

(2001) 07 KL CK 0047

High Court Of Kerala

Case No: M.F.A. No. 1092 of 1991

Indian Molasses Co. Ltd.

APPELLANT

Vs

Kerala State Civil Supplies
Corporation Ltd.

RESPONDENT

Date of Decision: July 13, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 20
- Easements Act, 1882 - Section 52, 53, 54, 55, 56

Citation: AIR 2001 Ker 383 : (2001) 3 ILR (Ker) 103

Hon'ble Judges: V.P. Mohankumar, J; R. Rajendra Babu, J

Bench: Division Bench

Advocate: T.P. Kelu Nambiar and Surendra Mohan, for the Appellant; B.S. Krishnan and R.D. Shenoy, for the Respondent

Final Decision: Allowed

Judgement

V.P. Mohankumar, J.

The plaintiff has come up in appeal against the judgment of the court below in a proceeding under S. 20 of the Arbitration Act. The facts in brief are as under.

2. As per Ext. A1 dated 30.1.1988 the defendant took on hire a shed owned by the plaintiff on a monthly rent of Rs. 1,54,000.00 for an agreed period of three years to store and handle edible oils at Cochin Port. Likewise, as per addends to the said agreement the defendant took on hire four other sheds belonging to Great Eastern Shipping Company, taken on lease by the plaintiff on a monthly rent of Rs. 17460/- for three years with effect from 1.2.1988. There was a covenant in the agreement that either party shall revoke the licence for an agreed period of three years. While so, as per Ext. A2 dated 31.7.1989 the defendant unilaterally informed the plaintiff that they have abandoned the agreement with effect from the said date and that they are releasing the plaintiff from the licence. The plaintiff replied by Ext. A3 that

the defendant cannot repudiate the agreement and that they are, in such an event, liable to compensate the plaintiff the hire charges for the agreed period of three years. As the defendant did not comply, the plaintiff issued Ext. A4 notice invoking arbitration clause 45 in the agreement calling upon the defendant to appoint an Arbitrator. Ext. A6 reply sent by the defendant thus declined the request made by the plaintiff. Consequently the present proceedings were initiated under S. 20 of the Act as referred to above.

3. The defendant while denying the claim of the plaintiff, contended, inter alia, that only disputes pending the agreement would arise for arbitration, that the dispute raised herein involves the interpretation of the agreement which is a question of law and such question of law cannot be gone into by an Arbitrator, that the premises was taken by the defendant to store the edible oils and as the defendant did not get edible oil at Cochin the purpose became impracticable. As such, the defendant abandoned the contract and therefore they had no obligation to continue the licence, that the defendant hence released themselves from the obligation and as such the obligation continued only upto 31.7.1989 the date of Ext. A2 and that any restraint to revoke the agreement Ext. A1 licence is void.

4. The parties went to trial on these pleadings. Neither side adduced evidence. The documents were marked on consent. After trial, the court below took the view that the question involves an interpretation of the agreement and it being a question of law, an Arbitrator cannot be appointed to decide a question of law. It further held that by virtue of the clauses in the agreement read with S. 62 of the Easements Acts, the licence stood revoked with issuance of Ext. A2 notice and as such the dispute that now arose did not arise during the currency of the agreement and as such the appropriate remedy of the parties would be to agitate their claims in a civil suit. It therefore dismissed the suit. Aggrieved, the plaintiff has come up in appeal.

5. We have heard Mr. T.P.K. Nambiar, learned Senior Counsel for the appellant as also the learned counsel appearing for the respondent. After careful consideration of the respective arguments of both sides, we are of the view that the judgment of the court below is not sustainable and it erred in dismissing the suit.

6. The trial court in the judgment stated as under:

".....The agreement namely Ext. A1 shows that the permission given to the defendant is purely a personal one. It is made clear in clause 27 that the defendant has no tenancy right in the premises and on the determination of the agreement they shall vacate the facilities without making any objection. Therefore, the provisions in Ext. A1 would make it clear that a personal privilege was given to the defendant by Ext. A1 for the purpose of storing and handling edible oil in the tanks belonging to the plaintiff".

