



Arbitration Application No.66 of 2023

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ABDUL QUDDHOSE, J.

M/s.Tirumazhai Indane Gas Agencies,
Rep. by its Partner K. Natarajan,
No.19-B, West Theppakulam Street,
Palakkarai, Thuraiyur,
Trichy – 620 010.

... Applicant

Vs.

1.The Executive Director and State Head,
Tamil Nadu State Office,
Indane Oil Corporation Limited,
Market Division, Southern Region,
Indane Oil Bhavan,
No.139, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai – 600 034.

2.The Indian Oil Corporation Limited,
Marketing Division,
'Triveni' II Floor, No.B35, Shastri Road,
Thillai Nagar, Trichy – 620 018.

3.G. Vinod Kumar,
Door No.209, KMS Garden,
Alagapuram Pudur,
Salem.

... Respondents

This application has been filed under Section 9 of the Arbitration
and Conciliation Act, seeking for interim stay of all further proceedings



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pursuant to the order of termination dated 09.02.2023 issued by the first respondent, pending disposal of the arbitral proceedings.

2. The applicant is a Dealer with the first respondent/Oil Corporation. They entered into a Dealership Agreement with the first respondent/Oil Corporation on 30.03.2017. They have been carrying on their business ever since the said dealership was granted to them. Admittedly, in the Dealership Agreement dated 30.03.2017, there is a clause which prohibits the applicant from entering into a contract as regards the dealership with any partner, without the knowledge of the first respondent/Oil Corporation.

3. However, it is the case of the respondent/Oil Corporation that the applicant represented by its partners, had entered into a Partnership Deed dated 10.05.2017, as well as a Partnership Agreement dated 04.10.2019, by which, they have inducted a new partner namely the third respondent herein without the knowledge of the first respondent/Oil Corporation. A complaint has also been given by the third respondent to the first respondent/Oil Corporation on 22.12.2020,



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informing the Oil Corporation that the applicant has cheated him by entering into a Partnership Deed dated 10.05.2017 and a Partnership Agreement dated 04.10.2019 with him. The third respondent had also filed a Writ Petition before this Court, seeking for a direction to the first respondent/Oil Corporation, to take action against the applicant for cheating him and for violating the terms and conditions of the Dealership Agreement dated 30.03.2017. A direction was also issued by the Writ Court to the first respondent/Oil Corporation, to conduct an enquiry with regard to the complaint dated 22.12.2020, given by the third respondent against the applicant herein, after giving an opportunity of hearing to the applicant herein, as well as the third respondent. Pursuant to the said direction given by the Writ Court, the first respondent held an enquiry and after examining 2 witnesses, has concluded in its findings that the Partnership Deed dated 10.05.2017 and the Partnership Agreement dated 04.10.2019, by which the applicant has inducted a new partner, namely the third respondent, are genuine documents and not fabricated, as alleged by the applicant.



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4. A show cause notice was also issued by the first respondent/Oil Corporation to the applicant on 28.11.2022, seeking for an explanation from the applicant with regard to the alleged violations of the terms and conditions of the Dealership Agreement, as the applicant has inducted a new partner namely the third respondent without the knowledge of the respondent/Oil Corporation. The applicant had also sent a reply to the show cause notice on 12.12.2022, denying the allegations levelled against them by the first respondent/Oil Corporation and they have stated in the said reply that they have never entered into a Partnership Deed dated 10.05.2017 and a Partnership Agreement dated 04.10.2019 under which, they have inducted the third respondent as a partner. According to them, the third respondent was never inducted as a partner of the applicant/Firm.

5. The first respondent/Oil Corporation, after giving due consideration to the reply dated 12.12.2022 sent by the applicant to the show cause notice dated 28.11.2022, as well as the statements made by the witnesses and the third respondent, who was inducted as a partner, came to the categorical condition that without the knowledge of the



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first respondent/Oil Corporation, the applicant has inducted the third respondent as a partner, which is in violation of the terms and conditions of the Distributorship Agreement dated 30.03.2017. Under those circumstances, a final order of termination was passed by the first respondent on 09.02.2023, by which the first respondent/Oil Corporation has terminated the dealership of the applicant. Aggrieved by the said termination, this application came to be filed seeking for an interim stay of all further proceedings pursuant to the order of termination dated 09.02.2023 of the first respondent, pending disposal of the arbitral dispute.

6. This Court had granted an interim stay of the impugned termination order and also directed the respondents 1 and 2, to resume their distributorship from the date of receipt of a copy of that order. In the said order, this Court had also observed in paragraph 4, as follows:-

.....

“4. In general, this Court while sitting under Section 9 of the Arbitration and Conciliation Act, will not interfere and grant stay on the termination order passed by the respondents 1 and 2 and the remedy



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for the applicant to claim for damages. However, upon hearing the learned Senior Counsel appearing for the applicant, it appears that the termination order came to be passed under the misconception that the constitution was changed by the applicant and the specific case of the applicant is that the constitution has not been changed. Admittedly, the applicant has 13000 consumers and the termination order has been passed without considering the prejudice to be caused to the 13000 consumers and the applicant due to the termination of the distributorship agreement.....”

