(2013) 12 MAD CK 0111

Madras High Court

Case No: Application No. 2639 of 2013 and Original Application Nos. 424 and 425 of 2013 and Application No. 2464 of 2013 and Application No. 2558 and 2559 of 2013 and Application Nos. 2590 of 2013 in C.S. No. 382 of 2013

Mr. K. Srinivasa Rao	APPELLANT
Vs	
Mr. S. Narayanan and Others	RESPONDENT

Date of Decision: Dec. 20, 2013

Citation: (2014) 2 LW 92

Hon'ble Judges: R. Subbiah, J

Bench: Single Bench

Judgement

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R. Subbiah, J.

Application No. 2639 of 2013 has been filed by the applicant/defendant seeking to reject the plaint under Order XIV Rule 8 of O.S. Rules r/w Order VI Rule 16(c) of Civil Procedure Court r/w Order VII Rule 11(a) & (d) of Civil Procedure Court, 1908. Original Application No. 424 of 2013 has been filed by the applicants/plaintiffs praying for grant of Interim Injunction restraining the respondent/defendant, his men, agents, representatives, assigns, tenants, lessees, persons and/or any one acting or claiming under or through him, from in any manner interfering with the applicants''/plaintiffs'' use and enjoyment of the common areas of the building including the land on all the four sides of the building viz., Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017.

2. Original Application No. 425 of 2013 has been filed by the applicants/plaintiffs praying for grant of interim injunction restraining the respondent/defendant, his men, agents, representatives, assigns, tenants, lessees, persons and/or any one acting or claiming under or through him from running a restaurant in the defendant''s dwelling unit, viz., Flat No. G-1, Ground Floor, Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017.

3. Since interim injunctions have been granted by this Court as prayed for in O.A. Nos. 424 & 425 of 2013 by order dated 14.06.2013, the defendant has filed Application No. 2464 of 2013 praying to vacate the said interim injunctions.

4. Application Nos. 2558 & 2559 of 2013 have been filed by the applicant/plaintiffs seeking to punish the defendant under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 for deliberate and willful disobedience of the order of interim injunction dated 14.06.2013 passed by this Court in O.A. Nos. 424 & 425 of 2013 respectively in C.S. No. 382 of 2013.

5. Application No. 2590 of 2013 has been filed by the plaintiff to implead the proposed parties as Defendants 2 & 3 in the suit in Civil Suit. No. 382 of 2013.

6. For the sake of convenience, the parties will be referred as per their ranking in the suit.

7. Before dealing with all the applications referred above, it would be appropriate to extract the averments made in the plaint.

8. The averments in the plaint are as follows:-

9(a)The plaintiffs are eight in number. They are the owners of their respective Flats in the building known as Vijay Apartments situated at Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017. Most of the Plaintiffs are second and third purchasers of their respective Flats and most of them are senior citizens. There are 12 dwelling units in the said building known as Vijay Apartments, which is a stilt + 4 Floor construction. There are 3 dwelling units each in the First, Second and Third Floors and 2 dwelling units in the Fourth Floor. There is one dwelling unit in the Stilt Floor (i.e., Ground Floor) and covered car parks are provided to some of the Flat Owners in the remaining Stilt Floor area. Those residents, who do not have a covered car parking area, utilize the open space around the building to park their vehicles. There is also a small room in the Stilt Floor (i.e., Ground Floor), owned by one of the plaintiffs.

9(b) The residential apartment building viz., Vijay Apartments was constructed by Mrs. M.R.C. Appa Rao, who owned the land measuring an extent of about 8,412 sq.ft. (about 3 1/2 grounds) on which the building stands. The then Corporation of Madras sanctioned the building plan for residential purpose only in the year 1981. The building is surrounded by common areas and pathways. The entire land, where the building is constructed, is enclosed by a compound wall. The access to the property is from Burkit Road, which is on the Northern side of the property. The defendant is the owner of the Flat No. G-1 on the Stilt Floor (i.e., Ground Floor vis-a-vis the building premises), a garage on the South East corner of the land along with the proportionate undivided share in the land, having purchased the same in the year 2003. From the time of purchase, the defendant has not been co-operating with the other residents of the building and he has been causing disturbance to the

other residents. The defendant further used to dump junk and garbage on the southern and western sides of the building, thereby congesting the common areas. The plaintiffs had to repeatedly request the defendant to clear the same and not to indulge in such activities as the same was causing hindrance to the other residents of the building and blocking the common areas.

9(c) The other residents of the building, being mostly senior citizens, have tried their best to avoid any kind of confrontation with the defendant. While so, the defendant caused an advertisement in Page 4 of T. Nagar Talk from 30.09.2012 to 06.10.2012, which reads as under:

T. NAGAR, Burkit Road, HALL TYPE, 2500 Sq.ft. for COMMERCIAL SPACE With 3000 sq.ft. Parking. 9884047921

Several persons started visiting the building and enquired about the property. Only then the plaintiffs learnt about the advertisement given by the defendant in the newspapers. The defendant claimed as though he was the exclusive owner of 3000 sq.ft. of parking area in the building. When the plaintiffs sought for an explanation from the defendant regarding such false claims, the defendant simply stated that he wanted to sell/let out his Flat to meet out his monetary needs and hence, such an advertisement was made by him. After the above advertisement, the main gate on the Eastern side entrance of the building was locked by the defendant on some days, thereby causing much annoyance and disturbance to some of the plaintiffs. By locking the main gates on some days, the defendant prevented some of the plaintiffs from parking their vehicles in the open space. The defendant also installed a grille gate on the rear (Southern) side of the building and locked the same, thereby preventing access through the common area on the Southern side. The area around the building are common areas and are used as a passage to walk around the building. The security guard of the building walks through these common areas around the building so as to secure the same. By indulging in such activities, the defendant was causing unnecessary problems. Hence, the plaintiffs issued a legal notice dated 22.02.2013 to the defendant, but the said legal notice was not received by the defendant and the same was returned as unclaimed.

9(d) The defendant attempted to lease out his dwelling unit for non-residential purpose, viz., for running a non-vegetarian restaurant. As the activities of the defendant were illegal and in utter violation of terms and conditions of the planning permission, the Bye-Laws and Rules of the Association of the said Flat Owners, the plaintiffs issued another legal notice dated 20.05.2013 calling upon the defendant to desist from such illegal attempts. A copy of the legal notice dated 22.02.2013 was also enclosed with the legal notice dated 20.05.2013 and sent to the defendant.

9(e) On receipt of the legal notice, the defendant came to the building and handed over two keys of the grille gate installed by him on the Western side of the building to the security guard as well as to the Secretary of the Association, who is the 7th

plaintiff herein and also cleared the arrears of monthly maintenance charges payable for over a year to the Association. The defendant also removed the Southern side grille gate lock and the lock put up by him on the main entrance gate. However, the defendant did not remove the two grille gates installed by him and further, his men were seen remodelling his dwelling unit, viz., Flat No. G-1.

9(f) The plaintiffs learnt from the workers that the defendant has, in fact, permitted the setting up of a non-vegetarian restaurant and the Flat was being remodeled for the same. The plaintiffs immediately contacted the defendant and asked him to desist from such illegal activities, as called for in the earlier legal notices. The plaintiffs also specifically brought to the notice of the defendant that in the building of residential Flats, setting up a restaurant is not permitted and that the same would cause unimaginable hardship to the other residents and that the pressures on logistics like water supply, waster disposal, parking, security etc. would be tremendous. The defendant was further informed that his proposal would be in breach of the original building plan and permission, which meant for residential purposes only. However, the defendant was defiant and was not willing to heed to the genuine and reasonable requests of the plaintiffs. Hence, the plaintiffs issued a notice dated 25.05.2013 to the Commissioner as well as to the Deputy Commissioner (Health) of the Corporation of Chennai and requested them not to issue any permission/licence to any person for using Flat No. G-1, Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai, for commercial/non-residential purposes.

9(g) The plaintiffs reliably learnt that till date, no permission or licence has been granted to the defendant or his purported lessees for running a restaurant in the building premises, which is purely for residential purpose and without the consent and no-objection from the other co-owners. While so, on 04.06.2013, the defendant sent a letter to the 7th plaintiff, who is the Secretary of the Association, furnishing the name of the person, who will be running the restaurant and the procedures that will be followed by them. The 7th plaintiff suitably replied to the defendant vide letter dated 07.06.2013 rejecting the defendant''s proposal to let out the premises for a restaurant and also reiterated the various issues raised in their legal notices and called upon the defendant to rectify the same. The defendant had also sent a person by name Mrs. B.K. Sathya to meet and convince the plaintiffs to permit them to run a restaurant in the said Flat No. G-1. The plaintiffs reiterated their stand and made it clear that no such proposal can be entertained. As per the approved plan, sanction was given only for a residential building and the defendant''s Flat can be put to residential use only. Any change of usage is a violation of the Development Control Rules and Chennai City Municipal Corporation Act. Under the Development Control Rules, restaurants are permitted only in commercial buildings. Moreover, the parameters like parking, fire safety standards and requirements, etc., are more stringent for commercial buildings than residential buildings. The building in the present case has been designed only as a residential building and hence, a

restaurant cannot be permitted to be set up. The Flat is not suitable for running a restaurant and no licence can be granted for the same under the Chennai City Municipal Corporation Act, the Tamil Nadu Public Health Act of the Madras City Police Act. A restaurant involves large quantities of cooking, which will expose 23 years old building to high levels of heat. This even worse with Italian and Chinese style of cooking, which involves very high levels of heat generation. This would seriously harm the whole structure of the building and jeopardise the rights and interests of the other residents. Permitting a restaurant to be set up in the residential building will therefore violate the fundamental right to a quiet and peaceful living by the other residents in the building.

9(h) That apart, the defendant has only an undivided share in the land like all other flat owners. The other areas on the Eastern side and on the remaining sides of the building are all common areas, over which only the Association of Flat owners has control and responsibility. However, the defendant is trying to prevent usage and enjoyment of this common areas by the plaintiffs. No one can claim exclusive right to the common areas and any attempt on the part of any resident is illegal. The common areas can be used for parking of vehicles belonging to the residents of the Flats, as may be approved by the Association, and not even by guests who visit the residents. The defendant''s men are actively involved in the process of renovating Flat No. G-1 for the purpose of starting a restaurant. If the defendant is allowed to set up a restaurant in the said residential flat, the plaintiffs would be put to sever problems. Hence, the plaintiffs have filed the suit for the following relieves:-

a) For a permanent injunction restraining the defendant, his men, agents, representatives, assigns, tenants, lessees, persons and/or any one acting or claiming under or through him from in any manner using or permitting the use of the defendant''s dwelling unit, viz., Flat No. G-1, Ground Floor, Vijay Apartment, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017, more fully described in the Schedule ''A'', for any use other than residential use,

b) For a permanent injunction restraining the defendant, his men agents, representatives, assigns, tenants, lessees, persons and/or any one acting or claiming under or through him from in any manner interfering with the plaintiffs'' use and enjoyment of the common areas of the building including the land on all the four sides of the building viz., Flat No. G-1, Ground Floor, Vijay Apartment, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017, morefully described in the Schedule ''B'' including for ingress/egress and parking of vehicles.

9. Pending the suit, the plaintiffs had taken out applications in O.A. Nos. 424 & 425 of 2013 praying for interim injunctions restraining the defendant and his men from in any manner interfering with the plaintiffs'' use and enjoyment of the common areas of the building including the land on all the four sides of the building and also from running a restaurant in the respondent''s dwelling unit, viz., Flat No. G-1, Ground Floor, Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar,

Chennai-600 017.

10. This Court, by order dated 14.06.2013, has granted interim injunction in both the applications as prayed for.

11. On appearance, the defendant has filed applications in A. No. 2639 of 2013 seeking to reject the plaint and A. No. 2464 of 2013 seeking to vacate the interim injunction granted by this Court on 14.06.2013.

12. In the affidavit filed in support of the application in A. No. 2464 of 2013 to vacate the interim injunction, it has been stated by the defendant as follows:- The defendant had purchased the suit schedule mentioned property by a deed of sale, dated 11.12.2003, from Lakshmi Appa Rao and two others, who are the legal heirs of the promoter of the property namely M.R.C. Appa Rao. The said sale deed was registered as Doc. No. 2863 of 2003 in the office of the Sub-Registrar, T. Nagar. The plan appended to the sale deed would indicate the area conveyed in his favour and would also indicate the common area, parking place etc. The entire property situate at Old No. 5, Burkit Road, T. Nagar, belonged to one Mr. Appa Rao, who developed the properly and retained the flat at No. G-1, Vijay Apartments for himself. He had let it out on rent to M/s. Nestle Company for using it as a godown i.e., for non-residential purposes. Originally M/s. Nestle was a tenant under the defendant''s vendors and subsequently, after they vacated, the defendant had let it out to M/s. Horizon Training Development Consultancy and after they vacated the premises, the defendant let it out to one B.K. Sathya for running Sole Pure Vegetarian Restaurant. The defendant has let out the premises for the purpose of starting a High Class Vegetarian Restaurant and also enclosed the details of the persons, who were employed in the restaurant and the procedure and precautions that would be adopted by the tenant, so as to not cause any hindrance to the other residents. As a matter of fact, the plaintiffs, who had filed the details furnished by the defendants with regard to the lessees who had taken the subject Flat on lease as suit document, deliberately, willfully and wantonly did not make the lessees, who had taken the premises, as a party to the proceedings and the plaintiffs has obtained an order of injunction, which would adversely affect their rights and the running of the restaurant. A perusal of the plaint averments and the perusal of the averments contained in the affidavit in the application for injunction would reveal that absolutely there is no whisper as to how the plaintiffs would be prejudiced or as to how an irreparable loss would be caused, if an order of injunction is not granted in their favour. The suit as framed by the plaintiffs is liable to be dismissed in as much as the leave as contemplated under Order I Rule 8 of CPC has not been obtained prior to the institution of the suit i.e., when two or more persons have common interest in the subject matter, the permission of the Court is mandatory and all the flat owners ought to have obtained the permission of the Court to combine the cause of action, with the leave of the Court as required under Clause 14 of the Letters Patent and as required under Order II Rule 3 of CPC and failure to do so is

fatal to the very institution of the suit. The plaintiffs ought to have made the lessees as the parties to the suit, who have invested several lakhs of rupees in their business. The plaintiffs have not made out any case much less a strong prima facie for grant of an interim injunction in their favour. The lessees have been doing lawful business after obtaining the statutory permission and as such, cannot be prevented from running the vegetarian restaurant and as such, there cannot be an injunction against the true and lawful owner and more so, when the lessees have been doing a lawful act by obtaining statutory permission to run the eating house. The defendant''s premises is located in the ground floor of the apartment and it has direct access to the road and it does not hinder the other co-owners'' movements and as such, the defendant is not abusing the common area intended for the use of the other co-owners of the premises. As a matter of fact, when the property was sold to the defendant, the area conveyed in his favour is the plinth area of 2186 sq.ft. and the common area of 250 sq.ft. garage area of 230 sq.ft. with exclusive right to use and enjoy the passage measuring 200 sq.ft. at the eastern side through the iron gate entrance. Without verifying the recitals contained in the document or plan appended to the sale deed, the plaintiffs have filed the present frivolous suit. The property is located in a mixed up residential area and as such, the master plan and the assessment of the tax issued by the Corporation of Chennai would add strength to the pleas of the defendant. The 2nd plaintiff is owning a shop in the ground floor and he has been using it as a commercial premises and has let it out to third party and as such, he cannot have one yardstick for himself and one for the defendant and as such, the conduct of the plaintiffs would disentitle them from claiming the discretionary relief of injunction. Therefore, unless the order of interim injunction granted by this Court is vacated, the defendant and his tenant viz. B.K. Sathya, who has commenced the restaurant business under the name and style of " Sole Pure Vegetarian Restaurant", would suffer grave prejudice, irreparable loss, which cannot be adequately compensated in terms of money. Thus, the defendant prayed for vacating the interim order.

13. That apart, the defendant has also filed an application in A. No. 2639 of 2013 praying for rejection of the plaint. The averments in the affidavit filed in support of the application in A. No. 2639 of 2013 filed to reject the plaint are as follows:- The suit filed by the plaintiffs is ex-facie barred in law and on facts also the plaint is liable to be rejected in limine. To maintain an action in civil Court, there must be an infringement of a civil right and for protection of such a right an action in a civil Court shall be maintainable. The plaintiffs, who are eight in number, are not owners of a bit of property belonging to the defendant and as such, there cannot be a decree for permanent injunction as against true and lawful owner of the property and in such an event, the suit as framed by the plaintiffs is liable to be rejected and dismissed at the threshold as abuse of process of Court and process of law. The provisions of Specific Relief Act govern a suit for permanent injunction or perpetual injunction. As per Section 41 of the Specific Relief Act, injunction cannot be granted--

a) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

b) to prevent a continuing breach in which the plaintiff has acquiesced;

c) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;

d) when the plaintiff has no personal interest in the subject matter

Therefore, it is manifest and clear that to maintain an action for injunction in a civil Court, a person who is complaining about violation or infringement of the right must have a settled right and not a doubtful or dubious rights. The suit initiated as against the defendant is liable to be struck off on account of the principle enunciated under Order VI Rule 16(c) of CPC, "which is otherwise an abuse of process of Court". The Present suit would squarely fall within the ambit of Order VI Rule 16(c) and as such, the same is liable to be struck out at the earliest, in as much as the present suit is nothing, but a frivolous, vexatious, speculative action. Hence, the suit is liable to be dismissed. Thus, the defendant prayed for rejection of the plaint, as abuse of process of Court under Order VI Rule 16(c) of CPC read with Order VII Rule 11(a) & (d) of CPC, 1908.

14. The plaintiffs have filed a counter affidavit denying all the allegations made by the defendant in the application for rejection of plaint. It is stated by the plaintiffs in their counter affidavit that the application filed by the defendant for rejection of the plaint is vexatious in nature and the said application has been filed without providing clear and cogent reasons. The application filed by the defendant for rejection of the plaint deserved to be dismissed in limine.

15. Apart from the above, the plaintiffs have also filed applications in A. Nos. 2558 & 2559 of 2013 seeking to punish the respondent under Order XXXIX Rule 2-A of the Code of Civil Procedure, 1908 for deliberate and willful disobedience of the order of interim injunction dated 14.06.2013 passed by this Court in O.A. Nos. 424 & 425 of 2013 respectively in C.S. No. 382 of 2013.

16. In the affidavits filed in support of Application Nos. 2558 & 2559 of 2013 to punish the defendant, it has been stated that injunction was granted by this Court in O.A. Nos. 424 & 425 of 2013 on 14.06.2013 and immediately the defendant was informed about the interim order passed by this Court by counsel''s notice dated 14.06.2013, stating that the certified copy of the order will be sent to him as and when the same is made available. The defendant was called upon to treat the notice as effective communication of the order passed by this Court and to comply with the same. The Counsel''s notice dated 14.06.2013 along with all the suit papers was served on the defendant on 15.06.2013. On 15.06.2013, the defendant was personally informed by the plaintiffs about the interim order passed by this Court, when he had come to his Flat. Copies of the Counsel''s notice dated 14.06.2013 were

also pasted by the plaintiffs on the entrance door and wall of the defendant''s Flat and photos were taken by the plaintiffs. Despite being fully aware of the interim order passed by this Court, the defendant chose to ignore and disobey the same and permitted the restaurant to be inaugurated on the evening of 15.06.2013 and further, interfered with the plaintiffs'' rights to use and enjoy the common areas on the Eastern, Western and Southern sides of the building. The defendant had also removed the notice, that was pasted on the entrance door and wall of his Flat. On the morning of 16.06.2013, the plaintiffs had once again pasted the counsel''s notice dated 14.06.2013 on the entrance door and wall of the defendant''s Flat and photos were taken by the plaintiffs. However, the said notices were also removed by the defendant and he permitted the restaurant to function on 16.06.2013 also. Such conduct on the part of the defendant amounts to deliberate and intentional non-compliance with the interim order dated 14.06.2013 passed by this Court. After receipt of the copy of the order dated 14.06.2013, on 17.06.2013 a copy of the same was also sent to the defendant vide Counsel''s notice dated 17.06.2013. The same was sent and served on the defendant on 18.06.2013 itself. Copies of the counsel''s notice dated 17.06.2013 and the order dated 14.06.2013 were also pasted by the plaintiffs on the entrance door and wall of the defendant''s Flat on 18.06.2013 and photos were taken by the plaintiffs. But, the defendant by willfully disobeying the interim order passed by this Court, permitted the restaurant to run. Hence, the defendant made himself liable to be punished for disobedience of the order passed by this Court.

17. The defendant has filed a counter affidavit to the said applications filed by the plaintiffs, stating that the order of the Court was never disobeyed by the defendant. Without sending the purported order, the communication sent by the counsel for plaintiff by extracting the prayers in the judges summons would not lead to the conclusion what is the nature of the order came to be passed by the Court, when admittedly the copy of the order itself was furnished to their counsel only on 17.06.2013. The plaintiffs'' counsel was not in a position to know when the notice was sent and the nature of the order passed by the Court. As a matter of fact, the defendant has recruited persons to be trained in the preparation of Italian-cum-Chinese Food and the persons, who were employed, were in the premises and had to necessarily have their food and eat, that cannot any stretch of imagination be construed as violation of the orders passed by this Court, as if they have entertained guests who have parked their vehicles thereby violated or flouted the orders of this Court. The plaintiffs have ever parked their vehicles in the passage, ever since the inception of their purchase. The plaintiffs have not been using the premises or the passage and they do not have any right over the passage, which have been exclusively conveyed in favour of the defendant. The entire proceedings initiated by the plaintiffs are nothing but sheer abuse of process of Court and law. Thus, the defendant prayed for dismissal of the applications filed by the plaintiffs for punishing the defendant.

18. Apart from the above applications, the plaintiffs have filed an application in A. No. 2590 of 2013 seeking to implead the lessees of the defendant as party to the suit as Defendants 2 & 3.

19. Heard the submissions made by the learned senior counsel appearing for respective parties and perused the materials available on record.

20. Before deciding the applications in O.A. Nos. 424 & 425 of 2013 and the application filed by the defendant in A. No. 2464 of 2013 to vacate the interim injunction granted by this Court, I am of the opinion, at the out set, it would appropriate to decide the application filed by the defendant for rejection of the plaint.

Application for rejection of the plaint - A. No. 2639/2013:-

21(a) With regard to the rejection of plaint, it is the submission of the learned counsel for defendant that the suit is impliedly barred u/s 9 of CPC since the issue raised in this suit is public interest in nature. It is the submission of the learned counsel for the defendant that on a reading of the plaint, if it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, then the plaint is liable to be rejected. In this regard, the learned counsel for the defendant relied upon the judgment delivered by the Hon''ble Apex Court reported in T. Arivandandam Vs. T.V. Satyapal and Another, .

21(b) But, it is the reply of the learned senior counsel appearing for the plaintiffs that the suit is not barred u/s 9 of CPC. The suit is only to adjudicate the civil rights of the plaintiffs, who are owners of the same building. In support of this contention, the learned senior counsel for the plaintiffs relied upon the judgment reported in Smt. Fatima Joao Vs. Village Panchayat of Merces and Another, .

21(c) In my considered opinion, there cannot be any quarrel in accepting the legal principal that on a reading of the plaint, if it is seen that it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, then the plaint is liable to be rejected. But, so far as the present case is concerned, it is the grievance of the plaintiffs that they are all owners of different Flats in the same building viz., Vijay Apartments and it is purely a residential building. The defendant is the owner of Flat No. G-1 in the ground-floor measuring an extent of 2186 sq.ft. of plinth area, including the garage area of 230 sq.ft. and he is now converting the said Flat into a restaurant and he has leased out his Flat in the ground-floor to set up a restaurant. As per the approved plan, sanction was given only for residential building. The defendant''s Flat can be put to residential use alone. Due to the illegal activities carried out by the defendant, the other residents of the building would be put to serious hardship and problems. Thus, the plaintiffs have clearly made out a case that the defendant is interfering with their civil rights by creating nuisance. Therefore, the present suit is only to adjudicate the civil rights of the plaintiffs, who are co-owners of the same building. Therefore, I am of the opinion that the

averments in the plaint clearly make out a definite case to strengthen the civil rights of the plaintiffs. Therefore, the submission made by the learned counsel for the defendant that the suit is barred u/s 9 of CPC cannot be accepted. In this regard, a reference could be placed in the judgment relied upon by the learned senior counsel for the plaintiffs reported in Smt. Fatima Joao Vs. Village Panchayat of Merces and Another, , wherein it has been held as follows:-

...Thus, we have no hesitation in holding that the suit at the instance of the neighbour for violation of Municipal plans or rules or bye-laws resulting in an invasion of their right to light, air, privacy or causing pollution, causing material injury, would furnish the plaintiff a cause of action and it would be open for him to file a civil suit to challenge the invasion of his rights causing material injury.

33. Independently of the discussion, is it possible to hold that the Civil Court would have jurisdiction. u/s 9, jurisdiction of the Civil Court to entertain all civil disputes, can be taken away by excluding its civil jurisdiction. Goa Panchayat Raj Act, 1993 has no provision excluding the jurisdiction of the Civil Court. Earlier it has been discussed that there is also no implied ouster. u/s 38 of the Specific Relief Act, a perpetual injunction can be granted to present the breach of an obligation existing in favour of a party whether expressly or by implication. "Obligation" has been defined to mean every duty enforceable by law. What therefore, is the duty which is enforceable against a neighbour who violates the provisions of the Goa Panchayat Raj Act, 1993. Will putting up a construction without taking a licence or by taking a licence and constructing contrary to the licence, give to the neighbour a right. Does the person constructing owe a duty to the neighbour not to construct without a licence or contrary to the licence? Can this be said to be a right enforceable in a Civil Court? Easements, in so far as light and air, are concerned in areas falling within the jurisdiction of local bodies are subject to the Acts, Rules and Regulations of such bodies. This is pursuant to the powers conferred on local bodies by various statutes to regulate construction activities within their jurisdiction. Therefore, does this duty cast by the statute on the neighbour, create an obligation which would be enforceable in a Civil Court. If it can be spelt out from the act itself, then the Civil Court would have jurisdiction. In respect of construction contrary to licence, extraordinary jurisdiction of this Court can be invoked to direct the local body to enforce the provisions of the Acts, rules and regulations. If, therefore, the extraordinary jurisdiction available, a civil Suit would be maintainable to direct by way of mandatory injunction, the local authority to discharge its duties under the Act. Where therefore, a local body is a party, there is no difficulty whatsoever.

34. The only question is whether in absence of the local body being made a party, would the Court have jurisdiction. In tracing a legal right in the neighbour, as we have noted earlier, there are difference of opinions between the High Courts. The Calcutta and Andhra Pradesh High Court, as also the Allahabad High Court have taken the views that civil suit is maintainable. The Division Bench of our High Court,

however, as noted earlier in the case of Narayandas Vs. Sarasvatibai (supra), has held it would not be available. To our mind, K.R. Shenoy''s (supra) case makes all the difference. The Apex Court noted as under:

The breach of a statutory duty created for the benefit of an individual or a class is a tortuous Act. Anyone who suffers special damage therefrom is entitled to recover damages.

35. Any scheme framed under the Act, is for the benefit of the residents of the locality. The local authority acts in the aid of the scheme. The rights of the residents in an area are invaded by illegal construction. A scheme for the residents must be planned in accordance with the requirements of the residents. It is, therefore, clear that making of a scheme, or bye-laws or building regulations is for the planned development of the area. It is for the benefit of the citizens residing in the area. A neighbour who is affected, therefore, by an illegal construction, has an obligation in his favour based on which he can maintain a suit for perpetual injunction. We, therefore, find no difficulty in holding that a neighbour would have the right to maintain a suit.

A reading of the above said judgment would show that when a person/neighbour violates the provisions of the Municipality Act and Rules and involved in a construction of building, without obtaining any licence from the authorities concerned, and thereby if he causes disturbance to the civil rights of the others, a civil suit is maintainable for restraining such person, who violates the Municipality Acts and rules, Therefore, I am of the opinion that the present suit is not hit by Section 9 of CPC.

22. It is the next fold of submission made by the learned counsel for the defendant that the suit is bad in law, since leave has not been obtained by the plaintiffs under Order I Rule 8 of CPC to file the suit in representative capacity. But, on perusal of the averments in the plaint, it is clear that the suit was not filed in the representative capacity. On the other hand, the suit has been filed by the owners of the Flats, by individually agitating their rights as against the defendant, who is attempting to run a restaurant in the residential building. In this regard, a reference could be placed in the judgment, which was relied upon by the learned senior counsel appearing for the plaintiffs, reported in Kalyan Singh Vs. Smt. Chhoti and Others, wherein it has been held that any member of a community may successfully bring a suit to assert his right in the community property or for protecting such property by seeking removal of encroachments therefrom and such a suit need not comply with the requirements of Order I Rule 8 of CPC. The dictum laid down in the said judgment squarely applies to the facts of the present case also. Even assuming that no permission was obtained under Order I Rule 8 of CPC, the same cannot serve as a ground to reject the plaint, as Order I Rule 8 of CPC is procedural in nature and the such permission could be obtained at any stage of the trial. Therefore, I am not inclined to accept the submission made by the learned counsel for the defendant

that the plaint is liable to be rejected since no permission was obtained under Order I Rule 8 of CPC.

23(a) It is further submission of the learned counsel for the defendant that the suit is liable to be rejected under Order I Rule 9 of CPC, for mis-joinder/non-joinder of necessary parties. It is the submission of the learned counsel for the defendant that the defendant had leased out his Flat to one Mrs. B.K. Sathya and Mr. B. Chandra Sekaran, but they were not added as defendants in the suit. Therefore, the plaint is liable to be rejected for non-joinder of the lessees.

23(b) But, it is the submission of the learned senior counsel for the plaintiffs that the plaintiffs were not aware of the particulars about the lessees and therefore, they were not in a position to add the lessees as party to the suit.

23(c) However, the plaintiffs have now filed an application in A. No. 2590 of 2013 to implead the lessees of the defendant as proposed parties as Defendants 2 & 3. Therefore, the non-joinder of necessary parties will not serve as a ground to reject the plaint at this stage.

24. It is yet another submission of the learned counsel for the defendant that the suit is bad in law, since leave was not obtained under Order II Rule 3 of CPC for joinder of several causes of action. But, Order II Rule 3 of CPC deals with the joinder of several causes of action. In the present suit absolutely no several causes of action are involved. The common grievance of the plaintiffs is that the defendant by leasing out the Flat in the ground floor of the residential apartments interfering with the civil rights of all the other flat owners, who are the plaintiffs in the suit. Hence, I am of the opinion that the suit is filed only on a common cause of action and absolutely, no several causes of action are involved and hence, there is no need to obtain leave under Order II Rule 3 of CPC for joinder of several cause of action. Hence, the submission made by the learned counsel for the defendant cannot be accepted.

25(a) It is yet another submission of the learned counsel for the defendant that the present suit has been filed by different flat owners by anticipating the possibilities of nuisance or future nuisance. Further, in a case of future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent, that an injury actionable in law will arise unless prevented by an injunction. Thus, the learned counsel for the defendant submitted that the present suit is not maintainable in law. In this regard, he has also invited the attention of this Court to the judgment reported in Kuldip Singh Vs. Subhash Chander Jain and Others, , wherein it has been held as follows:-

In our opinion a nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually existing nuisance is capable of being assessed in terms of its quantum and relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also

capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a children''s school or opening a shop dealing with highly inflammable products in the midst of a residential locality.

By relying upon the above said judgment, the learned counsel for the defendant submitted that the present suit has been filed by the plaintiffs expecting a future nuisance and thence, absolutely there is no cause of action to maintain the present suit as against the defendant.

25(b) But, a reading of the plaint would show that the cause of action for filing the present suit is that Flat No. G-1, which was sanctioned as a residential portion, is now sought to be converted into a restaurant. This is illegal and in violation of the Town and Country Planning Act, the Chennai City Municipal Corporation Act and The Chennai City Corporation Building Rules, 1972. Since the defendant is seeking to interfere with the enjoyment of the common areas by the plaintiffs, it gives a cause of action for filing the present suit. In this regard, a reference could be placed in the judgment reported in Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, , wherein it has been held as follows:-

Whether a plaint disclose a cause of action or not is essentially a question of fact. But, whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed. In ascertaining whether the plaint shows a cause of action, the Court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact.

The dictum laid down in the above said judgment would show that whether the plaint discloses a cause of action is essentially a question of fact and the averments made in the plaint in their entirety must be held to be correct. In the instant case, a threat is so certain and imminent and unless the defendant is prevented by an order of interim injunction, serious injury would be caused to the plaintiffs. Therefore, I do not find any merit in the submission made by the learned counsel for the defendant that the present suit has been filed by anticipating future nuisance.

26(a) It is further submission of the learned counsel for the defendant that the suit is hit by Section 34 of Specific Relief Act, since no prayer for declaration was sought for by the plaintiffs. The relief sought for in the plaint and the relief sought for in the injunction applications are one and the same and the suit was filed without the prayer for declaration. Hence, the suit is hit by Section 34 of Specific Relief Act.

