

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

MAT 2 of 2021

Smt. Anjali Ghosh
Versus
The Indian Oil Corporation Limited & Ors.

For appellant/applicant : Mr. Subir Sanyal, Adv.
Mrs. Rini Bhattacharya, Adv.
Mr. Ujjwal Luksom, Adv.

For respondent nos. 1-6 : Ms. Vineeta Meharia, Adv.
Mr. Amit Meharia, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Tanmoy Das, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul, Adv.

Heard on : 22.04.2021.

Judgment on : **22.04.2021.**

Arindam Sinha, J. : This appeal has been heard on priority basis pursuant to direction made by Supreme Court on **order dated 19th February, 2021** in petition for **Special Leave to Appeal (C) no.**

270(2)/2021 (Indian Oil Corporation Ltd. & Ors. vs. Anjali Ghosh & anr). We reproduce below relevant text from said order:

“Heard learned counsel for the parties.

The matter is pending before the High Court and, it is informed, that the matter is fixed for hearing on 22.03.2021. The High Court is requested to decide the same on that day after hearing both the parties on merits.

Till that time, status quo, as on today shall be maintained.

The third party rights created shall be subject to the decision of the High Court.”

We find from order sheet, respondent no. 7 had not waived service of notice of appeal but had appeared on 26th March, 2021. Said respondent goes unrepresented. Affidavit of service has been filed by appellant enclosing print of electronic message informing listing and hearing on urgent basis, as to be done today. In view of the clear direction upon this Court by Supreme Court, we have taken up the appeal and heard it.

The writ petition was dismissed by the first Court saying in impugned order dated 13th January, 2021, inter alia, as follows:

“However, I am not inclined to go into those judgments as the law is settled in this regard that when there is an arbitration agreement, writ court is not the proper forum to entertain such disputes.”

Appellant, in her writ petition, had prayed for quashing of reasoned order dated 23rd December, 2020 as well as termination letter dated 2nd January, 2021. Other prayers were also made. The reasoned order had listed under paragraph 2, five allegations. Said paragraph 2 is reproduced below:

“2. During the course of operation of the retail outlet after commissioning and execution of dealership agreement during 2002, IOCL received complaints from Rinku Ghosh during 2014 where several allegations were imposed against the dealer which mainly includes:

- a. The dealer entered into a Partnership Agreement dated 22.02.2001 with one Ram Avtar Sharma.*
- b. The dealer took financial assistance from said Ram Avtar Sharma.*
- c. The dealer took financial assistance of RS.5 Lakhs from Rinku Ghosh in lieu of execution of a Partnership Agreement dated 05.06.2012.*
- d. Dealership obtained by showing incorrect /tampered /forged documents for the criteria of permanent residence.*
- e. Motor spirit being sold without license.”*

The reasoned order says it is in reference to show cause notice dated 27th August, 2015. It appears the show cause notice was subject matter of arbitration reference requested by appellant. There was award passed on 18th December, 2017. The award went against appellant and she challenged it under section 34, Arbitration and Conciliation Act, 1996.

By letter dated 12th March, 2019, appellant wrote to respondent Oil Company in connection with its new reconstitution policy of 2018. She admitted all allegations except that she had entered into partnership deed dated 5th June, 2012 with respondent no. 7. Regarding her admission of having taken financial assistance from said respondent, she asserted she had repaid it. Having said all that she requested as follows:

“In this circumstances I request you to please condone my all mistakes which I done willingly and unwillingly (by cheating) and confirming to abide by the provision of dealership agreement in the future.

Sir, please consider my case being a widow woman this retail outlet is my only source of income.

However, now the dealership has already been rectified and reverted back its last approved set up and being a proprietor of the business I am only the signatory authority.”

