IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.Pd.No.1498 of 2025
and
C.M.P.No.8784 of 2025

1. P. Natarajan
   (a Partnership firm rep by the Partner P.Natarajan)
2. P. Natarajan
3. K. Rathinasamy
4. N. Santhakumar ... Petitioners

-vs-

M/s. Bharat Petroleum Corporation Limited,
Rep. by its Territory Manager (Retail),
Reg. Office: 4 and 6,
Currimbhoy Road,
Ballard Estate, Mumbai
Having Territory Office at: Irugur Top Installation,
Ravathur, Coimbatore - 641 103 .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 16.12.2024 passed in I. A. No. 1 of 2023 in O.S.No.653 of 2022 pending on the file of the learned III Additional District and Sessions Judge, Dharapuram and consequently dispose of the I. A. No. 1 of 2023 in O.S.No.653 of 2022 as prayed for.

For Petitioners : Mr.V.B.R.Menon

For Respondent : Mr.V.Anantha Natarajan

ORDER

The defendants have filed the above C.R.P. seeking to set aside the order passed in I.A.No.1 of 2023 in O.S.No.653 of 2022 on the file of the III Additional District and Sesssions Judge, Dharapuram.

2. The facts are briefly set out herein below. The parties are referred to in the same ranking as before the trial Court.

3. The plaintiff-Bharat Peroleum Corporation Limited (hereinafter referred to as "BPCL") had filed the above suit seeking recovery of a sum of Rs.17,31,138/- towards damage to property, assets, structures, facilities etc and Rs.20,00,000/- towards the damages to the plaintiff's reputation.

4. It is the plaintiff's case that they cater to the needs of the motoring public through their retail outlets set out across the length and breadth of the country. The dealership is awarded to individuals/partnership/society etc to

run these retail outlets and the BPCL would enter into a Dispensing Pump Selling License (herinafter referred to as DPSL) agreement with the successful candidate. One such retail outlet was the 1st defendant, whose retail outlet was set up at No.67-1, Byepass Road, Dharapuram, Tiruppur District. The 1st defendant is a Partnership Firm in which defendants 2 to 4 are partners. The defendants 2 to 4 had approached the plaintiff for obtaining the dealership and one of the partners of the 1st defendant, namely the 4th defendant had offered a vacant land admeasuring 12,000 sq.ft at the aforesaid address for setting up one petrol pump/ retail outlet near Dharapuram Bus stand. The plaintiff had made it clear to defendants that since it was a Company-controlled outlet, the land was required to be taken on long term lease by the plaintiff from the land owners. The 4th defendant promised to come forward to register the Sale Deed whenever he was called upon to do so.

5. Based upon the aforesaid assurance that the lease deed would be registered as and when demanded, the plaintiff had set up one petrol pump/retail outlet near Dharapuram Bus Stand in the land owned and offered by the 4th defendant. The 4th defendant had also appointed the 1st defendant

as dealer /licensee for selling period, diesel and other petroleum products to the general public and for this purpose, a DPSL "A" agreement dated 07.10.1997 was entered into between the plaintiff and the 1st defendant.

6. Since the retail outlet was company controlled, all the assets, facilites, structures such as the sales building, underground product storage tanks, multiproduct dispensers with submersible turbine pumps and pipelines, canopy with roofing sheets etc., were set up by the plaintiff themselves and therefore were the asset of the plaintiff. The plaintiff had invested over a sum of Rs.70.58 Lakhs for providing the above. The retail outlet was upgraded from time to time by making additional investments.

7. Yet another DPSL agreement was entered into between the plaintiff on one part and the 1st defendant represented by its partners, defendants 2 to 4 on the other part on 07.10.1997. On the basis of this agreement, the plaintiff had allowed the defendants to use the Motor Spirit and / or HSD pumps, Storage Tanks, Pipes and Fittings and all other facilities erected and provided by the plaintiff at the premises in question and the additional facilities also provided thereupon.

8. One of the terms of the DPSL agreement was that during the continuance of the licence the premies shall remain the absolute property and in the sole posession of the Company and no part of the said facilities could be renewed by the licencees. Further, no part could be changed or altered without the consent of the plaintiff. The agreement further provided that if the licence was terminated for whatever cause, the licencees shall cease to have any rights to enter or remain in the premises and the plaintif was at liberty to evict them.

9. The plaintiff would contend that the DPSL agreement was valid till 06.10.2012. After the expiry of the agreement, the plaintiff had requested the defendants to renew the licence by signing the DPSL "A" agreement. However, the defendants refused to sign the same and sought to convert the retail unit from a Company controlled unit to a dealer controlled one.

10. The plaintiff would submit that they had made several requests to the 4th defendant to complete the formalities of lease registration. However, for the reasons best known to him, he failed to register the same. The plaintiff was ready and willing to sign the same. The plaintiff would further

submit that as per the guidelines of the plaintiff-Company, they were required to update the KYC details to avail continued supply of petroleum products. The 1st defendant has sought for an extension of the DPSL agreement. The request was accepted by the plaintiff to protect the interest of the general public and the validity of the agreement was extended. However, the 4th defendant failed to sign the DPSL agreement after its expiry on 06.10.2012.

11. The plaintiff would submit that pending renewal of the DPSL agreement, they continued to supply the products to the defendants at their request and they have also accepted the same without any demure. Therefore, they would contend that the defendants are bound by the terms of the DPSL agreement dated 07.10.1997 by the act of the parties.

