

A.No.3309 of 2019
in
O.A.No.392 of 2019

R.SURESH KUMAR, J.

The prayer sought for herein is to vacate the interim order dated 11.04.2019 granted in favour of the respondent restraining the applicant from running a coaching institute under the name and style of VENPER Academy in and around Coimbatore either directly or through any other franchise pending disposal of the Arbitration Proceedings.

2. In that O.A.No.392 of 2019, this Court by order dated 11.04.2019, passed the following order:

"12. Considering the said prima facie case made out by the applicant and taking into consideration of the balance of convenience, this Court is inclined to pass the following order :

"that the respondent is hereby restrained by way of an interim injunction from establishing or running a coaching institute in the name and style of "VENPER ACADEMY" in and around 50 km from the registered office of the applicant partnership firm at Coimbatore city either directly or through any other franchisee till 29.04.2019."

Notice to the respondent returnable by 29.04.2019. Private Notice is also permitted. The applicant shall also comply with the provisions of Order 39 Rule 3 CPC."

3. On notice, the respondent has filed the vacate stay petition in Appl.No.3309 of 2019 in O.A.No.392 of 2019.

4. Heard the learned counsel for the applicant (Petitioner) in the Original Application and Mr.P.R.Raman, learned Senior Counsel appearing for the respondent in the Original Application, who has filed the application to vacate the interim order.

5. It is the submission of the learned Senior Counsel appearing for the respondent that, though the partnership deed between the parties was for the period of three years, the same has been terminated by the respondent, as against which, the petitioner invoked the Arbitration Clause and referred the matter to the Arbitration to seek remedy, including the remedy of claiming damages for such termination of contract/ partnership deed.

6. In so far as running the Institution/franchise at Coimbatore City, i.e., within 50 km. radius of Coimbatore City for

which area, the franchise has already been given to the petitioner through the partnership deed, since has been terminated, the petitioner in the main application cannot continue to run the business in the name of the respondent, i.e., VENPER ACADEMY.

7. Learned Senior Counsel also pointed out that, on 21.03.2019, the petitioner has written a letter to the respondent which reads thus:

"Trust this mail finds you well!

We were forced by you to come out of Venper and your brand Venper because of your sudden policies changes and disagreements of that for past few months.

It was your force decision to make us to come out, Even though you are aware that we are making huge investment for your brand in Coimbatore right from marketing from your brand from zero and to the second place till now in the market because of our extreme marketing through various channels. Because of your decision we have endure a huge loss on what we have planned for future years.

Despite of meeting Dr.Srinivas, R. and explained all the difficulties in removing the signages clearly, we have faced a lot of unnecessary trouble from your side like police complaint, threats etc., etc...

Still we have removed the signages as early as possible and we stopped using the your brand name Venper immediately. But I don't understand why our centre location in Vadakovai is used as your brand Venper academy identity location with your office contact number till now and its clear that its done from your side since you are only

having the access. We strongly request to remove the location from our office address and release it from verification in google.

Thanks and Regards,
Dr.Jegadish Kumar S."

8. Since the very petitioner itself wanted to remove the address and name of the respondent from the premises of the petitioner, as the same was claimed to have been used by the respondent as its branch office, the question of any further continuation of the institution of the petitioner, in the name of the respondent, does not arise.

9. Moreover, as against the termination of the contract, whatever the grievance or issue arises out of it, can very well be decided by the Arbitrator, before whom, the issue has already been referred. By way of interim arrangement under Section 9 of the Arbitration and Conciliation Act, the respondent, who is the owner of the study materials and other connected materials, cannot be restrained from running any institution in their name in the area, i.e., 50 km radius of Coimbatore City. Therefore, the learned Senior Counsel prays to vacate the interim order.

10. I have heard the learned counsel for the petitioner, who would submit that, only due to the pressure, as police

complaint had been given against the petitioner, by the respondent, the said letter dated 21.03.2019, has been issued.

11. Be that as it may, since the petitioner himself has come forward to issue a letter dated 21.03.2019 and the language used therein, prima facie show that, the petitioner wanted to sever the relationship with the respondent of course, by retaining the right to agitate the other issues, including the issue of termination of contract before the Arbitration proceedings, this Court is of the view that, the petitioner is not entitled to get the interim injunction as has been granted by this Court, on 11.04.2019. But at the same time, since the students have already been enrolled by the petitioner and they are continuing the coaching/classes, the petitioner can continue the institution to complete the term for the students already enrolled in the name of VENPER ACADEMY. However, once the students enrolled completed the course, the petitioner cannot continue the institution in the name of the respondent, i.e., VENPER ACADEMY. It is open to the petitioner, to continue the institution in its own name, i.e., 'i Positive'.

12. In that view of the matter, this Court is inclined to vacate the interim order granted on 11.04.2019 and dispose of the applications with the aforesaid direction and observation.

R.SURESH KUMAR, J.

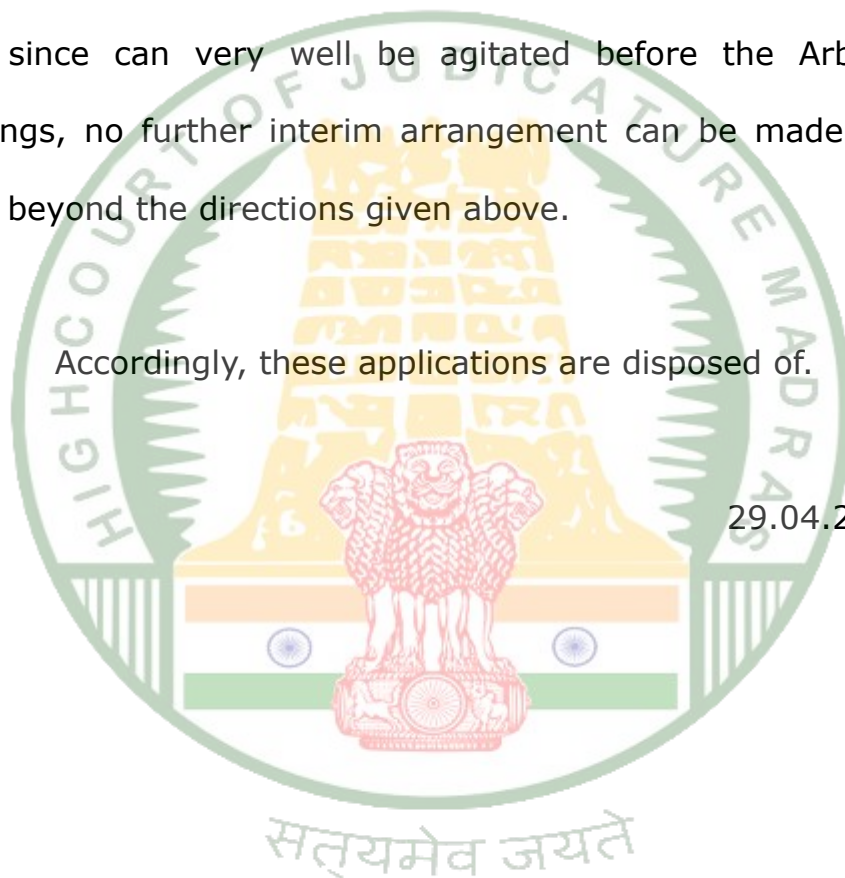
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13. It is made clear that, whatever issues arisen out of the agreement or termination of the agreement between the parties, since can very well be agitated before the Arbitration Proceedings, no further interim arrangement can be made at this juncture beyond the directions given above.

Accordingly, these applications are disposed of.

29.04.2019

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