HIGH COURT OF TRIPURA
AGARTALA

R.F.A. 4 OF 2006

1. **The State of Tripura (through the Secretary to the Government of Tripura),**
   Department of Finance, Civil Secretariat, Agartala.

2. **The Commissioner of Excise,**
   Government of Tripura, Agartala.

3. **The Collector of Excise**,
   Government of Tripura,
   West Tripura, Agartala.

….**Appellants.**

- Vrs –

1 (a) **Smt. Tagar Paul,**
W/o Lt. Chitta Ranjan Paul.

1 (b) **Shri Chinmoy Paul**,
S/o Lt. Chitta Ranjan Paul.

1 (c) **Shri Ripan Paul,**
S/o Lt. Chitta Ranjan Paul.

2. **Smti. Ajanta Paul,**
   Wife of Shri Ranjit Kumar Paul,
   66/6- Central Road, P.S. East Agartala,
   District-West Tripura.

3. **Shri Pradip Mukherjee,**
   Tripura Bonded Ware House,
   Motor Stand Road, P.O. Agartala,
   P.S. East Agartala, District- West Tripura.

... plaintiff-respondents

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the appellants : Mr. S. Chakraborty, Addl.G.A.

For the respondents : Mr. S.M.Chakraborty,
Sr. Advocate
Mr. P. Dutta & Ms. P. Sen,
Advocates.

Date of hearing & delivery of judgment and order : 12.02.2015

Whether fit for reporting : No

JUDGMENT & ORDER(ORAL)

This appeal under Section 96 of the Code of Civil Procedure,1908 is directed against the judgment and decree dated 19.09.2005, passed by learned Civil Judge, Sr. Division, Court No.2, West Tripura, Agartala in Money Suit No.30/2004.

2. Heard Mr. Supriya Chakraborty, learned Addl. G.A. for the appellants and learned counsel Mr. P. Dutta and Ms. P. Sen for the respondents.

3. The respondent Nos. 1 and 2 as plaintiffs (hereinafter mentioned as plaintiffs) instituted Money Suit No.30/04 against the defendant-appellants and another defendant-respondent No.3 (hereinafter mentioned as defendants) in the Court of learned Civil Judge, Sr. Division seeking a decree of Rs.9,43,899/- as compensation and damage.

4. The plaintiffs, *inter alia,* contended that they were the license holders of a Bonded Ware House namely "Tara Ma Bonded Ware House" at Motorstand, Agartala and they got the license in November,1999 and thereafter the license was extended time to time till 31.03.2002. Before expiry of the license, in response to Notice Inviting Tender (NIT) floated by defendant No.3 for issuance of fresh license, the plaintiffs also participated in the tender process but ultimately their tender was not accepted for shortage of bid money. The plaintiffs used to store the stock of their India made foreign liquor (IMFL, for short) and Beer etc. in a go-down located at Agartala but it was badly affected by flood in August/September,2000 and therefore, by a letter dated 26.02.2002 the plaintiffs approached defendant No.3 to shift the entire stock of IMFL and Beer to a safer go-down at Chandrapur but the prayer of the plaintiffs was refused by the defendant No.3 by writing a letter dated 07.05.2002. The plaintiffs thereafter by letter dated 07.06.2002 again informed defendant No.3 that the stock could not be kept in good condition in the existing go-down and in response to that letter defendant No.3 by letter dated 02.08.2002 informed the plaintiffs to transfer the stock to any licensed bonded ware house as per rule 153 of Tripura Excise Rules. On receipt of that letter, the plaintiffs wrote letter dated 03.08.2002 to all the Bonded Ware Houses of Tripura with a request to purchase unsold stock of IMFL and Beer from the plaintiffs and again the plaintiffs requested the defendant No.3 to shift the stock in the meantime to a new go-down at Chandrapur so that the stock can remain marketable. In response to their letter dated 03.08.2002 only defendant No.4 expressed his willingness to accept the unsold stock but ultimately the defendant No.4 did not accept the stock of the plaintiffs even after repeated persuasion by the plaintiffs. At a point of time, defendant No.3 issued pass in favour of the plaintiffs for transfer of the stock and accordingly, the plaintiffs loaded the stock in a truck and took it to the go-down of defendant No.4 but the defendant No.4 refused to accept the stock. The plaintiffs thereafter approached defendant No.3 about the refusal by the defendant No.4 and thereafter the defendant No.3 by letter dated 19.02.2003 asked the plaintiffs to take the entire stock in their custody again and the transfer pass dated 31.01.2003 which was issued by defendant No.3 was cancelled. On 25.03.2003, the plaintiffs served notice upon defendant Nos. 1 to 3 to sell the unsold stock by auction and otherwise the plaintiffs would be compelled to claim compensation but thereafter by letter dated 10.11.2003, the defendant No.3 informed the plaintiffs that the stock of IMFL and Beer should be destructed and accordingly stock of IMFL and Beer amounting to Rs.5,28,249/- was destructed. The plaintiffs, therefore, claimed the amount with damages and prayed for a decree of Rs. 9,43,899/-.

