(1975) 11 RAJ CK 0013

In the Rajasthan High Court

Case No : First Appeal No. 144 of 1973

Bhanwarlal APPELLANT

Vs

The State and Others RESPONDENT

Date of Decision : 06-11-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Limitation Act, 1963 — Article 113, 13

Citation : AIR 1976 Raj 125 : (1975) WLN 649

Hon'ble Judges : V.P. Tyagi, C.J

Bench : Single Bench

Advocate : S.K. Mal Lodha and Rajendra Lodha, for the Appellant; D.S. Shishodia, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Tyagi, C.J.—This is plaintiff''s first appeal against the judgment and decree of the learned Additional District Judge No. 1, Jodhpur, dismissing the plaintiff''s suit for the recovery of Rupees 16,620.41 p.

2. The facts giving rise to this litigation are in a nutshell as follows: The plaintiff obtained a licence for the retail sale of the country liquor for Panna Niwas shop in the town of Jodhpur. The period of the licence was to commence from August 4, 1962 and was to end on March 31, 1963. The licence was issued by the excise authorities under the guarantee system evolved under the rules made under the Rajasthan Excise Act. Under the terms of the licence, the plaintiff had to lift the country liquor from the State godown worth Rs. 1,01,802.00 The State was to realise the issue price from the plaintiff for delivering the country liquor which may be in force up to March 31. 1963. It is said that in pursuance of the terms of the licence, the plaintiff lifted liquor valued at Rupees 77,654.99 p. It is further said that the plaintiff deposited Rs. 24,147.01 p. for lifting the balance of the liquor to be supplied to him under the licence but the State Government failed to deliver that liquor to the plaintiff because it had no stock of liquor in its godown.

It is further averred that the plaintiff was required to deposit Rs. 1,608.90 p. more as a difference in ,issue price. Thus, the liquor worth Rs. 25,827.91 p. could not be delivered by the excise department and the money remained deposited with the department. The plaintiff demanded the refund of this amount of Rs. 25,827.91 p. but it is alleged that in spite of the repeated requests made by the plaintiff, the department did not decide for the refund of the said amount. According to the averments made in the plaint, the department vide its order No. Ex/GU/69 dated nil informed the appellant plaintiff that he is entitled for the refund of Rs. 11,326/- only and the rest of his claim was rejected. This letter was received by the plaintiff on 21-12-1969. After the receipt of this letter, a notice was issued u/s 80, Civil Procedure Code, to the defendant State and thereafter the present suit was filed for the refund of Rs. 16,620.41 p. alleging that the cause of action to file this suit arose on the date when the State Government through its officer decided to refund Rs. 11,326.00 on 21-12-1969. The plaintiff claimed interest pendente lite and future interest on this amount of Rs. 16,620.41 p.

3. The State Government filed its written statement alleging that the State had the stock to deliver the liquor to the plaintiff in accordance with the terms of the licence but the plaintiff could not manage the sale of the country liquor according to the terms of the contract and therefore the plaintiff himself failed to lift the liquor from the State godown as per the terms of the licence. It was however admitted that the plaintiff came to take the delivery of the liquor for the remaining guarantee as late as on 30-3-1963. According to the averments made in the written statement, the State had the stock at its Mandore distillery but the plaintiff deliberately avoided to take the delivery of the liquor and thus he committed the breach of the contract and the defendants were therefore entitled to retain the amount of the guarantee money for which the plaintiff failed to lift the liquor. A plea was also taken that the suit was barred by time.

4. Various issues were framed by the trial court but the suit was dismissed on the ground of limitation. It is against this judgment that the plaintiff has come In appeal before this Court.

5. I need not go into the merits of the issues which do not relate to the question of limitation because the arguments have centered round one question which resulted in the dismissal of the plaintiff''s suit viz., the question of limitation.

6. According to the learned counsel for the plaintiff, the cause of action arose in this case on 21-12-1969 when order No. Ex/GU/69/1233 endorsed on 21st of December, 1969, was delivered to the plaintiff signifying that the plaintiff was entitled to the refund of Rs. 11,326/- only. According to the learned counsel for the plaintiff, the suit is governed by Article 113 of the Limitation Act which prescribes the limitation of six years for filing of the suit from the date the cause of action arises. The suit was filed on 15-10-1971. On this basis, it is vehemently argued by the learned counsel for the appellant that the suit was within time and the court below has erred in declaring it time barred.

7. On the contrary, learned counsel for the State urged that the term of the licence expired on March 31, 1963 and if the plaintiff thought that he was entitled for the refund of the money that was deposited by him for the purchase of the liquor from the State godown, then the cause of action for the refund of that amount arose from April 1, 1963, when it became due to the plaintiff after the expiry of the term of licence and therefore the time started for filing of the suit from 1st of April, 1963. According to Mr. Shishodia, it is Article 13 that would govern the suit and not Article 113.

