

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF,
NAGERCOIL.**

**Present: Tmt. M.Alima, B.A., L.L.M.,
Principal District Munsif, Nagercoil.**

Wednesday, on the 4th day of December, 2024.

I.A. No. 2 of 2023 in O.S. No. 89 of 2023

A. Kirubhakaran

... Petitioner / Plaintiff

-vs-

S. Thankadurai

... Respondent /Defendant

This petition came before this court on 26.11.2024 for a final hearing in the presence of Mr. B. Ganesa Moorthy Advocate for the Petitioner / Plaintiff, and Mr. C. Azhagesan, Advocate for the Respondent/Defendant and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner has filed the above petition under Order XXXIX Rule 1 and 2 and Section 151 of the Code of Civil Procedure, seeking to grant an order of ad-interim injunction and permanent injunction restraining the defendant and his men and servants from interfere with the peaceful possession and enjoyment of the petitioner from the eviction of the plaint schedule building without giving notice and process of law and thus render justice.

2) Gist of Averments in the Petitioner / Plaintiff Petition :

The Petitioner is the Plaintiff in the suit. The petitioner is the lease holder and a tenant of the defendant who is the land lord of shop bearing Door No.175/A-8E in the ground floor which is located in Armed Reserve Police Camp, (ARP Camp) Road, at Pattakasaliyamvilai, Nagercoil – 2, of Municipal Ward No.40 now as ward No.43 comprised in Resurvey No.K2/16/23B of Vadiveeswaram South Village. The petitioner doing sticker business and other allied business in the name and style of Nanchil hardwares and Paints and also doing painting the vehicles and also selling various 2nd sale spare parts such as hardwares business inclusive of painting materials in connection with the painting works and also selling spare parts for motor vehicles for the cars and lorries and other vehicles including two wheelers, name boards and other things belongs to vehicles etc. and for which the petitioner approached the defendant for getting the plaint schedule shop for rent for a monthly rent and the defendant also agreed to give the plaint schedule shop for the monthly rent of Rs.2,000/- per mensem to an advance amount of Rs.15,000/-. As accordingly, the petitioner and defendant entered into an agreement of lease deed, executed on 01.10.2017 and the petitioner paid an advance amount of Rs.15,000/-. The monthly rent was starting from 01.10.2017 onwards and as per every English calendar months the rent being payable on or before on the 5th day of every month and in default, the petitioner is liable to be evicted from the premises of the shop

building and also it is agreed by the defendant received the advance amount of Rs.15,000/- from the petitioner. If, the petitioner vacate the premises from the plaint schedule building it is repayable to the petitioner and the defendant has to repay the advance amount without any interest to the defendant. They have also agreed that, the petitioner should not give the building for sublease and shall keep the building a good condition and any changes and alteration cannot be done without any consent of the petitioner, the petitioner is liable to be vacated. The petitioner accordingly agreed and executed the lease deed with the petitioner and paid an advance amount of Rs.15,000/- to the defendant on 01.10.2017 and received the key for the purpose of conducting the business in the shop. In order to attract public, the petitioner improved a lot at a cost of Rs.1,00,000/- inclusive of interior decoration and achieves and show case box and other lighting arrangements and other interior decoration and the total cost for the interior decoration, the petitioner incurred more than 1,50,000/- In order to conduct the business in a good manner and so many workshop walas came there and other regular customer are coming to my shop and he does the work for the customers and some of the customers such as two wheeler workshop people and some of the Lorry work shop walas were getting beneficiaries in a credit manner and thereby the petitioner in order to improve the business, done the work for credit manner and thereby the petitioner have to be given more than Rs.1,00,000/- as arrears from the customer and the same has to be collected from

the customers. The lease deed is only for 11 months, though it is for 11 months the defendant agreed to continue the rent as according to the lease deed and on 01.08.2019, it was renewed by a new agreement with the same contention. Subsequently, it was renewed through new agreement on 25.10.2021 with the same conditions and thereby every new calendar month after the stipulated time in the lease deed the defendant collected the rent from petitioner regularly till date. In order to give the lease hold building for the higher rent for other persons by the defendant he used to say to vacate the building. In the mean time the regional transport office was functioning near to the plaintiff's shop. The petitioner's business was in a great manner and thereafter since RTO Office it was shifted to near Thovalai that is at Visuvasapuram. The petitioner's business got dull and could not collect the balance amount from the creditors and then also the petitioner was struggling on the business in order to save his livelihood. Since, the defendant has agreed to receive the rent subsequent to the lease periods it is deemed that the lease is still in force as according to law. In the meanwhile in the month January 2023, the petitioner was threatened by the defendant to vacate the lease hold building without given any termination of notice to the lease of the petitioner. Therefore, the petitioner requested some more time to vacate the building and it was granted by the defendant and he had received the rent till the month of April 2023. Every month he has received the amount without given any receipt or memo. But every month he entered the

receipt of rent in a memo book. But, in the month of April 2023, when he acknowledge the receipt of rent, he got the memo book from the petitioner and he took the memo book along with him without giving back to me and has stoutly asked the petitioner to vacate the building with a week failing which he will meet the dire consequences. Therefore, the petitioner have no other go except to get the Police help and he approaches before the Superintend of Police, Kanniyakumari District by giving an online complaint and the same was enquired before the Inspector of Police Nesamoni Nagar and a CSR No.25/2023 is issued to the complaint of the petitioner. Since, the defendant is the influential person the police personal were threatened petitioner and asked to vacate the building and he was forced to sign in the plaint papers in order to write a under taking that he will vacate the building. Therefore, the petitioner has no other go except to seek the remedy through court of law. In these circumstances, the petitioner had filed an application for ad-interim injunction and permanent injunction restraining the defendant and his men and servants from interfere with the peaceful possession and enjoyment of the petitioner from the eviction of the plaint schedule building without giving notice and process of law and thus render justice lest, the petitioner will be put to irreparable loss and buildings. Hence, the petition is to be allowed.

3) . Gist of Averments in the Respondent Counter::

The Respondent had filed a counter stating that the petitioner and respondent entered into an agreement on rental deed executed on 01.10.2017 agreement duration 11 months from the agreement date. Thereafter, a new lease agreement was entered into every year for a period of 11 months. Last agreement was entered on 25.10.2021. It is at the respondent's discretion to renew the tenancy agreement after every 11 months depending on the petitioner's maintenance of the tenancy and breach of contract. The tenancy agreement was only for 11 months from 01.10.2017. After that further agreement has entered into according to the will of the respondent. It is a clear provision of the tenance agreement is only for 11 months and thereafter the petitioner should have carried on the business for the period of 11 months and incurred the expenses for that period to attract the customers. But the petitioner's claim that he spent Rs.1,00,000/- is unsupported and irrelevant to this case. The respondent shall not be liable in any way for this cost. The expenses referred to in para 3 are personal expenses of the petitioner. The details mentioned in this para have nothing to do with respondent. Because the respondent has nothing to do with the petitioner giving credit to his customer, collecting it or keeping the arrears. The petitioner must have had his customer relationship with the respondent in consideration of the contractual period. And the other averments of the petitioner's must be proved. A new agreement was

entered into with the petitioner and the respondent on 25.10.2021 in respect of the said shop with the old agreement condition. But the petitioner did not pay rent to the respondent as per the terms of the rental agreement. When arrears of rent started increasing, whenever the respondent approached the petitioner to ask for the said shop rent the petitioner used to use bad words against the respondent. Also, the life of the respondent's family depends on the above rent. In this situation as the petitioner says, the change of the RTO office the business was decreased, so the petitioner has completely stopped paying the rent from the month of June 2022. But the petitioner should be responsible for the business failure of the petitioner. The failure of the petitioner's business to be imposed on the respondent shows the impossibility of this case. Otherwise, the claim of the petitioner in this paragraph 5 is a misrepresentation to the petition, which the petitioner has to prove. The petitioner has given rent up to April 2023 is a complete lie. The respondent never asked the rent from the petitioner from the year of 2023, because when the respondent required the petitioner to vacate the shop the respondent would ask the petitioner to speak bad words. For the petitioner to keep the rental shop by force even after the period of the rental agreement is to forcibly take away the title right of the petitioner. It is also wrong to forcefully refuse to vacate the old age respondent's shop by threatening. The respondent without paying the rent even before the termination of the lease agreement with the petitioner. Otherwise, the police

