

CR No.2016 of 2014
Date of Decision: 20.10.2016

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Kapoor, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged order dated 15.02.2014 passed by Civil Judge (Junior Division), Jalandhar whereby objections filed by the petitioner were dismissed and petitioner was directed to resume the supplies of the petroleum to the decree holder.

[2]. Indo Burma Petroleum Company Limited was amalgamated with Indo Oil Corporation Limited. A scheme of amalgamation was sanctioned by the competent authority vide order dated 30.04.2007. Respondent-Joginder Pal Chanan filed a suit for declaration to the effect that the plaintiff-Firm was duly appointed as U-pump dealer for the sake of petroleum products

under Indo Burma Petroleum Company Limited to resume the supplies of petroleum products for sale by the petitioner at U-pump situated at Jandiala, District Jalandhar.

[3]. Suit was ultimately decreed vide judgment and decree dated 20.02.1998. Plaintiff was duly appointed as U-pump dealer at Jandiala, District Jalandhar for the sake of petroleum products under the Indo Burma Petroleum Company Limited. A consequential relief of mandatory injunction was issued and the defendant was directed to resume the supplies of petroleum products for sale by the plaintiff at U.pump situated at Jandiala, District Jalandhar. Judgment debtor-defendant remained unsuccessful before the lower Appellate Court who dismissed the appeal vide judgment and decree dated 22.09.2001.

[4]. Plaintiff-Firm was having two partners namely Leela Wati and Garesh Kumar Chanan. Both of them died after the judgment and decree passed by the lower Appellate Court. With the death of original partners, attorneys if any, appointed on their behalf stood automatically cancelled.

[5]. The execution was filed by M/s Joginder Pal Chanan through its partner Garesh Kumar Chanan through Som Dutt. The aforesaid nomanclature has come forth in the execution application without there being any power of attorney in favour of Som Dutt, Sh. Panna Lal son of Raghunath.

[6]. Learned counsel for the petitioner contended that in case of commercial transaction, the resumption of supply can only be made in favour of genuine allottee. After taking over Indo Burma Petroleum Company Limited by Indian Oil Corporation, objections were filed in the execution in respect of maintainability of the execution after the demise of both the partners that too at the instance of a stranger who had no privy to commercial transaction, nor was any beneficiary under the partnership firm. With the death of original partners, partnership firm already stood dissolved. With the death of original partners, the dealership itself stood terminated and the Indian Oil Corporation could not deal with any firm much less M/s Joginder Pal Chanan.

[7]. The factum of death of Leela Wati and Garesh Kumar was an admitted fact as per para No.4 of the reply to objection filed by the alleged decree holder. The objections filed by the petitioner were dismissed by the Executing Court even despite holding that there was no writing by the Indian Oil Corporation agreeing to take over debts of M/s Joginder Pal Chanan after the death of its partners. On the one hand, Indian Oil Corporation was not held liable to take over the debts of M/s Joginder Pal Chanan, but at the same time objections were dismissed on the ground that the decree has to be executed.

Vide order of even date i.e 15.02.2014, a direction was issued to resume the supplies of petroleum to the decree holder and mandate was ordered to be issued to the judgment debtor.

[8]. Notice of motion was issued in this revision petition on 19.03.2014 and the operation of impugned orders of even date i.e 15.02.2014 Annexures P9 and P10 was stayed. Vide order dated 12.01.2016, it was noticed that service upon the respondent was complete, but there was no representation on behalf of the respondent. Thereafter, also none appeared on behalf of the respondent.

[9]. In the absence of respondent, I proceeded to hear the arguments on behalf of the petitioner.

[10]. Having considered the submissions, it is found that with the death of original partners namely Leela Wati and Garesh Kumar Chanan, partnership firm came to be dissolved. In case of commercial transactions, none else can take benefit of any allotment from Government undertaking. Only firm through original partners was privy to bilateral transactions for which lawful contract was entered into. The suit was filed through Garesh Kumar Chanan and further through Panna Lal. After the death of original partner Garesh Kumar Chanan, authority in favour of Panna Lal came to an end. The execution was filed on behalf of M/s Joginder Pal Chanan through Som Dutt. There

cannot be any general power of attorney of a dead person, nor the same was brought on record along with the execution.

[11]. In view of aforesaid, I am of the considered view that order dated 15.02.2014 passed by Civil Judge (Junior Division), Jalandhar dismissing the objections filed by the petitioner was wholly unsustainable and the order of even date directing the petitioner to resume the supplies of petroleum to the decree holder was also without any legal foundation. Both the orders are set aside. This revision petition is accordingly allowed.

20.10.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No