

**Orders on IA filed under section XXXVIII Rule 1
and 2 of C.P.C.,**

The plaintiff has filed this application to issue warrant of arrest against the defendant No.1 and 2.

2. Along with application plaintiff has filed affidavit stating that, this suit is instituted by the

plaintiff against the defendant No.1 and 2 for the relief of ejectment, arrears of rent of Rs.16,23,0000/- and damages if Rs.75,00,000/- per month towards the mense profit, damages illegal occupation of the suit schedule property and also direct the defendant No.1 and 2 to handed over all the original documents pertaining to the suit schedule property which are in custody of the defendant.

3. It is further stated that, the defendants No.1 and 2 approached the plaintiff in the month of the December 2018 and sought to letout the suit schedule property on lease for a period of 20 years in order to start Petrol Bunk in the said property. Therefore, she is considering the offer made by the defendants No.1 and 2 agreed to let-out the same on lease on 22.12.2018 between the plaintiff and defendant No.1 and 2. Subsequently there was a modification of lease deed dated:24.04.2019, the duration of term of lease deed was fixed for 20 years and defendant No.1 and 2 agreed to pay initial security deposit of Rs.15,00,000/- with in one year dated:22.12.2018 and it is further agreed by way of modification lease agreement that, within the 3 years they have agreed to

pay a sum of Rs.35,00,000/- on or before 3 years from the date of original lease agreement dated:22.12.2016. Initial deposit was Rs.5,00,000/- by way of cheque issued by the defendant No.1 and 2 was not honoured as on the date of cheque and on persistence request the same was paid by RTGS. Subsequently, pleadings financial difficulty sought refund of Rs.4,00,000/- to meet urgent expenses by way of cash and same was not repaid by them. The defendants committed the breach of terms of lease agreement. The defendant No.1 and 2 approached the competent authority seeking conversion of Sy.No.61/1 measuring 13 guntas situated at Kothipura, Amanikere Village, Kasaba Hobli, Ramanagara Taluk and District. Sy.No.61/2 measuring 14 guntas situated at Kothipura, Amanikere Village, Kasaba Hobli, Ramanagara Taluk and District. The defendants also demonstrated that, they have applied for conversion of land and there is no terms of lease deed enabling them to seek conversion of land over and above the plaint schedule property and they have not communicated with respect to the same.

4. The defendants were well aware of starting of petrol bunk business in suit schedule property and they ought to obtain permission representing the plaintiff before the competent authority from agricultural usage to commercial activity. But, they did not apply for commercial activity from agricultural activity. Just avoid the payment of rent as agreed. They filed false police complaint and come-up with OS.No.118/2021 on the file of this court on 13.07.2021 for the relief of permanent injunction that to encroaching the portion of Sy.No.61/1 measuring 31 guntas which is over and above the subject matter of the lease deed.

5. The defendant have no intention to abide by the condition of lease deed. So when the application under order XXXIX rule 1 and 2 of CPC., dated:04.09.2021 was rejected, they started to encroach the other remaining portion of survey No.61/1. This itself shows that they are not law abiding persons. They have already changed the nature of the property encroaching the other portion of Sy.No.61/1 situated at Kothipura, Amanikere

Village, Kasaba Hobli, Ramanagara Taluk and District.

6. As per the terms of the agreement defendant No.1 and 2 duty bound to a sum of Rs.35,00,000/- within 3 years from the date of original sale deed 22.12.2018. On same is going to expiry on 22.12.2021. As of now the defendants No.1 and 2 did not come forward to pay the rent from the date of 1st conversion of land date:22.12.2019 and also not paid the rents from to this date. It is also stated that, this defendant agreed to bear the expenses of conversion charges and also obtained permission of commercial activity only in respect of the suit schedule property. They deliberately not applied for conversion of land for what actually they entitled to do. It is further stated that the defendants are absconding for causing delay in avoiding in the process and delay the execution of any decree that may be passed against him. Therefore, the applicant prays to allow this application and issue warrant against the defendants No.1 and 2.

