Before Hon'ble V. K. Jhanji, J.

M/S JAIPIR METALS AND ELECTRICALS LTD,—*Petitioner.*

versus

M/S JAIN INDUSTRIES, ROHTAK AND OTHERS,—*Respondents.*

Civil Revision No. 3101 of 1993

October 12, 1993.

Specific Relief Act (47 *of* 1963)—*S.* 14(1) (c) & 41(c)—***Dealership wrongly terminated—Injunction sought for restraining petitioner from terminating dealership—Allowed—Impugned order set aside—Held, dealer only entitled to claim damages and not restoration—No order of injunction can be granted restraining termination of dealership as it would be decreeing suit at the initial stage.***

Held, that once the petitioner-company decided to terminate the dealership, it was not open for the Courts to pass an order of restraint as it would amount to enforce an agreement which was not enforceable. The learned Additional District Judge has not appreciated that under sub-section (1) of Section 14 of the Specific Relief Act, certain contracts are not enforceable, one of which, clause (c) is a contract which in its nature is determinable. The word 'determinable' means that which can be put an end to. Determination is the putting of thing to an end. Clause (c) enacts that the contract cannot be specifically enforced, if it in its nature, is determinable. Section 41, clause (e) of the Specific Relief Act provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which would not specifically be enforced. Thus, if the plaintiff cannot enforce a contract which is determinable, then how the defendant can be restrained from not terminating it. Apart from this, assuming for the sake of argument that the dealership had been wrongly terminated, even then in law, the dealer can claim damages but in no case the dealership can be restored. Dealership is inherently terminable in law and normally no order of injunction can be granted restraining the terminating of the dealership because the effect would be decreeing the suit at the initial stage.

(Para 6)

M. L. Sarin, Sr. Advocate with Hemant Sarin, Advocate, *for the Petitioner.*

Ashok Aggarwal, Sr. Advocate with Subhash Goyal. Advocate and Vipun Mittal, Advocate, *for the Respondent.*

ORDER

(1) This is defendant's civil revision directed against the order of the Additional District Judge, Rohtak, whereby appeal against *ex parte ad interim* injunction order passed by the Senior Sub Judge, Rohtak, was dismissed.

(2) In brief, the facts are that the petitioner is a Limited Company engaged in the manufacture of Electric Meters at Jaipur, Rajasthan. In 1992, the respondents approached the petitioner Company and requested it to appoint plaintiff-respondent No. 1 as its dealer for the State of Haryana. *Vide* letter dated 13th October, 1992, petitioner Company provisionally appointed respondent-firm as its dealer for various Districts in the State of Haryana. The dealership was provisional and valid only upto 31st March, 1993. The petitioner-Company,—*vide* letter dated 10th June, 1993 conveyed to the respondent-firm that the dealership stood terminated in terms of the appointment letter. After waiting for almost two months, the respondent-firm filed suit for declaration with consequential relief of permanent injunction and mandatory injunction against the petitioner-Company. In the suit, declaration was sought to the effect that letter dated 10th June. 1993 terminating the dealership is totally illegal, without jurisdiction and void and for further declaration that the dealership for Energy Meters given in the name of the respondent-firm is still subsisting and continuing and is not liable to be terminated unless any fault or breach of the appointment letter is committed by the respondent-firm. An injunction was also sought for restraining the petitioner-Company from terminating the dealership in respect of the Electric Meters and its sale by the respondent-firm against regular payment. A further relief was also sought to direct the petitioner-company to supply 16,900 Meters to the respondent-firm upto 31st August, 1993 and for supply of 3,000 Energy Meters in future every month against payment. The respondent-firm alleged that it had placed orders upto 31st March, 1993 for more than 38,000 Meters and so far only 14,000 Meters had been supplied and thus the supply of 24,000 Meters was still pending. The respondent-firm further stated that since the petitioner-Company was not making supplies to them, the respondent-firm was suffering huge loss on account of non-supply of Energy Meters. Along with the suit, an application for *ad interim* injunction was filed on which the trial Court passed *ex parte* order on the very date the suit was presented. The effect of the order was that the petitioner-Company was restrained from stopping supply of Electric Meters to the respondent-firm Trial Court further restrained it from treating it auhorised the dealership of respondent-firm as terminated. The petitioner-Company was also directed to supply 16,900 Meters against payment and continue supplying 3,000 Meters per month, single phase or three phase, in terms of appointment letter dated 13th October, 1992. The petitioner-Company feeling aggrieved. of the *ex parte* order preferred appeal which was dismissed by the Additional District Judge, Rohtak. This order is impugned in this civil revision.

