

SUPREME COURT OF INDIA

Hammad Ahmed

Vs.

Abdul Majeed

C.A.No.3382-3383 of 2019

(Uday U.Lalit and Hemant Gupta,JJ.,)

09.07.2019

ORDER

Hemant Gupta,J.,

MISCELLANEOUS APPLICATION NOS. 883-884 OF 2019

1. The present applications are filed by the appellant-plaintiff claiming the following reliefs:

A) An order restraining the respondent Nos. 1 and 2 from interfering with the working and management of Hamdard Laboratories (India) and its allied institutions in any manner whatsoever;

B) An order directing to respondent No. 1 to forthwith counter-sign all payment advices prepared by the Finance Department of Hamdard Laboratories India;

C)An order permitting to applicant/appellant to release all payments under the payment advices prepared by the Finance Department of Hamdard Laboratories India in the event of the respondent No. 1 neglecting/refusing to counter-sign and returning the payment advices within a day from the date of receipt of the payment advices from the Finance Department of Hamdard Laboratories India.

2. The appellant has sought the above directions, inter alia, on the ground that respondent Nos. 1 and 2 are creating impediment in the working and management of Hamdard Laboratories (India) (for short' Hamdard'). It is alleged that this Court in its judgment dated April 3, 2019 has upheld the appointment of appellant as Chief Mutawalli but still respondent No. 1 wrongfully and illegally continues to assert that both the respondent Nos. 1 and 2 are in joint management along with the appellant. The genesis of such claim is the direction of this Court in para 59 of the judgment dated April 3, 2019, which reads as under:

"59. Thus, in view of above the appeals are allowed. The order passed by learned

Division Bench on 27.11.2018 is set aside and that of the order of learned Single Bench on 25.10.2017 is restored. The parties will additionally continue with the arrangements arrived at in respect of the management of the Hamdard in terms of the resolution dated 28.04.2015."

3. The appellant filed I.A. No. 5860 of 2017 before the Delhi High Court in Civil Suit (OS) No. 211 of 2017 claiming the following reliefs:

A) To release the salaries and other dues of all the Mutawallis of Hamdard (including Defendant No. 4) from September, 2016 till date.

B) Direct all the banks as stated in para no. 2 of the application, to allow the plaintiff to operate accounts maintained by Hamdard as sole signatory in his capacity as Chief Mutawalli.

D) An order directing the defendants No. 1 and 2 to handover the password of the domain name www.hamdard.com, www.hamdard.in and www.hamdardindia.com and its e-mail server password to the plaintiff.

D) Direct defendants No. 1 and 2 to disclose and handover the ERP (Enterprise Resource Planning) Admin Control Password.

4. However, the learned Single Bench in its order dated October 25, 2017 passed the following order in the said I.A.:

"47. In view of observations above, the defendants No. 1 and 2 are directed to handover the password of the domain name www.hamdard.com, www.hamdard.in and www.hamdardindia.com and its e-mail server password to the plaintiff. They shall also disclose and handover the ERP (Enterprise Resource Planning) Admin Control Password."

5. Thus, the prayer of the appellant for direction to allow the plaintiff to operate bank accounts maintained by Hamdard as sole signatory in its capacity as Chief Mutawalli was not granted.

6. The resolution dated April 28, 2015, as mentioned in the final order of this Court, was passed soon after Wakif Mutawalli died on March 19, 2015. The resolution dated April 28, 2015 was passed in the meeting of Board of Trustees while considering a proposal to operate two bank accounts of Hamdard in the Corporation Bank, Asaf Ali Road Branch, Delhi. By such resolution, one member of each of the two groups could sign in combination for operation of the bank accounts in the Corporation Bank. One of the conditions in the resolution is that the resolution can be rescinded if a notice in writing is given to the Bank by any of the trustees of the Trust.

7. The argument of the appellant is that Abdul Majeed has revoked the resolution which is made out from the electronic mail sent on December 12, 2018. Therefore, the arrangement

in respect of banking operations arrived at between the two groups is no longer available. It is contended that Chief Mutawalli-the appellant has the right to operate bank accounts in terms of Wakf Deed of 1948 as amended by 1973 Deed. Therefore, the respondents be restrained from interfering in the working of Hamdard.

8. On the other hand, Mr. Rohatgi, learned senior counsel for the respondents, submitted that revocation of the resolution was in the context of payment of Rs. 40 crores made in four days after the judgment of Division Bench of the High Court on November 27, 2018. It is contended that exclusive right to operate bank accounts was claimed by the plaintiff but not granted by the learned Single Bench and that this Court has restored the order of the learned Single Bench of the High Court while allowing the appeals filed by the appellant. It is contended that the appellant has not challenged the order passed by the learned Single Bench in an appeal in respect of non-grant of relief (B) in I.A. No. 5860 of 2017. Therefore, the restoration of the order of learned Single Bench by this Court will not mean that the appellant has right to operate bank accounts exclusively. The additional direction in para 59 was to safeguard the interest of both the groups so that one group is not excluded in the affairs of Hamdard.

9. We have heard the learned counsel for the parties and find that there is an inadvertent mistake in the judgment dated April 3, 2019 when the Court said that the parties will additionally continue with the arrangements arrived at in respect of the management of the Hamdard in terms of resolution dated April 28, 2015. The resolution was in respect of two bank accounts of Hamdard in the Corporation Bank only. The resolution is in no way in respect of management of Hamdard and even remotely has no connection with the management of the Hamdard. Therefore, the word 'management' is inadvertent mistake of this Court which is required to be substituted by the word 'banking operations'.

10. The learned Single Bench has not granted relief to the appellant to operate bank accounts as claimed by him. This Court, vide judgment dated April 3, 2019, has not granted the relief which was not granted by the learned Single Bench but it was ordered additionally to continue with the arrangements voluntarily arrived at in respect of two bank accounts of Hamdard on April 28, 2015.

11. The apprehension of the appellant that respondent Nos. 1 and 2 may not cooperate in approving the payment may not be unfounded but we hope that the good sense will prevail on the two groups to maintain the reputation and monumental work done by Hakim Hafiz Abdul Majeed who started the business of Hamdard in the year 1906. It is not in the interest of either of the two groups to damage the goodwill of Hamdard only because the two groups are not on the same page. We do hope that the two groups will rise above their egos and resolve their disputes amicably so that the establishment of Hamdard by Hakim Hafiz Abdul Majid continues to prosper and to charity as resolved by the Late Hakim Abdul Majid for the benefit of the people of India. With this hope, we dispose of Miscellaneous Application Nos. 883-884 of 2019 by substituting the word 'management' in para 59 of the judgment dated April 3, 2019 with the word 'banking operations'.

CONTEMPT PETITION (CIVIL) NOS. 589-590 OF 2019 IN CIVIL APPEAL NOS.

3382-3383 OF 2019

12. In view of the order passed in Miscellaneous Application Nos. 883-884 of 2019, no orders are called for in the present contempt petitions. Hence, the contempt petitions are dismissed.

I.A. NO. 90248 OF 2019

13. The applicant has sought a direction as to who will represent Hamdard and depose on its behalf in various criminal proceedings pending in different Courts against the appellant Hammad Ahmed.

14. In the application, it is pointed out that S. Rajagopalan was the authorised representative of Hamdard in case No. 525309 of 2016 and also in Complaint Case No. 5480/1/2010, both pending before Metropolitan Magistrate, Kamla Market, New Delhi. It is also pointed out that one Javed Akhter, Sr. Manager (Legal) of Hamdard was the authorised representative of Hamdard in three cases under Section 138 of the Negotiable Instruments Act, 1881 and also in FIR No. 89 of 2014.

15. The grievance of the applicant is that the appellant has appointed his son Sajid Ahmed as authorised representative of Hamdard. Therefore, the son of the appellant will be prosecuting his father which will not lead to fair trial.

16. It shall be open to the applicant to seek appropriate relief in the Civil Suit pending as the present claim is beyond the scope of the appeals filed and decided by this Court. The I.A. is disposed of.