

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1621 OF 2015

Premnath Rama Shetty

.. Petitioner

Versus

State of Maharashtra and others

.. Respondents

Shri. Jagdish Kumar S. Hegade, for the Petitioner.

Shri. R. A. Shaikh, for the Respondent Nos.2, 3 & 6.

Mrs. Vaishali Nimbalkar, AGP for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 07th APRIL, 2015

PC.

1. The above Writ Petition takes exception to the order dated 04.02.2015 passed by the Commissioner of State Excise, Maharashtra State, Fort, Mumbai, by which order the order passed by the Collector, Mumbai dated 01.12.2014 came to be confirmed. The said orders suspending the CL-III licence of the Petitioner have been passed in view of the fact that the heirs of the original licensee one T. Rama Shetty were not able to resolve their differences and therefore the Authorities have observed that the licence would stand suspended till all the legal heirs resolve their differences amicably and decide the person/persons on whose name the licence would be operational. The above Petition has

been heard from time to time and since the dispute was between the family members inter-se, this Court was of the view that the parties to the above Petition should amicably resolve their differences so that the said CL-III licence can be renewed and that the business of running the CL-III Bar can commence. The petitioner is personally present in Court as also the Respondent Nos.2, 3 and 6.

2. The parties have drawn this Court's attention to the Will dated 09.12.2011 which is a registered Will of the deceased licensee T. Rama Shetty @ Jogi Shetty. In so far as the CL-III licence is concerned, the same is covered by clause-7 of the said Will as also Clause-9(a) of the said Will. By virtue of which a sum of Rs.45,000/- per month is to be paid out of the property bequeathed by the deceased under the Will to his son Shri. Premnath R. Shetty, who is the Petitioner herein. This Court is not required to go into the legality or otherwise of the said Will, but is only referring of the said Will in view of the fact that the Learned Counsel for the parties have referred to the same whilst advancing their submissions in the above matter. This Court has also referred to the said Will so as to find a amicable resolution of the dispute in so far as the transfer/renewal of the CL-III licence is concerned. In so far as the amount of Rs.45,000/- which is required to be paid by the Petitioner to his mother is concerned, the Learned Counsel for the Petitioner states that T. Rama Shetty expired

on 27.03.2014 and till May 2014, the family members were busy with the religious ceremonies etc. and therefore, the business of running the bar was not conducted. The business was conducted from about 14.05.2014 to 14.11.2014, when the Collector passed the order dated 01.12.2014 suspending the CL-III licence. Hence, the Petitioner is liable to pay the arrears at the rate of Rs.45,000/- per month for 7 months which amounts to Rs.3,15,000/-. It is an undisputed position that from December 2014 till this date the licence is suspended. The Learned Counsel for the Petitioner on instructions states that out of the said amount of Rs.3,15,000/-, the Petitioner would pay an amount of Rs.2,00,000/- to the mother i.e. Respondent No.2 herein within 15 days from date by depositing the same in her account being No.120301010008108 in Vijaya Bank at Suratkal Branch (IFSC Code No.vijb0001203). The balance of the arrears, the Learned Counsel submits would be paid over to the Respondent No.2 as would be directed by this Court. The Learned Counsel appearing for the Respondent Nos.2, 3 and 6 on instructions states that he has no objection to the said course of action being followed.

3. In my view, the Petition can be disposed of by issuing the following directions-

- I) In terms of the statement made by the Learned Counsel for the Petitioner, the Petitioner would deposit the

amount of Rs.2,00,000/- out of the arrears of Rs.3,15,000/- in the account of the mother i.e. Respondent No.2 herein by on or before 21.04.2015. The Petitioner would only thereafter apply for renewal of the CL-III licence No.129 to the Excise Authorities. The renewal/transfer of the licence would be in the name of the Petitioner.

II) The Collector, State Excise would transfer/renew the CL-III licence No.129 in the name of the Petitioner.

III) The Petitioner undertakes to this Court to pay the amount of Rs.45,000/- from the month subsequent to the licence being renewed/transferred and would continue to pay the amount of Rs.45,000/- to the Respondent No.2 till he is conducting the business under the said licence. The amount to be paid on or before the 10th of each month.

IV) The Petitioner in addition to the said amount of Rs.45,000/- would pay an amount of Rs.15,000/- per month till the arrears of Rs.1,15,000/- are cleared. The Petitioner would however continue to pay the amount of Rs.45,000/- per month thereafter.

V) In case of any two defaults, the Respondent No.2 would be entitled to approach the Collector, State Excise to

suspend the licence of the Petitioner. If any such application is made by the Respondent No.2, the Collector, State Excise would pass appropriate orders by conducting an inquiry.

VI) The Petitioner to file an undertaking in this Court during the course of this week that he would pay an amount of Rs.2,00,000/- as also clear the amount of Rs.1,15,000/- as also keep on paying the amount of Rs.45,000/- to the Respondent No.2. If the said undertaking is not filed, the benefit of this order would not enure to the Petitioner. The Petition would then be deemed to have been dismissed.

VII) The above arrangement has been arrived at only with a view to see that the licence is transferred/renewed and that the business is conducted. The same would be undoubtedly without prejudice to the rights and contentions of the parties in the proceedings which may be pending in the concerned Courts or proceedings that may be adopted by the parties in future.

VIII) As indicated above, this Court has not gone into the legality or otherwise of the Will and it is before the appropriate Court that the contentions or submissions as

regards the Will can be urged. With the aforesaid observations, the Writ Petition is disposed of. The parties to act upon a copy of this order duly authenticated by the Court Shirestedar.

[R.M. SAVANT, J]