

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FA No. 11 of 2002**

- State of Chhattisgarh through Secretary, Department of Excise, Government of Chhattisgarh, through Officer-in-Charge, Shri B.L. Mandavi, District Excise Officer, Durg (CG).

**---Appellant/Defendant.**

**Versus**

- Kedia Kesal Dellian Industries Limited through its Managing Director Kailashpati Kedia, aged about 38 years, s/o. Mahabir Prasad, r/o. Nandini road, Bhilai, District Durg (CG)/

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**--Respondent/Plaintiff**

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For appellant/State. : Mr. A.N. Bhakta, Dy. Advocate General.

For respondent : None

**SB: Hon'ble Shri Justice Ram Prasanna Sharma**

**Judgment on Board.**

**25-02-2019**

1. The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the order /decree dated 28-8-2001 passed by the First Additional District Judge, Durg in Civil Suit No. 3-A2001 wherein the said court decreed the suit filed by the respondent and ordered the appellant that they are not entitled to recover the enhanced amount of rent to the tune of Rs.1,72,854.63.

2. The respondent/plaintiff is a registered firm and liquor manufacturer holding a licence and as per terms of licence building was provided by the appellant/defendant for which rent is to be paid by the respondent/plaintiff. As per Clause 7 of the Licence, rent is to be paid fixed by the Public Works Department. In the year 1969 rent was fixed for accommodation of Durg, Bemetara and Balod @ Rs.66.08/-, Rs.73/- and Rs.67/- respectively. In the month of August, 1982 rent was paid but it was informed by the appellant that rent is re-assessed and they are required to pay at enhanced rate that is why suit was filed which was decreed by the trial Court.
3. Learned counsel for the appellant would submit that revised rent is not fixed retrospectively but whenever licence is issued to respondent, it had stipulation on fixation of rent. When a fresh licence was awarded in the year 1981 the respondent was under obligation to pay the enhanced rate. He would further submit that the rent which was fixed on 1-4-1969 was provisional.
4. I have heard learned counsel for the appellant and perused the record in which judgment/decreed has been passed.
5. The core issue for consideration of this court is whether the enhanced rate can be recovered without execution of fresh lease deed and whether it can be recovered retrospectively.

6. Admittedly, there is a letter issued by Excise Commissioner dated 8-3-1978 in which it is directed that all the Excise Officers will execute lease deed after consultation with Public Works Department. In the present case, no lease deed was executed by the Excise Department with the respondent for enhancement of rent. The rent was enhanced from 1-4-1983, but notice was not served earlier regarding enhancement of rate. In absence of renewal of lease deed to that effect, the trial court opined that enhanced amount of rent cannot be recovered without there being any fresh lease deed or without notice to the respondent for increase of rent. Therefore, appellant is not entitled to recover rent at enhanced rate.
7. After re-assessing the oral and documentary evidence adduced by both sides, the view taken by the trial court appears to be only possible view and respondent cannot be compelled to pay enhanced rate without fresh lease deed or without prior notice, therefore, finding of the trial Court is not liable to be interfered with. The appeal is liable to be dismissed.
8. Accordingly, decree is passed against the appellant and in favour of respondent as under:
  - (i) The appeal is dismissed with cost.
  - (ii) Parties to bear their own costs.

- (iii) Pleader's fee., if certified, be calculated  
as per Schedule or as per certificate  
whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

**(Ram Prasanna Sharma)**  
JUDGE

Raju