Suit and the applicant would be entitled to withdraw the same after disposal of the Intra Court Appeal in O.S.A.No.94 of 2024. On receipt of the said amount, the Registrar General shall deposit the same in the Suit account as contemplated under the Original Side Rules.

10. Accordingly the Application is allowed on the above terms.

However, there shall be no order as to costs.

01.04.2025

Index : Yes / No

Internet : Yes / No

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WEB COPY



A.No.543 of.

K.KUMARESH BABU.J.,

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Pre-Delivery Order in
A.No.543 of 2025
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C.S.No.125 of 2024

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