

**(1987) 09 MP CK 0010**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Appeal No. 4 of 1987 & Miscellaneous Appeal No.4 of 1987

Madhyam Vargiya Grih Nirman Sahakari Sanstha

APPELLANT

Vs

Vasantrao and another

RESPONDENT

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**Date of Decision :** 16-09-1987

**Acts Referred:**

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 64(1)(e), 82, 82(1)(c)

**Citation :** (1988) MPLJ 326

**Hon'ble Judges :** T.N. Singh, J

**Bench :** Single Bench

**Advocate :** V. Kekre, for the Appellant; Arun Mishra, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Dr. T.N. Singh, J.

This appeal has been heard expeditiously because an order passed under Order 7, Rule 11(d), CPC by the trial Court is impugned by the plaintiff-appellant. Court below has taken the view that the suit was barred by the provisions of Section 82 read with Section 64(1)(e) of the M.P. Co-operative Societies Act, 1960 for short the Act.

Rejection of a plaint is indeed contemplated under Clause (d) of Rule 11 of Order 7, Civil Procedure Code, where "the suit appears from the statement in the plaint to be barred by any law". This would mean, according to me, that parties are not at issue in such a case and indeed the question merely is of law and no investigation into any fact is necessary. Indeed, if the "law" by which exclusion of Civil Court's jurisdiction is contemplated, on its face manifests the requirement of investigation into any fact then there would be no scope for passing order under Clause (d) aforementioned. In such a case, no leap-frog procedure can be adopted by the trial Court to efface or obliterate the right contemplated under Order 14, Civil Procedure Code, under which parties are allowed to raise "issue"

and to call for decision of the trial Court on issues so framed. Indeed, the amended Rule 2 of Order 14, CPC in terms contemplate "issue of law" to be raised on pleadings which the trial court may try as a preliminary issue. To be more precise, Rule 3 of Order 14 in terms indicates materials from which issues may be framed and as per Clause (b) consideration of "pleadings" is inevitable unless allegations on oath are made by parties as per Clause (a) which may provide, instead, sufficient material to consider if and what issues arise for decision in any case.

3-4. In the instant case, admittedly no written statement was filed by the two defendants. On the other hand, the two defendants jointly filed an application in the trial Court praying for rejection of the plaint under Order 7, Rule 11(d) but allegations in the application were not made on oath. It is also the admitted position that neither side produced any document, as is contemplated under Clause (c) of Rule 3 of Order 14, CPC and the trial Court was not in a position, therefore, to consider and decide the question if parties were at issue on any question of fact or law.

Shri Arun Mishra, who appears for the respondents/defendants, submits that the averments in the plaint were sufficient to vest in the trial Court jurisdiction under Order 7, Rule 11(d) to reject the plaint. But, what those averments are? According to counsel, they are threefold -- (i) that the first defendant was a member of the plaintiff-society; (ii) that first defendant had executed a sale deed in favour of the second defendant in violation of the terms and conditions of the sale deed executed by the plaintiff-society in his favour; and (iii) that the first plaintiff had executed a sale deed in favour of the first defendant. However, counsel concedes that there was a prayer in the plaint for cancellation of the sale deed which the first defendant had executed in favour of the second defendant and also for removal of the construction made by the second defendant on the suit land which was conveyed by the society to the first defendant.

Section 82 undoubtedly bars Civil Court's jurisdiction in respect of "any dispute required to be referred to the Registrar or his nominee or Board of nominees" under the Act. On referring to Section 64 we read provision concerning "disputes" which are required to be referred to the Registrar as contemplated u/s 82(1)(c). I quote sub-section (1) of section 64 and only the relevant Clause (c) thereof, on which reliance is placed by the trial Court in passing the impugned order:--

64. Dispute -- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following:--

.....

(c) a person other than a member of the society who has been granted a loan by

the society or with whom the society has or had business transactions and any person claiming through such a person.

The question to which the learned Additional District Judge ought to have addressed himself was whether the "dispute" which was raised in the plaint was such a dispute which touches only the "business" of the plaintiff-society inasmuch as the dispute evidently was not concerned either with "management" or "liquidation" of the society. The plaint averments afore-referred do not, however, indicate that the dispute raised thereby touched only the business of the plaintiff-society. The trial Court could not evidently have jurisdiction to try the suit if that had been the case and the plaint could be returned under Clause (d) of Rule 11 of Order 7, Civil Procedure Code. Not only that any finding is there to be read in the impugned order in that regard I am prima facie not satisfied if the plaint averments merely raise a question which could only touch the "business" of the plaintiff-society. I say this for the simple and plain reason that a prayer is made by the plaintiff-society claiming the relief of cancellation of the sale deed which the first defendant is said to have executed in favour of the second defendant, and by no stretch of imagination execution of that sale deed can be said to touch the business" of the plaintiff-society. Nothing more need be said at this stage in this matter as I have taken the view that this matter must go back to the trial Court for fresh decision to be rendered in accordance with law.

In the result, the appeal succeeds and is allowed. The plaint which has been returned to the plaintiff-appellant shall be filed in the trial Court on or before 29th Sept. 1987. Counsel agree to appear in the trial Court on 29th Sept. 1987 and to take a date of rehearing of the matter. Indeed, it shall be the duty of the trial court to first decide whether on the application presented by the defendants any order can be passed under Order 7, Rule 11(d) in the face of the provisions of Rules 2 and 3 of Order 14, Civil Procedure Code. If written statement is filed and a preliminary issue is raised then that issue must be decided within two months. No costs.