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A.Nos.5698 of 2024 & 4022 of 2025
in
E.P No.64 of 2023

ORDER

1. There are two applications filed before this court. A.No.5698 of 2024 is filed by the applicant/Judgment Debtors 3, 4, 6 to 10 who are the defendants in C.S No.121 of 2003 to direct the payment out of a sum of Rs.20,19,000/- which is lying to the credit of E.P No.64 of 2023 in favour of the applicants represented by its power of attorney Mr.K.Zainudeen. A.No.4022 of 2025 is filed by the applicant/deGREE holder to direct the payment out of a sum of Rs.19,74,582/- which is lying to the credit of E.P No.64 of 2023. Since, the parties to both the applicants are one and the same and the relief sought for by the parties are also one and the same a common order is passed in both the applications.

2. For the sake of convenience the applicants in A.No.5698 of 2024 who are the Judgment debtors 3, 4, 6 to 10 in the above execution proceedings and the respondents 4, 5, 7 to 11 in A.No.4022 of 2025 are hereinafter referred to as tenants. The applicant in A.No.4022 of 2025 who is the decree holder in the above execution proceedings and the 2nd respondent in A.No.5698 of 2024 will be hereinafter referred to as landlord. The 1st respondent in both A.No.5698 of 2024 and A.No.4022 of 2025 will be hereinafter referred to as sub-tenant.

3. The case of the landlord in both the applicants are that he filed a suit in the year 2003 against the tenants which was decreed in his favour on 04.11.2022 as follows:

“ 1. That the defendants herein, be and are hereby directed to vacate the suit



properties morefully set out in the schedule hereunder, and handover vacant possession to the plaintiff herein after removing all the constructions put up therein within three months from today.

2. That the defendants herein, be and are hereby directed to pay past damages of a sum of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) for occupation of the property from 01.07.2002 to 31.01.2003 and to pay future damages at Rs.25,000/- per month from 01.02.2003 till the date of handing over the vacant possession of the suit property.

3. That the defendants herein do pay to the plaintiff herein the costs of the suit as and when taxed by the taxing officer of this court and noted in the margin thereof”.

4. As against the said decree tenants filed an appeal in OSA No.223 of 2023 which was dismissed confirming the Judgment and decree passed by the learned Single Judge. Thus, there is huge arrears of rent of Rs.34,26,190/- up to October 2024 and the property tax and metro water charges and tax arrears of Rs.36,00,000/- up to October 2024 amounting to a total sum of Rs.17,26,190/- are pending from the tenants. Pending the execution proceedings the sub-tenant filed an impleading petition in the above execution proceedings and deposited rental arrears of Rs.19,74,582/- to the credit of the above E.P No.64 of 2023, as per the direction of the Hon’ble High Court by Order dated 23.04.2024. Hence, he has filed A.No.4022 of 2025 to direct the payment out of the sum of Rs.19,74,582/- lying in the credit of above E.P in favour of the landlord.

5. The case of the tenants in both the applications are that the amount deposited by the 3rd party/sub-tenant who is the 1st respondent in both the applications are the rental arrears payable to him and so he has filed A.No.5698 of 2024 to direct the payment out of sum of Rs.20,19,000/- which is lying to the credit of above E.P in favour of them.



6. The 1st respondent in both the applications has filed his counter in A.No.5698 of 2024 admitting that originally the 1st defendant in the suit and the 3rd respondent in the application was his landlord, the 3rd respondent was represented by its proprietor one Mr.K.Mohammed Kutty and the original respondents 3 to 11 are the legal heirs of Late.K.Mohammed Kutty who was the legal heir of the original 2nd respondent. But now only 7 legal heirs are claiming the whole amount deposited by him and so this application is not maintainable. On the other hand the very same 1st respondent has made no objection endorsement in allowing A.No.4022 of 2025.

7. Heard both side counsels and materials on record perused. The learned counsel for the landlord submitted that the tenants/respondents 2 to 11 in A.No.4022 of 2025 were collecting the rents from their sub-tenants through Mr.K.Zainudeen and are not paying rents to the landlord trust and the Government Departments because of which the landlord trust could not able to fulfill the trust objects and moreover tenants/respondents 2 to 11 in A.No.4022 of 2025 are not in good terms and so if the application in A.No.5698 of 2024 is allowed the deponent Mr.K.Zainudeen will use the money for his personal use and will not pay arrears due to the landlord/applicant in A.No.4022 of 2025. Per contra, the learned counsel for the applicants/Judgment debtors 3, 4, 6 to 10 submitted that the amount deposited by the 1st respondent/3rd party who is a sub-tenant under them are the rental arrears payable to them and so they are entitled to the amount of Rs.20,19,000/- lying in the credit of the above execution proceedings.

8. The admitted facts are that the 1st respondent/3rd party is a sub-tenant under the Judgment debtors in the above execution proceedings and the amount deposited by the 1st respondent lying to the credit of above EP are the rental arrears to be paid by the



sub-tenant to the judgment debtors/tenants. The deposit made by the sub-tenant is on behalf of the tenant which does not mean admission of liability to the landlord directly.

The sub-tenant has no privity of contract with the landlord unless statute expressly provides otherwise. The above E.P is filed by the landlord/deGREE holder u/o 21, R 35 & 36 of C.P.C to issue warrant directing the tenants/Judgment debtors to vacate the suit schedule premises and handover vacant possession after removing all constructions put up on the premises. Though it is the contention of the landlord/deGREE holder that the tenant/Judgment debtor was in arrears of rent for a period of 4 years, the same is not borne out by evidence and also this court cannot go beyond the decree. Furthermore, the landlord/deGREE holder on previous occasions, having accepted before this Court to pay the rental arrears deposited by the sub-tenant/ 1st respondent in both the applications to the tenant/Judgment debtors in A.No.5140 of 2023 and in A.Nos.864 and 865 of 2024, now cannot claim the same in the absence of proof of privity of contract.

In the result, A.No.4022 of 2025 filed by the applicant/deGREE holder/landlord is dismissed without prejudice to his rights to workout his remedy in the manner known to law.

A.No.5698 of 2024 filed by the applicant/Judgment debtors 3, 4, 6 to 10/defendants is allowed in the interest of justice. No cost.

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