
(1998) 07 BOM CK 0026

In the Bombay High Court

Case No : Civil Rev. Application No. 292 of 1995

Bharat Petroleum Corporation Limited and another

APPELLANT

Vs

M/s Jethanand Thakordas Karachiwala and others

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 9 Rule 2, 115

Contract Act, 1872 — Section 201, 202, 205, 206

Specific Relief Act, 1963 — Section 14(1)

Citation : (1999) 1 ALLMR 319 : (2000) 1 BomCR 289

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : Sudhir D. Kulkarni, for the Appellant; S.B. Talekar, for the Respondent

Judgement

A.B. PALKAR, J.—This revision petition u/s 115 of the CPC is filed by the original defendants in Regular Civil Suit No. 644 of 1994 on the file of Civil Judge Senior Division, Kopargaon.

2. The respondent/plaintiff filed suit for a permanent injunction restraining the present petitioners from removing the plaintiff/respondent from distributorship on the ground that termination of contract of distributorship of L.P.G. gas executed in favour of the plaintiff by the defendants was illegal and also for a mandatory injunction directing the defendants to return the Cylinders, Regulators, etc. taken in possession by them in pursuance of the termination of distributorship. The consequential prayer is also made that the distributorship given to defendants No. 4 and 5 being illegal, they should not be allowed to work as distributors. The learned Civil Judge allowed the application of respondents and even passed a mandatory order directing them to return the Cylinders, Regulators, etc. within eight days and from obstructing the plaintiff in doing business of distributorship of L.P.G. Gas without properly terminating the distributorship by giving one months notice as per the agreement.

3. This order was to some extent restricted by the learned 4th Additional District Judge by his order dated 2-2-1995 while dismissing the appeal of the respondents as well the cross objection of the plaintiff by deleting the words one months notice and substituting for it the words reasonable notice. Being aggrieved by these two concurrent orders of injunction, the defendants have come to this Court and although initially it was filed as a writ petition, it was later on converted into Civil Revision Petition as per order of this Court.

4. The material facts to understand the controversy and the points involved can be summarized as below. Suit was filed by the contesting respondent contending in the plaint that defendant No. 1 is a company having Divisional Office at Pune and defendant No. 2 manages the office at Pune.

5. Plaintiff had taken agency of Burshan Gas in the year 1975 and agreement for that purpose was entered into on 17-10-1975. When the plaintiff was looking after legitimately the business of distributorship in pursuance of the agreement, about 8 to 10 persons of the defendant company came to the plaintiffs shop on 18-10-1994 and took custody of all records of Bharat Gas Company, Regulators and Cylinders by force. Plaintiff, therefore, filed a complaint to the police station but the police did not help the plaintiff and so plaintiff filed an application to the Magistrate. Thereafter the distributorship was given to defendants Nos. 3 and 4 compelling the plaintiff to file the suit. The termination of distributorship of plaintiff is illegal as one month's notice is not given to plaintiff as required by the agreement. The deposit placed with defendants by the plaintiff is not returned and the entire act of the defendants is illegal and in violation of the principles of natural justice. On reading the notice published in newspaper on 19-10-1994 plaintiff came to know that the defendants have cancelled distributorship. Thus, defendants have not followed any legal procedure and have illegally taken in custody the Cylinders, Regulators have certain documents.

6. Along with the suit an application was filed for ad interim injunction and the learned Civil Judge issued ad interim injunction which came to be confirmed after hearing the parties.

7. This application was resisted by the defendant contending that the plaintiff has committed number of serious irregularities and breaches of the terms and conditions of agreement. Number of customers were registered unauthorisedly without the sanction of defendants in contravention of the agreement. The standard of service of plaintiff was also not proper and number of letters were sent to the plaintiff bringing to his notice repeatedly the breaches being committed. The plaintiff, in fact, admitted such serious breaches and illegalities committed and assured the defendants to regularise everything. Plaintiff has unauthorisedly given delivery of 571 Cylinders and 291 Pressure Regulators without maintaining account and the distributorship agreement was terminable and has been terminated on account of breach committed by the plaintiff by letter dated 18-10-1994. Thereafter notice was also published in local newspapers and inspite of these the plaintiff filed the present suit suppressing

number of material facts including the fact that the distributorship is revoked as a result of breaches committed by plaintiff. Moreover, the contract is one which cannot be specifically enforced and the remedy which plaintiff is at the most of seeking damages in case it can be successfully contended that the termination is illegal. In no case a permanent injunction can be issued and the plaintiff having no prima facie case, no temporary injunction could also have been issued.

8. The agreement itself provides that in case of any dispute between parties in respect of the contract suit shall be filed in Court at Bombay and thus the Civil Court at Kopergaon has no jurisdiction to entertain the suit.

9. In this Court arguments were advanced at length by the learned Counsel appearing for the parties. On behalf of the petitioners it was contended that jurisdiction of Civil Court at Kopergaon is excluded by agreement and this fact has not been properly considered by the Courts below. Moreover, in the very nature, it was an agreement of agency of distributorship and could be terminated by either side and not only by the defendants. Moreover, this present termination of agreement is on account of number of breaches committed by the plaintiff. The defendants had received number of complaints from customers. Inspections were conducted, breaches were brought to the notice of the plaintiff, he admitted and offered to correct the breaches but failed and as such the defendants were left with no alternative than to terminate the contract. Plaintiff's remedy is only to claim damages.

10. As against this, Shri S.B. Talekar, learned Counsel appearing for respondent No. 1 submitted that this was not an agreement of distributorship alone. The agreement did not prescribe any time limit for its continuation and as such it was a permanent agreement. That is to say liable to be continued in perpetuity and the plaintiff had acquired an interest in the property and the business of distributorship and the contract could not be terminated. The courts below have taken a reasonable view and the concurrent findings of the courts below cannot be interfered with in exercise of revisional jurisdiction. The clause ousting jurisdiction of Kopergaon Court is vague and does not recognize exclusive jurisdiction of Civil Court at Bombay.

11. In order to consider the arguments of the learned Counsel, it is necessary to refer to certain clauses of the agreement. It is undisputed fact that initially the agreement was with Burma Shell Oil and Storage Company which company was later on taken over by the Government and thereafter Bharat Gas Company is established and the agreements which were entered into earlier continued. The agreement describes the plaintiff as agent of the defendant company and even if the duty of the plaintiff is of distributorship, in my view, the jural relationship between parties is nothing else than principal and agent. The agreement categorically defines the area of operation of the plaintiff to Municipal limits of Kopergaon as existing on the date of agreements Clause 4 of the agreement categorically shows that the company is not prohibited from appointing at any time and other person as distributor for sell of gas in the said area and the agent

is directed to confine himself strictly to the area as stated in the agreement by Clause (6). The agent is further directed to comply with the instructions issued by the company from time to time. By Clause 25 the agent is made liable to collect all amounts including deposits from customers in respect of Cylinders and Pressure Regulators and to forward them forthwith to the company. Clause 32 clearly shows that the agreement can be terminated by either party by giving a notice of not less than 30 days. It must be pointed out here only that this termination has nothing to do with termination on account of breach. This termination is independent of any breach by either party and, therefore, in case the agreement has to be terminated without there being any fault on the other side, then alone one month's notice is prescribed. Even then by Clause 33 the company is at liberty to terminate the agreement forthwith at any time on happening of certain events which are enumerated thereafter and include commission of breach or any stipulation contained in the agreement by the agent or if the agent does not adhere to the instructions issued from time to time by the company or in case the agent commits any act which in the opinion of the Marketing Manager of the company is prejudicial to the interest of the company. According to Clause 34 on termination of agency, the agent is liable to deliver to the company all cylinders, pressure regulators and all other material belonging to the company and on his failure to deliver the same, the company has a right to enter into the premises of the agent and take the goods in their custody.

12. As per Clause 42 it is expressly agreed that this agreement has been made in Bombay and any dispute or suit, action or proceedings arising out of the agreement or breach thereof or in respect of any matter or thing therein contained and any claim by either party against the other shall be instituted or adjudicated upon or decided in the first instance by the appropriate Court in Bombay.

13. So long as the breaches or irregularities committed by the plaintiff was not brought to the company's notice, everything went on well. There are, however, number of letters on record which clearly indicate that the plaintiff was not only committing breach but was repeating the commission thereof and also admitted the same. By letter dated 10-8-1992 plaintiff informed the defendant company with reference to their letter dated 5-6-1992 which is nothing but explanation offered by the plaintiff assuring the defendant company to pay special attention to issue (1) customer cards, (ii) to maintain refill order register, (iii) to maintain D.P.R. replacement register and stock register. It is also stated by the plaintiff that the plaintiff is now giving home delivery of hundred cylinders daily. It is further admitted that connections have been given at Rahata and Shirdi on a misunderstanding that the agency is for Kopergaon taluka. I have already pointed out that the agency was limited only to the Municipal limits of Kopergaon and there could be no misunderstanding that it was for entire Kopergaon taluka . Thus, on plaintiff's own showing they had given connections outside the area of operation and it is further agreed by the plaintiff that he would stop giving connections outside the area as per the instructions of the defendants.

14. By letter dated 26th May, 1993 the plaintiff has in categorical terms admitted that there was a back log and, therefore, he did not give home delivery to customers. Plaintiff did not issue printed cash memos as the printed cash memos had exhausted. D.P.R. Replacement Register and Mechanics register is not correctly maintained.

15. By a letter dated 14-10-1993 the defendants brought to the notice of the plaintiff various breaches committed. The plaintiff was also informed that by their letters dated 24-9-1991, 12-12-1991 and 10-8-1992 they have replied only three letters and other letters are not even replied. However, by letter on 24-11-1992 dated plaintiff has categorically admitted grant of unauthorised connection without preparing proper and valid subscription voucher. The plaintiff has also admitted by letter on 20th December, 1991 the shortages of domestic pressure regulators found during inspection and stock check and the fact of having given connections outside the area . It was also brought to plaintiff's notice that having given unauthorised connections and delivered Cylinders to unauthorised persons without preparing subscription vouchers, the plaintiff was not in a position to account for the shortage as per stock book and existing stock found in physical verification and in order to suppress this the plaintiff was collecting empty cylinders from the customers without giving receipts and increasing the physical stock artificially to show that there was no shortage. It was further stated that the plaintiff has created artificial backlog by not sending Demand Drafts for the supplies to be made by plaintiff. Not only this but they had issued fake termination vouchers (TV) in the name of existing customers who were in fact still residing in the marketing area of plaintiff and this was done without the knowledge of the said customers. This was in collusion with the receiving distributor for release of a new connection and authorised customers were converted into unauthorised customers in order to continue issuance of refill cylinders and this was all done behind the back of the customers. In addition the plaintiff had over-charged some customers for which complaints had been filed Consumer Disputes Redressal Forum, Ahmednagar and there the plaintiff admitted the breaches before the Forum. The plaintiff was also informed that he was unauthorisedly taking advance money from customers and had failed to remit money collected from the customers to the company. The number of shortages in Cylinders found was also brought to the notice and that he was called upon to return the Cylinders and pressure regulators, and plaintiff was informed that on failure he would be liable to pay Rs. 7,72,750. Even thereafter by letter dated 24-11-1993 the plaintiff was informed that no explanation was given and as such the defendant company shall be at liberty to take any action. Another reminder was sent on December 14, 1993 and thereupon plaintiff came with reply dated 21-12-1993 admitting that he could not issue subscription vouchers and requested the defendants not to charge at penal rate but to allow him to issue subscription vouchers and regulators at usual rates pleading hard financial condition and seeking for a favour of new allotment. By letter dated 18th July, 1994 it was brought to plaintiff's notice that inspite of the above facts

and circumstances, the plaintiff had received one empty cylinder and he acknowledged this fact in writing in Marathi. The subscription vouchers were issued without affixing stamps although the plaintiff was collecting Rs. 20/- from every subscriber towards stamp duty and thereby causing loss of revenue to the Government. The Stock Register and Refill order register was not matching and it is after this that by letter dated 17-10-1994 after bringing all the irregularities, and various clauses of the agreement in detail to the plaintiff's notice, various admissions of the plaintiff the result of inspection conducted by the defendants company terminated the agreement dated 17-10-1975. It is really unfortunate that the courts below have not at all taken into consideration all these developments which clearly show that every time the plaintiff was committing breach of the agreement. Plaintiff was given repeated opportunities to correct himself. The consumers were complaining and had approached the Consumer Forum and thereafter as a last resort the defendants having been left with no alternative, terminated the agency of distributorship entered into with plaintiff. With this factual background, let us consider the legal aspects of the matter

16. The provisions of section 201 onwards of the Indian Contract Act are in respect of termination of agency. As per section 201 the circumstances in which the agency is revoked or can be terminated are stated and a plain reading of the section shows that the agency is terminable by the principal by revoking agent's authority, or by the agent renouncing the business of the agency. As per section 202 where an agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest. As per section 203 the principal may, save as is otherwise provided by the last preceding section (section 202) revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal. As per section 205 where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause. The next section 206 referred to by the courts below is to the effect that reasonable notice must be given on such revocation or renunciation or otherwise the damage thereby resulting to the principal or the agent, as the case may be must be made good by the one to the other. A bare reference to these provisions would show that except in cases provided u/s 202 the agency can be terminated at any time and in the cases covered by section 202 when the agent has himself an interest in the property which is subject matter of agency, the same can be terminated or revoked at any time. A reading of section 205 and section 206 shows that even if there is termination of agency by the principal, the remedy is to claim damages. According to section 14 of the Specific Relief Act the contracts which cannot be specifically enforced include a contract for the non performance of which compensation in money is an adequate relief. A contract which in its nature is determinable can also not be specifically enforced. As per section 16 of the

Specific Relief Act, specific performance of the contract cannot be enforced in favour of a person who (a) --- (b) has become incapable of performing or violates any essential term of, the contract that on his part remains to be performed or acts in fraud of the contract or wilfully acts at variance with, or in subversion, of the relation intended to be established by the contract. Therefore, without going into the merits also, it can be clearly stated that in view of the terms of contract detailed above this was a contract which could be terminated by either party. The question of notice for termination would arise only if it is to be terminated for no fault of the opposite party. This was a case of flagrant and consistent breaches committed by the agent. Such commission of breaches was also admitted by him and, therefore, it does not lie in his mouth to say that the contract should have been terminated after one month's notice to him because that clause would apply when without any fault on the part of the agent contract is to be terminated by the principal.

17. In this connection, reliance is placed by the petitioner on a judgment of the Supreme Court in which even certain facts were also similar to the present case viz Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, . In the case before the Apex Court a distributorship agreement dated April 1, 1975 was made between Indian Oil Corporation Ltd. (Company) and Amritsar Gas Service (respondent No. 1) as distributor of the Corporation for sale of Corporation's liquified petroleum gas (L.P.G). Clause 27 of the agreement provided for termination of agreement by Corporation forthwith on happening of any of the specified events and Clause 28 permits either party without prejudice to the foregoing provision or anything to the contrary contained in the agreement to terminate the agreement by 30 days, notice to the other party without assigning any reason for such termination and Clause 27 provided for adjudication of any dispute or difference by Arbitrator. In that case the appellant/Corporation received complaints about working of distributorship alleging unauthorised connections being given and tampering of waiting- lists of customers by the distributor which were acts prejudicial to the interest of the appellant Corporation and the appellant Corporation inducted Clause 27 of the distributorship agreement by letter dated 11th March, 1983 and terminated forthwith the distributorship. The learned Arbitrator held that the termination of the plaintiff's distributorship was not validly made by defendant Corporation and the issue was therefore decided against the plaintiff. The Apex Court while taking a contrary view has observed in paragraph No. 12 as below :---

"The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under Clause 27. Thereafter, he proceeded to record the finding on issue No. 2 relating to grant of relief and held that the plaintiff-respondent No. 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship

agreement was for an indefinite period till terminated in accordance with the terms of the agreement and therefore the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under. This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid Clauses 27 and 26. Having said so in the award itself it is obvious that the arbitrator held the distributorship to be revocable in accordance with Clauses 27 and 28 of the agreement. It is in this sense that the award describe the Distributorship Agreement as one for an indefinite period that is till terminated in accordance with Clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revocable and the same being admittedly for rendering personal service. The relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced one of which is a contract which is in its nature determinate. In the present case, it is not necessary to refer to the other Clauses of subsection (1) of section 14, which also may be attracted in the present case since Clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinate. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant Corporation is contrary to the mandate of section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to the law governing such cases. The grant of this relief in the award cannot, therefore, be sustained"

(Underlining is mine).

18. The Court further held that the relief granted regarding price of 224 Cylinders and 384 Regulators taken away by the appellant Corporation from the plaintiff/respondent No. 1 in the award was also not proper as the property belonged to the appellant Corporation and the direction to pay its price to the plaintiff/respondent discloses an error of law apparent on the face of award.

In para No. 14 the Court further observed that

"The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made - under Clause 27 of the agreement. No doubt, the notice of termination of distributorship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant-Corporation and such acts would permit exercise of the right of termination of distributorship under Clause 27. However the arbitrator having held that Clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revocable by either party in accordance with Clause 28 by

giving 30 days notice, the only relief which could be granted was the award of compensation for the period of notice that is 30 days. The plaintiff-respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation."

It would show that even if the Apex Court found that since it was against an arbitration award and the Arbitrator had held that Clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding must proceed on that basis in view of the limitations to interfere with the award by the Court as per the provisions of the Indian Arbitration Act. The agreement being revocable by either party in accordance with Clause 28 by giving 30 days notice the only relief which could be granted was of award of compensation. In the present case, I have already pointed out that the plaintiff themselves had admitted commission of breach of contract. They were given repeated opportunities to correct the errors and to remedy the breach but had failed and, therefore, in my view, the defendant Corporation was justified in terminating the contract. Even if it is presumed for the sake of argument that such termination required a particular notice, the only remedy that could be sought against the Corporation by the plaintiff was of damages for the said period and no other remedy was available. By no stretch of imagination could the plaintiff (respondent) claim continuation of the contract for indefinite period on the basis that one month's notice was not given because even in that case the only remedy available to plaintiff was to claim the damages for that much period and nothing more. The contract could not be specifically enforceable defendant company could not be compelled to continue the distributorship of the agent who has duped not only the defendants but even the customers. In another case reported in *Southern Roadways Ltd., Madurai Vs. S.M. Krishnan*, the Supreme Court pointed out that on revocation of agency, the agent cannot remain in possession of the premises for the purposes of carrying business of company and on termination he had no right to remain in possession of the premises. He is not entitled to interfere with company's business. In paragraph No. 9 the Apex Court has stated:-

The force of this argument cannot be gainsaid. Counsel, in our opinion, appears to be on terra firma. The principal has right to carry on business as usual after the removal of his agent. The courts are rarely willing to imply a term fettering such freedom of the principal unless there is some agreement to the contrary. The agreement between the parties in this case does not confer right on the respondent to continue in possession of the suit premises even after termination of agency. Nor does it preserve right for him to interfere with the company's business. On the contrary, it provides that the respondent could be removed at any time without notice and after removal the company would carry on its business as usual. The company under the terms of the agreement is, therefore,

entitled to assert and exercise its right which cannot be disputed or denied by the respondent.

