

IN THE COURT OF THE I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, AT SECUNDERABAD

DATED THIS THE 12th DAY OF JULY, 2017

PRESENT: SMT. P.SREEDEVI
I JUNIOR CIVIL JUDGE

O.S. No. 394 OF 2013

Between:

M/s. M.C.Modi Educational Trust
represented by its Trustee
Mr. Soham Modi, having its office
at 5-4-187/3 & 4, II floor, MG Road,
Soham Mansion, Secunderabad

...Plaintiff

AND

M/s. Pelican Services
represented by Mr. Benedict Ceaser
S/o M.Philip,
R/o Plot No. 12, Shameerpet,
Secunderabad

Also at

H.No. 5-4-187/3 & 4, II floor
Soham Mansion, MG Road,
Secunderabad

...Defendant

This suit is coming on this day before me for final hearing in the presence of Sri C.Balagopal, Advocate for plaintiff and Sri G.A.H.Khan, Advocate for defendant, and the matter having been heard and stood over for consideration till today, this Court delivered the following:-

J U D G M E N T

This suit is filed by the plaintiff for ejection of the defendant and mesne profits and damages against the defendant.

2. The brief averments of the plaint are as follows:-

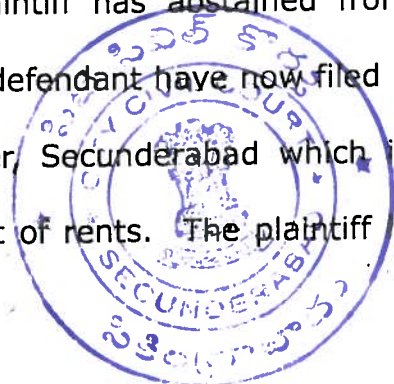
The plaintiff is owner of the premises bearing municipal No. 5-4-187/3 & 4 consisting of land and upper structure including basement.

obtained premises admeasuring 200 sq.ft on the second floor for lease for use of office and about 30 sq.ft of storage space on the ground floor for rent of Rs. 1,440/- per month under a lease agreement, dt. 1.6.2002 exclusive of water and electricity charges. The rent is enchanced from time to time and the present rent is Rs. 2,745/-. As per the terms of the lease agreement, the lease period is for three years. Thereafter no fresh deed was entered between both parties and there is no subsisting valid lease deed between the plaintiff and defendant. The defendant was very irregular in payment of rents and the maintenance charges.

3. The defendant is now due a sum of Rs. 13,960/- towards maintenance charges for the period from December 2004 to December 2012 and further sum of Rs. 32,855/- towards arrears of rent for the period from June 2012 to December 2012 aggregating to a sum of Rs. 46,815/-. The defendant committed default in payment of rents for the period from June 2012 to December 2012. The defendant is liable to be evicted on the ground of willful default. The lease period was terminated by issuing a notice, dt. 13.1.2012 to the defendant to vacate the suit schedule property which was received by the defendant on 17.1.2012. A reply notice was given by the defendant, but he failed to vacate the suit schedule property.

4. As the tenancy is terminated, the plaintiff has abstained from receiving the rents from the defendant. The defendant have now filed a petition before the Additional Rent Controller, Secunderabad which is numbered as RC No. 166 of 2012 for deposit of rents. The plaintiff is

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pursuing the above matter. As the tenancy was terminated and the defendant is still continuing in the suit schedule property, the plaintiff is constrained to file the present suit for ejecting the defendant from the suit schedule property and also requesting the court to direct the defendant to pay sum of Rs. 10,000/- towards mesne profits and damages from 1.2.2013 till the disposal of the suit and to direct the defendant to pay sum of Rs. 46,815/- towards arrears of rent.

