IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

W.P.(C).No.16415 of 2015 (B)

PETITIONER(S):-

P.RAVEENDRAN, S/O.PAUL NADAR, AGED 57 YEARS,
VISHNU BHAVAN, EDAYAPRAM, KEEZHMAD, ALUVA.

BY ADV. SRI.P.V.GEORGE (PUTHIYIDAM).

RESPONDENT(S):-

1. ERNAKULAM REGIONAL CO-OP.MILK PRODUCERS UNION LTD.,
   REPRESENTED BY MANAGING DIRECTOR, ERNAKULAM DAIRY,
   THRIPUNITHURA - 682 301.

2. DAIRY MANAGER,
   ERNAKULAM REGIONAL CO-OP.MILK PRODUCERS UNION LTD.,
   ERNAKULAM DAIRY, THRIPUNITHURA - 682 301.

3. ERNAKULAM REGIONAL CO-OPERATIVE MILK PRODUCERS' UNION LTD.,
   REPRESENTED BY MANAGING DIRECTOR, ERNAKULAM DAIRY,
   EDAPPALLY, KOCHI-24.

R1 TO R3 BY ADVS. SRI.K.ANAND (SENIOR ADVOCATE)
SMT.LATHA KRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.16415 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1 - TRUE COPY OF THE RECEIPT DATED 6.8.1994 ISSUED BY THE 1ST RESPONDENT FOR COLLECTING COST OF NAME BOARD.

EXT.P2 - TRUE COPY OF THE RECEIPT DATED 6.8.1994 ISSUED BY 1ST RESPNDENT FOR COLLECTING RS.90/- AS NOMINAL MEMBERSHIP FEE.

EXT.P3 - TRUE COPY OF RECEIPT DATED 6.8.1994 ISSUED BY 1ST RESPONDENT FOR DEPOSIT OF SECURITY DEPOSIT.

EXT.P4 - TRUE COPY OF RECEIPT DATED 10.5.2014 FOR REMITTANCE OF RS.1,02,100/-.

EXT.P5 - TRUE COPY OF RECEIPT DATED 15.5.2014 FOR RS.86,900/-.

EXT.P6 - TRUE COPY OF COMMUNICATION DATED 30.11.2000 ISSUED BY 3RD RESPONDENT.

EXT.P7 - TRUE COPY OF COMMUNICATION DATED 11.4.2015 ISSUED BY 2ND RESPONDENT.

EXT.P8 - TRUE COPY OF RECEIPT DATED 16.4.2015 ISSUED BY 1ST RESPONDENT.

EXT.P9 - TRUE COPY OF LETTER CANCELLING PETITIONER'S AGENCY PROVISIONALLY WITH EFFECT FROM 30.4.2015 ISSUED BY 2ND RESPONDENT DATED 28.4.2015.

EXT.P10 - TRUE COPY OF APOLOGY DATED 2.5.2015 GIVEN BY PETITIONER TO 2ND RESPONDENT.

EXT.P11 - TRUE COPY OF COMMUNICATION DATED 11.5.2015 FROM 2ND RESPONDENT.

EXT.P12 - TRUE COPY OF PAPER NOTIFICATION PUBLISHED IN MALAYALA MANORAMA DAILY DATED 14.5.2015.

RESPONDENT(S)' EXHIBITS:-

EXT.R2(a) - TRUE COPY OF THE DEALERSHIP AGREEMENT DATED 1.7.2014.

EXT.R2(b) - TRUE COPY OF LETTER DATED 02.01.2015.

EXT.R2(c) - TRUE COPY OF NOTICE DATED 12.01.2015.

EXT.R2(d) - TRUE COPY OF THE LETTER DATED 19.01.2015.

EXT.R2(e) - TRUE COPY OF THE LETTER DATED 16.04.2015.

EXT.R2(f) - TRUE COPY OF THE COMPLAINT REWCEIVED FROM SHRI.SAJIMON.

EXT.R2(g) TRUE COPY OF AGREEMENT BETWEEN THE PETITIONER AND SHRI.SHAMEER.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.16415 of 2015-B

Dated this the 31st day of July, 2015

JUDGMENT

The petitioner is aggrieved with the cancellation of the Milma booth, which was granted to him as per Exhibit P11.

2. The petitioner was first issued with a notice, as seen at Exhibit P7, for having sold articles from the Milma booth which were not products of Milma. In fact, the petitioner was obliged to sell products of Milma from the booth and nothing else, as per the specific agreement. However, later to Exhibit P7, on an oral undertaking before the Milma that the petitioner would not violate the agreement, the petitioner was allowed to resume operation after paying security deposit of Rs.25,000/-, evidenced at Exhibit P8. However, immediately thereafter Exhibit P9 notice was issued, again alleging the very same discrepancies noticed earlier. In Exhibit P9 it was also indicated that there was a sub-lease of the premises. The petitioner contends that, in fact after the security deposit was made at Exhibit P8 the petitioner had not made any sub-lease.

3. The learned Standing Counsel for the Milma has filed a detailed counter affidavit. Exhibit R2(a) is the agreement dated 01.07.2014 entered into between the petitioner and the Milma. The petitioner had been in possession of the Milma booth from 1994 onwards. The specific clauses pointed out are Clauses 2, 10 and 13 of the agreement, which the petitioner is said to have violated. Clause 2 is insofar as prohibition from dealing in products other than Milma milk and Milma products. Any discrepancy noticed on the said ground would, as per the above clause, result in the dealership being cancelled and the security deposit forfeited. Clause 10 deals with the prohibition in sub-letting or transferring or otherwise disposing of the dealership without the specific sanction from the respondent-Ernakulam Regional Co-operative Milk Producers' Union Ltd. [ERCMPU]. Clause 13 reserves with the ERCMPU the exclusive right to cancel the dealership.

4. The discrepancies noticed has to be decided on the basis of the clauses above referred. As to the allegation of selling products which were not of the Milma, as early as on 02.01.2015 the Railway had intimated the Milma by communication produced

at Exhibit R2(b) the various allegations with respect to the conduct of the Milma booth in the Railway Station. At that point itself it was noticed that the petitioner's milk stall had been dealing with items which were not permitted and which were not the products of Milma. On that complaint that Exhibit R2(c) was issued. On an apology [Exhibit R2(d)], the petitioner was allowed to continue. However, again the very same discrepancy of selling other products was detected and, hence, the second notice at Exhibit P7 was issued. Admittedly the petitioner had been selling such products, which is evident from Exhibit R2(e) apology offered by the petitioner. The petitioner, hence, was habitually violating the terms of the agreement.

5. Further, it is also to be noticed that the sub-lease effected by the petitioner, though earlier to Exhibit P1 agreement, was brought to the notice of the Milma only by Exhibit R2(f), a letter dated 27.04.2015. Hence, it cannot be said that the sub-lease which was made earlier would not stand against the petitioner; nor could a contention be taken that the sub-lease not being after Exhibit P7 the same cannot be put against the petitioner. Admittedly the petitioner had been carrying on the very

same activities from 1994 onwards on the basis of valid agreements executed with the Milma. Earlier also such conditions were available, specifically insofar as the sub-lease issue is concerned. The sub-lease issue having not been brought to the notice of the Milma, this Court does not find any infirmity in the cancellation effected under Exhibit P11 on the further ground of sub-lease effected. In fact the petitioner himself admitted in the writ petition that a sub-lease was effected. That would stand against the petitioner as also the fact that the petitioner has been engaged in the sale of products other than Milma, which on frequent detection was admitted by the petitioner.

Resultantly, the writ petition would stand dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]