

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 21st OF FEBRUARY, 2022

CIVIL REVISION No. 339 of 2021

Between:-

**KRISHI UJAP MANDI SAMITI DHAR
SECRETARY SHRI K.D. AGNIHOTRI
KRISHI UPAJ MANDI SAMITI
PREMISES DHAR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHOK AIREN, ADVOCATE)

AND

**M/S KHEMCHAM JAIN PROPRIE
TOR ANUJ KUMAR JAIN S/O KHEMCHAND JAIN
34 DHAR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NITIN PHADKE, ADVOCATE)

(Whether approved for reporting:- Yes)

.....
*This revision coming on for admission this day, the court
passed the following:*

ORDER

The petitioner has filed present revision under section 115 of the Civil Procedure Code 1908 (for short C.P.C) being aggrieved by the impugned order dated 09/09/2021 passed by the Civil Judge, Class-II, Dhar in Civil Suit no. 99-A/2021, whereby an application filed under Order 7 Rule 11 of CPC has been dismissed.

2. Brief facts of the case are that the respondent/plaintiff instituted a suit for declaration and permanent injunction against the petitioner/defendant. The petitioner filed an application under Order 7 Rule 11 of CPC before the trial Court and raised a preliminary objection to maintainability of such a civil suit contending that in view

of Section 66 of MP Krishi Upaj Mandi Adhiniyam, 1972 (in short Adhiniyam) the jurisdiction of civil Court was excluded and cancellation of license could not be challenged before the civil Court. After hearing both the parties, the trial Court has dismissed the application vide impugned order dated 09/09/2021, hence present revision before this Court.

3. Learned counsel for the petitioner has submitted that the plaintiff has not given any notice before filing of the suit to the petitioner/defendant and as per sections 66 and 67 of Adhiniyam, jurisdiction of civil Court is barred in this matter. The trial court has not considered that the civil suit is expressly barred and at the time of consideration of the application under Order 7 Rule 11 of CPC, only plaint averments are relevant. The plaintiff has even not properly valued the suit and the court fee was not accordingly paid. The trial Court has committed material irregularity in holding that section 9 of the CPC would be applicable. The suit filed by the plaintiff is not maintainable. The impugned order passed by the trial Court is bad in law and is not sustainable, hence learned counsel prays that the impugned order be set aside.

4. Learned counsel for the respondent has opposed the prayed made by counsel for the petitioner by supporting the impugned order passed by the Court below.

5. I have given my anxious consideration to the submissions advanced by both the parties and carefully examined the documents filed along with present revision.

6. The trial Court has dismissed the application filed on behalf of the petitioner under order 7 Rule 11 of CPC. On the basis of that, the matter should be adjudicated on the basis of the pleadings filed by the defendant and other objections should be decided on the basis of the evidence given by both the parties on merit. Therefore, short question that arises for consideration of this petition is whether an application under Order 7 Rule 11 of CPC ought to be decided on the allegations in the plaint and filing of the written statement and

evidence on merit is irrelevant and unnecessary.

7. In such circumstances, Order VII Rule 11 C.P.C. which reads as under:

"11. Rejection of plaint.-The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) Where the relief claimed is properly valued by the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, failed to do so:

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause great injustice to the plaintiff."

8. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of

jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.

9. In the case of **Sapan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others reported in (2004) 3 SCC 137**, Hon'ble Apex Court has observed as under :

“Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

In similar situation, Hon'ble Supreme Court in the case of **Om Agrawal Vs. Haryana Financial Corporation and others** reported in **2015(4) MPLJ 495** has observed as under :

“ 22. An application for rejection of the plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show the suit to be barred by any law. The question as to whether a suit is barred by any law or not would always depend upon the facts and circumstances of each case. However, for deciding this question, only the averments made in the plaint are relevant.”

10. To bolster his contentions, learned counsel for the respondent has placed reliance upon the judgment in the case of **Dhulabai etc Vs. State of Madhya Pradesh and another** reported in **AIR1969 SUPREME COURT 78**, wherein it has been held as under :

“ Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with

or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure

Where the particular Act contains no machinery for refund of, tax collected in excess of constitutional limits or illegally collected a suit lies.

An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply : case law discussed. “

11. In the case of **State of Tamil Nadu Vs. Ramalinga Samigal Madam** reported in AIR 1986 SUPREME COURT 794, Hon'ble Supreme Court has held as under :

“It is true that section 64-C of the Act gives finality to the orders passed by the Government or other authorities in respect of the matters to be determined by them under the Act and sub-section (2) thereof provides that no such orders shall be called in question in any court of law. Even so, such a provision by itself is not, having regard to the two propositions stated in Dhulabhai's case decisive on the point of ouster of the Civil Court's jurisdiction and several other aspects such as the scheme of the Act, adequacy and sufficiency of remedies provided by it etc., will have to be considered to ascertain the precise intendment of the Legislature.”

12. Chapter XI of the Adhiniyam deals with different provisions. Section 34 is related to provision of appeal. Section 34 of the Adhiniyam, 1972 reads as under :

34. Appeal. - (1) Any person aggrieved by an order of the Chairman, Market Committee or the [Managing Director] passed under [Section 32 or Section 33 as the case may be] prefer an appeal,-

(a) to the Market Committee, where such order is passed by the Chairman;

(b) to the [Managing Director] where such order is passed by the Market Committee; and

(c) to the [Commissioner] where such order is passed by the [Managing Director],

(2) An appeal under sub-section (1) shall be made,-

(i) within seven days from the date of receipt of the order, where such appeal is against the order of the Chairman; and

(ii) within thirty days from the date of receipt of the order where such appeal is against the order of the Market Committee or the [Managing Director];

in such manner as may be prescribed [x x x],

(3) The Appellate Authority may if it considers it necessary so to do, grant a stay of the order appealed against for such period as it may deem fit.

