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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 27.07.2018

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU  
AND**

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**W.A(MD)NO.65 OF 2015**

**and**

**M.P(MD)No.1 of 2015**

R.Suresh

: Appellant/Applicant/Petitioner

.vs.

1. The Principal District Judge,  
Madurai.
2. The Madurai District Co-operative  
Milk Products Limited,  
Madurai.
3. The Executive Engineer,  
Public Works Department,  
Building Construction and  
Maintenance Division,  
Madurai.

: Respondents/Respondents/  
Respondents

**PRAYER:** Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in Review Petition No.39 of 2013 in W.P(MD)No.1754 of 2009, dated 22.08.2014

**Prayer in REV.APLC(MD) . 39/ 2013 :**

Review application filed under order 47 Rule 1 and 2 and r/w section 114 of Civil Procedure Code, against the order dated 02/04/2009 passed in WP(MD) No.1754/2009, on the file of this Court.

**Prayer in WP(MD) . 1754/ 2009 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent passed in and quash the same in order in ROC.No. 1/2009/RK, dated 09/01/2009 and consequently, forbearing the first respondent from any way running the Aavin Parlour in the premises of the district court campus, madurai till 31/12/2009, except without following the due process



For Appellant : Mr.C.Jegannathan  
For Respondent-1 : Mr.R.Aravindan  
For Respondents : Mr.C.M.Mari Chelliah Prabhu  
2 and 3 Additional Govt. Pleader

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**JUDGMENT**

[Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**]

This Writ Appeal is directed against the order made in Review Application(MD)No.39 of 2013 in W.P(MD)No.1754 of 2009, dated 22.08.2014.

2.Heard the learned counsel for the appellant, learned counsel appearing for the first respondent and the learned Additional Government Pleader appearing for the respondents 2 and 3.

3.The first respondent herein originally granted permission to the second respondent to run a Aavin Milk Booth in the premises of the Combined Court Buildings, Madurai through proceedings, dated 31.12.2008. However, by a subsequent proceedings, dated 09.01.2009, the first respondent cancelled the said permission already granted also by directing the second respondent to vacate and hand-over the possession of the premises allotted for running such Aavin Milk Booth. Admittedly, the second respondent to whom the permission was originally granted and subsequently cancelled, as stated supra, has not chosen to challenge the said order. However, the appellant herein claiming to be the agent of the second respondent and stated to be running the said Aavin Milk Booth inside the Combined Court Building Premises, Madurai, has chosen to file W.P(MD)No.1754 of 2009 and challenged the said order of the first respondent, dated 09.01.2009.

4.The Writ Court, after hearing both sides, dismissed the Writ Petition by an order, dated 2.4.2009 by specifically observing that the Writ Petitioner was only an agent of the second respondent and that there was no privity of contract between the Petitioner and the first respondent. It was also contended before the Writ Court that the second respondent against whom the cancellation order was made, has not chosen to challenge the said order.

5.The Writ Petitioner challenged the order of the Writ Court by filing W.A(MD)No.264 of 2009.The Division Bench of this Court by an order dated 29.6.2009 while dismissing the Writ Appeal as withdrawn, has however, given liberty to the Writ Petitioner to file a Review Petition before the Writ Court. It was also made clear in the said order that the order of the Division Bench should not be construed as an opinion of the Bench on the merits of the case. The appellant, one way or other. Therefore, it is evident that the liberty given by the Division Bench to file a Review Petition was not with any positive findings rendered on the



submissions made by the Writ Petitioner in the above said Writ Appeal. On the other hand, it is evident that the Writ Court was left free to decide the matter on review, on merits and in accordance with law. Consequently, the Review Petition was filed by the writ Petitioner in Review Petition(MD)NO.39 of 2013. The said Review Petition was considered and the same was dismissed by order dated 22.08.2014 by observing that the licence given by the second respondent to the Writ Petitioner is purely an arrangement between the licensee and the Writ Petitioner and thus, the same will not give any right to the Writ Petitioner to challenge the order of cancelling the permission granted by the first respondent to the second respondent herein.

6.Though the learned counsel for the appellant sought to rely upon Sections 202 and 230 of the Indian Contract Act, 1872, We are not impressed upon such submission, more particularly, when the admitted fact remains that there is no privity of contract between the Petitioner and the first respondent. Further, when the second respondent, to whom permission was granted, has not chosen to challenge such cancellation, the Writ Petitioner claiming to be a licensee under the second respondent, cannot have any better claim than that of the second respondent insofar as the permission granted to the second respondent by the first respondent to run such Milk Parlour is concerned. At this juncture, we would like to make it very clear that the permission granted by the first respondent to the second respondent and the licence granted by the second respondent to the Writ Petitioner are two different, independent and distinct acts and therefore, based on such license stated to have been given by the first respondent to the Writ Petitioner, the order of cancellation of permission cannot be challenged by the Writ Petitioner, especially when the second respondent has not questioned such cancellation and on the other hand, by not questioning, he has accepted such cancellation and allowed the same to become final, conclusive and binding on parties. When such being the factual position, We do not think that the Petitioner/appellant is justified in raising all these contentions before this Court. Therefore, We find no merit to interfere with the well-considered order passed by the Writ Court.

7.Accordingly, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

**Sd/-**

**Assistant Registrar (CS-I)**

**/True Copy/**



To

1. The Principal District Judge,  
Madurai.
2. The Madurai District Co-operative  
Milk Products Limited,  
Madurai.
3. The Executive Engineer,  
Public Works Department,  
Building Construction and  
Maintenance Division,  
Madurai.

Copy to:  
The Section Officer,  
'B' Section,  
Madurai Bench of Madras High Court,  
Madurari

+1cc to M/S.VEERA ASSOCIATES, Advocate SR.No.75604

+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.75582

Vsn

MK/MMS/SAR 1/13.08.2018/4P/7C

**JUDGMENT MADE IN**  
**W.A(MD) NO. 65 OF 2015**  
**and**  
**M.P(MD) No.1 of 2015**  
**27.07.2018**