Again the learned Judge repeats:

".....As contended by the defendant the real dispute between the parties is whether the transaction evidenced by Ext. A1 is a licence or a lease and whether the defendant is legally entitled to release the plaintiff from the contract before the expiry of three years in Ext. A1".

Yet again the court below observes as under:

"If the transaction evidenced by Ext. A1 is purely a licence, it is open to the defendant to release the grantor for the reasons stated in the notice. The correspondence between the parties namely Ext. A2, A3 and A4 would clearly go to show that the dispute is with regard to the right of the defendant to release the plaintiff who is the grantor of the licence. The issues referred to in the plaint are depending on this dispute. The true interpretation of Ext. A1, that is to say whether it is a lease or licence and whether the licence is revoked by Ext. A2 notice are the matters in dispute. The question whether Ext. A1 is a lease or licence is a question of law and that depends upon the true interpretation given to Ext. A1."

These observations are made by the Court below only on the basis of the pleading in the case, as neither party has tendered any oral evidence. We may notice that the defendant pleads in the written statement as under:

"4. Clause 45 of the agreement makes it clear that the relationship between the plaintiff and the defendant is that of a licensor and licensee. Clause 27 of the agreement stipulates that this defendant shall not have any tenancy rights on the subject matter of the agreement. The other terms of the agreement also establish that the status of the defendant under the agreement is that of a licensee only".

Admittedly the plaintiff had also treated the transaction between them as a licence. This stand of the plaintiff is not disputed by the defendant anywhere in the pleadings. In view of the admitted premises on the construction of the document, the question of further interpretation of the document namely whether it is a lease or licence may not arise for consideration. The only question that arises is the consequence of clause 39 in the agreement. Clause 39 of the agreement is as under:

"39. Either party cannot revoke this agreement of hire during the period of three years i.e., from 1st February 1968 to 31st January 1991. Further extension of the agreement, after the expiry of the first 3 years shall be on mutual agreement by the parties."

It means, the licence cannot be terminated for a period of three years. What would be the legal consequence of such a clause in the licence? This question has been answered by Justice Mudholkar (as he then was) in [M.F. De Souza Vs. Childrens Education Uplift Society](#) .

".....But apart from the Easements Act, there is the law of contract and if parties enter into a contract and arrive at a solemn agreement to the effect that the licence shall be irrevocable or shall be limited for a particular duration, it follows that the

licensor will be bound by his engagement and will not be entitled to terminate the licence or revoke the licence at his sweet will and pleasure. If authority were necessary for this proposition, I may refer to the following passage in Corpus Juris Secundum, Vol.LIII, pp. 815-816.

"As a general rule a mere licence, that is, one which is merely a personal privilege not coupled within an interest in the land, may be revoked by the licensor at any time, at his pleasure. This rule generally applies regardless of how long the use has been permitted, and although the intention was to confer a continuing right, and even though the license was created by a deed or other written instrument. The general rule, however is not without its modifications and exceptions, and does not apply where the license is coupled with or partakes of the character of an easement and the rights under it are affirmatively and definitely fixed and settled, or where it constitutes part of a contract between the parties.....".

It being a contract to the contrary, the licence is to be treated as irrevocable by virtue of S. 60 of the Easements Act. The question then would be, could such a license be revoked by operation of S. 62 of the Easements Act.

7. As we have seen earlier there is no oral or documentary evidence tendered on behalf of the defendant. Regarding the revocation of the license, the plea urged by the defendant is as under:

".....The defendant could not get any oil for storage and handling at Cochin Port. So the purpose for which licence was requested for and granted by the plaintiff become impracticable. The specified purpose for which licence is granted had to be abandoned for want of supply of oil. It was in these circumstances that this defendant released the licence to the plaintiff who is the grantor of the licence".

