

(2013) 11 DEL CK 0164
In the Delhi High Court
Case No : LPA 435 of 2012

Nirmala Kwatra

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 14
Specific Relief Act, 1963 — Section 14, 14(1)

Citation : (2014) 2 AD 436 : (2013) 205 DLT 583

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J; Manmohan, J

Bench : Division Bench

Advocate : Sanat Kumar, for the Appellant; M.M. Kalra and Mr. Kunal Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Nuthalapati Venkata Ramana, C.J.—The appellant, being aggrieved by the judgment dated 20th April, 2012 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein against termination of her retail outlet dealership by respondent No. 1/Indian Oil Corporation (for short, "the respondent Corporation"), has preferred the present appeal. The appellant, who is a widow of defence officer, was allotted a petrol pump retail outlet under the Defence Category. An agreement of dealership was entered into between the appellant and the respondent Corporation on 28th February, 2000 for retail outlet site at Community Centre, Sector-4, Phase-I, Dwarka, New Delhi. According to the appellant, she applied for a petrol pump at Tughlakabad Extension in South Delhi, but the respondent Corporation allotted the petrol pump at Dwarka, which is a faraway place. The term of the dealership agreement was for a period of five years and the same was to continue thereafter for successive periods of one year each until determined by either party by giving three months' notice in writing to the other of its intention to terminate the agreement. Upon expiration of notice period, the agreement and the licence granted in favour of the appellant was to

be treated as cancelled and revoked.

2. It appears that on receipt of some anonymous complaint, a joint surprise inspection of the retail outlet was carried out by the respondent Corporation on 1st December, 2007. As per the inspection report, certain documents, purported to be executed on 10th February, 2001 between the appellant on the one hand and Ajay Kumar Mittal, S/o Shri O.P. Mittal and Gaurav Mittal, S/o Shri Krishan Kumar on the other hand, were found at the site. The said documents are:

(i) photocopy of the Will signed by the appellant transferring the ownership right of the petrol pump retail outlet in favour of Ajay Kumar Mittal, S/o Shri O.P. Mittal and Gaurav Mittal, S/o Shri Krishan Kumar;

(ii) photocopy of the irrevocable General Power of Attorney signed by the Appellant in favour of Ajay Kumar Mittal and Gaurav Mittal, which was duly acknowledged and contains signatures of the aforementioned parties; and

(iii) photocopy of the Partnership Deed executed on the stamp papers of the denomination of Rs. 10/- and Rs. 5/- purchased by the appellant herein. The partnership deed contains that since the son of the appellant has no interest in running the petrol pump retail outlet and the daughter of the appellant is settled in USA, she made Ajay Kumar Mittal and Gaurav Mittal as partners therein to the extent of 49% share each and keeping 2% share to herself.

3. Based on the aforesaid materials seized from the petrol pump retail outlet during the surprise inspection carried out on 1st December, 2007, the respondent Corporation issued a show-cause notice dated 20th March, 2008 for termination of the dealership. In the show-cause notice, it was alleged that as per clause 45 of the dealership agreement, the partners of the firm were required to take active part in the management and running of the retail outlet and were to personally supervise the same and under any circumstances not to do so through any other person, firm or body. It was stated that during the said surprise inspection, the documents such as GPA, Partnership Deed and Will, all bearing the date of 10th February, 2001 were found, which were contrary to clause 45 of the dealership agreement. It was also stated that clause 46(i) of the dealership agreement clearly mandates that, except with the previous written consent of the respondent Corporation, the dealer was not to enter into any arrangement whereby the operations of the dealership may be controlled, carried out and/or financed by any other person, firm or company, whether directly or indirectly and whether in whole or in part. It was also stated in the show-cause notice that whenever the Field Officer of the respondent Corporation visited the retail outlet, the appellant was mostly not available at the retail outlet and the inspection reports were also signed by Ajay Kumar Mittal on behalf of the appellant. Ultimately, the respondent Corporation came to the conclusion that the above acts of the appellant were not only contrary to the dealership agreement, but also adversely affected the image and good name of the respondent Corporation and, therefore, the respondent Corporation granted seven days time to the

appellant from the date of receipt of the said notice to explain and show-cause as to why action in terms of the dealership agreement including termination should not be taken against the appellant on account of breaches stated hereinabove.

4. In response to the show-cause notice dated 20th March, 2008, the appellant submitted a detailed reply on 10th April, 2008 vide letter dated 9th April, 2008. In the said reply, it was admitted by the appellant that because of her age and distance between the petrol pump and her residence coupled with her medical problems, she was taking the help of Ajay Mittal from time to time both financially and physically. The appellant also admitted that Ajay Mittal is the brother of her daughter-in-law and he had good relations with the appellant. It was further stated that since Ajay Mittal was also busy looking after his own business, he introduced another person by name Gaurav Mittal to the appellant, who was also known to her. Gaurav Mittal started helping the appellant from time to time in the business. According to the appellant, since she had to regularly take help of Ajay Mittal and Gaurav Mittal on account of her health problems and financial constraints, in 2001, she requested Mr. Ajay Mittal to officially become a partner. It was also submitted in the reply that she thought of taking permission from the respondent Corporation to induct Ajay Mittal and Gaurav Mittal as partners in the dealership. According to the advice of the lawyer of Mr. Ajay Mittal, she had to give a Power of Attorney in favour of Mittals (Ajay Mittal and Gaurav Mittal). They had also discussed about the unregistered proposed Partnership Deed and the Power of Attorney with the Sales Officer of respondent Corporation for approving the proposed reconstitution with the induction of Ajay Mittal and Gaurav Mittal as partners. Since the documents were only proposed documents, they had not been registered. When she approached the concerned Officer of the respondent Corporation, she was advised that as per the policy of the Corporation, no re-constitution would be permitted before the expiry of three years from the time of commissioning of the retail outlet and even after the expiry of three years, she had to retain 51% interest in the business and the incoming partners could not have more than 49% interest in the business and the above proposed documents, which were prepared, were contrary to the policy and the dealership agreement. Since the appellant had not registered the said documents, they never came into effect. Even the Partnership Deed as well as the General Power of Attorney dissolved on 5th March, 2001 by executing Dissolution Deeds. The appellant also denied about her admissions made during the surprise inspection, apart from the allegations of any irregularity or malpractice. It was also submitted that even though the Will was executed, it would have taken effect only after the death of the appellant.

5. Not being satisfied with the reply given by the appellant and after giving a personal hearing, the dealership agreement was terminated by the respondent Corporation on 29th December, 2008. It appears from the said termination order that the respondent Corporation had sought certain information regarding the documents, particularly the income tax returns, balance sheets of the dealership firm and the bank statements for the last five years, and upon perusal whereof, it

was found that the retail outlet was being operated through 100% financial assistance and transaction by the outsiders/third parties, without any financial involvement/investment by the appellant.

6. Challenging the said order of termination dated 29th December, 2008, the appellant preferred the writ petition before this Court, which was registered as WP (C) No. 7587/2010. The learned Single Judge, after taking into consideration the violations and examining the clauses of the dealership agreement, upheld the action of the respondent Corporation and dismissed the writ petition. Aggrieved by the said order, the present appeal has been filed.

7. On behalf of the appellant, it was contended by the learned counsel, before us, that clause 56(a) of the agreement incorporated the principles of natural justice and that before termination of the dealership agreement, an opportunity ought to have been given to the dealer, i.e., the appellant, to remedy the breach. The violations, if any, alleged were remediable. As per the appellant, sub-clauses (b) to (l) of clause 56 are breaches, which cannot be remedied except clause 56(g) where it can be remedied by giving four days' time to clear the outstanding amount due, either full or in part, from the date of demand by the respondent Corporation. Hence, according to the appellant, clauses 56(a) and 56(g) are similar in nature. It was, thus, contended that the ground mentioned in the show cause notice could be rectified if some time was granted.

