

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 31ST DAY OF DECEMBER 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A.Nos.8652 and 8653 of 2018
and

A.Nos.9742 and 9743 of 2018
and

O.A.No.1017 of 2018
in

C.S.No.574 of 2010

M/s. Doshi Constructions,
a partnership firm registered
under the India Partnership Act,
having its registered office at
No.3H, Century Plaza,
No.560, Teynampet,
Chennai 600 018.

Represented by its partner

(*)Mehul H.Doshi

(Amended as per order dt.31.08.2018

in Appl.No.4812/2018)

(& time extended as per dt.24.09.2018)

...Plaintiff

-Vs.-

1. M/s. MEC International Private Limited
(Formerly Known as M/s. Madras Electrical Conductors
Private Limited)
No.6 (Old No.37) Arcot Road,
Vadapalani,
Chennai 600 026.

2. Elroi Management Consultant
No.6 (Old No.37) Arcot Road,
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3. Dhanam Enterprises
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33. M/s. Balaji Bakery
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34. M/s.S.M.S.Bucary Wakf Al Aulad Estate
Represented by its Muthavalli S.M.S.Kalvath Syed Abdul
Khader
No.87/42, Swami Naicken Street,
Chindatripet, Chennai 600 002.

O.A.No.1017 of 2018 and A.Nos.8652 and 8653 of 2018:

M/s. Doshi Constructions,
A partnership firm registered
under the India Partnership Act,
having its Registered Office at
No.3H, Century Plaza,
No.560, Teynampet,
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Represented by its partner
Mr.Mehul H.Doshi

..Applicant

-Vs.-

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सत्यमेव जयते...Respondents.

O.A.No.1017 of 2018

Application praying that this Hon'ble Court be pleased to grant an order of interim injunction, restraining the 1st Respondent from inducting further sub-tenants into the Suit Schedule Property, pending disposal of the suit.

A.No.8652 of 2018:

Application praying that this Hon'ble Court be pleased to interim direction to the 1st Respondent to furnish a list of all sub-tenants in occupation of the Suit Schedule Property along with their full particulars, as of the date

of the Order in the present Application.

A.No.8653 of 2018:

Application praying that this Hon'ble Court be pleased to permit the applicant to produce and file the documents mentioned in para 3 of the affidavit, and more fully set out in the schedule hereunder.

A.Nos.9742 and 9743 of 2018:

M/s. MEC International Private Limited
(Formerly Known as M/s. Madras Electrical Conductors Private Limited)
No.6 (Old No.37) Arcot Road,
Vadapalani,
Chennai 600 026. ..Applicant/1st Defendant

/Vs./

1.M/s. Doshi Constructions,
a partnership firm registered
under the India Partnership Act,
Having its registered office at
No.3H, Century Plaza,
No.560, Teynampet,
Chennai 600 018.
Represented by its Partner
Mehul H.Doshi ..1st Respondent/Plaintiff

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Khader
No.87/42, Swami Naicken Street,
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...2nd to 34th Respondents /
2nd to 34th Defendants

A.No.9742 of 2018:

<https://hcservices.ecourts.gov.in/hcservices/>

Application praying that this Hon'ble Court be pleased
to permit the first defendant to withdraw the interest

accruable from Rs. 15 Crores on a monthly basis, in lieu of lease rental amounts which the first defendant is likely to lose on account of loss of monthly rentals due to non-inducting of new sub tenants.

A.No.9743 of 2018:

Application praying that this Hon'ble Court be pleased to direct plaintiff to deposit Rs.15 crores in the interest bearing account of any nationalised bank.

These Applications coming on this day before this court for hearing, the court made the following order:

Reserved on	18.12.2018
Pronounced on	31.12.2019

Suit C.S.No.574 of 2010 has been filed for ejectment of D1 tenant and other tenants/sub tenants from the suit premises and also for a consequential relief of recovery of damages and permanent injunction. In the said suit, some of the defendants were set exparte in the year 2016 and subsequently, Application No.9148 of 2018 was filed to set aside the exparte order dated 21.12.2016 and the said application was allowed by this Court on 29.11.2018 and the said defendants were permitted to file written statement.

2.In the meanwhile, these applications have been filed

in November, 2018. Among these five applications, A.No.8652

<https://hcservices.ecourts.gov.in/hcservices/>

of 2018, A.No.8653 of 2018, O.A.No.1017 of 2018 have been

filed by the applicant/plaintiff for the following relief respectively:

A.No.8652 of 2018: To pass an interim direction to the 1st respondent (1st defendant) to furnish a list of all sub tenants in occupation of the suit schedule property along with their full particulars as of the date of the order in the present application.

A.No.8653 of 2018: To permit the applicant to produce and file the documents mentioned in para 3 of the affidavit, and more fully set out in the schedule thereunder.

O.A.No.1017 of 2018: To grant an order of interim injunction, restraining the 1st respondent from inducting further sub tenants into the suit schedule property pending disposal of the suit.

3. Simultaneously, A.Nos.9743 & 9742 of 2018 have been filed by the 1st defendant with the prayer to direct the plaintiff to deposit Rs.15 Crores in the interest bearing account of any Nationalised Bank and to permit the 1st defendant to withdraw the interest accruable from Rs.15 Crores on a monthly basis, in lieu of lease rental amounts which the first defendant is likely to lose on account of loss of monthly rentals due to non-inducting of new sub tenants respectively.

4. The common counter affidavit has been filed by the

1st defendant, who is the 1st respondent in A.Nos.8652 and 8653 of 2018 and O.A.No.1017 of 2018.

5.Heard Mr.R.Parthasarathy, learned counsel appearing for the plaintiff and Mr.M.Ramachandran, learned counsel appearing for the 1st defendant, who are the main contesting parties in all these five applications.

6.Mr.R.Parthasarathy, learned counsel for the plaintiff, who filed the said applications viz., A.Nos.8652 & 8653/2018 and O.A.No.1017 of 2018 would make submissions that, insofar as the prayer sought for in these applications are concerned, which are genuine and innocuous and also in view of the order passed by a Division Bench of this Court in a related batch of Original Side Appeals, by order dated 18.01.2017, the plaintiff is entitled to get these reliefs sought for in these applications.

7.By further elaborating his submissions, he would submit that, as far as the status of the 1st defendant is concerned, he is only a lessee and the lease period would be over by 31.12.2018 and beyond that, he has no right whatsoever either to occupy the plaint premises or to let out even a part of the premises to any third party by way of sub lease. Therefore, the prayer sought for in respect of O.A.No.1017 of 2018 and A.No.8652 of 2018 are concerned, which are within the ambit of the order already passed by

the Division Bench of this Court, by order dated 18.01.2017. Insofar as A.No.8653 of 2018 is concerned, plausible and acceptable reasons have been given by the plaintiff, in the affidavit filed in support of that application as to why the plaintiff could not file those documents at the time of filing the plaint and therefore, independently for the said reasons that application also can be allowed. Therefore, the learned counsel for the plaintiff would submit that, the two applications and one original application may be allowed in the interest of justice.

8.Per contra, Mr.M.Ramachandran, learned counsel appearing for the 1st defendant in the suit, who is the 1st respondent in the aforesaid three applications, filed by the plaintiff, would submit that, insofar as the order passed by the Division Bench of this Court dated 18.01.2017 in the related OSAs are concerned, by virtue of the said order, the prayer now has been sought for by the plaintiff cannot be asked for. He would further submit that, since the right of the 1st respondent/1st defendant in the suit premises, is *prima facie* confirmed by the said Division Bench order, in view of the clearcut order given by the Division Bench of this Court stating that till 31.12.2018, the 1st defendant/1st respondent is a lessee and within which he can make any sub-lease, however, the same would be coterminus with the said date, the prayer sought for in

O.A.No.1017 of 2018 seeking restraint against the 1st defendant/1st respondent from placing any one as sub tenant in that suit premises, cannot be asked for. Like that, insofar as the prayer sought for in A.No.8652 of 2018 is concerned, along with the counter itself, the list of sub tenants, their name and address and the area each of them occupied in the plaint premises have been given. 39 of such tenants list have been annexed in the counter and therefore, no separate order need to be passed in the said application, as has been sought for by the plaintiff.

9.The learned counsel for the 1st defendant would also submit that, insofar as A.No.8653 of 2018 is concerned, not all the documents mentioned in the schedule which are sought to be accepted to be filed are either genuine documents or original documents. Even some of the documents claimed to be certified copies are illegible documents and therefore, those documents cannot be accepted or marked. The reasons cited by the plaintiff in not filing those documents mentioned in the schedule to the said application, are neither acceptable reason nor plausible reason and therefore, for the said reasons, the said application cannot be allowed and the plaintiff cannot be permitted to file those documents.

