

KADK030017632024



**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE
AND JMFC AT MANGALURU, DAKSHINA KANNADA**

PRESENT: **SRI. CHANDRAIAH B. P.**, B.A. LL.B.,
II Additional Civil Judge & JMFC., Mangaluru,
Dakshina Kannada

Dated this the 20th day of December 2024

Misc. Case No.26/2024

PETITIONERS:

1. Ms. Boomi Ramachandra, D/o. M. Ramachandra, aged about 40 years, R/at. Flat No.1013/1113, Ivory Towers Apartment, S. L. Mathais road, Attavar, Mangaluru Taluk.
2. Mrs. S. Susheela Devi, W/o. M. Ramachandra, aged about 73 years, No.690, 'Sri Mahalakshmi' Sri. Venkateshwara Theatre road, Devasandra, K. R. Puram, Bangaluru.

By Sri. M. R. Ballal., Advocate)

- Versus -

RESPONDENTS:

1. Ivory Towers Apartment Owners Association, Ivory Tower Apartment, S. L. Mathais road, Attavar, Mangaluru,

Represented by its President.

2. The President, Ivory Towers Apartment Owners Association, Ivory Towers Apartment, S.L. Mathais road, Attavar, Mangaluru.
3. The Secretary, Ivory Towers Apartment Owners Association, Ivory Towers Apartment, S.L. Mathais road, Attavar, Mangaluru.

(By Sri. K. P. A. Shukoor., Advocate)

PARTIES ON INTERLOCUTORY APPLICATION No.III

APPLICANTS: Ms. Boomi Ramachandra and another.

- V/s -

OPPONENTS: Ivory Towers Apartment Owners Association and others.

ORDERS ON INTERLOCUTORY APPLICATION No.III

This interlocutory application is filed by the petitioners under Section 151 r/w Order XXXIX rule 1 and 2 of Code of Civil Procedure and prays to grant an

order of interim mandatory injunction and directing the respondents to restore the essential amenities provided to Flat No.1013/1113, Ivory Towers Apartment pending disposal of the I.A.

2. This application is supported with an affidavit sworn by the petitioner No.1 and stated that the residential flat No.1013/1113 situated in 10/11th floor of the Ivory Towers Apartment building. The petitioners have no other residence in Mangaluru. It is further stated that the flat is now owned by the mother of the petitioner No.1. It is further stated that prior to formation of respondent No.1 Association, the promoter M/s. Mothisham Complexes (P) Ltd., had collected advance maintenance and other charges relating to the said flat and there was no arrears by the petitioner No.1. To gain unlawfully cost invoices were issued claiming maintenance charges in the guise of arrears of maintenance charges which was pretested by the petitioner No.1. It is further stated that to pressurize payment of illegal demand, the respondents displayed petitioner No.1 name as defaulter in the notice board of the Association and adopted indirect method of

threatening and troubling the petitioner No.1 thereby causing embarrassment and mental agony. Under such circumstances the petitioner No.1 has filed the suit in O. S. No.871/2019 resisting the illegal demands of the respondents and seek interim order of injunction restraining the respondents from enforcing the same.

3. It is further stated that on being coming to know of the petitioners efforts to pursue the matter, the respondent No.1 through communication dated 22.10.2024 and 30.10.2024 demanded the payment of Rs.7,04,525/- and disconnected the electricity provided to the apartment on Deepavali festival day, taking advantage of the situation. It is further stated that presently there is no electricity supply to the flat. It is further stated that the petitioners will suffer hardship on account of there being no electricity in their flat. The harm that is being caused to the petitioners cannot be compensated in terms of money. No such loss or hardship that will be caused to the respondents by granting mandatory order of injunction. Hence, prays to allow the application.

4. In the objection, the respondents stated that they have not disconnected the electricity to the schedule property. The said relief for restoration of electricity cannot be sought by the petitioners from these respondents without having specific averments and pleadings in the main suit nor has the petitioner sought for a consequential relief in the main suit. It is further stated that the petitioners with an intention to defeat the order passed by this court has willfully appeared before this court and this court after placing for the appearance of the plaintiffs for several dates was pleased to dismiss the above suit for non prosecution and this court was pleased to more than sufficient opportunities to the plaintiff for hearing on I. A. No.II and to comply the directions passed in I. A. No.IX, but the petitioners on the hand have played dilatory tactics to drag the matter by changing counsel to counsels.