8. It was contended by the learned counsel for the appellant that the respondent Corporation cannot arbitrarily discriminate against the appellant, since it had no option except giving an opportunity under clause 56(a) of the dealership agreement to rectify that mistake. To support this contention, learned counsel for the appellant had placed before us some material, which was not filed along with the writ petition. It was contended that when the mistake committed by the appellant was capable of being remedied, there was no reason to terminate the dealership agreement. Elaborating the argument, learned counsel for the appellant submitted that a notice under clause 56(a) ought to have been given by the respondent Corporation to the appellant to remedy the breach and straight-away issuing a show-cause notice for termination of the dealership agreement was bad in law.

9. Learned counsel for the appellant submitted that the appellant filed the present writ petition, instead of a civil suit, as she was entitled to an effective relief in a writ petition more than what she would get in a civil suit. To substantiate this submission, he relied upon the judgment delivered by the Apex Court in *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, . It was further contended that had the appellant been relegated to civil court for resolving the dispute on the ground that there were disputed questions of fact, she could not get the benefit of restoration of the dealership in view of clause 56(a) of the dealership agreement. Hence, the arbitration or civil suit was not an efficacious remedy in view of the judgment of the Supreme Court in *Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd.*, .

10. Lastly, relying upon the judgment of the Supreme Court in *Shalimar Gas and Others Vs. India Oil Corpn. Ltd and Another*, , it was contended that since the agency is the sole source of livelihood of the appellant, a lenient view, by taking a humanitarian approach, should have been taken by the respondent Corporation.

11. Learned counsel for the respondent Corporation, on the other hand, vehemently denied the submissions made by learned counsel for the appellant. It was submitted that the scope of judicial review in contractual matters was very limited, particularly when the learned single Judge, after considering the entire case-law, had declined to exercise the discretionary power in the facts of the given case. Hence, there was no need to entertain the present appeal and the same was liable to be dismissed.

12. It was submitted by learned counsel for the respondent Corporation that the Corporation had not discriminated against the appellant on any basis inasmuch as the appellant had not made any specific allegation against the respondent Corporation anywhere in the pleadings, but she pleaded that she was discriminated on the basis of some information gathered under the Right to Information Act, 2005. Learned counsel further submitted that the citations, which the appellant wanted to rely upon in the rejoinder, are cases where the dealership was granted under "B" sites, whereas the present case related to grant of dealership under "A" site where the land, apparatus and facility were provided by the respondent Corporation and the appellant wanted to transfer their property without the knowledge and consent of the respondent Corporation, which was not only in violation of the terms and conditions of the dealership agreement, but also tantamounted to criminal breach of trust.

13. We have gone through the material placed before us and considered the rival contentions advanced on behalf of both the parties.

14. The short question that falls for our consideration is, "Whether there is any factual or legal error committed by the learned single Judge while appreciating the facts and the material placed before him?"

15. Before dealing with rival submissions made by the respective parties, we consider it appropriate to extract some of the relevant clauses of the dealership agreement, which are as under:

18. The Dealer shall not remove the outfit or any part thereof from its position on the said premises nor deliver possession thereof to any other person, firm or company other than the Corporation nor encumber nor sell the same, nor do anything whereby the outfit may be seized or taken in execution or attached, destroyed or injured or whereby the title of the Corporation thereto may in any way be affected, destroyed or prejudiced.

26. The Dealer shall not during the currency of the Agreement sell or be in any way be concerned in selling the petroleum products of any other Oil Company or producer through the outfit or at the premises without the previous consent in

writing of the Corporation.

35. The Dealer shall not sell, assign, mortgage, charge or part with or otherwise transfer his interest in the dealership or any right or interest or benefit conferred by this Agreement or grant any licence in connection with the said premises and/or outfit or any part thereof to any person, firm or company nor allow any other person, firm or company to use the premises or the outfit or any part thereof except to the extent necessary under the terms of Agreement and specifically permitted in writing by the Corporation.

