



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.02.2022

PRONOUNCING ORDERS ON : 15.02.2022

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.849 of 2014
(Comm.Suits)

M/s.Ramaniyam Real Estates Private Ltd.,
Having their registered Office at
No.17/35, 2nd Main Road
Gandhi Nagar, Adyar
Chennai 600 020.

.. Plaintiff

.vs.

M/s.Spencer's Retail Limited
Rep.by its Authorised Signatory
Mr.Murali
Having its Registered Office at
Duncan House, 1st Floor
31, Netaji Subhash Road
Kolkata-700 001.

..Defendant

Prayer: Civil Suit has been filed under Order IV Rule 1 of O.S.Rules r/w Order VII,

Rule 1 of C.P.C., pleased to pass a judgment and decree as under:-



WEB COPY

a) Directing the defendant to pay a sum of Rs.4,61,42,148/- by way of Compensation together with interest @ 24% p.m., from the date of this Suit till the date of realization by way of compensation towards the construction cost of the Building and Rental Loss and loss of reputation.

b) Mandatory Injunction directing the Defendant to issue public notice in all leading daily news papers seeking apology to the plaintiff for causing damage to the reputation of the Plaintiff's Company by instituting false case.

c) To Award cost of the plaintiff in this suit.

d) pass such further or other orders as this Court may deem fit and proper in the circumstances of the case and thereby render justice.

For Plaintiff : Mr.S.Sundaresan

For Defendant : Mr.C.Manishankar
Senior Counsel
for Mr.Arun C.Mohan



JUDGMENT

The present suit was filed by the plaintiff seeking for the relief of monetary compensation, directing the respondent to pay a sum of Rs.4,61,42,148/- together with future interest at the rate of 24% from the date of filing the suit till the date of realization under the heads:

- a) loss in construction cost
- b) rental loss, and;
- c) compensation for defaming the plaintiff.

The plaintiff has also sought for other consequential reliefs.

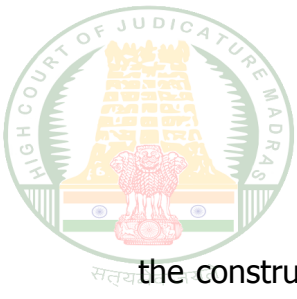
2.The defendant has also made a counter claim for directing the plaintiff to pay a sum of Rs.36,57,852/- along with interest at the rate of 15 % per annum from the date of termination of the agreement, towards refund of the security deposit paid by the defendant.

Brief facts of the case:

3.Case of the plaintiff:

3.1.The plaintiff is a company incorporated under the Companies Act,1956. The plaintiff is the owner of a property measuring an extent of 31032 Sq.ft., abutting GST Road, bearing Door No.1/10, GST Road, ZaminPallavaram Village.

3.2.The plaintiff states that the defendant, through a Letter of Intent dated 29.04.2010, approached the plaintiff to construct a commercial building for their exclusive usage, measuring an extent of 35000 Sq.ft. (approx.), and with a further offer of taking



C.S.No.849 of 2014

the constructed portion on lease for a minimum period of 11 years with a lock in period for the first 3 years. The plaintiff accepted the offer and designed the building exclusively for the use of the defendant according to the need and design given by the defendant.

3.3.The plaintiff states that they entered into an agreement for lease with the defendant on 25.09.2010, as per the terms and conditions approved by the defendant. As per the agreement, the plaintiff had to deliver the physical possession to the defendant on or before 31.03.2011 to enable the defendant to carry out the fit out works. The agreement also provided for termination if there is a delay in the handing over of the property. Alternatively, the agreement also provided for extension of the period at the discretion of the defendant. The agreement stipulated payment of refundable security deposit by the defendant to the tune of Rs.1,46,31,408/- in five instalments at various stages.

3.4.The plaintiff states that the defendant paid a sum of Rs. 2 Lakhs at the time of signing of the agreement and a further sum of Rs.34,57,852/- on 12.11.2010. Thus it is an admitted case of the plaintiff that out of the total security deposit that was fixed under the agreement, the defendant had paid a sum of Rs.36,57,852/-.

3.5.The further case of the plaintiff is that the agreement explicitly contemplated obtaining a planning approval only for a commercial building. According to the plaintiff, the commercial approval is sufficient to put up a hyper market/department stores.

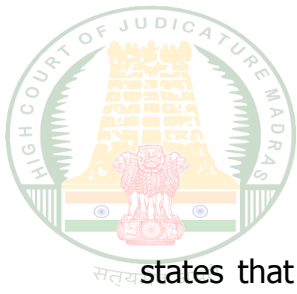


C.S.No.849 of 2014

Accordingly, the plaintiff obtained the planning approval from CMDA for commercial office building and informed the same to the defendant. The defendant sought for a clarification through their email dated 28.04.2011 as to whether they will be able to operate a hyper market in a building for which the approval has been accorded for commercial office building. The plaintiff through email communication dated 30.04.2011 clarified to the defendant that the approval for commercial building can be used for all purposes except running hotels or hospitals. For this purpose, the plaintiff relied upon regulation 16 of the Development Regulations. The defendant was not satisfied with the explanation given by the plaintiff and through their email communication dated 1.5.2011, they informed that they will get a clarification from CMDA through RTI.

3.6.The parties ultimately agreed that the plaintiff will get an approval for departmental store. This was informed to the defendant through email communication dated 03.05.2011. A supplementary agreement was signed between the plaintiff and the defendant on 07.05.2011, through which the date of handing over was extended till 15.08.2011. The plaintiff further states that they renewed the security deposit amount in favour of the defendant by giving post-dated cheques with a good intention that the transaction will go through smoothly.

3.7. The plaintiff states that they had the right to sell the property as per Clause 21 of the agreement dated 25.9.2010 and accordingly, they sold the property in favour of Mr. Y.K.Mohan Rao and others through four sale deeds on 30.11.2011. The plaintiff



states that the revised planning permission was obtained on 18.09.2013. However, the defendant cancelled the agreement through their letter dated 13.01.2014.

3.8. The further case of the plaintiff is that they had refunded the security deposit by way of a cheque for a sum of Rs.36,57,852/- in favour of the defendant. However, the defendant in order to suppress their misdeeds and to avoid paying compensation to the plaintiff, filed a company petition in C.P.No.262 of 2014 before this Court with a malafide intention to defame the plaintiff Company. The plaintiff contested the winding up petition and the petition was dismissed on 01.09.2014. It is under these circumstances, the present suit seeking for compensation has been filed by the plaintiff.

4. Case of the Defendant:

4.1. The defendant is a Public Limited Company incorporated under the Companies Act, 1956. The defendant claims that the plaintiff has defaulted in fulfilling the contract dated 25.9.2010.

4.2. The defendant states that, in spite of various opportunities, the plaintiff failed to perform their obligations under the contract. The defendant further claims that Clause 8(b) in the agreement specifically states that the defendant wanted a planning permission to establish a 'hyper market' but the plaintiff had obtained a 'commercial sanction' instead. The defendant claims that, the interpretation of Regulation 16 by the plaintiff is a mis-interpretation which specifically defines the zoning regulations and

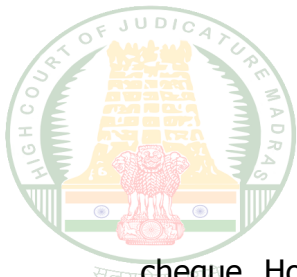


C.S.No.849 of 2014

permissible activities in that particular zone. However, the defendant states that for all the activities (constructions), specific permission is required from the competent authority. The defendant states that it is mandatory for the plaintiff to produce completion certificate and the same was never furnished to the defendant.

4.3.The defendant further states that, they intimated their disagreement on 01.05.2011 on the sanctioned plan and through various communications, the plaintiff was asked to specifically obtain planning approval for running a hyper market. In the meantime the period fixed came to an end and hence they entered into a supplementary agreement on 07.05.2011 and the period was extended upto 15.08.2011. It was agreed that the plaintiff will obtain a revised approval/permission for the property as commercial (department store). In the meantime, the plaintiff had sold the property to 3rd parties on 30.11.2011. The defendant claims that as per Clause 21 of the agreement dated 25.09.2010, a tripartite agreement for lease has to be entered into and that the plaintiff did not take any efforts to sign the said agreement.

4.4.The defendant claims that the plaintiff admitted in various communications their liability to return the interest free refundable deposit paid by the defendant amounting to Rs.36,57,852/-. The defendant states that plaintiff handed over a cheque dated 16.08.2011 to the defendant's official and further informed that if the cheque is not realised, the plaintiff would get the cheque validated from their office or issue a fresh



WEB COPY

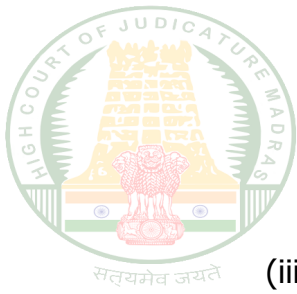
cheque. However, the plaintiff never issued any fresh cheque towards refund of security deposit.

4.5. The defendant states that due to the inaction of the plaintiff, the defendant issued a notice of termination of the agreement on 13.01.2014, thereby calling upon the plaintiff to refund the sum of Rs. 36,57,852/- paid by the defendant. As there was no response from the plaintiff, the defendant states that they filed a Company Petition C.P.No.262 of 2014 before this Court, praying for the winding up of the plaintiff Company as it was unable to discharge its dues. Accordingly, they have filed a counter claim seeking for the refund of Rs.36,57,852/- paid by the defendant, along with interest at the rate of 15% per annum from the date of termination till the date of actual payment.

5. Based on the above pleadings, the following issues were framed by this Court:

(i) Agreement for lease dated 25.09.2010 and supplementary agreement dated 07.05.2011, who has committed the breach of the covenants in these two agreements, i.e., whether the breach has been committed by Plaintiff or defendant ?

(ii) Whether there was delay on the part of the plaintiff in procuring commercial approval and occupation certificate resulting in default qua plaintiff documents No.2 & 14 ?



WEB COPY

(iii) Whether the agreement for lease dated 25.09.2010 stipulates permission for commercial sanction or sanction for hyper market specifically?

(iv) Whether it is feasible to run hyper market with a commercial sanction?

(v) Whether the plaintiff ought to return the interest free refundable deposit paid by the defendant amounting to a sum of Rs.36,57,852/- (Rupees Thirty Six lakhs fifty seven thousand eight hundred and fifty two only) along with interest as per the agreement at 15% per annum from the date of termination?

(vi) What relief is the plaintiff entitled to?

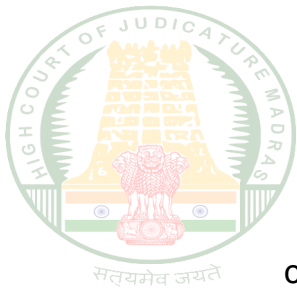
(vii) Whether the defendant is entitled to counter claim or any other relief?

(viii) Which party is entitled to cost and compensatory cost under Section 35 A of the amended Civil Procedure Code?

6. PW-1 and PW-2 were examined on the side of the plaintiff and exhibits P1 to P43 were marked. DW1 was examined on the side of the defendant and exhibits D1 to D19 were marked.

7. The learned counsel for the plaintiff made the following submissions:

- The terms of the lease agreement as well as the offer letter given by the defendant neither insisted that the planning permission should be obtained for hyper market nor stated that it is a pre-condition to commence its operation. The word super market is coming under one of the uses of commercial use. Therefore, the contention of the defendant that the planning permission

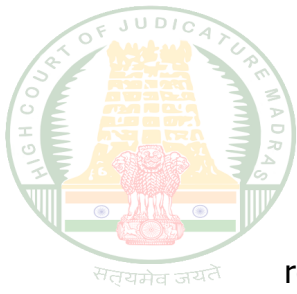


C.S.No.849 of 2014

WEB COPY

obtained on 08.06.2011 is not in consonance with the terms of the agreement, is incorrect. Moreover, the supplementary agreement signed between the parties on 07.05.2011 does not mention that planning permission must be obtained for hyper market, instead the time is extended till 15.8.2011.

- The defendant, through an email dated 28.4.2011, pointed out that the approval accorded by the CMDA is for commercial (office building) and sought for clarification as the nature of usage will be different from office purpose, as they will be operating a hyper market. This issue was clarified by PW-2, in pursuance to Regulation-16, stating that the normal practice in Chennai is to get the non-residential approval as commercial or office space and such type of building can be used for running office, banks, departmental store, except hotel and hospitals. The defendant was not satisfied with this reply and they said that they will take the information from CMDA through RTI.
- The defendant is well aware about the proposed flyover near the demised premises because under the original agreement executed between them, there was a Clause specifically under the head "special provision" which mentioned the terms of payment of rent in case there is a delay in completion of flyover.
- The action of the defendant in refraining from refund of security deposit cheque and suppressing the details regarding the same, shows their indecisiveness regarding the continuation of the lease and fulfilling the terms of the contract which culminated in unilateral cancellation of the agreement on 13.01.2014. This indecisiveness is clear when DW-1 in his cross-examination



C.S.No.849 of 2014

WEB COPY

replies that "they want to take the property on lease. So, the cheques have not been encashed".

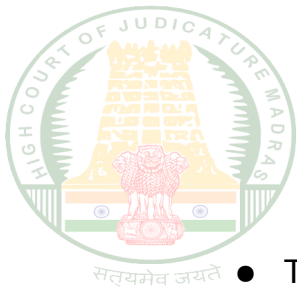
- The plaintiff had fulfilled their part of the obligation on 8.6.2011, before 15.8.2011, the cut-off date mentioned in the supplemental agreement. The first planning permit was obtained on 8.6.2011 and the subsequent permit was obtained on 18.9.2013. Even after receipt of the same, the defendant, by raising false allegations suddenly terminated the agreement on 13.01.2014.
- The plaintiff, in order to substantiate their claim of compensation for defamation, had produced their audited balance sheet of the company to prove that the company had earned a net profit (after tax) of Rs.30,22,74,222/- for the year ending 31st March 2014 and Rs.7,57,42,580/- for the previous year ending 31st March 2013 and the plaintiff was making a good profit and was not in any financial distress as projected by the defendant.
- The plaintiff sustained heavy loss as the building was constructed according to the design and needs of the defendant. Otherwise, the plaintiff would have constructed a multi-storeyed building of 75000 Sq.ft. as against 36000 Sq.ft. and would have sold it for a good profit. The defendant failed to take the property on lease as mentioned in the original agreement. The plaintiff either had to demolish the building or sell it according to the available offers. Therefore, the plaintiff sold it for a discounted price and therefore are entitled to a compensation of Rs.4,61,42,148/-.



WEB COPY

8. The learned Senior Counsel appearing on behalf of the defendant made the following submissions:

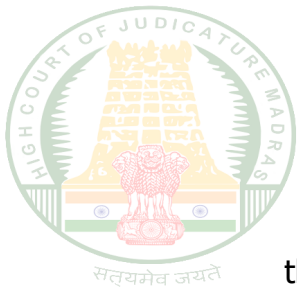
- After extending the handing over date from 31.03.2011 to 15.08.2011 through the supplementary agreement, the plaintiff did not seek further extension. However, the defendant had sent repeated reminders to the plaintiff enquiring the status of the property and proposed handing over date on 20.04.2012, 11.09.2012 and 09.07.2013. The defendant had waited for the plaintiff to deliver the possession till January 2014 and it is only on 13.1.2014 that the defendant terminated the agreement.
- The letters dated 11.9.2012 from the defendant, email dated 20.4.2012 from the defendant, 25.9.2012 from the plaintiff, 9.7.2013 from the defendant, 17.7.2013 from the plaintiff and 25.9.2012 from the plaintiff clearly show that the plaintiff was neither interested to give the property nor in obtaining the required sanction from the authorities to run a hypermarket. The plaintiff, through their letter dated 25.9.2012, has specifically intimated their intention to dis-engage with the defendant and informed that the plaintiff has issued a cheque of Rs.36,57,852/- towards refund of Interest Free Refundable Security Deposit.
- The revised planning permission dated 18.09.2013 was not sent to the defendant and it shows that the plaintiff was not at all interested in continuing the agreement with the defendant.



C.S.No.849 of 2014

WEB COPY

- The defendant had doubts as to whether, with a permission for commercial use, a departmental store/hypermarket could be operationalised. Therefore, the defendant wrote an email to the plaintiff on 28.4.2011 asking the plaintiff to clarify as to whether a hypermarket could be run with a commercial use permission. To this, the plaintiff replied through email dated 30.4.2011, that they may not be able to get a "departmental store approval" as the parking requirement for the same was twice that of an approval for "commercial use". Therefore, plaintiff wanted to obtain permission from the CMDA for an office space only because the plaintiff did not make the requisite parking facilities to obtain a specific permission for running a departmental store.
- The Departmental Regulations of the CMDA, in Annexure XVI, states that the parking requirement for the first 50 Sq.m. was nil. However, for every 50 Sq.m. after the said exception, there is a parking requirement of 2 car space and 1 two-wheeler. The space that the defendant was to occupy was about 3000 Sq.m. Therefore, the requirement for parking would have been significantly higher than what the plaintiff was ready to provide. It was further submitted that without specifically mentioning that permission was sought for a departmental store, the premises could not have been operationalised by the defendant.
- The defendant has filed a counter claim along with the written statement. Based on Clause 5(a) of the agreement, the defendant has claimed interest at the rate of 15% p.a. of the amount of security deposit (Rs.36,57,852/-) paid by

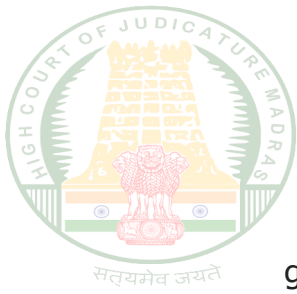


C.S.No.849 of 2014

WEB COPY

the defendant, from the date of termination of the agreement, i.e., 13.1.2014 till the filing of the said counter claim.

- The plaintiff failed to discharge the burden of proof under Section 101 of the Evidence Act, 1872 insofar as proving that the actual cost of construction was exactly a sum of Rs.12,50,00,000/-. The claim of the plaintiff with regard to incurring a loss of Rs.4 Crores towards the construction cost is false and untrue. It was also pointed out that a Sale cum Construction Agreement was entered into by the plaintiff on 2.9.2011 with one Mr. YK Mohan Rao & others for total consideration of Rs.21,00,00,000/- and out of the said consideration, the construction cost is Rs.8,50,00,000/-. It was submitted that, on 2.9.2011 i.e., the date of execution of Sale cum Construction Agreement, there was no dispute between the plaintiff and the defendant and whatever consideration was agreed between the plaintiff and the purchasers, are free and fair consideration. Accordingly, the claim of the plaintiff for a loss of Rs.40,00,000/- is neither true nor has any legal basis as the consideration was agreed 28 months before the date of termination of the agreement and 2 months before the revised planning permission was sought. Legally, the plaintiff is not even the owner of the property on the date of termination.
- It was further submitted that assuming without admitting that even if the plaintiff had incurred any loss due to termination of the agreement, it is well settled in law that indirect and consequential damages even if occurred are not

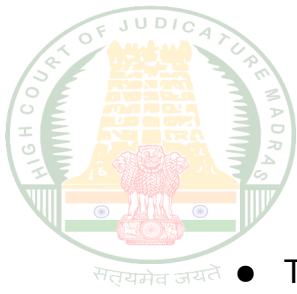


granted and it is excluded under law.

WEB COPY

- The plaintiff has not come before this Court with clean hands as the subject matter of the suit is already alienated by the Plaintiff through a registered sale deed.
- The plaintiff claims a rental loss for a period of 4 months. The basis of this claim is that the revised permission for running of the departmental store was obtained on 18.09.2013 and the agreement was terminated on 13.01.2014. Therefore, for not occupying the premises for 4 months, Plaintiff suffered rental loss of Rs. 48,00, 000/-.However, as per the agreement, rental commences only after handing over the possession of the property subject to completion of the scope of work of the Plaintiff and submission of documents/ approvals mentioned in the Agreement.
- As per Clause 2 of the Supplementary agreement, the Plaintiff was to give a notice in writing of seven days to the defendant to take over possession of the demised premises. The Plaintiff had never done the same. Moreover, Clause 5 (a) of the agreement entitles them to terminate the agreement and recover security deposit paid till such date and in case of delay in repayment of the security deposit, the plaintiff had also agreed to refund the same along with interest at 15% p.a. from the date of termination till the actual date of

payment. Further, the plaintiff has not challenged the termination on any ground, therefore the plaintiff is not entitled to this relief.



C.S.No.849 of 2014

WEB COPY

- The plaintiff has not provided any proof as to the loss suffered due to the alleged defamation caused to the plaintiff by the defendant and has also not met with the parameters required for claiming the compensation under the head defamation.
- The learned Senior Counsel further raised a question of law regarding the maintainability of the suit as the plaintiff has sought for 2 distinctive reliefs for which the cause of action is entirely different, one under the agreement and another a tort for defamation. The plaintiff has not filed any application under Clause 14 of the Letters Patent and on this ground alone, the suit is liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and carefully perused the pleadings and the oral and documentary evidence available on record.

10. Before dealing with the issues that have been framed, this court wants to capture the exact areas of dispute that are involved in the present case.

11. The undisputed facts in the present case are that the plaintiff was the owner of the subject property and there was an agreement between the plaintiff and the defendant on 25.09.2010 marked as Ex.P2 to the effect that the plaintiff will obtain a plan for a commercial building and will put up the construction and handover the same to the



C.S.No.849 of 2014

defendant on lease to run a hyper market/departmental store/super market. The agreement stipulated that the plaintiff will obtain the permission from the competent authority within two months from the date of the agreement. It was further agreed that the construction will be completed and handed over to the defendant on or before 31.03.2011. The agreement provided for payment of interest free refundable security deposit of a sum of Rs.1,46,31,408/- by the defendant in five instalments at various stages and the defendant had paid a sum of Rs.36,57,852/-.

12.It is also an admitted fact that the plaintiff obtained a payment advice on 26.04.2011, marked as Ex.P4, from CMDA and the permission was for putting up a commercial office building. When this was communicated to the defendant, the defendant was seeking for a clarification as to whether a hyper market can be operated based on the approval. There were email communications between the parties which are marked as exhibits P6 to P13. It is seen from these communications that the defendant was not satisfied with the type of approval to be granted by CMDA and the plaintiff was trying to explain that the departmental store can be run with the available approval. Ultimately, both the parties agreed that the plaintiff will get a revised approval from CMDA for a departmental store.

13. During this process, the period fixed under the original agreement was coming to an end and hence the parties entered into a supplementary agreement dated 07.05.2011, marked as Ex.P14. As per this agreement, the plaintiff had to get the revised



C.S.No.849 of 2014

approval for usage of the premises as commercial (department store). The handing over date was extended upto 15.8.2011. It was also made clear under this agreement that the terms and conditions and the clauses in the original agreement dated 25.9.2010 will remain unaltered and unaffected.

14. On 08.06.2011, a planning permit was issued by CMDA which is marked as Ex.P15. A close look at this planning permission shows that it was issued for office building (commercial). This was issued pursuant to the first application submitted by the plaintiff.

15. Clause 21 under the original agreement dated 25.09.2010 enabled the plaintiff to sell the property during the subsistence of the agreement. The manner in which it will not affect the rights of the defendant to get possession of the property and lease agreement executed in their favour, was also provided under the said Clause. The plaintiff exercised their right to sell the property and accordingly they entered into a sale cum construction agreement with the prospective purchasers on 02.09.2011, marked as Ex.P16. In this agreement, the earlier agreement entered into between the plaintiff and defendant was taken note of and the construction was agreed to be put up accordingly. The prospective purchasers under this agreement were aware of the obligations of the plaintiff under the original agreement towards the defendant.

16. The plaintiff executed registered sale deeds in favour of the prospective



C.S.No.849 of 2014

purchasers on 30.11.2011 and these sale deeds have been marked as exhibits P17 to P20. There is nothing on record to show that the defendant was put on notice before the plaintiff went ahead and sold the property.

17. Even though the supplementary agreement had stipulated the handing over date as 15.8.2011, both the parties were not taking the cut off date very seriously and probably, they were more interested in going ahead with the project and completing it rather than sticking on with strict time lines.

18. It is clear from the communication dated 11.09.2012 made by the defendant to the plaintiff, marked as Ex.P22 that there was some discussion that was going on between the parties and it seems that the plaintiff had assured that the approval will be obtained by March 2012 and the property will be handed over by June 2012.

19. Therefore by virtue of this communication, the defendant was insisting for an update and bringing to the notice of the plaintiff the consequence of the delay in getting the approval and handing over the possession.

20. It is also seen from the email communication dated 02.04.2013, marked as Ex. P23 that the parties were attempting to finalise the lease agreement. A copy of the lease agreement that was annexed with the email communication shows that the defendant by then were ready to proceed along with the subsequent purchasers of the



property and the plaintiff was made a confirming party in the draft lease agreement.

WEB COPY

21.The communication dated 09.07.2013 from the defendant to the plaintiff and which has been marked as Ex.P24 shows that the defendant was actively following up with the subsequent purchasers and the defendant was insisting for the status of the required approval from CMDA and the outer time limit within which they can enter into a tripartite agreement with the subsequent purchasers and the plaintiff. Till this stage, this court is not able to see any serious dispute between the parties and they were only trying to somehow finalise the deal.

22.It can also be seen from records that in the meantime, the plaintiff had received an advice from CMDA dated 30.03.2012, marked as Ex.P41 wherein it is seen that the planning permission application had been processed for the proposed construction of stilt + 4 floors departmental stores and service apartments at the subject property and the plaintiff had been directed to pay the necessary charges within a stipulated period. The plaintiff had also made the necessary payments. Pursuant to the same, the planning permit was issued for putting up a departmental store and service apartments on 18.09.2013 which is marked as Ex.P26. During the interregnum period, there was a communication dated 25.09.2012 made by the plaintiff to the defendant wherein the plaintiff informs the defendant that they have already returned back the refundable security deposit by way of cheque and that the plaintiff is free to deal with the property in any manner and the plaintiff also informs the defendant that they will inform



C.S.No.849 of 2014

the defendant after receipt of the CMDA approval and may re-engage with the defendant.

WEB COPY

It looks like the frustration started setting in somewhere around this time. The same stand is reiterated by the plaintiff through their letter dated 17.07.2013, marked as Ex.P25. Even in this letter the plaintiff sounds as if they are no longer interested to proceed further with the agreement. It is after this letter, the plaintiff gets the actual planning permit dated 18.9.2013 from CMDA. At the stage when the planning permit was in the hands of the plaintiff, the relationship between the parties was at a breaking point.

23. Eventually, the defendant proceeded to issue the termination letter dated 13.01.2014 marked as Ex. P27. By virtue of this termination agreement, the agreement dated 25.9.2010 and the supplementary agreement dated 07.05.2011 were terminated and the defendant called upon the plaintiff to repay back the security deposit of a sum of Rs.36,57,852/- on or before 20.01.2014. A copy of this termination letter was also marked to the subsequent purchasers of the property. This was the last straw on the camel's back.

24. According to the plaintiff, the defendant was intentionally dragging on with the agreement as a strategy to watch the development in the proposed flyover that was coming up near the subject property and take advantage of the special provision under the agreement dated 25.09.2010. It is the specific case of the plaintiff that the planning permit already obtained was enough to run a departmental store and infact the defendant was running departmental stores in two other places only in a construction for



C.S.No.849 of 2014

WEB COPY

which commercial sanction was granted by the CMDA. According to the plaintiff, the unclean mind of the defendant gets exposed since even after the refund of the security deposit by way of cheque as early as on 15.2.2012, they never encashed the cheque and they were intentionally keeping the agreement in limbo. Ultimately to cover up their illegalities, they unilaterally terminated a stale agreement and even initiated winding up proceedings in the guise of recovering the security deposit. Hence these are broadly the areas of controversy that is focused by the plaintiff and the plaintiff has sought for compensation under various heads.

25. Per contra, according to the defendant, the plaintiff has failed to fulfil their requirements within time, right through. It is the plaintiff who had kept the defendant in anticipation mode till the end inspite of the defendant making all efforts to close the deal without strictly sticking on with the timelines. It is the plaintiff who had abruptly shown their disinterest in proceeding further with the agreement after they sold the property to third parties. Once the defendant clearly understood that the plaintiff was no more interested in concluding the deal, they had to terminate the agreement and seek for the refund of the security deposit. These are broadly the areas of controversy insofar as the defendant is concerned.

26. Having set out the background of the case and captured the areas of controversy, this Court will now deal with the issues herein below.

27. To start with, the third and fourth issues are taken up for consideration. A



C.S.No.849 of 2014

careful reading of Ex.P2 which is the agreement dated 25.09.2010 shows that the plaintiff will apply and obtain a plan for commercial sanction wherein the defendant will be able to operate their supermarket/departmental store/retail outlet. The agreement also provided for the additions and modifications that could be done in the proposed building. As per the agreement, the sanction will be obtained by the plaintiff within two months from the date of execution of the agreement and the occupation of the building will be handed over to the defendant on or before 31.03.2011. Accordingly, the plaintiff applied for a commercial sanction with CMDA. The CMDA through their communication dated 26.04.2011 directed the plaintiff to pay the necessary charges to accord sanction for the commercial (office) building. After the payment advice was received from CMDA, the plaintiff sent a communication dated 28.4.2011, to the defendant by attaching the scanned copy of the payment advice received from CMDA. The defendant sought for a clarification from the plaintiff as to whether a hyper market can be operated in a building for which approval is accorded by CMDA for commercial (office) building.

28.The plaintiff in reply to this query through their communication dated 30.04.2011 informed that it is a normal practice to get approval as a commercial or office space in which any non-residential activities can be undertaken except running a hotel or a hospital. The plaintiff also further clarified that if they go for a sanction specifically for a departmental store, there will be a requirement of car park and two wheeler parking which will be two times the parking as shown in the proposed plan. The plaintiff made it clear that it is not feasible and informed the defendant that they can obtain a no



C.S.No.849 of 2014

objection certificate for running a hyper market in the proposed building for which approval is granted by CMDA as a commercial (office) building. To substantiate this stand taken by the plaintiff, they also informed the defendant that they are running their business in Besant Nagar and Thiruvanmiyur in a building for which only a commercial sanction was issued by CMDA.

