IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1749 of 2000
Date of decision : 08-11-2019

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State of Haryana and another
...........Appellants

Versus

M/s Mittal & Co. through its partners and licensees
...........Respondents

RSA No. 1800 of 2000 (O&M)

* * * * *

State of Haryana and others
...........Appellants

Versus

M/s Dharambir Mohinder Singh & Co. through its partners
...........Respondent

* * * * *

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. R.K.S Brar, Addl. A.G., Haryana.

Mr. Arastu Chopra, Advocate for the respondent(s).

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RITU BAHRI, J.

Two appeals bearing RSA No.1749 of 2000 titled, `***State of Haryana and another vs. M/s Mittal and Co. through its partners and licensees'*** and RSA No.1800 of 2000 titled, `***State of Haryana and others***

vs. M/s Dharambir Mohinder Singh and Co. through its partners' shall be decided by way of this common judgment as both these appeals involve identical facts and a similar question of law arises for determination in both these appeals. However, for the sake of convenience, facts are being extracted from RSA No.1749 of 2000**.**

These appeals were dismissed by this court earlier on 30/08/2001. The appellant-State, thereafter preferred Civil Appeals bearing Nos. 5286 and 5287 of 2003, which were disposed of by Hon'ble the Supreme Court on 28/07/2003 and the following order was passed:-

> *"On going through the orders of the High Court, we find that there has been no proper compliance of Section 100 of the Code of Civil Procedure and the disposal also appears to have been done in a summary manner. On this only ground, the judgment and orders of the High Court are set aside. The matters are remitted to the High Court for being restored to their original file to be dealt with in accordance with law after hearing both the parties. The parties are at liberty to urge their respective contentions before the High Court in the said proceedings.*
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> *The appeals are disposed of on the above terms.*
>
> *No costs."*

Upon remand of the matter before this court, the following two questions were framed as recorded in its order dated 13/07/2004 in each appeal:-

> *"1. Whether licence fee payable by the liquor vendor licencee can be exempted without there being any rule or instruction to that effect?*
>
> *2. Whether the plaintiff is entitled to remission as a matter of right, in terms of clause 3.19 (c) of the Punjab Excise Manual?"*

On 07/05/2019 this court opinionated that the third question of law that would arise, would be whether the civil court had jurisdiction at all to entertain the suits in the face of the bar contained in Section 57 of the Punjab Excise act, 1914 (as applicable to the state of Haryana), which reads as follows:-

> *"57. Bar of certain suits:-no suit shall lie in any civil court against the government or any officer or person for damages for any act in good faith done, or ordered to be done, in the pursuance of this Act or of any other law for the time being in force relating to the excise revenue. "*

On that date, this court observed that the trial court, in fact not having adjudicated upon the issue at all it having simply observed as regards issues No. 2 to 8 framed before it (issue No. 4 being the one on the question of jurisdiction) that the defendants had failed to prove the said issues and therefore decided against them. The first appellate court, on the other hand, held that the said provision was not applicable to the case at hand because "plaintiff-firm has not challenged the validity of the order of any competent authority under the Act nor it has claimed any damages against the State Government on passing of such order, rather, plaintiff-firm has filed suit for permanent injunction claiming its entitlement for remission of the licence fees under Punjab Excise Manual, Volume III under which, licenceholders are entitled for concession of licence fee. So naturally suit of the plaintiff-firm is beyond the scope of Section 57 of the Punjab Excise Act and due to that, civil Court cannot be barred from entertaining the same."

Thereafter on the above said questions, appeal was heard by this Court.

As per the case of the plaintiff-firm, the plaintiff-firm had been given a license for supply of country liquor i.e L-14A for group No. 5 Dadri command area for the year 1995-96. The plaintiff-firm being the highest bidder was given a license for L-14A in the command area of group No. 5 Dadri for the year 1995-96 and auction took place for L-14-A licence and it was released for the amount of Rs. 4,00,06,000/-. The plaintiff-firm was required to pay the whole of the bid amount in 11 monthly installments. The liquor vend was to be run for the whole year except 3 days i.e Independence Day, Mahatma Gandhi Jayanti and the Republic Day. The case of the plaintiff-firm was that because of Kadma kand, strikes, dharna and complete band etc., the vends of the plaintiff-firm particularly at Village Kadma, Berla, Mandi Piranu and sub vend at Kakroli remained closed from 23/08/1995 to 03/09/1995 and there was no sale of the liquor during that period. It was further alleged by the plaintiff-firm that there were heavy rains followed by unprecedented floods which caused havoc with the

Bhiwani District particularly with the command area of the license of the plaintiff and the villages of Dadri City and other villages of the command area of the plaintiff submerged with deep water ranging from 5' to 10' w.e.f. 03/09/1995 onwards. The plaintiff-firm suffered huge financial loss due to the continuous closure of liquor vends without any fault since 23.8.1995. Plaintiff-firm filed suit for injunction restraining the defendants from recovering the license fee to the extent of 90% for the period of 40 days.

From pleadings of the parties, the following issues were framed by the trial Court:

1. *Whether the plaintiff is entitled for injunction as prayed for? OPP*
2. *Whether the plaintiff has no cause of action to file the present suit? OPD*
3. *Whether the suit of the plaintiff is pre-mature in view of para No.2 of written statement? OPD*
4. *Whether this Court has no jurisdiction to try and entertain the suit? OPD*
5. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
6. *Whether the suit is bad for want of notice under Section 80 CPC? OPD.*
7. *Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD*
8. *Whether the suit is liable to be dismissed with costs, under Section 35-A CPC? OPD*

Both the courts after going through the evidence returned a concurrent finding of fact on issue No. 1 in favour of the plaintiff-firm. The plaintiff-firm in his oral evidence examined PW1 Sh. Kishori Lal PW2 Satbir Singh PW3 Bhim Singh who admitted that there was remission of license fee in the village Bamla during the year 1992-93 in village Sungarpur by the state government and the copies of the order have also been placed on file Ex. PW3/A and Ex. PW3/B. The plaintiff-firm also placed on record photocopies of the cuttings of the newspaper Ex. P-1 to Ex. P-57 relating to the flood situation in Bhiwani District especially of Dadri subdivision. The Dadri subdivision was adversely affected due to flood situation in the month of September 1995. There was no passage for coming in and going out from Dadri area and the daily life was totally disturbed. There was no question of consuming liquor by the people when they were starving from hunger. Reference was made to Section 3.19 (E) of the Punjab Excise Manual, wherein there is a provision that when there are unavoidable and unforeseen circumstances, the plaintiff-firm can be compensated by the Government. Both the courts have returned a finding on issue No. 1 keeping in view the provisions of Section 3.19 which reads as under:-

> *“**3.19** Cases sometimes arise in which concessions may equitably be made to license holders who through no fault of their own have failed to obtain from their licensed business the profits that they had reason to expect:-*
>
> *a) When a license is cancelled for a cause other than a breach of the conditions of the license, the licensee may be excused payment of the license fee calculated for a period of 15 days previous to*

the closure if due notice of the Collector's intention to close the shop has been given. He should also be excused payment of the fees due for the remainder of the term of his license.

b) If notice has not been given, the licensee may be awarded, in addition, such further sum, if any, as the Financial Commissioner may direct, by way of compensation- (Excise Act 1 of 1914 Section 41).

Foot Note: In the case of withdrawal of a license, permit or pass without notice under sub section (1) of section 41, the Financial Commissioner is empowered in accordance with sub section (2) of section 41 of the Punjab Excise Act to grant compensation to the licensee affected by such withdrawal.

(c) When there is an equitable claim for compensation owing to unavoidable circumstances which could not have been foreseen when the license was granted, such as an outbreak of plague, the occurrence of unusual scarcity, communal or other riots, bandhs or putting the area under curfew, a cases for a concession may be made out.

Compensation under sub-paragraph (b) requires the sanction of the Financial Commissioner and that under subparagraphs (a) and (c) of the Excise and Taxation Commissioner."

The main contention raised by the State was that if there had been any right of exemption of license fee to the plaintiff form, then it should have been mentioned in the agreement but in agreement Ex. D-1, there was no clause of remission in their license fee on account of closure of liquor vends due to natural calamity or unforeseen circumstances. However, it was held by the Courts below that even if there was no condition in the agreement Ex.D-1, the plaintiff-firm is entitled to the benefit of exemption of license fees as per clause 3.19 (c) of Punjab Excise Manual Volume III, which gives ample power to the Excise and Taxation Commissioner to give concession in the license fee to the contractor in such cases or locations where they are not at fault to run the business and have failed to obtain profits from their licenced business. Reference was made by the State to Section 54 of the Punjab Excise Act, according to which district magistrate or subdivisional magistrate is competent to pass the order for closure of the vends and on that event, license holder is not entitled for exemption. However, it was observed that in the instant case, district magistrate or subdivisional magistrate has not passed any such order for closure of the vends during the flood time. So the state shall not get any benefit from this contention. It was held that the license fee should be remitted proportionately to the loss of income to the license holder. Keeping in view the above provisions, the substantial questions of law have been answered in favour of the plaintiff-firm. With regard to the question of jurisdiction, reference at this stage, can be made to a Division Bench judgment passed by this Court in CWP No. 102 of 2017 titled ***"M/s. Somrass Traders through its partner S. Gurinder Singh Gill, Ludhiana versus State of Punjab and others"*** decided on 27/02/2017. This was a case where petitioners had been issued licenses for different zones under the Excise act and they were seeking directions to the respondents to refund/adjust license fee and other fees as prescribed for the month of April 2016 in the Excise policy for the year 2016-17 on account of liquor not having been supplied during this period. In paragraphs 10 and 37 of the judgment, the Division Bench observed as under:-

> *"10. It is not necessary to consider whether the respondents are bound to consider the claim made by the licensees under clause 3.19 as the learned Advocate General for the State of Punjab stated that they are. He stated that in the event of an application being made by any L-2 licensee under sub-clause (c) of clause 3.19, the respondents would consider the same after affording the petitioners and similarly situated persons an opportunity of being heard and producing the necessary evidence. The statement is accepted. We have decided, therefore, to relegate the petitioners to the alternate remedy either under clause 3.19 or by way of a civil suit. We now proceed to furnish the reasons for being unable to grant the reliefs sought in these writ petitions and relegating the petitioners to an alternate remedy.*
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> *37. In the circumstances, the petitions are dismissed with liberty to the petitioners to avail of any alternate remedy including resorting to clause3.19 of the Punjab Excise Manual for the year 2016-17. The statement of*

the learned Advocate General that if applications are made under clause 3.19 of the Punjab Excise Manual, the same would be decided after affording the petitioners an opportunity of being heard and producing evidence is accepted. The interim orders shall continue up to and including 31.03.2017 to enable the petitioners to either challenge the judgment before the Supreme Court or to seek interim reliefs in the alternate proceedings that they may adopt. There shall be no order as to costs"

Keeping in view the Division Bench judgment passed by this court, the suit of the plaintiff-firm has been rightly decreed by both the Courts below and it could not be dismissed on account of lack of jurisdiction. No substantial question of law arises for consideration in the present appeals. In view of all that has been discussed above, both the regular second appeals are hereby dismissed.

08-11-2019 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No