

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL 2016

BEFORE

THE HON'BLE MR.JUSTICE S. ABDUL NAZEER

MISCELLANEOUS FIRST APPEAL NO.2173/2016 (AA)

Between:

- 1 M/s Bharat Petroleum Corporation Limited,
A public sector undertaking,
Bharat Bhavan, Nos.1 & 2,
Ballard Estate, Mumbai 400 001,
By its Territory Manager Retail, Bangalore.
- 2 M/s Bharat Petroleum Corporation Limited,
7th Floor, Du-Parc Trinity,
17, M.G.Road, Bangalore – 560 001,
By its Territory Manager Retail,
Sri Rajeev Kumar. Appellants.

(By Sri Udaya Holla, Sr. Adv. For Sri N.J.Kumar, Adv.)

And:

B.G.Arunkumar S/o B.N.Gopal,
Aged about 58 years,
Prop. M/s Advaita, No.12,
Jayanagar 4th Block,
Bangalore – 560 011. Respondent.

(By Sri M.N.Sheshadri, Sr. Adv. For Sri M.Krishnappa, Adv.)

This Miscellaneous First Appeal is filed under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 praying to set aside the order dated 15.3.2016 passed by the VI Addl. City Civil & Sessions Judge, Bangalore City, in A.A.No.23/2016, etc.

This Miscellaneous First Appeal coming on for Further Orders this day, the Court delivered the following:

JUDGMENT

This appeal by the applicant is directed against the order in A.A.No.23/2016 dated 15.3.2016 on the file of the 6th Additional City Civil and Sessions Judge, Bengaluru City. Though the appeal is listed for orders on IA.2/2016, Sri.Uday Holla, learned Senior Counsel appearing for the appellants and Sri.M.N.Sheshadri, learned Senior Counsel appearing for the respondent submitted that the matter may be taken up for final hearing. Therefore, the matter is taken up for final hearing, heard and disposed of by this order.

2. For the sake of convenience, the parties are referred to by their respective ranking before the court below.

3. The contentions put forth by the applicant is that he is a dealer of the first respondent-Bharat Petroleum Corporation Limited marketing its petroleum products since 1989 at Hosakote and from the year 2002 in the City of Bangalore at No.3, 100 feet road, 16th Main, 1st Stage, 1st Phase, BTM Layout, Bangalore -78 under an agreement dated 1.10.2002. The respondents secured civic amenity Site No.12, 4th T Block, Jayanagar, Bangalore and an Auto LPG facility was put up in the said site. The facility was commissioned on 24.2.2007 and supplemental agreement dated 24.9.2007 was executed, which is deemed to be effective from 24.2.2007 and valid till 30.9.2017. The applicant received a notice dated 15.4.2013 proposing to terminate the supplemental agreement dated 24.9.2007 with effect from 23.4.2013. The applicant challenged the said notice by filing a writ petition in W.P.No.18598/2013. This Court by order dated 22.4.2013 granted two weeks time to the applicant to file objections and the respondents were directed not to take any action for cancellation of supplemental agreement till the disposal of the objections. It is

further contended that the applicant has filed detailed objections on 10.4.2013. The applicant sought for referring the dispute to arbitration in terms of clause 5 of the supplemental agreement in the event of the respondents not dropping further proceedings on the objections of the applicant.

4. It is further contended that sensing the attempts of the first respondent to overrule applicant's objections, he filed Arbitration Application No.444/2013 under Section 9 of the Act, which was allowed on 22.4.2014 restraining the respondents therein from interfering with the operation of the Auto LPG facility. It is contended that the respondents filed an appeal against the said order in MFA No.6145/2014, which was disposed of on 5.1.2016 on a memo filed by the appellants therein. The applicant filed SLP (Civil) No.546/2016, which was disposed of on 12.1.2016 giving liberty to the applicant to seek revival of arbitral proceedings and permitting him to participate in the proceedings and work out his remedy. Accordingly, the applicant has sought for revival of the arbitration proceedings. In the

meantime, the respondents have passed an order terminating the agreement on 12.1.2016 when the Supreme Court granted liberty to the applicant to revive the arbitration proceedings. Having regard to the conduct of the respondents, the applicant apprehends that they will take over the Auto LPG facility.

