
(2001) 11 BOM CK 0047
In the Bombay High Court
Case No : C.R.A. No. 526 of 2001

Shripat C. Mahajan

APPELLANT

Vs

Sanjay Radheshyam Jaiswal and Others

RESPONDENT

Date of Decision : 28-11-2001

Acts Referred:

Bombay Prohibition Act, 1949 — Section 146
Civil Procedure Code, 1908 (CPC) — Section 115, 9
Maharashtra Country Liquor Rules, 1973 — Rule 146, 28
Partnership Act, 1932 — Section 39

Citation : AIR 2002 Bom 211 : (2002) 2 ALLMR 769 : (2002) 3 BomCR 752

Hon'ble Judges : P.S. Brahme, J

Bench : Single Bench

Advocate : P.A. Markandeywar, for the Appellant; S.S. Vaditel and A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

P.S. Brahme, J.—Heard counsel for the parties.

2. Rule returnable forthwith. Heard with consent of parties.

3. This revision application is directed against the order passed by the Civil Judge, Senior Division, Nagpur in Civil Suit.

4. The factual matrix of the controversy involved is as under :

Respondent No. 3 had issued a licence to sell country liquor in the name of the applicant. Respondent No. 1 claiming to be the partner of the applicant in this liquor business carried out under the name of respondent No. 2 partnership firm. The licence which was for Ramtek area was later on transferred to Nagpur and the business was run accordingly by the firm constituted by the applicant and respondent No. 1 as partners. Respondent No. 1 claimed that by the deed of dissolution of partnership dated 14-3-2000 this partnership is dissolved and accounts have been settled and amount of Rs. 2,00,000/- has been paid to the

applicant and the business has become proprietary concern of respondent No. 1. Consequently, respondent No. 1 deposited Rs. 81,000/- for renewal of licence for the period from 1-4-2000 to 31-3-2001 and also applied to respondent No. 3 with consent of the applicant for converting the licence in his name and deleting the name of the applicant. However, respondent No. 3 did not delete the name of applicant. That application for changing the name and deleting the name of applicant is pending before respondent No. 3. In fact on complaint by the applicant to respondent No. 3. the latter has refrained from disturbing the entry in the licence and as such did not take any action. On 8-12-2000 the respondent No. 1 made representation to respondent No. 3 to delete the name of the applicant. In fact on 15-5-2000 the applicant has applied to the Superintendent, State Excise to delete the name of respondent No. 1 from the licence and the same is pending,

5. The respondent No. 1 has filed civil suit bearing Civil Suit No. 50/2001 in the Court of the Civil Judge, Senior Division, Nagpur for declaration that the partnership between the applicant and respondent No. 1 has dissolved and respondent No. 1 is entitled to have his sole name incorporated in the licence and by injunction restrained the applicant from interfering with the affairs of the country liquor ship and also for mandatory injunction against respondent No. 3 to delete the name of applicant from the licence.

6. In the suit applicant filed application raising objection to the jurisdiction of the civil Court and prayed for framing the preliminary issue in that regard and also filed another application for dismissal of the suit. Both the applications were rejected by common order dated 25-1-2001. Trial Court found that the jurisdiction of the Civil Court to try the issues involved in the suit expressly or by implication is not barred. It was found that the controversy between the parties was in respect of the issue as to the dissolution of partnership and that issue is exclusively triable by the Civil Court.

7. Heard Shri Harkandeywar, learned counsel appearing for the applicant. He submitted that u/s 146 of the Bombay Prohibition Act. jurisdiction of the Civil Court in respect of the functions to be performed by the authorities under the said Act is expressly excluded. That under Rule 28 of the Maharashtra Country Liquor Rules 1973, it is within the domain of the Collector to deal with the question as to the grant of permit or transfer of licence or delete the name of any partner after the licence is granted. It is therefore contended that the trial Court committed Illegality and material irregularity in assuming the jurisdiction in it for deciding the issues involved in the suit, more particularly in respect of grant of permanent and temporary Injunction against respondent No. 3 calling upon him to delete the name of the applicant from Country Liquor Licence and converting the licence from the name of the applicant and respondent, to the sole name of respondent No. 1. To substantiate his submissions, he relied upon the decisions reported in Uttam Jaiswal Vs. The State of Maharashtra and others, and Govind Sadashiv Pathak Vs. Sadashiv Shivrao Nisal, . He submitted that the respondent

No. 1 has already approached the Collector i.e. respondent No. 3 for deleting the name of the applicant and it was for the Collector to consider the claim of the respondent No. 1.

