

IN THE HIGH Court OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 34 OF 2016.

Shri John Rodrigues,
46 years of age,
s/o. Late Shri Henrique Rodrigues,
business, r/o. H. No. 117/B,
Nageshi, Bandora,
Ponda Goa.

..... Appellants

V/s.

- 1 The Excise Inspector,
Excise Department, Govt. of Goa,
Excise Station, Ponda, Goa.
- 2 The Commissioner of Excise,
Excise Department, Govt. of Goa,
With office at Panaji, Goa.
- 3 The Assistant Commissioner of Excise,
Excise Department, Govt. of Goa,
With office at Panaji, Goa.
- 4 State of Goa,
Through Chief Secretary,
Secretariat, Porvorim, Goa.

..... Respondents

Shri A. D. Bhole, Advocate for the Appellant.

Ms. Susan Linhares, Additional Government Advocate for the respondents.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 8th JULY,2016.

PRONOUNCED ON : 21st JULY, 2016

JUDGMENT:

Heard.

2. Admit.

3. Ms. Susan Linhares, learned Additional Government Advocate waives service of notice on behalf of the respondents.

4. The original plaintiff has challenge in appeal the order passed by the learned District Judge II, Panaji, under Order XLIII rule 1(r) of C.P.C. pursuant to which the learned Judge vacated the order of status quo dated 28/04/2016. The parties would be referred to as the appellant and the respondents for brevity's sake hereinafter.

5. Shri A. D. Bhobe, learned Advocate for the appellant came to be heard on his behalf who submitted that he had filed a suit for the appropriate reliefs and despite pressing for an order of interim stay, the learned Judge had been pleased to issue a show cause notice. However on the returnable date the learned Judge was inclined to direct the respondents to maintain status quo till the filing of the written statement and reply and not to disturb the appellant's business and fixing the matter on the next date for further course of action. However the learned Judge on the returnable date i.e. 09/05/2016 had fixed the matter on the next day and without any application at the instance of the respondents to vacate the order of status quo, passed the order of vacating the status quo without any notice to the plaintiff and in the absence of

any application at the behest of the respondents despite being seized of the fact that the jurisdiction issue arose as raised by the respondents.

6. Ms. Linhares, learned Additional Government Advocate contended that the order of the respondents no.2 was challenged before the District Court and the remedy of an appeal lay before the Chief Secretary in terms of Section 40 of the Excise Act. There was also a bar of suits in terms of Section 44 thereof and therefore the appeal did not lie and there was no reason to interfere with the impugned order. She adverted to the judgment of this Court in **Shri Arnaldo Paulo Menezes v/s. State of Goa** [Writ Petition No. 729 of 2015] to buttress her case on the remedy of an appeal and on that count too prayed for the dismissal of the Appeal from order.

7. The appellant as the original plaintiff had filed the suit for injunction and damages that the license was originally granted in the name of his late father to run the bar premises by the Department of Excise and upon his demise it was transferred in the name of his mother. He was assisting his mother initially in conducting the business and thereafter started conducting the business independently on account of her ill health till her demise and when the license was transferred in his name and was renewed

from time to time till this year. The respondent no.2 had issue a Show Cause Notice to him based on the complaint filed by his sister claiming that the license was transferred in his name without her consent and calling upon him to show cause why the license should not be cancelled. The respondent no.2 on hearing had suspended the license pending the clearance of title to the licensed premises inter se between the legal heirs of the original license holder.

8. The respondent no.1 had visited his business premise and directed him to close the business and also threatened to seal the premise on a later date. The appellant was lawfully entitled to conduct the business in his own premises under the license issued by the respondent no.2 in the name of his late mother and they had no authority to stop him from carrying on the business and in such circumstances maintained the suit for the relief of permanent and mandatory injunction. There was no challenge by the appellant to the order of the respondent no.2 and therefore the contention of Ms. Linhares, learned Additional Government Advocate on behalf of the respondents would not stand the test of scrutiny that the appellant had a remedy by way of an appeal to the Chief Secretary and that the suit was not maintainable.

9. The appeal was restricted to the challenge to the

impugned order pursuant to which the learned District judge had vacated the status quo order without any justifiable reason. A cursory perusal of the Roznama to which Shri A.D. Bhobe, learned Advocate for the appellant invited attention clearly indicates that the learned District Judge had not granted an interim relief to the appellant on the institution of the suit and the application for ad-interim relief and instead issued show cause notice to the respondents returnable on 28/04/2016. These records further reveal that the learned District Judge had directed the respondents to maintain status quo till the filing of the written statement and reply and not to disturb the business of the appellant and listing the matter for the written statement and reply on 09/05/2016.

10. On that date i.e. 09/05/2015 a third party application came to be filed and which was posted for reply and arguments on the next day when a reply was filed on behalf of the appellant, arguments heard on the third party application and the matter was posted for order when the learned Advocate for the appellant submitted that the respondent nos. 2, 3 and 4 would have to be heard on the said intervention application. The learned District Judge had accordingly afforded opportunities to the respondent nos.2, 3 and 4 to file their reply to the third party application and without any application at the instance of the contesting respondent

nos.2,3 and 4 vacated the order of status quo on the specious premise that he had no jurisdiction and secondly as the other legal heirs of his deceased mother were not made the parties to the suit.

11. Shri A.D. Bhole, learned Advocate for the appellant rightly submitted that the appellant was not aggrieved by the order of the Commissioner and which was therefore not challenged in appeal. The status quo order was made to operate till the filing of the written statement and the reply to the application for the temporary injunction pursuant to the order of learned District Judge dated 28/04/2016. No written statement was filed on behalf of the respondents nor any reply to the injunction nor any grievance made by any of the contesting parties to the operation of the order of the status quo. Moreover the third party application was still not allowed by the trial Court and therefore there was no justification for the learned District Judge to order the status quo to be vacated suo moto. Ms. Linhares, learned Additional Government Advocate for the respondents also tried to canvas a point that the third party had not been joined as a party to this appeal. However there is a force in the contention of Shri A. D. Bhole, learned Advocate for the appellant that no question arose of joining the third party when the application was yet to be decided by the learned District Judge. In any view of the matter the order passed by the learned District

Judge to suo motu vacate the status quo order dated 28/04/2016 contrary to his directions in that regard cannot be allowed to stand which is per se illegal and contrary to the records. In view thereof i pass following

ORDER

The appeal is allowed and the impugned order dated 10/05/2016 ordering to vacate the status quo is quashed and set aside. The respondents are ordered to maintain the status quo till the next date fixed before the trial Court.

NUTAN D. SARDESSAI,J.

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