

KABC170028382024



**IN THE COURT OF LXXXII ADDL. CITY CIVIL &
SESSIONS JUDGE, AT BENGALURU (CCH. 83)**

THIS THE 6TH DAY OF MARCH 2025.

PRESENT:

**SUMANGALA S. BASAVANNOUR., B. COM, LL. M.,
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

I.A.NO. I

IN

COM.O.S.1443/2024

BETWEEN:

**Speciality Restaurant
Limited**

: PLAINTIFF/S

AND

Kurien Thomas & others

: DEFENDANT/S

ORDERS ON I.A.NO.I

The Plaintiff filed this application under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code. The Plaintiff prays that to pass an ad-interim order of maintaining status quo with respect to any action / step which might be taken with respect to the Demised Premises being property bearing No.14, (Old No.32), in BBMP Ward No.76, Church Street, Bengaluru and the plaintiff be permitted to continue to use and occupy and possess the Demised Premises for conducting its business from the Demised Premises.

2. In the enclosed affidavit the authorized representative of the Plaintiff stated on oath that, the plaintiff is company incorporated under the provisions of Companies Act, 1956. The plaintiff is inter-alia engaged in business of hospitality and restaurant services, since the past more than 30 years and has multiple chain of restaurants and bars ("**Said Business**") not only in India but across the globe.

The plaintiff stated that the plaintiff has preferred the instant suit against the defendants seeking declaration of the

plaintiff continuing to be lawful tenant of Demised Premises bearing No.14 (Old No.32), in BBMP Ward No.76. Church Street, Bengaluru and other reliefs as enumerated in the plaint.

The plaintiff stated that the facts of the matter, I crave leave of this Hon'ble Court to treat all averments, statements and submissions made in the plaint as a part and parcel of this Interlocutory Application.

The plaintiff stated that in view of no clarity being received by either of the respondents as to who is actually now the owner of the Demised Premises and the plaintiff neither receiving rent invoices nor proper clarity and information, the plaintiff apprehends that the respondents would initiate injudicious proceedings amongst themselves and thereby prejudicing the rights of the plaintiff with respect to the Demised Premises and hence in the interest of justice and equity. The plaintiff be protected by an order and injunction of this Hon'ble Court restraining the respondents from initiating any injudicious proceedings against the plaintiff, whilst ensuring that the rights of the plaintiff under Lease Agreement are protected.

The plaintiff prays that in the peculiar facts and circumstances of the case, the plaintiff respectfully prays that pending the hearing and final disposal of the Suit, it is important that this Hon'ble Court be pleased to pass an order and injunction maintaining status quo with respect to any action / step which might be taken with respect to the Demised Premises being property bearing No.14, (Old No.32), in BBMP Ward No.76, Church Street, Bengaluru and the plaintiff be permitted to continue to use and occupy and possess the Demised Premises for conducting its business from the Demised Premises.

Further plaintiff stated that the Lease Agreement, as defined in the plaint, specifically records that any alterations and modifications in the Demised Premises, would have to be done by the plaintiff whilst seeking prior approval from the Lessor or the Owner of the Demised Premises and accordingly, the plaintiff requires clarity as to who would provide such permissions to the plaintiff to carry out the appropriate repairs and interior works. The plaintiff states that the Demised Premises requires multiple repairs and alterations since the main structure of the Demised Premises has not been properly maintained over a period of time and

hence, it is necessary and important the plaintiff carries out renovation, repairs, alteration, modifications and erect partitions with respect to and within the Demised Premises (**"Said Repairs"**) for which the plaintiff would require the NOC of the Owner of the Demised Premises to be submitted to the Municipal Corporation to seek permission to carry out such Said Repairs and hence, it is important and in the interest of justice that pending the hearing and disposal of the Suit, the Hon'ble Court be pleased to direct the respondents to grant NOC to the plaintiff for carrying out the Said Repairs. Hence, he filed this application.

3. Defendant filed objections stating that the plaintiff has arrayed the South Indian bank as defendant no.4 in the present suit as claimed cause of action has arisen out of notices issued under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. The present suit hit by Section 34 of the SARFAESI Act, 2002. That being the case, this Hon'ble Court does not have the jurisdiction to adjudicate the present matter. Therefore, when the main suit itself is not maintainable, the question of the interim relief being granted does not arise at all.

The defendant nos.2 and 3 submits that they are the absolute owners of the property bearing no.14 (Old no.32), Church street, Bengaluru – 560 001, i.e., demised premises by way of an auction Sale conducted by the South Indian Bank, i.e., the defendant no.4 on 05.03.2024. The said sale is confirmed and the defendant nos.2 and 3 have been issued Sale Certificate with respect to the same. The plaintiff was the tenant in the demised premises by way of a lease agreement dated 01.08.2013. With the sale of the demised premises on 05.03.2024, the ownership of the demised premises was transferred from Mr.Kurien Thomas i.e., defendant no.1 to 3 and further the lease between defendant no.1 and the plaintiff, was also transferred and as a result, the defendant nos.2 and 3 became the lessors by way of attornment. This attornment is automatic and statutorily provided for under the provisions of Transfer of Property Act. Therefore, by operation of law, these defendants having become the owner of the schedule property by virtue of the bank auction, are the landlords of the premises / plaintiff. It is unfortunate that the plaintiff is feigning ignorance of this basic legal concept and has mischievously chosen to institute the present suit.

Defendants further stated that, after the sale auction took place and consequently the sale certificate was issued to the defendant nos.2 and 3, the said transaction was intimated to the plaintiff by the defendant no.4 vide a letter dated 26.03.2024. The defendant no.4 informed the plaintiff that the defendant nos.2 and 3 were the new owners. The plaintiff itself has produced the said letter along with their plaint. That being the case, the plaintiff very well knew of the sale and that the defendant nos.2 and 3 are now the owners of the demised premises which makes them the lessors. Therefore, it was made clear as to who the owners /lessors of the demised premises were. However, the plaintiff has conveniently failed to make monthly payments of rent despite having knowledge of the sale of the demised premises. The plaintiff failed to pay the monthly rents from March 2024 till date. The plaintiff has committed a breach of the terms of the lease agreement dated 01.08.2013. As a result, the defendant nos.2 and 3 issued a legal notice dated 28.01.2025, calling upon the plaintiff to pay the arrears of rent, failing which the lease stands terminated and that it would be in unlawful possession of the demised premises. Yet again, by way of the said legal notice dated 28.01.2025, it

was once again made clear as to who the owners /lessors of the demised premises were. Even after receipt of the said legal notice, the plaintiff has failed to rectify its breach and has till date not paid the arrears of rent due to the defendant nos.2 and 3, thus he has forfeited his right to continue as a tenant in the demised premises.

Defendant further stated that, the plaintiff has approached this Hon'ble Court only with an intention of avoiding its liability i.e., payment of rents. The plaintiff being a defaulter is now making an attempt to gain shelter by way of the present application to protect its unlawful possession of the demised premises. They have approached this Hon'ble Court seeking the relief in the present application only to prevent the defendant nos.2 and 3 from exercising their right to remedy. If the present application is allowed, the rights of the defendant nos.2 and 3 will be defeated. They are the absolute owners of the demised premises and there has been attornment of tenancy by way of the clause 8 of lease agreement dated 01.08.2013 and as well as Section 109 of the Transfer of Property Act, 1882. As such, the defendant nos.2 and 3 possess the rights of the lessors. By seeking an order of Status Quo, the plaintiff is attempting to defeat the

rights of defendant nos.2 and 3 and safeguard itself from the legal actions to be taken by defendant nos.2 and 3. The plaintiff is liable to pay a sum of Rs.1,52,99,240/- to the defendant nos.2 and 3 and they have failed to do so. As such, the defendant nos.2 and 3 can take legal action against the plaintiff to recover possession of the demised premises in due process of law. The said right of the defendant nos.2 and 3 to exercise their right and take action in due course of law cannot be prevented. On this ground, the present application is liable to be dismissed.

The defendant further stated that, the plaintiff admittedly is a tenant of the demised premises under the defendant nos.2 and 3. The plaintiff admittedly has not paid the monthly rents which is lawfully payable from March 2023 up till now. The total rent due and payable is of Rs.1,52,99,240/-. The plaintiff has approached this Hon'ble Court for discretionary relief without discharging his obligations in law. In other words, the plaintiff has not come to the court with clean hands. He is a defaulter in payment of rents. Therefore, the plaintiff is not entitled to the discretionary relief. The plaintiff has not made out a prima facie case for the grant of an order of TI. It is squatting on

the property without paying rents and if any relief is granted to such a person, irreparable injury will be caused to the defendant nos.2 and 3 who are the lawful owners of the demised premises, who have acquired the demised premises by paying a huge amount. The balance of convenience lies in favour of the defendant nos.2 and 3 and in not granting any interim order. The relief sought for is hit by Section 28 of the Indian Contract Act, 1872 also.

The relief sought for by the plaintiff is not only discretionary but also equitable. The entire suit is engineered and instituted in such a manner by the plaintiff so as to avoid its legal obligations. The plaintiff has not approached the court with clean hands. The entire endeavour of the plaintiff in instituting the present suit is to avoid not only its legal obligations but also to avoid the legal remedies which these defendants are entitled to, in the eyes of law. The defendant nos.2 and 3 have already terminated the tenancy of the plaintiff by issuing a legal notice dated 28.01.2025 which is duly served and acknowledged by the plaintiff. The plaintiff is now required to quit and deliver vacant possession of the demised premises. As stated supra, the plaintiff is a chronic defaulter and arrears of rent to tune of more than Rs.1.5

Crores is due. The attempt on the part of the plaintiff in filing the suit and application is to secure an order so as to prevent these defendants who are the owners and landlords from taking appropriate and suitable action against the plaintiff including seeking their eviction for the suit schedule property. If an interim order is granted, it will amount to restraint being imposed on these defendants from initiating legal action / proceedings. Any interim order granted will unfairly, illegally and vexatiously aid and assist the plaintiff is not only avoiding the legal obligations but also the legal implications or the legal action/s that will be taken as a direct consequence of the plaintiff's own default and acts of omission and commission. Hence, the defendant nos.2 and 3 pray that dismiss the present application with exemplary cost in the interest of justice and equity.

4. I have heard the arguments of the learned Advocates for both parties.

5. The plaintiff counsel relief upon following decisions -

Om Prakash Agarwal & others V/s Sandeep Kumar Agarwal & another 2022 SCC Online MP 5944

Celir LLP V/s Sumathi Prasad Bafna & others 2024 SCC
Online SC

Bank of Baroda V/s Gopal Sriram Panda & another 2021
SCC Online

6. Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

- (1) Whether the plaintiff proves the prima facie case ?
- (2) Whether plaintiff proves that the balance of convenience lies in favor of the plaintiff company ?
- (3) Whether plaintiff proves that if the TI is not granted the plaintiff company would suffer from irreparable loss ?
- (4) Whether the Plaintiff entitled for relief of temporary injunction as prayed for ?

7. My findings are as follows:-

Point No. 1 : - In the Affirmative.

Point No. 2 : - In the Affirmative.

Point No. 3 : - In the Affirmative.

Point No. 4: - As per my final orders for
the following reasons.

REASONS

8. Point No. 1 to 3 :- As these points are interlinked with each other, they are taken together for discussion, to avoid repetition.

9. The suit is filed for declaration. The plaint averments discloses that in the year 2013 the plaintiff wanted to expand its restaurant chain "Mainland China" in the city of Bengaluru, Karnataka and hence, plaintiff approached the defendant no.1 for granting a lease of the premises at the property bearing No.14 (Old No.32), Church Street, Bengaluru in BBMP Ward No.76, and accordingly, the indenture of lease dated 01.08.2013 was executed by Mr.Kurien Thamas i.e., defendant no.1. The lease shall be for a period of 21 years commencing from 01.11.2013 ending on 31.10.2034. It is agreed between the parties that lessee shall keep deposited with the lessor a sum of Rs.1,16,25,000/- equivalent to 15 months rental, as refundable interest free security deposit. In the event of default or delay on the part of the lessor in the repayment / refund of the security deposit the lessees upon expiry or early determination of the term despite the lessees having paid all their reduce and having submitted a letter

indicating its readiness and willingness to hand over the vacant charges of the said premises to the lessor then in such an event the lessees shall have the right to recover from the lessor the security deposit along with interest at 18% for the delayed period after the due date, till the lessor refunds the security deposit. Also, the lessees shall be entitled to continue to occupy the said premises without payment of any rent, until the due repayment / refund thereof.

10. Plaintiff further stated that in the year 2014, the defendant no.1 had availed a loan facility from a bank by mortgaging the demised premises which mortgage was always subject to the rights of the plaintiff in the demised premises under the lease agreement. Accordingly, at the request of defendant no.1, a tripartite agreement dated 06.11.2014 was entered into by and between the defendant no.1, the plaintiff and the erstwhile bankers of the defendant no.1 being the Vijaya Bank, on the terms and conditions as are more particularly enumerated therein. In terms of the aforesaid tripartite agreement the plaintiff started paying monthly lease rent to the Vijaya Bank instead of to the defendant no.1. However, the other terms and conditions of the lease agreement remain the same. In view of the tripartite agreement the

