

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10124 OF 2010

(Arising out of Special Leave Petition (Civil) No. 26153 of 2010)

M/s. Shalimar Gas & others .. Appellants

-versus-

M/s. India Oil Corpn. Ltd & another .. Respondents

JUDGMENT

MARKANDEY KATJU, J.

1. Leave granted.
2. This appeal has been filed against the impugned judgment and order dated 6.5.2010 of Delhi High Court in LPA No. 216/2010.
3. Heard learned counsel for the parties and perused the record.

4. The facts of the case have been set out in the impugned judgment and hence we are not repeating the same here except where it is necessary.

5. Appellant No. 2 before us, Mrs. Aruna Nanda, is a widow of late Sqn Ldr. Romesh Nanda who was killed in an air crash in 1978 in course of his duty. She was allotted an Indane Gas distributorship as a sole proprietor of M/s. Shalimar Gas, appellant No. 1. She continued looking after the management till 2003 herself or with the help of her two daughters.

6. On 26.2.2003, appellant No. 1, i.e. M/s. Shalimar Gas Service, was converted into a partnership firm with appellant No. 2 and with her two daughters as partners. After the marriage of her daughters, appellant No. 2 entered into a partnership with appellant No. 2, Anil Kumar, on 21.12.2006 with 51% and 49% shares, respectively.

7. The respondent-corporation held an enquiry and came to the conclusion that appellant No. 2 assigned/transferred the distributorship in violation of the terms and conditions of the distributorship agreement

and got the approval for reconstitution of the firm by misrepresentation to the Corporation. Hence the appellant's distributorship was cancelled on 9.11.2009.

8. Aggrieved, the appellant filed a writ petition before the Learned Single Judge of the Delhi High Court which was dismissed on 23.3.2010. Thereafter the appellant filed a writ appeal before the Learned Division Bench which was also dismissed by the impugned judgment. Hence, this appeal.

9. In our opinion the judgment of the Learned Division Bench as well the Learned Single Judge of the Delhi High Court cannot be sustained.

10. Appellant No. 2, admittedly, was a war widow who was given a source of livelihood by awarding the distributorship of Indane Gas in 1986 and now she is an old lady with several ailments. Being an old lady and because of her ill health she could not be an active partner and was thus not available for day to day running of the firm. However, she continued to hold the majority shares in the firm.

11. The contention of the respondent-corporation was that by virtue of the dealership agreement, appellant No. 2 could neither sell the distributorship nor lose control over it. The High court has held that appellant No. 2 had lost control of the partnership firm. We do not agree.

12. It is an admitted fact that appellant No. 2 still holds 51% shares in the firm. Merely because she is an old lady who is a widow, it is quite natural that she could not look after the day to day functioning of the firm. By its letter dated 15.12.2006 the respondent-corporation accorded its approval for the reconstitution of the partnership firm, i.e. M/s. Shalimar Gas Service. Thereafter there was a formal agreement between appellant No. 1 with appellant Nos. 2 & 3 as partners and respondent No. 1 on 15.2.2007. It is a fact that the gas agency is the sole source of her livelihood, but unfortunately the respondents have not taken a humanitarian view in the matter.

13. The law should take a more liberal view in the case of widows, physically handicapped people etc.

14. In view of the above, the impugned judgment of the Learned Single Judge as well as the Division Bench are set aside. The impugned order dated 9.11.2009 terminating the distributorship also stands set aside and the respondents are directed to supply gas cylinders to the appellants regularly in terms of the Memorandum of Agreement dated 15.2.2007.

15. The appeal is allowed. There shall be no order as to costs.

.....J.
(Markandey Katju)

.....J.
(Gyan Sudha Misra)

New Delhi;
November 29, 2010