

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

CONTEMPT PETITION NO.69 OF 2012
IN
SUIT NO.1995 OF 2010

Mount Mary Enterprises	...	Petitioner
Vs.		
Jivartna Medi Treat P. Ltd. & Ors.	...	Respondents

Yasmin E Tavaría, Adv. for applicant.

Shailesh Shah, Sr. Adv. a/w. Mr. Vineet Jagtap, Adv. i/b. M/s. Khona & Kayser, for Respondent Nos.1,2,3 and 4.

Dinyar Madon, Sr. Adv., i/b. Dharmesh Jain, Adv. for respondent Nos.5 to 7.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 7th August, 2015.

P.C. :

1. The plaintiff has alleged contempt of this Court's order dated 30th July, 2010 restraining defendant No.1 in the suit (who is respondent No.1 in the contempt petition) from selling, transferring, parting with possession, encumbering, alienating or creating any third party rights in the suit premises.

2. Respondent No.1 entered into an agreement termed as collaboration agreement with one Nirmal Datacomm Private Ltd. dated 6th May, 2011. The clauses in the agreement show that it is not an collaboration agreement as alleged at all. If it is stated to be a collaboration agreement it would be a sham. It is seen to be in the nature of a license. The rights, duties, obligations and covenants of the parties to agreement are such as would be of a licensor and licensee. It is stated that even if it is taken to be a license agreement

the possession of the premises is not parted with under such license since a licence would confer only a personal privilege as held in the case of *The Hongkong & Shanghai Banking Corporation Vs. Diamant Borat India Pvt. Ltd. & Anr. 1998 (2) BLR* followed in *Yukta Mookhey Vs. Bank of India, 2006(3) Bom C R 26* and does not create estate or interest in an immovable property (See *Sohan Lal Naraindas Vs. Laxmidas Raghunath Gadit, 1971 (1) SCC 276*).

3. Respondent Nos. 5 and 6, who are such licensees under such a collaboration agreement wherein respondent No.1 is shown to be the owner, has handed over possession of the premises back to respondent No.1 after three years. (much as a licensee would do).

4. Respondent No.7 has been brought in the suit premises by respondent No.1 similarly. He claims under an identical agreement to collaborate.

5. Respondent No.7 has stated in paragraph 7 of his affidavit in reply that he is not in possession of the suit premises that the possession has always been with respondent No.1 only, that respondent No.1 has not created any third party rights in his favour and that the suit premises are in possession of respondent No.1 and shall continue with respondent No.1.

6. Respondent No.1 has also filed an affidavit in reply stating much the same thing. In paragraph 13 of the affidavit in reply respondent No.1 it is stated that it has entered into an agreement to collaborate (which was then with respondent Nos.5 and 6) and has not created any third party rights in favour of such respondents and

has not parted with possession of suit premises in respect of respondent Nos.5 and 6.

7. Counsel on behalf of the respondent No.1 states that respondent No.1 has not parted with possession of the suit premises in favour of respondent No.7 and has not created any third party rights in favour of respondent No.7 and that possession remains with it.

8. In view of the above statements which are recorded the petitioner would not suffer any prejudice in case the suit is decreed in favour of petitioner. In view of such statement the willful breach of the order of this Court dated 30th July, 2010 by respondent No.1 is also not seen.

9. No order has been passed against respondent No.7 in respect of the alienation or creation of third party rights or parting with possession of suit premises.

10. Consequently upon the above observations the Contempt Petition is disposed of.

(ROSHAN DALVI, J.)