C.S.No.304 of 2011
and C.R.P.No.3038 of 2013

N.SESHASAYEE, J.

These cases are decided by this Court on 06.12.2024, and it is listed today under the caption "for being mentioned" at the instance of the learned counsel for the plaintiff in C.S.No.304 of 2011.

2.The learned counsel submitted that the cause title of the judgment does not indicate who has appeared and argued for the plaintiff in C.S.No.304 of 2011 and that may have to be inserted. He added that in the relief portion at page No.54 of the judgment, the Court has not indicated the period within which the defendants are required to execute the sale deed.

3.The learned counsel for the defendants said that even the name of the counsel for the defendants also not mentioned in the cause title in C.S.No.304 of 2011.

4.The Registry is now required to:

i. mention the names of the counsels in the cause title of the judgment in C.S.No.304 of 2011; and

ii. In the result portion at Page No.54, the 2nd line after the words "in favour of the plaintiff", the following words "**within a period of three (3) months**" is directed to be inserted.

5.The relief portion will now read as below:

Result:

A. **C.S.No.304 of 2011**

1. The suit is decreed with costs, and the defendants are directed to execute a sale deed in respect of the suit property in favour of the plaintiff within a period of three (3) months from today and to hand over the original title deeds of the suit property to the plaintiff.

03.01.2025

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N.SESHASAYEE, J.

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C.S.No.304 of 2011
and C.R.P.No.3038 of 2013

03.01.2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.10.2024

Pronounced on : 06.12.2024

CORAM : JUSTICE **N.SESHASAYEE**

C.S.No.304 of 2011
and C.R.P.No.3038 of 2013

C.S.No.304 of 2011

M/s.E.H.Turel & Company
SA-1, Sidco Industrial Estate
I Street, MMDA Colony
Arumbakkam
Chennai – 600 106. ... Plaintiff

Vs.

1.G.D.Ranka
2.Mangala Ranka ... Defendants

Prayer in C.S.No.304 of 2011 : Civil Suit filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of Original Side Rules, praying for a judgment and decree :

(a) directing the defendants to execute a sale deed in respect of the suit property in favour of the plaintiff and on their failure to do so, direct the Registrar, Madras High Court to execute the sale deed in favour of the plaintiff;

(b) mandatory injunction directing the defendants to hand over the original title deeds of the suit property to the plaintiff;

(c) such other relief the plaintiff is entitled to; and

(d) to pay the cost of the suit.

C.R.P.No.3038 of 2013 :

1.G.D.Ranka
2.Mangala Ranka ... Petitioners

Vs

M/s.E.H.Turel & Company
Rep by its Partner Mr.Viraf Tural
Sree Apartment, New No.7
No.4A, Haddows Road
Nungambakkam
Chennai – 600 034.

Also at :
SA-1, Sidco Industrial Estate
MMDA Colony,Arumbakkam
Chennai – 600 106.

Also at :
Sanghavi Estate, Nityanad Nagar
Off L.B.S. Marg, Ghatkopar (W)
Mumbai – 400 086. ... Respondent

Prayer in CRP.No.3038 of 2013 : Civil Revision Petition filed under Section 25(1) of the Tamil Nadu Buildings Lease and Rent Control Act, 1960, praying to set aside the judgement and decreetal order dated 14.06.2013 passed in R.C.A. No.526 of 2012 on the file of VIII Court of Small Causes at Chennai, against the order dated 02.07.2012 passed in M.P.No.512 of 2011 in R.C.O.P.No.514 of 2011 on the file of Small Causes Court at Chennai.

For Plaintiff in CS.304/2011	:	Mr.C.A.Diwakar
For defendants in CS.304/2011	:	Mr.M.K.Kabir, Senior Counsel for Mr.G.Krishna Kumar
For Petitioners in CRP.3038/2013	:	Mr.M.K.Kabir, Senior Counsel for Mr.G.Krishna Kumar
For Respondent in CRP.3038/2013	:	Mr.R.Ganesan

COMMON JUDGMENT

The suit is laid for specific performance of an oral sale agreement involving the sale of the suit property.

2.1 The case of the plaintiff may be stated as below:

a) The suit property is described as a flat measuring 2,548 sq. ft. with two covered car parks plus undivided share in the land measuring 2 grounds and 390 sq.ft, at door Nos. 4 and 5, in Haddows Road, Nungambakkam, Chennai. It is a penthouse on the fourth floor.

b) In 1981 the defendant chose to develop a plot of land they owned into residential apartments with four floors. The plaintiff had purchased two flats, one measuring 1,000 sq.feet. in the ground floor.

c) The apartment now described as the suit property is in the 4th floor, and the defendants retained their ownership over the same.

d) The plaintiff is a dealer cum importer of industrial sewing machines. The defendants along with their family members run several firms and companies, and were chiefly engaged in the manufacture and export of garments. For their business needs, the defendants used to place orders for industrial sewing machines with the plaintiff.

e) Be that as it may, on 01.04.1996, the plaintiff had taken two separate leases relating to two properties of the defendants, one of which is situated in Poonamallee, and the other is situated in Chembarambakkam.

2.2 The further case of the Plaintiff is that:

a) In December 1996, the defendants faced financial crisis in their business and offered the suit property for sale to the plaintiff. The plaintiff consented to the proposal and agreed to buy the suit property for a sale consideration of Rs.71.50 lakhs. The plaintiff was put in possession of the suit property. According to the defendants, the properties were given as security to M/s.Indian Bank for securing a debt which the defendants had obtained from the bank.

b) Between 26.12.1996 and 04.11.1997, the plaintiff had paid the entire sale consideration to the defendants. The details are as below:

Date	***Amount***	***To whom payment was made***
26.12.1996	Rs.15 lakhs	1st defendant
27.3.1997	Rs.20 lakhs	1st defendant
27.3.1997	Rs.30 lakhs	2nd defendant
28.10.1997	Rs.3.0 lakhs	1st defendant
4.11.1997	Rs.3.5 lakhs	1st defendant

c) On payment of the entire sale consideration, the plaintiff requested the defendants to execute a sale deed, but he was informed that the original title deeds were with the bank. The defendants promised to execute the sale deed once they redeemed the title deeds from the bank. The plaintiff trusted the same as it shared a very cordial relationship with the defendants.

d) While so, Indian Bank (from which the defendants had borrowed) served the plaintiff with a notice dated 30.09.2005, under Sec.13 of the SARFAESI Act, as the plaintiff was in occupation of the suit property. Through the notice the bank had intimated the plaintiff that it had taken possession of the suit property on 22.06.2005, and required the plaintiff to pay the rent to the bank and also to vacate the suit property to enable the bank to auction the same.

e) Wasting no time, the plaintiff contacted the defendants, and the defendants would then inform that the negotiations were under way for an One Time Settlement (OTS) of their debt dues to the bank, and requested the plaintiff not to get agitated over the matter. The defendants would then request the plaintiff to pay a sum of Rs.30.0 lakhs to the former to pay its debt dues to M/s.Indian Bank, and to redeem the mortgage, obtain release of the title deeds of the property, and complete the sale.

f) As the plaintiff was keen to complete the sale of property, it had agreed to pay an additional sum of Rs.30.0 lakhs and paid it directly to the bank towards the OTS, under 6 demand drafts of Rs.5.0 lakhs each in '*no lien fixed deposit*', and thereafter to credit the same towards the sale consideration for the purchase of the suit property.

As directed, the bank had eventually credited it to the loan account of the defendants.

g) The defendants had informed that apart from the loan-dispute with bank, they had few more outstanding issues with the bank, and required some more time to complete the sale since the original title deeds were still with the bank.

h) In October 2010, the 1st defendant informed the plaintiff that the documents would be released shortly by the bank, but began demanding additional amount for executing the sale deed. The plaintiff declined to pay anything more. In December 2010, the defendants came to the plaintiff's office and informed that the title deeds of the suit property indeed had been released by the bank, but persisted with their demand for additional sale consideration to complete the sale. Since the plaintiff had already paid Rs.30.0 lakhs over and above the sale consideration of Rs.71.50 lakhs originally agreed, it declined to pay anything further.

i) It is in this backdrop, the defendants had issued a notice dated, 10.01.2011, wherein, they had asserted that the plaintiff was a mere tenant of the suit property from April, 1997, on a monthly rent of Rs.40,000/-, and that the amounts paid till date had been adjusted against the rent payable, and that a balance rent amount of Rs.9,54,712/- was outstanding from September, 2010, and demanded the same to avoid eviction proceedings.

j) The plaintiff lost no time to understand the strategy of the defendants: they had apparently taken a cue from Sec.13 notice of the Indian bank dated 30.09.2005, under the SARFAESI Act, wherein, the bank had described the plaintiff as a tenant of the suit property. The contention of the defendants is plainly untenable. However, no reply was issued. Since the parties were still in touch, the plaintiff contacted the defendants but the defendants required the plaintiff to ignore he said notice as they are in the process of negotiating with the bank for an OTS.

k) However, contrary to the statement so made, the defendants proceeded to institute R.C.O.P.No.514 of 2011 u/s.10(2)(1) of the TN

Buildings (Lease and Rent) Control Act, which is the subject matter of CRP (PD) 3038 of 2013.

l) The plaintiff came to understand that in December, 2010 all the outstanding issues between the defendants and M/s.Indian Bank had come to an end and the bank had released the title deeds. It is in these circumstances, the suit has become essential as the defendants displayed a changed of attitude vis-a-vis the oral sale agreement which the plaintiff had entered with them.

