

**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE
AND CJM, DHARWAD**

PRESENT

**SHRI. S.V. SRIKANTH,
Prl. SENIOR CIVIL JUDGE AND CJM.,
DHARWAD**

O.S. No.152/2020

DATED THIS 26TH DAY OF NOVEMBER 2020

PLAINTIFF/S : M/s Hotel Padmashri,
(Registered partnership firm registered
under No. DWR-F214/2019-20 dt. 23-
01-2020), Bungalow No.2, Lotus
Layout, Kelageri road, Sadhankeri,
(Next to Balaji Family Mart), Dharwad.
By its Managing Patner
Sri. Narayan S/o Chandrashekhar
Kalal.
(By Sri. R.H. Angadi, Adv.)

Vs.

DEFENDANT/S : S. Ramchandrareddy S/o
Chinnappareddy,
Age: 53 years, Occ: Business,
R/o Line Bazar, Dharwad.
(By Sri. C.B. Naik, Adv.)

ORDER ON I.A No.II

The Plaintiff has moved an application under order 39
Rules 1 and 2 of the CPC praying this court to grant to it
an ad-interim exparte order of Temporary Injunction

restraining the Defendant or anybody on his behalf from letting out the schedule property to any third party pending disposal of this suit by allowing this application with cost of the proceeding.

2. The deponent by name Narayan S/o Chandrashekhar Kalal who is the Managing partner of the Plaintiff firm has stated that the present suit is filed by the said firm against the Defendant for the relief of possession. According to the deponent the Plaintiff firm is engaged in the business of running the bar and restaurant and as the Defendant is the owner of the plot No. 177/A measuring 5610 sq. meters out of RTC No. 230 and 231 situated at Belur Industrial Area, Mummigatti, Dharwad. The Defendant had constructed the said building in the said property and offered to lease the ground floor premises. As the Plaintiff was interested in commencing its business in bar and restaurant approached the Defendant for lease of a part of portion of ground floor in the said property which is

described as the schedule property. It is also stated by the deponent that the Defendant agreed to lease the schedule property and in this regard negotiation took place and it was agreed that lease period is for 15 years from the date of taking possession of the schedule property. The Defendant agreed to complete the construction of the schedule property and also to construct the road for 250 meters length up to main gate entrance from the schedule property and deliver the possession of the same to the Plaintiff. It was mutually agreed that the cost of the construction to be equally borne out by the Plaintiff and Defendant. According to the deponent as per the mutual understanding a registered lease deed dated 23-12-2019 came to be executed by the Defendant in favour of the Plaintiff and on the date of the execution of the said lease deed the Plaintiff has paid an earnest money of Rs.2,00,000/- to the Defendant. There is also reference in the affidavit that in the meanwhile the Plaintiff secured permission for Hotel Business in the schedule property

from the Grama Panchayath on 25-02-2020 and also paid liquor licence fees of Rs.4,60,000/- to the Excise Department on 29-02-2020.

3. There is a detailed averment in the affidavit that in the meanwhile on 23-03-2020 the the State Government imposed lockdown in view of Covid-19. According to the Plaintiff subsequently in the month of June 2020 construction activities were permitted by the Government. At that juncture, when he requested the Defendant to complete the construction work to that Defendant replied that as restriction on sale of liquor and restaurant business is continued by the Government so there is no hurry in completing the said construction work. It is the say of the Plaintiff that Defendant delayed in completing the said construction work and did not deliver the physical possession of the schedule property to the Plaintiff. According to the Plaintiff it came to the knowledge that the Defendant is trying to deviate from the lease deed dated

23-12-2019 and it was shocked to know that Defendant had not completed the construction work. The Defendant instead of delivering the physical possession of the schedule property to the Plaintiff started demanding the rent which was fixed for Rs.45,000/- per month and on 27-08-2020 the Defendant issued a legal notice terminating the tenancy of the Plaintiff over the schedule property. There is also reference in the affidavit that there is a mutual exchange of notices between the Plaintiff and Defendant and also the Plaintiff issuing a public notice on 08-09-2020 cautioning the public not to enter into any kind of lease transaction of the schedule property in Vijaya Karnataka news paper on 09-09-2020. It is the say of the Plaintiff that now the Defendant after issuing the termination notice to it is, making hectic attempts to let out the schedule property to third parties then in such an event its interest will be very much effected. According to the Plaintiff it has made out a prima facie case, balance of

convenience was very much in its favour including the hardship factor and prayed for the application reliefs.

4. On the other hand, the Defendant filed objection to this application denied all the contents of the affidavit of the deponent. According to the Defendant not only the application even the suit is not maintainable and they had to be dismissed in limine. According to the Defendant he admits that he is the absolute owner of the schedule property which is situated at the Belur Industrial Area, Dharwad. The schedule property building consists of a ground floor and third floor which includes parking area and offered to ease the ground floor premises. There is an admission on the part of the Defendant that Plaintiff was engaged in running business of bar and restaurant and was interested in commencing the business in the schedule premises. According to the Defendant they agreed for a lease period for 15 years from the date of taking possession of the premises from the Plaintiff. There

is an empathetic denial on the part of the Defendant that he undertook complete construction of the road till the main gate and deliver the possession of the same to the Plaintiff. By denying the same has put the Plaintiff to strict proof of the same.

5. According to the Defendant so far as the allegations contained in the affidavit that he was supposed to complete the construction work of the schedule property and deliver the same to the Plaintiff only after construction of the approached road has been palpably denied as false and baseless. According to the Defendant, the Plaintiff by suppressing the material facts has filed the present suit and application. According to the Defendant construction work of premises was carried out by him prior to the lease except formation of the road. According to the Defendant as per the lease deed delivery of possession of the Plaintiff two months time was granted to carry out the interior work in order to commence his business. Likewise, even after

the Plaintiff taking physical possession of the schedule property from the date of execution of the lease deed dated 23-12-2019 he has not completed the interior work and not commenced his business. On 11-02-2020 the Defendant applied to the Tourism Development to issue permission for running the lodge and hotel, which in due course granted. According to the Defendant as per the lease agreement the Plaintiff has to pay the rent amount of Rs.45,000/- per month to the Defendant towards leased premises. But so far no such payment has been made which was mutually agreed. In the lease deed it is mentioned that if the Plaintiff failed to pay the lease rent continuously for the period of three months or if the Plaintiff contravenes any of the conditions of the lease deed, the Defendant will be at liberty to determine the lease.

6. According to the Defendant, the Defendant without any alternative got issued termination notice and

also replied the notice issued by the Plaintiff. According to the Defendant even though he has completed the construction of the schedule property, delivered the possession of the same to the Plaintiff on 23-12-2019 but Plaintiff has not started the business in the said premises. So according to the Defendant there is no fault on his part and prayed for dismissal of the said application.

7. Heard arguments. During the course of the arguments the learned counsel for the Defendant submitted list with citations. I have gone through them carefully in detail.

8. The fresh points that crop up for my consideration are;

1. **Whether the Plaintiff has made out a prima facie case for grant of temporary injunction ?**
2. **In whose favour balance of convenience lies?**

3. **In whose favour hardship factor leans?**

4. **What Order ?**

9. After carefully going through the materials available on record and also considering the facts and circumstances of the case, my findings to the above points are in the following:

Points No. 1 & 2 : In the Negative,

Point No. 3 : In favour of the Defendant,

**Point No. 4 : As per the final order
for the following :**

REASONS

10. **Points No.1 and 2:** I have taken up joint discussions of these two points not because they are inter connected but to avoid definite repetition of my discussion.

11. This Court after hearing both the parties to the suit on 23-09-2020 had directed them to maintain statusquo-ante in respect of the schedule property until further orders; that is being extended from time to time.

The prayer contained in the application of the Plaintiff under consideration is to restrain the defendant from letting out the schedule property to any third parties pending disposal of the suit. I should say before this Court goes into the pros and cons of the case there is not only inconsistency but many contradictions are available which are found in the plaint pleadings and in the documents placed by the Plaintiff itself. On one hand according to the Plaintiff it has not taken the physical possession of the schedule property as the approach road leading to the main gate is not constructed. Second aspect of the matter is according to the Plaintiff the Defendant did not complete the construction work as agreed in the registered lease agreement dated 23-12-2019. So according to the Plaintiff it was constrained to file a suit for possession and also moved the present I.A for the above said reliefs.