8. Shri S. S. Voditel, learned counsel appearing for respondent No. 1 and 2 supported the order passed by the trial Court. He also filed counter affidavit for respondent No. 1 and 2 to clarify the factual position which is accepted by the trial Court and also taken into consideration while deciding the application filed by the applicant. He pointed out that initially, the licence was obtained by the respondent No. 1 in his name for business in country liquor. It was subsequently converted into partnership licence in which the applicant and non-applicant No. 1 were the partners. However, the partnership came to be dissolved upon execution of deed of dissolution of partnership on 14-3-2000 and the accounts were settled permanently and the partnership firm came to an end with effect from 12-3-2000. He further pointed out that as per the deed of dissolution of partnership the respondent No. 1 was entitled to continue with the business of sale of country liquor on the business of the said licence, it was to be converted from partnership licence to a proprietary licence in the name of respondent No. 1 and for that it was the applicant himself had preferred application to respondent No. 3 in March 2000 enclosing the deed of dissolution of partnership and expressed a desire of deleting his name from the licence and for continuance of the name of respondent No. 1. However, it was the applicant who raised unnecessarily dispute by moving the false and frivolous complaint in the matter subsequently and also submitted application to respondent No. 3 for deleting the name of respondent and converting the licence in his own name. It is pointed out that the applicant has received an amount of Rs. 2,00,000/- by settlement of accounts upon dissolution of partnership firm. Despite this fact, he tried to impose his rights over the partnership firm and made attempt to get licence converted in his name. In view of this respondent No. 3 did not decide the application which the applicant had filed initially for converting the licence in the name of proprietary concern of respondent No. 1. This therefore, lead the respondent No. 1 to file the suit seeking declaration as to the dissolution of the partnership firm and also Sconce sequential relief of injunction against respondent No. 3 for passing the order as to the deletion of the name of the applicant from the licence. It is submitted that the main issue in the suit was regarding the controversy over the dissolution of partnership firm. The jurisdiction as to the dissolution of the partnership firm was exclusively that of the civil Court. The learned counsel for respondent No. 1 and 2 placed reliance on the decision reported in State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, and Ishar Singh Vs. National Fertilizers and another, . wherein it has been held that normally on the basis of pleading of the parties the Court should decide the issue of jurisdiction of the civil Court, that exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil Courts to try a civil suit. The test to be adopted while examining the question whether the

Civil Court has Jurisdiction, is:-- (i) is legislative intention of excluding Jurisdiction explicit or clear by necessary Implication; (ii) does the statute provide adequate remedy in case of grievance against order made under the statute. He therefore, submitted that the trial Court was right in rejecting the application holding that the Court is competent to decide the issue Involved in the suit.

9. The factual position is not disputed. Initially, as admitted by the parties the that the licence was in the name of the applicant. Subsequently applicant joined respondent No. 1 as partner and the liquor business was conducted. Partnership firm having obtained requisite licence by converting the earlier licence, that was in the name of the applicant. It is matter of record that the liquor business of the partnership firm was and has been run in the premises secured by respondent No. 1, Then as claimed by respondent No. 1 in the month of March 2000 the partnership was dissolved and the applicant received an amount of Rs. 2,00,000/- as a consideration for getting his withdrawal from the partnership and as a natural corollary that followed, it was respondent No. 1 who continued with the business as a proprietary concern. It is not disputed that necessary application was submitted by the applicant and respondent No. 1 to respondent No. 3 for converting the licence in the name of respondent No. 1 by deleting the name of the applicant, but the applicant backed out of the agreement and set up a claim as to ownership of the business as his alone exclusively denying existence of the partnership firm and started disturbing respondent No. 1 in running the business of country liquor. It was in that situation that respondent No. 1 decided to file a suit for the reliefs. It was the applicant who raised objection before the respondent No. 3 and attempted for conversion of licence in his own name. This controversy over the dissolution of the partnership firm or so to say even existence of the partnership between the applicant and the respondent No. 1. it was the respondent No. 3 who could not and did not decide either of the claim of applicant and respondent No. 1 in respect of the licence. Therefore, plaintiff/respondent No. 1 was constrained to file the suit for declaration as well as mandatory injunction.