8. These facts are not disputed that the term of the contract expired on the 31st of March, 1963 and thereafter the plaintiff was not entitled to obtain liquor under the licence granted to him from the State for the retail sale of country liquor on the shop which was allotted to the plaintiff. It is also admitted by the parties that the entire amount of guarantee under the licence was deposited by the plaintiff before 31-3-1963. There is however difference between the parties on this question whether the liquor was available for sale at the godown of the State, and that it was on account of the fault on the part of the plaintiff that the liquor under the guarantee system could not be lifted by him and therefore the plaintiff was not entitled to claim any refund from the State Government. In my opinion this question does not arise in order to determine the question of limitation--whether how much amount could be claimed by the plaintiff from the State for not supplying the liquor in time because after 31-3-1963, neither the plaintiff could claim the delivery of liquor nor was the State bound to supply the liquor under the contract. The question that arises for the determination of this Court is whether the amount that was claimed as a refund by the plaintiff became due from the State after the term of the contract had expired or whether the amount could become due only on condition when the State decided the representation dated 28-12-1965 and subsequent reminders given on 16-1-1969 and 31-1-1969.

9. It is not disputed that the plaintiff had to deposit the guarantee money before the term of the licence expired and that the plaintiff could purchase liquor under the licence only up to March 31, 1963. If, for one reason or the other, the plaintiff had deposited the guarantee money and could not take the delivery of the requisite quantity of liquor from the State either because of the fault of the State or because of his own fault, the question is, whether the plaintiff could claim the refund thereof after March 31, 1963 or not. The licence has not been brought on the record either by the plaintiff or by the defendant. In the absence of the licence, the terms thereof cannot be determined and it cannot be said with any justification that under the terms of the licence the plaintiff was entitled to get the refund only after his representation had been disposed of by the authorities of the excise department. There is nothing on the record to show that the refund could be claimed by the plaintiff only after he obtained the denial from the State Government. The right to refund, if any, accrued to the plaintiff after the expiry of the terms of the licence that is, after 31-3-1963 and as soon as the plaintiff was entitled to claim the refund, the cause of action arose simultaneously.

10. According to Mr. Lodha, Article 113 of the Limitation Act would be applicable to this case whereunder the limitation of three years has been prescribed and the suit must be brought within three years when the right to sue accrued to the plaintiff. According to learned Additional Government Advocate, Article 13 would be the proper article which would be applicable to this case. Article 13 reads as follows,--

"13 For the balance of money advanced in payment of goods to be delivered Three years When the goods ought to be delivered,"

This article is a specific article for the refund of the balance of money advanced in payment of goods to be delivered, When there is a specific provision in the Limitation Act, which governs the case, then the residuary Article 113 cannot be made applicable to that case. In my opinion, it is Article 13 that is a proper article which must be made applicable to this case and therefore the period of limitation of three years must be counted from the date when the goods were not delivered to the plaintiff by the State Government. In the present case, as discussed above, the plaintiff had a right to lift the liquor up to 31-3-1963 and therefore it shall be deemed that the goods were not delivered to him during the period of the licence which ended on 31-3-1963 and therefore, the cause of action arose to the plaintiff to file a suit for the refund of the balance of money which was advanced by him to the State Government for the purchase of the liquor when the delivery was refused or could not be made to the plaintiff. Therefore, under these circumstances, a time of three years shall start running from 31-3-1963 and not from the date when the government decided the representation of the plaintiff.

11. It is true that the government took a very long period to decide the claim of refund to the plaintiff but that does not give any right to the plaintiff to say that he could wait till the government decided his representation and the time would start for filing of the suit only from the date the decision was made by the government on the representation made by the plaintiff to it. This argument that the plaintiff had a right to wait till his representation was disposed of by the government, would make the position very anomalous if the government never decides the plaintiff''s representation. In such event, the time to file a suit for the recovery of the price already advanced against which he could not claim the delivery of the liquor would run from the date when he lost his right to demand the delivery of the liquor against the price deposited by him for one reason or the other under the licence.

12. Learned counsel for the appellant in support of his argument that Article 113 would govern his case, relied on Sardar Man Mohan Singh Nagpal Vs. Government of Rajasthan, State of Bihar and Another Vs. Motilal Chamaria and Another, AIR 1930 270 (Privy Council) and AIR 1931 9 (Privy Council) The facts of these decisions have no bearing on the facts and circumstances of the present case and therefore the law that has been laid down in these authorities cannot be of any avail to the plaintiff to sustain his claim of refund after the period of

limitation had expired.

13. For the reasons mentioned above, I do not find any life in this appeal which is dismissed with costs.

