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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4704 OF 2018**

M/s. Shyam Wines .. Petitioner
vs.
The State of Maharashtra and ors. .. Respondents

Ms. Veena Thadhani for the Petitioner.

Mr. Anil V. Anturkar, Senior Advocate a/w Ms. Chinmaya Acharya
a/w Mr. Viraj Jadhav I/b. Prerna Lalchandani for Respondent No.4A
and 4B.

Mr. S.H. Kankal, AGP for the State-Respondent Nos.1 to 3.

**CORAM : M.S.KARNIK, J.
DATE : AUGUST 11, 2021**

P.C.

Heard learned counsel for the parties.

2. Briefly stated, it is the case of the Petitioner that predecessor in title of the Respondent No.4A and 4B was the licence holder in respect of FL II licence. The Petitioner was inducted as a partner along with the licence holder and Partnership Deed was executed on 01.04.1998. Accordingly the entire investments came to be made by the Petitioner and upon the licence being re-validated, the original licensee was given 5% share in the partnership. Thereafter, some disputes arose between the parties.

3. The aggrieved approached the competent authorities raising grievance as to whether or not the Petitioner can be said to have

validly inducted as a partner in the licence on the basis of the partnership deed relied upon by the Petitioner. The Collector and the Commissioner being the Appellate Authorities under the provisions of Bombay Prohibition Act, 1949 ('the said Act' for short) decided the dispute in respect of the licence in favour of the Petitioner. The authorities held that the Petitioner is validly inducted as a partner in the licence on the basis of the partnership deed which is approved by the Collector after accepting proper fees and upon following the procedure laid down. The original licence holder filed a Revision before the Hon'ble Minister under the provisions of the said Act. The Revision was allowed by the impugned order. The orders passed by the Collector and Commissioner came to be set aside. In effect it is held that the partnership deed is not a valid document which could be the basis for inducting the Petitioner as a partner.

4. It is the contention of learned counsel for the Petitioner that the entire procedure was followed by the Collector and it is upon acceptance of prescribed fees and after grant of approval to the draft of the Partnership Deed by the Collector that the Petitioner was accepted as partner. She relied upon Government Resolution dated 20.08.1996 to support her contention that the orders passed by the Appellate Authorities was in conformity and in consonance with the procedure laid down in the said G.R. and therefore concurrent orders passed by the Authorities under the said Act required no interference in the revisional jurisdiction by the Hon'ble

Minister. It is the submission of learned counsel for the Petitioner that the Partnership Deed was on stamp paper and therefore was a valid document. She invited my attention to the findings of the Hon'ble Minister. According to her, the Hon'ble Minister proceeded on an erroneous footing that the partnership deed is only a draft and the same was not finalised. Further the Hon'ble Minister erred in holding that the partnership deed is not on a stamp paper and therefore cannot be acted upon to claim a right in the licence. She further submitted that the order also suffers from a gross procedural irregularity, as at the relevant time when the hearing took place, the Hon'ble Minister was pressurised by the MLA who was present at the time of hearing at the behest of original licence holder.

5. Mr. Anturkar, learned Senior Advocate on behalf of Respondent No.4A & 4B as well as the learned AGP on behalf of Respondent Nos.1 and 3 supported the impugned order. Mr. Anturkar submitted that the Partnership Deed is not in consonance with provisions of the Indian Partnership Act, 1932 and cannot be acted upon in view of the Section 69 and Section 42(C) thereof. Moreover, it is his submission that the partnership deed which is now relied upon by the Petitioner at Exhibit 'A' is a forged and fabricated document. He further submitted that an application was made by the Respondent No.4 under the Right to Information Act some time in the year 2008 when the response was received that the Partnership Deed is not even on stamp paper. He pointed out

that now the Petitioner is relying on the copy of the Partnership Deed which is on stamp paper, which obviously was not the case when the same was submitted to the Collector and therefore according to him, the Deed is a forged, fabricated and manipulated document. He submits that the Deed is not registered and therefore also there is no legal basis for the Petitioner to claim a right in the licence. He was at pains to point out that at the relevant time of execution the draft deed, alongwith the Petitioner, the wife and son of the Collector of the District, who also was the competent authority to approve the licence, have been inducted as partners. He further submitted that though the Petitioner has alleged that the MLA was present, the concerned MLA has not been made a party to the Petition. He further submitted that even during the course of hearing before the Hon'ble Minister, the submission of learned counsel for the Petitioner was recorded that the partnership deed was only a draft and having conceded to this position, there is now no question of the Petitioner claiming that the document on a stamp paper is a final document of partnership and not a draft.

6. I have heard learned counsel for the parties and gone through the Petition, annexures and the order passed by the Hon'ble Minister. The Hon'ble Minister in the order has proceeded on the footing that the Partnership Deed is not on a stamp paper and therefore the Petitioner cannot claim a right in the licenses as partner on the basis of such a partnership deed. It is further

recorded by the Hon'ble Minister that as the Advocate for the Petitioner has stated that the document in question viz. the Partnership Deed was in fact a draft and hence mainly for these reasons, the Hon'ble Minister has overturned the concurrent findings recorded by the two Authorities below.

7. The records before the Hon'ble Minister was called for by me. Along with the written submission is enclosed a copy of the Partnership Deed which shows that the same is a copy of partnership deed on a stamp paper. The finding that the document is not stamped therefore appears to be contrary to the record. It is the contention of Respondent No.4 that the said document is forged and fabricated though raised before the Hon'ble Minister, is not dealt with.

8. Suffice it to observe that the record indicates that there is a Partnership Deed on a stamp paper which the Hon'ble Minister probably has not noticed. The same is a part of the written submissions filed by the Petitioner. The Hon'ble Minister has proceeded on the footing that the partnership is not on a stamp paper. The Revision therefore needs to be dealt with after taking into consideration the Partnership Deed which is already on record before the Hon'ble Minister and which appears to be on a stamp paper. It is open for the Respondent No.4A and 4B to raise the contention that the partnership deed is forged and fabricated or that the partnership deed annexed with the written submissions is

not the same document based on which the Collector and Commissioner passed the orders, apart other contentions that may be raised in respect of the partnership deed. The Hon'ble Minister to deal with these contentions, if raised, in accordance with law.

9. The next submission that the Partnership Deed is merely a draft document and not a final deed for it to be acted upon, it is the contention of learned counsel for the Petitioner that under the procedure contemplated by the G.R., the Partnership Deed which is forwarded to the Collector is always referred to as a draft. According to her, it is in that context the submission was made and not a concession that the partnership deed is a draft as understood by the Hon'ble Minister. She submits that the Collector approved the Partnership Deed as per the procedure laid down in the G.R. dated 20.08.1996. Even in this respect, in my opinion, the Hon'ble Minister committed an error in simply proceeding on the footing that the Partnership Deed in question is merely a draft. The Hon'ble Minister ought to have considered whether the said document though termed as a draft is a valid document of partnership deed in accordance of the procedure laid down in G.R. dated 20.08.1996 or is in consonance of Rule 40(1) of the Maharashtra Foreign Liquor Rules, 1953. In this view of the matter, the matter requires reconsideration. The impugned order passed by the Hon'ble Minister is set aside. The Revision is remitted to the State Government for taking a fresh decision in accordance with law after hearing the parties.

10. All contentions are kept open.

11. The Hon'ble Minister not to be influenced by any observations made by me in this order and the Revision be decided on its own merits. The parties to appear on 24.08.2021 at 3.00 p.m before the Principal Secretary, Home Department, State Excise who has been delegated the power to hear the Revision. The Revisional Authority is requested to decide the Revision expeditiously and in any case within a period of three months from 24.08.2021.

12. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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signed by
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MAKARAND
BHOGALE
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