HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 70/2025 in
WP (C) No. 3441/2023

Reserved On: 25th of August, 2025
Pronounced On: 15th of September, 2025

1. **Chairman, Indian Oil Corporation,**
   New Delhi, India.

2. Divisional Manager, Indian Oil Corporation,
   Gandhi Nagar, Jammu.

… Appellant(s)

Through: -
Mr D. C. Raina, Senior Advocate with
Mr Sajjad Ashraf Mir, Advocate.

V/s

1. **Zareena Akhter, Age: 47 Years**,
   W/O Late Gh. Mohammad Khan
   R/O Naribal, Sopore, District Baramulla.

2. Union of India through Secretary,
   Ministry of Petroleum, New Delhi, India.

… Respondent(s)

Through: -
Mr Shuja-ul-Haq Tantray, Advocate for R-1; and
Mr Faizan Ahmad Ganie, CGC vice
Mr Tahir Majid Shamsi, DSGI for R-2.

CORAM:
Hon'ble Ms Justice Sindhu Sharma, Judge
Hon'ble Mr Justice Shahzad Azeem, Judge

(JUDGMENT)

Shahzad Azeem-J:

01. This *intra* Court appeal is directed against the Judgment dated September 24, 2024 passed by the learned Single Judge ["the Writ Court"] in WP(C) No. 3441/2023 titled **"Zareena Akhter V. Union of India &**

Ors.", whereby the Writ Court disposed of the Writ Petition with a direction to the Appellant-Corporation to purchase the leased out land or, in the alternative, to revoke the lease enabling the Petitioner (Respondent No.1 herein) to sell the leased property free from all encumbrances.

FACTS:

02. The facts giving rise to this appeal are stated very briefly hereinafter.

03. The Respondent No. 1-Mst. Zareena Akhter lost her better-half in the Kargil War in the year 1999, who, at the relevant time, was an Army-man and was serving as L/NK. The Government of India had come up with a policy under Operation Vijay Scheme for rehabilitation of war-widows by way of allotment of dealership of petrol pump/ gas agency, etc. The Respondent No.1 also being a war-widow, as such, she was appointed as Retail Outlet Dealer for the retail sale of petroleum products at Bumhama, Kupwara by virtue of letter of appointment dated February 26, 2024 on the terms and conditions contained in the Dealership Agreement, entered between the parties.

04. It is also relevant to note that simultaneously lease agreement dated January 28, 2004 came to be executed by and between the Respondent No.1-Mst. Zareena Akhtar and the Indian Oil Corporation ["the Corporation"], by virtue of which land falling in Survey No. 109 Min and measuring 02 Kanals 09 Marlas was leased out in favor of the Corporation for a period of 30 years on monthly rental @ Rs.6,000/- with increase in rent by 10% every 5 years.

05. Accordingly, the Respondent No.1 has established the Retail Outlet under the name and style **"M/S Shaheed G. M. Filling Station,**

Bumhama, Kupwara", providing the facilities for Motor Spirit, High Speed Diesel (HSD), Lube and Greases.

06. On April 30, 2010, a joint surprise check is said to have been conducted by the Central Bureau of Investigation (CBI) and Industry Mobile Laboratory of Bharat Petroleum Corporation. The samples being taken from the Filling Station are alleged to have failed the tests for density and "Kinematic Viscosity" since same were found adulterated as per the test report, accordingly, a formal case against the Respondent No.1-firm, being FIR No. 012320100002 under Section 3/7 of the Essential Commodities Act and the relevant provisions of the Petroleum Act and the Rules made thereunder came to be registered, showing the suspected offence as **"adulteration in essential commodity**". Consequently, the Area Manager of the Appellant-Corporation, vide Order dated May 01, 2010, directed the Respondent No.1-firm to stop the sales from the Outlet, followed by show cause notice dated May 05, 2010 calling upon the Respondent No.1-firm to explain in respect of High Speed Diesel (HSD) failing in clinical test and the Tank Lorry Retention samples available at the Retail Outlet being neither labelled nor properly sealed and reference density (morning density) being also not available at the time of inspection; that based on these allegations, the Respondent No.1-firm was further informed that failure of High Speed Diesel (HSD) samples in the clinical test is a source of irregularity and merits termination as per Clause 1 of the Marketing Discipline Guidelines (MDG), 2005.

07. Thereafter, other procedural formalities were also undertaken and finally, Order dated June 07, 2010 came to be passed by the Appellant-Corporation, thereby the dealership of the Respondent No.1-firm was terminated.

08. The Orders dated June 07, 2010, whereby the dealership of the Respondent No.1-firm was terminated and May 01, 2010, whereby the Respondent No.1-firm was directed to stop the sale/supply of petroleum, came to be challenged by the Respondent No.1-firm through its proprietor, namely, Mst. Zareena Akhter in OWP No. 585/2010 titled **"M/S Shaheed G. M. Filling Station V. Indian Oil Corporation & Ors."**, and, notably, during the currency of this first Writ Petition, the Respondent No.1 filed second Writ Petition, being WP(C) No. 3441/2023, which is the subject matter of the instant appeal, wherein the following prayer was made:

> **"In the premises, it is, therefore, respectfully prayed that this Hon'ble Court be pleased to allow this writ petition and direct the respondents to terminate the lease agreement executed between the petitioner and the respondent-IOC."**

09. This way, in OWP No. 585/2010, the Respondent No.1-Petitioner called in question the impugned orders issued by the Appellants-Corporation stopping the operation of the Filling Station and termination of her dealership, however, in the second Writ Petition-WP (C) No. 3441/2023, a simplicitor prayer was made for termination of lease agreement in respect of land over which the Filling Station was established.

10. Both the Writ Petitions were clubbed, considered and disposed of by a common Judgment dated 24th of September, 2024.

11. OWP No. 585/2010 came to be dismissed by the Writ Court on the ground that Clause 67 of the **"Agreement of Dealership"**, entered between the Respondent No.1 and the Appellants, contains an arbitration clause, therefore, in view of availability of alternate and efficacious remedy of arbitration, the Writ Petition was held not maintainable.

12. Notwithstanding the dismissal of OWP No. 585/2010 in view of the existence of arbitration clause in the **"Agreement of Dealership"**, the Writ Court allowed the second Writ Petition-WP (C) No. 3441/2023, but, for

different reasons that the dealership of the Outlet is terminated way back in the year 2010 and, by now, lease period has been more than 20 years, therefore, if the land is still kept by the Corporation at its disposal, without being put to any use, same will not be in the interests of justice. The Writ Court also observed that had the Respondent-Corporation allotted this Retail Outlet to some other person, things would have been different.

13. With these observations, WP (C) No. 3441/2023 came to be disposed of by virtue of the impugned Judgment with a direction to the Corporation either to purchase the leased-out land or revoke the lease agreement and make available the leased property of the Respondent No.1 free of encumbrances so that it may be sold off.

CHALLENGE:

14. The main ground of challenge to the impugned Judgment is that once there exists an **"Arbitration Clause"** in the lease agreement, in that event, any dispute between the parties has to be settled by the Arbitral Tribunal and the jurisdiction of the Court is ousted. The further ground of challenge is that during the pendency of the first Writ Petition, OWP No. 858/2010, the Respondent No.1-Petitioner had filed the second Writ Petition, WP (C) No. 3441/2023, just to frustrate the stand taken by the Appellants-Respondents and, thus, the second writ Petition was barred under Order 2 Rule 2 and explanation 6 to Section 11 of the Code of Civil Procedure (CPC).

15. Mr D. C. Raina, learned Senior Counsel, vehemently argued that the lease agreement entered between the parties was for a period of 30 years and the said period has not yet expired, therefore, the parties are bound by the terms and conditions of the lease agreement, as such, in view of the **"Arbitration Clause"**, any dispute has to be decided by the Arbitral Tribunal, ousting the jurisdiction of the Court, therefore, for this reason also, the impugned Judgment suffers from jurisdictional error.

16. *Per contra*, learned Counsel for the Respondent No.1, the contesting party, while opposing the appeal, submits that the Retail Outlet Dealership was terminated in the year 2010 and ever since the leased land has not been put to any use, whereas, on account of life threatening disease, the Respondent No.1-Petitioner is in dire need of finances, therefore, for the advance treatment, huge funds are required, thus, the leased land is required to be sold and same can be done only once lease agreement is revoked/ terminated, therefore, no fault can be found with the impugned Judgment passed by the Writ Court.

ANALYSIS:

17. On taking into account the whole conspectus of the controversy involved, the point which requires consideration is the maintainability of the Writ Petition on twin grounds; firstly, maintainability of WP (C) No. 3441/2023, filed during the currency of OWP No. 585/2010, and, secondly, existence of **"Arbitration Clause"** in the **"Lease Agreement"** duly executed by and between the Respondent No.1-Petitoiner and the Appellants-Corporation.

18. Indisputably, the Respondent No.1-Petitioner was appointed as Retail Outlet Dealer on the terms and conditions as were contained in the dealership agreement. Simultaneously, the Corporation and Respondent No.1-Mst. Zareena Akhter have entered into lease agreement by way of lease deed dated January 28, 2004, whereby land falling in Survey No. 109 Min, measuring 02 Kanals and 09 Marlas, was leased out in favour of the Corporation by the Respondent No.1 for a period of 30 years on monthly rental basis as detailed therein.

19. In the first Writ Petition, OWP No. 585/2010, the Petitioner-Mst. Zareena Akhter had challenged the orders of termination of dealership and stoppage of operation of the Outlet, respectively, issued by the

Corporation, whereas, in the subsequent Writ Petition, WP (C) No. 3441/2023, the prayer was made seeking direction to the Respondents-Corporation to terminate the lease agreement.

20. Now, the question arises as to whether the Respondent No.1-Petitioner was required to challenge the orders passed by the Corporation, whereby dealership was terminated and operation of Filling Station stopped; and, secondly, seeking direction to the Corporation for termination/ revoking of lease agreement, in one Writ Petition or it was legally permissible to split the cause of actions and to file two different Petitions challenging the action of the Corporation, one arising from the **"Dealership Agreement"** and the other arising out of **"Lease Agreement"**, respectively.

21. In order to answer this question, we need not to undertake much analytical study of the law governing the splitting and consolidation of the cause of action, as argued by the learned Counsel for the Appellants.

22. The cardinal principle of Order 2 Rule 2 and Section 11 of the Code of Civil Procedure is to prevent a Plaintiff from vexing the Defendant twice for the same cause of action, incapsulated in the maxim "*nemo debet bis vexari pro una et eadem causa"*, (no person can be vexed twice for the same cause) and the other principle is based on the maxim *"res judicata pro veritate accipitur"*, (a matter adjudicated is taken as conclusive and correct).

23. Both these provisions contained in the CPC operate proactively, ensuring all claims are brought in one Suit, while Section 11 CPC operates proactively, barring re-litigation of decided matters.

24. Therefore, all the claims arising from a single cause of action are required to be adjudicated together to avoid fragmented litigation and, at the same time, once a matter has been finally adjudicated, same is being prevented to be re-litigated on the issues already decided.

25. From the long drawn authoritative pronouncements on the subject, what is deducible is that the second Suit on different cause of action is not barred, whereas, this Rule only applies when the cause of action is same in the new Suit also.

26. Now, keeping in mind these broader principles, we will proceed to deal with the issue on hand.

27. The point involved is no more *res integra*, as it is trite that the **"Lease Agreement"** and **"Dealership Agreement"** are independent of each other. Be it further noted that the Respondent No.1-Petitioner was a dealer under the lessee (the Corporation) and the dealership was liable to be cancelled on many grounds contained in the contract entered between the parties and, if the lease deed is treated to have been terminated along with the dealership, it will lead to a situation which does not flow from the interpretation of the instruments, i.e., the dealership agreement and the lease agreement, respectively.

