

**IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SMT. SWATHI.R.KRISHNAN, MUNSIF
SATURDAY 25th OCTOBER, 2025 / 3rd KARTHIKA, 1947**

IA.15/2025 AND IA.20/2025 IN OS.191/2020

IA.15/2025

Petitioner (Plaintiff):

Sulficker, S/o Haji Asanaru Pillai, aged 56 years, Sulfi Manzil, Kaniyapuram P O, Pallippuram Village, Thiruvananthapuram.

By Advocate: Sri. A.Nissam Kaniyapuram

Counter Petitioner (Defendant):

R.Jawahar, S/o Abdul Rasheed, aged 30 years, Malamel Parambu, Maulana Bunglow, Kadinamkulam, Kaniyapuram P O, Kadinamkulam Village, Thiruvananthapuram.

By Advocate: Sri.M.Althaf

IA.20/2025

Petitioner (Defendant):

Jawahar, S/o Abdul Rasheed, aged 33 years, Punchiri, Near U.P.School, Masthanmukku, Kaniyapuram P O, Thiruvananthapuram-695301.

By Advocate: Sri.M.Althaf

Counter Petitioner (Plaintiff):

Sulficker, S/o Haji Asanaru Pillai, aged 56 years, Sulfi Manzil, Kaniyapuram P O, Pallippuram Village, Thiruvananthapuram.

By Advocate: Sri. A.Nissam Kaniyapuram

These petitions are having been finally heard on 25.10.2025 and the court on the same day passed the following:

COMMON ORDER

I.A.15/2025:

This is a petition filed by the plaintiff to direct the defendant to return back the possession of the plaint schedule shop room.

2. **The petition averments are as follows:** The petitioner is the plaintiff in the suit. The suit is for permanent prohibitory injunction. This court passed an order of temporary injunction restraining the defendants from evicting plaintiff from plaintiff schedule shop room. This court vide order dated 20.01.2022 in I.A.05/2020 modified the aforesaid order. The defendant filed an undertaking before this court on 01.01.2022 and it was on that basis that this court passed order in I.A.05/2021. Even though, the ear-marked portion of the plaintiff schedule shop room was removed on 23.03.2022 and a commission report was filed, the plaintiff has not received the possession of the plaintiff schedule shop room so far. The defendant committed acts obstructing the possession and business of the plaintiff and violated the order this court blatantly. Hence, this petition to direct the defendant to hand over the possession of the plaintiff schedule shop room to the plaintiff removing the obstructions therein for the plaintiff to conduct business therein.

3. **The defendant filed an objection contending as follows:** It is true that the pillar of the building was demolished for National Highway widening and the work is ongoing. The plaintiff failed to perform his statutory obligation to pay the rent. Now the plaintiff has no physical possession over the plaintiff schedule shop room and he obtained temporary injunction in I.A.01/2020 without paying admitted rent. The defendant is ready to give the plaintiff schedule shop room to the plaintiff as per the undertaking if the plaintiff pay the admitted rent arrears. The petitioner filed this petition suppressing material facts and hence the petition may be dismissed with costs.

I.A.20/2025:

This is a petition is filed by the defendant under Section 151 of CPC to direct the plaintiff to deposit arrears of rent from February 2022 to April 2023 amounting to Rs.2,66,500/- and to continue depositing rent which may subsequently become due in respect of the plaint schedule shop room until termination of proceedings before this court.

4. **The petition averments in brief are as follows:** The petitioner is the defendant in the suit. The suit is for injunction. The plaintiff is a tenant in the plaint schedule shop room. The plaintiff obtained an order of interim injunction against forceful eviction in I.A.01/2020. On April 16, 2023 the plaintiff temporarily vacated for the re-construction of the plaint schedule shop room for National Highway widening as per the order of this court in I.A.05/2021 and I.A.12/2023. The plaintiff failed to pay the admitted rent since February, 2020. The admitted arrears of rent is Rs.6,500/- per month. The total rent due from February 2020 to April 2023 covering 41 months amounts to Rs.2,66,500/-. The aforementioned rent arrears are not time barred and are legally recoverable. The plaintiff sought the relief of injunction without discharging his obligations to pay the admitted arrears of rent. The defendant is ready to reinstate the plaintiff's occupancy as per the undertaking upon the plaintiff's payment of outstanding rent arrears. Hence this petition to direct the plaintiff to deposit the arrears of rent within a time frame, failing which strike off the pleadings in the plaint.

5. No objection was filed to this petition. Whereas the learned counsel for plaintiff contended that the averments of the objection filed to I.A.17/2025 shall be considered as the objection to this petition.

6. **The objection filed to I.A.17/2025 is as follows:** The plaintiff obtained an order of injunction from this court in I.A.01/2020 and while the order of injunction was in force, the defendant filed the petition to modify the injunction order or to demolish the ear-marked portion for National Highway widening. The defendant filed an undertaking before this court that he will put the building in such a way for the business of the plaintiff and that the remaining portion will be set right properly. This court passed an order in I.A.05/2021 dated 20.01.2022 modifying the order of injunction and granted permission to the defendant with a specific direction that after the demolition of the alleged building, the defendant shall put the building to the plaintiff in such a way to make use of the same for the use of the plaintiff. The defendant did not obey the order of this court and didn't comply the work on time nor handed over the shop room to the plaintiff as per the order and undertaking. The defendant purposefully violated the order of this court and plaintiff filed a prosecution petition along with commission application to ascertain the obstacles made in the shop to illegally evict the plaintiff from the shop room. The arrears of rent or fixation of mesne profit cannot be raised by way of an IA in the present suit, since there is no counter claim. The plaintiff is not a defaulter. This petition is filed on an experimental basis and hence may be dismissed with costs.

