

**RSA-2001-2000 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Reserved on:-22.09.2025**Date of Decision : 25.09.2025****1. RSA-2001-2000 (O&M)**

State of Haryana and Others

....Appellants

VERSUS

M/s Dhillon and Company Licensee Firm, Bhiwani

....Respondent

2. RSA-188-2000 (O&M)

M/s Dhillon and Company Licensee Firm, Bhiwani

....Appellant

VERSUS

State of Haryana and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Vaibhav Sharma, AAG Haryana.
For the appellants in RSA-2001-2000
For the respondent in RSA-188-2000

Mr. Pratap Singh, Advocate and
Mr. Manav Sharma, Advocate
For the appellants in RSA-188 -2000
For the respondent in RSA-2001-2000

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MANDEEP PANNU, J.

1. These two Regular Second Appeals are being disposed of by this common judgment, as they arise out of the same proceedings and relate to the same controversy.

2. RSA No. 2001 of 2000 has been filed by the defendants, namely the State of Haryana and others, against M/s Dhillon and Company, challenging the judgment and decree dated 23.04.1997 passed by the learned trial Court whereby the suit of the plaintiff was decreed to the effect that the defendants were restrained

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from recovering the licence fee from the plaintiff to the tune of 90% for the period of 40 days from the date of filing of the suit, as detailed in the decree-sheet, as well as against the judgment and decree dated 22.10.1999 passed by the learned lower appellate Court whereby the appeal was partly allowed and the judgment and decree of the trial Court dated 23.04.1997 was modified to the effect that the plaintiff-firm was entitled to remission of 90% of the licence fee with effect from 03.09.1995 till the end of the month of September 1995, and that if the plaintiff had deposited any amount against that period, it was entitled to a refund thereof.

3. The connected RSA No. 188 of 2000 has been filed by the plaintiff, M/s Dhillon and Company, challenging the judgment and decree of the learned lower appellate Court dated 22.10.1999 inasmuch as it restricted the relief to remission for the period from 03.09.1995 to the end of September 1995 only, and thereby modified the decree granted by the trial Court.

4. Accordingly, the defendants have assailed the judgments and decrees of both the Courts below, while the plaintiff has challenged the judgment and decree of the lower appellate Court in as much as it restricted the relief of remission.

Brief Facts

5. The brief facts of the case, as emerge from the pleadings, are that the plaintiff, M/s Dhillon and Company, filed a suit for permanent injunction against the State of Haryana and Another. It was pleaded that the plaintiff is a partnership firm duly registered with the Registrar of Firms and Societies, Haryana, and is the licensee of country liquor (L-14-A) and Indian Made Foreign Liquor vends (L-2) of Group No. 1 of Bhiwani command area for the year 1995-96. The suit was filed through one of its registered partners and licensee, Shri Radha Ram Jain, who is competent and duly authorised to institute the proceedings.

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6. It was further pleaded that the plaintiff firm, being the highest bidder, was granted the licence for L-14-A and L-2 in the command area of Group No. 1, Bhiwani, for the excise year 1995-96. The auction for the aforesaid licences took place and the bid amounts were ₹6,26,50,000 for L-14-A and ₹1,95,50,000 for L-2. It was averred that the requisite security amount was also deposited, and the plaintiff was required to pay the whole of the bid money in 11 equal monthly instalments.

7. It was further pleaded that the licence fee was payable for running the vends throughout the year except for three days, namely Independence Day, Mahatma Gandhi Jayanti, and Republic Day. Calculating on that basis, the daily licence fee worked out to ₹1,73,066 for L-14-A and ₹50,405 for L-2.

8. The grievance of the plaintiff was that with effect from 03.09.1995, torrential rains followed by devastating floods struck Bhiwani District, particularly affecting the command area of the plaintiff's licences. It was alleged that villages and Bhiwani town were submerged under water ranging from 5 feet to 10 feet from 03.09.1995 onwards, and the flood fury had not abated even when the suit was filed on 27.09.1995. The countryside, already reeling under heavy rains of August 1995, was further flooded, paralysing normal life.

