
(1987) 12 DEL CK 0032

In the Delhi High Court

Case No : Criminal Revision Appeal No. 959 of 1987

Nirmal Arora

APPELLANT

Vs

Bydberg (India) and Others

RESPONDENT

Date of Decision : 16-12-1987

Acts Referred:

Citation : (1988) 34 DLT 207

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Advocate : R.P. Bansal, J.K. Seth and Poonam Chaudary, for the Appellant;

Judgement

Sunanda Bhandare, J.

(1) The petitioner is the tenant of shop no. 728, shibsahai Buliding, Church Mission Road, Fatehpuri, Delhi. A tripartite 208 agreement was entered into between Delhi State Civil Supplies Corporation Limited (hereinafter referred to as DSCSC), Shri P.R. Monga, Advocate, the Receiver appointed by the Delhi High Court of the said building and the petitioner to start a liquor vend from the said shop. The case of the petitioner is that originally for the last six years, the Dscsc has been running a liquor vend in shop no. 73 of the said building. Because of some dispute .between the tenant of shop no. 731 and the landlord, the Dscsc was required to vacate the said shop. A compromise was arrived at between Dscsc and the landlord and it was agreed that the liquor vend would be shifted from shop no. 731 to728. Respondent no. 1 who is an occupant of shop no. 727 filed a suit in the court of Sub Judge, Delhi being suit no. 489 of 1977 for permanent injunction against the petitioner and respondent no. 2 restraining them from opening a liquor vend in shop no. 728. The petitioner also prayed for an interim injunction The injunction was sought inter alias on two grounds: 1. that it was likely to cause annoyance and nuisance to the plaintiff-respondent no. 1 due to long queues and scuffles between people who were likely to come to the shop for purchase of liquor and also because storage of liquor which is highly inflammable near a restaurant which has also a "Bhatti" burning all the time was

a fire hazard; and 2. the opening of liquor vend in contravention of Rule 33(I)(a) of Delhi Liquor license Rules 1976 (hereinafter referred to as the Rules) which provides that no liquor shop shall be situated within 75 metres of a major educational institution and religious place resulted in public nuisance. The trial court by its order dated 24th October 1987 refused the interim injunction firstly on the ground that no nuisance was likely to be caused to the plaintiff-respondent no. 1 and secondly on the ground that injunction on the ground of public nuisance could be sought only by way of a suit u/s 91 of the Code of Civil Procedure. Being aggrieved by this order of the trial court, respondent no. 1 filed an appeal before the Senior Sub Judge, Delhi being M.C.A. 307 of 1987. The Senior Sub Judge, Delhi vide his order dated 20th November 1987 reversed the order of the trial court and held that in view of Rule 33(I)(a) of the Rules, liquor vend could not be allowed to be run from the said shop because admittedly there is a religious institution near the said shop and also because the liquor vend was likely to cause nuisance to the plaintiff-respondent no. 1. This order of the Senior Sub Judge, Delhi dated 20th November 1987 has been challenged by the petitioner in the present revision petition u/s 115 of the Code of Civil Procedure.

(2) It was contended by the learned counsel for the petitioner that the lower appellate court completely lost sight of the fact that a liquor vend is being run from an adjoining shop namely shop no. 731 for the last six years and it was only being shifted to shop no. 728. Respondent no. 1 did not raise any objection to the liquor vend at shop no. 731. The location and situation of both the shops is similar. Both the shops are in the same building. Respondent no. 1 did not take any step to stop the vend in shop no. 731 and filed the suit after all arrangements had been made for shifting the liquor vend from shop no. 731 to 728. The petitioner had incurred huge expenditure in making the arrangements. Learned counsel further submitted that the lower appellate court erred in holding that in view of Rule 33(I)(a) of the Rules the petitioner could not be allowed to run the liquor vend from the said shop.