28. In this regard, what has been held by the Hon'ble Supreme Court in "**Rahul Yadav & Anr. v. M/S Indian Oil Corporation Ltd. & Ors.; AIR 2015 Supreme Court 2742"** at paragraph Nos.18 and 19, is worth noting:

> **"18. On a plain reading of the aforesaid agreement, it is clear as noon day that it has no connection whatsoever with the lease agreement. Both the agreements are dependent of each other. The appellant was a dealer under the lessee, that is, the Corporation. The dealership is liable to be cancelled on many a ground. In case there is a termination, dealership is bound to be cancelled and at that juncture, if the lease deed is treated to have been terminated along with the dealership, it will lead to a situation which does not flow from the interpretation of the instruments. The dealership agreement has been terminated because of the decision rendered by this Court in Mukund Swarup Mishra (AIR 2007 SC (Supp) 1878 (supra). The consequences of cancellation of the dealership is a sequitur of the judgment. The inevitable consequence of that is the appellant has to vacate the premises and the Corporation has the liberty to operate either independently or through another dealer. The appellant cannot be allowed to cause obstruction or create an impediment. The submission that the appellant entered into the lease agreement at a monthly rent of Rs. 10,000/- as it was given the dealership is a mercurial plea, only to be**

noted to be rejected. The dealership was availed of as has been held by this Court in an inapposite manner. In such a situation, consequences are to be faced by the appellant.

19. The second issue which has been feebly raised by the learned senior counsel for the appellant that the 1971 Act would not be applicable has really no force. Admittedly, the respondent is a public sector undertaking. The appellant whose dealership has been cancelled, cannot claim possession to retain possession on the basis of ownership of the land as the lease is in continuance. Therefore, he is a trespasser. Thus, the provisions of the 1971 Act apply on all fours and accordingly we repel the said submission."

29. In view of the above proposition of law, it is well settled that both the agreements, i.e., **"Dealership Agreement"** and **"Lease Agreement"**, are independent of each other and, if there is any grouse in respect of stoppage of operation of the Outlet and termination of dealership, that was an independent cause and, thus Respondent No.1 was not enjoined to bring the cause of actions arising under **"Dealership Agreement"** and **"Lease Agreement"**, respectively, in one Writ Petition.

30. While dealing with the scope and nature of **"Lease Agreement"** and **"Dealership Agreement"**, respectively, the Hon'ble Supreme Court has reiterated the law in **"Indian Oil Corporation Limited v. Shree Ganesh Petroleum Rajgurunagar; (2022) 4 Supreme Court Cases 463**", wherein it has been held that the lease agreement and the dealership agreement are distinct agreements, independent of each other. It has been further held that the dealership agreement was inherently terminable, while as, the lease agreement was for a fixed period of 29 years from the date of execution thereof and, as per clause 3 (b) of the lease agreement, it was specifically provided that, on the lessee paying the rent as per the lease agreement and performing its conditions, it would be entitled to peaceably hold and enjoy the said premises without any interruption by the lessor(s) or any other person claiming through the lessor(s).

31. In this view of the matter, the plea raised by the Appellants-Corporation that the second Writ Petition was not maintainable does not hold

good, in view of the settled proposition of law that the cause of action arising from both the **"Dealership Agreement"** as well as **"Lease Agreement"** are distinct and independent of each other, therefore, the plea is liable to be rejected.

32. Now, the next question for consideration is as to whether in view of the **"Arbitration Clause"** contained in the lease agreement, the Writ Petition under Article 226 of the Constitution of India is maintainable.

