

**IN THE COURT OF THE SUBORDINATE JUDGE OF POLLACHI**

**PRESENT: Thiru.M.Manikandan, M.A., M.L., PG.D.C.F.Sc.,**

Subordinate Judge, Pollachi

Monday, the 10<sup>th</sup> day of March 2026

(2056, Thiruvalluvar Andu, Visuvavasu Varudam, Maasi Thingal 26<sup>th</sup> day)

**O.S.No. 70/2021**

**TNCB11-000221-2021**

1. A.Muthukumarasamy

2. M.Alagu Sadhasivam

... Plaintiffs

***/Versus/***

GTL Infrastructure Limited,

rep by Authorised Signatory

Navi Mumbai 400 710

... Defendant

This suit coming up for final hearing on 25.02.2026 before this Court in the presence of Thiru.S.Suresh, M.A., B.L., Counsel for Plaintiff and defendant was called absent set exparte and upon hearing the arguments of the plaintiff side and perusing the records, having stood over for consideration till this date, this Court delivered the following...

**Judgment**

1) Suit for a) directing the defendant to delivery the vacant possession of the suit property 1<sup>st</sup> item, b) directing the defendant to pay a sum of Rs.4,69,584/- with interest at the rate of 18% per annum from the date of the suit till the date of the realisation of the same, c) directing the defendant to pay a sum of Rs.13,044/- per month towards the damages from the date of the suit till the removal of the cell phone towers from the first item of the suit property, d) Creating a charge over the property more fully described hereunder as the second item of the suit property,

namely, the cell phone tower and the generator set, e) Granting the relief of Mandatory injunction directing the defendant to remove the cell phone tower, namely the second item of the suit property and failing compliance of the same permit the plaintiff to dismantle the cell phone with the help of skilled persons and to recover the cost of the same from the defendant and awarding costs.

**2) The averments made in the plaint is as follows:-**

The property described in the plaint is the plaintiff's absolute property. In respect of the same, the defendant entered in to a lease Deed on 07.08.2008 with the plaintiff. As per the lease deed, the defendant has informed that the defendant is a proper licence holder by department of Telecommunication, New Delhi and involved in the business of providing its passive infrastructure service in Telecom and the defendant informed that they are in need of the premises to place the required Antennae, Towers, BTS Equipments, etc. in the open land and to carry out services related thereto. As per the lease deed, the lease amount was fixed as Rs.9,800/- per month and the defendant have paid 6 month rent advance of Rs.58,800/- which is an interest free and shall be refunded at the time of termination of the agreement. As per the clauses in the agreement, the defendant has to enhance the rent periodically and in fact the same was enhanced up to Rs.13,044/-. The defendant paid the monthly rent till September 2017 payable in October. For the period from October 2017, the defendant has not paid the rent at the rate of Rs.13,044/- and the defendant is not regular in maintaining the cellphone tower and in paying the rent.

2.2) The defendant never come to the property and the plaintiffs understand that with some malafide intention the defendant has been paying the electricity charges alone directly to the TANGEDCO. The defendant's action of not paying the rent for the period from October 2017 amounts to willful default in paying the

rent and defendant is liable to be evicted. The defendant is, therefore, responsible to remove the cellphone tower by engaging necessary skilled persons and also the generator set. On account of placing the cellphone tower in idle, it also become endanger not only to the plaintiff but also to the passers thereon and amount to a public nuisance. The defendant is liable to pay the rent due from October 2017 to 30.11.2020 of Rs.4,82,628/-. The advance amount of Rs.58,000/- is to be adjusted. The amount due and payable by the defendant of about Rs.4,82,628/- the plaintiffs have got the right of lien over the said cellphone tower and the generator set. Hence the plaintiff on 24.12.2020 sent a legal notice to the defendant calling upon them to settle the amount due of Rs.4,82,628/- and dismantle the cellphone tower and also to take away the generator set.

2.3) The arrears rent due to the plaintiff is Rs.4,82,628/-. As per the proposition of law the plaintiffs can ask only the last three years rent due and as such the plaintiffs are filing the present due for the rent due for the period from 01.03.2013 to 28.02.2021 for a period of 3 years which comes to Rs.4,69,584/- at Rs.13,044/- per month. The plaintiffs are also entitled to the monthly rent at the rate of Rs.13,044/- from the date of the suit till the date of the dismantling and cell phone tower by way of damages from the defendant and the plaintiffs undertake to pay necessary court at appropriate time. The present suit is also filed for charge over the B schedule property for the amount due and payable by the defendant to the plaintiffs. Hence the suit.

**3) The averments in the written statement filed by the defendant is as follows :-**

The suit is false, frivolous, vexatious and not maintainable either in law or on facts of the case. The letter dated March 09, 2018 refers to the lease deed/license deed dated 07.08.2008 and the same being accepted by the 1<sup>st</sup> plaintiff

forms a part of the lease deed August 07, 2008 and is to be treated as a part and parcel of the lease deed dated August 07, 2008 and the statement made by the plaintiffs in para no.3 of the plaint lacks bonafide. This defendant is registered as an Infrastructure Provider Category I (IP 1) and in that regards a registration certificate has been issued by Department of Telecommunication, New Delhi and is in a business of providing its passive infrastructure services in Telecom to its clients in India and Aircel Limited is one such client/customer of this defendant who had preferred an Insolvency before the NCLT, Mumbai and the same has been admitted.

