**(1980) 09 RAJ CK 0008**

**In the Rajasthan High Court**

**Case No :** Civil First Appeal No. 130 of 1973

State of Rajasthan and Others — APPELLANT

Vs

Bherulal — RESPONDENT

**Date of Decision :** 03-09-1980

**Acts Referred:**
Civil Procedure Code, 1908 (CPC) — Section 80

**Citation :** (1980) WLN 588

**Hon'ble Judges :** S.K. Mal Lodha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

S.K. Mal Lodha, J.—This appeal by defendant-appellants is directed against the judgment and decree dated March 20, 1973, passed by the District Judge, Pratapgarh in Civil Suit No. 8 of 1971, by which the plaintiff-respondents'' suit for Rs. 37,000/- was decreed against the defendants with costs. It was further ordered by the learned District Judge that the plaintiff shall be entitled to interest amount at 6% per annum on Rs. 31,112/- from the date of the suit (July 31, 1971) until the date of the realisation.

2. The facts relevant for the disposal of this appeal may briefly be recounted here : The plaintiff obtained a licence from the Excise Department for the sale of country liquor under the guarantee system in respect of the two shops (Surajpol and Talai) situate in Partabgarh for Rs. 3,11,120/- for the period commencing from April 1, 1967 to March 31, 1968. The plaintiff deposited Rs. 31,112 as security deposit. The case of the plaintiff was that there was a shortage of liquor during the aforesaid period, for which the licence was granted to him and, therefore, the defendants were not able to supply the country liquor according to his demand. For failure on the part of the defendants to supply the liquor as per the demands of the plaintiff, he could not sell it to the extent of the guarantee amount, which is Rs. 3,11,120/-. The plaintiff sold the liquor of the value of Rs. 1,35,000/-. As the defendants failed to return the security amount to the

 

plaintiffs, inspite of the notice given to them u/s 80, CPC, the plaintiffs instituted a suit for the recovery of the security amount of Rs. 31,112. He also claimed interest amounting to Rs. 5820/-. Thus the suit for Rs. 37,000/- was filed in the Court of District Judge, Partabgarh on May 31, 1971. The defendants vide their written statements which was filed on October 29, 1971, resisted the suit on various grounds. It was, however, admitted that the plaintiff was a licencee for the sale of country liquor under the guarantee system. The averments that the amount of guarantee system was Rs. 3,11,120 and that the plaintiff had deposited Rs. 31,112/- as security deposit were admitted. It was, however, pleaded that the plaintiff was supplied liquor according to his demands. The allegation that there was shortage of liquor was denied. It was asserted that the plaintiff failed to lift and did not sell it, he was not entitled to the refund of the security deposit. The plea that the plaintiff''s suit was barred by limitation was also raised. The legality and validity of the notice u/s 80 CPC were also challenged. A sum of Rs. 1000/- was claimed as compensatory costs. The learned District Judge framed the necessary issues arising out of the pleadings of the parties. The plaintiff examined PW 1 Virdhi Chand ULDC Excise Department and PW 2 Bherulal (Plaintiff) in evidence. The defendants examined DW 1 Bherulal son of Nathulal and DW 2 Laxminarayan. The documentary evidence of the plaintiff consists of the licence (Ex. 1), Chart Ex. 2), application (Ex. 3), application (Ex. 4) and application (Ex. 5). The defendants evidence consists of the extracts from the Stock Registers (Ex. A1 to Ex. A12). The learned District Judge, by his judgment dated March 20, 1973, decreed the suit of the plaintiff as aforesaid. Hence this appeal by the defendants.

3. Learned Deputy Government Advocate, appearing for the appellant has only challenged the finding on issue no. 1 before me. Issue No. 1, when translated into English, reads as under :

Whether the plaintiff was not supplied country liquor from April 19, 1967 to March 19, 1968 because there was shortage of country liquor in the warehouses and, therefore, it was not supplied according to his demands and as such he could not fulfil the guarantee?