3. Admitting that there was a business relationship between them and the plaintiff, and that the plaintiff was also a lessee of their property at Poonamalli and Chembarambakkam, the 1st defendant filed his written statement (which is adopted by the 2nd defendant) wherein he pleaded:

a) the suit property was a penthouse with terrace in the fourth floor of a semi-residential apartment, and it was originally in the possession of the defendants. Sometime in 1995, the defendants moved out of it, and the plaintiff had approached the defendants to lease the same to it. Thus the plaintiff was only inducted as a mere lessee of the suit property. As the plaintiff wilfully defaulted in paying rent, the defendants were constrained to institute R.C.O.P.No.514 of 2011 for the eviction of the former. As a counter blast, the plaintiff had instituted the present suit for specific performance on the foundation of an alleged oral agreement of sale. The allegation of an oral sale agreement and the suit are more intended for creating a ground of defence to RCOP 514 of 2011, and no more. There never was an oral agreement to sell the suit property for a total consideration of Rs.71.50 lakhs.

b) So far as the alleged payment of Rs.71.50 lakhs is concerned, it is not paid towards the sale consideration pursuant any oral sale agreement as alleged, but it was for an entirely different purpose which are details as below:

Date	*Amount (in lakhs)*	*Purpose of payment according to Defendants*
26.12.1996	Rs.15	For refurbishing the suit property as requested by the plaintiff.
27.3.1997	Rs.20	Towards rent for the suit property @ Rs.40k/pm for 10 years paid in advance
27.3.1997	Rs.30	
28.10.1997	Rs.3.0	No reference in the written statement
4.11.1997	Rs.3.5	

Indeed, when the suit property was leased, the plaintiff was given two options: Either to pay rent for ten years in advance and to pay property tax and water tax, or to pay Rs.50,0 lakhs as advance rent for ten years. The plaintiff opted for the second option. Accordingly, plaintiff was given possession in April, 1997 and the lease term was to expire in March, 2007.

(Note: In paragraph 7 of the written statement, the rate of rent was not stipulated, but it could be gathered from the eviction-notice dated 10.01.2011, where the rate of rent was indicated as Rs.40,000/- p.m.).

c) Having paid, what according to the plaintiff the entire sale consideration, it is inconceivable that any person would postpone the sale merely because the title deeds were with the mortgagee, and that too for a period of 10 years. It is also inconceivable that after paying the entire sale consideration, any purchaser would agree to pay an additional consideration of Rs.30 lakhs as alleged by the plaintiff.

d) When the bank issued notice u/s.13(2) of the SARFAESI Act, the plaintiff did not protest about its status as the tenant of the property. On the contrary, it paid a sum of Rs.30 lakhs but on the conditions tenancy might be continued for a further period of 3 ½ years from March, 2007, and that it would vacate and handover the vacant possession by October 2010. Left with no option and to make payment for the OTS, the defendants had agreed for a further extension of the lease till October, 2010, for an additional period of 42 months) Accordingly, the plaintiff had paid an additional consideration of Rs.30.0 lakhs to the bank directly.

e) The suit is not maintainable as it is terribly barred by limitation. The suit is liable to be dismissed. At any rate the plaintiff is not entitled to any discretionary relief.

4. On the above pleadings, the following issues are raised:

1.Whether the plaintiff is a registered partnership firm, if not whether the suit is maintainable?

2. Was not the suit property handed over by the Defendants on 26.12.2006 to the plaintiff in pursuance of the oral Agreement to sell and on receipt of Rs.15,00,000.00 as advance of the sale consideration?

3.Did not the defendants receive a sum of Rs.71,50,000.00 between 26.12.1996 and 3.11.1997 and a further sum of Rs.30 Lakhs on 30.03.2006 as sale consideration for the suit property?

4.Was not the plaintiff approached the defendants for leasing the suit property and paid various amounts on various dates in advance which were adjusted towards rent?

5.Whether the present suit is barred by limitation?

6. Has not the plaintiff has been in possession of the property from 26.12.1996 in pursuant to the contract of sale?

7.Whether there exist any correspondence prior to December 2011 between the Defendants and the Plaintiff to even remotely suggest a landlord tenant relationship between Defendants and Plaintiff?

8.Whether the Plaintiff has shown any readiness and willingness as contemplated under Section 16(c) of the specific relief act?

9. Is not the plaintiff entitled to a decree of specific performance of the oral agreement of sale-dated 26.12.1996?

10.Was not the present suit is hit under Section 20(2) Specific Relief Act?

11. What are the other relief the plaintiff is entitled to?

5. The dispute went to trial, and during trial one of the partners of the

plaintiff's firm was examined as P.W.1, and through him Ex.P1 to Ex.P58 were marked. On the side of the defendants, the 1st defendant was examined as D.W.1, and no documents were produced on his side.

6. In this suit for specific performance, some of the fundamental facts are admitted. There is no dispute that the suit property belonged to the defendants, that the plaintiff was also put in possession of the same, which according to the plaintiff was on 26.12.1996, but according to the defendants it was in April, 1997. It is also an admitted fact that the plaintiff at the first instance, had paid a sum of Rs.71.50 lakhs in four instalments commencing from 26.12.1996 to 04.11.1997. Subsequently, on 29.03.2006 the plaintiff through its sister concern M/s Kiara Technologies (India) Pvt. Ltd., had paid a sum of Rs.30.0 lakhs which was credited to the loan account of the defendants with M/s. Indian Bank. Indeed, the plaintiff had made all their payments through bank.

7. The plaintiff would contend that the parties hereto had entered into an

oral sale agreement, and the amounts that it had paid represented the sale consideration. The defendants deny the same, and claim that the plaintiff is their tenant. While, according to the plaintiff, the initial payment of Rs.71.50 lakhs represented the entire sale consideration, plus another Rs.30.0 lakhs to settle the defendants' obligation under the OTS which the bank had offered, defendants contend that Rs.50.0 lakhs out of Rs.71.50 lakhs was towards ten year advance rent paid for the suit property and the last mentioned Rs.30.0 was towards rent for 42 months from March, 2007 to October, 2010.

8. Is there an oral sale agreement? Or, is the plaintiff a mere tenant of the suit property? The answers to them hold the key to resolve this dispute. Which of the two possibilities are preponderantly probable on evidence is the issue?

9.1 In its attempt to establish the plea of oral sale agreement, the learned counsel for the plaintiff argued :

a) It is an admitted fact that both sides shared business-relationship since 1982. It is proved through Ext.P1 sale deed pertaining to one of the first floor apartment in the very residential complex in which the suit property is also situated as a penthouse on the 4th floor. Besides the plaintiff had also entered into two other leases with the defendants vide Exts.P32 and to P35. Besides the defendants had also purchased industrial sewing machine from the plaintiff for their former's garment business, which Ex.P2 establishes. The defendants do not deny any of them.

b) It is in this circumstances, both the plaintiff and the defendants negotiated for the sale of the suit property, a penthouse, and there emerged an oral sale agreement. Given the relationship between the parties for close to 15 years, both did not consider it necessary to enter into a formal written sale agreement.

c) On 26.12.1996, on the date of payment of first instalment of Rs.15.0 lakhs, possession of the suit property was handed over to the plaintiff. Ever since, the plaintiff has been paying not just the electricity and water charges, but also the property tax payable, and this fact is not disputed by the defendants.

d) Even though the entire sale price was paid, a formal sale deed was not executed, essentially because, the suit property along with other properties of the defendants were outstanding on a mortgage to secure a loan which the defendants had obtained from M/s.Indian Bank. Since the title deeds were left with the mortgagee, the sale deed could not be executed. Since the plaintiff had very little to suspect the defendants at that point of time, and given the relationship that they shared, the plaintiff was merely waiting for the defendants to clear the loan liability and to obtain the release of the title deeds from the bank.

