

(2025) 01 KAR CK 0049

Karnataka High Court At Bengaluru

Case No: Miscellaneous First Appeal No. 8642 Of 2024

Nazru Shareef Basheer

APPELLANT

Vs

K. S. Narayana

RESPONDENT

Date of Decision: Jan. 29, 2025

Acts Referred:

- Arbitration And Conciliation Act, 1996 - Section 9

Hon'ble Judges: K. Natarajan, J

Bench: Single Bench

Advocate: Ravi B. Naik, Pramila M. Nesargi

Final Decision: Dismissed

Judgement

K.Natarajan, J

CAV JUDGMENT

1. This appeal is filed by the appellant under Order 43 Rule 1(R) of CPC., for setting aside the order passed in AA No.1/2024 for having rejected the application under Order 39 Rule 1 and 2 of CPC., R/w Section 9 of the Arbitration and Conciliation Act, by the Principal District and Session Judge, Mandya.

2. Heard the arguments of both the learned senior counsels.

3. The case of the appellant is that the appellant and respondent entered into the lease agreement dated 02.10.2022, for running the resorts. The respondent is the landlord/lessor and the plaintiff is the tenant/lessee. The lease amount was Rs.4,00,000/-per month and has paid Rs.40,00,000/- towards advance amount/security deposit. The duration of the lease is for 10 years. As per the clause /terms of the agreement the respondent-owner

shall be complete the construction work and made to use for the purpose of lessee. Subsequently, the respondent not completed the construction work

made use of the same by the appellant. However the appellant started paying the rent of Rs.4,00,000/- per month. Subsequently, due to non

completion of the construction work has stated in the annexure -A, that the respondent has to construct grand entrance gate, adjacent walls of

entrance gate and road work. Fencing from main road till entrance gate. Demolition of servant quarters and construction of new servant quarters at

left corner of the property (backside of existing convention hall). Resorts electrical work with new lights, but the same was not done by the defendant.

However, due to non completion of the work the appellant reduced the rent to Rs.2,00,000/- per month. The defendant/respondent illegally trespassed

into the application schedule property with an intention to evict the plaintiff/petitioner. Hence, he has constrained to file the suit against the respondent

in OS.No.19/2024. Subsequently, the respondent appeared before the court and stated there is an arbitration clause, matter should be referred to the

arbitrator for settlement and in the meanwhile respondent interfere with the schedule premises. Hence the appellant filed arbitration application before

the Prl. District and Session Judge, Mandya, along with the interlocutory application for granting injunction, but the court below was dismissed the

application and not granted injunction. Hence, appellant is before this court.

4. Learned senior counsel for the appellant contended that the court below has committed an error in dismissing the application. Where he has

deposited Rs.40,00,000/- advance amount to the respondent. He was paying the rent of Rs.4,00,000/- continuously, payment of rent amount has been

reduced to Rs.2,00,000/- due to non completion of the construction work. In spite of the same the respondent interfering with the possession of the

property. Therefore, prior to going to the arbitrator it is necessary to protect possession of the plaintiff/petitioner. But the Trial Court has committed an

error stating that petitioner already vacated the premises is not correct. Even though the contention of the respondent admitted by the court below that

the appellant was not in the station, he was out of country is not correct. In spite of the same court not granted any injunction. If the injunction is not

granted he will be put to hardship and irreparable loss.

5. Learned counsel for the respondent has seriously objected by contending that the appellant is defaulter in payment of rent for more than a year. The rent has not been properly paid, there is no clause to pay $\frac{1}{2}$ (half) of the rent to the respondent. Therefore as per the lease agreement the lessor is permitted to cancel the agreement if three months rent is not paid. Accordingly, the respondent took the possession over the resorts and he is running the business by paying the GST. And in spite of rejecting the plaint of the appellant he has not approached the arbitrator till date. Such being the case, there is no prima facie case made out by the appellant for granting the injunction and balance of convenience also not in his favour. Hence, prayed for dismissing the appeal.

6. In support of the case both the counsels relied upon the judgment of Hon'ble Supreme Court.

7. Upon hearing the arguments and perused the records, the points that arises for my consideration are;

1) Whether the appellant made out a case that he is in lawful possession and enjoyment of the suit schedule property as on the date of filing of the suit?

