

KATK510027852019



**IN THE COURT OF THE PRL. CIVIL JUDGE &
JMFC., KUNIGAL.**

-.PRESENT:-

Smt. Sujatha A.B._{B.A.L. LLB.,}
Prl Civil Judge & JMFC., Kunigal.

Dated this the 14th day of October 2024

O.S. No.511/2019

Plaintiff : The Taluk Agricultural Produce
Co-Operative Marketing Society Ltd.,
[R/by Smt.N.S.K., Advocate]

-V/s-

Defendant : H.G. Jayanna
[R/by Sri.J.R., Advocate]

Ranks of the parties in IA

Applicant/ Defendant:H.G. Jayanna

-V/s-

Opponent/ Plaintiff : The Taluk Agricultural Produce
Co-Operative Marketing Society Ltd.,

ORDERS

The defendant has filed the above application under section.152 r/w 151 of CPC for rectification or review in the order portion of the judgment and decree as Rs.4,99,820/- instead of Rs.3,00,000/-.

2. In the affidavit it is contended that, the plaintiff has filed this suit for recovery of possession and such other reliefs against him. The above said case was disposed on 23.11.2023 on merits and this court directed him to vacate the suit schedule property and to deliver the vacant possession of the suit schedule property in favour of plaintiff and to pay arrears of rent. Immediately after the above said judgment as per the said order he personally visit the plaintiff association and requested to take the lock and possession of the suit schedule property. At that time the plaintiff said should check the orders of the court that asked to come later and refuse to take the lock and possession of the suit property and he has so many times approached and requested to the plaintiff to take the lock and possession of the suit schedule property but the plaintiff fairly

refused to take back the possession of the suit schedule property and ready to vacate the suit schedule property and deliver the vacant possession of the property in favour of the plaintiff. Hence without alternative he approached this court.

3. He further submitted that at the time of rent agreement he had paid Rs.75,000/- towards advance and also paid Rs.1,00,000/- in the month of December 2018 to the plaintiff and after filing of the suit he has paid Rs.3,00,000/- before this court to the plaintiff. That the above facts are very clearly admitted in the cross-examination of P.W.1. Further at the time of judgment this court ordered to "As the defendant has made a payment of Rs.3,00,000/- on 02.03.2021, it shall be adjusted towards the interest and arrears of rent" but I have totally paid Rs.4,99,820/- to the plaintiff as per at the time of judgment by oversight Rs.1,99,820/- left out, this amount also adjusted towards the interest and arrears of rent, these fact came to his knowledge very recently hence this application and prayed to rectification of review in the judgment and

decree as prayed in the application and prayed to allow the application.

4. On the other hand, plaintiff has filed objection by contending that application filed by the defendant is not maintainable, plaintiff has filed this suit in view of non payment of rent amount and not handing of possession and after appearance by the defendant he has filed written statement and in the said written statement he has not pleaded as pleaded by him in the above application. The plaintiff further contended that at the time of filing the suit, the advance amount of Rs.70,000/- by excluding said amount the plaintiff has filed for arrears of rent amount and said suit was decreed in favour of plaintiff. The plaintiff further contended that on 31.11.2018 the defendant was in due of Rs.2,29,880/- and on 12.12.2018 the defendant has paid Rs.1,00,000/- to the plaintiff and by deducting the same, on 31.03.2019 the auditor of the plaintiff attested the same and in view of non-payment of arrears of rent amount the plaintiff has filed this suit and defendant has paid Rs.3,00,000/- before the court and plaintiff by

deducting said amount has filed execution petition for balance amount. Among these grounds the plaintiff prayed to reject the application.

5. In view of the above pleadings and materials the following points arise for consideration of this court.

1. Whether the defendant has made out sufficient grounds to allow the application as prayed for ?.

2. What order?

6. Heard the counsel appearing for the plaintiff and defendant and perused the pleadings, documents and materials placed on record. The counsel for defendant has filed written argument.

7. The above points are answered as under:

Point No.1 : In the Negative

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

REASONS

8. **POINT No.1**: The defendant is seeking for rectification or review in the order portion of judgment

and decree by contending that, he has totally paid Rs.4,99,820/- to the plaintiff, at the time of judgment by oversight Rs.1,99,820/- left out and said amount also adjusted towards interest and arrears of rent and said fact came to his knowledge very recently, hence he has filed this application.

9. On the other hand, plaintiff claimed that after deducting entire amount paid by the defendant still he is in due of arrears of rent amount and hence prayed to reject the application.

10. On perusal of records it is clear that plaintiff has filed this suit for recovery of vacant possession and recovery of arrears of rent amount and said suit was decreed in favour of plaintiff and this court has ordered as;

“The defendant is hereby directed to vacate the suit schedule property and deliver the vacant possession of the suit schedule property in favour of the plaintiff within 3 months from the date of judgment.

Further, the defendant is directed to pay arrears of rent of Rs.12,410/- per month with interest at the rate of 12% per annum from the date of institution of suit till the date of decree and at the rate of 6% per annum from the date of decree till realization. As the defendant has made a payment of Rs.3,00,000/- on 02.03.2021, it shall be adjusted towards the interest and arrears of rent.

In the event of failure on the part of defendant to vacate the suit schedule property and hand over the possession, the plaintiff is at liberty to get executed through the process of the court.

Draw decree accordingly.”

11. On perusal of the above, this court has ordered for adjustment of Rs.3,00,000/- towards interest and arrears of rent which was due from defendant to the plaintiff. It is further noticed that the

defendant in his written statement nowhere taken a contention regarding payment of advance amount and regarding other payments made by him. Further, after conclusion of trial, this court has passed judgment by decreeing the suit in favour of the plaintiff. Moreover the issues raised by this court are all answered. Further there is no clerical or arithmetical error in the judgment, since defendant claiming for rectification or review of judgment which is not permissible under this application and if the defendant is aggrieved by the judgment and decree of this court, he can exhaust his remedy as per law.

12. Further this court in the body of the judgment also discussed about adjustment of Rs.3,00,000/- towards interest and arrears of rent and same has been mentioned in the operative portion. In light of the above, further the defendant has not produced any order regarding challenging of judgment and decree passed by this court. Hence i find no clerical difference in the opinion expressed and judgment pronounced. After passing the judgment, this court again cannot take the

matter for consideration to grant any relief. since at this moment it is relevant to cite a unreported decision of Hon'ble High Court of Karnataka in **WP.No.44691-44692/2017 (Shri M.C Bachappa V/s Smt Nagarathana and others)** wherein their lordship held that ***“once the decree reached finality the learned Judge who passed the judgment and decree becomes functus officio”***

As per the decision of the Hon'ble Apex Court this court has no power to entertain this application. Therefore if at all any mistake as occurred it would be for the Hon'ble Appellate Court to correct the same and once court has passed decree after a lawful hearing it becomes functus officio and cannot reopen the case. Further, the defendant has not made out any valid grounds to allow his application. Hence, point No.1 is answered in the **Negative**.

13. **Point No.2:** For the reasons stated in support of point No.1, I proceed to pass the following:

ORDER

Application filed by defendant
Under Order 152 R/w Sec. 151 of
C.P.C is hereby dismissed.

Under the circumstances,
there is no order as to costs.

[Dictated to the stenographer directly on computer and then
corrected by me and thereafter pronounced in the open court
on this the 14th day of October, 2024]

(Sujatha A.B.)
Prl. Civil Judge and JMFC,
Kunigal.