

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6520 OF 2019

VSPM Academy of Higher Education,
YMCA Complex, Sitabuldi, Nagpur
Thr. Its Secretary Yuvraj Daulatrao Chalkhor

... Petitioner

-vs-

HERD Medical Foundation Private Limited,
GPO Square, Civil Lines, Nagpur
Thr. Its Managing Director,
Amol Ranjeet Deshmukh

... Respondent

Shri Masood Shareef, Advocate for petitioner.
Shri R. M. Bhangde, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : December 19, 2019

P.C.

The order passed by the appellate Court in the miscellaneous appeal preferred by the original plaintiff is under challenge in the present writ petition.

2. The facts in brief are that it is the case of the respondent-plaintiff that it is a Company registered under provisions of the Companies Act, 1956. The petitioner-defendant runs a Hospital and College. In the said Hospital it requires services of the pharmacy shop. Since the plaintiff intended to provide such services a lease agreement was entered into on 24/02/2014 between the parties. As per that lease agreement which was to operate till

2021 the plaintiff was permitted to run its pharmacy shop in the properties leased out to it. After completing all formalities the plaintiff commenced its operation. According to the plaintiff one of its Directors was the son of the Chairman of the defendant Company. Some disputes arose in the family. The defendant therefore tried to open a parallel pharmacy shop at the Hospital located at Hingna. The plaintiff objected to the same and since the defendant did not restrain itself from going ahead with opening of the pharmacy shop the plaintiff filed the aforesaid suit seeking permanent injunction so as to restrain the defendant from opening any parallel pharmacy shop in the leased premises. In that suit the plaintiff moved an application for temporary injunction. Reply was filed on behalf of the defendant opposing the aforesaid relief sought in the application for temporary injunction. It was stated that the defendant could not be prevented from starting any pharmacy business. Moreover the tenancy agreement had been terminated in view of the letter dated 13/03/2018. After obtaining necessary permission from the Competent Authority the defendant started its pharmacy and there was no reason whatsoever to restrain it from conducting that business.

3. The trial Court by its order dated 08/07/2019 partly allowed the application as moved by the plaintiff. The defendant was restrained from disturbing the possession of the plaintiff over the tenanted premises and also

from disturbing the plaintiff from running the pharmacy shop. However the prayer to restrain the defendant from opening parallel pharmacy shop in the premises of the Hospital was rejected. Being aggrieved by the latter part of the order the plaintiff filed a miscellaneous appeal. The appellate Court allowed that appeal by observing that by virtue of the lease agreement the plaintiff had the exclusive right to run the pharmacy shop in the leased premises. The cross-objection preferred by the defendant was dismissed. Being aggrieved by that order the defendant has challenged the same in the present writ petition.

4. Shri M. Shareef, learned counsel for the petitioner submitted that the appellate Court erred in granting an injunction which restrained the defendant from running any pharmacy shop in the Hospital premises. There was no clause in the lease agreement which prohibited the defendant from running such pharmacy shop. The Hospital run by the defendant had about 780 beds and since the defendant was the owner of the Hospital it was entitled to provide such services to the patients therein. The property leased out to the plaintiff was only the pharmacy shop and the Hospital premises had not been leased out. Since the defendant did not disturb the possession of the plaintiff as it continued to run its pharmacy shop there was no reason to restrain the defendant from obtaining any pharmacy shop at any other place in the entire premises. The nature of injunction as granted

amounted to imposing a restraint on the trade of the defendant. The learned counsel placed reliance on the decisions in *Gujrat Bottling Co.Ltd. And ors. vs. Coca Cola Co. and ors. (1995) 5 SCC 545* and *Percept D'mark (India) (P) Ltd. vs. Zaheer Khan and anr. (2006) 4 SCC 227* in support of his submissions. It was thus submitted that the order passed by the appellate Court was liable to be set aside.

