12.04.2023
Item No.5
gd/ssd

MAT/2077/2022
INDIAN OIL CORPORATION LTD. AND ORS.
VS
MRS. RUPA ROY (CHAKRABORTY)
IA NO: CAN/1/2023, CAN/2/2023

Mr. Manwendra Singh Yadav,
Ms. Satabdi Kundu Naskar,
Ms. Saswati Chatterjee
..for the Appellants.

Mr. Debabrata Saha Roy,
Mr. Neil Basu,
Mr. Subhodip Sen
..for the Respondent/Writ Petitioner.

Ms. Nibedita Pal
..for Applicant in CAN 2 of 2023.

Re: CAN 2 of 2023

1. This application is being filed by third party seeking leave to implead herself as a party in this appeal.

2. Admittedly, the applicant was not a respondent in the writ petition.

3. The case of the applicant is that she entered into a partnership agreement with the writ petitioner in respect of a distributorship granted by Indian Oil Corporation. It is alleged that the partnership subsists and the stand taken by the writ petitioner that the partnership was dissolved is false and forged documents have been produced and the action initiated by the Indian Oil Corporation to terminate distributorship granted in favour of the writ

petitioner is pursuant to the complained lodged by the third party.

4. With these facts, the applicant seeks leave to be added as a party before this Court.

5. In our considered view, the case as projected by the applicant is purely a private dispute between the applicant and the writ petitioner and more so when the applicant did not seek for intervening in the writ petition and application for impleadment in the appeal which has been filed by the Indian Oil Corporation cannot be entertained. Therefore, the application is dismissed.

6. Leave is given to the applicant to work out her remedy in accordance with law.

Re: MAT/2077/2022

7. This intra court appeal by the respondent in the writ petition, namely, Indian Oil Corporation Limited is directed against the order passed by the learned Single Bench dated 21st November, 2022.

8. The respondent/writ petitioner challenged the cancellation of the distributorship granted to her by the Indian Oil Corporation vide communication dated 22nd July, 2022.

9. The allegation based on which action was initiated against the respondent/writ petitioner for termination was that she had violated the terms and conditions set out in the letter of intent dated 9th

September, 2013, more particularly clauses 9.1 and 9.3 of the letter of intent.

10. The contention of the writ petitioner was that she became a distributor only on or after the appointment as a distributor by letter of appointment dated 29.11.2017 followed by the distributorship agreement dated 30.11.2017. Therefore, any alleged agreement which had been entered into by the appellants with any third party prior to the said date cannot impinge upon her rights to continue as a distributor. This argument which made by the writ petitioner was accepted by the learned Single Bench and the writ petition was allowed.

11. Aggrieved by the same, the Indian Oil Corporation has preferred the present appeal.

12. We have elaborately heard Mr. Manwendra Singh Yadav and Mr. Debabrata Saha Roy.

13. The first issue to be dealt is whether the writ petition was maintainable challenging an order of termination of distributorship dated 22.07.2022. To be noted that the appellant/Oil Company has specifically raised the issue regarding maintainability of the writ petition contending that there is an arbitration agreement in the distributorship agreement dated 30.11.2017 in clause 37(a) of the Agreement. Further, it is seen that when the writ petition was heard at the admission stage, the

learned Single Bench passed an order on 29th September, 2022 directing that the issue regarding maintainability of the writ petition will be kept open to be decided at the time of final hearing of the writ petition.

14. On a perusal of the impugned order passed by the learned Single Bench, we find that this issue has not been dealt with.

15. In our considered view, this is very important issue to be considered since it touches upon the maintainability of the writ petition and ought to have been decided as the preliminary issue or at least as the first issue among other issues.

16. The contention of the learned Advocate appearing for the appellants is sought to be fortified by placing reliance on the decision of the learned Single Bench of this Court in the case of M/s. Bimala Gas Service & Anr. v. Indian Oil Corporation & Ors. In WP No.12206(W) of 2014 dated 05.10.2018 as affirmed by the Hon'ble Division Bench in MAT 1493 of 2018 dated 27th March, 2019 and the Special Leave Petition filed against the said decision being (Civil) Diary No.31111 of 2019 dated 27th September, 2019 by which the Special Leave Petition was dismissed.

