

KABC170025932023



IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)

Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.

COM.OS.No.1218/2023

Dated on this 24th day of August 2024

Plaintiffs

Mr. Mohammed Ayub Ahmed &
another

(By Sri.P.M.Narayanaswamy,
Advocate)

// versus //

Defendants

Sri.Vijay Kumar and another

(By Sri.Eashwar Prasad .B,
Advocate)

I.A.No.III

**Applicants/
Plaintiffs**

1. Mr.Mohammed Ayub Ahmed,
S/o late Mohammed Iqbal Ahmed,
Aged about 50 years.
2. Smt.Seher Taj,
W/o Mohammed Ayub Ahmed,
Aged about 39 years.

Both are residing at:
No.357, 3rd Cross, 1st Block,
R.T.Nagar, Bengaluru-560032.

(By Sri.P.M.Narayanaswamy,
Advocate)

// versus //

**Respondents/
Defendants**

1. Sri. Vijay Kumar,
S/o Ramachand,
Aged about 33 years,
2. Smt.Soni Kesarwani,
W/o Vijay Kumar,
Aged about 28 years,

Both are residing at:
Sweet Home Apartments,
No.36/3, AALCO Layout,
Byadarahalli, Bension Town,
Bengaluru-560046.

Also at:
“VRS PALACE”
No.9, 1st Cross,
Shivaram Karanth Nagar,
Next to Bharath Petrol Pump,
Bengaluru-560077.

**(By Sri.Eashwar Prasad .B,
Advocate)**

I.A.No.IV

**Applicants/
Defendants**

1. Sri. Vijay Kumar,
S/o Ramachand,
Aged about 33 years,
2. Smt.Soni Kesarwani,
W/o Vijay Kumar,
Aged about 28 years,

Both are residing at:
Sweet Home Apartments,
No.36/3, AALCO Layout,
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**(By Sri.Eashwar Prasad .B,
 Advocate)**

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**Respondents/
 Plaintiffs**

1. Mr.Mohammed Ayub Ahmed,
 S/o late Mohammed Iqbal Ahmed,
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 Aged about 39 years.

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**(By Sri.P.M.Narayanaswamy,
 Advocate)**

(I)	Provision under which the application is filed and	IA No. 3 is filed by the plaintiffs under Order 6, Rule 17 CPC for amendment of the plaint.
(ii)	relief sought	IA No. 4 is filed by the defendants under Order 7 Rule 11 (a) and (d) of the CPC for rejection of the plaint.
(iii)	The date on which the application is filed	IA No. 3 filed on 26-06-2024 IA No 4 filed on 11-07-2024
(iv)	Number of the application	IA No. 3 and 4
(v)	The date on which the objections are filed by different opponents	Objections to IA No. 3 filed by Defendants on 13-08-2024 Objections to IA No. 4 filed by Plaintiff on 02-08-2024

(vi)	The date on which the orders were passed on the said application	24-08-2024
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ORDERS ON IA No.3 AND 4

IA No. 3 is filed by the plaintiffs under Order 6, Rule 17 CPC for amendment of the plaint. **IA No. 4** is filed by the defendants under Order 7 Rule 11 (a) and (d) of the CPC for rejection of the plaint.

2. The defendants have filed detailed objections to IA No. 3 for amendment of the plaint. The plaintiffs have filed detailed objections to IA No. 4 for rejection of the plaint.

3. At the time of arguments, counsel for plaintiffs sought time which was refused and hence arguments of plaintiff is taken as NIL. Counsel for defendants submitted that defendants' arguments may be taken as heard.

4. The stage of the main suit is that pleadings are complete but the stage of inspection of documents and statement of admission and denial of documents is not over.

5. I have perused the records of the case.

6. The points that arise for my consideration are as follows:-

- 1) **Whether IA No. 3 filed by the plaintiffs under order 6 rule 17 of the CPC deserves to be allowed and plaintiffs should be permitted to amend the plaint as sought for?**
- 2) **Whether IA No. 4 filed by the defendants deserves to be allowed and the Plaint is liable to be rejected for non-disclosure of cause of action and as barred by law under order 7 rule 11 [a] and [d] of the CPC?**