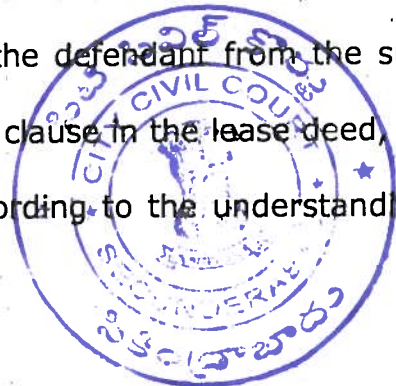
5. The defendant contended in the written statement that the notice issued by the plaintiff is bad as per the Section 106 of Transfer of Property Act as the defendant is statutory tenant of the suit schedule property and the present suit is frivolous and vexatious in the nature and the same may be dismissed. According to the lease agreement, the rent for the suit schedule property will be enhanced by 20% for every three years over the prevailing rent after the expiry of the three years from 1.6.2002 and the defendant shall be continued in the plaint schedule property as long as he wants to continue in premises as agreed between plaintiff and the defendant by virtue of lease deed, dt. 1.6.2002. Since then the defendant is in peaceful possession and occupation of the plaint schedule property and enjoying the same without any sort of interference from any body.

6. The defendant was regular in payment of rents and he never

to send the rents through money order to the plaintiff herein. The plaintiff is not entitled for any maintenance and service charges from this defendant since there is no covenant or any agreement under the lease, dt. 1.6.2002 for the leased premises, as such the plaintiff is not entitled for any service charges or maintenance charges. The defendant used to pay @ Rs. 80/- per month towards the janitorial expenses, security charges and other amenity charges till 2006. The plaintiff thereafter without any notice demolished the toilets used by the defendant and instructed the defendant not to pay any maintenance charges till new toilets were constructed. Hence, the plaintiff is not entitled for any maintenance charges or service charges.

7. From the date of lease the defendant is very prompt in payment of rents through account payee cheque to the plaintiff trust and defendant paid the rents till August 2012 thereafter the plaintiff stopped receiving the rents and since September 2012 onwards the defendant issued number of notices to the plaintiff herein and sent the rents through money orders for the period from September to December 2012, but they were refused by the plaintiff. The plaintiff deliberately not produced statement of account with regard to payments received by him in respect of the plaint schedule property from 1.6.2002 to till the date of filing of the suit and with all false allegations filed the present suit. Hence, the plaintiff is not entitled to evict the defendant from the suit schedule property as there is no termination clause in the lease deed, as such the lease is continuing till today. According to the understanding

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between the plaintiff and the defendant in the lease deed, the lease is to continue as long as the defendant paying the enhanced rent of 20% for every three years over the suit schedule property and there is no covenant of termination of any lease or tenancy between the plaintiff and the defendant as such the defendant is continuing as a tenant in the suit schedule property and the alleged notice is bad in law. Hence, requesting the court to dismiss the suit.

8. Basing on the averments of the plaint and written statement, my predecessor has framed the following issues for trial.

I. Whether the plaintiff is entitled for eviction of the defendant from the suit schedule property as prayed for?

II. Whether the plaintiff is entitled for recovery of mesne profits and damages from 1.2.2013 till disposal of the suit from the defendant as prayed for?

III. Whether the plaintiff is entitled for recovery of Rs. 46,815/- towards arrears of rents from the defendant as prayed for?

IV. To what relief?

9. PW1 who is the legal officer of the plaintiff had filed his chief affidavit in lieu of his chief examination and marked Exs.A1 to A8.

10. Issue No.I

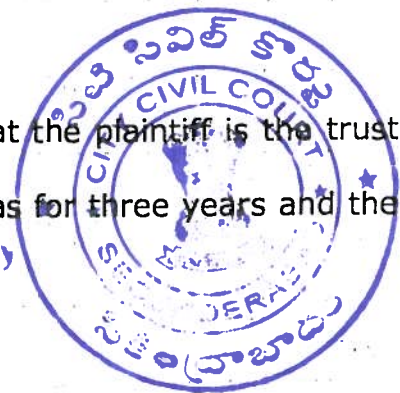
PW1 deposed that plaintiff is the owner of the premises bearing

space in the second floor admeasuring 200 sq.ft and in the ground floor admeasuring 30 sq.ft of storage space on a monthly rent of Rs. 1440/- under a lease agreement, dt. 1.2.2002 exclusive of water and electricity charges. The rent was enhanced from time to time and the present rent is Rs. 2,745/- apart from the maintenance charges and service charges. The lease period is only for three years and subsequently no fresh lease deed was entered between the parties and the lease is from month to month. The defendant was irregular in payment of rents and in payment of maintenance charges. Now he is due of Rs. 13,960/- towards maintenance charges from December 2004 to December 2012 and further sum of Rs. 32,855/- towards arrears of rent for period from June 2012 to December 2012 aggregating to a sum of Rs. 46,815/-. The defendant committed default in payment of rents for the period from June, 2012 to December 2012. Hence, the defendant is liable to be evicted from the suit schedule property. The plaintiff had issued notice, dt. 13.1.2012 which was received by the defendant on 17.1.2012 for vacating the suit schedule property. In support of oral evidence, PW1 marked the lease agreement, dt. 1.6.2002 as Ex.A1, Trust resolution, dt 2.11.2000 as Ex.A2, office copy of notice, dt. 13.1.2012 as Ex.A3, office coy of reply of defendant as Ex.A4, office copy of notice, dt. 15.11.2012 as Ex.A5, reply, dt. 26.11.2012 as Ex.a6, postal acknowledgment as Ex.A7 and authorisation letter as Ex.A8.

11. He admitted in his cross examination that the plaintiff is the trust which is a registered one. The lease period was for three years and the

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same was lapsed on 30.6.2004. He denied that the plaintiff trust renewed the said lease by another three years by enhancing the rent @ 20% over and above the existing rents. He explained that defendant himself enhanced 20% rent voluntarily. One Sri Soham Modi is looking after the plaintiff trust and he has no knowledge about the affairs of the trust better than PW1. He admitted that the defendant paid the rents for the month of July 2012 and in the month of August 2012. The defendant filed RC No. 166/2012 on the file of ARC, CCC, Secunderabad for the deposit of rents when the plaintiff refused to receive the rents from the month of September 2012.

12. After completion of evidence of plaintiff, the defendant got examined himself as DW1 and got marked Exs.B1 and B2.

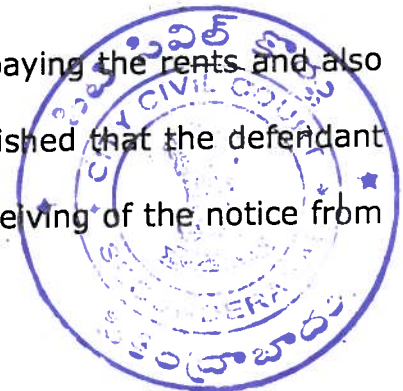
13. DW1 deposed that he was permitted to continue in the suit schedule property as long as he wants to continue in the premises by paying enhanced rents as agreed between the plaintiff and defendant in the lease deed, dt. 1.6.2002. He was very regular in payments of rents and never committed any default. The plaintiff is not entitled for the ejectment of the defendant from the suit schedule property and also not entitled to recover any arrears of rents much less a sum of Rs. 46,815/-. The notice issued by the plaintiff is bad in law, hence the plaintiff is not entitled to claim any mesne profits. The statement of payment was

plaintiff is not a registered one and Ex.A1 does not contain that he will be stay as long as he wish in the schedule premises. He received the notice of termination of tenancy under section 106 of Transfer of Property Act from the plaintiff.

14. The learned counsel for the plaintiff argued that the defendant taken the second floor on lease from the plaintiff which is a trust and both entered into lease agreement on 1.6.2002 and there was no fresh lease deed executed between both parties and the rent was enhanced from time to time and the present rent is Rs. 2,745/-. But the defendant was very irregular in payment of rents and he is liable to pay arrears of rents and also maintenance charges and the plaintiff got issued the termination of tenancy notice according to Section 106 of Transfer of Property Act on 13.1.2012 and as the lease is for month to month the notice issued by the plaintiff is a valid notice and the defendant is liable to vacate the suit schedule property and handover the property to the plaintiff. Hence, requesting the court to decree the suit in favour of the plaintiff and also grant mesne profits and damages including the arrears of rents.