9. It was pleaded that as per newspaper reports, the negligent acts of the district administration had aggravated the situation, and as a result all country liquor and Indian Made Foreign Liquor vends from 03.09.1995 to 15.09.1995 remained closed. It was further averred that some vends, as detailed in para 5 of the plaint, continued to remain closed thereafter due to stagnant water and non-restoration of normal conditions.

10. The plaintiff alleged that life in the district and the command area of Bhiwani Group No. 1 had come to a complete standstill, with people advised not to

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leave their houses, while many residents shifted to safer places. Consequently, people could not afford to purchase liquor, and the sales of the plaintiff's vends fell drastically to about 20% of the daily turnover as compared to the period preceding 03.09.1995. The plaintiff claimed that it suffered huge financial loss, which was irreparable, due to the continuous closure of the vends, which was without any fault on its part.

11. The plaintiff, therefore, asserted its entitlement to remission of licence fee to the tune of 90% of the average daily fee till normalcy returned, at least for a period of 45 days. It was also pointed out that, recognising the severity of the flood situation, the State of Haryana had granted flood relief to farmers at the rate of ₹1,000 per hectare and ₹25,000 each to affected shopkeepers. The plaintiff further relied upon para 3.19 of the Punjab Excise Manual, Volume III, which provides for remission of licence fee in cases of natural calamity.

12. It was pleaded that although the plaintiff had requested the defendants to grant remission of licence fee on account of the floods, the request was declined, constraining the plaintiff to file the present suit. The relief claimed was for a decree of permanent injunction restraining the defendants from recovering licence fee from the plaintiff to the tune of 90% for the period from 03.09.1995 onwards and from seizing the liquor stock of the plaintiff in the command area of Bhiwani Group No. 1, and further for a direction to remit the licence fee to the extent of 90% for the period from 03.09.1995 onwards.

13. Upon notice, the defendants appeared and filed written statement contesting the suit. It was denied that any cause of action had accrued to the plaintiff, or that the plaintiff had any locus standi to file the suit. It was pleaded that the suit was premature and not maintainable in the present form. It was further submitted that the civil Court had no jurisdiction to entertain and try the suit in



view of the statutory provisions governing excise matters. The suit was also alleged to be bad for want of notice under Section 80 CPC, and for non-joinder and misjoinder of necessary parties. The defendants prayed that the suit be dismissed.

On the pleadings of the parties, the learned trial Court framed the following issues:

1. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP
 2. Whether the plaintiff has no cause of action to file the present suit? OPD
 3. Whether the suit of the plaintiff is premature in view of para No. 2 of the written statement? OPD
 4. Whether this Court has no jurisdiction to try and entertain the present suit? OPD
 5. Whether the suit of the plaintiff is not maintainable in the present form? OPD
 6. Whether the suit is bad for want of notice under Section 80 CPC? OPD
 7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
 8. Whether the suit is liable to be dismissed with costs under Section 35-A CPC? OPD
 9. Relief.
14. Both the parties have led evidence.

Findings of the Trial Court

15. After recording evidence of both sides and considering the pleadings, the learned trial Court returned its findings as under:



i) Issue No. 1 (Entitlement of plaintiff to injunction):

The Court held this issue in favour of the plaintiff. On the basis of the testimony of PW1 Radha Ram Jain (partner of the plaintiff firm) and corroborating official witnesses PW2 Gunpal Singh (Office Kanungo), PW3 Raghbir Singh (Kanungo), PW4 Bhim Singh (AETO), and PW5 Ravinder Kumar (photographer), it was found that there were indeed unprecedented rains and floods in Bhiwani from 3.9.1995 onwards, resulting in complete disruption of normal life and closure of liquor vends. Documentary evidence including newspaper reports, photographs, and official records supported the plaintiff's version. The Court relied on para 3.19(E) of the Punjab Excise Manual to hold that in such natural calamities remission of licence fee is permissible. Accordingly, the Court concluded that the plaintiff was entitled to remission of 90% of the licence fee for 40 days from the date of filing of the suit, and to an injunction restraining the defendants from recovering the same.

ii) Issues No.2 to 8 (Cause of action, jurisdiction, maintainability, notice under Section 80 CPC, non-joinder, mis-joinder, and costs under Section 35-A CPC):

The onus of proof on all these issues was upon the defendants. The Court found that the defendants had failed to adduce any cogent evidence to prove these objections. The plea of want of notice under Section 80 CPC and bar of jurisdiction was rejected, and all these issues were decided against the defendants and in favour of the plaintiff.



iii) *Issue No. 9 (Relief)* :

In view of the above findings, the suit of the plaintiff was decreed. The trial Court restrained the defendants from recovering the licence fee from the plaintiff to the tune of 90% of the fee for the period of 40 days from the date of filing of the suit, in respect of vends of the plaintiff in Group No. 1, Bhiwani. A mandatory injunction was also granted directing the defendants to remit the licence fee to the said extent.

16. Thus, vide judgment and decree dated 23.04.1997, the suit of the plaintiff was decreed to the above extent.

Findings of the Lower Appellate Court

17. The defendants carried the matter in appeal. The learned Additional District Judge, Bhiwani, vide judgment and decree dated 22.10.1999, partly allowed the appeal.

18. The lower appellate Court, after reappraising the evidence, noted that the case of the plaintiff fell within the ambit of Clause 3.19(c) of the Punjab Excise Manual, Vol. III, which empowers the Excise and Taxation Commissioner to grant concession or remission of licence fee where licensees fail to run their business due to natural calamities or unavoidable circumstances. The appellate Court found that the floods and heavy rains which occurred in Bhiwani District from 3.9.1995 onwards were natural calamities beyond the control of the plaintiff, and during that period the plaintiff's business remained completely paralysed. Official witnesses and documentary evidence including contemporaneous records corroborated the plaintiff's version.

19. The contention of the State that there was no clause of remission in the licence agreement was rejected on the ground that the statutory provisions

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contained in the Excise Manual were applicable and could not be ignored. The appellate Court also rejected the argument that remission could only be granted under Section 54 of the Punjab Excise Act when shops were closed by orders of the District Magistrate or Sub-Divisional Magistrate. It was held that in the instant case, the closure was due to natural calamity and not by order of a Magistrate, and therefore Section 54 had no application.

20. The appellate Court, however, disagreed with the trial Court in relation to the period for which remission was granted. The trial Court had allowed remission of 90% licence fee for a period of 40 days from the date of filing of the suit i.e. 27.09.1995. The appellate Court found this to be erroneous, holding that the evidence established closure and disruption of business from 3.9.1995 till the end of September 1995, and therefore remission ought to be confined to that period only. The appellate Court reasoned that once the floods subsided after September 1995, there was no justification for remission beyond that month.

21. Consequently, the judgment and decree of the trial Court dated 23.04.1997 were modified to the effect that the plaintiff firm was entitled to remission of 90% of the licence fee with effect from 3.9.1995 till 30.9.1995. It was further directed that if the plaintiff had deposited any amount against the said period, the same shall be refunded. On the remaining issues, the appellate Court affirmed the findings of the trial Court against the defendants, rejecting objections as to jurisdiction, maintainability, notice under Section 80 CPC, and misjoinder/non-joinder of parties.

22. Feeling aggrieved, above-numbered two RSAs have been filed as detailed in para No.1 of this judgment.

***Submissions on behalf of State of Haryana (Appellants in RSA No. 2001 of 2000)***

23. Learned counsel for the appellants/State has assailed the judgments of both the trial Court and the lower appellate Court as being illegal, perverse, and against the record. It is contended that both the trial Court as well as the lower appellate Court have misinterpreted the facts and evidence, and have decided the matter merely on conjectures and surmises without appreciating the defence evidence led on record. The Courts below have wrongly believed the evidence adduced by the plaintiff, while ignoring the evidence of the defendant/appellants. The Courts below have erroneously restrained the defendants from recovering 90% of the licence fee for the period 03.09.1995 to 30.09.1995. Both Courts have erred in holding that remission of licence fee could be claimed under para 3.19 Vol. III of the Punjab Excise Manual. It is submitted that these provisions are not relevant or applicable to the facts and circumstances of the present case, and the licence fee is mandatorily recoverable from the plaintiff. The Courts below failed to appreciate that as per law, the plaintiff was duly bound to deposit the licence fee and such liability could not be waived in any circumstance. The decree passed in favour of the plaintiff and its affirmation by the learned Additional District Judge, Bhiwani, is wholly erroneous and deserves to be set aside.

Submissions on behalf of M/s Dhillon & Co. (Appellants in RSA No. 188 of 2000 / Respondents in RSA No. 2001 of 2000)

24. Learned counsel for the plaintiff/appellant has assailed the impugned judgment of the learned Additional District Judge, Bhiwani dated 22.10.1999 to the extent it restricted the remission of licence fee only up to 30.09.1995. The main contentions are that both the trial Court and the appellate Court concurrently found,

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on the basis of overwhelming oral and documentary evidence, that there was unprecedented heavy rain and floods in Bhiwani and the surrounding region from 03.09.1995 onwards which completely paralysed normal life and resulted in closure of all liquor vends in the area of the plaintiff. The plaintiff firm was not at fault; it could not operate its business because of natural calamity, and hence it is entitled to remission of 90% of the licence fee as per para 3.19(E) of the Punjab Excise Manual, Vol. III, which specifically provides for remission in case of unforeseen and unavoidable circumstances. The learned Additional District Judge erred in law in restricting the relief only for the month of September 1995. In fact, even after September, the flood waters continued to remain in the area for several weeks, and normalcy had not returned. The learned Court below ignored this aspect while curtailing the relief. The plaintiff had led sufficient evidence by examining PW-1 Radha Ram Jain, PW-2 Gunpal Singh (Kanungo), PW-3 Raghbir Singh (Kanungo), PW-4 Bhim Singh (AETO), and PW-5 Ravinder Kumar (Photographer), besides tendering photographs, news clippings, official records, and excise documents which proved beyond doubt that the business of the plaintiff remained paralyzed for more than 40 days. The learned lower appellate Court failed to appreciate that even government records showed distribution of free food to the public during the flood period, and even excise dues had been remitted in earlier years in similar circumstances e.g., in village Bamla in 1992–93. That once the finding was recorded that floods were a natural calamity, the remission could not have been confined to a shorter period. The learned lower appellate Court committed a serious error in restricting it only till 30.09.1995. Accordingly, the judgment and decree of the learned lower appellate Court is liable to be modified, and the plaintiff is entitled to remission of 90% of the licence fee at least for 40 days from 03.09.1995, if not beyond, till the conditions became normal.

**Findings**

25. Having considered the submissions made before this Court in these appeals, this Court is of the considered view that the impugned order of the learned lower appellate Court cannot be sustained in the manner it restricted the relief, and that the decree of the trial Court deserves to be restored.

26. At the outset, the factum of unprecedented floods commencing on 03.09.1995 in Bhiwani district and its surrounding areas is not in dispute. The trial Court, on the basis of consistent and corroborated evidence of PW1 Radha Ram Jain, PW2 Gunpal Singh, PW3 Raghbir Singh, PW4 Bhim Singh (AETO) and PW5 Virender Kumar, Photographer, supported by contemporaneous documentary material including newspaper cuttings and photographs, came to the categorical finding that normal life in Bhiwani was paralysed, liquor vends of the plaintiff firm remained closed or functioned at a negligible level of 5–10% of sales, and that the plaintiff firm was prevented from carrying on its licensed business not due to its own fault but due to natural calamity. These findings have not been displaced by the State either by producing rebuttal evidence or by pointing out any perversity. DW1 Ram Bhagat Sharma, Excise Inspector, himself admitted that water had collected in Bhiwani town and that certain shops were affected. Thus, the occurrence of floods and disruption of business is a concurrent finding of fact which binds this Court in second appeal.

