



A.No.2591 of 2023

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in

C.S.No.88 of 2023

**Reserved on
14.06.2023**

**Delivered on
26.06.2023**

K.KUMARESH BABU,J.

The instant application had been filed by the applicant/plaintiff seeking for a direction invoking the provision of Order 38 Rule 5 of CPC to direct the respondent herein to furnish security to the value of the suit claiming for a sum of Rs.2,26,00,000/- within the stipulated time fixed by this Court.

2.Mr.G.R.M.Palaniappan, learned counsel for the applicant would submit that the judge's summon schedule property had been leased out to the first respondent by way of registered lease agreement, dated 29.05.2014. He would submit that as per the lease agreement, the first respondent would be liable to pay a sum of Rs.5,75,000/- per month as rent for the demised premises from 01.05.2017 to 30.04.2020. He would further submit that the first respondent had been paying the monthly rents till March 2019 as per the registered lease agreement. He



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would further submit that the first respondent by letter dated 05.02.2019 claiming that due to demonetization and implementation of GST, there was a huge drop in the business and therefore unilaterally had taken a decision to surrender the first and second floors of the building and intended to retain the possession of the ground floor for running the business for which the demised property was leased out. He would further contend that the first respondent had unilaterally fixed a sum of Rs.2,00,000/- per month for the ground floor. He would submit that the said proposal was not accepted by the applicant. In spite of the non-acceptance by the applicant, the respondent failed to pay the agreed lease rentals to the applicant and the said cheque amount for a sum of Rs.2,00,000/- had been returned by the applicant. He would further submit that the lease rental was not fixed floorwise under the lease agreement, dated 29.05.2014 and the lease rental was only for the entire building. He would also submit that as per the terms of the said lease agreement, a renewal can be possible only for the entire demised premises and not for part of the demised premises and in such circumstances, he would submit that the respondent cannot take an unilateral decision to retain the portion of the property and hand over



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certain other portions of the property. He would submit that if it was the desire of the first respondent, the first respondent should first vacate and hand over the demised premises and thereafter would seek lease of the ground floor alone. He would submit that the first respondent had failed to pay the lease rentals from March 2019 and till the date of filing of this Application, there was arrears for a sum of Rs.2,26,00,000/- after adjusting the advance hold and for the recovery of the said amount, the present suit had been filed.

3.He would further submit that the first respondent had been taking steps to sub-lease the property which has not been agreed upon in the agreement and therefore, they have also taken on further application for injunction in A.No.409 of 2023, as the applicant apprehended that the first respondent is trying to sub-lease to the second respondent. In the said application, order had been modified by this Court in its order dated 18.05.2023, restricting the second defendant from taking possession of the property. In such circumstances, he would submit that the applicant also apprehends that the first respondent may vacate the property and it would be difficult for him to recover the said amount. In



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such circumstances, he requested this Court to direct the first respondent to furnish security for the Suit claim for a sum of Rs.2,26,00,000/-.

4.Mr.G.Vairava Subramanian, learned counsel appearing for the first respondent would vehemently oppose the said application. He would submit that the first respondent had already paid the rental advance for a sum of Rs.50,00,000/- for taking on lease the demised premises initially for a period of six years and for an additional period of another six years. He would contend that he had taken the entire building on lease only at the suggestion made by the applicant or otherwise he would not have taken the entire building on lease. He would further submit that the applicant had not provided the amenities available to the respondent, he had decided to hand over the possession of the first and second floors and to reduce the rent to Rs.2,00,000/- only for the ground floor taking into account the proportionality of the agreed lease amount and the portion that is to be occupied. He would also further submit that inspite of repeated letters enclosing the rental cheques, the applicant had refused to accept the same and had returned the same. He had also requested the applicant to provide the bank



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details, so that he can directly transfer the leased rentals. He would submit that he had also taken to me through various communications between the applicant and the first respondent with regard to the handing over the first and second floors to the applicant. He would further submit that he do not wish to continue the lease in respect of the first and second floors. He would submit that the applicant has his office in the third floor, which he accessed by crossing the first and second floors and the applicant himself had put up a board displaying that the property is available for rent and therefore, he would submit that the applicant had taken over possession of the first and second floors and agreed to the proposal made by the first respondent. He would further submit that the first respondent cannot be taxed with higher rent for the portion which is not in his occupation. He would further draw the attention of this Court to the proceedings filed by the applicant before the Rent Control Court, which had been dismissed as the tenancy, had not been produced before the Court. He would categorically submit that he only intends to retain the ground floor portion and he is not wanting to continue his tenancy in respect of the first and second floors. He would further submit that utmost he would be entitled to pay a sum



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of Rs.2,00,000/- on and from March 2019, as he has envisaged in his letter dated 05.02.2019, that he do not propose to continue with the tenancy of the first and second floors. Therefore, he would submit that the application as filed by the applicant is devoid of merits and requests this Court to dismiss the application.

5.I have considered the rival submissions made on either side and perused the materials placed on record.

6.It is an admitted case of the either parties that they had entered upon into an agreement of lease for leasing out the ground, first and second floors of the property, which has been morefully described to in the judge's summon. The claim of the applicant is that from March 2019, the respondent had failed to pay the rent.

7.On the contrary the respondent had stated that on 05.02.2019, he had issued a letter wanting to surrender the first and second floors of the demised property and would want to only retain the ground floor portion and he had unilaterally fixed a sum of Rs.2,00,000/- as rent. The respondent had not produced any document to substantiate that the



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applicant herein had consented to such a proposal. He had only relied upon the conduct of the applicant in accessing his office through the stairs from the ground floor and the board that had been kept by the applicant indicating the property is available for rent. Even to substantiate this averments, the respondent had not produced any document to show that by the conduct of the applicant there was a novation of the contract. Therefore, in my considered view that there is no novation of contract between the parties for the modification of the lease agreement. It is also pertinent to note that the agreement entered into between the parties which was registered in the year 2014, the period of lease was six years and therefore, the said lease agreement had expired in the year 2020. A clause has been provided in the rental agreement for renewal of the said lease. It is not the case of the first respondent that there was a renewal pursuant to the clause in the rental agreement.

8.He had relied upon a supplemental rental agreement, which had been entered into during the year 2013 for the period from 2020 to 2026, I am of the view that even in the said agreement, the demised portion



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was the entire ground, first and second floors with a monthly rental of Rs.7,50,000/- starting from 2020.

9.Having found that there was no novation of contract, *prima facie* I am of the considered opinion that the applicant is entitled to the agreed rent of Rs.5,70,000/- for the period from 2017 to 2020. The first respondent had continued to be in possession of the demised premises and therefore, *prima facie* the claim of the applicant for the relief sought for in the Suit is held to be genuine.

10.Further, the conduct of the respondent in unilaterally modifying the lease agreement to his whims and fancies do not agree well. Further even in the counter statement he has not made any statement of his financial stability. In the present case, he has admitted to drop in his business and therefore, in such view of the situation, I am also inclined to direct the first respondent to furnish security for a sum of Rs.2,26,00,000/- as sought for in the application. The first respondent shall furnish security within a period of six weeks from the date of receipt of a copy of this order.



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In fine, the Application in A.No.2591 of 2023 is allowed.

However there shall be no order as to costs.

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Pre-delivery Judgment in

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