(2024) 11 KL CK 0044

In the High Court Of Kerala

Case No : Regular First Appeal No. 858 Of 2015

State Of Kerala APPELLANT

Vs

Ajith Kumar RESPONDENT

Date of Decision : 25-11-2024

Acts Referred:

Citation : (2024) 11 KL CK 0044

Hon'ble Judges : Sathish Ninan, J;P.V.Balakrishnan, J

Bench : Division Bench

Advocate : Deepa Narayanan, K.Reghu Kottappuram

Final Decision : Dismissed

Judgement

P.V.Balakrishnan, J

1. The defeated defendants in O.S.215/2013 on the files of the Principal Sub Court Kottayam are the appellants.

2. O.S.No.215/2013 is a suit for declaration and settlement of accounts.

3. The case of the plaintiffs is that they were the licensees of arrack shops in Group No.II of Ettumannur Excise Range, for the year 1993–94 and they bid it for a total amount of Rs.86,40,000/-. The license issued to the plaintiffs was cancelled by the defendants on 13/8/1993, after running the business from 1-4-1993 to 12-8-1993. The plaintiffs have paid an amount of Rs.40,18,974/-, as rental and thereafter, when the shops were conducted directly by the defendants under Departmental Management, a sum of Rs.31,49,288/- was collected by them as Departmental Management fee. Since the defendants initiated revenue recovery proceedings without giving credit to the Departmental Management Fee, the plaintiffs filed O.P.No.7894/1994 and the same was allowed on 11/8/2000 directing the defendants to adjust the amount collected as Departmental Management Fee towards the liability due from the plaintiffs. In the meantime, on 2/6/2000, the Government of Kerala introduced Rule 25A to

the Abkari Shops Disposal in Auction Rules granting the defaulters an opportunity to settle the account, if they make an application on or before 15/7/2000. The plaintiffs filed a representation before the defendants on 12/9/2001, but the same was dismissed by the defendants stating that the application is filed out of time. Consequently, a revenue recovery notice was also issued by the defendants. Aggrieved by the notice, the plaintiffs filed O.P.No.11194/2002 before the High Court and the same was allowed on 6/10/2015 directing the 3rd defendant to grant the benefit of amnesty scheme to the plaintiffs on certain terms and conditions. The defendants preferred W.A.No.153/2006 against the said judgment and on dismissal of the same, preferred Civil Appeal No.2891/2008 before the Hon'ble Supreme Court. The Apex Court modified the judgments passed by the High Court and found that the plaintiffs are entitled for adjustment of a sum of Rs.31,49,288/- and the defendants are not entitled to get interest till the entire amount is adjusted towards the dues. The Apex Court also observed that the interest, if any, is to be calculated on the amount of balance liability. But the defendants issued a D.C.B with calculations which are absolutely false. In the meantime, the Government introduced a One Time Settlement scheme by order dated 26/5/2008 and the plaintiffs opted for the same by making an application on 4/7/2008. As per the scheme, if 100% of the principal amount is remitted, all interest and penalty shall be waived. But the Assistant Excise Commissioner passed an order on the application on 14/7/2008 and made a demand which is totally unsustainable and inconsistent with the directions of the Supreme Court. Thereafter, the plaintiffs filed W.P.(C)22928/2008 before the High Court seeking a declaration that they are not entitled to pay any more amount and are entitled to get back of Rs.8,00,000/-. But the High Court disposed of the writ petition directing the plaintiffs to seek recourse to civil suit. Accordingly, the plaintiffs issued a lawyer notice to the defendants demanding settlement of the accounts and the defendants by letter dated 1-4-2010, issued a fresh demand and the same was served to the plaintiffs with a covering letter dated 12/4/2010. Hence, this suit.

4. The defendants contended that apart from the rental amount, the plaintiffs are liable to remit the monthly duty on designated quantum of rectified spirit fixed for the shop and that it was due to default of kist and duty, the licence was cancelled. The shops were placed under Departmental Management for the period from 11/9/1993 to 13/9/1994 and a total sum of Rs.31,49,288/- was collected during the period. As per the Departmental Management Rule, the Departmental Management Fee collected during the relevant period from a shop due to default of kist, security, etc. is liable for forfeiture and accordingly, the arrears were calculated by adopting the principle of liquidation of interest first, by crediting all the amounts remitted by the plaintiffs. Hence, as per D.C.B. statement, plaintiffs are bound to remit Rs.38,96,187/- as principal and Rs.74,80,679/- as interest, as on 1-4-2013. Even though, D.C.B.was prepared in compliance with the judgments of the Apex Court and the High Court, after crediting the DM amount and other amounts collected from the plaintiffs, the

plaintiffs did not comply with the order or remit the amount. As per the amnesty scheme declared by the Government vide dated 26/5/2008, the plaintiffs need to pay only the principal amount of arrears as on the date of declaration of the scheme and as per the D.C.B., an amount of Rs.41,16,841/- as principal is due from the plaintiffs. But the plaintiffs have not complied with the conditions and applied within the stipulated time and are legally bound to pay the entire arrears due to the Government. The plaintiffs have filed this suit with an ulterior motive and mala fide intention to delay the payment .

5. The evidence in the trial court consisted of the oral testimonies of PW1 and DW1 and documentary evidence Exts.A1 to A23 and B1 to B7. The trial court on an appreciation of evidence on record, decreed the suit in part and declared the notice dated 1-4-2010 together with letter dated 12/4/2010 of the Deputy Commissioner of Excise, Kottayam(Ext.A16) as null and void and also found that the plaintiffs are liable to pay an amount of 11,76,064/- with interest to the defendants, on settlement of accounts.

6. Heard both sides and perused the records.

7. The points that arise for consideration in this appeal are;

i) Are the plaintiffs entitled to the benefit of the guidelines in Exts.A3 and A7 judgments, while considering Ext.A9 Amnesty scheme?

ii) Whether Ext.A16 notice and letter are null and void?

iii) Whether the impugned judgment and decree passed by the trial court are correct and whether, the same requires any interference?

iv) Reliefs and costs.

8. All these points are considered together for the sake of convenience. The suit has been filed by the plaintiffs seeking the following reliefs:

“A. Declare that the notice dated 01/04/2010 together with the covering letter dated 12/04/2010 served to the plaintiffs by fixing the liability is against the guidelines fixed as per the judgment of the Hon'ble Supreme Court in Civil Appeal No.2891 of 2008 and as per the judgment of the Hon'ble High Court of Kerala in O.P.No.11194/2002 and hence as null and void.

B. Pass a preliminary decree directing to settle the account of the plaintiffs according to the text and intention of the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.2891 of 2008, the judgment of the Hon'ble High Court of Kerala in O.P.No.11194/2002 and according to the Terms of G.O.(MS) No.108/08/TD dated 26/5/08 and allow the plaintiffs to realize the amount of Rs.8,00,000/- from the defendants as shown in the statement of account given above which realised in excess from the plaintiffs with future interest at the rate of 12% from the date of suit till realisation on settling the above said account.”

9. The notice dated 1-4-2010 and the covering letter dated 12-4-2010

mentioned above is Ext.A16 and the judgments of this Court and the Hon'ble Apex Court referred above are Exts.A7 and A5 respectively. As per Ext.A16, the defendants have informed the plaintiffs that if they want to avail the amnesty scheme introduced in 2008 as per Ext.A9, they have to remit 100% of the principal amount quantified therein, as Rs.67,26,429/-. It is specifically stated in Ext.A16 that the amount collected during the Departmental Management period is not given credit since, a SLP is pending challenging the judgment passed by this High Court directing to credit the afore amount towards the arrears. It is also stated that since Exts.A5 to A7 judgments pertain only to the amnesty scheme introduced in 2000, they are not applicable to the 2008 scheme and hence, the plaintiffs are not entitled to the benefit of the judgments while considering their case under 2008 scheme. The relevant portion of paragraph 21 of Ext.P16 is extracted hereunder:-

“xxxxxxx Now the Governments stand is that the amount collected during the D.M. period need not be credited to your, clients arrears since CA No.5815/09 arising out of SLP (C) No.24565/08 challenging the adjustment of D.M. fee is pending before the Hon'ble Supreme Court and the matter will be decided only after the final outcome of the above case. If your clients are ready to remit the amount under the benefit of amnesty scheme 2008, they will pay an amount of Rs.67,26,429/- ie the 100% of the principle portion of arrears as per the D.C.B prepared without adjusting the amount collected during the D.M. period.”

As stated earlier, the plaintiffs are seeking declaration of Ext.A16 as null and void, by claiming that the same is against Exts. A5 and A7 judgments. Strictly speaking, we are also of the considered view that the judgments referred afore may not be applicable to the scheme introduced in 2008 since, they pertain to the amnesty scheme introduced by the defendants in 2000. Even if it is so, we are of the view that the plaintiffs are entitled to get credit of the sums collected during the period of Departmental Management, since the issue regarding credit of the said fee has been settled in a proceeding before this Court, which began much before the introduction of 2000 scheme. This Court vide Ext.A3 judgment dated 11/8/2000 in O.P.No.7894/1994, has considered the case of the plaintiffs and others in a similar position and has categorically held that while calculating the loss suffered by the Government, there cannot be any forfeiture of the Departmental Management fee and credit should be given to the fee collected. There is no dispute between the parties that Ext.A3 judgment is still in vogue and has not been set aside. If so, we are of the view that the plaintiffs are entitled for getting credit of the Departmental Management fee even while quantifying the amount under the 2008 scheme, which as per Ext.A16, the plaintiffs are entitled. Since, in Ext.A16, while quantifying the amount, credit has not been given to the Departmental Management fee, we are of the view that the same is illegal and cannot be sustained.

10. Moving further, going by Ext.A9 scheme, if the plaintiffs remit 100% of the principal amount, they are entitled to waiver of all the interest and penalty. In

the present case, the trial court, after giving due credit to all the amounts paid and the Departmental Management fee, has rightly found that the plaintiffs will be entitled to get the benefit of 2008 scheme, on payment of an amount of Rs.11,76,064/-. If so, considering all the afore facts and circumstances, we are of the view that there are no grounds to interfere with the impugned judgment passed by the rial court.

Resultantly, we find that this appeal lacks merit and the same is accordingly dismissed. Considering the facts and circumstances of this case, costs made easy.