

HIGH COURT OF MADHYA PRADESH : JABALPUR

SINGLE BENCH : JUSTICE MS.VANDANA KASREKAR

Civil Revision No.100/2015

C.M.D. (EZ) MPPKVCL & another

Vs.

Sharad Oshwal

Shri A.P. Shroti, learned counsel for the petitioners.
Shri U.K. Bassi, learned counsel for respondent.

Whether approved for reporting : Yes

ORDER
(11/03/2016)

The petitioners have filed the present revision challenging the order dated 27/8/2014 passed by 10th Additional District Judge, Jabalpur in Civil Suit No.111-A/2011 thereby rejecting an application filed by the petitioners under Order 7 Rule 11 of Code of Civil Procedure.

2. Brief facts of the case are that the respondent has filed a civil suit against the petitioners for recovery of an amount of Rs.2,89,000/- together with interest at the rate of 28%. The aforesaid amount has been sought to be recovered as interest on the delayed payment to the respondent. The respondent is a Small Scale Industry and in the plaint reliance has been placed on the provisions of Micro, Small and Medium

Enterprises Development Act, 2006 (hereinafter referred to as 'the Act of 2006'). The petitioners have filed an application under Order 7 Rule 11 of CPC on the ground that the suit, as appeared from the statement of plaint, to be barred under the Act of 2006. It has been submitted that the Act of 2006 is a self-contained Code creating right in favour, inter-alia, of Small Scale Industry to recover interest on the delayed payment as well as the forum for recovery of such payment, thus, the respondent has an efficacious remedy available under the Act of 2006 for recovery of amount.

3. The respondent has filed reply to the said application and submitted that Section 18 of the Act of 2006 does not bar the jurisdiction of the Civil Court and, therefore, in absence of any express exclusion of any civil proceeding, civil suit is maintainable.

4. The trial Court by its order dated 27/8/2014 has dismissed the said application on the ground that the provisions of Sections of the Act of 2006 nowhere bar the Civil Court to exercise its jurisdiction and, therefore, civil suit is maintainable. Being aggrieved by this order, the applicants have preferred this civil revision before this Court.

5. Learned counsel for the petitioners has submitted that Section 15 of the Act provides for liability of buyer to make payment and as per said section, the supplier when supplies the goods, then the buyer shall make payment therefor on or before the date agreed upon between them. Section 16 provides for payment of interest and Section 18 provides reference to Micro and Small Enterprises Facilitation Council. He has submitted that as per Section 16 of the Act of 2006, when there is a delay in payment by the buyer, then according to Section 15, the buyer shall liable to pay compound interest with monthly rate to the supplier on that amount from the appointed day. Section 17 provides for recovery of amount due. Section 18 provides that when there is any dispute with regard to any amount due to Section 17, then a reference shall be made to the Micro and Small Enterprises Facilitation Council. Thus, as per the said section, if there is any dispute regarding the amount due, then the matter has to be referred to the Micro and Small Enterprises Facilitation Council. He has contended that in the present case from the plaint allegation, it is clear that there is a dispute about payment of interest under the Act and,

therefore, the respondent has to approach to the Micro and Small Enterprises Facilitation Council for recovery of the said amount and the Civil Court has no jurisdiction to entertain the suit. He has relied upon the judgment passed by the Apex Court in the case of **Dhulabhai etc Vs. State of Madhya Pradesh and another** reported in **AIR 1969 SC 78** and the judgment passed by this Court in the case of **R.R. Home Developers Pvt. Ltd. and others Vs. Rajendra Jain**, reported in **2013(2) MPLJ 525**, in which it has been held that where a statute creates a special right or liability and provides for determination of such rights or liability by any forum constituted under such statute, the maintainability of civil suit in such cases is impliedly barred. He, thus, has argued that although the civil suit is not specifically barred by the Act of 2006 but as in the present case a statute creates a special authority for determination of rights or liability, therefore, the civil suit is impliedly barred. He has further argued that the right to receive the interest on the delayed payment has been created under Sections 16 and 17 of the Act of 2006 and a complete procedure has been prescribed for recovery of the amount of interest. He also submitted

that the conciliation for resolution of dispute is to be constituted under Section 18(2) of the Act of 2006 and when the conciliation is unsuccessful, the resolution of dispute as per Arbitration and Conciliation Act, 1996, then section 18 of the Act of 2006 mandatorily provides first for conciliation and then arbitration for resolution of dispute regarding interest on the delayed payment which has overriding effect as per Section 24 of the Act of 2006. For the said preposition, he has relied upon the judgment passed by the Bombay High Court in the case of **M/s Steel Authority of India Ltd. and another Vs. Micro Small Enterprise Facilitation Council** reported in **AIR 2012 Bombay 178**.

6. On the other hand, learned counsel for the respondent has submitted that Section 18 of the Act of 2006 does not bar the jurisdiction of the Civil Court and the word 'may' used in the said section is not mandatory in nature. He has further argued that the order passed by the trial Court is a well reasoned order. He, therefore, supports the order passed by the trial Court. He has relied upon the judgment passed by the Apex Court in the case of **Sulochana Vs. Rajinder Singh** reported in **ILR [2008] MP 2487** in which it has

been held by the Apex Court that the provisions regarding exclusion of jurisdiction of Civil Court are to be strictly construed. He, thus, prays for dismissal of the civil revision.

