

**Navsari Central Consumers Cooperative Stores Ltd. Vs. Hpcl**

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**SooperKanoon Citation :** [sooperkanoon.com/745732](http://sooperkanoon.com/745732)

**Court :** Gujarat

**Decided On :** Jan-16-1999

**Reported in :** (2000)GLR293

**Judge :** S.K. Keshote, J.

**Acts :** [Constitution of India](#)

**Appeal No. :** Special Civil Application No. 2726 of 1996

**Appellant :** Navsari Central Consumers Cooperative Stores Ltd.

**Respondent :** Hpcl

**Advocate for Def. :** Sunil C. Patel, Adv. for Respondent No. 2

**Advocate for Pet/Ap. :** Patel

**Disposition :** Petition dismissed

**Judgement :**

**S.K. Keshote, J.**

1. Learned counsel for the respondent produced on the record of this special civil application a zerox copy of the certified copy of the judgment dated 8-11-1996 of the Civil Judge (S.D.), Navsari in Regular Civil Suit No.53/96. With the consent of the learned counsel for the parties, that document is taken on record of this special

civil application.

2. The petitioner, Navsari Central Consumer Cooperative Stores Ltd., through its President, filed this special civil application under Article 226 of the Constitution and prayer has been made that the order of the respondent No.1, Hindustan Petroleum Corporation Ltd. awarding distributorship of L.P. Gas to the respondent No.2 be quashed and set aside. Another prayer has been made for the direction to the respondent No.1 to withdraw the order of the distributorship of L.P.G. passed in favour of the respondent No.2. As usual the prayer has also been made for grant of interim relief.

3. This special civil application has been filed by the petitioner in this court on 10-4-1996. On 23-4-1996, notice was issued to the other side and then on 19-7-1996, this special civil application has been admitted. This court has protected the petitioner in terms that meanwhile if the dealership has so far not been commenced it shall remain stayed.

4. The grievance of the petitioner in this special civil application is that it is a consumers' cooperative society which deals in supply of sale of essential commodities to the general public at large and its application submitted to the respondent No.1 for grant of dealership of L.P.G. should have been granted to it and not to the respondent No.2.

5. Learned counsel for the respondent No.2 raised a preliminary objection regarding the maintainability of the special civil application on the ground that the petitioner has filed regular civil suit in this very matter for grant of same relief but in the said suit it has not been able to get the interim injunction. Ultimately, the suit has been dismissed on 8th November, 1996 and the petitioner has availed of simultaneously two parallel remedies out of which one has finally been decided. Carrying this contention further, learned counsel for the respondent No.2 submitted that the suit has been filed by the petitioner on 27-3-1996 i.e. immediately after the distributorship of L.P.G. has been granted by the respondent No.1 in favour of respondent No.2. After that this special civil application has been filed. So two parallel remedies have been availed of for the same relief and which is not permissible to the petitioner legally. It has next been contended that the

petitioner has concealed this material fact from this court and on this concealment of the fact what it has gone to the extent that it persuaded the court to issue notice to the respondent and ultimately got the interim relief also. Learned counsel for the petitioner has admitted the fact of filing of the suit, declining of the temporary injunction in its favour by the civil court and ultimately the dismissal of the suit by the civil court. Learned counsel for the petitioner also admitted that the fact of filing of the suit has not been disclosed in the special civil application. However, the learned counsel for the petitioner submitted that the subject matter of the suit and this special civil application are altogether different and separate cause of action and as such the filing of that suit will not come in the way of the petitioner to file this special civil application.

6. Both the learned counsel for the parties have also advanced their submissions on the merits of the matter. As I am satisfied that this special civil application deserves to be dismissed only on the ground of availing of simultaneous two parallel remedies by the petitioner, final decision in the suit against it and concealment of this fact to be disclosed in the special civil application, I do not consider it to be necessary to advert to the submissions made by the learned counsel for the parties on the merits of the matter.

