

(2011) 01 RAJ CK 0101

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1098 of 2010

District Excise Officer and Others

APPELLANT

Vs

Kishore Singh

RESPONDENT

Date of Decision : 05-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 11
Rajasthan Excise Act, 1950 — Section 9A, 9B

Citation : AIR 2011 Raj 70 : (2011) 1 RLW 869

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned Counsels for the parties.

2. This appeal is directed against the order dated 23.10.2010 passed by learned trial Court in a Civil suit filed by the Plaintiff, Kishore Singh S/o Bachan Singh against the show cause notice issued by the Appellant-District Excise Officer, Nagaur seeking to cancel the license given to Plaintiff for the period 1.4.2010 to 1.3.2011. In the said suit filed for injunction, learned trial Court has granted a temporary injunction in favour of Plaintiff-Respondent vide impugned order dated 23.10.2010. Being aggrieved of which, the District Excise Officer, Nagaur has filed the present appeal under Order 43 Rule 1 Code of Civil Procedure.

3. Learned Counsel for the Appellant, District Excise Officer, Dr. Sachin Acharya submitted that the suit itself was barred as per Section 9-B of the Rajasthan Excise Act, 1950 (for short, hereinafter referred to as "Act") and, therefore, learned trial Court could not have entertained the suit at all much-less granting temporary injunction by impugned order which will achieve the very purpose of filing of the suit if the said temporary injunction continues upto 31.3.2011, the period up to which license is granted in favour of Plaintiff-Respondent. He further submitted that even though the Appellant-District Excise Officer filed an application under Order 7 Rule 11 CPC before the learned trial Court alleging

therein that the suit itself is not maintainable, however, the aforesaid application was filed later on i.e. after passing of the impugned order granting temporary injunction on 23.10.2010.

4. E Converso, Mr. Rajesh Panwar, learned Counsel appearing on behalf of Plaintiff-Respondent urged that since the impugned show cause notice was without jurisdiction, therefore, the suit was maintainable and the learned trial Court has rightly passed the impugned order.

5. A bare perusal of Section 9-B of the Act, which is reproduced hereunder, would show that no civil suit is maintainable against any original order passed by an Officer competent to do so under the provisions of the Act, and so also, appellate or revisional orders passed under the provisions of Section 9-A of the said Act. The intention of the providing such bar against the jurisdiction of civil court is obvious that quasi-judicial authorities under the enactment concerned should be allowed a free hand to decide the proceedings initiated by them after giving an opportunity of hearing to the concerned licensee.

Section 9-B. Bar of jurisdiction of civil Courts: No civil Court shall have jurisdiction to entertain any suit or proceeding to set aside or modify;

(a) any original order passed by an officer competent to do so under the provisions of the Act, or

(b) any order passed under, or referred to in Section 9-A.

6. The entertainment of the civil suit in such matter, particularly, suit for injunction are likely to adversely affect the proceedings undertaken by the competent authority under the Act and, therefore, a bar has been provided in Section 9-B of the said Act prohibiting the civil courts from entertaining such suits or proceedings. In the present case in hand also, even though it was contention of the Plaintiff that impugned show cause notice was issued without jurisdiction, however, he could have raise this point before the competent authority himself who issued the said show cause notice; and the Plaintiff could not have filed the civil suit straightway against such show cause notice. Since, the civil suit against any original order itself is barred any civil suit against show cause notice, which could result in any such original order also, has to be equally held prohibited by law.

7. Learned trial Court in its impugned order even re-producing the Section 9-B in para 11 of the impugned order, has chosen to deflect from said bar by observing that show cause notice in the suit is not an order u/s 9-A of the Act. Such a casual approach on the part of learned trial Court not reading even the basic provisions carefully can hardly be appreciated and, the learned trial Court is always expected to proceed with the civil suit only if permitted by law. The very purpose of Order 7 Rule 11 CPC is to reject a suit at the threshold if the same is not maintainable in law or otherwise is barred by any other specific law.

8. Taxing statutes and other special enactments like Rajasthan Excise Act, 1950

contain such bar of jurisdiction of the civil courts, specially with a view to restrict or prohibit the entertaining of civil suits in such matters because the authorities created by such enactments are competent to decide the question on merits including the questions of jurisdiction raised before them. The Hon'ble Supreme Court in the case of District Excise Officer and Ors. v. Kalawati Hari Singh Choudhary and Part Civil Appeal No. 19 of 2001 decided on 16.8.2007 dealing with a similar matter had observed as under:

The controversy involved in this appeal is with regard to the grant of liquor licence for retail sale of country liquor, foreign Wine and Bear.

The licence was granted in favour of the Respondent on 5.11.1999 for the period 1999-2001. A notice dated 2.2.10 was issued to the Respondent to shift liquor shop Gahra uli which is located in the periphery of 2-5 kms. of the shops allotted to other 9 groups in Dausa, which is in violation of office circulars of the Commissioner. As would appear from the record the Respondent did not file any reply to the show cause notice.

He, however, filed Civil Suit No. 117/1999 before the trial court praying, inter-alia, for granting injunction restraining the Respondent from taking action on the said notice. In the trial Court, the Appellant filed written statement. It is specifically averred in the written statement that the civil suit is barred u/s 9B of the Rajasthan Excise Act, 1950. Amended Section 9B reads :

Section 9-B. Bar of jurisdiction of civil Courts: No civil Court shall have jurisdiction to entertain any suit or proceeding to set aside or modify;

(a) any original order passed by an officer competent to do so under the provisions of the Act, or

(b) any order passed under, or referred to in Section 9-A.

This averment was not considered by the trial Court as, according to the trial court, Section 9B has not been produced before it. We are at loss as to why the trial court has come to the conclusion as Section 9B has itself been quoted in the written statement. We have gone through the contexts of the written statement, and reply to the injunction application of the Appellant annexed in this appeal. On going through the written objections particularly para 14 of the said objections, entire Section 9B has been quoted. In view of the matter the trial Court has committed a grave miscarriage of justice and jurisdictional error. On appeal being filed by the Appellant before the High Court, the High Court also committed the same mistake and failed to appreciate the import of Section 9B of the Act where under the jurisdiction of the civil court is barred. (See: Church of North India Vs. Lavajibhai Ratanjibhai and Others,

A perusal of Section 9B, as amended, shows that there would be clear bar on the civil court jurisdiction. In view thereof, the orders of both the trial Court and the High Court are not sustainable in law and they are accordingly quashed. The Civil Suit No. 117/1999 filed by the Respondent therefore, is not maintainable and the

same stands dismissed accordingly.

The appeal is allowed. No order as to costs.

Sd/- Sd/- (H.K. Sema), J. (Lokeshwar Singh Panta)

9. It is therefore, clear that suit in the present case filed by the Plaintiff-Respondent itself was not maintainable and the learned trial Court has grossly erred in entertaining such civil suit and granting temporary injunction in favour of Plaintiff-Respondent.

10. Consequently, this appeal is allowed and the impugned order dated 23.10.2010 passed by learned trial Court is quashed and set aside and also the civil suit filed by the Plaintiff-Respondent viz. Civil Suit No. 83/2010 in the Court of learned Additional District Judge, Parbatsar, Nagaur is dismissed. A copy of this order be sent to the concerned Presiding Officer for information and to be very careful in future. No costs.