



2024:KER:71197

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2024/ 3RD ASWINA, 1946

OP(C) NO.2307 OF 2022

AGAINST THE ORDER DATED 25.08.2022 IN I.A NO.435/2021 IN OS NO.200 OF 2018 OF MUNSIF COURT, CHITTUR

PETITIONER/RESPONDENT/DEFENDANT:

PRAMOD, AGED 41 YEARS, S/O.PRABHAKARAN,  
LAKSHMI FANCY AND FOOT WEAR, 21/123,  
ST ANTONY'S CHURCH BUILDING, AMBATTUPALAYAM,  
CHITTUR POST, PALAKKAD, PIN - 678104.

BY ADVS.  
SAJAN VARGHEESE K.  
LIJU. M.P  
JOPHY POTHEN KANDANKARY

RESPONDENTS/PETITIONERS/PLAINTIFFS:

- 1 THE SECRETARY, THE SULTANPET DIOCESE SOCIETY,  
RC CHURCH, ST SEBASTIAN'S CATHEDRAL,  
PALAYAPET, PALAKKAD, PIN - 678001.
- 2 THE PROCURATOR, THE SULTANPET DIOCESE SOCIETY,  
RC CHURCH, ST. SEBASTIAN'S CATHEDRAL,  
PALAYAPET, PALAKKAD, PIN - 678001.

BY ADVS.  
SARATH M.S  
B.PREMNATH  
JACOB P.ALEX, AMICUS CURIAE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.04.2024, ALONG WITH OP(C) Nos.1446/2023 AND 2309/2022, THE COURT ON 25.09.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2024/3RD ASWINA, 1946

OP (C) NO.2309 OF 2022

AGAINST THE ORDER DATED 25.08.2022 IN I.A NO.437/2021 IN OS NO.202 OF 2018 OF MUNSIF COURT, CHITTUR

PETITIONER/RESPONDENT/DEFENDANT:

RAVIPRASAD, AGED 52 YEARS, S/O.PONNU, AGED 52,  
NANDHA FURNITURE UPHOLSTERY, 21/123,  
ST ANTONY'S CHURCH BUILDING, AMBATTUPALAYAM,  
CHITTUR POST, PALAKKAD, PIN - 678104.

BY ADVS.  
SAJAN VARGHEESE K.  
LIJU. M.P  
JOPHY POTHEN KANDANKARY

RESPONDENTS/PETITIONERS/PLAINTIFFS:

- 1 THE SECRETARY, THE SULTANPET DIOCESE SOCIETY,  
RC CHURCH, ST SEBASTIAN'S CATHEDRAL, PALAYAPET,  
PALAKKAD, PIN - 678001.
- 2 THE PROCURATOR, THE SULTANPET DIOCESE SOCIETY,  
RC CHURCH, ST SEBASTIAN'S CATHEDRAL, PALAYAPET,  
PALAKKAD, PIN - 678001.

BY ADVS.  
SARATH M S  
B.PREMNATH  
JACOB P.ALEX, AMICUS CURIAE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.04.2024, ALONG WITH OP(C) Nos.2307/2022 AND 2309/2022, THE COURT ON 25.09.2024 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

WEDNESDAY, THE 25<sup>TH</sup> DAY OF SEPTEMBER 2024/3RD ASWINA, 1946

OP(C) NO.1446 OF 2023

AGAINST THE ORDERS DATED 28.01.2023 IN I.A.NO.24/2022 & 28/2022 IN O.S NO.122 OF 2021 OF MUNSIF COURT, NORTH PARAVUR

PETITIONERS/PETITIONERS IN I.As/DEFENDANTS IN O.S:

- 1 M.T. VALSON, AGED 65 YEARS, S/O M.P.THOMMY, HAVING PERMANENT ADDRESS AT 'AKSHARAM', KUNDUPPADAM ROAD, MANJUMMEL P.O., UDYOGAMANDAL (VIA), ERNAKULAM-682 501, REPRESENTED BY ITS AUTHORIZED POWER OF ATTORNEY HOLDER, K.M. GEORGE, AGED 68, S/O K.V. MICHEAL, RESIDING AT KOTHETH HOUSE, MANJUMMEL P.O, ERNAKULAM, PIN - 683501.
- 2 ABHEDANANDAN ASARI V., S/O.VISWANATHAN ASARI, RESIDING AT OORUVILA HOUSE, THIRUPURAM, NEYYATINKARA TALUK, KANCHAMPAZHINJI P.O., THIRUVANANTHAPURAM, PIN - 695525.

BY ADVS.  
P.G.JAYASHANKAR  
P.K.RESHMA (KALARICKAL)  
S.RAJEEV (K/001711/2019)  
SAJANA V.H  
SHAIJU GEORGE  
AADERSH R.S. PANICKER



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RESPONDENTS/RESPONDENT IN I.As/PLAINTIFF IN O.S:

VINCY CHERIAN, AGED 77 YEARS, S/O.CHERIAN,  
ELENGIKAL HOUSE, NEAR POWER HOUSE, ALUVA,  
ERNAKULAM - 683 101,  
NOW RESIDING AT BUILDING NO.19/208A,  
KUNDUPPADAM ROAD, MANJUMMEL P.O,  
UDYOGAMANDAL (VIA), ERNAKULAM, PIN - 683501.

BY ADVS.  
JOHN NELLIMALA SARAI .  
MOHAMMED SAGHEER(K/1512/2022)  
JACOB P.ALEX, AMICUS CURIAE

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON  
05.04.2024, ALONG WITH OP(C) Nos.2307/2022 AND 2309/2022,  
THE COURT ON 25.09.2024 DELIVERED THE FOLLOWING:



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'CR'

JUDGMENT

Dated, this the 25<sup>th</sup> September, 2024

A proximate equal of the issues involved in these Original Petitions may be expressed as "*perversions of best things to worst abuses*" as Milton limned in Paradise Lost.

2. Disquieting is the litigative trend, where a tenant takes the landlord in a law suit seeking protection from forcible eviction - a rhetoric, unaccompanied by a real threat on facts, in many a cases - but without performing his fundamental obligation in law to pay the rent? Is the plaintiff/tenant entitled to an equitable relief of injunction from eviction? Should the suit continue even when the plaintiff/tenant fails to pay the

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arrears of rent; or whether the same is liable to be aborted by a process known to law? Can pleadings be struck off in such cases as an abuse of the process of the court? Up to what extent, law recognises the tenant's right to continue in the building, without paying the rent, under the guise of a protective order obtained by alleging a threat of forcible eviction? These are a few questions, which surface for consideration in these Original Petitions.

2. The bare minimum facts in the three Original Petitions are summarised below:

O.P. (C) Nos.2307 and 2309 of 2022

O.P. (C) Nos.2307 and 2309 of 2022 are more or less similar and connected. The tenants under a common landlord are the petitioners herein, who are the defendants in the suits, O.S.Nos.200 and 202 of

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2018, both of the Munsiff's Court, Chittoor. The suits were filed by the landlord for eviction, as also, for realisation of rent arrears. In the suits, interim applications were filed (marked as Ext.P3 in both Original Petitions) under Section 151 of the Code, for an order directing the defendants/tenants to deposit the rent arrears specified in the petition, within a time limit stipulated by the court; and to strike off their defence, in case they fail to comply with the direction. The interim applications were resisted *inter alia* on the premise that Section 12 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred as, 'the Rent Control Act' for short) cannot be made applicable to a suit for eviction. Ext.P3 application was allowed in both the cases as per order produced at Ext.P5, which however directed only deposit of rent

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arrears by the tenants within a period of one month, without discussing and directing striking off the defense, on failure to deposit. Deposit was not made as directed in Ext.P5 orders by both the tenants (the petitioners in the Original Petitions). Thereupon, the plaintiff/landlord filed Ext.P6 application alleging non-compliance and seeking the defence to be struck off. It is at that stage, Ext.P5 order is challenged by the petitioners/defendants/tenants.

O.P. (C) No.1446 of 2023

Here, the suit - O.S.No.122/2021 of the Munsiff's Court, North Paravur - is instituted by the tenant seeking a permanent prohibitory injunction from forcible eviction. An *ex-parte* interim order (Ext.P2), in the above direction was granted, which was later confirmed by Ext.P4 order, on



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merits. The defendant/landlord filed a written statement, along with a counter-claim for arrears of rent. Ext.P5 application was preferred by the defendant/landlord, again under Section 151 of the Code of Civil Procedure, seeking an order directing the plaintiffs/tenants to pay the rent arrears along with electricity and water charges. By Ext.P6 order, the claim for rent arrears was dismissed, holding that the tenanted premises is located in an area to which the provisions of the Rent Control Act was applicable, wherefore, civil court has no jurisdiction. However, there was a direction to pay the dues on account of electricity and water charges. Pursuant to the written statement along with the counter-claim, a conditional attachment of movables was sought for vide Ext.P10 in respect of the amounts claimed in the counter-claim. Ext.P11 objection was filed

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*inter alia* contending that the counter-claim is not maintainable, since the Rent Control Act applies. By Ext.P12 order, the application for conditional attachment was allowed, except in respect of a car sought to be attached. Yet another application for deposit of arrears of rent and also for a direction to continue to deposit the monthly rent was filed, vide Ext.P13. However, by the impugned Ext.P17 order, the same was dismissed, holding that the issue was considered and disposed of vide Ext.P6 order, wherefore, the instant application vide Ext.P13 is barred by *res judicata*. It appears that the landlord/defendant had filed one more interim application vide I.A. No.28/2022, seeking to vacate the order of injunction, which was originally granted *ex-parte* and which was confirmed vide Ext.P4 order. The said I.A. is seen dismissed vide Ext.P18 order,

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holding that, though the tenanted premises is not included under the notified area of the Rent Control Act, injunction was granted not only on the ground that the landlord can seek remedy under the Rent Control Act, but also, that the eviction should be in accordance with the due process of law. As already indicated, Ext.P17 order, which rejected the application for deposit of arrears of rent, is under challenge.

3. On facts of O.P.(C) No.1446/2023 afore referred, it could straight away be observed and found that dismissing an application for arrears of rent vide Ext.P17 on the principles of *res judicata* is not legal and proper. It is relevant to note that Ext.P6 application, originally filed for payment of arrears of rent, was dismissed on a technical ground that the tenanted premises is

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located in an area, where the Rent Control Act applies, wherefore the landlord should seek remedy under the said Act. Later, it was established - as found in Ext.P18 order - that the tenanted premises is not located in such an area and that the Rent Control Act is not applicable. If that be so, the same constitutes a definite change of circumstance, which warrants consideration of the matter afresh on merits. There was no consideration of the issue on merits, insofar as the claim for deposit of arrears of rent is concerned, so as to make applicable the principles of *res judicata* as between interim applications of the same suit. Therefore, Ext.P17 order cannot be sustained on the count alone.

4. However, the larger issues - as has been framed in paragraph no.2 of this

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judgment - require to be answered, for which, it is necessary to go into the basic concept of tenancy, as also, the legal obligations, which arise therefrom for both the parties.

5. Having regard to the complexity of the issue, this Court availed the service of Adv.Jacob P.Alex, as Amicus Curiae.

SUBMISSIONS MADE BY THE AMICUS CURIAE:-

The learned Amicus would canvass for the position that the Court has power under Order 39, Rule 10, read with Section 151 of Code of Civil Procedure (C.P.C), to pass an order directing the tenant to deposit the admitted arrears of rent. However, learned Amicus has a definite caveat as regards striking off the pleadings for non-compliance of such orders. Learned Amicus would invite my

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attention to Order VI, Rule 16, which speaks of the specific power to strike off the defence. The gamut of Order VI, Rule 16 appears to be to strike off that particular pleading, which is either unnecessary, scandalous, frivolous, or which tend to prejudice or embarrass or delay the fair trial, or which is otherwise an abuse of the process of the court. The expression 'abuse of process of the Court' may have to be read *ejusdem generis* with clauses (a) and (b) to Order VI, Rule 16. In other words, non compliance of an order passed by a Court cannot be treated as an abuse of process of Court in all circumstances. If a contrary view is taken, there may be ever so many situations, which will accordingly amount to abuse of process of Court. According to the learned Amicus, in the absence of a specific provision in the Rules - as is available in the Code for the States of

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Uttar Pradesh, Maharashtra, Punjab and Haryana -  
it may not be legal or proper to throw the  
litigant out of the Court by passing an order  
striking off his pleadings, only for reason of non  
compliance of an order directing him to deposit  
the rent. Learned Amicus would submit that it is  
not as if there is no remedy available from such  
an order. The remedy lies in Section 36 of the  
C.P.C, wherein orders are also liable to be  
executed, as in the case of a decree. So far as  
the concept of the foundational obligation of a  
tenant sought to be canvassed, learned Amicus is  
of the opinion that every litigation will involve  
obligations on the part of the parties to the *lis*  
and non suiting a party for non-performance of  
such an obligation, in the absence of an enabling  
statutory power, may not be within the four  
corners of law. Learned Amicus is of the opinion

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that this Court can make a suggestion to incorporate a provision in the Code of Civil Procedure, similar to the one available in the Code in Uttar Pradesh, Maharashtra, Punjab and Haryana, by way of a State amendment.

6. SUBMISSIONS MADE BY ADV.B.PREMNATH, LEARNED COUNSEL FOR THE RESPONDENTS IN O.P.(C) NOS.2307 AND 2309 OF 2022:-

Learned counsel for the respondent would contend that a clear duty is fastened on the tenant under Section 108(1) of the Transfer of Property Act to pay the rent, without which, he cannot claim the status of a tenant. Thus, according to the learned counsel, an order can very well be passed compelling the tenant to deposit the admitted arrears; and in case the same is not obeyed, the defence can be struck off. Learned counsel, by



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relying upon the Division Bench judgment of this Court in Jayasree v. Vivekanandan [2012 (2) KLT 249], would submit that the situation envisaged in Order VI, Rule 16 to strike off defence is not exhaustive; rather the defence can be struck off also relying upon Section 151 of the C.P.C. Learned counsel would submit that an analogy can be drawn from Section 12 of the Rent Control Act, which stipulates a time-frame within which order has to be complied; and on the event of non-compliance, allowing eviction. Unless, law is interpreted in accord with the principle underlying Section 12, thereby compelling and mandating the tenant to the pay the arrears of rent, the purpose will not be served, especially in the case like the one handled by the counsel, wherein the tenant has been in occupation of the premises for a period of six years after

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termination of the tenancy. Learned counsel would hasten to add that the rent is due for the past eight years. Heavy reliance is placed upon the judgment of the Hon'ble Supreme Court in Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal [AIR 1962 SC 527] to contend that Section 151 can be invoked in situations which are not covered by statutory provisions. In other words, to strike off the pleadings in cases which do not fall under Order VI, Rule 16, Section 151 has to be invoked is the submission made by the learned counsel.

7. SUBMISSIONS MADE BY SRI.P.G.JAYASANKAR, LEARNED COUNSEL FOR THE PETITIONERS IN O.P.(C) NO.1446 OF 2023:-

The first premise canvassed by the learned counsel is that an equitable relief of injunction can be claimed only if the claimant does equity and

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approaches the court with clean hands. Learned counsel would further expatiate that a tenant can retain his status only so long as, he pays the rent and he cannot claim a legitimate right to be in possession of the property without payment of rent. Learned counsel relied upon a judgment of the Honourable Supreme Court in Balkrishna Dattaraya Galande v. Balkrishna Rambharose Gupta and another [(2020) 19 SCC 119]. It was argued that upon the expiry of the term of lease, a tenant becomes a tenant in sufferance, which status can be retained only on the continued payment of rent. Once the tenant fails to remit the rent, such status is lost and his status partakes the character of a trespasser. While granting an equitable relief, a court of law, should ensure that the court's act does not prejudice any person. The duty of the tenant under

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Section 108(1) of the Transfer of Property Act to pay the rent cannot be by-passed by the process of law, by obtaining an injunction order, is another submission advanced. As regards, the non-availability of Section 12 of the Rent Control Act in a suit for eviction, learned counsel would submit that there cannot be a differential treatment in respect of tenants, where the tenanted premises falls within the notified area and outside the same. On the powers under Section 151 of the Code, learned counsel would submit that unlike the Tribunal (as constituted by the Rent Control Act), a civil court has inherent powers. According to the learned counsel, while the power of the Rent Control Court to direct deposit of rent arrears is traceable to statute, such power is inherent in a civil court, unless barred by law. The final submission made by the learned

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counsel for the petitioners is that every order of injunction in favour of a tenant should be made subject to his basic obligation to pay rent, as otherwise, the tenant will enjoy the premises, without paying any rent, under the garb of an injunction order.

8. SUBMISSIONS MADE BY ADV.SAJAN VARGHESE, COUNSEL FOR THE PETITIONERS IN O.P.(C) NOS.2307 AND 2309 OF 2022:-

Learned counsel would submit that Order VI, Rule 16, cannot be applied to strike off the pleadings. To pass an order directing the tenant to deposit the arrears of rent, learned counsel would submit that Order 39, Rule 10 cannot be pressed into service. Learned counsel relied upon the judgment of the Delhi High Court in Food Corporation of India v. Kuljinder Pal Singh

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Dhillon [2002 AIHC 2641]. As regards invocation of Section 151, the specific submission of the learned counsel is that Section 151 can be invoked only for the purpose of procedural matters; and not with respect to substantive rights. In this regard, learned counsel relied upon the judgment of a Division Bench of this Court reported in Shyju P.K. v. Nadeera and another [2021 (5) KHC 657]. Learned counsel would refer to the treatise in Black's Law Dictionary and Salmond on Jurisprudence to explain a substantive right. The judgment of a learned Single Judge of this Court in Narayana Pisharodi (Dr.) and others v. Stancash Chits (P.) Ltd., Thrissur [2022 KHC 4564] is also relied upon. The judgment of the Honourable Supreme Court in Padam Sen and another vs The State of Uttar Pradesh [AIR 1961 SC 218] is cited to drive home that the powers under Section 151

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cannot extend to or affect the substantive rights of the litigant. Finally, learned counsel would submit that Section 12, or its principle, cannot be imported to a civil suit, since Section 12 will apply only in a case where a petition for eviction under Section 11 has been filed under that Act. In this regard, learned counsel would rely on the judgments in Abdul Razak P.M. v. K.C.Thomas and others [2022 (4) KLT 72] and Ismail v. Sudhakara Shenoy [2009 (4) KLT 864].

9. SUBMISSIONS MADE BY ADV.JOHN NELLIMALA SARAI, LEARNED COUNSEL FOR THE RESPONDENTS IN O.P.(C) NO.1446 OF 2023:-

Adv.John Nellimala Sarai would submit essentially on the peculiar facts of the case, apart from adopting the contentions raised by Sri.Sajan Varghese. Learned counsel would submit that the

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tenancy arrangement commenced at the time when the landlord was abroad and arrangement was struck through his agent with a rent of Rs.10,000/- per month. During the first Covid attack, the respondent/tenant could pay rent at the rate of Rs.8,000/- per month only, which was done based on the understanding between the respondent and the agent of the landlord. However, when the landlord returned to India, he insisted rent at the rate of Rs.10,000/- per month. As a matter of fact, the tenant had vacated the premises and moved to another premise and surrendered the keys to the landlord. However, the landlord refused the same, stating that the entire articles of the tenant has to be removed from the tenanted premises, whereupon, only the advance amount will be repaid. According to the learned counsel, all the articles have in fact been removed. The second key was not



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handed over only for the reason that the advance has not been repaid or returned. It is the further argument of the learned counsel that the water connection to the premises has been cut by the landlord and the tenant has come back to the same premises when the landlord had claimed rent for the period during which the tenant had in fact occupied another premises. Tenant thought that he need not pay rent at two different places for the same period. According to the learned counsel, it is in this peculiar facts that the application for the landlord for deposit of arrears of rent has to be considered. Learned counsel would also submit that there was default in the matter of rent on the onset of second Covid attack. The Court has directed to restore the facility of availing water to the tenant, but the same has not been complied with by the landlord. Instead, the landlord chose

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to challenge the same along with a petition to the deposit the entire rent arrears.

10. Having referred to the pleadings and contentions of the respective parties, this Court will now address the issues raised in the light of the respective contentions. For a proper adjudication of the issues involved, the conceptual significance of a lease, the obligations created by a lease, the rights and liabilities of the lessor and lessee etc. are to be analysed. Section 105 of the Transfer of Property Act, 1882 defines a lease thus:

*"105. Lease defined.—*

*A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or*

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any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

*Lessor, lessee, premium and rent defined:  
The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*

(Underlined for emphasis)

11. Section 108 of the Transfer of Property Act deals with the rights and liabilities of lessor and lessee. Section 108, to the extent it is relevant, is extracted hereunder:

*"Section 108: Rights and liabilities of lessor and lessee.*

*108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against*

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*one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-*

*(A) Rights and liabilities of the lessor*

*(a) xxxxxxxx*

*(b) xxxxxxxx*

*(c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.*

*The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.*

*(B) Rights and liabilities of the lessee*

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*(1) the lessee is bound to pay or tender,  
at the proper time and place, the premium  
or rent to the lessor or his agent in this  
behalf;"*

(Underlined for emphasis)

12. Section 111 of the Transfer of Property Act provides for determination of lease. One among the modes of determination is by efflux of time stipulated in the lease, and another, by issuance of notice determining the lease. A third mode of determination of lease contemplated under Section 111(g) is relevant and is extracted hereunder:

*111. Determination of lease.—*

*(g)by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter."*

13. Section 114 of the Transfer of Property Act provides that, if the lease has been determined by

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forfeiture for non-payment of rent and the lessor  
sues to eject the lessee, an option is provided  
for the lessee to tender the rent arrears,  
together with interest and costs, at the hearing  
of the suit or furnish sufficient security, in  
which case, the court may pass an order relieving  
the lessee against the forfeiture, in lieu of  
making an order for ejectment, whereafter the  
lessee shall hold the property leased, as if the  
forfeiture had not occurred. The effect of holding  
over is dealt with in Section 116 of the Transfer  
of Property Act, which speaks of renewal of the  
lease, if the lessor accepts rent from the lessee,  
who remains in possession of the tenanted  
premises, even after determination of the lease.

14. A scan of the above provisions would  
illustrate that, lease of an immovable property is

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essentially a contract wherein the lessor transfers to the lessee the right to enjoy an immovable property for the time stipulated in the contract; and the consideration for the contract is the price paid or promised or the periodical payment of rent, as defined in Section 105 of the Transfer of Property Act. Inasmuch as Section 105 of the Transfer of Property Act employ the term "consideration", in the context of the obligation to pay rent, the principles of the Contract Act can surely be imported. Coming to Section 108 of the Transfer of Property Act, which specifically prescribes the rights and liabilities of the lessor and lessee, the concept of contract is made explicit, vide Section 108(A)(c). That provision deems a contract between the lessor and the lessee, whereby the lessee is permitted to hold the property during the period of lease, if the

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latter (lessee) pays rent reserved by the lease.

It is, therefore, axiomatic that the right of the lessee to hold the property under the contract arises and continues if - and only if - the lessee pays the rent reserved in the lease. Further re-iteration of this fundamental obligation of the lessee/tenant could be seen from sub clause (1) to Section 108 (B) of the Transfer of Property Act, where it is statutorily provided in explicit terms that the lessee is bound to pay rent to the lessor at the proper time and place. The significance of this obligation also finds reflection in Section 111 of the Transfer of Property Act in the context of determination of lease, which prescribes the consequences of non-performance of this basic obligation of the tenant.

15. Section 111(g) of the Transfer of Property Act



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prescribes a mode of determination by forfeiture, the first category of which speaks of the lessee committing breach of an express condition. The breach constitutes a right on the lessor to re-enter. While enforcing this relief based on determination of lease by forfeiture, the lessee has an option under Section 114 of the Transfer of Property Act to tender the rent arrears, together with interest and costs and to avoid a decree for ejection.

16. The upshot of the above discussion is that it is statutory, salutary, fundamental and foundational for a lessee/tenant to pay the rent to the lessor, failing which he cannot claim or retain his status as a lessee, or, for that matter, to hold the property.

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17. Though the instant case is not governed by the provisions of the Rent Control Act, the statutory stipulations therein are also relevant, the same being a statute dealing with lease of buildings, as also, to control the rent. Section 2(6) of the Rent Control Act defines a tenant as any person by whom, or on whose account, rent is payable for a building. Section 11(2)(b) of the Rent Control Act specifically contemplates eviction of tenants upon failure to pay the rent, after affording him a reasonable opportunity. The specific enabling provision, in a case which falls under the Rent Control Act, mandating deposit of rent during the pendency of proceedings for eviction is Section 12, which puts an embargo on a tenant from contesting an application for eviction, unless he pays to the landlord or deposits before the court,

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the admitted arrears of rent within the period stipulated by the statute. Here, we may have to notice that Section 12 of the Rent Control Act specifically recognises the right of the lessor to receive rent and the corresponding obligation of the lessee to pay rent, so as to hold the tenanted premises and even to contest a proceeding instituted by the lessor/landlord for eviction. The provisions contained in Section 12 of the Rent Control Act is a clear and unmistakable indication as regards the nature of the obligation of the lessee/tenant to pay the rent. In other words, the obligation to pay rent goes to the root of the matter and it is foundational to claim the status as a lessee/tenant.

18. Having found as above, the issue bifurcates

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into two. The first is with respect to the sustainability of an injunction from forcible eviction, once it is shown that the tenant failed to perform his fundamental obligation to pay the rent. The second is whether the pleadings are liable to be struck off and the proceedings aborted.

19. The first issue can be adequately guided for resolution by the first principle that "*he who seeks equity must do equity*". Injunction being a purely equitable and discretionary relief, is not liable to be granted, if the plaintiff/tenant fails to perform an important obligation arising from the legal relationship of a landlord and tenant, or for that matter, a licensor and a licensee. In the facts governing the suits in question, the professed/claimed status of one of

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the parties is that of a tenant. It has already been found that the tenant has a salutary obligation to pay the rent, without which he cannot aspire to retain the status as a tenant, or for that matter, to hold the tenanted premises. If this fact is established, will it not disentitle the tenant in seeking injunction from eviction? The answer in my opinion, can only be in the affirmative. By doing so, this Court is not recognising any right on the landlord to evict the tenant, otherwise than in accordance with law. Instead, the court only discounts the right of the plaintiff/tenant, to maintain a suit, seeking an equitable and discretionary relief, for failure on his part to perform his legal and salutary obligation. This Court does not, for a moment, sanction the eviction of a tenant by the landlord taking law into his hands; and if he chooses to do

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so, he will be subject to all possible consequences in law. However, that fetter on the landlord cannot automatically enure as an advantage in the form of an unfettered right in the hands of the tenant to obtain a protective order and to continue holding the premises, without paying any rent. So, in suits of that nature, the correct question to be posed is whether the plaintiff is entitled to seek an equitable relief like injunction, once his legal and salutary obligation is shown to be not performed. The obvious answer can only be in the negative. Per contra, if we pose a wrong question as to whether the defendant/landlord is entitled to evict the plaintiff/tenant forcibly, the mistake/injustice will be perpetrated. As it is well settled, a plaintiff in a suit has to succeed on his own merits; and not on the weakness of the

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defence. Taking cue from that concept, a plaintiff in a suit for injunction should independently establish his right for the remedy sought for; he cannot seek the relief by propounding that the defendant has no right to do the act, which is sought to be prohibited/interdicted by the relief sought for.

