(2001) 02 DEL CK 0068

In the Delhi High Court

Case No : FAO (OS) No''s. 77 and 235 of 2000

Bharat Petroleum Corporation Limited	APPELLANT
Vs	
Shri Hari Chand Sachdeva and others	RESPONDENT

Date of Decision : 02-02-2001

Acts Referred:

Citation : (2001) 3 AD 902 : AIR 2001 Delhi 307 : (2001) 90 DLT 817

Hon'ble Judges : Mukul Mudgal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. A. Banerjee, for the Appellant; Mr. A.K. Verma and Suman Bagga, for the Respondent

Judgement

Devinder Gupta, J.—In the first appeal [FAO (OS).No.77/2000] order dated 1.3.2000 and in the second appeal [FAO(OS) No.235/2000] order 10.3.2000 passed by learned Single Judge in suit No.2274/97 are under challenge at the behest of Bharat Petroleum Corporation Limited.

2. The facts in brief are that on 27.12.1997 Hari Chand Sachdeva filed a suit in this Court impleading Smt:Shakuntala Devi, as defendant No.1 and Rakesh Sachdeva, defendant No.2 in which he prayed for passing a decree dissolving the partnership from the date of notice given by him to Shakuntla Devi or from such date, as may be deemed just and proper by the Court. In addition, he prayed for; a preliminary decree against the defendants to render accounts of the partnership; a decree for the amounts to be found due to the plaintiff from the defendants and; a decree for permanent injunction against the defendants restraining them from interfering in his possession in respect of the Petrol Pump being run by the name of Raj Nath Motors, Moti Bagh, New Delhi.

3. At this stage, it may be mentioned that Bharat Petroleum Corporation Limited (for short "BPCL") was not a party to the suit. No relief had been claimed in the suit against BPCL. Dealership agreement with BPCL earlier was under the joint signature of Hari Chand and one Sanjeev Behl, on the basis of which license to

run the Petrol Pump had been granted by BPCL. Sanjeev Bahl had resigned from partnership and consequently BPCL had appointed Hari Chand as the sole licensee. For the purpose of deciding this appeal, we need not state inter se dispute between Shakuntla Devi and Hari Chand except by making a reference to the joint statement of the plaintiff and defendants recorded in Court, which ultimately led to the passing of the two orders.

4. The defendants were served in the suit. On the interim applications also notices were issued. No written statement was filed by the defendants. On 15.5.1998 an application (IA.435/98) was filed by the defendants u/s 8 of the arbitration and Conciliation Act, 1996 for stay of the proceedings in the suit and for reference of all disputes for Arbitration as per the arbitration agreement. A few orders were passed from time to time. First order was passed on 20.5.1998 on the statement made by learned counsel for the defendants that they shall not take any cash from the premises in question. It also appears that an intention was expressed by the parties to settle the matter and ultimately on 10.1.2000, on which date the plaintiff Hari Chand and defendants Shakuntala Devi and Rakesh Sachdeva were present in Court, a A compromise is alleged to have been arrived at. The parties did not file any separate application for recording compromise. The terms of the compromise were also not separately reduced into writing. The Court, however, proceeded to record a composite statement of Hari Chand, plaintiff and Shakuntla Devi, defendant No.1 and Rakesh Sachdeva, defendant No.2. After composite statement of the parties was recorded Shri Debasish Mohanty, Advocate, who was present in Court, was appointed as a Local Commissioner with direction that in presence of the parties the Local Commissioner will prepare an inventory of the goods and that the same will be placed on the will record. Case was adjourned to 11.1.2000. The order passed on 10.1.2000 reads:-

"Mr.Hari Chand Sachdeva, plaintiff is present in Court. Mr Ramesh Sachdeva, defendant no.2 is also present in Court. Let all the parties sign the compromise entered into between the parties.

The parties, without prejudice to their right and contentions in the suit as well as other legal proceedings pending between the parties in any other court in respect of the business of the petrol pump by the name of M/s.Raj Nath Motors at Shanti Path, Moti Bagh, New Delhi, on an experimental basis for a period of one year, have agreed to a compromise, which is being recorded separately.