15. On the other hand, the learned counsel for the defendants argued that the plaintiff approached this court with unclean hands and filed a false suit and the defendant is very prompt in paying the rents and also maintenance charges. Ex.B1 sufficiently established that the defendant was very regular in payment of rents. After receiving of the notice from

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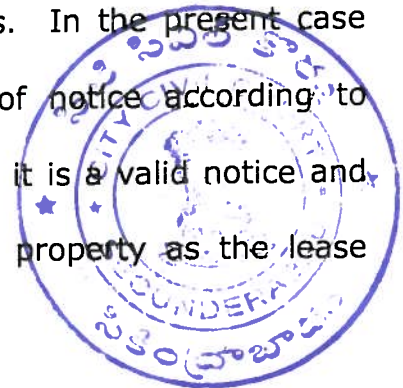
the plaintiff the defendant got issued reply vide Ex.B2 and he has asserted that the defendant by enhancing the rent @ 20% over the current rent can continue in the leased premises as long as the defendant is willing to continue. Ex.A1 lease agreement substantiated the defence of the defendant. Further he argued that there is no clause in Ex.A1 about the termination of the tenancy. Hence, the defendant is not liable to vacate the suit schedule property as long as he paying the monthly rents and willing to continue. The plaintiff is not entitled to evict the defendants and not entitled for any mesne profits or damages or arrears of rents. Further more he argued that the defendant has preferred a case before Rent Controller for deposit of the rents and which is pending. Hence, the present suit is not maintainable and requesting the court to dismiss the suit.

16. On the appreciation of both oral and documentary evidence of both parties, after hearing to both counsels and after careful scrutiny of the entire material available on record, it is pertinent to mention that the relationship between the plaintiff and the defendant as landlord and tenant is not in dispute. It is admitted that the lease agreement vide Ex.A1 is not a registered one. According to Section 106 of Transfer of Property Act the lease of immovable property for any purpose other than agricultural or manufacturing purpose shall be deemed to be a lease from month to month determinable on the part of either lessor or lessee

only commencing from 1st July, 2001. It is admitted by DW1 in his evidence that there is no fresh lease deed executed after expiry of three years. Further it is observed that the lease agreement was executed between both the parties after the lease was commenced.

17. Now the point to be construed here is whether the notice issued by the plaintiff is valid notice under section 106 of Transfer of Property Act. It is admitted by DW1 in his evidence that he received the notice for termination of tenancy and Ex.A3 is office copy of notice. It is the version of the defendant that they have got replied the notice vide Ex.A6 that the said lease is for period of three years retrospective effect which commences from 1.7.2001, the rent over the said premises will be enhanced by 20% over the prevailing rent after the expiry of first three years as agreed by both parties as long as the defendant continues in the leased premises. But the said fact was denied by the plaintiff and according to him he never agreed for extension of the lease period as per the wish of the defendant. The defendant failed to prove this averment of his reply notice. Further if the lease agreement is observed the lease period is only for three years as discussed above and there is no termination notice. However, the lease is for month to month, the owner by issuing a notice for termination of the tenancy with 15 days i.e. sufficient to get vacate the leased premises. In the present case also the plaintiff got issued the termination of notice according to Section 106 of Transfer of Property Act. Hence, it is a valid notice and the defendant has to vacate the suit schedule property as the lease

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period is terminated by the notice issued by the plaintiff. Accordingly, this Issue is answered in favour of the plaintiff.

18. Issue No. II

It is the allegation of the plaintiff that the defendant is irregular in payment of rents and as well as failed to pay the maintenance charges. According to the oral evidence of PW1 in chief the defendant committed default in payment of rents from June 2012 to December 2012, but the plaintiff failed to produce any documentary evidence to that effect. In contra, the defendant got marked Ex.B1 Bank statement pertaining to the year 2010 from the month of March to August which establish that the defendant was regular in payment of rents during the above period. However, both parties failed to prove their own contentions with regard to any default on part of the defendant in payment of rents or regular payments made by the defendants. In such a situation as the plaintiff also failed to produce sufficient evidence, it is difficult to come to a conclusion whether the plaintiff is entitled for any relief of mesne profits and damages. Accordingly, this Issue is answered against the plaintiff in favour of the defendant.

