
(1984) 07 MP CK 0025

In the Madhya Pradesh High Court

Case No : Second Appeal No. 388 of 1974

Harishankar Pyarelal and Co.

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 26-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1984 MP 140

Hon'ble Judges : R.K. Vijayvargiya, J

Bench : Single Bench

Advocate : S.L. Jain, for the Appellant; A.H. Khan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Vijayvargiya, J.—This appeal is directed against the judgment and decree dated 31-1-1974 passed by the learned District Judge, Ratlam in Civil Appeal No. 11-B Of 1972, arising out of the judgment and decree dated 21-7-1972 passed by the Civil Judge Class II, Jaora in Civil Suit No. 67B of 1968.

2. The material facts giving rise to this appeal are as follows The plaintiffs Harishankar and pyarelal carried on business of liquor contractors under the firm name M/s. Harishankar Pyarelal and Company. The firm was granted a license to vend liquor from 1-4-1967 to 31-3-68 for the Mundlaram liquor shop. A licence fee of Rs; 8100/- was realized from the firm. According to the plaintiffs as per terms of the licence it was the duty of the defendant to supply the requisite quantity of liquor to the plaintiffs' shop from Jaora warehouse. The plaintiffs alleged that during the months of January, February and March 1968 the defendant failed to supply liquor according to the plaintiffs' demand with the consequence that the liquor shop run by the plaintiffs had to be closed. The plaintiffs thus suffered a loss of Rs. 1155/- on account of the closure of their shop. The plaintiffs therefore filed the present suit for recovery of Rs. 1155/- as damages against the defendant state after service of notice u/s 80, C. P. C.

3. The defendant resisted the suit. The defendant denied that it failed to supply liquor to the plaintiffs according to the demand and that the plaintiffs' shop had to be closed on account of short supply of the liquor. The defendant also denied that any loss was caused to the plaintiffs on account of the alleged short supply of the liquor. The trial court dismissed the suit holding that it was not proved that the defendant failed to supply liquor according to the plaintiffs' demand and the plaintiffs' shop had to remain closed on account of short supply of liquor. The appeal preferred by the plaintiffs was also unsuccessful. The appellate Court confirmed the finding recorded by the trial court. Aggrieved by the judgment and decree of the appellate court the plaintiffs have preferred this appeal.

4. Having heard learned "counsel for the parties, I have come to the conclusion that this appeal deserves to be dismissed.

5. On appreciation, of the evidence on record the appellate Court confirmed the finding recorded by the trial Court that it was not proved that the defendant failed to supply liquor according to the plaintiffs' demand and that the plaintiffs' shop remained closed on account of the short supply of the liquor. This is a finding-of fact based on- appreciation of the evidence and the learned counsel for the appellant was unable to point out any such infirmity in the finding recorded by the appellate Court which may vitiate the same.

6. The learned counsel for the appellants contended that from the entry Exhibit p/1 it was proved that the plaintiffs' shop remained closed on account of short supply of liquor and the appellate Court committed an error of law in holding that the said entry was not proved. The contention has no merit. The appellate " Court did not place reliance upon the entry Exhibit P/I on the ground that it has not been regularly made, that apart the appellate court has further held that there is no evidence that the liquor shop of the plaintiffs had to be closed because of the non-supply of the liquor by the defendant as per the plaintiffs' demand. The learned counsel for the appellants was unable to point out that the aforesaid finding recorded by the appellate court is vitiated on any ground. The finding being on a question of fact is binding on this court in second appeal. I therefore see no reason to interfere with the judgment and decree passed by the appellate Court.

7. As a result of the discussion aforesaid this appeal fails and is dismissed with costs. Counsel's fee according to scale if certified.