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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 398 OF 2016
WITH
CIVIL APPLICATION NO. 521 OF 2016
IN
APPEAL FROM ORDER NO. 398 OF 2016**

M/s. Desai Auto Service, Sion ..Appellant

vs.

M/s. Bharat Petroleum Corporation
Limited & anr. ..Respondents

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Mr. A. Chandrachud, Mr. Suryavanshi, Mr. Y.K. Tiwari, Mr.
Manoj Sonavane for appellant.

Mr. S.J. Chaurasia I/b. Ashoka Law Firm for respondent No.1.

Mr. Anjani Kumar Singh I/b. Mr. Siddhesh Subhash Sutar for
respondent No.2.

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CORAM : M.S.KARNIK, J.

DATE : 25th JUNE, 2019

P.C. :

Heard learned Counsel for the appellant.

2. The challenge in this Appeal is to an order dated 31st
March, 2016 passed by the Judge, City Civil Court, Mumbai in
Notice of Motion No. 462 of 2016 filed by the plaintiff to
restrain the defendants – M/s. Bharat Petroleum Corporation

Ltd. by the order of temporary injunction from executing and/or enforcing notice Exhibit 'K' and letter Exhibit 'M' to the plaintiff or their action thereunder and further threat of termination of dealership in respect of the suit i.e. commissioned dealership for Dispensing Pump and Selling License for the sale of motor spirit and/or HSD motor oils, greases and other motor accessories at address Desai Auto Service, 30, Laxmibai Chawl, Sion, Mumbai, allotted to the plaintiffs' partnership firm named and styled as "Desai Auto Service, Sion" and to direct the defendants by order of injunction from stopping the supply of petroleum products to the plaintiffs till final disposal of the suit.

3. Learned trial Judge placing reliance on Clause 10(s) of the Memorandum of Agreement dated 12/11/2009 rejected the Notice of Motion.

4. Learned Counsel appearing on behalf of the appellant invited my attention to Clause 13(b) of the Agreement. On the basis of the said Clause, learned Counsel submitted that if the dealership is not terminated on the death

of one of the partners then surviving or continuing partners of the Licensees have a right to continue the business.

5. I have gone through the order passed by the trial Court. It appears that the trial Court proceeded only on the basis of Clause 10(s). However, Clause 13(b) which may have a material bearing on the controversy has not been considered.

6. The respondent No.2 herein was not a party to the suit at inception. He is subsequently impleaded as party defendant No.2. He claims to be the legal heir of the partner who has died. When the Notice of Motion was decided, obviously respondent No. 2 was not heard as he was not party.

7. As it is apparent that Clause 13(b) which may have a material bearing on the controversy while deciding the Notice of Motion was not considered by the trial Court and even respondent No.2 who then was not party was not heard, all the parties agree that by consent the impugned order can be set aside and that Notice of Motion be heard afresh and in

accordance with law. The parties to appear before the trial Court on 17th July, 2018 which is next date fixed for hearing of the suit. Hence following order :

ORDER

- (i) The impugned order dated 31st March, 2016 is quashed and set aside.
- (ii) The parties to appear before the trial Court on 17th July, 2019 when further schedule of the hearing of the Notice of Motion can be fixed by the trial Court.
- (iii) Notice of Motion No. 462 of 2016 to be heard afresh after hearing all the parties including respondent No.2 and the trial Court to pass a fresh order on its own merits without being influenced by any of the observations made in the earlier order dated 31st March, 2016 or in the order passed by me.
- (iv) Till the Notice of Motion is heard finally, in the interest of justice, the interim order dated 4/4/2016 which is in operation since then to continue.

8. The Appeal is allowed in the above terms.
9. All contentions are kept open.
10. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)