

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA 1886 of 2019 (O&M)

Date of Decision: July 06, 2022

M/s Vimal Filling Station and another ... Appellant
Vs.
BPCL and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Deepak Sabharwal, Advocate
for the appellant.

Mr. Raman Sharma, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

The instant regular second appeal by appellant M/s Vimal Filling Station and another is directed against the judgment and decree dated 05.03.2019 of the Court of learned Additional District Judge, Nuh, Mewat, whereby appeal of respondents Bharat Petroleum Corporation Ltd (hereinafter to be referred as '**the BPCL**') and others was allowed and judgment and decree dated 27.10.2017 of the Court of learned Additional Civil Judge, Senior Division, Mewat was set aside.

Heard Mr. Deepak Sabharwal, Advocate for the appellant and Mr. Raman Sharma, Advocate for the respondent and perused the records.

The BPCL issued an advertisement regarding allotment of petrol pumps and which was published in the newspapers. Mr. Shakuntala Devi appellant and her husband Mahender Pratap filed two different applications separately for allotment of an outlet. It is a dispute over the outlet issued to the wife on 02.02.2004. The main stand of the BPCL is that both husband and wife were allotted separate outlets on the same date, i.e. 02.02.2004 and since under the policy of the BPCL multiple outlets could not be allocated to the same family and had cancelled the allotment made in favour of the wife on the grounds of suppression of material facts by the plaintiff appellant. The stand of the plaintiff Shakuntala Devi is that she had never suppressed any material facts and the show cause notice Ex.D15 leading to cancellation of LOI is based on claim of the BPCL that a false affidavit has been submitted and that

too the proceedings against them had got initiated after more than 19 years the outlet has been running and, thus, had sought a suit for declaration for setting aside such an order of cancellation of the outlet with consequential relief of permanent injunction restraining the defendant, the BPCL from cancelling the same and creating hurdles in the smooth functioning of their outlet.

The learned trial Court on the basis of pleadings framed the following issues:-

- 1. whether the plaintiffs are entitled for declaration to the effect that termination notice dated 13.01.2014 is illegal, null and void? OPP.*
- 2. If issue No. 1 is proved, whether the plaintiffs are entitled for permanent injunction as prayed for? OPP.*
- 3. Whether the Civil Court has no jurisdiction to try and entertain the present suit.? OPD.*
- 4. Whether the suit is not maintainable? OPD.*
- 5. Whether the plaintiffs have not come with clean hands and have suppressed the true*

and material facts from the Court/ OPD.

6. *Whether the plaintiffs have no locus standi or any cause of action to file the present suit? OPD.*

7. *Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.*

8. *Whether the suit of the plaintiffs is bad for mis-joinder and non joinder of necessary parties? OPD.*

9. *Relief.*

The plaintiffs to prove their case examined PW1 Vijay Kumar special power of attorney holder of plaintiff Shankuntla Devi who tendered his affidavit Ex.PW1/A and proved documents Ex.P1 to P6 and closed the evidence.

On behalf of defendants, Vikram Singh Thakur testified as DW1 and tendered his affidavit Ex.DW1/A in evidence and proved on record documents Ex.D1 to D17 and closed the evidence.

The learned trial Court vide judgment and decree dated 27.10.2017 decreed the suit of the plaintiffs by setting

aside the termination dated 13.01.2014 to be illegal, null and void and further granting relief of permanent injunction restraining the defendants from taking forcible possession of the retail outlet of the plaintiff or any coercive steps.

Against this judgment an appeal was sought by the BPCL which stood allowed vide judgment dated 05.03.2019 passed by the court of Additional District Judge, Nuh (Mewat) by setting aside the findings of the trial Court. It is in this background the present regular second appeal has come about.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others**' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

Appreciating the submissions, the testimony of DW1

Vikram Singh Thakur Manager of the BPCL in his statement categorically accepts the fact that the guidelines Ex.A1 on the basis of which termination order has come about are not mandatory and therefore is illustrative of the fact that it was by no means authorizing that husband and wife as is in the present case cannot apply and allotted LOI outlet simultaneously. It is in consequence of the same very advertisement, the husband and the wife applied for grant of an outlet which was made on 02.02.2004 to both the sides as per Ex.D10 and Ex.D12, respectively.

To the specific query of the Court how or by what means there is suppression of material facts by the present plaintiff which has led to the termination order dated 13.01.2014, these guidelines certainly cannot attain to be mandatory unless or until provided for.

This Court cannot lost sight of the fact that husband and the wife both executed separate lease deeds Ex.D9 and D11 and which were duly scrutinized and accepted by the

defendant, the BPCL and what has perplexed is that one and the same officer has scrutinized the documents and signed the same and if it was a case of malfeasance by the officials what administrative action has been initiated against him, the counsel for the BPCL could not specify.

The learned trial Court has given a well reasoned findings holding that both the husband and the wife were offered retail outlets subject to fulfilling the conditions of the same which they complied and executed lease deeds in favour of the BPCL.

More so, the action has come about after more than 19 years is an adverse circumstance to hold that all was not well with the conduct of the respondents and as has been argued on behalf of the appellant counsel which is impregnated with malice and malafideneess.

In the impugned findings, the learned first appellate Court while reversing the findings of the trial Court has fallen into an error by holding that it was necessary for the husband

after receiving the letter of intent to inform the company that his wife too has been issued one. Admittedly both the husband and wife are major and has separately applied and got executed the BPCL agreement separately with the company and how there is a material concealment in the affidavit Ex.D4 made by the present plaintiff, the counsel was unable to impress upon the same and which was the primary reason for the first appellate Court reversing the findings which is based on surmises and conjunctures and incorrect appreciation of evidence on the records.

In the light of the foregoing discussion, the findings of the learned trial Court are well reasoned and needs to be upheld. The impugned findings needs to be set aside by way of acceptance of present regular second appeal.

July 06, 2022

(FATEH DEEP SINGH)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No