She had enclosed three affidavits with her said letter. The first was affidavit of Ram Avtar Sharma dated 12th March, 2019 declaring that he had no claim or demand in the business of the retail outlet dealership of appellant. The second was joint affidavit dated 12th March, 2019 of appellant and said Sharma declaring that appellant runs the retail outlet being licensee of the Oil Company. The third affidavit dated 26th March, 2019 was in form of an indemnity bond by appellant, indemnifying the Oil Company. In response to her letter the Oil Company by letter dated 26th March, 2019, said inter alia, as follows:

“We are in receipt of your proposal wherein you have confirmed that the constitution of the dealership was changed by you without obtaining prior approval of the Corporation, and now you have made a request for reverting back to your original status of proprietor dealership.

You have further confirmed to have gone through and fully understood various clauses of the Dealership Agreement and would fully comply by the same in future.

The Corporation has taken cognizance of the above mistake committed at your end and in view of your request for condoning the same, and the proposal meeting the extant guidelines, would like to convey the approval now.”

Pursuant to the Oil Company approving appellant as its dealer, appellant did not prosecute her challenge to the award. The challenge was accordingly dismissed on 27th June, 2019. On 10th November, 2020, the Oil Company issued a notice saying, inter alia, as follows:

“In light of the above, in continuation to the 2019 Letter and in clarification thereto, on facts, it is stated that by the 2019 Letter, the breach of Dealership Agreement committed by you, by entering into an Agreement with Mr. Ram Avtar Sharma on 22.02.2001 was condoned under provisions of clause B 5 of the Policy Guidelines For Reconstitution of Retail outlet /SKO-LDO Dealership. However, irregularities pertaining to Smt. Rinku Ghosh since subjudice is still pending and Corporation is free to take necessary action as per relevant terms of the dealership agreement and policy in vogue.”

Following through, the reasoned order under challenge in the writ petition came to be passed.

In the meantime, appellant had filed a civil suit being T.S. 232/2014 in the Court of Civil Judge (Junior Division), Siliguri. We accepted supplementary affidavit from Ms. Meharia, learned advocate appearing on behalf of the Oil Company, based on her submission that the suit was referred in her client’s affidavit-in-opposition but the plaint inadvertently not disclosed. Supplementary affidavit discloses the plaint. Mr. Sanyal, learned advocate appearing on behalf of appellant did not

dispute the plaint disclosed in the supplementary affidavit. As such we looked into the plaint, not as additional evidence in appeal but as part of record since the affidavit-in-opposition referring to it is already in the record. It is sufficient to only reproduce claims (a) and (b) from the plaint:

“(a) a decree declaring that the Plaintiff is the sole proprietress of the retail outlet business run under the name and style of “M/s. Anju Service Station” at Muraligach, Post office – Chitalghata, Police Station – Phansidewa, District - Darjeeling;

(b) a decree declaring that the purported Deed of Partnership Agreement dated 05.06.2012 is a forged one and the same is manufactured by the defendants in collusion with each other;

Appellant was successful in obtaining interim order no. 22 dated 26th August, 2016. The ‘ordered’ portion in said order is reproduced below:

“ORDERED

That the instant petition u/O 39 R 1 and 2 r/w Section 151 CPC be and the same is allowed, on contest.

No order as to cost.

Thus the defendants are hereby restrained from acting upon the purported deed of partnership agreement dt. 5.6.12 till the disposal of the suit.

Thus the instant petition is hereby disposed of.”

Mr. Sanyal submitted, the reasoned order is unreasonable, baseless and otherwise perverse. There should be interference by quashing it. He wanted to make further submissions on facts, including with reference to the letter of respondent no. 7, referred in the interim order passed by the civil Court. Ms. Meharia submitted, there is no scope for

interference since every opportunity was given to appellant to present her case before the authority and the reasoned order, is one which any prudent person would have made in the facts and circumstances. She relied upon authorities to urge appellant's challenge in the writ petition was barred by res judicata. Even otherwise, appellant had efficacious alternative remedy already availed of.

She relied upon judgments of Supreme Court.

