

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 15th OF DECEMBER, 2022

MISC. PETITION No. 939 of 2022

BETWEEN:-

**JANPAD PANCHAYAT KASRAWAD THROUGH
CHIEF EXECUTIVE OFFICER,
KASRAWAD TEHSIL KASRAWAD,
DISTRICT KHARGONE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI TEHJEEB KHAN - ADVOCATE)

AND

**SHAKUNTALA W/O LATE JAGDISHCHANDRA
MANDLOI, AGED ABOUT 61 YEARS,**

- 1. OCCUPATION: BUSINESS WARD NO. 3,
KASRAWAD TEHSIL KASRAWAD,
DISTRICT KHARGONE
(MADHYA PRADESH)**

- 2. JILA PANCHAYAT KHARGONE
THROUGH CHIEF EXECUTIVE OFFICER
KHARGONE TEHSIL KHARGONE,
DISTRICT KHARGONE (MADHYA PRADESH)**

- 3. STATE OF M.P. THROUGH
COLLECTOR KHARGONE,
DISTRICT KHARGONE
(MADHYA PRADESH)**

....RESPONDENTS

(BY SHRI AMOL SHRIVASTAVA - GOVT. ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

1. With the consent of learned counsel for the parties, matter is finally heard.
2. By this petition preferred under Article 227 of the Constitution of India the petitioner/defendant No.1 has challenged the order dated 17.02.2022 passed by the Civil Judge, Senior Division, Kasrawad, District Khargone in RCS-B No.6/2016 whereby its application under Order 7 Rule 11 of the CPC for rejection of the plaint has been rejected.
3. The plaintiff/respondent No.1 has instituted an action for recovery of a sum of Rs.2,86,886/- from the defendants submitting that she is running a photocopy centre and defendant No.1 has been getting the work of photocopy done from her by inviting tenders which have been awarded to her. She has worked as per the tenders and has submitted bills to defendant No.1 from time to time but as on date of suit a sum of Rs.2,86,886/- has not been paid to her for the work and is outstanding.

4. The defendant No.1 filed an application before the trial Court for rejection of the plaint on the ground that the same is barred by virtue of Section 108(2) of M.P. Panchayat Raj Adhiniyam, 1993 (here-in-after referred to as "the Adhiniyam, 1993") since as per plaintiff herself she has not instituted the claim within a period of six months from the date of accrual of cause of action to her. The said application has been rejected by the trial Court by observing that the contention of the plaintiff that defendants have not paid the amount to her for the work done by her cannot be said to be an act done under the provisions of the Adhiniyam, 1993.

5. Learned counsel for defendant No.1 submits that as per plaintiff herself the cause of action for institution of the claim has accrued to her in the year 2014 whereas the suit has been instituted by her in the year 2016 which is beyond a period of six months as provided under Section 108(2) of the Adhiniyam, 1993 hence is apparently barred by time. The defendants had given work of photocopy to the plaintiff under the provisions of the Adhiniyam, 1993 hence for instituting an action against them the period of limitation would be six months.

6. Per contra learned counsel for plaintiff submits that acts of the defendants cannot be said to have been done or purported to be done under the Adhiniyam, 1993 hence the bar under Section 108 (2) of the Adhiniyam, 1993 would not be applicable. The action of defendants in withholding the amount to the plaintiff to which she is legally entitled

cannot be said to be done under the Adhiniyam, 1993 hence the bar as raised by defendant No.1 is not attracted. Reliance has been placed by him on the decision of this Court in **Nagar Palika, Murena and Another V/s. Shivshankar Gupta 2005 (4) M.P.H.T. 19, I.B.Mishra V/s. Nagar Panchayat Suhagpur and Others 2013 (4) MPLJ 578 and Bhaiyalal Pannalal V/s. Municipal Committee, Murwada 1958 MPLJ 251.**

7. I have heard the learned counsel for the parties and have perused the record.

8. Section 319 of M.P. Municipalities Act,1961 reads as under :-

319. Bar of suit inabsence of notice.—(1) No suit shall be instituted against any Council or any Councillor, officer or servant thereof or any person acting under the direction of any such Council, Councillor, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after a notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims has been, in the case of a Council delivered or left at its office and in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted under Section 54 of the Specified Relief

Act, 1877 (1 of 1877)

9. In **Nagar Palika Murena (supra)** while interpreting above Section 319 it was held by this Court as under :-

“10. After perusing the said section I find that the arguments advanced by the learned Counsel for the appellant has no force. Section 319 of the Act bars a suit against the Council and its officers or any person for anything done or purported to have been done under the provisions of the Act. In the present case, the officers or the Council, while asking the plaintiff to supply the materials was not doing anything under the provisions of the Municipalities Act but have simply entered into a contract to supply materials for the purpose of 'Mela Pashupatinath Mahadev, Morena' and therefore, they were not acted or purported to have been acting under the provisions of the Act and in such circumstances Section 319 of the Act will not be attracted.”

10. In **I.B. Mishra (supra)** it was held by this Court as under :-

“7. Thus, from perusal of Section 319(1), it is apparent that notice has to be given to the Municipal Council in respect of anything done or purporting to be done under the Act. If the suit is filed by the plaintiff in respect of anything done or purporting to be done under the Act then provision of Section 319 of the Act would be attracted. The action of the respondent in withholding the amount which is due to the appellant on account of leave encashment cannot be said to be an act done or purporting to be done under the provisions of the Act, therefore, the provisions of Section 319 of the Act has no application in the facts of the case. Similar view has been taken by a Bench of this Court in Indore Nagar Palika Nigam v. Ramakant, 1982 MPWN 182 (SN 133). The Trial Court has held that on 28-3-1998, the cause of action accrued to the plaintiff and the suit was filed on 9-

9-1998, i.e., well within limitation. As stated supra, since the provisions of Section 319 of the Act do not apply in the facts of the case, therefore, the suit has rightly been held to be within limitation by the Trial Court.”

11. In **Bhaiyalal Pannalal (supra)** it was held by the Division Bench of this Court that omission to pay a sum due under a contract is not an act done or purporting to be done under the Act but the contract itself.

12. Section 108 of the Adhiniyam, 1993 reads as under :-

“108. Bar of suit in absence of notice. - (1) No suit shall be instituted against any [Panchayat or Gram Sabha] or any officebearer, officer or servant thereof or any person acting under the direction of any of the authorities, mentioned in this Act for anything done or purporting to be done under this Act unless a notice under Section 80 of the Civil Procedure Code, 1908 (No. V of 1908) has been duly served.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted under Section 38 of the Specified Relief Act, 1963 (No. 47 of 1963).”

13. The provisions of Section 108 of the Adhiniyam, 1993 are pari materia to the provisions of Section 319 of M.P. Municipalities Act, 1961 which have been interpreted in Nagar Palika Parishad (supra) and I.B. Shastri (supra). Both the provisions contain a bar on institution of suit and the contingencies provided in both of them are the same. The words “anything done or purporting to be done under this Act” are

contained in both the provisions and since Section 319 of the Municipalities Act has been interpreted in the decisions as above, the principles laid down therein would very much be applicable for interpretation of Section 108 of the Adhinyam, 1993 and would apply in full force to the same.

14. As per the plaintiff, she has done the work of photocopy which was awarded by the defendants to her and has been raising bills for the same from time to time which have not been paid to her by the defendants to which she is legally entitled. The said allegations of plaintiff while considering the application under Order 7 Rule 11 of the CPC filed by defendant No.1 have to be taken to be true at this stage. Thus plaintiff has performed the work which was awarded to her and defendants have taken benefit of the same knowing that they have to pay the amount as agreed to the plaintiff but have not done so. The act of the defendants in not making payment to the plaintiff cannot be said to be an act done or purported to be done under the provisions of the Adhinyam, 1993. Withholding of amount legally due to plaintiff cannot be said to be such an act. Since action of defendants cannot be said to be done or purported to be done under the Adhinyam, 1993, the bar under Section 108 (2) thereof would have no application and the suit would not be barred on the ground of the same having been instituted beyond the period of six months from the date of accrual of cause of action.

15. Thus in view of the aforesaid discussion, I do not find that the trial Court has committed any illegality in rejecting the application filed by defendant No.1. The petition is found to be without any merit and is accordingly dismissed.

(PRANAY VERMA)
JUDGE

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