defendant no.1 would provide the invoices to the plaintiff and plaintiff would pay the amounts you under the invoices raised as per the instructions provided the invoices to the Vijaya Bank. Subsequent, the defendant no.1 closed the credit facility loan account availed from Vijaya Bank and informed the plaintiff chief financial officer i.e., Rajesh Kumar Mohta vide letter dated 13.10.2015 that the defendant no.1 has changed its banker "The South Indian Bank" i.e., defendant no.4, wiliest enclosing tripartite agreement dated 13.10.2015 to be executed by and between the plaintiff, defendant no.1 and 4. The said letter explicitly records that defendant nos.1 had enclosed the said TI which was signed by him as well as the senior manager of the defendant no.4. The said letter explicitly records that defendant no.1 had enclosed the said TI which was signed by him as well as Senior Manager of the defendant no.4 and plaintiff was told to only sign on "five places marked in pencil" without actually giving chance to the plaintiff to browsing through or discussing terms and conditions of the TI. The lease agreement was already subsisting, plaintiff did not have any option, but to sign the said TA with an understanding to pay the lease rent directly to the defendant no.4 bank instead of defendant no.1.

11. In the premises, the plaintiff started diligent paying the lease rent to the defendant no.4 bank in terms of and as per the instructions of defendant no.1, so specifically set out in invoices up till January 2023, however in the month of February 2023, the defendant no.1 address an email dated 01.02.2023 wherein the plaintiff was instructed by the defendant no.1 to deposit the amount of the lease rent with the bank account of the defendant no.1 maintained with the Canara Bank. From the month of February 2023 till September 2023 the defendant no.1 raised invoices upon the plaintiff, which invoices explicitly specified the lease rent has to be paid by the plaintiff with the bank account of the defendant no.1 maintained with Canara Bank. Email dated 01.02.2023 along with invoice dated 01.02.2023 and email dated 01.03.2023 along with invoice dated 01.03.2023 had addressed by the defendant no.1 to the plaintiff whereby defendant no.1 gave clear instructions to the plaintiff to deposit the rent to the personal bank account of the defendant no.1.

12. Plaintiff further stated that in the month of September 2023 the plaintiff received the notice dated 12.09.2023 from the defendant no.4 under Section 13(4)(d) of SARFAESI Act

of 2002, subsequent to which plaintiff received another notice dated 15.09.2023 under the provision of Section 13(2) of SARFAESI Act of 2002, which was addressed to the defendant no.1. The advocate for defendant no.4 addressed a legal notice dated 11.10.2023 to the plaintiff calling upon the plaintiff to pay the alleged arrears of lease rent which was already paid in full by the plaintiff to the defendant no.1.

13. Plaintiff further stated that, when aforesaid notice numbers 1 and 2 referred to an earlier notice possession under Section 13(4) of SARFAESI Act of 2002 dated 23.12.2021 that the bank account of defendant no.1 has been categorized as a non performing asset as on 17.05.2021. Hence, the defendant no.4 intimated that they had taken symbolic possession of demised premises and further called upon the plaintiff to pay the monthly rent to them.

14. Plaintiff further stated that the defendant no.4 bank issued an e-auction sale notice dated 08.01.2024 for the sale of demised premises under the SARFAESI Act of 2002 read with proviso to Rule 8(6) & 9(1) of the SARFAESI Rules. Accordingly, e-auction sale so schedule and the demised

premises came to be sold to the defendant nos.2 and 3, which was intimated to the lessor i.e., defendant no.1 vide sale certificate dated 07.03.2024. the defendant no.4 addressed a correspondence dated 26.03.2024 to the plaintiff informing that defendant no.4 bank does not have any lawful claim over the demised premises and further directed that hence, for the rent for the demised premises, i.e., March 2024 onwards should not be paid to the defendant no.4 bank. Defendant no.4 bank further directed the plaintiff to contact the defendant nos.2 and 3 for further assistance for further clarifications. The defendant no.4 informed that erstwhile owner i.e., defendant no.1 that also preferred W.P.10365/2024 before the Hon'ble High Court of Karnataka and vide order dated 23.04.2024, an order of the status quo the auction purchase was passed.

15. The plaintiff further stated that the plaintiff is constrained to institute the suit since, the plaintiff is not avail as to with whom the plaintiff should deal with in respect of demised premises the plaintiff is not aware of to whom the plaintiff should the lease rent, who will refund the security deposit of the plaintiff, without proper GST complaint invoices, the plaintiff cannot book the invoices in books of

accounts, who will be providing the common area maintenance and services to the plaintiff, who will be paying the property taxes of the demised premises, with whom the plaintiff to coordinate to pass the carry out repairs and interior works of the demised premises.

16. The defendant no.1 has filed a W.P.448/2022 before the Hon'ble High Court of Karnataka against the defendant no.4 challenging the aforesaid tender cum auction sale process with respect to the demised premises. The Defendant has also preferred WP NO. 10365/2024 before the Hon'ble High Court of Karnataka. Accordingly, the Hon'ble High Court of Karnataka passed an order dated 23.04.2024 an interim order imposing a status quo on the auction process of the demised premises.

