

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE
AT BANGALORE [CCH.No.87]

Present:

Smt.NERALE VEERABHADHRAIAH BHAVANI, B.A., LLB(Hons)
LXXXVI ADDL.CITY CIVIL JUDGE

Dated this the 9th day of January, 2023

Com.O.S.No.945/2021

Plaintiff/s : Mr.K.A.Mohammad Ali

V/s

Defendant/s : Mrs.Asha.L @ Asha Chetan Kumar

ORDER ON I.A.No.VII

The learned counsel for the plaintiff filed an application under order XXXVII Rule 3 (6)(b) of CPC for seeking direction to direct the Defendant to provide security by way of deposit or bank guarantee for a sum of Rs. 16,10,500/- being the amount claimed by the Plaintiff that the Defendant is liable to pay along with interest to the plaintiff, in the interest to the plaintiff.

2. It is averred in the accompanying affidavit to the application that the plaintiff is represented by the Power of Attorney Holder and the power of attorney holder is aware of the facts of the case and the subject matter of the captioned suit. The Defendant, in lieu of a Sale Agreement dated 03/08/2018, issued the subject matter of the cheque

and the sale agreement discloses that the Defendant had purchased the Saloon run by the Plaintiff and his partner for a total consideration of Rs.56,00,000/- (Rupees Fifty-Six Lakh only). The agreed sale consideration is depicted in Para 1 of the Sale Agreement and the cheque was issued towards the purchase of the saloon detailed in Para 2 of the Sale Agreement. It is also pertinent to note that, the legal presumption under Section 139 of the NI Act in consonance with Section 138 provides that the handing over of a Cheque is proof enough of an admitted debt. Hence, the Cheque was issued as part of a debt under a document termed as Sale Agreement, which is a written contract and the issuance of the Cheque in lieu of the Sale Agreement is sufficient to establish that the said Cheque was issued towards discharge of a legally liable debt, that the Defendant had incurred towards the purchase of the Saloon, from the Plaintiff and his partner. If the plaintiff succeeds in the suit then it will be a paper decree and defendant will delay in satisfaction of the decree that may be passed against the plaintiff and sought for allowing the application.

3. On the receipt of the application, the defendant has filed a memo stating that the Written Statement of the

defendant may be treated as objections to the Application and the defendant has initiated Pre-Institution Mediation before DLSA at Bengaluru against the Plaintiff and his representative and produce the copy of PIM.

4. In the written statement the defendant has specifically contended that the plaintiff is guilty of suppressing material facts of the Suit. The business that was to be sold to the Defendant never belonged to the Plaintiff or his partner. The partnership was in the nature of a Limited Liability Partnership formed and constituted under the provisions of the Limited Liability Partnership Act, 2008. Unlike under the Indian Partnership Act, 1932. Under the Limited Liability Partnership Act, 2008, the Partnership Firm is a corporate entity having a legal existence separate from its partners. Hence, the property or business of a Limited Liability Partnership belongs to the Partnership Firm and not to any of its individual partners. The Agreement for Sale, dated 03.08.2018, was executed by the Plaintiff and his partner and not by the Limited Liability Partnership Firm. At that time, none of the Parties were aware of this and, by mistake, entered into the Agreement undertaking mutual

obligations. The said mistake is one that goes to the root of the transaction rendering it void.

5. It is further contended that on 25.09.2017, the Plaintiff and his partner, Komala Prakash, entered into a registered Indenture of Lease with a landlord, one Mr. S. Naga and in pursuant to which the Plaintiff and his partner took certain premises located in HMT Layout on CBI Road, Bangalore - 32, on lease for a period of 09 years and 09 months to establish and operate a Beauty Salon business. On 07.11.2017, the Plaintiff and his partner, Komala Prakash, entered into a Limited Liability Partnership Agreement, constituting a Limited Liability Partnership Firm named as "Goldenratio Healthcare LLP" and establish and maintain a Beauty Salon. On 22.11.2017, the Bruhat Bangalore Mahanagara Palike issued a Trade Licence Certificate in the name of the Plaintiff's partner, Komala Prakash to operate a Beauty Salon. The defendant submits that the Plaintiff and his partner ought to have and were, in fact, required by law to have obtained the Trade Licence Certificate in the name of the LLP and not in the personal name of one of the partners. Since the LLP did not have a trade licence, the establishment and operation of the Beauty

