

KABC170028382024



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

**THIS THE 6<sup>TH</sup> DAY OF MARCH 2026.**

**PRESENT: SRI. VIDYADHAR SHIRAHATTI, LL.M.,  
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Com.O.S.No.1443/2024**

**BETWEEN:**

**Speciality  
Restaurants Limited.**

**: PLAINTIFFS**

**AND**

**Mr. Kurien Thomas  
and Others.**

**: DEFENDANTS**

**ORDERS ON I.A.NO.5**

The Plaintiff filed this application under Order XXXIX Rules 1 and 2 read with Section 151 of the Civil Procedure Code prays that to pass an interim order

directing the Defendants to grant permission to the plaintiff to carry out renovation, repairs, alterations, modifications and erect partitions with respect to and within the Demised Premises being property bearing No.14, (Old No.32), in BBMP Ward No.76, Church Street, Bengaluru, in the interest of justice and equity.

**2.** In the enclosed affidavit the authorized representative of the Plaintiff stated that, the Plaintiff is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of hospitality and restaurant services for more than 25 years, having multiple chains of restaurants and bars in India and across the globe, with approximately 124 outlets across the country of different renowned brands across 11 cities and has earned tremendous reputation and goodwill in the hospitality industry. The Plaintiff has preferred the instant suit against the Defendants seeking declaration of the Plaintiff continuing to be lawful tenant of the Demised Premises bearing No. 14, (Old No. 32), in BBMP Ward No. 76, Church Street, Bangalore, and other reliefs as more particularly enumerated in the Plaint. The Lease

Agreement records that any alterations and modifications in the Demised Premises would have to be done by the Plaintiff with 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 carry out repairs and interior works. The Plaintiff states that the Demised Premises requires multiple repairs and alterations since the main structure has not been properly maintained over a period of time and it is necessary for the Plaintiff to carry out renovation, repairs, alterations, modifications and erect partitions within the Demised Premises ("Said Repairs"), for which the Plaintiff requires the NOC of the Owner to be submitted to the Municipal Corporation to seek permission to carry out such Repairs. Hence, pending the hearing and disposal of the Suit, the Plaintiff seeks direction to the Respondents to grant NOC to the Plaintiff for carrying out the Said Repairs and has filed the present application.

**3.** Defendant No.1 filed objections stating that, the Application under reply filed seeking direction of this

Court against the Defendants to permit the Applicant to carry out renovations, repairs, modifications, and erect partitions with respect to and within the Demised Premises is neither maintainable in law nor on fact and same is liable to be dismissed in limine. The Written Statement filed by this Defendant may be read as part and parcel of the instant Statement of Objections. The Applicant is seeking a prayer in the nature of a Mandatory Injunction under the provisions of Order XXXIX Rule 1 and 2 of Code of Civil Procedure in a manner not known under law and on this ground alone, the Application is liable to be rejected. The rights and obligations of the Applicant with respect to the demised premises are restricted to the rights and obligations in the indenture of lease dated 01.08.2013. The relevant clauses of the Lease Agreement i.e., II,III and IV. It is not forthcoming from the material placed before this court by the applicant that any communication is addressed to the lessors as per the terms of the lease agreement. In order to obtain necessary permissions from the lessor, without issuing written communication is circumventing the terms of the lease agreement by

preferring the instant application. The application under reply is seeking to modify the terms of the agreement in order to obtain permission from the lessor. The lease agreement being registered instrument, the terms therein can be replaced and/or amended only through another registered instrument. In the foregoing circumstances, the application filed by the Applicant is untenable and does not merit further consideration by this Court. If the present application is allowed as prayed for, the Defendant will suffer prejudice, resulting in a gross miscarriage of justice. The Plaintiff will not suffer any injury, loss, or inconvenience if the present application is rejected.

**4.** Defendant No. 2 and 3 have filed statement of objection stating that, the present application is neither maintainable in law nor on facts and the same is liable to be dismissed in limine. The Plaintiff has deliberately suppressed material facts and circumstances in the present application with an intention of misleading this Court. The Defendant No.2 and 3 submits that the Plaintiff on 22.10.2024, had filed I.A.No.1 under Order XXXIX Rule 1 and 2