The compromise undertaking of both the parties has been recorded separately.

Mr.Debasish Mohanty, Advocate, Chamber No.113, Delhi High Court Chambers, Delhi High Court, New Delhi who is present in Court is appointed as Local Commissioner in whose presence the parties will prepare the inventory to be placed on record. The fee of the Local Commissioner shall be Rs.5,000/- to be paid by the defendants subject to further order in this regard by this Court.

Recently on 11.1.2000 at 2.00 P.M."

5. The composite statement of the parties recorded by the Court on 10.1.2000 reads :-

"We, plaintiff, defendant No.1 and defendant No.2, without prejudice to our rights and contentions in the suit as well as other legal proceedings pending between us in any other court in respect of the business of the petrol pump by the name of M/s. Raj Nath Motors at Shanti Path, Moti Bagh, New Delhi, undertake as follows:-

1. The entire money transactions including receipt of cash, deposit of cash in the bank account as well as transactions carried out through the bank by cheques or bank drafts shall be completely handled by defendant no.1. The plaintiff shall not be responsible for any civil or criminal liability arising out of these transactions carried out by defendant no.1 who alone shall be responsible and liable for the same. The Bharat Petroleum Corporation Limited (BPCL) shall not treat this as a violation of any of its terms and conditions against the plaintiff. For this purpose, defendant no.1 can remain present at the petrol pump at any time. Defendant no.1 or any authorised representative of defendant no.1 shall properly record the entire collections and expenses and shall maintain the accounts properly. The said account shall be open to inspection by the plaintiff or his authorised representative at any time. The defendant no.1 shall not create any kind of liability, financial or otherwise against the plaintiff or against M/s.Raj Nath Motors by raising any type of secured or unsecured loans from the bank or any private individual. However, this shall not include any payments made to the BPCL for purchase of petrol, lubricants etc. Defendant no.1 shall be responsible to submit a duly audited balance sheet from 15.1.2000 till 31.3.2000 and from 1.4.2000 till 31.12.2000 before this court with a copy to the plaintiff.

2. The plaintiff shall not interfere in the day-to-day running of the business. Defendant no.1 shall be responsible for making payment of all the expenses being incurred by the plaintiff at present which have been detailed by defendant no.1 in various annexures filed along with her affidavit in the present proceedings. Further, defendant no.1 shall ensure that petrol and other products of BPCL are never exhausted at the petrol pump due to paucity of funds.

3. Defendant no.1 shall not remove from service the present employees/ contractors until and except with the prior permission of this Court. If due to growth of the business more persons are required to be employed, defendant no.1 can do the same after informing the plaintiff in writing. However, no liability shall be fastened in the hands of the plaintiff.

4. Defendant no.1 by virtue of this agreement or for any other reason, shall not endeavor in any manner whatsoever to either write to the BPCL in any capacity or to deal with them in any manner whatsoever. Only the plaintiff shall be entitled to do so. However, the plaintiff shall not refuse to write to BPCL in case it is required for better functioning of the business.

5. Defendant no.1 undertakes that defendants will deposit on or before 10th day

of each succeeding month a cheque in the sum of Rs.75,000/- in the name of the plaintiff in his Savings Bank Account No.2609 with Indian Overseas Bank, Model Town Branch, Delhi. The first payment shall be made by the defendant of the amount of Rs.37,500/- before 22nd January, 2000 in the aforesaid bank account. Thereafter from the month of January, 2000, the defendants will deposit on or before 10th day of each succeeding month.

6. The defendants shall not defy from any instructions imposed by the BPCL in terms of DPSL agreement or any other instructions or regulations that may be imposed in future by BPCL. The plaintiff shall be free to visit the suit premises at his own will and proper respect and treatment will be given to him by the defendants employee/contractors.

7. Notwithstanding that the plaintiff shall not interfere with the day-to-day running of the business as stated above the plaintiff shall be deemed to remain in legal possession of the petrol pump and is fully empowered to take any steps that are necessary for fulfilling the conditions imposed upon him by BPCL in terms of DPSL agreement or any other instructions or regulations that may be imposed in future by the BPCL.