(3) Mr. M. L. Sarin, Senior Advocate, counsel for the petitioner-Company while impugning the order made reference to various clauses of letter dated 13th October, 1992,—*vide* which the respondent firm was appointed as dealer and contended that no case had been made out for granting *ex parte ad interim* injunction. Counsel also contended that the Courts at Rohtak had no jurisdiction to entertain the suit as under the agreement, parties had agreed that in case of and dispute, the same shall be subject to Jaipur jurisdiction.

(4) In reply, Mr. Ashok Aggarwal, Senior Advocate, counsel for the respondent-firm contended that under letter of dealership, 30 days' notice was required to be given before termination and that having not been given, the Courts below were right in granting *ad-interim* injunction. He also contended that review with regard to performance of the respondent-firm, if at all, was warranted, that should have been done before 31st March, 1993 when the agreement had to come to an end. His precise argument was that after 31st March, 1993, the respondent-firm having made certain supplies, their agency could not be terminated because that would offend clause 1 of the agreement which provided for 30 days' notice.

(5) Before I deal with the respective contentions of learned counsel for the parties and the order of the learned Additional District Judge, who affirmed the order of the trial Court in appeal, I must say that the Senior Sub Judge, Rohtak was not justified in passing *ex parte* order. The dealership was terminated, *vide* letter dated 10th June, 1993. Suit was filed on 17th August, 1993 i.e. almost two months after the receipt of letter terminating dealership. The Senior Sub Judge in his order dated 17th August, 1993 has noticed that the petitioner-Company supplied goods upto 12th May, 1993 meaning thereby that no goods were supplied thereafter. In this situation, I fail to understand as to what were the exceptional circumstances which led to the passing of the *ex parte* order. When the plaintiff could wait for almost $2\frac{1}{2}$ months to challenge letter dated 10th June, 1993, why the Court could not wait till notice of application for *ad interim* injunction was served on the petitioner-Company. On perusal of the order of the trial Court, I find that it neither has given plausible reasons nor has taken into consideration all relevant factors including as to how the object of granting injunction itself would be defeated if an *ex parte* order is not passed. Trial Court ought to have taken into consideration that the consistent view of this Court is that except where delay involved in the issue of notice will defeat the object of injunction, notice should be ordered to the party, before injunction is ordered against him.

(6) Now, coming to the merits of the impugned order, the Additional District Judge who affirmed the order of the trial Court in appeal, primarily took into consideration that after the appointment had come to an end by efflux of time, petitioner-Company had made supplies to the respondent-firm upto 12th May, 1993 against their orders. Further, according to the Additional District Judge, if the appointment of the plaintiff was provisional and valid upto 31st Mrach, 1993, the petitioner-Company should not have sent any further supply against the order of the respondent-firm considering the respondent-firm as authorised dealer. Since the supply had been made beyond 31st March, 1993, a presumption was drawn that the dealership was extended and could be terminated only by giving 30 days' notice as per clause 10 of the appointment letter. This finding of the Additional District Judge affirming the *ex parte* injunction order cannot be sustained for the reason that the appointment was purely provisional and valid upto 31st March, 1993. Under the letter dated October 13, 1992, appointment could be reviewed for a further period subject to the performance of the respondent-firm. Under clause 10, dealership was liable to be terminated at any time within 30 days' notice without assigning any reason whatsoever. *Vide* letter dated 10th June, 1993, petitioner-Company terminated the dealerships of the respondent-firm. In its letter, the petitioner-Company stated :

> "Your dealership stands terminated as per clause 10 of the aforesaid appointment letter."

