

(2011) 04 AHC CK 0463

Allahabad High Court

Case No: Civil Revision No. 333 of 2010

Bharat Petroleum Corporation
Ltd.

APPELLANT

Vs

Khaybar Transport Pvt. Ltd.

RESPONDENT

Date of Decision: April 11, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, Order 7 Rule 11, 9
- Easements Act, 1882 - Section 52, 53, 54, 55, 56
- Specific Relief Act, 1963 - Section 14, 14(1), 34, 41, 42

Citation: (2011) 4 ADJ 516 : (2011) 4 AWC 3861 : (2011) 8 RCR(Civil) 1878 : (2011) 113 RD 443**Hon'ble Judges:** Pankaj Mithal, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Pankaj Mithal, J.

Plaintiff-Respondent M/s Khaybar Transport Pvt. Ltd. is a company. It was granted a licence to run a dispensing pump under an agreement dated 15th December, 2005 by the Defendant-revisionist Bharat Petroleum Corporation Ltd. The said agreement was terminated on 29.5.2008. The order of termination of the licence was challenged by the Plaintiff-Respondent by filing a Writ Petition No. 2701 of 2008. The writ petition was dismissed on 3.6.2008 on the ground of alternative remedy observing that the Plaintiff-Respondent has an effective alternate remedy of filing a civil suit before the civil Court concerned. On the basis of the observation made in the above order, Plaintiff-Respondent instituted Original Suit No. 1984 of 2008 claiming two relief's. First, for the issuance of decree of declaration declaring the cancellation of the licence to be illegal, arbitrary, void, and ineffective. Secondly, to grant a decree of mandatory injunction directing the Defendant-revisionist to restore the supply of diesel and petrol to the outlet of the Plaintiff-Respondent.

2. The said suit is being contested by the Defendant-revisionist wherein a written statement has been filed inter alia taking objection that the suit is barred by the provisions of Order 7 Rule 11 CPC as well as by Sections 41 and 42 of the Specific Relief Act, 1963.
3. Accordingly, issues were framed on 27.7.2009 and the issue No. 3 happens to be as to whether the suit is barred by Order 7 Rule 11 Code of Civil Procedure.
4. The Defendant-revisionist also moved an application on 11.1.2010 paper No. 14 Ga for rejection of the plaint under Order 7 Rule 11 CPC on the ground that plaint does not disclose any cause of action. The termination of the licence is not liable to be challenged in civil Court in view of certain decisions of the higher and superior Courts. The application was rejected by the Court below vide order dated 25.2.2010, which order was challenged by the Defendant-revisionist in Civil Revision No. 187 of 2020 before the Court. The revision was allowed and the matter was remanded vide order dated 7.4.2010 as the Court was of the opinion that it was passed without application of mind.
5. On remand the application has again been rejected vide impugned order dated 1.6.2010.
6. The Defendant-revisionist has again come up in revision challenging the order dated 1.6.2010 passed by the Court below refusing to reject the plaint under Order 7 Rule 11 CPC and deciding Issue No. 3 aforesaid in favour of the Plaintiff-Respondent.
7. I have heard Sri Prakash Padia, learned Counsel for the Defendant-revisionist and Sri M.A. Qadeer, Senior Advocate, assisted by Sri Iqbal Ahamad, learned Counsel for the Plaintiff-Respondent.
8. Sri Padia, has argued that the suit is barred by Section 14 of the Specific Relief Act, 1963 and the relief's prayed for in the suit cannot be granted in view of the provisions of Sections 52 to 64 of the Indian Easement Act 1982. He therefore, submitted that the Court below has materially erred in exercise of jurisdiction in rejecting the application of the Defendant-revisionist under Order 7 Rule 11 CPC by totally misconstruing the various authorities on the point.
9. On the other hand, Sri Qadeer, in reply has submitted that the suit is not barred by the provisions of the Specific Relief Act, 1963. For the purposes of deciding application under Order 7 Rule 11 CPC only the averments made in the plaint are to be looked into. The Plaintiff is entitle to amend the relief's claimed and even the Court has sufficient power to mould the relief's and as such at this stage it cannot be inferred that the suit is barred by any statutory provision and is not maintainable.
10. It is important to note that the civil Courts have jurisdiction to try ail suits of civil nature except the suits which are either expressly or impliedly barred. This is the mandate contained in Section 9 of the CPC which is reproduced herein below:

9. Courts to try all civil suits unless barred.--The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either or impliedly barred.

11. At the same time in order to avoid a suit which is manifestly vexatious and meritless in the sense there is no cause of action to sue or is apparently barred by any statutory provision Order 7 Rule 11 CPC provides for weeding out such suits at the threshold. The relevant provisions of Order 7 Rules 11 CPC are quoted below:

11. Rejection of plaint.--The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) ...

(c) ...

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) ...

(f) ...

12. In the light of the above provisions, it is to be examined as to whether the plaint of the present suit is liable to be rejected under Order 7 Rule 11 CPC for either of the two reasons that it does not disclose a cause of action or that it appears to be barred by any law.

13. The main relief claimed in the plaint is for declaration of the order dated 29.9.2008 to be illegal, void and effective in so far as it cancels or terminates agreement dated 15.12.05 granting licence to the Plaintiff-Respondent to run the dispensing pump. The other relief of mandatory injunction claimed in the plaint is dependent upon the first relief and as such is of a consequential nature. Therefore, it has no much relevance so long as the first relief stands.

