

Sri. Anand Reddy L vs Mrs. Sakina Ahmed on 28 September, 2022

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Com.OS.No.136/2021

IN THE COURT OF THE LXXXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT):
BENGALURU CITY. (CCH-89)

Present: Sri. P.J. SOMASHEKARA, B.A.,LL.M,
LXXXVIII Addl. City Civil & Sessions Judge
Bengaluru City.

Dated this the 28th day of September 2022

Com.OS.No.136/2021

Plaintiff: 1. Sri. Anand Reddy L.,
S/o late Lakshman Reddy,
Aged about 56 years,
Proprietor of SVL Trading Corporation.

2. Smt. Vijaya M., W/o Anand Reddy L.,
Aged about 46 years,

Both are R/at No.174, I Main, 2nd Cross,
5th Block, HBT Layout, Bangalore - 43.

(By Sri. V.A., Advocate)

-vs-

Defendant : 1. Mrs. Sakina Ahmed,
Proprietor of Needle Eye Boutique,
No.4c-162, 2nd Floor, Kasturinagar,
Bangalore - 43. And also at

Mrs. Sakina, Ahmed, W/o Aga Ahmed Ali,
Aged about 40 years, R/at No.356,

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Com.OS.No.136/2021

6 Main, 2 Cross, NGEF Layout,
th nd

Sadananda Nagar, Bangalore - 38.

2. Sri. Vijay B Ramnani,
(Deleted as per this Hon'ble Court's
Order dated 21.10.2021 on I.A.No.II

(By Sri. S.A., Advocate)

Nature of the suit	Ejectment suit		
Date of institution of the suit	02.02.2021		
Date of commencement of recording of the evidence	03.01.2022		
Date on which the judgment was pronounced	28.09.2022		
Total duration	Year/s	Month/s	Day/s
	1	7	22

JUDGMENT

This is a suit filed by the plaintiffs against the defendants, directing the defendants to quit, vacate and deliver the vacant possession of the schedule property in their favour and to direct the defendants to pay the arrears of monthly rentals, electricity charges, water charges and amenity charges thereon as agreed to in the lease agreement of attornment dated 14.10.2019 and to pay interest on the unpaid refundable security deposit, arrears of rentals and other charges from the respective due till its payment and to pay rentals and other charges for the period of unauthorized occupation after termination of the lease by efflux of time with effect from 02.03.2020 and other relief as this court deems fit.

2. Nutshell of the plaintiffs case are as under:

The plaintiffs in their plaint they were alleged that they are the absolute joint owners of commercial building bearing No.4C-162 Sangeetha Pearl situated at East of NGEF Layout, 2nd Main, Kasturinagar, Bangalore. The defendant is a tenant under them in respect of 2nd floor, 3rd floor, 4th floor and shop with store room in the ground floor portion of the building which is more fully described as schedule property. The 1st defendant had originally entered into a lease agreement dated 02.04.2019 with Sri.Vijay B. Ramnani, the 2nd defendant for a period of 11 months and the said lease period was expired on 01.03.2020. The 1st defendant has paid a sum of Rs.13,25,000/- towards refundable security deposit in terms of the lease agreement dated 02.04.2019. The monthly rental agreed to be paid was fixed at Rs.2,61,266/- on or before 5th of every calendar month, apart from monthly payment of electricity charges, water charges and maintenance charges as per the terms of agreement. It was also agreed that in case of any delay in reimbursement of any charges, the 1st defendant is liable to pay interest @ 12% p.a. apart from other conditions, if the 1st defendant fails to pay rental and amenities charges for one calendar month they can reenter and to take possession of the premises by providing a month's notice to lessee. During the interregnum 2nd defendant executed a sale deed dated 30.09.2019 in their favour which was came to be registered in the Sub-Registrar, Ulsoor, Shivaji Nagar, Bangalore and the ownership has been transferred in their favour. Prior to the

execution of the sale deed dated 13.09.2019, the 2nd defendant has intimated his tenants about the agreement of sale entered into by him and he is intend to sell the schedule property. The 2nd defendant had sent a communication dated 13.09.2019 through registered post to the 1 st defendant indicating that the entire building including portion of the building occupied by 1st defendant will be sold within 30 days and thereby provided an opportunity to the 1st defendant to either confirm her consent regarding the attornment of tenancy with the new proposed owner within 15 days. The 2nd defendant confirmed that only sum of Rs.5,83,521/- out of Rs.13,25,000/- shall be refunded as security deposit at the time of termination of the tenancy subject to other recoveries as provided in the agreement, since the balance amount being sum of Rs.7,41,479/- has been deducted from the security deposit towards the rental dues and other miscellaneous dues with mutual consent. There is also further statement that 1st defendant had acknowledged the arrangement vide letter dated 16.09.2019. It was also clarified that in case 1st defendant agrees to continue with tenancy, the other terms of the rental agreement dated 02.04.2019 would remain unchanged till the completion of tenancy period.

3. The plaintiffs in their plaint they further alleged that by virtue of the letter dated 16.09.2019 addressed to the 1 st defendant, 2nd defendant has informed the 1st defendant a sum of Rs.7,41,479/- remained unpaid and the said amount will be adjusted against the security deposit of Rs.13,25,000/-. The 1st defendant was also informed about the transfer of Rs.5,83,521/- to them on account of attornment endorsed by the 1st defendant and the 1st defendant has duly endorsed the said letter and by virtue of the letter dated 26.09.2019 the 2nd defendant transferred the security deposit amount of Rs.5,83,521/- deposited by Smt. Sakina Ahmed, Proprietor of Needle Eye boutique towards the lease of schedule property in relation to the rental agreement dated 02.04.2019, after deducting the dues owed by 1st defendant. The 2nd defendant transferred a sum of Rs.5,83,521/- in their favour vide cheque bearing No.627232 dated 01.10.2019 drawn on SBI, Kasturi Nagar, Bangalore.

Pursuant to change in ownership themselves and the 1 st defendant have signed the lease agreement on attornment dated 14.10.2019 in respect of the remaining lease period of 5 months commencing from 01.10.2019 till 01.03.2020 with the previously agreed terms and conditions as in the lease agreement dated 02.04.2019. The lease agreement on attornment, 1st defendant has acknowledged that out of security deposit of Rs.13,25,000/- originally paid to the 2 nd defendant and they have received only sum of Rs.5,83,521/-, the 1st defendant shall pay sum of Rs.7,41,479/- towards the balance outstanding refundable security deposit within 7 days from the date of execution of the lease agreement on attornment. Upon such payment agreed to treat a sum of Rs.13,25,000/- as the interest free refundable security deposit till date the 1st defendant has failed to pay the said deficit refundable security deposit to them.

4. The plaintiffs in their plaint further alleged that the lease agreement on attornment entered into between them the 1st defendant agreed to pay monthly rental of Rs.2,61,266/- on or before 5 th of

every calendar month, apart from monthly payment of electricity charges, water charges and maintenance charges as per the terms of agreement and also agreed in case of any delay in reimbursement of any charges the lessee is liable to pay interest @ 12% p.a. apart from other conditions agreement provided if the lessee/ 1 st defendant fails to pay rental and amenities charges for one calendar month re-enter and to take the possession of the premises by providing a month's notice to lessee/ 1 st defendant. The 1st defendant failed to pay the balance amount towards the security deposit, kept on reminding the 1st defendant to make the payment immediately, the 1 st defendant failed to pay monthly rentals, electricity charges, water charges and charges for other amenities in terms of the agreed terms, strangely the 1st defendant sublet the ground floor premises to run a hotel without even a communication to them. Therefore, by letter dated 07.01.2020 calling upon the 1st defendant to pay the balance refundable security deposit and other due amounts towards unpaid rentals, water charges and electricity charges borne by them on account of non-payment of the same by the 1 st defendant. The 1st defendant was called upon to vacate the schedule premises, since she has not complied with the terms of the lease. By letter dated 14.01.2020 they have requested the 1st defendant to pay the deficit interest free security deposit of Rs.7,41,479/- which was agreed to be paid within 7 days and to pay the arrears of rent and amenity charges amounting to Rs.7,79,428/- as on the date. Strangely without any intimation consent or authorization of them the 1st defendant has let out the shop with store room in the ground floor to 3rd party and authorized them to run a hotel in the name of Ahar Upahar, though the said portion was let out to the 1st defendant for use as store room purpose only, thus there has been other set of violation of the terms of the lease agreement.

