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Sumitra Devi Malik Vs. M.C.D. and anr.

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Court : Delhi

Decided On : Jul-13-1998

Reported in : 1998(47)DRJ19

Judge : Manmohan Sarin, J.

Acts : Delhi Municipal Corporation Act, 1957 - Sections 417

Appeal No. : F.A.O.No.48 of 1994

Appellant : Sumitra Devi Malik

Respondent : M.C.D. and anr.

Advocate for Def. : Mr. Ishwar Sahai, Sr. Advocate and ;Mr. A.P. Aggarwal Adv.

Advocate for Pet/Ap. : Mr. R.M. Sinha, Adv

Judgement :

Manmohan Sarin, J.

1.Appellant has preferred this first appeal against the order dated 21.1.1994, passed by the Additional District Judge, dismissing the application of the appellant/plaintiff in the suit under Order XXXIX Rules 1 and 2 CPC. The application was moved in Suit No.323 of 1993, seeking decree of permanent injunction to restrain the respondent No.1-MCD from granting any license for

trading of petro Chemicals like acrylic wool, kashmilon wool, silk yarns and other inflammable yarns in the tenanted premises to respondent No.2. Further a decree of permanent injunction was sought against respondent No.2, restraining it from trading in the above petro Chemicals products in the tenanted premises.

2. Before dealing with the contentions and grounds raised by the appellant, it would be appropriate to recapitulate the facts culminating in the filing of the present appeal:

(i) The appellant/plaintiff in February, 1993 filed a Suit No.220 of 1993 for permanent injunction against respondent No.2, hereinafter referred to as the previous suit. It was alleged that ground floor of premises No.57, South 5802, Basti Harphool Singh, Sadar Thana Road, Delhi had been let out about 15 - 17 years back to respondent No.2 for residential-cum-office purposes at a monthly rent of Rs.1,000/-. However, respondent No.2, without the written or oral consent of appellant started keeping, storing and manufacturing the petro Chemical products such as acrylic wool, yarns without requisite license or permission from the MCD and the fire services. It was averred that despite objections by the appellant, respondent No.2 and in spite of promises failed to remove the stocks of acrylic wool and yarns. It is claimed that there was a fire on 14.8.1987 in the premises and respondent No.2 after the fire had stopped storing and keeping the petro Chemical products in the tenanted premises, but had again started storing, keeping and manufacturing the petro Chemical products for the last 1 year or so. It is claimed that there was again a fire on 10.2.1993, which resulted in damage and cracks even on the first floor where the appellant resides with her family members. The appellant, thereforee, sought restraint on respondent No.2 from keeping storing or manufacturing petro Chemical products like wool and yarn and other inflammable goods in the tenanted premises. Besides restraint was sought on any additional constructions etc.

3. Respondent No.2 filed its written statement and claimed that the premises were let out for manufacturing, storage and sale of hand knitting yarns. It was averred that the premises had earlier even been let out for storage and processing of human hair to M/s. Seven Seas Exporters, who relinquished their tenancy in favor

of respondent No.2, who attorney to the appellant as the tenant. It was claimed that the premises w.e.f. 28.12.1971, were let out for manufacture, storage and sale of knitting yarns from the inception of the tenancy and were so used. In 1992, respondent No.2, shifted the manufacturing and processing to Industrial Area C-16, SMA Cooperative Industrial Estate, G.T.Karnal Road and continued to use premises for purposes of sale, office and for storage of the products. Pleadings were completed in the above suit. The interim injunction, sought by the appellant/plaintiff was refused. Appellant preferred an appeal against the order, refusing interim injunction. While the appeal is pending but appellant's prayer for grant of an ad-interim injunction was not acceded to.

4. Appellant, in these circumstances, preferred the present suit bearing No. 323/93. Appellant's contention is that from the written statement filed by respondent No.2 in the previous suit, the appellant learnt that the premises were being used for trading in the petro Chemical products. Appellant's case is that no permission or license had been obtained for 'trading' in the said articles from the MCD. Appellant claims that the cause of action for the present suit arose only when the factum of respondent No.2 carrying on trading in petro Chemical products like acrylic wool, kashmilon wool, silk yarn etc. was disclosed in the written statement in the previous suit and appellant became aware of it. The appellant sought a restraint on respondent No.2 from trading in the petro Chemical products. The application under Order XXXIX Rules 1 and 2 CPC, moved in the suit was dismissed by the Additional District Judge by the impugned order.