3.2) Aircel limited was the sole tenant in the cel tower erected in the suit schedule property and the rent waiver letter dated March 09, 2018 has been issued to the 1<sup>st</sup> plaintiff due to closure of Aircel Limited and the same being accepted by the 1<sup>st</sup> plaintiff by executing the letter, it is not right in the part of the plaintiff to state that the defendants never came to the property. The defendant is still in the look-out for prospective customers to occupy the tower with 5G Roll out in the telecom Industry and therefore submits to act according to the terms of the Rent waiver letter dated March 09, 2018. The defendant is also willing to submit a structural stability report of a qualified engineer on demand to prove the bonafide of this defendant. The defendant has right to 24x7 access to the schedule property and the payment obligation of licensee would be subject to the plaintiff complying the access covenant in the license deed wherein.

3.3) The defendant made regular payments to the plaintiff until the plaintiff was entitled without any delay. Claiming a lien on the equipment of this defendant is against the principles of Natural Justice. All assets of the company including all tower assets are secured/charged under various restrictive covenants of financing documents in favour of the lenders of the defendant company, who have provided

financial assistance of the company and therefore. This defendant is simultaneously filing an application under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the claim/dispute subject matter of the suit to Arbitration since this court does not have the jurisdiction to entertain this suit. The existence of the Arbitration clause is undisputed and the plaintiff is not entitled to file the suit. Section 8 of the Arbitration Act mandates the judicial authority to refer the dispute/claim to arbitration as held by the court and therefore. The plaintiff never extended co-operation for getting the lease deed registered after proper stamping of the license deed despite being insisted by this defendant. Hence the suit is dismissed with costs.

4) After filing the written statement defendant not appeared before the court. While the defendant was called in open court, the defendant was called absent and set *exparte*.

5) Heard plaintiff side argument.

6) In this case, the 1<sup>st</sup> plaintiff himself examined as PW1 and Ex.A1 to Ex.A3 were marked. On behalf of the defendant no one was examined and no documents were marked.

**7) Based on the pleadings, the following Issues were settled for Trial on 08.11.2023 :**

1. Whether the plaintiff is entitled for relief of delivery of possession of suit property ?
2. Whether the plaintiff is entitled for relief of recovery of money ?
3. Whether the plaintiff is entitled for relief of damages as prayed for ?
4. Whether the plaintiff is entitled for create charge over the IInd suit property ?

5. Whether the plaintiff is entitled for relief of Mandatory Injunction ?

6. To what other relief ?

**8) Point No. (I) to (V):-**

a) On careful perusal of the plaint, it is revealed that the defendant entered into a lease agreement with the plaintiff as per the lease deed dated 07.08.2008. As per the lease deed, the defendant informed that it is a proper licence holder issued by the Department of Telecommunications, New Delhi, and is involved in the business of providing passive infrastructure services in the telecom sector. The defendant further informed that it was in need of the premises to place the required antennae, towers, BTS equipment, etc., in the open land and to carry out services related thereto. As per the lease deed, the lease amount was fixed at Rs.9,800/- per month, and the defendant paid six months' rent in advance amounting to Rs.58,800/-, which was to be refunded at the time of termination of the agreement. As per the clauses in the agreement, the defendant had to enhance the rent periodically, and in fact the same was enhanced up to Rs.13,044/-. The plaintiff further stated that from October 2017 onwards, the defendant had not paid the rent at the rate of Rs.13,044/- and that the defendant was not regular in maintaining the cellphone tower and in paying the rent. The defendant never came to the property, and the plaintiff understood that with some malafide intention the defendant had been paying the electricity charges alone directly to TANGEDCO. The defendant's action of not paying the rent from October 2017 amounts to willful default in payment of rent, and therefore the defendant is liable to be evicted. Further, the plaintiff submitted that the defendant is liable to pay rent due to the extent of Rs.4,82,628/-. Hence, the plaintiff issued a legal notice dated 24.12.2020 to the defendant calling upon them to settle the due amount of Rs.4,82,628/-. Since the

defendant did not pay any amount to the plaintiff, the plaintiff filed the present suit.

**b)** Per contra, the defendant filed a written statement denying all the averments stated in the plaint. It was further stated that Aircel Limited was the sole tenant in the cell tower erected in the suit schedule property. A rent waiver letter dated 09.03.2018 was issued to the first plaintiff due to the closure of Aircel Limited, and the same was accepted by the first plaintiff by executing the letter. Therefore, it is not correct on the part of the plaintiff to state that the defendants never came to the property. The defendant further stated that claiming a lien on the equipment of the defendant is against the principles of natural justice. Further, all assets of the company, including all tower assets, are secured/charged under various restrictive covenants of financing documents in favour of the lenders of the defendant company, who have provided financial assistance to the company. Further, as per Arbitration Clause No.6.2, any dispute or claim between the parties arising out of or relating to the agreement shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The defendant also stated that it is simultaneously filing an application under Section 8 of the Arbitration and Conciliation Act to refer the dispute/claim forming the subject matter of the suit to arbitration, as this Court does not have jurisdiction to entertain the suit. Section 8 of the Arbitration Act mandates the judicial authority to refer the dispute or claim to arbitration. Hence, the defendant prayed that the suit be dismissed with costs.

**c)** Considering the rival submissions, this Court finds that as per Ex.A1, the lease deed dated 07.08.2008, the plaintiff and the defendant entered into a lease agreement, which was marked as Ex.A1. In this case, on behalf of the defendant, the defendant did not come forward to defend the case. Though a written statement

was filed before the Court, at the stage of cross-examination the defendant did not appear, and therefore he was called absent and set ex parte. Hence, this Court has drawn an adverse inference against the defendant as per Section 114(g) of the Indian Evidence Act.

d) Further, on careful perusal of the lease deed, it is revealed that it is an unregistered document. The learned counsel for the plaintiff argued that as per Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the Act to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by a registered instrument.

Further, the learned counsel for the plaintiff relied on **AIR 2003 NOC 41 (AP) Mary's Education Society vs. Quntubuddin Ahmed and Others**, wherein it was held that:

**Registration Act (16 of 1908), Section 49** – Unregistered lease deeds – Admissibility in evidence – In a suit for eviction of a party from the property in question, an unregistered lease deed would be admissible in evidence to protect possession of the party as proof of part performance of the contract.

On careful perusal of the above citation and Section 49 of the Registration Act, it is clear that an unregistered lease deed is admissible in evidence to protect possession of a party by way of proof of a document. Further, on behalf of the defendant, it was pleaded in the written statement that the defendant would file an arbitration petition. However, in this case the defendant did not come forward with any petition under Section 8 of the Arbitration and Conciliation Act.

e) Considering the facts and pleadings stated by the plaintiff, the evidence given by PW1, and the documents filed by the plaintiff marked as Ex.A1 to Ex.A3,

it is clearly revealed that there existed a lease between the plaintiff and the defendant based on which the antenna tower and equipment were erected. As per the lease deed, the rent amount was fixed at Rs.9,800/- per month. The defendant did not pay any amount to the plaintiff, and therefore an amount of Rs.4,69,584/- with interest is due to the plaintiff. On careful perusal of the lease deed and the evidence of PW1, the plaintiff has categorically established his case. Hence, the plaintiff is entitled to the relief of delivery of possession. Further, since the defendant did not defend the case and was set exparte, and based on the marking of Ex.A1, the plaintiff has clearly established that the amount is due from the defendant. Hence, the plaintiff is also entitled to the relief of recovery of money as stated in the plaint. Further, since the defendant has not complied with the terms of the lease deed, the plaintiff is also entitled to damages as stated in the suit. The plaintiff is also entitled to create a charge over the second item of the suit schedule property. Further, as per Ex.A1 lease deed, since the defendant has not complied with the terms of the lease deed, the plaintiff is entitled to the relief of mandatory injunction as prayed for in the suit. Accordingly, the defendant is directed to remove the cellphone tower, namely the second item of the suit property, within a period of three months, failing which the plaintiff is at liberty to remove the cellphone tower from the suit property.

**9. Issue No. VI:**

Since above issues are decided in favour of the plaintiff, no other issues to be decided in favour of plaintiff bank.

**10) In the result,** the suit is decreed as follows:

- i) The plaintiff is entitled to the relief of delivery of possession as prayed for.
- ii) that the defendant is directed to pay a sum of Rs.4,69,854/- to the plaintiff with subsequent interest at the rate of 9% per annum from the date of suit till

the date of decree and thereafter 6% from the date of decree till its realization.

iii) Time for payment is 3 months.

iv) The plaintiff is also entitled to damages as stated in the suit.

v) The plaintiff is also entitled to create a charge over the second item of the suit schedule property.

vi) The plaintiff is entitled to the relief of mandatory injunction as prayed for in the suit. Accordingly, the defendant is directed to remove the cellphone tower, namely the second item of the suit property, within a period of three months, failing which the plaintiff is at liberty to remove the cellphone tower from the suit property.

vii) with cost

Dictated to the Steno - typist directly, typed by her and corrected and pronounced by me in the open court, this the 10<sup>th</sup> day of March 2026.

Subordinate Judge,  
Pollachi.

**Plaintiffs side Witness:**

PW1 - Muthukumarasamy

**Plaintiffs side Exhibits:**

Ex.A1	07.08.2008	Lease Deed	Original
Ex.A2	24.12.2020	Legal Notice	Office Copy
Ex.A3	06.01.2021	Acknowledgment Card	Original

**Defendant side Witness and Exhibit:** Nil

Subordinate Judge,  
Pollachi.

**Fair/Draft Judgment**  
O.S.No.70/2021  
10.03.2026

O.S.No.70/2021 SJ, Pollachi