

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

COMAP. No.56 OF 2021

BETWEEN:

WHOLCOM TRADING PRIVATE LIMITED
HAVING ITS OFFICE AT 199/1
HSR LAYOUT, SECTOR-1, AGARA VILLAGE
SARJAPURA ROAD, 2ND FLOOR, CABIN A
22ND MAIN ROAD, BEGUR HOBLI
BENGALURU - 560 102
REP. BY ITS MANAGING DIRECTOR
MR. BHADRAVATHI SATYANARAYAN GANESH ... APPELLANT

(BY SRI. G. KRISHNAMURTHY, SENIOR COUNSEL FOR
SRI. SIMHA DUTTA.S, ADVOCATE)

AND:

SRI. V. PRASAD
S/O LATE Y. VENKATAPPA
AGED ABOUT 49 YEARS
RESIDING AT NO.1/C
GIDDAPANAHALLI VILLAGE
SULIBELE HOBLI, HOSKOTE TALUK
BENGALURU RURAL DISTRICT-560 067 ... RESPONDENT

(BY SRI. ASHOK HARANAHALLI, SENIOR COUNSEL FOR
SRI. M.S.DEVARAJU, ADVOCATE FOR C/RESPONDENT-PH)

THIS APPEAL IS FILED UNDER SECTION 13(1A) OF THE
COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 104 AND
ORDER XLIII RULE 1(R) OF THE CPC 1908, PRAYING TO ALLOW
THIS APPEAL AND MODIFY THE ORDER DATED 25.02.2021 AND
SET ASIDE THE FOUR CONDITIONS IMPOSED BY THE HON'BLE X

ADDL. DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU THROUGH ORDER DATED 25.02.2021 ON I.A.NO.1 FILED UNDER ORDER XXXIX RULE 1 AND 2 OF THE CPC, 1908 IN COMM.O.S.NO.753/2021, IN THE INTEREST OF EQUITY AND JUSTICE.

THIS APPEAL COMING ON FOR ADMISSION AND HAVING BEEN RESERVED FOR ORDERS ON 08.04.2021, THIS DAY, **SURAJ GOVINDARAJ J.**, PRONOUNCED THE FOLLOWING:

J U D G M E N T

1. The Appellant is before this Court seeking modification of the order dated 25.02.2021 passed by the X Addl. District and Sessions Judge, Bangalore Rural District, Bangalore in his order dated 25.02.2021 on IA-3 filed under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 (for short 'CPC') in COM. OS. No. 753/2021 by setting aside the conditions imposed in the said order.
2. COM.OS. No. 753/2021 is filed by the Appellant herein seeking a declaration that the cancellation of the lease dated 18.06.2020 made and executed on 23.10.2020 registered as document No.HSK-1-05788-2020-21 is

void and not binding on the Plaintiff. An application under Order 39 Rule 1 and 2 had been filed seeking for an order of temporary injunction restraining the defendants therein or anybody acting on their behalf from creating any right, title or interest in the suit schedule property.

3. The suit schedule property is an office space measuring 2,01,706 sq.ft with common area of 1,45,560 sq.ft in a building constructed in property bearing No.119, Ekarajapura, Near Sun Pharma Factory, Hoskote-Siddiaghatta Road, Sulibele Hobli, Hoskote Taluk, Bengaluru Rural District, Bengaluru.

4. The case of the appellant/plaintiff is that:

4.1. The aforesaid property belongs to the Defendant, the Defendant having partially constructed a warehouse being desirous of leasing the same had approached a real estate agency, the Real estate agency had approached the Plaintiff to

take the said property on lease, the Plaintiff after inspecting the warehouse, was satisfied with the location and the structure of the warehouse, and as such, upon negotiation, a lease agreement came to be executed on 18.06.2020 whereunder the Plaintiff had agreed to pay a security deposit of Rs.1,17,99,300/- and a monthly rental of Rs.39,33,267/-.

- 4.2. The said security deposit was to be paid in three instalments of Rs.39,33,267/-, the first instalment was paid at the time of execution of the lease, which had been paid on 18.6.2020, the second instalment to be paid on completion of the work relating to installation of fire hydrant system and issuance of 'No objection certificate' and third instalment was to be paid on all necessary statutory compliance with the physical possession of the warehouse would be handed over to the Plaintiff.

4.3. Plaintiff contends that the lease agreement was signed and executed by the representative of Plaintiff viz., Prithvi Kowshik, who was the employee of the Plaintiff, who tendered his resignation on 12.09.2020.

4.4. While awaiting the compliance of the obligation by Defendant, the Plaintiff received a letter in July 2020 from some of the local villagers alleging that there are certain illegalities in the construction of the warehouse, there was an encroachment of certain properties, including a kaludari (footpath), as regards which a proceeding is pending in a Court of law.

4.5. On receipt of the said information/complainant, Plaintiff had approached Defendant seeking for an explanation towards which no proper explanation was issued by Defendant. It is alleged that the Plaintiff thereafter on enquiry

became aware of two different plan sanctions obtained by Defendant, one from the local panchayat and the other from Hoskote Planning Authority, certain other litigations between the Defendant and neighbouring landowners and as such, the Plaintiff sought for further clarification from the Defendant. As regards this also, no information or clarification was received.

4.6. At this juncture, Plaintiff came to know or became aware of the fact that the Defendant in conspiracy with the former employee of the Plaintiff viz., Mr.Prithvi Kowshik, who resigned on 12.09.2020, had got executed a cancellation of the lease deed on 23.10.2020 and got the same registered in the office of the jurisdictional sub-registrar's office.

4.7. In the said cancellation agreement, there was a mention of Demand Draft bearing No;. 970671

drawn on Canara Bank, Hokote having been handed over to the said Prithvi Kowshik.

4.8. The cancellation of lease deed being illegal and impermissible, the Plaintiff coming to know of the fact that the Defendant was seeking to defraud the Plaintiff of its legal rights under the registered lease agreement had filed COM. OS. No. 753/2021 seeking a declaration that the cancellation of the lease deed is void and not binding on the Plaintiff.

5. On service of notice, Defendant entered appearance and denied all the allegations made by Plaintiff. The Defendant contended that

5.1. Mr.Prithvi Kowshik authorised signatory on behalf of Plaintiff, had approached Defendant for cancellation, and it is in that background the agreement has been cancelled.

5.2. Be that as it may, the petitioner does not have any objection to cancel the cancellation subject to Plaintiff making payment of the due amounts and taking over the property and making payment of the due rentals thereon.

5.3. As regards the other allegations regarding encroachment of the property and or the plan sanctions, the same was denied by the defendants.

5.4. It was contended by Defendant that Defendant has been ready and willing to perform his part of the obligations. It is in fact the Plaintiff who was unable to perform its obligation, that the Plaintiff did not have the wherewithal to go ahead with the lease agreement, they did not have the solvency or financial ability to comply with the same. It is for this reason the lease deed came to be cancelled.

5.5. Defendant, having borrowed a huge amount of monies from third parties, is required to return the said monies, and it is for this reason the Defendant was looking out for prospective lessees. If Plaintiff were to go ahead with the lease and make payment of the amounts due, Defendant would not deal with the property and was ready to restore the lease deed dated 18.06.2020 and make available the same to Plaintiff for its use. On similar grounds, objections to interlocutory application was also filed.

6. After hearing the parties, the trial Court came to a conclusion that the Plaintiff had made out a prima facie case in its favour and also came to a conclusion that there are doubtful circumstances surrounding the execution of cancellation of lease deed on 20.03.2020; hence, the balance of convenience was also held to be in favour of the Plaintiff, but, however, the trial Court

also recognised the fact that granting of an injunction as sought for is likely to cause loss to the Defendant. In view thereof, the trial court allowed the application for grant of a temporary injunction by imposing the following conditions:

- 6.1. *The Plaintiff shall return DD No.970671 dated. 23.10.2020 for Rs.39,33,267/- to the defendant.*
- 6.2. *The Plaintiff shall deposit 2nd and 3rd installments of security deposit totally amounting to Rs.72,66,534/- before the Court.*
- 6.3. *The Plaintiff shall deposit agreed rent of the suit schedule property i.e. Rs.39,33,267/- per month before the Court from 2.1.2021 till 28.02.2021.*
- 6.4. *The Plaintiff shall continue to deposit agreed monthly rent as and when it becomes due on or before 5th day of succeeding month till disposal of the suit.*

On such return of DD, the Defendant is at liberty to get it cancelled and to use the amount. On such deposit of amount as per condition No.2 & 3, same shall be kept in F.D. in any nationalised bank in the name of the Court and the succeeding party can claim the rent portion with interest. If the suit schedule property is occupied by the Plaintiff, the security deposit amount and its interest shall go to the Defendant or otherwise, it will be refunded to the Plaintiff.

The Plaintiff shall comply the above condition no.1 to 3 on or before next date of hearing. If he fails to

comply any of the conditions, T.I. stands automatically cancelled.

7. It is aggrieved by the same that Plaintiff is before this Court on appeal seeking to set aside the conditions imposed in the order as extracted hereinabove.
8. Sri.G.Krishnamurthy, learned Senior counsel for the Appellant, would submit that:
 - 8.1. The Appellant has filed a suit seeking for a declaration that the cancellation of the lease deed is bad in law. The trial Court having come to a conclusion that a prima facie case is made out by the Plaintiff, balance of convenience lies in favour of the Plaintiff and that the hardship that may be caused to the Plaintiff cannot be compensated in terms of money, it was not permissible for the trial Court to impose the conditions so imposed by the trial Court.
 - 8.2. The Appellant is only aggrieved by the conditions, the conditions not being required to be so imposed, he submits that the said conditions are

required to be deleted from the order dated 25.02.2021.

- 8.3. The Demand Draft dated 23.10.2020 has not been received by the Plaintiff inasmuch as the said Demand Draft is stated to have been handed over to Sri.Prithvi Kowshik on 23.10.2020, when, in fact, the said Prithvi Kowshik had resigned from the services of the Plaintiff on 12.09.2020 itself. Since Sri.Prithvi Kowshik is no longer in the employment of the Plaintiff, and the Demand Draft had been handed over to him post his resignation; the Plaintiff is not in a position to obtain the Demand Draft from Sri.Prithvi Kowshik and hand it over to Defendant. Be that as it may he submits that the Defendant being in touch with said Prithvi Kowshik, it is the Defendant who can approach said Prithvi Kowshik and obtain the Demand Draft. The Appellant has neither

received the Demand Draft nor encashed the same.

8.4. The Plaintiff is ready to deposit the second and third instalments of the security deposit; however, imposition of the condition of payment of rentals every month without being able to make use of the said premises would cause grave and irreparable harm to the Plaintiff. The Defendant has not complied with the terms and conditions of the lease deed; without such compliance, the Plaintiff is unable to take possession of the property.

9. Per contra, Sri. Ashok Haranahalli, learned Senior counsel appearing for the respondent-defendant, would submit that:

9.1. The respondent-defendant is still ready and willing to hand over the property, subject matter of the lease agreement, to the Plaintiff by restoring

the cancelled lease agreement. The Plaintiff, if so interested, can always take possession of the property and make payment of the due amounts.

- 9.2. He further submits that the Defendant has complied with all the obligations, has put up construction by investing huge amounts of money, the only manner in which the interest of the Defendant can be safeguarded is by way of conditions imposed by the trial Court. If the Plaintiff were to fail to establish its contentions, more so when the Defendant is willing to restore the Lease Deed and the suit is dismissed, then the Defendant would neither have been able to make use of his property, nor rent the property and furthermore, the Defendant would not have earned any money out of the property during the interregnum, The trial Court has therefore rightly imposed the conditions as done.

9.3. As regards the Demand Draft dated 23.10.2020, he submits that the Defendant has obtained Demand Draft from its Bankers and given it to Sri. Prithvi Kowshik, representative of the Plaintiff. Said Demand Draft is made out in the name of the Plaintiff. Therefore, the Plaintiff cannot now contend that condition No.1 cannot be complied with. It is for the Plaintiff to obtain the demand draft from its employee and return it to the Defendant.

9.4. If the Plaintiff neither wants to take possession of the land and building nor make payments of the amounts due in the lease deed, the interest of Defendant would suffer irreparably, and there is no manner of the Defendant being able to make good the losses which would be caused to the Defendant, as such he submits that the appeal as filed may be dismissed.

10. Heard Sri.G.Krishnamurthy, learned Senior counsel for Sri.Simhadutta.S, learned counsel for the Appellant and Sri.Ashok Haranahalli, learned Senior counsel for Sri.M.S.Devaraju, learned counsel for the respondent. Perused papers.

11. The points that would arise for our determination are:

- i) **Whether while granting interim injunction on an application filed under Order 39 Rule 1 and 2 CPC, the Commercial Court can impose conditions?**
- ii) **Whether the conditions imposed by the Commercial Court are proper and correct or do they require interference at the hands of this Court?**
- iii) **What order?**

12. **Answer to Point No.1: Whether while granting interim injunction on an application filed under Order 39 Rule 1 and 2 CPC, the Commercial Court can impose conditions?**

12.1. The facts as stated above are not in dispute except firstly Plaintiff alleging that the Defendant has not discharged all its obligations whereas the defendants alleging that it has discharged all the obligations; secondly, that the cancellation of the lease deed was got executed through Sri. Prithvi Kowshik, who is no longer an employee of the Plaintiff; and thirdly that the conditions imposed are onerous, ought not to have been imposed.

12.2. The execution of the lease agreement, registration of the lease agreement, the payments required to be made under the same are not in dispute.