7. The defendants No.1 and 2 filed objections stating that, this suit is filed for ejectment of these defendants from the suit schedule property and also for recovery of arrears of rent of Rs.16,23,0000/- and also damages towards mense profit. This dispute is regarding land lard and tenant in this backdrop the application cannot be considered by this court. It is admitted by the defendant No.1 and 2 that, the plaintiff has let-out the suit schedule property on lease deed dated:22.12.2018 and modification lease deed dated:24.04.2019. Since, the conversion order passed in the 06.07.2020 consequently, these defendants had tendered monthly rental from the month of July-2020 upto the end of 2021 amounting to Rs.6,00,000/-. However, the plaintiff refused to accept the tenders of such rentals, in this backdrop these defendants reserve the right to seek permission of this court to deposit the admitted monthly rentals. It is also submitted that, these defendants facilitated conversion of additional extent of 14 guntas in land bearing Sy.No.61/2 with regard to the same necessary fee and charges have been paid by these defendants. As per the modification deed these defendants are

required to pay a sum of Rs.35,00,000/- towards security deposit out of which these defendants are seeking for deduction of the expenses incurred for conversion. They have not breached the terms of lease deed. Therefore, they had filed original suit No.118/2021 and other contention are denied by the defendants and it is also denied trying to abscond and leave the location limit of jurisdiction of this court are false. Hence, prays to dismiss the application.

8. Heard and perused materials on record.

9. The following points arise for my determination:

1. *Whether the application as deserves to be allowed?*

2. *What order?*

10. My findings on the above points are as under:

Point No.1 : *In the Negative;*

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

:REASONS:

11. The plaintiff has filed the suit against the suit for ejectment, directing the defendants No.1 and 2 to quit

and hand over vacant possession of the suit schedule property of the plaintiff and other reliefs.

12. This application is filed by the plaintiff under Orders under section XXXVIII Rule 1 and 2 of C.P.C., states as follows:

“Arrest before Judgment:

1. Where defendant may be called upon to furnish security for appearance:-

Where at any stage of a suit, other than a suit of the nature referred to in Section 16, clauses (a) to (d) Court is satisfied, by affidavit or otherwise,-”

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him

(i) has absconded or left the local limits of the jurisdiction of the Court, or

- (ii) in about to abscond or leave the local limit of the jurisdiction of the Court, or
- (iii) has disposed of or removed from the local limits of the jurisdiction of the Court, his property or any part thereof, or

(b) that the defendant is about to leave (India) under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays specified in the

warrant as sufficient to satisfy the plaintiffs claim; to the officer entrusted with the execution of the warrant any sum and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. Security.- (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

13. The plaintiff has filed this suit for the relief of ejectment and recovery of arrears of rent. The main purpose of filing of this application is that, the defendant is trying to abscond or absconded from the jurisdiction of this court and not appear before this court. The section is also very clear that, as per the above section if the court is satisfy that the defendant is intending to delay the defendant with intend to delay the plaintiff, or to avoid any process of the court or to abstract or delay the execution of any decree that may be passed against him. He has absconded or left the local limit or trying to leave the local limits or disposes of or remove from the local limits. The property which is in the jurisdiction of the court. Herein this case, the plaintiff accept filing this application has not made effort to prove that the defendants is absconding or trying to abscond from the jurisdiction of this court. On

the other hand, the plaintiff has received cheques and money from the defendants No.1 and 2 after filing of this application in many dates from 05.04.2022 till today. The plaintiff received amount of Rs.2,00,000/- of cash from the defendants and also agreed to return back the cheques issued by the defendants No.1 and 2. This act of the defendants and plaintiff clearly shows that, the defendants are not going to abscond or absconded from the jurisdiction of this court. Therefore, the question issuing warrant against the defendants No.1 and 2 or to deposit sufficient security for his appearance at any time when called upon while the suit is pending and until satisfaction of decree that may be passed against him in this suit. But, the defendants No.1 and 2 in this case are regularly appearing and it is also admitted by the plaintiff that, they have also invested huge amount of Rs.35,00,000/- to wards security deposit out of which the defendants are seeking of deduction of expenses incurred in the direction of conversion of the additional land belonging to the plaintiff. The plaintiff have admitted about modification deed. Therefore, the plaintiff has failed to show sufficient grounds that defendants are playing mischief

and trying to escape from the jurisdiction. Therefore,
Hence, I answer the **Point No.1 in the Negative.**

14. **Point No.2:-** Thus, in view of the above discussion
on Point No.1, I proceed to pass the following;

ORDER

IA filed by the plaintiff is hereby
dismissed.

Further for order on IA.No.6 on
21.07.2026.

I Adll. Sr. Civil Judge & J.M.FC.,
Ramanagara.