5. The respondents have filed their statement of objections by contending that one of the guidelines of the respondent-company is that no person shall be allotted with multiple dealerships. By a supplemental agreement dated 24.9.2007, the applicant has got two different retail outlet in his name, which is against the norms prescribed regarding the dealership selection process. Since the allotment of second outlet at Jayanagar is in violation of selection guidelines/multiple dealership norms, a show cause notice dated 15.4.2013 was issued seeking his explanation as to why the supplemental agreement should not be terminated with effect from the date mentioned therein. The applicant has challenged the said notice by filing a writ petition in No.18598/2013. This Court granted two weeks' time to file his

objections and directed the respondents not to take any action to cancel the supplemental agreement till the disposal of objections to the show cause notice. While replying to the show cause notice, the applicant has sought to treat the same as notice under arbitration clause 5 of the supplementary agreement dated 24.9.2007 for reference of dispute to the arbitrator. Therefore, one Mr.B.P.Singh had been nominated by the Director, Marketing as an arbitrator. The arbitrator has directed the parties to file their pleadings. Instead of filing the claim statement before the Arbitrator, the applicant wrote a letter dated 22.6.2013 to the Territory Manager of the respondent-company with a copy to Arbitrator seeking termination of mandate of Arbitrator. On receipt of the above letter, the Arbitrator issued a letter to the applicant directing him to file a formal application in this regard and extended time to file his statement of claim. Yet another letter dated 20.1.2015 was sent by the Arbitrator granting further time to the applicant to file his statement of claim. However, the applicant has failed to file any statement of claim or any formal

application before the Arbitrator. Therefore, the Arbitrator has passed an order dated 22.4.2014.

6. In the meanwhile, in May, 2013, the applicant filed an application in A.A.No.444/2013 under Section 9 of the Act before the trial Court seeking to restrain the respondents from interfering with his possession of the property. After hearing the parties, the court below was pleased to allow the application by its order dated 22.2.2014. This order was challenged by the respondents before this Court in MFA No.6145/2014. The appeal was disposed of on 5.1.2016 by holding that the impugned order dated 22.4.2014 has ceased to be in force with effect from the date of termination of the arbitration proceedings i.e. from 30.3.2015. After disposal of the said case, the respondents terminated the licence agreement and started to run the outlet as Company Owned Company Operated Outlet. It is contended that the Hon'ble Supreme Court has dismissed the SLP (Civil) No.546/2016 filed by the applicant with regard to revival of arbitration. The Hon'ble Supreme Court has not set aside the

impugned judgment passed by this Court in MFA No.6145/2014 dated 5.1.2016. Therefore, they pray for dismissal of the application.

7. The court below after hearing the learned Counsel for the parties and on consideration of the materials on record, allowed the application by its order dated 15.3.2016.

8. Sri Udaya Holla, learned Senior Counsel appearing for the appellants submits that the applicant is a licensee of the property in question. Licence has been terminated and the appellants are carrying on the business. Therefore, question of restraining the appellants from carrying on the business or directing delivery of possession does not arise. Learned Senior Counsel further submits that this Court in W.P.No.18598/2013 dated 22.4.2013 has granted two weeks time to the applicant to file objections to the show cause notice. Till the disposal of the objections, respondents were directed not to take any action for cancellation of supplemental agreement. Thereafter, the applicant

has filed objections to the notice invoking the arbitration clause contained in the supplemental agreement. Thereafter, the applicant has filed the above case under Section 9 of the Act. The appeal was disposed of on the basis of the memo. The Hon'ble Supreme Court in SLP No. 546/2016 granted permission to the respondents to revive arbitral proceedings and permitted the applicant to participate in the proceedings. In the meantime, the grant itself was terminated. It is argued that having regard to the orders of the Supreme Court, the instant arbitration application itself was not maintainable. It is further argued that since the guidelines of the respondent-company do not permit grant of multiple dealerships, the allotment of the second outlet at Jayanagar is in violation of the said guidelines. Therefore, the applicant is not entitled for any discretionary order under Section 9 of the Act. In this connection, he has relied on the following decisions:

(i) *INDIAN OIL CORPORATION LTD. VS. AMRITSAR GAS SERVICE AND OTHERS – (1991) 1 SCC 533;*

(ii) *SAMAY SINGH VS. HINDUSTAN PETROLEUM CORPORATION LTD. – 2013 (1) ARBITRATION LAW REPORTER 493;*

(iii) *D.H.MANIAR AND OTHERS VS. WAMAN LAXMAN KUDAV – (1976) 4 SCC 118;*

(iv) *ARVIND CONSTRUCTIONS CO. (P) LTD. VS. KALINGA MINING CORPORATION AND OTHERS – (2007) 6 SCC 798;*

(v) *ANATHULA SUDHAKAR VS. P.BUCHI REDDY (DEAD) BY LRs. AND OTHERS – (2008) 4 SCC 594;*

(vi) *METRO MARINS AND ANOTHER VS. BONUS WATCH CO. (P) LTD. AND OTHERS – (2004) 7 SCC 478;*

(vii) *VIRUPAXAPPA VS. REVANAPPA SIDDAPPA GANIGAR & OTHERS – 1975 (2) KLJ 96;*

(viii) ***SIDDAMMA MADIAH & OTHERS VS. GEETHA DWARAKANATH -1983 (2) KLJ 331***; and

(ix) ***E.VENKATAKRISHNA VS. INDIAN OIL CORPORATION AND ANOTHER – (2000) 7 SCC 764***.

9. Sri M.N.Seshadri, learned Senior Counsel appearing for the applicant submits that the licence was granted till 30.9.2017. The Hon'ble Supreme Court has directed revival of arbitration proceedings. This Court in W.P.No.18598/2013 has directed the appellants not to take any action till the disposal of the objections. The objections have not been disposed of so far. Since the arbitration proceedings have been revived, question as to whether there is a valid termination of the licence or not has to be determined by the Arbitrator. It is submitted that the applicant has been marketing petroleum products and auto LPG facility was given to him in another location at Jayanagar. It is argued that the guidelines have not been violated while permitting the applicant for marketing the LPG facility as contended. The guidelines do not have the force of law and that they do not have any

significance and binding effect. The LPG facility allotted to the applicant is not a new business. It is a supplement to the original outlet. The allotment of auto LPG facility is not an independent dealership by any standards. The respondent has been carrying on the business even after the alleged termination of the licence. It is further argued that having regard to the order of the Hon'ble Supreme Court, it was permissible for the applicant to initiate proceedings under Section 9 of the Act. All these questions have to be decided in the arbitral proceedings. The court below on appreciation of the materials on record, has rightly allowed the application. This order does not call for interference.

10. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

11. The supplemental agreement dated 24.9.2007 is in force till 30.9.2017. The applicant was issued with a show cause notice dated 15.4.2013 seeking his explanation as to why the

supplemental agreement should not be terminated with effect from the date mentioned therein. The applicant challenged the said notice in W.P.No.18598/2013. This Court by order dated 22.4.2013 granted the applicant two weeks' time to file his objections and directed the respondents not to take any action to cancel the supplemental agreement till the disposal of the objections to the show cause notice.

12. Admittedly, while replying to the show cause notice, the applicant has sought to treat the same as notice under clause 5 of the supplementary agreement dated 24.9.2007 for reference of the dispute to the Arbitrator. Accordingly, the Director, Marketing of the respondent-company nominated one Mr.B.P.Singh as an Arbitrator. While the matter was pending before the Arbitrator, the applicant filed Arbitration Application No.444/2013 before the VI Addl. City Civil and Sessions Judge, Bengaluru under Section 9 of the Act seeking to restrain the respondents from taking over the Auto LPG facility from him and also to restrain the respondents from interfering with his functioning in any

manner till the disposal of the arbitration proceedings in accordance with clause 5 of the supplemental agreement. The court below allowed the arbitration application on 22.4.2014.

13. The respondents filed MFA No.6145/2014 before this Court. In the said case, the respondents filed a memo stating that the Arbitrator appointed by the respondents has terminated the arbitration proceedings by order dated 30.3.2015. In view of the said memo, this Court held that the impugned order dated 22.4.2014 has ceased to be in force with effect from the date of termination of the arbitration proceedings i.e. from 30.3.2015. The appeal was accordingly disposed of.

14. The applicant filed SLP before the Hon'ble Supreme Court in SLP (Civil) No.546/2016. Hon'ble Supreme Court passed an order in the said SLP on 12.1.2016 as under:

“Therefore, since we are not inclined to entertain this Special Leave Petition, we give liberty to the petitioner to seek for revival of the arbitral

proceedings in terms of Clause 5 of the Supplement Agreement dated 24.9.2007 and in the event of such approach being made by the petitioner, the respondent shall revive the arbitral proceedings and it is for the petitioner to participate in the proceedings and work out his remedy in accordance with law.

The Special Leave Petition stands dismissed on the above terms. It is made clear that all contentions are left open for the petitioner to urge before the Arbitrator after its revival.”

(emphasis supplied by me)

15. From this order, it is clear that in the event the applicant seeking revival of the arbitral proceedings in terms of clause 5 of the supplemental agreement dated 24.9.2007, the respondent therein shall revive the arbitral proceedings. The applicant was permitted to participate in the proceedings and work out his remedy in accordance with law. The Supreme Court has clarified that all the contentions are left open for the applicant to urge before the Arbitrator after its revival. The applicant has issued notice dated 14.1.2016 seeking revival of the arbitration

proceedings. It is contended that the respondents refused to receive the notice issued in exercise of the liberty given by the Hon'ble Supreme Court. It is also contended that apprehending the interference by the respondents, the applicant lodged a police complaint on 11.1.2016 and notified them that he has preferred SLP before the Hon'ble Supreme Court against the order of this Court in MFA No.6145/2014. The respondents in their anxiety to take over Auto LPG facility, have passed the order dated 11.1.2016 terminating the agreement. Feeling aggrieved, the applicant has filed A.A.No.23/2016 seeking interim order before the trial Court. It is also relevant to notice here that applicant has filed an application in SLP No.546/2016 seeking clarification/modification of the earlier order dated 12.1.2016. In the said case, the Supreme Court has observed as under:

“We are not inclined to entertain this I.A.,
which is dismissed.

However, we only state that the nominated
Arbitrator shall complete the proceedings after its

revival expeditiously, preferably within three months. It is needless to state that both the sides should extend full cooperation in conclusion of the same. All statutory remedies available to both the parties are left open before the Arbitrator as well as the Court.”

(emphasis supplied by me)

16. It is evident from the aforesaid order that both the parties were directed to extend full co-operation in conclusion of the arbitration proceedings expeditiously after its revival. The Supreme Court has further observed that all statutory remedies available to both the parties are left open before the Arbitrator as well as the Court. Therefore, it cannot be argued that having regard to the previous order of the Supreme Court, the instant arbitration proceedings under Section 9 of the Act was not maintainable. There cannot be any bar for filing A.A.No.23/2016 seeking an interim order. Be that as it may.

17. It is well established that under Section 9 of the Act, the Court by way of interim measure, pass an order for protection, preservation, interim custody or sale of any goods, which are the subject matter of the arbitration agreement and such other interim measure or protection as may appear to the Court to be just and convenient. The grant of interim measure under this provision has to be in accordance with the well recognized principles governing grant of interim relief by way of temporary injunction under the provisions of Code of Civil Procedure. The basic object of granting interim measure is to protect and preserve the subject matter of litigation and at the same time not to allow the ends of justice to be defeated. While passing the interim order in relation to granting measure as contemplated under Section 9 of the Act, the concept of prima facie case, balance of convenience or irreparable injury have to be considered. The Hon'ble Supreme Court in ***ARVIND CONSTRUCTIONS CO.(P) LTD.***'s case (supra), has held that exercise of power under Section 9 of the Act

must be passed on the well recognized principles governing grant of injunction. It has been held thus:

“Prima facie, it appears that the general rules that governed the Court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act. There is also the principle that when a power is conferred under a special statute and it is conferred on an ordinary Court of the land, without laying down any special condition for exercise of that power, the general rules of procedure of that Court would apply. The Act does not prima facie purport to keep out the provisions of the Specific Relief Act from consideration. No doubt, a view that exercise of power under Section 9 of the Act is not controlled by the Specific Relief Act has been taken by the Madhya Pradesh High Court. The power under Section 9 of the Act is not controlled by Order 18 Rule 5 of the Code of Civil Procedure is a view taken by the High Court of Bombay. But, how far these decisions are correct, requires to be considered in an appropriate case. Suffice it to say that on the basis of the submissions made in this case, we are not inclined to answer that question

finally. But, we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well-recognised principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a Receiver.”

(emphasis supplied by me)

18. In W.P.No.18598/2013, this Court has permitted the applicant to file objections to the show cause notice and the respondents were prohibited from taking any action till the disposal of the objections. Therefore, the applicant has filed objections and in the same objections, he has sought for appointment of an Arbitrator. The arbitration proceedings have been revived pursuant to the order of the Civil Court. The applicant has sought for revival of the arbitration proceedings. The fact remains that the objections of the applicant has not been disposed of so far.

19. In the arbitration proceedings, the applicant has filed the claim statement by contending that the purported grounds of

termination are wholly unsustainable and the proposed action is both unjust and not maintainable in law. He has raised the grounds that the extant guidelines relied on by the respondents have no legal sanction or existence in the eye of law and they would not be binding to the instant case. The question as to whether the LPG facility allotted to the applicant is a new business or not or it is supplement to the original outlet needs to be considered by the Arbitrator. Various other objections in relation to termination of agreement have been raised by the applicant. The proceedings are yet to be concluded by the Arbitrator. In the meantime, if the respondents proceed to take action, the applicant will suffer irreparable loss and injury.

20. The appellants have contended that they have produced certain receipts and a panchanama to establish their possession over the suit schedule property. Even the applicant has also produced certain materials before the Court below to assert his possession over the said property. There is a serious dispute on this question as well. The Court below has considered this

aspect in detail in paragraph 24 of the order and I am entirely in agreement with the findings of the trial Court..

21. Now let me consider the decisions relied on by Sri Udaya Holla, learned Senior Counsel for the appellants.

In ***AMRITSAR GAS SERVICE***'s case (supra), the Supreme Court has held that since the contract is determinable, provision of Section 14(1)(c) of the Specific Relief Act is applicable. It was further held that award for grant of restoration of the distributorship could not have been passed. This decision has been rendered while considering the validity of the award. This decision is not applicable to the facts of this case..

In ***SAMAY SINGH***'s case (supra), the Allahabad High Court has held that proceedings under Section 9 of the Act are in contemplation of arbitral proceedings likely to be initiated or pending and the grant of interim measure though independent to the arbitral proceedings cannot go beyond the final relief which is likely to be claimed or is likely to be awarded therein. The grant of interim measure under Section 9 has to be in accordance with well

recognized principles governing grant of interim relief by way of temporary injunctions in consonance with Specific Relief Act, 1963 as well as the provisions of Code of Civil Procedure. In the instant case, there is serious dispute between the parties in relation to termination of contract. The Arbitrator is yet to decide the matter on merits. Pending disposal of the said case, certain interim protection has been sought for.

In *D.H.MANIAR's* case (supra), the Hon'ble Supreme Court has held that a person continuing in possession of the premises after termination of the licence, continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person by no stretch of imagination can be called a licensee. If, therefore, the respondent was not a licensee under a subsisting agreement in occupation of the premises, he could not take shelter under Section 15A of the Bombay Rent Act. In the instant case, the termination of the licence itself is in dispute. Pending disposal of the arbitral proceedings, the court below has granted interim

protection. Therefore, this decision has no application to the facts of this case.

In ***ANATHULA SUDHAKAR***'s case (supra), the Hon'ble Supreme Court was considering the nature and scope of the suit for prohibitory injunction in relation to immovable property. The Court has laid down certain principles in relation to such suits. This decision has also no application to the facts of the present case.

In ***METRO MARINS***'s case (supra), the Hon'ble Supreme Court has held that interim mandatory injunction could be granted only in exceptional cases noticed in *Dorab Cawasji Warden case – (1990) 2 SCC 117*. It was further held that where the suit was filed for decree of khas possession of suit property against the alleged licensee on the ground of expiry of licence period, grant of interim mandatory injunction for delivery of possession to the plaintiff during the pendency of the suit is not covered under one of those exceptions and that it did not warrant issuance of such an interim mandatory injunction which

amounted to pretrial decree. This decision has no application to the facts of the present case.

In ***VIRUPAXAPPA***'s case (supra), this Court has held that an order granting injunction will be interfered with, if there is no indication in the order that the Court had applied its mind to the allegations in the affidavit. In the instant case, the court below on consideration of the materials on record, has allowed the application filed by the applicant seeking interim protection.

In ***SIDDAMMA MADIAH***'s case (supra), this Court has held that a licence may be revoked either expressly or impliedly and the licence gets terminated ipso facto on the expiry of the agreement. The licensee after the expiry of the licence would be a trespasser. In such a case, the licensor has a prima facie case to restrain the licensees by way of temporary injunction. In the instant case, that is not the position.

In ***E.VENKATAKRISHNA***'s case (supra), the Hon'ble Supreme Court has held that if the termination was unlawful, distributorship cannot be restored. The reference would only be

for consequential relief of wrongful termination. The Arbitrator had no power of jurisdiction to award restoration. In the instant case, the Arbitrator is yet to decide the matter on merits.

22. The Court below has followed the well recognized principles governing grant of relief by way of temporary injunction under the provision of CPC while passing the impugned order. I do not find any error in the said order. The appeal is accordingly dismissed.

23. In view of the dismissal of the appeal as above, I.A.No.2/2016 does not survive for consideration. It is accordingly dismissed. No costs.

Sd/-
JUDGE.

BMM/-