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A.S.No.932 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.932 of 2024 & CMP.No.25508 of 2024

Deepa Ramaprasad

... Appellant

Versus

Daimler India Commercial Vehicles Pvt. Ltd.,
Rep. by its Authorized Signatory,
SIPCOT-Industrial Growth Centre Oragadam,
Mathur Post, Sriperumbudur Taluk,
Kancheepurm District – 602 105.

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the decree and judgment dated 13.10.2023 in O.S.No.7254 of 2019 on the file of the XXIII Additional City Civil Court, Chennai and allow this appeal with costs.



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For Appellant : Ms.Susanna Prabhu
For Respondent : Mr.V.S.Janarthanan
for Mr.K.Harishankar &
Ms.Mithreyi Kasthurirangan

JUDGMENT

Challenging the decree and judgment of the trial Court dismissing the counter claim, the present appeal has been filed by the unsuccessful defendant.

2. The parties are arrayed as per their own ranking before the trial Court.

3. [i] The case of the plaintiff is that they entered into a lease agreement with the defendant on 04.05.2015 for the property situated at No.11, Spring Gardens, 1st Street, Aakarai, Sholinganallur, Chennai – 600 119. Lease is for a period of 11 months, that is till 07.04.2016. The rent for the lease premises was agreed between the parties at Rs.2,50,000/- per month. The plaintiff also paid a sum of Rs.15 lakhs as an interest free security deposit to the defendant.

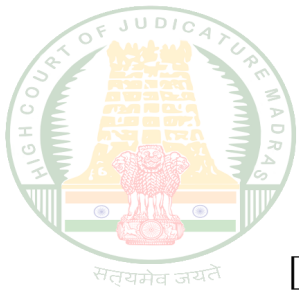


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The lease agreement was subsequently renewed vide letters dated 31.05.2016 and 28.02.2017. The lease agreement was terminated vide letter dated 21.04.2017 and the possession was handed over to the defendant on 06.05.2017.

[ii] One Mr.Micheal Condrad an employee of the plaintiff company was residing in the lease property. From the very beginning, Micheal Condrad has been complaining of the odd smell in the master bed room and that air conditioner performance is very poor. On 21.03.2017, the plaintiff informed Mr.Ravi, the care taker appointed by the defendant, that the air conditioner in the master bed room has not been working and AC maintenance team should be called to repair the AC. On 22.03.2017 and 23.03.2017, the technicians inspected the two ACs in the first floor for which AC maintenance team disassembled the cover of in-house blower of the AC. Subsequent to the inspection, the AC cooling effect was functioning well for few days. On 28.03.2027 Nina Condrad recognized a slight odd smell in the bedroom, but did not assess this as dangerous in the first place.

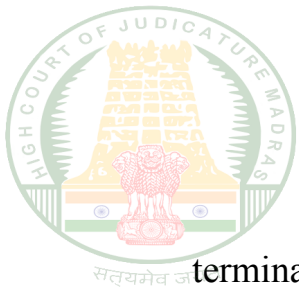


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[iii] Again on 29.03.2017, there was strong decay odour in the master bed room. It was identified that the odour came from the blower of the AC. Thereafter, on 30.03.2017, morning, Condrad was informed by the defendant that technicians from Cold Point Pvt. Ltd., inspected AC and ensured that the Acs are functioning properly. However, when they came from the hotel in the early afternoon, she sensed burning smell in the first floor and when she went to first floor, she noticed that AC was on fire and something was hanging from AC which was also burning. Immediately she turned off the circuit breakers and on hearing the commotion, her driver and neighbours rushed inside the house and in the meantime, Fire Brigade Service arrived and fire was put off.

[iv] Thereafter, there was joint meetings between Condrad, representative of the defendant and the AC service provider to investigate the cause of the accident on 04.04.2017. However, there was no conclusive proof for the cause of the accident and the AC service provider denied that the cause of fire accident was due to gas leakage in the AC. However, till date the cause of the fire was not identified. The defendant vide letter dated 21.04.2017

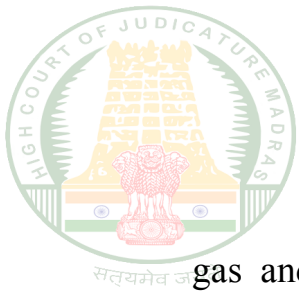


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terminated the lease agreement on giving 30 days notice. The defendant has also mentioned in the said letter that she would recover Rs.9 lakhs towards renovation cost from the plaintiff. It is never agreed that the plaintiff is the sole reason for the fire accident. According to them, out of Rs.15 lakhs security deposit, Rs.5 lakhs would be adjusted towards rent for two months for March and April 2017. Hence, the suit has been filed for the remaining sum of Rs.10,00,000/-.