This is an unilateral act and unsupported by the evidence. Perhaps the defendant had S. 62 (b) and (f) of the Easements Act in mind when this plea was raised. That section reads as under:

"62. Licence when deemed revoked:- A licence is deemed to be revoked-

xxx xxx xxx xxx

(b) when the licensee release it, expressly or impliedly, to the grantor or his representative;

xxx xxx xxx xxx

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;

xxx xxx xxx xxx"

In order to attract this section, it is essential that he who pleads the abandoning or impracticability of the transaction has to establish the ingredients of the section by

cogent evidence. In this case there is no evidence at all forthcoming in this behalf. Except the pleading in this case, no evidence has been let in to show that the purpose for which the license was granted has been attained, or abandoned or as such, it has become impracticable. These are facts within the knowledge of the defendant and which could have been proved by either oral or other evidence. We should confess that there has not been any attempt on the part of the defendant to establish these basic requirements. And if there be absence of evidence in this behalf, then we should proceed as if the said section do not apply. As such, as factual materials do not exist to attract S. 62(b) or S. 62(f) of the Act so as to hold that the licence stands revoked. We hold that the defendant is not entitled to invoke S. 62 to contend that the licence stands revoked.

8. The learned counsel Mr. Nambiar has raised a larger question in that in respect of license with respect to which S. 60 applies or a licence irrevocable by means of any contract to the contrary, operation of S. 62 stands excluded. In other words, a licence which is irrevocable cannot be deemed to have been revoked by operation of S. 62 of the Act. To understand this contention we may examine that part of the statute dealing with licence. Chapter VI of the Easements Act containing Ss. 52 to 64 codifies the statutory law relating to licence. Of them, Ss. 60 to 64 deals with revocation of a license and its consequences. In particular, Ss. 60 and 62 state as to when the grantor may revoke a licence, what are the limitations and as to when the licence stands revoked. S. 60 while conferring a right on the grantor to revoke the licence at any time, places a rider on this power, whereby exercise of that right of the grantor to revoke the licence is taken away. The circumstances under which the licence would stand revoked is enumerated in S. 62. It is important to note that unlike in S. 60, the subsequent S. 62 does not speak of an exclusive right conferred on the licensee in particular, to revoke the licence when any of the circumstances mentioned therein occurs. In other words, Ss. 60 and 62 operate in the same fields, namely as to when a licence can be revoked or ceased to be in force. The main part of S. 60 provides that a licence can be revoked by the grantor at any time except in the two circumstances made mention of therein. In other words, in cases covered by clauses (a) and (b) therein the grantor cannot exercise the general right to revoke the licence. S. 62 catalogues the specific instances on the happening of which the licence stands revoked. It is obvious from the wording of the section itself that the said right can be invoked by both grantee as also the grantor. Then would it be reasonable to interpret that the right to invoke which was taken away by the operation of S. 60 in the given case would revive when we invoke the right under S. 62? The answer would be in the negative. If we hold otherwise, then in a case where the grant is coupled with transfer of property by which circumstance the right of the grantor to revoke the licence is statutorily forfeited, such licence can still be revoked, nevertheless, if any of the circumstances made mention of in S. 62 exists. Such an interpretation will defeat the restriction the legislature in its wisdom introduced in S. 60. The rights conferred under S. 62 of the Act is subject to the operation of S. 60 of

the Act. S. 62 merely enumerates various circumstances when the right of revocation created under S. 60 can be exercised by the licensor as well. If so, then all the disabilities that are created by S. 60 in the matter of exercise of that right to revoke the licence would run along with that exercise of right of revocation on any of the grounds mentioned in S. 62. As such the licence in question being irrevocable, cannot be revoked by operation of either S. 62 (b) or (f) of the Act.

9. We are of the view that parties proceeded and joined issue admittedly on the basis that the suit transaction is a licence and not a lease. As such the court below erred in proceeding on the basis that the question of interpretation of the document would arise for consideration when once the dispute is referred to arbitration. By virtue of clause 39 of the agreement, the licence is irrevocable for a period of three years. If so, it will not stand revoked due to circumstances contemplated under S. 62(b) or S. 62(f) of the Act. Besides, as there is no evidence to attract S. 62(b) or any grounds to exercise the right of revocation in the instant case.

In the result we allow the appeal. The matter is remitted back to the trial court for passing consequential order. The parties are free to submit a panel of Arbitrators before the court below within two weeks of their appearance. Parties to appear on 28.8.2001.