e) While so, on 30.09.2005, the creditor bank issued a notice under Section 13 of the SARFAESI Act. This is marked as Ext.P-52. In this notice, the bank had treated the plaintiff as the tenant of the suit property and demanded rent. The plaintiff did not respond to it, since the defendants and the bank were then engaged in a negotiation for OTS.

f) Subsequently, the OTS indeed was arrived between the defendants and its banker, and as part of the deal Rs.100.0 lakhs was required to be deposited by the defendants, out of this, Rs.30.0 lakhs was earmarked to be paid by the plaintiff.

g) The plaintiff has a sister concern that goes by the name M/s.Kiara Technologies. Through its sister concern, the plaintiff made a deposit of Rs.30.0 lakhs on 31.03.2006 Vide FDR.No.0434795. There is also an endorsement made in this, that this amount must be held in a fixed deposit scheme for 46 days, and thereafter, it can be appropriated towards the sale price of the property. Indeed, the first defendant himself had issued a hand-written letter dated 31.03.2006, marked as Ext.P-48, to the bank requesting the latter to adjust Rs.30.0 lakhs paid by M/s.Kiara Industries and to appropriate it towards the reserve price for the suit property. This letter specifically refers to FDR.No. 0434795. And, these aspects are categorically admitted by the first defendant as D.W.1 in his cross-examination. Couple of months later, the plaintiff too had addressed Ext.P-49 communication, dated 23.05.2006 to the bank to adjust the amount in the fixed deposits towards the sale price of the suit property.

h) Once the adjustments were made on 13.11.2006, the first defendant addressed the bank Vide Ext.P-50, a hand-written letter, requesting the bank to release the title deed pertaining to the suit property to M/s.Kiara Industries, which, to repeat is the sister-concern of the plaintiff-company.

i) Another aspect that requires a special emphasis is that before OTS was arrived at, the bank had initiated action under SARFAESI Act, and the matter was pending before the DRT, Chennai in O.A.No.745 of 1999. To this OA, the defendants had filed their counter / reply statement. A copy of this document is marked as Ext.P-46. In paragraph No.12 of his reply statement, D1 had made a voluntary statement before the DRT that the suit property had been sold to the plaintiff, and that the possession too had been handed over to it.

j) The cumulative effect of Ext.P-16, Ext.P-46, Ext.P-48, Ext.P-49 and Ext.P-50 is that there was an oral sale agreement. It may be that in Ext.P-46, the first defendant might have stated that the property was already sold to the plaintiff, which in law does not recognise, still it discloses the mental aspect of the first defendant towards the suit property and the nature of transaction it had entered with the plaintiff. If only it was a lease agreement as contended by the defendants, nothing prevented the first defendant from stating it so in Ext.P46 counter, and that he need not have addressed Ext.P-48 to the bank and to require the bank to deliver the title deeds of the property under Ext.P50 to M/s.Kiara Industries. If the plaintiff was only a tenant, not one of these acts of the defendants reconcile with the plaintiff's status as a mere tenant.

k) In December, 2010 or thereabouts, the bank released the title document to the defendants, and they conveyed it to the plaintiff.

This fact the first defendant admits in his cross-examination.

l) Justly the plaintiff was expecting the defendants to execute the sale deed, but that was not to be. Instead they issued the suit notice dated 10.01.2011 (Ext.P-17), treating the plaintiff as their tenants, and alleged that the plaintiff was in wilful default in paying the rents to the suit property. When the plaintiff enquired about the same with the defendants, they informed that this was necessitated for some other purpose, and the plaintiff trusted it.

m) However, the defendants chose to institute RCOP.No.514 of 2011 for eviction as evidenced by Ext.P-18, and till the filing of RCOP, the relationship between the plaintiff and the defendants was cordial, and this fact was admitted by the first defendant himself in his cross-examination.

9.2 Shifting his focus to the case of the defendants, the learned counsel submitted:

a) Even though the defendants had pleaded that the plaintiff is the tenant of the suit property, they have done precious little either to negate the effect of Ext.P-16, Ext.P-46, Ext.P-48, Ext.P-49 and Ext.P-50 or let any independent evidence which may even remotely suggest that the plaintiff could only be a tenant of the suit property. This has to be appreciated in the context of Exts.P-32 and P-34 lease deeds (pertaining to Poonamallee and Chembarambakkam properties) which establish that the parties are only in the habit of entering into written lease deed and not oral leases.

b) Secondly, if according to the defendants, rents were paid in advance were to be presumed as true, then it is belied by the fact that the TDS relatable to Ext.P-32 and Ext.P-34, both of which related to the rental agreements Exts.P-33 and Ext.P-35 indicate that the rents were received at the commencement of the lease. And so far as the alleged oral lease of the suit property is concerned, the defendants have not chosen to produce the TDS certificates similar to Exts.P-32 and Ext.P34.

c) Thirdly, the defendants would contend that Rs.15.0 lakhs paid by the plaintiff on 26.12.1996, was received by them for refurbishing the suit property before handing over the possession to the plaintiff, but there are no documentary evidence to that effect, and the first defendant admits the same in his cross-examination.

d) Things were going smooth till 2010, but in 2010, when the first defendant obtained the title deeds from the bank, he entertained a temptation to obtain a higher consideration. Hence, he seized an opportunity and called the plaintiff as his tenant, perhaps taking a cue from Ext.P-52 notice, where the Indian bank had described the plaintiff as the tenant of the suit property.

e) The defendants have contrived a strategy of naming the plaintiff as their tenant, and attempted to sell that idea in Ext.P17, notice dated 10.01.2011. In this, the second instalment of Rs.50.0 lakhs paid to the defendants is stated to be non-refundable deposit. However, the same notice subsequently describes that subsequent rents were adjusted were adjusted against this non-refundable deposit. The second part of the statement of the defendants may be tenable only if the deposit is refundable, and not the non-refundable deposit. It would then say that Rs.50.0 lakhs so paid was adjusted against the rent payable upto 27.02.1997, and Rs.30 lakhs which the plaintiff had paid through Kiara Industries under Ext.P-16 was towards the payment of subsequent rents for 3 ½ years, from March, 2007 to October, 2010, and it proceeds to say that at the end of September 2010, total arrears of rent was Rs.89,54,912/-, but the defendants would still claim arrears of rent from 01.10.2010 to 31.12.2010 at the rate of Rs.2,26,278/- . Here it is curious to note, that in the written statement the defendants claim that the tenancy commenced in April, 1997 and for ten years, which implied, it should end in March, 2007, and if at all there should be an extension of lease, then can commence only from April, 2007. However, in the same written statement, they further plead that the extension of lease by 42 months commenced from March, 2007, which implied, that the 42 months period would end in August, 2010 and not September, 2010. The defendants apparently have spun a web of falsity and allowed themselves to be entrapped in it. Even if it were a mistake then the defendants should have explained it, but in the RCOP (Ext.P18), they replicate the same allegations.

Reliance was placed on the dictum in ***Shankarlal Narayandas Mundade Vs. The New Mofussil Co. Ltd.,*** [59 L.W. 370 (PC)]; ***K.Nanjappa Vs. R.A.Hameed alias Ameersab*** [2016 (1) SCC 762]; ***Vairavan Vs. K.S.Vidyanandan & 3 others*** [1995-2-L.W.50]; ***Syed Dastagir Vs. T.R.Gopalakrishna Setty*** [1999(6) SCC 337]; ***Narinderjit Singh Vs. North Star Estate Promoters Ltd., Satya Jain (dead) Vs. Anis Ahmed Rushdie(dead)*** [2013 (8) SCC 131]; ***Motilal Jain Vs. Ramdasi Devi and others*** [2000(6) SCC 420]; ***Faquir Chand and another Vs. Sudesh Kumari*** [2006 912) SCC 146]; ***Gurdial Kaur (dead) Vs. Piara Singh (dead)*** [2008(14 SCC 735]; ***T.Mohan Vs. Kannammal and another*** [2002 (10) SCC 82]; ***A.N.Arunachalam Vs. T.Sivaprakasam*** [2011(1) MWN (Civil)

819]; ***Ms.Promilla Sethi Vs. Inder Narain & others*** [2011(122) DRJ 251]; ***P.D'Souza Vs. Shondrilo Naidu*** [2004(6) SCC 649]; ***Zarina Siddiqui Vs. A.Ramalingam*** [2015(1) SCC 705]; ***K.Prakash Vs.B.R.Sampath Kumar*** [2015(1) SCC 597]; ***V.Arumugam Vs. R.Chandrasekaran and another*** [2016-4-LW 649]; ***Rathnavathi and another Vs. Kavitha Ganashamdas***[2015(5) SCC 223]; ***S.Brahmanand and others Vs. K.R.Muthugopal (dead) and others*** [2005 (12)SCC 764]; ***Panchanan Dhara and others Vs. Monmatha Nath Maity (dead)*** [2006 (5) SCC 340]; ***Mademsetty Satyanarayana Vs.G.Yelloji Rao and others*** [AIR 1965 SC 1405]; ***Ramjas Foundations and another Vs. Union of India and others*** [2010(14) SCC 38]; ***Silvey and others Vs. Arun Varghese and another*** [2008(11) SCC 45]; ***Manicka Gounder and another Vs. Lakshmi Ammal*** [2002-3-LW 281]; ***Narayan Bhagwantrao Gosavi Balajiwale Vs.Gopal Vinayak Gosavi and others*** [1960 91) SCR 773]; ***Veerayee Ammal Vs. Seeni Ammal*** [2002 (1) SCC 134]; ***Mukesh Singh Vs. Saurabh Chaudhary*** [2019 SCC Online All 5523 : (2019) 135 ALR 884].

