IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

COMMERCIAL APPEAL NO.386 OF 2023
CONNECTED WITH
COMMERCIAL APPEAL NO.388 OF 2023,
COMMERCIAL APPEAL NO.430 OF 2023,
AND
COMMERCIAL APPEAL NO.431 OF 2023

IN COMAP NO.386/2023:

BETWEEN:

1. M/S. WATER ANGELS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO.186/2
SUBEDAR CHATRAM ROAD
GUBBI VEERANNA ROAD
SHESHADRIPURAM
BENGALURU-560 002
REPRESENTED BY ITS MANAGING PARTNER
SRI KRISHNAKANTH.

2. SRI N. KRISHNAKANTH
S/O. LATE SATHYANARAYANA
AGED ABOUT 35 YEARS
MANAGING PARTNER OF
M/S. WATER ANGELS
RESIDING AT FLAT NO.T-1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU - 560 021.

3. SRI A.U. PRAVEEN
S/O. SRI B.S. UMESH
AGED ABOUT 34 YEARS
PARTNER OF M/S. WATER ANGELS
RESIDING AT NO.G1
ADITI VICTORY-2 NO.28
1ST CROSS, SRIRAMPURA
BENGALURU - 560 021.

...APPELLANTS

(BY SRI TRIBHUVAN PRAJWAL K., ADVOCATE)

AND:

1. SRI J.C. RUDRA SHARMA
S/O. LATE J. CHINNAPPA
AGED ABOUT 91 YEARS
RESIDING AT NO.6,
RAMACHANDRA AGRAHARA
4TH MAIN ROAD, CHAMARAJPET
BENGALURU - 560 018.

2. SRI B.N. VISHWANATH
S/O. SRI T.V. NARAYANA SWAMY
AGED ABOUT 63 YEARS
RESIDING AT FLAT NO.301
NO.12/13, 3RD FLOOR, 28TH CROSS,
2ND MAIN, 7TH BLOCK, JAYANAGAR
BENGALURU - 560 082.

...RESPONDENTS

(BY SRI R. VIJAYAKUMAR, ADVOCATE, FOR R-1, &
SRI B.N. VISHWANATH, R-2, PARTY-IN-PERSON)

* * *

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH ORDER XLIII OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 27.06.2023 PASSED BY THE HON'BLE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-87) IN COMMERCIAL ORIGINAL SUIT NO.4395/2019.

IN COMAP NO.388/2023:

BETWEEN:

1. M/S. WATER ANGELS
A REGISTERED PARTNERSHIP FIRM
HAVING ITS OFFICE AT NO.186/2
SUBEDAR CHATRAM ROAD
GUBBI VEERANNA ROAD
SHESHADRIPURAM
BENGALURU-560 002
REPRESENTED BY ITS MANAGING DIRECTOR
SRI KRISHNAKANTH.

2. SRI N. KRISHNAKANTH
S/O. LATE SATHYANARAYANA
AGED ABOUT 35 YEARS
MANAGING DIRECTOR OF M/S. WATER ANGELS
RESIDING AT FLAT NO.T-1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

3. SRI A. U. PRAVEEN
S/O. SRI B. S. UMESH
AGED ABOUT 34 YEARS
PARTNER OF M/S. WATER ANGELS
RESIDING AT NO.G1, ADITI VICTORY-2
NO.28, 1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

...APPELLANTS

(BY SRI TRIBHUVAN PRAJWAL, ADVOCATE)

AND:

1. SRI J.C. RUDRA SHARMA
S/O. LATE J. CHINNAPPA
AGED ABOUT 91 YEARS
RESIDING AT NO.6, RAMACHANDRA AGRAHARA
4TH MAIN ROAD, CHAMARAJPET
BENGALURU-560 018.

2. SRI B. N. VISHWANATH
S/O. SRI T. V. NARAYANA SWAMY
AGED ABOUT 63 YEARS
RESIDING AT FLAT NO.301
NO.12/13, 3RD FLOOR
28TH CROSS, 2ND MAIN
7TH BLOCK, JAYANAGAR
BENGALURU-560 082.

