



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL REVISION APPLICATION NO.86 OF 2025

PETITIONER

(Ori. Defendant No.1)

:-

Parveenbee Mohd. Sultan Saudagar,
Age : 64 years, Occ. Business, R/o Dhad,
Tq. & Dist. Buldhana.

..VERSUS..

RESPONDENTS

(R-1 is Ori. plaintiff)

:-

- 1) Ishwar Subhashrao Koppe,
Age : 33 years, Occ. Agriculturist &
Business, R/o Jamthi Road, Dhad, Tq. &
Dist. Buldhana.
- 2) The Superintendent, Maharashtra State
Excise Office, Buldhana, Tq. & Dist.
Buldhana, Office at Behind Administrative
Building, In front of main Bus Stand,
Buldhana, Tq. & Dist. Buldhana.

Mr. Anand Jaiswal, Senior Adv, a/b Mr. Vivek Awchat, Adv. for Applicant.
Mr. S.S. Deshpande, Advocate for Respondent No.1.
Ms. H.S. Dhande, A.G.P. for Respondent No.2/State.

CORAM : ROHIT W. JOSHI, J.

DATE : 05/12/2025

ORAL JUDGMENT :

1. Heard finally with consent of learned counsel for the
respective parties.

2. The application for rejection of plaint filed by the present applicant in Regular Civil Suit No.217 of 2023, dated 05.07.2024, passed by the learned 3rd Jt. Civil Judge Senior Division, Buldhana, vide Exh.17, came to be rejected, which is the subject matter of challenge in the present Civil Revision Application. The applicant is defendant No.1 and respondent No.1 is the plaintiff. The respondent No.2 is the Superintendent of State Excise and authority under the Maharashtra Prohibition Act, 1949 (hereinafter referred to as "Prohibition Act"). The plaintiff filed a suit against the defendant Nos.1 and 2 *inter alia* praying for the following reliefs :-

"(i) Allow the suit of plaintiffs.

(ii) Further be pleased to grant the perpetual injunction against the defendant in favour of the plaintiff and thereby restrain the defendant from carrying business over the suit property -B by himself or through his agents, servants, relatives, friends etc.;

(iii) Further be pleased to direct the defendant No.1 and to 2 to shift the shop from suit property -B to else were."

3. Perusal of the plaint averment will demonstrate that the plaintiff has stated that the defendant No.1 is running a business of country liquor shop under a CL-III license from the suit property, which is situated in the vicinity of house of the plaintiff. The plaintiff has averred that the terms and conditions imposed by the Government of Maharashtra are not being followed by the defendant No.1 while conducting his business. The plaintiff has also

alleged that nuisance is caused to the plaintiff due to the said shop run by the defendant No.1 since often customers of the defendant No.1 urinate and vomit in front of his door.

4. Perusal of the plaint averment will demonstrate that the plaintiff has made a complaint with respect to the running of the shop of defendant No.1 with the District Magistrate, Buldhana, who has directed the defendant No.2 (Superintendent of Excise) to conduct an inquiry in the matter and furnish a report.

5. The defendant No.1 filed application under Order 7 Rule 11 of the Code of Civil Procedure, 1908, vide Exh.17, praying for rejection of the plaint on the ground that jurisdiction of the Civil Court to entertain the suit relating to operation of licenses issued under the Maharashtra Prohibition Act, (hereinafter referred to as "Prohibition Act") is barred.

6. The learned trial Court has rejected the said application for rejection of plaint. The learned trial Court has observed that the suit does not raise any challenge to any order passed by the authorities under the Prohibition Act and that it is a suit for injunction restraining the defendant No.1 from conducting business of selling liquor from the suit property. It is further observed that although allegations are made against the defendant No.2, the

plaintiff has sought relief of injunction only against the defendant No.1. In view of the aforesaid, the learned trial Court has held that it has jurisdiction to entertain and decide the suit and has rejected the application for rejection of plaint accordingly.

7. Mr. A.S. Jaiswal, learned Senior Advocate for the applicant contends that the jurisdiction of the Civil Court to entertain such a suit is implidely barred. He contends that the provisions of the Prohibition Act are a complete code in themselves and, therefore, in the event any individual has any grievance with respect to any matter covered under the Prohibition Act, such individual must seek relief strictly in accordance with the provisions of the Prohibition Act and cannot approach the Civil Court seeking redressal of any grievance in relation thereto.

8. *Per contra*, Mr. Sachin Deshpande, learned Advocate for the respondent No.1/plaintiff contends that the authorities under the provisions of Prohibition Act do not have jurisdiction to grant the relief of injunction which is claimed by the plaintiff. By placing reliance on judgment of this Court in the matter of ***Baliram Buddulalji Kamale ..vs.. State of Maharashtra and others***¹, the learned Advocate contends that jurisdiction to issue injunction is

¹ (2008) 1 Bom CR 726

vested only with a Civil Court and further that there is no provision under the Prohibition Act empowering authorities under the Prohibition Act to pass order of injunction.

9. Perusal of the plaint averments will demonstrate that according to the plaintiff, the defendant No.1 is running a country liquor retail shop on the basis of license issued in his favour under statutory license form CL-III. License under form CL-III is issued under the provisions of the Maharashtra Country Liquor Rules, 1973 (hereinafter referred to as "Rules of 1973"). Since the relief sought in the suit is for injunction restraining the defendant No.1 from carrying on business from the suit property and further direction to defendant Nos.1 and 2 to shift the CL-III license elsewhere, it will be appropriate to refer to provisions of the Rules of 1973, dealing with the CL-III license. Rule 23 provides that a person desiring to sell country liquor in retail, shall make an application to the District Collector in Form C.L.A. The application for grant of license is required to be considered by a committee of five government officers as per the Rule 23-A. The said committee is required to determine the number and location of country liquor retail shops. The power to grant licenses is vested with the Collector under Rule 24 of the Rules of 1973. Rule 24 of the Rules of 1973,

provides that the Collector shall grant license in conformity with recommendation of the committee. Thus, license is granted by the Competent Licensing Authority having regard to the location of the country liquor shop. It will also be appropriate to refer to Rule 25 of the Rules 1973, which provides that a CL-III license shop shall not be transferred to any place within the Tahsil without prior approval of the Collector, from one Tahsil to another without prior approval of the Commissioner and from one District to another without prior approval of the State Government. Rule 44 provides that a CL-III license can be suspended or cancelled in accordance with Section 54 or 56 of the Prohibition Act. Rule 43 directs that a licensee shall abide by the conditions of the license while running the shop. Clauses 9 and 10 of the CL-III license provides that no disorderly person shall be harboured and no drunkenness shall be allowed in the licensed shop. Clause-10 provides that licensee shall give immediate information to the nearest Police Station of every irregularity committed at the shop it may disturb the public peace, it will also be appropriate to refer to Sections 54 and 56 of the Prohibition Act. Section 54 enables the Licensing Authority to cancel a liquor license for various reasons including in the event of breach of conditions of license. Likewise, Section 56 provides that

license can be cancelled by the Competent Licensing Authority for reasons other than those provided under Section 54.

10. The plaintiff is seeking relief of injunction restraining the defendant No.1 from carrying out business of sell of country liquor in retail from the suit property on the ground of nuisance and inconvenience.

11. In the event, the plaintiff has any grievance in this regard he must approach the Competent Licensing Authority under the Prohibition Act seeking cancellation of license or shifting of the license. It appears from the plaintiff's averments that the plaintiff has approached the District Magistrate in this regard. The plaintiff's averments indicate that the defendant No.1 holds the valid license for running the business. In the considered opinion of this Court, a Civil Court cannot grant injunction restraining a licensee from running his business from the suit property when he holds subsisting license for the same. Power to suspend and cancel the license is specifically vested with the licensing authority.

12. As regards the second prayer, the plaintiff is seeking relief of injunction against the defendant Nos.1 and 2 to shift the country liquor shop elsewhere. Power to order shifting of license shop is also vested with the authorities working under the provisions of the

Prohibition Act. Perusal of the provisions of the Prohibition Act will demonstrate that business of manufacture and sale of liquor is completely regulated by the Prohibition Act. Different authorities functioning under the Act are conferred with different powers. The Act also provides for right to appeal and revision under Sections 137 and 138 of the Prohibition Act, respectively. The trade is completely regulated by the Prohibition Act. Section 146 of the Prohibition Act bars filing of suit or any proceedings against any government or prohibition officer or Police Officers functioning under the Act. Having regard to the scheme of the Act, in the considered opinion of this Court, the learned Civil Court will not have jurisdiction to direct the defendant No.1 to stop conducting his business from the suit premises and for to shift the business to some other place. Authority to order the business to be stopped is vested with the Competent Licensing Authority under Sections 54 and 56 of the Prohibition Act. Likewise, power to direct shifting is also vested with the licensing authority.