5. The plaintiffs in their plaint they further alleged that by virtue of the email dated 20.02.2020 the 1 st defendant informed them the rental invoice, BESCO bill and water bill pertaining to January 2019 have not been received by her and requested them to send them immediately forward the invoice with request to pay the same on priority. Thus sent a reminder dated 12.03.2020 to the 1st defendant to pay the deficit security deposit of Rs.7,41,479/- to pay the arrears of rent and amenities charges of Rs.8,75,965/- as on the date and to immediately close the hotel Ahaar Upahar in the ground floor. The 1st defendant sent a reply admitting to pay the deficit security deposit of Rs.7,41,479/- within April 2020 and admitting to the subletting of the ground floor premises to run hotel. The 1 st defendant claimed that the previous owner/ 2nd defendant had consented to sublet the ground floor premises as regards the rental dues. The 1 st defendant admitted the arrears and agreed to pay the same by March 2020. The reply sent by the 1st defendant was received by them on 16.03.2020. That on 21.03.2020 they have denied the allegations regarding the delay in sending the invoices and also subletting since the same was not communicated or discussed with them at the time of attornment of lease. The 1st defendant admitted in reply sent on 16.03.2020 that they have stopped the hotel since 6 months and the 1 st defendant has been trying to mislead them. Immediately realizing that the 1st defendant is dill-dallying the payment of arrears sent a legal notice dated 21.03.2020 for termination of the lease agreement dated 14.10.2019 which had expired on 01.03.2020 and calling upon the 1st defendant to vacate the schedule property and to hand over the vacant and peaceful possession of the schedule property by 31.03.2020 to them. The 1st defendant was put on notice to pay a sum of Rs.52,558/- towards interest and deficit refundable security deposit, Rs.4,04,524/- towards unpaid electricity and water charges and Rs.7,49,526/- towards arrears of rentals after adjusting against the available security deposit of Rs.5,83,521/-. The

total outstanding rentals as on 21.03.2020 were Rs.13,33,047/-. The legal notice duly served upon the 1st defendant on 24.03.2020. As per clause 1 of the lease agreement on attornment the duration of lease was 5 months commencing from 01.10.2019 and ending on 01.03.2020, thereafter the lease period has to come to an end by efflux of time on 01.03.2020. The 1st defendant is liable to vacate the schedule premises and to hand over the peaceful, vacant possession of the same in their favour with effect from 02.03.2020. Continuation of possession beyond the lease period is in violation of the provisions of Karnataka Rent Control Act and amounts to unauthorized occupation. The 1st defendant has deducted tax at source under Sec.194- 1 of the Income Tax Act 1961 since 01.10.2019 but failed to remit the TDS of Rs.1,84,762/- as on the date of issue of legal notice to government to their credit. The 1st defendant is bound to deduct tax at source of each month remit the same to Central Government and to issue TDS certificate reflecting remittance of tax deducted amount of Rs.1,84,762/- to credit of their PAN, having failed to adhere to the provisions of the Income Tax Act. The 1st defendant has rendered himself punishable for the said violations apart non remittance by the 1st defendant though deducted as obligated them to pay the taxes additionally to the extent of such failure and the 1st defendant is liable to repay the said tax deducted amounts, but remained unpaid to the government to them.

6. The plaintiffs in their plaint they further alleged that the 1st defendant had issued cheques bearing No.144194 dated 16.04.2020 and another bearing No.144195 dated 10.04.2020 each for a sum of Rs.2,82,167/- both drawn on State Bank of India, NGEF Branch, Bangalore towards payment of arrears of part of the rentals, upon presentation of the two cheques both of them have been dishonoured one with a shara 'payment stopped by drawer' dated 07.05.2020 and another one with a shara 'funds insufficient' dated 12.05.2020. The two cheques dated 10.04.2020 and 16.04.2020 with the respective bank endorsements dated 07.05.2020 and 12.05.2020 have been issued to that effect. On 07.10.2020 they have filed the police complaint before the Ramamurthy nagar police station, Bangalore requesting to take action against the 1st defendant since she has failed to pay the arrears and also to vacate the schedule premises. The complaint acknowledged by providing non cognizable report No.748/2020, however they have been informed by the police that the dispute is civil in nature, therefore cannot be adjudicated upon them. So, no other remedy have filed the instant suit for eviction and recover sum of Rs.28,21,479/- towards unpaid rentals, security deposit, unpaid utilization charges and damages by way of interest. The 1st defendant during the tenancy period commencing from September 2019 ending on 1st March 2020 was due a sum of Rs.1,21,024/- towards the arrears. From 2nd March 2020 till filing of the suit the defendant due to pay a sum of Rs.28,21,479/- towards arrears of rent, water charges, electricity charges, maintenance charges and TDS non remittance. On account of the non payment of rentals and other amounts by the 1st defendant well within the period agreed upon they have incurred huge financial loss and therefore the 1st defendant is liable to pay damages by way of interest. The 1st defendant shall pay interest on non payment of refundable security deposit of Rs.7,41,479/- from the date of lease agreement on attornment dated 14.10.2019 and interest on arrears of rent, unpaid water charges, electricity charges, maintenance charges and TDS non remittance which have been incurred by them. The tax invoices dated 01.10.2019 to 04.01.2020 reflects the due dates for rentals, electricity bills, statement of arrears of water charges and other maintenance charges. After generation of tax invoice in relation to rentals payable by tenant including the 1st defendant they are liable to discharge the goods and services tax within the due dates irrespective of receipt of rentals and other

charges. The cause of action for the suit which arose upon the failure of the 1st defendant to pay the deficit refundable security deposit on 21.10.2019 the date of completion of lease period on 01.03.2020 and on subsequent dates reflecting the admission of liabilities and inability to pay the arrears by 1st defendant including the date of issue of legal notice on 21.03.2020 for terminating of lease agreement and on subsequent dates within the jurisdiction of this court and prays for decree the suit.

7. In response of the suit summons, the defendants have been appeared through their respective counsel. Pending of the suit the defendant No.2 has moved an application under Order 1 Rule 10(2) of CPC and sought for deletion from the suit and the said application was came to be allowed on 21.10.2021 and the defendant No.2 has been deleted. The defendant No.1 has filed the written statement in which has stated that the suit which filed by the plaintiff is not maintainable in law or on facts which is deserved for dismissal and she has admitted that the para No.3 of the plaint and she has alleged that the averments made in para No.4 of the plaint that she was the tenant under the defendant No.2 and also admitted that she had paid refundable security deposit of Rs.13,25,000/- and she was paying the monthly rent was of Rs.2,61,266/- and she has denied that she is liable to pay interest @ 12% in case of delay in reimbursement and she has denied the other averments which made in the very para and admitted the averments which made in para No.5 of the plaint and she has stated that she has no knowledge about the facts which pleaded in para No.6 of the plaint and denied the para No.7 of the plaint that the 2nd defendant has sent a communication dated 13.09.2019 and the 2nd defendant has deducted the balance of rent and stated the 2nd defendant has deducted the rents from the refundable advance under pressure and denied that she has acknowledged the arrangement vide letter dated 16.09.2019 and agreed to continue the tenancy on the terms of the rental agreement dated 02.04.2019 and she has no knowledge about the facts which pleaded in para No.8 of the plaint which are false and the plaintiffs have to strict proof of the same and denied the para No.10 of the plaint and the plaintiffs have to strict proof of the same and denied the para No.10 of the plaint that herself and the plaintiffs were signed the lease agreement on attornment dated 14.10.2019 and the lease agreement dated 14.10.2019 is not registered agreement and denied other averments which made in same para and the plaintiffs have to strict proof of the same. The defendant No.1 in her written statement has denied the para no.11 of the plaint that in terms of the lease agreement dated 14.10.2019 she has agreed to pay the rentals to the plaintiffs and denied in case of delay of reimbursement of charges, agreed to pay the 12% interest p.a. to the plaintiffs and the plaintiffs have been using pressure tactics in harassing her and denied para No.12 of the plaint stating that the plaintiffs have been pressurizing her to vacate the premises and troubled her in running the business used coercive methods illegally disposes her by abusing her staff, cutting power supply at the lift on day to day her business demanding 15% increase in the rent that too when the entire country was under lock down and no business was undertaken any person in the country during the collapse of entire economic systems and denied the averments which made in para No.13 to 16 of the plaint and the plaintiffs have to strict proof of the same and denied the para No.17 of the plaint and stated that in the month of March 2020 the lock down was started, there was no question of subletting the premises and the plaintiffs have to strict proof of the same and denied the averments which made in para 18 of the plaint and the plaintiffs have to strict proof of the same and she has alleged that the plaintiffs have made pressure tactics when the country was under lock down have been pressuring her to vacate the premises and to pay interest. The

outstanding dues to the plaintiffs are totally false and the plaintiffs have to strict proof of the same and denied the para No.20 and 21 of the plaint and the plaintiffs have to strict proof of the same and she has denied the para No.22 of the plaint stating that the plaintiffs stubborn attitude and pressure tactics clearly demonstrated while the entire country is under lock down have demanded rents and the averments which made in para No.23 demonstrates the fact that the plaintiffs are using pressure tactics so as to trouble her when there was lock down and no business transaction took place since March 2020. The approaching of the police by the plaintiffs per-se demonstrates the said fact and denied the para No.24 of the plaint stating that she has no due any amount as alleged by the plaintiffs and the plaintiffs have filed the instant suit on speculative grounds and false allegations against her.

8. The defendant No.1 in her written statement has denied the para No.25 of the plaint stating that due to lock down imposed by the government the entire economic system of the country has been collapsed and moreover due to the lock down all the business community have suffered in general and she has suffered huge losses not only due to the lock down but also due to illegal interference and illegal tactics of the plaintiffs in disturbing her peaceful possession of the premises and the economy has to recover in coming days and the government has relaxed the lock down restrictions, during the time the plaintiffs have filed the instant suit only to harass her and she should not grow her business due to the lifting of the restrictions on lock down by the government and denied the para No.26 of the plaint stating that there was no cause of action to file the suit against her and the plaintiffs have filed the instant false suit with an intention to give trouble to her and the prayer B, C, D as sought in the plaint without mentioning the amount per-se not maintainable. The plaintiffs are actually praying for recovery of amount in the prayer V. C. D for which they have to pay proper court fee and prays for dismiss the suit with cost.

9. On the basis of pleadings of the parties, following issues have been framed:

ISSUES

1. Does the plaintiffs are proves that they have legally terminated the tenancy of the 1st defendant by issuing notice dated 21.03.2020?
2. Does the plaintiffs are proves that the defendant No.1 is due for arrears of rent and other charges as alleged?
3. Does the plaintiffs are proves that the defendant No.1 is liable to pay damages towards unauthorized occupation after termination of tenancy?
4. Does the plaintiffs are entitle for the relief as prayed for?
5. What order or decree?

10. The plaintiffs in order to prove the plaint averments have examined the plaintiff No.1 as P.W.1 and got marked the documents as Ex.P.1 to P.41 and the plaintiffs have not examined any witness in

their favour. The defendant No.1 in order to prove her defense has examined her Power of Attorney holder as D.W.1 and got marked the documents as Ex.D.1 and D.2 and she has not examined any witness on her behalf.

11. The learned counsel for the defendant files written arguments.

12. Heard the arguments on both side.

13. My findings to the above issues are as under:

Issue No.1: In the Affirmative;

Issue No.2: Partly in Affirmative;

Issue No.3: In the Affirmative;

Issue No.4: In the Affirmative;

Issue No.5: As per final order, for the following;

REASONS

14. ISSUE NO.1 to 3: These issues are interrelated to each other, hence in order to avoid the repetition of facts and materials on record, these issues are discussed together. The plaintiffs were approached the court on the ground that they were the absolute owners of the suit schedule property. Prior to the execution of the sale deed by the defendant No.2 in their favour, the defendant No.1 was the tenant under the defendant No.2. After the sale deed the defendant No.1 became the tenant under them who has been continued but failed to pay the rent and other charges regularly, thereby tenancy of the 1st defendant has been terminated by issuing legal notice dated 21.03.2020 calling upon the defendant No.1 to quit, vacate and deliver the suit schedule property and to pay the arrears of rent and the 1st defendant is also liable to pay damages towards unauthorized occupation after termination of the lease, thereby the plaintiffs have filed the instant suit against the defendants. In response of the suit summons, the defendants have been appeared through their respective counsel pending of the suit the defendant No.2 has moved an application to delete him from the suit, thereby his application was came to be allowed and he has been deleted from the suit and the defendant No.1 alone filed the written statement.

15. The learned counsel for the plaintiffs in his arguments has submitted that the plaintiffs are the absolute joint owners of the schedule property who purchased the schedule property under a registered sale deed which executed by the defendant No.2. Prior to the execution of sale deed the defendant No.1 was tenant under the 2nd defendant for a period of 11 months and the lease period was expired on 01.03.2020. The 1st defendant had paid a sum of Rs.13,25,000/- towards refundable security deposit in terms of the lease agreement dated 02.04.2019 which was taken place in between the 1st and 2nd defendant by fixing the monthly rent of Rs.2,61,266/- and the defendant No.1 has to

pay the said rent on or before 5th of every calendar month apart from the monthly rent the defendant No.1 has to pay electric charges, water charges and maintenance charges as per the lease agreement was taken place in between the 1st and 2nd defendant on 02.04.2019. The 2nd defendant had executed the sale deed on 10.09.2019 in favour of the plaintiffs which was came to be registered at Sub-Registrar, Ulsoor, Shivajinagar and the plaintiffs became the absolute owner by virtue of the sale deed dated 13.09.2019. The 2nd defendant had intimated the same to the 1st defendant and executed attornment of tenancy in favour of the plaintiffs and the 2nd defendant also confirmed that not only sum of Rs.5,83,521/- out of Rs.13,25,000/- shall be refunded as security deposit at the time of termination of the tenancy, subject to other recoveries as per the agreement since the balance amount being sum of Rs.7,41,479/- has been deducted from the security deposit towards the rental dues, for which the 1st defendant had acknowledged the said arrangement by its letter dated 16.09.2019 and the 1st defendant agrees to continue with the tenancy and agreeing to pay other charges by virtue of the terms and conditions which was taken place earlier in terms of the lease agreement and the 1st defendant remained unpaid a sum of Rs.7,41,479/- and the 2nd defendant transferred the security deposit amount of Rs.5,83,521/- in favour of the plaintiffs, but the defendant No.1 failed to pay the rent regularly in spite of repeated request and demand in terms of the lease agreement on attornment which entered in between the plaintiffs and the defendant No.1, though 1st defendant agreed to pay monthly rental of Rs.2,61,266/- but by typographical error mentioned as Rs.2,62,266/- on or before 5th of every calendar month, but the 1st defendant did not pay the rent regularly, though the plaintiffs have requested the 1st defendant to pay the deficit interest free security deposit of Rs.7,41,479/- but the defendant No.1 did not pay the same nor paid the rent regularly, thereby the plaintiffs have got issued legal notice on 21.03.2020 by terminating the lease agreement dated 14.10.2019 calling upon the 1st defendant to quit, vacate and deliver the vacant schedule property in favour of the plaintiffs, but the defendant No.1 did not do so and he has continued the possession unauthorizedly, thereby there is no other go except to file the suit against the defendant, thereby the plaintiffs have filed the instant suit against the defendant, though the 1st defendant has admitted about the tenancy with the defendant No.2 and execution of the sale deed but he has denied the other averments which alleged by the plaintiffs regarding the lease agreement on attornment dated 14.10.2019 and due rent and other charges and taken up the contention the 1st defendant is not due any rent as alleged by the plaintiffs and the 1st defendant vacated the schedule property long back at the pressure of the plaintiffs. So he has not been continued in the schedule property as alleged by the plaintiffs, but nothing has been placed on record to substantiate the same. On the other hand the plaintiffs have proved their case through oral and documentary evidence and prays for decree the suit.

16. The learned counsel for the 1st defendant in his arguments has submitted the suit which filed by the plaintiffs is not maintainable in law or on facts and the plaintiffs have filed the false suit against the 1st defendant in order to harass the 1st defendant and the 1st defendant is not disputing that the 1st defendant was the tenant under the 2nd defendant and he has paid refundable security deposit of Rs.13,25,000/- by agreeing to pay monthly rent of Rs.2,61,266/-, but he has denied that who has been agreed to pay 12% interest in case of delay in reimbursement and the 1st defendant had no knowledge about the transaction which taken place in between the plaintiff and the 2nd defendant and the documents which placed by the defendant clearly reflects the defendant No.1 had vacated the entire building, even then the false suit has been filed against the defendant and the relief which

sought by the plaintiffs is not maintainable and moreover the plaintiff sought the prayer relating to B to D are not maintainable since the plaintiffs have not stated the amount towards arrears of monthly rent, electricity charges, water charges and amenity charges. Without showing the specific amount the suit which filed by the plaintiffs is not maintainable. The documents which placed before the court are clearly reflects the 1st defendant had vacated the schedule property prior to filing of the suit, even then false suit has been filed for wrongful gain. Ex.D.3 is the ledger statement which clearly reflects the defendant No.1 is not due as alleged by the plaintiffs and other materials which placed by the 1st defendant are clear the plaintiffs have filed the instant false suit against the defendants and the plaintiffs have not shown the amount which alleged to have been payable by the 1st defendant and the 1st defendant had vacated the schedule property in the month of March 2021 itself. Even the plaintiffs in para No.27 of the evidence have categorically admitted the 1st defendant had vacated the schedule property. In fact after vacating the schedule property when the keys were handed over to the plaintiffs, the plaintiffs did not take the keys from the 1st defendant which reflects in the omission of the plaintiffs in their pleading. The P.W.1 in his evidence has admitted that he has issued a notice to take the possession of the schedule property, when the 1st defendant had vacated the schedule property in the month of March 2021 question of taking the possession does not arise. Though the defendant No.1 has handed over the keys, the plaintiffs did not take the keys of the schedule property, anyhow the 1st defendant had already vacated the schedule property in the month of March 2021 and the plaintiff had kept the schedule property vacant since there was lock down there were no new prospective tenants to take the schedule property on the lease from the plaintiffs and the plaintiffs have filed the instant suit only with an intention to cover up the vacancy of the schedule property from March 2021 and for wrongful gain from the 1st defendant and the plaintiffs have not proved their case through oral and documentary evidence and prays for dismiss the suit with cost.

