

KABC010072572024



**IN THE COURT OF THE III ADDL. CITY CIVIL AND
SESSIONS JUDGE, (CCH-25) AT BENGALURU**

DATED: THIS THE 16th DAY OF JUNE, 2025.

PRESENT : Smt. NISHARANI A.C., B.A., LL.B.,
III Addl. City Civil and Sessions
Judge, Bengaluru.

O.S.No.1951/2024

PLAINTIFF:

1. Smt.Chethana Prasad
W/o Pranava Prasad,
D/o late G.V. Veerasetty,
Aged about 50 years,
R/at No.56, Railway Parallel Road,
Near Tata Coffee Ltd.,
Kumara Park West,
Bengaluru – 560 020.

(By Sri.T.A.Karumbaiah, Advocate)
V/s

DEFENDANTS:

**1. Veracious Vanivilas Flat
Owners Association**
Doddaballapura Road,
Near CRPF Campus,
Puttenahalli, Yelahanka,
Bengaluru – 560 064.
Represented by its Secretary.

2. SRI.Vaijinath
Aged about 67 years,
President,

Veracious Vanivilas Flat
Owners Association,
Doddaballapura Road,
Near CRPF Campus,
Puttenahalli, Yelahanka,
Bengaluru – 560 064.

3. Sri.Makam Ravi
Aged about 57 years,
The Secretary,
Veracious Vanivilas Flat
Owners Association,
Doddaballapura Road,
Near CRPF Campus,
Puttenahalli, Yelahanka,
Bengaluru – 560 064.

(D.1 by Sri.L.G., Advocate
D.2 & 3 - exparte)

**ORDER ON INTERLOCUTORY APPLICATION No.5 FILED
BY THE PLAINTIFF UNDER ORDER XXXIX RULE 1 AND 2
RW SEC.151 OF CODE OF CIVIL PROCEDURE .**

The learned counsel for plaintiff has filed I.A.No.5 under Order XXXIX Rule 1 and 2 r/w Sec.151 of CPC, for the relief of temporary injunction restraining the defendant, their committee members, servants, agents, labourers, watchman/ watchmen or anyone claiming through them from interfering with the peaceful use and enjoyment of amenities such as, common area, club house, playground,

lifts, gym, pool in the suit schedule 'A' property and collection of garbage, power supply back up/ generator power back up to the suit schedule 'B' property by the plaintiff and her tenants, their children, agents or persons claiming under her till the disposal of the suit.

2. In support of the application, the plaintiff has sworn to an accompanying affidavit stating that the plaintiff has filed the suit for permanent injunction restraining the defendants, their committee members, servants or anybody claiming through them for interfering with the peaceful possession and the enjoyment of the suit schedule A, B, C and D property. The plaintiff's father late Sri.G.V.Veerathy has entered into a JDA during his life time and after his demise the plaintiff schedule 'B' properties fell to the plaintiff's share consisting of 13 apartments. However, the builder left all the 13 apartments unfinished. The plaintiff himself by financial assistance from family and friends and finished Flat No.A 1103 and B 1201 and let out the same to the tenants. The plaintiff consistently paid all

the maintenance charges due for the two apartments i.e., A1103 and B1201 to the defendant Association since of April 2023 till date. Despite ensuring all maintenance by the plaintiff, he has facing repeated wrongful and illegal harassment from the defendants and their committee members, servants, agents, labourers who have been illegally denying the plaintiff, his tenants, their children access to the building's premier amenities and they are unable to enjoy the basic facilities that they are paying for in the maintenance that is paid to the defendant No.1 association. The plaintiff also lost many tenants who have left the suit schedule property owing to the illegal actions of the defendants. The plaintiff has made out prima facie case and balance of convenience lies in favour of the plaintiff. Hence, prays to allow the application.

3. On the other hand, the defendants have filed memo to adopt the written statement as objection to the I.A.5 stating that the suit is liable to be dismissed for mis-joinder of necessary parties. As a matter of fact, the flats

No.A-1103 and C-203 are in occupation of tenants inducted by plaintiff, they are regularly paying maintenance and therefore they are permitted to use the common area facilities like road, water, power and security. The defendants have never prevented the plaintiff from entering the flats owned by her, except stating that certain common facilities can be used only after payment of maintenance dues as per payment reminder notices sent to her from time to time. As far as using of housekeeping, club house, generator backup, since the defendants are incurring huge expenditure and the same are shared by group of residents/ association. It is the duty of the plaintiff to pay the same. Once the plaintiff pay the overdue maintenance fees, the defendant will allow her to use common area facilities. Hence, prays to reject the application.

4. From the contents of the IA and counter parts filed by the parties the following points that arise for my consideration.

1. Whether the plaintiff has made out a prima-facie for grant of temporary injunction as prayed in the I.A.No.5?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether the irreparable loss or injury caused to plaintiff?
4. What order?

5. Heard arguments. After hearing the arguments and after considering the available material on record my answer to the above points are,-

POINT NO.1 : In the **Affirmative**,

POINT NO.2 : In the **Affirmative**,

POINT NO.3 : In the **Affirmative**,

POINT.NO.4 : As per final order,
for the following-

REASONS

6. **POINT NO.1 PRIMA-FACIE CASE:-** There is no dispute that by way of partition and rectification deed 13 flats fallen to the share of the plaintiff. Now the plaintiff stated that she has let out two flats and even though they are paying their maintenance, the developers are not

providing the natural amenities for the tenants of the plaintiff. The defendants alleges that the tenants of the plaintiff who are residing in the flats A-1103 and B-1201 are not paying maintenance charges therefore, they are not providing the general amenities as they should pay from their hands for providing basic amenities for other residents also. Therefore, the plaintiff filed this application. It is not disputed from the defendants that the tenants are residing in the Flat No.A-1103 and B-1201 and also title deed of the plaintiff herein. However, the plaintiff has to pay maintenance. The plaintiff is hereby produced some of the documents to show that he is paying maintenance regularly, the same is denied by the defendant association. However, no document produced by the defendant association for the said denial. Therefore, it is just and necessary to restrain the defendant association from disconnecting the basic amenities subject to payment of maintenance. Therefore, prima facie case is made out by the plaintiff. Hence, I answer point No.1 in the **Affirmative**.

7. POINT Nos.2 & 3 – BALANCE OF CONVENIENCE & IRREPARABLE LOSS:- If the basic amenities are not provided, much injury and hardship would be caused to the plaintiff. Therefore, the applications filed by the plaintiff under Order 39 Rules 1 and 2 is hereby allowed. Hence, I answer **Point Nos.2 & 3** in the **Affirmative**.

8. POINT No.4:- For the foregoing reasons, I proceed to pass the following:-

ORDER

IA.No.5 filed by the plaintiff under Order XXXIX Rule 1 and 2 r/w Section 151 of CPC is hereby allowed.

Defendant Association, their committee members, or anyone claiming through them are restrained by way of temporary injunction from interfering with the use and enjoyment of amenities in any manner subject to payment of

maintenance by the plaintiff regularly/
periodically, **till the disposal of the suit.**

(Dictated to the Stenographer on computer, typed by her, corrected and pronounced by me in open Court on this **16th day of June, 2025**).

**(NISHARANI A.C)
III ADDL. CITY CIVIL AND
SESSIONS JUDGE, BENGALURU.**