43. The Dealer undertakes faithfully and promptly to carry out, observe and perform all direction or rules given or made from time to time by the Corporation for the proper carrying on of the dealership of the Corporation. The Dealer shall scrupulously observe and comply with all laws, rules, regulations and requisitions of the Central/State Governments and of all authorities appointed by them or either of them including in particular the Chief Inspector of Explosives, Government of India and/or Municipal and/or any other local authority with regard to the storage and sale of such petroleum products.

45. It shall be a paramount condition of the agreement that the Dealer himself (if he be an individual) or both partners of the Dealer firm (if the Dealer is a partnership firm consisting of two partners only) or the majority of the partners of the Dealer firm (if the Dealer is a firm consisting of more than two partners) or the majority of the members of the Dealer Co-operative Society (if the Dealer is a Co-operative Society) as the case may be shall take active part in the management and running of the retail outlet and shall personally supervise the same and shall not under any circumstances do so through any other person, firm or body.

46. Except with the previous written consent of the Corporation:

(i) The Dealer shall not enter into any arrangement contract or understanding whereby the operations of the Dealer hereunder are or may be controlled, carried out and/or financed by any other person or company whether directly or indirectly and whether in whole or in part.

(ii) The Dealer himself (if he be an individual) or partners/members or any of them of the Dealer (if the Dealer is a firm/co-operative society) shall not take up any other employment or engage in any other business apart from the running of the retail outlet which is the subject matter of this Agreement.

(iii) The Dealer (if it be a firm or a co-operative society) shall not effect any change in its constitution whether in the identity of its partners/members or in the share/shareholding of any of them, or in the terms of the Deed of Partnership or of the Bye-laws as the case may be. In the event of the death of any partner/member of a firm/cooperative society which has been appointed as a Dealer hereunder the surviving partners/members hereby agree to indemnify and keep indemnified the Corporation against any claims or demands, which may be made

by the heirs of the deceased partner/member.

56. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely-

(a) If the Dealer shall commit a breach of any of the covenants and stipulations contained in the Agreement and fail to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard.

(b) Upon

(i) the death or adjudication as insolvent of the Dealer, if he an individual;

(ii) the dissolution of the partnership of the Dealer's firm or the death or adjudication as insolvent of any partner of the firm, if the Dealer be a firm;

(iii) the liquidation, whether voluntary or otherwise or the passing of an effective resolution for winding up, if the Dealer be a Company or Corporate Society;

(c) If any attachment is levied and continued to be levied for a period of seven days upon the effects of the Dealer or any individual partner for the time being of the Dealer's firm or any member of the Dealer Co-operative Society.

(d) If the Dealer or any partner in the Dealer's firm or any member of the Co-operative Society appointed as Dealer hereunder shall be convicted of a criminal offence.

(e) If a Receiver shall be appointed of any property or assets of the Dealer or of any partner in the Dealers' firm of any member of the Dealer Co-operative Society.

(f) If the licence issued to the Dealer by the relevant authorities for the storage of petroleum products supplied by the Corporation is cancelled or revoked.

(g) If the Dealer shall for any reason make default in payment to the Corporation in full or his outstandings as appearing in Corporation's books of account beyond 4 days of demand by the Corporation.

(h) If the Dealer does not adhere to the instructions issued from time to time by the Corporation in connection with safe practices to be followed by him in the supply/storage of the Corporation's products or otherwise.

(i) If the Dealer shall deliberately contaminate or temper with the quality of any of the Corporation's products.

(j) If the Dealer shall sell the Corporation's products at prices higher than those fixed by the Corporation.

(k) If the Dealer shall either by himself or by his servants or Agents commit or suffer to be committed any act which, in the opinion of the General Manager of the Corporation for the time being in ... whose decision shall be final, is

prejudicial to the interest or good name of the Corporation or its products, the General Manager shall not be bound to give reasons for such decision.

