(2021) 03 KL CK 0310

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3110 Of 2021

Nisha M And Ors — APPELLANT

Vs

State Of Kerala And Ors — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Indian Partnership Act, 1932 — Section 33
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 KL CK 0310

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : R. Surendran, S. Mayukha, Tom K. Thomas, T.C. Krishna, Preethi Ramakrishnan

Final Decision : Dismissed

Judgement

1. The petitioners, who are Partners of a Firm engaged in the distribution and sale of LPG in retail to consumers, are before this Court seeking to quash Ext.P10 e-mail intimating the stoppage of internet banking facility of Current Account of the Firm and to direct the 1st respondent to restore the internet banking facility of the Current Account.

2. The petitioners state that they are Partners of M/s. Mongam Indane Services. The Partnership Firm is registered. The 1st petitioner was selected by Indian Oil Corporation for appointment as Distributor of LPG. On issuance of Ext.P2, the 1st petitioner spent the entire amount for establishment of the infrastructure facilities of the LPG distributorship. On 05.04.2019, the 1st petitioner entered into partnership with the 2nd petitioner and the 2nd respondent. The 2nd respondent promised to contribute ☐ 20 lakhs to the Firm as his share capital. But, the amount was not paid.

3. The 2nd respondent later started joining hands with nearby Gas Agency and started to cause trouble to the petitioners' business. The 2nd respondent has criminal background, contends the petitioners. The Partnership Firm had an

account with the 1st respondent-Bank and was operating a Current Account. All the three Partners were jointly operating the Account. The 2nd respondent was convicted by a criminal court. The petitioners reported the conviction of the 2nd respondent to the Oil Company. Infuriated by the action of the petitioners in communicating the conviction, the 2nd respondent approached the 1st respondent-Bank and instructed to stop all net banking transactions. The 1st respondent thereupon stopped internet transaction in respect of the Account of the Firm. 4. The petitioners filed W.P.(C) No.11337/2020. Pursuant to an interim order passed in the said writ petition, the 2nd respondent withdrew his instructions given to the 1st respondent-Bank and thereafter internet banking facility was restored.

5. When the petitioners verified the accounts of the Firm, they found that the 2nd respondent has committed gross irregularities and misappropriated funds. Thereupon, the petitioners issued a show-cause notice to the 2nd respondent. Though the 2nd respondent issued a reply to the show-cause notice, the reply did not contain any explanation to the allegations made against him. Therefore, the petitioners were convinced that continuance of the 2nd respondent in the Firm will be against the interest of the Firm. The petitioners therefore expelled the 2nd respondent from the Firm and the decision was communicated to the 2nd respondent as per Ext.P9.

6. The petitioners state that the 2nd respondent is no more a Partner of the Firm. However, the 2nd respondent prevailed upon the 1st respondent-Bank and the Bank has stopped internet banking facilities of the Current Account of the Partnership Firm. It is challenging the action of the Bank in stopping internet banking facilities that the petitioners are before this Court.

7. The counsel for the petitioner would contend that though the 2nd respondent had offered to contribute ☐ 20 lakhs to the Firm, the 2nd respondent did not pay the amount. He was cooperating with the business rivals. As per Clause 12 of the Partnership Deed, a Partner can be expelled after giving an opportunity to show-cause. After issuing a show-cause notice, the 2nd respondent was expelled from the Partnership and the said fact was communicated to the 1st respondent-Bank also. Therefore, the Bank ought not have acted upon the instructions of the 2nd respondent.

8. The petitioners' Firm has not committed any default. Therefore, the 1st respondent-Bank had no reason to stop internet banking transactions in respect of the Account. The 1st respondent-Bank ought to have noted that in view of Clause 11 of the Partnership Deed, no Partner could individually, without the concurrence of other Partners, seek stoppage of the Bank Account.

9. The learned counsel for the petitioners relied on a judgment of the Hon'ble High Court of Calcutta in Ganesh Chandra Mukherji v. Gopal Chandra Hazra [AIR 1976 Cal 459] to contend that as per Section 33 of the Partnership Act, 1932, a Partner can be expelled from a Firm in the exercise of powers conferred by

contract between the Partners. Expulsion of the 2nd respondent from the Partnership was communicated to the 1st respondent-Bank and therefore the Bank cannot be permitted to suspend the internet banking transactions of the petitioners' Firm, on the basis of instructions of the 2nd respondent, contended the learned counsel for the petitioners.

10. The learned counsel for the 2nd respondent pointed out that the petitioners were not justified in approaching this Court since under Clause 14 of Ext.P3 Partnership Deed, if any dispute or difference arises between the Partners, the dispute should be referred to arbitration. The learned counsel for the 2nd respondent relied on Clause 17 of Ext.P3 Partnership Deed and contended that the petitioners cannot be permitted to change the constitution of the Firm in any manner without the written consent and concurrence of the Indian Oil Corporation Limited. The 2nd respondent seriously disputes the legality of his ouster from the Partnership Firm.

11. I have heard the learned counsel for the petitioners and the learned counsel for the 2nd respondent. I have also heard the learned Standing Counsel for the 1st respondent-Bank.

12. The case of the petitioners is that the 2nd respondent has been expelled from the Partnership for good and sufficient reasons. Such expulsion is permitted by the provisions of the Partnership Act. The 1st respondent-Bank, therefore, ought to have relied on the information given by the petitioners as regards expulsion of the 2nd respondent from the Partnership and ought not have acted upon the instructions of the 2nd respondent. However, the 2nd respondent has disputed the fact of his expulsion from the Partnership. According to the 2nd respondent, he cannot be expelled from the Partnership in view of the specific provisions contained in the Partnership Deed, except with the leave of the Indian Oil Corporation Limited. Furthermore, in view of the provisions contained in the Partnership Deed, the petitioners ought to have resorted to arbitral proceedings.

13. The dispute involved in this writ petition falls under the realm of contract. When the legality of expulsion of a party from the Partnership is disputed by the Partner who is allegedly expelled, the appropriate remedy available to the petitioners is either arbitral proceedings as provided for under the Partnership Deed or civil remedies. The jurisdiction of the High Court under Article 226 of the Constitution of India cannot be invoked to resolve disputes between Partners of a Firm. Though the relief sought for by the petitioners is against the 1st respondent-Bank which is a Public Sector Undertaking, the issue involved is of purely civil nature and would fall under the realm of contract. No element of public duty on the part of the 1st respondent-Bank is involved in this case.

In the circumstances, this Court finds that the writ petition filed by the petitioners is misconceived and no relief can be granted to the petitioners in exercise of the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petition is therefore dismissed.