

IN THE COURT OF THE SENIOR CIVIL JUDGE & JMFC,
AT DODDABALLAPUR.

Dated this the 19th day of July, 2021

PRESENT: SRI.ARVIND SAIBANNA HAGARGI,
B.Sc., LL.B (Spl)
Senior Civil Judge & JMFC.,
Doddaballapur.
O.S.No.166/2016

Plaintiff:- Smt.Sujatha S. Acharya,
D/o.Late K.N.Vadiraj Rao,
and W/o. Srikantha Acharya, A/a.44 years,
R/at. No.967, "Padmashree Nilaya",
J.C.Circle, Doddaballapur Nagar.
(Represented by Advocate Sri.Ravi.M.)

V/s.

Defendants: 1. Smt.N.Rajeshwari W/o. Sri.Lokesh,
A/a. 28 years,
Proprietor of Ganesh Medicals,
967, "Padmashree Nilaya",
Government Hospital Circle,
(J.C.Circle) Doddaballapur.

2. Smt.Savitha.B.M.
W/o. Kiran Kumar.K.M., A/a. 28 years,
Ganesh Laboratories, # 967,
"Padmashree Nilaya",
Government Hospital Circle,
(J.C. Circle) Doddaballapur.

3. Sri.K.V.Srinivas S/o. Sri.K.N.Vadiraj Rao,
A/a. 49 years,
R/at. Sri.Bhuvaneshwari Nilaya,
Someshwara Extension, 4th Ward,
Doddaballapur.

4. Sri.K.V.Gururaj Rao,
S/o. Sri.K.N.Vadiraj Rao, A/a. 43 years,
R/at. Hayavadadna Nilaya,
Someshwara Extension,
4th Ward, Doddaballapur.
(Represented by Advocate Sri.M.K.M.)

ORDER ON I.A.No.XVI to XVIII

These orders arises out of again No.XVI filed by the plaintiff against under Section 151 of C.P.C. for release first installment Rs.10,00,000/- (Ten lakhs only) in favour of her mother Smt.K.V.Satyavathi W/o. Late Sri.Vadiraja Rao and I.A.No.XVIII filed by the plaintiff under Section 151 of C.P.C. with a prayer to direct the defendant No.1 to deposit third installment of arrears of rent and I.A.No.XVII filed by the defendant No.1 to set off the rent in respect of cellar portion of the suit schedule premises from July 2016 set off.

RELEVANT FACTUAL MATRIX

2. This is a suit of plaintiff against the defendants for ejectment of defendants from the suit schedule premises and payment of arrears of rent at the rate of Rs.40,000/- (forty thousand only) per month from June 2015 till the actual delivery of possession of suit premises by the defendants to the plaintiff. Plaintiff is claiming the attornment of tenancy by virtue of Gift deed dated 13-05-2014 executed by her mother Smt.Satyavathi at document No.DBP-1-01354/2014-15. On the contrary the defendant No.1 and 2 in their written statement are claiming the title to the suit property by virtue of the Will executed by the father of plaintiff and defendant No.1 and 2 namely K.N.Vadiraj Rao dated 21-04-2006. There is a dispute regarding the attornment of tenancy on plaintiff and all defendants by virtue of the Gift deed and Will deed referred above. There is a title suit in O.S.No.277/2015 pending for disposal in between parties to the suit in respect of suit schedule premises. Tenancy and rate of interest is admitted in written statement filed by defendant No.1 and 2. The death of Sri.K.N.Vadiraj Rao is undisputed fact. The fact that the

mother of plaintiff Smt.K.V.Satyavathi old age and ailing lady is not a fact at dispute. In these factual matrix the parties are fighting litigation up to Hon'ble High Court of Karnataka even on interim application and orders on interim applications. After disposal of W.P.No.2430/2021 (GM-CPC) these applications under reference came to be filed by plaintiff and defendant No.1 and 2.

3. I.A.No.XVI is filed by the plaintiff for release of an amount of Rs.10,00,000/- (Ten lakhs only) of first installment of payment of arrears of rent in favour of the mother of plaintiff Smt.K.V.Satyavathi as per order of Hon'ble High Court of Karnataka in W.P.No.2430/2021 dated 05-02-2021.

4. An affidavit is filed by plaintiff along with I.A.No.XVI and at Paragraph No.5 of the affidavit. The plaintiff has stated that defendant has deposited two installments of Rs.10,00,000/- (Ten lakhs) each in this Court. The plaintiff at Paragraph No.4 has stated that her mother Smt.K.V.Satyavathi is age bedridden and ailing and hence sought for the release of first installment of Rs.10,00,000/- (Ten laksh only) in favour of her mother Smt.K.V.Satyavathi.

5. The defendants have not filed any objections to I.A.No.XVI.

6. Before taking up I.A.No.XVII, I would like to take up I.A.No.XVIII for separation of I.A.'s filed by plaintiff and I.A.'s filed by defendant. I.A.No.XVIII is filed by plaintiff under Section 151 of C.P.C. with a prayer to direct the defendant No.1 to deposit third installment of rent as per order in W.P.No.2430/2021. Advocate for plaintiff has filed memo of facts along with I.A.No.XVIII stating that defendant is suppose to deposit third installment by not later then

05-05-2021, but the defendant has not deposited the third installment within the time frame set out by the Hon'ble High Court of Karnataka in W.P.No.2430/2021.

7. The defendants have filed objections to I.A.No.XVIII. The substance of objections of defendants is that as per the orders of Hon'ble Supreme Court of India in W.P. (Civil) No.3/2020 the limitation is said to be set at rest and again by the orders of Hon'ble Supreme Court of India in Misc. Application No.665/2021 dated 27-04-2021 the said orders dated 08-03-2021 in W.P. (Civil) No.3/2020 is said to be extended till further orders. Therefore, it is contentions of the defendant that in view of the said orders of Hon'ble Supreme Court of India the application at I.A.No.XVIII is prematured and not maintainable accordingly prayed to reject I.A.No.XVIII.

8. Now coming to I.A.No.XVII. This is an I.A. filed by defendant with a prayer to set off the rent in respect of cellar portion of suit schedule premises from July 2016. The substance for this application is forthcoming in the Paragraph No.2 and 12 of the affidavit filed by defendant No.3 along with I.A.No.XVII. In Paragraph No.2 of the affidavit defendant No.3 has made statement that, the suit schedule shop premises and cellar portion is leased out at the rate of Rs.28,000/- (Twenty eight thousand only) per month for the medical shop and at the rate of Rs.22,000/- per month to the cellar portion. In Paragraph No.4 to 11 of the affidavit the defendant No.3 has made allegations against plaintiff. In Paragraph No.12 of the affidavit the defendant No.3 has stated that defendant No.1 has handed over the possession of cellar portion to defendant No.3 in the month of July 2016 and defendant No.1 is said to made attempt to run Medical Lab in the cellar portion during 2018 September but the

plaintiff is said to have spoiled the attempt by the plaintiff by cutting of essential services like electricity supply etc., Accordingly the defendants prayed for set off rent in respect of cellar portion from July 2016.

9. The plaintiff has resisted I.A.No.XVII by tabling the objections to I.A.No.XVII. In the objections the plaintiff has focused on the orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021 and in the objections the plaintiff has contended that there is no materials to support the claim of set off rent in respect of cellar portion as claimed by defendants in I.A.No.XVII. Accordingly the plaintiff prayed to reject I.A.No.XVII.

10. Heard arguments of Sri.R.M., Advocate for plaintiff and Sri.M.K.M., Advocate for defendants on I.A.No.XVI to XVIII. Sri.M.K.M., Advocate has also filed written arguments on behalf of defendants.

11. The points that arises for my consideration are

1. Whether plaintiff has made out grounds for releasing the first installment in favour of her mother Smt.K.V.Satyavathi?
2. Whether plaintiff has made out grounds for directing the defendants to deposit third installment as per orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021?

3. Whether defendants are entitled for the set off of rent and arrears of rent in respect of cellar portion from July 2016?
4. What order?

12. My findings on the above said points are as under:

Point No.1: In the affirmative

Point No.2: In the affirmative

Point No.3: In the negative.

Point No.4: As per final order as per the following;

REASONS

13. **Point No.1 and 2:** The subject matter condensed in the present points under reference is the release of first installment of Rs.10,00,000/- (Ten lakhs only) in favour of the mother of plaintiff and also the directions to the defendants to deposit third installment.

14. As regarding I.A.No.XVI there is no objections by the defendants. Objections need not be against the orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021. When there are no objections by the defendants and there is orders of Hon'ble High Court of Karnataka to release the first installment which reads as under;

“The Court below shall release the entire first installment of arrears of rent in favour of petitioner's mother without brooking delay”

The directions of the Hon'ble High Court of Karnataka referred above is not challenged by the defendants by filed writ appeal. Therefore, by the force of the orders of Hon'ble High Court of Karnataka referred above the mother of plaintiff is at right to get released an amount of Rs.10,00,000/- (Ten lakhs only) of first installment of arrears of amount in her favour. The orders of Hon'ble High Court of Karnataka sounds high and defendant cannot be permitted to raise voice against the orders of Hon'ble High Court of Karnataka in this regard. The first installment is deposited in the Court on 08-03-2021. Therefore, I am of the opinion that the plaintiff has made out grounds for releasing the first installment of Rs.10,00,000/- (Ten lakhs only) in favour of her mother Smt.K.V.Satyavathi.

15. Now as regarding I.A.No.XVIII where in plaintiff has sought directions to the defendant to deposit third installment as per orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021. As per the orders of Hon'ble High Court of Karnataka refereed here in the Hon'ble High Court of Karnataka has directed the deposit of third installment i.e., the remainder of the amount shall be deposited on or before 05-05-2021 for better understanding the relevant Paragraph and clause is extracted as under.

16. IIIrd installment i.e., the remainder of the amount shall be deposited on or before 05-05-2021. Now the application at I.A.No.XVIII in reference is fide on 30-06-2021 i.e., after 05-05-2021. the only substance of objections raised by the defendants to I.A.No.XVIII is that the limitation is extended by the orders of Hon'ble supreme Court in Suo Motu W.P. (Civil) No.3/2020 dated 08-03-2021 and 27-04-2021, 14-03-2021. There is no dispute regarding the

principle of law laid down by Hon'ble Supreme Court of India. The said extension of limitation is for computation of period of limitation for filing any suit, appeal, petition or proceedings. The period from 15-03-2020 is extended till further orders and the period of limitation for a period from 15-03-2020 to 14-03-2020 and until further orders as excluded from computing the limitation for filing suit, appeal, applications or other proceedings. The period for making payments in Civil matters like Maintenance Cases, LAC Matters, Rent Matters and Motor Accident Claims the time is not extended. The orders of Hon'ble Supreme Court of India protects and extends the limitation and excludes the period enshrined the orders for filing suits, appeals, applications or other proceedings, but does not protects the making of payments in a matters like rent arrears or maintenance arrears. Limitation is not extended by the Hon'ble Supreme Court of India for making payments or deposits in the Court or for recovery of money from the Banks ofcourse Government orders in respect orders Bank recoveries deferring the payment of installments for a quarter or two. But there are no orders of the Hon'ble Supreme Court of India regarding payment of arrears of rent or deposit of compensations in LAC and MVC Matters and Maintenance Cases and even rate of interest is not set off for the Covid-19 period and there is no orders in this regard also by the Apex Court. Hence, I am of the opinion that the orders of the Hon'ble Supreme Court of India does not save and protect the defendants from making payments as per the undertakings made by them before the Hon'ble High Court of Karnataka and as per the orders of Hon'ble High Court of Karnataka the relevant portion is extracted above. Moreover the defendants have not preferred writ appeal against orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021. Hence, there is no other way for

the defendants except the obey the orders of Hon'ble High Court of Karnataka by depositing third installment or else to face consequences as laid down in bottom lines of page No.8 of Hon'ble High Court of Karnataka. Therefore, I answered point No.1 and 2 in the affirmative.