The learned District Judge, after considering the oral and documentary evidence on record, recorded a finding that the defendants did not supply the liquor to the plaintiff'' according to his demands and therefore, he could not sell the liquor to the extent of the guarantee amount. Issue No. 1 was, therefore, decided in favour of the plaintiff and against the defendants. As a result of the decision of the issues framed, the learned District Judge decreed the suit for Rs. 37,000/- with costs and also awarded pendente lite and future interest on Rs. 31,112/- at 6% per annum. Mr. Balia contended that issue No. 1 was wrongly decided by the learned District Judge as there is sufficient material consisting of oral and documantary evidence of the parties on record showing that there was no shortage of liquor in the warehouse and that it was supplied to the plaintiff according to his demands. The plaintiff failed to lift and sell the liquor in accordance with the terms of the licence and, therefore, the decree for refund of the security amount is not sustainable. For the examination of the arguments, raised by the learned Deputy Government Advocate, the oral and documentary evidence on record requires to be referred.

4. PW 1 Virdhichand was working as L.D.C. at the warehouse Paratapgarh from April 1, 1957 to March 31, 1968. He has also proved the Charts (Ex. A1 to Ex. A12) which relate to the monthly stock Of liquor. He has admitted that there was shortage of country liquor for one or two months as the defendants'' demand was more. It is clear from the statement of Virdhichand (PW 1) that the plaintiff, during the relevant period was supplied liquor every month in accordance with the orders of the Office of the Commissioner, Udaipur and that the orders to that effect were received every month. He has proved the list (Ex. 2) containing quota of every licence. A perusal of the list (Ex. 2) shows that the quota of every licence was fixed and the quota fixed for the plaintiff was much less than his demands. Ex. 3 and 4 are the applications, which were submitted by the plaintiff to the Assistant Excise Officer, Paratabgarh. In these applicatians, it is mentioned that the country liquor has not been supplied to him according to his demand and, therefore, the liquor may be supplied to him. There are endorsements and the reports on Exs. 3 and 4. It is clear from the reports that there was a shortage of the country liquor in the warehouse and as such the plaintiff could not be supplied liquor according to his demands. The reports on Exs. 3 and 4 are dated February 29, 1968 and February 14, 1968 respectively. It appears from Ex. 2 that the Excise Department had fixed the quota for the plaintiff as 1141 L.P. Litres per month and the plaintiff was not supplied the country liquor ever according to this quota. PW 2 Bherunlal (plaintiff) has deposed that the defendants did not supply liquor to him according his demands on account of the shortage of the liquor in the warehouses. This statement of his is corroborated by the statement of PW 1 Virdhichand. From the statement of PW 1 Virdhi Chand and PW 2 Bherunlal and Exs. 2, 3 and 4, it is established that the country liquor was not supplied to the plaintiff according to his demands & an account of this, he was not able to sell the country liquor to the extent of the guarantee amount DW 1 Bherunlal son of Nathulal and DW 2 Laxmi Narayan were examined on behalf of the defendants. I have read the statements of the aforesaid two witnesses. It is true that both the aforesaid witnesses have stated that there was enough stock of liquor and the quantity required by the plaintiff could be supplied to him. DW 1 Bherunlal has stated that it is wrong to say that monthly quota of every licence was fixed and the country liquor used to be supplied to him accordance with the quota. DW 2 Laxmi Narayan has stated that he has no knowledge whether monthly quota of country liquor was fixed or not. DW 1 Bherunlal and DW 2 Laxmi Narayan do not controvert the evidence of the plaintiff, which consists of the statement of PW 1 Virdhi Chand and PW 2 Bherunlal that there was shortage of liquor and on account of this the plaintiff was not supplied liquor according to his demands. It may be recalled that PW 1 Virdhi Chand was employed in the Excise Department. His statement finds

 

corroboration from the list (Ex. 2) fixing monthly quota of the licencecs and the applications (Exs. 3 and 4) containing endorsement and reports, which show that there was shortage of liquor during the relevant period and there it was not supplied to the plaintiff by the defendants. The oral and documentary evidence on record has correctly been appreciated by the learned District Judge and there is no good reason to take a view, contrary to one, which was taken by the learned District Judge. I, therefore, affirm the finding of the learned District Judge that defendants did not supply the liquor to the plaintiff according to his demands and because of this, the liquor could not be lifted and sold to the extent of guarantee amount. Issue No. 1 was, therefore correctly decided by the learned District Judge.

5. As finding on issue No. 1 was only challenged and no other point was pressed by the learned Deputy Government Advocate in support of the appeal, it has to be dismissed.

6. The result is that there is no force in this appeal and it is, accordingly dismissed with costs.