

(2000) 07 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Revision Petition No. 285 of 2000

District Excise Officer and Others

APPELLANT

Vs

Smt. Kalawati Hari Singh Choudhary

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 9
Industrial Disputes Act, 1947 — Section 10
Northern India Canal and Drainage Act, 1873 — Section 10, 30, 68
Specific Relief Act, 1963 — Section 41

Citation : (2001) 4 WLC 60 : (2007) 2 WLN 472

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—The defendants (petitioners) have preferred this civil revision petition challenging the order dated 3.11.1999 of the Civil Judge (Jr. Div.) Hindaun City in Civil Suit No. 117/1999, whereby he dismissed an application of the defendants filed under Order 7 Rule 11 CPC.

2. The facts leading to this petition, briefly stated, are that M/s. Kalawati Hari Singh Chaudhary and party carrying in business of country and foreign wine & beer under the contract for the year 1999-2000 sanctioned by the Excise Department of Govt. of Rajasthan for Hindaun Todabhim group of IMFL had instituted a civil suit for permanent injunction alongwith T.I. application in respect of two liquor shops situated one at village Gehroli, Todabhim Balaji Road and another at Kherali Crossing. Permanent injunction had been sought for restraining the defendants (Excise Authorities) from: (1) cancelling the contracts sanctioned for aforesaid two shops of Gehroli & Kherali Crossing in Todabhim Tehsil; (2) dispossessing them forcefully out of these two sanctioned liquor shops or closing those shops and further (3) allowing the plaintiffs to peacefully carry on their liquor business without any interruption or hindrances in accordance with terms & conditions of liquor contracts so as to avoid from causing any loss

to them. The dispute arose when the defendant No. 1 (District Excise Officer Sawaimadhopur) issued notice dated 22.10.1999 for change of the sanctioned location of liquor shops of Gehroli and Kherali Crossing. Upon service of the notices issued on the suit and T.I. application, the defendants moved an application u/s 9 as also Order 7 Rule 11 (d) CPC praying therein that the suit be dismissed on the sole ground that in the light of Section 9-B of the Rajasthan Excise Act, 1950 (for short "the Act"), so also the condition Nos. 4.1, 4.2 & 8.3 of the liquor contract, the Civil Court has no jurisdiction to hear and entertain the suit. Reply to the aforesaid application was filed by the plaintiffs contesting the objection raised for jurisdiction of the Civil Court. After hearing both the parties the learned trial Court by its order impugned herein, has dismissed the applications dated 30.10.1999 moved in suit and TI application. Hence this revision petition.

3. Shri R.B. Mathur, learned counsel for the petitioners (Excise Department) contended that the injunction has been sought by the plaintiffs against order/notice issued by the defendants in exercise of their powers vested under the Excise Act and only remedy against it is provided under the Act itself but a civil suit is barred by virtue of Section 9-B thereof thereby civil court has no jurisdiction under the provisions of Section 41(h) of the Specific Relief Act read with Section 9 CPC so also Order 7 Rule 11 (d) QPC which places a specific bar to entertain and try civil suit by the civil court for any injunction against the orders of the competent authority because the cognizance against which is expressly or implied barred and an alternative remedy is available under the Act.

4. Shri Mathur placed reliance upon the decisions reported in: (1) State of Rajasthan v. Vimlesh Harsh 1998(2) RLR 322. Tilam Sangh Sriganganagar v. K.P. Sharma 1998(1) RLR 503. Ajmer Kaur and others Vs. Punjab State and others, (4) Punjab State Electricity Board and Another Vs. Ashwani Kumar, and (5) R.C. Tiwari Vs. M.P. State Co-operative Marketing Federation Ltd. and others,

5. Contrarily, Shri R.P. Garg, learned counsel for the respondent (plaintiff) contended that Section 9-B of the Act cannot be read in isolation inasmuch as the excise department has acted malafidely under the pressure of other wine groups at whose instance they are adamant to change the location of the sanctioned shop ignoring the provisions of Rule 75 of the Rajasthan Excise Rules, 1956. Shri Garg also contended that the grievance raised in the pLalnt at para 7 do not fall within the purview of orders u/s 9A so as to exclude jurisdiction of Civil Court against it. He cited the decisions in (1) Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, and (2) Abdul v. Bhawani AIR 1969 SC 1718.

