(2016) 03 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 2089 of 2016 (O&M)

Ramanjot Singh APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 30
Partnership Act, 1932 — Section 69, Section 69(1), Section 69(2)

Citation : (2016) 03 P&H CK 0087

Hon'ble Judges : Paramjeet Singh, J.

Bench : Single Bench

Advocate : M.S. Khaira, Sr. Advocate, B.S. Sewak, Advocate, for the Appellant; S.S. Chandumajra, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—1. The instant writ petition has been filed for the issuance of a writ in the nature of mandamus directing respondents No. 1 to 3 to provide protection to the petitioner to carry on business of retail sale of Punjab Medium Liquor (PML) and Indian Made Foreign Liquor (IMFL) from his shops/liquor vends for the excise circle Dhanaula, District Barnala granted vide licences in Form L-14A & L-2 dated 01.04.2015 (Annexure P-1 and P-2, respectively). Further direction has been sought to respondents No. 4 to 11 not to interfere in the day to day running of retail sale at the liquor vends as respondents No. 5 to 11 have forcibly taken over the possession of the liquor vends with the support of respondent No. 4-S.P. Pahuja, Excise & Taxation Officer, Barnala.

2. Brief facts of the case are that the State of Punjab has framed the Excise Policy in the year 2015-2016. As per Excise Policy, the petitioner, who is working under the name and style of Ramanjot Singh & Company, Dhuri as a sole proprietor applied for the same and an application was moved before the licensing authorities under the signatures of Ramanjot Singh. Consequently, licences (Annexures P-1 and P-2) have been issued in the name of Ramanjot

Singh & Company Dhuri which are valid upto 31.03.2016 and in pursuance of the same, the petitioner is doing business but respondent No. 4 issued a letter dated 30.10.2015 (Annexure P-3) under his signatures in the name of Assistant Excise and Taxation Commissioner on the application of respondents No. 5 to 11 to the Sr. Superintendent of Police, Barnala. The said letter apparently appears to have been issued for extraneous reason and not as per the documents on the office file.

3. In pursuance of notice of motion, parties appeared and filed their respective replies. Respondent No. 4 has filed specific reply that he was Excise and Taxation Officer of District Barnala. In the reply it is averred that the matter relates to the functioning of liquor vends of Dhanaula Group of District Barnala for the year 2015-2016 (Licensing Unit Code No. 38U3/1-6) and the group comprises of 6 (L-14A) country liquor vends and 6 IMFL (L-2) vends in the area of Dhanaula Municipal Council and 17 (L14-A) liquor vends and 7 (L-2) vends in the rural area of this Excise circle. The license for the group was granted for annual license fees of Rs. 8,94,68,555/-. Out of this license fee, the successful licensee was required to deposit 10 % of the amount as security and the remaining amount in 9 installments prescribed in Rule 36 of the Punjab Liquor License Rules, 1956. It is further averred in reply that Ramanjot Singh along with some other persons submitted an application for grant of licence under the name and style of firm "Ramanjot Singh and Company". Copy of the same has been annexed as Annexure R-1 with the reply of respondent No. 4. A perusal of Annexure R-1 shows that it has been signed by only one Ramanjot Singh, however, there is reference to three photographs that might be affixed over it. Even the receipt Annexure R-2 shows that Ramanjot Singh and Company had deposited Rs. 55,000/- for L-14A/L2 with the Assistant Excise & Taxation Commissioner, Barnala. The Income Tax Department has assigned account number AAPFR4536H (Annexure R- 3) to the firm. A reference to partnership deed, Annexure R-5, has been made in the reply by respondent No. 4. Besides, the receipt of challan and deposits have been annexed.

4. Reply of respondent No. 11 by way of affidavit was taken on record, in which he says that he is neither partner nor has any concern with M/s. Ramanjot Singh & Company, Dhuri, whose proprietor is the petitioner. Respondent No. 4 S.P. Pahuja, ETO Barnala has been instigating respondents No. 5 to 9 to forcibly and illegally take over the vends for which petitioner has licence and also refer to the letter dated 30.10.2015, Annexure P-3 issued by the Assistant Excise and Tax Commissioner, Barnala. Other averments made in the reply are not relevant.