8. The present office space in the front side of the petrol pump shall remain in legal and constructive possession of the plaintiff.

9. The arrangement shall not be treated by the BPCL as a violation of any of the terms and conditions of DPSL agreement or any other conditions imposed by it. In case there are any malpractices committed by the defendants as defined in the DPSL agreement or in any other conditions imposed by BPCL or any other concerned authority, the defendant no.1 shall be exclusively liable for the same whether civil or criminal. BPCL shall not take any action against the plaintiff.

10. The plaintiff shall hand over all the books of account and will give the inventory of the entire equipments.

11. The parties shall prepare a joint inventory of the petrol, lubricants and spare parts as of date and will give the same on record.

12. It has been agreed between the parties that the plaintiff will open a new bank account in the name of M/s.Raj Nath Motors as a sole proprietor at Vijaya Bank, R.K.Puram Branch, New Delhi. However, the plaintiff will nominate defendant no.1 as the authorised signatory in that account and he will not himself operate the said account.

13. The joint inventory shall be prepared by us in the presence of Mr.Debasish Mohanty, Advocate, who is appointed Local Commissioner in this case by this Court."

6. On 16.2.2000 an application (IA No.1901/2000) was filed by the defendants praying that in continuation of the orders dated 10th and 11th January, 2000, a direction be issued to BPCL to resume the supplies and sale of petrol an

petroleum products at the petrol pump M/s.Raj Nath Motors and not to interfere with the affairs of the parties to the suit during the period of compromise dated 10.1.2000. The defendants alleged in the application that: on 10.1.2000 Court was pleased to record compromise in the suit and on 11.1.2000 the Court was pleased to dispose of IA.5682/99 in terms of the said compromises under the terms of the compromise, it was observed that M/s.BPCL shall not treat the compromise as a violation of any of the terms and conditions of DPSL agreement; Hari Chand, plaintiff had not acted bonafide and had pre-empted an order from BPCL whereby supplies and sale of petrol and petroleum products had been suspended at the Petrol Pump with effect from 12.2.2000 in terns of BPCL''s letter dated 10.2.2000, the defendant had called upon Hari Chand, the plaintiff to get the supply of petrol etc. restored at the said petrol pump premises but the plaintiff had declined to take any action. In this back ground the aforementioned direction was sought by the defendants against BPCL.

7. The above application was posted before learned Single Judge on 1.3.2000, when the following order was passed:-

"It is contended by plaintiff who is present in person as well as defendant no.2 who is also present in person that they are abiding by the order passed by this Court on 10th January, 2000. However, in spite of specific directions given to Bharat Petroleum Corporation to supply all petroleum products, the supply of the same has been stopped since 12th January, 2000.

It has been contended that the said conduct of Bharat Petroleum Corporation Ltd. amounts to willful disobedience of the order passed by this Court and the parties will move a separate contempt petition in this regard.

Let notice of this application be also issued to Bharat Petroleum Corporation, returnable on 10th March, 2000.

In the meanwhile, Bharat Petroleum Corporation Ltd. is directed to continue supply of the petroleum products as was done in pursuance of an order passed by this Court on 10th January, 2000, dusty."

8. Needless to add and as noticed above. BPCL was neither a party to the suit nor an notice on any application had been issued to or served upon BPCL before passing the above order or orders passed earlier. Only as an interim measure while issuing notice to BPCL on the above application returnable on 10.3.2000, it was directed that BPCL shall continue to supply petroleum products as was being done in pursuance to the order passed on 10.1.2000.

