
(1999) 02 GUJ CK 0063
In the Gujarat High Court

Jaganben Arvindbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1999) 3 GLR 2318

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—By this revision application u/s 115 of the CPC (hereinafter referred to as "Code"), the plaintiff - petitioner challenges the Order of the Second Joint District Judge, Bharuch dated 26-4-1995 in Misc. Civil Appeal No. 114 of 1994 confirming the Order of the Civil Judge (S.D.), Bharuch in Regular Civil Suit No. 176 of 1994 passed below Ex. 5 on 11-8-1994 under which it declined to grant a temporary injunction as prayed for pending final disposal of the suit. The facts of the case which are not in dispute are as follows:

2. The plaintiff-petitioner was granted by the Mamlatdar, Vagra wholesale kerosene licence which bears No. 1 of 1984 under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. On 11-11-1992 the business premises of the plaintiff was inspected by the Mamlatdar, Vagra. During the course of the inspection the inspecting officer found as many as 11 irregularities thereon. Show-cause notice was issued to the plaintiff on 27-11-1992 which was replied by her on 7-2-1992. Under the Order dated 2-1-1993 the Mamlatdar, Vagra found that the plaintiff has committed mal practices and breach of condition of licence and accordingly he Ordered for the cancellation of the licence No. 1 of 1984 and further confiscated the deposit.

3. Felt aggrieved of the Order aforesaid the plaintiff filed appeal before Collector, Bharuch, being Appeal No. 2 of 1993 which came to be dismissed on 4-3-1993. The plaintiff then taken up this matter before the State of Gujarat by filing Revision Application No. 42 of 1993 but the same has also been rejected on

29-3-1994.

4. Having lost in the department appeal and revision the plaintiff filed the present suit in the trial Court on 11-4-1994 out of which this revision application has arisen in this Court. Along with the suit the plaintiff filed application for grant of temporary injunction and the learned trial Court under its Order dated 11-8-1994 declined to grant temporary injunction. One of the grounds given for not exercising of the discretion power in favour of the plaintiff by the trial Court is that it has no jurisdiction in the matter. The appellate Court has confirmed that Order.

5. The learned Counsel for the petitioner contended that the civil Court has jurisdiction in this matter and both the Courts below have committed serious illegality in holding that the suit is not maintainable. The second contention raised is that even if it is taken that the plaintiff has committed breach of the condition of the licence still that breach was not of such serious nature which warrants the only Order of the cancellation of the licence. Carrying this contention further the learned Counsel for the petitioner contended that the licence has been granted in the year 1984 and earlier to the inspection made in the year 1992 nothing was found against the plaintiff. It is only a concocted case against the plaintiff. Lastly it is contended that the Mamlatdar, Vagra has renewed the licence of the petitioner for the period ending on 31-12-1998 so the authorities have also taken it to be a case where the breach of the conditions of the licence were not serious. Concluding his arguments the learned Counsel for the petitioner urged that this revision application has come up for admission on 4-5-1995 on which date the notice has been issued and status quo was Ordered to be continued. The learned Counsel for the petitioner submits that during the pendency of the decision on Ex. 5 and the first appeal the status quo was Ordered to be continued and thereafter this Court has Ordered for maintaining status quo so for all these years the petitioner is carrying on her business and hence in the interest of justice this status quo Ordered may be continued till the decision of the suit.

6. The learned Counsel for the State Mr. C.C. Bhalja vehemently contended that it is a case where the plaintiff was granted the licence under the Essential Commodities Act, 1955 and the Orders framed thereunder and therein exhaustive provisions are made for appeal and revision. The exhaustive provisions have also been made for cancellation of licence on breach of conditions thereof. In the present case, the procedure as laid down for cancellation of the licence has been followed and the competent authority after giving notice and hearing to the petitioner the Order has been passed. This judgment was confirmed in the appeal and ultimately in the revision application by the State of Gujarat. In the facts of this case, both the Courts below have rightly concluded that the civil suit is not maintainable. It has next been contended that both the Courts below have also found as a fact that the plaintiff has committed breach of several conditions of licence issued by the competent

authority and after giving her reasonable opportunity of being heard, the licence has been cancelled and it has been confirmed in the appeal and revision. In the presence of these findings of the competent appellant and revisional authorities otherwise also protection may not be granted by the civil Courts to the plaintiff, who has indulged in the malpractices of the sale of the essential commodity, i.e., kerosene. Kerosene is the commodity which now wholly and solely meant for the use of the down-trodden and poor people of the country. It is not only essential fuel for this class of persons and where in case the malpractices are being adopted by the wholesalers licence holders certainly the matter has to be taken seriously and it has rightly been taken seriously by the authorities and when nothing has been found in her favour by the appellant authority or the revision authority, then protection of the plaintiff by the civil Court in a suit is against the public interest also. Lastly, it is contended that both the Courts concurrently have found it to be not a fit case where the temporary injunction to be granted in favour of the plaintiff. This Court setting u/s 115 of the Code in the facts of the case may not interfere in this revision application.

7. I have given my thoughtful consideration to the submissions made by the learned Counsel for the parties.

8. I find from the Order of the appellate Court that the plaintiff has committed breach of several conditions of the licence issued by the competent authority. The findings have also been recorded that after giving reasonable opportunity of being heard the competent authority has passed the Order of the cancellation of her licence which order has been confirmed in the appeal and the revision by the State Government. The Essential Commodities Act, 1955 and the Orders framed there under is a special act with the object of controlling the supply and fair distribution of the essential commodities to the people in the country. To ensure proper, fair and equal distribution of essential commodities to the people the State Government provided for grant of retail and wholesale licences. In case the licensee is found indulged in malpractices then certainly the authorities are to take the matter seriously and on proof of the malpractices the minimum penalty would have been of cancellation of the licence of the licensee. It is not the case where the Order passed by the competent authority under the Act aforesaid and the Orders framed there under is final and conclusive. Sufficient remedies against that Order have been provided to the aggrieved party. The provision for appeal is there and then there is provision for the revision. In the case in hand, the plaintiff has filed the appeal and the revision also so all the three authorities under the Special Act, 1955 concurrently have decided against the petitioner. So, the plaintiff after exhausting all the remedies under the special Act has now started the second innings in the civil Court. I am only dealing with the matter of the grant of temporary injunction and as far as possible the Court should be refrained from giving the conclusive and final findings on the question of the maintainability of the suit or some other points relating to the merits of the matter. Whatever findings were given and the observations while dealing with the Ex. 5 made, are only tentative to find out whether the plaintiff has any prima

facie case in her favour which justifies the grant of temporary injunction, in case where further it is made out that non-grant of the temporary injunction will cause irreparable injury to the party praying for same and the balance of convenience also favours of grant of temporary injunction. Both the Courts below prima facie has accepted that the suit filed by the plaintiff is not maintainable and in the facts of this case those findings do not call for interference of this Court u/s 115 of the Code. Moreover, it is a case where the licence of the plaintiff has been cancelled on the ground of breach of several conditions of the licence thereof and in such matter and more so when the licensee has lost both in appeal and revision, the civil Court should be very slow to grant temporary injunction.

9. Much emphasize has been laid by the learned Counsel for the plaintiff that the Mamlatdar, Vagra has renewed her licence up to 31-12-1998, but even if it is done it will no confer any right upon the plaintiff to continue her licence. It is not gainsay that the licence appears to have been renewed because the civil Court has granted the Order in the suit to maintain status quo. The learned Counsel for the plaintiff does not dispute that it is not the licence in perpetuity but it is a licence for fixed term, though subject to renewal at the discretion of the licensing authority. When this is the nature of the licence the contention raised by the learned Counsel for the plaintiff has no substance. This is a case where by renewing the licence for more than 4 years by the Mamlatdar, Vagra merely because the civil Court has protected the plaintiff, is nothing but only an act under the Court's Order. It is not the case of the plaintiff that the licence was renewed as of right and as a matter of course. The learned Counsel for the respondent contends that it is not the case of renewal of licence but as Court Order for maintaining status quo to regularize the sale this licence has been renewed. It seems to be only the reason for renewal of the licence.

10. In the facts of this case otherwise also I have my own reservation whether any reasonable and prudent officer would have renewed the licence of the plaintiff where the same has been cancelled on the ground of breach of several conditions thereof. This matter can be looked into from another angle. The licence had been cancelled by the licensing officer after notice and hearing to the plaintiff and that order has been confirmed also by the appellate and revisional authority. Once the licence has been cancelled then the question does not arise for its renewal by the licensing authority. So the renewal of the licence is only for the reason that the civil Court has protected the plaintiff.

11. Once the licence has been cancelled by the competent authority there is no question of its renewal. Moreover, the civil Courts are not the licensing authorities and by giving the Order of the status quo it means or it may be taken to be meant only that the plaintiff could have carried on her business till the validity of the licence. After the expiry of the period of licence if any interim relief is granted it will amount to granting of the licence. Though the authorities have decided to cancel the licence but under the Order of the status quo the licensee

will carry on the business whereas in fact the licence is not renewed. So to avoid that conflict and to give respect to the Court's Order it appears that Mamlatdar has taken more practical approach and he passed an Order for the renewal of the licence. However, that Order is subject to the final decision of the Court below Ex. 5. The validity of licence otherwise also going to be expired on 31-12-1998.