13. As regards the judgment on which reliance placed by the learned Advocate for the respondent that the authorities functioning under the Prohibition Act do not have jurisdiction to pass the order of injunction, in the considered opinion of this Court,

the ratio of the said judgment cannot be made applicable to the facts of the present case. In the said case, there was a dispute with respect to fabrication of documents resulting in issuance of license. When the complainant approached the Competent Licensing Authority making grievance regarding his signatures being forged in order to obtain the license, the Collector held an inquiry and passed an order directing the parties to approach the competent Civil Court for adjudication of issue with respect to fraud and further directed suspension of license till resolution of the issue. This order passed by the Collector was challenged before the Appellate Authority. The Appellate Authority passed an order of interim injunction directing continuation of the business. The said order passed by the Appellate Authority was challenged before this Court raising a contention that authorities under the Act do not have power to grant relief of injunction. Accepting this contention, this Court has held that power to grant injunction is vested only with a competent Civil Court and that there is no provision under the Prohibition Act enabling the authorities under the Act to pass order of injunction. In the present case, the plaintiff has sought relief that defendant No.1 be restrained from running his business from the suit property. This relief can be granted by the Competent Licensing Authority

under the Prohibition Act by ordering suspension or cancellation of the license. The order of shifting of license to other place can also be passed by the authorities under the Prohibition Act. It will also be pertinent to mention that, Civil Court will not have jurisdiction of the authority to direct shifting of license to any other place having regard to mandate of Rules 23(B) and 24 of the Rules of 1973 since location of the premises is one of the consideration while granting the license.

14. With respect to first prayer in the suit, this Court is also of the opinion that the plaintiff does not have the cause of action to seek the said rule. The relief to sought business of sell of country liquor cannot be sought by the Civil Court while license for the same is subsisting. In this context, it must be noted that a plaint does not disclose cause of action is liable to be rejected. Cause of action when viewed in a narrow sense, implies infringement of right, however, in a broader sense, it includes facts constituting the right and violation of the same. A cause of action consists of a fact or bundle of facts that, if unrebutted, would enable the plaintiff to seek relief from a competent court in accordance with law.

15. The facts pleaded in the plaint must therefore make out a right to seek relief in accordance with law.

16. In the present case, the plaintiff has failed to make out such right to seek relief from the competent Civil Court since closure of the country liquor shop cannot be ordered while the license is subsisting and right to suspend or cancel license is vested with the authority under the Prohibition Act. Likewise, a Civil Court cannot direct the defendant No.1/licensing to shift the license shop elsewhere even if the plaintiff's averment is assumed to be correct since, the said power is vested with the licensing authority.

17. It will be appropriate to refer to judgment of this Court in the case of *Krushnarao Vithalrao Gollal ..vs.. State of Maharashtra*², wherein this Court has elaborately dealt with the issue pertaining to the jurisdiction of the Civil Court *qua* provisions of the Maharashtra Prohibition Act and held as under :-

“26. ... This is a special statute which governs the law relating to the promotion and enforcement and carrying into effect the policy of Prohibition Act and also the Abkari Law in the State of Bombay and the scheme itself provides for an effective remedy against the orders of the Prohibition officers by way of appeal and revision (under sections 137 and 138 of the said Act, which are sufficient and adequate to deal with the contingency. The Bombay Prohibition Act provides for an effective machinery to deal with the breach of the various provisions of the Act and Rules which govern the field by providing hierarchy of authorities ...”

18. It needs to be reiterated that the trade of liquor is not a matter of right. It is a privilege of the State, which is parted in favour

of persons who hold licenses under the Act. The said privilege is granted by authorities functioning under the Act and can be altered, modified or taken away only by such authorities functioning under the Act. The Civil Court does have jurisdiction to interfere with matters pertaining to license issued by the authorities under the Act in favour of the license holder.

19. Having regard to the scheme of the Act and Rules framed thereunder, in the considered opinion of this Court, the Act governs matters pertaining to the grant of privilege in trade of liquor and also provides for regulating the mode and manner in which the said privilege should be exercised. At the same time the Act and Rules also provide for remedial measures. The Act and Rules constitute a complete code by themselves, leading to an implied ouster of the jurisdiction of the Civil Court. The prayers in the suit for directing the defendant No.1 not to run the shop in the premises in question and mandatory injunction to shift the shop elsewhere therefore cannot be granted by a Civil Court. The jurisdiction of Civil Court to entertain such suit is barred.

20. For the reasons recorded above, in the considered opinion of this Court, Civil Revision Application deserves to be **allowed** in the following terms :-

- i) Order dated 05.07.2024, passed by the learned 3rd Jt. Civil Judge Senior Division, Buldhana, on application at Exh.17 in Regular Civil Suit No.217 of 2023, is quashed and set aside and the said application is **allowed** by rejecting the plaint in the said civil suit.
- iii) No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate