

(1975) 08 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil 2nd Appeal No. 245 of 1967

Dalichand

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-08-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, 100, 101
Contract Act, 1872 — Section 128, 133, 137, 139
Rajasthan Public Demands Recovery Act, 1952 — Section 3, 4, 8(3)

Citation : AIR 1976 Raj 112 : (1975) RLW 452 : (1975) WLN 454

Hon'ble Judges : S.N. Modi, J

Bench : Single Bench

Advocate : N.M. Lodha and I.J. Lodha, for the Appellant; M.R. Bhansali, Asst. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Modi, J.—This is a plaintiff's appeal against the judgment and decree of the District Judge, Partapganh, dated 30-3-67 whereby he reversed the decree passed by the Civil Judge, Banswara, in civil suit No. 4 of 1963.

2. The relevant facts giving rise to this appeal are these:

In pursuance of an advertisement dated 1-3-52 (Ex. 1/A) issued by the Excise and Customs Department. Rajasthan, licence for the sale of the liquor shop at village Bajar, tehsil Bagidiora, district Banswara for the year 1952-53 was auctioned on 17-3-52 in the office of the Deputy Commissioner, Excise and Customs, Udaipur Division, Udaipur. Raghavji son of Chokhaji and Bhimji son of Kacharu jointly gave the highest bid of Rs. 20,000 for the said liquor shop which was accepted. The bidders deposited one-sixth amount of the bid, namely, Rs. 3,330 according to the term No. 8 of the advertisement (Ex. 1/A) and obtained a receipt thereof on 25-3-52. The licence Ex. Z was issued in favour of the bidders, namely, Raghavji and Bhimji on 24-5-52. It being necessary under the terms and conditions of the licence to furnish security for the due performance of the

contract, the plaintiff stood surety for the payment at all dues payable to the State under the terms and conditions of the licence Ex. 2 and the advertisement Ex. 1/A. The surety-bond executed by the plaintiff-appellant is Ex. 1, Under the terms and conditions of the licence, the licencees, namely, Raghavji and Bhimji were required to deposit the balance of the licence amount in ten monthly instalments. The licencees paid monthly instalments upto a certain period but thereafter committed defaults with the result that a sum of Rs. 10,006 remained outstanding against the licencees Raghavji and Bhimil The licence period expired on 31-3-53. On 19-4-53 the Assistant Commissioner, Excise, and Customs, Banswara. sent a notice to the plaintiff calling upon him to deposit the amount due from the licencees. On failure of the plaintiff to deposit the amount, the Assistant Commissioner initiated action under the provisions of the Rajasthan Public Demands Recovery Act, 1952, hereinafter called as the Act, and issued a certificate of requisition to the Collector, Banswara for realisation of the amount of Rs. 10,006 from the plaintiff as well as from the licencees Raghavji and Bhimji. The Collector, Banswara, in his turn, issued notice Ex. 4 on 9-12-53 informing the plaintiff that the certificate for Rupees 10,006 had been filed against him in his office and he should therefore either file an objection petition denying his liability within 30 days from the receipt of the notice or deposit the amount in the treasury failing which the certificate shall be executed and the amount recovered under the provisions of the Act. Along with the notice, the Collector, Banswara, also sent a copy of the certificate which is Ex. 5 on the record. The plaintiff in response to the notice Ex. 4 submitted an objection petition Ex. A/6 denying his liability on 5-1-54. It appears that this objection petition was sent to the Sub-Divisional Officer, Banswara, for disposal. It further appears that on 18-2-54 the plaintiff moved another similar objection petition to the Collector with a request that his objection petition should be first decided by the Requisition Officer, namely, the Assistant Commissioner, Excise and Customs, Banswara. It further appears that the application dated 18-2-54 was sent by the Collector to the Assistant Commissioner, Excise and Customs, Banswara, who rejected the same vide his order dated 16-7-54 (Ex. A/11). The Assistant Commissioner thereafter realised a sum of Rs. 1,048 from the property of Raghavji and Bhimji. The objection petition dated 5-1-54 was then decided by the Sub-Divisional Officer who, it appears, rejected the same on 19-8-59 and ordered the Tehsildar to recover the amount of Rs. 8,958 from the plaintiff. The plaintiff then preferred an appeal to the Revenue Appellate Authority, Udaipur, challenging the legality of the order of the Sub-Divisional Officer dated: 19-8-59. The R.A.A. dismissed the appeal vide his order dated 22-6-60 (Ex 6). Ultimately, the plaintiff gave a notice u/s 80, C.P.C. and instituted a suit out of which this appeal has arisen, claiming the following reliefs against the State of Rajasthan and the Assistant Commissioner, Excise and Taxation, Banswara, formerly known as Assistant Commissioner, Excise and Customs, Banswara:---

