(1950) 12 CAL CK 0017

Calcutta High Court

Case No: None

Muhammad Ziaul Haque		APPELLANT
	Vs	
Standard Vacuum Oil Company		RESPONDENT

Date of Decision: Dec. 2, 1950

Citation: 55 CWN 232

Hon'ble Judges: Sinha, J

Bench: Single Bench

Advocate: B.K. Ghose, for the Appellant;Sridhar Chatterjee, for the Respondent

Judgement

Sinha, J.

This is an application by the Plaintiff for the grant of an injunction against the Defendant, its servants and agents, from taking possession of, and or interfering with the possession of the Plaintiff and or from interfering with the Plaintiff''s business and or cancelling the license granted to the Plaintiff, pending the disposal of the suit, The application was moved ex parts before Guha, J., during the vacation and an interim injunction was obtained on October 14, 1950 On October 28, 1950, an application was made by the Defendant for an order vacating the injunction. Both these applications have come up before me one after the other and may be disposed of at the same time.

2. The facts are briefly as follows:

One Saidunnessa Bibi is the owner of premises No. 213, Lansdowne Road. The Plaintiff is the husband of Saidunnessa Bibi. She granted a lease of the premises to the Defendant. The original lease was granted in February, 1938 and the present lease which is still subsisting, was granted on August 8, 1950, for a period of five years, commencing from March 1, 1948, with an option for renewal for a further period of five years. The Defendant has constructed on the premises a petrol pump, together with underground petrol tank, delivery pump and a service station. The Defendant entered into two agreements with the Plaintiff, one dated February 11,

1938, appointing the Plaintiff as a dealer and an other agreement dated August 1, 1939, granting license to the Plaintiff for the use and occupation of the premises as Agent or Licensee of the Defendant. Copies of these two agreements are annexed to the affidavit in opposition affirmed by Mr. Carey, dated November 24, 1950. The dealership agreement provides for the supply by the Defendant to the Plaintiff of the Company''s products and inter alia contains the following clause:

(13) ...This agreement shall continue in force until determined at any time by the dealer by one month''s notice in writing to the Company or by the Company at any time by notice in writing to the dealer....

The license granting the right of use and occupation of the premises to the Plaintiff specifically states that the dealer''s use and occupation thereof should be that of an Agent or Licensee and not of a lessee or tenant. The license contains the following clause:

(6) This license may be revoked at any time by the Company by notice in writing to the dealer and the dealer may surrender the license by one month''s previous notice in writing to the Company

3. On or about September 25, 1950, the Defendant gave notice to the Plaintiff, terminating both the dealership agreement as well as the license. This was sent under registered post but was returned with the remark "left", although the Plaintiff was carrying on business at the premises and was accepting other letters. A copy of the notice was also sent to the appropriate authority under the West Bengal Motor Spirit Sales Tax Act. It is stated by Mr. Carey, the District Sales Manager of the Defendant, that on October 9, 1850, the Plaintiff called at his office and saw him when he was informed about the above facts and was requested to accept the notice, but the Plaintiff refused. On October 10, 1950, a fresh notice was sent by registered post as also by ordinary post. This notice was received, as it appears, on October 14, 1950.

4. The case now made is contained in paragraph :1881, 7 Bing, 632, 635, 694 of the petition which runs as follows:

(5) That subsequent to the said agreement, in or about August, 1938, it was further agreed between the parties that the Petitioner would start a Motor Service Station upon the said premises and for that purpose set up a hydraulic car lift and, other machinery and accessories in that behalf and provide all capital required for the said purpose in order to render better service to motor cars generally and also thereby increase the sale of Defendant''s products at the said service station and in consideration thereof, the Defendant Company promised not to revoke the said license granted to the Petitioner unreasonably and without sufficient notice. The Defendant Company further promised and assured the Petitioner that the license issued to him, in any event, would not be revoked during the subsistence of the said lease of the said premises belonging to the Petitioner''s wife as aforesaid

5. It is stated that upon such "assurance", the Petitioner invested large sums of money amounting to Rs. 15,000 upon the Service Station, installed the hydraulic car lift and other machinery and accessories for better service and it is further stated that the Defendant had full knowledge of the said installation and "ratified the continuation of the same and or did not take any objection to the same". It is further stated that at the time of the renewal of the lease, the Defendant Company again "assured" the Petitioner that the license granted to him would not be revoked during the subsistence of the lease. All these promises and assurances are verbal and there is not one single written document in support thereof.

6. It is quite clear that under both the dealership agreement and the license mentioned hereinbefore, the" Defendant Company was entitled at any time to terminate the same and/or revoke the license.

7. There was some argument before me as to whether the license could be revoked, it being argued that the license was coupled with a grant or interest and could not be revoked. The position in law seems to be as follows:

A license may be of two kinds, namely, a bare license which is purely a matter of personal privilege and a license coupled with a grant or interest. What amounts to a license coupled with a grant or interest is a matter of some complication, but it is now quite clear that it need not necessarily be an interest in land [Wood v. Leadbitter (1845) 12 M. & W. 838, Hurst v. Picture Theatres (1915) 1 K.B. 1 and Arpan Ali v. Janendra Kumar Pal 49 C.W.N. 346].

8. A license is revocable unless (1) it is coupled with a grant or interest; or (2) the licensee acting upon the license has spent money in executing works of a permanent nature (Section 60, Indian Easements Act).

9. In the case of Dominion of India v. Sohon Lal AIR (1950) P&H, 40, ., states as follows:

Be that as it may, the two tests of irrevocability, established by the cases and referred to above, or by the Indian Easements Act will, however, give way to the special agreement, if any, of the parties. Thus, a license which is prima facie irrevocable, either because it is coupled with a grant or interest or because the licensee has erected works of a permanent nature, there is nothing to prevent the parties from agreeing expressly or by necessary implication that the license nevertheless shall be revocable": See Liggins v. Inge 1881, 7 Bing. , which was applied by the Judicial Committee in Plimner v. Wellington Corporation (1884) 9 A.C. 699 Gujrat Ginning and Manufacturing Co., Ltd, Ahmedabad v. Motilal Hirabhai Spinning and Monu featuring Co., Ltd., Ahmedabad A.I.R (1986) P.C. 77, and Ganga Sahay v. Badrul Islam A.I.R (1942) All 380. On the same reasoning I should think there will be nothing to prevent the parties from agreeing expressly Order impliedly that a license which is prima facie revocable being not within either of the two categories of irrevocable license should nonetheless be irrevocable

10. It is quite clear from the agreements hereinbefore mentioned, that they were expressly and specifically made revocable at the will of the grantor. It is, therefore, not necessary for me to go into the question as to whether the license is coupled with a grant or interest and thus irrevocable.

11. The next thing to be considered is as to the remedy in case a license is revoked. Where the license is revocable, the licensee is entitled to reasonable notice. If, however, the license is revoked without reasonable notice, the remedy is by way of damages and not by way of injunction-Aldin v. Lehimer Clark Muirhead & Co. (1894) 2 Chancery 437, 447 and Wilson v. Tavener (1901) 1 Chancery 578-where an interlocutory injunction was refused. Even if the license was obtained for consideration, yet, if it is otherwise revocable and is revoked, the remedy of the licensee is in damages-Smart v. Jones (1864) 38 L.J.Q.P., 154 and Proifsonno Coomar Sinha v. Ram Kumar Ghosh 18 Cal. 640. "The reason", says Das, J., in the case mentioned above, "is obvious, for to restrain the revocation of a revocable license is to make it irrevocable. If, however, the license is irrevocable and its enjoyment is obstructed by the licensor, there is authority that the remedy of the licensee is either by way of injunction or in damages (tec Peacock on Easement, Third Edition, p. 680). As already stated, the Court of Equity will give relief by way of specific relief or injunction. An irrevocable license for a term implies an undertaking on the part of the licensor not to revoke it during its term and even if the license be not specifically enforceable for any reason, a threatened breach of the license may be prevented by enforcing this implied negative covenant, by means of an injunction.-a remedy which really gives effect to the irrevocability of the license. As against this, reference is made on behalf of the Appellant to Section. 64 of the Indian Easements Act which provides:
Where a license has been granted for a consideration and the licensee without any fault of his own is evicted by the grantor before he has fully enjoyed under a license, the right for which he contracted, he is entitled to recover compensation from the grantor

13. It is argued, not without some force, that if the statute applies, it having prescribed a specific remedy, no other remedy is available and in case of revocation of an irrevocable license, the only remedy is by way of damages. Reliance is also placed on some decisions of the Calcutta High Court to the effect that even in the case of revocation of an irrevocable license the only remedy is by way of damages: per Mookerjee, J., in Swarnamoyee Peshakar v. Chander Coomar Das 12 C.L.J. 448 and Motilal Rai v. Kalu Mandar 19 C.L.J. 521".