5. It is further stated that once a suit is dismissed, the interim order passed in the said suit will be infructuous and there must be a specific order with regard to reviving of the said interim in the original suit itself and cannot be passed in its miscellaneous

proceedings. The petitioners have not been paying the maintenance, electricity and water charges to the respondents association and after the dismissal of the suit, the respondents stopped providing services such as maintaining the apartment unit of the petitioners. The petitioners are not entitled for any supervision and maintenance until the arrears of Rs.7,38,840/- have been cleared by the petitioners since the respondents have to pay salaries to the maintenance department. It is further stated that if the application is allowed great hardship and irreparable loss will be caused to this respondents whereas no hardship will be caused to the petitioners. Hence, prays to dismiss the application.

6. Heard.

7. Upon hearing arguments and perusal of material placed on records the following points would arise for consideration of this court;

P O I N T S

- 1. Whether the petitioners have made out a prima facie case to grant an order of mandatory temporary injunction?***

2. Whether balance of convenience lies in favour of the petitioners?

3. Whether any irreparable injury and hardship would cause to petitioners, if an order of mandatory temporary injunction is not granted ?

4. What order ?

8. Upon hearing and on perusal of the materials on record, this court has proceeds to answer the aforesaid points as under;

POINT No.1 to 3: In the Negative.

POINT No.4: As per the final order for the following;

REASONS

9. **POINT No.1:** The petitioners have filed this petition to restoring the suit in O. S. No.871/2019 on the file of this court. The petitioners have filed this application along with this petition and prays to pass an interim order of mandatory injunction and directing the respondents to restore the essential amenities provided to Flat No.1013/1113, Ivory Towers Apartment pending disposal of the interim application. Therefore, prima facie case is to be made out by the petitioners. In order

to consider, whether the petitioners are made out prima facie case or not, the court has to look into the pleading and also the documents available on record.

10. The petitioners in order to prove the prima facie case, have produced the certified copy of Order sheet in O. S. No.871/2019, copy of letter dated 22.10.2024, screen shot copy letter dated 30.10.2024.

11. The respondents have produced the copy of order dated 30.03.2024 passed in O. S. No.871/2019 by this court.

12. This Court has carefully perused the materials on record in order to ascertain the prima facie case. The specific contention of the petitioners that the residential flat No.1013/1113 situated in 10/11th floor of the Ivory Towers Apartment building is owned by petitioner No.2 and the petitioner No.1 is staying in the said residential apartment. The respondents have not disputed these facts.

13. The records reveals that the petitioner No.1 filed the suit in O. S. No.871/2019 against the respondents before this court and sought the relief of permanent prohibitory injunction to restraining the respondents from disconnecting the water, electricity, LPG and other basic amenities as specified in the deed of declaration to the plaint schedule apartment and also in anyway interfering with plaintiff possession and enjoyment over plaint schedule apartment along with amenities. In that suit the petitioner No.1 has successful to getting exparte temporary injunction order against the respondents. As per order dated 13.08.2019 said exparte order was extended till further order. Thereafter, the respondents files application for vacating the temporary injunction order on the grounds that the petitioner No.1 has fails to paying monthly electricity, Gas and maintenance charges to the respondents association. This court was dismissed the said application on 30.03.2024 and direct the petitioner No.1 to deposit the electricity, water and LPG charges to the CCD with proper identification till the disposal of I. A. No.II and matter was adjourned for hearing on I.A. No.II. Thereafter, counsels for the petitioner No.1 was

files retirement memo. Therefore this court, notice was issued to the petitioner No.1. Unfortunately, said notice was UN-served for person was not found. Thereafter, till 08.07.2024, the petitioner No.1 was not present before this court and not engaged any counsel to represent her. Therefore, by considering the absence of the petitioner No.1, this court dismissed said suit for non prosecution on 08.07.2024.

14. Now, theses petitioners have filed this petition for restoration of the suit in O. S. No.871/2019 after 113 days of delay and also after disconnecting electricity to the schedule premises. The contention of the petitioners that the respondents have disconnected the electricity provided to the apartment on Deepavali festival day i.e., 30.10.2024. The respondents have contended that they have not disconnected the electricity to the schedule premises. The specific contention of the respondents that utility sub meters are approved and installed by the concerned authority and the respondents are entrusted to only maintain the same.

15. The records reveals that till today the petitioner No.1 has failed to comply the order dated 30.03.2024 passed by this court in O. S. No.871/2019.

16. Now, the petitioners have contended that they are ready to deposit the demanded amount of Rs.7,04,525/- in the court to avoid dubbing them as defaulter. But, the respondents contended that once the suit is dismissed, the interim order passed in the said suit will be infructuous and there must be a specific order with regard to reviving of the said interim in the original suit itself and cannot be passed in its miscellaneous proceedings.

