

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1280 of 2013 (O&M)

Date of Decision: November 09, 2016

The State of Haryana & others

...Appellants

Versus

Dharambir

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.D.K.Mittal, DAG, Haryana,
for the appellant.

Mr.Manoj Chahal, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

Appellant-defendants are aggrieved of the concurrent findings of both the Courts below, whereby the suit of the respondent-plaintiff seeking declaration has been decreed and the order dated 15.2.2008, whereby the appellants had sought the recovery of the amount of ₹12,45,000/-, has been set-aside and they have been restrained from recovering the amount aforementioned.

Mr.D.K.Mittal, learned Deputy Advocate General, Haryana appearing for the appellants submits that the respondent-plaintiff had challenged the aforementioned order on the premise that he participated in bid for the auction of liquor vend as auctioned by the Excise & Taxation Department and was allotted Vend, namely, L-14-A Lajwana Khurd for a sum of ₹20,00,000/-. Accordingly, he deposited a sum of ₹2,00,000/- as security with the department. As per per pleadings, the Excise and Taxation

Department has also put up the liquor vend for Village Nandgarh for auction, but no body turned up, and ultimately it was sold for ₹8,50,000/- without following the process of auction. The said vendor had been selling the liquor at the lower rate than the prescribed one. It is in this backdrop of the matter, after running the liquor vend for two weeks, the respondent-plaintiff abandoned the work. The appellants, after obtaining permission from the competent authority, re-allotted the liquor vend at ₹7,55,000/-. It is in this background of the matter, the recovery certificate of the amount, noticed above, has been issued, but the same has erroneously been set-aside, which is against the policy which was in vogue.

He further submits that the findings cannot be based upon equity. It has to be seen whether the contract entered into between the parties had been breached or not and, thus, urges this Court for setting-aside the concurrent findings by holding the recovery certificate to be valid.

Mr.Manoj Chahal, learned counsel for the respondent-plaintiff submits that the pleadings in the plaint have been proved on record, for, the liquor vend at Nandgarh had been sold for a paltry amount of ₹8,50,000/- and that of the plaintiff to subsequent vendor at ₹7,55,000/-. The distance between these two liquor vends is only 3 Kms. and the same are situated in the rural area. In fact, the appellants have sold Lajwana Khurd vend at a very high rate by stating that the adjoining Nandgarh liquor vend would not be re-auctioned on less than ₹20,00,000/- and no where the department has auctioned two liquor vends. On this assurance, the appellant participated in the bid. The State cannot take away the equitable right and the source of livelihood of the liquor vendor and the Courts below have exercised the jurisdiction, which is permissible, much less in accordance with law which

does not require any interference and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submission of Mr.Mittal as the facts, noticed above, leave no manner of doubt that the appellants have sold the liquor vend of Lajwana Khurd, after the same had been left by the respondent-plaintiff, for a paltry amount of ₹7,55,000/-, i.e., in September, 2006 as the dispute is with regard to the financial year 2006-07. Even the liquor vend situated in Nandgarh, is at a distance of 3 Kms.away from the existing one. Obviously, the competitor of the plaintiff had been selling the liquor to the customers at lesser price. The aforementioned fact should have been taken care of in the excise policy. Having failed to take care of the aforementioned anomalous situation, the Courts below have rightly applied the principle of “equity” and set-aside the demand of recovery of ₹12,45,000/-. I am in agreement with the aforementioned findings, which do not call for any interference as the same are based upon preponderance or appreciation of oral and documentary evidence.

No ground for interference is made out.

Appeal stands dismissed.

November 09, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No