

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			SA No. 36 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. M.C. Kandpal, Senior Advocate, assisted by Mr. Chitrartha Kandpal, Advocate for the appellant. Mr. N.S. Pundir, Advocate for the respondents. On 26.07.2010, the plaintiff appellant has instituted a suit, before the Court of Civil Judge (Jr. Div.), Haridwar praying for a grant of decree of mandatory injunction thereby directing the defendants to the suit i.e. the Mandal Samiti to allot a shop in their favour. The suit was contested by the defendants who have filed their written statement and in the written statement, they have specifically come up with a case that the plaintiff-appellant, will not be entitled for any relief as claimed for in the plaint, for the reason being, that they have not been able to prove that in pursuance to the offer extended by the defendants, the plaintiff-appellant had ever applied for an allotment of shop. The question of allotment of shop as prayed for in the suit, would only arise when the plaintiff-appellant is an applicant in an application to be filed in accordance with the Rules of 2007 for allotment of a shop as offered to be allotted by the defendant. The suit proceeded and on exchange of

			pleadings, the learned trial court, after exchange of pleading had framed the following issues;- “5. उभय पक्ष के अभिवचनों के आधार पर निम्नलिखित वाद बिन्दु विरचित किये गये 1. क्या वादी नवीन मण्डी स्थल के मार्किट एरिया में पूर्व पात्रता के अनुसार कारोबार हेतु दुकान प्राप्त करने का अधिकारी है तथा क्या वादी मण्डी शल्क की घरीयता कम के आधार पर दुक्कात पाने का अधिकारी है? यदि हां तो प्रभाव । 2. क्या वादी द्वारा वाद का मूल्यांकन गलत किया गया है? यदि हां तो प्रभाव । 3. क्या वादी द्वारा अदा किया गया न्यायशुल्क कम है? यदि हां तो प्रभाव। 4. अनुतोष ।” Though, there are four issues, which have been framed, but, the prime consideration would be the observation which has been recorded by the learned trial court while recording its finding on issue no. 4, as to whether at all on the basis of the earlier eligibility of the plaintiff-appellant herein whether he had at all filed any application claiming of an allotment. The parties led their respective evidence as it has been considered by the trial court and the learned trial court while considering the statement of the DW1, who had recorded the statement to the effect, that the plaintiff-appellant was never an applicant for allotment of a shop, nor, has moved any application as such. Thus, irrespective of the fact that whether he was eligible to be allotted with a shop or not, it becomes irrelevant because he had not even applied by raising his claim for allotment in accordance with the rules applicable for allotment of shops and the said finding has been recorded in paragraph 12 as well in
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			paragraph 13 of the judgment that the relief sought in the plaint could not have even been granted when the plaintiff has utterly failed to produce any documentary or oral evidence and lead any proof to the effect that he was at all an applicant for allotment of the shop as prayed for in the plaint, that the shop to be allotted to him in accordance with the deposition of Mandi fee by the plaintiff-appellant with the defendant Mandi Samiti. Hence, accordingly the suit was dismissed by the judgment of 29.04.2017 by the court of Civil Judge (Jr. Div.), Haridwar. The matter was carried before the appellate court, which was registered as Civil Appeal No. 25 of 2017, Umar Daraj Vs. Krishi Utpadan Mandi Samiti. The appellate court too after exchange of pleadings in compliance of the provisions contained under Order 41, Rule 31, had framed point of determination and in accordance with the point of determination, the appellant court too had recorded a concurrent finding, as per the observations made in paragraph 26 and 27 thereof about the entitlement of the plaintiff to be allotted with the shop owing to the fact that the plaintiff has failed that he had ever applied for the allotment of shop to be allotted in his favour as observed in paragraph 27. The core issue would be that if the relief of the plaintiff-appellant in the suit itself is taken into consideration where he has sought a
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			direction by way of a mandatory injunction directing for allotment of a shop, the question of allotment of shop despite of the eligibility would only come into play when the plaintiff is able to sustain himself by bringing evidence on record, that he was ever an applicant or an aspirant to be allotted with the shop, irrespective of his satisfaction of the eligibility criteria, in case, thus if he has not applied and there is no question of allotment of the shop, as prayed for in the suit by way of decree and the said finding to the said effect has been concurrently recorded by both the courts below after appreciating the evidence on record and by giving its finding on the point of determination, as made by the learned appellate court. In view of the above, the substantial question of law as framed by the plaintiff-appellant pertaining to the Krishi Utpadan Mandi Samiti Dukandaar/Godown Allotment Rules of 2007 and its impact of allotment on the basis of seniority and the criteria of deposition of Mandi fee, will not come into play for its consideration until and unless, the plaintiff-appellant proves that he has applied for the allotment of the shop before the Mandi Samiti. In view of the concurrent finding of fact as recorded by the learned trial court, no substantial question of law entails consideration in the present second appeal. The second appeal is concluded by concurrent finding of facts, which
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			does not call for any interference under Section 100 of CPC. The same is accordingly dismissed. (Sharad Kumar Sharma, J.) 24.11.2023 Ujjwal
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