10. Arguing for the defendants, Mr.M.K.Kabir, the learned senior counsel, made the following submissions :

a) The case of the plaintiff can be split into four time zones :

- The first phase is between 26.12.1996, the date of the alleged formation of the oral agreement and 30.09.2005;
- Between 30.09.2005, the date on which the Indian Bank, (which had a security *inter alia* over the suit property for a loan that it had advanced, issued Ext.P52 notice under Sec.13 of the SARFAESI Act in October, 2010;
- Between October 2010, when the first defendant alleged to have informed the plaintiff that he had received the title deeds from the bank and alleged to have made a fresh demand for additional consideration and 10.01.2011; and
- 10.01.2011, when the defendant had issued Ext.P17 notice demanding arrears of rent from the plaintiff.

If the facts that have taken place in each of these phases are co-related into a logical sequence and tested for its believability, then it would establish that the plaintiff had made use of certain payments that it had made to the defendants for creating an oral sale agreement that never was.

b) According to the plaintiff, the oral agreement was dated 26.12.1996, on which date, the defendants have agreed to sell the suit property for a total consideration of Rs.71.50 lakhs; that he had paid Rs.15.0 lakhs on the very date; that subsequently he paid the balance amount in four instalments, the last of which was on 04.11.1997. However, as per Sec.230A of the Income Tax Act which then in force, any transaction involving a conveyance of an immovable property exceeding a value of Rs.25.0 lakhs ought to pass the scrutiny of the appropriate authority constituted under the Income Tax Act. The plaintiff is a partnership firm, and it is inconceivable that they would rush to enter into a oral sale agreement for a sum exceeding Rs.25.0 lakhs without a formal written sale agreement executed between the parties. In this context, it would be relevant to mention that earlier to the alleged transaction, the plaintiff had purchased an apartment in the ground floor.

c) If the storyline of the plaintiff was to be trusted, then after it had paid the full sale consideration, it was seen in a state of absolute inaction, if not in deep state of hibernation till Ext.P52 notice, dated 30.09.2005. It defies common sense as it is irreconcilable with the ordinary course of human conduct, that it required Ext.P52 notice issued by the bank under Sec.13(4) of the SARFAESI Act to activate the plaintiff. Secondly in this notice, the bank had described the plaintiff as the tenant of the suit property, but the plaintiff did not show any anxiety to react.

d) The defendant's contention is that he was in a desperate need of averting a potential sale of their properties by the bank and that they were in need of money. Here it is relevant to indicate the defence side of the case. According to the defendant, the suit property had been leased out to the plaintiff; that the defendant had earlier leased out two of these properties, one at Chembarambakkam and another at Poonamallee; that the plaintiff had always been in the habit of paying rent in a lumpsum, and in advance, and it followed the same pattern even when it took the suit property in lease. The arrangement was that the plaintiff would have this property for lease from 01.03.1997 for a period of 10 years, and this 10 year period ended in February, 2007. Now about 18 months prior to the expiry of the lease term, Ext.P52 notice was issued by the bank. It is in these circumstances, the defendants were in need of money need of money for averting a precipitate action by the bank.

e) On receipt of the notice, the plaintiff did convey his interest to extend the lease on 01.03.2007 for another 42 months, ending with October 2010. Rs.30.0 lakhs was thus paid on behalf of the plaintiff by its sister concern M/s.Kiara Technologies Limited. Indeed, this amount was put in a fixed deposit by M/s.Kiara Technologies and was eventually adjusted only subsequently, and curiously enough no document was returned/received either by the plaintiff or to M/s.Kiara Technologies. This indicates that the said sum of Rs.30.0 lakhs was not intended to be adjusted only against an additional sale consideration of Rs.30.0 lakhs as is now contended by the plaintiff.

f) Even thereafter, the plaintiff remained immobile till the defendants issued Ext.P17 notice, dated 10.01.2011, close to about two months after the expiry of the lease term agreed to between the parties. In this notice, the defendants had alleged that the plaintiff was a tenant of the suit property and demanded arrears of rent. Curiously enough, the plaintiff did not care to respond to the same. It may have to be underscored that twice the plaintiff was termed as a tenant, first by the bank in its Ext.P52 notice, and second by the defendant himself in Ext.P17. But the plaintiff would continue to be in a saintly silence.

g) At any time from 26.12.1996 till the receipt of the notice in RCOP.No.514/2011, the plaintiff which claims to have invested a little over a crore of rupees for purchasing a penthouse, has not chosen to issue a notice demanding the defendants to perform their part of the contract. If civil litigations are to be decided by the rule of preponderance of probabilities, then the probability of the plaintiff's conduct improbablises his assertion about the existence of a sale agreement.

h) This apart, in Ext.P21 and Ext.P22, which are the balance sheets of the plaintiff for the assessment year 1997-1998 (previous year 1996-1997) and 1998-1999 (previous year 1997-1998), the various amounts paid by the plaintiff through Exts.P3 to P7 (totaling Rs.71.50 lakhs) were shown as deposits and not as investments. This has to be read in conjunction with Exts.P8 and P9, which are the copies of sale deeds obtained by the plaintiff pertaining to another apartment (other than the one covered under Ext.P1) from a certain Sushila Gopinath, the sale consideration paid was shown as investments, and not as deposits. This belies the contention of the plaintiff that the amount paid under Exts.P3 to P7 were towards sale consideration. And when the plaintiff had purchased a property from a certain Anik Properties during the year 1996-1997, it has showed it only as an investment and not as deposit.

Reliance was placed on the authorities in ***K.Nanjappa (dead) by LRs Vs R.A.Hameed alias Ameersan (Dead) by LRs and another*** [2016-2-L.W.673]; ***S.E.Zarina Begum and others Vs P.M.S.Latiff*** [2016-2-L.W.726]; ***H.R. Subramanya Shastry and others Vs Sri.K.Mohan Kumar*** [ILR 2021 KAR 2507]; ***Ameer Mohammed Vs Barkat Ali*** [AIR 2022 Raj 406]; ***G.Manoharan Vs R.Edwin Solomon*** [(2020) 4 MLJ 369]; ***M.Sankar Nadar and another Vs Deva Krishnan*** [2017 (1) CTC 561]; ***Subhash Chander Kathuria Vs Umed Singh and another*** [AIR 2006 DELHI 194]; ***T.L.Muddukrishana and another Vs Lalitha Ramachandra Rao*** [(1997) 2 SCC 611]; ***Mehboob Pasha Vs Syed Zaheeruddin*** [1988 AIR (Karnataka) 83]; ***Manjunath Anandappa URF Shivappa Hanasi Vs Tammanasa and others*** [(2003) 10 SCC 390]; ***K.A.Kumaresan Vs K.S.Nanjundan and***

others [2018 (3) CTC 89]; ***K.S.Vidyanadam and others Vs Vairavan*** [(1997) 3 SCC 1]; ***Husenabibi and another Vs Abdulmiya Kasammiya Kureshi and others*** [2007 AIR (Gujarat) 56]; ***Indravathi Vs Kamala*** [2000 (IV) CTC 278]; ***Saradamani Kandappan Vs S.Rajalakshmi and others*** [(2011) 12 SCC 18]; ***Ranganatha Gounder Vs Sahadeva Gounder and others*** [2004-4-L.W.807]; ***M.Kumar Vs V.Balan*** [2021-1-L.W.932].

