Item no. 08

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Heard on : 24.03.2023

Delivered on : 24.03.2023

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

F.M.A.T.(ARBAWARD) 3 of 2023
with
IA NO.CAN 1 of 2023
With
IA No. CAN 2 of 2023

Indian Oil Corporation Ltd.
Vs.
Sri Mrinalendu Sarkar.

Appearance:

For the Appellant	:	Mr. M.S. Yadav
For the Respondent	:	Mr. Asit Baran Raut Mr. Surajit Roy

T.S. Sivagnanam J.:

1. There is a delay of 15 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay and we are satisfied that sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the application (I.A. No. CAN 1 of 2023) is allowed and the delay in filing the appeal is condoned.

2. This appeal has been filed challenging the order passed by the City Civil Court, Xth Bench in Misc. Case No. 2568 of 2021 dated 29th October, 2022. The said application was filed by the Indian Oil Corporation (IOC') on the ground that the reliefs sought for by them in the application filed under section 9 of the Arbitration and Conciliation Act, 1996 (for brevity 'the Act') has not been granted in full and as against that portion of the order disallowing a part of the prayer, the appellant has filed the present appeal.

3. We have heard Mr. M.S. Yadav, learned advocate for the appellant and Mr. Asit Baran Raut, learned advocate for the respondent. The dispute between the parties is with regard to a dealership granted by the IOC to the respondent. The dealership was initially suspended and thereafter terminated and the order of termination and the order of suspension were put to challenge by way of a writ proceeding, which was allowed. Subsequently, IOC preferred intra-Court appeal before this Court in which the Hon'ble Division Bench appointed an Arbitrator to adjudicate the dispute between the parties and the learned arbitrator was appointed, who has entered upon reference. The Division Bench further directed that the suspension shall continue till conclusion of the arbitration proceeding. As of now, the learned arbitrator has retired and the tribunal is not functioning. In this background the IOC filed an application under section 9 of the Act praying for an order of interim injunction.

4. The appellant sought for an injunction to restrain the respondent or any other person from creating any obstruction, hindrance in running the retail outlet and to direct the respondent to remove the unauthorised vehicles, which have been parked in the premises. The Court below in the operative portion of the order has held as follows:

> *"From the pleadings, it appears that the retail outlet or petroleum product has not been functioning right now, and from the pleadings of both sides it is also very much clear that at present there is no scope of having any role to pay on behalf of the Respondent/Opposite Party as because, the land wherein the said outlet has been situated, is no longer under the control of the Respondent/Opposite Party. As because, it has already been controlled under the I.O.C. Ltd and it is their obligation to maintain the site in proper manner as they desire so. In view of that, considering the contention of the Respondent/Opposite Party herein, it is justifiable on the part of this Court not to allow the prayer for interim relief at this stage. However, this Court is inclined to give liberty to the petitioner to remove any unauthorized occupants from the retail outlet site.*
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> *As a result the Misc. Case is allowed partly."*

5. From the above, it is seen that the Court has accepted the fact that the petroleum outlet has not been functioning. Further, that the respondent has no control over the site in question nor he can claim to run the petroleum outlet. If that be so, the Court ought to have issued proper direction/injunction so that the appellant/IOC would be in a position to run the outlet by the company pending arbitration proceeding. In fact, the Court below has also directed the appellant to remove the unauthorised occupants from the retail outlet site. That apart, we need to point out that under the terms and conditions of the agreement, which now stands suspended, the respondent cannot claim any right to run the outlet. However, the agreement permits the appellant, namely the IOC to run the outlet by themselves by appointing ad-hoc dealers etc. in terms of the agreement and the relevant regulations.

6. Therefore, in our view the Court should have clarified that aspect especially when the Court has accepted the fact that the respondent can have no control over the site in question nor the dealership.

7. In the light of the above, the appeal is allowed and it is clarified that apart from the appellant being entitled to remove the unauthorised occupants/vehicles etc. from the retail outlets, it will also be entitled to run the company outlet by appointing ad-hoc dealer and such operation shall be subject to the final outcome of the arbitral proceeding.

8. There shall, however, be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

I agree.

(Hiranmay Bhattacharyya, J.)

RP/Pallab (AR. CT.)