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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 4.5.2018.

+ W.P.(C) 4706/2018
M/S 2 BANDITS RESTAURANT Petitioner
Through Mr. Alok Srivastava, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR. Respondents
Through Mr. Ramesh Singh, Standing Counsel
for GNCTD with Mr. Chirayu Jain,
Adv.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER
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RAJIV SHAKDHER, J. (ORAL)

C.M. Appl. No.18121/2018

1. Allowed, subject to all just exceptions.

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2. The limited grievance of the petitioner is that despite having obtained an order of stay from the Financial Commissioner in the appeal preferred before him against the order of the Commissioner (Excise), the de-sealing of its premises has not been ordered.

3. The record shows that on 09.03.2018 the learned Financial Commissioner had stayed the order of Commissioner (Excise) dated 18.01.2018.

4. Since, the petitioner's premises were not de-sealed an application was moved before the learned Financial Commissioner for de-sealing of its premises.

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5. The Financial Commissioner, however, on 15.03.2018 indicated that he was not inclined to pass any ex-parte direction, at the request of the petitioner herein. Accordingly, notice was issued to the respondent the notice was made returnable on 20.03.2018.

5.1 On 20.03.2018, the learned Financial Commissioner observed that he was not inclined to issue any direction for de-sealing the subject premises i.e. the bar. However, the learned Financial Commissioner went on to observe that the interim order passed by him would continue to operate till the next date of hearing. The matter was posted for further proceedings on 05.04.2018.

5.2 On 05.04.2018, at request of the petitioner the matter was fixed for final arguments on 05.07.2018. Furthermore, the learned Financial Commissioner also granted time to the petitioner to file a rejoinder to the reply filed by the respondent herein. In addition thereto, a direction was issued that the interim order passed by him would continue to operate till the next date i.e. 05.07.2018.

6. The petitioner has approached this Court, being distraught with the approach adopted by the learned Financial Commissioner. It is the say of the learned counsel for the petitioner that even though operation of the impugned order of the Commissioner (Excise) remains stayed, the respondent has taken no steps to de-seal the subject premises. It is also the submission of the learned counsel that the respondent has become even more obdurate in view of the disinclination on the part of the learned Financial Commissioner to enforce his own order.

7. Issue notice. Mr. Ramesh Singh accepts notice on behalf of the

respondent.

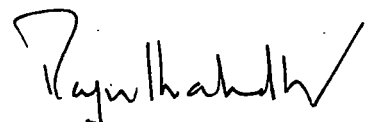
8. Mr. Ramesh Singh, learned standing counsel says that the respondents do not wish to file a counter affidavit in the matter and that the matter can be disposed of at this stage itself.

9. Having perused the record and heard learned counsel for the parties, I am unable to agree with the approach adopted by the learned Financial Commissioner. The reason being that even while he continues to extend the stay granted on the operation of the order of Commissioner (Excise) he refused to order de-sealing of the subject premises. The logical sequitur of staying the order of Commissioner (Excise) would be to proceed with de-sealing. Accordingly, the writ petition is disposed of with the following directions:-

- (i) The respondent will immediately de-seal the subject premises.
- (ii) The interim order dated 09.03.2018, passed by the learned Financial Commissioner will continue to operate till the disposal of the appeal.
- (iii) The learned Financial Commissioner will endeavour to take up the appeal for hearing and disposal on 05.07.2018.

10. Needless to say that the petitioner will not apply for an adjournment on 05.07.2018, when, the appeal is fixed for hearing.

11. Dasti.



RAJIV SHAKDHER, J

MAY 04, 2018

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