...RESPONDENTS

(BY SRI R. VIJAYAKUMAR, ADVOCATE, FOR R-1, &
SRI B.N. VISHWANATH, R-2, PARTY-IN-PERSON)

* * *

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH ORDER XLIII OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 27.06.2023 PASSED BY THE HON'BLE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-87) IN COMMERCIAL ORIGINAL SUIT NO.4396/2019.

IN COMAP NO.430/2023:

BETWEEN:

B.N. VISHWANATH
S/O SRI T.V. NARAYANASWAMY
AGED ABOUT 68 YEARS
RESIDING AT NO.12/13, 3RD FLOOR
28TH CROSS, 2ND MAIN
7TH BLOCK, JAYANAGAR
BENGALURU-560 082.

...APPELLANT

(BY SRI B.N. VISHWANATH, PARTY-IN-PERSON)

AND:

1. SRI J.C. RUDRA SHARMA
S/O. LATE J. CHINNAPPA
AGED ABOUT 93 YEARS
RESIDING AT NO.6
RAMACHANDRA AGRAHARA
4TH MAIN ROAD
CHAMARAJPET
BENGALURU-560 018.

2. M/S. WATER ANGLES
A REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER
SRI N. KRISHNAKANTH
AT NO.186/2, SUBEDAR CHATRAM ROAD
GUBBI VEERANNA ROAD
SESHADRIPURAM
BENGALURU.

3. SRI N. KRISHNAKANTH
S/O LATE SATHYANARAYANA
AGED ABOUT 37 YEARS
MANAGING PARTNER
M/S. WATER ANGLES
RESIDING AT FLAT NO.1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

4. SRI A.U. PRAVEEN
S/O SRI B.S. UMESH
AGED ABOUT 36 YEARS
PARTNER OF M/S. WATER ANGLES
RESIDING AT FLAT NO.1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

...RESPONDENTS

(BY SRI R. VIJAYAKUMAR, ADVOCATE, FOR R-1, &
SRI TRIBHUVAN PRAJWAL, ADVOCATE, FOR
R-2 TO R4)

* * *

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH ORDER XLIII OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET-ASIDE THE JUDGMENT AND DECREE DATED 27.06.2023 PASSED BY THE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, (CCH-87) IN COMMERCIAL ORIGINAL SUIT NO.4395/2019 AGAINST THE APPELLANT.

IN COMAP NO.431/2023:

BETWEEN:

B.N. VISHWANATH
S/O SRI T.V. NARAYANASWAMY
AGED ABOUT 68 YEARS
RESIDING AT NO.12/13, 3RD FLOOR
28TH CROSS, 2ND MAIN, 7TH BLOCK
JAYANAGAR
BENGALURU-560 082.

...APPELLANT

(BY SRI B.N. VISHWANATH, PARTY-IN-PERSON)

AND:

1. SRI J.C. RUDRA SHARMA
S/O. LATE J. CHINNAPPA
AGED ABOUT 93 YEARS
RESIDING AT NO.6
RAMACHANDRA AGRAHARA
4TH MAIN ROAD, CHAMARAJPET
BENGALURU-560 018.

2. M/S. WATER ANGLES
A REGISTERED PARTNERSHIP FIRM
REPRESENTED BY ITS MANAGING PARTNER
SRI N. KRISHNAKANTH
AT NO.186/2, SUBEDAR CHATRAM ROAD
GUBBI VEERANNA ROAD
SESHADRIPURAM
BENGALURU.

3. SRI N. KRISHNAKANTH
S/O. LATE SATHYANARAYANA
AGED ABOUT 37 YEARS
MANAGING PARTNER
M/S. WATER ANGLES
RESIDING AT FLAT NO.1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

4. SRI A.U. PRAVEEN
S/O SRI B.S. UMESH
AGED ABOUT 36 YEARS
PARTNER OF M/S. WATER ANGLES
RESIDING AT FLAT NO.1
ADITI VICTORY-2, NO.28
1ST CROSS, SRIRAMPURA
BENGALURU-560 021.

