

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 63 of 2015**

1. Haridas dead through LRs R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil And Revenue Distt. Korea, Chhattisgarh
1.1 - Arvind Gupta S/o Haridas Gupta, Aged About 38 Years R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil & Revenue Distt. Korea, Chhattisgarh
2. Rajkumar S/o Haridas, Aged About 44 Years R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil And Revenue Distt. Korea, District : Koriya (Baikunthpur), Chhattisgarh
3. Ashok Kumar Gupta S/o Haridas Gupta, Aged About 50 Years R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil And Revenue Distt. Korea, ChhattisgarhPlaintiffs, District : Koriya (Baikunthpur), Chhattisgarh

---- Petitioners**Versus**

1. Om Prakash S/o Mehngulal, R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil And Revenue Distt. Korea, Chhattisgarh.
2. Shiv Prasad S/o Mehngulal, R/o Haldibadi, Chirmiri, Tahsil Manendragarh, Police Station- Chirmiri, Civil And Revenue Distt. Korea, District : Koriya (Baikunthpur), Chhattisgarh
3. Indian Oil Corporation Ltd., Through General Manager, M.P. State Office, 16 Arera Hills Jail Road, Bhopal District : Bhopal, Madhya Pradesh
4. Senior Divisional Manager, Kishor Kumar Mohanty, Retail Sales, Indian Oil Corporation Ltd., Indian Oil Bhawna, Rajiv Gandhi Marg, V.I.P. Road, Telibandha, Raipur, Chhattisgarh, Currently Posted As Deputy General Manager Consumer, Indian Oil Corporation Ltd., 304, Bhui Nagar, P.S. Bhui Nagar, District : Bhubaneswar, Bhubaneswar OrissaDefendants,

---- Respondents

For the petitioners – Mr. Prateek Sharma & Mr. Tridibh
Bhattacharya, Advocates.

For respondents 3 & 4 - Shri Anand Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri**ORAL JUDGMENT****15-11-2018**

The appeal has been filed with the delay of 690 days. For the reasons stated in the application, the delay in filing the

appeal is condoned. Accordingly, I.A.1/2015 stands disposed of.

1. The present appeal is against the order dated 25th April, 2013 passed on an application filed under Order 39 Rule 2-A of the Code of Civil Procedure whereby the application was dismissed holding that there is no breach of any injunction.

2. The facts of this case are that a civil suit was filed along-with an application under Order 39 Rule 1 & 2 before the Civil Judge, Class II, Chirimiri in the year 2005 by the predecessors of applicants on 06.07.2005. The learned trial Court dismissed the application under Order 39 rule 1 & 2 of CPC in Civil Suit No.11-A/2005. The said order was subject of appeal before the Additional District Judge and the Additional District Judge by order dated 06.12.2005 allowed the application under order 39 rule 1 & 2 of CPC and directed that the respondents 4 & 5 who are the Indian Oil Corporation and its Senior Divisional Manager shall continue the supply of kerosene oil to the plaintiff namely Hari Das (since deceased), Raj Kumar and Ashok Kumar.

3. The respondents being aggrieved by the order of Additional District Judge filed a writ petition bearing No.6489 of 2006 before the Court and this Court by order dated 23.12.2005 stayed the effect and operation of the order of Additional District Judge dated 06.12.2005 thereby it would have effected the supply of kerosene oil which was ordered by the Addl. District Judge.

4. Likewise the Indian Oil Corporation also preferred the writ petition bearing W.P.No.567/2006 against the order of Additional District Judge and by order dated 24.02.2006 that said writ petition filed by the IOC was also dismissed in terms of the order dated 23.12.2005 passed in W.P. No. 6489/2005.

5. Being aggrieved by such order the respondents 1 & 2 therein Bindra Prasad preferred SLP before the Supreme Court wherein the leave was granted and the order was passed on 12.05.2016 in Civil Appeal No.2674/2006 & 2675 of 2006 arising out of SLP(C) No.s.6911/2006 and 7164/2006 respectively and the Supreme Court held that the writ petition filed by the petitioner therein were maintainable and remanded the case back to the High Court.

6. In the meanwhile, on 21.08.2006 an application under Order 39 rule 2-A was filed by the petitioners. This High Court disposed of the writ petition on 13.10.2011 with a direction that the trial Court shall decide the suit as early as possible within 90 days from that day and also further directed that the status quo as existing on 13.10.2011 relating to supply, distribution and sale of kerosene oil shall continue till 90 from that day.

7. Eventually the civil suit was dismissed by the trial Court on 06.1.2012 which was challenged by the petitioner in Appeal and the appellate Court remanded the matter to the trial Court. Thereafter the trial Court dismissed the application filed by the petitioner under Order 39 Rule 2-A of CPC. It is the order dated 25th April 2013 whereby the application filed under Order 39 Rule 2-A was dismissed by the trial Court is under challenge.

8. Learned counsel for the appellant submits that the appellate Court has passed an order to continue the supply of Kerosne oil by order dated 06.12.2005 which should have been continued and any breach thereof will certainly fall u/s 39 rule 2-A of CPC therefore, by grazing the other facts the order of the court below has to be restored.

9. Per contra, learned counsel for the respondents submits that the supply of Kerosene oil cannot be made at the free wish and will of the particular person unless and until the licence is obtained in accordance with C.G. Kerosene Dealers Licensing Order 1979. It is stated that in between the period from 06.12.2005 and the the application moved under order 39 rule 2(a) on 21.08.2006, the appellants were not holding any licence. Apart from this fact it is further stated that the order of 06.12.2005 was subsequently stayed by interim order of the High Court dated 23.12.2005 passed in W.P.No.6489/2015 and after the different round of litigation eventually when the High Court disposed of the writ petition it directed that the status quo as existing on that day i.e., 13.10.2011 should continue. He submits that on 13.10.2011 no supply was resumed for want of statutory licence and permission from the respective authorities to the appellant. Therefore, no breach has been committed.

10. Perused the order dated 25.04.2013. The reason was assigned in the order that the respondents 4 & 5 could not have started supply of Kerosene Oil as the appellants were not dealers. The Court further held that the Firm Bindra Prasad Manhagu Lal to whom the licence was alleged to have been issued was valid uptill 30.12.2013. However in between the date when the interim order of the appeal was passed and 28.01.2006, the fact whether the appellants were holding licence and the dealership for supply of kerosene oil was granted is not corroborated as no document has been placed on record.

11. It is obvious that supply of kerosene oil cannot be made only on the basis of order of the Court unless and until the

person is in hold of the dealership and the particular licence thereof. Further more, it is not in dispute that the interim order dated 06.12.2005 whereby the supply of K. Oil was directed by the appellate Court was stayed by order of this Court dated 23.12.2005 passed in W.P.No.6489/2005. Subsequently pursuant to the remand order of the Supreme Court passed on 12.05.2006 in SLP, the High Court finally disposed of the petition with a direction that the status quo as existing on 13.10.2011 be maintained for a period of 90 days. As such, in the facts and circumstances of the case it cannot be stated and assumed that there has been deliberate breach of the order for supply of Kerosene oil which was directed by the appellate Court. It is also obvious that in absence of any dealership or licence, supply of kerosene oil cannot be started.

12. In the result, I do not find that any breach of the order is made out under Order 39 rule 2-A of CPC so as to interfere in the order dated 25th April, 2013. The appeal has no merit and is dismissed.

Sd/-
GOUTAM BHADURI
JUDGE