2024:PHHC:136450

[210] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2403-2015(O&M)
Date of Decision : 18.10.2024

Deputy Excise & Taxation Commissioner,
Excise Department, Kaithal and another …Appellants

versus

Hari Kishan son of Sh. Harbhaj resident of
Village Balwanti, Tehsil & District Kaithal ….Respondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sandeep Singh Mann, Addl. AG, Haryana.
Mr. Arvind Bansal, Advocate for the respondent.

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PANKAJ JAIN, J. (ORAL)

CM-6307-C-2015

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has made sufficient cause for condonation of delay of 188 days in filing of the appeal.

Application stands **allowed** and delay of 188 days in filing of the appeal is condoned.

RSA-2403-2015

[1] Defendant(s) is in appeal.

[2] Plaintiff filed suit, seeking decree of declaration to the effect that plaintiff is entitled to receive back amount deposited in excess as security with defendant No.1 along with interest. Further prayer was for grant of mandatory injunction in form of mandate, directing defendant No.1 to make the payment of excess amount.

[3] The pleaded case of the plaintiff was that he was allotted a licence to sell liquor from 01.08.2006 in the year 2006-2007. The approval was granted by defendant No.1 on 29/30 August, 2006 and the permit was issued only on 31.08.2006. After allotment, plaintiff deposited the security amount for 08 months and also paid the licence fee. However, owing to delay in approval at the hands of the defendants, plaintiff could commence his business only w.e.f. 01.09.2006 i.e. he suffered loss of 30 days on business. The licence fee was deposited by the plaintiff for the period commencing from 01.08.2006 till 31.03.2007. The business having commenced only from 01.09.2006. Plaintiff was entitled for return of security amont for the month of August, 2006.

[4] The suit was contested by the defendant(s). It was claimed that the licence was granted as per the provisions of Haryana Liquor Licence Rules, 1970 (hereinafter referred to as 'the Rules, 1970'). Plaintiff was bound by the terms and conditions of the agreement dated 10.08.2006. Plaintiff being himself negligent in lifting his quota was not entitled for refund as prayed for.

[5] Suit filed by the plaintiff was put to trial, framed the following issues:-

> *"1. Whether the plaintiff is entitled to receive back the amount deposited in excess as security and excess fee etc.? OPP*
>
> *2. Whether the suit is not maintainable? OPD*
>
> *3. Whether the plaintiff has no locus standi to file the present suit? OPD*

> 4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
> 5. *Whether this Court has no jurisdiction to try and decide the present suit? OPD*
> 6. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
> 7. *Whether the plaintiff has not come to the court with clean hands, if so what effect? OPD*
> 8. *Relief. "*

[6] Learned Trial Court came to the conclusion that the licence granted to the plaintiff was for the period of 08 months commencing from 01.08.2006. However, the plaintiff could commence his business only from 01.09.2006, after the approval was accorded by defendant No.1 on 31.08.2006. Thus deciding Issue No.1, learned Trial Court held that plaintiff entitled to refund of excess licence fee for the month of August, 2006 i.e. an amount of Rs.1,79,088/-.

[7] In appeal preferred by the State, the findings have been affirmed by the learned Lower Appellate Court.

[8] Learned State Counsel, while assailing the impugned judgment and decree passed by the Courts below heavily relies upon Rule 36 (17) of 'the Rules, 1970', to submit that after waiting for 10 days, the rule provides for deemed approval and thus there was no impediment in plaintiff starting his business. Plaintiff owning to his own reasons was not able to commence his business from 10.08.2006 and thus Courts below erred in granting refund to the plaintiff.

[9] *Per contra,* Mr. Bansal, counsel for the respondent, submits that its not a case of 'no approval'. Thus, the provision as contained under Rule 36 (17) of the Rules of 1970 would not be applicable. Specific case of the plaintiff pleaded before the learned Trial Court was that the plaintiff after having been granted lincence from 01.08.2006 was granted approval only on 31.08.2006 and thus was deprived from carrying on business for whole period of August and was thus not liable to pay the licence fee. Thus, the licence fee paid in excess needs to be refunded.

[10] I have heard counsel for the parties and have carefully gone through the records of the case.

[11] Facts are not much less in dispute. Grant of licence is admitted. It is also admitted that the duration of licence commence from 01.08.2006 and was valid up to 31.03.2007. It is also not in dispute that the plaintiff indeed paid licence fee for the period commencing from 01.08.2006 till 3.1.03.2007. Issuance of approval on 31.08.2006 is also not in dispute. The issue thus that arises for the consideration of this Court is:-

> *"Whether the plaintiff is entitled to refund of licence fee for the period of August, 2006?"*

[12] The solution to the riddle depends upon answer to the question as to whether the plaintiff could have initiated his business in the absence of approval prior to 31.08.2006.

[13] Learned State counsel, while relying upon Rule 36(17) eloquently argues that the plaintiff was entitled to commence business if not

from 01.08.2006 but from 10.08.2006 i.e. the date of grant of licence. Rule 36(17) of 'the Rules, 1970' reads as under:-

> " *The Deputy Excise and Taxation Commissioner (Excise) of the district shall forward to the Excise Commissioner (Financial Commissioner) for approval, statements in forms M-14 and M-14A showing the locality, license, fee, quota of each retail liquor outlet, name, parentage and full permanent address of the person to whom the retail liquor outlet has been allotted by draw of lots. If no intimation to the contrary is received within ten days from the date of the allotment of a retail liquor outlet, the DeputyExcise and Taxation Commissioner (Excise) of the respective district shall assume that the ExciseCommissioner (Financial Commissioner) has accepted his proposal*."

[14] From the perusal of the aforesaid provision, it is evident that the same operates in a situation where the Deputy Excise and Taxation Commissioner awaits approval from the Excise Commissioner. The rule contemplates that Deputy Excise and Taxation Commissioner need not wait for approval of his proposal by the Commissioner beyond 10 days. In case, no such approval is received from the office of the Commissioner, Deputy Excise and Taxation Commissioner is within his authority to assume that the Excise Commisioner has accepted his proposal. The rule has nothing to do with the licensee. The import of the rule is that after 10 days, Deputy Excise and Taxation Commissioner can inform the licensee of the approval assuming so at the hands of Excise Commissioner.

[15] In the present case, admittedly, Deputy Excise and Taxation Commissioner, i.e. defendant No.1, never informed licensee that the approval has been received or the proposal has been deemed to have been approved. In the absence of any such communication from Deputy Excise

and Taxation Commissioner, plaintiff was not in position to commence business under lincece. Thus, lincence to commence business remained idol for a month.

[16] In view of the above, the reliance being placed upon Rule 36(17) of the Rules of 1970 is misplaced.

[17] In view of the above, this Court finds that both the Courts below rightly decreed the suit filed by the plaintiff. Finding no ground to interfere in the present appeal. The same is ordered to be **dismissed.**

[18] All pending miscellaneous application(s), if any, also stands *disposed off*.

(PANKAJ JAIN)
JUDGE

18.10.2024
'R. Sharma'

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