

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 02.02.2015

CORAM

THE HONOURABLE MS. JUSTICE K.B.K. VASUKI

S.A. No.534 of 1997

Hindustan Petroleum Corporation Ltd.
rep. by the Chief Regional Manager

...Appellant/
Defendant

Vs.

S.Kalaiselvan

...Respondent/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 08.12.1995 made in A.S. No.67 of 1994 on the file of Principal Subordinate Judge, Nagapattinam confirming the judgment and decree dated 27.11.1990 in O.S. No.226 of 1987 on the file of District Munsif, Nagapattinam.

For appellant : Mr.M.Vijayan for
M/s.King & Partridge

JUDGMENT

The defendant is the appellant herein. The plaintiff in his capacity as dealer of diesel oil retail outlet at Velankanni, has come forward with the suit in O.S. No.226 of 1987 on the file of District Munsif, Nagapattinam. The suit has been filed by the plaintiff for declaring that the defendant has no right to terminate the dealership agreement with the plaintiff dated 03.02.1985 and that his employment in Bank of India is not violative of any of the condition of the dealership agreement and for consequential relief of perpetual injunction restraining the defendant Corporation from terminating the dealership agreement of the plaintiff. The cause of action for the suit arose on 05.02.1987 within two years from the date of the dealership agreement, which was entered into between the parties for fifteen years. When the plaintiff was on 05.02.1987 called upon by the Chief Regional Manager to resign his employment with the Bank of India, failing which to terminate the dealership under clause 58(a) and (k) of the

Dealership Agreement.

2.The case of the plaintiff is that the agreement contains no such clause barring him to engage himself in any other employment or business activity and the dealership was obtained by him only on behalf of his family members and the retail outlet has been looked after by his father and other family members and his employment in the Bank is neither prohibited nor amounts to breach of any of the covenants or stipulations of agreement.

3.The suit is resisted by the defendant Corporation by contending that the employment of the plaintiff in the Bank will affect the very object for which he was appointed as Full Time Dealer as such he is dis-entitled to get any injunction against termination of the dealership agreement.

4.The Trial Court has on the basis of the oral and documentary evidence, arrived at a conclusion that the dealership is obtained for the benefit of the family and that there is no prohibition clause in the dealership agreement for getting any employment or for carrying on any other business activity and there is no breach of any of the condition or covenant stipulated in the dealership agreement and the defendant Corporation has no right to terminate dealership agreement. Aggrieved against the same, the defendant Corporation preferred A.S.No.67 of 1994 before the Lower Appellate Court. The Lower Appellate Court also on the basis of the same evidence, confirmed the findings and the judgment and decree of the Trial Court. Hence, this Second Appeal has been preferred by the appellant/Corporation before this Court.

5.The appellant has in this case questioned the correctness of the judgment and decree of the Lower Court by raising the following substantial questions of law:

- a)Whether Exhibit A1 the advertisement could be construed as an "offer" to award the dealership?
- b)Whether the interse-rights and obligations under the dealership agreement between the appellant and the respondent can be transferred by the appellant?
- c)Is not the dealership agreement a contract of personal service and the mutual rights and obligations under which are not transferable?
- d)Is not the appellant entitled in law to terminate the dealership agreement on the ground of breach of condition of the dealership agreement (Exhibit A3)?

e)Whether the respondent/plaintiff is entitled for any declaration under Section 15 of Specific Relief Act to enforce the specific performance of any of the covenants of dealership agreement if he assigns the contract to somebody else especially when the contract provides that the interest of the respondent/plaintiff shall not be assigned to other parties as evident in Exhibit A2 and A3?

f)Whether the respondent/plaintiff can hold two positions, viz. Dealership with the appellant and employment with Bank of India concurrently?

6.This Court after taking on file the Second Appeal, ordered notice of motion to the respondent/plaintiff. The respondent/plaintiff though duly served with notice in the Second Appeal, failed to appear either in person or through the learned counsel on record.

7.The learned counsel on record for the appellant/ Corporation would at his juncture bring it to the notice of this Court Ex.A3 dealership agreement, entered into between the plaintiff and the defendant. As per the dealership agreement, the agreement period is for fifteen years from 03.02.1985 and on the expiry of period of fifteen years, the Corporation may enter into fresh agreement for further period of five years. The learned counsel for the appellant would further submit that as of 2015, the fifteen years period of original agreement and five years period of further agreement was already over on 02.02.2005 and any relief sought for by the plaintiff against termination of the dealership, granted by the Lower Courts, can be held to be in force only for the initial period of fifteen years and further period of five years and thereby there can be no perpetual injunction against termination of dealership agreement beyond the period of 20 years (15 years + 5 years) as stated above. The learned counsel for the appellant contended that the judgment and decree of the Lower Courts are only enforceable for the period of dealership agreement and not beyond that and after the expiry of the agreement period, the defendant is at liberty to take appropriate action for re-possessing the apparatus and equipments, which is the subject matter of the agreement.

8.This Court finds much force in the argument so advanced on the side of the appellant and this Court deems it fit to restrict the relief of injunction to the period as above referred to and except such modification, the judgment and decree of the Lower Court is otherwise confirmed and no substantial questions of law arises for consideration of this Court in this Second Appeal.

9. In the result, the relief of declaration and perpetual injunction granted in favour of the plaintiff is restricted to the period of twenty years (15 + 5 years) from Dealership agreement dated 03.02.1985 and the judgment and decree of the Lower courts are modified and restricted to that effect. The Second appeal is accordingly disposed of. No costs.

Sd/-
Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

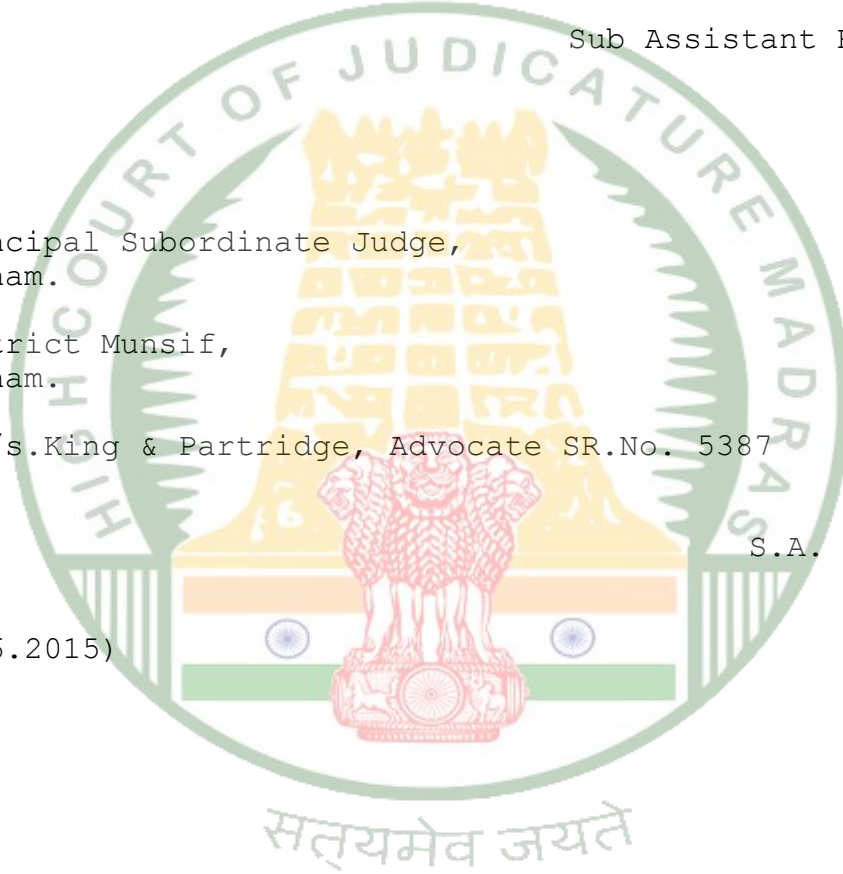
1.The Principal Subordinate Judge,
Nagapattinam.

2.The District Munsif,
Nagapattinam.

1 CC to M/s.King & Partridge, Advocate SR.No. 5387

S.A. No.534 of 1997

TEJ (CO)
PSI (15.06.2015)



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