5. Respondents No. 5 to 11 have also filed a separate written statement in which they have admitted that the contents of para No. 2 of the petiton and had denied the para No. 3 of the petition and in para No. 3 of the written statement they have mentioned that license was applied through Ramanjit Singh and Company and not through sole proprietor. Even in the application dated 23.3.2015, photograph of Amrik Singh and Amrik Son of Rogan Singh are attached. A copy

of the application dated 23.03.2015 (Annexure R-5/1) has been annexed. They have also admitted that licence fee from 1.4.2014 to 31.3.2015 was fixed as Rs. 6,73,98,645/-. They also rely upon the partnership deed dated 01.04.2015 and reference to the challan receipt Annexure P-6 has also been made, which are alleged to have been paid by Hardev Singh, respondent No. 5. and Hardev Singh, respondent No. 9. the averments are with regard to the complaint filed by respondents No. 5 to 11, which is on record as Annexure R-5/4 and reference to the FIR No. 42 dated 12.06.2012 and two other FIRs have also been made. Another application has been made to the SHO - Sukhdev Singh and another by Hardev Singh.

6. Reply on behalf of respondents No. 1 to 3 has also been filed and it has been stated that true facts of the case are that on the basis of a joint complaint submitted by the partners of liquor vends of MC Dhanaula, Assistant Excise and Taxation Commissioner Barnala wrote a letter No. 863/Excise dated 30.10.2015 to the Senior Superintendent of Police Barnala that that the liquor vends of MC Dhanaula group for the year 2015-2016 have been allotted to M/s. Ramanjot Singh and Company Dhuri for Rs. 11,49,70,745/-, the 10 % security of which was deposited in the month of March 2015. The monthly Government fee comes to around Rs. 90 lacs. After scrutiny of the whole record, Excise and Taxation Officer Dhanaula has reported that Ramanjot Singh is the son of Surinder Singh Dhuri Ex. MLA. As per the deed, initially he was owner to the extent of 23 % share but the other partners namely, Hardev Singh, Darshan Singh, Jagtar Singh, Sukhdev Singh, Jugraj Singh, Baljit Singh and Harkanwalpreet Singh had 77% share. Due to bad intention, Ramanjot Singh had been withdrawing his money from time to time and now as per record Rs. 1,50,125/- have been left in the firm and his share remains to the extent of merely 0.83%. The Government fees for the month of September has been deposited by Hardev Singh and other partners, however, Ramanjot Singh has not deposited any amount. Also for the month of October no money has been deposited by Ramanjot Singh and rather he has been threatening other partners by bringing goons with arms. In the letter it was also mentioned that SHO PS Dhanuala may be directed to stop Ramanjot Singh immediately and the Government property be protected and case be registered against above mentioned person under different provisions of IPC so that Government property could be protected. The said letter has been diarized on 30.10.2015 and was marked to the SHO PS Dhanaula for inquiry and report. SHO PS Dhanaula submitted inquiry report dated 28.11.2015 that inquiry into the matter was got conducted through SI Diwan Singh, who summoned both the parties and the concerned parties have produced a comprise deed duly signed by Ramanjot Singh, the petitioner and the person of the opposite side to the effect that the misunderstanding between them has been removed and they did not want any action against Ramanjot Singh. In view of the compromise deed and statements of applicants, SHO PS Dhanaula submitted that no action is required to be taken by the police and the application was recommended to be filed. The contents of para on merit have been denied and at some places it has

been mentioned as a matter of record. There is general denial to the various paragraphs of the writ petition.

7. In reply another affidavit of Amrik Singh son of Natha Singh R\\o Village Palia Kalan, Tehsil Nabha, District Patiala has been filed, in which it is mentioned that Ramanjot Singh, Amrik Singh son of Rogan Singh jointly gave an application for licence of excise circle Dhanaula District Barnala for the year 2015-16 i.e. 1.4.2015 to 31.3.2016.

