

MHKO070005372022



ORDER BELOW EXH.18 IN SPECIAL CIVIL SUIT NO.18/2022.

Shree Nikhil Services, Proprietary Firm through Partner Shri.Yogesh
Dattatray Gandhi etc.

V/s.

Executive Director, Shree Tatyasaheb Kore Warana
Sahkari Sakhar Karkhana Limited, Warananagar.

Defendant has moved the present application for rejection of plaint by taking recourse to Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 contending therein that plaintiff has filed the present suit for recovery of money and defendant has filed its written statement below Exh.12. According to defendant factory, they have raised objection in respect of non issuance of notice in view of section 164 of the Maharashtra Co-Operative Societies Act, 1960 and the Court has also framed issue in that respect. As per the defendant, prior notice as mandated by section 164 of Maharashtra Co-Operative Societies Act, 1960 was required to be given and as it is not given by the plaintiff, so plaint is liable to be rejected vide Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908.

Next contention raised by defendant is to the effect that, plaintiff in his pleading has given particulars about the purchase order No.137, 138 and bill, tax etc. which is of the year 2018 but, suit is filed in the year 2022 and so according to defendant, present suit is barred by law of limitation and on that count also plaint is required to be rejected vide Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908.

2. Application is strongly opposed by the plaintiff vide say below Exh.20. According to plaintiff, he has provided Air Cooling System and other maintenance as per the demand and purchase orders of the defendant and the bill of the same is due on the defendant. As the defendant factory has not given payment in respect machinery and services provided by the plaintiff and so he has filed the present suit for recovery of money, which is not touching the business of defendant factory. So, according to plaintiff, notice under section 164 of the Maharashtra Co-Operative Societies Act, 1960 is not necessary as the suit is simplicitor suit for recovery of money.

Next contention of the plaintiff is to the effect that, suit is at the hearing stage and even evidence is also partly completed and he has specifically raised the contention in his pleading as to how the suit is within limitation. In short, as per plaintiff, suit is filed well within limitation and so application is liable to be rejected with costs.

3. From rival contention of the parties, following points arise for my determination on which I have recorded my findings thereon with reasons to follow.

Sr. No.	Points		Findings
1.	Whether in the facts and circumstances of the present case, plaint is liable to be rejected vide Order 7 Rule 11 sub-clause (d) of the Code of Civil Procedure, 1908 ?	..	In the negative.
2.	What order ?	..	As per final order.

4. Heard learned counsels for both parties. Perused record. Defendant has also filed written notes of argument below Exh.18(A).

REASONS

As to point No.1 & 2 :-

5. On perusal of record it appears that defendant is sugar factory named and styled as 'Shree Tatyasaheb Kore Warana Sahkari Sakhar Karkhana Limited' registered under the Maharashtra Co-Operative Societies Act, 1960 (hereinafter referred to as 'defendant factory' for short). According to defendant factory, plaintiff has filed the present suit for recovery of the amount to the tune of Rs.14,22,790/- but, has not issued prior notice as mandated vide section 164 of the Maharashtra Co-Operative Societies Act, 1960. The next contention of the defendant factory is that suit is not within limitation and so, also the plaint is liable to be rejected.

As per the plaintiff, he has provided Air Cooling System as per the demand and purchase order of the defendant factory but, as payment is not made as per the agreed terms and so present suit is filed for recovery of money which not touching the business of defendant factory. Further contention of plaintiff is that suit is filed well within limitation.

6. Learned counsel for defendant has placed reliance on following case laws.

1. Vardhaman Developers Ltd. V/s. Borla Co-Operative Housing Society Ltd. etc. decided in Notice of Motion No.1081 of 2010 in Suit No.1442 of 2009 by the Hon'ble Bombay High Court.

2. M/s.Gurudev Developers V/s. Kurla Konkan Niwas CHS Ltd. decided on 20/02/2013 in Suit No.819 of 1992 by the Hon'ble Bombay High Court.
3. Mohinder Kaur Kochar V/s. Mayfair Housing Private Ltd. & Ors. decided on 01/08/2012 in Appeal Lodging No.474 of 2012 in Notice of Motion No.3627 of 2011 in Suit No.997 of 2010 by the Hon'ble Bombay High Court.
4. M/s.Nandanvan Co-operative Housing Society Ltd. V/s. Nandanvan Co-operative Housing Society Ltd. decided on 19/12/2011 in Appeal From Order No.978 of 2011 by the Hon'ble Bombay High Court.
5. Homi Nariman Bhiwandiwalla V/s. Zoroastrian Co-Operative Credit Bank reported in 2001 (3) BomCR 352.
6. Jijamata Sahakari Sakhar Karkhana Ltd. V/s. Sukhedeo Ramhau Fulzade & Another decided on 16/07/2010 in Second Appeal No.92 of 1999 by the Hon'ble Bombay High Court at Nagpur.
7. Mohan Meakin Limited V/s. Pravara Sahkari Sakhar Karkhana reported in (1987) 89 BOMLR 356.
8. The Gadhinglaj Urban Co-operative Bank V/s. Pooja Ravikumar Nidasoshi & Ors. decided on 04/09/2023 in Appeal From Order No.1005 of 2022 with Interim Application No.19277 of 2022 by the Hon'ble Bombay High Court.

9. Investment Combine V/s. Shree Tatyasaheb Kore
Warana Sahakari Sakhar Karkhana Ltd. reported in
2013 (6) All M.R. 542.

I have gone through the above said case laws. The gist of the above case laws is to the effect that, if dispute arose between parties touching the business of society then only section 164 of the Maharashtra Co-Operative Societies Act, 1960 would be applicable. The expression touching the business of the society should be understood in relation to actual trading or commercial or other similar business activity of the society. If claim is not based on business of society, then prior notice mandated by section 164 of the Maharashtra Co-Operative Societies Act, 1960 is not required.

7. It is settled principle of law that Order 7 Rule 11 of the Code of Civil Procedure, 1908 applies to those cases only, where the statement made by the plaintiff in the plaint without any doubt or dispute, shows that suit is barred by any law in force. It is the plaint only which has to be seen for the decision of application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. Whatever may be the defence of the defendant, it cannot be considered while deciding the application for rejection of the plaint.

8. The contention of the plaintiff in his pleading is to the effect that he has provided Air Cooling System and other services as per the demand and purchase order put by defendant factory and payment of the said has not been made and so he has filed the suit for recovery of the money. It appears that defendant

factory is a Co-Operative sugar factory registered under the Maharashtra Co-Operative Societies Act, 1960. Here the plaintiff has simply provided the Air Cooler System and other services as per demand order and for recovery of the money filed the present suit, which in my opinion simple suit for recovery of money due and not touches the business of the defendant factory and so there is no impediment of prior notice as per section 164 of the Maharashtra Co-Operative Societies Act, 1960.

So far as the question of limitation raised by the defendant is concerned, it appears that there is specific pleading that how the suit is within limitation and further the said question appears to be mixed question of law and fact. So, the plaint is not liable to be rejected on that count also. Consequently, I answer point No.1 in the negative and in response to point No.2 pass the following order.

ORDER

1. Application is hereby rejected.
2. Costs in cause.

Jaysingpur.
Date : 16/08/2024.

(Y. H. S. Deshmukh)
Civil Judge Senior Division,
Jaysingpur, Dist.Kolhapur.