7. The following points arose for consideration:

1. Is the plaintiff entitled to get an order directing the defendant to hand over the possession of the plaint schedule shop room ?
2. Is the plaintiff obliged to deposit the arrears of rent as claimed by the defendant ?
3. Is the defendant liable to proceed as per the undertaking if the plaintiff deposit the arrears of rent ?
4. Order and costs ?

8. Heard both sides in detail.

9. **Point No.(1) to (3):** I.A.15/2025 was filed by the plaintiff to direct the defendant to abide by the undertaking filed by him based on which this court modified the order of injunction in I.A.01/2020 so as to demolish the portion of plaint schedule building for National Highway widening. Meanwhile, defendant filed I.A.20/2025 to direct the plaintiff to deposit the arrears of rent from February 2020 to April 2023. The defendant raised a contention that he is only liable to put the plaintiff in possession and use of the plaint schedule shop room if the plaintiff deposit arrears of rent and a defaulter is not entitled to get the possession.

10. The learned counsel for defendant relied on judgment of Hon'ble High Court of Kerala in ***Pramod v. Secretary, Sultanpet Diocese's Society and Anr 2024(6) KHC 321*** and contended that a tenant is not entitled to seek an injunction from eviction without performing his obligation to pay the rent. The learned counsel for plaintiff contended that the circumstances to this case is entirely different and in

the instant case, the defendant has not complied his undertaking based on which this court pronounced the order dated 20.01.2022 and hence defendant is not entitled to seek an order directing the plaintiff, who is the tenant to pay the arrears of rent. The learned counsel for plaintiff contended that he is not having possession of the plaintiff schedule shop room and his business collapsed due to that reason and the defendant cannot claim arrears of rent from the plaintiff. It was also contended that the defendant purposefully restrained from performing the duty casted on him and flagrantly violated the order of this court, that is to put the plaintiff back in possession. It was hence contended that a party, who willfully violated an order of court is not entitled to any relief.

11. The learned counsel for defendant vehemently opposed to the aforesaid contention raised by the plaintiff and contended that the first requirement that a tenant seeking an order of injunction shall comply is to deposit arrears of rent. A defaulter cannot seek an equitable remedy of injunction.

12. The question to be considered in this case is – “who has the primary duty to comply”. Whether the duty of the tenant to remit arrears of rent or that of the defendant who filed an undertaking before this court to put back the tenant in possession after demolishing the ear-marked portion shall be given primary weightage shall be decided. To consider the same, this court has to ascertain whose duty started first.

13. The advocate commissioner appointed by this court to execute the demolition of ear-marked portion of plaintiff schedule shop room filed report dated 26.05.2023 wherein it was reported that the demolition took place on 16.04.2023. Both parties have not specified a particular date till which the plaintiff enjoyed possession. So this court has to consider the date reported by the advocate commissioner, which is 16.04.2023, that is the date when the demolition took place. There is another reason to point towards this date which is the petition filed by defendant for police protection, I.A.11/2023 to execute order in I.A.05/2021. The plaintiff has not raised a case that he had no possession till that date. Hence, it can be inferred from the commission report that the plaintiff enjoyed possession till the demolition, that is 16.04.2023.

14. Hence, the duty of the plaintiff to deposit admitted arrears of rent occasioned first and this court is of the view that the duty of the tenant to deposit the arrears of rent has to be placed over his right to direct the defendant to put him in possession as per the undertaking filed in background of I.A.05/2021. This court is hence of the view that only if the tenant deposit arrears of rent, kickstarts the duty of the defendant/landlord to comply the undertaking filed by him before the court. The plaintiff has no case that he has no possession over the plaintiff schedule building till April, 2023. Further plaintiff has not adduced proof regarding claim that the admitted rent was already paid to the landlord. It is the duty of the tenant to produce the receipt if they had such a case. In the instant case, no such case was advanced by the plaintiff. There is no dispute regarding the rate of rent ie, Rs.6,500/- per month.

Hence, this court is of the view that the duty of the tenant who filed the suit for injunction against eviction first started and that duty cannot be placed below any other duty that arose subsequently. Considering that the demolition occurred on 16.04.2023, the defendant is only entitled to half the amount of rent in the month of April 2023. Hence, this court is of the view that the plaintiff is liable to deposit arrears of rent from February 2020 to April 2023 amounting to Rs.2,50,250/-. The defendant can only be directed to proceed as per the undertaking once the plaintiff deposit rent arrears. On depositing rent arrears the duty casted on defendant to act as per the undertaking begins. This court is hence of the view that on depositing the arrears of rent, the defendant is directed to give back the possession of plaint schedule shop room to the plaintiff as per the undertaking filed by him.

15. **Point No(4):** In result, both petitions are allowed as follows:

1. The plaintiff is hereby directed to deposit admitted arrears of rent amounting to Rs,2,50,250/- which is due as on 15.04.2023 within four weeks from today.

2. On depositing the arrears of rent aforementioned, the defendant is directed to hand over the possession of plaint schedule shop room to the plaintiff.

3. The plaintiff on getting back the possession of plaint schedule shop room shall pay rent and shall file an affidavit stating that he shall undertake to continue paying rent at the rate of Rs.6,500/- per month which may subsequently fall due

within 15 days from the date of due till culmination of proceedings and shall continue the same.

4. Considering the facts and circumstances of the case, there is no order as to costs.

Dictated to Confidential Assistant, typed by her, corrected and pronounced by me in open Court on the 25th day of October, 2025.

Sd/-
SWATHI. R. KRISHNAN
MUNSIFF

Appendix: Nil

Id/-
MUNSIFF

Typed by: Sheena.K
Compared by: Shilpa K S