

(1977) 07 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil First Appeal No. 33 of 1967

State of Rajasthan

APPELLANT

Vs

Kamalji

RESPONDENT

Date of Decision : 13-07-1977

Acts Referred:

Citation : (1977) WLN 216

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Modi, J.—This is an appeal by the defendant State of Rajasthan against the judgment and decree of the learned Senior Civil Judge, Udaipur dated November 22, 1966.

2. It is not necessary to narrate the facts in detail. The facts relevant for the purpose of disposal of this appeal are like this. The plaintiff respondent Kamalji took a licence from the defendant for the sale of liquor from April 1, 1963 to March 31, 1964 on guarantee basis. The amount of guarantee agreed upon between the parties was Rs. 1,66,201/-. According to the plaintiff it was incumbent upon the defendant or its Excise Department to supply liquor of the quality and quantity as per demand of the plaintiff. It is alleged that during the relevant period, the plaintiff demanded supply of liquor worth Rs. 1,75,027.61 but the defendant could supply liquor worth Rs. 1,28,121.33. only. The defendant thus failed to supply liquor worth Rs. 46,906.28 and thereby committed breach of contract. The plaintiff after making certain adjustments claimed damages to the tune of Rs. 2225.18. He also claimed return of Rs. 16,620/- deposited by him as security amount for due performance of the contract. The defendant State of Rajasthan resisted the suit. It denied that it was incumbent upon the defendant or its Excise Department to supply the quality and quantity of liquor as per demand of the plaintiff. It further alleged that upto March 31, 1964 liquor worth Rs. 1,30,317.49 was supplied to the plaintiff and

not worth Rs. 1,28,121.33 as alleged by the plaintiff. The defendant also pleaded that the plaintiff did not demand supply of liquor worth Rs. 1,75,027.61. According to the defendant it was the plaintiff who was guilty of the breach of contract and therefore he was neither entitled to claim damages nor entitled to return of the security amount.

3. On the pleadings of the parties, the trial court framed several issues. The important issues for the purpose of this appeal run as under:

1. Whether the plaintiff made demands from the defendant to supply him liquor worth Rs. 1,75,027/P.61 upto the end of March 31, 1964 ? P.

2. Whether the plaintiff was supplied liquor worth Rs. 1,28,121.33 and not worth Rs. 1,30,317.49?

3. Whether due to nonsupply of liquor the plaintiff incurred a loss to the tune of Rs. 3518.94P.

On consideration of the evidence led by the parties, the trial court came to the conclusion that the defendant was not in a position to supply liquor demanded by the plaintiff. It further held that the total demand made by the plaintiff for supply of liquor was worth Rs. 1,75,027.61 up to the end of March 31, 1964. The trial court further held that the defendant supplied liquor worth Rs. 1,30,317.49 and not worth Rs 1,28,121.33 as alleged by the plaintiff. The trial court found the defendant to be guilty of breach of contract and therefore passed a decree for return of the security amount worth Rs. 16,620/- and granted damages to the tune of Rs. 2225.18; total Rs. 18845.18. Dissatisfied with the said judgment and decree the defendant has preferred this appeal.

4. Arguing the appeal the learned Government Advocate has contended that no genuine demand was made by the plaintiff to supply liquor in excess of the amount worth Rs. 1,30,317.49 as no treasury challan was filled in By the plaintiff for the amount in excess of Rs. 1,30,317.49. I find no substance in the above contention. PW 1 Kamalji has deposed that inspire of his demand no liquor was supplied to him on 12th, 13th and 14th of June 1963 and from September 9, 1963 to November 8, 1963. The above statement of the plaintiff appears to be correct. PW 3 Mahendra Singh who was the Officer Incharge of the concerned Ware House has deposed from the stock registers maintained at the Ware House that there was no liquor available during the period mentioned by the plaintiff. As regards the procedure for making demand for the supply of liquor he has stated that although it was the duty of the licensee to fill in the treasury challans but the practice was that the challans used to be filed in by the Wan House staff. He has further stated that the Ware House staff used to fill in the challans only in case the demanded quantity and quality of liquor was in stock on the date the demand was made or it was expected to be in stock of the Ware House within a day or two. He has further deposed that in case the re existed no possibility of supplying the requisite quantity and quality of liquor demanded by the licensee, it was not necessary to fill in the challan. The various challans tiled by the

plaintiffs on the record also shows that the treasury challans used to be filled in by the Ware House Officers. The learned trial Judge has relied on the evidence of PW 3 Mahendra Singh and I see no reason to disbelieve his testimony. It is further apparent from the statement of the plaintiff that he was always ready and willing to deposit the amount for the supply of liquor demanded by him. It is further clear that he did not deposit the amount because the quantity and quality of liquor demanded by him was not available in the stock of the Ware House. In these circumstances it cannot be said that there was no genuine demand on the part of the plaintiff for the supply of the liquor demanded by him. The learned Senior Civil Judge has discussed the entire evidence on this point and I entirely agree with him that the defendant committed breach of contract in not supplying the liquor demanded by the plaintiff.

5. No other point has been pressed before me.

6. There is no force in this appeal and it is dismissed with costs.