



CNR: KAHC010298782021

NC: 2026:KHC:41971
W.P. No.15101/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 7TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.15101/2021 (GM-CPC)

BETWEEN:

GOVINDA ACHARYA
S/O LATE G.A. ACHARYA
"GOVINDA NIVAS"
INDRALI, KUNJIBETTU POST
SHIVALLI VILLAGE
UDUPI TALUK AND DISTRICT 576101.

...PETITIONER

(BY SRI. S.K. ACHARYA, ADV., FOR
SRI. VIGNESHWARA U, ADV.,)

AND:

SRI. SODE VADIRAJA MUTT
UDUPI, BY ITS HEAD AND MATADHIPATHI
SRI. SRI. VISHWAVALLABHA THEERTHA SWAMIER
CAR STREET, UDUPI 576101
REP. BY GPA HOLDER
MURALIKRISHNA
AGED ABOUT 43 YEARS
S/O. K. VEDAVYASA BHAT
WORKING IN SRI. SODE MUTT
CAR STREET, UDUPI 576101.

...RESPONDENT

(BY SRI. B.S. VENKATA NARAYANA, ADV., FOR
SRI. MADHUKAR DESHPANDE, ADV.,)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE

Digitally signed
by RUPA V

Location: HIGH
COURT OF
KARNATAKA



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IMPUGNED ORDER DTD.9.4.2021 PASSED IN IA NO.IV IN O.S.NO.92/2014 ON THE FILE OF THE COURT OF THE PRINCIPAL CIVIL JUDGE AND JMFC, UDUPI VIDE ANNEXURE-A & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This petition is filed challenging the order dated 09.04.2021 passed on IA.No.4 in OS.No.92/2014 by the Principal Civil Judge and JMFC, Udupi.

2. Heard Sri.S.K.Acharya, learned counsel appearing on behalf of Sri.Vigneshwara U., learned counsel for the petitioner, Sri.B.S.Venkata Narayana, learned counsel appearing for Sri.Madhukar Deshpande, learned counsel for the respondent and meticulously perused the material available on record.

3. The respondent/plaintiff filed a suit in OS.No.92/2014 against the petitioner/defendant seeking a decree for possession of the plaint 'A' schedule property



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along with other consequential reliefs. In the said suit, the petitioner/defendant filed a written statement on 21.06.2014. During the course of proceedings, on 26.02.2021, the petitioner/defendant filed an application under Section 114 of the Transfer of Property Act, 1882 (for short 'the Act') read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), praying that the respondent/plaintiff be directed to accept the alleged arrears of rent and relieve the petitioner/defendant against the forfeiture and thereupon the petitioner/defendant shall hold the property as if the forfeiture has not occurred and to grant such other reliefs. The said application was opposed by the respondent/plaintiff. The trial Court, under the impugned order dismissed the application.

4. The primary contention of the learned counsel for the petitioner/defendant is that in the written statement, the petitioner/defendant had specifically stated that he has been paying the rent regularly to the



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respondent/plaintiff, but there is no practice of issuing a receipt on payment of rent and there are no arrears of rent as falsely claimed by the respondent/plaintiff. The petitioner/defendant further stated that without prejudice to his contention, he is ready to pay the rent. Even the same stand was taken in the affidavit accompanying the application, wherein it was also averred that the lease between the parties was for a period of 99 years, and before expiry of the lease and in the absence of any violation of the terms of the lease, the suit came to be filed. Instead of reiterating the dates and events of the proceedings, it would be appropriate to extract paragraph Nos.10 and 11 of the impugned order, which indicate the dates and events of the proceedings conducted before the trial Court. Paragraph Nos.10 and 11 are extracted herein below:

"10. With the reference of above referred provision, it is just to analyze the chronological events that occurred in the present suit. The suit summons to the defendant was served personally and on 3.04.2014 itself, the defendant has appeared



