
(2009) 04 MP CK 0059
In the Madhya Pradesh High Court

Krishi Upaj Mandi Samiti

APPELLANT

Vs

Chandra Shekhar Raghuwanshi and Others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Criminal Procedure Code, 1973 (CrPC) — Section 80

Citation : (2009) ILR (MP) 3019 : (2009) 3 MPHT 324 : (2009) 3 MPLJ 411

Hon'ble Judges : Sushma Shrivastava, J;Arun Mishra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Arun Mishra, J.

Writ Petition and the Civil Revision have been preferred by Krishi Upaj Mandi Samiti, Banapura, Tehsil Seoni Malwa, District Hoshangabad (hereinafter referred to as "the Samiti"). In Civil Revision No. 238/08 order passed by Civil Judge, Class-II, Seoni Malwa, District Hoshangabad in Civil Suit No. 43-A/05 on 29-2-08 has been assailed whereas in W.P. No. 17381/07 orders passed by the Trial Court and the Appellate Court in the matter of interim grant of injunction have been assailed by the Samiti. Both the cases have been listed before the Division Bench as per order passed by Hon'ble the Chief Justice on 21-1-2009. Consequently, civil revision is also heard by us.

The facts in short giving rise to the instant suit indicates that Chandra Shekhar Raghuwanshi has filed a suit for declaration and injunction against the Samiti, Director of Mandi Board, Bhopal and State of M.P. through Collector, Hoshangabad and for setting aside resolution passed by the Samiti dated 29-8-05 being illegal and void. Prayer has also been made to restrain the implementation of notice inviting tenders for installation of weighing machines in terms of NIT dated 29-10-05. Matter has travelled to this Court in a W.P. No. 5277/2005 which was decided by this Court on 7-3-2006, it was an independent writ petition in which prayer was made to quash the order dated 17-6-05 and

direct the respondents to execute the agreement and to permit the petitioner to establish the weight equipment in the market yard, Krishi Upaj Mandi Samiti, Banapura, District Hoshangabad and to operate it. This Court has allowed the writ petition on conditional order. The Samiti was directed to take a final decision or to issue a fresh letter permitting the petitioner to install weigh machine within a period of 30 days from the date of the order. Other directives were also issued, in case the Samiti takes a decision permitting the plaintiff to install weigh machine. In case of refusal to permit the petitioner to install the weigh machine directives were also issued by this Court. It is not in dispute that pursuant to the decision rendered by this Court in the writ petition the plaintiff has been permitted to install weigh machine. However, he has filed the instant suit praying for the aforesaid relief on 29-11-05. The suit was filed as mentioned in Para 16 without serving a notice. It was submitted that it was not practicable to serve the notice of two months which was necessary, consequently the permission was prayed to institute the suit without serving the notice. Application was filed before the Trial Court to reject the plaint under Order 7 Rule 11, CPC on the ground that notice u/s 67 of M.P. Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as "the Adhiniyam") has not been served. The Trial Court has rejected the application vide order dated 29-2-2008. The Trial Court has held that the suit has been filed for specific performance of the contract between the parties, suit was held to be maintainable, permission was granted u/s 80(2) of CPC to institute the suit. The objection has not been taken at the first instance. Aggrieved by the order civil revision has been preferred.

In W.P. No. 17381/07, Trial Court has granted injunction restraining the Samiti from acting upon the NIT and to install other weigh machines during pendency of the suit, order has been affirmed by the Appellate Court. Aggrieved by the orders, aforesaid writ petition has been preferred.

Shri Sanjay Sarwate, learned Counsel appearing for petitioner Samiti has submitted that in view of the admitted fact that notice u/s 67 of the Adhiniyam has not been served, the suit would not be maintainable. He has placed reliance on decisions of this Court in Bhagwandas Goyal v. Krishi Upaj Mandi Samiti, Datia and Anr. 1992 MPLJ 998. He has also relied upon Division Bench decision of this Court in Municipality Vs. Gas Authority of India Limited and Others, and a decision in Harmesh Chandra Dua and Another Vs. Nagar Palika Nigam, . He has also submitted that balance of convenience and irreparable injury could not be said to be in favour of plaintiff, consequently grant of injunction by the Courts below could not be said to be proper, virtually the suit has been decreed.

Shri Greeshm Jain, learned Counsel appearing for respondent No. 1 has submitted that though the suit was filed without serving notice u/s 67 of the Adhiniyam, however, the Trial Court has granted permission u/s 80(2) of CPC to institute the instant suit. The objection of want of service of notice u/s 67 was required to be taken at the threshold, it was not taken at the initial stage consequently filing of application later on could not be said to be proper.

