(2000) 03 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil SuitNo. 58 of l996

Naranjan Chauhan APPELLANT

Vs

State of Himachal Pradesh and Others RESPONDENT

Date of Decision : 02-03-2000

Acts Referred:
Partnership Act, 1932 — Section 69, 69(2)

Citation : (2000) 2 ShimLC 310

Hon'ble Judges : Surinder Sarup, J

Bench : Single Bench

Advocate : Rajesh Jaswal, for the Appellant; Abhilasha Kumari, for the Respondent

Judgement

Surinder Sarup, J.—This suit has been filed by Shri Naranjan Chauhan, Plaintiff, against the State of Himachal Pradesh and two other Defendants for the recovery of Rs. 8,50,105/- with interest at the rate of 18 per cent per annum with effect from 1.4.1993 till its payment.

2. The case set up by the Plaintiff is that he has been a partnership concern with Plaintiff being a partner alongwith three Ors. , namely, Lokinder Chauhan, Bhagwan Singh and Tarlok Singh as its partners. The firm was engaged in the business of retail sale of Indian Made Foreign Liquor boor and country made liquor as excise licencee.

3. It is further stated that on 16.3.1993 the Defendants conducted an auction in respect of excise vends falling in Jubbal and Kotkhai excise unit. The Plaintiff firm had given the highest bid in this auction amounting to Rs. 1,01,00,000/- and the same was accepted by the Defendants. Thereafter the partners of the firm mutually and interse decided as to how the vends falling in Jubbal unit should be run and similarly there was an internal arrangement regarding the excise vends falling in Kotkhai unit. An original agreement witnessing the above internal arrangement between the partners was drawn up in writing and was filed in the office of the Assistant Excise and Taxation Commissioner, Shimla. Necessary

entries in this behalf were also made by the Defendants in their concerned record.

4. In para 3 of the plaint, it has been pleaded that when the excise vends at Koti Bani were started for the sale of liquor with effect from 1.4.1993, the local Panchayat and other inhabitants of the area had opposed the functioning of the same. The matter reached such a pass that one Sanjay Chauhan, who was a member of the Block Development Committee at the relevant time, had already given a resolution to this effect to the Governor of Himachal Pradesh and the District Collector before the auction. Apprehending trouble the Plaintiff had approached the authorities including the local police for help to open the liquor vends at Koti Bani on 1.4.1993. On that day the Excise Inspector alongwith four police officials were present at the spot. However, it was found that a big crowd of local inhabitants including the office holders of three Gram Panchayats, members of Mahila Mandal and certain non-official members of Grievance Committee. Theog Sub Division, did not allow the Plaintiff to open the auctioned excise vends of L-2 and L-14. Despite utmost persuation by the Excise Inspector the vends could not be opened at Koti Bani and remained closed. In these circumstances, the Excise Inspector reported the matter to his superior (Assistant Excise and Taxation Commissioner, Shimla) and clearly told the Plaintiff that he was helpless in the matter because of the vehement opposition of the local people.

5. It is further pleaded by the Plaintiff that all representations, protests and requests being made because of the immense recurring loss mainly due to the said vends remaining closed, the Excise and Taxation Officer also made efforts to persuade the local inhabitants including the members of the Gram Panchayat and Block Samiti etc. to permit the opening and functioning of the liquor vends, but to no avail.

6. In para 5 it has been stated that the Plaintiff had deposited an amount of Rs. 15,15,000/- as 15 per cent security on the bid amount immediately after the auction. He was also required to deposit the remaining balance bid amount in ten monthly instalments with a condition to adjust the entire balance amount in the last instalment. According to the Plaintiff, despite the two liquor vends of L-2 and L-14 in Koti Bani not being allowed to open and carry on sales of liquor, nor any quota of liquor against the said vends having ever been lifted, the Defendants kept on recovering the licence fee in respect of these two vends, despite the same being non-starters from the very beginning. This was to the knowledge of the Defendants. Not only that, the Defendants had been charging 15 to 30 per cent interest on the delayed deposit of the instalments and in this way the Plaintiff was charged more than Rs. 60,000/- by way of interest. On these pleaded facts the present suit has been filed for recovery of the above said amount. It may be mentioned here that admittedly before filing the suit the Plaintiff and other partners had filed C.W.P. No. 152 of 1994 in this Court with a similar prayer and relief on account of the proportionate licence fee alleged to have been illegally recovered by the Defendants to compensate for anticipated

loss of profit, licence fee, interest etc. Ultimately this writ petition was permitted to be withdrawn by this Court by its order dated 2.6.1995 with liberty reserved to the Plaintiff to file a civil suit which he has done.

7. In the written statement a specific preliminary objection has been taken that the suit is bad for non-joinder of necessary parties. It is stated that the Defendants had given the excise licence in form L-2 and L-14 to the partnership firm, which included the other three partners referred to above, apart from the Plaintiff Naranjan Chauhan. The excise vends have been given in open auction for Jubbal and Kotkhai area, as such the Plaintiff is not competent to file and maintain the present suit in the present form.

8. On merits, the material facts as pleaded by the Plaintiff have been admitted. It has been stated that the Plaintiff failed to locate the suitable place in Gram Panchayat Koti Bani for the functioning of L-2 and L-14 vends and as such the lapse on his part for not taking steps in earnest way cannot by any stretch of imagination absolve the Plaintiff from payment of bid money and any other loss of the Government revenue even if the business is not carried out. Condition No. 21 of Excise Announcement for 1993-94 has been invoked in the written statement in this behalf. It has been denied for want of knowledge that the Plaintiff has not been permitted to open the shop in the entire area of Gram Panchayat Koti Bani. The other claims made by the Plaintiff have been controverted in the written statement of the Defendants. It may be stated here that the Plaintiff has filed a replication controverting the stand taken in the written statement and reiterating what has been pleaded in the suit. As regards the preliminary objection referred to above, it is maintained in the replication that the partnership firm has since been dissolved with effect from 18.3.1996 and hence the suit at the instance of one of the partners, i.e., the Plaintiff, is legally maintainable.

9. From the pleadings of the parties, the following issues have been framed:

1. To what amount the Plaintiff is entitled to? OPP

2. Whether the suit is bad for non-joinder of necessary parties? OPD

3. Relief.

10. At the outset, the learned Counsel for the Defendants has raised the preliminary objection based on the stand taken in the written statement of the Defendants to the maintainability of the suit by Naranjan Chauhan Plaintiff alone, although the pleadings and the cause of action as disclosed in the plaint indicate that the suit for recovery is maintainable on behalf of the partnership firm.

11. In order to appreciate the preliminary objection raised to the maintainability of the suit, certain admitted facts may be noticed. As is clear from the pleadings, the statement of the Plaintiff on oath as PW-1 and the original partnership deed Ex. PW-1/1, the partnership firm of the Plaintiff with the other three partners referred to above, was not a registered one. In other words, the partnership firm

in the present case is not registered. In this view of the matter, there is force in the objection of the learned Counsel for the Defendants as to the maintainability of the suit, who has placed reliance on the provisions of Section 69(2) of the Indian Partnership Act.

12. Section 69(2), (ibid) provides that no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

13. The above provisions of law has been a subject matter of interpretation in a recent decision of a Bench of this Court reported in Vinod Kumar and. Anr. v. State of Himachal Pradesh and Ors. (1999 (1) Shim. LC 110). It has been laid down that where a suit is filed on behalf of a partnership firm for recovery of a stipulated amount and if the partnership firm, of which the Plaintiff is a partner (as in the present case), is not registered, the suit is hit by the bar u/s 69(2) of the Partnership Act. In that case also the suit for recovery of a specified amount was dismissed by this Court on account of this legal bar.

14. In my considered view, the said decision of this Court fully applies to the facts and circumstances of the present case. At this stage it would be pertinent to mention that in the case reported as Loomkaran Sethia v. Ivan John and Ors. (AIR 1977 SC 366) it has been held that the provisions contained in Section 69 of the Partnership Act are mandatory in character. It necessarily follows that the present suit having been filed by one of the partners of the firm which was the successful bidder at the auction of liquor vends for the year 1993-94 in the present case, is hit by the said provision of law as admittedly the said firm is not registered in view of the pleadings and evidence on the record. There is thus no option but to dismiss the suit on this short ground.

15. In the view that I have taken that the present suit is barred because of the legal hurdle created to its maintainability, it is not necessary to go into the merits of the case as the suit can be disposed of on this preliminary ground which is covered by issue No. 2.

16. For the reasons aforementioned, the suit is dismissed but in the circumstances of the case, the parties shall bear their own costs.