competition is a false competition filed by the petitioner. At the Nesamony Nagar Police Station the petitioner assured to vacate the shop. Refusal to vacate even after the petitioner has said that there is no business shows the wrong mindset of the petitioner. The petitioner has no right to claim that the petition prayer. It is right to vacate the shop after the expiring of the rental agreement period. The petitioner did not mention in the petition that rental agreement duration is pending or not. So, the prayer sought by the petitioner is not available and this petition is not maintainable. Also, the petitioner fought with nearby shop keepers and filed a case in the Police Station and beating the respondent and the respondent filing a competition at the police station against the petitioner. Accordingly, the respondent's shops value is greatly lost by the petitioner. Also, the petitioner closed the said respondent's shop permanently by welding it so that the respondent could not open it and the petitioner is opened Two big sticker shop named Nila Stickers & Car Jewells 200 feet away from it. Therefore, even though the petitioner does not need the respondent's shop the petitioner's intention to make the respondent suffer, he has brought this case against the respondent and is making the old age respondent suffer. The petitioner should not have instituted this petition against the respondent. The Agreement period is 11 months till then the petitioner's right is subject to the agreement condition. But, the main object is to pass the time so that the petitioner should wrongly seek redress through the court. The rent of the

petition shop is the main income towards, the household expenses of the respondent, the petitioner does not have any business in the petition shop and it is wrong that the petitioner was welded the shop so that the respondent should not open the shop, and the petitioner is also opening a similar business shop with the same name hereby moreover stated the prayed of para 7 is sheer abuse of process of law because of the petitioner has no right any injunction against the respondent. The petitioner has no prima-facie for this petition. The petitioner has not approached this court with clean hands. He is seeking the aid of the court for unlawful gain. Hence, the respondent pray that to accept this counter and dismiss the petitions with costs.

4) The point for consideration is whether the above petition has to be allowed or not?

5) Point:

The original suit has been filed by the plaintiff for a permanent injunction restraining the defendant and his men and servants from interfere with the peaceful possession and enjoyment of the plaintiff from the evict of the plaint schedule building without giving notice and process of law.

6) The petitioner has filed the above petition seeking to grant an order of ad-interim injunction and permanent injunction restraining the defendant and his men and servants from interfere with the peaceful possession and enjoyment

of the petitioner from the eviction of the plaint schedule building without giving notice and process of law and thus render justice.

7) It is an admitted fact that the petitioner in this petition is the tenant and the respondent is the owner of the suit property.

8) After the completion of the trial, only this court will decide.

i) whether the petitioner closed the plaint schedule shop permanently by welding?

ii) Is the plaint schedule shop in actual and active possession of the plaintiff?

iii) whether the plaintiff has no cause of action to file this case?

9) The suit is in its preliminary stages. The petitioner and respondents always have the option of proving their case at the time of evidence.

10) Granting the relief sought in the petition to the petitioner at this early stage, when no decision has been made as to the above-mentioned issues, would cause great hardship and loss to the respondents/defendants. The petitioner/plaintiff failed to prove his prima-facie case.

11) Moreover, the petitioner/plaintiff is not entitled to seek the main relief as interim relief in this petition. In these circumstances, the petitioner is

not entitled to get any relief in this petition. Hence, this court is inclined to dismiss this petition.

12) As a result, this petition is dismissed without cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 4th day of December, 2024.

Principal District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

Principal District Munsif,
Nagercoil.

Draft/Fair Order
I.A.No. 2/2023 in
O.S.No.89/2023
Date: 04.11.2024.
PDM Court, Nagercoil.