

(1985) 04 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil First Appeal No. 191 of 1974

Bhagirath and Company

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

Citation : (1985) WLN 34

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—The plaintiff M/s. Bhagirath and Company has filed this appeal against the dismissal of the suit by the District Judge, Sri Ganganagar. The plaintiff is excise contractor, who took licence of 1969-70 for Rs. 2,29,440/- from the defendant. In terms of this licence, an amount of Rs. 19,120/- was deposited as security. The plaintiff's case is that on 28-3-70, the plaintiff deposited Rs. 2,730/- as sales tax and Rs. 1719.56/- as excise duty, but even then the liquor was not issued on the ground that bottles were not available. He has, therefore, claimed the refund.

2. The defendant has denied the allegations and the case of the defendant is that the default was of the plaintiff. According to the defendant, it was not responsibility of the defendant to supply the bottles.

3. After framing of the issues, the trial court has dismissed the suit.

4. The strange and curious feature of the case is that the plaintiff has not led evidence at all.

5. Issue No. 2 is the most important issue which reads as under:

2. Whether the defendant failed to supply liquor according to the conditions of the licence and what is its effect ?

The plaintiff accepted this burden without any demur or protest and failed to get the Commissioner appointed for examination of the plaintiff on oath. When the plaintiff was not made available to the Commissioner, the Commissioner reported that the plaintiff is not available for recording of evidence.

6. The undisputed position in the case is that neither the plaintiff nor the defendant had led any evidence. It is also undisputed that the burden was placed on the plaintiff of issue No. 2 and the plaintiff never moved any application for changing of the burden. Contrary to it, the plaintiff had led evidence. But the Commissioner's report is that plaintiff was not available and evidence was closed.

7. In view of the above fact, it is too late to argue that the burden should have been on the defendant to show that, the plaintiff was liable for the defendant.

8. The present one is a case of no evidence.

9. Mr. H.M. Parekh argued that the defendant has produced the case diary dated 28-3-70. On the back of which, there appears an endorsement signed by R C Sharma and P.C. Sharma that bottles are not available. According to this document, Mr. H.M. Parekh submits that since it is a signed document and defendant is bound by it and, therefore, the burden, if any, stands discharged.

10. The present one is a case where neither the plaintiff nor the defendant produced any oral evidence. So far as these documents are concerned, the plaintiff never thought it proper to admit them. In the absence of any evidence, it is difficult to appreciate the nature of the document and since the burden was on the plaintiff and it was required to examine the defendant and state that it was the defendant, who was at fault for non-supply of the liquor. Since it has not been done, I am unable to reverse the finding of the trial court on Issue No. 2.

11. In view of the complete absence of evidence, I would not like to enter into academic discussion, regarding the requirement of supply of empty bottles or price on those bottles or any other event that might have happened in this transaction. The plaintiff thanks his stars himself for not coming in evidence.

12. The result of the above discussion is that appeal fails and it is hereby dismissed with costs.