IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

Arb.A.No. 25 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OP(ARB).No. 308/2014 of II ADDL.DISTRICT COURT,ERNAKULAM DATED 12-03-2015

APPELLANT(S)/RESPONDENTS 1 TO 3:
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1. INDIAN OIL CORPORATION
REPRESENTED BY ITS GENERAL MANAGER
KERALA STATE OFFICE, PANAMPILLY AVENUE
PANAMPILLY NAGAR, COCHIN 682 036.

2. GENERAL MANAGER
INDIAN OIL CORPORATION, KERALA STATE OFFICE
PANAMPILLY AVENUE, PANAMPILLY NAGAR, COCHIN 682 036.

3. DIVISIONAL RETAIL SALES MANAGER
INDIAN OIL CORPORATION LTD, DIVISIONAL OFFICE
GROUND FLOOR, PREMIER PARK, VALLAKADAVU P.O
THIRUVANANTHAPURAM-695 008.

BY ADVS.SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.N.K.SUBRAMANIAN
SMT.B.BINDU

RESPONDENT(S)/PETITIONER & 4TH RESPONDENT:
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1. N.RAVEENDRANATHAN, AGED 75 YEARS
SON OF SRI.NANU VAIDHER, MANAGING PARTNER
MAVILA FUELS, BABY LAND, KOTTAPPURAM
PARAVUR, KOLLAM

2. R. REJITHA, AGED 33 YEARS, WIFE OF SRI GIRISH,
PARTNER, MAVILA FUELS, BABY LAND
KOTTAPPURAM, PARAVUR, KOLLAM.

3. C. BALACHANDRAN ASAN, AGED 55 YEARS
SON OF SRI.CHELLAPPAN PILLAI
RESIDING AT THOTTATHUVILA, PARAVUR
KOLLAM DISTRICT -691 301.

R1, R2 BY ADV. SRI..ALIAS M.CHERIAN (CAVEATOR)
R3 BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
R3 BY ADV. SMT.K.V.SHENU
R3 BY ADV. SMT.S.AMBILY
R3 BY ADV. SRI.ARUN ANTONY

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.N.RAVINDRAN & ANU SIVARAMAN, JJ.

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Arb.A.No.25 of 2015

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Dated this the 15th day of June, 2015

JUDGMENT

P.N.Ravindran, J.

The appellants are respondents 1 to 3 in O.P.(Arb.)No.308 of 2014 on the file of the Court of the District Judge of Ernakulam. Respondents 1 and 2 are the petitioners and the third respondent is the fourth respondent therein. The brief facts of the case are as follows:

2. Respondents 1 to 3 herein are partners of a firm "M/s Mavila Fuels" which was running a petroleum retail outlet at Paravoor in Kollam District. On the short ground that disputes and differences have arisen between the respondents 1 and 2 on the one hand and the third respondent on the other, thereby affect the functioning of the petroleum retail outlet, the Senior Divisional Retail Sales Manager of the Indian Oil Corporation Limited at Thiruvananthapuram issued a show cause notice dated 27.9.2013 calling upon the respondents to show cause why appropriate action including termination of the dealership agreement should not be taken against them. Ultimately by Ext.A15 order dated 13.2.2014, the Senior Divisional Retail Sales Manager (3rd appellant) terminated Ext.A6 dealership agreement dated

27.7.2010 entered into between the Indian Oil Corporation Limited on the one hand and the respondents herein on the other. Such an order was issued invoking Clause 45 thereof. Along with that order, Ext.A14 order dated 4.2.2014 issued by the General Manager of the Indian Oil Corporation Limited (second appellant herein) was also issued.

3. Respondents 1 and 2 herein thereupon filed W.P.(C).No.4811 of 2014 in this court challenging Exts. A14 and A15 orders which were produced and marked as Exts.P15 and P16 therein. The said writ petition came up for admission before one of us (P.N. Ravindran J.) on 18.2.2014. After hearing the learned counsel for respondents 1 and 2, who incidentally is the counsel appearing for them in this appeal as well, this court declined jurisdiction and dismissed the writ petition on the short ground that the writ petitioners (respondents 1 and 2) have got an effective remedy by way of arbitration. The judgment dismissing W.P.(C).No.4811 of 2014 is extracted below in full:

> "The petitioners and the fourth respondent are partners of a firm M/s.Mavila Fuels. The firm is running a petroleum retail outlet at Paravur in Kollam District. On the ground that disputes and differences had arisen between the petitioners on the one hand and the fourth respondent on the other, thereby affecting the functioning of the retail outlet, the Senior Divisional Retail Sales Manger issued Ext.P10 show cause notice dated 27.9.2013 calling upon the partners of the firm to show cause why appropriate action including termination of the dealership agreement should not be taken against them. Ultimately by Ext.P16 letter dated 13.2.2014, the Senior

Divisional Retail Sales Manger terminated the dealership agreement dated 27.7.2010 entered into between the Indian Oil Corporation Ltd. on the one hand and the petitioners and the fourth respondent on the other. This was done invoking clause 45 of the said agreement. Along with it a copy of Ext.P15 letter dated 4.2.2014 from the General Manager of Indian Oil Corporation Ltd. was also enclosed. Exts.P15 and P16 are under challenge in this writ petition wherein the petitioners pray for the following reliefs:

(i) To issue a writ of certiorari or any other appropriate writs, directions or orders calling for the records leading up to Ext.P16 and quash Ext.P15 and P16 orders.

(ii) To issue a writ of mandamus or any other appropriate writs, directions or orders directing 3rd respondent to continue the supply of petroleum products to the retail outlet of the petitioners namely M/s.Mavila Fuels at Paravur, Kollam.

(iii) Declare that the dispute raised by one of the 4th respondent in Ext.P2/P5 partnership deeds is of civil nature and the same is to be resolved by the partners by taking appropriate legal proceedings before the appropriate court.

2. When the writ petition came up for hearing today, Sri.C.S.Dias, learned standing counsel appearing for the Indian Oil Corporation Ltd. submitted referring to clause 61 of Ext.P6 agreement that any dispute between the parties arising out of the dealership agreement is an arbitrable dispute and therefore, the petitioners should take steps to have the dispute referred to arbitration. The learned counsel also submitted that the petitioners can also move the District Court for interim measures under section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act' for short). The learned counsel also submitted that until such time as the petitioners move the District Court for interim measures under section 9 of the Act and the District Court takes a decision on the application filed by the petitioners for interim

> measures under section 9 of the Act , the Indian Oil Corporation Ltd., will run the outlet as a company operated outlet, provided they invoke the arbitration clause and take steps to have the dispute resolved by arbitration within one month from today. In the light of the said submission, I am persuaded to take a view that the petitioners should invoke the arbitration clause contained in paragraph 61 of Ext.P6 agreement and also take steps under section 9 of the Act which entitles the petitioners to move the District Court for interim measures, within one month from today.
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> I accordingly decline jurisdiction and dismiss the writ petition on the ground that the petitioners have got an effective remedy by way of arbitration. It is however clarified that in the event of the petitioners invoking the arbitration clause within one month from today, the respondents shall not appoint any other person as the dealer and shall manage the outlet as a company operated outlet till the Arbitrator passes the award. The contentions of both sides on the merits are kept open. Needless to say, it will be open to the petitioners to move the competent District Court for interim measures as contemplated in section 9 of the Act and in the event of the District Court granting any interim relief, the parties will be governed by the said interim order."

4. While dismissing the writ petition, this court took note of clause 61 of Ext.A5 agreement which stipulates that any dispute between the parties arising out of the dealership agreement is an arbitrable dispute and therefore, the petitioners should take steps to have the dispute referred to arbitration. This court also took note of the fact that the petitioners can move the District Court for interim measures under section 9 of the Arbitration and Conciliation Act, 1996. This court also held that the writ petitioners should invoke the

arbitration clause contained in clause 61 of Ext.A5 agreement and take steps under section 9 of the Arbitration and Conciliation Act, 1996 within one month from 18.2.2014. This court observed that in that event, the respondents in the writ petition (viz; the appellants herein) shall not appoint any other person as the dealer and shall manage the petroleum retail outlet as a company operated outlet till the Arbitrator passes the award.

5. Respondents 1 and 2 thereupon filed O.P.(Arb.)No.308 of 2014 on the file of the Court of the District Judge of Ernakulam. The third respondent herein filed written objections wherein he raised various contentions including the contention that Ext.A5 partnership deed dated 3.6.2010 is a concocted document. He however admitted the fact that he and respondents 1 and 2 had entered into Ext.A2 partnership deed dated 7.8.2009 for the purpose of running the petroleum retail outlet. In the course of arguments, the appellants also raised a contention that in view of Ext.A16 judgment of this court dismissing W.P.(C).No.4811 of 2014, respondents 1 and 2 ought to have invoked the arbitration clause and moved for the appointment of an Arbitrator within one month from 18.2.2014 and as they had not moved for the appointment of an Arbitrator by invoking the arbitration clause they are not entitled to an interim order as prayed for.

Respondents 1 and 2 contended that the time limit stipulated in Ext.A16 judgment in W.P.(C).No.4811 of 2014 is only for filing an application under section 9 of the Arbitration and Conciliation Act, 1996 and not to invoke the arbitration clause.

6. The court below considered the rival contentions and held interpreting Ext.A16 judgment of this court that on the terms thereof, respondents 1 and 2 need invoke arbitration clause only within a reasonable time, that they were bound, on the terms of Ext.A16 judgment of this court only to file a petition under section 9 of the Arbitration and Conciliation Act, 1996 within the time stipulated therein. The court below accordingly allowed O.P(Arb.)No.308 of 2014 in part and appointed respondents 1 and 2 herein as party receivers to run the petroleum retail outlet, subject to the terms and conditions stipulated in the said order. The Indian Oil Corporation Limited and its officers have, aggrieved thereby, filed this appeal.

7. We heard Sri.C.S. Dias, learned counsel appearing for the appellants, Sri. Alias M Cherian, learned counsel appearing for respondents 1 and 2 and Sri. K.K. Chandran Pillai, learned Senior Advocate appearing for the third respondent. We have also gone through the pleadings and the materials on record. It is not in dispute that challenging the order terminating the dealership (Exts.A14 and

A15) respondents 1 and 2 as petitioners had filed W.P.(C). No.4811 of 2014. The said writ petition was dismissed on the ground that the dispute is an arbitrable dispute. This court also held that in the event of the writ petitioners (respondents 1 and 2 herein) invoking the arbitration clause within one month from 18.2.2014 (the date on which W.P.(C). No.4811 of 2014 was dismissed) and simultaneously filing a petition under section 9 of the Arbitration and Conciliation Act, 1996 for interim measures, the respondents, meaning thereby the Indian Oil Corporation Limited and its Officers shall not appoint any other person as dealer and shall manage the outlet as a company owned company operated outlet until the Arbitrator passes the award. Though the third respondent herein was not heard before Ext.A16 judgment had passed, respondents 1 and 2 herein who were petitioners therein are bound by the said direction. Respondents 1 and 2 had not, as on 12.3.2015, the date of the impugned order, invoked the arbitration clause. The arbitration clause was admittedly invoked only on 14.5.2015 when respondents 1 and 2 sent a letter to the second appellant calling upon him to appoint an Arbitrator.

8. In the light of Ext.A16 judgment of this court which binds respondents 1 and 2, we are of the opinion that as respondents 1 and 2 had not invoked the arbitration clause within the time limit stipulated

in Ext.A16 judgment, it was open for the appellants to appoint another person as the dealer. The injunction restraining the appellants from appointing any other person as a dealer would have operated only if respondents 1 and 2 had apart from filing a petition under section 9 of the Arbitration and Conciliation Act, 1996, also invoked the arbitration clause. On the terms of Ext.A16 judgment which has attained finality, we are of the opinion that respondents 1 and 2 could not have, in the light of the admitted fact that they have not invoked the arbitration clause as on the date of the section 9 petition or even as on the date on which it was allowed, prayed for their appointment as receivers. They could not have also prayed for an order of injunction restraining the Indian Oil Corporation Limited from enforcing the termination. The impugned order cannot therefore in our opinion be sustained. In this context it is also relevant to note that respondents 1 and 2 have not till date moved this court for enlargement of the time limit stipulated in Ext.A16 judgment. The court below has by the impugned order virtually re-written Ext.A16 judgment. Ext.A16 judgment does not leave any room for doubt as to the consequences that would follow if the writ petitioners do not invoke the arbitration clause within the time limit stipulated there.

For the reasons stated above, we allow the appeal and set aside the impugned order. However, in view of the fact that respondents 1 and 2 have now invoked the arbitration clause and the appellants are willing to appoint an arbitrator within a period of two weeks from today, we deem it appropriate to restrain the appellants from appointing any other person or persons as dealer of the outlet concerned, until the Arbitrator passes the award. No costs.

P.N.RAVINDRAN
JUDGE

ANU SIVARAMAN
JUDGE

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