REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2508 OF 2008

M/s. Modern Hotel .....Appellant

Versus

Commissioner of Excise & Ors. .....Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

1. The appellant is a partnership firm and is aggrieved by dismissal of its Writ Appeal No.1055 of 2002 by an order dated 09th January 2008 wherein the Division Bench has chosen to place complete reliance on an earlier Division Bench judgment dated 24th June 2005 in W.A.No.1151 of 2005 (M/s. Hotel Highway & Anr. v. N.K. Subhin & Ors.).

2. The issue falling for consideration is mainly one of law relating to scope and interpretation of a proviso to Rule 13A(5) of the Foreign Liquor Rules as in force at the relevant time in the State of Kerala. Subsequently it appears that Rule 13A, dealing with grant of different kinds of excise licence, along with proviso

has been renumbered as Rule 13B w.e.f. 1.4.2003. The relevant proviso needs to be noticed :

> "Provided further that no defaulter of abkari arrears due to the Government shall be permitted to renew the licence unless he produces from the Excise Department a certificate to the effect that he has cleared 50% of the abkari arrears pending at the time of renewal of the licence."

3. The facts of the case need not detain us for long except noting that the appellant firm was having a FL-3 licence to run a bar attached to a hotel at Kundara in Kollam District. The partnership firm was re-constituted on 01.10.1995 and one Shri J. Sasikumar was admitted as one of the partners. On 11.05.2001 the request of the appellant firm for renewal of its FL-3 licence was rejected by the Excise Commissioner on the ground that one of the partners had conducted abkari business in the year 1981-1982 and had incurred dues to the Government of Rs. 70 Lacs which had further grown on account of interest and until 50% of the abkari arrears pending at the time of renewal of the licence was cleared, the licence of the appellant could not be renewed. Appellant preferred writ petition in the High Court of Kerala wherein by an interim order the respondent authorities were directed to grant renewal for the year 2001-2002 on the condition of payment of Rs.20 Lacs towards

the arrears in addition to the licence fee. On such payment the licence was renewed for that year. But the writ petition came to be dismissed on 02.04.2002 on a finding that a partnership firm could not claim a separate juristic identity as it is only a totality of every partner and so long one or more partner suffers from liability or disqualification, the licence could not be renewed till the statutory requirement of the relevant rule was satisfied. The appellant filed appeal bearing W.A.No.1055 of 2002 before the Division Bench. By an interim order dated 15.04.2002 appellant's licence was ordered to be renewed for the year 2002-2003 on similar condition requiring payment of additional amount of Rs.20 Lacs over and above the licence fee. On compliance, the licence was renewed accordingly. On account of another interim order dated 13.05.2003 appellant's licence was renewed for the year 2003-2004 also on its paying Rs.10 Lacs in addition to the licence fee. The appellant's licence got further renewal upto the year 2007-2008 only on the strength of earlier additional deposits of Rs.50 Lacs in total. The writ appeal itself was heard on merits and dismissed by the impugned judgment dated 09.01.2008 following earlier Division Bench judgment dated 24.06.2005.

4. On behalf of appellant our attention was drawn to a subsequent development mentioned in I.A.No.1 of 2009 filed in

this appeal. Paragraphs 9, 10 and 11 of the I.A. disclose that the Government of Kerala declared an Amnesty Scheme (One Time Settlement Scheme) on 26.05.2008 wherein, if the other conditions were satisfied, a lump sum payment of 75% of the principal dues could be sufficient to waive the remaining principal as well as all the penalty and interest. Taking advantage of that scheme the defaulting partner Mr. J. Sasikumar along with his partners of the other partnership paid 75% of the principal amount, i.e., Rs.53,09,440/- and as a result the Excise Department on 10.11.2008 issued a certificate that no amount was now outstanding from said Mr. Sasikumar. The certificate is an enclosure to the I.A. and discloses that on payment of earlier noted amount the defaulters including J. Sasikumar got amnesty from paying not only the remaining 25% of the principal amount but also from liability to pay Rs.2,73,47,650/- towards interest upto 31.05.2008. On the strength of such payment and subsequent development, in the I.A. the appellant sought an order from this Court for unconditional return of Rs.50 Lacs in total deposited by the appellant for getting several renewal of its licence as per interim orders of the High Court.

5. This Court on 18.01.2010 heard the parties in respect of I.A.No.1 and passed the following order ;

> "We have heard learned counsel for the parties in the I.A. We direct that, as an interim measure, the amount of Rs.50,00,000/-, which is claimed by the appellants by way of this I.A., be refunded to them subject to the outcome of the result of the main appeal, on furnishing of security to the satisfaction of the Commissioner of Excise."

6. In terms of that order the appellant has obtained refund of Rs.50 Lacs from the concerned authority but on furnishing of required security to the satisfaction of the Commissioner of Excise.

7. When this appeal was taken up for hearing learned counsel for the appellant initially took the stand that due to passage of time and other reasons the appellant was not keen to press the appeal provided the appellant was absolved of its liability created by furnishing of security for Rs.50 Lacs. In other words, he wanted this Court to order for discharge of security furnished by him to the Commissioner of Excise. This prayer of the appellant was strongly contested by Ms. Bina Madhavan, learned counsel appearing for the respondents by placing reliance upon averments made in the counter affidavit (additional) filed in response to I.A. No.1 of 2009. In paragraph 6 of the counter affidavit the respondents have relied upon relevant proviso to

Rule 13A(5) of the Foreign Liquor Rules and have taken the stand that the liability or disqualification of each of the partner in the defaulting firm shall be distributed but if such liability continues then for the purpose of the proviso the liability of one of the partners will be liability of the firm for the purpose of abkari arrears disentitling renewal as provided in the proviso. According to respondents the High Court has correctly decided the law that a partnership firm is a totality of every partner and that the default of one of the partners can be taken into consideration for treating the firm as a defaulter even if only one of its partners continues to be in arrears of abkari dues.

8. So far as deposit of Rs.50 Lacs made by the appellant towards abkari dues as per interim orders is concerned, it is respondents' clear stand that as per Rule 6(25) of Abkari Shops (Disposal in Auction) Rules, 1974 the whole of Rs.50 Lacs had to be and was appropriated towards interest existing at the time the remittance was made and only the remaining dues of interest along with permissible 25% of the principal amount was subsequently written off as per Amnesty Scheme of 2008. The claim of the appellant that the amount of Rs.50 Lacs was required to be or had been kept in a suspense account has been strongly refuted as false with a positive statement that the said

amount was appropriated towards interest in accordance with the relevant rules.

9. Having heard the parties and applied our mind to the relevant facts and the rules we find ourselves in agreement with the submission on behalf of the respondents that appellant is not entitled to receive refund of Rs.50 Lacs on account of subsequent deposit of required percentage of principal dues under the Amnesty Scheme of 2008. The amnesty earned in 2008 must be confined to the arrears of interest outstanding at the relevant time in 2008 and by that date the earlier deposits of Rs.50 Lacs had already been appropriated towards interest. No fault can be found in appropriating that amount because there is no dispute regarding the actual outstanding amounts of principal and interest which clearly find mention in the certificate dated 10.11.2008 (Annexure P-6) to I.A. No.1 on which appellant itself has placed reliance.

10. We are also of the considered view that since there was no challenge to the proviso to Rule 13A(5) of the Foreign Liquor Rules, the respondents were well within their legal rights to insist that at least 50% of the excise dues against the partners of the appellant was required to be paid in accordance with the proviso, to get the desired renewal. Such decision of the High

Court in our considered view does not require any interference. Section 5 of the Indian Partnership Act, 1932 (the Act) provides unequivocally that the relation of partnership arises from contract and not from status. Such contracts clearly cannot override provisions in a statute or statutory rules. Section 49 of the Act stipulates for payment of firm debts and also of separate debts of any partner by use of firm's property and if there is no surplus then separate property shall be applied for payment of a partner's separate debts. Other than the defaulting partner can always claim their loss, if any, from the latter.

11. We have taken the aforesaid view for an additional reason that the factum of excise dues of one of the partners of the appellant and its subsequent payment under the Amnesty Scheme is not in dispute or controversy. This is apparent from the certificate dated 10.11.2008. Though large part of the interest amounting to several crores could not be recovered but that was on account of grace shown by the Government itself by formulating the Amnesty Scheme of 2008. In such circumstances exercise of writ jurisdiction to help the defaulter would be inappropriate. It would be unjust to direct for refund of Rs.50 Lacs on the premise that its recovery in the manner made is being questioned by the appellant.

12. For the aforesaid reasons we find no merit in this appeal and it is dismissed accordingly. It is clarified that appellant is now required to redeposit Rs.50 Lacs to meet its liability under the security furnished as per interim order of this Court dated 18.1.2010. It is directed to do so within six weeks along with interest at the rate of 6% per annum from the date of receipt of that amount till its redeposit. There shall be no order as to costs.

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

New Delhi.
August 19, 2015.