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through his counsel. On 21.06.2014 the written statement has been filed. The matter was then posted for hearing under Order 10 and Sec.89 of C.P.C. The order sheet discloses that on 20.08.2014 under the submissions of respective parties regarding no chance of settlement, the matter was posted for framing of Issues. The Issues were framed on 8.6.2015 and the Issue No.6 has treated as preliminary Issue which was framed regarding the valuation for the purpose Court Fee and jurisdiction. The said Issue No.6 was disposed off on merits on 12.3.2019. Thereafterwards, the G.P.A., holder of the plaintiff has got himself examined as P.W.1 on 5.4.2019 and when the case was posted for the cross-examination, the applicant/ defendant after seeking several adjournments had filed I.A.No.3 on 26-09-2019 under Order 14 Rule 5 of C.P.C. seeking for framing of an additional issue regarding the maintainability of the suit itself and to treat the same as preliminary Issue. The said application was disposed off on merits on 13.5.2020. Subsequently, when the case was posted for the cross-examination of P.W.1, the learned counsel for the applicant/ defendant had sought for time stating that the process of settlement is in progress. Finally, as the parties have not reported settlement, this Court directed the applicant/ defendant to go on with the cross-examination and since the applicant/ defendant failed to cross examine the P.W.1, the cross-examination was taken as nil and the matter was set down for defence evidence. It is at this stage, the present application has been moved.



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11. *As per the provisions under Sec.114 of the Transfer of Property Act, the applicant/ defendant ought to have moved the present application at the earliest point of time i.e. at the hearing of the suit. The term "at the hearing of the suit" can be termed as before the actual commencement of the trial. With reference to the above mentioned chronological events, there was an ample opportunity for the applicant/ defendant to move the present application at the hearing of the suit itself. There was no any such attempt appears to have been made by the applicant/ defendant to move the said application within a reasonable time. It is also essential to note that in Para No.4 of the written statement the applicant/ defendant has taken a specific defence that there are no arrears of rent to be payable to the opponent/ plaintiff as claimed under the present suit. It is also asserted that without prejudice to the above said contention, the applicant/ defendant is ready to deposit alleged arrears of rent into the Court or under the directions of this Court to pay the same to the opponent/ plaintiff itself. Though such a specific defence is taken in the written statement by the applicant/ defendant, but he has neither deposited any arrears of rent before the Court nor paid to the opponent/ plaintiff. Nothing has also been explained for not taking steps in that regard at the appropriate time."*

5. The aforesaid dates and events make it clear that the respondent/plaintiff had filed the suit for possession in the year 2014. The petitioner/defendant



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entered appearance upon service of summons. Thereafter, numerous applications were filed. The trial Court considered those applications on merits and passed appropriate orders including the issues with regard to the maintainability of the suit. The respondent/plaintiff was examined as PW1 and the matter was posted for cross-examination. At that stage, after substantial number of adjournments were sought by the petitioner/defendant on the ground that the settlement talks were in progress and finally when the Court declined to adjourn the matter further, an application was filed under Section 114 of the Act seeking the aforesaid prayer.

6. The trial Court, taking note of the conduct of the petitioner/defendant has recorded a clear finding that the application ought to have filed at the earliest stage of the proceedings and that no such attempts were made. The word "at the hearing of the suit" referred in Section 114 of the Act does not mean that the application can be



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entertained at the fag end of the proceedings or during the course of recording the evidence. I do not find any error or perversity in the impugned order calling for interference.

7. It is also to be noticed that one Mrs.Velthoria Sequiera, another tenant under the same respondent/plaintiff, against whom the proceedings were initiated before the trial Court had filed a similar application, which came to be rejected by the trial Court. The said order was assailed before this Court in WP.No.30053/2019. This Court, vide order dated 16.03.2021 dismissed the said petition by taking note of the Section 114 of the Act and the decision of the Hon'ble Supreme Court. The relevant paragraph Nos.3(f) to 3(k) of the said order are extracted herein below:

"f) It is pertinent to reproduce the text of Section 114 of the T.P. Act reads as under:

"114. Relief against forfeiture for the non-payment of rent - *Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or*



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tenders to the lessor the rent in arrears, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

*This provision enacts the rule of equity, where a lease of immovable property has been determined by forfeiture on the ground of non-payment of rent and the lessor files a suit for ejectment, the court has discretion to relieve the lessee of the consequences of such forfeiture, if **at the hearing of the suit** he pays or tenders the rental arrears with interest and costs, or furnishes such security as the court thinks fit; this provision is bit in variance with the English law inasmuch as there, equity can be invoked not only during the pendency of the suit but also within six months of the execution of the decree of ejectment by virtue of sec.210 of Common Law Procedure Act, 1852, as it then was; the relief under this section can be granted to the lessee even at the appellate stage, if other conditions are complied with vide Apex Court decision in LALA PRADUMAN KUMAR VS. VEERENDRA GOYAL, LAWS (SC) 1969-3-30.*