(I) If any information given by the Dealer in his application for appointment as a Dealer shall be found to untrue or incorrect in any material respect.

... ..

(emphasis supplied)

16. A bare perusal of clause 45, noticed hereinabove, makes it amply clear that it is the paramount duty of the dealer, in the present case the appellant herein, to take active part in the management and running of the retail outlet and to personally supervise the same and, under any circumstances, not do so through any other person, firm or body. This is the essence of the contract, i.e., the dealership agreement. However, clause 46 makes a provision for necessary prior written consent of the respondent Corporation in some exceptional situations.

17. We may also notice that clause 66 provided that the courts in the city alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this Agreement and clause 67 stipulates that the disputes shall be resolved under the Arbitration Act, 1940. However, it is unfortunate that the dealership agreement on record does not state the name of the city as the parties have not taken due care to fill up all the blanks/gaps at the time of execution of the said agreement. Similar is the situation in respect of clause 3, which also does not contain the date from which the agreement shall remain in force for five years.

18. The sheet anchor of the appellant appears to be that though a show cause notice had been issued to him, in view of clause 56(a) of the agreement, a notice affording an opportunity to remedy breach of the clauses of the agreement was not given.

19. The Apex Court and the High Courts have consistently taken the view that a contract has to be read holistically and not in a piecemeal fashion. While reading the clauses of the agreement, we have to gather the intention of the parties to the instrument. The contract must be construed as a whole, the meanings of the words contained in the contract have to be found out on the facts and circumstances of each case in the light of the terms and conditions of the contract. In construing the contract, a court must look into the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the Court can do about it. If there is any doubt, to correctly ascertain the true meaning of the words, it is legitimate to have regard to the circumstances surrounding the creation of the contract.

It is settled law that a commercial agreement has to be construed according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular senses. It would not be right while

interpreting a contract, to apply strict rules of construction. The meaning of such a contract must be adopted by a common sense approach and it must not be allowed to be thwarted by a narrow pedantic and legalistic interpretation.

In *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, , while dealing with, amongst other issues, the issue whether certain contracts executed therein constituted a sale of goods or a lease of immovable property, the Apex Court observed that it is a well-settled rule of interpretation that a document must be construed as a whole. The relevant portion of para 117 of the judgment reads as under:

117....This rule is stated in Halsbury's Laws of England, Fourth Edition, Volume 12, paragraph 1469 at 602, as follows:

Instrument construed as a whole.

It is a rule of construction applicable to all written instruments that the instrument must be construed as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause must be so interpreted as to bring them into harmony with the other provisions of the instrument, if that interpretation does not violence to the meaning of which they are naturally susceptible. The best construction of deeds is to make one part of the deed expound the other, and so to make all the parts agree. Effect must, as far as possible, be given to every word and every clause.

(emphasis supplied)

21. Keeping in mind the aforesaid well settled principles of interpretation of an agreement, now we would like to deal with the termination order and the specific clauses which are in dispute between the parties.

It is the admitted case of the appellant that she was granted retail outlet under "A" site as per the dealership agreement. Neither she denied the surprise inspection conducted on 1st December, 2007 nor the inspection report prepared at that point of time. The appellant has also not disputed the execution of the General Power of Attorney, Partnership Deed and the Will-all dated 10th February, 2001. The only defence that has been put up by the appellant is that those documents were prepared to submit to the respondent Corporation for transfer of the ownership of the retail outlet on account of her old age and financial problems and also on account of the fact that her son and daughter were not interested in continuing the said business. According to her, the said documents were dissolved on 5th March, 2001, even though purported to be executed on 1st February, 2001, i.e. in about one month's time. Even according to the appellant, the said documents were not notarized or registered, but the factum of execution of the same were never disputed. Apart from that, the documents found in the premises itself substantiate that on the basis of the said documents, Mittals (Ajay Mittal and Gaurav Mittal) were operating all the transactions of the petrol pump retail outlet and were also present at the time of

