

IN THE COURT OF THE MUNSIFF, PERUMBAVOOR

Present:- Smt. Alshari A., Munsiff

Wednesday, the 12th day of April, 2023/ 22nd Chaithra, 1945

IA No. 05/2022 in OS 193/2022

Petitioner/Plaintiff:-

V. K. George, S/o. Kunjumon, Aged 70 years,
residing at Apartment 4 CI Star Retreat, Lane 34,
Janatha Road, Vyttila, Ernakulam, Pin – 682019.

By Adv. Sabu P Joseph

Respondent/Defendant:-

Sujith Radhakrishnan, S/o. Radhakrishnan P N,
Aged 31 years, Carrera Car Care, Door No.8/488A,
BOC Road, Perumbavoor, Ernakulam District, Pin: 683542.

By Adv. Biji Mathew

This petition having been finally heard on 12/04/2023 and the court on the same day passed the following:-

O R D E R

1. Petition averments in brief:- Defendant is the petitioner herein who is the joint owner in possession of the building with door No. 8/488, 8/488A, 8/488B and 8/488C. Plaintiff had taken the above said building for rent from the defendant for car detailing and residential purpose. On 10.03.22, plaintiff had vacated the door No. 8/488B and 8/488C. On 06.08.21, plaintiff executed a fresh lease agreement for the above said building bearing door No.8/488 and 8/488A of Perumbavoor Municipality for a period of 11 months. The plaintiff is conducting commercial activities in the said rooms. The plaintiff was creating problems and nuisance in the counter claim schedule property and neighbours have made several

complaints to the defendant as well as in the police station. The plaintiff was using the counter claim schedule property for illegal purpose. The plaintiff had started to bring some of his goons to the counter claim schedule property and is doing all sort of disturbances and nuisance to other tenants and even dared to threaten other tenants to vacate the premises. The plaintiff and his goons destroyed the lock of the door leading to the terrace of the building and is consuming liquor with his goons. Further, the plaintiff is committing waste and damage to building situate in the counter claim schedule property, leased out to plaintiff. In due compliance with Municipal building rules, defendant had constructed a wash room with toilet facility for the use of physically challenged person. Plaintiff had unauthorizedly changed it. Further, the plaintiff had unauthorizedly dismantled the fittings and fixtures of another wash room and it is now being used as a dog kennel. The plaintiff had also damaged the rain water filtering unit as well as cooking granite counter, kitchen sink and water tap. Plaintiff is rearing three ferocious dogs without any licence which also prevents the defendant from entering into the plaintiff schedule property. The defendant had never permitted the plaintiff to rear any animal and there is no facility for that. Plaintiff by using these dogs threaten the other tenants and two of the tenants have vacated the premises. Plaintiff have no right to trespass into any portion of the counter claim schedule property other than the area rented out to the plaintiff and to commit any waste or damage to the counter claim scheduled property. It came to notice that the plaintiff is conducting the car detailing business without obtaining licence from the Municipality and other authorities. Hence, the petition.

2. The respondent had filed counter statement by denying the plaint averments. The petition is not maintainable either in law or on facts. The building bearing No. 8/488 and 8/488A was legally taken in lease by the plaintiff/respondent. While taking the rooms for rent, an amount of Rs. 3 lakhs was given to the petitioner as advance. Rent is being regularly paid till June 2022. Some times, it is remitted to the account of the children of the petitioner and sometimes in favour of others also. The respondent did not receive any receipts for the same. The petitioner who is an old man, by using tactics that due to tax issues, the receipts were not issued to the plaintiff/respondent. The petitioner have no case of arrears of rent till date. He had raised such a contention only when the plaintiff had filed the suit. The description of the counter claim schedule property is wrong. The rooms which were rented out to the respondent is also included in the counter claim scheduled properties. The respondent is not claiming any right over the property which was already vacated. The respondent is residing in the building bearing No. 8/488. With all crookedness the defendant/petitioner is trying to evict the respondent/plaintiff. The respondent herein is entitled to get back the amount of Rs. 10 lakhs spend by him. KSEB bills are also regularly paid. By spending the amount, the respondent had done the tile work and painting works in the building which was rented out for conducting business. This is a petition filed to take vengeance against the respondent on personal grudge. Petitioner/defendant had rented out the building to some labours of other State, so many of them were returned to lack of job, this respondent had not obstructed or made any interference to the peaceful life of the others. He had not interfered with the life of others by using his dogs. He had not threatened anybody. There is no prima facie case in favour of the

petitioner/defendant. Hence, the petition is to be dismissed with costs of this respondent/plaintiff.