14. The Allahabad and Lahore High Courts have held that Mookerjee, J., in the two cases cited before, went a bit too far. But so far as I am concerned, the decisions seem to be binding upon me, or, in any event, they are decisions to which I must attach very great importance.

15. It is, therefore, argued by Mr. Chatter-jee on behalf of the Defendant, not without considerable force, that in any event, the remedy of the Plaintiff lay in damages and that the granting of an interim injunction would be giving the Plaintiff a remedy which he cannot get at the trial of the action.

16. Taking into consideration the dealership agreement and the license, I must come to the same conclusion as was arrived at by Das, J., in the case quoted above wherein he said as follows:

Even on this basis, the license being revocable, the remedy cannot be by way of injunction, for, there can be no question of preventing a person from doing what by special contract it is lawful for him to do. It is thus quite clear, whether the Indian Easements Act applies or not, that the articles of agreement constitute only a revocable license and the revocation thereof cannot be prevented by injunction .... Apart from these arguments, it seems to me that there cannot be specific performance of a contract which by its own terms is revocable at the will of a party thereto, because the decree, if any, may be rendered nugatory at the will and pleasure of that party. There can be no injunction, for, as I have said, the Court ought not to prevent a person from doing what, by contract, it is lawful for him to do.

17. The next thing that I have to consider is as to how the position is altered or affected by reason of the facts stated in paragraph 5 of the petition. What is attempted to be stated there is that the license, originally revocable, was subsequently made irrevocable. As I have said before, the Calcutta cases seem to hold that even in such a case the remedy will be one by way of damages. But I do not base my decision on this aspect of the law alone. It is necessary, in order to find out the case made by the Plaintiff, to plaintiff the statements made in paragraph 5. It is first stated that subsequent to the previous agreement, in or about August, 1938, there was a further agreement that the Petitioner would start a Motor Service Station and invest certain moneys and or do certain things, thereby increasing the sale of the Defendant''s products and in consideration thereof, the Defendant Company promised not to revoke the license, unreasonably or without sufficient notice. It will be seen that even so, the license is not wholly irrevocable but that it should not be done "unreasonably and without sufficient notice". I believe a breach of this, according to the authorities quoted above, would only give rise to damages. In contra-distinction to the word "agreement" used in the earlier part of the said paragraph, it is stated that the Defendant Company further "promised" and "assured" the Petitioner that the license issued to him, in any event, would not be revoked during the subsistence of the lease. In paragraph (6) it is said that upon such "assurance" the Petitioner invested large sums of money and in paragraph (7) it is stated that there was ratification by the Company of installations made by the Plaintiff and it is further stated in the alternative that they did not take objection thereto. The petition is verified not by the Plaintiff but by one Sachindra Nath Sen. In

the body of the petition it is not stated as to who represented the Defendant Company nor whether Sachindra Nath Sen represented the Plaintiff, and, therefore, I have nothing before me to show the foundation for his saying that the relevant facts are true to his knowledge. I do not even know who Sachindranath Sen is, excepting that he is the Plaintiff''s constituted attorney. From the wordings used in the said paragraphs it seems that the "promise" or "assurance" not to revoke the license during the subsistence of the lease must have been something short of an agreement and that the Plaintiff acted upon an "assurance" and not upon any contract. He is not at all sure of his position and he consequently pleads ratification and or want of objection in the alternative.

18. The position, therefore, in short is as follows:

So far as the written documents which contain the terms agreed upon between the parties are concerned, they show that the license was clearly revocable and, therefore no injunction can be granted. The facts stated in paragraphs 5, 6 and 7 for the reasons stated above, do not at this stage show that the Plaintiff has made out a prima facie case for an injunction. If the evidence is as it stands, I cannot say that it has been proved to my satisfaction that the Defendant Company agreed that it would not revoke the license during the subsistence of the lease. Upon this state of the evidence, it would be oppressive to issue an injunction on the Defendant Company, transforming a license which is prima facie revocable into an irrevocable one. It seems to me that the proper remedy, if any, of the Plaintiff is in damages. But even if it is not so, I must hold that the Plaintiff has not been able to satisfy me on the facts that there is a prima facie case made out that the Defendant Company is about to do what it had contracted not to do or that it should be restrained by an injunction as asked for in the application.

19. Under the circumstances, I must dismiss the original application and dissolve the interim injunction. No order is made on the second application. I will, however, make the costs of both the applications costs in the cause.