1. That certificate No. 1 dated 9-12-53 issued against the plaintiff for the realisation of Rs. 10,006 be declared null and void and ineffective against the

plaintiff and it be cancelled.

2. That the requisition certificate sent by the defendant No. 2 to the Collector, Banswara, being illegal, be declared as void and ineffective.

3. That since the defendants have not acted in accordance with the provisions of the Act, the proceedings initiated for the realisation of the amount be declared illegal.

4. That since the defendant No. 2 has violated the terms and conditions of the licence No. 83 and advertisement dated 1-3-52. the plaintiff be discharged from the entire liability.

5. That the disputed recovery be declared as not falling within the purview of the Act

3. The suit was resisted by the defendants. The defendants asserted that the certificate for the recovery of the amount was legally issued against the plaintiff and he is liable to pay the amount mentioned therein under the terms and conditions of the surety-bond executed by him. The various pleas raised by the plaintiff in his plaint and the defendants in their written statement would be clear from the following issues framed by the trial court: --

"1. Was it incumbent on the Government to re-auction the shop (theka) on the non-payment of the monthly instalments by the licencees in time and also to stop the issue of liquor?

2. Was the security deed dated 19-5-52 Ex. A/1 executed by the plaintiff?

3. Was the licencee Baghayji allowed to bid at the auction of the liquor shop at Lankayi in spite of the breach of the terms of the licence by him?

4. In case issue No. 3 goes for the plaintiff, were the defendants free to act as they did?

5. Was it not necessary to inform, the surety of the violations of the terms of the licence, if at all, within reasonable time?

6. Is it necessary under the Public Demands Recovery Act that the requisition certificate be signed by the Head of the Department and if not signed, is certificate invalid?

7. Is it illegal to issue A joint requisition certificate under the P.D.R. Act?

8. Had not all the means of realising State dues from Raghavji Bhimji been exhausted and is therefore the certificate invalid?

9. Is the requisition certificate not signed by the competent authority and therefore invalid?

10. Does the notice issued by the Collector, Banswara and the certificate No. 1 dated 9-12-53 not contain full particulars?

11. Was it mandatory to consider the objection petition of the plaintiff u/s 8(3) if the Public Demands Recovery Act and was it not heard accordingly?
12. Is the licence No. 83 signed by Shri R.S. Kothari unauthoritatively signed and cannot any realisation thereunder therefore be made from the plaintiff?
13. Cannot the defendants realise the amount in question under the P.D.R. Act?
14. Is the plaintiff not liable to pay the amount in question in view of the defendants not informing him of the nonpayment of the instalments in time?
15. Is the notice u/s 80, C.P.C. given by the plaintiff valid? 16. Is the suit time-barred?
17. Is the court-fee paid not sufficient?
18. To what relief is the plaintiff entitled?"

The trial court on consideration of the evidence led by the parties decided issues Nos. 1, 3, 5, 8, 11, 14, 15, 16 and 17 in favour of the plaintiff and the remaining issues, namely, Nos. 2, 4, 6, 7, 9, 10, 12 and 13 against the plaintiff. In the result, the trial court decreed the suit. On appeal by the defendants, the learned District Judge set aside the decree passed by the trial court and dismissed the suit. Hence this second appeal by the plaintiff.

