

IN THE COURT OF THE PRINCIPAL MUNSIF, ERNAKULAM**Present :- Sri. Rohit Nandakumar, Principal Munsiff.****Thursday, 06th day of March, 2025/15th Phalguna, 1946****O.S No. 140/2023****Plaintiff :-**

M. D Antony, aged 42 years, S/o. Devassy, Maliakkal,
Ponekkara, AIMS P.O, Kochi – 41.

By Advs. M. R. Rajesh and Jyothi S. Menon

Defendant:-

M/s. Indus Towers Ltd., 8th Floor Vankarath Towers, NH-47,
Palarivattom, Kochi – 682 025.

**By Advs. Philip T. Varghese, Thomas T. Varghese, Achu Shubha
Abraham, Amala Purushothaman, Urmila M.G, Sapna Shaji,
Aiswarya Ajith, Kallayni G. Menon and Thahseem A**

This suit coming on for final hearing before me on 06.03.2025
in the presence of above advocates concerned and having stood over
for consideration to this day, the Court delivered the following:-

JUDGMENT IN PRELIMINARY ISSUE

1. The suit is one for recovery of possession and arrears of rent.
2. The case of the plaintiff is that :-

The plaintiff had leased out the plaint schedule premises to the

defendant under a lease agreement dated 15/02/2010 for erecting and establishing Mobile Tower and trans-receiver station for a monthly rent of ₹40,000/-, without any premium for a period of ten years from 14/05/2010 to 13/05/2020 in supersession of earlier agreement dated 14/07/2002, which inter-alia provides that rent shall be paid promptly on the 15th of every month revisable by 15% on every three years on the last paid rent and default of rent for three consecutive months entail termination of lease and to surrender vacant possession of tenanted premises and thus paid revised rent at the rate of ₹60598.94/- after deducting TDS till August 2020 and thereafter paid only at the rate of ₹37,120.44/- and hence deficit amount of ₹5,63,484/- is due towards arrears of rent from September 2020 till date of suit with 6% interest. The defendant is continuing occupation of leased premises as tenant holding over on the expiry of term of lease on 13/05/2020, without renewing the lease agreement and hence as stipulated under the agreement, lease is determined. The defendant thus defaulted rent at the rate of ₹23,478.50/- being the deficit amount due as against the actual rent payable of ₹60,598.94/-

from August 2020 till date and hence an amount of ₹5,63,484/- is due as on August 2022, being the arrears of deficit rent. But the claim is limited to ₹ 5,50,000/-. Since lease period was determined, the defendant is liable to be evicted from the plaint schedule property. Hence, the suit.

3. Summons was issued to the defendant. The defendant entered appearance and has filed written statement denying the averments. It is averred that the suit is not maintainable on account of fact that the suit is hit by the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965. It is averred that the suit is not properly valued and the court fee paid is insufficient. It is averred that claiming the actual rent to be ₹60,598.94, the plaintiff cannot value the relief sought for in the suit by claiming that the rent is only ₹37,120.44 and pay lesser court fee based on such a valuation. The plaintiff has instituted this suit experimentally, without even paying the court fee due. The defendant denies the allegation raised against him. The suit may be dismissed.

4. In consideration of the suit, the following issues were raised:-

I. Whether the suit is maintainable ?

- II. Whether the suit is correctly valued ?
 - III. Whether the plaintiff is entitled to a decree of recovery of possession of the plaint schedule property?
 - IV. Whether the plaintiff is entitled to recover an amount of ₹5,50,000/- from the defendant and his assets as arrears of deficit rent?
 - V. What are the reliefs and order as to costs?
5. The parties were heard on issues I and II, as the same were considered to be the preliminary issues.
6. In consideration of issue No.I, the case that is raised by the plaintiff is that the suit is one for recovery of land and not for building. It is argued by the learned counsel for the plaintiff that the agreement was for lease of land and not for any building and that therefore, the Kerala Buildings (Lease and Rent Control) Act, 1965, cannot have been application in the case at hand. On the contrary, it is argued by the learned counsel for the defendant that subsequent agreement had been entered into between the parties, wherein lease of building is also made out in the terms of the contract. It is argued by the the defendant that the suit is therefore barred by the provisions

of the Kerala Buildings (Lease and Rent Control) Act, 1965. Upon consideration of the rival averments of the parties, it can be seen that evidence is to be adduced in the case at hand, to properly determine as to whether the suit is maintainable or not, by virtue of the provisions of the Kerala Buildings (Lease and Rent Control) Act, 1965. It is seen that in consideration of the issue No.I, a question law and fact is involved. Hence, issue No.I cannot be answered as preliminary issue and is relegated to the stage after trial and is not considered as a preliminary issue herein now.

Issue No.II:-

7. The next issue considered is whether the suit is correctly valued or not? The objection that is raised by the defendant is that the valuation for first relief is not properly calculated. It argued that rent is calculated at the rate of ₹37,120.44 (under Section 43(2) of Kerala Court Fee and Suit Valuation Act) which is not proper. A perusal of Section 43 (2) of the Kerala Court fees and Suit Valuation Act would show that the court fee for the first relief herein is to be computed on the premium and on the rent payable for the year next before the date of presenting

the plaint. Even according to the plaint averments, the rent had been ₹60598.94/- and not ₹37120.44/-. Hence it is seen that the valuation for reliefs is not properly made.

8. I am of the opinion that valuing the relief at ₹37,120.44/- is not proper and that the valuation should have been made on the monthly rent of ₹60,598.94/-. Issue No.II is therefore answered as against the plaintiff. It is found that the plaint is not properly valued with respect to the first relief. Issue II is answered so.

9. Hence, I am of the opinion, in view of Section 12(2) of the Kerala Court Fee and Suit Valuation Act, that the plaintiff is to furnish fresh valuation. The plaint shall be amended accordingly and the deficit court fee is to be paid after the proper valuation carried out in accordance with the valuation fixed on rent at the rate of ₹60,598.94/-, following Section 43(2) Kerala Court Fees and Suits Valuation Act. The plaintiff is therefore directed under Section 12(2) of the Act to amend the plaint incorporating the proper valuation and in accordance with the proper rent and to pay the deficit fee on or before 13.03.2025. Post the case to 13.03.2025 to ascertain

compliance.

In the result, issue No.I is relegated for consideration after trial. Issue No.II is answered as against the plaintiff.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court, on this the 6th day of March, 2025)

Sd/-
Rohit Nandakumar
Principal Munsiff

A P P E N D I X:- Nil

Id/-
Principal Munsiff