First we take up the civil revision for decision. Section 67 of the Adhiniyam provides Bar of suit in absence of notice. Section 67 reads thus:

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. Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

We find that notice is mandatory u/s 67 of the Adhiniyam. The NIT was issued purporting to exercise powers under the Adhiniyam. The action was clearly within the periphery of the Adhiniyam. Notice u/s 67 is mandatory and suit without serving a notice is not maintainable has been laid down by this Court in *Bhagwandas Goyal v. Krishi Upaj Mandi Samiti, Datia and Anr.* (supra). This Court has laid down that the language used in Section 67 of the Adhiniyam leaves no manner of doubt that 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. The question without respect to plea being technical has also been considered by this Court in *Bhagwandas Goyal v. Krishi Upaj Mandi Samiti, Datia and Anr.* (supra). This Court has laid down that provision being mandatory obliges the Court to hold the suit not maintainable, if it is filed before expiry of statutory period of two months, the decision of *Bihari Chowdhary and Another Vs. State of Bihar and Others*, , has also been considered in which Section 80, CPC came for consideration as it stood prior to its amendment by Act No. 104 of 1976. This Court has laid down thus:

5. 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 u/s 80, CPC 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 Section 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 Section 67 of the Adhiniyam, with all force in view of similarity in the language employed in Section 80, CPC and Section 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 u/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 and then filing the suit. Reliance was placed on Mahabir Kishore v. State of M.P. 1990 J LJ 1 (SC) and State of M.P. v. Ramrao Krisharao Paliskar 1990 J LJ 315 (DB), 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 Section 67 of the Adhiniyam 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).

Section 80 has been amended later on. Sub-section (2) has been added. However, Section 67 does not contemplate permission to institute a suit which is provided in Section 80(2), CPC, thus, grant of permission u/s 80, CPC could not have been used by the Trial Court to protect the suit instituted without serving a notice u/s 67 of the Adhiniyam. In the instant case, no notice was in fact issued u/s 67 of the Adhiniyam. None of the act of the Collector was assailed, thus, permission granted u/s 80(2), CPC was superfluous and could not inure to the benefit of plaintiff so as to hold that suit is maintainable as no such permission is contemplated u/s 67 of the Adhiniyam.

Division Bench of this Court has distinguished the provisions of Section 319 of M.P. Municipalities Act and Section 80(2) of CPC in Municipality, through Chief Municipal Officer, Raghogarh v. Gas Authority of India Ltd. and others (supra). It has been held that benefit of Section 80(2) of CPC cannot be extended to suits against Municipal Council and the suit without serving statutory notice under the Municipalities Act is not maintainable. Division Bench of this Court has laid down thus:

19. It appears that the Trial Court in a haste to decide the suit has not considered the material objections. When specific plea as to valuation was raised, it was the duty of the Trial Court to examine the question of valuation from bare reading of the plaint. Trial Court committed error in holding that the Court fee paid is proper. Plaintiffs themselves have valued their suits and they have sought injunction to avoid their monetary liability of Rupees Two crore and above. Loss which was going to cause to the plaintiffs was of two crore and two crore fifty three lac in two suits respectively. Therefore, the Trial Court ought to have directed the plaintiffs to pay ad valorem Court fee. In the absence of any such direction, suit as filed itself was not maintainable. There is no notice u/s 80, CPC according to law. Plaintiffs have neither mentioned the date on which cause of action has accrued and the reliefs intended to be claimed by the plaintiffs in the notice. There is nothing in the pleadings that the said notice has been delivered at the office or place of residence of the concerned officer and to whom notice has been served. Therefore, in view of such technical flaws suit as filed itself was

not maintainable. Even otherwise, suit against the Municipal Council without serving statutory notice u/s 319 of the M.P. Municipalities Act is not maintainable. The benefit of Section 80(2), CPC cannot be extended to suits against Municipal Council and the suit without serving statutory notice under the Municipalities Act is not maintainable.

The provision of Section 67 is *pari materia* to Section 319 of M.P. Municipalities Act is also not in dispute.

In *Harmesh Chandra Dua and Anr. v. Nagar Palik Nigam, Gwalior* (supra), Division Bench of this Court has laid down that notice u/s 401 of M.P. Municipal Corporation Act is mandatory. Plaint was ordered to be returned to plaintiff with liberty to present after complying with provisions of notice, if it is within limitation and permissible under the law.

In view of the aforesaid, we hold that notice u/s 67 of the Adhinyam to be mandatory, the suit could not be said to be maintainable. As prayed, plaint is ordered to be returned which was also the recourse adopted to in *Harmesh Chandra Dua and Anr. v. Nagar Palik Nigam, Gwalior* (supra). We direct the plaint to be returned to the plaintiff with liberty to present it after complying with provisions of notice and to present it, if it is within limitation and permissible under the law.

It is conceded at Bar that in view of aforesaid, the writ petition has been rendered infructuous. Same is dismissed as infructuous. Civil Revision is allowed. Impugned order with respect to application under Order 7 Rule 11, CPC is hereby quashed, application is allowed. Parties to bear their own costs as incurred of the petitions.