

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

**Original Petition No.69 of 2010
and O.A.No.719 of 2010**

Glory Jeeva Rita .. Petitioner

Vs.

1.The Territory Manager,
Bharat Petroleum Corporation,
Madurai Byepass Road,
Thoothukudi - 628 008.

2.The Regional Manager,
Bharat Petroluem Corporation
Ltd., No.1, Ranganathan Garden,
Off: 11th Main Road, Anna Nagar,
Chennai - 40.

3.P.K.Mallick, Sole Arbitrator.

.. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 09.11.2009.

For Petitioner : Mr.S.Suresh

For Respondents : Mr.Krishna Ravindran
for M/s.Ramasubramaniam
and Associates for R1 & R2

ORDER

Challenging the award dated 09.11.2009, the present Original Petition has been filed.

2.The petitioner herein was given the distributorship by the first respondent. A writ petition was filed by a third party alleging that the petitioner has obtained the distributorship by committing fraud in furnishing false information. Pursuant to the direction of this Court, an enquiry was conducted. The enquiry officer, in and by the report dated 22.02.2007, found that the petitioner produced the false information in furnishing the agreement for sale to a property, which was sold already by the vendor shown therein. Consequently, it was found that the bank account furnished was also false after serving a copy of the report. The petitioner was asked to show cause as to why the distributorship shall not be terminated. Needless to state that the distributorship was for the purpose of supplying LPG gas cylinders.

3.On a consideration of the explanation given by the petitioner to the show cause notice, an order of termination was passed on 18.01.2008. The petitioner made a challenge to the aforesaid order in W.P.No.505 of 2008 before this Court. By the order dated 24.01.2008,

the petitioner was directed to seek her remedy before the Arbitration Tribunal by invoking Clause 38(a) in the agreement signed between the parties. Accordingly, the petitioner approached the learned Arbitrator, who on the consideration of the issues, on fact and law, was pleased to dismiss it and hence the present original petition.

4.Learned counsel appearing for the petitioner would submit that no issues were framed and answered. As allegations of fraud being raised against the petitioner, the learned Arbitrator could not have gone into it. The parties have not been examined by the learned Arbitrator before rendering the award. In support of his contentions, reliance has been made on the judgment of the Apex Court in **A.Ayyasamy Vs. A.Paramasivam and Others (AIR 2016 SC 4675)**.

5.Learned counsel appearing for respondents 1 and 2 would submit that as the award having been passed on merit, which in turn, is based upon factual basis, no ground is made out to interfere with the same under Section 34 of the Arbitration and Conciliation Act, 1996, in which, an order was passed both on merits and on the scope and applicability of Sections 14 1 (a) and (c) of the Specific Relief Act. Hence no interference is required.

6.The arbitration clause was invoked only by the petitioner pursuant to the order of this Court. The challenge before the learned Arbitrator was to the termination order passed, which is a speaking order and after affording opportunity to the petitioner. Clauses 27 and 28 of the agreement clearly speak that in the event of information having furnished being false, the consequences would follow. The agreement is determinable in nature. Therefore, as rightly submitted by the learned counsel for respondents 1 and 2, no relief can be granted even assuming that the termination order is bad in law.

7.There is no need for framing issues and then answering it. We are not dealing with a civil suit. It is no doubt true that for the convenience sake, the learned Arbitrator, in exercise of the power, may follow the procedure under the code. When the relevant issues of fact and law are taken into consideration by the learned Arbitrator, nothing else is required. There is absolutely no serious questions of fact involved. There is no allegations of fraud to be proved by respondents 1 and 2 as it is the petitioner who challenged the termination order which has been passed in exercise of power conferred under the contract after due notice to the petitioner and on analysing the report of the enquiry officer. The very case of the petitioner is that she was not aware of the sale effected by her socalled vendor even prior to the agreement for sale. Thus, she did not

dispute the factum that her vendor did not have title. To that extent, the fact as found by the enquiry officer confirmed the termination order and approved by the learned Arbitrator cannot be disturbed. The learned Arbitrator has rightly held that in view of the aforesaid admitted position, the petitioner has violated the terms of the contract and therefore, respondents 1 and 2 rightly invoked Clauses 27 and 28 of the contract for passing an order of termination. What transpired between the petitioner and her alleged vendor can never be a concern of respondents 1 and 2. It is rather strange as to how the petitioner did pay the remaining amount to a person who did not have the title even at the time of entering into the agreement.

8. For the aforesaid reasons, this Court does not find any merit in this petition. Accordingly, the original petition stands dismissed. No costs. Consequently, connected application is closed.

सत्यमेव जयते

28.02.2018

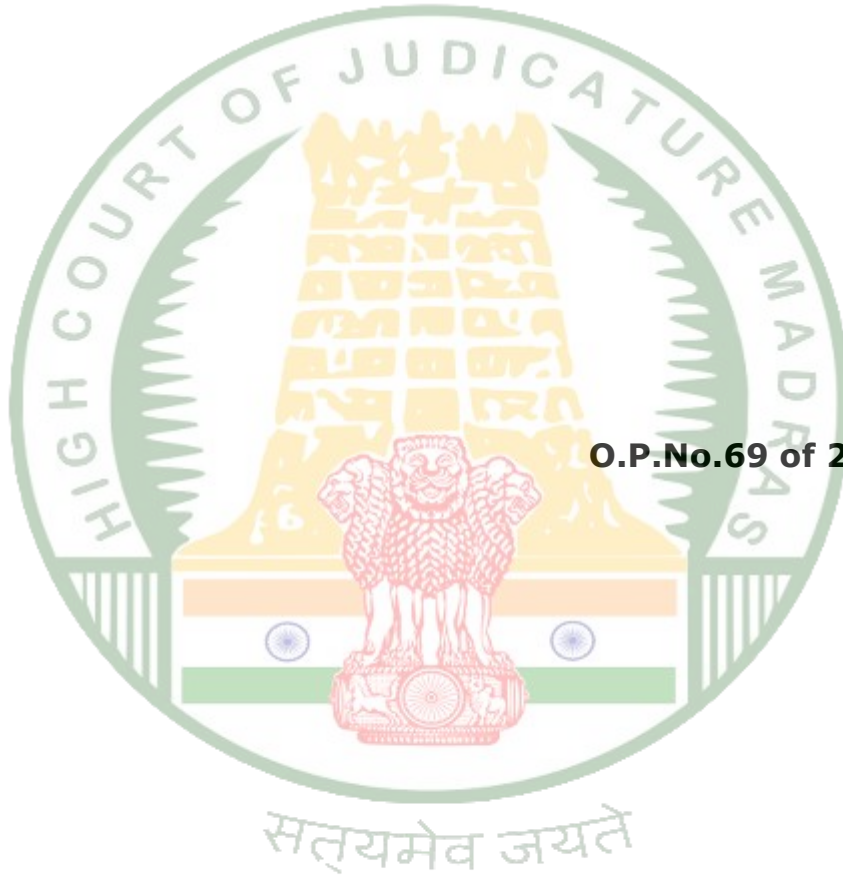
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M.M.SUNDRESH,J.

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