
(1980) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil First Appeal No's. 139, 143-145, 146 and 148 of 1972

State of Rajasthan

APPELLANT

Vs

Lalukhan and Others

RESPONDENT

Date of Decision : 24-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Evidence Act, 1872 — Section 114

Citation : (1980) WLN 441

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is a batch of five Civil Regular First Appeals before me. At the request of the learned Counsel for the parties, they were Heard together. As these appeals involve common questions it will be convenient to dispose them of by a common judgment.

2. It will be sufficient to notice the facts giving rise to S.B. Civil First Appeal No 148 of. 1972; State of Rajasthan and Lalu Khan and others. The plaintiff-respondents instituted a suit for Rs. 25,000/- against the defendant-appellant alleging that they took a contract for supplying country liquor at Ratangarh that the period of the contract was from April" 1; 1967 to march 31, 1968 and that according to the terms of the contract they deposited Rs. 25,000/- as security in the Excise Department of (State of Rajasthan) at Bikaner. It was further averred that the defendant agreed to refund the amount after the termination of the contract. The term of the contract expired on March 31, 1968. Their case was that in terms of the contract they were entitled to get refund of the amount of security, which was deposited with the defendant. It was, inter alia, pleaded in the plaint that the condition related to minimum guarantee was illegal, void and ultra vires and hence is not enforceable. A notice under"Section 80, CPC was served on the defendant. Despite that notice the security amount was not

refunded, and hence, the suit for Rs. 25000/- was filed. They claimed pendente lite and future interest also. The defendant resisted the suit on, various grounds. It was, however, admitted that the contract for selling Country liquor at Ratangarh for that the period from "April 1, 1967 to March 31, 1968 was granted and that the plaintiffs deposited Rs. 25000/- as security in terms of the contract. The claim of the plaintiffs for the refund of Rs. 25000/- was contested on the ground that the defendant had enough stock of country liquor and it was wrong that it was not supplied to the plaintiffs by the defendant for want of stock. According to defendant, the plaintiffs did not ask for the supply of the country liquor to it and that when ever the plaintiffs had demanded it, it was supplied to them. The contention raised in this connection on behalf of the defendant was that the plaintiffs failed to sell country liquor according to the minimum guarantee scheme. Various other objections were also taken; which need not be mentioned here as the learned Addl. Govt. Advocate appearing for the defendant rightly challenged the finding on the following issue in these appeals:

Whether the defendant had sufficient stock of wine and the plaintiff did not fulfil the condition of minimum guarantee?

The trial Court, after the framing of issues, afforded opportunity to the parties to lead evidence in support of their respective pleas. The parties did not produce any evidence and; therefore, after hearing arguments, the learned Distt. Judge by the impugned judgment dated March 31, 1972 decreed the plaintiffs suit for Rs. 25,000/- with costs and the defendant was directed to make payment of the decretal amount within three months. Having regard to the circumstances, the plaintiffs were held not entitled even to the future interest. Feeling aggrieved, the defendant has filed this appeal. The facts giving rise to S.B. Civil First Appeals Nos. 143 of 1972, 145 of 1972, 146 of 1972 and 149 of 1972 are substantially the same except with some variations. The learned Additional Government Advocate in these four appeals has also challenged the finding on the aforesaid issue, mentioned hereinabove. I have heard Mr. H.N. Calla, Additional Government Advocate, for the appellant and Mr. N.M. Lodha, learned Counsel for the respondents and have gone through the record. 3. It was contended by the learned Additional Government Advocate that the learned District Judge has erred in deciding the aforesaid issue against the defendant whereby holding that the defendant had failed to prove that the State Government had enough stock of country liquor and that the plaintiffs did not take delivery of it from the warehouse/warehouses of the defendant and that they did not fulfil the condition of minimum guarantee. On the contrary, Mr. Lodha appearing for the respondents strenuously contended that from the documents on record, reference of which has been made by the learned Distt. Judge in the impugned judgment, it is abundantly clear that the defendant, namely, State had not enough stock of country liquor to meet the requirements of the plaintiffs and that the defendant failed to supply the liquor as demanded by the plaintiffs during the currency of the contract. The burden of proving the aforesaid issue was on the defendant-appellant. The plaintiffs submitted an

application on Sept. 10, 1972 under Order 40, Rule 12 CPC, which was in force at the relevant time, for discovery of the documents. On November 9, 1971, learned Counsel for the defendant took time for the production of the documents and the court ordered that the documents be produced on the next date. After four adjournments on November 19 1971, December 3, 1971 December 15, 1971 and December 17, 1971, the documents were produced on January 13, 1972. On that day, the documents produced were inspected by the learned Counsel for the plaintiffs and he stated that he will get the copies of the documents prepared and filed in court. Thereafter, issues were framed and the case was posted for evidence. As stated above, none of the parties led any evidence. The documents that were produced by the defendant, the copies of which were filed by the plaintiffs were marked as Ex. 2 to Ex. 53 and the endorsement as required under Order XIII, Rule 4, CPG was made on them. The plaintiffs got those documents from the custody of the defendant and after getting their copies prepared, they were filed in the Court.

4. It is in these circumstances that I am called upon to determine whether the findings of the learned Distt. Judge in regard to the aforesaid issue is correct or not.

5. Before the learned Distt. Judge, it was conceded on behalf of the defendants that no action was taken against the plaintiffs under clause 2 (a), (b), (c) and (d) of the licence. It appears from the copies of the government record Ex. 3 to Ex. 6, 8 to Ex. 14 and Ex. 53 that the plaintiffs requested the officers of the defendant to issue country liquor; that the State Government did not possess enough stock to meet the requirements. The stock register of the country liquor of the relevant time was in the possession of the defendants. It was open to the defendant to produce it in support of the plea that it had sufficient stock of country liquor with it so as to meet the requirements of the plaintiffs. The stock register has not been produced. In these circumstances, the learned Distt. Judge in my opinion was right in drawing an adverse inference against the defendant on account of the non-production of the stock register u/s 114 of the Evidence Act. Even no oral evidence has been produced on behalf of the defendant to show that they had sufficient stock of country liquor for being supplied to the plaintiffs. In the absence of oral and documentary evidence having bearing on the question whether the defendant had enough stock of country liquor for being delivered to the plaintiffs and on the basis of the record, which the plaintiffs got produced from the defendant, the copies of which were filed by the plaintiffs, the learned District Judge was right in deciding the aforesaid issue against the defendant,. I, therefore, affirm the findings of the learned District Judge when he held that the defendant had failed to establish that the State Government had enough stock of country liquor; that the plaintiffs did not take delivery from the warehouse of defendant and that he did not fulfil the conditions of minimum guarantee.

6. As the finding on the aforesaid issue has been only challenged and no other point was pressed by the learned Additional Government Advocate in support of

the these five appeals, they have to be dismissed.

7. The result, is there is no force in S.B. Civil First Appeals Nos. 148 of 1972, 143 of 1972, 145 of 1972, 146 of 1972 and 149 of 1972 and they are, accordingly, dismissed. In the circumstances of the case, parties shall bear their own costs of these appeals.