29.The learned counsel for the plaintiff brought to the notice of this court Rule 6 (2) of the Development Control Rules and submitted that where the use of the site or the premises is not specifically designated in the development plan/master plan, it can be used for all activities that are permissible in the land use zone in which the site or the premises falls. The learned counsel submitted that the property in question falls under the commercial zone. It was further submitted that Rule 16 of the Development Control Rules specifically deals with commercial use zone and this rule permits all commercial and business uses including all shops, stores, markets, shopping centres in the building or the premises which falls under this zone. Therefore according to the learned counsel for the plaintiff, a departmental store or a hyper market or a retail shop can be run by the defendant in the premises with the sanction accorded by CMDA and there is no specific provision to get sanction for a departmental store or a hyper market.

30.The defendant was not convinced with the answer given by the plaintiff for the query and therefore they decided that they will independently enquire and get a confirmation from CMDA through RTI. There is no material to show that the defendant



took any steps in this regard.

WEB COPY

31. There were subsequent communications between the parties and it was agreed that the plaintiff will get a revised approval/permission for usage of the premises as commercial (department store). This was probably done to satisfy the parking requirements for departmental store as prescribed under Annexure XVI of the Development Control Rules. It is therefore clear that the area of disagreement was on the parking requirements and there was not much of controversy that a departmental store can be run with a sanction obtained by the plaintiff. The defendant is not able to produce any material to the contra.

32. This led to a supplementary agreement being entered into between the parties on 7.5.2011. By virtue of this supplementary agreement, the plaintiff had agreed to obtain revised approval/permission for usage of the premises as commercial (departmental store) and the handing over was revised and extended upto 15.8.2011. Apart from these two major modifications from the original agreement, all the other terms and conditions and clauses of the agreement dated 25.9.2010, governed the parties.

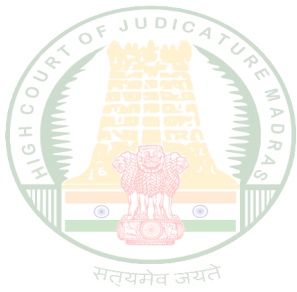
33. In the meantime, the original application dated 12.07.2010 was processed by the CMDA and the planning permit was issued on 08.06.2011 (Ex.P15). Obviously, the planning permit was issued for office building (commercial) since the application was made only for this purpose. It is seen from the deposition of PW- 1 that the construction



C.S.No.849 of 2014

was completed by December 2011 in line with the approval granted by CMDA for the office building (commercial). After the parties entered into supplemental agreement, the plaintiff once again made an application for revised approval/permission on 07.07.2011 for usage of the property as commercial (departmental stores). That apart, the plaintiff also applied for adding one more floor to the existing structure and thus the proposed construction under the revised application was for stilt + 4 floors-departmental stores and service apartments. On receipt of the revised application, the CMDA issued the payment advice to the plaintiff through letter dated 30.03.2012, marked as Ex. P41 and the payment was made by the plaintiff. Ultimately the planning permit was issued by the CMDA on 18.09.2013, marked as Ex. P26.

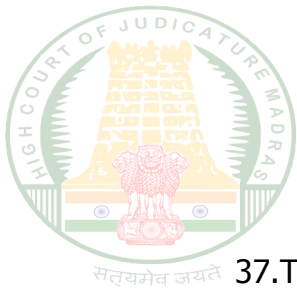
34. On a cumulative reading of the materials available on record, it can be seen that there is no specific provision under the Development Control Rules which specifically deals with approving a sanction for a hyper market. The first agreement dated 25.09.2010 only used the term "commercial sanction". The understanding of the plaintiff was that to run a departmental stores/hyper market, a commercial sanction is enough since the property in question falls under commercial zone. Infact the defendant is carrying on with the departmental store in two more places at Besant Nagar and Thiruvanmiyur and the premises where the departmental store is being run has been accorded only a commercial sanction. There is therefore no bar under the relevant regulations to run a department store/hyper market in a premises for which the CMDA accords commercial sanction.



WEB COPY

35.The defendant was apprehensive about the sanction and it seems that they required sufficient parking space. Therefore, they were pushing the plaintiff to get the revised sanction for commercial (departmental store). The only difference between the earlier sanction and the later sanction was that there was an increase in the parking space as required under Annexure XVI of the Development Control Rules. The third and fourth issues are answered accordingly.

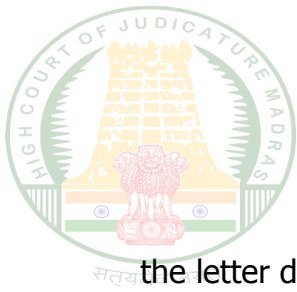
36.This Court will now take up the first and second issues for consideration. As per the original agreement dated 25.09.2010, the sanction must be obtained from CMDA within two months and the property must be handed over to the defendant by 31.03.2011. The plaintiff made an application seeking for commercial approval and the payment advice was given by CMDA on 26.04.2011 after processing the application. Strictly speaking, the payment advice itself was beyond the time fixed by the agreement. The admitted case of the plaintiff is that the construction was completed as per the approved plan only in December 2011. If really the defendant was serious about the time lines, the defendant had the option under the agreement to terminate the agreement and to get back the security deposit. However the defendant who was not very clear about the sanction obtained by the plaintiff to run the departmental store, decided to extend the time limit through the supplementary agreement dated 7.5.2011 wherein the time for handing over the property was extended till 15.8.2011.



WEB COPY

37.The plaintiff was expected to get the revised approval for usage of the premises as commercial (department store). The plaintiff made the revised application only on 07.07.2011. The payment advice was received from CMDA only on 30.03.2012 and ultimately the planning permit was issued only on 18.09.2013. A reading of the original agreement dated 25.09.2010 and the supplementary agreement dated 07.05.2011 shows that the plaintiff must not only get the sanction/approval and complete the construction within the stipulated time but also must get the competition certificate and put the defendant in possession within the stipulated time. None of this happened within the timelines fixed under the supplementary agreement. While the revised sanction was pending before CMDA, the plaintiff had proceeded to sell the property on 30.11.2011. The defendant also had the security deposit cheque for a sum of RS.36,57,852/- renewed from the plaintiff as early as in February 2012. If the defendant had felt that there was a delay on the part of the plaintiff and the time lines were already over, the defendant could have very well terminated the contract and encashed the cheque. The defendant did not take any such steps. It is therefore very clear that both the parties did not treat the time as the essence of the contract. Ultimately the contract got terminated for different reasons and not on the ground of non-adherence to the timelines fixed under the agreement.

38.It is clear from the above discussion that the defendant and the plaintiff were attempting to close the deal at some point of time and it is the subsequent sale of the property which actually slowed down the process. The plaintiff started losing interest in the contract and it is evident from their letter dated 25.09.2012 wherein while replying to



the letter dated 11.09.2012, the plaintiff wrote as follows:

WEB COPY

“We are in receipt of your letter referred above. We are surprised to note the claims in your letter referred above and deny all the claims raised therein.

As per your request we had applied for a revised approval. Since the approval is inordinately getting delayed and at your request we have already issued cheque towards refund of the Interest Free Refundable Security Deposit of Rs.36,57,852/ (Rupees Thirty Six Lakhs Fifty Seven Thousand Eight Hundred and Fifty Two only) paid by you.

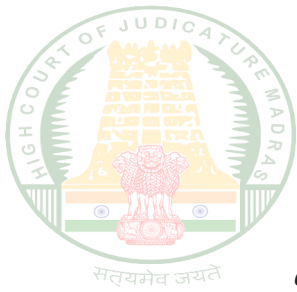
We are surprised to receive a letter towards the subject matter. As we have already returned your advance, we are free to deal with the property to any prospective tenant.

