

Spl.C.S. No.71/2017
(CNR No.-MHST05-000602-2017)

Order below Exh.15

Present application has been moved by defendant No.2 by taking recourse to Order-VII Rule-11 (d) & (a) of Code of Civil Procedure for rejection of plaint contending therein that a notice prior to the institution of suit under Section 164 of Maharashtra Co-operative Societies Act 1960 has not been given, which was must. The defendant No.2 Sugar Factory is a co-operative society registered under the provisions of the Maharashtra Co-operative Societies Act 1960. The main object of defendant No.2 Sugar Factory as laid down in the bye laws of defendant No.2 Sugar Factory is manufacture of sugar and allied products from the sugarcane available from the farmers registered with defendant No.2. According to defendant No.2, present suit has arose of alleged loan transaction given to defendant No.1 by plaintiff Bank on account of harvesting and transportation of sugarcane and as such which is touching the business of this defendant No.2 i.e. Sugar Factory. Another ground put forth by defendant No.2 is that as no consideration of loan amount is given to defendant No.1 as shown and so no cause of action arose to file the present suit. Next contention of the defendant is that, as he has raised objection in respect of jurisdiction of the Court to entertain the present suit and so, this objection has to be decided as preliminary issue before granting any interim relief and so, this defendant has sought for framing preliminary issue vide Section 9(A) of the Code of Civil Procedure, 1908.

2. Application is opposed by plaintiff by filing his say

Exh.23 on the ground that defendant No.2 has taken 'default guarantee' for the loan of defendant No.1 and as such, the present suit is for recovery of money i.e. default loan amount on the basis of deed of guarantee so this cannot be said to touching the business of defendant No.2 Sugar Factory and so notice under Section 164 of M.C.S.Act 1960 is not necessary and such suit is maintainable. Further, cause of action is pleaded in plaint. So, plaintiff requested for rejection of application with costs.

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

| Sr.No | POINTS | FINDINGS |
|--------------|--|---------------------|
| 1 | Whether defendant No.2 proves that plaint is liable to be rejected by taking recourse to Order-VII Rule11(d) of C.P.C. due to non-compliance of pre-institution notice vide Section 164 of M.C.S.Act, 1960 ? | No |
| 2 | Whether suit is liable to be rejected vide Order-VII Rule-11 (a) ? | No |
| 3 | What order ? | As per order below. |

REASONS

As To Point Nos.1 & 2 :-

4. Here, defendant No.2 has filed this application under Order-VII Rule-11 (d) & (a) of C.P.C. for rejection of plaint due to their non-compliance with the mandatory provision of Section 164 of

M.C.S.Act 1960. In order to understand the controversy, it would be necessary to quote to the provisions of Section 164 of M.C.S.Act which is as follows:-

Section 164- Notice necessary in suits. No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

Provides that, no suit shall be instituted against a society, or any of its office bearers in respect of any act touching the business of the society, until after the expiration of two months after the stipulated notice has been delivered. The notice is to specify the cause of action and the other particulars which are set out in Section 164. The plaint is to then contain a Statement that a notice was so delivered.

5. Here, from rival contentions of parties the fact emerges is that plaintiff bank has advanced a loan to defendant No.1 on the say of defendant No.2 (Sugar Factory) and for that defendant No.2 Sugar Factory stood as a guarantor by executing a deed of guarantee in favour of bank and on default of repayment of loan by defendant No.1 plaintiff has instituted suit for recovery of loan amount. Here, the question arises whether this dispute would be a dispute touching

the business of defendant No.2 i.e. Sugar Factory. The expression, “touching the business of society” came up for consideration before the Hon’ble Apex Court in **Deccan Merchants Vs. Dalichand 1970 Mh.L.J.301(SC)**. Where in it was held that,

“in the context of Section 91, the expression “touching the business of the society” would not mean the affairs of a society because election of office bearers, conduct of general meetings and management of a society could be treated as affairs of a society. Therefore, the Hon’ble Apex Court was of the view that the word “business” has been used in a narrower sense and it means the actual trading, commercial or other similar business activity of the society which the society is authorized to enter into under the Act and the Rules and its bylaws. The Hon’ble Apex Court has observed that, “The question arises whether the dispute touching the assets of a society would be a dispute touching the business of the society. Ordinarily, if a society owns buildings and lets out parts of buildings which it does not require for its own purpose it cannot be said the letting out of those parts is a part of the business of the society. But, it may be that it is business of a society to construct and buy houses and let them out to its members. In that case letting out property may be part of its business. In this case, the society is a co-operative bank and ordinarily a co-operative bank cannot be said to be engaged in business when it lets out properties owned by it. Therefore, it seems to us that the present dispute between a tenant of a member of the bank in a building which has subsequently been acquired

by the bank cannot be said to be a dispute douching the business of the bank, and the appeal should fail on this short ground”.

6. Pleading of plaintiff is to be effect that as defendant No.1 has failed to repay the loan and so he has filed the suit for recovery against the borrower and guarantor. No doubt, being a Sugar Factory the defendant No.2 has to prepare a scheme for availability of Sugarcane from farmers and for that also to prepare a scheme for the harvesting and transporting of sugarcane as per its bylaws. But, in my opinion when it is alleged that defendant No.2 has stood as a guarantor by executing a deed of guarantee for the loan of defendant No.1 it cannot be said that it touches the business of Sugar Factory because standing as a guarantor is an independent act more particularly when the suit is simplicitor for recovery of loan amount by the plaintiff bank. Hence, I have no hesitation to hold that act of standing as guarantor could not be treated as one of the affairs of Sugar Factory touching its business. Consequently, I hold that suit is not barred by Order-VII Rule11 (d) of the C.P.C.

7. Further, contention of defendant No.2 is to the effect that, as no consideration of loan amount is passed to defendant No.1 as so there is no cause of action. Here, it is necessary to mention that cause of action is a bundle of facts on the basis of which plaintiff is entitled to make its claim. There is difference between no cause of action and false cause of action. Here, it appears that defendant wants to plead that there is false cause of action. On perusal of the plaint it appears that cause of action is pleaded in the suit. For the purpose Order-VII Rule-11 (a) the plaint has to be looked into and

not defence of defendant. Whether, there is false cause of action cannot be decided for deciding the application under Order-VII Rule-11 of Civil Procedure Code. Here, plaint discloses cause of action and so in my opinion plaint is not liable to be rejected vide Order-VII Rule-11 (a) of Civil Procedure Code. Further, Section 9A has been deleted in view of its application to the State of Maharashtra and so, no question of framing preliminary issue would arise at all. Consequently, I answer the point No.1 and 2 in negative and in response to point No.3 pass following order.

ORDER

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

Date:- 15/03/2022
Place:-Karad

(Smt.S.Y.Deshmukh)
2nd Jt. Civil Judge, Sr.Division, Karad.