

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.3436 of 2014 (O&M)
Decided on: 06.04.2016**

M/s. Hindustan Petroleum Corporation Limited and another

....Petitioners

Versus

M/s. New Service Station and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Raman Sharma, Advocate
for the petitioners.

Mr. Girish Agnihotri, Sr. Advocate
with Mr. Vijay Pal, Advocate
for the respondents.

REKHA MITTAL, J.

The present petition has been directed against order dated 01.07.2013 passed by the Civil Judge (Junior Division), Patiala, allowing application of respondent No.2 for impleading him as legal representative of plaintiff/respondent No.3 (Sh. Gurbax Singh).

M/s. New Service Station, the Mall, Patiala through its proprietor-Surinder Kumar and others filed a suit against M/s. Hindustan Petroleum Corporation Limited (in short 'Corporation') and another claiming that plaintiff No.1 is an authorized dealer of the Corporation for retail sale/supply of petroleum products at the Mall, Patiala. Plaintiff No.3 has transferred a share in favour of plaintiff No.2 and re-constitution of plaintiff No.1 is deemed to have been approved and accepted by the defendants.

During pendency of the suit, Gurbax Singh-plaintiff No.3 passed away and an application under Order 22 read with Section 151

of the Code of Civil Procedure (in short 'CPC') for impleading Surinder Kumar-plaintiff No.2 as legal representative of Gurbax Singh (since deceased) on the basis of registered Will dated 03.05.2011 was filed and that was allowed by the learned trial Court vide order impugned.

Counsel for the petitioners has submitted that as Sh. Gurbax Singh was merely a licensee of the respondent-Corporation to carry on the business of a Service Station, the said licence being not an estate is not inheritable, therefore, Surinder Kumar cannot be impleaded as a legal representative of Gurbax Singh on the basis of registered Will dated 03.05.2011. Counsel also made a vain attempt to argue that after death of Sh. Gurbax Singh, the firm-M/s. New Service Station shall cease to exist and thus, the suit is liable to be dismissed as no cause of action survives for continuation of the proceedings.

Counsel for the respondents, on the contrary, would urge that the respondent-firm has filed a suit through its proprietor-Sh. Surinder Kumar and Gurbax Singh has been arrayed as one of the plaintiffs. It is not the scope of application under Order 22 read with Section 151 CPC to decide if M/s. New Service Station can still maintain the suit after demise of Sh. Gurbax Singh. Another submission made by counsel is that even after death of Gurbax Singh, the suit on his behalf can continue without bringing on record his legal representative(s) in view of the relevant provisions of CPC applicable in the State of Punjab.

I have heard counsel for the parties and perused the records.

Indisputably, there are three plaintiffs in the suit and

Gurbax Singh (since deceased) is plaintiff No.3. The firm-M/s. New Service Station has sued through its proprietor-Sh. Surinder Kumar and Surinder Kumar is also a plaintiff in his individual capacity. It is a matter of evidence yet to be adduced by the parties if Surinder Kumar can claim to be the proprietor of M/s. New Service Station or institute a suit on behalf of the firm keeping in view the terms and conditions of the agreement executed between the petitioners and M/s. New Service Station through Sh. Gurbax Singh and Sital Kaur.

Counsel for the petitioners is not in a position to counter the submissions made by counsel for the respondents that suit on behalf of a plaintiff (since deceased during pendency of proceedings) can continue even without impleading his legal representative in view of State amendment in the Code of Civil Procedure. Under these circumstances, without dilating on the question as to what would be the impact of death of Sh. Gurbax Singh *qua* merits of the case, I do not find any reason to interfere in the impugned order, subject, however that Sh. Surinder Kumar would be entitled to represent Sh. Gurbax Singh only for the purpose of present *lis*, without examining the correctness and validity of the Will, that may be decided in appropriate proceedings.

In view of what has been discussed hereinabove, the petition stands disposed of in the aforesaid terms. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

06.04.2016

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(REKHA MITTAL)
JUDGE