...RESPONDENTS

(BY SRI R. VIJAYAKUMAR, ADVOCATE, FOR R-1, &
SRI TRIBHUVAN PRAJWAL, ADVOCATE, FOR
R-2 TO R4)

* * *

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, READ WITH ORDER XLIII OF THE CODE OF CIVIL PROCEDURE, 1908, PRAYING TO SET-ASIDE THE JUDGMENT AND DECREE DATED 27.06.2023 PASSED BY THE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, (CCH-87) IN COMMERCIAL ORIGINAL SUIT NO.4396/2019 AGAINST THE APPELLANT.

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND RESERVED ON 13.07.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, ***VENKATESH NAIK T. J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T.)

COMAP No.386/2023 is filed by defendant Nos.2 to 4 and COMAP No.430/2023 is filed by defendant No.1 challenging the judgment and decree dated 27.06.2023 passed by the learned LXXXVI Additional City Civil and Sessions Judge, Bengaluru, (CCH 87) in Commercial Original Suit No.4395/2019. Whereas, COMAP No.388/2023 is filed by defendant Nos.2 to 4 and COMAP No.431/2023 is filed by defendant No.1 challenging the judgment and decree dated 27.06.2023 passed by the learned LXXXVI Additional City Civil and Sessions Judge, Bengaluru, (CCH 87) in Commercial Original Suit No.4396/2019.

2. Since four appeals are arising out of a common judgment and decree passed in two suits in respect of the same larger extent of the property, they are taken up together and disposed of by this common judgment.

3. For the sake of convenience, the parties herein are referred to as per their rankings before the trial Court. The appellants are defendant Nos.2 to 4, respondent No.1 is the plaintiff, and respondent No.2 is defendant No.1 in Commercial Original Suit No.4395/2019, and the appellant is defendant No.1, respondent No.1 is the plaintiff and respondent Nos.2 to 4 are defendant Nos.2 to 4 in Commercial Original Suit No.4396/2019.

4. The brief facts of the parties before the trial Court are as under:

The plaintiff, Sri J.C. Rudra Sharma, instituted a Commercial Original Suit No.4395/2019 seeking for ejectment and mesne profit in respect of suit schedule property, bearing Municipal Corporation No.186/2,

situated at Subedar Chatram Road, now known as Nataka Rathna Gubbi Veeranna Road, Ward No.27, Div. No.19, Sheshadripuram, Bengaluru, measuring 3326 square feet including a passage portion and open shed area of 1765 square feet, which is marked by letters 'ABCDEFGHA' in the sketch.

5. The plaintiff, Sri J.C. Rudra Sharma, instituted a Commercial Original Suit No.4396/2019 seeking for ejectment and mesne profit in respect of suit schedule property, bearing Municipal Corporation No.186/2, situated at Subedar Chatram Road, now known as Nataka Rathna Gubbi Veeranna Road, Ward No.27, Div. No.19, Seshadripuram, Bengaluru, measuring 600 square feet, which is marked by letters 'ABCD' in the sketch, as against defendant Nos.1 to 4 to quit, vacate and deliver vacant possession of the suit schedule property. Defendant No.1 is the tenant and defendant Nos.2 to 4 are the subtenants.

6. In Commercial Original Suit No.4395/2019, the plaintiff, being the absolute owner of the suit schedule

property, inducted defendant No.1 on a registered Lease Deed dated 01.04.2012 for a period of five years commencing from 01.04.2012 till 31.03.2017.

7. In Commercial Original Suit No.4396/2019, the plaintiff, being the absolute owner of the suit schedule property, inducted defendant No.1 on a registered Lease Deed dated 20.11.2014 for a period of five years commencing from 01.12.2014 till 30.11.2019.

8. The contention of the plaintiff is that the tenancy was for non-residential purpose, but contrary to the Clause of the Lease Deeds, defendant No.1 had illegally sublet the leased suit schedule property in favour of defendant Nos.2 to 4 and was collecting rents from them. However, defendant No.1 failed to pay the rents from 01.04.2017 till 31.10.2018 amounting to Rs.10,45,000/-. Since the plaintiff did not wish to continue the tenancy of defendant No.1, the same was lawfully terminated by issuance of legal notice dated 15.11.2018 to defendant Nos.1 to 4. The plaintiff contended that defendant Nos.1 to 4 did not

reply to the legal notice. Therefore, the plaintiff instituted a suit in Commercial Original Suit No.4395/2019.

9. Further, it is contended that since defendant No.1 failed to pay the rents from 01.05.2018 to 31.10.2018 amounting to Rs.1,87,500/-, the plaintiff did not wish to continue the tenancy of defendant No.1 and the same was lawfully terminated by issuance of legal notice dated 15.11.2018 to defendant Nos.1 to 4. As the legal notice was returned with endorsement 'unclaimed', the plaintiff instituted a suit in Commercial Original Suit No.4396/2019.

10. After initiation of the suits, the defendants appeared through their counsel and denied the claim of the plaintiff as false. The defendants admitted the ownership of the plaintiff in respect of the schedule property and the property was leased to defendant No.1, who in turn, sublet the property to defendant Nos.2 to 4. The defendants have disputed the fact that they are liable to pay arrears of rents, as claimed by the plaintiff and

mesne profit/damages. They also contended that the plaintiff has acquiesced the portion of the suit schedule premises in the hands of defendant Nos.2 to 4 and has collected the rents from them and therefore, they are not liable to pay mesne profits/damages to the plaintiff, as claimed by him. On all these grounds, the defendants prayed for dismissal of the suits.

11. Based on the pleadings of the parties, the trial Court in Commercial Original Suit No.4395/2019 framed the following issues:

> *"1) Whether the plaintiff proves that the defendant No.1 had obtained the suit premises by virtue of the registered lease deed dated 01.04.2012?*
>
> *2) Whether the plaintiff further proves that the defendant No.1 has unlawfully sublet the suit schedule premises to the defendants No.2 to 4 in violation of the terms of the lease deed dated 01.04.2012?*

3) Whether the plaintiff further proves that the defendant No.1 is in arrears of rent of Rs.44,000/-?

4) Whether the plaintiff further proves that he is entitled for mesne profits at the rate of 3,32,500/- per month from 01.01.2019 till actual delivery of vacant possession of suit schedule premises?

5) Whether the defendant No.1 proves that the plaintiff has acquiesced the possession of the suit schedule premises in the hands of defendants No.2 to 4 and collected rents from them?

6) Whether the defendant No.1 further proves that he is not liable to pay mesne profits as claimed in the plaint?

7) Whether the suit is bad for mis-joinder of parties?

8) Whether the plaintiff is entitled to the reliefs sought for?

9) What order or decree?"

12. Based on the pleadings of the parties, the trial Court in Commercial Original Suit No.4396/2019 framed the following issues and additional issues:

> *"1) Whether the plaintiff proves that the suit schedule property was leased by the plaintiff to the defendant No.1?*
>
> *2) Whether the plaintiff further proves that the defendant No.1 has sub-let the suit premises in favour of the defendant No.2 to 4 by violating clause of lease deed?*
>
> *3) Whether the plaintiff further proves that the defendant No.1 is liable to pay a sum of Rs.1,87,500/- as arrears of rent along with interest @ 12% p.a.?*
>
> *4) Whether the plaintiff further proves that he is entitled to current mesne profit/damages at Rs.60,000/- per month from 01.01.2019 till delivery of suit schedule property?*
>
> *5) What order or decree?*

ADDITIONAL ISSUES

1) Whether the defendant No.1 proves that the plaintiff has acquiesced the possession of the suit schedule premises in the hands of defendants No.2 to 4 and has collected rents from defendants No.2 to 4?

2) Whether the defendant No.1 further proves that he is not entitled to pay mesne profits/damages to the plaintiff as claimed in the plaint?

3) Whether the suit is bad for mis-joinder of parties?"

13. The plaintiff in Commercial Original Suit No.4395/2019, in order to prove his case, was examined as PW1 and relied on forty documents as per Exs.P1 to P40. For the defence, defendant No.3 was examined as DW1 and defendant No.1 was examined as DW2 and they relied on fifty documents as per Exs.D1 to D50.

14. The plaintiff in Commercial Original Suit No.4396/2019, in order to prove his case, was examined

as PW1 and relied on twenty documents as per Exs.P1 to P20. For the defence, defendant No.3 was examined as DW1 and defendant No.1 was examined as DW2 and they relied on fifty-three documents as per Exs.D1 to D53.

15. After hearing the parties at length in Commercial Original Suit No.4395/2019, the trial Court directed defendant No.1 to pay the arrears of rent of Rs.45,000/- with interest at the rate of 18% per annum from 01.11.2018 till actual payment. Further, defendant Nos.1 to 4 were directed to pay damages by way of mesne profits to the plaintiff at the rate of Rs.75 per square feet, which comes to Rs.2,49,465/- from 01.01.2019 till 14.12.2021.

16. Further, in Commercial Original Suit No.4396/2019, the trial Court directed defendant No.1 to pay the arrears of rent of Rs.1,87,500/- with interest at the rate of 12% per annum from 01.11.2018 till actual payment. Further, defendant Nos.1 to 4 were directed to pay damages by way of mesne profits to the plaintiff at

the rate of Rs.75 per square feet, which comes to Rs.45,000/- from 01.01.2019 till 14.12.2021.

17. Being aggrieved by the judgment and decree passed in Commercial Original Suit No.4395/2019, defendant Nos.2 to 4 have filed COMAP No.386/2023 and defendant No.1 has filed COMAP No.430/2023.

18. Being aggrieved by the judgment and decree passed in Commercial Original Suit No.4396/2019, defendant Nos.2 to 4 have filed COMAP No.388/2023 and defendant No.1 has filed COMAP No.431/2023.

19. Learned counsel appearing for the appellants-defendant Nos.2 to 4 vehemently submits that the judgment and decree of the trial Court is misconceived and unsustainable in law. The trial Court rejected the written statement and evidence of defendant Nos.2 to 4 solely on the ground of non-compliance of the order dated 08.04.2022 directing them to furnish a Bank Guarantee. However, neither the trial Court, nor respondent No.1-

plaintiff objected to the recording of evidence despite being fully aware of such non-compliance and of the pending application seeking modification of the said order. The plaintiff raised issue only at the stage of final arguments, and even then, the trial Court proceeded to hear the matter on merits and reserved it for judgment. Having allowed the proceedings to continue, the plaintiff was estopped from raising such objection at the final stage, and the trial Court ought not to have accepted the same.

19(a). Learned counsel further contended that defendant Nos.2 to 4 had filed an application seeking modification of the order dated 08.04.2022 due to severe financial constraints and had offered the lodge property purchased from defendant No.1 as security. Non-compliance was bonafide and not intentional. The trial Court failed to consider this fact and ignored the defence of defendant Nos.2 to 4. Though defendant Nos.2 to 4 sought restoration of the suit and deposited

Rs.45,00,000/- and Rs.10,00,000/- before this Court, which amount has been withdrawn by the plaintiff, but the trial Court disregarded their contentions and instead accepted the case of respondent No.2-defendant No.1, who neither challenged the earlier judgment nor deposited any amount, despite the specific plea of collusion between the plaintiff and defendant No.1.

19(b). Learned counsel further contended that the trial Court failed to appreciate the order dated 08.04.2022 passed by this Court in its proper perspective. The order did not prescribe any consequence for failure to furnish the Bank Guarantee, and the trial Court was informed that an application seeking modification of the said order was pending. The direction to furnish the Bank Guarantee was only intended to safeguard the plaintiff's interest regarding mesne profits and did not extinguish the right of defendant Nos.2 to 4 to contest the suit on merits. The trial Court ignored their entire defence and the admissions secured in the cross-examination of PW1 and DW2,

thereby causing manifest injustice.

19(c). Learned counsel further contended that the judgment has been passed without proper reasoning and without considering the stand of defendant Nos.2 to 4. The plaintiff and defendant No.1 failed to establish that defendant Nos.2 to 4 were illegal sub-tenants or were in possession of the suit schedule property, and no documentary evidence was produced in support thereof. The plaintiff must succeed on the strength of his own case and cannot rely upon the weakness of the defence of defendant Nos.2 to 4. However, the trial Court disregarded the defence of defendant Nos.2 to 4 and erroneously held them liable to pay damages, thereby defeating the very purpose of the remand order in Commercial Appeal Nos.260/2021 and 262/2021.

