

KABC170009842024



**IN THE COURT OF LXXXVI ADDL. CITY CIVIL & SESSIONS JUDGE,  
COMMERCIAL COURT, BENGALURU (CCH-87)**

**Present: Sri Jithendranath C.S., B.A., LL.M.,**  
LXXXVI ADDL. CITY CIVIL & SESSIONS JUDGE  
BENGALURU.

**COM. O.S.No. 487/2024**

**Dated on this the 7<sup>h</sup> day of December, 2024**

**Plaintiffs** M/s. PSSV Incorporation

*(By Sri. C.R.R., Advocate)*

**// versus //**

**Defendant** M/s. Davanam Jewellers Pvt. Ltd.

*(By Sri. B.G., Advocate)*

**ORDERS ON I.A.NO.3 & 4**

Plaintiff is the landlord and whereas the defendant is its tenant. Having allowed I.A.No.2 filed by the plaintiff this court by its order dated 30.10.2024 directed the defendant to deposit in the court, the agreed monthly rent from October 2022 till October 2024 within 15 days from the date of order on 12.11.2024. Upon the request of the defendant matter was adjourned to 15.11.2024 for compliance of the order. On 15.11.2024, the defendant

once again sought for one day time for compliance of the order, the matter was adjourned to 16.11.2024. On 16.11.2024, the defendant filed I.A.No.3 under Section 148 of CPC i.e., seeking enlargement of time for compliance of the order dated 30.10.2024 by 30 days. Since the defendant did not comply the order of the court, the plaintiff filed I.A.No.4 under Order VI Rule 15A of CPC r/w Order 39 Rule 11(1) and Section 151 of CPC requesting the court to strike off the defense of the defendant. Rival parties have filed their respective objections to the I.A.No.3 and 4.

2. Heard both the sides.

3. Advocate for the defendant cited several decisions of the superior courts of this land emphasizing on the point that this court can extend a time invoking under Section 148 of CPC.

4. The following points arise for court's consideration;

1. *Whether the I.A.No.3 filed by the defendant is deserves to be allowed?*

2. *Whether the I.A.No.4 filed by the plaintiff is deserves to be allowed?*

2. *What order ?*

**Point No.1 & 2 :**

5. Sri. D.V. Aravind, Director of Davanam Jewellers Pvt. Ltd. i.e., defendant herein filed his affidavit *inter alia* stating that the defendant has arranging funds to make necessary payments and therefore, the defendant may be permitted 30 days time to comply the order. It is to be noted that the defendant is running a jewelry shop in the suit premises owned by the plaintiff. The rent has not been paid from October 2020 till October 2024. On institution of the present suit, the defendant has paid the rents for a month or two. The substantive portion of the rent is still in due. Except an *omnibus* assertion that the defendant is arranging funds there is no substantive proof for the same. Though this court granted sufficient time, the defendant was not deposited arrears of rent or substantive portion thereof. Therefore, the prayer of defendant is liable to be rejected.

6. In so far as the request of the plaintiff to strike off the defense is concerned, at the outset there is no expressed

provision in CPC applicable to the State of Karnataka to strike off the defense of the defendant.

7. Learned counsel for the plaintiff cited two decisions;
- i) In the case of Ramavatar Suraj Modi Vs. Mulchand Surajmal Modi reported in 2004(1) ALL MR 822, the Hon'ble Bombay High Court held that by invoking Order 39 Rule 11(1) of CPC (as amended in Maharashtra in 1983), the court may strike off the defense. No such provision is available to Karnataka.
  - ii) In the case of Mahesh Chander Kumar Vs. Bhagwan Singh Saini in CM(M) 701/2023 & CM APPL. 21979/2023, the Hon'ble High Court of Delhi did not wish to interfere with the order of the commercial court which struck off the defense. The question before the Hon'ble Delhi High Court was that whether Order XXXIX Rule 10 of CPC is applicable to the commercial courts or not. The Hon'ble Delhi High Court held that the said provision is certainly applicable to the commercial courts also. Since there is no expressed provision in the Code of Civil Procedure applicable to the State of Karnataka to strike off the

defense for non compliance of the order of the court, this court do not wish to pass any adverse order on the defendant. The plaintiff is already filed execution petition to execute the interim order passed by this court. Hence the plaintiff is at liberty to seek for necessary orders in the said execution petition. Accordingly, I answered above points in the negative.

**Point No.3 :**

8. For the forgoing reasons, the court proceed to pass the following;

**ORDER**

I.A. No.3 filed by the defendant under Section 148 of C.P.C. is hereby rejected.

I.A. No.4 filed by the plaintiff under Order VI Rule 15A r/w Order 39 Rule 11(1) of CPC is hereby rejected.

*[Dictated to the Stenographer, transcribed by him, corrected and signed by me then pronounced in the Open Court, dated this the 7<sup>th</sup> day of December, 2024]*

**(Jithendranath C.S.)**

LXXXVI ACC & SJ, (Commercial Court)  
Bengaluru