(1985) 03 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil First Appeal No. 190 of 1974

Ajaib Singh and Co. APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 02-03-1985

Acts Referred:

Citation : (1985) WLN 66

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Lodha, J.—M/s. Ajaib Singh and Company has filed this appeal after an unsuccessful attempt to get decree from the trial court against the State of Rajasthan. The plaintiffs case is that they are a partnership firm and they took contract of country liquor of Sadulshahar for the year 1969-70 & deposited a security amount of Rs. 33,980/-. The plaintiffs case is that while the amount of Rs. 33,980/- was lying in the deposit in the last month, the defendant failed to issue liquor on the ground that it has no bottles for the purpose. The plaintiffs case is that the State was entitled to supply liquor in its own bottles. The State denied the allegations that there was any fault of the defendant, so the liquor was not supplied The State''s case was that the plaintiff did not draw the liquor and they committed the default.

2. After framing of the issues and recording of the evidence, the trial court came to the conclusion that Issue No. 2 is the main issue, which was decided against the plaintiff. It was held that the statement of Ramnath plaintiff, stands rebutted by that of Amar Jeet Singh, PW 1, A.E.O.

3. Mr. Parekh, learned counsel for the appellant, has submitted that there is no written statement that the plaintiff was required to deposit the amount in the Ganganagar Sugar Mills of the bottles and then to show the challan for the same for getting an order of issue of liquor. I have perused the statements of the

plaintiff and the defendants officer and also relevant documents.

4. It is obvious from the pleading that the evidence did not lead that the plaintiff did not pay the amount of the bottles to the Ganganagar Sugar Mills, a case which has been set up in the evidence.

5. All that has been stated in reply to para No 6, is that it was duty of the defendant to supply empty bottles. On the contrary, it shows that the defendants officer has taken the plea that the bottles were used to supply by the Ganganagar Sugar Mills, but the amount was required to be paid for the same. Obviously, the two are inconsistent.

6. In the face of the plaintiff''s evidence that the amount of the balance was deposited along with the sales tax and the copies of the challan. which have been produced it is clear that the plaintiff wanted to take the liquor. It was the last month and therefore, instalment was to be adjusted as held in the earlier decision in Hazari Lal and Company v. State of Rajasthan and Ors..

7. In view of the above fact, the evidence of the Assistant Excise Officer that since he has been transferred long back, it is difficult for him to mention whether there was entry in the stock register showing the availability of the liquor and whether the bottles were available or not cannot be positively replied, assumes importance.

8. The plaintiff has paid the entire amount and further in order to supplement the last instalment, additional amount was also deposited by the appellant. This is important to note that this challan was presented after the Excise Inspector has signed it and this challan is further accompanied by sales tax challan. Ex. 3 (c), the cash challan, signed by the Excise Inspector proved by the plaintiff depositing Rs. 2124/- the balance of the amount of the instalment in 26-3-70 and Ex.4(c) is the sales tax challan of Rs. 265.50 for payment of sales tax on this amount. The defendant has not produced any evidence from the Ganganagar Sugar Mills where the Assistant Excise Inspector states that bottles were available and payment was required to be made separately before issue of the bottles.

9. In view of the above important features of the case, the judgment of trial court appears to be perfunctory as it only shows that there is no reason to disbelieve the Assistant Excise Officer and believe the plaintiff. No reason whatsoever has been given

10. I am, therefore, of the opinion that the finding of the trial court on this important ground deserves to be reserved and plaintiff is liable to be decreed for the principal amount of Rs. 33,980/- plus the amount deposited, which is Rs. 2,124/- plus 265.50, total being an amount of Rs. 36,369.50/-.

11. In the facts and circumstances of the case, I am not inclined to allow any interest. The defendant should pay the decretal amount within a period of three months from today, In case it fails, the future interest at the rate of 6% would be

allowed against the defendant to the plaintiff. The plaintiff would get the cost of both the courts.