It was for the petitioner Company to review the performance of the respondent-firm and it was the petitioner-Company who could either extend or terminate the dealership. There is nothing in letter dated October 13, 1992 to show that the petitioner-Company was under any obligation to extend the period of dealership. Once the petitioner-Company decided to terminate the dealership, it was not open for the Courts to pass an order of restraint as it would amount to enforce an agreement which was not enforceable. The learned Additional District Judge has not appreciated that under subsection (1) of Section 14 of the Specific Relief Act, certain contracts are not enforceable, one of which, clause (c) is a contract which in its nature is determinable. The word 'determinable' means that which can be put an end to Determination is the putting of a thing to an end, Clause (c) enacts that the contract cannot be specifically enforced, if it in its nature, is determinable. Section 41, clause (e) of the Specific Relief Act provides that an injunction cannot be granted to prevent the breach of a contract, the performance of which

would not specifically be enforced. Thus, if the plaintiff cannot enforce a contract which is determinable, then how the defendant can be restrained from not terminating it. Apart from this, assuming for the sake of argument that the dealership had been wrongly terminated, even then in law, the dealer can claim damages but in no case the dealership can be restored. Dealership is inherently terminable in law and normally no order of injunction can be granted restraining the terminating of the dealership because the effect would be decreeing the suit at the initial stage.

(7) I am also not in agreement with the reasoning of the first Appellate Court that the dealership would be deemed to have continued once the petitioner-Company supplied goods to the respondent-firm after 31st March, 1993. There is nothing on record to show that after termination of the dealership, petitioner-Company, has by its conduct, given an impression of continuing the dealership. The definite stand of the petitioner-Company in the written statement was that all the instructions given before 31st March, 1993 were complied with i.e. only those Electric/Energy Meters were supplied for which orders were placed before 31st March, 1993. In view of this stand of the petitioner-Company, it was wrong to presume that the dealership was extended irrespective of the fact that no letter to that effect was ever issued by the petitioner-Company or any such document in this regard was ever executed. For all these reasons, I am of the considered view that the Courts below while granting injunction acted with material irregularity in the exercise of their jurisdiction and for that matter the orders cannot be sustained.

(8) Before concluding I must notice another argument of Mr. M. L. Sarin, Senior Advocate, learned counsel for the petitioner-Company with regard to jurisdiction of the Court. His contention was that civil Courts at Rohtak had no jurisdiction because the parties had agreed that all disputes were subject to Jaipur jurisdiction. For this, he referred to (i) *Indian Oil Corporation* v. *Amritsar Gas Service and others* (1), (ii) *Hakam Singh* v. *Gammon (India) Ltd.*, (2) and *A.B.C. Laminart Private Limited* v. *A. P. Agencies, Salem* (3).

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(1) 1991 (1) S.C.C. 533.

(2) A.I.R. 1971 S.C. 740.

(3) A.I.R. 1999 S.C. 1239.

(9) It is true that clause 8 of the letter provides that all disputes arising out of the appointment shall be subject to Jaipur jurisdiction but I do not intend to decide the question of territorial jurisdiction at this stage because that would require some evidence which the parties are yet to lead. Of course, it would be for the trial Court to frame issue regarding territorial jurisdiction of the Court on which decision would be given before determining any other issue arising out of the pleadings of the parties.

(10) For the reasons recorded above, this civil revision is allowed with costs. Orders of the Courts below are set aside and application for *ad interim* injunction stands dismissed. Costs are assessed at Rs. 2,000.

J.S.T.

Before Hon'ble H. S. Bedi, J.

KEHAR DIN,—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, CHANDIGARH AND ANOTHER,——*Respondents.*

Civil Writ Petition No. 6652 of 1991

January 22, 1992

Central Civil Service (Classification, Conduct and Appeal) Rules 1965—*Rules* 3(1)(*i*) & (*iii*), 14(8)(*a*), 14(14) *and* 15—*Constitution of India,* 1950—*Art.* 226/227—*Domestic enquiry—Validity of—Dismissal from service—Duty to inform delinquent official of entitlement to services of a Presenting Officer—Violation of rule* 14(8)(*a*) *would cause prejudice and vitiate enquiry—Denial of right of cross examination of material witnesses will cause prejudice to delinquent official—Non supply of enquiry report alongwith the opinion recorded by enquiry officer being mandatory the enquiry would stand vitiated—However, since punishment was imposed long before* Mohd. Ramzan Khan *case, punishment shall not be open to challenge on the ground of non-supply of enquiry report—Delinquent official entitled to reinstatement with full backwages and continuity of service—Labour Court award set aside.*

Held, that the petitioner who is admittedly a Class IV employee, and as per the record was suffering from some kind of depression, was definitely prejudiced in not being made aware of the fact that he was entitled to be assisted in the enquiry by another Government servant belonging to the department particularly when the P.G.I. itself was represented by its Presenting Officer. The enquiry against the petitioner, therefore, stands vitiated on this short ground. (Para 3)