5. A perusal of the impugned order shows that the learned Additional District Judge took note of the fact that the previous suit filed by the appellant/plaintiff was based almost on the same allegations, as are made in the present suit.

6. The appellant's contention is that it is not permissible for respondent No.2 to trade or sell petro Chemical products like acrylic wool, kashmilon wool, silk yarn and hand knitted yarns on the strength of the municipal license obtained by the appellant for their storage. In other words, in the absence of a requisite license for trading in the aforementioned petro Chemical products, the activity of trading claimed and admitted to be carried on by respondent No.2 would be unlawful. The

appellant relies on Section 417 of the Delhi Municipal Corporation Act, 1957 as well as the entries in Part I of the Eleventh Schedule. It would be useful to re-produce Section 417 of the Delhi Municipal Corporation Act, 1957 and some of the relevant entries in the Eleventh Schedule to appreciate the submission sought to be made:-

Section 417.Premises not to be used for certain purpose without license - (1) No person shall use or permit to be used premises for any of the following purposes without or otherwise than in conformity with the terms of a license granted by the Commissioner in this behalf, namely:-

(a) any of the purposes specified in Part I of the Eleventh Schedule;

(b) any purpose which is, in the opinion of the Commissioner dangerous to life, health or property or likely to create a nuisance;

(c) keeping horses, cattle or other quadruped animals or birds for transportation, sale or hire or for sale of the produce hereof; or

(d) storing any of the article specified in Part II of the Eleventh Schedule except for domestic use of any of those articles:

Provided that the Corporation may declare that premises in which the aggregate quantity of articles stored for sale does not exceed such quantity as may be prescribed by bye-laws in respect of any such articles shall be exempted from the operation of clause (d).

(2) In prescribing terms of a license granted under this Section for the use of premises as mills or iron yards or for similar purpose the Commissioner may, when he thinks fit, require the licensee to provide a space or passage within the premises for carts for loading and unloading purpose.

(3) The Corporation shall fix a scale of fees to be paid in respect of premises licensed under sub-section (1):

Provided that no such fee shall exceed five hundred rupees.

The Eleventh Schedule - Part I

Purposes for which premises may not be used without a licence.

Carrying out any of the following trades and operations connected with trades:

1. Baking.

2. Cinematograph films. Shooting of-

3. Cinematograph films by any process whatsoever, treating of-

4. Chillies or masala or corn or sees. Grinding of by mechanical means-

5. Cloth yarn or leather in indigo or in other colours. Dyeing or printing of-

6. Cloth or yarn. Bleaching-

7. Eating house or a catering establishment. Keeping of an-

20. Carrying on the trade or business of or any operation connected with the trade of-

(i) Autocar or autocycle servicing or repairing.

(ii) Blacksmithy

(xiii) Silversmithy

(xiv) Spinning or weaving cotton, silk, art silk, or jute or wool with the aid of power.

(xvii) Tinsmithy.

21. Manufacturing parching, packing, pressing, cleaning, cleansings, boiling, melting, grinding or preparing by any process whatever any of the following articles-

(xviii) Cotton, cotton refuse, cotton waste, cotton yarn, silk, silkyarn, silk inclusive of waste yarn, art silk waste, art silk yarn, wool or woollen refuse or waste.

(xxxiv) Lime.

Part II

Articles which may not be stored in any premises without a licence.

18. Cloth in pressed bales or boras.

19. Cloth or clothes of cotton, wool, silk, art silk etc.

25. Cotton including Kahok, surgical cotton and silky cotton.

26. Cotton refuse or waste or cotton yarn refuse of waste.

95. Wool (raw).

96. Yarn other than waste yarn.

7. Learned counsel for the appellant contends that a separate license was required for use of premises for purposes and eventualities specified in sub-clause a,b,c and d of Section 417 of the Delhi Municipal Corporation Act, 1957. The appellant further contends that the word 'or' appearing in the following sentence in EleventhSchedule, Part I, 'Carrying out any of the following trades or operations connected with trade has to be interpreted as 'and.' Accordingly, the contention is that license is required for, 'trade as well as operations connected with trade as mentioned in the entries of Part I of EleventhSchedule.' However, since all the operations connected with trade were not intended to be prohibited, the particular operation intended to be prohibited has been mentioned against each item. Respondent No.2 not having a license for the activities of 'trade' falling under S.Nos. 5, 6 and 21 of Part I of Eleventh Schedule cannot carry out any trade in them in the premises in question on the basis of a license for storage. Learned counsel for the appellant also relied on the letter of the Deputy Chief Fire Officer dated 8.4.1993 and the recommendation for withdrawal of the 'No Objection' granted to respondent No.2. Learned counsel submitted that as a result of the two fires that had admittedly taken place, the continuance of trading and storage activities was also a nuisance and a danger to health and property, thereby also falling in the ambit of Section 417(1)(b) of the Delhi Municipal Corporation Act,

1957.

8. I have given my careful consideration to the grounds set out, the rival submission made, the pleadings and material on record. Admittedly, the premises in question had been let out as far back as in 1971. The trial court has prima facie found that respondent No.2 had been carrying out the manufacturing, storage and trading in the aforementioned items since 1971. Respondent No.2 had placed on record before the trial court the bills of the year 1982, evidencing sale of material from premises in suit. It has come on record that in the year 1982, respondent No.2 shifted the manufacturing and processing activities to another premises. Thereafter, the premises have been used for storage and trading of these items since 1982. The appellant, who admittedly lives in the same premises and on the floor over the premises in suit, could not have been ignorant of the premises being used for trading and sale of these items. The trial court observed that the appellant was fully in the knowledge of trading activities carried out. In these circumstances, the conclusion reached by the trial court that the appellant could have sought the relief of restraint against trade in the previous suit and the relief now sought was barred cannot be faulted with. The appellant's contention that he came to know of the trading only after the written statement was filed by the respondent in the previous suit is not credible and does not inspire any confidence. Moreover, it was also open for the appellant to seek amendment of the plaint in the previous suit as instituted on this ground. As noticed, the appellant's appeal against dismissal of the injunction application filed in the previous suit is still pending. The trial court has rightly observed that the present suit has resulted in avoidable multiplicity of proceedings.

9. It may also be noticed that the counsel for respondent No.1-MCD on 17.5.1994, stated before this Court that license had been issued in favor of respondent No.2 for storage and knitting yarns of all kinds but no license of trade in inflammable items in favor of respondent No.2 had been issued. It was further stated that no license for trading in the said items was required. The trial court has also noticed the integral connection between storage and trading inasmuch as the articles stored are removed upon sale from the store and new articles which have been manufactured or purchased are brought to be stored, till sold.

10. Coming to Section 417 of the Delhi Municipal Corporation Act,1957 and the entries in the EleventhSchedule, the same being in the nature of a restraint on trade by regulating and stipulating a requirement of licence. These entries have to be interpreted in a restrictive manner and its scope can not to be widened by employing aids to interpretation. Entry at S.Nos.2,5 and 6 are as follows: (2) Cinematograph films, Shooting of; (5) Cloth yarn or leather in indigo or in other colours. Dyeing of printing of; (6) Cloth or yarn. Bleaching. These entries would show that the prohibition is in respect of the operation connected with the subject trade. For instance, it is the shooting of Cinematograph films, which is prohibited. Similarly, it is dyeing or printing and bleaching in items 5 and 6, which are prohibited. This would become clear also from entry No.20, wherein the prohibition is wider namely carrying on the trade or business of any business connected with trade of - Blacksmithy, Silversmithy Tinsmithy etc. This is an instance where the entire trade is prohibited, without licence, as compared to the other items where the requirement of license is only in respect of specific operations connected with the trade.

A perusal of entry No.21 also shows that it is only manufacturing, packing, pressing and the processing in respect of the articles, which is prohibited without license and not the trading in the items. Accordingly, there is no merit in the contention of the appellant that the respondent is prohibited from carrying on trade in acrylic, kashmilon wool, silk yarn and hand-knitted yarns etc. In the instant case, respondent No.2 admittedly has a license as required for storage in items as per Part II of the Eleventh Schedule. The respondent No.1-Corporation has also vide an order dated 10.8.1993, directed issuance of a fresh 'No Objection' in respect of storage of the material, which would take care of the concerns said to have been mentioned in the Deputy Chief Fire Officer's letter of 8.4.1993.

11. In view of the foregoing discussion and specially for the reasons set out in paras 8 and 10, the refusal to grant interim injunction, as sought by the appellant cannot be faulted with. The appeal has no merit and is, accordingly, dismissed.

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