

130 RA-RS-32-2022 in RSA-1886-2019

M/S VIMAL FILLING STATION AND ANOTHER
V/S
BHARAT PETROLEUM CORPORATION LTD AND ORS

Present: Mr. Deepak Sabherwal, Advocate
for the appellants.

Mr. Raman Sharma, Advocate
for the applicant-respondents.

The instant review petition seeks review of order dated
06.07.2022 passed by a Co-ordinate Bench in RSA-1886-2019.

2. A civil suit was filed by the non-applicants/plaintiffs
(M/S Vimal Filling Station & Anr.) for declaration with consequential
relief of permanent injunction. The crux of the matter was that one
Mahender Partap and his wife Shakuntla Devi had moved separate
applications for the allotment of retail outlet dealership advertised by
the applicants/defendants (Bharat Petroleum Corporation Ltd. & Ors.).

3. Pursuant to the process as advertised, two letters of intent
dated 02.02.2004 were issued in favour of Shakuntla Devi and her
husband Mahender Partap individually. Separate dealership
agreements of different dates were executed with both. However
subsequently, a notice dated 19.04.2013 was issued to Shakuntla Devi
to show cause as to why she had furnished a false affidavit to the
effect that no relative was having any dealership, whereas her husband
had also applied for the dealership. This led to the filing of a suit,
which was decreed by the Court of Additional Civil Judge (Sr.
Division), Mewat, vide judgment and decree dated 27.10.2017.
However, the appeal filed by the applicants/defendants against the
said judgment and decree was allowed by the Court of Additional

District Judge, Nuh (Mewat), vide judgment and decree dated 05.03.2019, vide which the judgment and decree passed by the trial Court, was set aside and the suit filed by the non-applicants/plaintiffs was dismissed.

4. This led to the filing of RSA-1886-2019 before this Court which was allowed by the Co-ordinate Bench vide judgment and decree dated 06.07.2022.

5. The sole grievance put forth by the learned counsel for the applicants is that the Co-ordinate Bench had made a factual error in the judgment in question and had wrongly observed as under:-

“ Appreciating the submissions, the testimony of DW1-Vikram Singh Thakur Manager of the BPCL in his statement categorically accepts the fact that the guidelines Ex.A1 on the basis of which termination order has come about are not mandatory and therefore is illustrative of the fact that it was by no means authorizing that husband and wife as is in the present case cannot apply and allotted LOI outlet simultaneously. It is in consequence of the same very advertisement, the husband and the wife applied for grant of an outlet which was made on 02.02.2024 to both the sides as per EX.D10 and Ex.D12, respectively.”

6. Learned counsel submits that the said observation/finding is factually incorrect, for, no such admission was there by DW-1-Vikram Singh Thakur and he had in fact denied the suggestion. Learned counsel submits that under the circumstances, this error apparent on the face of the record, led to the allowing of the appeal.

7. Per contra, learned counsel for the non-applicant opposes the application for review submitting that the appeal was allowed not only on this fact but on other grounds as well.

8. I have considered the submissions made by learned counsel for the parties.

9. No doubt, the observation/finding as regards the admission by DW1- Vikram Singh Thakur appears to be erroneous, upon perusal of the record. However, the Regular Second Appeal was not allowed only on the said ground and the Co-ordinate Bench gave detailed findings even after the aforesaid observation:-

“ To the specific query of the Court how or by what means there is suppression of material facts by the present plaintiff which has led to the termination order dated 13.01.2014, these guidelines certainly cannot attain to be mandatory unless or until provided for.

This Court cannot lost sight of the fact that husband and the wife both executed separate lease deeds Ex.D9 and D11 and which were duly scrutinized and accepted by the defendant, the BPCL and what has perplexed is that one and the same officer has scrutinized the documents and signed the same and if it was a case of malfeasance by the officials what administrative action has been initiated against him, the counsel for the BPCL could not specify.

The learned trial Court has given a well reasoned finding holding that both the husband and the wife were offered retail outlets subject to fulfilling the conditions of the same which they complied and executed lease deeds in favour of the BPCL.

More so, the action has come about after more than 19 years is an adverse circumstance to hold that all was not well with the conduct of the respondents and as has been argued on behalf of the appellant counsel which is impregnated with malice and malafideness.

In the impugned findings, the learned first appellate Court while reversing the findings of the trial Court has fallen into an error by holding that it was necessary for the husband after receiving the letter of intent to inform the company that his wife too has been issued one. Admittedly both the husband and wife are major and has separately applied and got executed the BPCL agreement separately with the company and how there is a material concealment in the affidavit Ex.D4 made by the present plaintiff, the counsel was unable to impress upon the same and which was the primary reason for the first appellate Court reversing the findings which is based on surmises and conjectures and incorrect appreciation of evidence on the records. ”

10. This would make it abundantly clear that the appeal was not allowed only on the basis of the aforesaid finding, but was allowed on other grounds as well.

11. It is well settled that while hearing a review application, the matter cannot be re-heard on merits and only an error apparent on the face of the record, can be considered. Even if the said error is considered, the final outcome will remain the same. As already observed in the preceding paragraphs, various reasons were given by the Co-ordinate Bench while allowing the appeal.

12. That being so, the present review application is found to be bereft of merit and is accordingly dismissed.

19.01.2026
himanshu

(VIKRAM AGGARWAL)
JUDGE