

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (STAMP) NO.27904 OF 2019
IN
WRIT PETITION NO.9537 OF 2016
WITH
IA/1983/2019 IN RPW(ST)/27904/2019

Ashok Sevakram Gangwani Petitioner
Versus
The State of Maharashtra And Ors. Respondents

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Mr.Vishal Kanade, a/w. Mr. Parag Tilak for Petitioner.
Ms. Veena Thadhani, for Respondent No.5.
Mr. A. P. Vanarse, AGP for State.

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CORAM: SANDEEP V. MARNE, J.
DATE : 22 DECEMBER 2023.

P.C.:

The present Review Petition is filed seeking review of the Order dated 27 November 2018 passed by this Court dismissing Writ Petition No. 9537 of 2016. It must be observed here that the Order dated 27 November 2018 has been unsuccessfully tested by the Review Petitioner before the Supreme Court by filing Special Leave Petition (Civil) Diary No(s). 16494 of 2019, which has been dismissed by Order dated 05 July 2019.

2. Interim Application No.1985 of 2019 has been filed seeking condonation of delay of 294 days in filing the Review Petition. The application is opposed by Ms. Veena Thadhani, the learned counsel appearing for Respondent No. 5. Considering the averments made in the Application, the Interim Application No.1985 of 2019 is allowed by condoning the delay in filling Review Petition.

3. I have heard Mr. Kanade, the learned counsel appearing for Review Petitioner. He would submit that this Court has not noticed the effect of power of attorney executed by the Respondent No.4 in favour of Petitioner which amounts to virtual transfer of the business. He would invite my attention to the findings recorded by the Commissioner of State Excise in Order dated 30 June 2015, in which it is held that the intention behind executing power of attorney was to assign the entire license in favour of the Petitioner. Mr. Kanade would further submit that failure to consider the effect of the power of attorney by this Court is an error apparent on the face of record.

4. Mr. Kanade would further submit that this Court has erroneously held that no right has been established on the basis of the power of attorney, when in fact the power of attorney conferred power to execute even Nokarnama in favour of the Petitioner. He would further submit that Nokarnama was indeed executed in favour of Petitioner and in support of his contention, he would rely upon averments made in paragraph No.11 of the reply filed by the Respondent No.5 in the Writ Petition. Mr. Kanade would further submit that it was specifically argued before this Court that the

Commissioner had recorded finding of committing breach by Respondent No.4 and the fact of commission of said breaches on the part of Respondent No.4 has not been considered by this Court while passing the Order under review. Mr. Kanade would further submit that since the power of attorney executed by the Respondent No.4 in favour of Plaintiff has the effect of transfer / assignment of FL-II license, this Court ought to have considered the fact that Respondent No.5 used the design of becoming partner in the firm of Respondent No.5 for seeking Petitioner's indirect ouster from the business. In support of his contention that power of attorney mandated virtual transfer of the license, Mr. Kanade would rely upon various entries made in the FL-II license to demonstrate that the Petitioner got license transferred from Mumbai City to Thane District at Vasai on 15 May 2005. He got name of the business changed from Conpell Wine to Vasai Wine on 15 May 2005 and he got the license further shifted on 13 May 2005. Mr. Kanade would submit that this is an error apparent on the face of record committed by this Court while passing Order under review which is required to be set aside and the Review Petition filed by the Petitioner is required to be allowed.

5. Review Petition is opposed by Ms. Thadani, the learned counsel appearing for Respondent No.5. She would submit that under the garb of seeking review, Petitioner is trying to reargue the entire petition. That Petitioner is seeking to argue the same points which were canvassed before the Apex Court while rejection of the SLP. She would further submit that there is no error apparent on the face of record in the order under review. She would submit that Petitioner cannot be permitted to rely on any of the observations

made by the Commissioner of Excise since the said Order has been set aside by the State Government. That this Court has correctly considered statutory framework which does not recognise the concept operation of license through power of attorney. She would pray for dismissal of the Review Petition

6. I have heard Mr. Vanarse, the learned AGP for State.

7. After having considered submissions canvassed by the learned counsel appearing for the parties, it is seen that Petitioner unsuccessfully challenged the Order under review before the Apex Court and his SLP came to be dismissed by order dated 5 July 2019. Though refusal of leave by the Supreme Court and summary rejection of SLP is not a ground for refusal to entertain application for review, it is well settled that the scope of review must be confined to the error apparent on the face of record or discovery of new material not in the knowledge of the review petitioner. After considering the submissions canvassed by the learned counsel for review petitioner, I do not find any error apparent on the face of record in the Order dated 27 November 2018 passed by this Court.

8. Perusal of various findings recorded by this Court would indicate that this Court considered the effect of Rule 40 (2)(a) and (b), under which the business under the license is required to be conducted either by the licensee personally or by an agent/servant duly authorized by him by a written Nokarnama. This Court has also taken note of the provisions of form F.L.XIV under which the Nokarnama is required to be countersigned by the Prohibition and Exercise Officer not below the rank of Sub-Inspector. After

considering Judgment of this Court in **Pratap Balkrishna Kedari Vs. Premadevi laxminarayan Agarwal**, AIR 2002 Bombay 391, this Court arrived at a conclusion that the only method by which a licensee can permit a third person to conduct business on basis of FL-II license is by executing the written Nokarnama in form F.L.XIV signed by him and countersigned by the officer of the excise department. This Court has therefore held that there is no concept of effecting general power of attorney for the purpose of conducting a business under FL-II license. Therefore it cannot be contended that this Court did not take into consideration the effect of power of attorney executed in favour of the Petitioner. Once this court arrived at a conclusion that the business under FL-II license cannot be conducted on the basis of a power of attorney, the finding of the Commissioner-Excise about power of attorney having the effect of assignment of license (which is set aside by the State Government) cannot change the scenario. Petitioner's contention that the Nokarnama has indeed been executed in his favour cannot be a ground for review of the Order. Firstly, contention of execution of Nokarnama is raised only on the basis of averments in reply filed by Respondent No.5. The Nokarnama was not placed on record when the Petition was decided nor the same is produced along with the review petition. It is not known whether the alleged Nokarnama is in form F.L.XIV and whether it is countersigned by the officer of Excise Department. Therefore a mere story statement by Respondent No. 5 in his reply would not be a ground for review of the order in absence of the Nokarnama being placed on record. Even otherwise, execution of alleged Nokarnama would not substitute Petitioner in place of the licensee.

9. I therefore do not find any valid ground for review the Order dated 17 November 2018. Review Petition is accordingly rejected without any order as to costs. The Interim Application is also disposed of in above terms.

(SANDEEP V. MARNE, J.)

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