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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 99 OF 2010
IN
NOTICE OF MOTION NO. 2933 OF 2006
IN
SUIT NO. 1705 OF 1998

Bralco Metal Industries Ltd	...Petitioner
<i>Versus</i>	
Elite Auto Industries & Ors	...Respondents

Mr SP Dalal, i/b Dalal & Co., for the Petitioner.
Mr Girish Kedia, for Respondents Nos. 1, 4 and 5.

CORAM: G.S. PATEL, J
DATED: 22nd February 2019

PC:-

1. The Petitioner claims that the Respondents are in breach of an order dated 6th January 1997 of the Court of Small Causes, Bandra, Mumbai granting an ad-interim injunction order, and an undertaking dated 11th July 2006, a copy of which is at page 125, given to this Court in Appeal No. 140 of 2006. The premises in question is at 54-A, M VasANJI Road, Andheri (East), Mumbai 400 093.

2. The 1st Respondent is a partnership firm of which the 2nd Respondent was a partner. Respondents Nos. 3, 4, 5 and 6 are respectively the 2nd Respondent's wife and children. Respondents Nos. 3, 5 and 6 have passed away.

3. On 11th July 2006, Respondent No. 2 gave an undertaking not to sell, transfer or dispose of the undivided right, title and interest of the 1st Respondent in this 6,150 sq ft property. The second part of the undertaking was that the extant agreement of leave and licence with one Paramount Health Care Services Pvt Ltd ("**Paramount**"), due to expire on 19th April 2007, would not be renewed without leave of the Court. The third undertaking was that upon Paramount vacating the premises, neither the 1st nor the 2nd Respondent would part with possession or give the premises on leave and licence to any third party except with leave of the Court. It seems that the leave and licence agreement with Paramount was renewed with leave of the Court on 21st June 2007. Mr Dalal's submission of behalf of the Petitioner that this agreement indicates prior negotiations between the Respondents and Paramount is neither here nor there, and will not amount to contempt because the Respondents did indeed get leave of the Court.

4. What the Affidavit in Reply indicates at page 136 is that the renewed agreement expired on 31st December 2009. Respondents Nos. 1 and 2 confirm that they have not renewed it thereafter nor given a fresh leave and licence to anyone else. Paramount seems to have said on 14th January 2010, a few days after the renewed leave and licence expired, that it could not afford to continue in the premises. It apparently agreed to vacate the premises by the end of

2010 and asked Respondents Nos. 1 and 2 to arrange for a refund of the deposit against possession.

5. It is this continuance of Paramount in the premises that the Petitioner says constitutes contempt of the undertaking. I disagree. These undertakings are to be strictly construed especially once they are accepted by a Court. There is no leave and licence to a third party. There is no parting with possession. If a licensee continues, that is not covered by the third undertaking agreeing not to part with possession or to give the premises on a leave and licence to a third party. It is the case of the Petitioner itself that the only portion of the undertaking said to have been breached is this third portion.

6. In my view, there is no substance in the Contempt Petition. The Contempt Petition is dismissed. There will be no order as to costs.

7. The Notice is discharged.

(G. S. PATEL, J)