17. The plaintiffs in order to prove the plaint averments have examined plaintiff No.1 as P.W.1 who filed the affidavit by reiterating the plaint averments stating that himself and the 2nd plaintiff are the absolute joint owners of commercial building bearing No.4C-162 Sangeetha Pearl situated at East of NGEF Layout, 2nd Main, Kasturi Nagar, Bangalore. The defendant is a tenant under them in respect of 2nd floor, 3rd floor and 4th floor, shop with store room in ground floor portion. The defendant had originally entered into lease agreement dated 02.04.2019 with Sri. Vijay B. Ramnani for a period of 11 months and the said lease deed was expired on 01.03.2020 and the defendant had paid a sum of Rs.13,25,000/- towards the refundable security deposit in terms of the lease agreement dated 02.04.2019. The monthly rent has been agreed to be paid was fixed at Rs.2,61,266/- on or before 5th of every calendar month. Apart from monthly payment of rent agreed to pay electricity charges, water charges and maintenance charges as per the terms and condition of the agreement and the defendant was also agreed that in case of any delay in reimbursement of any charges is liable to pay interest @ 12% p.a. The agreement provided that if the defendant fails to pay rental and amenities charges for one calendar month, they can re- enter and to take the possession of the premises by providing a month's notice to lessee. One Vijay B. Ramnani executed the sale deed dated 13.09.2019 in their favour and ownership has been transferred in their favour and prior to the execution of sale deed dated 13.09.2019 Vijay B. Ramnani had intimated his tenants about the agreement of sale entered in between them to sell the schedule property in their favour and had sent a communication dated 13.09.2019 through registered post to the defendant indicating that the

entire building including the portion of the building occupied by the tenant will be sold within 30 days and provided opportunity to the defendant either to confirm her consent regarding the attornment of the tenancy with a new proposed owner within 15 days. The letter was also confirmed that only sum of Rs.5,83,521/- out of Rs.13,25,000/- has been transferred in their favour which was deposited as a security deposit and the defendant was liable to pay balance security deposit amount of Rs.7,41,479/- which has been deducted from the security deposit towards the rental dues and other miscellaneous dues with mutual consent. For which the defendant had acknowledged the said arrangement vide letter dated 16.09.2019. As per letter dated 16.09.2019 Vijay B. Ramnani had informed the defendant that a sum of Rs.7,41,479/- remained unpaid and the said amount will be adjusted against the security deposit of Rs.13,25,000/- and informed about the transfer a sum of Rs.5,83,521/- in their favour on account of attornment endorsed by the defendant. By virtue of the letter dated 26.09.2019 Vijay B Ramnani transferred the security deposit of Rs.5,82,521/- in their favour through the cheque bearing No.627232 dated 01.10.2019 drawn on SBI, Kasturi Nagar Branch, Bangalore, pursuant to the change of ownership the defendant signed the lease agreement on attornment dated 14.10.2019 in respect of the remaining lease period of 5 months commencing from 01.10.2019 to 01.03.2020.

18. The P.W.1 in his evidence has further stated that the defendant acknowledged that out of security deposit of Rs.13,25,000/- has been received by them and the defendant shall pay sum of Rs.7,41,479/- towards the balance outstanding refundable security deposit within 7 days, but the defendant did not do so. In terms of the lease agreement on attornment entered into between them the defendant had been agreed to pay monthly rental of Rs.2,61,266/- but by typographical error amount has been mentioned as Rs.2,62,266/- in the lease deed. The defendant liable to pay interest @ 12% p.a. in case of delay in reimbursement of any charges as per the lease agreement. The defendant failed to pay the balance amount towards the security deposit kept on reminding the defendant to make the payment immediately and failed to pay monthly rentals, electricity charges, water charges and charges for other amenities in terms of the agreed terms. The defendant sublet the ground floor premises to run a hotel without even communication to them, therefore, by letter dated 07.01.2020 calling upon the defendant to pay the balance refundable security deposit and other due amounts towards unpaid rentals, water charges and electricity charges and also requested to vacate the schedule premises since has not been complied with the terms of the lease. By virtue of the letter dated 14.01.2020 requested the defendant to pay deficit interest free security deposit of Rs.7,41,479/- within 7 days and also to pay the arrears of rent and amenity charges amounting to Rs.7,79,428/- and the defendant without their consent nor intimation let out the shop with store room in the ground floor to 3rd party authorizing them to run a hotel in the name of Aahar Upahar, though the said portion was let out to defendant for use as store room purpose only, in spite of reminder the defendant did not pay the deficit security deposit and arrears of rent and other charges. So the defendant is due to pay a sum of Rs.8,75,965/- towards arrears of rent, amenity charges and the defendant sent a reply admitting to pay the deficit security deposit of Rs.7,41,479/- and also admitting about the subletting of the ground floor to run the hotel, but the defendant did not complied in terms of the lease deed, thereby sent a legal notice dated 21.03.2020 for the termination of the lease agreement dated 14.10.2019 which had expired on 01.03.2020 calling upon the defendant to vacate the schedule property and to handover the vacant and peaceful possession of the schedule property by 31.03.2020, but the defendant in spite of notice did not come forward

either to vacate and handing over the property nor paid the arrears of rent and other charges, thereby police complaint has been filed for which the police have issued NCR thereby filed the instant suit against the defendant.

19. The learned counsel for the defendant has cross- examined the P.W.1 in which the P.W.1 has admitted that they have issued a notice to the defendant to take the possession of plaint schedule property in the month of March 2020, but did not took the possession from the defendant after issuance of notice, since the defendant had approached the court and denied though the defendant has vacated the schedule premises by handing over the keys in the month of March 2020 and deliberately kept vacant of the schedule premises in order to make illegal gain from the defendant and he has admitted that they have filed the instant suit against the defendant for seeking possession from the defendant and taken the possession of the suit schedule property from the defendant in the month of March 30, 2022 through the court. On the date of taking of the possession himself and court Ameen as well as the 2 nd plaintiff were present, but denied the defendant had vacated the schedule property in the month of March 2021 itself and intentionally not received the key from the defendant and denied during 2021 there was an Covid pandemic no tenant come forward to occupy the schedule property. That is the reason why deliberately refuse to receive the key of the schedule property.

20. The defendant in order to prove her defense has examined her power of attorney holder as D.W.1 by reiterating the contents of written statement stating that the suit which filed by the plaintiff is not maintainable in law or on facts and admitted the para No.4 of the plaint are true and correct and also admitted the defendant had paid refundable security deposit of Rs.13,25,000/- and the monthly rent was fixed for Rs.2,61,266/- and he has stated the defendant already paid the rents to the plaintiffs till March 2021 and in the month of March 2021 the defendant vacated the schedule property and at the time of handing over the keys the plaintiffs decline to take keys from the defendant and the defendant had vacated the suit property in the month of March 2021, for which the plaintiff admitted in para No.27 of the affidavit filed as chief-examination that the defendant vacated the schedule property. After vacating the schedule property when the key was handed over to the plaintiffs, the plaintiffs did not take the keys from the defendant, for which the P.W.1 has admitted in the evidence in chief-examination itself, the defendant failed to pay the rental and amenity charges for one calendar month and the P.W.1 in his evidence has admitted that the notice has been issued to take the possession of the schedule property and the suit schedule property has been vacated in the month of March 2021 itself. When the defendant trying to handing over the case of schedule property but the plaintiff did not take the key of the schedule property and the defendant has vacated the schedule property in the month of March 2021 itself and the plaintiff had kept the schedule property vacant due to the fact there was a lock down and there were no new prospective tenants to take the schedule property on lease from the plaintiffs and the plaintiffs have filed the instant false suit for wrongful gain. That is the reason why failed to mention the clarity regarding the amount payable by the defendant in respect of rents, amenity and other charges and the relief which sought are vague and the defendant is not liable to pay any charges as claimed since the defendant is already vacated the schedule property in the month of March 2021 and the mistake is on the part of the plaintiffs in not receiving the keys of the schedule property and nothing is prevented to the plaintiffs to file a suit for taking possession of the schedule property after issuance

of the notice for possession as admitted by the plaintiff. Moreover, that the plaintiffs have filed an application to take possession of the schedule property through the bailiff of this court reveals the plaintiffs were aware that the suit schedule property has been vacated by the defendant and was kept vacant, though suit has been filed for eviction, but the schedule property was already kept vacant since March 2021. So the prayer which sought is not maintainable and plaintiffs have filed the instant suit only with an intention to harass the defendant and as per the mutual and oral understanding due to the pandemic rents for month of April 2020 to June 2020 were waived off and agreed that the rents from July 2020 to receive the half rent of the premises and the suit schedule property is already in possession of the plaintiff, question of deliver the schedule property in favour of the plaintiffs does not arise and the claim which sought as B to D are not maintainable.

21. The learned counsel for the plaintiffs cross-examined the D.W.1 in which has admitted since the defendant No.1 is the lessee of the building and 11 months lease agreement was taken place in between the 1st defendant and one Vijay B Ramnani and in the month of September 2019 the very Vijay B. Ramnani had sold the building in favour of the plaintiffs and they used to pay the monthly rent regularly to the said Vijay B Ramnani for the payment of monthly rent was used to issue invoice and they have paid the monthly rent to the Vijay B Ramnani till August 2019 from September 2019 paid the monthly rent to the plaintiffs and admitted as per Ex.P.4 the defendant No.1 has been admitted the balance of security deposit of Rs.5,83,521/- and same will be transferred to the plaintiffs by virtue of letter of attornment and the defendant No.2 has transferred the security deposit of Rs.5,83,521/- to the plaintiffs through cheque and Ex.P.6 is the lease agreement on attornment which taken place in between the plaintiffs and the defendant No.1 on 14.10.2019 and as per Ex.P.6 the lease period only for 5 months and prior to the Ex.P.6 there was a lease agreement in between the defendant No.1 and Vijay B Ramnani for a period of 11 months, before 11 months the very Vijay B. Ramnani had sold the property in favour of the plaintiffs, thereafter Ex.P.6 was taken place in between the plaintiffs and the defendant No.1 and the defendant No.1 had not paid balance security deposit of Rs.7,41,479/- to the plaintiffs and after expiry of the lease period from 01.03.2020 have not entered for renewal of the lease period with the plaintiffs and they were in the suit schedule property as lessee till March 2021 and denied that they have no authority to continue as a lessee till March 2021 and denied they have no authority to continue as a lessee till March 2021 and they were in possession of the building as a lessee till December 2021 and admitted that they have not produced any document to show the plaintiffs have agreed for renewal of the lease deed. That is the reason why they have continued in the building as lessee, but the plaintiffs orally agreed to renew the lease deed. That is the reason why they have continued in possession of the building as lessee and they used to pay the monthly rent to the plaintiffs through NEFT only for two months have paid the monthly rent through the cheque and admitted that they have not paid the monthly rents to the plaintiffs before every 5th of month and they have paid monthly rent upto March 2021 and has no impediment to produce the bank statement to show that they have paid the monthly rent after deducting the TDS and as per Ex.P.11 the plaintiffs have issued a letter to calling upon to pay the arrears of rent as per the enclosure of Ex.P.11 and after receipt of Ex.P.11 and enclosure replied as per Ex.P.12 and they have admitted that they were due a sum of Rs.6,92,203/- to the plaintiffs towards arrears of rent and they have already paid the due amount of Rs.6,92,203/- to the plaintiffs and they have paid the said amount through NEFT but did not produced statement of account to show the defendant No.1 had paid an amount of Rs.6,69,203/- through NEFT and admitted the

plaintiffs had issued a termination notice as per Ex.P.16. In the said notice the plaintiffs were stated that the defendant No.1 is due a sum of Rs.7,41,526/- and he has not produced reply notice copy before the court to show that they have replied to the notice which was issued by the plaintiffs. The defendant No.1 had issued two cheques marked as Ex.P.19 and 21 in favour of the plaintiffs and admitted Ex.P.19 and 21 are not honoured and has stated that they have requested the Manager of the plaintiffs orally not to present the Ex.P.19 and P.21 and has no impediment for production of documents to show they have paid amenity charges and rent and he has not seen the documents which produced by the plaintiffs and admitted that they have not stated in the written statement in respect of Ex.P.37 regarding the delivery of the possession in favour of the plaintiffs and he has no impediment to file memo in between March 2021 to March 2022 to brought to the notice of the court that they have vacated the schedule property and as per the lease agreement the lease period is up to 01.03.2020 and there was no lease agreement after 01.03.2020 to continue in the schedule property, but the plaintiffs have assured to execute the extension lease agreement and there was no written agreement regarding the assurance which alleged to have been assured by the plaintiffs to execute the extension of lease agreement to continue in the schedule property and they have not paid the monthly rent in the due date as per the lease agreement and as per Ex.D.3 there was no entry regarding the payment of monthly rent in the month of April, May and June 2020 and as per the lease agreement monthly rent has been fixed at Rs.2,61,266/- with GST 18% in total Rs.3,08,294/- and admitted as per Ex.P.3 paid monthly rent in the month of March 2020 of Rs.1,82,044/- and as per Ex.D.3 after payment in the month of March 2020 have paid the rent in the month of August. As per Ex.D.3 they were due a sum of Rs.6,01,973/- as on 19.03.2020 and admitted though the plaintiffs have issued invoice every month for 3 months did not pay the monthly rent within the due date and as per Ex.D.3 have paid the water charges once in 3 months and as per the lease agreement they have to pay every month Rs.7,000/- towards the water charges and to pay electricity charges based on the consumption and as per the bank statement marked as Ex.D.5 has been shown upto October 2020 and they have not stated in the written statement about Ex.D.1 which were taken on 31.03.2021

22. The learned counsel for the plaintiff while canvassing his arguments has submitted a legal notice has been issued on 21.03.2020 by terminating the lease agreement and the defendant is due for payment of arrears of rent and other charges, but the defendant in spite of termination neither quit and deliver or handing over the vacant possession of the schedule property in favour of the plaintiffs or paid the arrears of rent and other charges, thereby the plaintiffs have filed the instant suit against the defendants. But whereas the learned counsel for the defendant in his arguments has submitted that the suit which filed by the plaintiffs is not maintainable in law or on facts. Since, the plaintiffs have not approached the Court with clean hands, as the defendant had vacated the schedule property in the month of March 2020 itself and the defendant is not due to the plaintiffs as alleged. So, before considering the arguments which advanced by both counsels as well as oral and documentary evidence on record, let me know the legal aspects for the proper appreciation of the arguments which advanced by both parties.

23. It is an admitted fact, the plaintiffs were filed the instant suit on the ground prior to execution of the sale deed dated 13.09.2019, the defendant was the tenant under the lease agreement dated 02.04.2019 and the defendant is the tenant under the plaintiffs by virtue of the lease agreement on

attornment dated 14.10.2019 and it is the specific case of the plaintiffs that they have terminated the lease agreement by issuing legal notice dated 21.03.2020, thus this Court drawn its attention on Sec.106 of Transfer of property act which reads like thus:

Section 106 in The Transfer of Property Act, 1882 1[106. Duration of certain leases in absence of written contract or local usage.--

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. (2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-

section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.] The above provision is very much clear in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year terminable on the part of either lessor or lessee by 6 months notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month terminable on the part of either lessor or lessee by 15 days notice. So, one thing is clear from the provision which cited supra, in the absence of the contract or local law or usage to the contrary shall issue notice as stated above. But, whereas the vendor of the plaintiffs and the defendant were entered into lease agreement dated 02.04.2019 and after the execution of the sale deeds in favour of the plaintiffs, the plaintiffs and the defendant were entered agreement on attornment dated 14.10.2019. Now the question arises who can terminate the lease and when can terminate the lease which taken place on 02.04.2019 & 14.10.2019. So, for the proper appreciation of the termination clause which appeared in the clause 10 of the lease deed dated 02.04.2019 and lease agreement on attornment dated 14.10.2019 is necessary for reproduction which reads like thus:

The agreement shall be liable to be terminated by either the lessee or lessor by giving 2 months of written notice. The security deposit will be refundable by the lessor to the lessee simultaneously at the time of vacating the demised premises, after deducting any arrears in rent, BESCO charges and towards making good any damage caused by lessee if any.

The above provision which appeared in the Ex.P.1 & P.6 as referred above is very much clear either of the party can terminate the lease by issuing 2 months written notice. Therefore, by virtue of the agreement which taken place in between them either of the party can terminate the lease by issuing 2 months notice.

24. It is an admitted fact, the defendant has filed her written statement by admitting the tenancy which was taken place prior to Ex.P.6 in between her and the vendor of the plaintiffs. But the defendant has denied about the lease agreement on attornment dated 14.10.2019 which was alleged to have been taken place in between the plaintiffs and defendant, as the defendant denied about the agreement on attornment dated 14.10.2019 thus this Court drawn its attention on Sec.10 of the Indian Contract Act 1872 which reads like thus:

Section 10 in The Indian Contract Act, 1872

10. What agreements are contracts.--All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. --All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void." Nothing herein contained shall affect any law in force in 1[India], and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

The above provision is very much clear all agreements are contracts if they are made by the free consent of parties competent to contract. Thus this Court drawn its attention on Sec.14 of Indian contract Act which reads like thus:

Section 14 in The Indian Contract Act, 1872

14. 'Free consent' defined.--Consent is said to be free when it is not caused by--
--Consent is said to be free when it is not caused by--"

(1) coercion, as defined in section 15, or (2) undue influence, as defined in section 16, or (3) fraud, as defined in section 17, or (4) misrepresentation, as defined in section 18, or (5) mistake, subject to the provisions of sections 20, 21 and 22. Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

The above provision is very much clear in order to define the free consent of the parties competent to contract should not falls within the ambit of Sec.14 of Indian Contract Act as referred above.

25. Now the question arise, whether the signatory of the contract having any obligation to perform respective promise, thus this Court drawn its attention on Sec.37 of the Indian Contract Act which

reads like thus:

Section 37 in The Indian Contract Act, 1872

37. Obligation of parties to contract.--The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law. --The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law." Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

The above provision is very much clear the parties to a contract must either perform or offer to perform their respective promises unless such performance is dispensed with. Therefore, the contract which taken place in between the parties is not only binds the parties to the contract but also their representatives. Now the question arises, whether the breach of contract or broken of contract, who suffers can entitle compensation for loss or damage. Thus this Court drawn its attention on Sec.73 of the Indian Contract Act which reads like thus:

73. Compensation for loss or damage caused by breach of contract.--When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. --When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it." Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.--When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. --When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. The above provision is very much clear when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract, either for loss or for damage.

26. Now, let me know the admitted facts which admitted by the defendant as the plaintiff in para No.4 & 5 of the plaint have clearly stated about the lease agreement dated 02.04.2019 for a period of 11 months and refundable security deposit of Rs.13,25,000/- as well as monthly rental of Rs.2,61,266/- and also stated execution of the sale deed in respect of the schedule property which got registered at sub- registrar, Ulsoor, Shivajinagar and transfer of ownership in favour of the plaintiffs by virtue of the sale deed dated 13.09.2019, for which the defendant in her written statement has categorically admitted that the averments made in para 5 may be true and admitted about the lease deed refundable security deposit and monthly rent, if at all para No.4 & 5 of the plaint are not true the defendant would have denied the lease deed dated 02.04.2019, refundable security deposit of Rs.13,25,000/- and monthly rent of Rs.2,61,266/- as well as transfer of ownership to the plaintiffs in respect of the schedule property from their vendors. But, the reasons best known to defendant has not denied the averments of the plaint in para No.4 & 5 in view of order 8 Rule 5 of CPC. Therefore, admitted facts need not be proved in view of Sec.58 of the Indian Evidence Act.

27. Now keeping the provisions and admitted facts, which referred above are in mind, now let me know the arguments which advanced by the both parties. It is an admitted fact the learned counsel for the plaintiffs while canvassing his arguments has submitted that the plaintiffs have legally terminated the tenancy of the defendant by issuing a notice dated 21.03.2020. Now the question arises whether the agreement which was taken place in between the plaintiffs and the defendant empowers to terminate the lease agreement which was taken place in between them, as the defendant except denial of the averments regarding the execution of lease agreement on attornment dated 14.10.2019, but admitted the lease deed dated 02.04.2019. So, clause 10 of the very document clearly reflects agreement shall be liable to be terminated by either the lessee or the lessor by giving 2 months of written notice. So, one thing is clear the clause No.10 which referred above empowers either of the party can terminate the agreement by issuing 2 months written notice. Admittedly Ex.P.16 is the notice which was issued by the plaintiff to the defendant by terminating the lease deed dated 14.10.2019, on the ground as mentioned in the notice and the Ex.P.17 & P.18 are the postal receipt and acknowledgment reflects the said notice has been served on the defendant. So, by virtue of the provision and the clauses which referred above are clear in the absence of a contract or local law or usage to the contrary to terminate the lease agreement in view of Sec.106 of the TP Act but the clause of the lease agreement and lease agreement on attornment empowers to terminate the lease, accordingly the plaintiffs have got issued a termination notice dated 21.03.2020 and which was served on the defendant and the plaintiffs have filed the instant suit on 02.02.2021 thus one thing is clear the plaintiffs have complied the clauses which appeared in the Ex.P.1 & P.6 and terminated the lease agreement and moreover the DW.1 in his cross examination has categorically admitted about the issuance of notice by the plaintiffs to the defendant. So, for the proper appreciation of the admission which admitted by the DW.1 during his cross examination is necessary for reproduction which reads like thus:

It is true as per Ex.P.16 the plaintiffs had issued termination notice. It is true in the said notice the plaintiffs were stated that the defendant No.1 is due a sum of Rs.7,49,526/-. Witness volunteers they have already replied to the said notice. It is true I have not produced reply notice before the Court. It is true the defendant No.1

had issued 2 cheques marked as Ex.P.19 & P.21 in favour of the plaintiffs Proprietorship concern.

The above admission of the DW.1 during his cross examination is clear the plaintiff got issued legal notice and terminated the lease agreement. Therefore, the oral and documentary evidence and record reflects the plaintiffs have legally terminated the tenancy of the defendants by issuing a notice dated 21.03.2020.

28. The plaintiffs in their plaint they were alleged the defendant had agreed to pay monthly rental of Rs.2,61,266/- on or before 5th of every calendar month and apart from monthly rent the defendant agreed to pay Electricity charges, water charges and maintenance charges and the defendant failed to pay deficit security deposit of Rs.7,41,479/- and to pay the arrears of rent and amenity charges of Rs.8,75,965/- , but the defendant failed to pay the amount for which the learned counsel for the defendant while canvassing his arguments has rightly submitted the defendant has not been disputed about the monthly rent and refundable security deposit of Rs.13,25,000/- and adjusted the amount of Rs.7,41,479/- out of security deposit of Rs.13,25,000/- and consent for deduction of Rs.7,41,479/-.

29. It is an admitted fact, the learned counsel for the plaintiff while canvassing his arguments has submitted the defendant is due for payment of rent and other charges. Now the question arises whether the agreement which taken place in between the plaintiff and the defendant mandates for payment of rent and other charges as sought by the plaintiffs, thus this Court drawn its attention on Ex.P.6 on clause 2 & 12 of the lease agreement on attornment which reads like thus:

2. Rent: The monthly rent payable by the lessee to the lessor for the demised premises shall be Rs.2,62,266/-(Rupees Two Lakh Sixty Two Thousand Two Hundred and Sixty Six only) + GST as applicable on or before 5th of every English calendar month in respect of the lease commencing from 01.10.2019.

12. Payment of Electricity, Telephone, water ECT:

The lessee shall pay the charges towards electricity, telephone, water etc., to the concerned authorities in time. If any such charges are paid by the lessor during the subsistence of the lease on account of the lessee not making payment on time, the lessee shall reimburse the same to the lessor along with 12% interest per annum and shall ensure that all such payment are made before the termination of the lease.

Water charges are to be paid to the lessor at Rs.1000/- (Rupees One Thousand) per floor for usage of the water in the toilets and Rs.5000/- (Five thousand only) as water charges for supply of the water to the shop.

The clauses which referred above are very much clear the lease agreement on attornment was taken place in between the plaintiffs and the defendant and defendant had agreed to pay monthly rent of Rs.2,61,266/- with GST as applicable

and also liable to pay Electricity, Telephone, Water charges etc., if any such charges are paid by the lessor during the subsistence of the lease on account of the lessee not making payment on time, the lessee shall reimburse the same to the lessor along with 12% interest and water charges to be paid to the lessor at Rs.1000/- per floor for usage of water in the toilets and Rs.5000/- as water charges for supply of water to the shop. The DW.1 during his cross-examination has admitted that the defendant is due to the plaintiff for Rs.6,01,973/- as on 19.03.2020 and did not pay the rent every month within time and they have paid the water charges once in 3 months and as per the lease agreement they were due of Rs.7,000/- every month towards the water charges. So, for the proper appreciation of the admission of the DW.1 is necessary for reproduction which reads like thus:

It is true as per Ex.D.3 we were due a sum of Rs.6,01,973/- as on 19.03.2020, it is false to suggest that we have not paid monthly rent as per the lease agreement every month and denied that they have shown the false statement as per Ex.D.3. It is true though the plaintiff had issued invoices every month for 3 months did not pay the monthly rent within due date.

It is true as per Ex.D.3 we have paid the water charges once in 3 months.

Witness volunteers because of some clarifications did not pay the monthly water charges.

The above admission of DW.1 during his cross-examination has categorically admitted as per Ex.D.3 they were due a sum of Rs.6,01,973/- as on 19.03.2020. So, if the admission of the DW.1 during his cross-examination is clear and clauses which appeared in the Ex.P.1 & P.6 are clear, the defendant did not pay either the monthly rent, water charges, Electricity charges and other charges within time in terms of lease agreement. Thus one thing is clear the defendant did not make the payment in time, so the lessee shall reimburse the same to the lessor along with 12% interest. The DW.1 during his cross- examination has categorically admitted that the monthly rent has paid sometimes once in a 2 months. So, for the proper appreciation of the admission of the DW.1 during his cross- examination is necessary for reproduction which reads like thus:

It is true we have not paid monthly rent in the due date as per the lease agreement. It is true as per Ex.D.3 we have not paid monthly rent regularly. It is true as per the document which shown to me we used to pay monthly rent sometimes once in a two months.

Thus the admission of the DW.1 as referred above is clear that the defendant was irregular in payment of rent and did not pay the rent in terms of the lease agreement on attornment. So, one thing is clear the defendant has not been disputed not only the monthly rent of Rs.2,61,266/- but also irregular payment of monthly rent. The

DW.1 in the cross-examination has categorically admitted about payment of water charges Rs.7,000/- per month and Electricity charges based on the consumption. So, for the proper appreciation of the admission of the DW.1 during his cross-examination which reads like thus:

It is true as per Ex.D.3 we have paid the water charges once in 3 months. Witness volunteers because of some clarifications from the plaintiffs we did not pay the monthly water charges. It is true as per the lease agreement we have to pay every month Rs.7000/- towards water charges and to pay Electricity charges based on the consumption.

The above admission of the DW.1 during his cross examination the obligation is on the defendant not only payment of Electricity charges, but also water charges and other charges. The learned counsel for the defendant while canvassing his arguments has submitted the plaintiffs have not stated in para B to D of the prayer column about the due to the plaintiffs by the defendant towards Electricity charges, water charges, amenity charges and non payment of rentals and other charges within the time as prescribed under the agreement. Therefore, one thing is clear the defendant not only irregular in payment of rent but also irregular in payment of other charges as the Ex.P.3 is the attornment of tenancy regarding ground floor shop, 2nd, 3rd, 4th floors are clear about non payment of rent and other charges. Ex.P.4 is the notice reflects the defendant was due a sum of Rs.7,41,479/-. Ex.P.10 is clearly reflects about the due to the plaintiffs by the defendant. Ex.P.12 is the notice issued by the defendant to the plaintiff. Ex.P.23 is the letter dated 07.10.2020 reflects the plaintiff had filed the complaint to the Ramamurthy Nagar Police station. Ex.P.27 and P.28 are the electricity bills statement and the bills are reflects the defendant was due for payment of electricity bill charges. The D.W.1 in his cross-examination has categorically admitted about payment of water charges. It is an admitted fact by virtue of clause 12 of lease agreement on attornment referred above clearly reflects the defendant is not only liable to pay the rent, but also liable to pay the electricity, telephone and water charges etc. So the contract which taken place in between the plaintiffs and the defendant binds on the defendant to pay the said charges in view of the provision which referred above.

30. The learned counsel for the defendant while canvassing his arguments has much argued the the defendant had vacated schedule property in the month of March 2021 and he has paid not only rent but also other charges. It is an admitted fact the D.W.1 in the chief-examination itself has stated that the defendant had vacated the schedule property in the month of March 2021 and the plaintiffs decline to take the key from her. The mistake on the part of the plaintiffs in not receiving the keys of the schedule property. So, the own admission of the D.W.1 in the chief-examination itself is clear, though D.W.1 had vacated the schedule property, the plaintiff has not received the key. Thus one thing is clear the defendant has not delivered the suit schedule property physically to the plaintiffs. So, according to the defendant has vacated schedule property in the month of March 2021. But the reasons best known to the defendant soon after his appearance did not filed any memo to that effect

as the plaintiffs have filed the instant suit on 02.02.2021 and the defendant has been appeared through her counsel on 08.04.2021, but whereas the very plaintiffs pending of the suit have filed the application under Sec.151 of CPC and sought for permission to take the possession of the vacant schedule property on the ground that the defendant had vacated the schedule property in month of December 2021 without intimation by damaging the schedule property for which opportunity has been granted to the defendant to file her objection to the application which filed by the plaintiffs, but the reasons best known to her did not chosen to file objection to the said application. Thus objection to the said application taken as not filed and the said application was came to be allowed on 03.03.2022 and delivery warrant has been issued. Accordingly the court Bailiff delivered the schedule property in favour of the plaintiffs. Ex.P.38 is the certified copy of the order sheet reflects the very defendant had filed the suit against the very plaintiffs in O.S.No.3633/2020 for permanent injunction on 17.08.2020, on 23.03.2022 the very defendant filed memo stating that has vacated the schedule premises in the month of March 2021 for which the plaintiffs have submitted that the plaintiff has vacated the schedule premises in the month of December 2021. However memo was came to be accepted and suit was dismissed as not pressed. So, according to the plaintiffs the defendant had vacated the schedule premises in the month of December 2021, though the defendant has taken up the contention that she had vacated the schedule premises in the month of March 2021 but nothing has been placed on record to substantiate the same and nothing is prevented to issue notice to the very plaintiffs soon after vacating and to brought to the notice of the plaintiffs that she has vacated the schedule property and physical possession has been handing over to the plaintiffs. If that is so matter would have different, but except denial nothing has been placed to substantiate the same. Therefore, the arguments which advanced by the learned counsel for the defendant on this aspect holds no water.

31. It is and admitted fact, Ex.P.16 is the notice copy is very much clear the plaintiffs have got issued legal notice on 21.03.2020 stating that as per the terms of the lease deed dated 02.04.2019 the schedule premises had let out on payment of Rs.13,25,000/- as interest free security deposit and on payment of monthly rentals of Rs.2,61,266/- in addition to payment of water charges and electricity consumption charges for every month and the previous owner Sri. Vijay Ramnani had set up a sum of Rs.7,41,479/- out of the refundable security deposit and transferred only sum of Rs.5,83,521/- in favour of the plaintiffs and the lease agreement on attornment was taken place on 14.10.2019 and the defendant had agreed to pay a sum of Rs.7,41,479/- within 7 days but the defendant did not pay the said amount to the plaintiffs in spite of repeated request and demand, though through email requested to pay the said amount, but did not pay the same. The plaintiffs are entitled for refund of security deposit of Rs.13,25,000/- from the defendant, on 12.02.2020 the plaintiffs have sent a letter to the defendant to pay deficit security deposit of Rs.7,41,479/- and to pay the arrears of rent of Rs.8,75,965/- but did not pay the same. So an amount of Rs.1,84,762/- has been deducted towards the tax deduction at source from out of the monthly rentals payable and the defendant is also liable to pay an amount of Rs.8,75,965/- towards arrears of rent, unpaid water charges and electricity consumption charges and also non remittance of TDS despite of deducting it from the payments. So, the defendant is liable to pay interest @ 24% p.a. on unpaid which calculated at Rs.52,558/- and as per agreement on attornment from 02.03.2020 till 31.03.2020 and reimburse the charges for water and electricity consumption totaling to sum of Rs.4,04,524/-. So, the defendant liable to pay an amount of Rs.13,33,047/- till the date of issuance of notice. Therefore,

setting up of the available interest free refundable security deposit of Rs.5,83,521/- against the arrears of Rs.13,33,047/-. Still the defendant is liable to pay an amount of Rs.7,49,526/- as on the date of issuing the legal notice dated 21.03.2020. Therefore, the defendant is liable to pay an amount of Rs.7,49,526/- as on 21.03.2020. Therefore, the averments which referred above in Ex.P.16 are clear the defendant was due a sum of Rs.7,49,526/- towards arrears of rent, unpaid water charges and electricity consumption charges and also non remittance of TDS despite deducting it from the payments. So, one thing is clear from the oral and documentary evidence on record as on 21.03.2020 the defendant was due a sum of Rs.7,49,526/-, admittedly though the defendant has taken up the contention that he had vacated the schedule property in the month of March 2021 but the Bailiff report and the admission of the plaintiffs in the original suit which filed by the very defendant are clear that the bailiff had delivered the schedule property in favour of the plaintiff on 30.03.2022. Therefore, the materials on record are clear though defendant has taken up the contention that he had delivered the schedule property in the month of March 2021 but the materials on record reflects the schedule property has been delivered to the plaintiffs on 30.03.2022. Admittedly the defendant has been continued in the schedule property after termination of tenancy. Therefore, the defendant is liable to pay damages with effect from 02.03.2020 in view of Ex.P.16. Therefore, the defendant is liable to pay damages after her termination of the lease by virtue of Ex.P.16 and the D.W.1 in his cross-examination has clearly admitted that the monthly rent of Rs.2,61,266/- with GST @ 18% in total of Rs.3,08,294/-. So, for the proper appreciation of the admission of the D.W.1 during his cross- examination which reads like this:

'It is true as per the lease agreement, monthly rent has been fixed for Rs.2,61,266/-

with GST 18% in total Rs.3,08,294/-.' Thus by virtue of the admission of the DW.1 as stated above the defendant is liable to pay monthly rent with GST 18% in total Rs.3,08,294/- as damages from 02.03.2020 as the defendant has been continued in the possession of the schedule property unauthorizedly after termination of her lease period by virtue of Ex.P.16. Therefore, the defendant is liable to pay an amount of Rs.3,08,294/-

including rent and GST per month till 30.03.2022 as damages for her unauthorized occupation after the termination of the lease by virtue of Ex.P.16.