17. It is well settled law that interim temporary mandatory injunction is to be granted only under compelling circumstances and in order to restore status-quo ante and to prevent irreparable or serious injury being caused to a party. It is also well settled that a higher standard is required than a prima facie case for grant of a prohibitory injunction. It is also well settled that interim injunction, prohibitory or

mandatory can be granted even for restoring status quo anterior to the date of the suit if it is found that it is absolutely necessary.

18. In the present case on hand the petitioners sought to directing the respondents to restore the essential amenities provided to Flat No.1013/1113, Ivory Towers Apartment pending disposal of the interim application.

19. The Hon'ble Gauhati High Court in the case of Abdul Rehman V/s Assistant Executive Engineer, in CRP No.211/2009, the Hon'ble court has observed that *"Electricity is an essential requirement for any occupied premises and if a occupier is threatened with disconnection of power, it certainly amounts to invasion of the right of the complainant to fully enjoy the property occupied legitimately, by the complainant."*

20. The Hon'ble Chhattisgarh High Court, in the case of N. R. Sharma V/s Chattisgarh State Power Distribution Company Limited, in W. P. (C) 3340/2017, in para No.12 observed that *"12. Access to Electricity should be construed as a human right, of course, to the*

requirements to be satisfied under the Electricity laws. Denial of the same, upon even satisfying the requirements, would amount to violation of human rights".

21. The disconnection of electricity is governed in terms of Electricity Act, 2003 and the Association cannot disconnect electricity to his apartment and disconnection of electricity is a criminal offence. The concerned authority has power to disconnect electricity if the electricity bill is due. According to the respondents the petitioners are due an amount of Rs.7,38,840/- for maintenance, electricity and water charges. The petitioners also ready to deposit the demanded amount of Rs.7,04,525/-. It clears that the petitioners are not paid electricity charges also even though they have enjoy the electricity. The respondents are denied the disconnected the electricity to the schedule premises. The concerned authority is not a party to this petition or the suit in O. S. No.871/2019. The petitioners also not approached concerned authority to reconnect the electricity to the schedule premises or not filed any complaint against the

respondents for disconnecting the electricity to the schedule premises. It is well settled law that a court cannot pass an injunction order against a third party without impleading them, giving them an opportunity to be heard, and considering their interests. Under such circumstances this court cannot pass an order against the third party to restore the electricity connection to the schedule premises.

22. The counsel for the respondents has contended that when there is no prayer for a particular relief and no pleadings to support such reliefs, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grant such a relief, it will lead to miscarriage of justice. In support of his contention, he relied the decision of the Hon'ble Apex Court reported in (2008) 17 SCC 491 in the case of Bachhaj Nahar V/s Nilima Mandal and another. The Hon'ble Apex Court has observed in para No.13 it read as *"Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which*

some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief". In another decision reported in (2018) 11 SCC 652 in the case of Shivaji Balaram Haibatti V/s Avinash Maruthi Pawar. The Hon'ble Court has observed in para No.26 as "It is these issues, which were gone into by the two Courts and were concurrently decided by them against the respondent. These issues, in our opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law

that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue de hors the pleadings is without jurisdiction. Such is the case here". In the present miscellaneous petition is filed and sought to restoration of the suit in O. S. No.871/2019. The petitioners nowhere sought any relief to restore the electricity connection to the schedule premises or the petitioners nowhere pleaded regarding electricity connection disconnected by the respondents in the petition. Therefore, ratio laid down by the Hon'ble Apex Court in the above decisions are aptly applicable to the present case also. Hence, same is adopted.

23. The Counsel for the respondents further contended that after delay of 113 days, the petitioners have filed this petition. The petitioners have not vigilant litigants therefore, they have not entitled for the relief sought in the suit. In support of his contention, the counsel for the respondents has relied the decision of the Hon'ble

Apex Court, reported in (2021) 2 SCC 317 in the case of Sagufa Ahamad and others V/s Upper Assam Polywood Products Pvt. The Hon'ble Apex Court in para No.17 observed as *"But we do not think that the appellants can take refuge under the above order in Cognizance for extension of limitation, In re. What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is Vigilantibus Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them".* In the present case, the petitioners after dismissal of the suit, filed this petition after lapse of 113 days delay. It shows that the petitioners are not vigilant litigants. Hence, ratio laid down by the Hon'ble Apex

Court is applicable to the present petition and same is applied.

24. The counsel for the respondents further contended that once a suit is dismissed, the interim order passed in the said suit will be infructuous, reviving of the said interim order in the original suit itself and it cannot be passed in its miscellaneous proceedings. In support of his contention, the counsel for the respondents has relied the decision of the Hon'ble Supreme Court reported in (2004) 6 SCC 378, in the case of Vareed Jacob V/s Sosamma Geevarghese and others. The Hon'ble Apex Court has observed in para No.66 as *"From the decisions rendered by different High Courts, therefore, the law that emerges is that there exists a distinction between ancillary orders which are required to be passed by the court in aid of or supplemental to the ultimate decision of the Court; as contradistinguished to an order passed under Part VI of the Code of Civil Procedure in terms whereof an order is passed in favour of a party to the lis which may not have a bearing on the ultimate result of the suit. An interlocutory order passed in a suit may not also have anything to do with the relief*

prayed for by the plaintiff. An order for injunction or appointment of receiver can be passed even at the instance of the defendant. An order which has been obtained by the defendant may not revive on restoration of the suit. Supplementary proceedings, thus, envisage that such a power must be specially conferred upon the Court which are required to be passed in the interest of justice irrespective of the fact as to whether the same would ultimately have any bearing with the reliefs claimed in the suit or not. In absence of any statutory provisions such a power cannot be exercised whereas a power which is ancillary or incidental, can always be exercised by the Court in aid of and supplemental to the final order that may be passed. Furthermore, a jurisdiction expressly conferred by a statute and an inherent power, subject to just exceptions, must be treated differently". In the present petition, this court granted the interim exparte injunction against the respondents in O. S. No.871/20 19. Therefore, said order is cannot reviving the present miscellaneous petition. The ratio laid down by the Hon'ble Apex Court is aptly applicable to the present petition. Hence, same is applied in the present case also.

25. The Karnataka Apartment Ownership Act requires apartment owners to comply with the bye-laws and administrative rules and regulation. Therefore, residents or users of the common areas and amenities, so it's legally binding to pay maintenance charges. A flat owner who doesn't pay maintenance to the apartment association cannot claim the common amenities. However, if the apartment owners association illegally claims the maintenance, same can be challenged before the court of law. In the present petition, the petitioner sought to restoring the suit in O. S. No.871/2019 on the file of this court. Nowhere sought the relief of restore of the essential amenities provided to Flat No.1013/1113, Ivory Towers Apartment. The petitioners are not paid electricity, water and maintenance charges to the apartment association even though they have enjoy the same service. The petitioner No.1 has failed to comply the order dated 30.03.2024 passed by this court in O. S. No.871/2019 till today. The Act of the petitioners it appears that they have not approach this court with clean hand. The Hon'ble Supreme Court in the case of Susanta Kumar Mandi V/s Shambhu Nath

Das Calcutta, has reiterated that a person who does not come to court with clean hands, he is not entitled to relief, emphasizing the duty of the court to protect itself from unscrupulous litigants.

26. From the above discussion this court is of the considered view that the facts and circumstances of the present case are not clearly indicate that there existed exceptional circumstances warranting grant of interim mandatory injunction in order to prevent injustice and irreparable harm being caused to the petitioners. Therefore, the petitioners are not entitled to an order of interim mandatory injunction to restore the essential amenities provided to Flat No.1013/1113, Ivory Towers Apartment pending disposal of this interim application. Therefore, at this stage, this court is of the opinion that the petitioners have made out prima facie case for trial, but failed to made out prima facie case for granting an order of temporary mandatory injunction against the respondents as sought for. Accordingly, this court answer to point No.1 in the Negative.

27. **POINT No.2 and 3:** For the sake of convenience these two points are taken up for common discussion. As per the discussion above the petitioners have failed to establishing prima facie case for granting temporary injunction in their favour. So, the question of balance of convenience and caused irreparable loss and injury to the petitioners does not arise. Therefore, this court answer point No.2 and 3 in the Negative.

28. **POINT No.4:** In view of findings to the point No.1 to 3, this court proceed to pass the following;

ORDER

The Interlocutory Application No.III
filed under Section 151 r/w Order
XXXIX rule 1 and 2 of CPC by the
petitioners is hereby dismissed.

No orders as to cost.

(Order is dictated to the stenographer on computer,
typed by her, corrected and then pronounced by me in
the open court on this 20th day of December 2024)

(SRI. CHANDRAIAH B.P)
II ADDITIONAL CIVIL JUDGE & JMFC,
MANGALURU, DAKSHINA KANNADA.