

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos 4819-4820 of 2021
(Arising out of SLP (C) Nos 8682-8683 of 2020)

M/s Maharashi Filling Station (Indian Oil Dealer)

Appellant(s)

Versus

Indian Oil Corporation Limited and Another

Respondent(s)

ORDER

1 Leave granted.

2 A Division Bench of the High Court of Judicature at Allahabad disposed of Writ - C No 20271 of 2018, instituted by the appellant with the following order dated 31 May 2018:

“Heard Mr. Anand Tewari, learned counsel for the petitioners and Mr. P. Padia, learned counsel for respondents.

Counsel for the petitioners does not press the writ petition and submits that the petitioners desire to take a remedy of arbitration.

The petition is disposed of as not pressed. It is open to the petitioners to take a remedy of arbitration for redressal of their grievance.”

- 3 The review before the High Court has been dismissed on 10 January 2020.
- 4 The appellant was a retail dealer of the respondent, Indian Oil Corporation Limited. The dealership was terminated on 29 July 2017. A writ petition under Article 226 of the Constitution was instituted by the appellant seeking:
 - “(i) a writ, order or direction in the nature of certiorari quashing the order dated 29.7.2017.... (Annexure-8 to the writ petition);
 - (ii) a writ, order or direction in the nature of mandamus commanding the respondent No.1 to decide the representation submitted by the petitioner dated 26.3.2018 (Annexure-13 to the writ petition), expeditiously....after providing opportunity of hearing...”
- 5 When the Petition came up before the High Court, counsel for the petitioner informed the Division Bench that the petition was not being pressed since the petitioner desired to pursue the remedy of arbitration. There is an arbitration agreement between the parties. The petition was hence disposed of as withdrawn.
- 6 The ground which was sought to be espoused in the review was that the arbitrator would have no jurisdiction to order the restoration of the distributorship. Hence, it was submitted that the concession which was

made by counsel on a wrong conception of law should not be held against the appellant. The relevant averments in the review petition are to the following effect:

“That it is, therefore, clear that the concession made by the earlier counsel Sri Anand Tewari leading to the disposal of the instant writ petition was made under a wrong assumption of law that the arbitrator had jurisdiction to direct restoration of distributorship. It is settled law that concession made by a counsel on a wrong presumption of law is not binding on the petitioner.”

- 7 Ms Meenakshi Arora, learned senior counsel appearing on behalf of the appellant submits that in view of the decision of this Court in ***E Venkatakrishna vs Indian Oil Corporation and Another*** (2000) 7 SCC 764, the arbitrator would have no jurisdiction to order the restoration of the distributorship and can only to award damages. Hence, the legal assumption on which the petition was withdrawn was incorrect and the error on the part of the counsel should not cause prejudice to the appellant.
- 8 Mr Amitesh Mishra, learned counsel appearing on behalf of the respondent does not dispute that the principle of law as stated in the above submission has been enunciated by this Court on the jurisdiction of the arbitral tribunal. However, learned counsel submits that the respondent should be at liberty to raise all appropriate defences including on the ground that the appellant has not exhausted all departmental remedies if the writ petition is restored to the

High Court for a decision afresh.

- 9 The writ petition under Article 226 of the Constitution was withdrawn by the counsel appearing for the petitioner on a misconception of law. The arbitral tribunal would have jurisdiction to award damages but not to restore the distributorship. In the circumstances, we set aside impugned orders of the High Court dated 31 May 2018 and 10 January 2020 and restore Writ - C No 20271 of 2018 to the file of the High Court. All the rights and contentions of the parties including the defences of the respondent are kept open. The High Court is requested to expedite the disposal of the writ petition on remand expeditiously, preferably within a period of three months from the date of receipt of a certified copy of this order.
- 10 The appeals are accordingly disposed of.
- 11 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
August 16, 2021
CKB

ITEM NO.38

Court 4 (Video Conferencing)

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) Nos.8682-8683/2020

(Arising out of impugned final judgment and order dated 31-05-2018 in WC No.20271/2018 10-01-2020 in CMRA No.3/2019 passed by the High Court of Judicature at Allahabad)

M/S MAHARASHI FILLING STATION (INDIAN OIL DEALER)

Petitioner(s)

VERSUS

INDIAN OIL CORPORATION LTD. & ANR.

Respondent(s)

Date : 16-08-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mrs. Meenakshi Arora, Sr. Adv.
Mr. Krishna Dev Jagarlamudi, AOR

For Respondent(s) Mr. A.C. Mishra, Adv.
Ms. Reetu Saipawar, Adv.
for ACM Legal

UPON hearing the counsel the Court made the following
O R D E R

1 Leave granted.

- 2 The appeals are disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(ANITA RANI AHUJA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)