5. The defendant Nos. 1, 2 and 3 by filing written statement contended that as per Rule 89 of the Tripura Excise

Rules,1990, the State Govt. cannot be held responsible for any loss or damage and any loss or damage sustained by the plaintiffs is for their own fault for which the defendants cannot be held responsible. It is also contended that since the plaintiffs had no license of bonded ware house, they could not be allowed to shift the stock to a new go-down. When the plaintiffs prayed for auction sale of the stock, the stock was tested in the Drug Testing Laboratory of the State Govt. and it was found that the stock was unfit for human consumption and therefore, the defendant Nos.3 directed the plaintiffs to destroy the stock as per rules.

6. Defendant No.4 by filing written statement contended that by his letter dated 14.08.2002 he expressed willingness to receive the unsold stock subject to verification about marketability of the goods. But subsequently by his letter dated 19.12.2002 he informed the plaintiffs that only those products which would be found in good condition would be accepted and when he found that the stock was unsuitable for sale, he informed the plaintiffs that he could not accept the stock since it was not in proper condition.

7. Considering the pleadings of the parties, the trial Court framed three issues namely---

i. Is the suit maintainable?

ii. Are the plaintiffs entitled to get compensation and damages for Rs.9,43,899/- from the defendants No. 1,2 & 3?

iii. To what other relief, the plaintiffs are entitled?

8. The plaintiff No.1 examined himself as P.W.1 and the plaintiffs exhibited 42 documents those were marked as Exhibit-1 to Exhibit-42.

On behalf of defendant Nos. 1 to 3 one Haridas Debbarma was examined as witness and six items of documents were proved and marked as Exhibit-G to Exhibit-I.

Defendant No.4 also examined himself as D.W. and exhibited six documents which were proved and marked as Exhibit- A to Exhibit-F.

9. The trial Court decided all the issues in favour of the plaintiffs and decreed the suit to the extent of claim of Rs.5,29,249/-.

10. Aggrieved, the defendant Nos. 1 to 3 filed the present appeal.

11. Mr. Chakraborty, learned Addl. G.A. appearing for the appellants has submitted that there is no evidence to show that the stock of IMFL and Beer in the go-down of the plaintiffs were in good condition on 26.02.2002 when the plaintiffs first approached defendant No.3 for transfer of the stock to a new go-down at Chandrapur. It is emphatically contended by Mr. Chakraborty, learned Addl. G.A. that Exhibit-4 is the letter dated 26.02.2002 written by the plaintiffs to defendant No.3 wherein the plaintiffs clearly mentioned that there was a flood in the month of August/September,2000 and after flood the plaintiffs did not lift any new consignment of the goods and all the goods in stock of the plaintiffs were lifted before August/September, 2000. So, the stocks were already old and it has to be presumed that those were in the meantime became inconsumable and when it became inconsumable the plaintiffs approached for shifting of the stock which could not be allowed since they had no license of any bonded ware house by that time. Referring to Exhibit I series, learned Addl. G.A. further submitted that the stock of the IMFL and Beer were tested in the State Drug Testing Laboratory and the report dated 22.09.2003 (Exhibit-I series) shows that it was not fit for human consumption and therefore, when the plaintiffs approached the defendants for auction sale, the defendants directed destruction of the stock since the stock was already unfit for human consumption. There was no lapse on the part of the defendants in taking decision and whatever decision were taken by the defendants it was according to law and so the trial Court was absolutely wrong in decreeing the suit partly in favour of the plaintiffs.

12. Learned counsel Mr. Dutta and Ms. P. Sen argued that the plaintiffs approached defendants for shifting all the stock in the month of February,2002 and the order for destruction of the stock was passed by the defendant No.3 on 10.11.2003 i.e. almost after about one year 9 months and in the meantime, the stock got damaged and became unfit for human consumption so the responsibility was of the defendant Nos. 1 to 3 for whose fault the stock could not be disposed of or shifted by the plaintiffs.

13. It is an admitted position that as per the Tripura Excise Act, 1987 and Rules framed there-under, a license holder is bound to store the stock of IMFL and Beer etc. excise-able goods in an approved go-down only. It is an admitted position that the plaintiffs were maintaining 'Tara Ma Bonded Ware House' from the year 1999 and their license expired on 31.03.2002. So they had valid license upto 31.03.2002 which is not disputed. While the license was in force, the plaintiffs approached the defendants for shifting the stock to a new go-down at Chandrapur, Agartala since their existing go-down was damaged because of flood but that was not allowed by the defendants which is an admitted position. From February,2002 till the expiry of the license on 31.03.2002 the defendants would take action on the prayer of the plaintiffs regarding shifting of the stock to a new go-down but no action was taken during the period from 26.02.2002 to

31.03.2002. The approach of the plaintiffs for shifting of the go-down was denied by the defendants by a letter dated 07.05.2002 and the plaintiffs thereafter also continued to approach the defendants but ultimately by a letter dated 02.08.2002 the defendant No. 3 informed the plaintiffs to shift the stock to any other licensed bonded ware house and accordingly on 03.08.2002 itself, the plaintiffs wrote letter to all the license holder Bonded Ware Houses in Tripura to accept the stock of the plaintiffs and only defendant No.4 came out but he also ultimately refused to accept the stock saying that it was not marketable. On 25.03.2003 the plaintiffs served notice to allow them for auction sale of the stock but that was not allowed and thereafter by a letter dated 10.11.2003, the defendant No.3 asked the plaintiffs to destroy the stock and accordingly within 15.12.2003 the entire stock valued Rs.5,28,249/- were destroyed. There is no pleading of the defendants that the stock was already unfit for human consumption at the time when the plaintiffs approached the defendants for shifting of the stock to a new go-down at Chandrapur. The defendants after testing of the stock on 22.09.2003 came to the conclusion that the stock of IMFL and Beer were unfit for human consumption and therefore, directed that the stock be destroyed. The defendants, therefore, took unreasonable time in disposing the prayer of the plaintiffs regarding their stock in hand after their license was not renewed and so the trial Court decided the issues in favour of the plaintiffs and decreed the suit partly. I cannot accept the argument of learned Addl.G.A., Mr. Chakraborty that the stock was already unfit at the time when the approach was made by the plaintiffs for shifting of the stock to a new go-down at Chandrapur or immediately thereafter.

14. Learned Addl. G.A., Mr. Chakraborty has further submitted that the evidence on record has not been properly appreciated by the trial Court and that the trial Court arrived at a wrong finding. But on perusal of the impugned judgment passed by the trial Court and the pleadings and evidence on record, I am of considered opinion that the trial Court rightly evaluated the pleadings and evidence on record and decided the issues and hence, I find no force in the argument advanced by learned Addl. G.A. and accordingly, the appeal stands dismissed.

15. Parties to bear their own costs.

16. Send back the L.C. record along with a copy of this judgment.

JUDGE