8. I have heard learned counsel for the parties at length.

9. Learned senior counsel for the petitioner vehemently contends that the application was moved on 23.03.2015 under the name and style of "M/s. Ramanjot Singh and Company" by Ramanjot Singh, the present petitioner alone. The perusal of application (Annexure R-1) annexed with the reply of respondent No. 4 clearly reveals that it is given by Ramanjot Singh his name and signature and contact number have been given, however, on the said application three photographs are annexed but name of the persons in photographs have not been mentioned, reference to the photocopy of the application annexed with the reply has been made. The said application has also been annexed as Annexure R-5/1, which bears the photographs of three persons, their name are also not mentioned against the photograph. Though the application has been signed by Ramanjot Singh, applicant has been shown as Ramanjot Singh and Company, Ward No. 108, H. No. 3, Dhuri and the Income Tax Account number has also been given as AAPFR4536H. Even the document is signed by the ETO(X) and AETC as well as ETI, which is placed on the paper book at page 189 clearly mention the name of Ramanjot Singh and Company. The said document has been signed on 27.3.2015 where he has been referred to as successful bidder. The sum and substance of the argument of learned counsel for the petitioner is that it was the petitioner alone who had moved the application and the alleged partners have nothing to do with the issuance of license and transaction of business. The inter se dispute between partners with reference to the partnership deed can be settled in appropriate proceedings either by way of arbitration or in a civil Court. It is further contended that licence is not transferable and, thus, cannot be transferred. It can only be issued in the name of bidder who had applied for it. It is contended that letter to the SSP has been issued by ETO under his signature in the name of AETC and the alleged inquiry conducted by the SHO, PS Dhanaula is beyond jurisdiction. The ETO has no right to write such a letter to the Superintendent of Police whereby he is protecting the rights of the private respondents No. 5 to 11. It is pleaded that alleged compromise is under duress and is in Police Station. Learned senior counsel for the petitioner made reference to the signatures on the letter written to the SSP and the signature on the reply of respondent No. 4.

10. On the other hand learned counsel for respondent No. 5 to 11 submitted that they are partners of the firm and a partnership deed has been annexed. He has made reference to Annexure R-5/2, which is dated 1.4.2015. The identity of the

said firm has been mentioned as "M/s. Ramanjot Singh, Dhuri and Company", which has been signed by the petitioner. Counsel submitted that in view of the partnership, respondents No. 5 to 11 have every right to transact the business and in this business they have also invested a substantial amount as the petitioner was not in a financial position to invest the same. Reference has also been made to payment made by one Hardev Singh and even deposited by other partners mentioned in the partnership deed.

11. Learned counsel for the State vehemently contended that letter has been written in good faith to protect the rights of the State Government. He further contended that Excise Department has conducted an inquiry. Learned counsel for respondent No. 4 vehemently contended that he has issued letter in good faith to protect the rights of State Government which has been written after enquiry. Although the letter has been written in the name of Assistant Excise Taxation Commissioner, Barnala but it has been signed by respondent No. 4. This letter was not issued in any extraneous consideration rather with bona fide belief to protect the rights of the State Government so that there may not be any revenue loss to the State Government for the activities of the petitioner.

12. I have considered the contentions raised by learned counsel for the parties and with their assistance have perused the record.

13. The petitioner is doing business under the name and style of "M/s. Ramanjot Singh and Company Dhuri" and the application was moved by the petitioner to the Excise Department under his own signatures and the license in Form L-14A for retail sale of Punjab Medium Liquor (PML) including beer for consumption off the premises was issued for excise circle Dhanaula vide Annexure P-1. Further license in Form L-2 for retail sale of Indian made Foreign Liquor (including IMFL, beer, wine and cider) for consumption off the premises for excise circle Dhanaula was issued vide Annexure P-2. The application was moved by Ramanjot Singh and with the application no partnership deed was annexed, however, allegedly it is the case of respondents, specifically respondents No. 5 to 11 that they had entered into partnership with the petitioner and a partnership deed dated 01.04.2015 (Annexure R-5/2) was executed in which the petitioner and private respondents are partners and their shares have been respectively defined and the said partnership business is of wine contractors for Excise Circle Dhanaula, District Barnala and the name and style of partnership business is mentioned as "M/s. Ramanjot Singh Dhuri & Company". The question of their photos on the application does not arise as on that date there was no partnership firm.

