
(2013) 05 MP CK 0105
In the Madhya Pradesh High Court
Case No : C.R. No. 488 of 2010

Rohit Grih Nirman Sahkari Samiti Maryadit	APPELLANT
Vs	
A.K. Nagpure and Others	RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 7
Madhya Pradesh Co-operative Societies Act, 1960 — Section 94

Citation : (2013) 05 MP CK 0105

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : A.P. Shroti, for the Appellant; Vivek Agrawal, Learned Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

R.S. Jha, J.—The applicant has filed this revision being aggrieved by order dated 08.09.2010 passed by the 8th Additional District Judge, Bhopal in Civil Suit No. 483-A/08 whereby the application filed by the applicant u/s 7 rule 11 of the C.P.C. has been dismissed. It is submitted by the learned counsel for the applicant that the respondent no. 1 had filed a suit against the respondent/applicant which is a cooperative society. It is submitted that in view of the provisions of section 94 of the M.P. Cooperative Societies Act the respondent no. 1 was statutorily required to serve and deliver notice to the Registrar giving details of the cause of action and the relief which he seeks to claim and that they should have made a specific statement in this regard in the plaint.

3. It is submitted that on a bare perusal of the plaint it is clear that the respondent no. 1 has not complied with the provisions of section 94 of the Act and in such circumstances, the court below has committed material irregularity and patent illegality in dismissing the application filed by the applicant under order 7 rule 11 of the C.P.C. as in the absence of compliance of the provisions of section 94 of the Act, the suit filed by the respondent no. 1 is not maintainable.

4. The learned counsel for the applicant has relied upon an order passed by this court in C.R. No. 390/09 and submitted that this court in a similar matter had disposed of the matter with a direction to the applicant therein to raise the question of section 94 by filing an appropriate application with a further direction to the concerned court to decide it within four weeks. It is submitted that in view of the aforesaid facts and circumstances, the impugned order deserves to be set aside.

5. Having heard the learned counsel for the applicant it is observed that in the instant case unlike the facts of C.R. No. 390/09 the applicant has already filed the application under order 7 rule 11 of the C.P.C. raising the issue of section 94 of the Act before the court below. It is also clear that the court concerned has considered the same in paragraph 4 of the impugned order and has stated that prima facie the question as to whether the issue involved relates to the constitution, management and business of the society concerned is not clear and therefore reliance of the applicant on the order passed in C.R. No. 309/09 is misconceived.

6. It is observed that in C.R. No. 486/10 which has been decided today in which identical order had been passed by the same court in C.S. No. 482-A/08, it was informed by the learned counsel for the respondent that connected civil suit 482-A/08 which was pending before the same court and in which the same issue had been raised by the same applicant herein, the trial court after hearing the parties has decreed the suit. In the circumstances, I am of the considered opinion that as I do not find any infirmity or illegality in the impugned order warranting interference by this court, however, the revision filed by the applicant is disposed of giving liberty to the applicant to take up the issue in the pending suit and in case the applicant does so, the same shall be decided in accordance with law by the court concerned.

The revision petition is disposed of accordingly while upholding the impugned order.