

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.6034 of 2018
and
W.M.P.Nos.7421 & 7422 of 2018

P.Udayasuriyan

... Petitioner

Vs.

1. The Indian Oil Corporation Ltd.,
rep. By its Deputy General Manager (Retail Sales),
Marketing Division,
Salem Divisional Office,
No.234, Salem-Bangalore Bye Pass Road,
Kodalampatty,
Salem - 636 010.

2. R.Parthasarathy

3. P.Rangarajan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus forbearing the 1st respondent herein and their subordinates from disturbing or suspending the supply of petroleum products or interfering with the business, in any manner, being carried out by the petitioner in the name of M/s Sarathy traders at No.3/637A, Cuddalore Main Road, Kamaraj Nagar Colony, Salem - 636 014, Salem District.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.Abdul Saleem,
Standing counsel for R1

O R D E R

This writ petition is filed seeking for a Mandamus forbearing the 1st respondent from disturbing or suspending the supply of petroleum products or interfering with the business, in any manner, being carried out by the petitioner in the name of M/s Sarathy Traders at No.3/637A, Cuddalore Main Road, Kamaraj Nagar Colony, Salem - 636 014, Salem District.

2. Heard Mr.M.R.Jothimanian, learned counsel for the petitioner, Mr.Abdul Saleem, learned Standing counsel appearing for the first respondent and perused the materials placed before this Court.

3. It is seen that the fight between father and sons is seemingly going to the stage of never ending process, as the parties resorted to file proceedings one after another before various forums, in respect of running the subject matter Petrol Bunk. Admittedly, the petitioner as a plaintiff, filed a suit in O.S.No.272/2017 on the file of II Additional District Judge, Salem, wherein an interim injunction was granted in I.A.No.514/2017 dated 27.11.2017 restraining the respondents 1 and 2 therein namely, the respondents 2 and 3 herein from in any manner disturbing the physical possession and enjoyment of the petitioner over suit Petrol Bunk. It is also not in dispute that the said interim order granted by the trial Court was put to challenge before this Court in C.M.A.Nos.3395 & 3396 of 2017, wherein the learned Judge, while entertaining the miscellaneous petitions, granted interim order on 11.12.2017, which reads as follows:

"Heard Mr.D.Shivakumaran, learned counsel appearing for the appellants and Mr.A.v.Radhakrishnan, learned counsel appearing for the respondent/Caveator.

2. There shall be an order of Interim suspension of the order dated 27.11.2017 passed in I.A.No.514 of 2017 in O.S.No.272 of 2017 on the file of II Additional District Court, Salem only insofar as against the first appellant/first defendant is concerned.

2. The learned counsel on either side submitted that since the second appellant and the respondent are sons of the first appellant and the dispute between them may be settled by mutual negotiations.

4. In view of the submission made by the learned counsel on either side, post the matter on 05.10.2018 for enable the parties to settle the dispute between themselves."

4. A perusal of the order would show that the interim injunction granted by the trial Court was suspended insofar as the first defendant namely, the second respondent herein, who is none else than the father of the petitioner and the third respondent. Now, it is contended that the father has gone before the first respondent Oil Corporation and seek to prevent the petitioner from running the Petrol Bunk. Therefore, it is contended by the learned counsel for the petitioner that unless the petitioner is protected by way of some interim relief, he will be put to great loss and sufferings.

5. I am unable to understand as to what prompted the petitioner to approach this Court and file the present writ petition, when admittedly, the above said C.M.A. is still pending before this Court. Needless to state that it is open to the petitioner to file appropriate application for seeking any other relief before the Court where the said civil miscellaneous appeal is pending. Without resorting to such remedy, the petitioner has approached this Court and filed the present writ petition under Article 226, which in my considered view, is not maintainable in view of the fact that civil litigation between the parties is pending, as stated supra. Therefore, it is for the petitioner to work out his remedy before the said appeal is pending by filing appropriate application. In any event, as I find that the present writ petition is not maintainable, the same is dismissed, however, without expressing any view on the merits of the claim made by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vsi

+1CC TO MR.M.R.Jothimanian, Advocate S.R.No.19916

+2CC TO MR.Abdul Saleem, Advocate S.R.No.20225,19994

W.P.No.6034 of 2018

SVI (CO)

RMP (21/03/2018)

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