19(d). Learned counsel further contended that the trial Court further erred in holding that defendant No.1 had sublet the premises to defendant Nos.2 to 4 without

any documentary evidence establishing owner-tenant relationship. The plaintiff, during cross-examination, admitted that defendant No.1 himself was running "Savi Sagar AC Restaurant". This itself indicates that defendant No.1 was in possession of the premises and could not have sublet the property, after expiry of the lease period. The trial Court ignored this material evidence and wrongly fastened the liability on defendant Nos.2 to 4. Further, while awarding mesne profits, the trial Court relied only on the oral evidence of the plaintiff and defendant No.1 to conclude that defendant Nos.2 to 4 were sub-tenants, without assigning any reasons. The trial Court ignored the settled principle that the plaintiff must prove his own case on merits. The trial Court also relied on the Bailiff's report despite PW1 admitting in cross-examination that the suit schedule premises was vacant at the time of execution of the warrant. This admission clearly establishes that defendant Nos.2 to 4 were not occupying or using the premises, yet the trial Court ignored the same and

proceeded to hold them liable for damages.

19(e). Learned counsel further contended that the trial Court accepted the pleadings and evidence of the plaintiff and defendant No.1 as gospel truth while completely rejecting the written statement and evidence of defendant Nos.2 to 4 rendering the judgment perverse and unsustainable. The trial Court ought to have adjudicated the matter on merits after considering the entire evidence on record. He further contended that the present appeal is confined only to the decree directing defendant Nos.2 to 4 to pay mesne profits at the rate of Rs.75/- per square feet per month, amounting to Rs.2,49,450/- from 01.01.2019 to 14.12.2021 and also Rs.45,000/- from 01.01.2019 to 14.12.2021 in both the suits and the costs awarded by the trial Court.

19(f). Learned counsel further contended that the trial Court failed to appreciate that the entire case of the defendant Nos.2 to 4 regarding the alleged sub-tenancy

was founded upon the oral assertions of the plaintiff and defendant No.1 without any independent documentary evidence. Admittedly, all lease documents pertaining to the suit schedule property stand exclusively in the name of defendant No.1. Though defendant No.1 alleged that he had inducted defendant Nos.2 to 4 into the premises and that defendant Nos.2 to 4 were paying rent to him, which he in turn remitted to the plaintiff, but defendant No.1 failed to produce even a single lease agreement, sub-lease agreement, rent receipt, account statement, ledger, acknowledgment, or any other document evidencing the alleged landlord-tenant relationship between himself and defendant Nos.2 to 4. In the absence of such primary evidence, the trial Court could not have presumed the existence of a tenancy or sub-tenancy merely on the basis of interested oral testimony. The finding that defendant Nos.2 to 4 were sub-tenants is, therefore, based on conjectures and surmises and is liable to be set aside.

19(g). Learned counsel further contended that the trial Court further failed to appreciate that the burden of proving the alleged illegal occupation or unauthorised possession of the suit schedule property squarely rested upon the plaintiff. It was incumbent upon the plaintiff to establish by cogent and convincing evidence that defendant Nos.2 to 4 were in actual, physical and unauthorised possession of the suit schedule property during the relevant period. Except the interested testimony of PW1 and defendant No.1, no documentary or independent evidence was produced to establish the alleged possession of defendant Nos.2 to 4. No electricity bills, trade licence, GST registration, labour records, invoices, photographs, municipal records, inspection reports or any other contemporaneous documents were produced to demonstrate that defendant Nos.2 to 4 were carrying on business or occupying the premises. In the absence of such evidence, the trial Court could not have shifted the burden upon defendant Nos.2 to 4 or

presumed their possession. On all these grounds, the learned counsel prays to allow COMAP Nos.386/2023 and 388/2023.

20. *Per contra*, the learned counsel for respondent No.1-plaintiff has contended that defendant No.1 was inducted under the registered Lease Deeds dated 01.04.2012 and 20.11.2014, which expressly prohibited subletting without the written consent of the plaintiff. It is contended that defendant No.1 admitted induction of defendant Nos.2 to 4 in the suit schedule property and failed to establish any written consent of the plaintiff. The Bailiff's report also supports the plaintiff's case regarding their possession over the schedule property. The plaintiff, therefore, justified the findings of the trial Court. On all these grounds, the learned counsel prays to dismiss the appeals.

21. Learned counsel for respondent No.2-defendant No.1 has vehemently contended that the plaintiff was

aware of the possession of defendant Nos.2 to 4 in the suit schedule premises and had acquiesced in such possession. It is contended that the plaintiff had accepted the rents from defendant Nos.2 to 4 and therefore, defendant No.1 cannot be held liable for mesne profits/damages, as claimed by the plaintiff. It is also contended that the mesne profits awarded by the trial Court at the rate of Rs.75/- per square feet per month are excessive and have been fixed without any proper basis or determination of the prevailing market rent. Hence, the said finding and the consequential liability for mesne profit are liable to be interfered with. On all these grounds, the learned counsel prays to allow COMAP Nos.430/2023 and 431/2023.

22. In the present case, in order to establish the contention of the plaintiff in Commercial Original Suit No.4395/2019, one J.R. Veerabhadra Prasanna, Special Power of Attorney holder of the plaintiff, was examined as PW1. In his evidence, he has reiterated the contents of

the plaint and relied on in all forty documents as per Exs.P1 to P40. In order to rebut the claim of the plaintiff, the Managing Partner of defendant No.2, Sri N. Krishnakanth (who is defendant No.3) was examined as DW1 and defendant No.1, Sri B.N. Vishwanath, was examined as DW2. In their evidence, they have reiterated the contents of their written statements. In support of oral evidence, they relied on fifty documents as per Exs.D1 to D50.

23. Further, in order to establish the contention of the plaintiff in Commercial Original Suit No.4396/2019, one J.R. Veerabhadra Prasanna, Special Power of Attorney holder of the plaintiff, was examined as PW1. In his evidence, he has reiterated the contents of the plaint and relied on in all thirty-two documents as per Exs.P1 to P32. In order to rebut the claim of the plaintiff, the Managing Partner of defendant No.2, Sri N. Krishnakanth (who is defendant No.3) was examined as DW1. In his evidence, he has reiterated the contents of his written statement.

In support of oral evidence, he relied on fifty-eight documents as per Exs.D1 to D58.

24. A perusal of Ex.P2-registered Lease Deed dated 01.04.2012 in Commercial Original Suit No.4395/2019, the plaintiff gave the leased property to defendant No.1 for a period of five years commencing from 01.04.2012 to 31.03.2017. Ex.P2-registered Lease Deed dated 20.11.2014 in Commercial Original Suit No.4396/2019, the plaintiff gave the leased property to defendant No.1 for a period of five years commencing from 01.12.2014 to 30.11.2019. As per Clause 7 of the Lease Deed, "the lessee (defendant No.1) shall not transfer or alienate his lease hold rights in respect of the suit schedule property in any manner whatsoever without obtaining prior consent of the lessor (plaintiff) and in the event of contravention of this Clause, the same is not binding on the lessor and such transfer shall not give or confirm any right, on the transferee(s)." As per Clause 6 of the Lease Deed, it was agreed between the parties as "the lessee (defendant

No.1) shall not sublet or under let entire schedule property to anyone whomsoever in any manner without obtaining written consent of the lessor (plaintiff)."

25. On perusal of the oral testimony of defendant No.1, it is not his case that he never sublet the schedule property to defendant Nos.2 to 4. Moreover, defendant No.1, in his written statement, has stated that he has sublet the premises to defendant Nos.2 to 4 legally and same is known to the plaintiff. But, defendant No.1 has not obtained the consent of the plaintiff in writing before he subletting the premises to defendant Nos.2 to 4. The contention of the plaintiff also corroborates the report of the Bailiff, which is marked as Ex.P26 in Commercial Original Suit No.4396/2019. As per Ex.P26, at the time of execution of delivery warrant, defendant Nos.2 to 4 were in possession of the suit schedule property. Thus, it is clear that the original lease was entered into between the plaintiff and defendant No.1, but defendant No.1 sublet the premises to defendant Nos.2 to 4 in violation of the

terms of Lease Deeds dated 01.04.2012 and 20.11.2014. In this regard, defendant No.1 has taken contention that the plaintiff consented the possession of defendant Nos.2 to 4 in the schedule premises and he was collecting rents from them, but no documents are produced to substantiate his contention. No other material is placed on record that the plaintiff permitted/consented defendant Nos.2 to 4 to occupy the schedule premises. As per Clause 6 of the Lease Deed, there was no scope for defendant No.1 to sublet the premises to defendant Nos.2 to 4 without the written consent of the plaintiff.