11. Replying the above submissions, the counsel for the plaintiff made the following submissions :

a) Contrary to the contentions of the counsel for the defendants that Ext.P21 and Ext.P22, the various sums paid by the plaintiff under Exts.P3 to Ext.P7 are concerned, that is precisely how the plaintiff accounts for the money it had paid, Whenever the plaintiff purchases any properties and makes any payment, prior to the actual sale in its books it is always shown as deposit amount, and once the sale fructifies, the same money is shown as the value of the asset in the balance sheet. Otherwise, from the time of payment till actual sale, the money will be essentially in some kind of suspense account. The plaintiff has adopted this accounting methodology, and it also gets reflected vis-a-vis the payments made for Ext.P8 and Ext.P9 sale deeds. The sale consideration paid under Ext.P8 was Rs.23,50,000/-, and that which was paid for car parking under Ext.P9 was Rs.4,50,000/-. Towards this purchase, the plaintiff had paid an initial advance of Rs.4,00,000/- to their vendor Sushila Gopinath and it gets reflected in Ext.P21 income tax returns only under the column "deposit". And the actual purchase took place about a year later during the financial year 1997-1998, and that gets reflected in the income tax return for the assessment year 1998-1999 (Ext.P22), where it reflects as an additional asset acquired during the previous year 1997-1998. And in the case of Anik Properties to which reference was made by the counsel for the defendants with reference to cross-examination P.W.1, there was an actual purchase during the previous year 1996-1997, and hence, it is shown as investment. Therefore, how the monies are accounted in the books of account of the plaintiff does not and should not concern the defendants but what is relevant is whether the plaintiff had been consistent in the manner of its accounting.

b) When the plaintiff had already purchased the first floor apartment in the same building under Ext.P8 and Ext.P9, there is hardly any reason for the plaintiff to take the suit property in lease, which is in the fourth floor of the same apartment.

c) So far as the payment of Rs.30.0 lakhs by M/s Kiara to Indian Bank to close a loan account which the defendants had with the said bank in terms of the OTS, the defendants were required to pay Rs.30.0 lakhs to the bank latest by 30.03.2006. And the first defendant indeed had acknowledged this payment by Kiara Technologies to M/s.Indian Bank vide Ext.P48 letter dated, 31.03.2006, in which he had referred to Rs.30.0 lakhs as reserve price of fourth floor. An endorsement to this effect is seen in Ext.P16.

d) So far as the allegation attributing inaction on the part of the plaintiff for close to ten years and that this inaction essentially because the the title documents of the suit property were with the bank, which it realised only in December, 2010 or thereabouts.

e) It is seen from Ext.P12 that all the rates and taxes payable for the suit property including the property tax has been paid even during the alleged period of inaction only by the plaintiff.

Discussion & Decision

12. The plaintiff had paid a sum of Rs.71.50 lakhs between 26.12.1996 and 04.11.1997. The receipt of the said money, all paid through demand drafts, are detailed in para 2.2(b) is not disputed. However, the defendants have chosen to explain only about the receipt of Rs.65.0 lakhs (no matter if there is evidentiary probability to believe the said explanation), but has offered no explanation for receiving Rs.3.0 lakhs on 28.10.1997 vide Ext.P6 and Rs.3.50 lakhs on 04.11.2007 vide Ext.P7. This court observed a disquieting silence on this aspect in the written statement. This will now set the tone

for further discussion for ascertaining the believability of the rival contentions involving an oral sale agreement Vs oral lease, and to decide which one of these two versions holds the greater probability of being true? A decision on it is determined more on facts, and hence notwithstanding the fact that both sides competed with each other to rely on several authorities, it is the evidence on record that will essentially decide the issue.

13. Before delving deep on the merit of rival submissions and the evidentiary facts place before this Court, Issues Nos: 1 and 5 can be addressed straight away.

Issues Nos: 1 and 5

14. The 1st issue is on the maintainability of the suit and is about the status of the plaintiff as to whether it is a firm, and whether the suit is maintainable, if it were so? Nowhere in the written statement is the status of the plaintiff seen to have been denied or disputed, nor any issue on the maintainability of the suit is raised. Necessarily, this Court holds that this

issue is fundamentally unnecessary, but having framed, it is decided in favour of the plaintiff.

15. Turning to issue No. 5, the issue is, if the suit is barred by limitation. So far as this issue is concerned, the terminus quo for reckoning limitation for a suit for specific performance will be determined by the terms of contract. If it were a written contract, the term as to time for performance can be reasonably ascertained from it. However, the plaint alleges an oral contract, and the time for performance is open-ended in the plaint. Therefore, in terms of the the second part of Article 54 of the Limitation Act, limitation for institution of suit will run only from the date of denial to perform the contractual obligation by the defendant. In this case, this denial was made known to the plaintiff only through Ext.P17 notice dated, 10.01.2011 issued by the defendant. And the suit is laid on 12.04.2011, well within three years. The suit is therefore, not barred by limitation. This issue also is decided in favour of the plaintiff.

Issues 2,4 and 6

16. Now to the core issue: Oral sale agreement Vs Oral lease. Very obviously, the believability of any one of these rival claims depends fundamentally on their preponderating evidentiary probability. To state it differently it is based purely on evidence, and how it appeals to the conscience of the reasonable man of law.

17.1 Before embarking on a discussion to explore the probability of rival contentions, it has become mandatory to examine the sustainability of defendants' plea of oral lease for ascertaining if the defendants had received Rs.71.50 lakhs in 1996-1997 under Exts.P3 to P7 plus Rs.30.0 lakhs under Exs.P 49 read along with Ext.P16 towards advance rent respectively for a period of 10 years and 42 months. And the plaintiff admittedly is in possession of the suit property.

17.2 While setting up this plea, what the defendants appeared to have overlooked was that under Sec.107 of the Transfer of Property Act, 1882, a "*lease of immoveable property from year to year, or for any term exceeding* *one year, or reserving a yearly rent, can be made only by a registered instrument".* Sec.17(1) (d) of the Registration Act reinforces same aspect. Therefore, no court will ever take cognizance of an oral lease for ten years reserving rent payable for the entire term of the lease unless the lease is created under a registered document. Here, a distinction may have to be drawn between a lease created under an unregistered lease deed which may or may not have been adequately stamped. If a lease deed is written but unstamped or inadequately stamped then the document can be impounded and the stamp deficiency can be rectified under Sec.35 of the Stamp Act, but there is no statutory cure to remedy non-registration of a document that requires registration. It is these categories of documents which the courts have allowed to be admitted in evidence for proving collateral purposes such as proving the character of possession, which does not touch upon the terms of the document. This principle however, cannot be extended to situation where a lease is said to be orally created when in law it ought to have been under a registered document. Secondly, in terms of Sec.91 of the Evidence Act (Sec.94 BSA), where the terms of any contract, grant, or other disposition of property is either reduced to writing or where law requires it to be in writing, then the terms thereof can be proved only through the production of the document and not through parole evidence. In the instant case, Rs.101.5 lakhs was alleged to have been received by the defendants as advance rent for a oral lease which exceeds more than a year, and necessarily constitutes a material term of the lease. And, the court may not consider the plea of the defendants on oral lease and payment of advance rent. In effect, the defendants have lost a wicket before they scored a run.

18. Having held thus, this court will still consider it necessary to evaluate the defendants' case on merit for evaluating the sustainability of the plaintiff's case for specific performance, where the conduct of the plaintiff is as much important as the merit of the case it presents for securing the remedy that it seeks.

19. The plaintiff had paid Rs.71.50 lakhs under Exts.P3 to P7 demand drafts between 26.12.1996 and 04.11.1997, and about nine years later

another Rs.30.0 lakhs under Ext.P-16, dated 29.03.2006 to be read along with Ext.P49, dated 23.05.2006 through its sister concern, M/s Kiara Technologies. Does it represent the sale consideration as alleged by the plaintiff, or payment of advance rent as contended by the defendants. Here few facts are require to be considered:

a) Of Rs.71.50 lakhs which the plaintiff had paid, the defendants contend that Rs.15.0 lakhs paid by it under Ext.P3, represents the cost of refurbishing the suit property. This implies that the alleged refurbishing of the suit property was done by the defendants with the money which the plaintiff had paid. The plaintiff denies the purpose for the payment of this money, and hence the burden is on the defendants to establish that the money indeed was intended for actual refurbishing of the suit property, and that it had been so spent. But the defendants have neither produced any bills, nor let in other evidence to establish that Rs.15.0 lakhs (which in 1996 was lot of money), was actually spent for the purpose that they claim. Necessarily this plea of the defendants fails.

