

MHKO010001372020



**Order below Ex.39 in Misc Civil Application No.15/2020.**

1           The applicant has filed this application for taking action against non applicant for contempt of Court.

2           The applicant has filed application under Section 34 of the Arbitration Act. During pendency of the said application the interim prayer was made by the applicant to restrain non applicant from alienating or selling the suit machinery which was seized by the non applicant from the applicant. The Court has passed order on said application below Ex.5 on 09.01.2020 which was continued by applicant on each date.

3           It is submitted by applicant that the machines which were seized by non applicant, one of the machines viz., Lokesh Make TL 30 ER CNC machine was sold by the non applicant to Nobel Enterprises, Pradip Patil, Shirol, Kolhapur and said Pradip Patil has sold said machine to one Arun Mohite, proprietor of Samruddhi Engineering, M.I.D.C., Gokul Shirgaon. Against said sale Pradip Patil of Noble Enterprises had issued bill. He has filed the copies of said bills on record

and has also filed video recording about said machine is in possession of Arun Mohite. As there was order not to sell the machine, during that period non applicant has sold it and had committed contempt of court and filed this application to take action against non applicant.

4 Non applicant has filed its say at Ex.44 and denied the contents in the application. The application filed by the applicant is misleading the Court. The applicant has taken loan from the non applicant and said loan was not repaid within time though it was informed to the applicant by non applicant. Therefore, there was no any other way to recover the loan amount, the non applicant as per the agreement has filed arbitration proceeding. The notice was issued before the arbitration proceeding, but it was not accepted by the applicant. As the interim order was passed by arbitrator on 10.10.2019 to seize the machinery and therefore, for interim protection said machinery was seized.

5 It is further submitted that the machinery is with non applicant and to get it maintained in proper condition, the non applicant kept it with Nobel Enterprises – Pradip Patil and it was kept by him with Uttam Gandhave of Chetak Bar M.I.D.C., Shirolu near Mantri Metallics, M.I.D.C., Shirolu and CNC machine was kept with Samruddhi Engineering near

M.I.D.C., Gokul Shiraon. The proprietor of Nobel Enterprises - Pradip Patil had issued such letter about three machines. None of the machinery was sold or there was no any conveyance of selling of said machinery. After repayment of loan amount said three machinery would be returned to the applicant. Non applicant has not committed any contempt. The xerox copies of bills are filed on record which can not be read in evidence. As the non applicant has not sold the said machines, no contempt was committed by him. Hence prayed to reject the application.

6           The applicant has filed the bills on record. Non applicant has denied about sale of the said machinery. The applicant has adduced evidence by calling witnesses to prove that non applicant has sold their machinery. The applicant Vilas Badale has examined Pradip Mallappa Patil of Nobel Enterprises and Arun Mohite.

7           As the non applicant has admitted that the said machines are kept with Noble Enterprises for its maintainance, he himself has filed the affidavit of Shri. Pradip Patil at Ex.47 in support of his contention. Pradip Patil has denied the selling of machinery on oath. He has stated that he used to support the finance company and help to seize the machinery. He kept the machinery in proper condition and maintain it. He has stated that he is working for Visage Holdings and Finance Company

since last two years. The company used to give machinery for keeping it in proper condition and for maintenance of said machines. Accordingly he has stated that he has seized three machines and he kept one machine with Uttam Gadhave, M.I.D.C., Shirol and another with Samruddhi Engineering, M.I.D.C., Gokul Shiraon. The Finance Company has not given any consent for selling said machinery. He has stated that he has not sold said machinery to anybody.

8           As the bill was produced on record and witness no.1 has admitted said bill and stated before Court that he has purchased said machine from Pradip Patil to prove said transaction the applicant has examined him i.e., Pradip Patil. He has stated that he knows Badale Techno Precision-Proprietor Vilas Badale and he was having machines. At the time of attachment of machines he was present there. Authority was given by said Finance Company to keep the machines in his possession.

9           In his examination in chief by the applicant he has stated that he has sold machines to Arun Mohite. He has admitted the bill which was issued by him which is at Ex.63. Asset inventory list is also proved at Ex.67.

10           The said witness was cross examined by non applicant and it is brought on record that the said machine was kept with him for maintenance and Finance Company has not given any consent in writing for selling it. Consideration received by Nobel Enterprises and it was not informed to the Finance Company i.e., non applicant. He has not informed about anything to the Finance Company. He is ready to hand over two machinery to the Finance Company. He has not informed about ownership of the Finance Company to anybody.

11           The applicant has examined purchaser Arun Rajaram Mohite. He has stated that he knows Vilas Badale and the owner of Noble Enterprises Pradip Patil. He has purchased CNC machine on 23.01.2020 and Nobel Enterprises issued a bill to him. He has produced the bill which is at Ex.63. During cross examination he has stated that he has not enquired about Noble Enterprises and machines before purchasing it.

12           Heard both learned Counsel.

13           It appears from the record that as per interim order passed by the arbitrator the machinery was seized. The said proceeding is challenged before this Court. During pendency of application below Ex.5 to restrain non applicant from selling said machinery was filed. The order was passed on said

application and the non applicant was restrained from selling said machinery. The order was extended from time to time.

14           The applicant has filed on record the bill in support of his statement that machine was sold and the witnesses were examined. From the oral and documentary evidence on record, it is proved from the evidence of AW 2 that CNC machine was sold by Pradip Patil, owner of Noble Enterprises to one Arun Mohite. Pradip Patil himself has filed affidavit on record on behalf of non applicant on 20.11.2020. In his affidavit, he has stated that he is working for M/s. Visage Finance Company since last two years. He used to seize the machinery for Finance Company and used to maintain the machinery seized and take care of said machinery and accordingly he was taking care of said machinery of non applicant which was seized in his presence. He has mentioned the names of machinery seized by non applicant and it is kept with one Gadhave and one CNC machine was kept with Samruddhi Engineering i.e. with Mohite and has stated that he has not sold any of the machine kept with him by non applicant.

15           Though he has stated on oath that he has not sold said machine when he has given evidence before the Court has admitted that he sold the said property. He is authorized person of non applicant. He has stated that he sold said

machine and it was not known to the Finance Company. He was working for the Finance Company, he was aware of the seizure of it. He was present at the time of seizure of said machinery. He has filed false affidavit on record and has admitted that he has sold the said machinery against which order not to sell was there. Witness no.1 has also stated that he has purchased it from Pradip Patil. From evidence of both the witnesses, it is proved that machinery was sold during existence of the order of restraining the non applicant from selling the said machinery.

16 Even after knowing that Pradip Patil had sold said machinery, no action was taken by non applicant against him which proves that the sale transaction was done by keeping hands in gloves by non applicant. The non applicant tried to pretend that he was not aware about it and tried to take shelter of Section 227 of Contract Act. In reply the non applicant has stated that witness has kept the machine with witness no.1 i.e. Mohite. Witness has denied about knowledge of said machine was seized from applicant. Affidavit filed by witness on behalf of non applicant is proved to be false during his evidence then also he has not taken any action against him. The witness was working for finance company, he has given false affidavit and said transaction was done, the provisions of Sec. 227 of Contract Act will not come to help of the non applicant as he

was aware about it and trying to suppress it by filing false affidavit on record. It is proved that the non applicant has flouted the order of this Court which amounts to contempt. Hence I pass the following order.

**ORDER**

- 1] Application is allowed.
- 2] Reference be made to the Hon'ble High Court, Bombay under Section 11 of Contempt of Courts Act for further action.

Sd/-

Dt/-31.03.2021.

( **Smt. V.V. Joshi** )  
Principal District Judge, Kolhapur.

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