
(1992) 10 MP CK 0012
In the Madhya Pradesh High Court
Case No : S.A. No. 67 of 1984

Bhagwandas Goyal

APPELLANT

Vs

Krishi Upaj Mandi Samiti and Another

RESPONDENT

Date of Decision : 12-10-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 67

Citation : (1992) 37 MPLJ 998 : (1992) MPLJ 998

Hon'ble Judges : R.C. Lahoti, J

Bench : Single Bench

Advocate : K.L. Mangal, for the Appellant; M.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.

On 11-7-1984 this Court admitted the appeal for hearing parties on the following two substantial questions of law : -

"(1) Whether in the facts and circumstances of the case, a notice u/s 67 of M. P. Agriculture Produce Market Act, 1972 is attracted and if so, whether the notice Ex.P/6 is invalid?

(2) Whether the period of two months of the notice Ex.P/6 having expired during the pendency, of the suit; the suit cannot be dismissed on the ground that it was not maintainable inasmuch as it was instituted prior to the expiry of two month"s notice period u/s 67 of the aforesaid Act."

On 2-9-1980 the plaintiff/appellant filed a suit for recovery of Rs. 8,818.96 P. against the defendant/respondent alleging that in spite of having completed the work contract the amount of security deposit, earnest money and final bill were not paid to the plaintiff. Prior to the institution of the suit the plaintiff had served a notice u/s 67 of the M. P. Krishi Upaj Mandi Adhiniyam, 1972, (hereinafter

referred to as the "Adhiniyam", for short). The notice dated 12-8-1980 (Ex.P/6) was served on the defendant on 12-8-1980. The defendants gave a reply on 16-8-1980 (Ex.P/10) refuting the claim of the plaintiff. In the written statement a specific objection was taken by the defendant that the suit having been filed before the expiry of the period of 2 months, from the date of service of the notice, it was not maintainable and was liable to be dismissed. Issue No. 7(A) was framed on this plea of the defendant.

The trial Court decreed the suit. In appeal also, the claim of the plaintiff was found to be just on merits. However, the appeal has been allowed and the suit directed to be dismissed as having been filed in violation of Section 67 of the Adhiniyam.

Section 67 of the Adhiniyam reads as under:-

"67. Bar of suit in absence of notice - No suit shall be instituted against the Board or any market committee until the expiration of two months next after notice in writing stating the cause of action, name and place of abode of the intending plaintiff, and the relief which he claims has been delivered or left at its office. Even such suit shall be dismissed unless it is instituted within six months from the date the accrual of the alleged cause of action."

The provision is *pari materia* with S. 80 of the Code of Civil Procedure.

In *Bihari Chowdhary and Another Vs. State of Bihar and Others*, their Lordships held:

"A suit against the Government or a public officer, to which the requirement of a prior notice under S. 80, C.P.C. is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable. "

The language used in S. 67 of the Adhiniyam leaves no manner of doubt that the provision is mandatory. It takes away the right of any one to institute a suit against "the Board" or "Market Committee" until the expiration of two months from the delivery of the notice. *Bihari Chowdhary's* case applies to S. 67 of the Adhiniyam, with all force in view of similarity in the language employed in S. 80, C.P.C. and S. 67 of the Adhiniyam.

The learned counsel for the appellant submitted that the defendant should not have been permitted to take shelter behind the plea under S. 67 of the Adhiniyam. Firstly, because it is a technical plea and secondly, because the defendant/respondent having refuted the claim of the plaintiff within the period of 2 months it would have served no purpose in waiting for a period of 2 months and then filing the suit. Reliance was placed on *Mahabir Kishore v. State of M. P.* 1990 J.L.J. 1 (S.C.) and *State of M. P. v. Ramrao Krishnarao Paliskar* 1990 J.L.J. 315 (D.B.) in both the decisions, the Apex Court and this Court have held that State

should not rely on technical plea of limitation to defeat the legitimate claim of the citizens. It is for the defendant /respondent to read and act on the law so laid down while learning moral therefrom. However, two cases relied upon by the learned counsel for the appellant do not help him in the present case for the simple reason that S. 67 of the Adhinyam is mandatory in character and obliges the Court to hold the suit not maintainable, if it is filed before expiry of statutory period of two months as is the law laid down in Bihari Chowdhary's case (supra).

The learned counsel for the plaintiff/appellant relied on a number of decisions setting out the object and purpose behind serving a statutory notice. In view of Bihari Chowdhary's case (supra) reference to those decisions may be academic but would not serve any useful purpose.

Lastly it was submitted by the learned counsel for the appellant that if the suit was not maintainable, the plaint should have been directed to have been returned instead of dismissing the suit. Even this contention cannot be accepted. Return of plaint is contemplated only by Rule 10 of Order 7 of the Code of Civil Procedure, under which provision a case like the one at hand is not covered. At the best Rule 11 of Order 7, C.P.C. could have been relied on by the learned counsel for the plaintiff/appellant, but even that would not take any difference. Under this provision the Court would have rejected the plaint instead of dismissing the suit; but the net result would be the same.

For the foregoing reasons the appeal is held to be without any merit and liable to be dismissed. The plaintiff/appellant should have been better advised in filing a fresh suit seeking exclusion of time lost in the present proceedings under S. 14 of the Limitation Act which liberty is still open and available to him. For the present, the appeal has to be dismissed. The judgment and decree of the lower appellate Court are confirmed. In the facts and circumstances of the case, there shall be no order as to costs. Counsel's fee as per schedule, if pre-certified.