

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Ex.F.A.No.1/2000**

% *Reserved on :22.03.2011.*
Decided On: 05.04.2011

THE PUNJAB EXCHANGE LTD. Appellant
Through: Mr. K. Sunil, Adv.

Versus

RAJDHANI GRAINS JAGGERY EXCHANGE LTD. &
ANR. Respondents
Through: Mr. N.S. Jain, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG,J.**

1. This appeal arises out of the order dated 1.11.1999 passed by the learned ADJ in having allowed the objections filed by the respondent No.2 during execution initiated by the appellant against the judgment debtor to evict respondent No 2/ Objector, by alleging that they were sub-licensee of the judgment debtor and thus, were bound by the decree of eviction passed in favour of the appellant against the judgment debtor.

2. According to the respondent No.2/objector, the decree could not have been executed against them inasmuch as it was their plea that they are direct tenant/licensee of the decree holder and, therefore, in the event of there being no suit filed by the decree holder against them, the decree holder was not entitled to evict the respondent No.2/objector from the said property.

3. The learned ADJ after having recorded the evidence led by the parties on the objections came to the conclusion that the respondent

No. 2/objector was inducted in the premises directly by the decree holder as tenant and in the absence of any judgment/decreed order for eviction having been passed against them, the appellants could not have evicted the respondent/objector from the suit premises pursuant to the decree passed in their favour but against the first respondent vide impugned order dated 1.11.1999.

4. Briefly stating the facts of this case are that; the appellant/decree holder in the trial court had filed suit for possession and recovery of Rs 18,000/- as licence fees against Respondent No 1/ Judgment debtor on 18.02.1972. The Ld. ADJ vide an order dated 17.01.1979 decreed the suit in favour of the appellant/Decree holder and directed respondent No.1/ Judgment Debtor to vacate the premises shown in red colour. The respondent No. 1/Judgment Debtor later preferred an appeal which was dismissed. The appellants then initiated winding up proceedings against respondent No. 1 and vide orders dated 7.10.1983 and 11.04.1979 this Court made it clear that the other occupants except Respondent No. 1/Judgment Debtor would not be forcibly disposed by the appellant except in accordance with law in an appropriate proceedings. It was also made clear that the rights of the other occupants were not affected by the above said orders. However, the appellant filed an execution petition against Respondent No. 2 which was objected by the respondent No. 2 by filing an objection Petition M-54/91.

5. In the Objection Petition M-54/91, it was averred by the respondent No. 2 that he was inducted as a tenant in the premises bearing shop No. 119/20 Kohinoor Building, Katra Barain, Fathepuri, Delhi, in the year 1969 by the appellant at a rental of Rs 24/- per month. Since then respondent No. 2 was in continuous, exclusive and independent possession of the said tenanted premises without any obstruction of any kind. In January 1960, respondent No 2 was instructed by the appellant to pay the future rent with effect from January 1960 to respondent No 1/ Judgment debtor as appellant had entered into an arrangement with respondent No 1/ Judgment Debtor

whereby respondent No 1 was authorized to collect the rent from all the occupants in the disputed building. Consequently, respondent No 2 started paying rent to respondent No 1. In December 1971, respondent No 2 received a letter from the appellant stating that license of respondent No 1 had been revoked and respondent No 1 was asked to pay the rent with effect from December 1971 to appellant.

6. Thereafter, respondent No 2 had been paying rent as per the instructions received from time to time from the appellant. Thus, it was the case of the respondent No 2 that the decree was not executable against him because he was neither the judgment debtor nor the person occupying the premises in dispute under the judgment debtor. Respondent No 2 also alleged that appellant during the execution petition had filed a site-plan in the suit and depicted the portion in red color alleged to be in actual possession of respondent No1/ Judgment Debtor which was factually incorrect.

7. On the other hand the appellant contested these objections and submitted that since respondent No 2 was not a party to the suit, therefore the objections raised by him were not maintainable. According to the appellant respondent No 2 was claiming possession under respondent No 1/ judgment Debtor and as such had no right to remain in possession because respondent No 2 had no independent title to the Gaddies and cannot maintain objections. Further, respondent No 2 was not paying use and occupation charges since October 1983 either to the appellant or to Respondent No 1 or to the official Liquidator. Appellant denied that respondent No 2 was not bound by the decree passed against respondent No 1/ Judgment Debtor.

8. On pleadings of the parties the following issues were framed by the Ld ADJ:

“1. Whether the decree holder itself having inducted the objector can dispossess him in the decree now passed against the judgment debtor? OPD

2. What is the effect of the notice issued by the decree holder in the year 1971 to the objector asking him to pay the license fee to the decree holder instead of judgment debtor?

3.What is the effect of the undertaking given by the decree holder in the High Court?

4.Whether the decree is not executable against the objector as alleged by the objector?

5.Relief.”

9. As regards to Issue no 1, the Ld ADJ observed that there was abundant evidence on record which clearly proved that respondent No 2 was inducted as a tenant or licensee in the premises in dispute by none else than appellant himself. As a matter of fact the admission of the appellant came out from the horse's mouth through the letter Ex. O.W.1/1 written by appellant to respondent No 2. The relevant part is quoted hereunder:

“You are a licensee in respect of Gaddi No. 119-120 Kohinoor Building, under the Punjab Exchange Ltd. In 1960 Punjab Exchange Ltd. had entered into an arrangement with M/s. Rajdhani Grains & Jaggery Exchange Ltd., under which you were asked to pay the license fee to the aforesaid Exchange. This arrangement has now come to an end, as the license in favour of M/s. Rajdhani Grains & Jaggery Exchange Ltd. has been revoked by us. You are therefore, required to pay the license fee with effect from 1st December, 1971 in respect of the premises which you have been allowed to use, to M/s. Punjab Exchange Ltd. against the Company's receipt at the rate of ₹ 40/-.

Payment of your monthly license fee for December, 1971 and onward to anybody other than Punjab Exchange Ltd. shall be unauthorized and shall be treated as non-payment of license fee”.

10. It was noteworthy that the appellant admitted signature on this document of immense importance.

11. During the course of evidence, Shri Ram Dayal Gupta who was previously working as a director of respondent No 1/Judgment debtor and currently working as a chairman of the decree holder has admitted in his examination-in chief that gaddies Nos 121-122 were given on license basis to respondent No 1 though he could not explain as to how

respondent No 1 shifted to gaddie Nos 119-120. The relevant extract is quoted here under:-

“10. The letter Ex.D.H.W.1/F dated 30.03.84 is written by Shri Ram Dayal Gupta to the Objector. It shows that Shri Ram Dayal Gupta had refused to accept the rent from the Objector.

11. In his cross-examination, Shri Ram Dayal Gupta admitted that he has not filed any list of occupants in the original suit. He could not say whether the Objector exchanged Gaddies No. 121-122 with Gaddies No. 119-120. He admitted that he had issued equity share certificate Ex. D.H.W.1/E in favour of the Objector on 21.11.59 as Director of the Judgment Debtor. He admitted that he does not have record of Decree Holder from 1948-60 except certificate of incorporation rules and articles of incorporation. He stated that he does not have the record of the occupants, who were occupying the Gaddies at the time of agreement with the Judgment Debtor in the year 1960.

12. It is thus crystal clear that the best evidence was withheld for the reasons best known to the Decree Holder. Production of this record would have gone a long way to show whether the Objector was occupying the premises prior to 1960 or not. In the absence of this record the court has to draw an adverse inference against the Decree Holder in view of authorities reported as Gopal Krishnaji Vs. Mohd. Hazi Latif, AIR 1968 SC 1413 and National Insurance Company Ltd. Vs. Jugal Kishore & Others, JT 1988 10 SC 265. In his examination-in-chief, in the start, Shri Ram Dayal Gupta stated that Gaddies No. 121-122 were given on license basis to the Objector by the Decree Holder. He could not explain as to how the Objector was shifted to Gaddies No.119-120. These facts further fortify the objections.”

12. Thus it is clear that the respondent No 2/objector was a direct licensee under the appellant. In fact, he abided by the instructions of the appellant to pay license fee to the respondent for some time. However, as soon as the instruction were changed, he started paying license fee directly to the appellant. Thus, merely because at some point of time, the respondent No.2/objector paid license fee to the judgment debtor that also under the instructions of decree holder, it does not make the respondent No.2/objector his sub-licensee under the

judgment debtor entitling the appellant to evict them from the suit property.

13. Thus the Ld. ADJ held that it was crystal clear that the appellant itself had inducted respondent No 2 in the premises in dispute therefore respondent No 2 who is a stranger to the decree cannot be bound, holding this the Ld. ADJ dismissed the execution petition filed against respondent No 2 and simultaneously upheld the objection petition filed by him. Hence this appeal.

14. I have considered the submissions made on behalf of the both the parties and have also perused the records.

15. In the written submissions filed by the respondent No 2, he has reiterated his stand taken before the Trial Court and has submitted that:

1.He had taken on rent shop No 119-120 on or about 1959 from the appellant/ decree holder i.e Punjab Exchange Ltd.

2. Pursuant to Agreement between appellant and respondent No 1, respondent No. 2 started paying rent to respondent no1.

3. On December 1971 letter was sent by appellant informing termination of agreement with respondent No1 and requiring respondent No 2 to make future payment to appellant.

4.Respondnet No 2 appeared as witness as OW-1 and in cross examination by appellant admitted to have remained Director of appellant for short period.

5. The counsel for appellant during arguments asserted that respondent No 2 Occupied Gaddi No 121-122 and relied upon Statement of respondent No.2 in suit No 4/1977 wherein respondent No.2 appeared as witness of respondent No.1 , whereas respondent No.2 appeared as witness in the Trial Court as OW-1 but was neither confronted nor put in cross-examination of the above stated deposition by appellant. Further respondent No.2 submits that a perusal of list dated 9.09.1976 of License Fee recoverable up to month of August 1976 filed by the appellant along with paper book of appeal wherein at S.No. 59 at Page 55 of the Appeal Paper Book Gaddi No 119-120 have been shown in the name of respondent No. 2

6. The respondent further submits that the appellant withheld relevant record of appellant from 1948-60 for which adverse inference was rightly drawn by the Trial Court.

7. The appellant also submits that the witness Ram Dayal of appellant appeared as DHW-1 in the trial court and admitted his deposition in suit NO 4/77 wherein gaddi no 119-120 were stated to have been given by appellant”

16. However, no written synopsis has been filed on behalf of the appellants. The record supports the contention made by respondent No.2/ objector as made by him in his written submissions.

17. I have gone through the evidence which has come on record. A perusal of the letter EX O.W1/1 written by the appellant to respondent No. 2 on which appellant has admitted his signatures as well as reading of the statement of Shri Ram Dayal makes it clear that the respondent No.2 /objector was a direct licensee under the appellant and was not a sub-licensee through the judgment debtor. Thus, the plea of respondent No.2/objector being direct licensee under appellant is probable.

18. No doubt, there is some discrepancy about the Gaddi Number but there was admission on the part of the witness appearing on behalf of the appellant that the possession was given to respondent No. 2 with respect to gaddi No 121-122 on license basis, however he could not explain how respondent No. 2 was shifted to gaddies No 119-120. More so, when no record is produced by the appellant to show as to whether the respondent No. 2/objector was occupying the premises prior to 1960 or not. In the circumstances, when there is evidence available to show that the respondent No. 2/objector was admittedly a licensee under the decree holder without there being anything available on record as to whether he was a licensee for Gaddi No 119-120 or Gaddi No 121-122, the plea of the respondent No 2/objector cannot be disputed. Moreover, no clarification has been given by the appellant as to who is presently in occupation of gaddi No. 119-120 and since when the concerned person occupied those gaddies rather admitted by the learned counsel appearing for the appellant at the bar, they have taken possession of gaddi No. 121-122 from a third person.

19. Therefore in such circumstances, I do not find any infirmity in the order passed by the Learned Additional District Judge. The appeal is dismissed with no orders as to cost. The copy of the order be sent to the Executing Court along with the records.

MOOL CHAND GARG,J

APRIL 05, 2011

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