10. In this revision, the order passed by the trial Court rejecting the application filed by the applicant in the suit is under challenge. At the outset it is made clear that scope for the High Court to interfere in exercising jurisdiction u/s 115 of CPC is very limited. This section is enacted with a view to enable the High Court to correct, when necessary, certain clauses of errors of jurisdiction committed by subordinate Courts. If the subordinate Court in the decision of the case, in the exercise of its jurisdiction has committed illegality or material irregularity, then only the High Court can interfere with the orders passed by the subordinate Court. When this condition is satisfied, that a subordinate Court has committed illegality or material irregularity, then the High Court can interfere with the decision. The High Court cannot in the exercise of revisional powers under this section attack the findings of facts of subordinate Court. No doubt the power in revision is limited one, comparison to the appellate power. Whether the Courts

decide it rightly or wrongly, they had jurisdiction to decide the case even if they decided it wrongly, they did not exercise their jurisdiction illegally or with material irregularity. In such circumstances, the High Court cannot interfere with the order passed by the subordinate Court.

11. There is no dispute that under Rule 28 of the Maharashtra Country Liquor Rules 1973, it relates to transfer of licence. It is the Collector who has to deal with the question relating to grant of permit or transfer of licence from one name to another or admit or delete the name of any partners after the licence is granted. However, any issue regarding the dissolution of the partnership or basic constitution of the partnership in whose name the licence is issued by the Collector it is for the Civil Court alone to decide that issue. As to the dissolution of the partnership so also formation of the partnership, it is needless to say that in such cases, the issue Involved is of civil nature relating to the rights of the parties involved in the partnership firm. Therefore, it cannot be said that the jurisdiction of the Civil Court is excluded because under Rule 28 the Collector has to deal with the issue regarding granting permission or licence or deleting the name of the partner after the licence is granted.

12. It is true that u/s 146 of the Bombay Prohibition Act, there is bar for a suit or proceeding against the Government or against any prohibition police or other officers or against any person empowered to exercise his powers or perform function under this Act for anything in good faith done or Intended to be done under this Act, but then that does not exclude the jurisdiction of the Civil Court for deciding the issue relating to dissolution of the partnership firm which fact is related to the grant of licence or deleting the name of any partner after the licence is granted. The bar u/s 146 is certainly restricted to the functions and actions on the part of the authorities or police, acting under the provisions of the Bombay Prohibition Act, provided the action is done in good faith or purporting to be done so under the Act. That is why the decision in 2000 (3) Mh LJ 585 relied upon by the applicant has no application to the case before hand. What is contemplated u/s 137 and 138 of the Prohibition Act is that the parties who are aggrieved by the orders passed by the prohibition officers have a remedy and when statute provides for a specific remedy which encompasses reliefs of all natures arising out of exercise of powers by the prohibition officer then by necessary implication the Jurisdiction of the civil Court is bared. This Court has observed that the action on the part of the Prohibition Officer acting under the provisions of the Bombay Prohibition Act while exercising the administrative powers can be examined by the authorities u/s 137 by way of appeal and u/s 138 in exercise of the powers of the revision by the State Government, and therefore, the jurisdiction of the Civil Court is barred.

13. The decision reported in Uttam Jaiswal Vs. The State of Maharashtra and others, relied upon by the applicant is of no assistance considering the peculiar facts and circumstances in the case before hand. In fact this authority does not squarely buttress the submission of the learned counsel for the applicant that

jurisdiction of the civil Court is expressly barred. In fact in that case the order of the Secretary was challenged by licensee in writ petition before the High Court. This Court found that if one of the partner wishes to dissolve partnership firm and also acts in furtherance thereof by giving the necessary notice, the partnership which is on will stands dissolved. In the circumstances, the order passed by the Secretary cannot be said to be worthy of being sustained in law. The position in the case before hand is still on a better footing in as much as the Collector respondent No. 3 has not dealt with the matter particularly regarding the controversy between the parties as to dissolution of partnership firm. Therefore, it was within competence of the civil Court to decide that issue when the respondent No. 1 has approached the Court by filing the suit.

