

IN THE COURT OF THE III JUNIOR CIVIL JUDGE: CITY CIVIL COURT  
AT HYDERABAD

I.A.NO. 1130 OF 2009

IN

O.S.NO. 3287 OF 2009

Between:

Syed Javed and another

... Petitioners/Plaintiffs

And

Satish Chandra Modi

.... Respondent/Defendant

COUNTER AFFIDAVI OF RESPONDENT/DEFENDANT

I, Satish Chandra Modi S/o late Manilal C. MOdi aged 62 years, occ: Business, Plot No.280, Road NO.25, Jubilee Hills, Hyderabad, do hereby solemnly affirm and state on oath as follows:

1. I am the Respondent herein and as such I am well acquainted with the facts deposed hereunder.
2. I submit the application as filed by the Petitioner for injunction restraining me from interfering with the alleged peaceful possession and enjoyment of the suit schedule properties is not maintainable either in law or on facts hence liable to be dismissed in limini.
3. I deny the all the adverse allegations contained in the affidavit in support of the petition and the Plaintiff is put to strict proof of all such allegations.
4. I submit that at the outset, the application for injunction and the suit are not maintainable for the reason that the same is filed against a person who is not related in any way to the suit schedule property. The suit is filed against me for injunction is not maintainable as I am nothing to do with the suit schedule property. The suit schedule property belonged to a charitable institution by name Sri M.C.Modi Discretionary Trust. On this ground alone, the application as well as suit are liable to be dismissed.
5. In reply to para No.2 of the affidavit in support of the application, I deny that the Petitioner is the tenant in respect of Shop No.46 admeasuring 412 sq.ft. in the lower ground floor in the building known as "21<sup>st</sup> Century Commercial Complex' bearing M.No.5-8-112 to 173, situated at Nampally, Hyderabad. It is further denied that the petitioner obtained Schedule-A property on rent in the month of November 2001 at Rs.2143/- commencing from 16.10.2001 from the Respondent is absolutely false and hence denied.

6. In reply to para No.3 of the application, I submit the contention of the Petitioner that the said rent was enhanced from 2143/- from time to time and the present rent is Rs.3042/- per month for schedule-A property and that the Petitioner set up a furniture shop in the name and style of J.K. Enteprrises and that the Petitioner is in peaceful physical possession as on today is false and hence denied.

7. In reply to para No.4 of the application, that the contention of the Petitioner No.2 that he obtained shop bearing No.39 admeasuring 417 sq.ft. in the lower ground floor building of 21<sup>st</sup> Century Commercial complex bearing M.No.5-8-112 to 173 at Nampally, Hyderabad is false, hence denied. The further contention of the Petitioner No.2 that he has obtained the schedule-B property in the month of November 2001 on a monthly rent of Rs.2143/- commencing from 16.10.2001 or that the Petitioner has set up a furniture shop in the name and style of S.K.Enterprises and he is in peaceful physical possession of the property is absolutely false and hence denied.

8. In reply to para No.5 of the application, that the contention of the Petitioner No.2 that the said rent of Rs.2143/- has been enhanced from time to time as per my wishes and that the present rent is Rs.3442/- is absolutely false and hence denied.

9. In reply to para No.6 of the application, the further contention of the Petitioner that it is the practice of the landlord whenever he thinks fit and he used to come down at the premises of the Petitioner No.1 and 2 and receive rents but did not pass the receipts is absolutely false and concocted for the purpose of filing the present application.

10. In reply to para No.7 of the application, the contention of the Petitioner that this Respondent did not come down to receive the rents for the months of March and April 2009 is false hence denied. The further contention of the Petitioner that they have sent some monies purported to be rents through money orders but the said money orders also being returned with the endorsement refused, or that thereafter again the Petitioners have sent the monies purported to be rents through M.O. for the months of March 2009 to July 2009 on 13.07.2009 is not disputed but it is respectfully submitted that the Petitioners have no right to send the monies through M.O. as they are not at all the tenants of the suit schedule property and as they are only trespassers in the suit schedule property.

11. In reply to para No.8 of the application, the contention of the Petitioners that they have been paying rents in common for convenience but no receipts are being issued by me is false and hence denied.

12. In reply to para Nos.10 to 15 of the application, I respectfully submit that I am not the landlord of the suit schedule property and I have nothing to do with the suit schedule property in my individual capacity. I submit in fact the suit schedule property belongs to a Trust by name M.C.Modi Discretionary Trust. The Respondent No.1 and 2 have obtained the six mulgies bearing Nos.37 to 39 and 46 to 48 situated at 21<sup>st</sup> Century Commercial Complex, Nampally, Hyderabad from the Trust under a Lease Agreement dated 8<sup>th</sup> day of October 1998. I submit the schedule property is also part and parcel of the above shops under the Lease Agreement dated 8<sup>th</sup> day of October 1998. The Petitioner No.1 obtained three shops bearing Nos.39, 46 and 47 on a monthly rent of Rs.5250/- comprising of 3250/- and Rs.2000/- towards amenity charges. Similarly, the Petitioner No.2 obtained another 3 shops bearing Nos.37, 38 & 48 admeasuring 1125 Sft. on a monthly rent of 5250/- comprising of Rs.3250/ towards rent and Rs.2000/- towards amenity charges. Under the above said two lease agreements, the lease period is for three years commencing October 1<sup>st</sup> 1998. I further submit the Petitioner No.1 and 2 after the completion of the above said three years period have vacated all the six shops obtained under the above said Lease Agreement and handed over the possession of the all the six shops to the M.C.MODi Discretionary Trust vide their letter dated 14<sup>th</sup> October 2001. I submit since the above said date, the above said Trust is in peaceful possession and occupation of the all the shops and the Trust kept the above shops under lock and key and using as and when it requires for their own purposes.

13. I further submit the Petitioner No.1 taking advantage of the situation, on 02.04.2009 broke open the locks of the shops bearing No.39 and 46 and occupied the said shops illegally. I submit immediately the Trust filed a Private Complaint on 1.4.2009 vide C.C.S.R.No. 881 of 2009 on the file of the XII Addl. Chief Metropolitan Magistrate at Nampally for referring the complaint to the P.S.Nampally for investigation and filing report into the said court and the said complaint was referred to P.S.Nampally for investigation and filing a Report. I submit having come to know about the filing of the above said complaint, the Petitioners herein filed the above said suit on all false and baseless allegations and obtained exparte injunctions.

14. I submit the Petitioners are not at all the tenants of the suit schedule property and they are only trespassers of the suit schedule property and the documents filed by the Petitioners are created for the purpose of filing of the suit and the Petitioners approached this Hon'ble Court with unclean hands by suppressing the true facts. It is also pertinent to mention here the Petitioners are not paying any rents and they are continuing in the premises without paying a single pie to the Trust.

In view of the above facts the Petitioners are not entitled the equitable relief of injunction as they have approached this Hon'ble Court by suppressing the material facts and on the basis of fabricated documents. Hence their application for injunction is liable to be dismissed.

Sworn and signed before me  
on this the 14<sup>th</sup> day of September, 2009  
at Hyderabad.

Deponent

Advocate / Hyderabad

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Filed on: 14.09.2009

Filed by:

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