

(1997) 02 PAT CK 0050
In the Patna High Court
Case No : L.P.A. No. 21 of 1997 (R)

Raj Kumar Jain

APPELLANT

Vs

Union of India(UOI) and Others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1997) 1 BLJR 463 : (1997) 2 PLJR 269

Hon'ble Judges : D.P. Wadhwa, C.J;S.K. Chattopadhyaya, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.P. Wadhwa, C.J. and S.K. Chattopadhyaya, J.—The appellant has impugned the order of the learned Single Judge dated 15.10.96 passed in CWJC No. 1979 of 1996(R) by reason of which the writ application filed by respondent No. 4 has been allowed.

2. The facts of the case lie in a narrow compass : Respondent No. 4 herein, being petitioner in the writ application, prayed before this Court that respondents 2 and 3 in particular, be directed to restore her name as one of the dealers in respect of the concerned Petrol Pump. Husband of the petitioner, as early as in the year, 1947, entered into an agreement with the erst-while Burmah Shell Oil Storage and Distributing Company of India Limited (now M.S Bharat Petroleum Corporation Ltd.) relating to setting up of an outlet for Petrol and diesel on hire over his lease-hold premises. In the year, 1975, due to his ill-health, the husband of the petitioner entered into a partnership agreement with Ram Kumar Jain, the present appellant. Pursuant to that partnership agreement the appellant, Raj Kumar Jain was directed by the concerned authority to meet them in relation to reconstruction of Pearl Motor Company. Husband of the petitioner died on 15.10.80 and by letter dated 6.11.80 one of the sons of the petitioner informed the Divisional Manager, respondent No. 3 about the death of his father and intimating therein that the heirs of the deceased sole dealer, D.N. Sen were

desirous to continue with the business under the same arrangement whereby the heirs will be one of the partners and Raj Kumar Jain will be other partner. The appellant also, in the said letter, admitted himself to be one of the partners of the business of M/s Pearl Motor Company and desired to continue with the business on the same arrangement whereby he would be one of the partners and the heirs of D.N. Sen will be other partners. This letter is annexure 5 to the writ application. Thereafter, appellant, Raj Kumar Jain inducted his brother, Sanjay Kumar Jain in place of his (appellant's) mother who died on 26.8.88. Shares of the partners were distributed, Raj Kumar Jain having 40% share, Sanjay Kumar Jain having 35% share and the writ petitioner having 25% share.

3. The petitioner however, came to know in the third week of January, 1996 from Raj Kumar Jain that her name has been deleted by the respondents as a joint dealer and now only the name of Raj Kumar Jain has been written as a dealer. Having come to know about the same, legal notice was sent to the respondents on 22.2.96 but without any effect. The petitioner made a grievance before this Court that her name was deleted as one of the dealers without giving any notice to her and without affording any opportunity.

4. Learned Single Judge noticed that in spite of several opportunities given to Mr. Trivedi to file counter affidavit on behalf of respondents 1 to 3, no counter affidavit was filed. Mr. S.K. Dutta who appeared on behalf of respondents 2 and 3 by filing vakalatnama also did not file any counter affidavit. After hearing the parties, learned Single Judge disposed of the writ application by the following directions :

Having considered the submission made by learned Counsel for the parties and considering that no counter affidavit has been filed inspite of adjournments of the case and also that the order with regard deletion of the name of the petitioner has not been annexed with the writ petition, the respondent-Bharat Petroleum is directed to verify as whether the name of the petitioner has been deleted or not. If it is found that in fact the name of the petitioner has been deleted without giving opportunity of hearing to her, the respondent-Bharat Petroleum and its authorities shall pass necessary order with regard to restoration of the name of the petitioner.

5. Mr. Kameshwar Prasad, learned Sr. Counsel appearing on behalf of the appellant has contended that the learned Single Judge erred in directing the respondents to consider the grievance of the writ petitioner inasmuch as the writ petitioner was not one of the partners as asserted by her. Further, he contended that the appellant has been prejudiced by this order inasmuch the writ petitioner had stated that he learnt from the appellant that her name was deleted by the respondents as a joint dealer.

6. On the question of maintainability of the appeal Mr. Prasad, relying on a decision in the case of State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, , submits is that as the order would prejudicially affect the

appellant, the appeal is maintainable. In our view, the reliance of Mr. Prasad is misplaced. According to their lordships, the ordinary rule is that only a party to a suit adversely affected by the decree or any of his representative in-interest may file appeal. Under such circumstance a person who is not a party may prefer an appeal with the leave of the appellate court if he would be prejudicially affected by the judgment and if it would be binding on him as res-judicata under explanation 6(2) of Section 11 of the Code of Civil Procedure. The Apex Court was of the opinion that a person who is not a party to a decree or order, may with the leave of the court prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it.

7. On this legal backdrop, considering the facts of the present case, we are of the opinion that the appellant cannot be said to be prejudicially affected in any way or in any manner. The learned Single Judge, on the prayer made by the writ petitioner, merely directed the concerned respondent to verify as to whether the name of the writ petitioner was deleted or not and if it is found that, in fact, same was done without affording opportunity of hearing to her, the authorities will pass necessary orders with regard to restoration the name of the petitioner.

8. The appellant was admittedly not made party to the writ application and in our view, correctly because the writ petitioner did not pray any relief against him. She came to know from the appellant, one of her partners, that her name was deleted as joint dealer by the concerned respondent and, as such, she made a grievance before this Court. We fail to understand as to how the order passed by the learned Single Judge will prejudice the appellant.

9. In the facts and circumstances, in our view, the appeal must fail both on the ground of maintainability as well as on merit. Accordingly, the appeal is dismissed.