IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09-01-2025**

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN

A NO. 2636 of 2024

AND

A NO. 90 OF 2025,CS NO. 116 OF 2024

M.Vaigai Selvan
Flat No.D-4 T.V.H. Boag Villa, No.52/54, North
Boag Road, T.Nagar, Chennai - 17. and another

Applicant(s)

Vs

G.sreenivas
S/o G.Ramakrishna, Flat No.201,Idea Heritage Road,
No.14, Near Bsnl Tower, Khairatabad, Banjara Hills,
Hyderabad, Telangana- 500 04 And Also At Old
No.71, New No.185, Habibullah Road, T.Nagar,
Chennai 17 and another

Respondent(s)

For Applicant(s):

M/s.K.Venkateswaran
P.K.Srinivasan
cell: 888876471

For Respondent(s):

Fresh Batta Memo Not Filed
Pn-aos Filed - Cover Returned

ORDER

The Application has been filed for attachment before judgment, as the fact that the suit has been filed for the recovery of Rs.1,49,39,256/-. This is based on the premise that the defendants had rented out the premises to the plaintiff for commercial purposes and allowed the plaintiff to improve the property by renovating it. Subsequently in order to defeat the interests of the plaintiff, the defendants have allegedly colluded with a third party, taken over the entire structure and machinery and replaced them while operating a restaurant.

2. According to the plaintiff, they entered into an agreement with the defendant on 31.08.2018, paid an advance of Rs.34 lakhs, availed a loan from the bank, improved the property and started running a restaurant. While so, a tripartite agreement entered between the plaintiff, defendant and one M/s.Dea Foods with the specific understanding that the rent would be paid by M/s.Dea Foods to the landlord/defendants. As per the tripartite agreement, the parties agreed that the agreement would be renewed by mutual consent every two years, with a 7% annual increase in rent.

3. The allegation of the plaintiff is that, following the tripartite agreement, the landlord formed one part, while the plaintiff and M/s.Dea Foods constituted the other. After a few months, the landlord in collusion with M/s.Dea Foods, fraudulently deprived the plaintiff of possession and access to the premises, as well as of the improvement made to the property, worth about Rs.1,49,39,256/-. Along with the plaint, the plaintiff filed an application for attachment before judgment for the said amount, apprehending that the defendants might alienate the property to defeat the plaintiff's right and prevent realization of the decree amount, if the plaintiff succeeds in the suit.

4. On notice for furnishing of security, the defendant/respondent filed a counter, stating that there is no amount due to the plaintiff. They claimed the alleged improvements to the property are baseless. The tripartite agreement dated 05.10.2022 was only valid for a period of one year and was not renewed. Additionally, the advance money of Rs.34 lakhs received from the plaintiff was returned to him through demand draft on 19.01.2024. Despite the termination of the agreement, the plaintiff allegedly attempted to interfere with the possession of the property, which led to a criminal complaint. M/s.Dea Foods, the other party to the agreement faced difficulties in running their business and voluntarily handed over the premises to the landlord. It is further stated that the building has a total of five tenants with the plaintiff being one among them.

5. The contention of the plaintiff that he has improved the property investing Rs.75 lakhs through a bank loan is preposterous and baseless. Possession was taken in a manner known to law after the termination of the lease agreement. In the absence of evidence to substantiate the plaintiff's claim that he constructed/renovated the property by spending Rs.75 lakhs, no interim order of attachment or direction to furnish security can be granted.

6. On perusing the documents relied by the plaintiff, as well as the averments made in the counter filed by Sreenivas, the 1st respondent/defendant and the agreement dated 05.10.2022 entered into between the landlord and the tenants, the Court finds that the plaintiff has been running a hotel business on the premises since 2018, based on the agreement between the plaintiff and the defendants. It is not the case of the defendant that the infrastructure on the premises was provided by him.

7. Admittedly, the premises were furnished as a restaurant at the plaintiff's expense, and there is a *prima facie* material to show that the plaintiff had availed a loan to improve the property. Furthermore, the agreement dated 05.10.2022 entered into between the landlord and the plaintiff along with the M/s.Dea Foods, indicates that the Management of the restaurant was taken over by M/s.Dea Foods with the consent of both the landlord and the plaintiff under specific terms and conditions.

8. Though it is contented that the initial period of tenancy is only for one year and there is no correction in the said agreement, the subsequent recital in the agreement indicate a clause for the renewal of the lease. After the initial period of one year, the lease was to be renewed for every two years at a time with an annual rent increase of 7%. Therefore, *prima facie* it appears that the parties had agreed to this arrangement as stated in the agreement dated 05.10.200.

9. The lease was intended to be for a period of two years and subsequently, renewable every two years by mutual consent with at 7% increase in rent. In the said circumstances, the alleged termination of lease and the refund of the advance amount of Rs.34 lakhs by the landlord to the plaintiff must be examined to determine whether such termination unilateral termination by landlord is permissible or legal. This will also decide whether it effectively ends the legal relationship between the landlord and the tenant.

10. More so, there is *prima facie* material to show that the defendant's property was improved by the plaintiff to make it for suitable for operating a restaurant, which has been running for nearly five years. There is no whisper for the account about the fittings, furniture and infrastructure materials, which will form part of any restaurant business. Therefore, this Court holds that there is a *prima facie* material to sustain the claim of the plaintiff, subject to proof.

11. However, to protect the plaintiff's interest, it is necessary to attach the property morefully described in the schedule if the defendant fails to furnish security to the extent of suit claim on or before 15.02.2025. Accordingly, this *Application is allowed*. The defendant is directed to furnish security on or before 15.02.2025, failing which the schedule mentioned property shall be attached. Batta is to be paid after 15.02.2025.

09.01.2025

rpl

DR.G.JAYACHANDRAN, J.

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