12. The grant of the temporary injunction is a discretionary power of the trial Court in its equitable jurisdiction. It is true that this Order is appealable but as the appeal is against the discretionary Order, the appellate Court has also very limited power of judicial review in the appeal. In case of *Wander Ltd. and Another Vs. Antox India P. Ltd.*, the Apex Court observed that the trial Court will not interfere with the exercise of the discretion of the Court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principle of law regulating grant or refusal of interlocutory injunction. An appeal against the exercise of discretion is said to be an appeal on principle. The appellate Court will not re-assess the material and seek to reach a conclusion different from one by the Court below solely on the ground that if it had considered the matter at the trial stage it would come to the contrary conclusion. Where the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion. That is the power of the appellate Court in such matters. It is a case where this Court may not interfere with the Orders of the Courts below. The learned first appellate Court has rightly declined to interference in the appeal. The Order of the trial Court is not perverse or arbitrary. In the facts of this case, both the Courts have taken not only a reasonable approach but an approach in consonance with the object and purpose of a Special Act.

13. In the case of *The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway*, , their Lordships of Supreme Court in para No. 5 has observed as under :

In our opinion the High Court had no jurisdiction to interfere with the Order of the first appellate Court. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the Order that it made. The Order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that Order. It is not the case that the, first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High Court could not have invoked its jurisdiction u/s 115 of the Civil Procedure Code: See the decisions of this Court in *Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav*, and *D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others*, .

14. The revisional jurisdiction has been conferred upon this Court u/s 115 of the Code is not analogous to or akin to the appellate jurisdiction. This Court may call

for the record of any case which has been decided by any Court subordinate to this Court and in which no appeal lies thereto and if subordinate Court appears to have exercised a jurisdiction not vested in it by law or to have failed to exercise a jurisdiction so vested or to have acted in the exercise of its jurisdiction illegally or with material illegality this Court may make such Order as it thinks fit. In the case of D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, , their Lords of Supreme Court observed that the mass of reported cases only serve to show that High Courts do not always appreciate the limits of their jurisdiction under this Section. It is not competent to this Court in exercise of its revisional power to correct errors of the fact or even errors of law howsoever gross same may be unless such errors have relation to the jurisdiction of the Court to try the dispute itself. The words "Illegal" and with "material irregularities" as used in Clause (c) of Sub-section (1) of Section 115 of the CPC do not cover either errors of the fact or law. They did not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this Clause may relate to either breach of some provision of law or to material defects of procedure effecting the ultimate decision, and not to error either of the fact or law after prescribed forms have been complied with.

15. The matter needs to be examined yet from another aspect. In case the relief as provided for by the plaintiff in the application Ex. 5 is granted it will amount to grant of final relief at this interlocutory stage of the suit. In fact and substance the grant of temporary injunction result in granting of final relief in favour of the plaintiff. For more than 4 years the plaintiff is enjoying the licence which has been cancelled by the competent authority. The plaintiff is doing business in fact without any valid licence in his favour. It is not the case of validly renewed licence. But as the civil Courts protected the plaintiff the licence has been renewed. The suit is still lying at the initial stage. The law is almost settled that in substance giving the principle relief by way of interim relief is impermissible. See State of U.P. v. Visheshwar , Interim Order should not amount to over-reaching the main relief which ultimately the Court may or may not grant. See Commissioner/Secretary to Government Health and Medical Edu. Deptt. Civil Sectt., Jammu Vs. Dr Ashok Kumar Kohli, . Interim Order in substance giving the principal relief in the petition, such practice is deprecated by the Apex Court in the case of Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd. and another, . In the case of Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa the Apex Court observed that interim Order passed pending writ petition having effect of allowing the writ petition is not proper.

16. So, this Court while exercising its jurisdiction u/s 115 of the Code cannot correct the errors of the fact or errors of the law. The errors contemplated by Clause (c) of Sub-section (1) of Section 115 of Code, as what their Lords of Supreme Court said may relate either to breach of some provisions of law or to material defect of procedure effecting the ultimate decision and not to errors either of the fact of the law after the prescribed formalities have complied with. The Apex Court has laid down clearly the guidelines how to exercise the

revisional powers by the High Courts. This case does not fall under Clause (c) Sub-section (1) of Section 115 of the Code. Leaving apart the question whether the Court below has jurisdiction or not in the matter, otherwise also on merits it is not a fit case where the civil Court should grant the interim injunction in favour of the plaintiff. Not only this, both the Courts below have not considered it to be fit case for grant of temporary injunction in favour of the plaintiff.

17. In the result, this revision application fails and the same is dismissed with costs, which is quantified to Rs. 1,000/-.