

**Order Below application Exh.6**

**Coram: Mr. Hiteshkumar Mukundrai Vyas, (Judge).**

1. That, the present suit is filed by the plaintiff as a POA holder of his father, who is original landlord, against the defendants inter alia praying for decree of eviction on the grounds of tenant in arrears for a period more than six months, on ground of personal bona fide requirement and on a ground that as per agreed terms the defendants have to vacant the rented premise upon received of notice as per agreed terms as well as also prayed for permanent injunction against the defendants. Wherein, the plaintiff has filed an application under the provision of O.39 R.1 and R.2 of The Code of Civil Procedure, 1908, hereunder referred as “The Code” for short. The brief facts of the application under consideration are as follows.

The plaintiff pleads that, the property, a description of which is mentioned in para-2 is owned by his father, who has executed an irrevocable power of attorney in his favour and under the gist of the same the present suit is filed. It is further pleads that the father of the plaintiff has let the property to the defendant no. 1 and father of the defendant no. 2 by executing a rent agreement on 30.10.1970 for a rent of Rs.100/- per month. The parties had also agreed to the terms stipulated in the agreement. Thereafter, the rent of rented premise was increased at Rs.150/-. It is also pleaded that the defendants have been possessing the rented premise as tenant. The defendants have been very

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irregular in making payment of agreed rent amount and had failed to pay rent from 01.04.2012 and therefore, the plaintiff had issued a legal notice 13.11.2019 inter alia asking for vacant possession of rented premise on ground of tenant in arrears for a period more than six months. The said notice was duly served upon the defendants. The defendants had replied to the said notice along with it, the defendants had sent a cheque for an amount of Rs. 13,860/-, which later on, was encashed by the plaintiff. The plaintiff had filed a suit no. 458/2019 against the defendants, wherein after filing of written statement by the defendants and after filing of rejoinder by the plaintiff, the plaintiff had withdraw the suit with condition to file a fresh suit as the cheque amount was encashed. The said permission was granted to the plaintiff and thereafter, on 05.02.2020 the suit was ordered to be disposed as withdrawn with condition to file a fresh suit. Thereafter, the plaintiff has issued another legal notice to the defendants on 16.03.2020, wherein, it is alleged that as per agreed terms either party to the agreement may vacant the rented premise by giving three months prior notice as well as the plaintiff needs the rented premise for his personal bona fide use i.e for starting a computer business. The said notice was duly served upon the defendants and the defendants have given an evasive reply to the said notice and have failed to comply with agreed terms. It is also alleged that the defendants have also once again failed to pay agreed rent for a period more than six months at the time of filing suit. Thereafter, as the defendants have not acted as per agreed terms of

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agreement, a cause of action arose to the plaintiff and therefore, the suit and an application under consideration is filed by the plaintiff for the relieves claimed for.

2. Thereafter, this Court has, by taking cognizance on the suit and application under consideration, has issued notice to the defendants, which have been duly served upon them and in persuasion thereof, they have appeared before this Court and have filed their written statement to the suit and application exh. 6 vide exh. 17. In their written statement, the defendants have admitted their relationship, the description of the rented premise, the facts of earlier notices on both the occasions along with their reply, the facts of the payments of rent amount by cheque and the facts of execution of an agreement on 30.10.1970. The rest of all the facts have been denied in toto. The sum and substances of the defendants' written statement are that the defendants had made attempt to make payment of rent amount. However, the plaintiff was not accepting for the reasons that the plaintiff wants the defendants to vacate the rented premises. It is also pleaded that the earlier suit was withdrawn by not giving proper reasons and the present suit is filed by suppressing material facts. It is also pleaded that no valid reasons or cause arose to the plaintiff to file a suit against them as they are not tenant in arrears. It is also pleaded that on second occasion, they could not pay the rent amount due to spread of covid-19 and lockdown and as soon as the lockdown was lifted, they have made the payment of rent amount. The defendants have also stated that they stick to their earlier reply to the

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notices and written statement filed in HRP Suit No.458/2019. The defendants have also pleaded that they have not violated any terms of agreement and therefore, the suit deserves to be dismissed.

3. Thereafter, the plaintiff has filed his rejoinder vide exh. 22 against the written statement of the defendants, wherein he has denied all the material denial of the defendants and has stick to his pleadings.
4. Thereafter, Learned Advocate for the plaintiff has appeared before this Court in virtual hearing and has made his oral submissions by stating that both the suit are on different grounds and on a valid cause. The defendants have admitted the agreement dated 30.10.1970 and therefore, the plaintiff has by issuing required notice as per agreed terms filed the suit as per agreement as well as on bonafide requirement and therefore, the defendants have no valid defence and during the course of trial the rented premise is required to be preserved therefore, prayed for passing injunction as prayed for.

Whereas, learned advocate for the defendants has filed his written submission vid exh. 25. I have carefully gone through the same.

5. Upon consideration of the above stated factual aspects, following issues are arisen for just determination of the present application.

**ISSUES.**

1. Whether the plaintiff proves that, the plaintiff has prima facie case against the defendants ?
2. Whether the plaintiff proves that, the balance of inconvenience is in favour of the plaintiff.