inspection and even signing the inspection reports. To examine whether the said documents were in operation or not, the respondent Corporation directed the appellant to submit income tax returns, balance sheets of the dealership firm and the account statements. It is apparent from the material placed before us that the appellant is using two different PAN numbers for filing of income tax returns. The financial statements which were placed before the respondent Corporation also reveal that the petrol pump retail outlet was operated by 100% financial assistance given by the outsiders/third parties and the said account transactions relate to the said Mittals. One of the documents, i.e., Partnership Deed also shows that 98% share had been transferred to the Mittals. The above documents clearly establish that the said petrol pump retail outlet, even though allotted to the appellant, is virtually run and controlled by the benamis and, hence, we cannot appreciate the interpretation placed by the appellant that they are entitled for a notice under clause 56(a) which is remedial in nature. By any stretch of imagination the violation of clause 45 and running of business by a third party for the last several years is contrary to the policy of the Corporation. Though the respondent had provided all the facilities and granted dealership to the appellant who is a widow, yet a third party is enjoying the profits and benefits to an extent of 98% and such an act is an irreversible act.

22. We may also notice that clause 56 clearly provided that notwithstanding anything to the contrary contained herein, the Corporation shall be at liberty to terminate the agreement forthwith upon or at any time after the happening of any of the events stated therein-one being if the dealer commits a breach of any of the covenants and stipulations contained in the agreement and fails to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard. Thus, the clause has to be understood in such a way that it promotes the intention of the parties while incorporating that clause. It appears to us that the intention of the parties is to give an opportunity to the dealer in cases of breaches which are remedial in nature.

23. Furthermore, the appellant cannot seek shelter under clause 56(a) when there is no admission made by the appellant that she has committed such a mistake and the mistake is a remedial one. It is the admitted stand of the appellant from the very beginning that she has executed the aforesaid documents in favour of the said Mittals, which were later on claimed to be dissolved (though the General Power of Attorney was irrevocable). Hence, there was nothing to be remedied by the appellant at any stage.

24. Now, the only question remains to be examined is whether such documents were executed and came into operation or not. So far as the execution part is concerned, it is the admitted case of the appellant that she had executed not only the General Power of Attorney, but also the Partnership Deed and the Will in favour of Mittals. It is surprising to note that even though both children of the appellant are alive, she has executed the Will in favour of Mittals and it is also equally surprising to note that the entire transaction accounts indicate the

participation of Mittals in running, controlling and financing the business of petrol pump retail outlet. It is also a fact that the said documents, which were executed on 10th January, 2001 and, according to the appellant, were dissolved on 5th March, 2001, were lying at the petrol pump. Even though they were dissolved in less than a month's period, why were they still lying at the petrol pump. The material on record further proves that the said documents had come into operation and had been acted upon. The categorical finding that the said documents came into operation stood substantially proved by scrutiny of the income tax returns, sales tax returns, etc. by the respondent Corporation. The plea of the appellant that the same stood revoked does not hold good. Hence, the question of issuing notice to rectify the mistake within four days did not arise in the case of the appellant herein, as the violation of the clause committed by the appellant is not a remedial one.

24. The appellant having admitted her guilt, cannot take advantage of clause 56(a) of the dealership agreement and contend that she is entitled to a notice to remedy the mistake. Hence, taking into consideration the entire documents and contentions of the learned counsel on either side, we are of the considered opinion that the interpretation placed by the appellant in respect of clause 56(a) is misconceived.