b) What now remains is Rs.56.50 lakhs. Of this the plaintiff had paid Rs.20.0 lakhs and another Rs.30.0 lakhs respectively vide Ext.P4 and Ext.P5 demand drafts, both dated 26.03.1997. The defendants would contend that these are advance rent amount paid by the plaintiff for the suit property from 01.04.1997 for ten years. If the lease were to commence on 01.04.1997, then the ten year period would expire by 31.03.2007. It may be stated that in the written statement, the date of commencement of alleged tenancy was not specifically pleaded, but finds a mention in Ext.P17 notice, which formed the basis for RCOP No.514 of 2011 from which CRP(NPD) 3038 of 2013 has arisen. In the written statement the defendants make a crafty pleadings when they allege that the defendants had given the plaintiff either to pay advance rent for ten years or to pay Rs.50.0 lakhs. No reference was made to the monthly rent payable if it were the first option, or the rate of monthly rent at which Rs.50.0 lakhs would be adjusted if it were the second option. It is in Ext.P17 eviction notice, the defendants allege that the monthly rent payable was Rs.40,000/-. Now, what is intriguing is that the total amount payable for 120 months @ Rs.40,000 a month would be Rs.48.0 lakhs. Now why should the plaintiff pay another two lakhs towards advance rentals? If Rs.50.0 lakhs represents ten year advance rent, then it works out to Rs.41,666 a month. The second aspect is that if the rent were to be paid for ten years in advance, then unless the terms offered provides an incentive, such as for instance any attractive discount in the total sum payable as rent for ten years is offered, no sane lessee would ever opt to gift Rs.50.0 lakhs as advance rent. What is offered by the defendants is a penalty and not a discount, for by opting to pay Rs.50.0 lakhs as advance rent, the plaintiff would end up paying Rs.2.0 lakhs more than the total rent if he had opted to pay Rs.40,000 a month for 120 months.

c) To the point (b) above, it may have to be added that about the same time, to be precise 31.07.1997, the plaintiff had purchased a flat measuring a plinth area of 1,450 sq.ft in the first floor of the same apartment of which the suit property forms the penthouse in the 4th floor, together with proportionate UDS and car parking from a certain Sushila Gopinath for a total consideration of Rs.28.0 lakhs. And the total extent of the suit property is 2,548 sq.ft, which is about 1,000 sq.ft more than the extent covered under Ext.P8. Does it logically stands to reason, given the ordinary course of human conduct, that plaintiff should pay advance rent of Rs.50.0 lakhs, when he could have easily purchased the suit property with that money plus the remaining 21.50 lakhs?

d) This apart the plaintiff also under an obligation to pay property tax for a tenanted premises. Was this penthouse offers an incredible experience that a reasonable man of law should pay a premium-rent for his stay plus property tax?

e) Indeed, the plaintiff had paid more, and not just Rs.50.0 lakhs. Here the defendants have to account as to why they received Rs.3.0 lakhs under Ext.P6, dated 28.10.1997 and Rs.3.50 lakhs under Ext.P7, dated 04.11.1997? The defendants had admitted that they had received these amounts, but go blissfully silent as to why they received the money? Thus Rs.71.50 lakhs which the defendants had received can be split into two parts: (i) Rs.65.0 lakhs on specific heads, which is either not proved or cannot be believed; and (ii) Rs.6.50 lakhs where there is a ghostly silence.

20. There therefore, is a greater probability in evidence which outweighs the contention of the defendants that the receipt of Rs.15.0 lakhs + Rs.50.0 lakhs out of Rs. 71.50 lakhs which the plaintiff had paid them under Exts.P3 to P5 were neither towards refurbishing the suit property, nor towards advance rent for ten years.

21.1 The next issue is whether Rs.30.0 lakhs which the plaintiff had paid through its sister concern Kiara Technologies vide Exts.P16 and P49 could be for advance rent payable for 42 months. Here the first problem is in computing these months. As stated earlier, in Ext P.17, the defendants allege that the plaintiff became the tenant of the suit property in April, 1997. And, since Rs.50.0 lakhs was paid on 27.03.1997, it may be presumed that it could be from 01.04.1997. If that is so, then ten year period as contended by the defendants would end in March, 2007. But according to the defendants the lease was extended from March, 2007, which implied that the original lease should have expired by February, 2007. And, since the defendants committed the first blunder, it followed it with a second blunder when they claim that the 42 months period ended in September, 2010, when it should have ended in August, 2010. Only their counsel tried to save them from further embarrassment, when he tried to correct these blunders in his arguments. But, this court cannot ignore the defendants' wobbling pleading, since it is now a serious pursuit to assess the conduct of the defendants.

21.2 Now, if Rs.50.0 lakhs paid under Exts.P4 and P5 could not be treated as rent for ten years, then it leads to the next inference that there is a preponderating probability that the alleged lease of the suit property for an initial period of ten years (which according the defendants should conclude on 31.03.2007) becomes unbelievable. Therefore, if Rs.30.0 lakhs which Kiara Techonologies paid has to be construed as advance rent for 42 months from 01.04.2007, then it requires a fresh lease for 42 months, but the defendants contention was that the plaintiff had been its tenant for ten years (up to 31.03.2007), and the lease for 42 months was not a fresh lease but a renewal of the subsisting lease for 42 months. This plea of the defendants, therefore, is on a heavily wobbling plane. Another associated fact is that this amount of Rs.30.0 lakhs was deposited in six fixed deposits vide Ext.P16, on 29.03.2007, exactly a year before the ten year period when the lease was to expire. This anxiety to extend the lease a yer ahead of the expiry of the original term of lease is plainly baffling.

21.3. On this aspect, this court cannot ignore that in 2007, the apartment must at least must be 25+ years old, because Ext.P1 under which the plaintiff had first purchased an apartment from the defendants in the same complex was in 1982. If Rs.30.0 lakhs must represent the advance rent for 42 months in 2007, arithmetically it works out to Rs.71,428.57 a month.

Would anyone in 2007, pay about Rs.72,000/- a month as rent for a 25 + year old penthouse measuring a mere 2,548 sq. ft. with a car parking? *Prima facie* the rate of rent is shockingly high priced, and unless the defendant is able to establish that this amount matches the monthly rent payable for a similar building in 2007, it would be nigh difficult to consume what the defendants have served this court court. But the defendants have neither chosen to trouble themselves nor this court with any evidence to prove that their contention could be a remote possibility.

22. The foregoing discussion leads to the only possible conclusion that the plaintiff was not the tenant of the defendants vis-a-vis the suit property, and that the sum of Rs.71.50 lakhs initially paid under Exts.P3 to P7 and the subsequent Rs.30.0 lakhs vide Exts.P16 to be read with Ext.P49 were not towards advance rent for any of the lease period as contended by the defendants contend. Issue No:4 is decided against the defendants.

23. What then was the character of plaintiff's possession of the suit property

either from 26.12.1996 (the date on which it paid the first installment of Rs.15.0 lakhs under Ext.P3, which according to the plaintiff was the date on which it was put in possession) or from 01.04.1997 (which according to the defendant was after the payment of Rs.50.0 lakhs vide Exts.P4 and P5 dated 27.03.1997). When exactly has the plaintiff entered possession of the suit property? Except the oral testimony of both the sides, this court could not lay its hands on any specific documentary evidence to arrive at a conclusion. However, at this distant point of time, it is immaterial too. All this Court can now hold is that the plaintiff had come into possession of the property not as the tenant of the suit property.

Issue No:3

24. Having found that the defendants plea of tenancy is unfounded, this Court now endeavours to ascertain whether the payment of Rs.71.50 lakhs + Rs.30.0 lakhs were paid towards sale consideration of the suit property. After all, merely because the line of defence adopted by the defendants has failed that does not automatically constitute the proof of plaintiff's plea.

More, so in a case of specific performance, where every single step of the plaintiff will be under the scanner. This now brings to focus the effect of Ext.P45, Ext.P48, and Ext.P50. Let each of these documents be now considered:

a) Ext.P45 is the copy of the OA 577 of 2001 which the Indian Bank had filed *inter alia* against the defendants before the DRT, Chennai, seeking a recovery certificate for realising the amounts due under several loans plus to sell the various assets which are offered as security in case of default. The suit property was described in Schedule E of OA 577 of 2001. Ext.P46 is the counter filed by the defendants. In paragraph 12 of Ext.P46 the defendants had pleaded that the suit property had been sold to the plaintiff with the knowledge of the bank. And, this was admitted by D.W.1 in his cross examination.

b) As stated, on 29.03.2006, vide Ext.P16, Kiara Technologies had deposited Rs.30.0 lakhs in fixed deposit with Indian Bank in six deposits of Rs.5.0 lakhs each for a term of 45 days. In this circumstances, the first defendant had written Ext.P48, a hand-written letter, to the Indian Bank, wherein he had required the bank to "*appropriate Rs.30.0 lakhs today towards the reserve price of fourth floor bearing door No:4-A, Haddows Road, Chennai – 6. On your receipt of balance payment from us kindly release the document pertaining to the above mentioned property to Kiara Techonology (India) Pvt. Ltd, or their authorised representatives along with No claim certificate."* This letter too has been admitted by D.W.1.

c) Next comes Ext.P50, another hand-written communication, dated 13.11.2006, from the first defendant to the Indian Bank wherein he records the payment of amounts pursuant to the OTS, and requires the bank *inter alia* to release the title documents of suit property to Kiara Technologies. Ext.P50 was also admitted by D.W.1.