26(b) But, considering the materials placed before this Court, I am of the opinion that there is no need to make a declaration prayer since the sanction plan clearly depicts Flat No. G-1 as residential flat and the defendant has not produced any sanction plan to the contrary. Moreover, except the fire licence, the defendant has not obtained any other licence so far, to convert the Flat No. G-1 into a restaurant. In this regard, a reference could be placed in the judgment relied upon by the learned senior counsel appearing for the plaintiffs, reported in 2011 3 L.W. 408 : 2011(2) MWN (Civil) 395 [Jeffrey Mathuranayagam Vs. Asha and others), wherein it has been held as follows:-

30. Placing reliance upon Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, , learned Senior Counsel for Appellant contended that when the plaintiffs claim to the property is in dispute or in a cloud and 1st defendant asserts his title/ownership for the same, the plaintiffs will have to sue declaration of title and consequential relief of injunction. It was further argued that when the title of the plaintiffs is under dispute, in the suit for bare injunction, the learned Single Judge erred in saying that plaintiffs have established prima facie case and erred in granting temporary injunction.

31. As held by the Supreme Court in Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs. and Others, , the prayer for declaration will be necessary only if the denial of title by the defendant to the plaintiff''s title raises a cloud on plaintiff''s title to the property. Whether the defence put forth by the 1st defendant actually raises a cloud on plaintiff''s title remains to be seen only at the trial of the Suit and at this stage we are not expressing our views on the merits of the above submission made by the learned Senior Counsel for Appellant.

32. Grant or refusal of a temporary injunction is subject to the following principles; (i) prima facie case of Plaintiff''s right; (ii) balance of convenience in his favour; (iii) whether he would suffer irreparable injury if injunction is not granted. These conditions have to be satisfied and proof of any of them is not by itself sufficient to obtain a temporary injunction. Prima facie case means that there exists a strong probability that the Petitioner has an ultimate chance of success in the suit. Balance of convenience is the principle by which the Court weighs and balance the mischief or inconvenience to either side. Irreparable injury means a material injury which cannot be adequately compensated for in damages.

33. While considering the question of prima facie what the Court is required to see is whether there is a fair question involved in the suit for decision and it will suffice if it

is found that the plaintiff has a prima facie case. All that the plaintiff is required to show that he has a fir and serious question to be tried.

34. While seeking temporary injunction, plaintiff is not only to establish the prima facie case, but should also show that unless the interim injunction is granted, irreparable injury would be cased to him and that the balance of convenience in his favour.

A reading of the above said judgment would show that the prayer for declaration would be necessary only if there is denial of title by the defendant. In the instant case, the plaintiffs are the owners of their flats in the same building and the building permission was granted by the Corporation only for residential purpose and this fact was not denied by the defendant. Hence, I am of the opinion that there is no need for the prayer for declaration.

27. It is yet another submission of the learned counsel for the defendant that no injunction can be granted since the plaintiffs have no personal interest in the subject matter. In this regard, the learned counsel for the defendant relied upon Section 41(j) of the Specific Relief Act. But, I am of the opinion, as contended by the learned Senior Counsel for the plaintiffs, the plaintiffs are not the third parties or outsides. The plaintiffs, being the co-owners of the undivided share in the property, have every personal interest in the matter, because they are having every right to lead a peaceful life. Therefore, the submission made by the learned counsel for the defendant cannot be accepted.

28(a) Finally, it is the submission of the learned counsel for the defendant that the issue involved in this case is a public interest litigation and the same cannot be adjudicated in a civil litigation. In this regard, the learned counsel for the proposed parties (D2 & D3) has also made a detailed submission stating that they are the lessees of the defendant. Further, the plaintiffs are trying to prevent the defendant from carrying on a business of his choice. The competent authority is empowered to grant or refuse sanction for any restaurant. The administrative authorities are the experts to decide whether such an activity can be permitted, by taking into consideration the safety, security and nuisance. Courts generally should refrain from interfering with the discretionary power of the administrative authorities, otherwise it will virtually bring the governance to a halt. If a permanent injunction is granted, then it effectively puts an embargo on the discretion of administrative authorities. It will create a wrong precedent wherein civil suits will be pressed into service for deciding every aspect of governance by way of civil suits throwing legislations to the dust.

28(b) In this regard, the learned counsel for the proposed parties (D2 & D3) has also relied upon a judgment of the Division Bench of this Court reported in Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, . But, the factual aspects of the said case

would show that the appellant therein claiming to be a member of a non-political party, whose main aim is said to be the abolition of the caste system in the country, has filed the writ petition. He by application dated 1.11.2004 sought permission of the Inspector of Police, Mannargudi Police Station, to conduct a public meeting on 16.11.2004 to propagate the principles of the said non-political Party, but the permission was refused by the Police. Hence, he filed the writ petition. Aggrieved by the order passed by the learned Single Judge in the writ petition, the appellant therein filed the said writ appeal. The Division Bench held that the administrative authorities have expertise in law and order problems through their long experience and training, the Courts should not ordinarily interfere in such type of matters. The judiciary must therefore exercise self-restraint and not try to interfere with the functions of the executive or the legislature. Relying upon the said judgment, the learned counsel for the proposed parties (D2 & D3) submitted that if injunction is granted in favour of the plaintiffs, it will amount to restraining the authorities in considering the application to be submitted by the lessee for issuance of licence to run the business.

28(c) But, in my considered opinion, the issue involved in the present case is not a public interest litigation. The plaintiffs are the co-owners of the building. Because of the conduct of the defendant, according to the plaintiffs, their peace has been disturbed. Therefore, only to adjudicate the civil rights of the plaintiffs in the manner known to law, the present suit has been filed by the plaintiffs. Therefore, the judgment relied upon by the learned counsel for the proposed parties (D2 & D3) cannot be made applicable to the facts of the present case.

28(d) It is the submission of the leaned counsel for the defendant as well as the proposed parties, that the appropriate remedy for the plaintiffs is only to file a writ petition and not to file the civil suit. In this regard, a reference could be placed in Section 101 of Tamil Nadu Town and Country Planning Act.

Section 101--Bar of jurisdiction of Courts:-Any decision or order of the Tribunal or the Government or the planning authority or other authority or of any officer under this Act shall, subject to any appeal or revision or review provided under this Act, be final and shall not be liable to be questioned in any Court of law and no injunction shall be granted by any Court against the notices served to any person by the planning authority u/s 56 or u/s 57 of this Act.

As per Section 101 of Tamil Nadu Town and Country Planning Act, the above provision of law, only in the event of any decision taken by the planning authority under the Act, subject to any appeal or revision or review provided under the Act, there is a bar to file a civil suit. But, in the instant case, no order has been passed by any authority granting permission to the defendant or his lessees to run a restaurant. Under such circumstances, I am of the opinion that there is no bar for filing a civil suit to adjudicate the civil rights of the plaintiffs. When a civil right of the plaintiffs is interfered with by the conduct of the defendant, the plaintiffs need not

wait for any decision to be taken by the planning authority and the plaintiffs can very well file a civil suit for injunction against the defendant. On the whole, I do not find any merit in the application filed by the defendant to reject the plaint.

29. Hence, the application in A. No. 2639 of 2013 filed by the defendant for rejection of the plaint is liable to be dismissed and accordingly, the same is dismissed.

Interim Injunction applications:-

30. Since this Court has come to the conclusion that the plaint is maintainable, it is necessary to deal with the interim injunction granted by this Court in O.A. No. 424 & 425 of 2013.

O.A. No. 424 of 2013

31. O.A. No. 424 of 2013 has been filed seeking Interim Injunction restraining the defendant from interfering with the plaintiffs'' use and enjoyment of the common areas of the building including the land on all the four sides of the building viz., Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017.

32. It is the grievance of the plaintiffs that there is open space for about 1300 sq.ft. on the eastern side of the premises. Now, the defendant by claiming right over the entire open space on the eastern side is preventing the plaintiffs from using the common space on the eastern side of the premises.

33. Whereas, according to the defendant, he purchased the suit schedule property by a sale deed dated 11.12.2003 registered as Document N.2863/2003, from the legal heirs of one Mr. M.R.C. Appa Rao, who had promoted apartments in the year 1981. The said M.R.C. Appa Rao, after selling the flats to the third parties, retained one flat for himself in the ground floor viz., G-1, and he was residing there. After his demise, the said flat was sold to the defendant by the legal heirs of the said M.R.C. Appa Rao. The said M.R.C. Appa Rao was using the entire common passage on the eastern side of the premises. Hence, when the property was sold to the defendant by the legal heirs of the said M.R.C. Appa Rao, by sale deed dated 11.12.2003, the exclusive right to use and enjoy the passage measuring 200 sq.ft. on the eastern side of the premises, through the iron gate entrance, was conveyed to the defendant. Therefore, the defendant acquired exclusive right to use and enjoy the entire open space on the eastern side from his vendors. Therefore, none of the plaintiffs has any right to the passage on the eastern side.

34. In view of the submission made on the either side, I am of the opinion, it is necessary to see the recitals of the sale deed dated 11.12.2003 executed in favour of the defendant by his vendors. On a perusal of the recitals in the sale deed Dated 11.12.2003, I find that on 10.09.1993 there was a partition among the said M.R.C. Appa Rao, his son M.P. Appa Rao and Mrs. Mamta Appa Rao W/o. Late M. Kishore Appa Rao. In the said partition deed dated 10.09.1993, the said M.R.C. Appa Rao was allotted with the Flat in the ground-floor viz., G-1 measuring 2436 sq.ft. (plinth area

2186 sq.ft. + Common Area 250 sq.ft.), along with undivided share of 1088.68 sq.ft. in the land. The description of the property allotted to the share of M.R.C. Appa Rao made in the said partition deed is as follows:-

SCHEDULE - B

(1) Flats and Shop in Vijay Apartments bearing Municipal Door No. 5, Old No. 29, Burkit Road, T. Nagar, Madras 17, bearing Plot Nos. 19 and 20 in Block No. 16 of T. Nagar, Mambalam Division survey No. 138/2 and T.S. No. 5846 and measuring 2436 sq.ft. consisting of 1 Flat along with 1088.68 sq.ft. of undivided share in land on which the superstructure is situated along with the common use of the apartment land, with trees, watercourses, drains, borewell, pumpset, and the lobby space described below:-

A reading of the above said schedule in the partition deed would show that even the vendors of the defendant did not have a right for the entire common area on the eastern side of the premises. The vendor of defendant had a right only to an undivided share in common are to an extent of 1088.68 sq.ft.

35. Now, it would be appropriate to extract the schedule in the sale deed dated 11.12.2003 executed in favour of the defendant by his vendors.

SCHEDULE OF PROPERTY

1088.68 sq.ft. of undivided share in the land measuring 5006.4 sq.ft. comprised in S. No. 139/2 and T.S. No. 5846, bearing Plot Nos. 19 & 20 in Block No. 16, T. Nagar Village, together with Flat No. G-1 in the Ground Floor of "Vijay Apartments" in premises of Old Door No. 29, New Door No. 5, Burkit Road, T. Nagar, Chennai-600 017 and bounded on the

NORTH BY : Burkit Road

SOUTH BY : Plot No. 23 & 24

EAST BY : Plot No. 18

WEST BY : Plot No. 21

with a Plinth Area of 2186 sq.ft. and a Common Area of 250 sq.ft. Garage Area of 230 sq.ft. with exclusive right to use and enjoy the Passage (an extent of 200 sq.ft. Approx), at the Eastern side through Iron-Gate Entrance, which is marked and shaded in YELLOW colour in the Sketch Plan annexed hereto and situated within the Sub-Registration District of T. Nagar and Registration District of South Chennai.

A reading of the above said schedule in the sale deed dated 11.12.2003 would show that the defendant has got exclusive right to use and enjoy the passage, an extent of 200 sq.ft. at the eastern side through Iron-Gate Entrance. In the schedule, it is not mentioned that the defendant has got exclusive right over the entire common passage on the eastern side of the premises. All along the plaintiffs were in usage

and enjoyment of the common passage on the eastern side. Now, after the defendant purchased Flat No. G1, the plaintiffs are prevented from using common passage. I find that absolutely no document was produced before this Court to show that the plaintiffs have no right to use the common passage. Hence, the defendant cannot prevent the plaintiffs from using the common passage. Hence, I find a strong prima facie case for granting interim injunction.

36. Hence, in the light of above, the interim injunction granted by this Court in O.A. No. 424 of 2013 by order dated 14.06.2013 is made absolute.

O.A. No. 425 of 2013

37. O.A. No. 425 of 2013 has been filed seeking interim injunction restraining the defendant or any one acting or claiming under or through him from running a restaurant in the defendant''s dwelling unit, viz., Flat No. G-1, Ground Floor, Vijay Apartments, Old No. 5, New No. 9, Burkit Road, T. Nagar, Chennai-600 017.

38. It is the submission of the learned counsel for the plaintiffs that the subject apartment is a pure residential building and the plan was sanctioned and plan was sanctioned only for construction of residential Flats in the year 1981 by the Corporation of Chennai. Subsequently, an agreement was also entered into between the purchasers of the Flats and the promoter of the property viz., M.R.C. Appa Rao, only for construction of a residential apartment. Therefore, right from the beginning, it is only a residential apartment. Now, the defendant is trying to convert the Flat No. G-1 in the ground-floor as a restaurant, by violating the plan sanctioned by the Corporation.

39. It is the submission of the learned counsel for the defendant that Burkit Road, is mixed residential zone, therefore, there cannot be any impediment in running the restaurant in the Ground Floor of the apartment. In support of his contention, the learned counsel for the defendant has also relied upon the judgment reported in Mowbrays Flats Owner''s Association Vs. C.A.M. Riazuddin alias Riazuddin Mohammed, . It is further submission of the learned counsel for the Defendant that the defendant has applied for licence to the competent authority to run a restaurant in the Ground Floor of the apartment. The said application was not rejected so far. It is further submission of the learned counsel for the defendant that as per Section 365(10) of the Madras City Municipal Corporation Act, 1919, if the application for licence was not considered within a period of 60 days from the date of receipt of application, the application shall be deemed to have been allowed for the year. In the instant case, the application for licence was not considered within 60 days from the date of application and hence, as per Section 365(10) of the Act, the licence shall deem to have been issued.

40. But, it is the counter submission of the learned senior counsel for the plaintiffs that the permission for running a restaurant in the subject building was refused by the Corporation of Chennai on 19.08.2013. Therefore, the question of applying the

above said deeming provision would not arise in the present case. Further, according to the learned Senior Counsel for the plaintiffs, it is not a mixed residential area, on the other hand it is a primary residential area. In this regard, the learned senior counsel appearing for the plaintiffs has also filed an additional affidavit along with a letter received from the Assistant Commissioner of Corporation of Chennai, dated 19.08.2013, wherein it has been stated that the application for licence was rejected on sanitation ground. The relevant passage in the letter written by Assistant Commissioner of Chennai Corporation is extracted hereunder: -

Licence paper received by Revenue Department, Z.O.X, was sent to Z.H.O. On 21/06/2013 for sanitation remarks. A notice issued to the above restaurant on 26/06/2013 by health department indicating the improvements to be done to issue sanitary remarks, to restaurant. They were not complied the improvement in the sanitation point of view. The licence paper was refused on sanitation ground.

The above said letter received from the Assistant Commissioner of Chennai Corporation would show that the application for licence to run restaurant in the Flat No. G-1 was refused. Therefore, I am not inclined to accept the submission made by the learned counsel for the defendant that by applying the deeming provision, it has to be construed as if the licence is deemed to have been granted. The judgment relied upon by the learned counsel for the defendant reported in Mowbrays Flats Owner''s Association Vs. C.A.M. Riazuddin alias Riazuddin Mohammed, , therefore, cannot be made applicable to the present facts of the case.

41. Though it is the submission of the learned counsel for the defendant that the suit property is situated in mixed residential zone, he has not produced any document to substantiate the same. But, on the other hand, the letter addressed to the 1st defendant by CMDA dated 27.06.2013 would confirm that T.S. No. 5846 is Primary Residential zone. Therefore, the subject building falls under the definition of ''Building'' as defined under Rule 2(8) of Chennai City Corporation Building Rules, 1972. Rule 2(8) of the said Rules reads as follows:-

"Building"-- Residential means a building used or constructed or adopted to be used wholly or principally for human habitation and includes garages, stables and other out houses appurtenant thereto;

Hence, I am of the opinion, when the plan was sanctioned for construction of only residential apartments by the authority concerned, a restaurant can not be run in the said apartments by interfering with the civil rights of the other Flat owners.

42. Rule 7 of the Development Control rules for Chennai Metropolitan Area, 2004, deals with the primary residential use zone. Rule 7(b) of the said Rues says that on special sanction of the authority, hostels, dormitories & restaurants, not exceeding 300 squire meters in floor area, may be permitted. But, in the instant case, there is no special permission/sanction was obtained from the authority concerned, for

running a restaurant. Therefore, I am of the opinion that the documents produced on the side of the plaintiffs would clearly show that the subject building in this case is situated only in a primary residential zone and not in mixed residential use zone. Therefore, the defendant is not entitled to run a restaurant, by interfering with the civil rights of the other flat owners, who are the plaintiffs herein. Even assuming for a moment, the subject area is a mixed residential use zone, it does not mean a restaurant can be run in an residential apartment by interfering with the civil rights of other Flat owners.

43. It is further submission of the learned counsel for the defendant that the relief claimed in the Injunction applications as well as in the plaint are one and the same and therefore, injunction cannot be granted. But, I am of the opinion, as contended by the learned senior counsel for plaintiffs, that if the defendant is allowed to run the restaurant, by the time the main matter comes up for hearing, nothing would remain to be allowed as relief. When there is a prima facie case, interim relied could be granted. In this regard, a reference could be placed in the judgment reported in Deoraj Vs. State of Maharashtra and Others, , wherein the Hon''ble Supreme Court has held as follows:-

where withholding the interim relief would amount to dismissal of the main petition itself, as by the time the main matter comes up for hearing, nothing would remain to be allowed as relied, Court may, having regard to a strong prima facie case, balance of convenience and irreparable injury, issue an interim writ even though it would amount to granting the final relief.

The dictum laid down in the above case is squarely applicable to the present case also.

44. It is yet another submission of the learned counsel for the defendant that the plaintiffs cannot ask for any relief as against the co-owners of the building. But, I am of the opinion that the plaintiffs are agitating their civil right in the manner known to law. Therefore, the submission made by the learned counsel for the defendant cannot be accepted.

45. Apart from the above submissions, it is the further submission of the learned counsel for the defendant that the 2nd plaintiff is owning a shop in the second floor of the building and he is using for commercial purpose and letting out it to the their parties and therefore, the plaintiffs would be disentitled from claim discretionary relief of injunction pending suit. But, I am not inclined to accept this submission of the learned counsel for the defendant, since in the instant case by running a restaurant the defendant is attempting to interfere with the civil rights of the plaintiffs, who are entitled to live peacefully in their respective flats. But, in the case of the 2nd plaintiff, interference with the civil rights of the other Flat owners does not arise. Therefore, I am not inclined to accept the submission made by the counsel for the defendant that since the 2nd plaintiff is owning a shop in the second floor,

he is not entitled to claim discretionary relief.

46. Therefore, I find a strong prima facie case in favour of the plaintiffs for granting interim injunction. Hence, the interim injunction granted by this Court O.A. No. 425 of 2012 restraining the defendant/his men from running a restaurant in the subject building, has to be allowed to continue, pending disposal of the suit. Accordingly, the interim injunction granted in O.A. No. 425 of 2012 is made absolute.

Application No. 2590 of 2013:-

47. So far as the application to implead the proposed defendants 2 & 3 is concerned, I am of the opinion that since they are the lessees of the defendant, the application is liable to be allowed. Accordingly, Application No. 2590 of 2013 is allowed.

Application Nos. 2558 & 2559 of 2013:-

As far as these applications are concerned, I am of the opinion that these application have been filed by the plaintiffs to punish the defendant, stating that inspite of the injunction granted by his Court on 14.06.2013, the restaurant was run for two days. But, actually, the restaurant was run by the lessees and they were not shown as parties in the suit. Hence, these applications are liable to be dismissed. Accordingly, the same are dismissed.

In the result, the Application No. 2639 of 2013 filed to reject the plaint and the Application No. 2464 of 2013 filed to vacate the interim injunction are dismissed. The interim injunctions passed by this Court on 14.06.2013 in O.A. Nos. 424 & 425 of 2013 are made absolute. Application Nos. 2558 & 2559 of 2013 are also dismissed. Application No. 2590 of 2013 filed to implead the proposed parties, is ordered as prayed for.