

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Gale Joy Chettupuzha, Munsiff-Magistrate

Wednesday, the 8th day of April, 202618th day of Chaithra – 1948INTERLOCUTORY APPLICATION No.2/2025

ORIGINAL SUIT No.172/2025

Muhammed Shafi Kavvu, S/o.Ibrahim Haji, Aged 42 years, Appartment No.B1 Newjen Residency, Metro pillar No.171, 172 M.D.Block, Opposite 8th Main Road, Malleswaram P.O., Bangaluru, PIN – 560 003.

} Petitioner
Plaintiff

V/s.

1. N.K.Muhammed, Aged 79 years,
S/o.Nambipoonilath Beeran Kunhimammed,
Vinny House, Medical College P.O., Nellikode
Village, Kozhikode.
2. Ayishabi, Aged 73 years, W/o.N.K.Muhammed,
Vinny House, Medical College P.O., Nellikode
Village, Kozhikode.

} Respondents
Defendants

This interlocutory application is coming on this day for hearing before me in the presence of Sri.T.M.Rasheed, Advocate for the petitioner and Sri.Abdul Salam, Advocate for respondents and the Court on the same day passed the following:-

ORDER

This is an application filed by the petitioner/plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, seeking an order of temporary injunction.

2. The case of the petitioner, in brief, is as follows: The plaintiff schedule property originally belonged to the defendants by virtue of Sale Deed No. 1073/1/2020 of the S.R.O., Sulthan Bathery. The property comprises a hotel building having 29 bath-attached rooms across four floors, along with a conference hall, restaurant, parking area, terrace, and other appurtenant facilities. The petitioner contends that he took the said property on lease from the defendants under a lease agreement dated 01.04.2024 for a period of five years, commencing from 01.04.2024, on a monthly rent of ₹4,50,000/-, payable on or before the 5th day of every month, with an annual enhancement of 5%. He further states that he paid a refundable security deposit of ₹50,00,000/-. As per the agreement, he was liable to pay electricity and water charges and was permitted to carry out interior works and alterations. The petitioner asserts that he took the property on lease for running a hotel, restaurant, and conference business, and accordingly invested more than ₹2,00,00,000/- towards interior works, furniture, decoration, kitchen equipment, and other necessary items. He engaged staff and commenced business under the name “Wayanad Hill Suite and Restaurant,” and has been in possession and enjoyment of the property since 01.04.2024.

3. According to the petitioner, the conduct of the defendants subsequently changed, and they began attempting to evict him forcibly. It is alleged that the defendants failed to pay building tax, resulting in refusal of licence renewal by the Sulthan Bathery Municipality, thereby adversely affecting his business. It is further alleged that the defendants attempted to trespass into the property with the assistance of hired persons. Specifically, on 28.07.2025, persons engaged by the defendants allegedly attempted to enter the premises under the guise of security personnel but were prevented by the petitioner’s staff, while also issuing threats of forcible dispossession. The petitioner contends that the defendants have no right to dispossess him otherwise than in due process of law or to interfere with his peaceful possession. He further states that he lodged a complaint before the Sulthan Bathery Police on

28.07.2025. Hence, the petitioner seeks an order of injunction restraining the defendants, their men and agents from forcibly evicting him, trespassing into the property, or otherwise interfering with his peaceful possession and enjoyment of the plaint schedule property, pending disposal of the suit.

4. The respondents entered appearance and filed a counter affidavit contending, in brief, as follows: They denied all allegations except those specifically admitted and contended that the petition is not maintainable either in law or on facts. While admitting the lease agreement dated 01.04.2024 for a period of five years with a monthly rent of ₹4,50,000/- and 5% annual enhancement, they pointed out that the petitioner was liable to pay electricity charges and that the lease provided for automatic termination in case of default of rent for more than two consecutive months. The respondents denied the allegation of any attempt to forcibly evict the petitioner or trespass into the property on 28.07.2025 or on any other date, terming such allegations as false and baseless. According to them, the petitioner committed default in payment of rent, having paid only for three months and thereafter defaulted from June 2024 onwards. Despite issuance of notice dated 03.09.2024 demanding arrears, the petitioner failed to comply.

5. It is further contended that the respondents have already initiated eviction proceedings by filing R.C.P. No. 37/2024 before the Rent Control Court, Sulthan Bathery, on the grounds of arrears of rent and violation of lease conditions, which is pending, and that the petitioner is evading service of notice therein. The respondents assert that the petitioner is in arrears of rent amounting to ₹63,00,000/- and is not entitled to continue in possession without payment. They also alleged that the petitioner is conducting business without proper licence and has caused damage to the building. Reference is made to O.S. No. 168/2025 pending before this Court, wherein an Advocate Commissioner has reported acts of destruction. The allegation regarding non-payment of building tax is denied, and it is contended that the

petitioner himself failed to approach the authorities for licence renewal. The respondents further contend that the petitioner has not approached the Court with clean hands and is therefore not entitled to the discretionary relief of injunction. Reliance is placed on the decision in *Pramod v. Secretary, Sultanpet Diocese Society & Anr.* (2024) to contend that a tenant in arrears is not entitled to injunction without complying with legal requirements. Hence, they seek dismissal of the petition.

6. The following points arise for consideration:

1. Whether the plaintiff has established a prima facie case?
2. Whether the balance of convenience lies in favour of the plaintiff?
3. Whether irreparable injury would be caused to the plaintiff if injunction is refused?
4. Whether the plaintiff is entitled to the relief sought?
5. Reliefs and costs?

7. **Points Nos 1 to 4:-** These points are considered together, as they are interlinked. It is well settled that the grant of a temporary injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is an equitable and discretionary relief. The applicant must satisfy the three cardinal requirements, namely: (i) existence of a prima facie case, (ii) balance of convenience in his favour, and (iii) likelihood of irreparable injury in the absence of such relief. These conditions are cumulative, and failure to establish any one of them is sufficient to decline the relief. At the outset, it is not in dispute that the petitioner entered into a lease agreement with the respondents in respect of the plaint schedule property and was put in possession pursuant thereto. However, the core dispute revolves around the alleged default in payment of rent and the consequent entitlement of the petitioner to continue in possession.

8. The respondents have specifically contended that the petitioner committed default in payment of rent from June 2024 onwards and that, in terms of the lease agreement, such default entails termination of the lease. It is also on record that a demand notice dated 03.09.2024 was issued calling upon the petitioner to clear the arrears, and that eviction proceedings have already been initiated before the Rent Control Court, Sulthan Bathery, in R.C.P. No. 37/2024. These assertions are supported by prima facie materials.

9. On the other hand, the petitioner has not produced any convincing material, at least at this interlocutory stage, to show that he has discharged his obligation to pay rent or that there are no subsisting arrears. In a landlord–tenant relationship, payment of rent is a fundamental obligation. A party seeking equitable relief must demonstrate bona fides and due compliance with the essential terms of the contract. A tenant who is prima facie in breach of such a fundamental obligation cannot ordinarily invoke the discretionary jurisdiction of this Court to secure an injunction against the landlord.

10. In this context, the dictum laid down by the Hon’ble High Court of Kerala in *Pramod S/o Prabhakaran v. The Secretary, The Sultanpet Diocese Society & Anr.* [2024 (6) KHC 321] assumes significance. It has been held therein that a tenant in arrears of rent cannot seek an injunction against eviction without fulfilling his legal obligation to pay rent, and that non-compliance with such obligation amounts to an abuse of the process of court. The Court emphasized that the foundational requirement for claiming equitable relief is adherence to the essential terms of the tenancy, and failure to pay rent disentitles the tenant from invoking such discretionary relief. Equally significant is the allegation of threatened forcible dispossession. The petitioner relies upon an alleged incident dated 28.07.2025 and a complaint said to have been lodged before the police. However, apart from these assertions, no independent or cogent material is produced to substantiate any real or

imminent threat of unlawful dispossession. Mere apprehension, unsupported by credible evidence, cannot be a ground for grant of injunction. Moreover, when eviction proceedings are already pending before the competent Rent Control Court, the presumption is that the respondents would pursue remedies in accordance with law rather than resorting to extra-legal measures. In such circumstances, the plea of imminent forcible dispossession does not inspire confidence at this stage.

11. It is also pertinent to note that the disputes raised by the parties, including arrears of rent, alleged breach of lease conditions, and the right to continue in possession, are matters squarely falling within the jurisdiction of the Rent Control Court, which is already seized of the matter. Granting an injunction in the present proceedings, in the absence of clear evidence of illegal interference, would have the effect of indirectly impeding the statutory proceedings initiated by the respondents. Such a course is unwarranted, particularly when an efficacious alternative forum has already been invoked.

12. As regards the balance of convenience, the same is clearly in favour of the respondents. The petitioner continues in possession of a commercially valuable property without prima facie establishing payment of the agreed rent. Granting an injunction in such circumstances would enable the petitioner to retain possession without discharging his contractual obligations, thereby causing prejudice to the respondents. Conversely, refusal of injunction does not authorise the respondents to dispossess the petitioner otherwise than in accordance with law. Hence, the balance of convenience does not favour the petitioner.

13. With respect to irreparable injury, the petitioner has failed to demonstrate that he would suffer any injury incapable of being compensated or remedied through due process of law if the injunction is refused. In the event of any unlawful dispossession, adequate remedies are available to the petitioner. On the other hand,

continuation of an injunction in favour of a tenant who is prima facie in arrears would result in continuing loss to the respondents. The contention that the petitioner has not approached the Court with clean hands also merits acceptance. Since the relief of injunction is equitable in nature, the conduct of the party seeking such relief assumes significance. In the absence of material showing compliance with the lease conditions, particularly payment of rent, the petitioner cannot claim such relief as a matter of right.

14. In the light of the foregoing discussion, this Court is of the considered view that the petitioner has failed to establish a prima facie case. The balance of convenience is not in his favour, and no irreparable injury is made out. Consequently, the petitioner is not entitled to the relief of temporary injunction.

15. **Point No. 5:-** In view of the foregoing points, I.A. No. 2/2025 is dismissed. Ad interim injunction, if any, shall stand vacated. No order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 8th day of April, 2026)

MUNSIFF-MAGISTRATE

Appendix:- - Nil.

MUNSIFF-MAGISTRATE

Typed by : Girija T N
Compared by : Subha V K