17. Further plaintiff also faced difficulty to book GST invoices in terms of prevailing law and demonstration of the same in its books of accounts.

18. On the other hand the defendant nos.2 and 3 contention that the sale auction took place and consequently the sale certificate was issued to the defendant nos.2 and 3,

sale transaction was intimated to the plaintiff by the defendant no.4 vide letter dated 26.03.2024. The defendant no.4 informed the plaintiff that defendant no.2 and 3 were new owners. The plaintiff itself as produced the said letter along with the plaint. The plaintiff very well new of the sale, and that the defendant nos.2 and 3 are now the owners of the demised premises which makes them the lessors. Therefore, it was made clear as to who the owners / lessors of the demised premises were, however, plaintiff has conveniently failed to make monthly payments of rent despite having knowledge of the sale of demised premises. The plaintiff failed to pay the monthly rents from March 2024 till date. The plaintiff has committed a breach of the terms of lease agreement dated 01.08.2013. as a result the defendant no.2 and 3 issued a legal notice dated 28.01.2025 calling upon the plaintiff to pay arrears of rent, failing which the lease stands terminated and it would be in unlawful possession of the demised premises. At again by way of the said legal notice dated 28.01.2025, it was once again made clear as to who the owners / lessors of the demised premises were. Even after receipt of the said legal notice, the plaintiff has failed to rectify its breach as till date not paid the arrears of the rent due to the defendant nos.2 and 3, thus he has

forfeited his right to continue as a tenant in the demised premises. The plaintiff being a defaulter now making an attempt to gain shelter by way of the present application to protect its unlawful possession of the demised premises. If the present application is allowed rights of the defendant nos.2 and 3 will be defeated. Defendant nos. 2 and 3 are the absolute owners of the demised premises and there has been attornment of the tenancy by way of clause 8 of the lease agreement dated 01.08.2013 and as well as Section 109 of the Transfer of Property Act of 1882. As such, defendant nos.2 and 3 possess the rights of the lessors. By seeking an order of status quo, the plaintiff is attempting to defeat the rights of the defendant nos.2 and 3. The plaintiff is liable to pay a sum of Rs.1,52,92,240/- to the defendant nos.2 and 3 and they have failed to do so. As such the defendant nos.2 and 3 can take legal action against the plaintiff to recover possession of the demised premises in due process of law can't be prevented. The relief sought for is it by Section 28 of the Indian Contract Act of 1872.

19. The plaintiff has produced the notice dated 28.01.2025 issued by the defendant nos.2 and 3. The above notice reflects as under:-

"You have failed to pay rents for 11 consecutive months and as such a result, the defendants call upon you to rectify / remedy such breach i.e., to pay arrears as mentioned above within 30 days from the date of receipt of his notice failing which the lessor or entitled to forthwith cancel / terminate the agreement and license and permission granted to you and you are required to give peaceful and vacant possession of the schedule property within 30 days. In the event your tenancy has been terminated and if you do not quit, vacant and deliver vacant possession of the schedule property as stated above, you will be deemed to be unauthorized occupation of the schedule property.

You have deposited / paid a sum of Rs.1,16,25,000/- as security deposit Mr.Kurien Thomas. You have recover the said amount Mr.Kurien Thomas as payment is made to him defendants are not liable to pay said amount."

20. From the above notice it is clear that the defendant No.2 and 3 are intended to terminate the tenancy. It is undisputed fact that the said notice has been served on the plaintiff so, the plaintiff filed this application and sought relief of status quo.

21. The plaintiff produced the case status of W.P.10365/2024 of Hon'ble High Court of Karnataka dated 05.04.2024.

"The petitioner is before this court calling in question a notice dated 15.09.2023 issued under section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and its aftermath.

The learned counsel for the petitioner alleges that his property, which according to the current valuation is valued at Rs.50 Crores as situated in Church Street, Bangalore, it is sold for a song. The price of the song is said to be at Rs.23 Crores. Therefore according to the petitioner, the property worth Rs.50 Crores, is sold at Rs.23 Crores. Not stopping at, the bank has issued a sale certificate in favour of the auction purchaser and has also registered the sale certificate even before the ink on the sale certificate would dry. These are the submissions of the learned counsel for the petitioner, which he would make to buttress his submission with regard to the statutory aberration in the case at hand.

In the normal circumstance, this court would not lend its hands in favour of the petitioner to challenge a proceeding that has already concluded upto the stage of registration of the sale certificate. What merits entertainment of the present petition is the submission that the property is under sold. The learned counsel would further submit that the auction

purchasers who have purchased the property have deposited the entire amount. Against the said deposit, the petitioner is ready and willing to clear the entire dues, if reasonable time is granted along with solatium to the auction purchaser.