3. From the above rival contentions, the following points are settled for consideration: -

1. Have the petitioner made out a prima facie case?
2. Is the balance of convenience in favour of the petitioner?
3. Will the petitioner be put to irreparable loss and injuries in the event of not granting the temporary injunction order?
4. Order as to costs?

4. Heard both sides.

5. **Point Nos. 1 to 3:-** The building bearing No. 8/488 and 8/488A were rented out to the plaintiff. The respondent have no case that, he is in possession of any other buildings other than the building bearing No. 8/488 and 8/488A and it is admitted that other buildings which were in possession of the respondent was already vacated except building bearing No. 8/488 and 8/488A. The documents produced from the side of the petitioner/defendant is marked as Ext. A1 to A6 for the purpose of this I.A and the documents produced from the side of the respondent/plaintiff is marked as Ext.B1 to B7, C1 and C1(a) for the purpose of this I.A. According to the petitioner, the respondent is causing much annoyance to the other tenants. Also, he had brought goons to the counter claim schedule property and causing nuisances to the other tenants. He had destroyed the lock of the door leading to the terrace of the building and he is consuming liquor with his goons. Empty and crushed liquor bottles are seen scattered every where in the terrace which is damaging the building etc. To substantiate the

averments in the petition a photograph is seen produced from the side of the defendant marked as Ext. A5. Though the photographs shows the dumping of liquor bottles, it is not possible to see from the said photographs that it is pertaining to the counter claim schedule property or not. Other documents are notices issued against the respondent, from which, it is not possible to see any material substantiating the averments in the petition that the respondent herein had brought goons, dumped liquor bottle or damage the building etc.

6. From Ext. C1 and C1(a) it can be seen that the building No. 8/488 and 8/488A admittedly rented out to the plaintiff is lying within the clear boundary walls on all the four sides which is facing to the BOC road. It is not possible to see that any other tenants are located within the boundary walls seem to be rented out to the plaintiff/respondent bearing No. 8/488 and 8/488A. From Ext. C1 and C1(a), it is not possible to see the location of other buildings or the location of the counter claim schedule building except the building bearing No.8/488 and 8/488A which is admittedly rented out to the plaintiff/respondent herein. The commissioner had attached photographs of the plaint schedule property from which, it is also possible to see the location of the other buildings or the other tenanted premises or rather the other buildings scheduled in the counter claim. On the other hand, the photographs along with report only would go to show that the building bearing No.8/488 and 8/488A which is rented out to the plaintiff is lying within the clear boundary walls and which is not possible to see any entrance or opening from the premises to the other tenanted buildings or rooms. So, on the basis of the materials available before the court, it is not possible to see that the respondent had committed any waste or caused any damage to the counter claim scheduled property in the

absence of any materials to show the same. Even that be so, the respondent/plaintiff have no case that, he is in possession of the property or building bearing No. 8/488B and 8/488C which was admittedly vacated by the respondent. From the available materials, it is not possible to see any thing substantiating the damage alleged to be caused or committal of wastage in the buildings bearing No. 8/488B or 8/488C or even in buildings bearing No. 8/488 and 8/488A which is admittedly in the physical possession of the respondent/plaintiff herein. Only on the basis of photographs, it is not possible to be discern the same to be the counter claim schedule property in the absence of any materials to show the same. It is not possible to see any prima facie case in favour of the petitioner/defendant herein, for the relief sought for on the basis of the alleged committal of waste and damage be caused to the counter claim scheduled properties.