27. The main objection of the learned counsel for the appellants–State was that remission of licence fee cannot be granted in absence of an express clause in the licence agreement. This submission cannot be accepted in view of the clear provisions of para 3.19 of the Punjab Excise Manual, Vol. III, which specifically contemplates that where unforeseen and unavoidable circumstances prevent the licensee from running the licensed premises, the Excise and Taxation



Commissioner is empowered to grant remission of licence fee. The floods of September 1995 squarely fall within the phrase “unforeseen and unavoidable circumstances.” To hold otherwise would render the beneficial provision of the Manual otiose and defeat the very purpose of providing relief in extraordinary situations.

28. The contention of the State that under Section 54 of the Punjab Excise Act only the District Magistrate or Sub-Divisional Magistrate can order closure of shops, and unless such an order is passed no remission can be claimed, is equally without merit. The present is not a case of closure of vends due to an executive order for elections or law and order exigencies. It is a case of a natural calamity rendering the vends physically inaccessible and non-functional. The absence of a formal order of closure cannot negate the ground reality that the shops were incapable of being run. Courts are not to be blind to the reality of floods which submerged entire towns and villages.

29. As regards the duration of remission, the learned lower appellate Court, while upholding the entitlement of the plaintiff to remission, restricted it to the period 03.09.1995 to 30.09.1995, i.e., 27 days, as against 40 days granted by the trial Court. This restriction, in the opinion of this Court, was not justified. The evidence on record shows that the effect of floods continued well into October 1995. PW1 and PW2 have categorically stated that even after 26.09.1995, water remained collected in the town and adjoining villages and the normal business activity did not resume. Food grains were being supplied by government agencies even beyond September, indicating that life was yet to return to normalcy. The trial Court’s finding that remission of 40 days was reasonable, proportionate, and equitable is based on proper appreciation of evidence. The lower appellate Court erred in curtailing the relief without assigning cogent reasons.



30. As regards the other objections of the State that the civil Court lacked jurisdiction under Section 57 of the Punjab Excise Act or that the suit was barred for want of notice under Section 80 CPC, both the trial Court and the first appellate Court have rightly rejected the same. The plaintiff has not challenged any executive order of the Government, rather, it has sought equitable relief based on the Excise Manual provisions. The suit was therefore maintainable. The plaintiff had also filed an application under Section 80(2) CPC and obtained leave of the Court, hence the technical objection does not survive.

31. Thus, after considering the matter from all angles, this Court finds that:

1. The plaintiff firm has established by cogent oral and documentary evidence that due to floods commencing from 03.09.1995, its liquor vends remained closed or suffered negligible sales
2. The case squarely falls under para 3.19 of the Punjab Excise Manual entitling remission of licence fee.
3. The remission cannot be restricted to 27 days as done by the lower appellate Court but must extend to 40 days as found by the trial Court.
4. The objections of the State regarding jurisdiction, non-joinder, notice, and lack of express clause in the agreement have no merit.
5. The decree of the trial Court dated 23.04.1997 granting remission of 90% of licence fee for 40 days deserves to be restored.

Conclusion

32. Accordingly, RSA No. 2001 of 2000 filed by the State of Haryana is dismissed. RSA No. 188 of 2000 filed by the plaintiff firm is allowed. The

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judgment and decree of the trial Court dated 23.04.1997 is restored. The plaintiff firm shall be entitled to remission of 90% of the licence fee for the period of 40 days from 03.09.1995, and if any amount has already been deposited for the said period, the same shall be refunded.

33. Pending application(s), if any, also stands disposed off.

September 25, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes