C.V.KARTHIKEYAN, J.

This Original Application has been filed under Order XIV Rule 8 of O.S.Rules r/w. Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996, seeking an order of interim injunction restraining the respondents from enforcing the termination order dated 12.09.2024 till the pendency of the arbitration proceedings between the applicant and the 1st respondent.

2.The late wife of the applicant, R.Kalaivani had a dealership called Nandaa Gas Agency with the 1st respondent. She died on 17.07.2019. The applicant, S.Bharathiyar, was recognized as legal heir. The 1st respondent had entered into an agreement with him and he had been granted dealership on and from 23.09.2019 till 12.09.2024 with a clause for renewal. When the wife was having the dealership, she had filed an application seeking to reconstitute the firm namely, Nandaa Gas Agency by inducting another individual S.P.Pandian. The respondents had forwarded the format under which such third party could be inducted. But ultimately, the respondents had rejected such induction of S.P.Pandian into the dealership. In the meanwhile, the wife died and the applicant herein had been recognized as sole dealer.

3.The applicant then filed an application to bring in another individual as a partner to the dealership. S.P.Pandian whose efforts to become a partner in the dealership had failed, then initiated arbitration proceedings on the basis of an agreement entered into with the applicant. That agreement was dated 20.07.2019. An award had been passed by the arbitrator stating that the applicant should pay liquidated damages to S.P.Pandian, but refusing to grant any relief to put into effect the agreement which had been entered into between the applicant and S.P.Pandian.

4.Claiming that the applicant had violated the terms of the dealership by availing finance from S.P.Pandian and trying to induct him as further partner, a show cause notice had been issued by the respondents to the applicant. The reply given by the applicant was rejected and a termination order had been issued, which is under challenge in arbitration proceedings.

5.The present application has been filed claiming that owing to such termination irreparable loss and hardship had accrued to the applicant as there are a number of customers who had been cultivated over a period of time and the goodwill built up would be lost and therefore, seeking an injunction to continue with the dealership.

6.It is contended by Mr.S.R.Rajagopalan, learned Senior Counsel for the applicant, that the partnership agreement with S.P.Pandian is not a concluded agreement and it was always subject to approval by the respondents herein. It is also stated that owing to expenses incurred towards treatment of his wife, the applicant was in need and obliged to avail finance and S.P.Pandian had revived the earlier agreement. It is contended that when the disputes which had arisen had been referred to arbitration, an award had been passed not enforcing the partnership agreement, but only awarding liquidated damages on the ground that the applicant had entered into an agreement with a third party. It is therefore contended that the allegation that the applicant had inducted a partner without informing the respondents would is not correct and that therefore, the termination has to be held as bad on facts.

7.Mr.Mohamed Fayaz Ali, learned counsel had entered caveat in the proposed application to be filed under Section 34 of the Act and not in the application under Section 9 of the Act. But at any rate, the leaned counsel was also served with the relevant papers and was also heard. He had not filed his counter affidavit, but the Court had granted him full opportunity to advance arguments.

8.According to Mr.Mohamed Fayaz Ali, learned counsel, the agreement entered into by the applicant with S.P.Pandian violated three fundamental conditions namely, (i) not to enter into any agreement with anu third party relating to the dealership and (ii) not to induct any partner without concurrence of the respondents and more importantly (iii) not to avail any finance assistance from any third party without the concurrence or approval of the respondents.

9.It is contended that the arbitral tribunal had returned a finding of liquidated damages which would indicate that the applicant herein had actually availed finance from S.P.Pandian. It is also contended that the consumers have since been diverted to other dealers and therefore, no hardship would be caused to any of the consumers.

10.In this connection, the learned counsel placed reliance on the judgment of the Division Bench of this Court reported in ***(2018) 2 Mad***

LJ 275, Indian Oil Corporation Ltd. and Another Vs. Bhagawan Balasai Enterprises and Another. The facts in that case were that, the agent or distributor was found to have supplied petrol of less quality and the explanation was that he had unfortunately mixed the petrol with diesel. That was the ground on which the show cause notice was specifically issued and the contract was terminated.

11.The Division Bench examined the issue on determinability of contract and termination of contract.

12.Determination is by efflux of time and when there is clause for renewal and the contract is not renewed, and the matter ends there. On a specific date, if it is extended and the period is determined, then when that period comes to an end, the contract ends. Termination is different. Termination is for violation of any of the clauses and the agreement. The two terms may refer to the same concept but are significantly different. Determination is by agreement when the time period fixed in the agreement has expired and no extension of time has been agreed. The contract just lapses by itself. It does not survive anymore. Termination on the other hand is owing to a charge of violation of a specific clause in the agreement whereby, a right is retained to terminate the contract. The Division Bench had proceeded on the ground on determinability of the contract. That may not be directly an issue here, since the contract had been terminated owing to the agreement entered into by the applicant with S.P.Pandian which according to the respondents was a violation of the terms of the contract.

13.Mr.S.R.Rajagopalan, learned Senior Counsel placed reliance on the judgment of the Hon'ble Supreme Court reported in ***(2007) 7 SCC 125, Adhunik Steels Ltd. Vs. Orissa Manganese and Minerals (P) Ltd.***, wherein the Hon'ble Supreme Court had stated that injunction is actually a form of specific relief. The Hon'ble Supreme Court had also stated that if there is breach of contract the proper remedy would either be damages or specific relief. It had also been held that specific relief is a remedy which aims at exact fulfillment of an obligation.

14.In the instant case, the very basis of the show cause notice was that the applicant had entered into an agreement with S.P.Pandian. As a fact, there was no such agreement. A reading of the partnership deed which had been produced as a document shows that the date of commencement of the partnership has not been specified. It has been left as blank. It had also been stated that it would come into effect only in accordance with the rules and regulations of the respondents.

15.There is one issue about finances being received by the applicant and there is a further charge that immovable property had been sold to S.P.Pandian. A sale of independent property is an issue which cannot be clubbed with dealership. The receipt of money towards sale of immovable property could be an independent agreement between the applicant and S.P.Pandian and could be for various reasons not necessarily to bring in finance for the dealership, but also to meet or honour personal demands and liabilities incurred elsewhere with other third parties. The sale could not be pinned down to one particular object and it could be to satisfy any of liability in the family.

16.In view of these reasonings, even though it is contended that the consumers had been diverted, I would still grant an order of interim injunction restraining the termination order. Accordingly, the original application stands allowed.

18.11.2024

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O.A.No.852 of 2024

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