7. I have heard learned counsel for the parties and perused the record as well as the provisions of law. Sections 15, 16, 17 and 18 of the Act of 2006 read as under :

15. Liability of buyer to make payment.- Where any supplier, supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

16. Date from which and rate at which interest is payable.- Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall,

notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

17. **Recovery of amount due.-** For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under Section 16.

18. **Reference to Micro and Small Enterprises Facilitation Council.-** (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter

or seek the assistance of any institution or centre providing alternate resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1966 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of the Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small

Enterprises Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”

8. From perusal of these sections, it is clear that as per Section 15 of the Act of 2006, there is a liability of buyer to make payment to the supplier who supplies any goods or renders any services to any buyer and if there is any delay, then the buyer is required to pay compound interest to the supplier as provided under Section 16 of the Act. Section 17 provides for recovery of interest as provided under Section 16 of the Act of 2006. Section 18 provides that when there is any dispute with regard to any amount due under Section 17, then a reference shall be made to the Micro and Small Enterprises Facilitation Council. Sub-section (2) of Section 18 provides that on receipt of a reference under sub-section (1),

the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre. Where conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, then the Council shall either itself take up the dispute for arbitration or refer to it any institution or centre providing alternate dispute resolution services. Sub-section (4) of Section 18 provides for a clause stating that Micro and Small Enterprises Facilitation Council or centre providing alternate dispute resolution services shall be jurisdiction to act as an Arbitrator or Council under this section. Sub-section (5) provides that every reference made under this section shall be decided within ninety days from the date of making such reference. Thus, as per the said sections, a complete mechanism has been provided for redressal of grievance of the supplier including the payment of interest. The word 'may' used in this section qualifies the rights of the petitioners to invoke jurisdiction of Micro and Small Enterprises Facilitation Council under Section 18(1) of the Act of 2006, however, Section 24 of the Act of

2006 impliedly bars such other remedies which are inconsistent, inter-alia, with Section 18(1), therefore, the trial Court has erred in holding that it is within the jurisdiction of the plaintiff whether to invoke the jurisdiction of Micro and Small Enterprises Facilitation Council under Section 18 or any other forum by completing overlooking the provisions of Section 24 of the Micro, Small and Medium Enterprises Development Act, 2006.

9. The Bombay High Court in the case of **M/s Steel Authority of India Ltd. and another (supra)** in para-13 has held as under :

“13. At one stage, it was also submitted at the bar that the procedure contemplated by Section 18 of the Act for resolution of dispute is not compulsory either for the seller or the buyer and the parties are free to adopt any course including the civil suit. We, however, find that it is not possible for the parties whether a buyer or seller to invoke jurisdiction of a Civil Court by filing Civil Suit in respect of its claim particularly since the requirement of conciliation is mandatory and the buyer or seller must approach the Council

where there is a dispute with regard to any amount due under Section 17 of the Act.”

10. This Court in the case of **R.R. Home Developers Pvt. Ltd.and others (supra)** in para 21 has held as under :

“21. In view of the forgoing discussion and after going through the provisions of Sections 9 and 10 of the Companies Act, it is clear that the word “Court” defined in the Companies Act would have a jurisdiction to decide the issue in relation to the affairs of the company and by the specified Court. In the Companies Act, for the purpose of certain causes remedies have been specified. But under the Act, it has not been specified that the jurisdiction of the Civil Court has been barred even in cases to which remedy lies to Company Court. In the said context if section 9 of the Civil Procedure Code has been read with the provisions of Companies Act, then it is clear that the remedy to file a civil suit conferred to a citizen to go in a Civil Court having jurisdiction to

try the suit of civil nature, except in a case where the cognizance is expressly or impliedly barred. In cases where under the Companies Act remedy is available, the maintainability of civil suit is impliedly barred. In other cases where remedy is not available in Companies Act, civil suit can be maintained.”

11. Thus, from perusal of the above cited judgments passed by the Apex Court as well as by this Court, Bombay High Court and the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, it is clear that the respondent has an alternate remedy of referring the dispute to the Micro and Small Enterprises Facilitation Council and without availing that remedy, the respondent cannot approach to the Civil Court. Thus, the trial Court has committed an error in rejecting an application filed by the petitioner under Order 7 Rule 11 of CPC.

12. The judgment relied by learned counsel for the respondent in the case of **Sulochana (supra)** is not applicable in the present case as the facts of that case are

different than the present case because the said judgment relates to the provisions of M.P. Accommodation Control Act related to Chapter-III-A of the M.P. Accommodation Control Act.

13. Ex-consequentie, the revision is allowed. The impugned order dated 27/8/2014 passed by 10th Additional District Judge, Jabalpur in Civil Suit No.111-A/2011 is hereby set aside. The application filed by the petitioners under Order 7 Rule 11 of the Code of Civil Procedure is hereby allowed and the suit is dismissed.

(Ms. Vandana Kasrekar)
JUDGE

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