25. The other limb of the argument of the learned counsel for the appellant is that the appellant is a widow and a lenient view should have been taken. In support of this submission, the appellant placed strong reliance on *Shalimar Gas and Ors.*" case (supra) wherein it was held that the law should take a more liberal view in case of widows, physically handicapped people, etc. Having regard to the fact that the petrol pump is the sole source of livelihood of the appellant, the respondent Corporation should have taken a humanitarian view. But, in the present case, there is no material placed before us to show that the appellant is living only on the income from the petrol pump retail outlet. It is clear from the material placed on record that the appellant's daughter is settled in USA and her son is not inclined to run the petrol pump retail outlet, which indicates that the appellant is not in a distressed condition where she has to depend upon the income from the petrol pump retail outlet only. Even otherwise, in the said case, the appellant continued to hold the majority shares in the firm, while in the present case, after execution of the aforesaid documents in favour of Mittals she was left with only 2% share. Apart from that, in this case, the appellant is granted "A" site and land facilities are provided by the Corporation and someone else is enjoying the lion share of the income. Hence, there is no need to adopt any leniency in the peculiar facts and circumstances of the present case. Thus, the said judgment has no application to the facts of the present case.

26. The learned counsel for the appellant advanced an argument contending that though there is alternative remedy available to her, yet as the writ jurisdiction is providing her more effective remedy, it is the appropriate remedy for her, and relied on the judgment of the Apex Court in *Amritsar Gas Service and Ors.*" case

(supra) that the appellant is entitled to maintain a writ petition and she will get more relief than what she is entitled to through civil court or arbitration. In the said case, the short issue, in nutshell, was that the Indian Oil Corporation entered into a distributorship agreement with the respondent, i.e., Amritsar Gas Service and the distributorship agreement was terminated by the appellant after issuing a notice. Aggrieved by the termination of the distributorship, the Amritsar Gas Service filed a civil suit before the Sub-Judge, Amritsar seeking a declaration that the termination of the distributorship of Amritsar Gas Service by the Indian Oil Corporation is illegal and void, the distributorship continued notwithstanding the said termination and other consequential reliefs. The suit was based on the terms and conditions of distributorship agreement and inapplicability of clause 27 therein permitting the Indian Oil Corporation for forthwith termination without any notice or opportunity of show-cause being given to the distributor. At the same time, the Indian Oil Corporation also filed an application u/s 34 of the Arbitration and Conciliation Act, 1996 seeking stay of the suit, which was rejected by the trial court and even the appeal and the revision were also dismissed by the High Court. A SLP was filed thereafter, which was disposed of by appointing an arbitrator. The arbitrator, who was so appointed, was not functional and, therefore, another arbitrator was appointed. The arbitrator passed the award, which was the subject matter in the said judgment. In the said facts of the case, it was held that the Corporation committed breach of contract and on that basis, it was held liable to remedy the breach by restoration of the distributorship and pay compensation for the reasons given in the award. In the said case, an argument was advanced on behalf of the Indian Oil Corporation that since granting such a relief by the arbitrator is beyond the scope of arbitration, the arbitrator should not have granted such a relief. In the said facts and circumstances of the case, it was held as under:

11. We may at the outset mention that it is not necessary in the present case to go into the constitutional limitations of Article 14 of the Constitution to which the appellant-Corporation as an instrumentality of the State would be subject particularly in view of the recent decisions of this Court in *Dwarkanadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, and *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, . This is on account of the fact that the suit was based only on breach of contract and remedies flowing therefrom and it is on this basis alone that the arbitrator has given his award. Shri Salve is, therefore, right in contending that the further questions of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts. It is, therefore, in this background that we proceed to consider and decide the contentions raised before us.

12. 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 No. 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 award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises.

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 1.4.1976, which contains the aforesaid Clauses 27 and 28. 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 describes 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 determinable". In the present case, it is not necessary to refer to the other clauses of Sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with the reasons given in the award itself that the contract by its nature is determinable. 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 in 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.

(emphasis supplied)

Eventually, their Lordships held as under:

14....The plaintiff-respondent No. 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of thirty days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The

compensation for thirty days notice period from 11.3.1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd.

In view of the aforesaid observations, it is amply clear that the said judgment is of no help to the appellant since their Lordships have found fault with the arbitrator in restoring the dealership and held that the arbitrator has committed mistake in granting such relief of restoration.

27. With regard to maintainability of the writ petition, the appellant relied upon judgment of the Supreme Court in *Sanjana M. Wig's case* (supra), wherein it was held as under:

13. However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.

In the said case, the Apex Court, after considering the relevant case-law, i.e., *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, ; *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, ; *Titagarh Paper Mills Ltd. v. Orissa State Electricity Board*, (1975) 2 SCC 436; *Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another*, ; and *State of H.P. v. Gujarat Ambuja Cement Ltd.*, (2005) 6 SCC 499, held as under:

18. It may be true that in a given case when an action of the party is de hors the terms and conditions contained in an agreement as also beyond the scope and ambit of domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, and *E. Venkatakrishna v. Indian Oil Corpn.*, (2007) 7 SCC 764, that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent.

(emphasis supplied)

28. In the present case, it is an admitted position that the appellant has executed documents in favour of third parties contrary to the terms and conditions of the dealership agreement. Hence, the above-said judgment will be of no help to the appellant herein. The respondent Corporation awarded the dealership and executed Agreement in favour of the appellant on 28th February, 2000. The appellant executed the aforesaid documents in favour of "Mittals" on

10th February, 2001, i.e., even before expiry of one year. The officials of the respondent Corporation inspected the premises on 1st December, 2007 and, during inspection, the aforesaid documents (viz. Partnership Agreement, General Power of Attorney and Will-all dated 10th February, 2001) were recovered from the petrol pump retail outlet. One of the clauses, more particularly clause 23 of the Partnership Agreement reads as follows,

That the first party and/or their legal representatives, successors-in-interest, legal heirs, etc. shall not obstruct, interfere, hamper, disrupt the working of the business of the said firm which is being/to be run and managed by second and third party (Mittals).

A bare perusal of the aforesaid clause would disclose that the appellant had divested her right to operate the dealership in favour of "Mittals". Apart from that, clause 5 of the said Partnership Agreement states that the entire investments in the business has been by "Mittals", which goes to establish that the appellant contravened Dealership Agreement, particularly clauses 45 and 46 of the Dealership Agreement. The appellant having executed Partnership Agreement in contravention of the Dealership Agreement and having allowed "Mittals" to invest, run and manage the business, cannot be permitted to contend that the Agreement was never acted upon. Though the appellant is contending that the Partnership Firm was dissolved by Deed of Dissolution dated 5th March, 2001, the said contention is nothing but an after-thought to wriggle out of the consequences of the violations.

29. In view of the above observations, learned counsel for the appellant sought to contend that even if dealership agreement refers to arbitration, the courts can entertain a writ petition. In our opinion the Courts may exercise the writ jurisdiction though there is an alternative remedy, in cases where the petitioner seeks enforcement of fundamental rights, where there is failure of principles of natural justice, or where the order or proceedings are wholly without jurisdiction or the vires of an act is challenged. At the same time, exercising the discretion is not a rule of law, but depends on the facts and circumstances of each case. As we have already decided the issue on the merits of the matter, we are not inclined to pass any orders on the maintainability of the writ petition.

30. The learned single Judge rightly observed that the Dealership Agreement was for a term of five years only renewable thereafter from time to time for one year each but was terminable by three months' notice. The respondent Corporation was, thus, within its right to even without any cause to terminate the Agreement by three months' notice. Even if it was to be held that the termination in the instant case was bad, the maximum loss to the appellant would be of three months' earnings from the dealership. Apart from that the appellant is seeking specific performance of a clause in the agreement, which in our view, could not be granted to the appellant. In view of the above-stated facts and circumstances of the case, we are of the opinion that there is no reason to interfere with the well considered order passed by the learned Single Judge. Accordingly, the

appeal is dismissed leaving the parties to bear their own costs.