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IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

PANKAJ MITHAL; J., AHSANUDDIN AMANULLAH; J.

SPECIAL LEAVE PETITION (CIVIL) NO. 1381 OF 2025; JULY 14, 2025

INDIAN OIL CORPORATION LIMITED & ORS. *versus* M/S SHREE NIWAS RAMGOPAL & ORS.

Indian Partnership Act, 1932 - Section 42 - Dissolution of firm on death of partner - Held, partnership firm with more than two partners does not dissolve upon death of one partner, provided the partnership deed contains a clause allowing firm's continuity - that principle of dissolution under section 42 is applicable where there are two partners in a partnership firm and would not apply in cases of more than two partners - In present case, there are three partners and the dealership agreement itself recognises that in the event of death of one of the partners, IOCL - appellant may continue the dealership with the said firm, without terminating its dealership- the partnership deed contains a clause that in an event of death of one of the partners, the surviving partners may admit any of the competent heirs of the deceased partner so as to reconstitute partnership – Held, the IOCL-appellant cannot insist on joining all legal heirs of the deceased partner as appellant has no role to play in determining as to who is competent heir of deceased partner - appellant is supposed to act in a beneficial manner for continuance of business and not to adopt arbitrary approach - Upheld order passed by High Court. Appeal dismissed. [Relied on *M/s Wazid Ali Abid Ali vs. Commissioner of Income Tax, Lucknow 1988 (Supp) SCC 193; Para 19-23, 24- 27*]

For Petitioner(s) Ms. Madhavi Goradia Divan, Sr. Adv. (argued by) Ms. Mala Narayan, Adv. Mr. Shashwat Goel, AOR Ms. Isha Ray, Adv.

For Respondent(s) (R.1 to R.3) Mr. Yashraj Singh Deora, Sr. Adv.(argued by) Mr. Ramanand Aggarwal, Adv. Mr. Anindo Mukherjee, Adv. Mr. Rameshwar Prasad Goyal, AOR (R.7 & R.8) Ms. Pallavi Pratap, AOR(argued by) Mr. Ashag Gutgutia, Adv. Mr. Amjid Maqbooc, Adv. Ms. Yashvi Aswani, Adv.

J U D G M E N T

PANKAJ MITHAL, J.

- 1.** Heard Smt. Madhavi Goradia Divan, learned senior counsel for the Petitioner, Shri Yashraj Singh Deora, learned senior counsel for the Respondent Nos. 1 to 3 and Smt. Pallavi Pratap, learned counsel for the Respondent Nos.7 and 8.
- 2.** It is a classic case where instead of acting in a just, fair and equitable manner, the statutory corporation, a state instrumentality, has acted in a high-handed manner while exercising arbitrary powers with no sense of fairness in a matter of commercial interest.
- 3.** The Indian Oil Corporation Limited¹ after having lost before the Single Judge and the Division Bench of the High Court of Calcutta in successfully defending its above action has preferred this Special Leave Petition, probably in order to cover its illegal action.
- 4.** The Special Leave Petition is directed against the judgment and order dated 04.07.2018 passed by the Division Bench of the High Court upholding the mandamus issued by the Single Judge on 03.07.2012 in a writ petition directing the IOCL to maintain the supply of kerosene to the respondent No.1 till it is reconstituted or its dealership agreement is terminated.

¹ In short 'IOCL'

