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(2019) 02 RAJ CK 0267

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 60 Of 2019

Manwar Resort And Camp Pvt. Ltd — APPELLANT

Vs

State Of Rajasthan And Ors — RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

- Limitation Act, 1963 — Section 5
- Rajasthan Excise Act, 1956 — Section 9, 9A
- Constitution Of India, 1950 — Article 226

Citation : (2019) 02 RAJ CK 0267

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Nupur Bhati

Final Decision : Dismissed

Judgement

The appeal is reported to be barred by limitation for 43 days. An application seeking condonation of delay in filing the appeal has been filed, however, no plausible explanation has been given for filing the appeal so belatedly.

While considering the application under Section 5 of the Limitation Act, we have examined the merit of the appeal also.

The present intra-court appeal being aggrieved of the order dated 23.07.2018, passed by the learned Single Judge, whereby its writ petition had been dismissed on the ground of availability of alternative remedy provided under Section 9-A of the Rajasthan Excise Act, 1956 (hereinafter referred to as the 'Act of 1956').

Succinctly stated the facts relevant for the purpose of present appeal are that the appellant is carrying on its hotel business in village Chordiya, Tehsil Shergarh, District Jodhpur in the name of Manwar Desert Camp and Resort. For the purpose of its business, it obtained a bar license for the resort in the year 2004 and got it renewed periodically. At the time of renewal of the bar license for the period from 20.03.2011 to 31.03.2012, the appellant paid license fee of Rs.3 lacs. On

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15.2.2012, the appellant came to receive a notice requiring it to pay a sum of Rs.21,25,000/- for the differential amount of license fee and renewal fee for the year 2008-2009 to 2011-2012. The differential demand was raised in view of the fact that on 5th December, 2008 the appellant had been categorised as '3 Star Hotel' by the Ministry of Tourism, whereas it had paid license fee ignoring/ concealing this fact.

The entire edifice of the case set up by the appellant was that it was not aware of the factum of having conferred the status of '3 Star Hotel' by the Ministry of Tourism, as the order dated 05.12.2008 granting '3 Star Hotel' status had not been communicated to it.

Laying challenge to the said demand notice dated 15.02.2012, the appellant approached this Court invoking its extra ordinary writ jurisdiction under Article 226 of the Constitution of India, while also roping in the Department of Tourism. In its writ petition, the appellant had prayed for quashment of not only the demand notice dated 15.02.2012, but also the order dated 05.12.2008, vide which the status of '3 Star Hotel' was conferred by the Ministry of Tourism.

Learned Single Judge dismissed the appellant's writ petition in view of the preliminary objection raised by the respondents regarding maintainability of the writ petition in wake of alternative remedy available to it in the form of appeal under Section 9 of the Rajasthan Excise Act, 1956. While relegating the appellant to avail remedy of appeal, learned Single Judge has found the appellant's assertions to be factually incorrect. Learned Single Judge also held the writ petition to be suffering from misjoinder of cause of action.

Calling the order dated 23.07.2018 passed by the learned Single Judge in question, Mrs. Nupur Bhati, learned counsel for the appellant contended that the impugned order of the learned Single Judge is contrary to facts and law. While inviting attention of the Court towards the order dated 05.12.2008, vide which the Regional Director, Ministry of Tourism had awarded '3 Star Rating' to the appellant-hotel, she contended that not only the said order was not endorsed/ forwarded to the appellant, the appellant always remained ignorant about the factum of conferment of '3 Star Status'. Learned counsel strongly contended that as the appellant was not aware about awarding of '3 Star Status', it did not avail many other benefits/advantages/ concessions available to a 3 Star Hotel and in absence of information, the appellant was justified in applying the bar license as a retail hotelier. She asserted that the appellant came to know about awarding of '3 Star Status' only on receipt of impugned demand notice dated 15.02.2012.

In the backdrop of above factual matrix, she contended that not only appellant's prayer of quashing the '3 Star Status', but also its prayer seeking quashment of demand notice dated 15.02.2012 deserved acceptance.

We have heard learned counsel for the appellant and perused the material available on record.

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It is not in dispute that none other than the appellant itself had filed an application for conferment of '3 Star Status'. The appellant's stand or plea that after filing of the application in the year 2008, it simply lost track of the application and did not enquire about its fate, is difficult to accept.

Be that as it may, regardless of the fact that the appellant was aware of such conferment or not, the fact remains that it had been awarded '3 Star Rating' by the competent authority i.e. Ministry of Tourism on 05.12.2008.

The license fee is required to be determined on the basis of status/category of an applicant. Even if it is assumed that on the date of obtaining bar license, the appellant was oblivious of its status as a '3 Star Hotel', it is required to pay license fee as applicable to a '3 Star Hotel'. The appellant's plea of not being aware of its '3 Star Status' is of a little avail in the instant facts inasmuch as the respondents have simply demanded differential license fee and not inflicted any penalty etc upon the appellant for furnishing incorrect or inaccurate particulars.

As far as appellant's prayer in the writ petition for quashing the order dated 15.02.2012 is concerned, we agree with the learned Single Judge that the same could not have been agitated in a writ petition, which essentially laid challenge to a demand notice issued by the State Excise Department, asking the appellant to pay the differential license fee. The appellant had other remedies for revoking/ quashing of the order dated 15.02.2012 conferring '3 Star Status' to it, but then it should firstly have approached the concerned authorities of the Ministry of Tourism or file a separate writ petition.

In this view of the matter, the cause sought to be blended by the appellant in its writ petition, was impermissible and such prayer has rightly been repelled by the learned Single Judge, vide his judgment under consideration.

In view of the discussions above, we are of the view that the appeal lacks merit.

Hence, the application under Section 5 of the Limitation Act; the special appeal and so also the stay application are dismissed.

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