4. Mr. Lodha, the learned advocate for the plaintiff, has urged the following points before me:--

1. That the liability of the plaintiff as surety was discharged when the State acted in violation of the terms of the licence and the advertisement by not cancelling the licence of the licencees and re-auctioning the same on non-payment of the monthly instalments within the prescribed time by the licencees.
2. That the certificate Ex. 5 issued by the Collector, Banswara, against the plaintiff is vague inasmuch as it does not disclose the period for which the demand is due.
3. That the requisition for recovery sent to the Collector was invalid as it was signed and sent by the Assistant Commissioner. Excise and Customs, Banswara, who was not the Head of the Department and therefore had no authority u/s 3 of the Act to send requisition for recovery of the amount from the plaintiff.
4. That the requisition for recovery was also invalid on the ground of its being a joint requisition against the licencees and the surety.
5. That the Sub-Divisional Officer, Banswara, had no jurisdiction to decide the objection petition filed by the plaintiff u/s 8 (3) of the Act.
5. So far as the first point is concerned, it is a fact that under the terms and conditions of the licence Ex. 2 and the advertisement Ex. 1/A the State had the right to cancel the licence and re-auction it on the failure of the licencees to

deposit monthly instalments within the prescribed time, that is, at the end of the month. It is further not in dispute that in spite of the defaults in the payment of the monthly instalments by the licencees, the State did not cancel the licence or re-auction the sale or inform the surety about the defaults committed by the licencees. The question that arises for consideration is whether the surety stood discharged on account of the failure of the State to cancel the licence and re-auction the same on the defaults committed by the licencees in not making payment of monthly instalments as per terms and conditions of the licence or the advertisement. In this connection, it would be desirable to quote in extenso the surety or guarantee-bond executed by the plaintiff. It is Ex. 1 on the record and reads as under:--

^^tekur ukek**

;g tekur&ukek vkt rkjh[k 16&5&52 dks eSa nyhpUn oYn dk:ath tkfr dyky lkfdu oklokMk rglhy oklokMk ftyk oklokMk fMohtu mn;iqj jktLFkku Jheku dfe"uj lk-dLVEI vkcdkjh dh Isok esa is"k djrk gwa A

dLVEI vkcdkjh fpHkkx ls [knkZ Qjks"kh "kjk] cktkj nqdku dk ykblsUI uEcj 83 fMohtu mn;iqj ftyk oklokMk rglhy okxhnsjk ds ekStk cktkj ds && eqgYys esa ykblasl esa ntZ "kqnk "krksZ ij :- 20]000? :i;ksa esa rkjha[k 1&4&52 ls rkjk[k 31&3&53 rd ds fy, Jh jk?koth oYn pks[kk Hktheth oYn dp: tkfr dyky lkfdu vkSlu lk-lkfy;k rglhy okxhnsjk ftyk oklokMk fMohtu mn;iqj dks fn;k x;k gS A tks fd vc ykblsUlnkj fy[kk tkosxk vkSj gLc "kjk;r ykblsUlnkj jk?koth o Hktheth us ?ij fyf[kr ykblsUI Qhl dk :- 3330? :i;s rkjh[k 25&3&52 dks tek djf fn;k gS o ftldh jlhn ua-964 mlus ,fILVUV dfe"uj ftyk esa gkfly dj yh gS A