14. Now the question arises, whether "Ramanjot Singh Dhuri & Company" and "Ramanjot Singh & Company Dhuri" is the one and same firm or different entities?

15. The perusal of record of the Excise Department annexed with the reply of respondent No. 4 and other official respondents clearly indicates that petitioner had moved application (Annexure R-1), which is signed by petitioner Ramanjot

Singh alone, however, over it three photographs have been annexed which do not bear the signatures of anyone. The photographs have been annexed to indicate that photos of three persons on application means that they are applicants in the application. There is no photo of Ramanjot Singh on the application, only photos are of three persons. On the application signature is only of Ramanjot Singh. Mere affixing photos on the application of three persons do not make them applicants and partners of the applicant. Even on those photos there are no cross signatures nor their names have been mentioned. There is no explanation as to why the photo of actual applicant i.e. Ramanjot Singh has not been annexed. The learned counsel for the respondents failed to explain the purpose of such photos when they have not signed the application. By affixing photos on the application, an attempt appears to have been made to project them as applicants. The said application was given on 23.03.2015 and the partnership deed is of 01.04.2015 meaning thereby there was no partnership existing between the petitioner and private respondents and the licenses have been issued only in pursuance of the application dated 23.03.2015 and the fee was also deposited under the same name vide Annexure R-2 and the Income Tax Department account number is also issued in the name of Ramanjot Singh & Company, which has been placed on record as Annexure R-3. Respondent No. 4 who has been impleaded by name has annexed Annexure R-1 partnership deed executed between the petitioner and private respondents and the name and style of the partnership firm has been mentioned as "M/s. Ramanjot Singh Dhuri & Company" and it apparently appears to be altogether different entity as the applicant is "M/s. Ramanjot Singh & Company Dhuri" not "M/s. Ramanjot Singh Dhuri & Company". Now it is also relevant to refer that the claim of the private respondents is based on partnership deed dated 01.04.2015, and no document indicating the registration of the firm has been annexed with the written statements. Although, registration of firm is optional there is no penalty on nonregistration of firms but an unregistered firm is burdened with certain disabilities. Reference in this regard can be made to Section 69 of the Partnership Act, 1932 (for short ''the Act''). In view of Section 69 of the Act, the firm as well as its partner(s) suffer from the following disabilities: -

"(i) No suit against other partners and firm - In case of a dispute that arises between two partners or between a partner and a firm, a partner of an unregistered firm cannot file a suit against any of his fellow partners (present or past) or the firm, to enforce his right arising out of a contract or conferred by the Act.

(ii) No suit by the firm against third parties - An unregistered firm or its partners cannot file a suit against third parties to enforce a right arising out of the contract in the Court of law i.e. a right to recover price of goods etc.

(iii) No claim for set-off - The term "set-off" means a mutual adjustment of the debts of two parties against each other or a cancellation of a cross claim in a suit. If a suit is filed against an unregistered firm for a claim, the firm cannot take advantage of set-off for its own claim on the same party."

16. Non-registration, however, does not affect the following:

"(i) The third party can file a suit against the firm.

(ii) The partners of the firm can file a suit for: (i) dissolution of a firm; (ii) accounts of the dissolved firm; and (iii) realize the property of the dissolved firm.

(iii) Right to set-off where the claim does not exceed Rs. 100/-.

(iv) The official assignee or received of Court may bring an action to realize the property of an insolvent partner."

17. Under Section 69 of the Act for sharing of assets and liability of firm by partners no suit lies unless the firm is registered and unless partners are recorded in the register of firms. Even suit by unregistered firm is barred under Section 69(1) of the Act. It is mandatory for a partnership firm that it must comply with the mandatory requirement of Section 69(2) of the Act alongwith procedural requirement of Order 30 of the Code of Civil Procedure. The reference to words "right arising out of the contract" appearing in Section 69(2) of the Act, indicates that contract must be by the firm with a third party and it must be entered into in the course of business dealings. The constitution of firm, which is not registered and the names of the partners are not reflected in the register of firms and the rights of such partners will not flow as a member of specific firm when the entities are altogether different.