19. On behalf of the respondents, it was strenuously contended by learned Counsel Shri S.B. Talekar that there is a concurrent finding of two courts below and it is a concurrent finding of two courts below and it is not proper on part of this Court to interfere with the same. However, I have already indicated earlier that the courts below have failed to apply correct legal provisions applicable to the facts of the case and had even perceived the fact of the case in a manner which can be said to be perverse and have thereby put a premium on the dishonest acts of the plaintiff and as such this is a fit case for interference while exercising revisional jurisdiction.

20. It must be borne in mind that while coming to the Court to seek relief of temporary injunction plaintiff must make out a prima facie case. A prima facie case means that the plaintiff can show to the Court that in all probabilities ultimately he would succeed in securing a permanent injunction and therefore refusal of relief pending the trial would make the final relief even if granted, infructuous and in order to make the same effective, it is necessary to grant the relief even pending suit. In this case, the plaintiff had miserably failed to make out a case that he would be in a position to claim a permanent injunction. Secondly, the above stated facts and admissions of the plaintiff for having committed various breaches of the contract and having given connections to persons beyond the territorial limit and having accepted money without receipt and even stamp duty in cash without purchasing necessary stamp plaintiff had perpetuated fraud and had obviously not come with clean hands to claim temporary injunction. This was also clearly overlooked by the courts below while granting temporary injunction. Another aspect of the matter as already pointed out is that even presuming for the sake of argument that the plaintiff had not committed any breach the maximum relief that the plaintiff could claim was of compensation for the period of notice and in no case the plaintiff could claim that the defendants be compelled to continue him as their agent even though the defendants did not want. Furthermore, the agreement itself provided that defendants were at liberty to engage any other distributor for the aforesaid area. Therefore, even without terminating the agency of plaintiff defendants could have appointed other person as an agent for the said area.

21. In this connection Shri Talekar, learned Counsel for respondent No. 1 tried to contend that the judgment of the Apex Court reported in 1991 S.C.C. 533 (supra) is not applicable to the present case as it was an agreement of distributorship and this is an agreement of agency. However, the learned Counsel could not answer my query as to what is the jural relationship of a distributor of L.P.G. Gas and the company engaging him as distributor. The answer is simple. The jural relationship is of principal and agent and the same was the jural relationship in the case before the Apex Court. It is also observed by a Division Bench of Madras High Court in S. RM. S.T. Narayana Chettiar and Another Vs.

The Kaleeswarar Mills Ltd. and Others, that the effect of want of notice of revocation of proxy to the agent (proxy) does not invalidate the revocation or the termination of the authority of the proxy but makes the principal liable for any damage that results to the agent by reason of such want of notice.

22. On behalf of the respondents, reliance was placed on International Oil Co. Vs. Indian Oil Co. Ltd. now known as Indian Oil Corp. Ltd., Madras, . Referring to an earlier judgment of Chancery Appeal, at page 425 the Court pointed out:

"In all indefinite mercantile or commercial contracts, the question whether the relationship of principal and agent can be terminated by a reasonable notice or only by mutual consent is one of construction, subject to the rules of law. There is no general rule of permanence. An agency may be terminated in various ways. If the termination of the agency by the principal is inequitable or works an unjust hardship on the agent, the law requires a reasonable notice to be taken. The Indian Oil Corporation cannot arbitrarily terminate the contract of employment nor they can break the contract prematurely or without the specific notice. It is a case of a wrongful dismissal and the plaintiff can sue for damages."