vc bl ykblsUlnkj dh ykblsUI Qhl dh cdk;k 10 fdLr gLc "kjk;r eqUnts ykblsUI p<h gqbZ fdLrksa dk O;kt o ykblsUI dh "kjk;r dh f[kykQ nthZ djusdh otg ls tks tqekZuk is"kxh tek djf;s gqbZ jde ls olwy gksus ds ckn tks cdk;k jgs o vkSj dksbZ fdLr dks cdk;k jde bl ykblsUI ds eqrkfyd tks egdes ?dLVEI o vcdkjh? dh rjQ ls crkbZ tkos tek djkuh gS A ,slh cdk;k jde ykblsUlnkj vt [kqn gLc "kjk;r eqUntsZ ykblsUI tek djosxk] vkSj vxj oks eqdjika fe;kn esa tek ugha djkosxk ;k ykblsUlnkj dh e`R;q gks tkus ls ;k fdLh fnxj otg ls ykblsUlnkj dh rjQ jde tek u gks lds o ljdkjh ckdh jg tkos rks eSa fcuk fdLh mtz ds dqy jde e; O;kt ftldh eq>s fyf[kr bfryk dLVEI o vkcdkjh egdEg ls nh tkus ij QkSju bfryk feyus dh rkjh[k ls 1 ekg ds vUnj 2 ,fILVsUV dfe"uj dLVEI o vkcdkjh cklokMk ds [ktkus esa ;k nhxj txg tgka ds fy, eq>ss tek djkus dh fgkn;r dha tkosxh] tek djf nqaxk A vxj bl vok/k esa tek ugha djf ldwa ;k tek dh jlhn uEcj e; rkjh[k ls tek djkusds gqDe nsus okys vQlj dks fyf[kr bfryk is"k ugha dj ldwa rks jkT; dks iw.kZ vf/kdkj gS fd eq>s fcuk uksfVI fn, bl ykblsUlnkj eSa cdk;k jde e; O;kt dh esjs ls o esjh py o vapy lEifr ls olwyh ckcr dkuwuh dk;Zokgh mlh izdkj dh tk ldsxh ftl izdkj dh jktLFkku jkT; dh cdk;k jde olwy djus ckcr jkLFkku ;k mlesa lEefyr gksus okyh fj;klrks esa izpfyr dkuwu o rjhdk gks] o ,slh jde esjs okfjiku ls Hkh olwy gks ldsxh] vkSj esjs dks dksbZ mtz djus dk gd ugha gksxk A

eSa ykblsUlnkj dks tkurk gwa A bl tekur ds etewu dks i< dj le> fy;k gS o "kjk;r

ykblsUI ls dSfQ;r gkfly dj yh gS o eSaus viuh ftEesnkjh iw.kZ :ils le> yh gS A

Qdr

nk% jk?koth pkS[kk] nyhpUn

gLrk{kj ykblsUlnkj} gLrk{kj tkfeu

16&5&52 rkjh[k 16&5&52

Again, the relevant clauses of the licence Ex. 2 and the advertisement Ex. 1/A on which reliance has been placed run as under:--

Clause 1 of the licence:

1? ykblsUlnkj us mij ntZ "kqnk Bsds dh jde dk vk/kk fgLIk A NBk fgLIk is"kxh 31 ekpZ lu 1952 ds igys tek dj k fn;k gS A cdk;k jde 2A10 fgLIksa esa gj eghus dh 5 rkjh[k rd vkxk? vius gYds ds os;j gk?l ok ,fLVsUV dfe"uj dLVEI vkcdkj dks [ktkus esa fcyk ukxk tik djkuh gksxh ojuk C;kt 1? :- izfr lsdMk ekgokj rk- 5 ds ckn p<h gqbZ fdLr ij pkyw gksxk A vyc?kk Bsds dh jde vxj 100? :- ;k 100? :- ls de gksxh rks vk/kh jde tks ckdh jg xbZ gks mldh dsoy 2 fdLrs gksxh vkSj igyh fdLr rk- 5 vizSy lu 52 rd tek djkuh gksxh o nqljh fdLr rk- 5 vDVwcj lu 52 rd tek djkuh gksxh ojuk mijksDr C;kt pkyw gks tk;sxk A uhyke [kRe gksrs gh is"kxh dh jde tks tek gqbZ gS oks jde ;fn ykblsUI dks fdLh Hkh "krZ dh f[kYkkQ iath esa ;k p<h fdLr ckdh jgus dh ctg ls tCr ugha gksxh rks 100? :- ls T;kns de ds Bsds ds fy, rks fiNyh 2 fdLrks es ?Qjoh o ekpZ? eqtjk ns nh tkosxha vkSj 100? :- ;k bls de jde ds Bsds okyxa ls 5 vDVwcj okyh fdLr tek gksus ds ckn esa dksbZ fdLr ugha yh tkosxh ojuk vk[kjh 2 fdLrs ,d eq"r rk- 5 Qjcjh 53 dks tek djkuh gksxh A blds vykok ykblsUlnkj dks gj gkyr esa ,d Hkjkslnkj jktLFkkuh dh tekur ckcr jde vnk;xh is"k djuh gksxh A dksbZ jde cdk;k jgus dh gkyr esa olwyh dh dkuwuh dk;Zokgh mlh rgij dh tkosxh ftl rgj fd ekyxqtjk dh cdk;k jde olwyh ds ckcr jktLFkku esa dkuwu ykxw gS o vk;Unk ykxw fd;k tkosxk A

Clause 3 of the licence:

jkT; dks vf/kdkj gksxk fd ;fn dksbZ Hkh ekgokjh fdzLr vxys eghus ds vUr rd tek u gksxh rks ykblsUI j? dj nsosa vkSj ?bl ykblsUI ds j? gksus ds ckn? ykblsUlnkj dks fcuk fdLh ukfVI fn, nqdku }kjk uhyke dh vkSj nqckjk uhyke ls tks deh jgs ogh ykblsUlnkj dh tek djkbZ gwbZ is"kxh jde esa ls ;k ykblsUlnkj ls ;k mlds tfeu ls olwy dj ysos vkSj ykblsUlnkj fdLh Hkh equkQs dk tks nqckjk uhyke ls gks] ikus dk gdnkj ugha gksxk vkSj is"kxh tek djkbZ gqbZ jde tCr djyh tk ldsxh A

Clause 9 of the advertisement Ex. 1/A:

Bsds dh jde ekfld fdLrksa esa olwy gksxk ;g fdLrs izfr ekl dh 5 rk- rd tek gksuh blds i"pkr lqn 12? lsdMk okf"kZd pkyw gks tkosxk ;fn eghus ds vUr rd tek ugh gksxh rks nqdku fu%ladksp nqckjk uhyke dj nh tkosxh vkSj gkfu dh jde olwy dj yh tkosxh rFkk vxk? tek djkbZ gwbZ nks ekl dh jde tCr dj yh tk;sxh A

The aforesaid clauses in the licence and the advertisement gave the right to the State to cancel the licence and to reauction the same in case the monthly

instalment was not paid by the licencees by the end of the month. There is nothing to show in the surety-bond Ex, 1 that in case the licencees did not act as per terms and conditions of the licence or the advertisement, the surety shall stand discharged. On the contrary, under the surety-bond, the plaintiff undertook full liability to pay the entire amount found due from tile licencees. It is, however, contended on behalf of the plaintiff-appellant that if the State had cancelled the licence and re-auctioned it on the first default of monthly instalment, the course so adopted would have diminished the liability of the plaintiff and therefore the State ought to have resorted to it, failing which the surety was discharged. This contention has no merits. In the first place, since the surety and the licencees would have been liable for any deficit on re-auction, there is no proof that the liability of the surety could have been lessened and secondly, the cancellation of the licence and its resale was entirely within the option of the State authorities and neither the licencees nor the plaintiff-surety could have asked, as a matter of right, the authorities to resort to that course on the ground that such course if adopted would diminish the liability of the licencees and the surety.

6. The law is dear that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract See Section 128 of the Contract Act. In other words, in the absence of a contract to the contrary, the creditor can recover the loan from the surety without taking steps for its recovery from the principal debtor. Again, as there has been no variation in the terms of the contract between the principal debtor and the creditor, there is no question of discharge of the surety u/s 133 of the Contract Act Section 134 of the Contract Act is another provision under which the surety is discharged. It lays down that the surety is discharged by any contract between the creditor and the principal debtor by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. The State has also not, in any way, in the present case, released the principal debtor nor has it committed any act or omission the legal consequence of which would be to discharge the principal debtor. Section 135 of the Contract Act is not applicable to the facts of the present case as the State has not made any composition with the plaintiff nor it has compromised to give time to, or not to sue the principal debtor. It has been made clear in Section 137 that mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not. in the absence of the provision in the guarantee to the contrary. discharge the surety. In the present case, it was pleaded by the plaintiff that his liability to pay the amount would arise only if the amount was not paid by the licencees. This plea was rightly rejected as the agreement in the surety-bond was not subject to any condition and consequently the surety could not be deemed to have been discharged merely on account of failure on the part of the State to take steps to recover the amount from the licencees. It may be mentioned here that in the present case the Assistant Commissioner, Excise and Customs, Banswara, did take certain steps against the licencees and recovered the amount of Rs. 1,048 from them.

7. The learned counsel for the plaintiff-appellant also placed reliance on Section 139 of the Contract Act. Section 139 lays down that if the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged. The argument of the learned counsel is that because the State did not take action in cancelling the licence on the first default in the payment of monthly instalment which would have protected the rights of the surety, the surety was completely discharged. This contention, if I may say so, is not based on correct appreciation of Section 139. In order to attract Section 139, there must not only be an act inconsistent with the rights of the surety or an omission to do an act which his duty to the surety required him to do, but also the impairment of the eventual remedy of the surety against the principal debtor. This impairment of the surety's eventual remedy is crucial factor in this section. If the surety's eventual remedy is not impaired against the principal debtor, then the surety is not discharged. I am supported in my view by the decision of their Lordships of the Privy Council in AIR 1939 110 (Privy Council) I find nothing in the present case which impairs the plaintiff's remedy against the licencees.

8. I am not unmindful of the fact that a contract of guarantee under the Contract Act specially Sections 133 to 139 postulates the existence of the surety, the principal debtor and the creditor. This requirement is not satisfied in the case of the surety-bond executed in favour of the State or a Department of the State. Such surety-bond is given to the Department of the State and not to the creditor. Therefore, there cannot be any doubt that in terms the provisions of Sections 133 to 139 of the Contract Act cannot apply to a surety-bond like Ex. 1; but it is also clear from the various authorities that equitable principles underlying these sections apply to a surety-bond executed in favour of the State or a Department of the State. I am supported in my view by the decision of their Lordships of the Supreme Court in Raja Bahadur Dhanraj Girji Vs. Raja P. Parthasarathy Rayanimvaru and Others, and the decision of the Lahore High Court in Prithi Singh v. Ramcharan Aggarwal, AIR 19-44 Lah 428. The case in hand therefore does not fall within the ambit of Section 139 of the Contract Act. The first point urged on behalf of the plaintiff-appellant thus fails.

9. Coming to the next point, it is urged that the certificate filed in the office of the Collector, Banswara, u/s 4 of the Act is vague, inasmuch as no period in column No. 4 for which demand was due has been mentioned. Reliance is placed on the decisions of Rijhumal Vs. State of Rajasthan and Another, and Abanindra Kumar Maity Vs. A.K. Biswas, (sic?), (1896) 23 Ind App 45 (PC) (Abanindra Kumar Maity v. A.K. Biswas).

10. Mr. Bhansali, the Assistant Government Advocate, appearing on behalf of the State, has urged that this point which is now being pressed by the learned counsel, has not been raised in the memorandum of appeal filed in this Court He has further urged that a certificate even if deemed to be vague and defective, it

is not a serious disregard of the provisions of law rendering the certificate invalid in the particular circumstances of the case, specially when the plaintiff was well aware of all the facts about his liability and also moved an objection petition denying his liability u/s 8 (3) of the Act.

11. It may be noted here that the plaintiff-appellant has not taken up this point in the memorandum of appeal. I, however, permitted the learned counsel appearing on his behalf to raise this point since it is, more or less a point of law. In the present case, failure on the part of the Collector, Banswara, to mention the period in column No. 4 of the certificate, is, in my opinion a mere irregularity. No prejudice appears to have been caused to the plaintiff on account of non-mentioning of the period for which the demand was made. Baijnath's case (sic?) (Abanindra Kumar's) (supra) on which reliance has been placed by the learned counsel for the appellant was discussed and distinguished by a Division Bench of this Court in Mannalal v. The Collector, Jhalawar 1956 RLW 538. In that case, it was observed:

"It may be pointed out that in the Calcutta case the certificate was defective on a number of grounds and this was one of them that the period was not specified as required by the Form of Certificate. The learned Judges only observed that failure to specify the period as required by the Form was a non-compliance with the requirements of the Form. The court, however, did not go to the length of saying that the certificate was rendered invalid merely for this reason."

The Division Bench then examined the Form of Certificate in that cases which is similar to the Form in the present case and repelled the argument of the learned counsel for the petitioners that failure to mention period for which such demand was made would invalidate the certificate. The relevant observations of the Division Bench in this connection run as under:--

"It would be apparent that under Col. 4 of the Form the period for which such demand is due has got to be specified. The Collector is expected to draw up this certificate on the basis of the particulars furnished by the officer sending the requisition for recovery u/s 3 in Form No. 1 of the Rules. We find that in the form of requisition the particular regarding the period does not appear. It may be that the Form under the Rules expects the Collector to make an independent inquiry himself in this behalf in order to fill in this particular item in the certificate. We may point out that failure to comply with every minute minor detail of the certificate cannot be regarded to have the effect of invalidating it. We should not be understood when we say so to mean that the authority signing the certificate is absolved from faithfully carrying out the provisions of law. It is very desirable that the officer who is to discharge the heavy responsibility of filling such a certificate should try strictly to comply with the requirements of the Form, specially because the certificate is prepared and signed ex parte and it has the effect of the passing of a decree against the person against whom it is signed. However, as pointed out above in the present case failure on the part of the Collector of Jhalawar to mention the period in col. 4 of the Certificate cannot be

regarded to be irregularity which may be considered to go to the root of the case. No prejudice appears to have been caused to the petitioners for this reason."

The Rajasthan case (Raghmal's case) reported in *Rijhumal Vs. State of Rajasthan and Another*, is a case similar to the Calcutta case reported in *Abanindra Kumar Maity Vs. A.K. Biswas*, (sic?) (1896) 23 Ind App 45 (PC). In Raghmal's case, there were several defects in the certificate. While dealing with the defect about non-mentioning of the period for which the demand was due, the Division Bench observed that the defect is of a serious nature but it did not go to the length of saying that this defect alone invalidated the certificate. The Division Bench found one more defect in the certificate and as a cumulative effect of both the defects, held the certificate to be invalid and observed as follows:--

"To sum up, there are grave defects in the certificate in this case. It does not show clearly who the authority signing the requisition is, for the initials "D.S.O." Churu, may or may not convey the name of the authority clearly. In *Bajinath Sahai's* case referred to above, their Lordships of the Privy Council said that it was essential that any person who sees the certificate should be able to know who the judgment creditor is, and what is the sum for which the judgment is given, for the certificate amounts to a decree. The other defect is that the period for which this sum became due is not mentioned. Both these, in our opinion, are substantial defects which invalidate the certificate, and thus the foundation is not laid for proceeding under the Act."

The *Rijhumal Vs. State of Rajasthan and Another*, is thus distinguishable and not applicable to the facts of the present case. The second point also fails.

12. I now take up the third point. It is argued on behalf of the appellant that the requisition for the recovery Ex. A/7 sent to the Collector, Banswara, is invalid as it is not signed by the Head of Department but by the Assistant Commissioner, Excise and Customs, Banswara Shri R.S. Kothari, The relevant provision in the Act in this connection is Section 3 which runs as under:--

"Section 3. Requisition for recovery:--

1. When any public demand is due, the officer, or authority charged with its realisation may send to the Collector having jurisdiction in the place where the defaulter resides or owns property a written requisition in the prescribed form.
2. Every such requisition shall be signed and verified in the prescribed manner."

A requisition for recovery is required to be sent to the Collector under the aforesaid section not by the Head of Department but by the officer or authority charged with the realisation of the demand. It is nobody's case that the Assistant Commissioner, Excise and Taxation, District Banswara, was not the officer charged with the duty to realise the demand from the plaintiff. This point has also no force and it is rejected.

13. The fourth point urged by the learned counsel for the appellant is equally untenable. It is true that the requisition for recovery Ex. A/7 was sent to the Collector mentioning therein the names of the defaulters as Bheemji, Raghavji and Dalichand (plaintiff). It is certainly a requisition for recovery against several persons but no such provision of law or rule has been shown to me which prohibits sending of requisition for recovery against more than one person. This point also fails and it is rejected.

14. Coming to the last point, it is urged that the Sub-Divisional Officer, Banswara, had no jurisdiction to decide the objection petition filed by the plaintiff u/s 8 (3) of the Act. According to the learned counsel, the only competent authority was the Collector, Banswara, Who should have decided the objection petition filed by the plaintiff denying this liability in response to the notice of the certificate issued by the Collector.

15. On the other hand, it is argued by Mr. Bhansali that no such point was raised by the plaintiff in his plaint. This point was raised for the first time at the time of the arguments in the trial court. Had this objection been raised in the plaint, the defendants would have produced the authority empowering the Sub-Divisional Officer to deal with objection petitions made by the defaulters u/s 8 (3) of the Act. I have given my earnest thought to the point raised by the learned counsel for the plaintiff-appellant. There is no denying the fact that no plea was taken in the plaint that the Sub-Divisional Officer, Banswara, had no authority to deal with objection petition filed by the plaintiff u/s 8 (3) of the Act. In such matters, it must be remembered that if a technical plea of the nature sought to be raised had been raised in the plaint, the defendants would have had the opportunity to produce before the court the authority which empowered the Sub-Divisional Officer to deal with such objection petition. That apart, the point sought to be raised is not purely legal which may be allowed to be urged without any amendment of the plaint. It is a mixed question of law and fact. It is further significant to note that the plaintiff filed an appeal against the judgment of the Sub-Divisional Officer before the Revenue Appellate Authority, Udaipur, and that appeal was dismissed. The judgment of the Revenue Appellate Authority does not show that the plaintiff therein took the plea that the Sub-Divisional Officer had no jurisdiction to decide the objection petition u/s 8 (3) of the Act. In my judgment, the course which the litigation between the parties had taken upto the date the suit was instituted and the abandonment of any contention about the authority of the Sub-Divisional Officer before the Revenue Appellate Authority are sufficient to reject this point.

16. The learned counsel for the appellant during the course of the dictation of the judgment, drew my attention to para No. 16 of the plaint and urged one more point to the effect that the requisition authority in the present case did not decide objection petition u/s 8 (3) of the Act in accordance with law. Suffice it to say in this connection that it is not the case of the plaintiff that the person authorised u/s 8 (3) of the Act to decide the objection petition was the

requisition authority. In absence of that, it is immaterial whether the requisition authority decided the objection petition in accordance with law or not.

17. There is no force in this appeal and it is dismissed with costs.

18. The prayer for leave to appeal is refused.