

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

Arb.A.No. 10 of 2015 ()

AGAINST THE ORDER IN I.A.5715/2014 Dt.1.1.2015 in OPARB 784/2014 of
ADDL.DISTRICT COURT

APPELLANTS/RESPONDENTS:

1. ST. ANTONY'S TRADING CO.
34/1242 A, BEENA ANJUMANA ROAD, EDAPPALLY
KOCHI 682024, REPRESENTED BY MANAGING PARTNER
MEHAR REYNOLDS.

2. MEHAR REYNOLDS
S/O. REYNOLDS, MANAGING PARTNER, NO.33
CHOICE VILLAGE, NADAMA, TRIPPUNITHURA
KOCHI 682031.

BY ADVS.SRI.K.J.SAJI ISAAC
DR.ELIZABETH VARKEY

RESPONDENT/PETITIONER:

SHAHANAS ADIL, AGED 23 YEARS
W/O. ADIL MUHAMMED ALI, KOLPARAMBIL HOUSE, BLOCK JUNCTION
VELLANGALLOOR P.O., TRICHUR DIST. 6820622
NOW RESIDING AT 18, KIRWAN DRIVE, CRANBOURNE EAST
VIC-3977, AUSTRALIA
REP. BY POWER OF ATTORNEY HOLDER K.B.MOHAMMEDKUTTY
S/O. LATE K.A.BAVAKUNJ, AGED 66, KALATHIL HOUSE
NETTOOR P.O., MARADU, KANAYANNUR TALUK
KOCHI-682040.

R1 BY ADV. SRI.T.K.RADHAKRISHNAN
R1 BY ADV. SMT.S.SREEDEVI (ALP)
R1 BY ADV. SRI.K.J.GLADIS
R1 BY ADV. SMT.K.S.SUDHA
R1 BY ADV. SMT.K.L.SREEDEVI

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON
02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Arb.A.No. 10 of 2015

APPENDIX

APPELLANTS' EXHIBITS

ANNEX.A1: TRUE COPY OF I.A.NO.4256/14 IN ARB.O.P.784/14 OF THE
ADDITIONAL DISTRICT COURT V, ERNAKULAM.

ANNEX.A2: TRUE COPY OF THE INJUNCTION ORDER IN I.A.4256/14 IN
ARB.O.P.NO.784/14 OF THE ADDITIONAL DISTRICT COURT V, ERNAKULAM.

ANNEX.A3: TRUE COPY OF I.A.NO.5715/14 IN ARB.O.P.NO.784/14 OF THE
ADDITIONAL DISTRICT COURT V, ERNAKULAM.

/TRUE COPY/

P.S TO JUDGE

T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

Arb.Appeal No.10 of 2015

Dated this the 2nd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is from the order in I.A.No.5715 of 2014 issued in O.P(Arbitration) No.784 of 2014.

2. The bare facts for the disposal of the appeal are the following. The appellant herein has taken a premises on rent from the respondent landlord. The present order is passed in O.P(Arb.) No.784/2014, which was filed by the respondent. By an order in I.A.4256/2014 in A.O.P 784/2014, the court below has granted interim injunction restraining the appellants from inducting any strangers in the petition schedule property or transferring from the schedule premises like mezzanine construction etc. to any other person until further direction.

3. As far as the impugned order is concerned, the same is dated 1.1.2015 whereby the court has directed the Advocate Commissioner to put the premises under lock and key and report compliance on or before the next posting date, ie. this day, the 2nd of February, 2015. This order is passed on the I.A.5715 of

2014 wherein the prayer made is to direct the Commissioner to put the premises under the lock and key with him in order to avoid taking the articles in the schedule premises by the respondents. The learned counsel for the landlord submitted that the rent is in huge arrears to the tune of Rs.29 lakhs and above. It is also submitted that the income tax component has been collected from the respondent for non payment by the appellants. It appears that the appellants are dealers in Skoda Cars and the learned counsel for the appellants submitted that because of certain financial problems, adverse circumstances have arisen in the business, and they are taking efforts to tide over the situation.

4. The learned counsel for the appellants submitted that by keeping the premises under lock and key, the appellants will be dis-entitled to continue the business in spare parts. It is submitted that the order of injunction passed by the court below has not restrained the appellants from continuing their business also.

5. The apprehension expressed by the learned counsel for the respondent is that if the premises are allowed to be kept

opened, there is the chance of the appellants removing the machineries and other valuable items. It is also submitted that the appellants have not offered any security for the arrears of rent and ultimately if the rent control petition is allowed, there may not be any possibility for the respondent to recover rent arrears from the appellants herein.

6. Today the learned Advocate Commissioner appointed by the court below is also present as directed by this Court, since on the last hearing day, there was a dispute between the learned counsels for the respective parties as to whether the report has been filed or not by the Advocate Commissioner. It appears that the learned Advocate Commissioner was directed to prepare an inventory of all the articles in the show room. It is submitted by the learned Advocate Commissioner that the report has been filed on 29.01.2015. It is also submitted that he has put the premises under lock and key as directed by the court below. The learned Advocate Commissioner also submitted that he has not prepared an inventory of the spare parts available in the show room.

7. In the light of the fact that the interim order of

injunction does not restrain the appellants from continuing the business in spare parts, we find that the order passed by the court below to put the premises under lock and key will prejudice the appellants. The work of preparing inventory by the Advocate Commissioner is already over and hence we do not find any reason to allow the premises to be kept under lock and key of the Advocate Commissioner. The learned counsel for the appellants submitted that running of business in spare parts, which has never been disputed by the respondent, will not prejudice the respondent also. The premises are common. The anxiety expressed by the learned counsel for the respondent is that by allowing the appellants to open the show room, they will remove machineries and other valuable items. This is a matter which the respondent can bring to the notice of the court below and seek appropriate orders.

In that view of the matter, in modification of the impugned order we allow the appellants to open the show room and conduct their business in spare parts, which will be subject to the further orders to be passed by the District Court in A.O.P 784/2014. Since the Commissioner has surrendered the key to

the court below, there will be a direction to the court below to return the key to the appellants. The appellants will complete their pleadings within one week. It is made clear that we have not expressed anything on the merits of the contentions raised by the parties.

The appeal is disposed of as above. No costs.

Sd/-
T.R.RAMACHANDRAN NAIR
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge