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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 436 of 2021

Order Reserved on 29.9.2021

Order Delivered on 27.10.2021

Rajesh Kumar Jaiswal S/o Bhaiyalal Jaiswal Aged About 53 Years R/o Shri In Front Of Ram Mandir Manendragarh District Koriya Chhattisgarh.

---- Petitioner

Versus

1. India Oil Corporation Limited Through General Manager 16- Arera Hills Jail Road, Bhopal Madhya Pradesh.
2. Senior Board Manager Indian Oil Corporation Limited V.I.P. Road Post Ravigram, Telibandha Raipur Chhattisgarh.
3. Shri Suresh Kumar Jaiswal S/o Late Baiyalal Jaiswal Aged About 68 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
4. Smt. Radha Jaiswal W/o Late Shri Rakesh Jaiswal Aged About 65 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
5. Shri Mahesh Kumar Jaiswal S/o Late Baiyalal Jaiswal Aged About 62 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
6. Shri Dinesh Kumar Jaiswal S/o Late Baiyalal Jaiswal Aged About 55 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
7. Smt. Mamta Jaiswal W/o Mukesh Jaiswal Aged About 50 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
8. Smt. Kusum Jaiswal Wd/o Shri Ramesh Kumar Jaiswal Aged About 54 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.
9. Shri Pankaj Jaiswal S/o Ramesh Kumar Jaiswal Aged About 30 Years R/o In Front Of Shri Ram Mandir, Manendragarh District Koriya Chhattisgarh.

---- Respondents

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For the Petitioner : Shri Shakti Raj Sinha, Advocate.
For Respondents No.1 & 2 : Shri Anand Shukla, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 6.8.2021, passed in Miscellaneous Civil Appeal No. 3 of 2020 by the learned Second Additional District Judge, Manendragarh, District Koriya, Chhattisgarh.

2. The petitioner/ plaintiff has filed a civil suit praying for declaration of title and permanent injunction against the respondents. An application under Order XXXIX Rule 1 & 2 of the CPC was also filed. The respondent/ defendant No.6 – Dinesh Kumar Jaiswal is contesting Civil Suit No. 32A of 2019 and contested the application under Order XXXIX Rule 1 & 2 of the CPC. Learned trial Court by order dated 14.1.2020 dismissed the application filed under Order XXXIX Rule 1 & 2 of the CPC. The petitioner then preferred W.P.(227) No.404 of 2020, which was disposed off by this Court vide order dated 5.10.2020 granting liberty to the petitioner to file an appeal against the order dated 14.1.2020 of the trial Court. The petitioner then preferred a miscellaneous appeal No. 3 of 2020 before the Appellate Court, which was partly allowed by order dated 18.11.2020 and the case was remanded to the trial Court with a direction to decide the application under Order XXXIX Rule 1 & 2 of the CPC afresh. Learned trial Court by order dated 11.12.2020 again dismissed the application filed by the petitioner under Order XXXIX Rule 1 & 2 of the CPC and the petitioner then preferred Miscellaneous Appeal No.4 of 2020 against that order. In the meanwhile, respondent No.6 filed W.P.(227) No.497 of 2020 before this Court, which was disposed off by order dated 5.4.2021 granting liberty to the petitioner to file an application for condonation of delay in filing miscellaneous appeal and directing the Appellate Court to consider and decide the application on its

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own merits in accordance with law. The petitioner then filed an application under Section 5 of the Limitation Act. Learned Appellate Court has dismissed this application for condonation of delay by the impugned order.