12. On the other hand, the learned counsel for the Defendant highlighted crucial aspects by taking this Court

through the covenants of the registered lease agreement dated 23-12-2019. The following recital clearly show that as on the date of execution of the lease agreement possession was handed over to the Plaintiff and it will have to pay monthly rentals of Rs.45,000/- to the Defendant. The said recital is extracted as under:

“ The lessee has agreed to pay an interest free deposit of Rs.2,00,000/- (Two Lakhs) to the lessor as security deposit. The lessee shall pay the security deposit amount to the lessor on the date of taking possession of the premises i.e., on the date of registration of the present deed.”

13. Now when this recital which is found in the registered lease deed is gone through virtually the Plaintiff is blowing hot and cold. Rightly during the course of the argument the learned counsel for the Defendant submitted that the entire plaint and affidavit contents of the Managing Partner annexed to the present application under consideration are silent in respect of the Plaintiff not

paying rentals of Rs.45,000/- per month to the Defendant from the date of registration of the lease deed dated 23-12-2019.

14. As a preface to these subsequent developments, as the Plaintiff firm was interested in running bar and restaurant and it has also placed records to show that it has taken licence from the competent authorities for the said purpose. So far as construction of approach road to the schedule property is concerned as per the said lease deed both Plaintiff and Defendant shall have to bear the cost equally. The Defendant also placed records to show that it has obtained permission from the Tourism Department and also secured completion certificate from the concerned panchayath authorities. These documents per se show that even though the schedule property and the entire building was ready for the Plaintiff to commence its business but for the reasons best known it has not started at all. In fact the documents of the Plaintiff

supports the stand of the Defendant that Plaintiff has not fulfilled the terms and conditions of the lease deed dated 23-12-2019. Rightly the counsel for the Defendant relied upon decisions reported in **(2006) 5 Supreme Court Cases 282 between Seema Arshad Zaheer and others Vs. Municipal Corporation of Greater Mumbai and others** wherein the Hon'ble Apex Court has held that:

“ Civil Procedure Code, 1908- Or. 39 R.1 and Or. 43 R.1(r)- Temporary injunction – when to be granted – Interference by Appellant Court with the discretion of the Trial Court when justified – Law in general and law in cases of orders for demolition of buildings, restated – In cases of demolition of building where the Plaintiff fails to make out a prima facie case for grant of an injunction and documents produced clearly show the structures to be unauthorized, temporary injunction may not be granted merely on the ground of sympathy or hardship- Where the Lower Court acts arbitrarily, capriciously or

perversely in the exercise of its discretion, the appellate Court will interfere- Granting temporary injunction on the basis of “no material” or refusal to grant temporary injunction are instances of such exercise of discretion- The expression “no material” for the said purpose, held, includes cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion- On facts, held, there was no material in the present case to make out a prima faice case for the grant of temporary injunction against the order of the Commissioner of the Municipal Corporation for the removal/ pulling down of the structures he had found to be unauthorised and illegal- Hence, High Court rightly interfered and vacated the temporary injunction granted by the Trial Court- Practice and Procedure- Interim/ Interlocutory orders- Temporary injunction- Town planning- Unauthorised construction- Municipal Corporation's order for removal/ pulling down of – Grant of temporary injunction against, by

**Court- When permissible- Municipalities -
Bombay Municipal Corporation Act, 1888 (3 of
1888), S. 351- Words and phrases- “No
material”.**

15. And one more decision reported in **AIR 1965
Mysore 310 between Lakshminarasimhiah and others
Vs. Yalakki Gowda** wherein the Hon'ble High Court has
held that:

**“ 8. The granting or refusing of injunctions
is a matter resting in the sound discretion with
the Trial Court and consequently no injunction
will be granted whenever it will operate
oppressively, or inequitably, or contrary to the
real justice of the case. In exercising the
discretionary power, the Courts should be guided
by the following guiding principles.**

**9. There is no power which is more delicate,
which requires greater caution, deliberation, and
sound discretion, or is more dangerous in a
doubtful case, than the issuing an injunction. It**

is the strong arm of equity, that never ought to be extended unless to cases of great injury, where Courts of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventive process of injunction. But that will not be awarded in doubtful cases."

And contended that the Plaintiff has approached the Court with soven hands, indeed it is true that the documents which are discussed supra show that as on the date of the registration of the lease deed the Plaintiff was put in physical possession of the schedule property and two months time was taken by the Plaintiff for completing the interior designing work. That is nothing to do with the responsibility of the Defendant. Likewise, the Defendant took this Court to clause NO.40 of the said deed to show that if there is any default on the part of the Plaintiff in making rentals then the Defendant will get a right to initiate action against him under the Transfer of Property

Act. Likewise, it is also made it very clear that if the Plaintiff fails to pay the rentals to the Defendant then after waiting for a period of 3 months the Defendant can terminate the tenancy by issuing a legal notice. In this regard, the very conditions stipulated in the lease deed has been violated by the Plaintiff herein. The relevant recital found in clause No.34 is extracted as under:

“ If the lessee fails to pay the lease rent for the period of three months or if lessee contravenes any of the condition of the lease deed, the lessor is at liberty to determine the lease after issuance of 30 days notice to the lessee.”

16. By issuing termination notice to the Plaintiff the Defendant has complied this condition. Furthermore, the very fact that the Plaintiff has failed to place any documents to show that it has paid Rs.45,000/- per month to the Defendant show that it is a chronic defaulter. Under such circumstances, according to me there is no question

of Plaintiff claiming that it has made out a prima facie case and that there are circumstances which leans in its favour for grant of temporary injunction. Accordingly, I have answered **the points No.1 and 2 in the negative.**

17. **Point No.3:-** During the course of the argument, the learned counsel for the Plaintiff contended that it has already paid a sum of Rs.2,00,000/- as an earnest money to the Defendant and has deposited a sum of Rs.4,60,000/- to the Excise Department towards liquor vending charges. As that business has not been started hardship is very much in its favour. According to me this is not the correct position. Infact it is the Plaintiff for the reasons best known has not completed the interior designing work in the schedule property and not invested the 50% of money to complete the construction of approach road and there is no material to come to the conclusion that it has paid rentals to the Defendant in respect of the schedule property from the date of

registration of the above said lease deed. On the other hand, the Defendant has lost everything and it was also submitted by the Defendant counsel that his client has raised huge loans from the financial institutions for completion of entire construction work. So the hardship factor is more on the Defendant and not on the Plaintiff. I have no any hesitation in answering that the Plaintiff has approached the Court with unclean hands.

18. It has made very clear that when Plaintiff itself is the root cause for the breach of every terms and conditions stipulated in the lease deed dated 23-12-2019 finding fault with the Defendant does not arise at all. It is high time that Plaintiff should take immediate measure to pay the arrears of rent to the Defendant. Accordingly, I have answered **the point No.3 in favour of the Defendant.**

19. **Point No.4:-** Having gone through the materials the bonafides of the partners of the Plaintiff has to be doubted at this juncture. Now, for not starting bar and

restaurant in the schedule property; the answer lies with the Plaintiff itself. But through out this suit they are blaming the Defendant. As admitted by the Plaintiff itself they have filed the present suit having received the termination of lease notice from the Defendant. So the present application is bereft of merits. The Managing Partners affidavit contents to the application under consideration lacks bonafides. It is made very clear that any observation made by this Court during the course of above discussion is restricted to this stage of the case only. It shall in no way influence the merits of the case. With this observation, I proceed to pass the following:

ORDER

**The Application filed by the Plaintiff
under Order 39 Rules 1 and 2 of the
CPC dated 18-09-2020 is hereby
dismissed with costs.**

**Consequently, the interim order
passed by this Court dated 23-09-2020
stands hereby vacated.**

**Call on for filing written statement
by 04-01-2021.**

*(Dictated to the Stenographer, transcribed and computerized by him,
script corrected and then pronounced by me in the Open Court on this
the 26th day of November 2020)*

**(S.V. SRIKANTH),
Prl. Senior Civil Judge & CJM.,
Dharwad.**