10.The learned counsel for the 1st defendant would also submit that, the 1st respondent/1st defendant has filed

A.No.9743 of 2018 to seek for the prayer to direct the plaintiff to deposit Rs.15 Crores in the interest bearing account of any Nationalised Bank. This prayer, according to him, has been sought for, in the context that, as per the recital of document between the parties i.e., the plaintiff and the 1st defendant as well as the 34th defendant, the 1st defendant is entitled to have the said money of Rs.15 Crores and without having the said money, if ultimately the suit is decided, the 1st defendant/1st respondent would loose its valuable right and therefore, in order to safeguard the right of both the parties, a direction can be given to the plaintiff to deposit the said amount in an interest bearing account of any Nationalised Bank and consequently, permit the 1st respondent/1st defendant to withdraw the interest on monthly basis. By making all these submissions, the learned counsel for the 1st defendant submitted that, the two applications and one original application filed by the plaintiff have to be dismissed and the A.No.9743 of 2018 and A.No.9742 of 2018 filed by the 1st defendant have to be allowed.

11.I have heard the rival submissions made by the learned respective counsels appearing for the parties as referred to above and I have perused the materials placed before this Court.

12.The suit had been filed for the aforesaid relief and

during the pendency of the suit, already number of applications have been filed. In an earlier occasion, some of the applications including O.A.Nos.685 & 686 of 2010 filed by the plaintiff had been disposed of on 31.01.2012 by a learned Judge of this Court, where though the learned Judge has given a finding that, once it is *prima facie* held that the plaintiff has failed to prove its ownership of the land and superstructure, then, this Court cannot grant any order which will adversely affect the 1st defendant, however, it seems that, the learned Judge also was inclined to grant an order of status quo as on that date insofar as the possession and construction is concerned and the status quo is to be maintained till the disposal of the suit. The learned Judge was also not inclined to restrain the 1st defendant from inducting any other new tenant and therefore, the 1st defendant can induct a new sub-tenant in the light of the recitals contained in the sale deed.

13. With the strength of these findings of the learned Judge in the earlier batch of applications, the learned counsel appearing for the 1st defendant made submissions by stating that, the application filed by the plaintiff's side have to be rejected.

14. However, the learned counsel appearing for the plaintiff has heavily relied upon the common judgment passed by the First Bench of this Court dated 18.01.2017

made in O.S.A.Nos.259, 260 and 262 of 2012. For easy reference, the entire order is extracted hereunder:

"It is agreed that the appeals be disposed of in the following terms:

i. Any fresh tenants inducted by the first respondent would be only with advance intimation to the appellant and the lease deed be filed before the learned Single Judge;

ii. The rights of the first respondent of lease are only till 31.12.2018 and thus, any sub-lease granted would have to be, at best, coterminus with the said date and not beyond that date;

iii. The learned Single Judge to look into the issue of expedition of trial considering the limited scope of the controversy.

Original Side Appeals, accordingly, stand disposed of in the aforesaid terms. No costs."

15.If we look at the said common judgment passed by the First Bench of this Court in the batch of OSAs, which arise out of the said applications referred to above, filed earlier by the plaintiff, it could be easily ascertained that, though the right of the 1st defendant/1st respondent to induct a new tenant as permitted by the learned Judge, was confirmed by the Division Bench, a condition has been, however imposed, thereby, the 1st defendant, if at all induct any fresh tenant, he shall do it only with the advance intimation to the plaintiff and the lease deed to that effect be filed before the learned Single Judge, that means in the suit proceedings. It can further be ascertained from the said order of the First Bench that,

the right of the 1st defendant as a lessee is only till 31.12.2018, therefore, if at all any sub-lease already been granted by the 1st defendant to any sub lessee, that would have to be, at best, coterminus with the said date and not beyond that. It means that, whatever third party right granted by way of letting the portion of the suit property by way of sub lease to any third party by the 1st defendant in the capacity as a lessee for the whole premises, since the 1st defendant is enjoying the right of lease till 31.12.2018, such sub lease could have been granted by the 1st respondent/1st defendant would be coterminus till 31.12.2018 the date on which the status of the 1st defendant as lessee also get terminated or expired. The words 'not beyond the date' in clause (ii) of the order of the First Bench makes it very clear that, beyond 31.12.2018 the 1st defendant has no role whatsoever to play to create any sub tenancy in the suit premises.

16.If the spirit of the order of the First Bench, as referred to above, is taken into account, this Court is of the view that, the prayer sought for in O.A.No.1017 of 2018 can very well be granted.

