

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 20526 of 2015 (M)

PETITIONER(S):

**JIJO THOMAS, AGED 45 YEARS,
S/O VALIAVEETIL THOMAS, PULLUR VILLAGE DESOM,
MUKUNDAPURAM TALUK.**

BY ADV. SRI.G.SREEKUMAR (CHELUR).

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO
THE GOVERNMENT, DRUGS DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**
- 2. THE ASSISTANT DRUGS CONTROLLER,
THRISSUR-680 001.**
- 3. A.P. JOSE, S/O. PAUL ALUKAL,
ALUKAL HOUSE, MAIN ROAD,
IRINJALAKUDA-680 121.**

**R1 & R2 BY SR. GOVT. PLEADER SRI.GIKKU JACOB.
R3 BY ADVS. SRI.K.S.BHARATHAN,
SMT.S.ANJUSHA.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1: A TRUE COPY OF THE DEED OF PARTNERSHIP DATED 24/03/2010.
- EXT.P2: A TRUE COPY OF THE DRUG LICENSE ALONG WITH THE COMMUNICATION DATED 24/06/2010 .
- EXT.P3: A TRUE COPY OF THE COMPLAINT OF THE PETITIONER DATED 02/07/2015.

RESPONDENT'S EXHIBITS:-

- EXT.R3A COPY OF THE PLAINT IN O.S. NO.2587/2015 BEFORE THE MUNSIF COURT, IRINJALAKUDA PRESENTED ON 06/07/2015.
- EXT.R3B COPY OF THE ORDER DATED NIL IN I.A. NO.4387/2015 IN O.S. NO.2587/2015 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA ALONG WITH THE SCHEDULE APPENDED THERETO.
- EXT.R3C COPY OF THE COUNTER STATEMENT SUBMITTED ON BEHALF OF RESPONDENTS IN I.A. NO.4387/2015 IN O.S. NO.2587/2015 ON THE FILE OF THE MUNSIF COURT, IRINJALAKUDA ON 08/07/2015.
- EXT.R3D COPY OF THE PLAINT IN O.S. NO.2641/2015 BEFORE THE MUNSIF COURT, IRINJALAKUDA PRESENTED ON 07/07/2015.
- EXT.R3E COPY OF THE I.A. NO.4591/2015 IN O.S. NO.2641/2015 BEFORE THE MUNSIF COURT, IRINJALAKUDA DATED 07/07/2015.
- EXT.R3F COPY OF THE ORDER DATED NIL IN I.A. NO.4591/2015 IN O.S. NO.2641/2015 ON THE FILES OF THE MUNSIF COURT, IRINJALAKUDA ALONG WITH THE SCHEDULE APPENDED THERETO.
- EXT.R3G 1, 2, 3: COPIES OF THE LEASE DEEDS DATED 23/03/2010, 10/10/2014 AND ON 22/07/2015.
- EXT.R3H 1, 2, 3: COPY OF THE REPORTS SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 07/07/2015, 09/07/2015 AND 28/07/2015.
- EXT.R3I COPY OF THE APPLICATION SUBMITTED BY THE 3RD RESPONDENT ON 23/07/2015.
- EXT.R3J COPY OF THE STATEMENT PREFERRED BY THE PETITIONER ON 14/07/2015 BEFORE THE MUNSIF COURT, IRINJALAKUDA.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 20526 of 2015

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Dated this the 26th day of October, 2015

J U D G M E N T

The writ petitioner and the third respondent entered into a partnership deed whereby they constituted a firm to engage in drug business. The firm obtained a drug licence.

2. The partners fell apart. The business was carried in the rented premises 6/435 of Irinjalakuda Municipality.

3. The case of the petitioner is that rented premises belongs to the partnership firm. The petitioner's case is that the 3rd respondent shall not get a licence in his name using the business premises of the partnership firm.

4. Per contra, the learned counsel for the third respondent submits that though the tenanted premises exclusively belongs to him and was used by the partnership firm, since partnership was formed and the partnership has been extinguished on account of termination or on the 'will' of a partner, the premises will revert back to exclusive use of the 3rd respondent.

5. It is further submitted that the partnership firm was only in occupation and the possession was with the 3rd respondent. Therefore when the partnership is dissolved, no other party can claim or any right in respect of the premises.

6. The public remedy, in fact, is invoked here for a limited purpose of interdicting statutory authority from granting licence. The dispute between the partners essentially has to be resolved through the Civil Court. This Court cannot adjudicate dispute between the partners. Therefore the question is whether statutory authority could be interdicted from exercising statutory power in terms of the Drugs and Cosmetics Act.

7. The 3rd respondent has applied for drug licence in his individual capacity. This essentially has to be considered by the 2nd respondent authority in accordance with law, unless the authority is interdicted by the order of a civil court. Therefore this Court is of the view that the parties shall work out their dispute before the Civil Court in respect of premises. The 2nd respondent shall consider the application submitted by the 3rd respondent in accordance with law. It is made clear that the 2nd respondent is bound by any decision of the Civil Court in relation to the right of use of the

premises. The second respondent shall also advert to any order of the Civil Court, if produced before him while taking such decision.

The writ petition is disposed of, as above.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE