

(1979) 01 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Second Appeal No. 29 of 1968

State of Rajasthan

APPELLANT

Vs

Ganesh Mal and Another

RESPONDENT

Date of Decision : 05-01-1979

Acts Referred:

Rajasthan Public Demands Recovery Act, 1952 — Section 2(5), 20, 26

Citation : (1979) WLN 10

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This is a civil second appeal by the State of Rajasthan against the judgment and decree dated 6-9-1967 passed by the Civil Judge, Sojat, upholding the judgment and decree dated 31-7-1965 passed by the Munsif, Jaitaran, whereby the State of Rajasthan was restrained from effecting recovery of Rs. 990.72P. from the plaintiffs Ganesh Mal and Sohanlal.

2. The plaintiffs' case, in brief, was that the plaintiffs were appointed agents for the storage and sales of food grains by the then Jodhpur Government under an agreement Ex. 1. The Government supplied 1540 "maunds wheat & 1,116 "maunds Gujji of the value of Rs. 31, 269/5/4. The plaintiffs were to be paid commission @ Rs. 1/10/- per maund. The Plaintiffs after deducting their commission amounting to Rs. 4, 316/- deposited the price of grain amounting to Rs. 26,953/5/4 in the Treasury through challans in two installments. When the commission bill was insisted by the Government, there was found a total shortage of Maunds 61.0 5 wheat & Maunds 32-33- 11 of Gujji. The Government allowed shortage (Chhijat) to the extent of four "chhatanks" per maund. After allowing this shortage, the excess shortage came to Maunds 51 30-9 in wheat and Maunds 25 32-14 in Gujji. The Govt. there upon made the following claim:

(1) Refund of commission charged on total Chhijat of Maunds 93-34-0 @ Rs.

1/10/- per maund -- Rs. 152/2/3 (2) Cost of excess Ghhijat of Maunds 51-30-9 in wheat @ Rs. 13/4/3 per maund. -- Rs. 686/11/- (3) Cost of excess Cbhijat of Maunds 25-32-14 in Gujji @ Rs. 10/5/- per maund. -- Rs. 258/14/3 ----- Total :- Rs. 1,097/11/6 -----

Out of this amount Godown charges amounting to Rs. 107/- were allowed to the plaintiffs and a balance of Rs. 990/11/6 was found to be due from the plaintiffs. It was alleged that no amount is due from the plaintiffs and the Government is proceeding to recover the money by adopting coercive process after initiation of proceedings under the Rajasthan Public Demand Recovery Act, 1952 (Act No. V of 1952) (hereinafter referred to as "the Act"). It was alleged that the plaintiff received a notice u/s 6 of the Act and they submitted a petition denying liability, but to no effect. Two months' notice was served on the Government and thereafter a suit was instituted for rendition of account and for permanent injunction restraining the State from effecting the alleged recovery from the plaintiffs.

3. The State of Rajasthan submitted its written statement in which it was asserted that the demand was legitimately due from the plaintiffs and the proceedings were rightly initiated against them. An objection was also taken that suit ought to have been instituted u/s 20 of the Act within the time mentioned therein, but it is barred by time. Other legal objections were also raised and it was prayed that the plaintiffs' suit be dismissed with costs and special costs may be allowed.

4. On the pleadings of the parties as many as ten issues were framed. Thereafter the evidence of the parties was recorded. After hearing the parties, the learned Munsif dismissed the plaintiffs suit for rendition of account and decreed the suit for permanent injunction. The learned Munsif decided issues Nos. 2 and 4 in favour of the plaintiffs and it was found that a sum of Rs. 990 72 P. is not due from the plaintiffs. Consequently, the plaintiffs are entitled to the relief of permanent injunction.

5. Aggrieved against the judgment and decree of the learned Munsif, the State went in appeal before the District Judge, Pali, from where the appeal was transferred to the Civil Judge, Sojat. The learned Civil Judge dismissed the appeal and held that the alleged demand is not the public demand as defined in Section 2 (5) of the Act. In appeal only two contentions were raised, - (1) that the suit is barred u/s 26 of the Act, and (2) that the suit is barred by limitation and is not maintainable in the form it has been instituted. The learned Civil Judge found that Section 20 and 26 of the Act have no application in view of the fact that the demand is not a public demand. Dis-satisfied with the judgment and decree of the learned Civil Judge, Sojat, the State has come in the second appeal.

6. I have heard the learned Additional Government Advocate on behalf of the State and the learned Counsel for the plaintiff-respondents.

7. The main controversy in the present appeal is as to whether the alleged

demand is covered within the definition of the "public demand" u/s 2(5) of the Act. The expression "public demand" is defined u/s 2(5) as under:

Section 2 Definition:- In this Act unless there is anything repugnant in the subject or context:

(5) "public demand" means any arrear of money mentioned or referred to in the Schedule to this Act and includes any interest which may by law be chargeable thereon upon the date of the signing of a certificate in respect thereof u/s 4.

8. The definition refers to the Schedule. There are various items in the Schedule out of which items Nos. 1 to 5 were deleted. The relevant item is item No. 6, which is as under:

6. Any money payable to the Government or to a department or an officer of Government.-

(i) Under or in pursuance of written instrument, or

(ii) under or in pursuance of an agreement evidenced by a writing; or, a correspondence or otherwise, in repayment of any advances or in lieu of any services rendered or supplies made by the Government or such department or officer of Government.

9. The question that arises for consideration is whether the demand in question is covered under item No. 6. In this connection reference is required to be made to Ex. I the agreement, entered into by the plaintiff's with the Government for the storage and sale of food grains. I have gone through this agreement. The agreement does not contain any such terms and conditions whereby such a demand may be created. The obligation of the plaintiffs under the agreement was to make payment of the price of the grain supplied to them by the Government and they were further entitled to a commission @ Rs. 1/10/- per maund. For shortage, the agreement provides, that the Government will in no way be responsible and the responsibility will be that of the agent. The agreement nowhere provides that in case of any shortage the Government will be able to recover the difference in the contracted price of grain found to be short and the market rate. Similarly the question of recovery of commission, as well, does not arise under the agreement. Thus, the alleged demand is not covered under item six of the Schedule. It may be stated that the State did not contest the appeal before the Civil Judge on any other grounds, except that the suit was barred under Sections 20 and 26 of the Act. Thus, it would appear that the finding of the learned Munsif that the amount is not due from the plaintiff remained unchallenged and so the plaintiffs were otherwise also entitled to a decree, unless it is found that the alleged demand was public demand and the suit was not brought within six months. The plaintiffs could be disentitled to a relief of injunction only when it is found that the demand is a public demand covered u/s 2(5) of the Act & the suit was barred u/s 20 of the Act being beyond 6 months limitation. As considered above, the demand does not fall within the purview and

scope of item No. 6 of the Schedule and it has not been suggested that the alleged demand is covered under any other item, as such, Section 20 of the Act is in no way attracted to the facts of the present case and so it cannot be found that the suit was barred u/s 20 of the Act. Similarly the question of applicability of Section 25 of the Act, as well, does not arise in view of the fact that the plaintiff have come with the case that no amount is due from them and the alleged recovery is illegal. That being so, Section 26 would not come into play. Thus, I do not find any substance in the contentions of the learned Additional Government Advocate.

10. No other point has been pressed.

11. In the result, this appeal is devoid of any force, so it is hereby dismissed. In the circumstances of the case I leave the parties to bear their own costs of this appeal.