



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 4352 OF 2024
ROSHANALI S/o YUSUFALI AJANI AND ANOTHER
VERSUS
ASGARALI S/o YUSUFALI AJANI AND OTHERS

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Mr. M. P. Khajanchi, Advocate for the petitioner.
Mr. S. K. Soni and Mr. A. V. Karnavat, Advocates for R.Nos.1 & 2
Mr. S. M. Bhangde, Advocate for respondent no.3

CORAM : G. A. SANAP, J.
DATE : NOVEMBER 14, 2024.

1. Heard Mr. M. P. Khajanchi, learned advocate for the petitioner, Mr. S. K. Soni and Mr. A.V. Karnavat, learned advocates for respondent nos.1 and 2 and Mr. S. M. Bhangade, learned advocate for respondent no.3. Perused the record and proceedings.

2. In this petition, the petitioners have questioned the correctness of the order dated 02.05.2024 passed by the learned Joint Civil Judge, Senior Division, Warora, Dist. Chandrapur, whereby the learned Judge was pleased to allow the application (Exh.32) for appointment of Arbitrator for resolution of the dispute arose between the parties.

3. It is evident that there was dealership agreement between respondent no.3 and a partnership firm M/s Haji

Noor Mohammad Petroleum, Warora (hereinafter referred to as “the firm” for short). The petitioners and respondent nos.1 and 2 are the partners of the said firm. The Partnership Deed is dated 21.08.2004. The dealership agreement between respondent no.3 and the firm is dated 19.01.2005. It can be seen on perusal of the plaint that a Memorandum of Understanding (MoU) was entered into between the petitioners and respondent nos.1 and 2 on 04.10.2013 and as per this MoU, the partners have arrived at an understanding as to the distribution of the business between them.

3. It is to be noted that the partnership firm has not been dissolved. The firm is registered with the Registrar of the Firms. The dealership agreement is with the firm. Respondent no.3 is not party to the MoU. It is apparent on perusal of the plaint that the dealership agreement was in writing between respondent no.3 and the firm.

4. Learned advocate for respondent no.3 submitted that the dealership agreement also contains the arbitration clause for resolution of the dispute arising between respondent no.3 and the firm with regard to the business. It is further submitted by the learned advocate for respondent no.3 that in the suit filed by the petitioners, respondent no.3 was not served. It is also pointed out that the application at Exh.32 was not served to respondent no.3. It is submitted that

respondent no.3 is not privy to the understanding, if any, amongst the partners with regard to the business. It is submitted that any understanding between the partners would be prejudicial to the interest of respondent no.3. It is pointed out that such an arrangement behind the back of respondent no.3 would reflect upon the dealership agreement.

5. Learned advocate for the petitioners concedes that respondent no.3 was not served in the suit and without granting an opportunity to respondent no.3, the impugned order was passed. In my view, the impugned order is therefore, without application of mind. Respondent no.3 was required to be heard before passing such an order, which would directly affect the dealership agreement between respondent no.3 and the firm. In view of this, the impugned order is required to be quashed and set aside.

6. Accordingly, the order dated 02.05.2024 passed by the learned Joint Civil Judge, Senior Division, Warora, Dist. Chandrapur, is quashed and set aside.

7. The application at Exh.32 is remitted back for decision afresh after granting an opportunity of hearing to respondent no.3.

8. The parties are directed to appear before the learned Joint Civil Judge, Senior Division, Warora on 21.11.2024.

9. The learned Judge shall dispose of the application (Exh.32) expeditiously, after granting an opportunity to respondent no.3 to file reply.

10. The statement made by learned advocate for respondent nos.1 and 2 and recorded vide order dated 24.10.2024, shall continue till the disposal of application at Exh.32.

11. The petition is partly allowed and disposed of in the aforesaid terms.

(G. A. SANAP, J.)

Diwale