(3) On the other hand, it was contended by the learned counsel for respondent no. 1 that since Rule 33(I)(a) of the Rules created a specific bar for running a liquor vend within 75 metres from a major educational institution or religious place and admittedly there is a religious institution within 75 metres, the lower appellate court was right in coming to the conclusion that the petitioner should not be permitted to start the liquor vend in the said shop. Learned counsel submitted that there is no estoppel against a statute and even if respondent no. 1 had not objected to the liquor vend being run from shop no. 731 he could not be now stopped from objecting to the running of liquor vend from shop no. 728. Learned counsel submitted that the liquor vend was likely to disturb the plaintiff-respondent no. 1 inasmuch as undesirable elements are likely to come to purchase liquor and because of long queues and scuffles between the purchasers, the business of respondent no. 1 would be affected.

(4) There is a separate provision in the CPC to stop public nuisance and it cannot

be stopped by a private party by way of a suit for permanent injunction under Order 39 Rules 1 & 2 of the Code of Civil Procedure. Public nuisance can be stopped by making the authority granting such permission as a party by way of a suit u/s 91 of the CPC or by way of a writ of certiorari seeking of the license. In the present case, the liquor vend is to be run by Dscsc pursuant to a license issued by the Collector of Customs & Excise, Delhi under the provisions of Delhi Liquor license Rules. The Collector of Excise is not even made a party to the suit. The plaintiff respondent no. 1 had to make out a prima-facie case for grant of interim injunction under Order 39 Rules 1 & 2 of the CPC on account of personal of private nuisance and not public nuisance. Thus, even if there is a bar under Rule 33(l)(a) of the Rules no injunction could be granted in the present suit. In my opinion, the lower appellate court was wrong in granting an injunction on the ground that the liquor vend is likely to cause public nuisance and since there is a bar under Rule 33(l)(a) of the Rules, a prima-facie case is made out.

(5) Now coming to the question of alleged private injury to the plaintiff-respondent no. 1. Ordinarily, this court in a revision petition dose not interfere with a finding of fact, however, in the present case I find that the lower appellate court has completely lost sight of the fact that a liquor vend is already in existence in shop no. 731 for the last six years it was pursuant to the orders of .the Delhi High Court that the liquor vend was being shifted to shop no. 728. If the liquor vend in shop no. 731 which is next door did not cause any nuisance to the plaintiff-respondent no. 1, I fail to understand how it will disturb the plaintiff-respondent no. 1 if it is run from shop no 728. Admittedly, plaintiff respondent no. 1 never took any objection to the liquor vend in shop no. 731 though all the objections raised by the plaintiff-respondent no. 1 were available even in respect of shop no. 731. Furthermore, the trial court had refused to grant an injunction after considering all the relevant facts and even a different view is possible, the appellate court was not right in reversing the order of the trial court for that reason. The restaurant with the open "Bhatti" was always there and if storage of liquor in shop no. 731 was not a file hazard it cannot be a fire hazard when it is shifted to shop no. 728. There is nothing on record to show that shop 210 no. 728 is nearer to the restaurant. I also do not find any force in the contention that there will be a scuffle between the people who come to buy the liquor which will disturb customers who come to the shop of plaintiff- respondent no. 1. This argument would have been valid if women and children were the regular customers of the plaintiff-respondent no. I but since the respondent is running a motor spare part shop, this apprehension is ill-founded.

(6) Furthermore, the lower appellate court has not considered the hardship and injury that is likely to be caused to petitioner if the liquor vend is not allowed to be run from shop no. 728 till the disposal of the suit. If the shop is not allowed to run, the petitioner who is a widow be put to heavy financial loss. The livelihood of the petitioner is stated to be dependant on the income from the shop. Furthermore, the Dscsc holds a valid license for running the liquor vend and this liquor vend is being shifted to shop no. 728 pursuant to an agreement arrived at

between the parties in proceedings pending in the Delhi High Court. If this shifting is not allowed that compromise itself may fizzle out.

(7) For the above reasons I find it difficult to sustain the order of the lower appellate court dated 20th November 1987.

(8) In the result, the petition is allowed. The order of the lower appellate court dated 20th November 1987 is set aside. The petitioner will be entitled to costs. Counsel's fee Rs. 500.00 .