KAKL510020052018

IN THE COURT OF THE II ADDL. CIVIL JUDGE & JMFC AT K.G.F.

Dated this the 12th day of August 2021

:: PRESENT::
KIRAN S.P., B.B.M., LL.B.,
II Addl. Civil Judge, K.G.F.

OS No 512/2018

Plaintiff : - Sri. N.Janardhan

V/s.

Defendants :- City Municipal Council

Cause Title On IA NO. II

Applicant: - **City Municipal Council,**
Robertsonpet,
KGF Taluk.
Its Commissioner

(By Sri. K.M.V., Advocate)

V/s.

Respondents:- **Sri. N.Janardhan,**
S/O.T.Narayana Rao
Aged About 45 Years,
R/at. Hotel Janardhana,
Gandhi Circle, Robertsonpet
KGF Taluk.

(By Sri. S.A.H., Advocate)

: ORDER ON IA NO.II FILED BY THE DEFENDANT

U/SEC. 151 OF CPC :

The defendant has filed IA no.2 U/sec. 151 of CPC seeking to direct the plaintiff to pay tax which is due and payable by the land lord and deduct the tax amount on the rent paying by the plaintiff to defendant since the plaintiff is running hotel business in the suit schedule property during the pendency of suit.

02. In the accompanying affidavit it is stated that plaintiff is running a hotel business that to a commercial in the heart of the city, and property situated in the prime area of the city, who is tenant under the defendant paying regular monthly rent for a sum of Rs, 40,000/- per month, who obtained C form license from the concerned authority and the trade licence from the CMC, KGF which is tentatively renewed from year to year according to license obtained by the plaintiff from the CMC, KGF. The land lord is not paying the tax related to suit property, the defendant corporation and its revenue force observed and verified the revenue records its found that plaintiff is due a tax related to the property. If plaintiff paid the tax related to suit property on behalf of the land lord and adjusted with the rent amount no hardship will be caused to the plaintiff or his land lord, if the plaintiff is not entitled to get the license from the defendant corporation to run hotel business in the suit schedule business, and the defendant is at liberty to exercise his option provided under Karnataka

Municipal Act 1964. On these grounds he prays for allow IA no.2.

03. This application is resisted by the plaintiff by filing objections. It is stated in the objections that plaintiff is running a hotel business in a smooth manner and defendant along with his associates came near the suit schedule property on 10-12-2018 and interfered with the peaceful possession of plaintiff over the suit schedule property and to close the main door of the hotel on the guise that the landlord J.Manohar lal has to pay taxes and he is due huge amount and that the plaintiff has been paying rents to the landlord regularly without fail. The lease agreement is subsisting between the plaintiff and landlord the plaintiff cannot act contrary and pay the said sum of Rs. 40,000/- paid to the landlord as rent to the municipality as the lease dies not contemplate the same and if at all any arrears of tax due. The said amount is liable to be paid by the landlord J.Manohar lal and not by the plaintiff, there is a relationship between the plaintiff and the said person as the tenant and landlord and when there is a jural relationship existing between them, issuance of the trade licence is the bounden duty of the defendant to issue to the same and they cannot penetrate in the aspect and stop the business of the plaintiff in any way without renewing the trade licence as the licence fee is enchequer amount of municipality and the said licence cannot be withhold by the municipality as the relevant

provision is imbibing in Karnaaka Municipalities Act 1964. On these grounds he prays for dismiss the application.

04. Heard both side, perused materials available on record.

05. Points that would arise for final determination of this application are as follows:

<u>Point No.1</u>: Whether the defendant has made out prima-facie grounds to allow IA no.2 ?

<u>Point No.2</u>: What Order?

06. The findings on the above points are as follows;

Point No.1: In the Negative

Point No.2: As per final order for the following;

<u>R E A S O N S</u>

07. **<u>Point no 1</u> :**It is the definite case of the plaintiff that plaintiff is running a hotel business that to a commercial in the heart of the city, and property situated in the prime area of the city, who is tenant under the defendant paying regular monthly rent for a sum of Rs, 40,000/- per month, who obtained C form license from the concerned authority and the trade licence from the CMC, KGF which is tentatively renewed from year to year according to license obtained by the plaintiff from

the CMC, KGF. The land lord is not paying the tax related to suit property, the defendant corporation and its revenue force observed and verified the revenue records its found that plaintiff is due a tax related to the property. If plaintiff paid the tax related to suit property on behalf of the land lord and adjusted with the rent amount no hardship will be caused to the plaintiff or his land lord, if the plaintiff is not entitled to get the license from the defendant corporation to run hotel business in the suit schedule business, and the defendant is at liberty to exercise his option provided under Karnataka Municipal Act 1964.

08.There is no dispute that plaintiff is in possession of suit schedule property. Upon perusal of materials available on record, it shows that plaintiff is running Hotel business under the name and style as Hotel Janardhana in the suit schedule property and he had registered the said Hotel in government of India and he had obtained license from food surety and standards authority of India and also obtained trade licence from CMC, KGF, The defendant contended that the tax has not been paid to CMC pertaining to suit schedule property for number of years. The defendant has every right to question to the illegally and non payment of arrears of tax related to suit schedule property.

09. It is the duty of every person to pay the tax to government. Admittedly suit schedule property is

situated with in the limits of CMC. Hence it is the duty of the owner to pay the tax to CMC pertaining to suit schedule property. There is no dispute that plaintiff is not a owner of suit schedule property. He is only a tenant in the said property. Even though the plaintiff has paid rent to his landlord, it is not the duty of plaintiff to pay the taxes to the CMC and it is the duty of his landlord to pay taxes. If the tax has not been paid with respect to suit schedule property, the defendant has liberty to recover the tax amount from the owner of suit schedule property in accordance with law. By considering the facts and circumstances, it shows that plaintiff has made out prima facie case. Hence interim application filed by the defendant U/Sec. 151 of CPC is deserves to be dismissed. Accordingly Point no. 1 is answered in the Negative.

10.**Point No.2:** For the foregoing reasons, I proceed to pass the following;

ORDER

IA no.2 filed by the defendant U/Sec. 151 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open Court on this the 12th day of August 2021)

Sd/-
(KIRAN S.P)
II Addl. Civil Judge & JMFC,KGF