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CHITRA

v.

STATE OF KERALA & ORS.

(Civil Appeal No.2246 of 2006)

B

AUGUST 21, 2015

**[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]**

*Foreign Liquor Rules:*

C

*rr. 13, 14 – Entitlement to pay proportionate annual rental instead of full annual rent applicable for the year in respect of FL3 licence granted to appellant-licencee – Due to third party suit, injunction granted restraining excise commissioner from issuing the said licence to the appellant*

D

*for use at her hotel – Claim of appellant that she was disabled from utilising the licence for the full period because of third party intervention – Legality of demand to pay the fee for the entire year despite the truncated period of use by the appellant for no fault attributed to appellant – Held: A party is entitled to*

E

*seek a remission in the payment of licence fee if it is precluded from transacting business on the strength of that licence because of factors and reasons extraneous to it and/or if it is granted the licence on the direction of a Court for only a portion of the financial year – Respondent State to refund the excess amount paid by the appellant.*

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G

*rr. 13, 14 – Renewal of licence – Appellant-licencee was holder of FL3 licence for the period ending on 31.3.2001 – Due to a dispute with its landlord it had to vacate the premises and on relocating it to another place, it applied for renewal of licence on 26.2.2002 – Litigation – High Court directed appellant to pay licence amount and after such payment, licence renewed on 25.3.2003 – In these circumstances,*

H

*appellant could conduct its business only for less than a fortnight in that licence year – Liability to pay licence fee for the year 2002-03 – Held: Appellant is only liable to pay the proportionate licence fee for the period in which it could avail of the licence, that is 25.3.2003 to 31.3.2003 – Respondent State to refund the excess amount paid by the appellant.*

**Allowing the appeals, the Court**

**HELD: 1. CIVIL APPEAL NO.2246 OF 2006**

**No person can be prejudiced because of an act of a Court. Although the Appellant had applied for the FL3 licence which would ordinarily run the course of one financial year, due to interim orders passed by the Courts, the Appellant could only utilize it for a fraction of that period. The Appellant's application was not made in the duration of that year and was thus initially not for a fraction of the financial year. Rule 14 does not impede or inhibit the charging of annual proportionate fee so long as no failure is placed on the licensee or it is blameworthy itself. In the event that a party applies for a period which is obviously not effective for the entire financial year, such as applying for a licence mid-way that financial year, the full fee for that year may be claimable or chargeable and, therefore, would have to be paid. In other words, had the Appellant applied for the licence even with the knowledge that because of external factors such as a pre-existing injunction order etc., she would not have been able to exploit it for the entire year, she may not have been liable to pay the licence fee for the entire year. This is not the factual matrix which obtains in the case at hand; the licence could only be granted for part of the period owing to unforeseeable circumstances beyond the ken and control of the parties. A party is entitled to seek a**

A remission in the payment of licence fee if it is precluded  
 from transacting business on the strength of that licence  
 because of factors and reasons extraneous to it and/or  
 if it is granted the licence on the direction of a Court for  
 only a portion of the financial year. [Para 5] [757-H; 758-  
 B B-H]

## 2. CIVIL APPEAL NO.4900 OF 2006

C The Appellant is only liable to pay the proportionate  
 licence fee for the period in which it could avail of the  
 licence, that is 25.3.2003 to 31.3.2003. It would be fair to  
 cogitate upon whether the Appellant should have  
 declined the licence for virtually a week in that year, and  
 since it failed to exercise that option, whether it should  
 D be burdened with the fee for the full year. Any person  
 placed in the position of the Appellant would not be in a  
 position to decline to accept the renewal of the licence  
 even though it was for less than a fortnight, since that  
 would have led to the licence being rendered defunct;  
 E which may have then led to consequence of  
 disentitlement for grant or renewal of the FL3 licence in  
 the future. The Respondents are directed to recalculate  
 the proportionate amount of licence fee due and payable  
 by the Appellant for the period from 25.3.2003 to  
 F 31.3.2003. [Paras 9, 10] [760-G-H; 761-A-C]

*Rajagopalan Nair v. Assistant Commissioner of Excise*  
 1989 (1) KLT 800 – relied on.

G *R. Vijaykumar v. Commissioner of Excise* 1993(4)  
 SCALE 386 – referred to.

### Case Law Reference

H	1989 (1) KLT 800	relied on.	Para 5
	1993(4) SCALE 386	referred to.	Para 3

CIVIL APPELLATE JURISDICTION: Civil Appeal No. A  
2246 of 2006

From the Judgment and Order dated 21.07.2005 of the  
High Court of Kerala at Ernakulam in W.A. No. 910/2000(A).

WITH B

C.A. No. 4900 of 2006.

Huzefa Ahmadi, Roy Abraham, Seema Jain, Himinder Lal  
for the Appellant. C

Bina Madhavan for the Respondents.

The Judgment of the Court was delivered by

**VIKRAMAJIT SEN, J.** D

**CIVIL APPEAL NO.2246 OF 2006**

1 This Appeal calls into question a brief Judgment passed  
on 21.7.2005 by the Division Bench of the High Court of Kerala  
in W.A. No. 910 of 2000 reversing the detailed Judgment of  
the learned Single Judge. The question that has been raised  
pertains to the Appellant's entitlement to pay proportionate  
annual rental for the year 1999-2000, instead of full annual fee  
of ₹13 lakhs which was applicable for that year in respect of  
an FL3 licence granted to her. E F

2. The Division Bench took note of Rule 14 of the Foreign  
Liquor Rules which reads thus:

"If any of the licences referred to in Rule 13 is granted in  
the course of a financial year, the full annual fee shall be  
paid and the licence shall expire at the end of the financial  
year". G

On the reading of the said Rule, the Division Bench opined H

A that it was not permissible for any licensee to claim only  
proportionate payment on the predication that it had been  
disabled from utilizing the licence for the full period because  
of third party intervention. Accepting the Appeal, the Appellant  
was permitted to pay the balance of the entire fee after adjusting  
B the sum already paid, within three weeks, in which event the  
Respondent would not be permitted to claim interest on belated  
payments. It is the admitted case that in order to avail of this  
indulgence and advantage the balance amount has been duly  
paid. However, the legality of the demand to pay the fee for  
C the entire year, despite the truncated period of user by the  
Appellant for no fault ascribable to her is what has been brought  
into question before us.

3. We have commented on the brevity of the impugned  
D Judgment for the reason that the learned Single Judge of the  
Kerala High Court in O.P. No. 18145 of 1994 had, in its detailed  
Judgment, considered various legal aspects including the  
topicality of the maxim '*Actus curiae neminem gravabit*', that  
an act of Court prejudices no one, as well as the  
E pronouncement of this Court in **R. Vijaykumar v.**  
**Commissioner of Excise 1993(4) SCALE 386**, which  
indubitably held the field and was facially in favour of the  
Appellant. It seems to us that the attention of the Division Bench  
was not drawn to this binding precedent, since otherwise its  
F conclusion would in all likelihood have been diametrically  
different.

4. The facts are neither disputed nor are they convoluted.  
The Appellant had submitted an application on 16.3.1990 for  
G the grant of an FL3 licence in respect of her Hotel Chanakya  
at Trivandrum, which had been granted. However, it transpired  
that a third party filed a suit in which the Munsif Court,  
Trivandrum granted an interim injunction restraining the Excise  
Commissioner from issuing the said licence to the Appellant  
H for user at her said Hotel. This suit, along with another suit

similar to it, was eventually dismissed on 29.9.1993. In an A  
ensuing Appeal, the District Judge granted an *ad interim*  
injunction on 15.4.1994, which came to be vacated on  
3.6.1994. On 23.11.1994, the Respondent rejected the B  
Appellant's application for the FL3 licence due to an  
amendment to the Foreign Liquor Rules which had resulted in  
private parties being ineligible for FL3 licences. Consequently,  
the Appellant filed O.P. no. 18145 of 1994, which was allowed  
by the Single Judge. Acting in accordance with the Single C  
Judge's directions the Excise Commissioner granted the  
licence and raised a demand of only the proportionate licence  
fee which was duly deposited; but the matter was brought before  
the Division Bench in the subject Appeal. As already D  
mentioned, it seems most likely that the attention of the Division  
Bench which passed the impugned Judgment was not brought  
to bear on the already existing binding decisions in  
**R. Vijaykumar** as well as **Jayadevan v. Board of Revenue**  
(Excise) 1999 (1) KLJ 87 wherein the Division Bench of the  
High Court of Kerala has held that the licensee is required to  
pay only the proportionate licence fee if the delay in granting E  
the licence, or utilizing it, as the case may be, are for reasons  
not attributable to the said licensee.

5. We are in agreement with the learned senior counsel  
for the Appellant that the legal principle to the effect that no F  
person can be prejudiced because of an act of a Court is  
apposite and relevant in the present case. We say this keeping  
in perspective the position that although the Appellant had  
applied for the FL3 licence which would ordinarily run the G  
course of one financial year, due to interim orders passed by  
the Courts, the Appellant could only utilize it for a fraction of  
that period. We hasten to clarify that the Appellant's application  
was not made in the duration of that year and was thus initially  
not for a fraction of the financial year. This Court has already  
held in **R. Vijaykumar**, in the circumstances prevailing in that H

A case, that the Department could not interfere with the utilization of the FL3 licence, provided that the licensee complied with all other conditions as well as "payment of annual rental proportionately". It is therefore clear that Rule 14 would not impede or inhibit the charging of annual proportionate fee so long as no failure is placed on the licensee or it is blameworthy itself. We must be quick to clarify that in the event that a party applies for a period which is obviously not effective for the entire financial year, such as applying for a licence mid-way that financial year, the full fee for that year may be claimable or chargeable and, therefore, would have to be paid. In other words, had the Appellant applied for the licence even with the knowledge that because of external factors such as a pre-existing injunction order etc., she would not have been able to exploit it for the entire year, she may not have been liable to pay the licence fee for the entire year. This is not the factual matrix which obtains in the case at hand; the licence could only be granted for the period from 21.12.1999 to 31.3.2000, i.e. till the close of that financial year, owing to unforeseeable circumstances beyond the ken and control of the parties before us. We have already made a mention of the Division Bench Judgment delivered in **Jayadevan** which in turn was referred to in another Division Bench Judgment in **Rajagopalan Nair v. Assistant Commissioner of Excise 1989 (1) KLT 800**, wherein the Division Bench directed that the licensee was entitled to remission of payment of kishit because of being disabled to conduct its business on account of the interim orders passed by the Court. We affirm the conclusions arrived at in these decisions. We hold that a party is entitled to seek a remission in the payment of licence fee if it is precluded from transacting business on the strength of that licence because of factors and reasons extraneous to it and/or if it is granted the licence on the direction of a Court for only a portion of the financial year.

6. The Appeal is accordingly allowed. The Respondent State shall, within six weeks from today, refund to the Appellant the balance amount of 9,41,257/- together with interest thereon at the rate of six per cent per annum with effect from 11.8.2005. Failure to do so shall render the Respondent State liable to refund the aforementioned sum of 9,41,257/- together with interest at the rate of twelve per cent per annum calculated from 11.8.2005 till the date of payment and also additionally liable for payment of costs quantified at 15,000/- (Rupees fifteen thousand only).

**CIVIL APPEAL NO.4900 OF 2006**

7. The facts that arise in this Appeal are somewhat complex in comparison to Chitra's foregoing Appeal. The Appellant had been granted an FL3 licence for its Hotel Hackoba at Ernakulam for the period ending on 31.3.2001. Due to a dispute with its landlord it had to vacate its premises; and on locating to another, it applied for the renewal of the licence on 26.2.2002. This was obviously for the immediately succeeding year 1.4.2001 to 31.3.2002. The Excise Commissioner rejected the application for renewal on 4.9.2002 on the ground that the licence had become defunct; a decision which was upheld by the State Government. In these circumstances, the Appellant successfully approached the High Court of Kerala which issued a direction to the State Government to issue the licence within two weeks. The Single Judge simultaneously directed the Appellant to pay the licence fee for the years 2001-2002 and 2002-2003 by his Judgment dated 27.1.2003. The Appellant preferred an Appeal, and on the first day of its hearing, the Division Bench passed an *ad interim* Order directing the Appellant to pay 15 lakhs. Shortly after making this payment, on 25.3.2003, the licence was renewed. The Division Bench of the High Court of Kerala noted Rule 14 of the Foreign Liquor Rules as well as the fact that it

A had not been challenged. The Division Bench accepted the argument of the Appellant that for the reason that it could not utilize the licence for the year 2001-2002 as its application had been disallowed it was not liable to pay any fee; viz. during this period it was prevented by extraneous elements and factors from utilizing the licence. However, the Division Bench held that since the licence was renewed in March 2003, even though the Appellant could conduct its business for less than a fortnight in that licence year, nevertheless the Appellant was liable to pay the full fee for the year 2002-2003. It is these circumstances which have constrained the Appellant to file the present Appeal before us.

8. In order to eradicate any possibility of misunderstanding our present Judgment, we hasten to clarify that had the Appellant's application for renewal of the FL-3 licence found approval instead of rejection on 4.9.2002, the Appellant would have been liable to pay the entire fee for the year 2001-2002. This is so for the simple reason that there was no third party interference or intervention which led to the non-utilization of that licence for the previous portion of that year; it may be reiterated that the Appellant had to locate fresh premises. However, after 4.9.2002, the Appellant cannot be held responsible in any way for the non-utilization of the licence up to the date it was eventually renewed i.e. 25.3.2003.

9. On the predication of the legal analysis and discussion in Civil Appeal No. 2246 of 2006 (supra), we are of the opinion that the Appellant is only liable to pay the proportionate licence fee for the period in which it could avail of the licence, that is 25.3.2003 to 31.3.2003. It would be fair to cogitate upon whether the Appellant should have declined the licence for virtually a week in that year, and since it failed to exercise that option, whether it should be burdened with the fee for the full year. It seems to us that any person placed in the position of the Appellant would not be in a position to decline to accept

the renewal of the licence even though it was for less than a fortnight, since that would have led to the licence being rendered defunct; which may have then led to consequence of disentitlement for grant or renewal of the FL3 licence in the future. A

10. The Appeal is accordingly allowed. The Respondents are directed to recalculate the proportionate amount of licence fee due and payable by the Appellant for the period from 25.3.2003 to 31.3.2003. The amount of refund shall carry interest at the rate of six per cent per annum from the date of its payment due till the date of its refund. This exercise should be completed within two months from today. Failure to make this payment within this period will render the Respondents liable to pay the interest at the rate of twelve per cent per annum, instead of six per cent, as directed above, and in addition thereto, the Respondents shall be liable to pay to the Appellant the costs quantified at 15,000/- (Rupees fifteen thousand only), which amount shall be deposited with the Supreme Court Advocates Welfare Fund. B C D

Devika Gujral

Appeals allowed. E