7. Learned counsel for the petitioner though contended that the cause of action in the suit and the special civil application are distinct and separate, he is unable to satisfy this court on this point in his favour. On being asked by the court, learned counsel for the petitioner fairly admitted that the suit also relates to the dispute inter-se of the petitioner and the respondent No.2, re : grant of dealership of L.P.G. by the respondent No.1. The distinction sought to be drawn in these two proceedings by the learned counsel for the petitioner is that in the suit, the petitioner prayed against the other defendants therein i.e. the Collector, Mamlatdar etc. the Government authorities not to grant to the petitioner the licence as per the provisions of the orders as framed under Essential Commodities Act, 1955. I failed to understand how it can be said to be a separate and distinct cause of action. A very fine distinction or thin line distinction has been sought to be drawn by the learned counsel for the petitioner. The question of grant of licence in pursuance to the orders framed under the Essential Commodities Act, 1955 is nothing but only

in pursuance of the dealership of L.P.G. is granted by the respondent No.1 in favour of the respondent No.2. These are all the consequential certificates, licences etc. but foundation of those subsequent action is of dealership which is of L.P.G. which has been granted by the respondent No.1 in favour of respondent No.2. From the reading of the judgment of the learned trial court given in the suit filed by the petitioner, I am satisfied that it is nothing but only a challenge which is sought to be made by the petitioner in the suit to the action of the respondent No.1 of grant of dealership of L.P.G. in favour of the respondent No.2. It is a same cause of action which was there in the civil suit and this special civil application. Availing of two parallel remedies simultaneously in the matter is certainly objectionable which cannot be permitted to the petitioner. It is a case where the petitioner has availed of simultaneously two parallel remedies in the matter and which is nothing but only an attempt on its part to one or the other way get the interim relief in its favour. Learned civil court declined to grant the interim relief and so far as this court is concerned, conditional interim relief has been granted. The suit has been decided finally and the same has been dismissed. It is not out of context to state that where the petitioner availed of remedy available in one form then against the same action it cannot avail of other remedy before this court. The contention of the learned counsel for the respondent No.2 that this writ petition is not maintainable on this ground deserves acceptance. Not only this the inter-se dispute between the parties has been decided by the learned trial court and that decision has attained the finality as admittedly the petitioner has not filed any appeal against that decision. Once the civil court has decided inter-se parties dispute, merely because the petitioner has availed of simultaneously two parallel remedies, this court cannot go on the merits of the matter again. Whatever decision given inter-se the parties in dispute by the civil court is binding and in case it is not challenged by filing an appeal, this court under its extraordinary jurisdiction cannot re-examine the matter and decide the same on merits. It is open to the petitioner and it has opted for remedy of civil court, it has to stick to it and whatever decision given therein has to be accepted. In this special civil application, if any decision is given in favour of the petitioner then what this court will do, to set aside the order of the civil court though the petitioner has not felt aggrieved of the same as against which no appeal has been filed.

8. Not only this but this conduct of the petitioner to open two fronts to challenge this action of the respondent No.1 deserves to be deprecated. This conduct of the petitioner is nothing but only an abuse of the process of the court, which cannot be permitted by this court. Learned counsel for the petitioner has utterly failed to give out any explanation much less a legal and cogent explanation for this availing of two parallel remedies simultaneously.

9. Be that as it may. The concealment of this fact of filing of the suit in the matter is certainly a serious concealment and I find sufficient merits in the contention of the learned counsel for the respondent No.2 that by concealing this fact, the petitioner got issued the notice to respondents in this special civil application and also obtained interim relief from this court in its favour. This fact of filing the suit in the matter is a relevant and material fact, which has to be disclosed by the petitioner in this case and concealment thereof certainly disentitle it from seeking any relief under extraordinary jurisdiction of this court in the matter. Only on this ground otherwise also this case deserves no consideration on the merits by this court. If any reference is needed, the reference may have to the decision of this court in the case of Patel Kaushikbhai Bhogilal and Ors. vs. Zapli Khadni Dana Nakhwani Chakla-ni Parabadi Trust & Ors., special civil application No.3306/94 decided on 4-2-1995 (Coram : S.K. Keshote,J).

10. In the result, this special civil application fails and the same is dismissed with costs. Learned counsel for the respondent No.2 states that he has charged Rs.5000/- towards the professional fees from the respondent No.2. Cost of this litigation is assessed to Rs.5000/-. Rule discharged. Interim relief, if any, granted by this court stands vacated.