3. It is submitted by counsel for the petitioner that the impugned order is erroneous and bad in law. It is further submitted that the Appellate Court has committed grave error of law in deciding the issue relating to agreement between the partners of the firm, hence, this order cannot be sustained in the eyes of law. It is also submitted by counsel for the petitioner that according to the partnership deed dated 1.10.1992, clause IV clearly speaks that retirement or death of any partner shall not have the effect of dissolving the partnership. According to clause 46, the agreement between the partnership firm and respondent No.1 is contrary to the condition in the partnership agreement. Respondent No.1 has given a communication dated 7.8.2020, by which the supply of oil to the petrol pump owned by the petitioner has been suspended. Such a direction is clearly against the terms of the partnership deed. The dispute is present between the petitioner and respondent No.6, therefore, the supply of oil should have been resumed by respondent No.1. It is also submitted that the payment has been made in advance to respondent No.1 for supply of the oil and other things which is outstanding in favour of the petitioner. Respondent No.6 and others have clearly intimated respondent No.1 by a communication that they are not interested to become a partner in the firm of the petitioner, therefore, the stoppage of supply of oil to the petitioner by respondent No.1 is totally uncalled for. Hence, it is prayed that the petition be allowed and the impugned order be set aside. Respondent No.1 be directed to resume the

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supply of oil to the petitioner.

4. Learned counsel for respondent No.1 opposes the submissions and submits that the impugned order is sustainable which needs no interference by this Court. It is submitted that according to the clause 46 of the agreement between the parties, it is clearly provided that in the event of the dealer being a partnership firm, this agreement shall automatically come to an end and stand terminated upon any change in the constitution of the firm, whether by retirement or death of any partners, introduction of new partners, unless and until respondent No.1 is given notice of such change or there is express agreement by respondent No.1 for continuation of the dealership with the surviving partners or with the reconstituted firm. It is submitted that in the present case, after the death of one of the partners, the dealership of the petitioner has been terminated by respondent No.1. There is a dispute between the petitioner and his brothers which has not been resolved so far. Hence, there is no reason present for respondent No.1 to continue with the supply to the petrol pump of the petitioner as the agreement is already terminated. Hence, the petition be dismissed.

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5. In reply, it is submitted by counsel for the petitioner that even after the death of one of the partners, respondent No.1 has continued the supply until 7.8.2020, therefore, the supply can be continued further, hence, a direction be given to respondent No.1 for this purpose.

6. Heard learned counsel for the parties and perused the documents present on record.

7. Considered on the submissions. The impugned order is passed on the application of the petitioner praying for condonation of delay in filing miscellaneous appeal under Section 5 read with Section 14 of the Limitation Act, 1963. After detailed discussion, learned Appellate Court has dismissed the application under Order XXXIX Rule 1 & 2 of the CPC on 14.1.2020, but the petitioner did not take any interest to file miscellaneous appeal until the supply of petrol and diesel was stopped by respondent No.1 on 7.8.2020. Subsequent to that, the petitioner instead of filing miscellaneous appeal filed a Writ Petition No. 404 of 2020, which was disposed off as withdrawn with liberty to file an appeal against the impugned order dated 5.10.2020. Learned trial Court by the impugned order has granted adjustment to the petitioner in accordance with the direction of the Supreme Court in the *suo moto* Writ Petition (C) No. 3 of 2020 and even then the filing of miscellaneous appeal had not been within limitation, the application for condonation of delay in filing the miscellaneous appeal has been dismissed.

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8. As it is clear from the perusal of the impugned order that the learned Appellate Court has not given any consideration the merits of miscellaneous appeal, therefore, there is no need to consider on the merits of the appeal itself. As regards the prayer of counsel for the petitioner seeking a direction of this Court to respondent No.1 for resuming the supply of petrol and diesel to the petrol pump of the petitioner, it is observed that the contract agreement that had been between the firm of the petitioner and respondent No.1 is not prevailing and further, the order passed by the Appellate Court is limited on the application for condonation of delay in filing the miscellaneous appeal, hence, there being a limited jurisdiction of this Court under Article

227 of the Constitution of India for supervising whether the Court below has acted within the parameters of law or not, therefore, any such independent relief as prayed by the petitioner's side cannot be granted. Hence, the present petition is dismissed and disposed off.

9. Accordingly, the present petition is dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

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