The submission is now opposed by the learned counsel Mr.Francis Xavier who submits that the present petition is not entertainable at the hands of this court in the light of the judgment of the Hon'ble Apex Court in Celir LLP V. BAFNA MOTORS (MUMBAI) PVT. LTD., 2023 SCC ONLINE SC 1209. The petition would merit entertainment only for the reason that the petitioner has projected complete violation of the mandate of the statute in selling the property, which according to him, is undersold. Therefore, the sale that has happened and the sale certificate issued shall all remain subject to the result of the petition. Till the appearance of the auction purchaser before this court, status quo qua the auction purchase is maintained.

Mr.Francis Xavier, learned counsel is directed to take notice for respondent Nos.2 and 3 viz., the action purchasers.

The learned counsel for the petitioner to serve the learned counsel for respondent Nos.2 and 3 by way of hand summons and file the acknowledgment of such service in the next two days before the court."

22. The advocate for plaintiff relief upon following decisions

Shiva Kumar Chadha V/s Municipal Corporation Delhi
(1993)3 SCC 161 wherein Supreme Court held that

"30. It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the court. In such a suit of the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The court grants such relief according to the legal principles - ex debito justitiae. Before any such order is passed the court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him."

Swapna Kumar Dey V/s Smt.Arati Nandy 2011 SCC Online Calcutta 4685 wherein Hon'ble Calcutta High court held that:

"On the other hand, if the order of status quo is maintained as passed by both the Courts below, I am of the view that the plaintiff would not suffer irreparable loss. The balance of convenience and inconvenience in maintaining the order status quo lies in favour of the plaintiff and not in favour of the defendant/petitioner herein inasmuch as the plaintiff is, prima facie, controlling the possession of the premises in suit since July 1998 by putting locks at the outer door of the premises in suit. Therefore, the balance of convenience in granting injunction in the form of status quo lies in favour of the plaintiff. If the injunction in the form of status quo is not maintained, it is the plaintiff who would suffer. So if it is withdrawn, it is the plaintiff who would be put into an inconvenient position. The object of granting injunction is to keep the suit property in status quo position during the pendency of the suit."

23. Defendant counsel relied upon the following decisions -

Kishore Kumar Khaitan & another V/s Praveen Kumar Singh (2006)3 SCC 312 wherein Hon'ble Supreme court held that:

"It is necessary to notice at this stage that in an original suit of this nature, it was not appropriate for the Additional District Judge to pass an order directing the parties to maintain status quo, without indicating what the status quo was. If he was satisfied that the appellant before him had made out a prima facie case for

an ad interim ex parte injunction and the balance of convenience justified the grant of such an injunction, it was for him to have passed such an order of injunction. But simply directing the parties to maintain status quo without indicating what the status quo was, is not an order that should be passed at the initial stage of a litigation, especially when one court had found no reason to grant an ex parte order of injunction and the appellate court was dealing with only the limited question whether an ad interim order of injunction should or should not have been granted by the trial court, since the appeal was only against the refusal of an ad interim ex parte order of injunction and the main application for injunction pending suit, was still pending before the trial court itself."

N Ramaiah V/s Nagaraj S & another, ILR 2001 Karnataka 3466 wherein Hon'ble High Court of Karnataka held that :

"A digression re: 'status quo'

20. We may at this juncture advert to the confusion caused by orders directing status quo. The parties are (or a party is) normally directed to maintain status quo in regard to a property, so that the position does not get altered or become irreversible pending decision in the suit or legal proceeding. The term 'status quo' means the 'situation that currently exists' or the 'existing state of things at any given point of time'. The Supreme Court in [Bharat Coking Coal Limited v State of Bihar and Others](#), has recognised the fact that "the expression "status quo" is undoubtedly a term of ambiguity and at times give arise to doubt and difficulty".

22. An order of status quo is a specie of interim orders, when granted indiscriminately and without qualifications or conditions, leads to ambiguity, difficulties, and injustice. If Courts want to give interim relief, they should endeavour to give specific injunctive relief. If grant of order of 'status quo' is found to be the only appropriate relief, then Courts should indicate the nature of status quo, that is whether the status quo is in regard to possession, title, nature of property or some other aspect. Merely saying 'status quo' or 'status quo to be maintained' should be avoided. If in a suit for injunction, where plaintiff claims that he is in possession of the suit property and the defendant is attempting to interfere with his possession, and the defendant contends that he is in possession and petitioner was never in possession, if the Court merely directs status quo to be maintained by parties, without saying anything more, it Will cause confusion and in many cases even lead to breach of peace. On the basis of such order, the plaintiff would contend that he is in possession and he is entitled to continue in possession; and the defendant would contend that he is in possession and he is entitled to continue in possession. In such a case, if the Court wants to direct status quo, it should specify the context in which, or conditions subject to which, such status quo direction is issued."