17.Insofar as the prayer sought for by the plaintiff in A.No.8652 of 2018 is concerned, it is a very innocuous prayer, of course, this also arising out of the import of the order passed by the First Bench where in clause (i) of the said order of the Division Bench, it has been specifically mentioned that, any fresh tenants inducted by

the 1st respondent would be only with advance intimation to the appellant and the lease deed be filed before the learned Single Judge. It means that, without an intimation no new tenant can be put in by the 1st respondent even prior to 31.12.2018. Only in this context, it is the case of the plaintiff in the said application i.e., A.No.8652 of 2018 that some of the existing tenants had been vacated and in whose place new tenants had been inducted, therefore, a proper list of tenants with complete details are to be filed by the 1st respondent/1st defendant and therefore, only to that aspect, the prayer in this application i.e., A.No.8652 of 2018, this Court feels that, can be allowed.

18.Insofar as A.No.8653 of 2018 is concerned, 17 documents have been mentioned in the schedule to the Judges summons of the said application, which according to the plaintiff, could not be filed along with the plaint.

19.Therefore, the plaintiff seeks for permission of this Court to file those documents. Though the said prayer has been opposed by the 1st respondent/1st defendant, the reasons cited by the 1st respondent/1st defendant in the common counter affidavit filed in this regard has been perused by this Court. However, for the non filing of those documents, the plaintiff has given two reasons, firstly, in respect of certain documents at the time of filing the plaint, the plaintiff was having only photocopies of those documents, such as sale deed, lease deed etc. and

thereafter, after obtaining certified copy from the concerned authorities, those documents now have been filed, hence those documents could not be filed along with the plaint. Secondly, some of the documents emanated only after finalising the draft plaint and therefore, those documents could not be made available at the time of filing the plaint and further reason given by the plaintiff in support of the said application is that, since some of the applications were already filed, where some decision was given by the learned Judge, as against which, intra Court appeal was filed in a batch of Original Side Appeals, which came to be disposed of only in January, 2017 and therefore, till such a decision was taken and concluded, the plaintiff could not involve in taking steps to file those documents, therefore, that was also one of the reason cited by the plaintiff.

20. On perusal of these reasons, this Court is of the considered view that, these reasons can very well be accepted, as there is no ingenuity attached with these reasons, as certified copies of some documents were obtained subsequently and some of the documents emanated only after finalising the draft plaint in December, 2018 and it is a fact that, proceedings were pending in a number of OSAs before a Division Bench till January, 2017. Therefore, all these factual aspects would go to show that, these reasons cited by the plaintiff can be accepted.

Accordingly, in order to meet the ends of justice, as every chance shall be given to the parties before the first Court of instance where the respective parties have to prove their case to establish their civil right, which is a substantive right and at the threshold, those chances shall not be denied, which is a settled legal proposition, this Court is inclined to accept this application and accordingly, A.No.8653 of 2018 also can be allowed.

21.Insofar as the A.No.9743 of 2018 filed by the 1st respondent/1st defendant is concerned, he seeks for a direction to the plaintiff to deposit a sum of Rs.15 Crores in an interest bearing account in a Nationalised Bank.

22.I have gone through the affidavit filed in support of this application and by taking into account the factual matrix of this case, especially in the given context, as has been discussed above, the present issue of depositing the said money of Rs.15 Crores can be decided at the time of disposal of the suit as the right of the parties as to whether the 1st defendant is entitled to have that money, in view of the complex prayer sought for by the plaintiff not only for ejectment of the defendants, but also for recovery of money by way of damages and other heads, these issues can only be decided after the trial and therefore, at this juncture, this Court feels that, the present prayer in A.No.9743 of 2018 cannot be directed to be complied

with. Hence, this application i.e., A.No.9743 of 2018 is liable to be rejected.

23. In view of the aforesaid discussions and factual matrix and by taking into account the submissions made by both sides, this Court is inclined to dispose of these five applications by passing the following order:

(i) A.No.8652 of 2018, A.No.8653 of 2018 and O.A.No.1017 of 2018 in C.S.No.574 of 2010 are allowed.

(ii) A.No.9743 of 2018 in C.S.No.574 of 2010 is dismissed.

(iii) In view of the dismissal of A.No.9743 of 2018, the prayer sought for in A.No.9742 of 2018 cannot be granted, accordingly, it is dismissed.

However, there shall be no order as to costs.

WEB COPY

Sd./-R.S.K.J
31.12.2019

//Certified to be true copy//

Dated at Madras this the day of 2020.

JJ 13/01/2020

COURT OFFICER(O.S.)