

(1986) 05 RAJ CK 0052
In the Rajasthan High Court
Case No : Civil Second Appeal No. 165 of 1975

Mangi Bai

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-05-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1986) WLN 183

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Surendra Nath Bhargava, J.—This is plaintiff's second appeal against the judgment and decree dated 31st October, 1974, passed by the Addl. District Judge, Sirohi, setting aside the decree of the Civil Judge, Sirohi, and dismissing the suit of the plaintiff-appellant.

2. Plaintiff was a country liquor contractor at Erinpura Road and entered into a contract for liquor from 1-4-1963 and 31-3-1964 and deposited a sum of Rs. 3027 as security. Since the warehouse at Rani did not stock sufficient quantity of liquor of the type and quality required by the plaintiff, the plaintiff could not get the liquor for the contract amount and, therefore, the State forfeited the security amount of Rs. 3027/- and a further demand was made asking the plaintiff to pay Rs. 2521.51. Plaintiff gave a notice u/s 80 C.P.C. and thereafter filed the present suit for an injunction against the State not to recover the demand made by it and also to refund the security amount to the plaintiff. The defendant State contested the suit. The trial court after framing issues and recording the evidence decreed the suit of the plaintiff relying on the judgment of this Court in Balmukand's case 1971 WLN 373. The State of Rajasthan preferred an appeal against the said decree and the learned Addl. District Judge observed that the decision of Balmukand's case has been overruled by this Court in State of Rajasthan v. Balmukand 1974 WLN 367 which has latter been affirmed by the Supreme Court

and ultimately allowed the appeal and set aside the decree passed by the learned Civil Judge and dismissed the suit. It is against this judgment that this second appeal has been preferred by the plaintiff. The record of the case was received by this Court in September, 1985, but the evidence and the exhibits forming part "B" of the record of the trial court is not available and it appears that the same has been weeded out. Since it is an old matter, the learned Counsel for the parties agreed that the case may be heard and they have got the statement of the witnesses and also certified copies of some documents and, therefore, I have heard learned Counsel for the parties and have also gone through the evidence of the witnesses.

3. Learned Counsel for the appellant has vehemently submitted that both the courts below have seriously erred in ignoring the important documents Ex.Ps 29, 30 and 31 and they have not properly appreciated the evidence led by the parties in the light of these documents. It has also been submitted that Ex. P. 1 to Ex. P. 22 are the documents which were filed by the plaintiff in the court after copying them from the official record and they should have also be taken into consideration by the courts below. The learned Counsel for the respondent, on the other hand, has vehemently opposed and submitted that this Court in second appeal should not interfere with the finding of fact arrived at by the first appellate court.

4. I have given my thoughtful consideration to the whole matter and have also perused Ex.Ps. 29, 30 and 31 whose certified copies are available with the learned Counsel for the appellant as also the oral evidence led by the parties. Ex. P. 29 is a letter addressed to the Excise Inspector dated 26-3-1964 by the appellant on which there is an endorsement by the Inspector Excise, Bali, where as Ex. P. 30 is a letter again to the Inspector Excise and Taxation by the appellant in September, 1963, containing the endorsement of the Inspector Excise Bali and Ex. P. 31 is also a letter by the appellant to the Inspector Excise containing also the endorsement by the Inspector Excise in November, 1963. A perusal of these documents show that atleast during the month of March, 1963 to September, 1963 and November, 1963, there was shortage of stock in the warehouse. D.W. 1 Vijayram admitted in cross examination that there was no stock of liquor on 4-9-63. He has further admitted that on 23-3-64 also there was no stock in the warehouse. He has further admitted that the liquor for the amount which was deposited on 6-3-64 was supplied on 28-3-64. He has further admitted that on 23-3-64 the liquor was not supplied even though the amount was deposited on that day as there was no liquor and was supplied on 25-3-64 and 28-3-64 He has further admitted that the contractor had deposited sum of Rs. 1125/-on 22-10-1963 for which the liquor was supplied on 31-10-1963 and 15-11-1963 and 23-11-1963 and 9-12-1963. He has further admitted that about 35 to 36 contractors used to lift liquor from Rani ware-house. D.W. 2 Amardutt who was incharge of this case has stated that a stock register was maintained at the ware-house and a copy thereof was produced in the court which has been marked Ex. P-A-2. Unfortunately Ex. P. A-2 is not available with other of the

parties but in cross-examination this witness has given the stock of different varieties on different dates, that also indicates that there was no adequate quantity of the liquor available at the ware-house so as to meet the requirements of 35 to 36 contractors of Bali and Desuri Tehsil who used to lift liquor from Rani warehouse. This evidence has not been considered by the two courts below PW 2 Brij Mohan who was the grand son of the plaintiff-appellant has of course deposed that there was short supply of liquor on account of non availability of liquor in the ware-house. Ex. P. A1 is a statement showing that the amount of liquor which was lifted by the appellant in various months and it shows that during the month of September, October, November 1963 and February 1994, there was shortage of supply and the total shortage during the year was to the tune of Rs. 5618.51p. The total guarantee period for the whole year was Rs. 30270.00. Out of which the appellant had lifted liquor only to the tune of Rs. 24651.49. On perusal of the evidence, I am of the opinion, that it was the defendant State of Rajasthan which was responsible for the short supply and, therefore, the suit of the plaintiff deserves to be allowed. The demand made by the State of Rajasthan amounting to Rs. 2591-5lp, is hereby quashed. The defendant will not be entitled to recover this amount from the plaintiff and the plaintiff is further entitled with the refund of the security amount deposited by him to the defendant amounting to Rs. 3027/-.

5. In the result, this appeal is allowed? The judgment and decree passed by the Addl. District Judge, Sirohi dated 31st October, 1974, is set aside and that of the Civil and Assistant Session Judge, Pali, dated 1-9-1973 is restored. The parties are left to bear their own costs of this appeal.