7. As seen from the aforesaid paragraph, in fact this Court has observed that normally this Court will not interfere and grant stay of a termination order and in case of termination, the remedy for the applicant is only to seek damages. However, only on the submission made by the learned senior counsel for the applicant that the constitution of the applicant's Partnership Firm was changed and is a misconception, the interim stay was granted by this Court.



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8. A counter-affidavit has also been filed by the respondents denying the contentions of the applicant and reiterating that the Partnership Deed dated 10.05.2017 and Partnership Agreement dated 04.10.2019, are genuine documents entered into between the third respondent and the applicant, under which, the third respondent has been inducted as a partner in the applicant/Firm. They have also reiterated that only after holding a proper enquiry pursuant to the directions given by this Court in a Writ Petition and after giving an opportunity of hearing to the applicant, it has been conclusively proved that the third respondent has entered into a Partnership Deed dated 10.05.2017 and a Partnership Agreement dated 04.10.2019 with the applicant/Firm without the knowledge of the first respondent/Oil Corporation. They have also stated that till date, the applicant has also not invoked the arbitration clause despite an interim order granted in their favour as early as on 21.02.2023. In such circumstances, they seek for dismissal of the application, as the applicant has inducted a partner in violation of the terms and conditions of the Dealership Agreement, without the knowledge of the first respondent/Oil Corporation.



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Discussion

9. It is not in dispute that the Dealership Agreement dated 30.03.2017 contains clauses which prohibits the applicant from entering into contracts pertaining to the dealership, without the knowledge of the first respondent/Oil Corporation.

10. Learned senior counsel appearing for the applicant has also not disputed the clauses which prohibits the applicant from entering into contracts without the knowledge of the first respondent/Oil Corporation.

11. The applicant in his affidavit filed in support of his application would submit that the applicant never entered into a Partnership Deed dated 10.05.2017 and a Partnership Agreement dated 04.10.2019 and has never inducted a new partner, as claimed by the first respondent/Oil Corporation.

12. However, the third respondent who has been inducted as a partner under a Partnership Deed dated 10.05.2017 and a Partnership



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Agreement dated 04.10.2019, would state that the aforesaid documents are genuine documents and that he has been legally inducted as a partner in the applicant/Firm.

13. The first respondent/Oil Corporation had issued a show cause notice to the applicant on 28.11.2022, calling for explanation based on the complaint received by them from the third respondent on 22.12.2020. In the said complaint, the third respondent had stated that the applicant has cheated him by making him invest in the applicant's business and making him sign documents namely the Partnership Deed dated 10.05.2017 and Partnership Agreement dated 04.10.2019. The applicant has also sent a reply dated 12.12.2022 to the first respondent/Oil Corporation for the show cause notice dated 28.11.2022, once again denying that they have violated the terms and conditions of the Distributorship Agreement dated 30.03.2017 by inducting a new partner namely the third respondent under a Partnership Deed dated 10.05.2017 and a Partnership Agreement dated 04.10.2019.



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14. Pursuant to an order dated 29.08.2022 passed by this Court in a Writ Petition in WP.No.22123 of 2022, filed by the third respondent, a direction was issued to the first respondent/Oil Corporation, to conduct an enquiry with regard to the complaint given by the third respondent on 22.12.2020, after hearing both the third respondent as well as the applicant herein. A detailed enquiry was also conducted by the first respondent/Oil Corporation and the statement of two witnesses were also recorded and only thereafter, it was conclusively proved that the applicant has inducted a new partner without the knowledge of the first respondent/Oil Corporation. Letters from the various witnesses were also received, which is the basis for the first respondent/Oil Corporation to come to the conclusion that the Partnership Deed dated 10.05.2017 and Partnership Agreement dated 04.10.2019, are genuine documents which have been executed by the applicant without the knowledge of the first respondent/Oil Corporation. Only based on the enquiry conducted by the first respondent/Oil Corporation, a final termination order dated 09.02.2023 came to be passed by the first respondent/Oil Corporation, terminating the distributorship of the



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applicant as per the Distributorship Agreement dated 30.03.2017 for violation of the terms and conditions of the said agreement.

15. The applicant is yet to initiate arbitration in accordance with the Arbitration Agreement contained in the Distributorship Agreement dated 30.03.2017. The interim order was granted in their favour as early as on 21.02.2023. Section 9(2) of the Arbitration and Conciliation Act, stipulates that if the applicant is having the benefit of an interim order, the said applicant will have to initiate arbitration, within a period of three (3) months from the date of the said order. The three months period has also come to an end. Till date, the applicant has not initiated arbitration. Further, this is a case where the first respondent/Oil Corporation has terminated the contract of the applicant on account of the alleged violation committed by them under the Distributorship Agreement. The only remedy for the applicant, in case they have suffered any loss on account of the termination, is to seek for damages against the respondent/Oil Corporation before the Arbitral Tribunal to be constituted in the near future.



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16. When the violation of the terms and conditions of the contract is based on an enquiry conducted by the first respondent/Oil Corporation, the question of this Court, interfering with the said enquiry, in an application filed under Section 9 of the Arbitration and Conciliation Act, will not arise and cannot be entertained. Further, it is to be noted that admittedly till date, the dispute between the applicant and the third respondent is still subsisting and is yet to be resolved.

17. For the foregoing reasons, there is no merit in this Application. Accordingly, this Arbitration Application stands dismissed and the interim order granted by this Court in applicant's favour on 21.02.2023, shall stand vacated.

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