(i) **Mohanlal Goenka vs. Benoy Kishna Mukherjee** reported in **AIR 1953 SC 65**, paragraph 23, reproduced below:

"22. There is ample authority for the proposition that even an erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. A decision in the previous execution case between the parties that the matter was not within the competence of the executing court even though erroneous is binding on the parties; see Abhoy Kanta Gohain v. Gopinath Deb Goswami."

(ii) **Delhi Gate Auto Service Station vs. BPCL** reported in **(2009) 16 SCC 766**.

(iii) **Indian Oil Corpn. Ltd. vs. T. Natarajan** reported in **(2018) 9 SCC 235**, paragraph 30, reproduced below:

"30. In our opinion, the writ court (Single Judge) was, therefore, justified in dismissing the respondent's writ petition and upholding the rejection on the ground that the High Court cannot interfere in the administrative decision of IOC and nor can it substitute its decision by acting as an

appellate court over such decision in exercise of writ jurisdiction. It is more so when such decision is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court.”

We proceed to adjudicate in view of facts we have stated above and the declarations of law relied upon by Ms. Meharia. Here, we must mention that on our query Ms. Meharia submitted that there was direction in the award, became final and binding by reason of the challenge to it having been dismissed, necessitating the subsequent notice resulting in the reasoned order. We find, in the award several issues were framed. We reproduce below issue nos. (ii) to (vi) as are relevant for purpose of adjudication of this appeal.

“ii) Did the Claimant enter into any partnership agreement and/or acted upon on the basis of any partnership agreement dated 5.06.2012 with one Smt Rinku Ghosh or any other person for running the dealership?

iii) Whether the claimant breached the terms of the agreement by entering into an arrangement with any third party for operating the dealership?

iv) Whether the Claimant breached the terms of the agreement by taking financial and administrative help from any third party for running the dealership?

v) Whether the impugned show cause notice dated 27.08.2015 is premature and not maintainable?

vi) Whether the impugned show cause notice dated 27.08.2015 is hit by the principles of estoppels, waiver and acquiescence?”

The arbitrator, though held under issue no. (iv), inter alia, that he had no hesitation in concluding that claimant (appellant) had breached the terms of the agreement and as such had made herself liable to the penal consequences according to the terms of the contract, went on to say, inter alia, as follows:

“With regard to Issue Nos.(ii) & (iii), the decision needs to be taken firstly by IOCL authorities on the basis of the evidences that may be placed before them. I hereby state that there is no finding with regard to issue no. (ii) & (iii).”

The award following is reproduced below:

“In the premises I hold that the Claimant is not entitled to any relief prayed for in the Statement of Claim. The respondent authority should consider the Judgments referred to and relied upon by the Claimant as specified above and pass a reasoned order on merits taking into consideration the fact of the Civil Suit pending before the Siliguri Civil Court and also my finding regarding issue No.(iv). I make it clear that the Respondent Authority would be free to take any punitive measures in tune with the established practice and procedure for violation of the terms of the Agreement on behalf of the Claimant in as much as by taking financial and administrative assistance from the outsiders.”

The reference was directed against said show cause notice dated 27th August, 2015. In the award issue nos. (v) and (vi) were answered in the negative, meaning thereby the show cause notice was not premature, maintainable and not hit by principles of estoppel, waiver or acquiescence. The arbitrator appears to have then travelled beyond the challenge and held

on issue no. (iv), that claimant had breached terms of the agreement. Having said so, it is to be reiterated that issue nos. (ii) and (iii) were then left to be decided by the Oil Company. This award was there before the Oil Company when appellant wrote said letter dated 12th March, 2019 in connection with the Oil Company's reconstitution policy of July, 2018, regardless of it stayed by order passed in the challenge to it under section 34.

