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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 855/2016 and CM Nos. 31823-31824/2016

TATA TELESERVICES LTD Petitioner
Through: Mr. Amitesh Chandra Mishra and
Mr.Sidhant Pandith, Advocates.

versus

M/S SHIKHA POLYMERS PVT LTD & ANR..... Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **31.08.2016**

1. By the present petition, the petitioner seeks to impugn the order dated 10.05.2016 by which order the trial court dismissed the application of the petitioner under Order 1 Rule 10 CPC and allowed the application of the plaintiff/respondent No.1 under Order 39 Rule 10 CPC and directed the petitioner to pay a monthly rent of Rs.26,236/- w.e.f. 01.09.2011.
2. The plaintiff/respondent No.1 has filed the present suit for recovery of Rs.5,91,256 license charges/damages, for permanent and mandatory injunction and for possession. The plaintiff/respondent No. 1 and the petitioner entered into a Leave and License Agreement on 30.03.2002 whereby the respondent No. 1 granted permission to the petitioner to use a certain part of the terrace/roof top of its property at GT Karnal road for installation of mobile tower/antenna.
3. The facts which come out are that on 08.11.2007, the petitioner have transferred their business to respondent No. 2 and respondent No.2 is now

running the concerned mobile tower/antenna from the said premises.

4. Learned counsel appearing for the petitioner has contended that as per Clause 14.1 of the agreement between the parties, the petitioner is entitled to make available the said premises to its subsidiary, holding companies, joint partners or partners any time during the term of the deed without the written consent of respondent No. 1. It is averred that respondent No.2 was at that time i.e. in 2007 a subsidiary of the petitioner. Subsequently, the said respondent No.2 has changed its name to Vyom Networks Ltd. It is further urged that since 2007 the said respondent No.2 has been paying the license fees to respondent No.1/plaintiff who has been without any protest or objection accepting the license fees. By the said conduct, it is averred, respondent No.1 has accepted respondent No.2 as its licensee. He also relies on letter dated 29.10.2011 written by respondent No.1 to respondent No.2. Hence, he submits that the impugned order is erroneous.

5. A perusal of the plaint filed by the plaintiff/respondent No. 1 shows that respondent No.1 accepts that respondent No.2 has been paying license fees to respondent No.1 allegedly on behalf of the petitioner after deducting TDS and that the respondent No. 1 has been accepting the same on behalf of the petitioner without prejudice to its rights. The said plaint also states that on 23.03.2011 respondent No.1 has stated that there is no privity of contract with respondent No.2. The plaint does not state as to from which date respondent No.2 is paying respondent No.1.

6. The letter dated 29.10.2011 which respondent No. 1 has written to respondent No.2 states that the matter has been mutually settled and an agreement has been signed.

7. A perusal of the impugned order shows that the trial court has noted

that there was no consent obtained by the petitioner from respondent No.1 to transfer its business to respondent No.2 and hence, the petitioner is liable to pay the monthly rent of Rs.26,236/- w.e.f. 01.09.2011 till date. The above contentions of the petitioner including the effect of the averment by respondent No.1 in its plaint and the effect of letter dated 29.10.2011 written by respondent No.1 have not been dealt with by the trial court while adjudicating the said application under Order 39 Rule 10 CPC.

8. In the facts and circumstances, it would be appropriate that the petitioner is permitted to move an application for review/recall of the impugned order seeking adjudication on the contentions of the petitioner. Granting the leave and liberty to the petitioner to move the trial court for review/modification of the order dated 10.05.2016, the present petition is disposed of. The trial court is requested to consider the said application if moved within two weeks from today, as per law.

9. Till the disposal of the application of the petitioner, or till two weeks if no such application is filed the order dated 10.05.2016 may not be given effect to.

10. It may be noted that an advance copy of the petition has been sent through courier to the respondents. However, none is present for the respondent.

11. The petition stands disposed of.

12. Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

AUGUST 31, 2016/rb