HON'BLE SRI JUSTICER. RAGHUNANDAN RAO

A.S.No.54 of 2020

JUDGMENT:

The respondents herein are the owners of a building, which was being used as a hotel in the name and style of Hotel Annapurna, situated in Tirupati town. The said hotel is the schedule premises of the suit. The respondents had let out the suit schedule premises to M/s. Sri Venkateswara Associates, a partnership firm having four partners, for a period of 7 years commencing from 15.07.2007 to 14.06.2014. The terms and conditions of the lease were said to have been reduced in writing on 14.08.2007 by way of an unregistered lease agreement on a monthly rent of Rs.2,75,000/- per month initially, which was to be increased to Rs.3,00,000/- per month till 15.06.2012 and Rs.3,60,000/- from 15.06.2012 to 14.06.2014. Thereafter the rent was reduced to Rs.2,04,000/- by mutual agreement under a supplementary lease deed, which also extended the lease up to 31.03.2015.

2. On 09.01.2014, the respondents received papers through Court informing them that O.S.No.20 of 2015 had been filed by the lessees before the III Additional District Judge, Tirupati for an injunction against them. Thereafter, a legal notice was issued by the plaintiffs on 21.02.2015 to which a reply was given on 23.03.2015.

3. The dispute finally culminated in filing of O.S.No.107 of 2015 before the IV Additional District Judge, Tirupati against five persons, who were said to be the partners of M/s. Sri Venkateswara Associates. This suit was filed for a decree and judgment directing the defendants to vacate the suit premises and deliver the peaceful possession of the same to the plaintiffs and for payment of costs, and such other orders that the

Court may deem fit. It appears that the appellants had also filed O.S.No.132 of 2016 claiming damages of Rs.1,65,00,000/-. This suit was dismissed for default and the appellants have moved this Court by way of C.R.P.No.2180 of 2019, which is still pending before this Court.

4. The defendants in the suit filed their written statement.

5. During the course of trial, the respondents/plaintiffs had examined PWs.1 to 4 and marked Exs.A.1 to A.17 and the defendants had examined DWs.1 and 2 and marked Exs.B.1 and B.2.

6. The trial Court, after completion of trial and after hearing both sides, allowed the suit by way of a judgment and decree dated 06.11.2019. Aggrieved by the said judgment and decree, the defendants 1 and 3 filed the present appeal.

7. The appellants do not dispute the fact that the suit schedule premises had been taken on lease by them. There is also no dispute that a quit notice had been issued by the respondents after which the suit came to be filed. However, it is the contention of the appellants that the appellants had advanced sum of Rs.10,00,116/- as security deposit and had also extended about Rs.75,00,000/- for interior decoration, repairs and renovation of the suit schedule premises for running it as a hotel. The appellants contend that they were entitled for recovery of the aforesaid security deposit of Rs.10,00,116/- and the sum of Rs.75,00,000/-that had been expended by the appellants.

8. The trail Court, on the basis of these allegations, had framed the following issues:

1. Whether the plaintiffs are entitled for delivery of schedule mentioned property as prayed for.
2. To what relief?

9. The trial Court considered the question of whether plaintiffs could not obtain possession without payment of aforesaid two sums of money and held against the appellants.

10. Sri O. Manohar Reddy, learned counsel appearing for Sri A. Jagannadha Rao, the learned counsel for theappellants has taken this Court through the evidence and the exhibits marked in the trial Court.

11. The case of the appellants at paragraph 17 of the written statement is that the firm of the appellants had invested Rs.75,00,000/- for interior decoration, furniture, fixtures, installation of machinery etc. The details of the expenditure amounting to Rs.75,00,000/- was also set out in the form of a table in paragraph 26 of the written statement. To demonstrate and prove this allegation, a auggestionwas made to the 2nd plaintiff, who was examined as PW.1, that the defendants had spent more than Rs.75,00,000/- for development of their business; a suggestion was made to PW.2 that the defendants had always been ready to vacate the premises if their security deposit of Rs.10,00,116/- and expenditure incurred for renovating the building is repaid; the defendants had raised the claim for Rs.75,00,000/- in the reply notice dated 23.03.2015, marked as Ex.B.1 which also contain the details of the expenditure incurred in the form of a table at the end of the said legal notice.

12. Sri O. Manohar Reddy, learned counsel appearing for the appellants would submit that as the respondents had not denied any of these allegations made in the legal notice marked as Ex.B.1, the contention raised in the written statement or in reply to the suggestions made in the course of cross-examination of the witness of the respondents, it would have to be taken that the claim of the appellants relating to expenditure of Rs.75,00,000/- and the requirement of the

respondents to repay the security deposit and the expenditure incurred by the appellants is proved. He relies upon the judgments of the Hon'ble Supreme Court in **Muddasani Venkata Narasaiah (dead) through L.Rs., vs. MuddasaniSarojana**[1] and the Hon'ble High Court of Calcutta in the case of **A.E.G. Carapiet vs. A.Y. Derderian**[2] for this proposition.

13. Sri O. Manohar Reddy, learned counsel appearing for the appellants contended that the expenditure of Rs.75,00,000/- incurred by the appellants is deemed to be proved on account of non-demur of the respondents in the course of pleadings or the trial. He submits that the said expenditure was not a gratuitous expenditure and the appellants are entitled for recovery of the said money before the suit schedule premises can be handed over to the respondents herein.

14. Sri E.V.V.S. Ravi Kumar, learned counsel appearing for the respondents fairly submits that the respondents are ready to return the security deposit amount as and when possession of the suit schedule premises is handed over to the respondents. As far as reimbursement of the alleged expenditure of Rs.75,00,000/- is concerned, he submits that no such amounts are payable by the respondents.

15. Sri E.V.V.S. Ravi Kumar, submits that except a bald allegation in the legal notice and written statement, no material has been placed before the trial Court to support the said claim. He would also draw the attention of this Court to Exs.A.7 and A.9 which contained the minutes of the meeting held between the respondents and the appellants on 13.04.2014 and 14.04.2014. In this meeting there was no discussion of

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[1](2017) 1 SCC (Civ) 268 = 2016 (12) SCC 288

[2]AIR 1961 Cal 359

any repayment of the alleged expenditure by the appellants to submit that the claim of Rs.75,00,000/- is an afterthought which came up for the first time only in the reply notice to the quit notice and the same is only an untenable and unproved claim being made for the purpose of prolonging the litigation. In reply to the contention of Sri O. Manohar Reddy, that no suggestion of any nature had been made in relation to the expenditure allegedly incurred by the respondents, he would draw the attention of this Court to the suggestion made at page 113 of the paper book. This suggestion recorded in this page was a suggestion made to DW1, that no money was spent by the appellants towards repairs.

Consideration of the Court:

16. There is no dispute that the suit schedule property was let out by the respondents to the appellants; a quit notice was issued by the respondents to the appellants and that a reply notice was also issued by the appellants, after which, the respondents filed O.S.No.107 of 2015 for eviction and O.S.No.132 of 2016 for recovery of damages.

17. The defence of the appellants is that they have no objection to hand over the suit schedule premises back to the respondents provided the respondents refund the security deposit of Rs.10,00,116/- and the expenditure of Rs.75,00,000/- by the appellants for repairs and maintenance of the suit schedule premises.

18. As far as repayment of the security amount is concerned, the respondents have fairly admitted that the said amount would be returned at the time of taking over possession of the suit schedule premises.

19. In the circumstances, the only question that arises is whether the appellants would be entitled for recovery of Rs.75,00,000/- as condition precedent to handing over the suit schedule premises to the respondents.

20. The contention of the appellants, to be accepted by this Court, would require the appellants to demonstrate that, they have spent a sum of Rs.75,00,000/- for repairs and renovation of the suit schedule premises and that either there was an agreement between the respondents and the appellants that the appellants are entitled to recover such money from the respondents or in the alternative, the appellants are entitled, in law to recover such amount from the respondents, as a condition precedent to eviction of the appellants.

21. The appellants have not placed any material or evidence before the trial Court to demonstrate that they have spent an amount of Rs.75,00,000/- towards repairs and renovation. The entire case of the appellants is based on the statement made in the reply notice to the quit notice marked as Ex.B.1, the pleading in the written statement, thestatements made in the deposition of the witnesses appearing for the appellants, and the suggestions made to the witnesses appearing for the respondents, that they have spent an amount of Rs. 75,00,000/-

22. Sri O. Manohar Reddy contends that once such statements have been made in the pleadings and the depositions, the said statements would be binding on the other side unless the statements have been specifically denied by the other side. In the present case, no such denial is available and as such it would have to be treated that the statements made in the reply notice and pleadings are admitted and there is no duty cast on the appellants to prove the said expenditure. He would further

submit that in view of the judgments of **Muddasani Venkata Narasaiah (dead) through L.Rs., vs. MuddasaniSarojana** and the Hon'ble High Court of Calcutta in the case of **A.E.G. Carapiet vs. A.Y. Derderian**, the statements would have to be treated as admitted.

23. The Hon'ble High Court of Calcutta in **A.E.G. Carapiet vs. A.Y. Derderian** had held as follows:

> "9. The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.
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> 10. On this point the most important and decisive authority is *Browne* v. *Dunn*, reported in (1893) 6 R 67. It is a decision of the House of Lords where Lord Herschell, L.C., Lord Halsbury, Lord Morris and Lord Bowen were all

unanimous on this particular point. Lord Chancellor Herschell, at page 70 of the report observed:

> "Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact, by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass is by as a matter altogether unchallenged and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses."

24. Subsequently, the Hon'ble Supreme Court in the case of **Muddasani Venkata Narasaiah (dead) through L.Rs., vs. MuddasaniSarojana** had affirmed the said proposition in the following manner.

> 15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal* v. *Debnath Bhagat* [*Bhoju Mandal* v. *Debnath*

Bhagat, AIR 1963 SC 1906] . This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath* v. *Hartford Fire Insurance Co. Ltd.* [*Chuni Lal Dwarka Nath* v. *Hartford Fire Insurance Co. Ltd.*, 1957 SCC OnLine P&H 177 : AIR 1958 P&H 440]

16. In *Maroti Bansi Teli* v. *Radhabai* [*Maroti Bansi Teli* v. *Radhabai*, 1943 SCC OnLine MP 128 : AIR 1945 Nag 60] , it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet* v. *A.Y. Derderian* [*A.E.G. Carapiet* v. *A.Y. Derderian*, 1960 SCC OnLine Cal 44 : AIR 1961 Cal 359] has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in *KuwarlalAmritlal* v. *RekhlalKoduram* [*KuwarlalAmritlal* v. *RekhlalKoduram*, 1949 SCC OnLine MP 35 : AIR 1950 Nag 83] has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in *Karnidan Sarda* v. *Sailaja Kanta Mitra* [*Karnidan Sarda* v. *Sailaja Kanta Mitra*, 1940 SCC OnLine Pat 288 : AIR 1940 Pat 683] has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.

25. The Hon'ble High Court of Calcutta, has encapsulated the basic principles that need to be followed , while cross examining a witness. I am in complete and respectful agreement with the said principles enunciated in the said judgement. The Hon'ble Supreme Court's affirmation of the said principles seals the entire issue.

26. These principles would be applicable, to the present case, if no suggestion had been made to the witnesses appearing for the appellants. A suggestion denying the claims of the appellants had been made to DW.1 that no money was spent by the defendants for repairs or renovation of the suit schedule premises as the suit schedule premises was a new construction. The deposition, of DW1, on this issue is as follows:

> "We invested Rs. 75,00,000/- for the repairs, maintenance and machinery, during the period of Exs. A5 and A6. It is not mentioned in Ex.A6 about Rs. 75,00,000/- investment by us towards maintenance, repairs and machinery. It is not true to suggest that we did not spend even single rupee towardsmaintenance, repairs and machinery, since the said building was a new one and we damaged the schedule properties."

27. In view of this specific suggestion, the principles laid down in the aforesaid judgments would not be applicable to the present case.

28. Once the primary requirement of proof of expenditure has not been demonstrated before the trial Court or this Court, the further issues that would have come up on such proof, do not require any further consideration by this Court.

29. Apart from this, as pointed out by Sri E.V.V.S. Ravi Kumar, no counter claim of any nature had been made against the respondents by the appellants on this count. No Court fee has been paid for seeking

such a relief. In the circumstances, the defence raised by the appellants cannot be accepted.

30. In view of the above discussion, this Court does not find any basis for any interference with the judgment and decree of the trial Court. Accordingly, the Appeal is dismissed.There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

25th March, 2022
Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

A.S.No.54 of 2020

25th March, 2022

Js