Smt.Jayamma & others V/s Gangaswamy & others ILR
2018 Karnataka 4086, wherein Hon'ble High Court of
Karnataka held that :

"11. It has become ineffective to proceed under Order 39 Rule 2A CPC because of want of clarity and certainty in the order. An order of status quo should not be passed for mere asking. Before passing an order of status quo, it is very essential that the status of the property on that day must be ascertained from the parties. Whenever a party putforths a request for status quo order, it is very much necessary that such party should appraise the court of the situation or the circumstance necessitating an order of status quo to be passed. If either side parties are before the court, no status quo order shall be passed unless the parties agree to a particular status. From the submission made by the parties or on their behalf, the court must record the position or status to be maintained. If necessary photograph showing the position and signed by the parties may be placed on record. If injunction order is found to be more effective than status quo order, it is better to issue injunction than passing status quo order."

D Albert V/s Lalitha & others, AIR1989MAD73, wherein Hon'ble Madras High Court held that :

Whenever a Court pass an order directing the preservation of 'status quo' it should by the same order state in unequivocal terms what the 'status quo' is. Otherwise the court will be failing to do its duty.

"6. It is no doubt true that parties are well aware of the real state of things as they exist. But when they are fighting with each other, in a court of law, advancing cases diametrically opposed to each other, neither of them can be expected to meekly reconcile to the situation and stop interfering with the possession of the opposite party even if that is the real 'status quo'. Invariably, the immediate consequence is that the party who is not in possession would attempt to get into possession by asserting that he had been in possession already and on the date of the 'status quo' order he was in possession with the result that there would be a clash between the parties leading to intervention by police and criminal proceedings. There is no justification whatever for a civil court driving the parties to criminal proceedings by passing an order of 'status quo' without indicating what the status quo is. This is nothing but a grave dereliction on the part of the civil Court of its duty to decide a disputed question of fact. The Court is bound to decide prima facie on the materials available, whether the plaintiff is in possession or the defendant is in possession. Leaving the matter in doubt and ambiguity by passing an order of 'status quo' will result in more dangerous consequences than even deciding wrongly but clearly that one of the parties is in possession."

(1983) 4 Supreme Court cases 625 Cotton Corporation India Limited V/s United Industrial Bank Limited & others, wherein Hon'ble Supreme court held that:

"It manifestly expressed. It is true to suggest that, mind by enacting s.41(b) in such clear and unambiguous language that an injunction cannot be granted to restrain any person-the language takes care of injunction acting in personum-from instituting or prosecuting any proceeding in a Court not subordinate to that from which injunction is sought. This change in language deliberately adopted by the legislature has to be given full effect.

It must at once be conceded that Sec. 41 deals with perpetual injunction and it may as well be conceded that it has nothing to do with interim or temporary injunction which as provided by Sec. 37 are dealt with by the Code of Civil Procedure. To begin with, it can be said without fear of contradiction that anyone having a right that is a legally protected interest complains of its infringement and seeks relief through court must have an unhindered, uninterrupted access to law courts.

Deena Alias Deen Dayal & others V/s Union of India & others (1983)4 Supreme Court 645, wherein Hon'ble Supreme court held that

"In our opinion, this clause is not meant to cover cases of decree-holders who are executing their decrees and it cannot bear the connotation that is attributed to it. Even otherwise no grievance could be made of the order for the reason that a court is not bound to grant, injunction in every case falling within the purview of Order 39 Rule 1, CPC. The relief

could be granted only in appropriate cases."

From the above decision it is clear that, injunction order is more effective than the status quo order, it is better to order injunction order than passing status quo order.

Abdul Amir Khan & others V/s Tridip Kumar Chanda & another AIR 1953 ASSAM 104 wherein Hon'ble Assam High court held that:

"4. In Parbhu Dayal Vs. Laldas Maganlal and Others, it was laid down that "lawful exercise of a right vested in a person cannot be legally restrained by the Court under Order 39, Rule 2." It was further held that S. 151 did not apply where the parties were acting within their own rights in prosecuting their respective suits. The learned Judges expressed the view that the only justification for the exercise of the equity jurisdiction by the Court was that the party to the suit was doing something which was against its notions of equity. Even according to this view Section 151 would not apply where a party was acting within his rights."