(g) The text & context of Section 14 require bona fide on the part of the tenant who has been remaining in arrears of rent; if that is lacking, a tenant cannot be permitted to seek refuge under the umbrella of this provision; otherwise this provision runs the risk of being used as an instrument of unconscionability to



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defeat the accrued right of re-entry accruing to the landlord; in deciding whether there is bona fide, facts & circumstances of the case need to be kept in view; the Apex Court in NAMDEO LOKMAN LODHI Vs. NARMADA BAI, 1958 SCR 1009 observed as under:

"... in exercising the discretion (under Section 114 of the Transfer of Property Act) each case must be judged by itself; the delay, the conduct of the parties and the difficulties to which the landlord has been put should be weighed against the tenant. ...It is a maxim of equity that a person who comes in equity must do equity and must come with clean hands; if the conduct of the tenant is such that it disentitles him to relief in equity, then the court's hands are not tied to exercise it in his favour."

*(h) In the case at hands, the petitioner lacks bona fide as rightly held by the court below because she has filed the application in Form-7A seeking grant of the land under Section 77A of the Karnataka Land Reforms Act, 1961 as amended; nothing prevented her even then, from making payment of arrears of rent particularly when the rate of rent is apparently frugal ie., **less than Rs.5/- per month**; even rental arrears are equally frugal ie., about Rs.300/ or so, in all; despite that the petitioner chose to remain in arrears, admittedly having built a huge building worth more than Rs. 20 Lakh, according to her own estimation; this shows the incongruity on the part of the petitioner in somehow squatting on the property of the respondent without complying with the agreed covenants of tenancy.*



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(i) The decision in LALA PRADUMAN KUMAR supra, relied upon by learned counsel for the petitioner does not come to his aid, it's facts being miles away from those of the case at hands; there was no lack of bona fide on the part of the tenant in that case; therefore, relief against forfeiture of tenancy was accorded by the courts in their discretion to the said scrupulous tenant and that came to be affirmed by the Apex Court as well; a perusal of the decision shows that the tenant had remained in arrears only for a short period of two years unlike here; he had promptly made the payment of arrears and much more money, than due; there was no culpable conduct attributable to him, which demonstrably lies at the threshold of the petitioner herein, as dealt with in the succeeding paragraph; it has been said by Lord Hallsbury more than a century ago in Quinn Vs. Leathem, 1901 A.C. 495, 506, that a case is an authority for the proposition it lays down in the given fact matrix and not for all that which logically follows from what has been laid down.

(j) The stand of the petitioner that after the amendment to the 1961 Act, the land has vested in the State, is no justification for not paying the rent; admittedly, she had not claimed occupancy by filing Form 7 u/s 48A of the Act added to this, these words are put into the mouth of the landlord, which sounds unusual & strange; a tenant should conduct himself consistent with the vinculum juris of tenancy and comply with the covenants thereof; he should not do anything repugnant thereto; in the instant case admittedly, petitioner has applied for the grant of tenanted property by filing Form 7A u/s.77A of the Act;



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(k) It is true that Section 114 of the T.P. Act gives right to apply for such a grant; merely because a tenant can so apply, it cannot be readily inferred that his act of remaining in arrears of rent on that ground should be treated as bona fide; an act contrary to law can never be bona fide; however, an act which is not contrary to law may still lack bona fide, depending upon the circumstances of a case; for an act being bona fide, one has to show that it is done in good faith ie., with honesty, sincerity & genuineness, and without any element of culpability; from this inarticulate premise, the learned judge of the court below opined against the petitioner 'thou art weighed and found wanting'; a writ court exercising a limited supervisory jurisdiction constitutionally vested under Article 227 cannot run a race of opinions with the court below which in its discretion exercised in accordance with the rules of reason & justice, has denied relief to the unscrupulous petitioner.

In the above circumstances, this writ petition being devoid of merits is liable to be dismissed, and accordingly it is, costs having been made easy.

The Registry to transmit the amount in deposit to the court below forthwith, for holding the same subject to outcome of the suit."

8. Keeping in mind the interpretation of the Section 114 of the Act by this Court as well as by the Hon'ble Supreme Court, I do not find any error in the order of the trial Court calling for interference in the



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present petition. Accordingly, the writ petition is devoid of merits and the same is ***rejected***.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 21