

was no need for actually serving the respondent again. Accordingly, the service of the notices is dispensed with.

(2) The finding of the learned Additional District Judge is that the respondent was living in adultery with one Kala Masih and that there was no collusion between the husband and wife. Accordingly, the decree of dissolution of marriage by divorce granted by the Additional District Judge is confirmed.

R.N.R.

Before G. C. Mital, J.

SHARMA AND COMPANY,—Petitioner.

versus

UNION TERRITORY AND ANOTHER,—Respondents.

Civil Writ Petition No. 1820 of 1987.

July 19, 1988.

Punjab Excise Act (I of 1914)—Ss. 31 and 32—Punjab Liquor Licence Rules, 1956—Rl. 37 (29, 30 and 31)—Payment of excise duty—Duty paid at prevailing rates—Subsequent enhancement of excise duty—Demand of enhanced duty on duty paid stock—Validity of such demand.

Held, that once the excisable article is subjected to duty the item would lose the character of being subjected to a fresh or additional duty. Respondents were thus not justified in demanding the enhanced duty on the stock which remained unsold till the close of 31st March, 1986. The demand made is clearly illegal and beyond the authority of law.

(Paras 4 and 8).

Petition under Articles 226/227 of the Constitution of India praying that:—

(a) *A writ in the nature of certiorari or any other writ, order or direction appropriate in the circumstances of the case quashing the impugned orders, contained in annexures P. 2 and P. 3, be issued;*

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- (b) Any other relief to which the petitioner is found entitled to in the facts and circumstances of the case, may kindly be granted to the petitioner;
- (c) Filing of certified copies of the Annexures and issuance of prior notices to the respondents may kindly be exempted, and
- (d) The writ petition may kindly be allowed with costs.

It is further prayed that the respondents may kindly be restrained from recovering the enhanced duty from the petitioner during the pendency of the writ petition.

S. C. Kapoor, Advocate, for the Petitioner.

Ashok Bhan, Sr. Advocate with Ajay Kumar Mittal, Advocate, for the Respondents.

JUDGMENT

Gokal Chand Mital, J.

(1) Whether additional excise duty can be collected on the excisable items which were purchased on payment of the excise duty payable at that time, is the point for consideration in these writ petitions.

(2) The petitioners in this bunch of 18 writ petitions are either having L-1 licenses as whole-sale dealers of Indian made foreign liquor (hereinafter called 'IMFL') or L-2 licenses for retail sale of IMFL. Under Sections 31 and 32 of the Punjab Excise Act, 1914 (for short 'the Act'), as applicable to the Union Territory, Chandigarh, Rs. 22 were fixed as the excise duty payable per proof litre till 31st March, 1986. By notification Annexure P. 1 dated 27th March, 1986, the excise duty payable was enhanced from Rs. 22 to Rs. 27 per proof litre, payable with effect from 1st April, 1986. Under the scheme of the Act, a whole-sale dealer obtains duty paid permits from the Excise authorities of the district, which means that on the deposit of the necessary duty the permits are presented to the distillers, who release the necessary quantity of IMFL to L-1 licensee. From L-1 licensees, the retail dealers, who hold L-2 licenses, purchase the required liquor in turn for retail sale. L-2 dealers have not to pay duty once over again as the L-1 dealer after paying the

excise duty obtains the liquor and thereafter sells to the retail dealers.

(3) The Deputy Excise and Taxation Commissioner-cum-Collector, Union Territory, Chandigarh, issued memorandum dated 30th September, 1986, Annexure P. 2, calling upon the licensees to pay the excise duty on their opening stock of IMFL, with effect from 1st April, 1986, at the enhanced rate of Rs. 27 per proof litre, (that is, increase of Rs. 5 per proof litre), as on that stock they had paid excise duty at the rate of Rs. 22 per proof litre, the purchase having been made before that date. The dealers challenged the order by filing an appeal before the Excise and Taxation Commissioner, Chandigarh, but remained unsuccessful, as the same was dismissed,—vide order dated 23rd October, 1986, Annexure P. 3. The aforesaid orders separately passed in the case of each licensee have been challenged in the different writ petitions Nos. 3984 to 3995, 4006 to 4008, 4480 and 4701 and 1820 of 1987. Since they involve the common question of law, they are being disposed of by this common judgment.

(4) The licenses are granted for one year, starting from 1st April, until 31st March of the following year. We have decided two cases, one of the Supreme Court and the other of the Division Bench of this Court. They are reported in *State of Bombay v. M/s S. S. Miranda Limited* (1), and *M/s. Bhajan Lal Saran Singh and Company v. The State of Punjab* (2). The facts in *S. S. Miranda's case* (suara) were thpt during the currency of the license, which was from April to March, on 16th December, 1948 a notification was issued, whereby the duty on foreign liquor was doubled and thereupon the licensee was called upon to pay the additional duty upon the liquor which was still lying in its godowns un-sold, although it was purchased by the licensee long before after paying the excise duty payable at the time of initial purchase. After referring to various provisions of the Bombay Act, the decision of the Bombay High Court was upheld that the licensee was not liable to pay the additional duty. The aforesaid decision was relied upon by a Division Bench of this Court in *Bhajan Lal Saran Singh's case* (supra). The following passage deserves to be reproduced:

“.....In *State of Bombay v. M/s. S. S. Miranda Limited Mazagoan* it was held that once an excise duty has been

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- (1) A.I.R. 1960 S.C. 898.
 - (2) 1967 Curr. L.J. 460.

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paid, in respect of certain goods, an additional amount as excise duty would not be recoverable in respect of the same goods merely on the ground that the rate of duty has subsequently been enhanced. Their Lordships observed that they could not see an excisable article which had been subjected to duty one would be liable to further duty nor to the difference in case of increase in the rate. Applying the same principles to the instant case it appears that once excise duty known as still-head duty had been levied in respect of the stock lifted by the wholesaler from the bonded warehouse or from the manufacturer of the liquor as the case may be the relationship of the said duty with the manufacture, or production of the liquor had come to an end, and in that event, it would be for the wholesaler to recoup himself to the extent of the excise duty paid by him by including the same in the price to be charged by him, but the said item would lose the character of an excise duty and would cease to be leviable as such by the State."

The aforesaid quotation clearly goes to show that once the excisable article is subjected to duty, the item would lose the character of being subjected to fresh or additional duty and the aforesaid reasoning applies to the case in hand.

(5) In S. S. Miranda's case (*supra*), the excise duty was enhanced during the currency of the excise year, whereas in the present case the excise duty was enhanced after close of the year. This matter was put to the learned counsel for the parties to show if it would make any difference. On the adjourned hearing, the learned counsel appearing for the respondents was not able to show if it would make any difference. He referred to sub-rules 29, 30 and 31 of Rule 37 of the Punjab Liquor License Rules, 1956 (for short the 1958 Rules). Sub-rule 29 of the Rules provides that if a person who is also the licensee has intoxicant in his possession on the expiry or determination of the license, which he is unable to dispose of, he shall at once surrender the same to the Collector, and the Collector may make over the same to the incoming licensee. Sub-rule 30 provides that the licensee to whom such intoxicant is made over shall be bound to pay such price, as may be determined by the Collector, keeping in view the actual amount spent thereon or prevailing market price. Sub-rule 31 provides that the Collector shall tender

the price so paid to the outgoing licensee by whom the intoxicant was surrendered after deducting therefrom the amount of fee, duty or penalty, if any, recoverable from the licensee. These sub-rules do not help the respondents. Rather they support the case of the licensee. Assuming for the sake of arguments, that the licences in these cases ceased on 31st March, 1986, the un-sold stock lying with them on 1st April, 1986 had to be given over to Collector, who was to make over the same to the new licensee and after collecting the actual price or the prevailing market price from him/them, was to pay the same to the outgoing licensee. Therefore, the enhancement of excise duty, which came into force, with effect from 1st April, 1986, had no effect.

(6) In the cases before me all the licensees have contained as fresh licensees with effect from 1st April, 1986 onwards. Therefore, sub-rules 29 to 31 of Rule 37 of the Rules, do not apply, and the licensees will continue to hold the stock under the fresh licenses and dispose of the goods in accordance with the Rules. This is the additional reason why the licensees cannot be called upon to make good the difference in the excise duty.

(7) It was also mentioned during arguments that during 1986-87 the excise duty was at the rate of Rs. 27 per proof litre, which for the year 1987-88 was enhanced to Rs. 29 per proof litre and for the current year, that is, 1988-89, it has been reduced to Rs. 26 per proof litre, and most of the petitioners continued to be the licensees. For the stocks which were lying with the petitioners on the date the duty was reduced, no refund has been allowed to them. It was argued by the learned counsel for the petitioners that in case State is entitled to collect the enhanced duty, similarly it should be duty bound to return the amount because of the reduction of excise duty, if it was so provided by law. It is on these premises argued that whether enhancement or reduction took place, neither the additional duty is chargeable nor refundable in the either event.

(8) In view of the aforesaid reasons, it is held that the respondents were not justified in demanding the enhanced duty on the stock, which remained un-sold till the close of 31st March, 1986, neither in view of the above cited judgments nor under the sub-rules, referred to above, and the demand made is clearly illegal and beyond the authority of law.

(9) For the reasons recorded above, all the civil writ petitions are allowed and the order of the Deputy Excise and Taxation

**Harbans Lal and others v. Central Bank of India and others
(J. S. Sekhon, J.)**

Commissioner-cum-Collector, U.T. Chandigarh, which was upheld in appeal, by the Excise and Taxation Commissioner, Chandigarh, are hereby quashed leaving the parties to bear their own costs.

S.C.K.

Before J. S. Sekhon, J.

HARBANS LAL AND OTHERS,—Petitioners.

versus

CENTRAL BANK OF INDIA AND OTHERS,—Respondents.

Civil Revision No. 1204 of 1988 and Civil Misc. No. 2225/2227-CII of 1988.

September 5, 1988.

Code of Civil Procedure (V of 1908)—Order 1, Rl. 10—Suit by bank for recovery by sale of mortgaged property—Defendant agreeing to sell mortgaged property in favour of third party—Third party undertaking to pay the bank dues—Application by third party for being impleaded as party to the suit—Validity of such claim.

*Held, that the provisions of sub-rule (2) of rule 10 of Order 1 of the Civil Procedure Code, 1908 are clear enough to conclude that an addition of a party to a suit cannot be allowed unless such party is a necessary party or if the controversy in issue cannot be effectively and completely decided without impleading such party. It is also well settled law that the plaintiff is the *dominus litis*, i.e. master of the suit and he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief. In the case in hand, the plaintiff-Bank had not at all claimed any relief against the present petitioner. The petitioners cannot be said to be necessary party to the suit as they had simply entered into an agreement after the institution of the suit with the original debtor of the Bank to purchase the property in dispute which is admittedly under simple mortgage with the plaintiff Bank.*

(Para 6)

Petition under Section 115 C.P.C. for the revision of the Order of the Court of Shri Surinder Gupta, Sub Judge, Amritsar dated 29th January, 1988 declining the application and further order to come up on 26th February, 1988 for replication and issues.

CIVIL MISC. NO 2225/C. II of 1988

Application under order 41 Rule 27 read with Section 151 C.P.C. praying that this Hon'ble Court may be pleased to allow to place on