12.3. As stated earlier, the agreement between the parties was to the effect that the Defendant would construct the building, obtain necessary permissions and licences and lease it out to the Plaintiff. The construction made is not in dispute; however, the Plaintiff contends that Defendant

has not obtained necessary permissions and licences and as such, the Plaintiff is unable to take possession of the property.

12.4. Suit has been filed seeking for a declaration that the cancellation of the lease deed is void and not binding on the Plaintiff, and in the said suit, an injunction is sought for restraining the defendants from creating any right, title and interest in the suit schedule property, thereby implying that the property is required to be maintained in status-quo without the Defendant being able to use the property by way of letting it out to any one else or selling the property. If the Plaintiff wants an equitable relief, he must do equity by complying with his part of the agreement by depositing the monthly rentals. But, the Plaintiff is not willing to do so.

12.5. A Court while dealing with a matter of granting an injunction against the Defendant restraining the

Defendant from doing any particular act, if the said injunction order were to have the effect of causing any harm, injury or loss to the Defendant even though on a comparative analysis the harm, loss and injury caused to the Plaintiff may be more than that which would be caused to the Defendant, it is but required that the said harm loss and injury that may be caused to the Defendant on account of passing of an order of injunction be compensated in the event of the Plaintiff failing in his suit.

12.6. This being so since if not for the order passed by a Court of law there would be no loss, harm caused or likely to be caused to such Defendant.

The Apex Court in the case of ***Wander Ltd. And Another –v- Antox India P.Ltd.*** [(1990) 1 SCC 727] at para 5 has held as under:

“5. Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The

Court, at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The object of the interlocutory injunction, it is stated is to protect the Plaintiff against injury by violation of his rights for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience lies". The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The Court also, in restraining a defendant from exercising what he considers his legal right but what the Plaintiff would like to be prevented, puts into the scales, as a relevant consideration whether the Defendant has yet to commence his enterprise or whether he has already been doing so in which latter case considerations somewhat different from those that apply to a case where the Defendant is yet to commence his enterprise, are attracted."

12.7. The Apex Court in the case of ***M/s Gujarat Pottling Co.Ltd. & Others –v- The Coca Cola & Co. & Others***–[(1995) 5 SCC 545] at para 43 has held as under:

43. *The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests — (i) whether the Plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the Plaintiff; and (iii)*

whether the Plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the Plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the Plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the "balance of convenience" lies. [See: Wander Ltd. v. Antox India (P) Ltd. (SCC at pp. 731-32). In order to protect the Defendant while granting an interlocutory injunction in his favour the Court can require the Plaintiff to furnish an undertaking so that the Defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.

- 12.8. Thus, while granting an order of injunction, it is the bounden duty of any Court of law to consider the comparable damage, loss or injury that may be caused both to the Plaintiff and/or the Defendant and it would be the duty of the Court to protect the Defendant from any losses which may

be caused on the Plaintiff failing in the suit, such losses being caused on account of the injunction issued on an application being made by such a plaintiff.

- 12.9. We cannot agree with the contentions of Sri.G.Krishnamurthy, learned Senior counsel that since prima facie case, the balance of convenience and irreparable injury has been held to be in favour of the Plaintiff, injunction order ought to have been issued without imposing any conditions. As stated earlier, it may be that the irreparable comparative injury caused to the Plaintiff is greater than that which may be caused to the Defendant, however, when there is any injury which is likely to be caused to the Defendant, it would but be required for a Court of law while granting an order of injunction to impose such conditions as may be necessary to safeguard the interest of the Defendant against

whom an injunction order is passed, in the event of the Plaintiff not succeeding in the suit.

12.10. **We, therefore, answer Point No.1 by holding that while granting an interim injunction on an application filed under Order 39 Rule 1 and 2 CPC, the Commercial Court can impose conditions on the Plaintiff while granting an order of injunction so as to protect the Defendant in the event of the Plaintiff not succeeding.**

13. **Answer to Point No.2: Whether the conditions imposed by the Commercial Court are proper and correct or do they require interference at the hands of this Court?**

13.1. The subject matter of the contract has been explained hereinabove. Suffice it to say that there was a lease deed entered into between the Plaintiff and Defendant under the said lease deed; there were various obligations to be performed by both the parties; the defendant-owner was to construct and hand over the

premises after obtaining the necessary permission. Plaintiff was required to make a deposit of a certain security amount and make payment of the monthly lease rentals.

13.2. Though Plaintiff alleges that the Defendant has not complied with its obligations, the Defendant contends that the Defendant has complied and is ready to hand over the constructed area to Plaintiff. This is again refuted by Plaintiff.

