
(1975) 12 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Revision No. 464 of 1975

Karachi Wine Store

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 19-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1975) WLN 531

Hon'ble Judges : K.D. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.D. Sharma, J.—These three revision-petitions have come up for admission today. As they arise out of common order passed by the District judge Jodhpur and as common questions of law and fact arise in all these revision-petitioners, they are disposed of by one order. A notice was issued to the non- petitioner to show cause why this revision-petition be not admitted Mr. M.M. Singhvi has appeared on behalf of the Municipal Council, Jodhpur, non-petitioner and contended before me that the order of the appellate court dismissing the application for temporary injunction filed by the petitioner cannot be revised even though it may be a wrong order, because the first appellate court had jurisdiction to pass such an order and because the order does not suffer from material irregularity in the exercise of the jurisdiction. In support of his above contention, he relied upon The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, and an unreported case of this court Harakraj and Anr. v. Binjaram and Ors. S.B. Civil Revision No. 251 of 1972, decided on 5-7-1972. It has been observed in the referred to above authority of Hon'ble the Supreme Court that the order of the first appellate court directing the defendant to refrain from proceeding with the enquiry until the decision of the suit, cannot be interfered with in revision u/s 115 CPC irrespective of the fact whether such an order may be right or wrong or may be

in accordance with law or may not be in accordance with law, provided the first appellate court had jurisdiction to pass such an order and provided the first appellate court did not exercise its jurisdiction illegally or with material irregularity. A similar view has been taken in the unreported judgment of this Court by the then Chief Justice Hon''ble Mr. Jagat Narayan.

2. Mr. M.C. Bhoot, learned Counsel for the petitioner, on the other hand, argued that the order passed by appellate court, i.e. District Judge, Jodhpur, is erroneous in law and that error of law should be considered as vital and a jurisdictional error in this case. In support of his above contention he placed reliance on *Shri M.L. Sethi Vs. Shri R.P. Kapur*, .

3. I have considered the rival contentions put forward by the learned Counsel for the parties. The short but important question that arises for consideration in this case is whether the District Judge, Jodhpur, has exercised his jurisdiction in a legal manner, or with material irregularity. From a bare perusal of the order, it appears that the learned District Judge, Jodhpur was satisfied that there is no prima-facie case in favour of the petitioner and that the petitioner is not likely to suffer irreparable loss in case the injunction sought by him is refused and that the balance of convenience also is not in his favour. The learned District Judge has given the reasons for arriving at a conclusion that the aforesaid three conditions for grant of a temporary injunction do not exist in favour of the petitioner. The reasons may be right or wrong, but the learned District Judge certainly had the jurisdiction to decide the matter.

4. The only point that remains to be considered is whether he exercised his jurisdiction with material irregularity. Mr. M.C. Bhoot, learned Counsel for the petitioner, in "his connection invited my attention to Sub-section (2) of Section 104 of the Rajasthan Municipalities Act, 1959, hereinafter referred to as the Act, which clearly lays down that octroi duty shall be levied by every Municipal Board on goods and animals brought within the limits of the Municipality for consumption, use or sale therein. On the strength of these provisions, Mr. M.C. Bhoot, contended that the petitioner is not entitled to levy octroi on the petitioner's goods, which are not brought within the Municipal limits of Jodhpur for consumption, use or sale therein and that if the non-petitioner does so, it acts in contravention of the mandatory provision of Sub-section (2) of Section 104 of the Act. Mr. Bhoot further invited my attention to Rules 16 and 34A of the Rajasthan Municipalities (Octroi) Rules 1962, hereinafter referred to as the Rules and argued that the petitioner is keeping his goods in a warehouse licensed by the Excise Commissioner u/s 17 of the Rajasthan Excise Act and that by virtue of Rule 34A of the Rules, the warehouse shall be deemed to be a licensed warehouse for the purpose of Rule 16 of the Rules and that the non-petitioner is not entitled to deny the facilities which the petitioner can obtain under Rule 16 of the Rules. The learned District Judge was of the view that the warehouse in which the petitioner is keeping his goods though licensed by the Excise Commissioner u/s 17 of the Rajasthan Excise Act, is not an excise warehouse of the State of

Rajasthan & that the petitioner therefore, is not entitled to avail himself of the facilities provided under Rules 16 of the Rules. Mr. M.M Singhvi, learned Counsel for the petitioner invited my attention to Rules 9 and 12 of the Rules and strenuously urged before me on the strength of the provisions contained therein that petitioner is bound to produce the goods at octroi outpost and to make the declarations under Clauses 1, 2 and 3 whichever is applicable and to follow the subsequent procedure laid down in Rules 11 or 12 of the Rules.

5. I have given my consideration to these provisions. At this stage, it is not necessary for me to express any final opinion on the above questions raised before me during the course of arguments. Suffice it to say that the non-petitioner is not entitled to levy octroi on the goods which are not brought within its limits for consumption, use or sale therein. It is undoubtedly entitled to levy octroi on goods which are bought within its limits for consumption, use or sale therein, It may also be observed that the petitioner is bound to comply with the provisions contained in Rules 9, 11 and 12 of the Rules. The petitioner's apprehension that the octroi shall be charged on the entire goods is not a reasonable apprehension, because, under the law, the non-petitioner has no right to do so, provided the provisions of Rules 9, 11 and 12 are complied with. The non-petitioner shall also pass necessary legal orders such as for bonded warehouse etc, as provided under the rules, after compliance of these rules by the petitioner.

6. In this view of the matter, it is not necessary to issue any temporary injunction against the non-petitioner, especially when the District Judge has not exercised his jurisdiction with material irregularity. The revision petitions are dismissed summarily, No order to as to costs.