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

WRIT PETITION NO. 5582 OF 2021

M/s. Daulat Petroleum ... Petitioner
Versus
General Manager, Indian Oil Corporation Ltd. ... Respondent

Mr. Rajesh Tekale i/by M/s. Jay & Co. for the Petitioner.
None for the Respondent.

**CORAM: S. V. GANGAPURWALA &
R. N. LADDHA, JJ.
DATE : 28th SEPTEMBER, 2022**

P.C. :-

. The learned counsel for the petitioner submits that the respondent terminated the dealership of the petitioner. Though, the dealership has been terminated, the machinery and the equipments had not been removed from the premises of the petitioner. The petitioner is also not refunded the amount paid for booking of the petroleum and the diesel products. The learned counsel for the petitioner submits that because of the inaction on the part of the respondent, the petitioner is suffering damages at the rate of Rs.1,00,000/- per month from the date of termination. According to the learned counsel, though the dispute is contractual one, this Court in its writ jurisdiction under Article 226 of the Constitution of India can entertain the writ petition in as much as respondent is the instrumentality of the State and it is expected that they would be a model litigant. The learned counsel to buttress his submission relies upon the judgment of the Apex Court in case of **Food**

Corporation of India v/s. M/s. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71.

2. The present matter arises out of a contractual dispute. The petitioner was dealer of respondent. The dealership has been terminated by the respondent. The petitioner claims damages on account of the acts of omissions on the part of the respondent. So also seeks refund of the amount spent for booking the products.

3. The damages claimed by the petitioner at the rate of Rs.1,00,000/- per month would require evidence to be led. The damages will have to be computed referable to Section 73 of the Indian Contract Act, 1872. The various aspects will have to be considered such as remoteness of damages, the theory of mitigating damages, etc. As far as the amount for supply of product is concerned, the same is also required to be proved. All these aspects will require evidence to be recorded. The same cannot be considered in the writ jurisdiction. In a case of ***Food Corporation of India*** (supra), the Apex Court was dealing with a matter arising out of a tender. However, in view of the disputed questions of facts involved, it will not be appropriate to invoke the writ jurisdiction of this Court.

4. The petitioner may avail the remedy before the Civil Court of such as a forum, as may be permissible under law. In that event, all contentions of petitioner are kept open.

5. Writ Petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]