
(1994) 01 KL CK 0018

In the High Court Of Kerala

Case No : A.S. 515 of 1990 and Cross Appeal

State of Kerala

APPELLANT

Vs

Thomas

RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Kerala Abkari Act, 1077 — Section 12

Citation : (1994) 01 KL CK 0018

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : P.K. Behanan, Govt. Pleader, for the Appellant; P.C. Chacko and M.P. Krishnan Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—State has filed the appeal challenging the judgment and decree of the Sub Judge, Hosdurg in O.S. 26 of 1987. Respondents-plaintiffs filed the suit for declaration that the Govt. and Excise Department have committed breach of their obligation under the contract in the matter of supply of arrack, that the plaintiffs are not liable to pay any amount by way of kist and that the revenue recovery proceedings initiated against them are illegal and void. Plaintiff also sought for a perpetual injunction of restraining the defendants (appellants therein) from proceeding with the revenue recovery proceedings. The suit was decreed by the court below declaring that the defendants have committed breach of contract in supply of the monthly quota of the arrack to the plaintiff in January, 1985. The Sub Judge further held that the plaintiffs are entitled to Rs. 1,25,000/- as damages. The said is directed to be adjusted against the balance kist amount due from the plaintiffs.

2. Plaintiffs filed Cross Appeal being not satisfied with the quantum of damages. Contention of the plaintiffs is that the Court below erred in finding that they are entitled only to Rs. 1,25,000/- as damages. According to them the Court below ought to have allowed the entire reliefs prayed for in the suit.

3. Defendants admitted their liability to supply monthly quota of 7490 liters of arrack to the plaintiffs. Plaintiffs have no case that the defendants have filed to supply the same during the respective months. The controversy between the parties is with regard to the belated supply of arrack during January 1985. 30 percent of the kist amount was paid in advanced Supply of arrack was made on 28-1-1985. Defence contention is that the agreement does not specifically mention any date on which the monthly quota of arrack had to be supplied and as it provides only for the supply during the month and as it was actually supplied on 28th of January the plaintiffs have no justifiable cause of action.

4. P.W.1 stated that he paid the duty for their monthly quotas of arrack for January on 4-1-1985 and went to Chipeops Distillery at Chittor on that day itself with a lorry and he could get the arrack only on 28-1-1985 from there. The learned Sub Judge that there is an implied condition for the supply of the monthly quota during the beginning of the month and as that has not been done plaintiffs are entitled to declaration that there was breach of contract by the defendants in the supply of monthly quota of arrack.

5. The question that arises for consideration is whether the court below was justified in holding that there was any breach of contract by the defendants. Learned Govt. pleader submitted that as the agreement does not specify any date on which the monthly quota of arrack has to be supplied it cannot be held that there was any breach of contract by the defendants as it was perfectly open to them to supply the arrack during the course of the month. In other words, it is contended by the defendants that the plaintiffs are not entitled to any damage on the ground of belated supply of arrack particularly when the contract does not specify any time limit for the supply of arrack. Counsel for the plaintiffs submitted that supply of arrack is the monopoly of the state as can be seen from S. 12 of the Abkari Act and so the plaintiffs were entirely dependent upon its supply from the defendants and as the supply was effected only on 28th of January, 1985, they could not transact any business during that month and the Court below was justified in decreeing the suit. Contention of the plaintiffs is that there are sufficient indications in the Abkari Shops (Disposal in auction) Rules to hold that the supply of arrack has to be made by the defendants during the first week of every month or earliest before tenth of every month.

6. The Sub Judge held that the intention of providing monthly quota in the contract itself is to supply the same during the beginning of the month and there is an implied condition for the same. In view of the express terms contained in the agreement that supply has to be made during the month, such an inference is not possible. Merely because the defendants have supplied arrack occasionally during the first week of the month it does not mean that they were bound to do so as per the agreement. In the absence of any express terms to the effect and also in view of the express and unambiguous terms in the contract that the monthly supply of arrack has to be made during the respective months, no implied agreement can be inferred. There is also no scope for such inference.

7. In a contract of agreement no implied condition can be imported except when it has to be held that both parties intended to have it. The general rule is that if the contract can be fulfilled as it stands and is effective, no terms or condition by implication should be imported into it simply because it may seem reasonable that there should have been such a term in the contract. It is not possible to hold that as per the agreement arrack should have been supplied by the defendants in the first week of every month or before tenth. If the parties wanted such a term in the contract, there was no difficulty at all to incorporate it in the contract itself. When such terms and conditions are absent in the contract, the court cannot supply the omission on the ground that the parties have agreed to it impliedly. Though the court may consider the presumed intention of the parties, it cannot be done if the express terms of the contract leave no scope for ambiguity. When there are circumstances to hold that the implied condition set up by one of the contracting parties is reasonable and equitable or that is necessary to give business efficacy to the contract and without it the contract is ineffective or it is so obvious that it goes without saying or that it does not contradict any express term of the contract, the court is well justified in recognising it. But, when terms of the contract are explicit and clear and free from ambiguity those terms alone can be applied by the court even if the court holds that some other term will be more appropriate. When the terms of contract show that the parties have agreed to do a particular thing in a particular manner and they got it expressed in their written contract, the court cannot supplant a new contract between the parties.

8. The Court would read an implied term into a contract only where it was clear that both parties intended it to operate. It must be established that both parties were well aware of the terms. So long as it is not possible to hold that the defendants have agreed to supply arrack during the first week of the month and whereas the agreement is categorical that it would be supplied during the course of the month it cannot be held that there was any implied condition as urged by the plaintiffs. As the essence of the contract is to the effect that the supply of arrack would be made during the month end not on or before any specified date. There cannot be inference of any implied term. While construing the contract between the parties, the court at the first instance should analyse the language used by the parties in the contract and try to find out the obligations imposed on the parties. While doing so if it is found that there is no ambiguity no implied term in the contract can be drawn. It is useful to refer to *Navnital and Co. and Others Vs. Kishanchand and Co.*, where the Bombay High Court held thus:

It is well established that where a contract is in writing no express condition should, however, be considered as implied in the contract except such term as were necessary in order to give the transaction such efficacy as both parties must have in all reason intended it to have. The general rule is that if the contract can be fulfilled as it stands and is effective no term or condition by implication should be imported into it simply because it may seem reasonable that there should have been such a term in the contract.

9. The learned Sub Judge held that the documentary evidence in the case shows that plaintiffs have sold the entire quantity of arrack supplied on 28.1.1985 during the subsequent days. Plaintiffs have no case that they had to sell the arrack on a low price due to the late supply of it or that they were unable to sell the same as the evidence in the case shows that the plaintiffs have sold the entire quantity of arrack received by them on 28.1.1985 during the subsequent days, it cannot be held that on account of the belated supply they have suffered any loss.

For the foregoing reasons, I hold that the judgment and decree of the court below cannot be sustained. Also I hold that there is no merit in the cross appeal. The judgment and decree of the court below in O.S. 26 of 1987 are set aside and the suit is dismissed. The appeal stands allowed. Cross appeal is dismissed. The parties are directed to bear their respective costs.