- 5.** The brief facts giving rise to the present dispute and to this Special Leave Petition are that Respondent No.1 – M/s Shree Niwas Ramgopal herein was a proprietorship firm of one Kanhaiyalal Sonthalia. The said Kanhaiyalal Sonthalia reconstituted the firm on 24.11.1989 and included his two sons, Ramesh Sonthalia and Gobinda Sonthalia along with himself as partners in the said firm. The firm was reconstituted as a partnership firm with Kanhaiyalal Sonthalia having 55% share, Ramesh Sonthalia having 35% share and Gobinda Sonthalia holding 10% share in the said partnership business.
- 6.** The partnership was to work as an agency/distributor of kerosene oil for the IOCL. The said partnership firm entered into a kerosene dealership agreement with the IOCL on 11.05.1990 which *inter alia* specifically provided that in the event of death of any of the partners of the partnership firm, the dealer shall immediately inform the corporation and provide details of the heirs and legal representatives of the deceased partner. It further provided that IOCL shall have an option:- i) to continue with the dealership with the existing firm; or ii) to have fresh agreement of dealership with the reconstituted firm; or iii) to terminate the dealership agreement. The decision of the IOCL in this behalf shall be final and binding upon all parties.
- 7.** One of the partners of the aforesaid partnership firm Kanhaiyalal Sonthalia, having 55% shares in the firm, died on 29.11.2009 leaving behind his wife, seven sons and four daughters as his heirs and legal representatives which included Ramesh Sonthalia and Gobinda Sonthalia, the two sons who were already working as partners in the firm.
- 8.** On the death of aforesaid Kanhaiyalal Sonthalia, as usually happens in all business families, disputes cropped up amongst his heirs with regard to the stake of 55% shareholding of the deceased in the partnership firm.
- 9.** One of his legal heirs Ananda Sonthalia addressed a letter dated 19.01.2010 to the existing partners staking claim in the partnership and that he be inducted as one of the partners. An undated letter was written by another heir Jagdish Prasad Sonthalia stating he has a bitter experience about the firm's business and he does not know about the assets and liabilities of his deceased father, therefore, the remaining partners be directed to furnish the details of the assets and liabilities, failing which it would not be possible for him to take a decision in the matter. Another legal heir Rakesh Sonthalia sent a letter to the Chief Divisional Retail Sales Manager of IOCL on 07.02.2010, informing him that his deceased father had left a will dated 28.05.2008, bequeathing his 55% share in the firm to him and that after his death he should be taken as a partner. It was later informed that he had already applied for probate of the said will through Miscellaneous Case No.11 of 2010 in the court of Civil Judge, Junior Division, Jangipur.
- 10.** Pending the above confusion regarding the reconstitution of the partnership firm, the IOCL approved the continuation of the firm till 14.06.2010 and advised them to furnish documents for the reconstitution of the firm. Accordingly, the subsisting partners on 13.04.2010 submitted a proposal for the reconstitution of the firm with the surviving partners and one another legal heir of the deceased i.e., Bijoy Sonthalia, with necessary documents and the reconstitution fee of Rs.25,000/-.
- 11.** Despite the above, the firm was informed that the validity of the token to supply kerosene would not be extended beyond 14.06.2010 if a fresh agreement is not executed. The representations of the partners to continue supplies were all in vain. Thus, the firm and its partners were compelled to invoke the writ jurisdiction of the High Court under

Article 226 of the Constitution by filing Writ Petition No.758 of 2010². The firm and its subsisting partners therein prayed for declaring Clause 1.5 of the policy guidelines dated 01.12.2008 to be illegal and contrary to the provisions of the Indian Partnership Act, 1932, for a mandamus to renew the licence to supply kerosene and to allow reconstitution of the partnership firm in terms of the partnership deed dated 24.11.1989. A further prayer was made to extend the validity of the token for the supply of the kerosene and not to stop it after 14.06.2010 so that the partnership firm may continue its business till the reconstitution of the firm.

12. The aforesaid writ petition was allowed *vide* judgment and order dated 03.07.2012 directing the IOCL to allow the partnership firm to be reconstituted subject to any order that may be passed in the probate case or by the competent civil court in the event any of the legal heirs approaches the court. The aggrieved heirs were given liberty to get their rights decided by the competent civil court. The court directed that till their rights are not decided, the partnership firm will be allowed to continue with its subsisting partners and to receive supplies of kerosene.

13. Aggrieved by the aforesaid directions of the learned Single Judge of the High Court, only the IOCL appealed against it. No grievance was raised by any of the heirs and legal representatives of the deceased Kanhaiyalal Sonthalia. None of them assailed the aforesaid order before the Division Bench meaning thereby that they felt satisfied and accepted the directions of the Single Judge.

14. The appeal by the IOCL was disposed of by the Division Bench on 04.07.2018 holding that in view of the law laid down earlier by the High Court in ***Indian Oil Corporation vs. Roy and Company***³, the IOCL is not entitled to discontinue the supply of kerosene oil to the partnership firm. The IOCL being a state authority ought to act in the interest of consumers, the common people, and should continue to supply kerosene oil to the firm for a period of one year and thereafter review the same on yearly basis till the partnership firm is reconstituted amongst the surviving partners and the heirs of the deceased partner.