6. I have heard the learned counsel for the parties and perused the impugned order Section 9B of the Act exclusion the jurisdiction of Civil Court but only to suit or other proceedings to set aside or modify any order passed under or referred to Section 9A, which provides remedy of an appeal and revision. Its Sub-section (1) provides that an appeal shall lies (a) to the Excise Commissioner from

any order passed by an Excise Officer under the Excise Act and (b) to the Divisional Commissioner of the area appointed u/s 17 of the Rajasthan Land Revenue Act, 1956 from any order in a matter arising from such area passed by the Excise Commissioner under this Act otherwise than an appeal. Sub-section (2) of Section 9A prescribes sixty days period of limitation to file appeal u/s 9A(1).

7. In *Tilam Sangh v. K.P. Sharma* (supra), this court held Civil suit not maintainable because civil suit against Cooperative Society by its employee challenging punishment order had involved disputes regarding disciplinary action taken by Society or its Committee against a paid employee and those disputes were duly covered by Section 75 of the Rajasthan Cooperative Societies Act, 1965 which could be decided by Registrar, thereby this Court held that jurisdiction of Civil Court u/s 9 CPC is barred in such matters.

8. In *State of Rajasthan v. Vimlesh Harsh* (supra) original tenants of public premises (forefathers of plaintiffs) died and occupation of plaintiffs became unauthorised and the Devasthan department wanted to regularise the tenancy consequent upon which the plaintiffs approached the civil court for permanent injunction as well as temporary injunction which was granted by the appellate court, against which the State filed revision petition. In revision petition, this Court held that civil court had no jurisdiction to entertain suit for injunction filed by plaintiffs as such lower appellate court acted without jurisdiction in granting temporary injunction and in entertaining the appeal by virtue of Sections 10 & 10 A of the Rajasthan Premises (Eviction of Unauthorised Occupants) Act, 1964.

9. In *Ajmer Kumar v. Punjab State* (supra) the trial Court holding that it had no jurisdiction to entertain the suit in view of Sections 30(g) & 68 of the Northern India Canal & Drainage Act, 1873, had dismissed T.I. application under Order 39 Rules 1 & 2 CPC, and in appeal against the dismissal, the appellate court held that no appeal lies against the orders of trial Court returning the plaint. In revision petition challenging the said order, the Punjab & Haryana High Court held that the Court having no jurisdiction to entertain civil suit being barred under the aforesaid statute, has to reject plaint and not to return it under Order 7 Rules 11(d) and 10 CPC and therefore, the order returning plaint is appealable under Order 43 Rule 1(a) CPC.

10. In *R.C. Tewari v. M.P. State Cooperative Marketing Federation Ltd.* (supra), the petitioner was dismissed from service for his misconduct, against which he sought a reference under the M.P. Cooperative Societies Act, 1960 for short "the Act" which was confirmed and became final. However, on a reference u/s 10(1) of the Industrial Disputes Act, 1947, the Labour Court held the domestic inquiry being vitiated by illegality, it set aside the petitioner's dismissal. The High Court in writ petition held that in view of Section 55 of the Act, the Labour Court has no jurisdiction and therefore, reference was bad. The Apex Court in these circumstances, held that the dispute relating to disciplinary matter of an employee of a Cooperative Society was covered by Section 64 of the Societies

Act and therefore, reference u/s 10 of the Industrial Disputes Act stood excluded.

11. In Punjab State Electricity Board v. Ashwini Kumar (supra) the meter installed to the connection of supply of electrical energy to the respondent was since suspected to have been tampered with which it was removed and the bill for Rs. 1,90,498/- was sent to the respondent, against which he filed civil suit for permanent injunction which was decreed by the trial Court restraining the Board or its officers from collecting & recovering the amount from the respondent and on appeal the decree was confirmed and the second appeal was also dismissed by the High Court. The Apex Court held that ordinarily civil court has jurisdiction to go into disputed questions of civil nature where fundamental fairness of procedure is violated but where fundamental fairness of procedure is followed, cognizance of civil cause is excluded by necessary implication where State Electricity Board issued statutory instructions regarding dealing with cases of tampering with meter and accordingly sent bills to the respondent customer whose meter was removed suspecting tampering but later restored on request, the Apex Court held that suit seeking permanent injunction without first availing the remedy provided under the Electricity Act and its Supply Act and the instructions of the Board, cannot be entertained by the civil court.

12. Having considered the ratio of the decisions cited by Shri Mathur, which have been discussed hereinabove, prima facie, I am of the view that none of the decisions (supra) is attracted to the facts and circumstances of the present case which are distinguishable in view of the issues involved in the suit for permanent injunction. Therefore, the decisions cited by Shri Mathur do not render any assistance in advancing the cause of the defendants, because the defendants have failed to establish their contention as to the exclusion of civil court's jurisdiction to entertain the suit based on malafide alleged against the defendants for shifting of location of shops duly approved by them at the time of grant of license for contract of the retail sale of country liquor, foreign or Indian made foreign liquor.

13. In the instant case, the trial Court while dismissing the defendant's application under Order 7 Rule 11 (d) CPC found that as per circular dated 8.10.1998 issued by the Excise department (defendant) it did not exclude civil court's jurisdiction to entertain suit for permanent injunction where the dispute admittedly pertained to shifting/change of location of shops in question and the orders in respect of which have not yet been passed and only notice had been issued on 22.10.1999 by the District Excise Officer against whom the plaintiffs had complained of his action to allot liquor shop to Dausa group of wine dealer in contravention of the circulars of the Excise Department. That apart, it is also the plaintiffs case in the plaint that once they have been granted license of contract of retail sale of liquor etc. at the location of the suit shops duly approved by the excise department, the notice in question for change or shifting of location of the suit shops was without jurisdiction. Thus, I do not find that the trial Court has acted in excess of jurisdiction in rejecting the application of defendants

under Rule 11(d) of Order 7 CPC keeping in view the controversy raised in the plaint. Moreover the defendants failed to establish their contention for exclusion of jurisdiction. It is for the party who seeks to oust jurisdiction of civil court to establish his contention, as has been Laid down in Abdul v. Bhawani (supra) by the Apex Court. In that case, the Apex Court held that the statute ousting jurisdiction of civil court must be strictly construed and Section 7 of the Bhopal State Land Revenue Act, 1932 does not comprehend decision on question of title and therefore, suit in civil court for declaration of title and possession by Khatedar against trespasser was not barred by Section 200(1) of the aforesaid Act of 1932. In Dhulabhai v. State of M.P. (supra) the Apex Court held that on the facts and in the circumstances of the case that the suit in quuestion for declaration that the provisions of the" law relating to assessment under M.B. Sales Tax Act, 1950 were ultravires and for refund of the amount of the tax illegally collected, was not barred by Section 17 of the Act of 1950.

14. The Rajasthan Excise Act, 1950, as its preamble envisaged, was enacted with an intent to consolidate and amend the law in Rajasthan relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of drugs. Thus, it cannot be urged that the provisions of the Excise Act have created any right or liability and for enforcement thereof, remedy has been provided under the Act, itself. The Act purports to restrict a common law right, and not any right or liability created under the Act itself and it can also not be said that the right and the remedy have been given "uno flatu" e.g. "in the same breath". Most of the cases cited at the bar by the parties referred to above relating to statutes creating rights or liabilities and providing remedies at the same time, as such the principles enunciated therein shall not be fully applicable in the present case. Inspite of the bar prescribed under Sections 9A & 9B of the Excise Act over the powers of the Courts under certain special circumstances, the Court can, examine whether the dispute raised in the suit before the civil court or any Court otherwise, falls within the ambit of the Act for exclusion of its jurisdiction. In all circumstances, the authorities entrusted with the powers, have exclusive power to the absolute exclusion of the power of the court and in certain cases where jurisdictional error on part of the Excise department is established, a suit shall be maintainable. I am fortified with the observation of the Apex Court in Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, wherein it has been observed, as under:

(1) The court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner, in terms of Section 343 (1) of the Corporation Act. The court should direct the persons aggrieved to pursue the remedy before the appellate Tribunal and then before the administrator in accordance with the provisions of the said Act.

(2) The court should entertain a suit questioning the validity of an order passed u/s 343 of the Act, only if the court is of prima facie opinion that the order is nullity in the eyes of law because of any "jurisdictional error" in exercise of the

power by the Commissioner or that the order is outside the Act.

15. However, in the present case, the defendants have absolutely failed to establish that the dispute raised in the civil suit for permanent and temporary injunctions is covered by Section 9A so as to exclude civil court's jurisdiction u/s 9B of the Excise Act. The bar envisaged for jurisdiction of, civil court is confined to only those cases covered and referred to in Section 9A of the Excise Act (supra). I do not find any error of law or jurisdiction or material irregularity and illegality or impropriety in the impugned order of the trial Court so as to invoke revisional jurisdiction under Section 115 CPC.

16. As a result of the discussion made above, this civil revision petition being devoid of any merit is hereby dismissed. No order as to costs. The impugned order dated 3.11.1999 of the trial Court in civil suit No. 117/1999 rejecting defendants (petitioner's) application under Order 7 Rule 11 CPC, is upheld.