19. Issue No. III

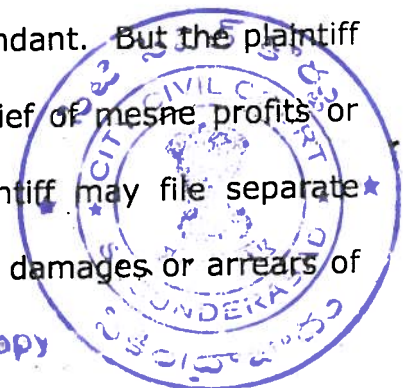
It is the contention of the plaintiff that from June 2012 the defendant did not pay any rents and also from December 2004 to

evidence moreover, on one hand, the plaintiff is asserting that from December 2004 to December 2012, the defendant committed default and again on the other hand asserting that from June 2012 to December 2012 the defendant failed to pay the arrears of rents and total aggregating amount is Rs. 46,815/-, but there is no proof adduced before the court by the plaintiff that the defendant is liable to pay a sum of Rs. 46,815/- towards arrears of rents. Hence, at this juncture ordering of recovery of arrears of rents without any substantial proof is not justified, though the plaintiff is entitled for ejection of the defendant from the suit schedule property. Accordingly, this Issue is answered against the plaintiff in favour of the defendant.

20. Issue No. IV

As discussed above, the plaintiff by producing cogent and reliable evidence, established that he has issued notice, dt. 13.1.2012 which is a valid notice under section 106 of Transfer of Property Act and the same was received by the defendant, but the defendant failed to vacate the suit schedule property. Though RC No. 166 of 2012 is filed or pending as stated by the defendant that does not come in the way of this court for disposing the present suit when the plaintiff is entitled for the relief under the law by producing sufficient evidence. Hence, the plaintiff is entitled for the relief of eviction against the defendant. But the plaintiff failed to establish that he is entitled for any relief of mesne profits or damages or arrears of rents. Hence, the plaintiff may file separate application for ascertainment of mesne profits or damages or arrears of

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O.S. No. 394 of 2013

rents if he could establish by producing sufficient evidence. Therefore, the plaintiff is entitled for the relief of vacating the defendants from the suit schedule property but not entitled for the arrears of rent. Accordingly, this Issue is answered.

21. **In the result**, the suit is decreed with costs in favour of the plaintiff against the defendant directing the defendant to vacate the suit schedule property within a period of 3 months from the date of this judgment. The plaintiff is directed to file a separate application for ascertainment of mesne profits and arrears of rents.

(Dictated to Personal Assistant, transcribed by her, corrected and pronounced by me in Open Court, on this the 12th day of July, 2017.)

[Signature]
**I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, SECUNDERABAD.**

**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

For the plaintiff:

PW1: L.Ramacharyulu

For the defendant:

---None---

EXHIBITS MARKED

For the plaintiff:

Ex.A1 - Lease agreement, dt. 1.6.2002

Ex.A2 - Trust resolution, dt. 2.11.2000

Ex.A3 - Office copy of Notice, dt. 13.1.2012



Ex.A5- Office copy of notice, d t. 15.11.2012

Ex.A6- Reply, dt. 26.11.2012

Ex.A7- Postal acknowledgment

Ex.A8- Authorisation letter

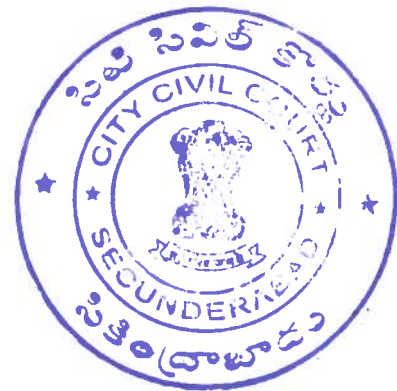
For the defendant:

-- Nil--

**I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, SECUNDERABAD.**

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P.C. SUPERINTENDENT



IN THE COURT OF THE I ADDL.
CHIEF JUDGE: C.C.C. SEC'BAD
CENTRAL PHOTO COPY SECTION

PCA.No. 4499/17

Presented on 13-7-17

C.F. Called on 9.8.17

Charges Deposited on 11/8/17 Rs. 64/-

Receipt No.

Made Ready on 28/08/2017

Copy Delivered on

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[Handwritten Signature]
P.C. Superintendent

DECREE IN ORIGINAL SUIT

IN THE COURT OF THE I JUNIOR CIVIL JUDGE: CITY CIVIL COURT: SECUNDERABAD.

PRESENT: Smt.P.Sreedevi,
I Junior Civil Judge,
City Civil Court, Secunderabad.

Dated: This the 12th day of July, 2017.