18. Now another question arises as to whether respondent No. 4 could issue a letter to the Senior Superintendent of Police for restraining the petitioner from carrying out its business on the application of private respondents and under what authority he is proceeding to issue such a letter/notice?

19. As has been discussed earlier, the license has been issued on the application of Ramanjot Singh in the name of "M/s. Ramanjot Singh & Company, Dhuri" to a different entity which has no relationship with the firm which has been constituted vide Annexure R-5, which is unregistered and provisions of Section 69 of the Act are applicable in the present case. Furthermore, the the letter Annexure P-6 which has been given by various persons addressed to the Assistant Excise and Taxation Commissioner, bears the signatures of private respondents and mentions that some fraud has been committed by Ramanjot Singh & Company. From this, it is also clear that they are not claiming any right over Ramanjot Singh & Company rather they are claiming their rights independently. All the amounts have been paid by the petitioner in the name of Ramanjot Singh & Company and not in the name of Ramanjot Singh Dhuri & Company.

20. Be that as it may, the fact remains that there is no relationship between the Punjab Excise Department and the private respondents. The relationship of the Punjab Excise Department is with "M/s. Ramanjot Singh & Company" through

Ramanjot Singh sole proprietor. Respondent No. 4 in connivance with the private respondents has issued impugned letter to Senior Superintendent of Police for extraneous reasons without any justification against all the settled principles of law and liability.

21. Further during the course of arguments it has been pointed out that respondent No. 4 has played a fraud upon the Court as well as police also. The signatures on the written statement, affidavit and other documents on the record of this Court attested by ETO, Excise, Barnala - respondent No. 4 are different than the signature on the letter written to the Senior Superintendent of Police, Barnala. The letter written in the name of Assistant Excise and Taxation Commissioner has been allegedly signed by respondent No. 4 which is admitted by him in para No. 7 of his written statement. The signatures on this letter to bare eye appear to be different and do not tally with the signatures of respondent No. 4 on the written statement filed in this Court and other documents. It apparently appears to have been done to mislead the police authorities. The Senior Superintendent of Police, Barnala, will look into it at his own level and initiate action under the provisions of IPC and Prevention of Corruption Act for forgery and fabricating a document and for misuse of official power. This clearly indicates that respondent No. 4 has exceeded his jurisdiction for extraneous reasons in addressing the said letter to SSP. The SSP shall be at liberty to apply to this Court for comparing the signatures of respondent No. 4 on the documents filed in this Court and the letter written to SSP Barnala. The needful shall be done within one month from today and report shall be submitted to this Court.

22. The sum and substance of the above discussion is that respondent No. 4 in connivance with respondents No. 5 to 11 had written letter apparently for extraneous considerations which is not sustainable in the eyes of law. The action of respondent No. 4 and other officials in supporting the private respondents is against the law and is not sustainable and this Court is of the view that present petition deserves to be allowed with costs. Thus for the act and conduct of respondent No. 4, he is burned with a cost of Rs. 25,000/- to be deposited with the District Legal Services Authority, Barnala within one month. In case the amount is not paid, the District Legal Services Authority shall recover it as land revenue and if any loss has occurred with respect to the Excise and Taxation Department same shall also be recovered personally from the officers who appear to have connived with private respondents and have affected the business of the petitioner. If the respondents No. 5 to 11 are aggrieved against the petitioner, their remedy is to approach the civil Court or go for arbitration and get their rights vindicated. In any circumstances, private respondents cannot be legally made liable for the revenue, it is only the applicant in whose name the license has been issued and, thus, he is responsible for payment of the same. The superior authorities of the Punjab Excise and Taxation Department are advised that they should submit all the documents for legal opinion before permitting the involvement of third party. The letter No. 863/Excise dated

30.10.2015 (Annexure P-3) addressed to Senior Superintendent of Police, Barnala is quashed.

23. Present petition is allowed in above terms.