

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

Date of decision: 15.11.2017

CM No.13710-C of 2017 and
CM No.13268-C of 2017 in/and
RSA No.2385 of 2017

M/s Goyal Filling Station

...Appellant

Vs.

Indo Burma Petroleum Company Limited & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Gupta, Advocate, for the applicant/appellant.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.13710-C of 2017

The application is allowed as prayed. License Agreement is taken on record as Annex A-1.

CM No.13268-C of 2017

The application is allowed for the reasons stated therein, which is duly supported by an affidavit. Order dated 03.10.2017 is recalled and the main appeal is ordered to be restored to its original number to be heard today itself for preliminary hearing.

RSA No.2385 of 2017

The suit was filed at a premature stage, when the Indo Burma Petroleum Company Limited (hereinafter 'the Petroleum Company') had issued notices to the plaintiff proposing to terminate the license agreement dated 18.10.1972, a copy of which has now been placed at Annex A-1. A reading of the license agreement reveals that the licensees were 'Mr. Sita Ram Goyal and Siri Ram Goyal', which expression would include their heirs and

legal representatives. They were licensed to carry on business in a fuel filling station at Bhagta Bhai Ka on Barnala-Bhandaur, Baikhana road in the State of Punjab in partnership under the firm name of 'Goyal Filling Station'. The agreement explained 'licensees' to mean also to deem to include 'the present partners of the firm and any other partners or partner for the time being of the firm, their and each of their heirs executors or administrators, or their successors of heirs executors or administrators as the case may be'.

Learned counsel for the appellant argues that the expression 'for the time being' includes subsequent partners inducted in the firm even without the knowledge or consent of the Petroleum Company.

To cut the story short, the plaintiff, who are represented by the later inducted partners without written consent of the Petroleum Company deserve to be treated as licensees by the mere fact that the Petroleum Company continued to supply products to Goyal Filling Station for over a decade without objection. It is urged that this amounts to approval of the status of the plaintiff in relation to the Filling Station.

Be that as it may, the Petroleum Company issued notice to the Filling Station for breach of contract and for termination of dealership agreement/license for 'Company Owned Pump Outfits'. The plaintiff did not file reply to the notice and rushed to civil court by bringing the present suit for declaration and permanent injunction. The suit has been dismissed and so is the first appeal and that is how this second appeal has been filed in this Court. After the dismissal of the suit by judgment and decree dated 11.05.2012, the defendant - Petroleum Company cancelled the license pending proceedings for the reasons which have been discussed elaborately on facts by both the Courts below.

In appeal, an application was filed for amendment of the suit, which was dismissed on 07.12.2012. The revision against the said order was also dismissed by this Court and the order has attained finality. Consequently, there was no challenge to the order cancelling the license nor was an issue framed in this regard even at the appellate stage. The suit was confined to a declaration to the effect that notices No.DB-1 dated 20.10.2004 threatening termination of dealership agreement/license dated 18.10.1972 and discontinuance of the supply of petroleum products to the plaintiff are illegal, void, arbitrary, unilateral and against the statutory provisions and not binding on the rights of the plaintiff. They pray that the notices be set aside and a declaration may be given that the plaintiff is entitled to continue as the dealer of the defendant – Petroleum Company. The suit was filed through partners, namely, Prem Rani wife of Desa Singh and Satpal son of Kirpa Ram, who are not parties to the license agreement dated 18.10.1972 and claimed themselves to be inducted partners changing the very composition of M/s Goyal Filling Station.

The plaintiff while appearing as her own witness as PW-1 candidly admitted that the reconstitution of the firm was never intimated to the defendant – Petroleum Company, so much so even after the death of Sita Ram Goyal, they did not inform the Registrar of Firms or the defendant – Petroleum Company of the demise and, therefore, the Additional District Judge, Bathinda in his judgment dated 01.10.2016 correctly observed that no written notice as required under Clause 23 was issued to the Petroleum Company. The lower Appellate Court endorsed the view of the trial Court holding that the show cause notices Exs.P7 & P8 cannot be held to be illegal, void or arbitrary. During the prolonged proceedings, the plaintiff made no effort to submit reply

to the show cause notice; explain its case to the defendant – Petroleum Company and show its right to continue with the license agreement. The findings are unexceptionable and are duly supported by the documentary evidence.

Thus, I have no reason to disagree with the findings of fact recorded by the Courts below and the appreciation of oral as well as documentary evidence including the license agreement and the notices. The cancellation order passed in 2012 has remained unchallenged. The oral request of Mr. Gupta appearing on behalf of the appellant that he may be permitted to withdraw his suit to file a writ petition is declined since the period of limitation for challenging the cancellation order adverse to the interest of the plaintiff passed in 2012 has expired and it is not a case where the plaintiff can be heard on laches in the writ Court in case a writ petition is to be filed against the cancellation order.

Keeping in view the entire facts and circumstances of the case, interference under Section 100 of the CPC or Section 41 of the Punjab Courts' Act, 1918 is not warranted. For predominance of the 1918 Act in Punjab & Haryana jurisdiction over Section 100 of the Code; See, law stated by the Supreme Court in *Pankajakshi (D) through LR. & others vs. Chandrika & Others.*, (2016) 4 SCC 68 : AIR 2016 SC 1169. Consequently, I do not find any merit in the instant regular second appeal, which is ordered to stand dismissed in *limine* with no question of law arising for consideration.

15.11.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>