3. Whether the plaintiff proves that, the plaintiff would suffer irreparable loss if the injunction as prayed for is not granted ?
4. What order ?
6. That, my findings for the above mentioned issues are as follows.

**Findings.**

1. In Negative.
2. In Negative.
3. In Negative.
4. As per final order.
7. That my reasons for the above findings are as follows.

**Reasons.**

**Issues No. 1 to 4 :-**

As all the issues are inter connected therefore, to avoid repetition of facts, they are discussed together hereunder.

1. That, I have carefully gone through the pleadings of the parties vide exh. 1, 17 respectively as well as also considered the contention of the plaintiff in application vide. 6 and rejoinder exh. 22. I have also carefully considered the documentary evidence produced by the plaintiff vide exh. 5 and 23 list, vide mark 5/1 to 5/17 and 23/1 to 23/6 and documents produced by the defendants vide exh. 19, list vide mark-19/1. On carefully going through above stated pleadings of the parties as well as documentary evidences, certain facts have been emerged as an admitted facts by and between the parties, which goes to very root of the litigation and the same have been curved out as follows.

There is no dispute between the parties with regard to the facts of

execution of rent agreement on 30.10.1970 and under the gist of which, the defendants have been holding the possession of the rented premise till today. It is also not in dispute that at present rent of the premise is Rs.150/- per month. It is also not in dispute that the plaintiff had earlier issued a notice to the defendant on 13.11.2019, which was duly received by the defendants and thereafter the defendants had replied to the said notice and along with it make payment of Rs.13,860/- by cheque. It is also not in dispute that the plaintiff had filed HRP Suit No. 458/2019, which later on withdrawn with condition to file a fresh suit by the plaintiff and the court had also permitted the plaintiff for the same. Thereafter again, the plaintiff has issued notice on 16.03.2020 on the basis of which present suit is filed. The said notice was also served upon the defendants and the defendants have make payment of Rs.1,350/- for nine months as well as given reply, to the said notice. It is also not in dispute that the plaintiff has also lodged a caveat against the defendants for filing of the suit, which was duly served upon them. The present suit is filed by the plaintiff as POA holder of his father, who is original owner of the subject property of this suit. All these facts get further corroboration on bare perusal of documents vide mark 5/1 to 5/16, 23/1 to 23/6 and 19/1 produced by the parties respectively. Thus, these facts do not required much deliberations.

2. In this case, the plaintiff has also taken ground of tenant in arrears. However, considering the pleadings of the plaintiff, it appears that the plaintiff has not complied with the provision of Section 12(2) of the

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Rent Act by giving one month prior notice. Thus, the plaintiff has not complied with statutory mandatory provision. Secondly, on perusal of written statement of the defendant vide exh. 17 as well as documentary evidence provided by the plaintiff vide exh. 23/1 to 23/5. It becomes clear that the defendants have paid unpaid rent of nine months and therefore, in view of the above factual aspect of the case, this Court is of the view that this ground is not available to plaintiff.

At this stage, it required to note that the plaintiff have produced document mark 5/17 contending that he requires property for bonafide use. However considering the document, it appears that it is merely a quotation. Thus, in aforementioned background of this suit, it appears that, the issues of bonafide requirement is purely a question of facts, which can not be decided without giving an opportunity to both the parties for leadings evidence in this behalf.

3. Now, considering the aforesaid discussion as well as agreement dated 30.10.1970, at this stage, it becomes clear that the parties not disputing its execution. However, considering the matter from the prospective of grant of injunction to the plaintiff, it appears that the plaintiff has not pleaded any clear foundation of facts regarding, how the defendants are attempting to dispossessed with the possession of rented premises in plaint exh. 1. The plaintiff has only contained in the application Exh. 6 that the defendants could dispossessed with the possession of the rent premise. However, except this bare version, there is no other clear foundation of facts regarding the issue. It is also not the case of the

plaintiff that the defendants have made any attempts for doing so. Further, mere apprehension is not a ground for grant of injunction. Thus, considering the totality of factual aspect of the case as emerged from above discussion, it appears that the plaintiff has failed to prove the facts that, how the defendants are breaching his lawful right and thus from above discussion, this Court is of the view that the plaintiff has failed to prove his prima-facie case for grant of injunction as prayed for and therefore, accordingly answer for Issue no.1 in Negative.

So far as concerned to other two required elements, it appears that when the plaintiff has failed to prove his prima-facie case, then the balance of convenience cannot be said to be in his favour. Further, as there is no clear foundation of facts regarding how the defendants are trying to cause irreparable to the plaintiff, which cannot be compensate in terms of money. Thus, from above discussion this court is of the view that the plaintiff has also failed to prove other two elements and therefore, accordingly answers for Issue Nos. 2 and 3 in Negative and passing for final order for issue no. 4.

**ORDER**

1. The application exh. 6 filed by the plaintiff is hereby order to be disallowed and rejected and earlier order passed by this court below application exh. 6 is stand vacated forthwith.
2. The costs shall follows the suit.

**Order passed and pronounced on this 17<sup>th</sup> Day of December, 2020 through video conference.**

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