17. **Point No.3:** Defendants have filed I.A.No.XVII with a prayer to set off the rent and arrears of rent in respect of cellar portion from July 2016 and affidavit is filed by the defendants admitting the rate of rent of cellar portion at the rate of Rs.22,000/- (Twenty two thousand only) per month. In Paragraph No.12 after making allegations from Paragraph No.7 to 11 against the plaintiff the defendant has contended that in July 2016 the defendant No.1 has given possession of cellar portion to defendant No.3 and in September 2018 the plaintiff has cut off all essential supplies to the cellar portion and cause loss of Rs.2,00,000/- (two lakhs only) to the defendant No.3 by not allowing him to run Medical Diagnostic Laboratory. Therefore, the defendants have prayed for setting off of rent at the rate of Rs.22,000/- (Twenty two thousand only) per month from July 2016 till deposit of the arrears of rent by the defendants. The plaintiff has filed objections disputing the fact of handing over possession of cellar portion to the defendant No.3 by the defendant No.1. The defendants have also putforth this fact before the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka has laid down at last Paragraph of the orders that the correct rate of rent and the period during which the same has remained in arrears and also the surrender of part of tenanted premises are kept open for being debated on the floor of this Court. The defendants have filed I.A.No.XVII on 30-06-2021 and they have filed written statement on 09-11-2016. In their written statement the defendants have not

pleaded this fact of handing over possession of the cellar portion to defendant No.3 by defendant No.1, though the rate of rent is not at dispute. Even at the time of hearing of I.A.No.XVII the defendants have not produced any documents except the affidavit of defendant No.3. There is no document of termination of lease in respect of cellar portion like issue of notice for termination for lease are the document of handing over the possession of cellar portion to defendant No.3 by defendant No.1 except the affidavit of defendant No.3 it is self serving affidavit of defendant No.3 there is no other materials like affidavit of neighbours. Nothing is placed on record to evidence or established the fact that cellar portion was handed over to defendant No.3 by defendant No.1 in July 2016. When such fact is not established under such circumstances set off cannot be given to the defendant in respect of cellar portion of July 2016. The defendants are at liberty to establish and prove this fact during the course of trial and prayed for set off in final arrears of rent or at any stage as and when the cause of action arises for defendant to claim set off on the applications filed by the plaintiff in near future for claim in the arrears of rent and deposit of the same.. Therefore , I am of the opinion that the defendants have utterly failed to establish that they are entitled for set off rent and arrears of rent in respect of cellar portion from July 2016. Hence, I answered point No.3 in the negative.

18. In view of my findings on point No.1 to 3 I proceed to pass the following;

ORDER

I.A.No.XVI and XVIII filed by the
plaintiff under Section 151 of C.P.C. are
hereby allowed.

Office is directed to release the first installment of Rs.10,00,000/- (Ten lakhs only) deposited by the defendants in the Court on 08-03-2021 vide Demand drafts in favour of mother of plaintiff namely Smt.K.V.Satyavathi through Khajane-2.

The mother of plaintiff is directed to file their account details, aadhar card, pan card, and her affidavit for this purpose forthwith.

Defendants are directed to deposit the third installment of arrears of rent forthwith as per the orders of Hon'ble High Court of Karnataka in W.P.No.2430/2021 dated 05-02-2021.

I.A.No.XVII filed by the defendants under section 151 of C.P.C. is hereby rejected.

(Dictated to the Typist copyist, typed by her, corrected and then pronounced by me in the open Court on the 19 day of July, 2021.)

(ARVIND SAIBANNA HAGARGI)
Senior Civil Judge & JMFC.,
Doddaballapur.