
(1986) 07 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 138 of 1975

Dhan Raj

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) WLN 392

Hon'ble Judges : S.M. Jain, J

Bench : Single Bench

Judgement

Sobhag Mal Jain, J.—This appeal, filed by the plaintiff, is directed against the judgment dated 13th August, 1975, of the Additional District Judge, Sirohi, dismissing the plaintiff's suit for the recovery of Rs. 11,001/-.

2. The plaintiff was granted a licence for the sale of country made liquor under a guarantee system at Ganchiwada, Sirohi, for the period from April 1, 1963 to March 31, 1964. As per the terms of the licence, the plaintiff guaranteed to draw from the Government warehouse country liquor worth Rs. 1,00,001/-. He was required to draw and sale by the end of each month 1/12th quantity of the liquor of the guaranteed amount. He could make the deficiency good by the 10th of the next month. The plaintiff had deposited a sum of Rs. 10,001/- as security. In case of any shortfall in the guaranteed amount, the same could be realised from his security amount and the balance, if any was, recoverable from his other moveable and immovable property. On the expiry of the period of licence, the security amount was not refunded to the plaintiff. He, therefore, served a notice u/s 80, CPC on the defendant and when no action was taken on it, he filed a suit for the recovery of Rs. 11,001 /- in the Court of Civil Judge, Sirohi. The suit was filed on May 2, 1967. The plaintiff's case, in brief, was that although he was willing and prepared to deposit 1/12th of the guaranteed amount every month and wanted to draw liquor from the ware house of the value of the guaranteed quantity there was shortage of liquor in the ware house and, therefore, the same

was not supplied to the plaintiff, as per his demands. This resulted in short supply and for this the plaintiff had to keep his shop closed for some period. In the suit the plaintiff claimed refund of the amount of Rs. 10,001/- deposited by him as security and a further sum of Rs. 1,000/- on account of loss sustained by him as a result of his shop remaining closed, total Rs. 11,001/-.

3. The State of Rajasthan in the written statement admitted that the plaintiff was granted a licence for selling country liquor for the period 1-4-1963 to 31-3-1964. It was also admitted that a sum of Rs. 10,001/- was deposited by the plaintiff as security, The defendant, however, stated that there was sufficient stock in the ware houses and non-lifting of the liquor was not the result of default on the part of the defendant but the plaintiff himself was responsible for the same, as he did not deposit the requisite monthly amount guaranteed under the licence. It was averred that the defendant was fully entitled to adjust the security towards the deficit in the guaranteed amount. It was specifically stated that the guaranteed amount to be deposited was short by Rs. 32,806.86p. and after adjusting the amount of Rs. 10,001/- towards this deficit amount the defendant--State was still entitled to recover a sum of Rs. 22,805.86p. from the plaintiff.

4. After trial, the Additional District Judge, Sirohi, by the judgment dated 13th August, 1975, dismissed the plaintiff's suit with costs. The Additional District Judge has held that although the agreement (Ex. 2) did not contain a condition that the defendant was bound to supply the variety of liquor as demanded by the licensee, yet this condition was implicit in the agreement, because unless the plaintiff was supplied the variety required by him, he could not be expected to fulfil his part of the contract. The Additional District Judge, however, held that it was the Plaintiff, who had failed to deposit sufficient sums in the Treasury or Bank and that it was wrong to suggest that the Excise Inspector did not allow him to deposit the full amount. The Additional District Judge decided against the plaintiff the issue that he had sustained a loss of Rs. 1,000/- due to the breach of the contract by the defendant. It was held that the plaintiff was not entitled to the refund of the security amount.

5. Aggrieved by the aforesaid judgment, the plaintiff has filed the present appeal. Shri N.M. Lodha, appearing as a counsel for the plaintiffappellant, has contended that the plaintiff could not lift the guaranteed quantity of the liquor, as adequate stock was not available in the ware house. It was on account of non-supply by the defendants that the deposit of the guaranteed amount fell short. The defendant was not, therefore, entitled to keep back the security amount and adjust it towards the deficit. Learned counsel has invited my attention to Schedule A/2 filed by the defendant and made a part of the written-statement itself. According to the learned Counsel, this makes out a complete case for the plaintiff.

6. Schedule Ex. A/2 read thus:

[illegible]

that when liquor was not available and the defendant could not even meet the demand of the plaintiff and was not in a position to supply liquor even to the extent the amount was deposited, the plaintiff could not be expected to further block his money when it was quite obvious that liquor was not available in the ware house in sufficient quantity to meet his demands. The circumstances mentioned above amply demonstrate that there was shortage of liquor in the ware house and the defendant was not in a position to meet the demand of the licensee, even to the extent he deposited the amount. In these circumstances, the shortage in the guaranteed amount cannot be attributed to the fault of the plaintiff. Obviously, the defendant was not entitled to keep back the security deposit of the plaintiff and adjust the same towards the aforesaid deficit. The plaintiff was perfectly entitled to the refund of the security amount deposited by him.

7. The learned Counsel for the plaintiff-appellant has not pressed his claim for Rs. 1,000/- on account of loss sustained as a result of the shop remaining closed. The plaintiff is also not entitled to any interest, as he did not claim the same in the notice u/s 80, CPC.

8. The result is that the appeal is partly allowed, the judgment and decree of the Additional District Judge dated the 13th August, 1975 is set aside and the plaintiff's suit for Rs. 10,001/- is decreed against the defendant. His claim for the amount of Rs. 1,000/- is disallowed. The defendant shall pay the decretal amount to the plaintiff within a period of two months" from today, failing which, the plaintiff shall be entitled to recover interest at rate of 6% per annum from the date of this judgment till realisation. Parties shall bear their own costs, throughout.