

CAA(ST).26052/2015(905)

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST) NO. 26051 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 26052 OF 2015
IN
APPEAL FROM ORDER (ST) NO. 26051 OF 2015**

M/s. Muslim Ambulance Society & Anr. ...Appellants/Orig.Pltfes.
Vs.

The Executive Health Officer
Public Health & Ors.

...Respondents/Orig.Defdts

Mr. Aspi Chinoy, Sr.Advocate a/w. Mr. Cyrus Ardeshir,
Mr. S.K. Srivastav, Ms. Simeen Shaikh, Ms. Rashmi Patil &
Ms. Priyanka Gharge i/b. M/s. S.K. Srivastav & Co., for the
Appellants.
Mr. N.V. Walavalkar a/w. Mr. A.V. Diwate for the Respondent

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 23RD SEPTEMBER, 2015**

PC. :

Rule. Returnable forthwith.

1. The appellants who are the plaintiffs in the trial Court sued for declaration that the letter of the respondent / MMC dated 7th August, 2014 was illegal, for renewal of its license, for injunction against disturbance of their possession and obstructions in the smooth running of their hospital.
2. Initial interim application of the appellant was for protection against interference in running the hospital and for

mandatory relief of renewal of the registration certificate. The ad-interim relief in the notice of motion was not granted. The notice of motion came to be dismissed for default and an appeal against the ad-interim order became infructuous.

3. The appellants took out another notice of motion in the trial Court again for an order of injunction against interference in the running of the hospital and for renewal of the license certificate.
4. The appellants have entered into an agreement with the respondents on 25th February, 2004 for setting up a maternity home on no-profit no-loss basis and to use the premises only for that purpose. Nevertheless the license has been granted on 1st November, 2007 for a maternity and general hospital under the Maharashtra (Bombay) Nursing Home Registration Act 1949, which is renewed annually and has been renewed until 31st March, 2013.
5. The agreement is seen to be breached on a number of counts and consequently the license is not further renewed. The refusal to renew the license is challengeable in appeal to the Provincial Government under Section 8 of Maharashtra (Bombay) Nursing Home Registration Act 1949. Hence the main relief in the suit cannot be granted by the Civil Court and its jurisdiction would be taken to be impliedly barred.

Upon such main relief the incidental reliefs are sought and for which the interim applications are taken out. Both the notices of motion are for the same reliefs. The grant of the reliefs would impliedly constitute renewal of the license which is not renewed by the concerned authority. Thus seen the impugned order dated 14th September, 2015 of the Bombay City Civil Court cannot be faulted.

6. Mr. Chinoy on behalf of the appellants conceded that the prayers of the appellants in the notice of motion are rather wide and that upon a further notice issued for handing over possession, only the possession of the appellants be protected. This would, in fact, mean and imply that despite the non-renewal of the license the appellants would be allowed to carry on the business. The Court cannot allow any party to carry on business without license.

7. However it is seen that the agreement of the appellants requires the appellants to run a maternity home which a prime need of the society in the area where it is situate. The breaches, if any, of the agreement by the appellants would be required to be seen in the notice of motion. Based upon the consideration of the breaches the renewal or otherwise of the license would follow. That would be for the concerned authority to consider subject to appeal and not the Civil Court.

8. The respondents have issued notice on 28th January 2014 for breach of the agreement dated 25th February, 2004. The appellants have replied to the notice on 11th February 2014 and an order has been passed on 3rd May, 2014 upon the notice issued. That order has not been challenged. The challenge to that order would be within the jurisdiction of the Civil Court.
9. Nevertheless it would have to be seen whether the appellants are indeed guilty of the breaches alleged. Since their maternity home which is licensed as a maternity and general hospital is stated to be running only for the poor on no-profit and no-loss basis, it would be in the interest of justice to allow the appellants to continue to run their maternity and general hospital pending the notice of motion and pending determination of their civil rights under the agreement dated 25th February, 2004. Hence though it is seen that the impugned order based upon the reliefs claimed by the appellants is not wholly incorrect, the appellants shall be allowed only to carry on the maternity and general hospital strictly as per the terms of the agreement dated 25th February, 2004 until the disposal of the notice of motion.
10. Appeal and the civil application are disposed off accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**