What more requires to tilt the probability of the case which the plaintiff has put forth in its favour?

25. The counter argument of the defendants is threefold: (a) that none who had paid Rs.71.50 lakhs in 1996-1997 would wait for ten year without doing anything for having the sale deed executed; (b) None would pay another Rs.30.0 lakhs as additional sale consideration and (c) the accounting pattern of the plaintiff in Exts. P21 and P22. So far as the first argument goes, admittedly till November, 2006, the encumbrance over the suit property created in favour of Indian Bank was subsisting, and title documents are with the bank till the end of 2010. The plaintiff's waiting was therefore, commonsensical and justifiable. Turning to the second argument, after paying Rs.71.50 lakhs, the plaintiff was faced with a possibility of losing the property to Indian Bank, since the bank had instituted OA 577 of 2001. Therefore, the plaintiff, justly anxious to save the money it had already invested apparently had chosen to additional money, and it is understandable. And, the last argument – about accounting. This perhaps is most amusing piece of argument, perhaps made out of desperation. In the face of Exts.P46, 48 and 50, how does it matter how the plaintiff accounts the money it had paid in its books of account. At any rate, it has explained it

in its reply argument, and this court finds the same acceptable.

26. Unquestionably there is a preponderating probability that the plaintiff had paid Rs.71.5 lakhs + Rs.30.0 lakhs to the defendants only towards the sale consideration for the purchase of the suit property. **Issue No 3** is decided in favour of the plaintiff.

27.1 Now, has the plaintiff made a false statement vis-a-vis the date on which it came into possession of the suit property? It asserts it was on 26.12.1996, the date on which it had paid Rs.15.0 lakhs under Ext.P3. When this court has found that the entire amounts paid by the plaintiff was towards sale consideration of the suit property, going by ordinary course of human conduct, it would be difficult to believe that the one who pays the money without documenting the purpose for which it paid, might have at least entered possession. Issues No 2 and 6 are decided accordingly.

27.2 Here it is not difficult to unlayer the defendants' strategy in defence.

They have received Rs.71.50 lakhs between 26.12.1996 (vide Ext.P3) and 04.11.1997 (Ext.P7). They have to explain. And they have issued Ext.P17 notice for eviction on 10.01.2011 on ground of willful default in the matter of payment of rent. Effectively they had about 15 years from the date of Ext.P3. And because every money was accounted, they obviously had began spinning their story: The first Rs.15.0 lakhs towards refurbishing the suit property; The next Rs.50.0 lakhs towards rent for ten years. And Rs.30.0 lakhs paid vide Ext.P49 read with Ext.P16 towards further rent. But, when did lease commence? Because Rs. 50.0 lakhs was paid on 27.03.1997, couple of days before the next financial year, it became easy for the defendants to fix the date of commencement of lease to 01.04.1997. And, against Rs.30.0 lakhs was deposited on 29.03.2006, which was about one year before the completion of ten year period, and the defendants thought it fit to describe it as rent for 42 months, because only then will the defendants have few months left for them to allege willful default in paying rent.

28. Ordinarily, this Court refrains from judging the parties as its purpose is to judge the cause and not the characters behind the cause. But this is a suit for specific performance where the conduct of the defendants is as much a factor as the conduct of the plaintiff. If the evidence is filtered for its purity through the membrane of fairness, the defendants lose their case by miles. Their greed is apparent, and the fraud they had devised is evident. This litigation is truly an avoidable one, but for the utter lack of fairness in the consciousness and conduct of the defendants. And, it does make true the immortal lines of Justice Midha, former Judge of the Delhi High Court which he made in his farewell speech: "*In court of justice, both the parties know the truth, it is the judge who is on trial.*"

CRP (NPD) 3038 of 2013

29.1 Turning to CRP.No.3038 of 2013, the challenge is to the order of the Rent Control Appellate Authority in R.C.A. No.526 of 2012.

29.2 The short facts of the case is that the defendants have filed

R.C.O.P.No.514 of 2011 under Sec.10(2)(i) of Tamil Nadu Buildings (Lease and Rent) Control Act, to evict the plaintiff / respondents from the property on the ground that the tenant (the plaintiff in the suit) had committed wilful default in the matter of payment of rent. A counter was filed by the plaintiff denying the averments. Subsequently, the defendants/petitioners have taken out an application in M.P.No.512/2011 to amend the RCOP petition to one under Sec.10(2)(i) and 10(2)(vii) of the Act, seeking eviction for denying the landlord's title without bonafide. This petition for amendment was allowed by the the Rent Controller.

29.3 Challenging the said order, an appeal in R.C.A.No.526 of 2012 was preferred by the plaintiff, and this came to be allowed stating that M.P.No.512/2011 is not maintainable either on facts and law, and the triable issue about the existence of a jural relationship between the parties as landlord and tenant has to be decided in the pending suit in C.S.No.304/2011 before this Court. This order of the Rent Control Appellate Authority is under challenge in CRP (NPD) 3038 of 2013.

30. Whereas in C.S.No.304 of 2011, this Court had found that since the plaintiff was in possession pursuant to an oral agreement, there can never be a landlord - tenant relationship between the parties. Necessarily, this Court holds that R.C.O.P.No.514 of 2011 is not maintainable on any grounds under the Act.

31. To conclude, the suit is required to be decreed. However, as already indicated the suit itself was necessitated by what this court considers as the unfair attitude of the defendants in creating a non-existing tenancy when they knew or ought to have known the effects of Ext.P46, Ext.P48 and Ext.P50 which the first defendant himself had written. In effect, the attitude of over-ambitious defendants has wasted the judicial time and this Court considers it appropriate that such tendencies of the litigants in taking up false plea leading to wastage of judicial time needs to be appropriately curbed.

Result :

A. C.S.304 of 2011

1. The suit is decreed with costs, and the defendants are directed to execute a sale deed in respect of the suit property in favour of the plaintiff and to hand over the original title deeds of the suit property to the plaintiff;

B. CRP(NPD) 3038 of 2013

2. The civil revision petition is dismissed with costs.

06.12.2024

Index : Yes / No
Neutral Citation : Yes / No
ds

APPENDIX

I. Witnesses :

Plaintiff :	
PW1	Viraf Turel
PW2	Nikhil Madhav Sampat
Defendant :	
DW1	G.D.Ranka (first defendant)

II. Exhibits :

Plaintiff :		
Ex.P1	25.03.1982	Certified copy of sale deed and construction agreement by defendants in favour of plaintiff in respect of 876 sq.ft. Of UDS and for construction of ground floor - showroom and first floor – flat.
Ex.P2	09.11.1987 to 12,06.2001	Sample letters, invoices and bills pertaining to business transaction between plaintiff and defendants between 09.11.1987 to 12.06.2001.
Ex.P3	26.12.1996	Photocopy of D.D.bearing No.403496 dated 26.12.1996 for Rs.15,00,000/- in favour of first defendant with acknowledgement
Ex.P4	26.03.1997	Plaintiff's letter to its banker for issuance of D.D. for Rs.20,00,000/- in favour of first defendant, along with photocopy of demand draft bearing 403928 dated 27.03.1997 for Rs.20,00,000/-
Ex.P5	26.03.1997	Plaintiff's letter to its banker for issuance of D.D. for Rs.30,00,000/- in favour of second defendant, along with photocopy of demand draft bearing 403927 dated 27.03.1997 for Rs.30,00,000/-

Plaintiff :		
Ex.P6	28.10.1997	Plaintiff's letter to the first defendant enclosing a demand draft bearing No.025098 dated 28.10.1997 for Rs.3,00,000/-
Ex.P7	04.11.1997	Plaintiff's letter to its banker for issuance of D.D. for Rs.3,50,000/- in favour of first defendant, along with photocopy of demand draft bearing No.762914 dated 04.11.1997 for Rs.3,50,000/-
Ex.P8	31.07.1997	Certified copy of sale deed in favour of plaintiff for purchase of first floor flat from Mrs.Sushila Gopinath
Ex.P9	31.07.1997	Certified copy of sale deed in favour of plaintiff for purchase of the covered car park from Mrs.Sushila Gopinath
Ex.P10	01.04.1998	Photocopy of Confirmation of Accounts signed by defendants (2pages)
Ex.P11	01.04.2003	Plaintiff's copy of Confirmation of Accounts sent to defendants (2 pages)
Ex.P12	21.12.2007 to 31.08.2008	Original Statement of Accounts with bill and vouchers for expenses incurred for renovation of suit property
Ext.P13	1998 - 2011	Statement of Accounts with Corporation tax receipts for tax paid by the plaintiff for the suit property [2/1998-1999 to 2/2010-2011]
Ext.P14		Statement of accounts with receipts for payment of Water and Sewerage Tax for suit property
Ext.P15	Dec.1996 – March 2011	Receipts issued to the plaintiff for the payments received by Shree Apartments Association towards maintenance, repairs and paintings done at the premises at 4A, Haddows Road, Chennai – 600 006.
Ext.P16	29.03.2006	Letter issued to the Indian Bank by M/s.Kiara Technologies (India) Pvt Ltd. (plaintiff's sister concern) for issuance of No Lien deposit of Rs.30,00,000/-.
Ext.P17	10.01.2011	Legal notice issued by defendants