14. In the third case, reported in Baburao K. Pai Vs. Dalsukh M. Pancholi, this Court has observed that in setting up a Tribunal a Legislature has provided that Tribunal shall have Jurisdiction provided certain conditions exist. In such cases it is not possible to contend that it is left to the Civil Court to decide whether certain conditions exist, so that the tribunal alone can exercise its jurisdiction. It is not the case of the applicant that under the Bombay Prohibition Act or under Rules, it is within the exclusive jurisdiction of the Collector to decide the issue relating to the status of partnership firm or dissolution of the partnership firm. As stated earlier though it is within competence of Collector alone to decide the Issue regarding grant of permit or licence or even to delete the name of partner from the licence, as a result of dissolution of partnership, the jurisdiction of the Civil Court to decide the issue as to dissolution of partnership is neither expressly nor by implication barred.

15. The decision relied upon by the respondent No. 3 reported in State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others, squarely covers the case before hand in as much as in this decision the Apex Court has laid down the guidelines as to determination of question of exclusion of jurisdiction of the Civil Court. It is stated that in case of exclusion of jurisdiction of the Civil Court, the Court shall not readily infer exclusion of the jurisdiction of the Civil Court. Normal rule of law is that civil Court have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly as provided u/s 9 of CPC but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try a civil suit.

16. In the decision reported in Ishar Singh Vs. National Fertilizers and another, , the Apex Court observed that if for part of the reliefs the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor. In that view of the matter, so far as the relief of rectification of the record relating to the date of birth is concerned, the Civil Court had jurisdiction to grant that relief. However, where the employee stood superannuated even on the basis of the corrected date of birth by the time the civil suit came to be decided in his favour, the relief of back wages could not be granted by the civil

Court. The employee can avail of the remedy u/s 33C/2 of the Industrial Disputes Act.

17. At the cost of repetition, therefore, we may state that the controversy involved in the case before hand was exclusively within the domain of the Civil Court so far as it relates to the issue as to the controversy over the dissolution of partnership as claimed by respondent No. 1. We may state that even the Collector-respondent No. 3 could not have decided either granting of licence or deleting the name of either of applicant or respondent No. 1 from the licence, unless this controversy as to the dissolution of the partnership firm of which applicant and respondent No. 1 were admittedly partners, was dissolved. In fact it is our experience while dealing with the matters of like nature particularly dealing with the grant of licence or deleting the name of the partners, it is Collector who directs the parties to get the dispute of dissolution of partnership resolved by the Civil Court. It appears that in the case before hand the Collector respondent No. 3 rightly kept the application of the respondent No. 1 pending as the controversy as to dissolution of partnership had arisen between the parties and was not resolved by the Civil Court which is competent to decide the same. Therefore, the trial Court was right in holding that the Civil Court has jurisdiction to decide the issue regarding the dissolution of partnership firm over which there has been controversy between the parties. The trial Court has not committed any error, regality or material irregularity in assuming the Jurisdiction to decide the issue. Therefore, this revision application merits no consideration at all. It has to be dismissed.

18. When the revision was admitted this Court has passed interim order. Now consequent upon dismissal of the revision application, the Interim order of stay shall stand vacated, As a consequence of that C.A. 3029/2001 filed by respondent No. 3 for clarification of the order of interim stay does not survive and as such civil Application is also disposed of.

19. While disposing of this revision, holding that the trial Court was justified and right also in assuming jurisdiction to deal with the issue as to the dissolution of the partnership, we observe that the trial Court shall entertain and decide the issue relating to the dissolution of the partnership firm and consequential injunction to the applicant restraining him from interfering with the business of country liquor run by the respondent No. 1. We observe that question relating to grant of licence or deleting the name of concerned outgoing partner from the partnership is exclusively within the competence and Jurisdiction of the respondent No. 3 the Collector. Therefore, the Trial Court after deciding the issue as to the dissolution of partnership shall leave it to the Collector respondent No. 3 to decide the question of deleting the name of respondent No. 1 or applicant from the licence. It is for the respondent No. 3 to decide the question as to grant of licence in the name of respondent No. 1 or the applicant If after the Court has resolved the dispute in the suit Regarding dissolution of partnership, we also take note of the fact that the trial Court has already granted injunction restraining the

applicant from interfering with the business run by the respondent No. 1 in the licence already in force. With these observations, I pass the following order :

ORDER

The Revision Application No. 526/2001 is dismissed with no order as to cost. Rule discharged. Interim stay stands vacated. Civil Application No. 4029/2001 stands disposed of as a consequence of vacation of interim stay.