32. It is an admitted fact the D.W.1 in his cross- examination has categorically admitted that the defendant has to pay Rs.7,000/- per month towards water charges to pay the electrical charges based on the consumption. So, for the proper appreciation of the admission of the D.W.1 during his cross- examination is necessary for reproduction which reads like this:

'It is true as per the lease agreement, we have to pay every month Rs.7,000/- towards the water charges and to pay electricity charges based on the consumption.' The above admission of D.W.1 during his cross-examination is clear the defendant has to pay Rs.7,000/- per month towards water charges and electrical charges based on the consumption. So, one thing is clear the defendant has not disputed for payment of

water charges and electricity charges not only by way of admission but also based on Ex.P.6 which is lease agreement on attornment as referred above. Admittedly, the defendant was due a sum of Rs.7,49,526/- as on 21.03.2020. Therefore, the defendant is liable to pay not only dues of Rs.7,49,526/- but also monthly rent including GST of Rs.3,08,294/- from 22.03.2020 till 30.03.2022 in total of Rs.74,09,332.46/- (24 months 8 days) Apart from payment of arrears of rent and the damages, the defendant is also liable to pay water charges @ Rs.7,000/- per month from 22.03.2020 till 30.03.2022 (24 months, 08 days) it comes to Rs.1,68,233.33/-

and also liable to pay electricity charges of Rs.4,04,524/-. Though the plaintiffs have sought for interest on refundable security deposit, but whereas the Ex.P.1 and P.6 are nowhere reflects the defendant is liable to pay interest on refundable security deposit. Therefore, the plaintiffs are not entitle any interest on the refundable security deposit, since the plaintiffs were already adjusted the refundable security deposit of Rs.5,83,521/- towards arrears of rent which transferred by their vendor and prior to execution of the sale deed by their vendor already adjusted an amount of Rs.7,41,479/- towards the arrears of rent. Therefore, the plaintiffs are not entitled the interest on interest free refundable security deposit. Therefore, the defendant is liable to pay the amount as stated supra only. Hence, I am of the opinion that the issue No.1 and 3 are answered as Affirmative and issue No.2 is answered as partly in Affirmative.

33. ISSUE NO.4: The plaintiffs have filed the instant suit against the defendant for eviction of the defendant from the suit schedule property and restore the schedule property in favour of the plaintiffs and to pay arrears of monthly rentals, electricity charges, water charges and amenity charges as agreed in the lease agreement of attornment dated 14.10.2019 and to pay interest on the unpaid refundable security deposits, arrears of rentals and other charges and for rentals and other charges for the period of unauthorized occupation upon termination of lease by efflux of time with effect from 02.03.2020. Admittedly the suit was filed on 02.02.2021 and as per the orders passed by this court on I.A.No.VII the schedule property has been delivered by the court bailiff on 30.03.2022. So, question of directing the defendant to quit, vacate and deliver the schedule property in favour of plaintiffs does not arise and the plaintiffs have proved their case through oral and documentary evidence that the defendant is due an amount of Rs.7,49,526/- as on 21.03.2020 and from 22.03.2020 the defendant is liable to pay arrears of rentals @ Rs.3,08,294/- per month and Rs.7,000/- per month towards water charges and total electrical charges of Rs.4,04,524/- from 22.03.2022 till 30.03.2022. Though the plaintiffs have sought for interest on the unpaid refundable security deposit, but Ex.P.1 and P.6 are the lease deed and lease agreement on attornment are clear the amount of Rs.13,25,000/- which paid by the defendant is interest free security deposit and the amount of Rs.5,83,521/- which was transferred to the plaintiffs is also interest free security deposit, merely on the ground that the defendant had not paid the balance security deposit amount of Rs.7,41,479/- it does not mean that the plaintiffs are entitled the interest on interest free security deposit which is refundable when the defendant vacated or terminated or expiry of the lease period or revocation of the lease as per clause 10 of Ex.P.1 and P.6. So, question of awarding the interest does not arise. Hence, I am of the opinion issue No.4 is answered as partly in the Affirmative.

34. Issue No.5: In view of my findings to the issue No.1 to 4 as stated above I proceed to pass the following:

ORDER The suit of the plaintiffs is partly decreed with cost.

The defendant is hereby directed to pay decretal amount of Rs.87,31,615.79/- with interest at the rate of 12% p.a. from the date of suit till its realization.

Draw decree accordingly.

(Dictated to the Stenographer, thereof corrected by me and then pronounced in the open court on this the 28th day of September, 2022) (P.J. Somashekara) LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City.

List of witnesses examined on behalf of plaintiff:

P.W.1 Anand Reddy List of witnesses examined on behalf of defendant:

D.W.1 Manjunath B. List of documents exhibited on behalf of plaintiff:

Ex.P.1	Original lease deed dt:02.04.2019
Ex.P.2	Copy of the letter dt:13.09.2019
Ex.P.3	Postal receipt
Ex.P.4	Copy of the letter dt:16.09.2019
Ex.P.5	Copy of the letter dt:26.09.2019
Ex.P.6	Lease agreement on attornment dt:14.10.2019
Ex.P.7	Copy of the Letter dt:07.01.2020

Ex.P.8 Postal receipts

Ex.P.9 Postal acknowledgment

Ex.P.10 Copy of the demand notice dt:14.01.2020 Ex.P.11 Copy of the letter dt:12.03.2020 with enclosure Ex.P.12 Copy of the letter with enclosure Ex.P.13 Copy of the letter dt:21.03.2020 Ex.P.14 Unserved postal cover(opened in the open Court which is empty) Ex.P.15 Postal acknowledgment Ex.P.16 Office Copy of the termination notice dt:21.03.2020 Ex.P.17 Postal receipt Ex.P.18 Postal acknowledgment Ex.P.19 Original Cheque of Rs.2,82,167/-

dt:10.04.2020

Ex.P.20 Bank endorsement dt:12.05.2020

Ex.P.21 Original cheque of Rs.2,82,167/-
dt:16.04.2020

Ex.P.22 Bank endorsement dt:07.05.2020

Ex.P.23 Copy of the complaint dt:07.10.2020 Ex.P.24 Police endorsement Ex.P.25 Rent statement Ex.P.26 Tax Invoice in 7 Nos.

Ex.P.27 Electricity bills statement Ex.P.28 Electricity bills in 16 Nos. Ex.P.29 Water charges statement Ex.P.30 Tax Invoice in 17 Nos.

Ex.P.31 Summary sheet (total arrears of rent, TDS, Electricity, Water dues and interest) Ex.P.32 Mail copy of the intimation dt:20.02.2020 Ex.P.33 Certificate U/Sec.65(B) of Evidence Act Ex.P.34 Certified copy of the plaint in OS No.3336/2020 Ex.P.35 Certified copy of the application U/o.6 Rule 14(a) of CPC filed in OS No.3336/2020 Ex.P.36 Certified copy of list of documents filed in OS No.3336/2020 Ex.P.37 Certified copy of the memo dt:23.03.2022 filed in OS No.3336/2020 Ex.P.38 Certified copy of the order sheet filed in OS No.3336/2020 Ex.P.39 Bank Statement Ex.P.40 Form 26AS for the year 2021-22 Ex.P.41 Form 26AS for the year 2020-21 Ex.P.34 Certified copy of the plaint in OS No.3336/2020 Ex.P.35 Certified copy of the application U/o.6 Rule 14(a) of CPC filed in OS No.3336/2020 Ex.P.36 Certified copy of list of documents filed in OS No.3336/2020 Ex.P.37 Certified copy of the memo dt:23.03.2022 filed in OS No.3336/2020 Ex.P.38 Certified copy of the order sheet filed in OS No.3336/2020 Ex.P.39 Bank Statement Ex.P.40 Form 26AS for the year 2021-22 Ex.P.41 Form 26AS for the year 2020-21
List of documents exhibited on behalf of defendant:

Ex.D.1	4 Photos with CD
Ex.D.2	Original Special power of attorney

(P.J. Somashekara)

LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court),
Bengaluru City