7. Admittedly, the building bearing No. 8/488 and 8/488A was rented out for the conduct of business by the respondent. Therefore, he cannot be restrained from doing any business. Though, the petitioner had alleged that he is doing business without obtaining any licence, there is absolutely no materials to substantiate the same also. The main contention or the main grievance of the petitioner during the argument was the respondent is rearing dogs which is not covered by Ext. B1 agreement. Therefore, he cannot be permitted to rear dogs in the premises. From Ext. C1 and C1(a), it can be seen that the said buildings bearing No. 8/488 and 8/488A is placed within the clear boundary walls with a gate. The respondent had not denied the rearing of dogs in the property rented out to him. Even though, there is no specific permission granted as per Ext. B1 agreement, there is no restriction as per the stipulations in Ext. B1 agreement in rearing any

dogs or any other pets in the premises, rented out to the respondent herein. So, there is no express permission in the Ext. B1 agreement as argued cannot be accepted, since there is no restriction in rearing the dogs or any other pets in the property rented out to the plaintiff. On the other hand, there is no material to show that the dogs were reared in a dangerous situation or they are ferocious or they are causing annoyance to any other tenants except the petition averments which is not sufficient to substantiate or show any prima facie case in favour of the petitioner in the absence of any materials. Also, it is not possible to see the location of the counter claim schedule property or does any opening exist to enter from the building admittedly rented out to the respondent, so as to see the dogs to be entering into the other premises or counter claim schedule schedule property other than building bearing bearing No. 8/488 and 8/488A. So, on that ground also, I could not see any prima facie case in favour of the petitioner pertaining to the relief sought for to restrain the respondent/plaintiff from rearing any dogs in the counter claim schedule property. The other reliefs sought for is outside the scope of this suit itself which can only be decided in a RCP as per the Kerala Building (Lease and Rent Control) Act. So, from the materials available I could not see any prima facie case in favour of the plaintiff herein so as to see him to be entitled for the relief of temporary injunction as sought for. Since, I could not see any prima facie case in favour of the petitioner, there is no question of balance of convenience or irreparable injury arise for consideration herein.

8. **Point No. 4:-** Considering the nature and circumstances of the case, the parties are directed to bear their respective costs.

9. **In the result**, the petition stands dismissed. No costs.

Dictated to the confdl.asstt., transcribed and typed by her, corrected and pronounced by me in open court on this the 12th day of April, 2023.

Sd/-
ALSHARI A.
MUNSIFF

Appendix:-

Petitioner's Exhibits :-

- A1 - 21/06/2021 - Copy of letter given by the petitioner to the respondent.
- A2 - 18/06/2022 - Copy of complaint submitted by the petitioner to the Circle Inspector of Police, Perumbavoor.
- A3 - 01/07/2022 - Copy of lawyer notice.
- A4 - 09/11/2022 - Copy of letter issued by the National Radis to the petitioner.
- A5 - - - Copy of Photographs
- A6 - - - Compact Disc

Respondent's Exhibits :-

- B1 - 06/08/2021 - Copy of agreement.
- B2 - 03/08/2020 - Bill of purchasing cement and ACC packet.
- B3 - - - Bill of purchasing marbonite shale blanco floor, cera AL Tile caccum-m.
- B4 - - - Bill of purchasing marbonite shale blanco floor handling charge.
- B5 - 03/08/2020 - Bill of purchasing ACC packet and Ambuja cement.
- B6 - 28/07/2020 - Bill of purchasing Birla wall putti 40k and CLSC wall putty knife R-10.

B7 - - - Bill for tile work.

Court Exhibits :-

C1 & - 13/07/2022 - Commission report and rough sketch prepared and
C1(a) submitted by the Advocate Commissioner Rekha N R

Petitioner's Witnesses :-Nil

Respondent's Witnesses :- Nil

Court Witnesses :-Nil

Id/-
Munsiff
(By Order)

// True Copy //

Sd/-
Junior Superintendent

Typed by: jav
Compd.by :

Copy of Order
in

IA No. 05/2022
in OS 193/2022
Dated : 12/04/2023