

(1985) 10 BOM CK 0019

In the Bombay High Court

Case No : Civil Revision Application No. 53 of 1982

Pralhad Eknath Fulkari

APPELLANT

Vs

Ramkrishna Tukaramji Dhage and Others

RESPONDENT

Date of Decision : 01-10-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 57

Citation : (1986) 2 BomCR 516 : (1985) MhLj 971

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : B.N. Mohta, for the Appellant; J.N. Chandurkar, for non-applicant No. 1, for the Respondent

Judgement

S.W. Puranik, J.—Defendant No. 1 Pralhad had objected to the maintainability of the suit filed by non-applicant No. 1-Ramkrishna against himself and non-applicant Nos. 2 and 3. The said application Exhibit 12 came to be dismissed by the trial Court by its order dated 5-12-1981 passed below Exhibit 12 in Reg. C. S. No. 115 of 1981.

2. Non-applicant No. 1 Ramkrishna is the original plaintiff who filed the said suit on the ground that he is an agriculturist, that he had cultivated cotton crop and the raw cotton produce was sold by him through a broker defendant No. 2 under the superintendence of the Agricultural Produce Market Committee, Yavatmal-defendant No. 3. In spite of his right to the price of the agricultural produce sold by him, the Market Committee defendant No. 3 made over the payment through Aditya or broker- defendant No. 2 to defendant No. 1. According to the plaintiff, therefore, all the three defendants have committed a fraud upon him by issuing payment to a wrong person and the plaintiff agriculturist has not been paid the price of the agricultural produce sold by him in the market committee area.

3. The defendant No. 1 filed application Exhibit 12 for dismissal of the suit. It was contended that u/s 57 of the Maharashtra Agricultural Produce Marketing

(Regulation) Act, 1963, the plaintiff's dispute must necessarily be referred to the Tribunal constituted by the Agricultural Produce Market Committee, Yavatmal for recovery of the purchase price. In the said application, the defendant No. 1 referred to sections 57, 57(2) and 57(3) of the Maharashtra Agricultural Produce Marketing (Regulation) Act and claimed that the jurisdiction of the Civil Court is specifically ousted by subsection (3) of section 57 of the said Act and as such, the suit was not maintainable.

4. The trial Court rejected the objection by the impugned order on the ground that it was satisfied that the plaintiff had sent a notice to the Agricultural Produce Committee, Yavatmal and had also moved the District Deputy Registrar and as such, there was no failure or default on the part of the plaintiff. The learned trial Judge further observed that the Agricultural Produce Market Committee-defendant No. 3 should have referred the dispute to the Tribunal constituted under the Act and in that case, the decision of the Tribunal would have been final as per the provisions of section 57 of Maharashtra Agricultural Produce Marketing (Regulation) Act. The defendants having failed to refer the matter to the Tribunal, the plaintiff's suit according to him, was maintainable. It is this order which is impugned by the defendant No. 1 in this revision.

5. Shri B.N. Mohta, Advocate, appears for the applicant-defendant No. 1 Shri J.N. Chandurkar, Advocate, appears for the plaintiff-non-applicant No. 1 other non-applicants are served.

6. The only question urged before me is about the jurisdiction of the Civil Court to entertain the suit in respect of unpaid price of agricultural produce by one agriculturist to another agriculturist in the market committee area. Section 57 of the said Act provides that every sum due from a Market Committee to the State Government shall be recoverable as an area of land revenue. It further provides that any sum due to a Market Committee on account of any charge, costs, expenses, fees, rent or on any other account under the provision of this Act or any rule of bye-law made there under or any sum due to an agriculturist for any agricultural produce sold by him in the market area which is not paid to him as provided by or under this Act, shall be recoverable from the person from whom such sum is due, in the same manner as an area of land revenue.

7. Sub-clause (3) of the said section further provides that if any question arises whether a sum is due to the Market Committee or any agriculturist within the meaning of sub-section (2), it shall be referred to a Tribunal constituted for the purpose which shall after making such enquiry as it may deem fit, and after giving to the person from whom it is alleged to be due an opportunity of being heard, decide the question; and the decision of the Tribunal shall be final and shall not be called in question by any Court or other authority.

8. A plain reading of the above provision shows that where any sum is due to any agriculturist for any agricultural produce sold by him in the market area and which is not paid to him as provided by or under the Act, the same shall be

recoverable from the person from whom such sum is due, in the same manner as an area of land revenue.

9. Sub-clause (3) further says that if there is any dispute regarding whether a sum is due to the Market Committee or to any agriculturist, the same shall be referred to a Tribunal constituted for the purpose and this sub-clause (3) further makes it clear that the decision of the Tribunal shall be final and shall not be called in question in any Court or other authority.

10. In the instant case, according to the plaintiff, he had sold agricultural produce as an agriculturist to another in the market area, but the price was not paid to him as provided under this Act and in particular u/s 30-A(6) of the Act, it is thus a case which squarely fall within sub-clause (2) of section 57 and if that be so, and as there is a dispute regarding amount due to the plaintiff, then the dispute has to be referred to the Tribunal constituted for the purpose.

11. The plaintiff in his plaint itself has stated in Para 4 as follows :

".....as a matter of fact when the matter was in dispute, the defendant No. 3 (A. P. M. C.) should have referred the dispute u/s 57 of the A.P.M.C. Act to a Tribunal constituted under the said provisions, but it deliberately did not do so."

The manner of this pleading indicates the mind of the plaintiff that it is the A.P.M.C. alone which can refer the dispute to the Tribunal u/s 57. A perusal of section 57 sub-clause (3), however, does not indicate that in case, the dispute has to be referred by the Agricultural Produce Market Committee alone. The only wording used are that, if there is any dispute, then such dispute shall be referred to a Tribunal constituted for the purpose. The position that emerges is, therefore, quite clear. In the present case, the dispute has arisen and the plaintiff who is an agriculturist and who has sold his produce in the market area and has not been paid as provided u/s 30-A(6) of the A.P.M.C. Act, then such dispute the plaintiff can and ought to refer to a Tribunal constituted under the Act. The jurisdiction of Civil Court is specifically barred and u/s 9 of the CPC since it has been barred by special statute, the Civil Court would not be able to entertain the suit.

12. The view of the trial Court that the defendant No. 3-A.P.M.C., should have referred the matter to the Tribunal is incorrect. The plaintiff can suo motu move, in case of a dispute, the Tribunal constituted for the purpose. In this view of the matter, I must hold that the suit as framed, is not maintainable before the Civil Court and it will have to be rejected as not tenable. Rule made absolute in the above terms. No order as to costs in this revision. The plaintiff may apply for refund as may be permissible.