17.07.2023.
Item No. 3.
Court No. 13
ap/AP

M.A.T. No. 690 of 2023
With
I.A. No. CAN 1 of 2023 (Not found in the File)
And
I.A. No. CAN 2 of 2023

Indian Oil Corporation Limited & Ors.
Versus
Bholanath Das

Mr. Saptangshu Basu, ld. Sr. Advocate,
Mr. Subhrendu Halder,
Ms. Shreya Nandi,
Mr. Abhirup Halder.
...For the Appellants.

Mr. Rachit Lakhmani,
Mr. R. N. Bandyopadhyay.
...For the Respondent.

Mr. Sourav Kumar Mukherjee,
Mr. Kaushik Chowdhury,
Mr. Soumoyadipa Kanu.
...For the added Respondent.

Re: CAN 2 of 2023 (Sec.5)

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about 27 days in filing the instant appeal.

2. Having heard the learned Advocates appearing on behalf of the respective parties, as also considering the statements made in the said application, this Court is satisfied with the grounds indicated therein, as sufficiently explaining delay of 27 days in preferring the instant appeal.

3. The application for condonation of delay being CAN 2 of 2023 is, thus, allowed and disposed of.

4. There will, however, be no order as to costs.

Re: MAT 690 of 2023

1. Leave is granted to the appellants to add the private respondent as party respondent to the instant proceedings. The learned advocate on record of the appellants is directed to amend the cause title of the appeal in course of the day.

2. The instant appeal is directed against an order dated 27th September, 2022 passed by the learned Single Judge whereby and whereunder the order of termination of the Dealership of a retail petroleum outlet, of the respondent/writ petitioner, namely, Bholanath Das dated 28th February, 2021 was stayed by the Court below.

3. The brief facts relevant to the instant appeal as canvassed in the writ petition are that the Dealership of a Retail Outlet was granted to the writ petitioner/respondent sometime in December, 2007.

4. In the year 2015 the appellant Indian Oil Corporation Limited (IOCL) received a complaint from the added respondent, namely, Krishna Manna, daughter of Promotha Nath Manna that it is her father who had infused the funds for setting up of the Retail Outlet/Dealership. The Dealership was in fact being run by the said Promotha Nath Manna.

5. The said Promotha Nath Manna contends that he had entered into a partnership with the writ petitioner/respondent to run the Dealership.

6. The writ petitioner denies the same and submits that the said Promotha Nath Manna, was only assisting him in running the Petrol Pump.

7. An enquiry was commenced by the IOCL for alleged violation of the terms and conditions of allotment of Dealership to the writ petitioner inter alia by transfer and an order of termination was passed on 28th February, 2021.

8. Impugning the order of termination, W.P.A. No. 8594 of 2021 was filed by the writ petitioner.

9. Various grounds have been urged in support of such challenge. One of which is that a Deputy General Manager (DGM), who participated in the enquiry on behalf of the IOCL before the Hearing Authority i.e. the Chief General Manager himself (DGM) passed the order of termination. There are other grounds urged challenging the letter of termination.

10. A learned Single Judge of this Court, on 6th April, 2021, declined to pass any interim order and called for affidavits from the respondents in the writ petition. Krishna Manna was subsequently added as a respondent.

11. Krishna Manna had disputes and differences with the writ petitioner with regard to the Petrol Pump and its running and has filed a civil suit being Money Suit No. 14 of 2014 which is now pending before the learned Civil Judge (Senior Division), Tamluk, Purba Medinipur.

12. For reasons far too obvious Krishna Manna supports the appellant IOCL's termination of the Dealership of the writ petitioner.

13. On 20th July, 2021 time to file affidavit-in-opposition was extended and was finally filed on 23rd August, 2021. A query was raised on 23rd August, 2021 as to whether the Deputy General Manager, Haldia had the authority to pass the impugned notice of termination. It can therefore safely be assumed that the hearing of the writ petition commenced before the learned Single Judge on 23rd August, 2021, after exchange of affidavits.

14. The writ petitioner thereafter filed CAN 1 of 2022 making a twofold prayer –

> (a) seeking a direction upon the IOCL to permit him remove the residual/unsold Petroleum Products lying unutilized in the Petrol Filling Station and sell the same with the participation of the IOCL.

(b) to seek early hearing of the writ petition.

15. CAN 1 of 2022 was being heard by the learned Single Judge most likely when the main writ petition itself was being heard on merits.

16. The interim order passed by the Court in CAN 1 of 2022 while hearing the main writ petition was extended from time to time.

17. Before finally pronouncing upon the main writ petition, at the instance of the writ petitioner, on the 27th September, 2022 the learned Single Judge passed an interim order directing the IOCL not to give further effect to the order of termination dated 28th February, 2021. No objection had been called against CAN 1 of 2022 by the Single Judge. Liberty was, however, granted to the IOCL/the appellant to bring on record certain internal documents, particularly with regard to the authority of the DGM (RS) to issue the order of termination of dealership.

18. This Court is unable to appreciate the scope of the expression "not to give further effect to the order of termination dated 28th February, 2021" in the impugned order, since by this time the supply by the Indian Oil Corporation to retail outlet of the writ petitioner had already ceased nearly one and half years ago.

19. Since the Oil Company did not resume supply of petroleum product to the respondent in terms of the impugned order, the writ petitioner filed a contempt application being CPAN 1165 of 2022. By an order dated 23rd November, 2022 passed in the contempt application an affidavit-in-opposition was called from the IOCL appellants/alleged contemnors.

20. The Indian Oil Corporation, then woke up from its slumber and filed CAN 2 of 2022 seeking a clarification from the Court below as regards the scope of the interim order passed i.e. "not to give further effect to the order of termination after one and half years".

21. By an order dated 20th February, 2023, passed in the contempt application of the writ petition, the Single Judge directed and clarified the order dated 27th September, 2022 that the appellant Oil Company was to resume supply of its products to the writ petitioner so that the petitioner can carry on business as a dealer pending hearing of the writ petition.

22. It is recorded in the order that the alleged contemnors had undertaken to abide by any condition that would be stipulated by the Single Judge.

23. Thereafter, the oil company filed CAN 1 of 2023 in CPAN 1165 of 2022 annexing an affidavit of their

advocates wherein it was stated that the advocate had not given any such undertaking before the Court as recorded in the last three lines of the second paragraph of the second page of the order dated 20th February, 2023.

24. CAN 1 of 2023 was taken up by the learned Single Judge where it was found that the Court was persuaded not to issue any Rule in the contempt application only because of the learned advocates undertaking on behalf of the Oil Company that they would resume supply to the dealership.

25. It is after this comedy of errors and the series of fiascoes by the IOCL that the appeal has been filed.

26. The first error and omission of the IOCL/appellant, that is noted, is that two orders have been challenged in the single appeal. One order is passed in CAN 1 of 2022 filed in aid of WPA 8594 of 2021, being order dated 27th September, 2022. The second order under challenge is an order dated 20th February, 2023 which is passed in CPAN 1165 of 2022.

27. Under normal circumstances this Court ought to have completely ignored the challenge to the second order dated 20th February, 2023 since there is no valid appeal in the eye of law thereagainst.

28. The only question that comes for consideration is as to whether the single judge was misled into passing the order dated 27th September, 2022.

29. The respondent/writ petitioner had made only two prayers in CAN 1 of 2022. The first prayer was to sell the residuary stocks that were left in the petrol pump after the order of termination dated 28th February, 2021 took effect. The said CAN application, in no uncertain terms, constitutes an acceptance of the letter of termination, subject, however, to the result of the writ petition. The second prayer was for expeditious hearing of the writ petition, which was, in fact, allowed when the writ petition itself was being heard.

30. This Court is of the unequivocal view that when the writ petition itself is being heard finally, under normal circumstances, an order is passed disposing of the main writ petition after hearing all parties and consideration of all pleadings.

31. It is unusual for a writ petitioner to pray for interim orders when the writ petition is itself being taken up for final hearing as specifically prayed for in their application. This is all the more when at the time of admission of the writ petition, interim orders were refused. Interim orders are considered only based on any new or changed circumstances not available in the

pleadings already on record. No such circumstances or events existed or were disclosed in CAN 1 of 2022.

32. There was no prayer for interim stay of the termination notice in CAN 1 of 2022.

33. This Court, therefore, is of the view that the learned Single Judge was completely misled by the writ petitioner into passing an interim order that substantially grants the main relief at the time of final hearing of the writ petition itself and without disposing of the main petition.

34. The conduct and casual attitude on the part of the IOCL leaves much to be desired. The representatives of the appellants did not bother to notify the Court below that it was hearing the main writ petition itself as would be clearly evident from the orders passed by other Benches which entertained the writ petition.

35. The conscious misleading by the writ petitioner, the passive concession by the Indian Oil Corporation Limited, and the fiasco that has occurred in the impugned orders may have been obtained from the Court, reveal a sordid tale of impropriety. This Court is therefore inclined to set aside the order dated 27th September, 2022. Consequently, the contempt

applications and/or all other applications filed therein in aid of the said order would be rendered infructuous.

36. Given the over enthusiasm of the writ petitioners and the weak and silent acquiescence of the appellants, this Court directs both the appellants as well as the writ petitioner to pay a sum of Rs.17,000/- each, to the High Court Legal Services Authority within a period of ten days from date.

37. The parties shall be at liberty to mention the writ petition for hearing and final disposal since affidavits have been exchanged, subject to the business of the Learned Single Judge permitting.

38. With the aforesaid observations and the discussions made hereinabove, the instant appeal is disposed of.

39. In view of disposal of the appeal itself, CAN 1 of 2023 is also disposed of.

40. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Supratim Bhattacharya, J.*)