



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8<sup>TH</sup> DAY OF FEBRUARY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ**

**WRIT PETITION NO.23306 OF 2021 (EXCISE)**

R

**BETWEEN:**

NAGALINGA

...PETITIONER

(BY SRI. C.H. JADHAV, SENIOR COUNSEL FOR  
SRI. SHASHIDHAR G.,ADVOCATE)

**AND:**

Digitally  
signed by  
POORNIMA  
SHIVANNA  
Location:  
HIGH  
COURT OF  
KARNATAKA

1. THE EXCISE COMMISSIONER IN KARNATAKA  
2ND FLOOR, TTMC A BLOCK,  
BMTc BUILDING, SHANTINAGAR,  
BENGALURU 560027
2. THE DEPUTY COMMISSIONER  
MANDYA DISTRICT,  
MANDYA 571403
3. Y B RAMACHANDRA

...RESPONDENTS

(BY SRI. PRAMOD R.,ADVOCATE FOR C/R3;



SMT. JYOTHI BHAT, HCGP FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ORDER ANY OTHER APPROPRIATE WRIT ORDER OR DIRECTION, QUASHING THE IMPUGNED JUDGMENT AND ORDER DATED 08.12.2021 AS PER ANNEXURE-Q PASSED BY THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU IN SO FAR AS IT RELATES TO APPEAL NO.337/2021 AND ETC.

THIS WRIT PETITION, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

*a. Issue a Writ of Certiorari order any other appropriate writ order or direction quashing the impugned Judgment and Order dated 08.12.2021 as per Annexure-Q passed by the Karnataka Appellate Tribunal at Bengaluru in so far as it relates to Appeal No.337/2021.*

*b. Issue any other appropriate writ order or direction s the Hon'ble Court deemed fit to be granted under the facts and circumstance of the case to meet the ends of justice.*

2. The petitioner and the respondent are stated to be the partners in the firm M/s.Marthanda Enterprises, which is constituted under the Partnership Deed dated 15.12.2010. The said M/s.Marthanda Enterprises runs the business of M/s.Marthanda



Wines under Form CL-2 which is transferred in the name of M/s.Marthanda Enterprises from the earlier licensee.

3. There being certain disputes between the partners, as regards the continuance of the business, each of the partners made several allegations against the other. The petitioner alleges that respondent No.3 could not carry on the business of the partnership firm, and similar allegations have been made by respondent No.3 against the petitioner. There are various proceedings which took place between the parties.
4. What is under challenge in the present matter is the order dated 08.12.2021 passed by the Karnataka Appellate Tribunal (KAT) in Appeal No.337/2021. By virtue of the said order, the Appellate Tribunal dismissed the appeal filed by the petitioner challenging the renewal of the licence on an application made by respondent No.3 and confirmed the order of respondent No.1-Excise Commissioner



renewing the licence. It is aggrieved by the same that the petitioner is before this Court seeking for the aforesaid reliefs.

5. Sri.C.H.Jadhav, learned Senior Counsel for the petitioner would submit that:

5.1. respondent No.3 has no right to continue the business without involving the petitioner. Both of them being partners in the firm, respondent No.3 is acting contrary to the interest of the petitioner and partnership firm.

5.2. When there is a dispute between the partners neither respondent No.1 could have renewed the licence nor could KAT confirm the said order.

5.3. In this regard, he relies upon the decision of the Co-ordinate Bench of this Court in W.P.No.14282/2021 dated 11.03.2022 more particular Para 11 thereof, which is reproduced hereunder for easy reference:



*11. As rightly submitted by learned High Court Government Pleader, the applications seeking transfer of licence filed by the parties is required to be kept in abeyance and parties have to adjudicate their claim in a competent Civil Court and get resolved the dispute and then approach respondent Nos.1 and 2 for further opinion on their applications. However, in the meantime, if the contesting parties seeking transfer of licence in their favour come to an understanding that, due to their dispute, the business shall not be stalled, in such an event, they are at liberty to approach respondent Nos.1 and 2 with a via-media interim solution, in a process known to law, for the continuation of the licence, however, without affecting the desire, if any, of the alleged testator in the alleged Will about continuation of the licence and bequeathing the property, particularly the business involving the licence under question.*

5.4. Respondent No.3 has also involved himself in fraudulent activities, has fabricated the signature of the petitioner, made use of the photograph of the petitioner downloaded from the Facebook page of the petitioner, and while the matter was pending, was successful in obtaining renewal of Form CL-2 on 02.08.2021 which is issued at 18.20 hours when an order had been passed in W.P.No.13793/2021 whereunder this Court had directed the



Appellate Tribunal to pass orders on the interlocutory application within a period of 10 days. Instead of awaiting the decision of the KAT, the respondent No.3 has gone ahead and secured licence on the very same day, which establishes the fraudulent acts on the part of respondent No.3 is the contention of the learned counsel for the petitioner and he seeks for allowing the Writ Petition.

6. The submission of Sri.Pramod R, learned counsel for respondent No.3 is that:

6.1. the respondent No.3 being unable to carry on business with the petitioner and the petitioner indulging himself in acts contrary to the interest of the partnership firm by invoking Section 44 (c) of the Indian Partnership Act, 1932, respondent No.3 has filed a suit for dissolution of the partnership firm in O.S.No.363/2020.