14. Section 34 of the Specific Relief Act, 1963 imposes a discretion upon the Court in issuing declaratory decrees with regard to the legal character of a person in respect of any right. But such a declaration is not to be granted when the person entitled to it omits to claim further relief to which he is entitled than a mere declaration. The Plaintiff-Respondent as per the averments in the plaint is prima facie seeking a declaration regarding his status as a licence to run the dispensing pump as per agreement dated 15.12.2005 by getting the cancellation order dated 19.11.2008 declared illegal for the reason that it has been passed in an arbitrary manner and in violation of the principles of natural justice. In addition to seeking such a declaration Plaintiff-Respondent has also sought a further relief with regard to restoration of supplies by way of mandatory injunction. In this way, he has not simply claimed declaration. He has not omitted to claim the further relief to which he may be entitled to under law. It is immaterial, if he fails to claim damages which claim, he

can certainly relinquish in view of Order 2 Rule 2 Code of Civil Procedure.

15. The Plaintiff-Respondent in the suit in paragraph 25 of the plaint has clearly stated the reason for the cause of action. The cause of action is stated to have arisen on the issuance of the order of cancellation dated 29.5.2008 cancelling the agreement dated 15.12.2005.

16. In view of the above, the plaint on the face of it discloses a cause of action and does not appear to be barred unless it is shown that the jurisdiction of the civil Court stands ousted.

17. In this connection, on behalf of the Defendant-revisionist reliance has been placed upon Section 14 of the Specific Relief Act, 1963 and the three Judges decision of the Supreme Court in the case of [Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others,](#)

18. Section 14 of the Specific Relief Act, 1963 clearly provides that the contracts of the nature provided therein cannot be specifically enforced namely a contract which in its nature is determinable. The relevant provision of Section 14 is quoted below:

14. Contracts not specifically enforceable.--(1) The following contracts cannot be specifically enforced, namely,--

(a) ...

(b) ...

(c) a contract which is in its nature determinable;

(d) ...

19. The above provision in effect provides that a contract which is terminable in any event at the option of the parties cannot be enforced through a Court. It is not disputed that the agreement in question dated 15.12.2005 under its terms and conditions is revokable. Moreover, the said contract was in the nature of a licence which is always revokable as licensee has no right or any interest and the licence is simply a permission and the person granting the permission has every right to revoke the permission so granted. Therefore, in such cases of revocation of permission the only remedy available is to sue for damages and not for the enforcement of the licence or the contract.

20. The Apex Court in the case of Amritsar Gas Service (supra) while considering the termination of the distributorship of the Indian Oil Corporation Ltd. viz-a-viz the provisions of Section 14(1)(c) of the Specific Relief Act, 1963 held granting the relief of restoration of the distributorship even on the finding that the breach was committed by the Corporation is contrary to the mandate of Section 14(1)(c) of the Specific Relief Act, 1963 and held that the restoration of the distributorship was not sustainable in law. It further added that in such a situation, the agreement being

revokable, the only relief which could be granted was the award of compensation.

21. In view of the aforesaid facts and circumstances as well as the legal position, the Plaintiff-Respondent is not entitled to grant of relief No. 1 as claimed in the plaint and consequently relief No. 2 which is dependent on the above relief cannot also be granted.

22. In this view of the matter, I am of the opinion that the plaint in question happens to be barred by Section 14(1)(c) of the Specific Relief Act, 1963. The Court below in passing the impugned order has completely side tracked, the above aspect and by only referring to certain decisions without application of its independent mind as to whether the plaint is barred by any law decided issue No. 3 in favour of the Plaintiff-Respondent.

23. Sri Qadeer, then submitted that the Plaintiff-Respondent can always get the plaint amended and add the relief of damages also and if that is done, the suit would not be barred. I am afraid, if such an amendment at this juncture would be permissible in law. When no such application for amendment of the plaint has yet been filed the plaint has to be seen as it stands today and not what it would be in future on amendment.

24. He has further submitted that the suit was filed by the Plaintiff Respondent on the directions of the High Court. Therefore, the plaint is not liable to be rejected. No doubt, this Court while dismissing the writ petition No. 2701 of 2008 in its order dated 3.6.2008 had observed that the Plaintiff-Respondent has an effective alternate remedy of filing a civil suit but such an observation in the first instance cannot be treated to be a direction so as to give a cause of action. Secondly, a jurisdiction cannot be conferred upon the Court when it is not so contemplated by law. Lastly, the above observation of the High Court cannot be taken as an observation or a direction to institute a civil suit for enforcement of a contract which is not legally enforceable. The said observation obviously refers to the alternate remedy of filing a civil suit so as to claim damages on account of revocation of the license illegally.

25. The Plaintiff-Respondent not having framed the suit for damages which alone is permissible in law, cannot be allowed to press the suit which is patently barred by Section 14 of the Specific Relief Act, 1963.

26. Accordingly, the Court below failed to exercise jurisdiction vested in it under law by refusing to reject the plaint.

27. The revision is therefore, allowed. The order dated 1.6.2010 passed by Additional Civil Judge (Senior Division) Court No. 2 Kanpur in Original Suit No. 1984 of 2008 Khaybar Transport Pvt. Ltd. v. Bharat Petroleum Corporation Ltd., is set aside and the plaint is ordered to be rejected under Order 7 Rule 11 CPC with no order as to costs.