5. On the other hand Shri R. M. Bhangde, learned counsel for the respondent supported the impugned order. He referred to the lease agreement entered into between the parties and especially the clause titled "Background". According to him the pharmacy shops which the plaintiff was entitled to operate under the lease agreement had been described and this description indicated that it was the plaintiff alone who had the sole and exclusive right to conduct the pharmacy shop in the hospital. The appellate Court rightly considered the lease agreement and therefore found that since the sole and exclusive right had been given to the plaintiff the defendant was not permitted to open a parallel pharmacy shop. Since there was an attempt to dispossess the plaintiff, the injunction protecting the plaintiff's possession was also rightly granted. He further submitted that in the pleadings of the defendant there was no reference to the stand taken now that grant of such injunction amounted to restraining the defendant from carrying out its trade or business. He therefore submitted that as the appellate Court had taken a

possible view of the matter the impugned order did not call for any interference.

6. I have heard the learned counsel for the parties and I have perused the documents on record. The lease agreement dated 24/02/2014 has been entered into between the parties and pursuant to that agreement the plaintiff claimed entitlement to run the pharmacy shop in the Hospital premises as described. Since the premises in question are described in the Clause titled “Background” that Clause is reproduced for reference :

“Background :

Whereas the First party is engaged in the business of operating and managing a Hospital in the name of Lata Mangeshkar situated at Bhumajla, W.No.5, Digdoh Hills, Hingna Road, Hingna, Nagpur, Maharashtra (hereinafter referred to as the “Hingna Pharmacy Shop”), 5 Y.M.C.A. Complex, Maharajbagh Road, Sitabuldi, Nagpur, Maharashtra 440001 (hereinafter referred to as the “Sitabuldi Pharmacy Shop”)

And Lata Mangeshkar hospital near AIPS school, Khatamba Road, Behind Railway station, Katol, Nagpur, Maharashtra (hereinafter referred to as the “Katol Pharmacy Shop”).”

7. Perusal of the said Clause prima facie indicates that the Hospital by the name ‘Lata Mangeshkar Hospital’ Digdoh Hills, Hingna Road, Hingna, Nagpur has been referred to as the Hingna Pharmacy Shop. Similarly the other two pharmacy shops have also been described therein. As per Clause-2 of the agreement the plaintiff has been appointed as the sole and exclusive

company to operate and manage the three pharmacy shops described in that Clause. Under Clause-8 of the said agreement the name of the pharmacy shop has been stipulated and the defendant has been restrained from using that name for any other activity. Prima facie on a reading of the entire lease agreement it is found that the view taken by the appellate Court that the plaintiff was appointed as sole and exclusive entity that could operate the pharmacy shop appears to be a possible view taken. The lease agreement was for a period of five years which period is yet to expire.

8. As regards the contention that grant of such injunction would result in restraining the defendant from carrying out its trade/business, said contention firstly has not been raised in the pleadings. However it can be also seen that there is a restriction only to conduct that business within the leased premises as described and not elsewhere. The defendant has not been restrained from carrying that business elsewhere. Hence that contention also does not deserve to be accepted.

9. The appellate Court has after taking into consideration the lease agreement found that the “Hingna Pharmacy Shop” encompasses the entire Hospital premises. This conclusion has been based on the terms of the agreement and on perusing the same I do not find any reason to take a different view. On a reading of the agreement in its entirety it is prima facie

clear that the defendant intended to permit the plaintiff to operate the pharmacy business in the entire Hospital premises. Hence the defendant has been rightly restrained from seeking to open a parallel pharmacy shop in the very same premises. I therefore do not find any reason to take a different view from the one taken by the appellate Court. It is clear from the facts of the case that all ingredients for seeking interim injunction have been satisfied by the plaintiff.

10. Thus by clarifying that the appellate Court by taking a prima facie view of the matter has proceeded to grant interim injunction this conclusion does not deserve to be interfered with. The said order is maintained. However the trial Court shall not be influenced by any observations made in the order passed by the appellate Court or observations in this order while adjudicating the suit. Findings recorded are only prima facie in nature and for the purposes of deciding the question of temporary injunction alone. The suit shall be decided on its own merits and in accordance with law.

The Writ Petition is accordingly dismissed with no order as to costs.

JUDGE