17. The learned Advocate appearing for the respondent/writ petitioner advanced his arguments

both on facts as well as on the question of maintainability the writ petition in view of availability of alternate remedy by way of an arbitration.

18. On going through the facts of the case in the case of M/s. Bimala Gas Service (supra), we find that there is a clear distinction between the case on hand with the aforesaid case. Since in the case on hand what is alleged by the Indian Oil Corporation is forgery and it appears that a report has been obtained from the Forensic Science Department to show that an agreement which was produced by the writ petitioner to show that the partnership between the writ petitioner and the third party which was entered into in the year 2014 was dissolved in the year 2019 was shown to be a forged document. That apart the writ petitioner/respondent filed a Misc. Case No.1112 of 2021 under Section 9 of the Arbitration and Conciliation Act, 1996 praying for interim relief on the basis of perceived threat of limitation of distributorship agreement and the learned Judge, 9th Bench, City Civil Court at Calcutta, by an order dated September 17, 2021 restrained the OIL Company from terminating the Distributorship Agreement dated 30.11.2017 till the conclusion and determination of the arbitration proceeding by an award. The writ petitioner was directed to take necessary steps for the arbitral

proceeding within three months from the date of the said order.

19. On an appeal being preferred by the OIL Company being FMAT (ARBAWARD) 22 of 2022, a coordinate Bench by an order dated 21.04.2022 was pleased to set aside the order passed in Misc. Case and allowed the OIL Company to proceed with the adjudication of the show cause notice and to pronounce its decision thereon and restrained the OIL Company not to give effect to the decision if it is termination of the distributorship agreement for a limited period.

20. The writ petitioner, for protection of his rights under the distributorship agreement, availed of the remedies under the 1996 Act and also enjoyed the relief granted in her favour in such proceedings. Therefore, on facts the case in M/s. Bimala Gas Service was quite different.

21. On the issue regarding the maintainability of the writ petition, we find that the learned Single Bench in M/s. Bimala Gas Service has considered the issue and after referring to clause 37(a) of the distributorship agreement, the learned Writ Court took into consideration the peculiar facts and circumstances of the case. In the said case the distributorship agreement was terminated by Indian Oil Corporation on 26th March, 2015 and the writ

petition was filed immediately thereafter, for more than four years the writ petition was pending and the matter was finally heard in the year 2018. Therefore, the learned Single Bench opined that it would be too harsh for the Court to relegate the said writ petitioner to the remedy of arbitration. In the case on hand the facts are entirely different and such relief cannot be granted to the respondent/writ petitioner. The Hon'ble Division Bench while agreeing to the finding of the learned Writ Court in MAT 1493 of 2018 dated 27.03.2019 had referred to various decisions of the Hon'ble Supreme Court as regards the ouster of writ jurisdiction of the Court and under what circumstances such ouster will take place. There is no quarrel on the legal proposition and, in fact, the Hon'ble Division Bench has referred to the decision reported in 2003 (2) SCC 107 wherein the Hon'ble Supreme Court has held that on three broad contingencies the High Court can exercise writ jurisdiction in spite of an alternative remedy being available: (i) where the writ petition seeks for enforcement of the fundamental rights, (ii) where there is failure of principle of natural justie, and (iii) where the order is wholly without jurisdiction or the vires of an Act is challenged. In the facts and circumstances of the case on hand, we find that the writ petitioner cannot bring her matter under anyone of the three contingencies as mentioned by the Hon'ble Supreme Court. Above all the right which accrued in favour of the writ petitioner was purely contractual pursuant to a distributorship agreement. Merely because the Indian Oil Corporation had granted the distributorship and it being the Government of India undertaking will not bring the contract into one in the public law domain and the contract will continue to remain in the private law. This is also one more reason as to why the writ petition is not maintainable. Another argument which was advanced by the writ petitioner and found acceptance by the learned Writ Court is with regard to who is a distributor and the learned Writ Court was of the view that the writ petitioner becomes the distributor only on and after the letter of appointment dated 29.11.2017 or entering into the distributorship agreement dated 30.11.2017.

22. We are unable to persuade ourselves to agree with the said finding for the following reasons:

Firstly, the right which accrued in favour of the writ petitioner is pursuant to a letter of intent dated 9th September, 2013. In the said letter of intent it had been clearly stated that the writ petitioner shall induct her spouse as co-owner i.e. 50% of the partnership and not permitted to induct anyone as her partner, other than the spouse nor make any changes in the partnership of the proposed distributorship in a manner other than what is intended at the time of application, without prior written approval of the Corporation. Further, in clause 9.3 of the letter of intent empowers the Indian Oil Corporation to terminate the distributorship, in case if it is found that the document enclosed by the writ petitioner along with the application is incorrect or false or any material was suppressed or misrepresented affecting eligibility which will be result in withdrawal of the letter of intent and in case such evidence comes to the light after the writ petitioner is appointed as a distributor, the distributorship is liable to be terminated. Therefore, the word "distributor" cannot be truncated or restricted to give a different meaning only on and after the letter of appointment dated 29.11.2017 is issued. Furthermore, in clause 5.3 of the letter of intent, there is a clear embargo that there cannot be any change of the constitution of the proposed distributorship in a manner other than what was intended at the time of application without prior written approval of the Corporation. Admittedly, the writ petitioner entered into a partnership agreement with a third party after issuance of the letter of intent as it has been stated that such an agreement was entered in the year 2014. If that be so, it would tantamount to violation of the conditions of the letter of intent. That apart, after the distributorship agreement was entered into, the writ petitioner was bound by all the terms and conditions contained therein and clauses 21, 23(c)(1) and 27(m) are all clear embargo for the writ petitioner to enter into any agreement with the third party without prior approval of the Indian Oil Corporation. Therefore, these are all circumstances which have laid to termination of the distributor. Since elaborate submissions have been made touching upon the factual aspects, we had to deal with such submissions while deciding this appeal.

23. Since we are convinced that the writ petition was not maintainable as the dispute falls within the private law domain, the writ petitioner has to necessarily avail the remedy of arbitration as contained in the distributorship agreement.

24. So far as the decision in M/s. Bimala Gas Service as we have already observed that the relevant decision was passed considering the facts of that case and even on the question of the maintainability of the writ petition the factual aspect was taken note of by the learned Single Bench and also took note that the writ petition was pending for more than four years. The Hon'ble Supreme Court while dismissing the Special Leave Petition filed by the Indian Oil

Corporation had left the question of law open. Therefore, we are of the view that the decision in M/s. Bimala Gas Service is clearly distinguishable on facts and cannot be made applicable to the case on hand.

25. Thus, we hold that the order and direction passed by the learned Single Bench calls for interference. In the result, the appeal is allowed. The order passed by the learned Single Bench is set aside and the writ petitioner is to avail the remedy which is available under the distributorship agreement.

26. We make it clear that the observations which have been made in this judgment and order are only to support our conclusion with regard to the maintainability of the writ petition and these observations will not in any manner affect the rights of the parties in any other proceedings that they may initiated subsequently.

27. After the above judgment was dictated, Mr. Saha Roy, learned Advocate appearing for the respondent/writ petitioner submitted that the respondent has been continuing with the distributorship and that the same status quo may be permitted to continue for a period of time so that the writ petitioner can avail the other remedies under law. In this regard, the learned Advocate has

referred to certain observations made by the Hon'ble Division Bench in FMAT (ARBAWARD) 22 of 2022 dated 21st April, 2022.

28. The learned Advocate appearing for the appellants/Indian Oil Corporation submitted that the consumers will be distributed to the other distributors in the locality and the supply will not be affected.

29. In our view, if the consumers are distributed to various other distributors that may cause inconvenience to the consumers. Therefore, we direct that status quo which is prevailing as on date (12th April, 2023) shall be maintained for a period of one month from date. In the event the parties choose to approach the Arbitral Tribunal/Arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 the parties will be free to pray for any interim relief and such authority shall be free to take a decision on such prayer strictly in accordance with law without being swayed by the fact that this Court has passed an interim order for a limited period.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)