15. The sheet anchor of Smt. Madhavi Divan, learned senior counsel for the IOCL, is the revised policy guidelines dated 01.12.2008. Her main submission is that the IOCL is following the said guidelines uniformly throughout the country. The said guidelines *vide* Clause 1.5 provides that in case of death of a partner(s), the partnership shall be reconstituted with the legal heir(s) of the deceased partner(s) and the surviving partner(s). Since all the heirs of deceased Kanhaiyalal Sonthalia have not applied or joined as partners to the reconstituted partnership firm, the IOCL is not bound to continue business with the existing partnership or to recognise the alleged reconstituted partnership, so as to continue the supply of kerosene.

16. In order to counter the above arguments, the counsel for the Respondents 1,2 and 3 i.e., the partnership firm and the surviving partners submitted that under the deed of partnership dated 24.11.1989, it has been specifically stipulated *vide* Clause 18 that in the event of death of any of the partner, the partnership will not cease to function, rather it shall continue to carry on the business and the surviving partners may admit any of the competent heirs of the deceased partner to the partnership so as to reconstitute it. The Dealership Agreement dated 11.05.1990 also does not provide for the cessation of the existing partnership on the death of one of the partners, rather it provides to continue the

² M/s Shree Niwas Ramgopal & Ors. vs. The Director of Consumer Goods & Ors.

³ 2018 (1) CHN (Cal) 199

dealership with the existing firm or to have a fresh dealership agreement with the firm, if reconstituted, or to terminate the dealership agreement. Since the dealership agreement was never terminated, the IOCL is not empowered to stop the supplies of the kerosene or to treat the business having come to an end.

17. In the light of the facts as narrated above and the submissions advanced by the counsel for the parties, it would be prudent to first refer to the Dealership Agreement dated 11.05.1990 which lays down the conditions of dealership *inter alia* that in the event of death of any partner, the subsisting partners of the dealership shall immediately inform to the IOCL about the death of the partner with necessary details of legal heirs of the deceased partner; whereupon it would be open for the IOCL to:- (i) either continue the dealership with the existing firm; or (ii) to have the fresh agreement of the dealership with the firm if reconstituted; or (iii) to terminate the dealership agreement. The above three conditions are evident from the plain and simple reading of Clause 30 of the dealership agreement.

18. It is an admitted position that the IOCL till date has not exercised the option of terminating the dealership of the firm, rather has provided opportunity to the firm to reconstitute itself. The firm has been reconstituted as per the proposal submitted on 13.04.2010 having the surviving partners and Vijay Sonthalia, one of the heirs and legal representatives of the deceased, as the third partner. However, the said reconstituted firm has not been recognised by the IOCL simply for the reason that all the heirs and legal representatives of the deceased persons have not joined or have not expressed their unwillingness to join the partnership firm.

19. The deed of partnership on the other hand *vide* Clause 18 clearly stipulates that the death of any partner shall not cause discontinuance of the partnership business and that the surviving partners may continue the business and the interest of the deceased partner shall vest in the legal heirs of the deceased. The surviving partners have the option to admit any of the competent heirs of the deceased partner to the partnership on such terms and conditions as may be agreed upon.

20. The aforesaid clause thus permits the existing partners to continue with the partnership business notwithstanding the death of one of the partners, leaving it open for the surviving partners to induct any of the competent heirs of the deceased partner in the partnership business. It is not necessary for the surviving partners to include all the heirs of the deceased partners in the partnership or to wait for their consent to be included or not to be included in the partnership.

21. It is settled in law by virtue of Section 42 of the Partnership Act, 1932⁴ that the partnership will stand dissolved *inter alia* on the death of the partner but this is applicable in cases where there are only two partners constituting the partnership firm. The aforesaid principle would not apply where there are more than two partners in a partnership firm and the deed of partnership provides otherwise that the firm will not stand automatically dissolved on the death of one of the partners.

22. In the case at hand, the partnership consisted of three partners and the deed of partnership, in unequivocal terms, provided that the death of a partner shall not cause discontinuance of partnership and the surviving partners may continue with the business. Therefore, the principle laid down under Section 42 of the Partnership Act would not be applicable and the partnership would continue despite the death of one of the partners.