7. My answer to the above points are :-

Point No. 1 : In the affirmative,

Point No. 2 : In the negative, for the following :-

REASONS

Point No. 1 :-

8. The facts in brief are that, this is a suit filed by the plaintiff No. 1 and 2 against defendant No. 1 and 2 for ejection, arrears of rent, recovery of TDS and GST charges and other reliefs. The plaint averments are that, the plaintiffs are the absolute owners of suit schedule premises. The plaintiffs and defendants entered into a rental agreement dated 23-10-2022 and revised rental agreement dated

6-12-2022 under which suit schedule premises was leased out by the plaintiffs to the defendants on monthly rental of Rs. 3 lakhs and defendants are running a function hall in the said premises under the name and style of VRS Palace. The grievance of the plaintiffs is that, the defendants have not paid the rents from May 2023 onwards and since the defendants did not clear the arrears of rent in spite of issuance of legal notice dated 7-7-2023, the plaintiffs were constrained to cause legal notice dated 16-8-2023 terminating the tenancy. With these pleadings, the plaintiffs are before the court for ejectment of the defendants from the Suit Schedule premises and for arrears of rent of Rs. 12 lakhs and for mesne profits of Rs. 5 lakhs per month from the date of termination of tenancy and for payment of TDS and GST charges and injunction to restrain the defendants from removing fixtures in the suit-schedule premises which belong to the plaintiffs and other reliefs.

9. The defendants have filed detailed written statement categorically admitting at paragraph 6 of the written statement that the defendants are the tenants in respect of suit-schedule property on monthly rent of Rs. 3 lakhs and are

running function hall named VRS Palace under Rental Agreement dated 23-10-2022 and Revised Rental Agreement dated 6-12-2022. The defendants have contended that they have invested a huge amount of nearly Rs. 1 crore for making the premises fit for their purpose. The defendants have pleaded that till May 2023 the defendants were utilizing the suit schedule property and they also paid the rent up to that date, but thereafter, the road leading to the basement for parking area was dug up by BWSSB and the suit schedule property was closed and access to suit schedule property was blocked, as a result of which, defendants could not get any bookings for their function hall and therefore defendants were not in a position to pay the rents from that day onwards. After the blockage was removed, the defendants have made payments towards arrears of rent by way of cash. Denying all other plaint averments, the defendants have prayed for dismissal of the suit.

10. Earlier, the plaintiffs had filed I.A. No. 2 for a direction to defendants to deposit the arrears of rent from May 2023, amounting totally to Rs. 27,30,000. This court, by orders dated 5-4-2024, has moulded the relief by directing

defendants to deposit the admitted rate of rent of Rs 3 lakhs per month from date of suit till disposal of the suit. Against the said orders of this court, the defendants had filed WP 11551 of 2024. But subsequently, as per Orders of Hon'ble High Court of Karnataka dated 29-05-2024, the said WP has been dismissed as withdrawn.

11. At this stage, the plaintiffs have filed I.A. No. 3 for amendment of the plaint to incorporate certain subsequent facts, viz. the passing of orders by this court, the dismissal of the WP against the said Orders has withdrawn and to bring on record that the defendants have vacated the premises on 31-05-2024 and in the process they have caused damage to the suit schedule premises and therefore the plaintiff seeks to amend the prayer column to delete the prayer of ejection and to seek damages of Rs. 40,14,000.

12. In the objections filed by the defendants, it is contended that the facts which transpired in the writ petition cannot be made the subject matter of the suit and therefore, amendment to incorporate the said facts has to be disallowed. Further, the proposed amendment is sought to be denied and

the defense taken in the written statement is sought to be reiterated.

13. Having considered the rival contentions in so far as IA No. 3 is concerned, it is to be noted that the I.A. No. 3 is filed to bring on record subsequent facts which have taken place after filing of this suit, viz. the allegation of the plaintiffs that defendants vacated the premises on 31-05-2024 and in the process damaged the suit schedule premises and on the basis of this subsequent event, the plaintiffs seek to delete the prayer for ejectment and incorporate prayer for recovery of damages, etc. No doubt, strictly speaking, the averments of proposed paragraph 18a regarding the passing of orders of this court and filing writ petition there-against and withdrawal of the same, are strictly not necessary to be pleaded in the plaint since they are matters of record. However they furnish a background for the relevant averments at paragraph 18b and 18c in which the plaintiffs seek to introduce the averments regarding vacating of the premises by the defendants and in the process damaging the same. The proposed amendment is necessary to decide the controversy between the parties since, it is to bring on record

subsequent events which have taken place after the filing of the suit and on that basis to seek modification of the prayer column of the Plaint and therefore I am of the view that the amendment deserves to be allowed.

14. However, the contention of the plaintiffs that the court fee paid towards ejectment, which is now deleted should be adjusted towards the court fee payable for the additional prayer of damages sought to be incorporated in the Plaint, cannot be accepted because under section 66 of the KCF&SV Act, refunding the court fee to the Plaintiff arises only if the matter is settled between the parties. Although it is the right of the plaintiff to delete any prayer or withdraw any prayer at any stage, under Rule 23, Rule 1 of the CPC, the plaintiff cannot, as of right, claim a refund or adjustment of the court fee already paid, towards the additional prayers sought by way of amendment. **Therefore, while allowing the amendment as sought in IA No. 3, it is necessary to direct the plaintiffs to pay the appropriate court fee on additional prayer, which has been inserted by way of amendment. Accordingly, I answer point No. 1.**

Point No. 2:-

15. Insofar as IA No. 4 is concerned, it is filed by the defendant to reject the plaint on the ground that it is barred by law and also that the plaint does not disclose cause of action. In the affidavit, the contentions, which are already taken in the written statement, are reiterated.

16. It is firstly contended that from the plaint averments, it is evident that, it is only plaintiff No. 1 who has purchased the Suit Schedule premises, and there is no plaint averments as to how plaintiff No. 2 acquired title and since plaintiff No. 2 is not the owner of the Suit Schedule property, the suit is not maintainable. This contention has to be stated only to be rejected for more than one reason. Firstly, as already noted Supra, in the written statement at paragraph 6, defendants have admitted that they are the tenants of the suit schedule premises under the rental agreement dated 23-10-2022 and revised rental agreement dated 6-12-2022. Admittedly these rental agreements are executed by both the plaintiffs in favour of both the defendants therefore the defendants being the tenants under the plaintiffs cannot dispute the title of their landlords to the Suit Schedule Premises, under Section

116 of Indian Evidence Act, which corresponds to Section 122 of the BSA. Secondly even conceding that it is only plaintiff No. 1 who is the absolute owner of Suit Schedule Premises, it is to be noted that plaintiff No. 1 and 2 are husband and wife and since both of them have executed the lease deeds in favor of the Defendants, both of them are impleaded as plaintiffs to avoid technical objections being taken by Defendants and therefore, there is no defect in that regard and therefore on this ground there is no question of rejecting the plaint.

17. The second contention raised for seeking rejection of the Plaint is that as per the law laid down by Hon'ble Apex Court in ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP, (2020) 15 SCC 585***, it is laid down that only those disputes which arise out of immovable property being actually used in trade and commerce shall be categorized as commercial disputes. On this basis, it is contented that, there are no plaint averments to show that the present case involves a commercial dispute and therefore this court does not have jurisdiction and the Plaint is liable to be rejected.

18. This contention again cannot be accepted because in the Plaint, there is a categorical averments that the suit schedule premises was taken on rent by defendants for running the same as a function hall. The said plaint averments are admitted in the written statement at paragraph 6 since defendants admit that they are running a function hall under the name and style of VRS Palace in the Suit Schedule Property. Therefore, it is clear that the suit schedule premises as on the date of the suit was being used as a function hall, i.e. for commercial purpose. Once this conclusion is reached, it follows that, as per the law laid down by Hon'ble Apex Court in aforesaid ruling, since the dispute is in respect of a immovable property exclusively used for commercial purpose, it involves a commercial dispute, and therefore this court has the jurisdiction to entertain the present suit. Accordingly, both the grounds raised for seeking rejection of the plaint are unacceptable and liable to be rejected. Accordingly, I answer point No. 2 in the negative and proceed to pass the following :-

ORDER

**IA No. 3 filed by the Plaintiffs under
Order 6 Rule 17 of the CPC is allowed and the**

**Plaintiffs are permitted to amend the plaint as
sought for in IA No. 3.**

**IA No. 4 filed by the Defendants under
Order 7 Rule 11 [a] & [d] of the CPC for
rejection of the plaint is dismissed.**

[Dictated using Dragon Professional Speech Recognition
Software Version 15.3, transcript revised, corrected, signed
and then pronounced by me in open court on this the **24th**
day of August, 2024]

(Sri. S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT; BANGALORE.