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A.S.No.49 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :07.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**A.S.No.49 of 2022 & CMP.No.2010 of 2022 &
CMP.No.10289 of 2022**

1. Padmanabhan
2. P.Manikandan

... Appellants

Versus

VipulMedCorp Insurance TPA Private Ltd.,
[Formerly Vipul Medcrop TPA Private Limited]
Chennai Branch, No.407 & 408, 2nd Floor, G.R.Complex,
Anna Salai, Nandanam, Chennai – 600 035. ... Respondent

PRAYER : This Appeal Suit has been filed under section 96 of Code of Civil Procedure to set aside the judgment and decree passed in O.S.No.1843 of 2017 vide Order dated 23.10.2019 on the file of the XVI Additional City Civil Court, Chennai.

For Appellants : Mr.R.Subramanian

For Respondent : S.Venkata Krishna Kumar



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JUDGMENT

Challenge has been made against the decree and judgment of the trial Court decreeing the suit for recovery of the balance of the advance amount paid by the plaintiff.

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

3. The brief background of the case is as follows :

The plaintiff was inducted as a tenant under the defendant as per the agreement dated 25.12.2012 on a monthly rent of Rs.95,000/-. At the time of lease, interest free advance of Rs.9 lakhs has been paid to the defendant. The lease is for a period of 9 years. The plaintiff has informed the defendant that he would vacate the premises on 31.05.2015 vide their letter dated 18.05.2015 and also called upon the defendant to return the advance amount. The defendant promised to refund the said amount within a short period and paid



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only a sum of Rs.2,00,000/- by way of cheque dated 25.06.2015 and remaining amount of Rs.7 lakhs has not been paid. Even after repeated demands, the amount has not been paid. Hence, the suit for recovery of the balance amount.

4. The contention raised by the defendants in their written statement is that the plaintiff had not maintained the subject premises with proper care and had caused severe damages to the subject property taken on lease by them. The floors were broken, ceilings were damaged, electrical connections were tampered beyond repair, damaged the toilets beyond repair, walls being defaced. The defendant has never promised to pay a sum of Rs.7 lakhs. According to the defendants, as per the letter dated 18.12.2015, they are entitled to hold that amount towards recovery of expenses incurred by the defendant. Further, the plaintiff all of a sudden vacated the premises without even prior notice as contained in the lease deed. The defendant had spent a sum of Rs.5 lakhs in respect of the damages caused by the plaintiff to the subject premises for repainting and replaced the entire electrical wiring and fittings. Hence, the building has not been let out to any one. Hence, opposed the suit.



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5. Based on the above pleadings, the following issues have been framed :

1. Whether the plaintiff is entitled to recover a sum of Rs.10,08,000/- with interest?

2. To what other relief the plaintiff is entitled for?

6. On the side of the plaintiff, the Branch Manager of the plaintiff's company has been examined as P.W.1 and Ex.A.1 to A.14 have been marked. On the side of the defendants, the first defendant has been examined as D.W.1 and Ex.B.1 to Ex.B.7 have been marked.

7. The trial considering the entire evidence and documents filed by both the parties, has decreed the suit. Challenging the same, the present appeal has been filed.

8. The learned counsel appearing for the appellant would submit that the trial Court has not appreciated the documents filed on the side of the



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defendants to prove the damages. Further the nature of the damages pleaded in the written statement has not been denied properly and his evidence is also not denied. Only in that context, a sum of Rs.2 lakhs has been returned after the plaintiff has vacated the premises. The trial Court, without considering all these aspects, has decreed the suit for the remaining amount. According to him, the finding of the trial Court is not valid in the eye of law.

9. Whereas, the learned counsel appearing for the respondent would contend that the damages as pleaded in the written statement has not been established and Ex.B.1 to Ex.B.7 have been obtained after the filing of this suit and hence, the same has not been proved. Hence, prayed for dismissal of this appeal.

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

1. Whether the defendant has established the damages to the tune of Rs.5,25,000/- as pleaded in the written statement.



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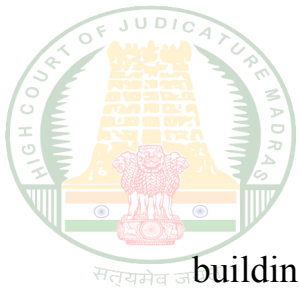
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2. Whether the plaintiff is not entitled to claim refund of advance amount?

11. Points 1 & 2 :

The fact that the plaintiff was inducted as a tenant on 25.05.2012 on a monthly rent of Rs.95,000/- is not disputed by both sides. It is not disputed that the lease is for a period of 9 years. Further, at the time of lease, an advance of Rs.9 lakhs has been paid by the plaintiff, which is also not disputed. The fact that the plaintiff had vacated the premises on 31.05.2015 is also not disputed, after due notice to the defendant. It is also not disputed that at the time of vacating the premises, only a sum of Rs.2 lakhs has been returned by the defendant, out of the advance of Rs.9 lakhs.

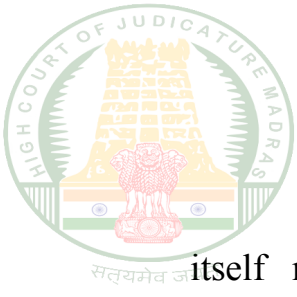
12. The contention of the defendants is that a sum of Rs.7 lakhs has been retained towards damages caused to the building. Therefore, it is the contention of the defendants that severe damage has been caused to the building and he has spent a sum of Rs.5,25,000/- towards repairing the



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building. In the written statement filed by the defendants, when carefully seen, except contending that floors were broken, ceilings were damaged, electrical connections were tampered beyond repair, damaged the toilets beyond repair, walls being defaced and that they had spent a sum of Rs.5,25,760/- to set right the damages, absolutely there is no evidence, whatsoever, placed before this Court as to the nature of damages found in the building. Further, though it is stated by the defendants that due to such damages, he could not let out the premises for more than 22 months, even in this regard, no efforts, whatsoever, has been taken by the defendants to establish nature of damages found in the buildings. Not even photographs of the building indicating nature of damages has been filed. Though it is contended by the defendants that they had spent a sum of Rs.5,25,000/- and to substantiate the same Ex.B.1 to Ex.B.7 cash vouchers said to have been issued were marked, it is relevant to note that the plaintiff had vacated the premises as early as on 31.05.2015. If really there were damages and having retained Rs.7 lakhs advance amount, immediate reaction of the owner would be to attend the damages then and there. Whereas, the vouchers relied upon by the defendants have been paid after 08.07.2017, almost two years after the plaintiff had vacated the premises. This



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itself make the documents unreliable. Further to substantiate these documents, none of the persons who issued such documents have been examined before this Court to prove the so called vouchers. That apart, no one has been examined to establish that the so called damages had been attended and the amount had been spent in this regard.

13. Once a specific stand has been taken by the defendants that the plaintiff has caused damages to the building and the damages has been assessed to the tune of Rs.5,25,000/-, the burden lies on the defendant to establish that the said amount has been spent for attending such damages. Merely on the basis of the vouchers obtained, that too after two years of the plaintiff vacating the premises, it cannot be said that the advance amount can be retained by the defendant. Hence, I do not find any merits in this appeal and the points are answered accordingly.

14. Accordingly, this appeal suit is dismissed. There shall be no Order as to costs. Consequently, connected miscellaneous petitions are closed.



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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

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



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N. SATHISH KUMAR, J.

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