Plaintiff :		
Ext.P18	06.04.2011	Notice to the plaintiff herein issued by X Court of Small Causes at Madras in RCOP.No.514/2011 laid by the defendants herein, for his appearance before Court on 07.7.2011
Ext.P19	16.07.1965	Certificate of registration issued by the Registrar of Firms, Mumbai
Ext.P20	25.06.2006	Partnership deed of E.H.Turel & Co.,
Ext.P21	29.10.1997	Balance Sheet for the Assessment Year 1997-1998 filed by the plaintiff before the Income Tax Department
Ex.P22 (P.W.2)	31.05.1987	Photocopy of certificate of membership issued by the Institute of Chartered Accountants of India to certify Nikhil Madhav Sampat of Bombay was admitted as an Associate of the Institute
Ex.P23 (P.W.2)	31.05.1987	Photocopy of certificate of membership issued by the Institute of Chartered Accountants of India to certify Nikhil Madhav Sampat of Bombay is entitled to practise as a Chartered Accountant.
Ex.P23 & Ex.P24 (P.W.1)	21.11.2012	Original certificate issued by Bombay Mercantile Co-operative Bank Ltd., for issuance of Demand Draft for Rs.15.0 lakhs in favour of 1st defendant along with the Statement of Account of the plaintiff company from 01.12.1996 to 31.12.1996
Ex.P24 (P.W.2)	22.09.1999	Certificate of Incorporation issued to M/s.Kiara Technologies (India) Pvt Ltd by the Registrar of Companies, Maharashtra, Mumbai.
Ex.P25 (P.W.2)	29.11.2000	Acknowledgement for filing the Income Tax Returns by M/s.Kiara Technologies (India) Pvt Ltd., for the assessment year 2000-2001
Ex.P25 & Ex.P26 (P.W.1)	22.11.2012	Certificate issued by Bombay Mercantile Co-operative Bank Ltd., certifying issuance of Banker Cheque No.403928 of CITI Bank for Rs.2.0 lakhs favouring Mr.G.D.Ranka by debiting CA A/c. No.E.H.Turel & Company on 27.3.1997 and passed through clearance.

Plaintiff :		
Ex.P26 (P.W.2)		Income Tax Statement of the plaintiff as on 31.03.2004.
Ext.P27 (P.W.1)	22.11.2012	Certificate issued by Bombay Mercantile Co-operative Bank Ltd., certifying issuance of Banker Cheque No.403927 of CITI Bank for Rs.3.0 lakhs favouring Mr.G.D.Ranka by debiting CA A/c. No.E.H.Turel & Company on 27.3.1997 and passed through clearance.
Ext.P27 (P.W.2)	09.11.2015	Fresh certificate of incorporation consequent upon of change of name of M/s.KIARA Technologies (India) Private Limited to M/s.DUERKOPP ADLER – Turel Technology Private Limited
Ext.P28 (P.W.1)	21.11.2012	Account statement of the plaintiff issued by Bombay Mercantile Co-op. Bank Ltd for the period 01.03.1997 to 31.03.1997
Ex.P29 (P.W.1)	22.03.2013	Certificate issued by Union Bank of India certifying issuance of pay order for Rs.3.0 lakhs favouring Mr.G.D.Ranka by debiting from A/c.No,412301010029024 of Turel Sales Corporation on 28.10.1997
Ex.P30 & Ex.P31 (P.W.1)	22.11.2012	Certificate issued by Bombay Mercantile Co-operative Bank Ltd certifying issuance of Banker's cheque for Rs.3.50 lakhs favouring Mr.G.D.Ranka by debiting from CA A/c.No,20041 of Turel Sales Corporation on 04.11.1997
Ex.P32 (P.W.1)	01.04.1996	Rental Agreement entered into between M/s.Ranka Pharmaceuticals Pvt Ltd., and E.H.Turel & Co.,
Ex.P33 (P.W.1)	09.04.1997	Form 16-A of M/s,E.H.Turel and Co
Ex.P34 (P.W.1)	01.04.1996	Rental Agreement entered into between M/s.Ranka's (Madras) Private Limited and M/s.Turel Sales Corporation
Ex.P35 (P.W.1)	09.04.1997	Form 16-A of M/s,Turel Sales Corporation

Plaintiff :		
Ex.P36 (P.W.1)	24.03.2008	Cheque issued in favour of CMWSSB by M/s.E.H.Turel & Company for Rs.30,977/- & also enclosed the statement provided by CMWSSB for the period 1993 to 2003.
Ex.P37 (P.W.1)	30.03.2006	Letter addressed by KIARA Technologies to M/s.Indian Bank for release of documents and issuance of 'No Claim Certificate" against the property at Haddows Road
Ex.P38 (P.W.1)	24.06.2008	Photocopy of cheque issued to M/s.Alba Corporation for a sum of Rs.28,584/- by M/s.E.H.Turel and Company vide cheque No.276652
Ex.P39 (P.W.1)	15.11.2007	Sale executed executed by Mrs.Taradevi Kothari in favour of M/s.E.H.Turel and company
Ex.P40 (P.W.1)	20.03.2002	Original property tax demand card along with the first defendant's handwritten note
Ex.P41 (P.W.1)	06.09.2002	Original property tax demand card along with the first defendant's handwritten note
Ex.P42		Original Water and Sewerage Tax cum Charges Card for the period 2005-2010 along with original receipts
Ex.P43		Original Receipts issued by CMWSSB to G.D.Ranka dn Mangla G.Ranka
Ex.P44	20.03.2014	Property Tax collection receipt for the payment made by G.D.Ranga
Ex.P45		Photocoopy of O.A.No.745 of 1999 filed by Indian Bank against the defendants' group before Debts Recovery Tribunal at Chennai.
Ex.P46	17.04.2002	Reply statement filed by the defendants in O.A.No.577 of 2001 (Originally O.A.No.745 of 1999)
Ex.P47	27.03.2006	Photocopy of conditions of OTS given by Indian Bank to defendants
Ex.P48	31.03.2006	Letter addressed to the Chief Manager, Indian Bank by

Plaintiff :		
		the first defendant regarding OTS of GDR Group Account as concerning the payment made by KIARA Technologies
Ex.P49	23.05.2006	Letter issued by M/s.KIARA Technologies to the Indian Bank for renewal of validity of FDR for another 45 days
Ex.P50	13.11.2006	Letter addressed to the Asst. General Manager by first defendant requiring to provide a full settlement of dues of OTS
Ex.P51	15.04.2014	Certificate issued by Bombay Mercantile Co-operative Bank Ltd certifying the authorised signatories of M/s.E.H.Turel & Co.,
Ex.P52	30.09.2005	Notice issued by the Indian Bank under Sec.13(4)(D) of the SARFAESI Act
Ex.P53	25.01.2016	Legal notice issued by the plaintiff's counsel to the defenants' counsel under Sec.66 of the Indian Evidence Act r/w. Order XII Rule 8 CPC
Ex.P54	03.03.2016	Reply notice by the defendant's counsel to the counsel for the plaintiff in regard to their letter dated 25.01.2016
Ex.P55		Photocoopy of O.A.No.745 of 1999 filed by Indian Bank against the defendants' group before Debts Recovery Tribunal at Chennai.**(Ext.P45)**
Ex.P56	17.04.2002	Reply statement filed by the defendants in O.A.No.577 of 2001 (Originally O.A.No.745 of 1999) **(Ex.P46)**
Ex.P57	27.03.2006	Photocopy of conditions of OTS given by Indian Bank to defendants **(Ex.P47)**
Ex.P58		Letter addressed to the Asst. General Manager by first defendant requiring to provide a full settlement of dues of OTS **(Ex.P50 remarked as Ex.P58)**

06.12.2024

N.SESHASAYEE.J.,

ds

Pre-delivery Judgment in
C.S.No.304 of 2011
and C.R.P.No.3038 of 2013

06.12.2024