Salon was illegal from the very beginning. Without prejudice to the aforesaid, the Defendant submits that even the Trade Licence issued to the Plaintiff's partner expired on 28.02.2018. On 10.10.2017, the Defendant came to be employed by the LLP as a manager in the Beauty Salon. On 03.08.2018, the Plaintiff and his partner induced the Defendant to enter into an Agreement for Sale of Stock-in-Trade, Furniture and Effects, i.e., the business of the Beauty Salon, under which the Plaintiff and his partner agreed to sell the LLP's business to the Defendant for a total sale consideration of 56,00,000/- (Rupees Fifty Six Lakhs). The Defendant states that the Plaintiff and his partner had received and collected from the Defendant a sum of Rs. 27,00,000/- (Rupees Twenty Seven Lakhs) in installments over a period of several months prior to entering into the Agreement and the Defendant was required to pay the balance amount of Rs. 29,00,000/- (Rupees Twenty Nine Lakhs) to the plaintiff and his partner upon the consummation of the transaction by the Plaintiff and his partner handing over vacant and peaceful possession of the Beauty Salon premises to the Defendant along with all original documents legally transferring the ownership of the

Beauty Salon business to the Defendant. The said Rs. 29 Lakhs, being the balance sale consideration, was to be made by way of three cheques, two aggregating to Rs. 19 Lakhs drawn in favour of the Plaintiff's partner, and one, being the Suit Cheque, for a sum of Rs. 10 Lakhs drawn in favour of the Plaintiff. The Defendant submits that the execution of the Agreement, dated 03.08.2018, did not, by itself, result in sale and transfer of the Beauty Salon business to the Defendant. The Plaintiff and his partner's LLP continued to remain the owner of the said business. Further, the Plaintiff and his partner continued to be the lessees in respect of the said premises.

6. On 03.10.2018, by an email addressed to the Plaintiff and his partner, the Defendant cancelled the said Agreement, dated 03.08.2018 and called upon the Plaintiff and his partner to refund the sum of Rs.27 Lakhs already paid by her. The Plaintiff and his partner did not care to refute or deny or even respond to the Defendant's cancellation of the said Agreement, dated 03.08.2018. The Plaintiff and his partner have, till date, not challenged the cancellation of the said Agreement, dated 03.08.2018, by the Defendant. On 04.10.2018, the Plaintiff's partner,

Komala Prakash, filed a Police Complaint against the Defendant, alleging that she was illegally occupying the leased premises and that she had, allegedly, embezzled funds from the business. However, upon the police authorities 'persuading' both the parties to work out a settlement, both the parties were made to submit letters, dated 04.10.2018, in which the Defendant was to pay Rs.5.5 Lakhs to the Plaintiff's partner against which the Plaintiff's partner was to sell the business to the Defendant. On 15.11.2018, the Plaintiff's partner, Komala Prakash, wrote to the BBMP seeking cancellation of the Trade Licence. On 06.12.2018, the Plaintiff's partner issued a Legal Notice to the Defendant informing her of the surrender of the Trade Licence and calling upon the Defendant to take steps to get the lease transferred to her name. A day earlier, i.e., on 05.12.2018, the Plaintiff's partner wrote to the landlord, Mr. S. Naga, to transfer the lease to the Defendant and that, if the Defendant does not pay the rent, to terminate the lease. In response thereto, by his letter, dated 27.12.2018, addressed to the Plaintiff's partner, the landlord alleged that the Plaintiff and his partner had, purportedly, sub-let the leased premises to the Defendant and committed breach of

the terms of the lease and called upon the Plaintiff to vacate the leased premises within 15 days from the receipt of the letter. By her letter, dated 31.12.2018, addressed to the landlord, the Plaintiff's partner denied that she had sub-let the leased premises to the Defendant, claimed that it was, purportedly, the Defendant's obligation to pay the rent and that she was surprised that the Defendant had, allegedly, defaulted in paying the rent for the leased premises.

7. Simultaneously, on the same day, i.e., 31.12.2018, the Plaintiff's partner also wrote to the Defendant alleging that it was her responsibility to pay the rents for the leased premises and that the Plaintiff's partner would not be responsible if the landlord terminated the lease. Eventually, by his letter, dated 06.02.2019, addressed to the Plaintiff as well as his partner, the landlord terminated the lease and called upon the Plaintiff and his partner to pay the arrears of rent and to vacate the leased premises. The Plaintiff nor his partner challenged the termination of the lease. Consequently, the landlord locked up the leased premises along with the LLP's fixtures and furniture, and the Defendant has been given to understand that the landlord has inducted someone else in the leased premises to

operate a similar beauty salon business and they are running the business in the name and style "Expression Unisex Salon". On 20.02.2019, the Plaintiff's partner wrote to the landlord, claiming that she had already sold the business to the Defendant and that it was, purportedly, the Defendant's fault in not having paid the rents, and that, therefore, if the landlord took any precipitate steps, the Plaintiff's partner would defend against the same. On the same day, i.e., 20.02.2019, the Plaintiff's partner also wrote to the Defendant calling upon her to pay the rents for the leased premises. On 15.03.2019, by a letter, dated 15.03.2019, addressed by the Plaintiff's Advocates to the Defendant, the Plaintiff informed the Defendant that, on 23.11.2018, he had presented her cheque for Rs. 10 Lakhs (which had been issued as part of the balance sale consideration for the sale of the business to the Defendant) and that it had been returned unpaid and threatened to initiate criminal proceedings against her. In December, 2020, suppressing the facts filed the present suit. The defendant is already cancelled the said Agreement, dated 03.08.2018 in October, 2018, which cancellation has not been challenged and has attained finality, there was no

subsisting obligation on the part of the Defendant to make any payment to the Plaintiff and sought for dismissing the case.

8. Heard the arguments.

9. Considering the rival arguments and the materials on record, admittedly the plaintiff has filed the present suit U/o 37 Rule 1 of CPC alleging that the plaintiff along with his partner had established Unisex Saloon in the name of purple Tree and entered into an agreement with the defendant to sell the saloon for a sale consideration of Rs.56,00,000/- under the agreement of sale and stock in trade of furniture effects dated 03.08.2018. In pursuance of the said agreement, the defendant has paid Rs.27,00,000/- and the balance receivable was Rs.29,00,000/- and issued three cheques for Rs.10,00,000/- by way of cheque bearing No.073776 and another cheque for Rs.10,00,000/- bearing No.073777 and a cheque for Rs.29,00,000/- bearing cheque No.073778 dated 01.10.2018 drawn on Axis Bank Ltd was sum of Rs.29,00,000/-. It is alleged after the issuance of the said cheque the plaintiff has presented the cheque bearing No.073778 for Rs.10,00,000/- and the same was return with a endorsement stopped by the drawer and the said cheque

is the subject matter in dispute. The main defence of the defendant that the plaintiff is not the owner of the lease premises and could not transfer the business as agreed and not liable to pay the amount as agreed in the agreement of sale. Infact this court while allowing the leave to defend vide order dated 10.03.2022 as observed that the defendant has raised serious contention and the same is triable issue and even the claim of the plaintiff to recover the sum of Rs.16,10,500/- with interest is seriously disputed and allowed the leave to defend unconditionally. Now the present application of the plaintiff is that the defendant has admitted the liability. This court has already referred to contention raised in the written statement as stated in supra and the defendant has taken a specific plea that the issuance of the cheque was subject to the transferring of business as per the agreement coupled with the condition of delivery of possession. Though, the plaintiff contend that the defendant has admitted the delivery of possession by referring to the notice dated 05.12.2018 marked at Ex.P.7 but the fact remains the plaintiff was a tenant under one naga in which the saloon was being carried out and the said business was agreed to be sold to the defendant under the

agreement dated 03.08.2018 and thereafter the land lord Naga has terminated the tenancy of the plaintiff on the ground of subletting and the same is also evident from the evidence of P.W.1. In such circumstance, the contention of the learned counsel for the plaintiff that the defendant has admitted the liability of the issuance of the cheque towards the discharge of the existing liability is not acceptable. Thus, this court is of the opinion that the plaintiff has failed to prima facie establish that the defendant is liable to pay the amount of Rs.16,10,500/- to offer security as claimed in the application.

ORDER

I.A.No.VII filed an application under order
XXXVII Rule 3 (6)(b) of CPC is hereby dismissed.

LXXXVI Addl. City Civil Judge
Bangalore.