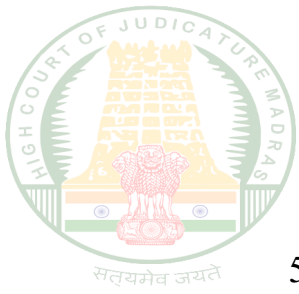
4. According to the defendant, the plaintiff has made vain attempts to cover-up the negligence of the occupant of the premises belonging to the defendant, owing to which the fire accident happened on 31.03.2017, causing extensive damage to the premises and the defendant incurred Rs.19,61,375/- to set the house in order. The insurance amount claimed was a sum of Rs.3,34,921/-. After adjusting Rs.10,00,000/- from the caution deposit paid by the plaintiff, the defendant incurred a loss of a sum of Rs.6,26,454/-. The fire accident was not due to the fault on the part of the defendant. According to the defendant, the gas leakage cannot be the reason for the fire. It is a green



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gas and it is not inflammable. Even in the meeting held on 04.04.2017, nominee of the plaintiff and representatives of the plaintiff and the defendant, it was specifically explained by the AC technicians that gas leakage could not have been the reason for fire accident, as the gas is not inflammable. The plaintiff neither denied nor disputed any of its technician for inspection. Even all the email communications since 21.04.2017, the defendant had always consistently cited the report, which was never disputed by the plaintiff. The nominee of the plaintiff and its representatives who came in face with authors in the meeting held on 04.04.2017 had not disputed the report. According to the defendant, she had incurred a sum of Rs.9,61,375/- towards renovation of the premises, and insurance claim was only a sum of Rs.3,34,921/ after adjusting the same in Rs.10 lakhs cash deposit made by the plaintiff, the defendant incurred a loss of a sum of Rs.6,26,454/-. The fire accident was solely due to the negligence on the part of the plaintiff and there is no fault on the part of the defendant. Hence, the defendant claims counter claim a sum of Rs.9,17,755/-.

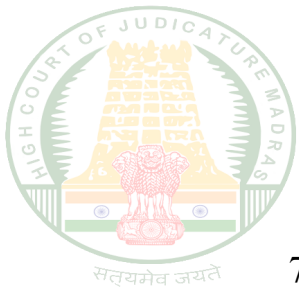


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framed :

5. On the basis of the above pleadings, the following issues have been framed :
 1. Whether the plaintiff is entitled to recovery of the suit sum as prayed for?
 2. Whether the fire accident was solely due to the negligence attributable only to the occupants?
 3. Whether the defendants paid a sum of Rs.10,00,000/- as advance towards repair of the damages?
 4. Whether the defendant is entitled to the relief of recovery of the sum of Rs.9,17,755/- with interest from the plaintiff as prayed for?
 5. To what other relief is the plaintiff entitled?
6. On the side of the plaintiff, P.W.1 has been examined and Ex.A.1 to Ex.A.13 have been marked. On the side of the defendant, D.W.1 has been examined and Ex.B.1 to Ex.B.20 have been marked.

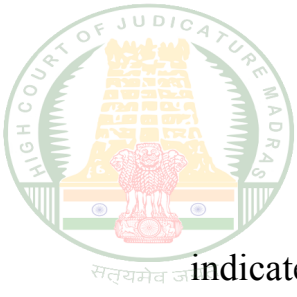


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7. The trial Court appreciating entire oral and documentary evidence, decreed the suit for a sum of Rs.14,12,274/- along with interest at the rate of 12% per annum from the date of the suit till the decree and thereafter, 6% interest till realization and dismissed the counter claim. Challenging the same, the present appeal has been filed by the unsuccessful defendant.