2) Whether the balance of convenience lies in his favour?

3) Whether he will be put into irreparable loss if the injunction is not granted?

4) Whether the order of the Trial Court calls for the interference by this court?

8. On careful perusal of the pleading, it is not in dispute that there is a lease agreement between the appellant and respondent dated 02.10.2022 for

running the resort and Rs.4,00,000/- fixed as rent per month and Rs.40,00,000/- towards advance amount/security deposit. As per the clause -2 of the

agreement lease period is for 10 years and lease commenced from 05.10.2022. The defendant/respondent should complete the renovation work as per

annexure -A before commencement of lease. Admittedly lease commenced from 05.10.2022, the appellant started paying the rent to the respondent.

Even though there was no construction or completion of the work but appellant started using the resorts. The contention of the senior counsel for the

appellant is that respondent intentionally not started the construction work. Therefore the appellant was sending rent by reducing it into Rs.2,00,000/-

but the respondent refused the same, the same was transferred to the respondent account directly. However, it is admitted for sending Rs.2,00,000/-

per month. There is no privity of contract between them. That apart from last more than two year the appellant not sent any legal notice to the

respondent by mentioning they have not completed any construction work and he has not started the business. On the other hand before completion of

the arch and compound wall the plaintiff started functioning letting out the resorts to the customers and doing the business. Admittedly the appellant is

a defaulter in payment of rent to the respondent and it is also seen from the record, more than a year appellant not paid any rent to the respondent.

Even if the respondent was refused to receive the amount he could have sent the legal notice to the respondent by mentioning the clause but he has

not sent any legal notice.

9. That apart the plaintiff already filed a suit in O.S.No.19/2024 before the Civil Court, which came to be rejected as there is arbitration clause and the

court referred the matter to the arbitrator as per the clause 20 of the agreement. Even till date the plaintiff/appellant not appointed any arbitrator or

directed the respondent to appoint the arbitrator nor he has approached the High Court of Karnataka by filing the application for appointing any

arbitrator. Such being the case without taking any law course and without paying any rent enjoying the property and also it is seen from the records

subsequently the respondent said to be took over the possession of the suit schedule property and he is running the business. Which reveals as on the

date of filing of application before the Trial Court he is out of possession, though it is well settled even a tress passer cannot thrown out without due

process of law. But when the plaintiff himself fail to pay the rent continuously as per lease agreement and even otherwise the documents produced by

the appellant is unregistered document where he said to be paid the duty penalty subsequently but as on the date of filing the application the lease

agreement on the insufficient stamp is not admissible. Therefore appellant is not entitled for any relief. Therefore the appellant failed to prove he is

having prima facie case in hand and he is in lawful possession as on the date of filing of the application.

10. In view of the finding given on issue No.1 he has failed to pay the rent, he paid 1/2 (half) rent without privity of contract. The respondent also said to be took over the possession. Therefore without seeking any restoration of the possession, the plaintiff is not entitled for any relief or injunction restraining the defendant from interfering with the suit schedule property. Therefore at this stage balance of convenience not lies in favour of the appellant.

11. In view of the non payment of rent for long time, Rs.4,00,000/- per month, for one year he totally defaulted, and for another most of the months he paid 1/2 rent i.e., Rs.2,00,000/-. Such being the case, the account extract produced by him does not reveals payment of rent by the appellant.

Therefore the security deposit of Rs.40,00,000/- also said to be adjusted by the respondent. The appellant not approached the arbitrator as per the judgment of Civil Court dated 04.07.2024, more than six months lapsed, he has not approached the Hon'ble High Court of Karnataka for appointing the arbitrator. Such being the case even injunction is not granted the appellant will not put into irreparable loss. Therefore, the appellant is not entitle for any relief of injunction.

12. The Trial Court after considering the application, though some of the observation made in favour of the appellant but application is rejected by the Trial Court for seeking injunction, therefore from the view there is nothing to interfere in the order passed by the Trial Court. If at all for any relief the appellant shall approach the arbitrator or appropriate court for restoration of the possession in accordance with the law. The appeal is devoid of merits, liable to be rejected. Hence the following;

ORDER

The appeal is dismissed.