(4) The order passed by the Chairman, the Market Committee and the [Managing Director] shall, subject to the order in appeal under this section, be final and shall not be called in question in any Court of law.

13. In the present matter, Krishi Upaj Mandi Committee, Dhar terminated the licence of the plaintiff for not-payment of imposed penalty amount of Rs. 4,50,330/-. Nothing has been mentioned in the plaint averment that the said order passed by the Krishi Upaj Mandi Committee, Dhar is malafide in nature. The Krishi Upaj Mandi Committee has power to cancel or suspend the licence under section 34 of the Adhiniyam and the plaintiff/respondents have every right to challenge the order of cancellation of the licence before the Appellate Authority as provided under section 34 of the Adhiniyam, therefore, alternate remedy of appeal is already available for the plaintiff, but the plaintiff did not file any appeal before the concerned Appellate Authority and directly filed a suit before civil Court.

14. Learned counsel for the respondent has placed reliance upon the judgment passed by this Court in the case of **Krishi Upaj Mandi Samiti, Shivpuri Vs. Ramjilal Harnarayan and others** reported in **1991 MPLJ page 231** wherein it has been held :

“ Assessment or recovery of market fee on a produce which is not taxable- Right of assessment of market committee can be challenged before civil Court.”

15. But in the present case, respondent/plaintiff did not file any appeal against the order passed by Krishi Upaj Mandi under section 33 of the Adhiniyam and present matter is not related with the assessment or recovery of the market fees of a produce, therefore, this

citation is distinguishable with the present case and the same is not applicable.

16. In the case of **Nagar Palika Nigam and another Vs. Hemant Kumar and others** reported in (2014) 2 MPLJ page 214, co-ordinate Bench of this Court has held as under :

“While considering the judgment in Dhulabhai (supra) the Apex Court in Bata Shoe (supra) opined as under:—

“24. Plaintiff's reliance on the 1st proposition in Dhulabhai's case (1969 MPLJ (S.C) 1: AIR 1969 SC 78) is equally misconceived. The first two propositions formulated in that case contain a dichotomy. The 1st proposition refers to cases where the statute merely gives finality to orders of special tribunals. In such cases, according to that proposition, the Civil Court's jurisdiction would not be excluded if “the provisions of the particular Act are not complied with”. The instant case does not fall under the 1st proposition because section 84(3) of the Act does not merely give finality to the orders passed by the special tribunals. It provides expressly that such orders shall not be questioned in any other manner or by any other authority than is provided in the Act.”

(Emphasis supplied)

The judgment of Bata Shoe is directly on the point dealing with a pari materia provision. This judgment squarely covers the question of jurisdiction of Civil Court.

55. The Apex Court in a recent judgment reported in (2013) 3 SCC 440, [Oma alias Omprakash v. State of Tamil Nadu](#) opined that “binding judgments should be the Bible of a Judge and there should not be any deviation.’ (Para 57), In my opinion, the judgment of Bata Shoe (supra) is a binding judgment and this view was also expressed by a Single Bench of this Court in 1993 (1) MPWN 168, **Nagar Palika Nigam Indore v. Payare Ali**. Once a binding judgment covers the field, there is no scope of any deviation.”

17. Same principal was also laid down by the co-ordinate Bench of this Court in the case of **Agricultural Produce Market Committee Vs. Govind Oil Mill , Shivpuri** reported in 1980 MPLJ 687 , in which it has been held as under :

“M.P. Krishi Upaj Mandi Adhiniyam (24 of 1973), SS.61(2) and 19 and M.P. Agricultural Produce Market Rules, 1962, RR. 56(4) and 57 and Form VI and By-laws

46 and 47(3) and Civil Procedure Code, S.9- Bar of suit- Plaintiff suing for refund of tax illegally recovered by the Market Committee and for injunction restraining future recovery of tax on allegation of having purchased agricultural produce outside and brought within market area for consumption in manufacture of edible oil but not alleging recovery in spite of declaration in Form VI- Suit barred under section 61(2).”

18. In view of the aforesaid discussions, this Court is of the considered opinion that the Krishi Upaj Mandi has jurisdiction to cancel or suspend the licence under section 33 of the Adhiniyam and respondent/plaintiff did not file any appeal against the said order under section 34 of the Adhiniyam.

19. As per the section 66 of the Adhiniyam, the Civil Court has no jurisdiction to entertain the civil suit in respect of anything in good faith to be done or intend to be done under this Adhiniyam, but the learned trial Court has not considered all these material legal aspects, therefore, the impugned order passed by the Court below suffers from non-exercising jurisdiction vested in the Court as well as procedural irregularity. The impugned order passed by the Court below is contrary to law and deserves to be set aside.

20. Accordingly, present civil revision is allowed and the impugned order dated 09/09/2021 passed by the trial Court is hereby set aside.

21. Present civil revision stands disposed of accordingly. No order as to costs.

CC as per rules.

(ANIL VERMA)
J U D G E