It was a case in which there was reservation in favour of one party to cancel the contract of agency which is not the case herein. In the present case both the parties could terminate the contract and in case of breach by the agent, the principal could forthwith terminate the contract. *The breaches were apparent and were also admitted by the plaintiff in the correspondence and, therefore, plaintiff had miserably failed to make out a case that he was entitled to one month's notice. As already pointed out even if such a case is presumed to be made out, the remedy of plaintiff was to claim damages. The plaintiff had no prima facie case to secure injunction order. However, inspite of these facts and circumstances, the courts below have issued even mandatory injunction in favour of the plaintiff of returning the Regulators and Cylinders which were taken in custody by defendant company, which were admittedly the property of defendant company and which were taken in custody after due notice and after bringing to the notice of the plaintiff the repeated breaches committed performance of contract of agency.

23. On behalf of the respondent it was tried to be contended that the respondent was compelled to do certain things by the orders of Consumer Forum and, therefore, if the compliance with the said orders has resulted in certain breaches, then respondent should not be punished for the same. The argument is liable to be rejected on the face of it, because the orders of the Consumer Forum which are produced on record clearly show that certain consumers were aggrieved with the conduct of the plaintiff in the business of distributorship. Plaintiff was not providing gas connections to the persons on the reaching maturity in waiting list. The plaintiff was not giving home delivery to customers. The customers were compelled to complain to the company and approach the Consumer Forum and the Forum found that there was deficiency in service of the plaintiff and he was called upon to pay costs to the customers. The plaintiff was not providing

Cylinders to the customers in time even after receiving stock from the defendant company and the consumers had to suffer. In another case plaintiff was compelled to give gas connections to persons as they had not received the connection in spite of their numbers having matured in the waiting list. Therefore, the arguments of the respondent that they were compelled to commit certain breaches of the agreement due to orders passed by the Consumer Forum is to say the least totally unsustainable and an attempt to cover up the plaintiff misdeeds he has resorted to this argument.

24. Thus, in a nutshell this was not a case in which even prima facie the plaintiff could establish that he was entitled to a permanent injunction or to the mandatory relief and no temporary injunction could be granted in favour of the plaintiff and as against the defendants. Even if on facts the plaintiff's claim is presumed to be true, the only remedy the plaintiff could seek was of compensation for the notice period and not of injunction which has the effect of foisting on defendant company, plaintiff as their agent and this is also in a case where the plaintiff has admittedly committed breach of contract number of times which has ultimately resulted in causing hardship to the consumers. The Courts below have thus wrongly interpreted the agreement and the legal position applicable to the nature of contract between the parties and the orders have resulted in putting a premium on the dishonest acts of the plaintiff and, therefore, the Courts have wrongfully exercised jurisdiction vested in them by law while passing the impugned orders.

25. I have not discussed in detail the issue of jurisdiction but even a prima facie reading of Clause 42 shows that the said clause restricted the territorial jurisdiction to Bombay where the agreement was entered into. This is, however, expressed by me only prima facie as in my view even if that issue is held in favour of the plaintiff, on merits the plaintiff was not entitled to reliefs and the relief of temporary injunction and mandatory injunction granted by the Courts was to excessive and wrongful exercise of jurisdiction and the impugned orders deserve to be set aside. I have, therefore, refrained from expressing in detail myself on the interpretation of Clause 42 regarding territorial jurisdiction.

26. In the result, petition succeeds and is allowed. The order passed by the learned Civil Judge Senior Division Kopergaon on 14-12-1994 below Exh. 5 in Regular Civil Suit No. 647 of 1994 and the order passed by the 4th Additional District Judge Ahmednagar in Misc. Civil Appeal No. 321 of 1994 on 2-2-1995 are set aside and the application for temporary injunction Exh. 5 is dismissed with costs throughout. Hearing of the suit is expedited. Parties are directed to appear before the Trial Court on 18th August, 1998.

27. Revision allowed.