8. The main contention of the learned counsel for the appellant is that the cause of the fire could not be ascertained and the accident took place on 30.03.2017. Even before the fire, several calls received from the tenant has been properly attended and the AC mechanic has been deputed and the defects have been pointed out and set right then and there. The evidence of P.W.1 has not been properly appreciated by the trial Court. The plaintiff has not established the fact that the AC was the reason for fire. Hence, it is his contention that AC was not properly maintained by the plaintiff's employee and there were many electronic equipments used which resulted in overloading and fire broke, as a result of which the defendant had to spend huge amount for renovation. The correspondences between the parties clearly

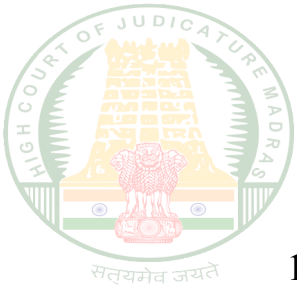


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indicate that the damage has been attended by the defendant, since the plaintiff has in fact agreed to renew the lease. However, the plaintiff terminated the lease and vacated the premises. Therefore, according to the defendant, they are entitled for damages.

9. Whereas, the learned counsel for the respondent would submit that cause of fire has not been ascertained. The fire broke out from the air conditioner is an admitted fact. The defendant being the landlord has already got insurance amount. Therefore, once she got the insurance amount, now she cannot claim damages. Further, negligence on the part of the plaintiff has not been established and damages has also not been established. It is their further contention that when the premises was destroyed by fire, any lease will be terminated automatically. Hence, opposed the appeal. In support of his contentions, the learned counsel relied on the judgement in **The East India Distilleries And Factories Ltd. through their Managng Agents M/s.Parry & Co. Vs.P.F.Mathias** reported in **The Law Weekly 1928 728.**



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10. In the light of the above submissions, now the points that arise for consideration are :

1. Whether the defendant established alleged negligence on the part of the plaintiff's employee for the cause of fire on 30.03.2017?
2. Whether the plaintiff has established damages to claim counter claim?

11. Points 1 & 2 :

It is an admitted fact that the plaintiff has entered into a lease agreement with the defendant under Ex.A.1. Lease was originally agreed for a period of 11 months and it was renewed till 28.02.2017. It is also an admitted case of both sides that the rent was Rs.2,50,000/- per month. A sum of Rs.15 lakhs interest free security deposit has also been paid to the defendant at the time of inception of tenancy. It is also not disputed by both sides that there was fire accident in the tenanted premises and the fire has been emanated from the air conditioner unit. As a result, vide Ex.A.4 letter dated 21.04.2014, the plaintiff



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has terminated the lease. Further, it is an admitted case of the parties that at the time of termination of the lease, the plaintiff has not paid rent for two months. Therefore, they had sought to adjust the said rent from the security deposit which has already been paid and sought refund of Rs.10 lakhs.

12. Whereas, it is the contention of the defendant/landlord that there was negligence on the part of the employee of the plaintiff, which resulted in fire accident due to which damage has been caused to the premises. The defendant has to spend a sum of Rs.19,61,375/-. Therefore, she claims counter claim of a sum of Rs.9,17,755/-. A perusal of the records indicate that even after the accident, it appears that there was discussion between the parties and minutes have also been recorded under Ex.A.5 and it is concluded that cause of fire has not been established.

13. Whereas, it is the contention of the learned counsel for the respondent that the photographs indicate that the air conditioner unit was not the cause of the fire accident. It is relevant note that it has been recorded in



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minutes in E.A.5 that exact reason for the fire accident cannot be fixed with proof by any party. Therefore, he suggested the parties to arrive at an amicable solution. Further, subsequent correspondences and meetings yielded no result, as there was no consensus ad idem between the parties with regard to amicable settlement and no settlement has been reached. Whereas, it is the case of the defendant that she also spent a sum Rs.19,61,375/- for renovating the premises.

14. It is relevant to note that as long as there is no concrete evidence to show that the fire accident was due to the negligence on the part of the tenant or plaintiff's employee, merely on the basis of some fire accident had happened, that too electrical short circuit or any other defects in the air conditioner, negligence cannot be attributed to the occupier of the building. At the most, such an accident could be termed as beyond control of the parties and Act of God. Therefore, merely because, the defendant has spent some amount under the impression that the lease would be renewed by the plaintiff company, after the renovation of the premises and as the plaintiff had not

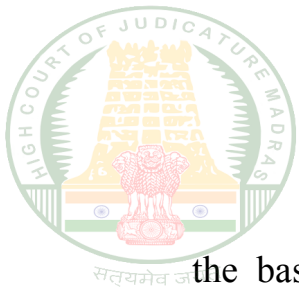


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renewed the lease, they suffered damages cannot be ground to set up counter claim in the form of damages. When a person claim damages on account of any loss or injury, the negligent act on the other side has to be established. In the entire evidence, absolutely, there is no materials placed by the defendant to substantiate the same.

15. It is relevant to note that though the defendant would contend that he had spent huge amount for renovating the premises, the fact remains that the defendant has not been examined. D.W.1, who was working under the defendant has been examined as D.W.1. The evidence of D.W.1 clearly show that that they also realized insurance amount. The premises in question was insured with Royal Sundaram Insurance Company and before processing of the insurance claim, surveyor of the insurance company filed a survey report and in terms of the survey report, assessment was made and the amount was credited to the defendant's account. Therefore, once the insurance amount has already been determined and nature of damages to the building has been assessed and the insurance company has already paid the amount, merely on



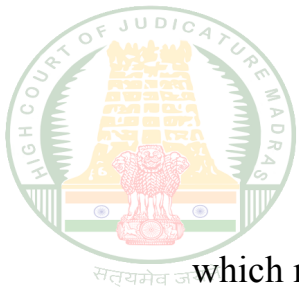
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the basis of Ex.B.13, the so called final bill obtained from one Surendra Enterprises, it cannot be contended that the defendant had spent huge amount in the absence of any proof.

16. At any event, when the cause of the fire accident itself has not been established as against the plaintiff's employee, when the expert report found that they could not ascertain the cause of fire accident and negligence has not been established on the part of the plaintiff's employee, the defendant now cannot claim exorbitant amount towards counter claim. Particularly on the basis of self serving documents. Even assuming that some payments have been made to one Surendra Enterprises under Ex.B.14, that will not lead to the fact that the fire accident was only due to the negligence on the part of the plaintiff.

17. Further it is relevant to note that what is the nature of the policy amount received from the insurance company has not been established. In this regard, it is relevant to extract Section 49 of the Transfer of Property Act,



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which reads as follows :

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“Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

18. The above section makes it very clear that after transfer of property for consideration, on date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property. The above section makes it very clear that insurance amount has been received by the transferor namely, the lessor to be applied for renovating the property. The evidence of D.W.1 itself indicate that



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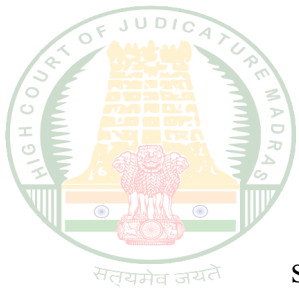
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insurance amount has been received by the defendant. Therefore, in such case, when the defendant has already received the insurance amount, he cannot claim any extra amount as damages, particularly, in the absence of any negligence established against the plaintiff. Though Section 49 deals with transfer of immovable property, the same will also apply to lease hold right also since, the lease is also transfer of right to enjoy such property in consideration price paid or promised. Therefore, the defendant cannot claim the damages, merely on the basis of some renovation made by her.

19. It is also relevant to note that lease has been terminated by the plaintiff on 21.04.2017 under Ex.A.4. Such termination is also permissible under law. Section 108 [B][e] of the Transfer of Property Act reads as follows :

“108. Rights and liabilities of lessor and lessee.—

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are



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subject to the liabilities mentioned in the rules next following,
or such of them as are applicable to the property leased:—

(A) Rights and Liabilities of the Lessee

[e] if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

The fact remains that if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision. Whereas, the evidence of D.W.1 proceed as if there was consensus ad idem reached between the parties in subsequent correspondences wherein the plaintiff agreed to renew the lease after renovation. Much emphasis has been made to the correspondences under Ex.B.19 emails. A perusal of the above correspondences, this Court is of the view that there is no consensus ad idem reached between the parties assuring that the lease will be renewed after



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renovation.

