
(2011) 01 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 85 of 2009

Balram

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Constitution of India, 1950 — Article 226

Rajasthan High Court of Judicature Rules, 1952 — Rule 134

Citation : (2012) 2 WLN 141

Hon'ble Judges : C.M. Totla, J;A.M. Sapre, J

Bench : Division Bench

Advocate : Vijay Bishnoi, for the Appellant; Jamant Gurjar, AGC, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—This is an intra Court appeal filed by writ petitioner of W.P. No. 6646/2006 under Rule 134 of the Rajasthan High Court Rules against an order dt. 11.10.2007, whereby the learned Single Judge dismissed the writ petition of the appellant. So the question that arises for consideration in this writ appeal is whether the Single Judge was justified in dismissing the writ petition of appellant?

2. Facts of the case are these.

3. The appellant and respondent No. 5 applied for license to run fair price shop for the village 2 KLD Tehsil Gharsana, District Sriganganagar. On scrutiny, it was decided by the State Authorities to give license in question to respondent No. 5. The appellant feeling aggrieved by this decision of the State filed a civil suit before Civil Judge at Sriganganagar against the State and respondent No. 5. The suit was filed seeking a declaration and injunction against the defendants (respondents herein) to the effect that license be not granted to respondent No. 5. According to the appellant, the respondent No. 5 was not eligible to apply for the license in question because he was not the local resident of the area for

which the license was applied for by the parties. The appellant also applied for grant of temporary injunction praying that license may not be issued in favour of respondent No. 5 during pendency of suit. The respondents contested the application for grant of temporary injunction and denied the material averment made in the application. The trial Court rejected the application and declined to grant temporary injunction to the plaintiff (appellant). The appellant feeling aggrieved filed an appeal to District Judge. The Appellate Court also dismissed the appeal and in consequence while declining to grant temporary injunction to the plaintiff, upheld the order passed by the trial Court. The appellant then did not take any interest in prosecuting the suit. It was dismissed for want of prosecution. The State Authorities then issued a license in favour of the respondent No. 5. The appellant then filed an appeal under the Rules before the Appellate Authority constituted for deciding the appeal of this nature. The Appellate Authority dismissed the appeal filed by the appellant. It is against this dismissal of appeal, the appellant filed the writ petition out of which this intra-Court appeal arises. The Writ Court (Single Bench) dismissed the writ petition, giving rise to filing of this appeal by the writ petitioner.

4. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to dismiss this appeal as in our opinion, the Writ Court was right in dismissing the writ.

5. In our opinion, the writ petition was not entertainable for two reasons. In the first place, the appellant having filed a suit earlier to filing of the writ petition out of which this appeal arise and claiming same relief and that too on same set of facts, and the same having been gone into by the Civil Court by party on merits, the writ petition was not really entertainable under Article 226 of the Constitution of India. Secondly, the findings recorded by the Civil Court though rendered while deciding the injunction application was binding on parties in any subsequent litigation on the principals of res-judicata.

6. We are not impressed by the submission of the learned counsel for the appellant when he contended that the appellant having got the suit dismissed in default, there was no decision rendered by the Civil Court on merits and hence the writ petition could be filed to raise the issue again. In our opinion, the answer to this submission lies in following passage of Chief Justice Rankin in a case reported in *Tarini Charan Bhattacharjee and Others Vs. Kedar Nath Halder*, which found its acceptance by Supreme Court in a case reported in *S. Nagaraj (dead) by LRs. and Others Vs. B.R. Vasudeva Murthy and Others etc. etc.*, :-

...The question whether decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not

according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law, or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party.

7. In our opinion, once the issue was gone into by the Court competent to decide the said issue between the parties, though while deciding the injunction application made in a suit and the same having been upheld by it's Appellate Court; the parties are not then allowed to prosecute the same issue again in any subsequent litigation.

8. This is what has happened in this case. The appellant first filed a suit and invited finding on facts while deciding his injunction application. He also filed appeal against such dismissal that again probed into the issue but decided against the appellant. The appellant then instead of filing a writ petition against the Appellate Court's order, accepted the findings recorded therein and filed the writ petition against the grant of license to respondent No. 5 out of which this appeal arises. This in our opinion was not permissible. The public policy enshrined while enacting Section 11 of C.P. Code coupled with our extra ordinary powers conferred under Art. 226 of Constitution bars it.

9. Learned counsel for the appellant then argued that since the suit was dismissed in default and no finding on its merits was recorded, the writ petition was capable of being entertained. He also argued that the writ arose out of the order passed by the Appellate Authority constituted under the rule and hence it had to be gone into on its merits. True it is that the writ petition was filed challenging the order passed by the Appellate Authority but the challenge was again on the same grounds on which the suit was filed and contested for obtaining the injunction. In other words, if the challenge to the grant of license was on the same grounds in the writ petition that were made basis while prosecuting the suit then it was not permissible. A Writ Court could not go into the question of residence of respondent No. 5 again, once it was decided rightly or wrongly by the Civil Court between the parties. A Writ Court could not ignore the factual finding of the Civil Court and take contrary view only because the writ petition arose out of the order passed by the Appellate Authority under the rules. The decision thus relied on by the learned counsel for the appellant viz Arunima Baruah Vs. Union of India (UOI) and Others, and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, are not applicable to the facts of this case. In the light of foregoing discussion, in our opinion, the Writ Court (Single Bench) was right in dismissing the writ petition on the ground that it was not capable of being entertained consequent upon the dismissal of suit. We concur with this finding. As a consequence, the appeal fails and is accordingly dismissed.