O.S.No.394 of 2013

Between:

M/s.M.C Modi Educational Trust,
Rep., by its Trustee Mr.Soham Modi,
having its office at 5-4-187/3&4, II Floor,
M.G.Road, Soham Mansion, Secunderabad. ...Plaintiff.
A N D

M/s.Pelican Services,
Rep., by Mr.Benedict Ceaser, S/o.M.Philip,
aged major, R/o.Plot No.12, Shameerpet, Secunderabad.

Also At H.No.5-4-187/3 & 4, IInd Floor,
Soham Mansion M.G.Road, Secunderabad. ...Defendant.

Claim: Suit filed U/Sec.26 of CPC to direct the defendant to vacate and handover the peaceful possession of the suit schedule property and to direct the defendant to pay a sum of Rs.10,000/- towards mesne profits and damages from 1.2.2013 till the disposal of the suit or till the date of delivery of vacant and peaceful possession by the defendant the plaintiff and to direct the defendant to pay sum of Rs.46,815/- towards arrears of rent and with costs.

Cause of Action in the suit : Arose in month June, 2012.

Jurisdiction: Suit property is situated at M.G.Road, Secunderabad. Court has territorial jurisdiction.

Valuation of suit : The suit is filed for valued at Rs.79,790/-(arrears of rent Rs.46,850, and Annual rent of Rs.32,940/-) is paid Court Fees of Rs.4,235/- and is paid U/S 20 of the APCF & SV Act.1956.

Plaint presented on :19-1-2013.

Plaint numbered on:19-08-2013.

This suit coming on this day before me form final hearing and disposal in the presence of Sri.C.Bala Gopal, advocate for plaintiff, and Sri.G.A..H.Khan,, Advocate for defendant and this court doth order and decree as following:

..Ctd...2...



2) That the defendant be and are hereby directed to vacate suit schedule property within a period of 3 months from the date of this judgment.

3) That the plaintiff is directed to file a separate application for ascertainment of mesne profits and arrears of rents.

4) That the defendant also do pay to the plaintiff a sum of Rs.5,224/-, towards costs.

Given under my hand and seal of the Court this the 12nd day of July, 2017.

I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, SECUNDERABAD.

MEMO OF COSTS

	Plaintiff	Defendant
1) Stamp on Plaint	Rs. 4,235-00	
2) Stamp on Power	Rs. 2-00	
3) Advocate fee	Rs. 797-00	
4) Process fee	Rs. 90-00	
5) Misc. Charges.	Rs. 100-00	
Total	Rs. 5,224-00	

INDEPENDENT COURT OF THE I ADDL
CHIEF JUDGE: C.C.C. SEC'BAD
CENTRAL PHOTO COPY SECTION
PCA.No. 2-00 0099/17
Presented on 13.7.17
C.F. Called on 9.8.17
Charges-Deposited on 11/8/17 Rs. 60/-
Receipt No.
Made Ready on 28/08/2017
Copy Delivered on

I JUNIOR CIVIL JUDGE, P.C. Superintendent
CITY CIVIL COURT, SECUNDERABAD.

SCHEDULE OF PROPERTY.

Office space Adm., 200 Sft on the lind floor and about 30 Sqft of Godow space in the ground floor forming a porjtion of Municipal bearing No.5-4-187/3&4 H.No.5-4-187/3 & 4, 1Ind Floor, Goham Mansion, M.G.Road, Secunderabad and bounded on the :

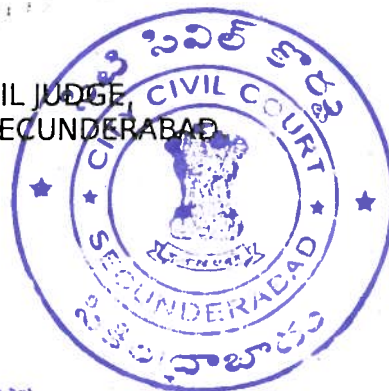
- North: Premises belonging to M/s.Luharuka & Associates.
- South: Common Passage.
- East: Common Passage.
- West: Office Space.

I JUNIOR CIVIL JUDGE,
CITY CIVIL COURT, SECUNDERABAD.

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P.C. SUPERINTENDENT

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Salagopal Adv

T-by [Signature]