As already noticed, the Oil Company by its letter dated 26th March, 2019 approved appellant's proposal of returning her to her original status of proprietor dealership. It is thereafter on 27th June, 2019 that challenge to the award stood dismissed for non-prosecution, on vacating the interim order of stay of the award. It appears, pursuant to the dismissal, the Oil Company felt that it had to act in terms of the award, thus restored.

The reasoned order, we find from recital of facts therein, says that it had come to the knowledge of the Company, a partnership agreement dated 5th June, 2012 was entered into between appellant and her relative, (respondent no. 7), in connection with operation of the retail outlet. Respondent no. 7 had complained to the Oil Company and produced the original deed before it. The recital bears the information had of the suit for declaration and injunction filed on 3rd September, 2014, by appellant against said respondent. The authority goes on to say that the approval of restoration of original status of sole proprietorship had nothing to do with appellant having had entered into partnership with respondent no. 7.

Neither any affidavit nor any dissolution of the partnership agreement dated 5th June, 2012 nor any NOC from said respondent, relinquishing her rights over subject retail outlet was submitted by appellant, is the finding in the reasoned order. As such, the authority was of the opinion that appellant had breached causes 35, 46(i) and 46(ii) in the dealership agreement, by entering into illegal partnership agreement dated 5th June, 2012 with respondent no. 7. Hence, there was direction upon the competent authority to take appropriate action, which came to be termination of appellant's dealership.

It appears, the authority, based on omission to produce affidavit or dissolution of partnership agreement dated 5th June, 2012 or NOC from respondent no. 7, there was found to be existing, as executed, partnership deed dated 5th June, 2012. This appears to be the only reason given for the finding of partnership. If these documents would have been produced, they themselves would have confirmed the execution and existence of the partnership. Production of those documents would not have proved that partnership was not there at all. This cannot be said to be a reason. Furthermore, there being reference in the reasoned order to a pending civil suit and interim order obtained by appellant on her contention that the deed is forged, the authority went on to decide in preempting the civil Court, where, we are told, the suit had trial commenced and is at argument stage. Furthermore, said respondent's conduct is unbecoming of a partner for profit, in complaining to the Oil Company to secure or put to end the dealership, which would automatically be an end to the partnership! In

said respondent's letter dated 27th June, 2014, written by her learned advocate and which Mr. Sanyal wanted to show us, the disputed partnership deed was said by her to be treated as terminated/cancelled/dissolved. This position prevailed at the time of request for restoration to original status made by appellant and her request approved, subsequent hearing given and the reasoned order made. Absence of respondent no. 7 on participation in this appeal thus assumes significance.

After the approval on 26th March, 2019, there is no assertion by anyone of a partnership entered into by appellant, either with respondent no. 7 or any other. There is also no allegation of financial accommodation taken thereafter by appellant from said respondent or any other. This is, however, irrelevant since by reasoned order, the only breach found against appellant was of she having had entered into partnership by deed dated 5th June, 2012.

On res judicata we do not find that appellant's challenge suffers a bar. As aforesaid, the arbitrator did not decide anything for either of the parties to be bound in a subsequent litigation between them. As such **Mohanlal Goenka** (supra) is of no assistance to respondents. **Delhi Gate Auto Service Station** (supra) is also distinguishable on facts since challenge to the reasoned order is on grounds of unreasonableness and perversity. In mounting the challenge or before it, appellant did not seek to avail alternative remedy in arbitration. We would not like to comment on

whether that would have been efficacious remedy, as no such argument was made, for us to do so.

T. Natarajan (supra) is implied declaration of law in the Supreme Court finding that concerned High Court, in appeal, could not substitute its decision by acting as an appellate Court, in exercise of writ jurisdiction. More so, the decision challenged was based on reasons involving no arbitrariness of any nature, which may call for interference. In this case, we have stated our views regarding the reasoned order, that we find it without reason.

We reverse impugned order and allow the writ petition in terms of prayer (b). The appeal is **disposed of**.

Ms. Meharia prays for stay of operation of our judgment. Her prayer is considered and rejected.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)