20. It is relevant to refer the in the judgment in **The East India**

Distilleries and Factories Ltd., cited supra, it has been held as follows :

“Section 108 of the Transfer of Property Act clearly contemplates that a lessee should not be responsible for the consequences of fire unless he has definitely taken that burden upon his shoulders by his covenant or unless negligence on the lessee's part is established.

Where a person had taken on lease of a building for purposes of his distilling business and the building was accidentally burnt down on a certain night when there was no watchman at the building.

Held that the absence of the watchman could not in any way be regarded as the proximate cause of the fire and hence no negligence was proved against the lessee.”

Therefore, in the absence of any evidence to prove that the negligence is on



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the part of the tenant, the contention of the defendant cannot be countenanced.

21. The trial Court has decreed the suit directing the defendant to pay a sum of Rs.14,12,274/- on the basis of the contractual terms between the parties, Ex.A.1 lease agreement makes it clear that Rs.15 lakhs security deposit was made. Clause 4 of the agreement makes it very clear that at the time of termination of the lease or earlier termination thereof, upon handing over peaceful vacant possession of the schedule premises, the amount shall be repaid to the lessee free of interest. In the said clause, it is further held that if the lessor fails to refund to the lessee the deposit amount refundable in terms hereof at the expiry of termination of the lease, then in that event, without prejudice to the lessee's right to recover the same, the lessee shall be entitled to remain in possession of the schedule premises without paying any rent or compensation, whatsoever to the lessor until such time, the lessor refunds the said amount to the lessee along with interest thereof at the rate of 12% for the period of delay. Further, it is also agreed between the parties that if the security deposit of Rs.15,00,000/- is not repaid to the lessee on the date of termination of lease, the lessor shall not be entitled to lease or sell the property



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to any other person. Though the above clause makes it very clear that lessee has an option to continue in possession even after the termination of the lease till the security deposit amount has been paid with interest at the rate of 12%, the fact remains that the lessee has not exercised option to remain in possession of the premises without paying any rent.

22. Further it is also relevant to note that though the lease agreement was terminated in view of the fire accident as per Ex.A.4 notice dated 21.04.2017, the parties also exchanged correspondences even thereafter and there was also minutes recorded to find out the cause of the accident. All these facts clearly indicate that in fact the parties were intended to arrive at a settlement and find out who was responsible for the fire accident. In view of the same, this Court of the view that mere delay in refund of security deposit, contractual rate of interest of 12% cannot be slapped on the defendant. Hence, this Court is of the view that the suit ought to have been decreed only for a sum of Rs.10 lakhs. The plaintiff claimed interest at the rate of 18% from 01.05.2017. This Court is of the view that interest claimed by the plaintiff is

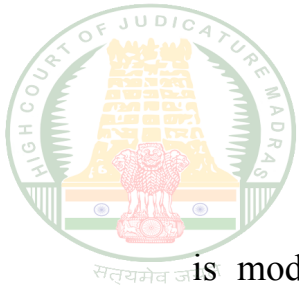


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against contractual rate. That apart, the very nature of the correspondences between the parties to find out the cause of fire indicate that the delay was not deliberate on the part of the defendant. In such view of the matter, this Court is of the view that the plaintiff is entitled to interest only from the date of suit alone and not before that. It is an admitted case of the parties that a sum of Rs.10 lakhs alone is payable by the defendant towards refundable security deposit. Though Rs.15 lakhs has been received as security deposit, a sum of Rs.5 lakhs has to be adjusted towards two months rents. Hence, after termination of the tenancy, the defendant has to return only Rs.10 lakhs and suit has been filed in the year 2019. In the meanwhile, there were correspondences between the parties to find out the cause of fire accident and there was no consensus ad idem arrived between the parties. In such view of the matter, interest claimed by the plaintiff over and above contractual rate cannot be sustained. The points are answered accordingly.

23. In the result, this Appeal Suit is partly allowed and the judgment and decree passed by the trial Court in O.S.No.7254 of 2019 dated 13.10.2023



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is modified to the effect that the defendant is directed to pay a sum of Rs.10,00,000/- [Rupees ten lakhs] with interest at the rate of 6% from the date of plaint till the date of realization with costs. Consequently, connected miscellaneous petition is closed.

11.03.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,

1. The XXIII Additional Judge,
City Civil Court, Chennai.
2. V.R. Section, High Court.



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N. SATHISH KUMAR, J.

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