
(2008) 04 AHC CK 0047
In the Allahabad High Court

U.P. State Handloom Corporation Limited and Others	APPELLANT
Vs	
Prem Sagar Jaiswal	RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 12

Citation : (2008) 4 AWC 3523

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.N. Varma, J.—The present revision is directed against the judgment and order dated 6.2.2008, whereby the application preferred by the revisionists for rejection of plaint under the provisions of Order VII, Rule 11, C.P.C. has been rejected. The circumstances in which the controversy arises in the revision is as follows.

2. The opposite party instituted a suit (S.C.C. Suit No. 4 of 2004) for ejectment of the revisionist from the premises in question on the ground of arrears of rent. The revisionists, i.e., the tenants filed their written statement on 3.12.2004 raising an objection in para 5 whereby it was averred that the suit was barred as 60 days clear notice was not given to the revisionists as contemplated u/s 80 of the C.P.C. They thereafter preferred an application under Order VII, Rule 11, C.P.C. for rejection of the plaint for want of proper notice u/s 80, C.P.C. The trial court vide its judgment and order dated 6.2.2008 rejected the said application and negatived the plea of the revisionists. It is the said order which has been assailed through the present revision.

3. I have heard Shri Shesh Verma learned Counsel for the revisionists in support of the revision and Shri S.K. Mehrotra learned Counsel for the opposite party in opposition.

4. Shri Verma vehemently argued that the suit itself was bad for want of 60 days clear notice as contemplated u/s 80, C.P.C. and as such the learned court below committed material irregularity in the exercise of its jurisdiction while rejecting the application under Order VII, Rule 11, C.P.C. He further argued that the revisionists being a State owned Corporation falls under the definition of "State" and being an instrumentality of the Government notice u/s 80, C.P.C. was mandatory and in the absence of the same, suit could not proceed.

5. Shri Mehrotra, on the other hand, opposed the contentions raised by the learned Counsel for the revisionist. According to him the revisionists are not State Government as contemplated u/s 80, C.P.C. and as such no notice against revisionist No. 1 or against any of its officer in respect of any act purported to be done by such officer in his official capacity was required. As per submission of the learned Counsel even otherwise no act was being done by any officer in respect of any act purported to be in official capacity. The suit being only for ejectment on ground of arrears of rent, as such, compliance of the said provision was not mandatory.

6. In support of his case he placed reliance upon a decision rendered by the Apex Court in U.P.S.E.B. and Another Vs. Sant Kabir Sahakari Katai Mills Ltd., . On the strength of the said judgment the learned Counsel argued that U.P. State Handloom Corporation cannot be equated with State Government, According to him it may be a "State" within the ambit of Article 12 of the Constitution of India but, in no circumstance, can it be termed as State Government. The Hon"ble Apex Court in paragraph Nos. 12 and 13 of the aforesaid judgment observed as follows:

"12. The High Court equated the Board with the State Government and held that the writ petitioners who were cooperative societies were public sector undertakings.

13. The High Court's view is clearly untenable. The Board cannot be equated with the State Government. Section 80 of the Code of Civil Procedure, 1908 (in short "C.P.C") is a pointer in that regard. Cooperative Societies and public sector undertakings are conceptually different. The Board is a public sector undertaking and not a State Government department. It may be "State" for the purpose of Article 12 of the Constitution. There the similarity ends. Cooperative societies (the writ petitioners) cannot be, without examination of relevant factual aspects, equated with public sector undertakings. The High Court has come to an abrupt conclusion that they are public sector undertakings without indicating any reason for such conclusion. The High Court, therefore, was wrong in applying the ratio of O.N.G.C.-I case to the facts of the present cases."

7. U.P. State Handloom Corporation, Electricity Board or Food Corporation of India or any other statutory corporation may be an instrumentality of Government for purposes of "State" within the meaning of Article 12 of the Constitution of India, it nevertheless would not answer the description of

Government as understood in law and also understood in context of Section 80 of the Code of Civil Procedure. The argument of the learned Counsel for the revisionist that U.P. State Handloom Corporation should be termed as State Government within the meaning of Section 80 of the CPC is totally misplaced and thus unsustainable.

U.P. State Handloom Corporation Ltd. not being the State Government within the meaning of Section 80, C.P.C. notice as such was not required. The court below, thus, while rejecting the application under Order VII, Rule 11, C.P.C., in the considered opinion of this Court has not committed any illegality or irregularity in the exercise of its jurisdiction.

8. The revision, thus, being devoid of merits is hereby dismissed.