

Order Below Exh.17

Defendant no.2A and 2 B have moved the present application for rejection of the plaint by taking recourse of Order 7 Rule 11 of the Code of Civil Procedure, 1908, contending therein that, defendant no.2-sugar factory is a society registered under the Maharashtra Co-operative Societies Act, 1960 and pre suit statutory notice as required under Section 164 of the the Maharashtra Co-operative Societies Act, 1960 was necessary to be served by the plaintiff on the defendant no.2 or its officers and no notice has been delivered and so, suit is barred and liable to be rejected under Order 7 Rule 11(d).

02. 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.

03. Contention of the plaintiff as it appears from the pleading is to the effect that, defendant no.2 has stood as a guarantor for defendant no.1, and so, defendant no.2 has been arrayed in the present suit as a party defendant and

so, no question concerning Section 91 or Section 101 arise in the present suit because claim in the suit is based upon the deed of guarantee and so, plaintiff requested for the rejection of the application.

04. From rival contention of 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, pre institution suit notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 is necessary in the present suit ?	... In the negative.
2.	Whether preliminary issue under Section 9A of the Code of Civil Procedure, 1908 is needs to be framed ?	... In the negative.
3.	What order ?	... As per final order.

REASONS

05. On perusal of record it appears that, the present application is pending since 23/02/2018 and say is filed on 30/07/2018. Record shows that, parties and their advocates not turn up to the Court since long. Considering the facts that matter is old one, it is taken for order on merit.

AS TO POINT NO.1 TO 3 :-

06. Contention of the defendant no.2 is to the effect that, being a registered co-operative society under the

provisions of The Maharashtra Co-operative Societies Act, 1960, the present suit is liable to be rejected in view of Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that pre institution suit notice is not given and further preliminary issue under Section 9A of the Code of Civil Procedure, 1908 is required to be framed. In the present application defendant no.2 has nowhere described as to why the pre institution notice is necessary and what is the act contended by the plaintiff. Defendant no.2 only states that, as notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 prior to the institution of the suit is not issued and so, suit is barred.

07. On perusal of Section 164 of the the Maharashtra Co-operative Societies Act, 1960 it appears that, no suit shall be instituted against society or any of its officer in respect of any act touching the business of the society until two months pre institution notice has been given. So, it is to be seen whether standing as a guarantor for defendant no.1 by defendant no.2 comes within the scope of act touching the business of the society. 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 required to prepare a scheme for cutting, transportation and for hiring labour etc. but, when it is specifically alleged that, defendant no.2 has stood as a guarantor by executing deed of guarantee for loan of defendant no.1 it cannot be said that, it is the act touching the business of sugar factory because standing as a guarantor is an independent act and if

any dispute arose out of that act it would not be said that it is the act touching the business of the society i.e. sugar factory. Further standing as a guarantor for any borrower cannot be said to be business of individual person or entity but it is security given for the loan and pure contract. Here, dispute is not arose under the provisions of the Maharashtra Co-operative Societies Act, 1960 but, it arose because defendant no.2 has stood as a guarantor and in default of repayment of loan, simplicitor suit for recovery of loan amount from defendant no.1 as well as defendant no.2 has been filed. So, I have no hesitation to hold that, when dispute arose on the basis of contract i.e. deed of guarantee, it is independent liability not touching the business of the society and so, pre institution notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960 is not at all necessary. 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 point no.1 and 2 in the negative and in response to point no.3 proceed to pass the following order.

ORDER

Application is rejected.

Karad.
Date :- 04/03/2022.

(Y.H.S. Deshmukh)
Jt. Civil Judge Senior Division,
Karad.