

(2002) 02 AHC CK 0086
In the Allahabad High Court
Case No : Civil Revision No. 40 of 2002

Krishi Utpadan Mandi Samiti and Others	APPELLANT
Vs	
Heinz India Ltd.	RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17

Citation : (2002) 2 AWC 898 : (2002) 93 RD 569 : (2002) 2 UPLBEC 1060

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant; Bharat Ji Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—The respondent filed Suit No. 733 of 2000 against the revisionists. The main relief claimed in the suit is for prohibitory injunction restraining the revisionists from imposing and recovering any mandi fee of all those transactions of the opposite parties in future by which it transfers stock of ghee to its various godowns/depots located in and outside the State of U. P. not coming within the territorial jurisdiction of revisionist No. 1 for the sale of such ghee at the said places where the said godowns are situated. The revisionists, who are defendant in the suit have yet not filed written statement. They made request for rejection of the plaint under Order VII, Rule 11. C.P.C. read with Section 151 of C.P.C. The said application has been rejected by the learned Civil Judge (Senior Division), Aligarh, by the impugned order dated 24.1.2002. Aggrieved by it, the present revision has been preferred.

2. I have heard Sri B. D. Mandhyan, learned counsel for the revisionists and Shri Bharat Ji Agarwal, learned Senior Advocate for the respondent at length.

3. The request for rejection of the plaint has been made by the revisionists under Clause (d) of Rule 11 of Order VII, C.P.C. which provides that the plaint shall be

rejected where the suit appears from the statement in the plaint to be barred by any law. Therefore, It is necessary to examine briefly the allegations made in the plaint. The opposite party is "a company registered under the Companies Act and Its factory is manufacturing many articles including ghee (regarding which there is dispute) ; for which C & F agents have been appointed by the opposite party for receiving, handling and delivering of stock of the ghee. It is alleged that the factory at Aligarh does not enter into any kind of contract with regard to the sale of ghee with the party or parties outside the State of U. P. or in any city of Uttar Pradesh. There is no nexus between the transfer of ghee from the plaintiff factory at Aligarh and purchase thereof by the various purchasers : that a licence u/s 9 of U. P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as The Adhiniyam") has been obtained from revisionist No. 1; that Section 17 of the Adhiniyam provides for levy and collection of the market fee regarding the sales, that the opposite party collects the mandi fee for each sale made at Aligarh from the purchaser and deposits the same with the Mandi Samiti, Aligarh and is also Issuing Form 9R to the purchasers. However, when the goods are sent to C & F agents by stock transfer, then on those transactions no mandi fee is payable by the plaintiff as that transaction is not a sale at Aligarh or in the State of U. P. The reference has also been made in the plaint regarding the filing of the certain writ petitions in this Court and in the Hon"ble Supreme Court. The Writ Petition No. 6483 of 1995 was filed in the High Court by the opposite party regarding the levy of the fees in which the order was passed that revision u/s 32 of the Adhiniyam should be filed before Director, Mandi Parishad. It was further provided that in case the Director directs that the mandi fee is not payable, the amount deposited shall be refunded with interest @ 12%; that, therefore, the respondent filed revision u/s 32 of the Adhiniyam which was dismissed and thereafter, the respondent moved an application for amendment in the writ petition in this Court and challenged the decision of Director, Krishi Utpadan Mandi Samiti. That writ petition was dismissed by order dated 10.10.1996 ; that Special Appeal was preferred by the plaintiff before the Apex Court and the Apex Court has passed the following order on 25.03.1998:

"If the trader makes the payment without demur, the matter ends and the assessments finalised. But in case he does so and raises protest, then the assessment shall be taken to be the provisional in nature making It obligatory on the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged and provisional assessment has been made, a time frame would be needed to devise making the final assessment. We, therefore, conceive that it innately be read in the order of this Court that a final assessment has to be made within a period of two months after provisional assessment so that the entire transaction in that respect if over, enabling the aggrieved party, If any, to challenge the final assessment in the manner provided under the aforesaid Act or under the general law of the land in appropriate form." (Emphasis given)

4. That in compliance of the order of the Hon"ble Supreme Court objections were filed which were rejected and the mandi fee has been assessed. Therefore,

according to the direction of the Hon''ble Supreme Court, the right to realise the tax is being challenged under the general law by the civil suit.

5. It has been argued by Sri B. D. Mandhyan, learned counsel for the revisionists that Explanation added in the year 1987 to Section 17 (iii) of the Adhiniyam is as follows :

"For the purpose of Clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed."

6. It is contended that in view of this Explanation, if the produce is taken out, it shall be deemed to be a sale and mandi fee is payable on the same.

7. It has also been argued that the Adhiniyam is self-contained Code. Section 25 of the Adhiniyam provides for the appeal to the Board against the orders of the Committee imposing tax u/s 17 of the Adhiniyam ; that Section 32 further provides regarding the power of the Board to revise the orders; that, therefore, the recourse should have been taken to the provisions of the Code and the remedy provided in the Code itself; that, therefore, the jurisdiction of the Civil Court provided u/s 9 of C.P.C. is impliedly barred.

8. The learned counsel has further argued that these provisions are being utilised by the respondent. Against three assessment orders, three revisions have been filed before the Board, which are pending. Twenty other revisions were filed by the respondent : that eleven writ petitions filed by the respondent in this Court and eight writ petitions filed by M/s. Glaxo India Limited, predecessor of the respondent before Lucknow Bench. All these writ petitions are pending and various stay orders have been passed ; that, therefore, the suit is gross misuse of the process of the Court and is liable to be struck-off ; that the respondent can take recourse to the provision of appeal u/s 25 of the Act against imposition of tax.

9. In support of the argument and regarding the scope of Order VII, Rule 11, C.P.C. the learned counsel has referred to the decision of the Apex Court in T. Arivandandam Vs. T.V. Satyapal and Another, In this case the provisions of Section 35A and Order VII, Rule 11, C.P.C. came for consideration before the Apex Court. It was observed "that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in (he sense of not disclosing a clear right to sue, "the Court should exercise its power under Order VII. Rule 11, C.P.C.. taking care to see that the ground mentioned therein is fulfilled. (Emphasis given). And. if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X. C.P.C.

10. After carefully considering the above decisions, I am of the view that it does not apply to the present case. In the present case, the plaintiff disclosed a clear right to sue. Apex Court has also directed that care should be taken to examine whether the grounds mentioned in Order VII, Rule 11, C.P.C. are fulfilled or not. However, it has not been provided that it can be examined whether the plaintiff has prima facie case or there is chance of the suit being decreed. Clause (d) above only provides for examination as to whether on the basis of the statement made in the plaint, the suit appears to be barred by any law. In the present case, from the statement made in the plaint, it does not appear that the suit is barred by any law. The question whether the Court has jurisdiction u/s 9, C.P.C. can be decided after the proper issue is framed and the scope of Section 9, C.P.C. is different from Order VII. Rule 11, C.P.C.

11. The learned counsel for the revisionists has also filed copies of various appeals preferred u/s 32 by the respondent. The filing of all these appeals does not show that the suit is not maintainable. A bunch of writ petitions were filed by the respondent, which have been dismissed by this Court on 21.3.1995. In those writ petitions, the question was regarding the levy of fee on the transactions of ghee from the premises of respondent in Aligarh to various godowns. The relief was refused. Another Writ Petition No. 6483 of 1995 was also decided by the Division Bench of this Court on 21.3.1995, in which order to file revision/petition to the Board u/s 32 of the Adhiniyam was passed. On its basis, it has been argued that only remedy open to the respondent is to file appeal and revision under Sections 25 and 32 of the Adhiniyam and, therefore, the suit is not maintainable.

12. Explanation to Section 17 and Sections 25 and 32 of the Adhiniyam came for consideration before the Apex Court in many cases. In the case of Civil Appeal Nos. 1769-1773 of 1998, *Krishi Utpadan Mandi Samiti v. Saraswali Cane Crushers and others*, decided on 25.3.1998. It was observed that :

"We are satisfied that the orders of this Court afore-referred to would need some repair work. We treat the said order to be conceiving of a provisional assessment whereafter doors are opened for a final assessment. We conceive that when demands are raised by the Krishi Utpadan Mandi Samiti against a trader before he could ask for transit of goods outside the market area, the trader would be entitled to tender a valid rebuttal to say that no sale had taken place within the notices area and that if the explanation is accepted there and then by the Mandi Samiti, no question of payment would arise as also of withholding the gate pass. If prima facie evidence led by the trader is not accepted by the Mandi Samiti the trader or the dealer can be compelled to pay the market fee as demanded before the issuance of gate pass. If the trader makes the payment without demur, the matter ends and the assessment finalised. But in case he does so and raises protest, then the assessment shall be taken to be provisional in nature making it obligatory on the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged and the provisional assessment has been made a

time-frame would be needed to devise making the final assessment. We therefore, conceive that it innately be read in the order of this Court that a final assessment has to be made within a period of two months after provisional assessment so that the entire transaction in that respect is over enabling the aggrieved party, if any, to challenge the final assessment in the manner provided under the aforesaid Act or under the general law of the land in appropriate fore."

13. The other important decision on this point of the Apex Court is Shri Mahalaxmi Sugar Works, Farid Nagar and others v. State of Uttar Pradesh and others. (1987) 2 UPLBEC 957. It was observed:

"Inter alia that from a bare perusal of the Explanation and the background in which it has been enacted, it is apparent that the effort was to check evasion or avoidance of payment of market fee on transactions of sale or purchase of specified agricultural produce by placing the burden on the person who is taking out the goods to prove that it was not to be sold in the market area. It was not intended to widen or alter the meaning of "sale". If the person concerned fails to discharge the burden placed on him by the Explanation then it "shall be deemed" that the goods have been "sold within such area". To put it conversely if the person concerned proves that the goods are being taken out for sale outside the market area then he shall have discharged his burden."

14. In view of the above dictum of the Apex Court, it cannot be said that the matter cannot be challenged outside the provisions of the Adhiniyam. In the case of M/s. Saraswati Cane Crushers (supra), the Apex Court has clearly observed that the final assessment can be challenged in the aforesaid manner or under general law of land in appropriate forum. The impact of the words "under general law of land in appropriate forum" were considered by this Court in Writ Petition No. 25333 of 1998 decided on 30.11.1997 by Hon"ble R. R. K. Trivedi. J.. on reference to him on difference of opinion of the two Judges of this Court. It was held that words "general law" appear to have been used to distinguish it from the special remedy available under the Act. The remedy under the general law normally refers to the remedy available to the civil courts by way of suit. Generally, for remedy under Article 226 words "extraordinary remedy" or "special remedy" are used.

15. In view of the above decisions, I am of the opinion that the plaint cannot be rejected on the ground that the suit is barred by law under Order VII. Rule 11, C.P.C.

16. The matter of jurisdiction has to be decided by the trial court after an issue on the point is framed and arguments are advanced. Therefore, at this stage, I do not express any final opinion regarding the jurisdiction of court below to try the suit. Any observation, made above shall not be considered to be expression of opinion regarding the jurisdiction of the civil court to try the suit.

17. However, considering the scope of Order VII, Rule 11, C.P.C. I am of the opinion, that the learned Civil Judge has rightly held that there is no ground for

rejection of the plaint under Order VII, Rule 11, C.P.C.

18. The revision is, therefore, without merit and is hereby dismissed.