

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR-7506-2019 (O&M)

Date of decision: 26.11.2019

M/s Telu Ram Hans Raj Thapar and others

..... Petitioners

Versus

Bharat Petroleum Corporation Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Divya Sharma, Advocate for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this revision, plaintiff-petitioners have laid challenge to the order dated 08.11.2019 of the trial Court, whereby their application under Order VI Rule 17 CPC, for amendment of their plaint was dismissed.

Briefly, plaintiff-petitioners filed a suit for declaration and permanent injunction to declare them as regular dealer of respondents and restraining them from disrupting the supply of fuel to their filling station situated at Railway Road, Moga. Along with the suit, they also filed an application Order 39 Rules 1 and 2 CPC, which was dismissed by the trial Court vide order dated 04.12.2015.

Being aggrieved, plaintiff-petitioners filed appeal before the lower Appellate Court which too was dismissed vide order dated 15.05.2017. They further laid challenge to both the aforesaid orders before this Court vide CR-2248-2019, but remained un-successful as their revision too was dismissed vide order dated 18.09.2019 (Annexure P-1) by a co-ordinate Bench of this Court. Meaning thereby, plaintiff-petitioners

failed to obtain any stay against the respondents throughout up to this Court restraining them to disrupt their supply of fuel. As soon as, their revision was dismissed, respondents stopped supply of fuel to the petitioners. Consequently, plaintiff-petitioners moved an application under Order VI Rule 17 CPC for amendment of their plaint for incorporating the relief of mandatory injunction and seeking a direction to the respondents to restore their supply. The trial Court after hearing the parties, dismissed the said application vide order dated 08.11.2019, impugned herein.

Relying upon judgments of the Apex Court in **Rajkumar Gurawara (dead) through Lrs. Vs. S.K. Sarwagi and Company Private Limited and another, (2008) 14 Supreme Court Cases 364** and **Ashutosh Chaturvedi Vs. Prano Devi Alias Parani Devi and others, (2008) 15 Supreme Court Cases 610**, learned counsel for the petitioners *inter alia* contends that the aforesaid rulings have not been appreciated by the trial Court in a perspective manner. Rather, the same have been misread by the trial Court. Learned trial Court has failed to appreciate that amendment had become necessary due to disruption of supply, during the pendency of suit, otherwise, there was no occasion to amend the plaint. In a similar situation, the Apex Court in **Sampath Kumar Vs. Ayyakannu and another, (2002) 7 Supreme Court Cases 559**, allowed application under Order VI Rule 17 CPC. Therefore, setting aside the impugned order dated 08.11.2019, petitioners be permitted to amend their plaint for incorporating the relief of mandatory injunction to restore their supply.

Having given thoughtful consideration to the submissions of learned counsel for the plaintiff-petitioners, this Court finds the instant revision completely devoid of any merit for the reasons to follow:

Admittedly, the petitioners have been re-sited at village Bughipura, in lieu of their petrol pump presently situated at Railway Road, Moga, by converting it into a *ad hoc* dealership, with an intention to convert the re-sited site as a regular dealership.

Vide letter dated 06.09.2006, the Government of India decided that OMCs would formulate their own policy and procedure for operating those retail outlets, where sites had been procured and facilities created, or which had been de-commissioned, because of termination of dealerships, of Company-Owned-Company-Operated (COCO)/*ad hoc* basis, till regular dealers were appointed. The matter was considered and it was decided that temporary COCO, ROs may first be offered and handed over, subject to suitability, to the pending Letter of Intent (LOI)-holders.

The petitioners along with others laid challenge to the aforesaid notification of Government of India dated 06.09.2006, in Delhi High Court, who vide judgment dated 08.02.2008 decided bunch of matters and observed that case of the petitioners i.e. Writ Petition No. 1915 of 2007 was required to be heard separately. Accordingly, aforesaid writ petition of the petitioners was heard separately and dismissed vide order dated 18.03.2010. The claim of the petitioners regarding restraint from cancelling the retail outlet at Railway Road, Moga, on the basis of notification dated 06.09.2006, was declined, specifically, holding that present site of the petitioners was an *ad hoc* dealership as their original retail outlet has been re-sited at new place i.e. at village Bughipura.

The things did not rest here. Thereafter, in their suit for declaration and permanent injunction, the petitioners claimed the same relief which they earlier claimed in the aforesaid writ petition, but remained

un-successful up to this Court on dismissal of their revision vide order dated 18.09.2019 (Annexure P-1). The petitioners, when failed to get any relief or injunction in their application under Order 39 Rules 1 and 2 CPC, for restraining the respondents from disrupting their fuel supply on their failure to prove that they were having permanent dealership at the present site at Railway Road, Moga, after their resitement at village Bughipura, they now filed the instant application for amendment of plaint claiming relief of mandatory injunction which has rightly been declined by the trial Court, inasmuch as, petitioners have been re-sited at new site at village Bughipura, after a written agreement and their consent. Thus, from any angle, they cannot be permitted to run their petrol pump at the present site which has already been converted into a *ad hoc* site after resettlement.

Since, the petitioners had apprehension of disruption of supply, for that reason only they knocked at the doors of the Court by filing suit for declaration and permanent injunction along with application under Order 39 Rules 1 and 2 CPC, but remained un-successful up to this Court. Therefore, for the same relief by way of amendment, they cannot be permitted to convert their suit now into mandatory injunction.

Dismissed.

November 26, 2019

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No