13.3. The veracity of these facts cannot be ascertained at the Interlocutory stage and the same would require a trial to be held and these aspect to be determined. It is in such circumstances, aforesaid conditions have been imposed by the trial Court while granting an order of injunction in favour of the Plaintiff restraining the Defendant from creating any encumbrance or dealing with the property, subject matter of the lease.

13.4. Thus it cannot be disputed that on the passing of an order of injunction, the Defendant would be unable to make use of the property which the Defendant would normally have been able to make use of. Admittedly, the rentals per month for the property has been agreed upon between the parties. Thus, the loss which may be caused has been determined and agreed upon by the parties. It is for this reason that the trial Court, while granting an order of injunction in order to protect the interest of the Defendant, has imposed the conditions.

13.5. The first condition as regards return of the Demand Draft as on today has been rendered academic inasmuch as the Demand Draft dated 23.10.2020 has spent itself and has expired. The Defendant, therefore, would be in a position to seek for cancellation of the said Demand Draft and remittance of the amount into its accounts, if

there are any documents required to be executed by the Plaintiff like a letter etc., the Plaintiff is directed to execute such documents to enable the Defendant to cancel the Demand Draft No.970671 dated 23.10.2020 and for remittance of the amount covered thereunder into its account.

13.6. The second condition as regards deposit of the second and third instalments of the security deposit is in terms of the lease deed entered into between the parties; the trial Court has only directed to deposit the said amounts in the Court, needless to say, the same would not, for now, be made available to the defendants. Hence, we find no infirmity in this condition also.

13.7. The third and fourth conditions are as regards the deposit of the monthly rentals as agreed upon under the lease deed. This being for the reason

that Defendant would not be able to earn from the said property, while Defendant is prevented by order of injunction from leasing or dealing with the property. If not for the order of injunction the Defendant would have been in a position to lease out the property and earn rentals, though Defendant has agreed to reinstate the lease deed, the Plaintiff has expressed its inability to take possession of the property on account of the Defendant not having discharged its obligations. Whether each of the parties has discharged its obligation or not would be decided after completion of the trial. It is to secure the interests of both parties that the third condition is imposed. We find no infirmity in this condition also.

- 13.8. However, taking into consideration that as per the order of the trial Court the said amounts have to be deposited by the next date i.e. 17.04.2021 and the Plaintiff has been before this Court from

22.03.2021 prosecuting the above appeal, we are of the considered opinion that the time to comply with the said condition would be required to be extended and as such, the same is extended by a further period of one month from 17.04.2021. The amounts stated in condition No.2, 3 and 4 to be deposited by the Plaintiff by 17.05.2021. Needless to state that if such amounts are not so deposited by that date, the interim order of injunction granted by the trial Court will automatically stand vacated. On such deposit being made, the same would be kept in a fixed deposit initially for a period of one year and renewed from time to time until the resolution of the matter. In the event the order of injunction stands vacated on account of non-compliance of the above conditions, if any third party rights are created by Defendant, the same will be subject to the final outcome of the suit.

14. **Answer to Point No.3: What order?**

14.1. The order of the trial Court dated 25.02.2021 is modified as under:-

14.1.1. The order of temporary injunction restraining the Defendant from creating any third party rights is confirmed.

14.1.2. There would be no requirement for the Plaintiff to return DD No.970671 dated 23.10.2020 for a sum of Rs.39,33,267/- to the Defendant.

14.1.3. The Defendant may however approach the concerned Bank for cancellation of the said DD and credit the amount covered under the said DD into its account. In this connection, if any documents are required to be executed by the Plaintiff as required by the Bank, the Plaintiff shall execute such documents.

- 14.1.4. The second condition requiring the Plaintiff to deposit the second and third installments of security deposit totally amounting to Rs.78,66,534/- remains unaltered.
- 14.1.5. The third condition requiring the Plaintiff to deposit the agreed rent of the suit schedule property i.e., Rs.39,33,267/- per month from 02.01.2021 till 28.02.2021 remains unaltered.
- 14.1.6. The fourth condition requiring the Plaintiff to deposit the further monthly rent as and when it becomes due on or before 5th day of succeeding month till disposal of the suit remains unaltered.
- 14.1.7. On deposit of the aforesaid amounts, the same shall be remitted into a fixed deposit in any of the nationalised Bank in the name of the Court and renewed from time to time until the disposal of the suit.

- 14.1.8. The succeeding party shall be entitled to receive the said amount along with interest.
- 14.1.9. In the event of the deposits not being made by Plaintiff, the injunction order will stand vacated, any third party rights created by the Defendant would however be subject to the result of the suit.

With the above observations, the appeal is partly allowed.

No order as to costs.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**