This is for your kind information. We will inform you on receipt of CMDA approval and we may re-engage, subject to availability of the property at that time.”

39.This decline in interest on the part of the plaintiff is further evident from their letter dated 17.07.2013 wherein the plaintiff wrote as follows:

“We are in receipt of your letter first above referred. We are surprised to receive such a letter from you despite of the receipt of our letter cited second above.

In our earlier reply cited above itself we have clearly indicated that we will inform about the status of the subject property and

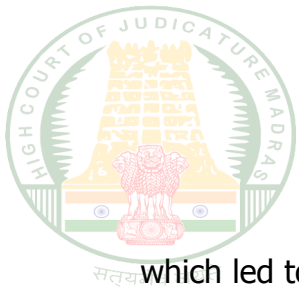


WEB COPY

about its availability if we intend to re engage. While so we are unable to understand the reason for the issuance of your letter.”

40.The above letter was written by the plaintiff when the defendant through their letter dated 09.07.2013 requested the plaintiff to provide the status of the revised approval and for entering into tripartite agreement with the new purchasers. The intention of the plaintiff becomes evident from the above two letters and even at that point of time, it was left to the defendant to terminate the contract and encash the security deposit cheque that was already available with the defendant.

41.The plaintiff received the revised planning permit from CMDA on 18.9.2013. By then, the relationship between both the parties had reached the nadir. Thereafter, the defendant proceeded to issue the termination letter dated 13.1.2014 (Ex. P27) and thereby expressed their intention to terminate the agreement and to recall the security deposit. The plaintiff by their conduct had actually backed out of the agreement much before the termination letter was issued by the defendant. The plaintiff at least on three occasions had renewed and issued the security deposit cheque for a sum of Rs.36,57,852/- and for reasons best known to the defendant, they chose not to encash the cheque and the type of answers that was given by DW-1 shows that the cheque was available with the local office and there was lack of communication between the local office and head office at Kolkata. If the defendant had encashed the cheque, everything would have come to an end then and there. However it is the clash of ego on both sides



WEB COPY

which led to the subsequent events starting from exchange of legal notices upto the filing of the present suit.

42. In view of the above discussion, strictly speaking in terms of the Clauses contained under the agreement, it was the plaintiff who did not comply with the timelines in getting the sanction and putting the defendant in possession of the property. Even though the defendant was willing to condone the delay and work with the plaintiff to get the tripartite agreement and take possession of the property to run the departmental store, the plaintiff lost interest and eventually it resulted in the termination of the agreement by the defendant. The first and second issues are answered accordingly.

43. This Court will now take up the sixth issue for consideration. This issue deals with the relief to which the plaintiff is entitled to. The plaintiff has sought for compensation under three heads viz. loss in construction cost, rental cost and compensation for defaming the plaintiff. Insofar as the head rental loss is concerned, the plaintiff has sought for a sum of Rs. 48 Lakhs. This amount is for the period of 4 months from October 2013 to January 2014. The basis for claiming this amount is that the plaintiff had obtained the planning permit on 18.09.2013 and the agreement was terminated on 13.01.2014. In the considered view of this Court, the payment of rent will start only from the time when the possession is actually handed over to the defendant after getting the completion certificate. This is made clear under Ex.P2. In the present case, by the time the plaintiff obtained the revised planning permit, they had lost interest



C.S.No.849 of 2014

in going ahead with the agreement which became evident from their letters dated 25.09.2012 and 17.07.2013. Hence the plaintiff is not entitled for any compensation under the head "rental loss".

44.Insofar as the loss claimed under the head "defaming the plaintiff", this claim is made on the ground that the defendant had intentionally filed a Company Petition in C.P.No. 262 of 2014 under Section 433(e) and (f) read with Section 434 (1) (a) of the Companies Act, 1956 for winding up the plaintiff company and for appointment of an official liquidator. According to the plaintiff, this petition was filed even after the plaintiff had refunded the security deposit to the defendant by way of cheque. The further grievance of the plaintiff is that they were a profit making company and inorder to substantiate the same, they had filed Ex. P35. Hence according to the plaintiff, the petition was filed only to cause embarrassment to the plaintiff.

45.A careful reading of the order passed by this court in the Company Petition marked as Ex.D17 shows that the petition was dismissed both on the ground of maintainability and on the ground that there is a genuine dispute with regard to the liability. This court also took into consideration the pendency of the present suit, which had been filed by then.

46.If the Court had felt that the defendant had initiated frivolous proceedings for winding up the company without any basis, cost could have been imposed on the



C.S.No.849 of 2014

defendant. The fact that the Company Petition ultimately came to be dismissed, only reiterated the stand of the plaintiff that their company was not at the stage of being wound up. Hence there was no real loss of name for the plaintiff due to these proceedings. Not all frivolous litigations will end up claiming for compensation for defamation. The defendant worked out a remedy that was available in law and they failed in the said attempt. If at all the court felt that the proceedings were initiated with some ulterior motives, it should have been dealt with in the very same proceedings by imposing cost. The proceedings per se will not give rise to a cause of action to claim compensation for defamation.

47. There is yet another reason as to why the plaintiff cannot claim compensation under this head. The compensation claimed under the other two heads arises out of the agreement and the compensation claimed under the head of defamation arises out of a civil wrong (tort). The cause of action for defamation is entirely different and strictly speaking, it cannot be combined with the compensation claimed under the other two heads unless the plaintiff had obtained a specific leave for joinder of cause of action. Admittedly, the plaintiff did not obtain such a leave. Therefore the compensation claimed under this head is a misjoinder of cause of action. Accordingly, the plaintiff is not entitled to any compensation under this head.

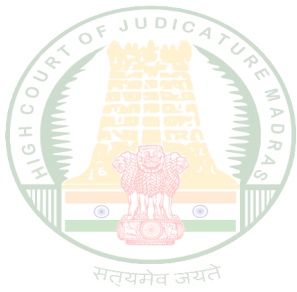
48. The other head under which the plaintiff has sought for compensation is under the head of "loss in construction cost". The case of the plaintiff is that they were entitled



C.S.No.849 of 2014

to put up a multi-storeyed building of 75000 Sq.ft. and whereas they were forced to confine the construction to 33000 Sq.ft., in order to meet the requirements of the defendant. Hence according to the plaintiff, they could have earned more profit if they had gone ahead and put up a multi-storey building of 75000 Sq.ft. The plaintiff in order to further substantiate their case, have pointed out that they have paid a sum of Rs.1,84,00,000/- crores to the CMDA during the first planning permission and a further sum of Rs.1,83,81,000/- at the time of the second planning permission. That apart, the total cost of construction of the building was Rs.12,50,00,000/- and whereas it was valued for a reduced price of Rs.8,80,00,000/-. Ex.P40 is the project report that has been filed to substantiate this claim. The plaintiff has also marked Exhibits P42 and P43 to substantiate the fact that they sold the property to the subsequent purchasers for a total consideration of Rs.18,32,92,518/-. According to the plaintiff, through this process, they have incurred a net loss of Rs.2,74,10,075/-.

49.This Court has already held that the defendant has not committed any breach of the covenants in the agreement. Therefore if the plaintiff had actually incurred any consequential damages while going through this project, the same cannot be recovered from the defendant and such recovery will not have a statutory backing. That apart, the plaintiff has not specifically challenged the cancellation of agreement by the defendant by seeking for a declaration and hence it must be construed that the plaintiff has conceded to the termination of agreement and is only agitating for the consequences arising out of such termination.



WEB COPY

50. One disturbing factor that was noticed in the present case was the fact that the defendant had already received the refund of security deposit cheque from the plaintiff and for some strange reasons, they did not choose to encash the same. When questions were put to DW-1 in this regard, he merely states that the cheques were not encashed since they wanted to take the property on lease. Most of his answers were evasive. When the defendant issued notice before initiating winding up proceedings, a reply was given by the plaintiff on 15.3.2014 which is marked as Ex.P31. In the said notice, it was clearly stated that the cheque was first issued on 16.8.2011. Thereafter a fresh cheque was issued for the sum of Rs.36,57,852/- on 15.2.2012. Even in this reply notice, the defendant was requested to come up with their definite stand on two issues and the same is extracted hereunder:

“We now take this opportunity to seek this information from you.

1. PLEASE INFORM US WHETHER M/s.SPENCER'S RETAIL LIMITED IS PROCEEDING WITH A FRESH LEASE AGREEMENT WITH OUR NEW OWNERS WITH WHOM THEY HAVE ALREADY FINALISED DRAFT AGREEMENT?

2. PLEASE INFORM US WHETHER M/s.SPENCER'S RETAIL LIMITED IS ADJUSTING THE PART ADVANCE PAYMENT MADE TO US TOWARDS RENTAL ADVANCE TO THE NEW OWNERS IN THE LEASE AGREEMENT?”

51. In spite of the receipt of the above reply from the plaintiff, the defendant informed the plaintiff that there is no question of adjusting the refundable deposit and



C.S.No.849 of 2014

WEB COPY

insisted for the refund of the amount. Thereafter, they proceeded to file the winding up proceedings. The plaintiff has adjusted this amount from the total sale consideration that was received by them from the subsequent purchasers. Hence, even though the plaintiff is liable to repay back the refundable security deposit to the defendant, this court wants to impose exorbitant cost on the defendant for their attitude. The cost imposed by this court will be adjusted from the counter claim. The sixth issue is answered accordingly.

52. This Court will now take up Issue Nos. 5 and 7 for consideration. The defendant has sought for a counter claim for the refund of a sum of Rs.36,57,852/- from the plaintiff. There is no dispute with regard to the fact that the plaintiff had received refundable deposit of a sum of Rs.2,00,000/- at the time of entering into the agreement dated 25.09.2010 and a sum of Rs.34,57,852/- on 12.11.2010. On termination of the agreement, this amount is liable to be refunded to the defendant. Admittedly, this amount has not been encashed by the defendant inspite of availability of the cheque issued by the plaintiff. Therefore, even though this court holds that the defendant is entitled for the counter claim, this court has taken note of the conduct of the defendant and held that this amount is going to be adjusted towards exorbitant cost that is going to be imposed on the defendant. Both the issues are answered accordingly.

53. This Court will now take up the last issue viz. Issue No.8. The Commercial Courts Act, 2015 has ushered in a new regime of costs in commercial litigation by substituting Section 35 and omitting clause (2) from Section 35A of the Code of Civil



C.S.No.849 of 2014

WEB COPY

Procedure. Section 35 (3) sets out the various circumstances which will weigh the courts while imposing costs. The first head under this provision is the conduct of parties. The Court can take into consideration the statutory intent that no litigant in the commercial division can ordinarily escape a litigation loss without an accompanying order of costs. The amendment contemplates actual costs and compensatory costs both. The said provision also brings in the concept of partial success. In other words, the party succeeding in some of the issues and failing in the other issues. There is yet another head which discourages frivolous and futile legal adventures even when there is a proposal to settle by one of the parties. The various heads under which the cost can be imposed is set out under Section 35(4). The Act has also inserted compensatory cost without any restrictions by omitting clause (2) from Section 35A.

54. In the present case, the defendant immediately after coming to know that the plaintiff is no more interested in proceeding further with the agreement, should have terminated the agreement and encashed the cheque that was available readily. This intention was expressed by the plaintiff through their letter dated 25.09.2012. Once again the plaintiff informed through their letter dated 17.07.2013 that they were no more interested in the agreement. The defendant was also aware of the fact that the property has been sold to third parties and they have to be brought into the picture if they want to proceed further in taking the property on lease. The person who was actually incurring the expenses was the plaintiff towards payment to CMDA, construction cost etc. In fact the plaintiff had to put up the construction within the bounds of the requirements of the



C.S.No.849 of 2014

defendant. Even while selling the property, they had to account for the refundable security deposit. Whereas on the side of the defendant, except the payment of the refundable security deposit, they did not incur any tangible cost or expenses. In spite of the same, it is the defendant who started an unnecessary litigation by initiating winding up proceedings. This is a clear case where the defendant ought to have avoided litigation. There was no reason for the defendant to push the plaintiff and get the property leased out to them. Any prudent person would have simply encashed the refundable security deposit cheque and walked away. The attitude of the defendant to initiate this unnecessary litigation is also apparent from some of the evasive and irresponsible answers given by DW-1 in the course of the evidence.

55. In view of the above discussion, this Court is inclined to impose exemplary cost on the defendant for the unwarranted litigation/avoidable litigation, equivalent to the amount claimed by them as counter claim. In other words, the counter claim that was ordered in favour of the defendant is entirely set off from the cost imposed on the defendant and payable to the plaintiff. This issue is answered accordingly.

56. In the result, the suit filed by the plaintiff is dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs. Insofar as the counter claim made by the defendant is concerned, the same is allowed and it is set off entirely from the exemplary cost awarded against the defendant and payable to the plaintiff.



C.S.No.849 of 2014

WEB COPY

15.02.2022

Internet: Yes

Index : Yes

KP

..



WEB COPY

List of Witness examined on the side of the Plaintiff:-

Mr.V.Jagagannathan - PW-1
R.Viswanathan - PW-2

List of Witness examined on the side of the Defendant:-

G.R.Srikanth - DW-1

List of the Exhibits marked on the side of the Plaintiff:-

<u>Sl. Nos.</u>	<u>Exhibits</u>	<u>Description of documents</u>
1.	Ex.P.1	Copy of offer letter dated 29.04.2010 by defendant. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
2.	Ex.P2	Copy of Agreement dated 25.09.2010 for lease entered between the defendant and plaintiff. Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
3.	Ex.P3	Copy of Title Investigation Report dated 06.09.2010 of M/s.R & P Partners. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
4.	Ex.P.4	Copy of DC advice dated 26/4/2011 for planning permission. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)



WEB COPY

Sl. Nos.	Exhibits	Description of documents
5	Ex.P-5	Copy of E-mail dated 28.04.2011 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
6.	Ex.P-6	Copy of E-mail reply dated 28.04.2011 by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
7.	Ex.P-7	Copy of E-mail dated 30.04.2011 sent by the plaintiff to the defendant.
8.	Ex.P-8	Copy of E-mail reply dated 01.05.2011 by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
9.	Ex.P-9	Copy of E-mail dated 03.05.2011 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
10.	Ex.P-10	Copy of E-mail reply dated 03.05.2011 by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
11.	Ex.P-11	Copy of E-mail dated 05.05.2011 by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).



