

(1987) 01 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Second Appeal No. 219 of 1976

Kishan Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:

Citation : (1987) 2 WLN 184

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Sobhag Mal Jain, J.—This appeal by the plaintiff is directed against the judgment dated 9th January, 1976 of the Additional District Judge No. 1, Jodhpur dismissing the plaintiff's suit by reversing the judgment and decree dated July 14, 1975 of the Additional Civil Judge, Jodhpur who had decreed the plaintiff's suit for Rs. 1505.50p.

2. The plaintiff's case in brief was that his tender to run a canteen at the places mentioned in the plaint was accepted by the defendants and he was allowed to deposit the amount and worked the same till June 4, 1970, but thereafter his contract was terminated prematurely, as a result of which he suffered damages. The plaintiff claimed a sum of Rs. 4455/50p. as damages. The suit was contested by defendant No. 1 State of Rajasthan on various grounds. The Additional Civil Judge by his judgment dated 14th July, 1975 decreed the plaintiff's suit for Rs. 1505.50 p. and disallowed the rest of his claim On appeal by the defendant the Additional District Judge dismissed the plaintiff's suit. Aggrieved, the plaintiff has preferred the present appeal.

3. Both the courts have concurrently held that the plaintiff was not in breach of the contract. The Additional Civil Judge allowed the plaintiff's claim for Rs. 753 80 p. by way of refund of the rental which he had deposited, but was not allowed to work. The plaintiff was also allowed sum of Rs. 750/-as damages for not

working the canteen for six month"s. It would be relevant to set out here the relevant portion of the judgment of the Civil Judge on these two questions:

So far as the claim for loss for a period of I-1/2 year from 6-6-1970 is concerned the plaintiff has made a claim Rs. 5/- per day. Dr. Vaishnava while being cross-examined has admitted that he was not in a position as to what was the daily sale of the plaintiff but he has admitted that plaintiff used to sell tea, coffee, sweets and fruits. He has also admitted that plaintiff deposited the rent for one year. Plaintiff too in his examination has not stated as to what was his daily income after deducting the expenditure of the same which may have facilitated the court to come to any definite conclusion; yet I think that the claim of Rs. 5/- per day made by the plaintiff is reasonable and minimum and he should be awarded the same for a period of 6 months i.e. Rs. 750/-.

So far as the return of Rs. 753 80 p. claimed by the plaintiff for being out of possession of the canteen for 6 months is concerned it may be stated that the plaintiff deposited rent for one year and he was allowed to work only for 6 months and as discussed issue No. 2 & 3 the contract of the plaintiff was terminated without any reason and for which a damage @ Rs. 5/- per day has been allowed in the preceding para. The rent for a period of 6 months for which the plaintiff was not allowed to run the Canteen should be re-imbursed to him. There is nothing on record to show any reason for forfeiture of this amount nor the same is justified in accordance with the principles of natural justice.

This in view of above it is held that the plaintiff has failed to prove his loss of Rs. 3700/- but has only proved loss to the extent of Rs. 750/- along with returns of rent amounting to Rs. 753.80p. and in this way the plaintiff is entitled for a sum of Rs. 1505.50 p. from the defendants. The issue is decided accordingly.

Obviously, in reversing the judgment and decree passed by the Additional Civil judge, the learned Additional District judge has not given any reasons what so ever. While discussing issue Nos. 5 and 9 the learned District Judge has merely said the suit of the plaintiff fails and ought to have been dismissed. The judgment of the learned Additional District Judge was read over to me and I have not been able to find any reason what so ever, why he considered it necessary to reverse the conclusions arrived at by the learned Additional Civil Judge. There is no dispute that the plaintiff" was not allowed to work the canteen There is also no dispute that he was not guilty of breach of contract. The trial court assessed the damages and decreed the suit for Rs. 1505 50 p. Obviously therefore, the suit for the said amount could not be dismissed by the Additional District Judge. I do not find any infirmity in the findings of the learned Additional Civil Judge.

4. Accordingly, the plaintiff"s appeal is allowed. The judgment of the learned Additional District Judge No. 1, Jodhpur dated 9th January, 1976 is set aside and that of the Additional Civil Judge, Jodhpur dated 14th July, 1975 is restored. The plaintiff shall be entitled to costs.