12. The plaintiff had informed the defendants that the control category of the retail outlet cannot be changed from that of a Company controlled unit to a dealer controlled one. Therefore, they were advised to come forward and sign the DPSL agreement vide letter dated 02.02.2022 failing which, the plaintif had informed that they would have to stop the supplies of the retail

outlet. Despite receipt of this letter, the defendants refused to sign the DPSL agreement. A show cause notice dated 30.04.2022 was issued by the plaintiff to the defendants as they had failed to execute the DPSL agreement. After receipt of this show cause notice, the defendants vide letters dated 03.05.2022 and 05.05.2022 once again sought for extension of the DPSL agreement. The same was accepted by the plaintiff and supplies were continued. However, the defendants did not come forward to sign the DPSL agreement. Therefore, the plaintiff had issued another show cause notice dated 23.06.2022 to the defendants stating that since there was no valid agreement and no extension has been granted, the supply of product to the said retail outlet would be suspended with immediate effect.

13. On 02.07.2022, the plaintiff came to learn that the defendants, who are the dealers / licencees, had started dismantling the asset at the impugned retail outlet premises. Immediately, on receipt of the same, the concerned Sales Officer of the plaintiff-Company rushed to the premises and found the defendants together with 5-6 men carrying heavy tools and machines and had forcefully, illegally and fraudulently removed the assets of the plaintiff from the retail outlet. In fact, by the time the Sales Officer had reached the retail outlet, nearly 70% of the canopy structures had already been

dismantled. Despite opposition, the defendants did not stop the work and continued to remove the assets. Immediately, a police compliant was lodged for which also no action was taken and therefore, the plaintiff was constrained to file a complaint before the Superintendent of Police, Tiruppur District which also did not yield any results. Therefore, the defendants vide their letter 04.07.2022 informed the plaintiff that they had handed over the vacant possession of the retail outlet site to the present owner, the 4th defendant. They had also informed the plaintiff about the removal of all the equipment / facilities that the plaintiff had provided for use in the dealership business and that they had kept the same in front of the premises for further action. This unilateral action of the defendants in removing the assets of the plaintiff runs foul of the agreed terms of the DPSL Agreement. Therefore, the plaintiff has come forward with the suit in question.

14. After receiving notice in the above suit, the defendants had come forward to file an application invoking the provisions under Order 7 Rule 11 of C.P.C to reject the plaint in O.S.No.653 of 2022.

15. The basis on which this application has been filed is on the ground that the plaint averments are false, misleading, baseless and self styled. The defendants would submit that the plaintiff has proceeded on a wrong premise that the retail outlet was a Company Controlled retail outlet. There is no lease agreement between the plaintiff and the defendants. The DPSL Agreement dated 07.10.1997 which is relied upon by the plantiff and referred to in Paragraph 7 of the plaint is blank in all respects and in fact, the constitution of the 1st defendant is not spelt out therein as also the description of the site. The plaintiff has voluntarily supplied the goods without a valid lease and DPSL agreement and derived a huge benefit in the form of high licence fee recovery amounts. The defendants would further submit that they are entitled to get refund of the excess licence fee recovered which amounts to nearly a sum of Rs.2 Crores and that the plaintiff is taking steps separately to recover the sum. The agreement having expired on 06.10.2012, the plaintiff continued to retain the equipment in the site without there being any extension of lease. The defendants had waited for over 10 years for removing the equipment from the property. The plaintiff had issued a legal notice dated 18.07.2024 calling upon the defendants to pay a sum of Rs.95,62,449/- as damages. However, the damages have not been quantified

under separate heads. The plaint lacks cause of action and is hopelessly barred by time. The suit in question is a frivolous suit and has to be nipped at the bud.

16. The plaintiff had denied the allegations contained in the application for rejecting the plaint by contending that a mere reading of the plaint would clearly set out the cause of action and further demonstrate, how the suit is not barred by limitation. That apart, limitation being a mixed question of fact and law, the suit cannot be rejected on this ground. Therefore they had sought for dismissal of the application.

17. The learned III Additional District and Sessions Judge, Dharapuam by his order dated 16.12.2024 was pleased to dismiss the said petition. The learned Judge had observed that there is a continuous cause of action and though a plea of limitation was raised, a mere reading of the plaint would indicate that the suit is filed within the period of limiation.

18. Heard the learned counsels on either side and perused the materials available on record.

19. The plaint is sought to be struck off on the ground that there is no cause of action and that the same is barred by limitation. The plaintiff's contention is that the lease deed had never been executed. However, from the statements made in the plaint as well as the documents filed along with the plaint, it is clear that the retail unit was functional even on 23.06.2022. The show cause notice issued by the plaintiff states that there was no valid subsisting agreement as no extension had been granted and a new agreement not entered into. They informed the defendants that the retail supply of products would be suspended if the lease agreement was not renewed. It appears that on the basis of the dealership letters, the defendants have been continuoulsy operating as the retail outlet of the plaintiff. The request for renewal of the retail unit has also been made periodically and therefore, there is a continuing cause of action. The act of removing the machinery and other assets of the plaintiff has taken place only in the year 2022 and the plaintiff has immediately rushed to this Court. Therefore, the plea of limitation is the one which has to be tested during the trial. Therefore, the learned trial Judge has rightly dismissed the application for rejecting the plaint and I see no reason to interfere with the same. Accordingly, civil revision petition is

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.04.2025

Index : Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

The learned III Additional District and Sessions Judge,

Dharapuram

P.T.ASHA, J.,

srn

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