Code of Civil Procedure, 1908, seeking for status quo with respect to any action/step which might be taken with respect to the premises. The application filed by the Plaintiff under Order 39 Rule 1 and 2 of CPC, this court was pleased to pass an order on 06.03.2025 is hereby allowed. The interim order which is still in force directs both the parties to maintain Status Quo with respect to any action/steps which might be taken with respect to the premises. Therefore, the parties to the suit cannot take any action/step in respect of the demised premises. However, the Plaintiff is permitted to continue to use and occupy and possess the demised premises for conducting its business from the demised premises. Therefore, this Court has restrained the Plaintiff to carry out renovation, repairs, alterations, modifications and erect partitions with respect to and within the demised premises. Therefore, the present application is misconceived. It is settled law that this Court cannot pass inconsistent orders and mutually offending orders in a case which is pending before it. Therefore, the Plaintiff is not entitled to the aforesaid relief sought for. An interim relief sought should be one which is in aid of the main

relief. However, the Plaintiff with the present application has sought for a main relief to be granted as an interim relief which is not permissible in law. The main relief sought for in the present application are one and the same and this court cannot grant the main relief as an interim relief and on this ground also the present application deserves to be dismissed. Clause 7 at page 6 of the lease deed dated 01.08.2013. The clause does not provide for renovation, alterations, modifications and for erection of partitions with respect to and within the demised premises. All that it provides is only periodical maintenance, painting and repairs.

**4.1.** The Plaintiff was a tenant of the Schedule property from 01.08.2013. Clause 5 of page 6 of the lease deed dated 01.8.2013. The plaintiff is not entitled to undertake any structural changes, alterations, modifications and erect partitions to the demised premises without the prior written consent of the lessor. The Plaintiff to be entitled to the said benefit, the lease which he claims should be in force and it is only with the consent of the Lessor it would

be entitled to the said benefit. The Defendants have terminated the lease of the Schedule Property by issuing a statutory Notice dated 28.01.2025 on the ground of non-payment of arrears of rent. The said notice was duly served on the Plaintiff. The Plaintiff has sent a detailed reply but did not pay the admitted arrears of rent. Therefore, the Plaintiff did not comply with the demand made in the legal Notice dated 28.01.2025. Thus, the Plaintiff forfeited the right to continue as a tenant and their possession of the Schedule Property is wholly unauthorised. These Defendants are producing herewith copy of the Legal Notice dated 28.01.2025 and the Reply Notice dated 12.02.2025 as Documents No.1 and 2, which may be read as part and parcel of this statement of objections. When the Plaintiff ceases to be a tenant and when the Plaintiff has failed and neglected to perform its contractual obligations, the Plaintiff has no right to enforce a contractual right. The said contractual right cease to exist with the breach of the contract and consequent termination of tenancy. The Plaintiff is an unauthorised occupant of the Schedule Property and therefore, the Plaintiff cannot be

permitted to meddle with the Schedule Property in any manner whatsoever except carrying on his business as directed by this Hon'ble Court in its order dated 06.02.2025. They have purchased the Schedule Property in a public auction conducted by the Debt Recovery Tribunal in a proceeding initiated by a Nationalised Bank I.e., the Defendant No.4 herein against the Defendant No.1 herein. The Sale Certificate is issued. The Plaintiff is not willing to admit these Defendants as the lawful owners of the Schedule Property. Therefore, in law, according to them there is no relationship of Lessor and Lessee between the Plaintiff and Defendant No.2 and 3. In other words, there is no privity of contract between the Plaintiff and Defendant No.2 and 3. Therefore, they are not entitled to enforce any contractual rights against these Defendants. On that score also this application is not maintainable and is liable to be dismissed.

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

**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 **Negative**.

Point No. 2 : - In the **Negative**.

Point No. 3 : - In the **Negative**.

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 Plaintiff has seeking interim order directing the Defendants to grant permission to the plaintiff to carry out renovation, repairs, alterations, modifications and erect partitions with respect to and within the demised premises being schedule property.

**10.** The plaintiff has assigned reasons that, the plaintiff entered into lease agreement in the business of hospitality and restaurant services, and has entered in the suit premises in the lease agreement. In the demised premises of the lease property by make an alteration, modifications it requires prior approval from the lessor. The plaintiff requires clarity as to who would provide such permissions to the plaintiff to carry out the appropriate repairs and interior works. Therefore, the plaintiff has filed this application for seeking a mandatory injunction against the Defendants.

**11.** The Defendants have filed separate objection has stated that, the said mandatory injunction application is not maintainable as per the lease agreement. In the lease agreement it is mentioned as under:

"II. The LESSEES hereby covenant with the LESSOR as follows:

(5) The LESSEES shall not be entitled to undertake any structural changes, alterations, modifications and erect any partitions to the Demised Premises without the prior written consent of the LESSOR.

(6) Upon reasonable notice being given in writing to permit the LESSOR or his agents at all reasonable times during working hours to enter upon the Demised Premises to view and state the condition thereof.