9. On coming to know of the order dated 1.3.2000 and feeling aggrieved, on 3.3.2000 FAO(OS) No.77/2000 was filed by BPCL making grievance that the impugned order dated 1.3.2000 could not have been passed and the Court had no jurisdiction to issue any direction against it since it was not a party to the suit. Simultaneously on 7.3.2000 BPCL filed an application (IA 2353/200) praying for recalling of the order dated 1.3.2000, inter alia, on the same grounds on

which appeal had been preferred. Before the appeal could come up for hearing defendants application (IA.1901/2000) and BPCL''s applications came up for consideration before learned Single Judge on 10.3.2000. On the defendants'' application order was passed by learned Single Judge on taking on record an undertaking of Mr.Srivastava on behalf of BPCL that without prejudice to the rights and contentions of BPCL, they will forthwith comply with the order passed by the Court on 1.3.2000. In view of the undertaking of Mr.Sirivastava, the defendants application was disposed of. The said order dated 10.3.2000 on the defendants application reads:-

"Vide its order dated 10.1.2000, this Court, in order to amicably resolve the disputes inter se the parties; issued certain directions to Bharat Petroleum Corporation Ltd. It was made clear in the order that the compromise will, in no way, affect the DPSL Agreement. Paragraph 7 of that compromise statement of the parties was recorded in the following terms:

"Notwithstanding that the plaintiff shall not interfere with the day-to-day running of the business as stated above the plaintiff shall be deemed to remain in legal possession of the petrol pump and is fully empowered to take any steps that are necessary for fulfilling the conditions imposed upon him by BPCL in terms of DPSL agreement or any other instructions or regulations that may be imposed in future by the BPCL."

It seems that after the order was passed by this Court incorporation the compromise into the order, BPCL in spite of specific directions of the Court, stopped the supply on 12.2.2000. When the supply was stopped, the plaintiff as well as defendant no.2 informed the Court that the supply of petroleum products has been stopped since 12.2.2000. On 1.3.2000 Court observed that conduct of BPCL amounted to willful disobedience of the order passed by this Court. As the BPCL was not a party in the proceedings it was termed appropriate as well as in the interest of justice to issue notice to the BPCL. However, it was ordered that in the meanwhile BPCL will continue the supply of petroleum products. Today again I have been informed that in spite (SIC)of the order passed on 1.3.2000 supply has not been started by BPCL, although BPCL was served with the copy of the order dated 11.3.2000.

It has been contended by plaintiff and defendant no.2 that against the order passed on 1.3.2000, BPCL has preferred an FAO(OS) No.77/2000. No stay has been granted by the appellate court.

Mr.Sirivastava has contended that the orders dated 10.1.2000 and 11.1.2000 were not brought to the notice of BPCL till 9.2.2000. However, the case of BPCL is not that the order dated 1.3.2000 has not been served on the BPCL. What has been stated before me by Mr.Sirivastava is that the said order is unimplementable. It is further stated that BPCL cannot comply with the order as they do not recognise the defendants as the dealer. This conduct of the BPCL is in gross violation of the order of this Court. The order dated 10.1.2000 or

1.3.2000 nowhere state that defendant is the dealer or not. That order was passed keeping in view the disputes between the parties.

At this stage, Mr.Sirivastava says that without prejudice to the rights and contentions of BPCL, they will forthwith comply with the order passed by this Court on 1.3.2000. In view of the undertaking of Mr.Sirivastava, no order is required on this application.

Application stands disposed of in view of this undertaking.

10. The application of BPCL (IA.2353/2000) was also before the Court on 10.3.2000. No effective order was passed thereon except issuing notice thereon. The order reads:-

IA 2353/2000

This is an application filed by Bharat Petroleum Corporation Ltd.

Notice. plaintiff as well as defendant no.2 accept notice. Let reply be filed within two weeks. Rejoinder within one week thereafter.

List this application for disposal of 19.4.2000."

11. On 14.3.2000 FAO(OS No.77/2000 came up before the Division Bench. Notice was directed to be issued to the respondent which was accepted by Hari Chand Sachdeva and Rakesh Sachdeva. Division Bench recorded its prima facie satisfaction that the impugned order dated 1.3.2000 could not have been passed by learned Single Judge as it purports to issue a direction to a third party, who was not a party to the suit. Accordingly, ad interim order was passed staying operation of the impugned order dated 1.3.2000. It was further directed that BPCL will not be bound by the undertaking stated to have been given on its behalf on 10.3.2000 and that pending admission of the appeal the Corporation will not be bound to supply petrol and petroleum products. The said order has continued to remain in force till date.

