IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5596 of 2014 (O&M)
Date of Order:07.09.2018

M/s Anuj Filling Station and another

..Appellants

Versus

Indian Oil Corporation Limited and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagdish Manchanda, Advocate,
for the appellants.

Mr. Ashish Kapoor, Advocate,
for respondent no.1.

Mr. Shubham Tyagi, Advocate, for
Mr. N.S.Shekhawat, Advocate,
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

C.M.No.13297-C of 2014

Prayer in this application is for condonation of delay of 73 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 73 days in re-filing the appeal is condoned.

Application is allowed.

MAIN

Plaintiffs-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below, dismissing their suit for mandatory injunction directing the defendants to issue letter of intent regarding retail outlet of a fuel station. Plaintiffs also prayed that defendants be restrained from inviting fresh applications.

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In the present case, Indian Oil Corporation Limited-defendant invited applications for site selection through advertisement dated 06.06.2003. It is the case of the plaintiff that the site proposed by the plaintiffs was selected and they were called upon to obtain No Objection Certificate from various departments. It is further case of the plaintiffs that they had deposited Rs.1,00,000/- with the aforesaid department for loss of plantation by user agency. It is further case of the plaintiffs that application for appointment of dealers were invited and plaintiffs no.2 and 3 along with others applied and plaintiff no.1 was appointed as dealer. Plaintiffs erected boundary wall by spending a sum of Rs.5,00,000/- but no letter of intent was issued.

Defendant contested the suit by pleading that only selection was made but no vested right has come to vest in the plaintiffs. It has further been pleaded that the plaintiffs were only declared as impanelled candidates and thereafter once information was sought, it was found that on the cut of date, plaintiffs were not having sufficient funds as required in the advertisement.

Both the courts after appreciating the evidence have found that the plaintiffs failed to maintain in its accounts the required balance as on cut of date.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants while drawing attention of the court to the statement, furnished by the plaintiffs has stated that in Current Account No.0810401000290, that is the account maintained by the

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firm ,namely, Ranbir Singh and Co., there was balance of Rs.4,82,205/- . He further submitted that in the individual account of the partner, there was credit balance of Rs.4079/-.

On careful examination of the aforesaid details, it is clear that Rs.4,85,205/- as standing in the name of one firm Ranbir Singh & Company was a debit balance. In the individual account of Ranbir Sing, there was credit balance of Rs.4079/- whereas there was a over draft facility in account no.442, therefore, once again there was debit balance of Rs.49,0,46/-.

As per advertisement, it was specifically provided as under:-

> "*For the purpose of eligibility as well as evaluation of candidates, all the criteria shall be as on the cut off date of advertisement. However, for evaluation only the document attached along with the application shall be considered. No subsequent document will be entertained."*

Therefore, plaintiffs cannot claim that they did not know as to how much balance was to be maintained in the account. Partner of the plaintiff when appeared in the witness box, admitted that fact that he had only credit balance of Rs.4079/- in his accounts.

Still further learned counsel for the Corporation has further drawn attention of the court to Ex.D1, the account maintained by partner of the firm wherein it is clear that on 01.10.2007, Rs.1,50,000/- was deposited which were withdrawn in two installments i.e on 04.10.2007 and 10.10.2007, so on the cut of date, plaintiffs was not having the balance amount as required.

Keeping in view the aforesaid facts, this court does not find any good ground to interfere. Further it is not in dispute that now the process of selection has been changed and court after a period of 11 years cannot issue

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a mandate to issue allotment letter. Plaintiffs have further failed to show any vested right. Merely on account of impanelment, no vested right is created.

The regular second appeal is dismissed.

September 07, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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