6.2. respondent No.3 being the managing partner in terms of Clause 7 of the Partnership deed dated 15.12.2010, it is respondent No.3 who as managing partner, is incharge of the day-to-day affairs of the firm, including the managing and administration of the firm. The remaining partners are the working partners only entitled to monthly remuneration. Respondent No.3 being the managing partner was well within his rights to seek for renewal of licence and run the business.

6.3. that the partnership is not created by status of the parties but by contract and as such, Clause 7 of the Partnership Deed has to be given full effect to and therefore, the right of the managing partner being recognized, a working partner cannot impinge upon such right.

6.4. that the petitioner has been making use of legal proceedings only to harass respondent No.3



and to prevail upon respondent No.3 making payment of huge amounts to the petitioner.

6.5. On these grounds, he submits that the petition is completely malafide and does not require any interference.

7. Heard Sri.C.H.Jadhav, learned Senior Counsel for the petitioner and Sri.Pramod R., learned counsel for caveator/respondent No.3 and Smt.Jyothi Bhat, learned HCGP for respondents No.1 and 2 and perused the papers.

8. Though several arguments have been advanced on various aspects, more so as regards the disputes between both the parties and the litigations pending before the various forum, including the Civil Court, the short question that is required to be considered by this Court is as to whether once a suit for dissolution of a firm has been filed, can any of the partners continue the business of the firm?





9. A perusal of the prayer sought for in O.S.No.363/2020, which has been filed by respondent No.3, indicates that it is respondent No.3 who has sought for dissolution of the partnership firm between the plaintiff and defendant therein i.e., respondent No.3 and the petitioner respectively and for a permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property as also for a further injunction restraining the defendant from interfering with the affairs of the business of Marthanda Enterprises (Wines).
10. An Interlocutory Application under Order 39 Rules 1 and 2 of CPC having been filed as regards the interference with the aforesaid business, the same came to be rejected by the trial Court which rejection came to be confirmed by the 1<sup>st</sup> Appellate Court in M.A.No.20/2020.



11. Be that as it may, what is to be seen from the said plaint is that it is the respondent No.3 who has sought for dissolution of the firm. Once respondent No.3 himself seeks for dissolution of the firm, the question of respondent No.3 continuing business of the firm in my considered opinion would not arise. Once a suit for dissolution of firm is filed, the continuance of the firm is only for the purpose of recovery of any of the amounts which is due to the firm and for drawing up of the accounts. There would be no purpose which could be served by continuance of the firm by one of the partners when the suit for dissolution is pending. The matter would have been different if the petitioner had filed a suit for dissolution of the firm and respondent No.3 has sought for renewal of the licence. That is to say a person other than the plaintiff in a suit for dissolution were to seek for renewal of the licence.



12. In the present case, the plaintiff in a suit for dissolution of a firm, in my considered opinion, cannot seek for renewal of a licence and continuance of the business while the suit filed by him for dissolution of the partnership is pending. Hence, this particular fact ought to have been taken into consideration by respondent No.1 as also the KAT which has not been done.
13. Respondent No.1 has infact passed an order approving the renewal of the licence on the ground that the State Exchequer would suffer which cannot be a ground for renewal of the licence of a private party. The State cannot seek to try and protect its own interest of revenue when two of the partners are involved in litigation. The said observation made by the Excise Commissioner is completely untenable.
14. In view of the fact that suit for dissolution of the firm has been filed, at the most, after the dissolution takes place, it would have to be adjudicated by the



Court seized of O.S.No.363/2020 as to in whose favour the licence has to be transferred or to whose share it would fall. Until then, there would be no purpose in continuing the said licence or renewal of the licence.

15. As regards the contention of Sri. Pramod, learned counsel for respondent No.3 is that there is due compliance of Rule 5A inasmuch as one of the partners has made an application for extension and the same has been rightly considered. I am of the considered opinion that when a suit for dissolution filed by the very same applicant is pending, no application could be filed by such a partner for renewal.

16. In view of the above, I pass the following:

**ORDER**

- a. The Writ Petition is allowed.



- b. The licence in question bearing No.ES20200626675 issued in the name of Marthanda Enterprises by the respondent No.1 shall be kept in abeyance and no person shall be permitted to make use of the said licence pending the resolution of the suit in O.S.No.363/2020 by Civil Judge (Jr.Dn.) at Mandya.
- c. The order dated 08.12.2021 passed by the Karnataka Appellate Tribunal in Appeal No.337/2021 at Annexure-Q stands quashed.
- d. At this juncture, learned counsel for respondent No.3 submits that there are stocks at the shop where the business is being carried on and he may be granted four weeks' time to make sale of the said stock. He is so permitted. It is made clear that no fresh stock shall be ordered by respondent No.3 from any of the manufacturer, wholesalers, stockiest, distributors or otherwise and it is only the stock as on today which shall be sold. A statement of stock to be furnished to the respondent No.1 on or before 14.02.2023.

**Sd/-  
JUDGE**