24. In view of the above decisions that law full exercise of right vested in a person cannot be legally restrained by the court under Order XXXIX Rule 2 of CPC. In the present case, the defendant no.2 and 3 have purchased the demised premises in auction sale became the absolute owner of the

schedule property, but Hon'ble High Court of Karnataka in W.P.10365/2024 clearly held that the sale has been that happen and sale certificate issued shall all remain subject to result of petition. Till the appearance of the auction purchaser before this court, status quo qua the auction purchase is maintain.

25. The Hon'ble High court of Karnataka passed an order as under:

***“In the normal circumstance, this court would not lend its hands in favour of the petitioner to challenge a proceeding that has already concluded upto the stage of registration of the sale certificate. What merits entertainment of the present petition is the submission that the property is under sold. The learned counsel would further submit that the auction purchasers who have purchased the property have deposited the entire amount. Against the said deposit, the petitioner is ready and willing to clear the entire dues, if reasonable time is granted along with solatium to the auction purchaser.*”**

The submission is now opposed by the learned counsel Mr.Francis Xavier who submits that the present petition is not entertainable at the hands of this court in the light of the judgment of the Hon'ble Apex Court in Celir LLP V. BAFNA MOTORS (MUMBAI) PVT. LTD., 2023 SCC ONLINE SC 1209. The petition would merit entertainment only for the reason that the petitioner has projected complete violation of

the mandate of the statute in selling the property, which according to him, is undersold. Therefore, the sale that has happened and the sale certificate issued shall all remain subject to the result of the petition. Till the appearance of the auction purchaser before this court, status quo qua the auction purchase is maintained.”

26. In view of the above order dated 23.04.2024 now ownership of the defendant nos.2 and 3 is not absolute. It is on the matter on record that the defendant nos.2 and 3 have issued termination notice 28.01.2025. The ownership of the defendant nos.2 and 3 is under cloud and matter is ceased before the Hon'ble High Court of Karnataka. Further the defendant has not issued proper GST invoices. Under these circumstance, that definitely the plaintiff is not aware of that to whom the plaintiff should lease the rent. Further, in termination notice the defendant has clearly stated that, defendant No.1 is liable to refund the security deposit. So on prima-facie the termination notice issued by the Defendant NO.2 and 3 is under dispute and also the legality of notice has to be adjudicated after full pledged trial only. Hence, on prima-facie plaintiff established his case.

27. During the course of argument the learned counsel for the plaintiff has categorically stated that they are ready to deposit the arrears of rent before this court. In view of this order of Hon'ble High Court of Karnataka they are under dilemma to whom they will pay the rent amount. Admittedly, the defendant NO.2 and 3 have not raised the proper GST invoices. Under these circumstance, the plaintiff cannot **book** the invoices in the books of accounts. So, they have not paid the rent amount to the defendant nos.2 and 3.

28. On prima facie it is proved that the plaintiff is tenant of demised premises and is running the restaurant in the name of "Mainland China". As above discussed the Hon'ble High Court of Karnataka has passed status quo order dated 05.04.2024 in WP NO. 10365/2024 against the auction purchase proceedings, inspite of that defendant nos.2 and 3 had issued termination notice dated 28.01.2025 so, under this circumstances the possession of the plaintiff is to be protected. Hence, the plaintiff has proved prima facie case and balance of convenience also lies in favour of the plaintiff.

29. It is an admitted fact that the lease agreement executed by the defendant no.1 in favour of the plaintiff for a period of 21 years commencing from 01.11.2013 ending on 31.10.2034. Under these circumstance, if the application is not allowed, definitely the plaintiff will be put into irreparable injury and loss.

30. The Defendant nos.1 the original landlord and defendant no.4 South Indian Bank submitted no objection to granting the relief as prayed in this application.

31. In view of the above discussion I hold that plaintiff is made out prima facie case balance of convenience of lies in favour of the plaintiff, and if the interim order as prayed in the application is not granted plaintiff is put into irreparable loss. **Hence, I answer these points are Affirmative.**

32. Point No. 4: - In view of the discussion In point no.1 to 3, I hold that the plaintiff is not entitled for relief as prayed in the application. Therefore, I proceed to pass the following Order.

ORDER

The I.A. No. I filed by the Plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, is hereby allowed.

The parties are directed to maintaining status quo with respect to any action / step which might be taken with respect to the Demised Premises being property bearing No.14, (Old No.32), in BBMP Ward No.76, Church Street, Bengaluru and the plaintiff is permitted to continue to use and occupy and possess the Demised Premises for conducting its business from the Demised Premises.

(Dictated to the Stenographer, transcribed by her, verified by me and pronounced in the open court on **06th day of March 2025**).

(SUMANGALA S BASAVANNOUR)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.