HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.No.1740 OF 2004

ORDER: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Government Pleader for appellants and Sri E.Manohar, learned counsel for respondent.

The writ appeal is directed against the order dated 07.09.2004 in W.P.No.226 of 2004. The sole respondent challenged in W.P.No.226 of 2004 Memo No.64018/Ex.II(1)/03-8), Revenue (Ex.II) Department dated 18.11.2003, as illegal, arbitrary and unconstitutional.

Through Memo dated 18.11.2003, the 1st appellant vacated the stay granted in favour of respondent on 30.07.2003. The issue for consideration in this appeal is very short and *prima facie*, we are of the view that Rule 28 of the A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1969 (for short 'the Rules') has no application to the fact situation of the case. The relevant findings of the learned Single Judge in the order under appeal read thus:

> "……Further reliance was also placed by the respondents herein under Rule 28 of the A.P. Excise (Arrack and Toddy Licenses General Conditions) Rules, 1969, which states that notwithstanding the suspension of licences, the licensee is liable to pay the rental along with the interest till the finalisation of the action initiated against the licensees or restoration of the licence, whichever is earlier. Therefore, it was stated that the petitioner cannot escape the liability. On a conspectus of the fact involved, there is no dispute to the aspect that admittedly the petitioner is a new entity having been formed with few members of the erstwhile society. There cannot be any dispute in regard to the fact that the erstwhile T.C.S., Komatikunta and the petitioner society are totally two different legal entities and the petitioner society is not outcome of any proceedings at the instance of the erstwhile T.C.S., Komatikunta. There is no allegation at any point of time that the petitioner society has passed any resolution or taken a decision as such. On a given set of circumstances, it is amply clear that the petitioner was in fact seeking formation of new society and for grant of fresh licences at this juncture. The president appears to have given a statement, but on itself does not show any authority conferred by him in respect of mulcting the liabilities on the petitioner society. There is no other provision placed by the Government Pleader to show that such liability can continue to exist, especially where members are one and the same. The only rule, which has been cited across the bar is Rule 28 as aforesaid, which in no way contemplates that any such liabilities can be passed on to the subsequently formed society, though by the same members.
>
> In the circumstances, it is to be held that petitioner society being a new and fresh one having its own independent identity in law and otherwise, cannot be mulcted with any liability of any erstwhile society, in spite of the fact few members in the petitioner society are from the erstwhile society. The Writ Petition is accordingly, allowed. The impugned proceedings are set aside. No costs".

Before this Court, learned Government Pleader has substantially reiterated the contentions which did not find favour with the learned Single Judge. With the assistance of learned Government Pleader, we have examined the scope and object of Rule 28 of the Rules. In the case on hand, the respondent-Society is not a successor society to the society which has fallen in arrears of rentals to the Government. According to respondent, the rentals of TCS, Komatikunta cannot be fastened on respondent, as respondent is a newly formed Society. In our considered view, no exception can be taken to this objection. Hence, we do not see any illegality or irregularity in the order under appeal.

The writ appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

____

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date:09.02.2016

Lrkm