20. Needless to say that when such interim relief sought for by the plaintiff/tenant is an injunction, the re-iterated principles of *prima facie* case, balance of convenience and irreparable injury is also liable to be adjudged. All the three concepts, especially the *prima facie* case, will turn against the tenant/plaintiff, if he approaches the court seeking protection from forcible eviction, without paying the agreed rent to the landlord/defendant. In other words, an

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injunction - though couched in such a manner as from forcible dispossession - if granted to a tenant, who fails to perform his salutary, statutory obligation to pay the rent, will virtually amount to recognising his right to continue in the premises without payment of any rent. Such a situation cannot be contemplated and it is completely irreconcilable with the provisions of the Transfer of Property Act.

21. The above discussion persuades me to conclude the first issue, by holding that a tenant is not entitled to seek injunction from eviction without performing his obligation to pay the rent.

22. Coming to the second issue as to whether the pleadings can be struck off and the proceedings aborted, one relevant aspect is the applicability



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of the principle behind Section 12 of the Rent Control Act to a civil proceeding, in the absence of a specific statutory provision in the Code of Civil Procedure. In this regard, this Court takes stock of the fact that Section 12 only recognises the fundamental principles, which governs the relationship between a lessor and lessee, which is defined in the Transfer of Property Act. It cannot be said that the Rent Control Act is a separate and different package altogether, at least insofar as the concept of lease, the rights and obligations of the lessor and lessee etc. are concerned. The relationship is only defined and governed by the Transfer of Property Act, from which foundation only, the Rent Control Act takes off. The preamble to the Rent Control Act only says that it is an Act to regulate the lease of buildings and to control the rent, the conceptual

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doctrines governing the lessor and lessee remaining the same, as defined in the Transfer of Property Act. It could therefore safely be held that it is in recognition of the statutory obligation/liability of the lessee/tenant to pay the rent - even for holding the property, as is explicit from (i) the definition of lease under Section 105 of the Transfer of Property Act, (ii) the rights and liabilities of the lessor and lessee under Section 108 of the Transfer of Property Act and (iii) the concept of forfeiture under Section 111 of the Transfer of Property Act - that Section 12 has been engrafted to the Rent Control Act. Section 12 does not create any new right in favour of the landlord, which is completely separate, independent and distinct from the rights of a lessor under the Transfer of Property Act. Rather, it only recognises the well

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defined statutory relationship between a lessor and a lessee. The lessor's rights flowing from the Transfer of Property Act and the right under Section 12 of the Rent Control Act mutually complement each other. Both are inextricably interwoven and inseparably intertwined. Be that as it may.

23. Now, the question is how to reconcile and translate into action, the above conceptual premises, which encompasses the right of the lessor, and the corresponding obligation of the lessee, once it comes to a civil suit at the instance of the lessor, or for that matter, a suit for injunction from forcible eviction, at the instance of the lessee, especially in the absence of an enabling provision like Section 12. Pithily put, under which provision the civil court will

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deal with the situation, when this Court has already found that the lessee has no right to hold/continue in the building without performing his basic and salutary obligation to pay the rent.

24. This Court is of the opinion that there is absolutely no inherent lack of power so far as the civil court is concerned. It goes without saying that the tenant should be given an opportunity - seminal in the context of ensuring natural justice - to pay the arrears of rent, or for that matter, to deposit the same before the court, for which an interim order will have to be passed, calling upon the lessee to do so. The learned Amicus Curiae would point out that the source of power in this regard can be traced to Order XXXIX, Rule 10; read with Section 151 of the Code of Civil Procedure (hereinafter referred to

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as 'the Code'). However, on a perusal of Order XXXIX, Rule 10, this Court is not fully convinced as to whether an order calling upon the tenant to pay/deposit the admitted arrears of rent can be passed under Order XXXIX, Rule 10 of the Code.

25. Learned Amicus is correct in his submission that Section 94 of the Code enables a civil court to pass orders to prevent the ends of justice being defeated and sub Section (e) to Section 94 of the Code speaks of residuary clause styled as "such other interlocutory orders". However, powers under Section 94 of the Code is circumscribed by the pre-condition that an order to be passed under that section should be so prescribed in the Rules. See in this regard the definition of 'prescribed' under Section 2(16) of the Code and also the dictum laid down by the Hon'ble Supreme Court in

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Manohar Lal Chopra v. Rai Bahadoor Rao Raja Sethi

[AIR 1962 SC 527], to which further reference is made, while discussing the scope of inherent powers under Section 151. Coming to Order 39 Rule 10, the ingredients appears to be:

- 1) The subject matter of the suit is money or some other thing capable of delivery.
- 2) The party should admit that he holds money or other thing as a trustee for another or that it belongs or is due to another.

26. If the above conditions are satisfied, the provision enables the court to pass an order for depositing in court or delivering to the party, the money or thing as the case may be, without security and subject to further directions of the court. This Court is afraid whether the above specified pre-requisites are satisfied in the

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instant facts, where a suit is instituted by the landlord or the tenant, as the case may be, for eviction or for injunction from forcible eviction.

27. The residual source is the inherent power under Section 151 of the Code. Section 151 is extracted hereunder.

*"151. Saving of inherent powers of Court.*

*Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court."*

(Underlined for emphasis)

28. To invoke Section 151 of the Code, two concepts have to be borne in mind. The first is that, an order under Section 151 is necessary "for the ends of justice". The second situation is that

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such order is necessary "to prevent abuse of the process of the court". Therefore, the question which requires an answer is whether an order warranting the lessee/tenant to pay/deposit the rent, is an order, which is necessary for the ends of justice, or to prevent abuse of the process of the court, having regard to the nature and reliefs sought for in the suits in question. A further question, which surfaces for consideration is whether the pleadings are liable to be struck off, if the lessee/tenant fails to deposit the admitted arrears of rent, despite an interim order affording time for payment.

29. This Court will first refer to the scope and ambit of Section 151 of the Code. The necessity to bestow inherent powers on court stems from the fact that a codified law cannot provide for and



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cater to all possible and myriad circumstances which may arise in a suit. Circumstances which were in the contemplation of the statute makers are taken care of and provided for; and inherent powers are bestowed on courts to deal with situations which are not so expressly provided for. It may not be a correct proposition of law to seek for specific enabling provision in the statute for grant of every relief, for the simple reason that all possible situations and circumstances cannot be contemplated in the statute. It is to take care of the residual category which is not expressly provided for, but which warrants grant of a relief in the interest of justice, that inherent powers are provided. In Rajendra Prasad Gupta v. Prakash Chandra Misra [AIR 2011 SC 1137], it was held that Section 151 of the Code gives inherent powers to do justice

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and that the provision has to be interpreted to mean that, every procedure is permitted to the Court for doing justice unless expressly prohibited; and not that every procedure is prohibited unless expressly permitted. It is also trite by now that, it is not Section 151 which confers inherent powers to a civil court; instead Section 151 merely saves the pre-existing power of every court to pass orders necessary for the ends of justice, which power inheres with all courts. Examining the scope of Section 151, in the context of grant of injunctions in situations not covered by Order 39 Rules 1 and 2, the honourable Supreme Court Manohar Lal Chopra (supra) held thus:

"18. ....We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue

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*temporary injunctions in circumstances which are not covered by the provisions of Order 39 CPC. There is no such expression in Section 94 which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order 39 or by any rules made under the Code. It is well settled that the provisions of the Code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression "if it is so prescribed" is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interests of justice, but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of Section 94 were not*

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*there in the Code, the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of Section 94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power."*

30. The Honourable Supreme Court also took stock of the fact that, Section 151 starts with a non obstante clause, to hold that the provisions of the Code does not control the powers saved under Section 151.

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31. K Subba Rao, J. would define the scope of the inherent power under Section 151 thus in Ram Chand and Sons Sugar Mills Private Ltd. v. Kanhayalal Bhargava and Others [AIR 1966 SC 1899].

*"Having regard to the said decisions, the scope of the inherent power of a court under Section 151 of the Code may be defined thus: The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of Section 151 of the*

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*Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the Court. "*

32. It is thus clear that the powers under Section 151 can be invoked to deal with a situation which is not otherwise expressly provided by the Code, but which warrants an order/relief in the interests of justice or to prevent abuse of the process of the court. I cannot therefore accept the argument of the learned Amicus that pleadings cannot be struck off in the absence of a specific provision enabling the same.

33. This takes us to examine the ambit and scope of expression 'ends of justice' and 'abuse of the process of the court'. 'Ends of justice' in its plain natural meaning only signifies, in the

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interest of justice or to promote justice. The parameters and niceties of the expression is beyond the scope of definition and any attempt to identify or cull out situations which warrant an order in the ends of justice, would be idle and futile. The best course is to leave the concept open, to be interpreted based on the peculiar fact situation. Nevertheless, it could safely be said that the powers under Section 151 can be invoked to make such orders, as should be made *ex debito justitiae*; and every court should have the power to pass such orders with a view to shorten the litigation, prevent duplication of proceedings and saving parties from harassment and expenses (See, ILR 61 Cal 711). The concept of 'ends of justice' would surely take within its sweep the three time tested principles of justice, equity and good conscience, wherefore, it would be safe to

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conclude that an order in terms of justice, equity and good conscience, as applicable to the particular facts, would be an order in furtherance of justice, under Section 151 CPC.

34. Coming to the concept of abuse of the process of the Court, Black's Law Dictionary defines abuse as follows:

*"Abuse. Everything which is contrary to good order established by usage. Departure from reasonable use; immoderate or improper use. Physical or mental maltreatment. Misuse. Deception."*

35. In the same treatise, abuse of process is seen dealt with thus:

*"Process. The gist of an action for "abuse of process" is improper use or perversion of process after it has been issued. Publix Drug Co.v. Breyer Ice Cream Co., 347 Pa.346, 32 A.2D 413, 415."*



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36. Prem and Saharay's Judicial Dictionary of Words and Phrases depicts abuse of process of the court thus:

*"Abuse of the process of the court/judicial process. When an adversary through malicious and unfounded use of some regular proceeding obtains advantage over his opponent, it is called abuse of process of court. Wharton's Law Lexicon P.16.*

*If the appellate court is satisfied that an action was not maintainable and to allow it would be abuse of process of court, action be dismissed e.g. when it is based on wagering contract. Law v Dearnley, 1950 All ER 124, (1948) 64 TLR 394, even under inherent powers. Dyson v A.G (1911) KB 418, (1949)1 All ER 223.*

*The expression "abusing the process of the court" within the meaning of section 482 Cr PC is generally applied to a proceeding which is wanting in bona fides and is frivolous vexatious or oppressive and the High Court is under an imperative*

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*obligation to interfere in order to prevent the harassment of a citizen by an illegal prosecution."*

(Underlined for emphasis)

37. In Subrata Roy Sahara v. Union of India [2014 (8) SCC 470], the Hon'ble Supreme Court made some important observations as regards abuse of judicial process. The relevant findings are extracted hereunder.

*"Abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. In private litigation as well, the concerned litigant would continue to approach the higher Court, despite the fact that he had*

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*lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigants perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsels advice is otherwise."*

It could thus be seen that even exhausting an appellate remedy irresponsibly and without bonafides may verge on abuse of the judicial process.

38. P.Ramanatha Aiyar's Advanced Law Lexicon explains the term 'abuse' as that which is contrary to good order or established usage. The

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author refers to the observations of Brickell, C.J. in Dawkins v. State, [29 Am. Rep. 754]. The relevant portion is extracted hereunder.:

*"Its proper signification must be ascertained by reference to the subject-matter or the context and the meaning of the words with which it is associated".*

39. Significantly, the author describes "abuse" as including misuse, which interpretation finds recognition in M.Narayanan v. State of Kerala [AIR 1963 SC 1116]. 'Abuse', in the context of abuse of process, is dealt with thus:

*"'Process' is a general word, meaning in effect, anything done by the Court. An abuse of the process may be committed by a party litigating over again the same question which has already been decided against him, or by starting proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive."*

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40. This Court had occasion to deal with the concept of abuse of process in C. Sarala v. K. Nalina K. Shan [1991 SCC OnLine Ker 60]. This Court held that abuse of process of court takes various forms. For instance, securing an injunction to protect one's possession, when he is not in possession, filing successive suits in respect of the same cause, securing a relief by suppression of facts and so on.

41. In Ranipet Municipality v. M.Shamsheerkhan [1997(2) LW 761 (Mad)], the following categories have been culled out as amounting to abuse of process of the court, with a caveat that the list is not exhaustive.

- (1) *Gaining an unfair advantage by the use of a rule of procedure.*
- (2) *Contempt of the authority of the Court by a party or stranger.*

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- (3) *Fraud or collusion in Court proceedings as between parties.*
- (4) *Retention of a benefit wrongly received.*
- (5) *Resorting to and encouraging multiplicity of proceedings.*
- (6) *Circumventing of the law by indirect means.*
- (7) *Presence of witness during examination of previous witness.*
- (8) *Institution vexatious, obstructive or dilatory actions.*
- (9) *Introduction of scandalous or objectionable matter in proceedings.*
- (10) *Executing a decree manifestly at variance with its purpose and intent.*
- (11) *Institution of a suit by a puppet plaintiff.*
- (12) *Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc.*

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42. In the context of striking off the defence, Section 151 was profitably employed by the Delhi High Court in Pharma Ventures International Private Ltd. v. Senior Media Ltd. [2009 SCC OnLine Del 740].

43. In C.S. Mangalam v. Velayudhan Asari [AIR 1993 Ker 181], the powers under Section 151 was invoked, when the husband was deliberately flouting court's order directing payment of maintenance under Section 24 of the Hindu Marriage Act. It was held that, even in the absence of an enabling provision, the Court can strike off the defence, in exercise of the inherent power under Section 151, if one of the parties willfully refuses to comply with the court's order.

44. In the context of the rent control

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legislation, the Punjab and Haryana High Court had occasion to deal with the issue of striking off the defence in Suresh Kumar v. Prem Chand [AIR 1994 P&H 203]. In that case, there was a positive finding by the court that the amount tendered by the tenant was short of the admitted amount and nothing was shown that he had a good cause for the default occurred. The tenant's defence was struck off by invoking the inherent power under Section 151. Here, I may pause to note that the Code of Civil Procedure as applicable to Punjab and Haryana, contains an enabling provision for the same, as has been put to the notice of this Court by the learned Amicus Curiae.

45. Lastly, a Division Bench of this Court in Jayasree v. Vivekanandan [2012 (2) KLT 249] held



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that, the situations envisaged in Order VI, Rule 16 to strike off defence is not exhaustive; and that defence can also be struck off relying upon Section 151 of the Code of Civil Procedure. This Court therefore concludes that, Order VI, Rule 16 of the Code is not the sole repository of power to strike off defence. It can also be done under Section 151, provided the requirements in terms of Section 151 is fully and clearly satisfied.

46. Juxtaposing the above treatise on abuse of process and the dicta on striking off the pleadings to the instant facts, this Court is of the definite opinion that any litigation, wherein a litigant fails to perform his basic and fundamental obligation, which he is statutorily bound to perform in his admitted and professed status, will amount to a clear misuse of the

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process of court. The mechanism of providing reliefs through the process of court is meant to protect the legitimate rights of the parties and to grant reliefs thereby. This right is not an unbridled or unfettered one. The right of a litigant to approach a court is subject to performance of certain salutary obligations. For example, a litigant has to approach the court with clean hands. He cannot seek reliefs by suppressing true facts. Likewise, the right to approach a court seeking discretionary reliefs pre-supposes the satisfaction of certain mandatory legal obligations on the part of the litigant in his admitted status, failing which, it cannot be held that he has got a vested right to institute, or for that matter, continue a litigation, for the sake of it. The situation will be different altogether, if the question as to whether he has

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performed his part or not, is itself, a question of fact to be determined in the suit. However, if the non-performance of a fundamental obligation of a litigant is writ large on the pleadings or is decipherable *ex facie* from the proceedings, it will be unwholesome in law to contemplate that such a litigant still has a right to continue with the litigation, more so in cases where such performance is not forthcoming, despite granting a further opportunity by the Court.

47. It cannot be lost sight of the fact that the landlord is the paramount title holder of the tenanted premises; and the tenant's right to occupy the same is only as provided for by the statute, that is to say, the Transfer of Property Act. This Court has already held that such right of the tenant to hold the premises is wholly

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dependent on his obligation to pay the rent. If the tenant choose to approach a court of law, that too seeking an equitable relief of protection from eviction, without performing the above vital obligation, is not such a proceeding an abuse of the process of the court? Will it not amount to improper use and perversion of the process of the court? Will not the adversary/tenant, through unfounded use of a legal proceeding, obtain an unfair advantage over his opponent/landlord? Is not such a proceeding - wholly bereft of any *bonafides* - oppressive and vexatious and liable to be aborted to prevent miscarriage of justice? Will not the continuance of such a proceeding amount to harassment of the landlord, who is forced to bear a tenant, without receiving rent? If the cause espoused is not shown to be fair, legitimate or at least *bonafide*, can it be held that the

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plaintiff/tenant still has a right to continue the legal proceeding, for the sake of it? In permitting such continuance, which legal right of the plaintiff/tenant is being recognised in law? If it is sure that the plaintiff/tenant, by his own conduct, renders it impossible to grant the relief sought for, is not such a litigation liable to be shortened, so as to save the valuable time of the court, as also, harassment and expenses to the landlord?

48. The answers to the above questions are not far to seek and it converges to the conclusion that the plaintiff/tenant, in the above referred fact situation, is not entitled to institute, or for that matter, to continue the litigation, as the same would be nothing short of abuse of the process of the court. Resultantly, courts will be

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justified in striking off the pleadings in such cases, so as to subserve the ends of justice, or in other words, to prevent miscarriage of justice.

49. In view of the above declaration of law, this Court choose to issue the following guidelines to ensure uniformity in dealing with cases of the nature above referred:

- i) The tenant, who approaches a court seeking injunction from forcible eviction shall swear to an affidavit - to be submitted along with the plaint - stating that the agreed rent, which falls due up to the month previous to the month of filing has been paid to the landlord and that he will continue to do so, pending the litigation. In case, the rent is not being paid, the tenant/plaintiff shall explain in the affidavit the reasons justifying such

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non-payment. The same procedure is to be followed in cases where the tenant, as a defendant, files any application for injunction from forcible eviction against the plaintiff.

- ii) In all cases where the tenant swears to an affidavit asserting payment of rent and where the tenant/plaintiff makes out a *prima facie* case that he is a tenant, the courts will generally grant an *ex-parte* ad interim order of injunction restraining eviction of the tenant, except in accordance with law. In cases where the affidavit indicates that the rent has not been paid, the court will address whether the justification offered for such non-payment is *prima facie* acceptable. Courts should, as a general rule, adopt a liberal standard at the *ex-parte* stage, while adjudging so. If the

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explanation offered is *prima facie* satisfactory, courts should grant an *ex-parte* ad interim order of injunction, as indicated above.

iii) Upon the defendant/landlord entering appearance, if it is shown that the agreed rent has not been paid - contrary to the affidavit sworn to by the plaintiff/tenant - the court, after hearing the parties, and on being satisfied of the same, will issue an order directing the tenant/plaintiff to deposit the arrears of rent, within a time frame fixed by the court. The same course is to be followed in cases where the Court is satisfied, after hearing both sides, that there is no justification for non-payment of rent.

iv) In adjudicating the question as to whether the agreed rent has been paid or not, the Civil Courts will



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be guided by the principles of Section 12 of the Rent Control Act, as also, the exposition of law in this regard by the High Court and the Supreme Court.

- v) If the plaintiff/tenant deposits such arrears of rent, along with an undertaking to continue to pay/deposit further rent pending litigation, the interim order of injunction shall be made absolute, pending adjudication of the *lis*.
  
- vi) If the tenant/plaintiff fails to make such deposit, the interim order of injunction shall be vacated at the first instance; and the court shall grant further time as it deems fit and proper for the tenant to deposit such arrears.
  
- vii) If such deposit is made, the interim injunction shall be revived on condition that the

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tenant/plaintiff undertakes to pay  
future rent, without fail.

viii) If such a deposit of arrears is  
not made even by the extended time,  
the pleadings are liable to be  
struck off invoking the powers  
under Section 151 C.P.C.

50. The above instructions are only broad and  
general guidelines. Needless to say that the civil  
courts will be at liberty to deviate/depart from  
the same for weighty reasons, if the individual  
facts and circumstances justify the same.

51. Having declared as above, the impugned orders  
in all the three Original Petitions are hereby set  
aside. The matters are remitted back to the trial  
court to reconsider the interlocutory  
application/s afresh, in the light of the law laid  
down above and to pass necessary orders therein,

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in accordance with law.

52. The Registrar (Judicial) is directed to serve a copy of this judgment to all civil courts of the State for necessary guidance and compliance. The Registrar General is also directed to place the judgment before the Rule Committee of the High Court to consider whether necessary State amendment - in accord with the relevant provisions of the Code of Civil Procedure as applicable in the States of Uttar Pradesh, Maharashtra, Punjab and Haryana etc - has to be made to the Code of Civil Procedure enabling striking off defence, in cases where the tenant fails to pay/deposit the rent, even after the court directing the same to be done within a time frame.

53. Appreciation galore to Sri. Jacob P. Alex, the

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learned Amicus, for the invaluable service  
rendered in resolving the legal issues involved.

These Original Petitions are disposed of, as  
above.

Sd/-

C.JAYACHANDRAN, JUDGE

ww/vdv



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APPENDIX OF OP(C) 2307/2022

PETITIONER'S EXHIBITS:

- |            |  |
|------------|--|
| EXHIBIT P1 | THE TRUE COPY OF THE PLAINT IN OS NO.200/2018 ON THE FILE OF THE MUNSIFF'S COURT, CHITTUR. |
| EXHIBIT P2 | TRUE COPY OF THE WRITTEN STATEMENT FILED IN EXHIBIT P1 SUIT.                               |
| EXHIBIT P3 | TRUE COPY OF IA NO.435/2021 FILED IN EXHIBIT P1 SUIT.                                      |
| EXHIBIT P4 | TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN EXHIBIT P3.                                    |
| EXHIBIT P5 | TRUE COPY OF THE ORDER DATED 25-08-2022 PASSED IN EXHIBIT P3 APPLICATION.                  |
| EXHIBIT P6 | TRUE COPY OF IA NO.2361/2022 FILED IN EXHIBIT P1 SUIT.                                     |



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APPENDIX OF OP(C) 2309/2022

PETITIONER'S EXHIBITS:

- EXHIBIT P1                    THE TRUE COPY OF THE PLAINT IN O.S  
NO.202/2018 ON THE FILE OF THE MUNSIFF'S  
COURT, CHITTUR.
- EXHIBIT P2                    TRUE COPY OF THE WRITTEN STATEMENT FILED  
IN EXHIBIT P1 SUIT.
- EXHIBIT P3                    TRUE COPY OF IA NO.437/2021 FILED IN  
EXHIBIT P1 SUIT.
- EXHIBIT P4                    TRUE COPY OF THE COUNTER AFFIDAVIT FILED  
IN EXHIBIT P3.
- EXHIBIT P5                    TRUE COPY OF THE ORDER DATED 25-08-2022  
PASSED IN EXHIBIT P3 APPLICATION.
- EXHIBIT P6                    TRUE COPY OF IA NO.2363/2022 FILED IN  
EXHIBIT P1 SUIT.



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APPENDIX OF OP(C) 1446/2023

PETITIONERS' EXHIBITS:

- EXHIBIT P1 CERTIFIED COPY OF THE POWER OF ATTORNEY DATED 15.04.2021 DULY AUTHORIZED ON BEHALF OF THE 1ST PETITIONER.
- EXHIBIT P2 A TRUE COPY OF THE SUIT BEARING OS NO. 122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P3 A TRUE COPY OF THE RENT AGREEMENT DATED 27.11.2019 EXECUTED BETWEEN THE 1ST PETITIONER AND THE RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 14.03.2022 IN IA NO.2 OF 2021 IN OS NO.122 OF 2021 ON FILES OF MUNSIF COURT NORTH PARAVUR.
- EXHIBIT P5 A TRUE COPY OF THE IA NO.8 OF 2021 IN OS NO.122 OF 2021 ON THE FILES OF THE MUNSIF COURT NORTH PARAVUR.
- EXHIBIT P6 A TRUE COPY OF THE ORDER DATED 14.03.2022 IN IA NO.8 OF 2021 IN OS NO.122 OF 2021 ON THE FILES OF MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P7 A TRUE COPY OF THE IA NO.14 OF 2021 IN OS NO.122 OF 2021 ON THE FILES OF MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P8 A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA NO.14 OF 2021 IN OS NO. 122 OF 2021 ON THE FILES OF MUNSIF COURT NORTH, PARAVUR.
- EXHIBIT P9 A TRUE COPY OF THE COUNTER CLAIM CUM WRITTEN STATEMENT FILED BY THE PETITIONER IN OS NO.122 OF 2021 ON FILES OF MUNSIF COURT, NORTH PARAVUR.



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- EXHIBIT P10 A TRUE COPY OF THE IA NO.17 OF 2022 IN OS NO.122 OF 2021 ON THE FILES OF MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P11 A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA NO.17 OF 2022 IN OS NO. 122 OF 2021 ON THE FILES OF MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P12 A TRUE COPY OF THE ORDER DATED 20.10.2022 IN IA NO.17 OF 2022 IN OS NO.122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P13 A TRUE COPY OF THE IA NO.24 OF 2022 IN OS NO.122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P14 A TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA NO.24 OF 2022 IN OS NO. 122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P15 A TRUE COPY OF IA NO.28 OF 2022 IN OS NO. 122 OF 2021 ON THE FILES OF THE MUNSIF COURT NORTH PARAVUR.
- EXHIBIT P16 A TRUE COPY OF THE ORDER DATED 28.01.2023 IN IA NO.14 OF 2021 IN OS NO.122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR.
- EXHIBIT P17 A TRUE COPY OF THE ORDER DATED 28.01.2023 IN IA NO.24 OF 2022 IN OS NO. 122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR
- EXHIBIT P18 A TRUE COPY OF THE ORDER DATED 28.01.2023 IN IA NO.28 OF 2022 IN OS NO.122 OF 2021 ON THE FILES OF THE MUNSIF COURT, NORTH PARAVUR





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EXHIBIT P19                    A TRUE COPY OF THE WRITTEN STATEMENT DATED  
23.03.2023 FILED BY THE RESPONDENT TO THE  
COUNTER CLAIM PREFERRED BY THE PETITIONERS  
HEREIN IN OS NO.122/2021 ON THE FILES OF  
THE MUNSIEF COURT, NORTH PARAVUR

RESPONDENT'S EXHIBITS:

EXHIBIT R1 (A)                A TRUE COPY OF THE BANK STATEMENT OF THE  
RESPONDENT FROM 01.01.2019 TO 31.03.2021

EXHIBIT R1 (B)                A TRUE COPY OF THE RENTAL AGREEMENT DATED  
18.04.2021.