WEB COPY

Sl. Nos.	Exhibits	Description of documents
12.	Ex.P-12	Copy of E-mail dated 05.05.2011 by plaintiff to the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
13.	Ex.P-13	Copy of E-mail reply dated 05.05.2011 by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
14.	Ex.P-14	Copy of Supplementary Agreement dated 7.5.2011 for lease entered between the defendant and plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy and also the original shown as signatures which the copy filed does not have.)
15.	Ex.P-15	Copy of Planning permit dated 8/6/2011 issued by CMDA. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
16.	Ex.P-16	Copy of Sale cum Construction Agreement dated 2/9/2011 entered by the plaintiff with the purchasers. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
17.	Ex.P-17	Copy of Sale Deed dated 30/11/2011 executed by the plaintiff in favour of Mr.Y.Anand, vide Doc.No.7567/2011. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)



WEB COPY

Sl. Nos.	Exhibits	Description of documents
18.	Ex.P-18	Copy of Sale Deed dated 30/11/2011 executed by the plaintiff in favour of Mr.Y.K.Mohan Rao, vide Doc.No.7568/2011. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
19.	Ex.P-19	Copy of Sale Deed dated 30.11.2011 executed by the plaintiff in favour of Mr.Y.Anand, vide Doc.No.7569/2011. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
20.	Ex.P-20	Copy of Sale Deed dated 30.11.2011 executed by the plaintiff in favour of Mr.Y.S.Lakshmi, vide Doc.No.7570/2011. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
21.	Ex.P-21	Copy of E-mail dated 9/2/2012 sent by the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
22.	Ex.P-22	Copy of Letter dated 11/9/2012 sent by the Defendant to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
23.	Ex.P-23	Copy of E-mail dated 2/4/2013 sent by the plaintiff. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
24.	Ex.P-24	Copy of E-mail dated 9/7/2013 sent by the defendant to the plaintiff. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).



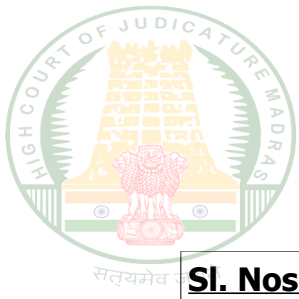
WEB COPY

Sl. Nos.	Exhibits	Description of documents
25.	Ex.P-25	Copy of E-mail dated 17/7/2013 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
26.	Ex.P-26	Copy of Planning permit dated 18/9/2013 issued by CMDA. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
27.	Ex.P-27	Copy of letter dated 13/1/2014 sent by the defendant to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
28.	Ex.P-28	Copy of Acknowledgement dated 7/2/2014 issued by CMDA. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
29.	Ex.P-29	Copy of E-mail dated 26/2/2014 sent by Mr.Y.K.Mohan Rao to the defendant. (Objected. Marked subject to admissibility as there is no accompanying Sec.65(b) certificate and document is purported to be an E-mail and mode of proof).
30.	Ex.P-30	Copy of letter dated 5/3/2014 sent by defendant to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
31.	Ex.P-31	Copy of letter dated 15/3/2014 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)



WEB COPY

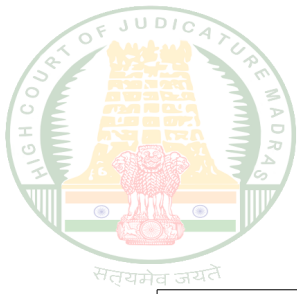
Sl. Nos.	Exhibits	Description of documents
32.	Ex.P-32	Copy of letter dated 15/4/2014 sent by defendant to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
33.	Ex.P-33	Copy of letter dated 2/5/2014 sent by defendant to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
34.	Ex.P-34	Copy of letter dated 7/5/2014 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
35.	Ex.P-35	Copy of letter dated 29/4/2014 from Mohan Rao to the plaintiff. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
36.	Ex.P-36	Copy of Balance Sheet dated 18/8/2014 of plaintiff's company as on 30/3/2014. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)
37.	Ex.P-37	Original Velachery Building approved plan.
38.	Ex.P-38	Copy of Besant Nagar Building approved plan. Copy of letter dated 7/5/2014 sent by the plaintiff to the defendant. (Objected. Marked subject to admissibility and mode of proof as the document is the photocopy.)



Sl. Nos.	Exhibits	Description of documents
39.	Ex.P-39	Photocopy of the CMDA advice along with original paid receipts dated 26.04.2011. The counsel for the defendant objected for marking documents stating that it is a colour Xerox and not original. The counsel for the plaintiff submitted that it is not colour Xerox, it is original. ExP-39 is marked with objection subject to proof and admissibility.
40.	Ex.P-40	Original Pallavaram project report dated 24.06.2011.
41.	Ex.P-41	The original CMDA advice along with receipts dated 30.03.2012. The counsel for the defendant objected for marking documents stating that it is a colour Xerox and not original. The counsel for the plaintiff submitted that it is not colour Xerox, it is original. ExP-41 is marked with objection subject to proof and admissibility.
42.	Ex.P-42	Original Certificate of receipt forwards sale consideration from Mr.Mohan Rao and family dated 18.03.2017.
43.	Ex.P-43	Extract copy of accounts statement maintained by the company certified by company as true copy dated 18.09.2021.

List of the Exhibits marked on the side of the Defendants:- --

Sl. Nos.	Exhibits	Description of documents
1.	Ex.D-1	Board resolution dated 12.10.2018.
2.	Ex.D-2	Lease agreement entered into between and respondent dt.25.09.2010.
3.	Ex.D-3	Planning approval obtained by respondent under file no.B1/10242/2010 for building for commercial purposes dt.26.04.2011.
4.	Ex.D-4	Supplementary agreement entered into between petition and respondent dt.07.05.2011.
5.	Ex.D-5	Letter correspondences between petitioner and respondent.
6.	Ex.D-6	Notice of termination issued by the petitioner to the respondent by speed post and by email dated 13.01.2014.



WEB COPY

Sl. Nos.	Exhibits	Description of documents
7.	Ex.D-7	Printout copy of e-mail in respondent of termination sent by the defendant to the plaintiff dated 20.01.2014.
8.	Ex.D-8	Statutory notice issued by petitioner to respondent dated 05.03.2014.
9.	Ex.D-9	Holding reply issued by respondent dated 15.3.2014.
10.	Ex.D-10	Clarificatory rejoinder issued by the petitioner to respondent dated 15.04.2014.
11.	Ex.D-11	Reminder issued by petitioner to respondent.
12.	Ex.D-12	Certified copy of reply issued by plaintiff to defendant's counsel dated 07.05.2014.
13.	Ex.D-13	Certified copy of Company Petition No.262 of 2014 filed by the defendant before Hon'ble Madras High Court dated 14.06.2014.
14.	Ex.P-14	Certified copy of counter filed by the plaintiff herein in C.P.No.262 of 2014 dated 14.10.2014.
15.	Ex.P-15	certified copy of Rejoinder to the counter filed in C.P.No.262 of 2014 dated March, 2015.
16.	Ex.P-16	Certified copy of Reply to the Rejoinder filed in C.P.262 of 2014 dated 01.09.2015.
17.	Ex.P-17	(Series) are the certified copy of Judgment and Decree in C.P.No.262 of 2014 dated 01.09.2015.



WEB COPY

Sl. Nos.	Exhibits	Description of documents
18.	Ex.D-18	Original Cheque dated 30.06.2012 from plaintiff to defendant for a sum of Rs.36,57,852/-. (The learned counsel for plaintiff objected to mark this document stating that this document has not been found place in the written statement, proof affidavit or not even a suggestion put forth to plaintiff's witnesses. Hence Ex.D18 is marked with objection, subject to admissibility, proof and relevancy.)
19.	Ex.D-19	Photocopy of Sanction Plan No.B1/10242/2010 dated 26.01.2011. (The learned counsel for plaintiff objected to mark this document stating that this document is only a photocopy and not copy of sanctioned plan or approved. plan and it does not contain any seal of planning authorities and the building. contain three floors but it does not contain floor wise plan and hence objected to mark this document. The learned counsel for defendant has represented that this plan contains stilt and first floor and it contains the stamp of the planning authorities. Hence Ex.D19 is marked with objection, subject to admissibility.

N.ANAND VENKATESH, J.



C.S.No.849 of 2014

KP

WEB COPY

**Pre-Delivery Judgment in
Civil Suit No.849 of 2014
(Comm.Suits)**

15.02.2022

==