III. The LESSOR hereby covenant with the LESSEES as follows:

(2) The LESSOR shall attend to any major structural defects or repairs to the Demised Premises on notice in writing of such defects being given by the LESSEES to the LESSOR.

IV. The LESSOR and the LESSEES agree to the following:

(4) Any notice required to be served herein shall be sufficiently served if left addressed to the parties at their addresses as mentioned hereinabove."

**12.** As per the said clause the lessee does not have alteration, modification and partition in the suit schedule property.

**13.** It is also noted point that, I.A.No.1 has filed by the Plaintiff under Order 39 Rule 1 and 2 and same was allowed and this court has directed the parties to maintain the status-quo order with respect to any action/step which might be taken with demised premises 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. The said order itself clear that, the plaintiff does not have any rights to change and alter as per the order of this court. The said order extracted as under:

***The I.A. No. 1 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 maintain the 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, till further order.***

***Subject to deposit of arrears of rent within a 15 days from the date of this order before this court. The plaintiff is directed to deposit the rent continuously.***

**14.** It is also noted point that, the interim relief sought should be one which is in aim of main relief. However, the plaintiff with present application as sought for main relief to be granted as a interim relief which is not a permissible in law. The relief claimed by the plaintiff in plaint as under:

a) Declaring that the Plaintiff continues to be the lawful tenant / lessee of the Demised Premises bearing No. 14, (Old No. 32), in BBMP Ward No. 76. Church Street, Bangalore;

b) Declare that the Lease Agreement dated 01st August 2013 executed is valid and subsisting and in full force and effect;

c) Declare as to who the Plaintiff must deposit the monthly rentals subject to receipt of valid GST compliant invoice;

d) Direct either Defendant No. 1 or in the alternatively Defendant Nos. 2 and 3 to enter into such documents and/or writings and/or agreement with the Plaintiff so as to ensure that the rights of the Plaintiff under the Lease Agreement dated 01st August 2013 is protected;

e) Direct and declare that on termination or expiry of the Lease Agreement dated 01st August 2013, the Plaintiff will be entitled to a refund either from Defendant No. 1 or alternatively from Defendant Nos. 2 and 3, Security Deposit amounting to Rs.1,16,25,000/- (Rupees One Crore Sixteen Lakhs Twenty-Five Thousand only);

f) Direct and declare that the Plaintiff continued to be entitled to the services related to common area maintenance and services pertaining to the Demised Premises being property bearing No. 14, (Old No. 32), in BBMP Ward No. 76. Church Street, Bangalore either from Defendant No. 1 or alternatively from Defendant Nos. 2 and 3;

g) Declare that all amounts paid by the Plaintiff towards property taxes be adjusted from the lease rent to be paid either to Defendant No. 1 or alternatively to Defendant Nos. 2 and 3;

h) That, the Hon'ble Court be pleased to allow the Plaintiff to carry out renovation and interior works of the Demised Premises and direct either to Defendant No. 1 or alternatively to Defendant Nos. 2 and 3 to grant NOCs / sign applications and/or documents as may be required to be submitted to the various authorities;

i) That the costs of this Suit be provided for;

**15.** Accordingly, the prayer of the plaintiff in clause (h) clearly relief claimed in I.A.No.5.

**16.** In the course of argument, the defendant has relied the Judgment of the Hon'ble Supreme Court in **(1990) 2 SCC 117** between **Dorab Cawasji Warden vs. Coomi Sorab Warden and others**, wherein, para No. 16 and 17 held as under:

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last

non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute

rules, and there may be exceptional circumstances needing action, applying them. as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

**17.** By relying the above judgment, the plaintiff has sought relief has claimed in main suit and also along with this application. Hence, the plaintiff is not entitle for the said relief.

**18.** The lease agreement itself is not permitted to the plaintiff and also this court has passed a restrained order and to maintain status-quo order to both the parties. Therefore, the will not entitle for relief claimed under application.

**19.** The main relief claimed by the plaintiff and the relief claimed in I.A.No.5 are one and the same and the detail evidence are required. Therefore, looking to the pleadings, facts and circumstance of the case, the plaintiff does not made out a prima-facie case in his favour and balance of convenience and irreparable

loss caused to the plaintiff. **Hence, I answer Point No.1 in Negative.**

**20. 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.

**O R D E R**

***The I.A. No.5 filed by the Plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of CPC, is hereby dismissed.***

(Dictated to the Stenographer, typed by her, verified and corrected by me and then pronounced by me in open Court on this the **06<sup>th</sup> day of March 2026** ).

**(VIDYADHAR SHIRAHATTI),  
LXXXII Addl.City Civil & Sessions Judge,  
Bengaluru.**