
(2005) 03 MP CK 0097
In the Madhya Pradesh High Court
Case No : S.A. No. 63 of 2005

Jal Praday Karmachari Kalyan Sangh	Vs	APPELLANT
Ayukt, Nagar Nigam		RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 80
Municipal Corporation Act, 1956 — Section 401

Citation : AIR 2005 MP 222 : (2005) 3 MPLJ 145

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : B.P. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This is plaintiff's second appeal. The plaintiff filed a suit, against Commissioner, Municipal Corpora Lion, Jabalpur for declaration and injunction in regard to the suit shop. u/s 401 of the Municipal Corporation Act, 1956 thereafter referred to as "the Act") there is mandatory requirement to send notice to the Municipal Corporation. In the present ease notice was not sent in terms of Section 401 of the Act to the Municipal Corporation, but it was addressed to Commissioner, Municipal Corporation. Since there is non-compliance of Section 401 of the Act, according to me, the two Courts below rightly dismissed the suit of the plaintiff in that regard. My view is supported by the decision of this Court in the case of Putli Bai v. Municipal Corporation, Gwalior 1964 Jab LJ 464. wherein this Court held as under :--

"7. I confess that on the basis of these observations I was at first of the opinion that there was substantial compliance with Section 401 of the Corporation Act in the present case, and the objection raised by the Corporation was too technical. But I readily discovered that I was wrong in view of the pronouncement in S.N.

Dutt Vs. Union of India (UOI), . That was a suit Instituted by S.N. Dutta as sole proprietor carrying on business in the name and style S.N. Dutta and Company". Notice was given by "Messers S.N. Dutt and Company". Their Lordships observed :--

"It will be Immediately obvious that the notice was in the name of Messers S.N. Dutta and Company while the suit was filed by S.N. Dutta claiming to be the sole proprietor of Messers S.N. Dutta and Company. It is urged on behalf of the appellant that the reason why the suit was filed in the name of S.N. Dutta as sole proprietor of Messers S.N. Dutta and Company was that no suit could have been filed in the name of Messers S.N. Dutta and Company as that was not a firm; that was merely the name and style in which an individual namely S.N. Dutta was carrying on the business. The question therefore that Immediately arises is whether S.N. Dutta who filed the suit was the person who gave the notice and the answer is obvious that it is not so. It may be that S.N. Dutta is the sole proprietor of Messers S.N. Dutta and Company and is carrying on business in that name and style; but that does not mean that these notices were by S.N. Dutta. Any one reading these notices would not necessarily come to the conclusion that Messers S.N. Dutta and Company were merely the name and style in which an individual was carrying on business."

In the result, their Lordships upheld the decision of the High Court dismissing the suit for want of proper notice. Referring to the decisions in Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), and State of Madras v. C. P. Agencies AIR 1960 SC 1300, their Lordships have observed :--

"It must however be remembered that the defect with which this Court was dealing in this case was in the matter of cause of action and relief and this Court pointed out that it was necessary to use a little common sense in such circumstances. Where the matter (for example) concerns the or the cause of action, it may be necessary to use common sense to find out whether Section 80 has been complied with. But where it is a question of the name of the plaintiff, there is in our opinion little scope for the use of common sense, for either the name of the person suing is there in the notice or it is not. No amount of common sense will put the name of the plaintiff there, if it is not there." These observations are emphatic and I am bound by them. Following them with the utmost respect, it must be said that a notice addressed to the "Commissioner" cannot be deemed to be notice to the "Corporation".

Similar is the view in another decision of this Court in the case of Kashiram v. Municipal Corporation Mandsour 1966 Jab LJ (SN) 7. The decision in Putli Bai (1964 Jab LJ 464) (supra) is based on two decisions of the Supreme Court as referred as in para 7. Learned Counsel for the appellant has placed reliance on a Division Bench decision of this Court in Union of India (UOI) and Another Vs. Imperial Tobacco Company of India Ltd., and has contended that in that case notice was given to Union of India through General Manager of the Railways. However, the notice was required to be sent to the General Manager of a

particular Railway. The Division Bench in para 7 further held that it was under the impression because u/s 79, C.P.C. the suit was required to be filed against Union of India. However, in the present case, not only the notice was sent to Commissioner, Municipal Corporation, Jabalpur and not to the Municipal Corporation, Jabalpur, but, the suit has also been filed not against the Municipal Corporation but against Commissioner of Municipal Corporation. Apart from this, decision of Putli Bai (supra) is based on two decisions of the Apex Court.

In this view of the matter, since notice u/s 401 of the Act was not sent to the Municipal Corporation, Jabalpur and the suit is also not filed against the Municipal Corporation, Jabalpur, according to me, the two Courts below did not commit any error in dismissing the suit.

This appeal is dismissed in limine.