

**(2013) 08 KAR CK 0020**

**In the Karnataka High Court**

**Case No : Writ Petition No. 38222 of 2013 (Excise)**

M.N. Anil Kumar

APPELLANT

Vs

The Commissioner of Excise and Others

RESPONDENT

**Date of Decision : 29-08-2013**

**Acts Referred:**

**Citation : (2014) 2 KarLJ 451**

**Hon'ble Judges : B.S. Patil, J**

**Bench : Single Bench**

## **Judgement**

B.S. Patil, J.—In this writ petition, petitioner is challenging the ex parte interim order of stay granted by the Karnataka Appellate Tribunal in Appeal No. 731 of 2013 vide its order dated 19-8-2013. Though several contentions are urged on merits by the learned Counsel for the petitioner, the main grievance made by the petitioner is that the appeal before the Karnataka Appellate Tribunal has been filed by the 3rd respondent challenging the order dated 26-8-2011 passed by the Commissioner of Excise, Bangalore, after a lapse of nearly two years from the date of passing of the order. It is urged by the petitioner that in such circumstances, when the matter pertains to transfer of CL-9 licence which has been effected way back on 11-9-2009, the Tribunal ought to have notified the petitioner before granting any interim order adverse to his interest. It is further contended by the petitioner that during the interregnum from 2011 to 2013, the petitioner has been running business of vending liquor in seven shops premises continuously by paying licence fee. Learned Counsel for the petitioner has also referred to other litigations pending between the petitioner and respondents 3 and 4. It is lastly urged by the learned Counsel for the petitioner that pursuant to the ex parte interim order of stay granted, the Deputy Commissioner of Excise, Chamarajanagar District has by his order dated 23-8-2013 produced at Annexure-A1 directed for closure of the shops and the business premises of the petitioner where trading in liquor was done for the last more than two years. Allegation of collusion between respondents 3 and 4 are made by the petitioner.

2. Learned Senior Counsel appearing for the 3rd respondent supports the impugned order. He draws the attention of the Court to Regulation 9(f) of the Karnataka Appellate Tribunal Regulations, 1979 which states that "even where an appeal is presented to the Tribunal after the expiry of period of limitation, if the Bench is satisfied prima facie that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed period, then, keeping open the question of limitation, the appeal could be admitted". He further points out that once the appeal is so admitted, an ex parte interim order could be granted even if there is delay. Reliance is also placed on the decision of this Court in the case of Smt. Sudhatai and Another Vs. The Joint Registrar of Co-operative Societies and Others, , to contend that though the delay cannot be condoned without hearing the respondents, no order condoning the delay is required to be passed before admitting the appeal because the appeal could be admitted keeping open the question of limitation as per Regulation 9(f) and once the appeal or petition is so admitted, the Tribunal gets jurisdiction to consider the application for stay and pass appropriate interim orders.

3. He further points out that the appeal itself is posted before the Tribunal tomorrow (30-8-2013) and the ex parte interim order is granted only till the next date i.e., 30-8-2013. Hence, without interfering with the ex parte interim order, this Court may dispose of the writ petition directing the Tribunal to hear both the parties on the application filed for grant of interim stay. He also points out that the 3rd respondent is ready to address his arguments before the Tribunal on the next date as regards the interim application filed for stay.

4. In the light of the respective contentions raised and having regard to the nature of controversy raised, I am of the view that it is unnecessary to go into the several contentions urged by the respective parties. The matter is listed before the Tribunal on 30-8-2013, i.e., tomorrow. There is no doubt that the appeal has been filed after a lapse of nearly two years. In the normal circumstances, before entertaining such an appeal and granting stay, the other party would be heard. However, as per Regulation 9(f), the Tribunal has power to admit an appeal, keeping open the point of limitation, if it is prima facie satisfied that there was sufficient cause for the delay. In the instant case, the Tribunal has not admitted the appeal. The Tribunal was well-advised to hear the other side in a matter like this before granting an ex parte interim order. However, this does not matter much in the present case as the case is listed on 30-8-2013 (tomorrow) and both parties are willing to appear and address their arguments.

5. Hence, the controversy can be resolved by directing the Tribunal to consider the application filed for grant of stay after affording an opportunity to the petitioner herein and after hearing both parties. It is made clear that the Tribunal shall pass order after hearing both parties and considering the facts and circumstances of the case. The apprehension expressed by the petitioner that there will be closure of his shops and that the matter will be precipitated pushing him to serious loss can be addressed by directing the Tribunal to take the same

into consideration and pass an expeditious order without loss of much time in the matter. Hence, the writ petition is disposed of and a direction is issued to the Tribunal to consider and dispose of the application as far as possible on the next date, i.e., tomorrow (30-8-2013) and that the Tribunal shall desist from continuing the ex parte interim order without considering the contentions raised by both the parties. Both parties shall not precipitate the matter till an order is passed by the Tribunal.