33. At this stage, we only wish to add that, besides Clause 67 of the 'Agreement of Dealership', which contains the arbitration clause and lead to dismissal of OWP No. 585/2010, a similar clause, is also contained in the lease agreement dated January 28, 2004 in the shape of Clause 5 (d) which reads, thus:

> **"(d) Any dispute or difference of any nature whatsoever regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to these presents shall be referred to the sole arbitration of the Managing Director of the lessee and if the Managing Director is unable or unwilling to act as a sole arbitrator then the matter will be referred to the sole arbitration of any other person designated or nominated by such Managing Director in his place and stead willing to act as such arbitration on the ground that the arbitrator so appointed in an officer of the lessee or that as such officer be had dealt with the matters to which the disputes relate or had expressed his views thereon. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable of act for any reason such Managing Director as aforesaid at the time of such transfer vacation of office or in his inability to act shall nominate or designate another person to act as an arbitrator pursuant to this clause and such other person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is expressly agreed that no person other than the Managing Director or the person or persons designated by such Managing Director of the lessee as aforesaid, shall act as an arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. The award of the Arbitrator so appointed as herein provided shall be final, conclusive and binding on both the parties and such arbitration shall be held subject to and in accordance with the provisions of the Arbitration Act, 1996 and any statutory modification or re-enactment thereof."**

34. It has been mutually agreed between the parties, while executing the lease agreement, that in case of any dispute or difference of any nature whatsoever, same shall be referred to the sole arbitration of the Managing Director of the lessee.

35. The rights and liabilities of the parties are undoubtedly governed by the terms of lease agreement and both the parties have duly consented to it and also obligated to adhere to its terms and conditions, therefore, once the parties are signatory to the instrument, then they are bound to abide by the contractual obligation, thus, as a corollary, the specific mechanism provided therein by way of arbitration for adjudication of any dispute or difference, the parties have to adhere to it in letter and spirit.

36. The Hon'ble Supreme Court in **"Hindustan Petroleum Corporation Ltd. v. M/S Pinkcity Midway Petroleum; AIR 2003 Supreme Court 2881"**, held that in case where there is 'Arbitration Clause' in the agreement, it is obligatory for the Court to relegate the parties to arbitration in terms of the agreement.

37. It is worth noting that, while navigating through the paper book, we had also come across an application, being CM No. 4156/2025, moved by the Appellants-Corporation seeking direction to utilize/ assign the leased premises in terms of Clause 4 (e) of the lease deed dated January 28, 2004 to *ad hoc* dealership during the pendency of the appeal. The Clause 4 (e) of the lease deed reads, thus:

> **"(e) The Lessee shall be entitled to assign, transfer, sub-let, underlet or part with possession of the demised premises or any part thereof to any person above named whosoever it chooses without the consent of the Lessor."**

38. In the wake of the above noted factual aspect, still to say that the Appellant-Corporation does not intend to utilize the land cannot be accepted, inasmuch as there is no ground, worth the name, raised either before the Writ Court or in the appeal that the Appellant-Corporation had, in any manner, violated the terms and conditions of the lease agreement.

39. From the above discussion, it emerges that the cause of actions based on rights and liabilities arising from **"Dealership Agreement"** and

"Lease Agreement", respectively, are independent and distinct of each other, therefore, such actions need not to be brought in one litigation and, also in absence of any procedural infirmity; violation of rules of natural justice; or violation of any of the rights contained in Part-III of the Constitution, a Writ Petition under Article 226 of the Constitution ought not to be entertained if alternative and efficacious remedy arising out of the instrument (lease agreement) is available.

40. Thus, we are of the considered opinion that the impugned Judgment dated 24th of September, 2024 passed by the Writ Court is unsustainable in the eyes of law, as such, the instant appeal is **allowed** and the impugned Judgment is hereby set aside. Resultantly, the Writ Petition-WP (C) No. 3441/2023 shall stand **dismissed**.

41. LPA No. 70/2025 shall stand **disposed** of on the above terms, along with any application(s) pending therewith.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

SRINAGAR
September 15th, 2025
"TAHIR"

i. Whether the Judgment is approved for reporting? **YES**.