

**Smt. ShameemunnissA. and anr Vs. Smt. Habbebunnissa, and ors**

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**Court :** Karnataka

**Decided On :** Nov-04-2010

**Judge :** A.N.VENUGOPALA GOWDA J.

**Appeal No. :** WRIT PETITION NOS.33044-33045/2010 AND WRIT PETITION NO.33082/2010 (GM-CPC)

**Appellant :** Smt. ShameemunnissA. and anr

**Respondent :** Smt. Habbebunnissa, and ors

**Advocate for Def. :** Sri M.Shivaprakash, Adv

**Advocate for Pet/Ap. :** Sri S.lagan, Adv

**Judgement :**

ORDER

1. Respondents have filed suit against the petitioners for the relief of ejection. The petitioners have filed written statement and have contested the suit. Trial has commenced. For the plaintiffs 2 witnesses have deposed. The witnesses were not cross-examined by the defendants. Hence, they were discharged. Noticing that, the defendants have not come forward to adduce evidence, arguments were heard and the suit was posted for judgment. At that stage, petitioners filed I.As.4, 5 and 6 i.e., for reopening of the case, recalling of PW.1 and to adduce evidence on their behalf. The applications having been opposed, the Trial Court has passed the impugned order. Aggrieved, the defendants have filed these writ petitions.

2 Heard the learned counsel on both sides and perused the record.

3. In the termination notice dated 3.3.2008, the rent payable by the petitioners was shown as ₹1200/- p.m. i.e., in respect of the premises bearing No 24, Shivajinagar, Bangalore, measuring 20' x 20'. The petitioners have not paid any amount towards use and enjoyment of the said premises. Learned counsel for the petitioners paid 20,000/- to the learned counsel for the respondents, the receipt of which Sri M.Shivaprakash acknowledges. Learned counsel for the petitioners submits that, a further sum of 1,000/- is due and the same would be paid at the earliest.

A. Keeping in view the fact that, the decision if rendered without the cross-examination of PWs.1 and 2 and the evidence of the defendants, may lead to future litigation and complications and in order to advance cause of justice, I deem it appropriate to set aside the impugned order and allow the applications filed in the Trial Court, by putting the petitioners to terms. In the result, writ petitions stand allowed the impugned order stands quashed. 3 applications filed in the Trial Court shall stand allowed subject to the payment of cost of Rs.5, 000/-.

The petitioners shall pay the admitted balance arrears of 11,000/- to the plaintiffs in the Trial Court, within a period of 15 days from today. PWs.1 and 2 shall be present before the Trial Court on 23.11.2010. The said witnesses shall be cross-examined by the petitioners on 23.11.2010 or on any other date to which the Trial

Court in its discretion may adjourn the suit. If the cross-examination of PWs.1 and 2 is not made on 23.11.2010 or on the date to which the Trial Court adjourned the case, the petitioners shall waive the right to cross-examine the said witnesses. Soon after discharge of PWs.1 and 2, the defendants in the suit may adduce their evidence, which shall be completed within a period of 6 weeks from the date the plaintiffs' side of evidence is closed. The Trial Court is directed to decide the suit within a period of 2 months from the date the trial of the suit is complete.

The amount of 5,000/- deposited in this Court be released in favour of respondents to meet the cost.

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