

(1980) 09 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2774 of 1974

Kundanlal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-09-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1980) WLN 342

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—This writ petition has been filed by the petitioner Kundanlal for setting the demand raised by the District Excise Officer, Udaipur, for Rs, 31,553.91p. vide notice dated 20-8-1974 (Annexure I), quashed.

2. Brit fly, the facts are that the petitioner obtained the licence for retail sale of country liquor for the year 1963-64 under the guarantee system and he Was required to obtain the liquor for the value of Rs. 144,060/- as per its issue price. The petitioner alleged that he received regular supply of contry liquor till June, 1963, according to his requisitions, but from July, 1963, to December, 1963, he was not supplied the country liquor according to his requisitions as the same was not available in the warehouse. In the relevant Year there were no stocks of liquor in the warehouse & the respondents were not in a position to supply and in fact did not supply the liquor as demanded by the petitioner. It was also stated that the supply was ridiculously insignificant during the most important festivals like Deshera, Navratiri, Rakhi and Deepawali when usually the sales are at the highest. Inspite of representations and repeated demands the liquor was not supplied and such the petitioner could not lift the liquor to the tune of guaranteed amount. The petitioner further stated that he deposited a sum of Rs. 14 406/-as earnest money. He demanded the return of the earnest money, but the same was not returned to him. The petitioner then filed a civil suit for the

recovery of the earnest money as well as for the loss of Rs. 3,200/- after serving notice u/s 80, C.P.C., but the suit was, however, dismissed. The petitioner then preferred S.B. Civil Regular First Appeal No. 200 of 1972-Knndanlal v. State of Rajasthan. The petitioner further stated that the District Excise Officer created a demand for the amount of the short-fall being the price of uplifted liquor during the relevant year, which is Rs. 31,553.91. The petitioner was (sic) called upon to deposit the said amount vide notice Annexure I within fifteen days failing which the petitioner's property would be attached. It was stated that this notice did not contain any adjudication, nor the respondents, at any earlier stages, had adjudicated upon the reply of the petitioner that the short fall was due to the non-availability and non-supply of liquor to the petitioner. The petitioner challenged the demand on the grounds stated in para 11 of the writ petition. It is not necessary to mention the ground that there was no failure on the part of the petitioner to obtain the supply of liquor, but the shortfall was due to short supply of liquor.

3. On behalf of the respondents return to the writ petition has been filed, in which facts regarding grant of licence & the guaranteed amount have been admitted. It was stated that the liquor was supplied to the licence petitioner as and when demanded by him. The petitioner was required to deposit money in Treasury to obtain the liquor in accordance with the condition of the licence and all the challans duly paid by the petitioner to the Treasury, when presented to the Excise Authorities were honoured by issuing liquor to the petitioner. The petitioner is to blame himself for the non-supply of the liquor and the State is not at fault for non supply as the State on its part supplied liquor to the petitioner as and when he made payment for the same and presented challans to the Excise Authorities signifying payment of the necessary money. The petitioner had laid no foundation to prove that the State was in any way, responsible for non-supply of the liquor when demanded by the petitioner. In para 7 of the reply it was stated that the supply of the liquor in some warehouses during a month or two was a bit, low, but it did not result in non-supply of the liquor when demanded by the licensee. Thus, the licensee himself was liable for breach of condition. As the petitioner failed to lift the liquor up to the guarantee amount, so the demand was rightly created against the petitioner and the respondents were within their right to raise the demand through notice Annexure I. Reply in respect of other grounds and averments was also made, but they are not very material. It was prayed that the writ petition may be dismissed with costs.

4. I have heard Shri M G. Bhandari, learned Counsel for the petitioner, and Dr. S. S. Bhandawat, learned Deputy Government Advocate for the respondents.

5. The success of the present writ petition depends only on the question as to whether the shortfall was due to short supply on the part of the Excise Authorities. If this question is answered in the affirmative in favour of the petitioner, then the petitioner succeeds in view of the fact that it cannot be said that the petitioner did not lift the requisite amount of liquor, despite availability

of the same. In this writ petition, along with the writ petition and the return, only the affidavits have been filed and no other documents have been placed on record on behalf of the petitioner. A certified copy of the judgment of this Court in S.B. Civil Regular First Appeal No. 200 of 1972 Kundanlal v. State of Rajasthan, decided on August 25, 1980, has been placed on record. That first appeal and the writ petition were heard on the same day and the writ petition was heard after the dictation of the judgment in the first appeal and at that stage the learned Counsel for the petitioner sought time for the production of the certified copy of the judgment in the first appeal, which was allowed.

6. Mr. M C Bhandari, learned Counsel for the petitioner, urged that that this has recorded a clear finding in the first appeal to the effect that the short fall was due to short supply and the petitioner was not at fault in lifting.

7. I find force in the submission of Shri Bhandari, learned Counsel for the petitioner. In view of the judgment of this court in the aforesaid first appeal Dr. Bhandawat learned Deputy Govt. Advocate, could not successfully contend that short fall was not due to short supply. Dr. Bhandawat urged that after issue of notice Annexure I, it was open to the petitioner to have placed necessary material before the Dist. Excise Officer to establish that short fall was due to short supply. The Dist. Excise Officer gave to the petitioner an opportunity to present his case before him, so in view of the contents of the notice calling upon the petitioner to present his case, quashing of the demand would not be justified by this Court. He also pointed out that the question of short supply for non availability of the liquor, is a disputed question of fact depending on evidence, so this court should be slow to deal with such a question of fact in its extraordinary jurisdiction. In thin connection suffice is so say that the disputed question of fact stands concluded by the judgment of this Court in the Civil First Appeal referred to above and a finding has been reached after appraisal of the oral and documentary evidence on record produced by the parties. After recording of the finding there dees not remain any issue to be adjudicated upon or to be considered by the Distt. Excise Officer Had there been no judgment of the competent court on the question of short supply of liquor or observance of conditions of the licence or their breach, perhaps it can be contended that this court should not proceed with the disputed question of fact dependent on evidence, though this Court docs po(sic)ess jurisdiction to record a finding on fact even on disputed question of fact on the basis of material on record. There have been cases where sufficient material has been placed on record in the form of admitted documents or otherwise and on the basis of that material & finding of fact can also be reached. In the present case, the controversy between the parties stands concluded and determined on the judicial side, by this Court. After that finding only the consequential order has to be passed and nothing remains to be done. So in view of the findings in the Civil First Appeal, which are binding on the respondents, in my opinion, the petitioner is entitled to the relief claimed by him for quashing of the demand. It may be pointed out that when the plaintiffs suit for recovery of the amount of the security deposit had been

decreed on the basis of finding that the petitioner is not at fault in not taking delivery of liquor to the extent of the total guarantee amount, then certainly the respondent are not entitled to claim the difference of the guarantee amount and the amount of liquor, of which delivery has been taken. Thus, the petitioner is not liable for the payment of the short fall to the extent of Rs. 31,553 91p.

8. The net result of the above discussion is that this petition deserves to be allowed.

9. In the result, the writ petition is allowed and the demand raised through Annexure I, is quashed. In the circumstances the parties are left to bear their own costs of this writ petition.