⁴ Hereinafter referred to as the "Partnership Act"

23. This Court in **M/s Wazid Ali Abid Ali vs. Commissioner of Income Tax, Lucknow**⁵ observed that under the Partnership Act, on death or demise of a partner, the firm shall not be dissolved but shall be carried on with the remaining partners or by including the heirs and representative of the deceased partner on such terms and conditions mutually agreed upon. The aforesaid decision relied upon the decision of Calcutta High Court in **Sandersons & Morgans vs. ITO**⁶ wherein it was reiterated that if one of the partners dies or retires, there is change in the constitution of the firm but there is no dissolution. A similar view was expressed by the Allahabad High Court in **Noor Mohammad and Co. vs. Commissioner of Income-Tax**⁷ wherein it was held that the partnership would continue despite the death of one of the partners in terms of the Partnership Deed.

24. Moreover, the dealership agreement itself recognises that in the event of death of one of the partners, the IOCL may continue the dealership with the said firm. Therefore, on the death of one of the partners of the firm, the business of the firm would not come to an end in view of Clause 18 of the deed of partnership read with Clause 13 of the dealership agreement. In such a situation, the IOCL could not have discontinued the supply of kerosene to the existing firm without terminating its dealership.

25. The IOCL has refused to recognise the reconstituted firm on the pretext that all the heirs of the deceased partners have not joined or expressed their willingness either way to join or not to join the firm. In this connection, Clause 1.5 of the guidelines dated 01.12.2008 is very relevant and important. The said guidelines simply provide that in the case of death of one of the partners, the partnership shall be reconstituted with the legal heirs of the deceased partner and the surviving partners. It further provides that if there are no legal heirs or any of them have expressed unwillingness to join the firm, the dealership shall be reconstituted with the surviving partners or with the willing heirs of the deceased partner. The aforesaid guidelines nowhere stipulates that it is mandatory for all the legal heirs to join or reconstitute the partnership firm or otherwise to express their unwillingness to participate. It simply provides that a firm can be reconstituted with the legal heirs of the deceased partner which does not in any manner mean that it is mandatory for all the legal heirs to join for reconstitution of the firm. In fact, the deed of partnership specifically provides that on the death of any of the partners, the business of the partnership will continue with the surviving partners and they may induct any of the competent heirs of the deceased partners, which means that it is not imperative upon the surviving partners to induct all the heirs of the deceased partner in the reconstituted partnership firm. The insistence of the IOCL that all the legal heirs of the deceased partner should join the reconstituted firm or give 'No Objection Certificate' to the reconstituted firm would be contrary to the spirit of the original deed of partnership. The IOCL has no role to play in determining as to who is the competent heir of the deceased partner. It should be left on the wisdom of the existing partners.

26. In the wake of the above analysis and the discussion, the IOCL appeared to have misconstrued its own guidelines in not recognising the reconstitution of the partnership firm with the surviving partners and one new partner being one of the competent heir and legal representative of the deceased partner.

27. It is trite to mention that the IOCL is supposed to act in a manner which is beneficial for the continuance of the business and not to adopt an arbitrary approach thereby

⁵ 1988 (Supp) SCC 193

⁶ (1973) 87 ITR 270

⁷ (1991) 191 ITR 550

creating hinderance in the running business. It is for this reason that the learned Single Judge and the Division Bench of the High Court issued *Mandamus*, directing IOCL to continue the supply of kerosene to the existing partnership firm till it is properly reconstituted, subject to any order that may be passed in the probate case or by the competent Civil Court, if any of the heirs of the deceased partners approaches such a court and that the situation be reviewed on yearly basis to allow reconstitution of the firm with the surviving partners.

28. In the facts and circumstances of the case, there is no error or illegality on the part of the High Court in issuing the above directions.

29. It may be pertinent to note that none of the heirs and legal representatives were dissatisfied by the directions issued by the High Court as they have not assailed the same in any forum. Therefore, when the heirs and legal representatives of the deceased partner were not aggrieved, it was not appropriate for the IOCL to have taken a hyper-technical approach on the interpretation of the guidelines, so as not to extend the period of supply of kerosene or to stop the supply which, in effect, is axiomatic to the continuance and the smooth flow of business which was continuing for past many years.

30. Accordingly, in view of the aforesaid facts and circumstances, we do not propose to entertain the Special Leave Petition and to interfere with the impugned order(s) of the High Court.

31. The Special Leave Petition is devoid of merit and is dismissed with the observation that the IOCL ought to avoid such litigations by interfering with the continuance of any running business by taking a narrow approach.

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