12. We have heard learned counsel for the parties and have also perused the record.

13. Besides the facts aforementioned another fact, which deserves to be taken note of at this stage would be that Hari Chand Sachdeva on 17.2.2000 had filed an application (IA.276/2000). After narrating certain back ground of the litigation with defendants 1 and 2 and the circumstances under which composite statement was recorded in Court on 10.1.2000, he alleged in the said application that immediately after passing of the order on 10.1.2000, the two defendants started flouted their own undertaking given to the Court. Narrating further details in the said application and the circumstances under which the compromise stated to have been arrived at on 10.1.2000 could not be (SIC)acted upon and had not been acted upon, Hari Chand Sachdeva in the said application has prayed the Court that the order dated 10.1.200 be recalled/modified so as to restore the position as it existed prior thereto, namely, that of 20.5.1988 and to absolve the

plaintiff of the undertaking given to the Court on 10.1.2000. Notice of this application was issued to the defendants by learned Single Judge, but till date the defendants despite service have not filed any reply to the said application.

14. While hearing the appeal, with consent of the parties, we also heard them on the application moved by Hari Chand Sachdeva.

15. Needless to repeal again the appellant BPCL was not a party to the suit. In the suit, the dispute was inter se the plaintiff and the defendants about their partnership and its accounts. Supply of petrol and petroleum products by BPCL was not the subject matter of the suit. The prayers made by the defendants in their application (IA 1901/2000) after, compromise is alleged to have been arrived at amongst the plaintiff and the defendants were out side the scope of the suit. BPCL had not notice of the said application. By an order, which was an ex parte order against BPCL, no mandate could have been issued against it to supply or continue to supply petrol and petroleum products. While Courts power to grant temporary mandatory injunction on interlocutory application cannot be disputed, but such temporary mandatory injunctions have to be issued only in rare cases where there are compelling circumstances and where the injury complained of is immediate and pressing and is likely to cause extreme hardship. If a mandatory injunction has to be granted at all on interlocutory application, it is granted only to restore status quo and not to establish a new state of things. Even on the averments made in the application by the defendants, supply of petrol and petroleum products had stopped much prior tot the date of the defendants approaching the Court against BPCL. In these circumstances and on the ratio of the decision of Supreme Court in Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, no mandatory injunction could have been issued against the appellant. Otherwise also, we are of the view that in case the parties had already entered into a compromise in the suit, no such application could have been made thereafter, which could have the effect of compelling a third part to the suit to restore supply of petrol and petroleum products when admittedly on the day when the impugned order was passed, petrol and petroleum products were not being supplied by BPCL to the Petrol Pump in question. In case any of the party to the suit had any grievance against the appellant, their remedy would have been to take out such other or independent substantial proceedings against BPCL, as would have been available in law. But in the suit to which the reliefs prayed for in the application were totally out sided the scope of the suit, no relief could have been granted in favor of a party to the suit against a third party and for that reason alone the impugned orders passed on 1.3.2000 and 10.3.2000 deserve to be set aside. The appeals are allowed. Impugned orders dated 1.3.2000 and 10.3.2000 accordingly are set aside.

16. As regards the undertaking furnished by the plaintiff to the Court in a composite statement dated 10.1.2000, there has been serious dispute amongst plaintiff Hari Chand Sachdeva on one part and defendants 1 and 2 on the other part. The said compromise has not been acted upon in its entirety and at the

very first opportunity the plaintiff came forward by filing an application that he be absolved of his undertaking for the reasons mentioned in the said application, which is duly supported on his affidavit. Copy of the application has been supplied to the defendants but till date the defendants have not opposed the prayer made in the said application. This application was posted in Court on various occasions. Since compromise has not been acted upon and the parties are not willing to abide by their undertaking, there is no reason why the prayer made in the application be not allowed. Accordingly, the application (IA.2760/2000) is allowed. Parties are absolved of the respective undertaking given by them to the Court on 10.1.2000 i their composite statement. As regards the plaintiff and defendants 1 and 2 position as it existed prior to 10.1.2000 is ordered to be restored including all interim orders passed prior to 10.1.2000.

17. The suit as well as other pending applications will now be listed for disposal in accordance with law before appropriate bench hearing civil suits on Original Side.

