IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.174 of 2014 (O&M)
Date of Decision: February 27, 2019

Hari Kishan

...Appellant

Versus

D.E.T.O. Excise Department and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arvind Bansal, Advocate
for the appellant.

Mr. Pawan Kumar Jangra, Addl. AG Haryana.

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JAISHREE THAKUR, J. (Oral)

1. The instant appeal has been filed by the appellant-plaintiff against the judgment and decree dated 10.05.2010 passed by the lower court dismissing his suit seeking the relief of declaration and mandatory injunction to the effect that he is entitled to receive back the amount deposited in excess as security and licence fee with the respondents-defendants, as well as the judgment and decree dated 12.07.2013 passed by the Addl. District Judge, Kaithal, dismissing the appeal.

2. In brief, the facts of the case are that, the appellant-plaintiff was issued licence for sale of liquor by the respondents-defendants for the year 2006-07 commencing from 01.04.2006 to 31.03.2007. The appellant-plaintiff was allotted licence of L-14 A at village Kawartan, of L-14 at village Siwan and of L-14 at village Dhor Khurana, for which he paid an

amount of ₹ 10,00,000/-, ₹ 4,25,000/- and ₹ 13,75,000/- respectively as security and licence fee. It has been alleged that the respondents-defendants cancelled the above said allotment and revoked licence from the appellant-plaintiff arbitrarily just after four months of the allotment, without any fault of the appellant-plaintiff, as such, respondents-defendants are liable to refund the excess fee amounting to ₹ 8,50,000/-. However, despite requests, the respondents-defendants failed to refund the said amount along with interest, hence the present suit.

3. Upon notice, the respondents-defendants filed their written statement. Preliminary objections as to the maintainability of the suit, cause of action and suit being not properly valued for the purpose of court fee and jurisdiction have been taken, while alleging that the civil court has no jurisdiction to hear the matter. It has been pleaded that the allotment of the appellant-plaintiff was cancelled in compliance of the orders of the Hon'ble Supreme Court of India and the amount of ₹ 8,50,000/- has been adjusted by the respondents-defendants before the application for refund made by the appellant-plaintiff. Remaining averments were denied.

4. The lower court, by an order dated 17.01.2008, framed the following issues:-

1. Whether the plaintiff is entitled to a decree for declaration and mandatory injunction as prayed for?OPP.
2. Whether the suit of the plaintiff is not maintainable?OPP.
3. Whether the plaintiff has no cause of action to file the present suit?OPD.
4. Whether this court has got no jurisdiction to try the present suit?OPD.

5. Whether the suit of the plaintiff is not properly valued for the purposes of court fee?OPD.

6. Relief.

5. In order to prove his case, the appellant-plaintiff examined himself as PW1 and Dharam Pal, Clerk as PW2. On the other hand, the respondents-defendants examined Kashmir Singh Brar, Excise Inspector as DW1.

6. After hearing both the sides, the lower court dismissed the suit of the appellant-plaintiff and the first appeal filed by the appellant-plaintiff has also been dismissed. Aggrieved, the instant regular second appeal has been filed.

7. Learned counsel appearing on behalf of the appellant-plaintiff argues that both the courts below have failed to appreciate the fact that the appellant-plaintiff was entitled to refund of ₹ 8,50,000/- lying deposited with the respondents-defendants as an excess security and licence fee. It is contended that judgments and decrees passed by the courts below are based upon misreading and non-reading of the important evidence.

8. Per contra, learned counsel appearing on behalf of the respondents-defendants argues that the judgments and decrees passed by the courts below are well reasoned and no ground is made out to interfere with the same.

9. I have heard learned counsel for the parties and have gone through the pleadings of the case.

10. The lower court, while dismissing the suit of the appellant-plaintiff, has observed as under:-

> *"11. It is admitted case of the defendants that the plaintiff was allotted three shops for sale of liquor. The order dated 07.06.2006 passed by the Hon'ble Supreme Court of India is on the file which reveals that the allotment for the year 2006-07 liquor vends were cancelled by the Hon'ble Supreme Court of India. Therefore, the defendants are not at fault for cancellation of the allotment of the plaintiff.*
>
> *12. As far as claim of refund of licence fee and security fee to the plaitniff is concerned, the same has been adjusted by the defendants in the account of the plaintiff. xxx xxx xxx"*

The lower court, while relying upon Section 57 of the Punjab Excise Act, 1914, as applicable to the State of Haryana, has also observed that the appellant-plaintiff cannot seek remission of security fee and licence fee on the basis that allotment was cancelled by the respondents-defendants, especially when the said amount has been adjusted by respondents-defendants.

11. The lower Appellate Court, while dismissing the appeal of the appellant-plaintiff, has observed as under:-

> *"15. The appellant/plaintiff alleged that no request was made by him to adjust the amount rather request was made to pay the amount and that he has issued legal notice dated 22.03.2002. The employee of the defendants Kashmir Singh Brar, Excise Inspector while appearing as DW-1 has rebutted this contention. His statement is supported by documentary evidence also. Notice of the appellant/plaintiff was duly replied by the respondents/defendants and the reply is on the record as Ex.P21. It is well mentioned in the reply that the amount has been adjusted. The reply was given on 10.05.2007.*

Apart from that in the letter Ex.DB, it is well mentioned that the amount has been adjusted. It is correct that the letter is written in the year 2009 but it is not made out from the letter that the amount was adjusted in the year 2009. The amount has already been adjusted. It has been adjusted before the issuance of notice as mentioned in the reply Ex.P21 of the respondents/defendants. As per the respondents/defendants, the request was made by the appellant/plaintiff to adjust the amount. To corroborate this fact the photocopies of the letters written by the appellant/plaintiff have also been placed on the record from Mark-B to Mark-D each dated 09.08.2006. These letters are not exhibited, therefore, these letters cannot be relied upon but it is a strong piece of corroborative evidence. The stand of the respondents/defendants that the amount was adjusted at the request of appellant/plaintiff is supported by these documents. One of the letters of appellant/plaintiff is placed on the record as Ex.DA, in which he has written that the amount may not be adjusted. This letter is original but this letter is written on 15.03.2007 i.e. after the previous letter and upto that time, the amount has been adjusted. In this letter, the appellant/plaintiff stated that amount has been adjusted in the name of some other contractor and made a request that the amount may be paid to him and it may not be adjusted. This letter shows that previously, the appellant/plaintiff has made a request to adjust the amount and it was in his notice that the amount has been adjusted. As the amount has already been adjusted and the same has been adjusted before the request of appellant/plaintiff to return the amount, therefore, he is not entitled to get back the amount. The learned Trial Court has rightly dismissed the suit. The appeal is also liable to be dismissed"

12. This court is of the considered view that both the courts below have rightly declined the relief to the appellant-plaintiff. The allotment of the appellant/plaintiff was cancelled, in view of the order of the Apex Court, as such, the cancellation cannot be said to be illegal or arbitrary. It is an admitted fact that after the cancellation of the allotment, the appellant-plaintiff was entitled to refund of ₹ 8,50,000/-. From the documents produced on the record, the courts below have observed that the appellant-plaintiff had made a request to adjust the said amount and consequently it was adjusted against other firms of the appellant, in which he was a partner. It is only thereafter that the appellant-plaintiff made a request to return the said amount, which request was not acceded to.

13. In view of the above, this court finds no illegality or perversity in the concurrent findings so recorded by both the courts below. As such, no question of law requiring determination arises in this regular second appeal filed by the appellant-plaintiff, which has no merit.

14. Dismissed.

(JAISHREE THAKUR)
JUDGE

February 27, 2019
vijay saini

Whether speaking/reasoned Yes/No
Whether reportable Yes/No