

Order below Ex.1 in RCS No. 332/2012

1) The present suit is filed for perpetual injunction restraining defendants No. 1 to 3 from causing obstruction to the peaceful possession of plaintiff. The plaintiff has further prayed that the sugarcane bill amount deposited with defendants No. 4 and 5 be not paid to the defendants No. 1 to 3. After filing of the suit, the suit summons and the notice of temporary injunction application were issued to the defendants. Accordingly defendants No. 1 to 3 appeared in the matter and filed their W.S. at Exh. 22. The defendant No. 4 do not appeared and hence ex-parte order is passed against him. The defendant No.5 filed his W.S. at Exh. 23 and has taken the defence that the present suit is not tenable as it is filed without issuing notice u/s. 164 of Maharashtra Co-operative Societies Act and this court do not have jurisdiction to entertain the present suit.

2] Considering the objection of jurisdiction raised by defendant following preliminary issues are framed. Same are reproduced below alongwith my findings for the reasons thereon.

ISSUES

FINDINGS

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| 1] Whether this court is having jurisdiction to try the present suit ? | In the affirmative |
| 2] Whether the suit is barred by provisions of section 164 of Maharashtra Co-operative Societies Act ? | In the negative. |
| 3] What order ? | As per final order. |

As to the issue No. 1 to 3

3] After the preliminary issue the parties have not adduced any evidence. Hence the matter is taken for hearing of preliminary

issues. The learned advocate Shri. Badkar for defendants No. 1 to 3 and learned advocate Shri. Muddanna Patil for defendant No. 5 argued that prior notice u/s. 164 of M.C.S. Act is not issued to them and hence suit is not tenable. On the other hand, the learned advocate Shri. Dingankar for plaintiff argued that the suit is filed for perpetual injunction against defendants No. 1 to 3 and defendant No. 5 is the formal party. He further submitted that the issue is not touching to the business of society and hence notice u/s. 164 of M.C.S. Act is not required to be given and hence the suit is maintainable as civil rights of the plaintiff are affected.

4] It is true that if the dispute is not based on the business of society that will not attract the provisions of section 164 of Maharashtra Co-operative Societies Act and also prior notice is not required. In the present case, it is to be determined whether dispute is touching to the business of society. Perused the plaint. It appears that plaintiff has claimed the possession over the suit property and prayed that defendant No. 1 to 3 may be temporarily restrained from causing obstruction to his peaceful possession over the suit property. It is the contention of the plaintiff that the sugarcane bill is pending with defendant No. 5. The plaintiff apprehend that the same sugarcane bill will be paid to the defendants No. 1 to 3 and hence plaintiff has claimed that defendant No. 5 may be ordered to deposit the sugarcane bill in the court. Considering the averments made in the plaint in my view the same is not touching to the business of the defendant No. 5 Sugar factory.

5] In the present case the defendant No. 5 has filed his W.S. at Exh. 23 and has stated that they are ready to deposit or pay the

sugarcane bill as per the order of the Hon'ble Court. It appears that defendant No. 5 is the formal party. Also it appears that the issue is not touching to the business of defendant No. 5 sugar factory. Hence considering the facts, circumstances it appears that the civil rights of the plaintiff are involved in the suit and the this court has jurisdiction. Also the notice u/s. 164 of M.C.S. Act is not required to be given as it is not touching the business of society. Hence I answer point No. 1 in affirmative and point No. 2 in negative and in view of issue No. 3 proceed to pass the following order.

ORDER

- 1] This Court has jurisdiction to entertain the present suit.
- 2] Suit to proceed according to the provisions of law.

Kagal

Date : 22/01/2013

Sd/-

**(P.R. Wagdole)
Civil Judge, Jr. Dn. Kagal.**