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O.S.A.Nos.91 and 92 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.S.A.Nos.91 & 92 of 2024

1.M/s.Benz Vaccations Club Public Limited,
Represented by its MD, Mr.Benz Saravanan,
New No.158 (781-785), Rayala Tower,
2nd Floor, Anna Salai,
Chennai - 600 002.

2.M/s.Benz Vaccations Club,
Represented by its President, Mr.A.Thanajayan,
New No.158 (781-785), Rayala Tower,
2nd Floor, Anna Salai,
Chennai - 600 002.

... Appellants
in both Appeals

Vs.

1.M/s.Rayala Corporation Pvt. Ltd.,
Represented by its Managing Director, Mr.Ranjit Pratap,
No.144/7, Rayala Techno Park,
Rajeev Gandhi Salai (OMR), Kottivakkam,
Chennai – 600 041.



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2. M/s. Vira Properties Pvt. Ltd.,

Represented by its Director Mr. Gulam Dastagir,
Rayala Tower, New No.158 (Old No.781), Anna Salai,
Chennai – 600 002.

... Respondents

Prayer in O.S.A.No.91 of 2024 : Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 25.03.2024 in Appl.No.4254 of 2023 in C.S.No.113 of 2022 on the file of this Court.

Prayer in O.S.A.No.92 of 2024 : Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of the Letters Patent against the order and decree dated 25.03.2024 in Appl.No.4255 of 2023 in C.S.No.113 of 2022 on the file of this Court.

For Appellants : Mr.P.Valliyappan
Senior Counsel
for M/s.P.V.Law Associates
in both Appeals

For R1 and R2 : Mr.K.P.Ashok
in both Appeals



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COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

The above Original Side Appeals have been preferred by the defendants in the suit in C.S.No.113 of 2022 aggrieved by the dismissal of applications filed by them in A.Nos.4254 and 4255 of 2023 to set aside the *ex parte* decree dated 19.10.2022 in the suit in C.S.No.113 of 2022 and to condone the delay of 188 days in filing the written statement in the suit in C.S.No.113 of 2022.

2.Brief facts that are necessary for the disposal of these Appeals are as follows :

The respondents 1 and 2 are Private Limited Companies. The respondents filed the suit in C.S.No.113 of 2022 against the appellants for the following reliefs :

- (a) directing the defendants to deliver and hand over vacant possession of the suit schedule mentioned premises i.e. The 2nd floor premises (measuring a built up area of 11,195 sq.ft. With



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11 car parkings (six covered and 5 open car parkings and common amenities) of the premises called “Rayala Towers” bearing No.158 (781-785), Anna Salai, Chennai – 2.

- (b) directing the defendants to pay the sum of Rs.1,93,30,946/- being arrears of rent, licence fee, maintenance charges and EB charges due till April 2022 (after deducting security deposit)
- (c) directing the defendants to pay the future damages for use and occupation at the same rate of Rs.10,00,000/- per month; from 1.5.2022 till the date of vacating and handing over vacant possession”

The suit property is a building in 2nd floor of the premises with a built up area of 11,195 sq.ft. with 11 Car Parkings (6 covered and 5 open Car Parkings along with common amenities) in the premises called “Rayala Towers”, Anna Salai, Chennai – 2. It is the case of the plaintiffs that the suit property was given to the appellants on lease and the appellants agreed to pay monthly rent of Rs.3,63,838/- for the period from 10.10.2013 to 30.09.2016 and then at Rs.4,18,469/- from 01.10.2016 and thereafter, at Rs.4,81,161/- with effect from 01.10.2019. The rent payable are excluding GST, Electricity Charges and other Utility Charges like Maintenance Charges, etc., payable by the defendants. Even though the plaint contains



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several allegations, this Court, for the present, need not go into those allegations as the suit is for ejectment alleging that the defendants have indulged in misusing the premises for illegal purposes and on the ground that the defendants have committed default in payment of regular monthly rent. After issuing notice of termination, the suit came to be filed for directing the defendants to deliver vacant possession of the schedule premises and for consequential reliefs.

3.It is not in dispute that the appellants, despite issuance of summons, did not appear. After taking note of the fact that defendants 1 and 2 had been served on 13.07.2022 but had not filed any written statement, the defendants were set *ex parte* on 09.09.2022. After the defendants were set *ex parte*, the plaintiffs in the suit were directed to tender evidence. The plaintiffs examined Mr.Gulab Dastagir, the Director of 2nd plaintiff, as P.W.1 and marked Exs.P1 to P17. After closing the evidence, the trial Court decreed the suit *ex parte* by judgment dated 19.10.2022, after elaborately discussing the case of plaintiffs and considering the evidence of the plaintiffs.



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4.It is seen from the judgment dated 19.10.2022 that the findings of the trial Court are based on the evidence of P.W.1 and the documents filed through P.W.1. The trial Court, therefore, decreed the suit by issuing directions to the defendants to vacate the premises and hand over vacant possession of the suit property by granting three months' time. The defendants were directed to pay a sum of Rs.1,10,54,489/- till the date of filing of the suit and thereafter, at the rate of Rs.6,69,969/- per month till the actual possession is taken over by the plaintiffs.

5.Thereafter, the Decree Holders filed Execution Petition in E.P.No.13 of 2023 in February, 2023. It was after the filing of the Execution Petition, the defendants 1 and 2 filed applications in A.No.4254 of 2023 to set aside the *ex parte* decree dated 19.10.2022 in C.S.No.113 of 2022 and A.No.4255 of 2023 to condone the delay of 188 days in filing the written statement in C.S.No.113 of 2022.



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6.During the pendency of the applications, it was represented by the plaintiffs about the huge arrears of rent payable by the defendants to the tune of Rs.1,68,48,365/-. Taking note of the huge arrears of rent and the current rent payable and the conduct of the appellants in not paying any rent even as per the agreement, the learned Judge held that the tenants, without paying any rent or depositing even the admitted arrears, are not entitled to maintain a petition to set aside *ex parte* decree and dismissed both the applications in A.Nos.4254 and 4255 of 2023 by order dated 25.03.2024.

7.As against the dismissal of the applications to set aside the *ex parte* decree and to condone the delay in filing the written statement in the suit, the above two Appeals have been preferred by the defendants.

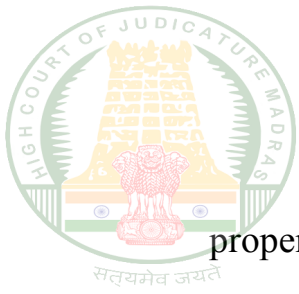
8.It is to be noted that there was no stay granted by this Court in the present Appeals. Hence, even during the pendency of the applications to set aside the *ex parte* decree, the plaintiffs, with the help of Bailiff, tried to take



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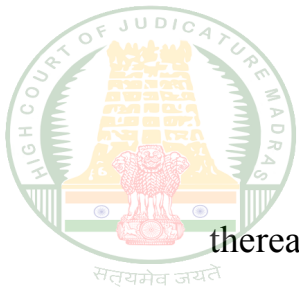
possession of the property in execution of the decree by orders of the Executing Court. However, it is reported even before the learned Single Judge that some third parties, who are in possession, had obstructed delivery as if they are in possession of the entire property. Therefore, the plaintiffs are not in a position to recover possession by executing the decree. It is in the said circumstances, the learned Single Judge observed that the appellants have to pay arrears as per the admitted rent in 2013. The learned Single Judge also observed that the appellants, who claim to be in possession of the property, should deposit admitted rent as per the agreement. Therefore, taking note of the conduct of the appellants in refusing to pay any rent for a long period and the fact that there was no explanation for the delay, held that the reasons assigned in the applications in A.Nos.4254 and 4255 of 2023 to set aside the *ex parte* decree and to condone the delay in filing the written statement, are vague and false, and dismissed the impugned applications.

9.Even before this Court, the learned Senior Counsel appearing for the appellants reiterated that the appellants are in physical possession of the



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property. However, the appellants have no explanation why delivery could not be effected despite there is no interim order in these Appeals. The conduct of the appellants in not paying the amount of arrears even at the contract rate, cannot be ignored. It is to be noted that the landlord had already lost their right to recover part of arrears due to limitation. The suit is also for recovery of arrears of rent due from July, 2019. Even when the petition to set aside *ex parte* decree was filed in 2023, the arrears claimed by landlord is more than Rs.3.9 Crores. Assuming that the landlord claimed damages for use and occupation at higher rate, the rent, if calculated at the contract rate, the amount payable as on date is nearly Rs.4 Crores. The learned Single Judge, while decreeing the suit, considered the possible legal defence and found untenable on merits. In cases like this, the conduct of appellant is relevant while exercising discretionary power. The plaintiffs have already suffered by the delaying tactics. The cumulative impact on the plaintiffs who are deprived of their legitimate right on account of the non-remittance of rent for a long time, should also be weighed. During the pendency of these Appeals, this Court directed the appellants to pay a sum of Rs.1.5 Crores within two weeks. However, no payment was made even



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thereafter as directed for no good reason. In the said circumstances, this

WEB COURT is unable to find any *bona fides* in these Appeals.

10. For the above reasons, we are unable to interfere with the order of learned Judge dismissing the applications to set aside the *ex parte* decree and to condone the delay in filing. The appellants who are in possession of more than 11,000 sq.ft. of building in a busy commercial place (Mount Road) have committed continuous default. A very meagre amount of Rs.50 Lakhs paid by appellants does not impress this Court to show any indulgence.

11. As a result, these Original Side Appeals are dismissed. No costs.

(S.S.S.R., J.) (P.D.B., J.)
29.01.2025

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Index : Yes

Neutral Citation : Yes



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