26. In these cases, the premises in question was given by the plaintiff to defendant No.1 as tenant, but defendant No.1 sublet the schedule property to defendant Nos.2 to 4 and failed to pay rents regularly. Hence, in so far as payment of arrears of rent is concerned, the trial Court has rightly directed defendant No.1 to pay the arrears of rent and payment of arrears to the plaintiff, which does not call for interference at the hands of this

Court.

27. In so far as mesne profits/damages is concerned, defendant Nos.1 to 4 have taken contention that the trial Court fixed mesne profits at Rs.75/- per square feet without any basis. Thus, it is contended that the trial Court exorbitantly granted mesne profit, which requires to be interfered with. On the other hand, the plaintiff has contended that the schedule premises is situated at Subedar Chatram Road, now popularly known as Nataka Rathna Gubbi Veeranna Road, Sheshadripuram, Bengaluru, which is a prime business locality, which fetch more rent than the amount claimed.

28. In so far as grant of mesne profits and damages is concerned, the Court must find that the defendants were in unlawful or wrongful possession of plaintiff's property. Hence, under Order XX, Rule 12 of the Code of Civil Procedure, 1908, the Court must evaluates actual profits received, fair rental value, or potential earnings

during the period of unauthorised occupation, and either awards a specific sum or orders a formal inquiry. Hence, it is just and necessary to analyse Order XX, Rule 12 of the Code of Civil Procedure, 1908, which contemplates for grant of decree for possession and mesne profits, which reads as under:

> "**Order XX** - Judgment and Decree:
>
> ***12. Decree for possession and mesne profits. -*** *(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-*
>
> *(a) for the possession of the property;*
>
> *(b)[for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;*
>
> *(ba) for the mesne profits or directing an inquiry as to mesne profits;]*
>
> *(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-*
>
> *(i) the delivery of possession to the*

decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

29. The trial Court in Commercial Original Suit No.4395/2019 directed defendant Nos.1 to 4 to pay damages by way of mesne profits to the plaintiff at the rate of Rs.75/- per square feet per month which comes to Rs.2,49,450/- from 01.01.2019 till 14.12.2021, and in Commercial Original Suit No.4396/2019, defendant Nos.1 to 4 were directed to pay the damages by way of mesne profit to the plaintiff at the rate of Rs.75/- per square feet which comes to Rs.45,000/- per month from 01.01.2019

to 14.12.2021.

30. A perusal of the aforesaid provisions makes it clear that in order to ascertain the mesne profits or damage, a separate inquiry has to be conducted. Whereas, in these cases, the trial Court without conducting such enquiry, ascertained the mesne profits, which is contrary to the provisions of Order XX, Rule 12 of CPC. Therefore, the commercial appeals deserve to be partly allowed by confirming the judgment and decree with regard to eviction and payment of arrears of rent. In so far as grant of mesne profits/damages is concerned, a separate inquiry to be conducted and hence, the finding with regard to grant of mesne profits/damages are liable to be set aside.

In the result:

i. Commercial appeals are ***partly allowed***. The judgment and decree dated 27.06.2023 passed by the learned LXXXVI Additional City Civil and Sessions

Judge, Bengaluru, (CCH 87) in Commercial Original Suit Nos.4395/2019 and 4396/2019, with regard to arrears of rents with interest payable to the plaintiff is confirmed, however, in so far as granting mesne profits/damages is set aside, as the same require separate inquiry as contemplated under Order XX, Rule 12 of the Code of Civil Procedure, 1908.

ii. No order as to costs.

Registry is directed to send the trial Court records forthwith with a copy of this judgment.

In view of the disposal of the appeals, pending applications, if any, shall stand dismissed.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

KVK