

HIGH COURT OF CHHATTISGARH: BILASPUR**SINGLE BENCH: GOUTAM BHADURI, J****MISCELLANEOUS APPEAL No. 31 of 2002****APPELLANT**

M/s Rai Saheb Richhpal
Rungata, One Partnership
Registered Firm, through Partner
Santosh Rungata

Vs.

RESPONDENT

State of Madhya Pradesh (Now
Chhattisgarh) and another

Present:

Mr. B.D. Guru and Mr. Aditya Bharadwaj, Counsel for the Appellant.
Mr. S.C. Khakaria, Deputy Advocate General, for the State.

JUDGMENT
(02.03.2015)

1. This is an appeal against the order dated 6th December, 2001 passed by the District Judge, Rajnandgaon whereby the Civil Suit filed by the appellant/plaintiff bearing No.4-A/1996 was directed to be returned as the dispute inter-se was in touching the business of cooperative society and that of plaintiff and as such order for return of the plaint was made. The said order is under challenge in this appeal.
2. Briefly stated facts of the case are that a suit was filed claiming declaration against the then State of Madhya Pradesh and *M.P. Rajya Laghu Vanupaj Vyapar and Vikas Sahkari Sangh Maryadit, Durg*. In such suit prayer was made that recovery of Rs.6,48,049.71 cannot be made from the plaintiff-firm and further the plaintiff is entitled for refund of Rs.1,45,798.20 as also damages of Rs.1,54,201.80. Admittedly, the plaintiff-firm submitted its tender for collection of *Tendu* leaves at Mohgaon Samiti, lot no.1661 of Hatbandhari wherein 1909 bags of tendu leaves were accumulated. The plaintiff-firm was successful bidder and accordingly the tender was accepted on 27.09.1991 by the defendant and an agreement to

this effect was entered on 11.10.1991 between plaintiff and defendant. After such agreement, the plaintiff appellant deposited the earnest money and the bank guarantee. Thereafter, out of the lot, 25% of the tendu leaves were collected. It was further case of the plaintiff that the quality of goods (*Tendu leaves*) collected were not upto the mark and standard of quality and even the goods which remained to be collected were not good to the standard as a result of which, when the goods were sent for Bidi works at Mangalore, they were refused for acceptance. The rest of the goods which were collected by the plaintiff from Bilaspur and Rajnandgaon were also subsequently damaged due to fungus since the goods were given without any treatment. It was stated that the complaint was though made by the plaintiff to the defendant, but it was not adhered too and it was directed that the plaintiff should first receive the remaining goods i.e., tendu leaves thereafter his complaint would be considered. Subsequently, the goods were not collected and as such on 30.04.1992, the agreement entered into between the plaintiff and the defendants were annulled and the goods were subsequently auctioned on 27.5.1992. Therefore, for the loss sustained of Rs.6,48, 049.71, the notice was served to the plaintiff, which was subject of challenge. The plaintiff further stated that the amount of Rs.6,48,049.71 was not recoverable and the defendant was not entitled to forfeit the security money and further damages were also claimed.

3. The plaint allegations were refuted by the defendants and it was stated that the goods were inspected by the plaintiff himself and after full satisfaction of the quality of goods after checking the quality i.e., tendu leaves, the plaintiff had submitted his tender. It was further stated by the defendant that the quality of goods given to the plaintiff were upto the mark and neither it was damaged nor it had fungal affect. Further it was stated that the plaintiff has not paid the amount of installment according to the terms of agreement and therefore the agreement was nullity as per the agreement clause 13(3). It was further stated that the rest of the goods

were also not collected for which the Government had to sustain loss. It was further stated that according to the terms of agreement, the dispute interse between the plaintiff and defendant was with respect to business transaction of the cooperative society and therefore it was not amenable to the civil court jurisdiction. It is further stated that the defendant No.2 M.P. Rajya Laghu Vanupaj Vyapar and Vikas Sahkari Sangh Maryadit, Durg, was working as a Cooperative Society, dealing in business of tendu leaves therefore, the dispute ought to have been decided by the Registrar of Cooperative Society. On the basis of the written statement, preliminary issues were framed on the ground that whether the suit was barred u/s 64 (wrongly written as 67) of the Cooperative Societies Act, 1960.

4. The learned court below after hearing and examining the documents and agreement came to conclusion that the dispute was interse between the cooperative Society and the plaintiff and therefore it was covered within the definition of section 64 of the Cooperative Societies Act and as such directed for return of the plaint for presentation to proper forum.

5. The learned counsel for the appellant would submit that the respondent was working for and on behalf of the State Government and therefore it cannot be stated that the agreement was between the cooperative Society and plaintiff. He would submit that the agreement was in the name of Governor meaning thereby the Co-operative Society was working as an agent of the Government. Therefore, it was not *interse* dispute between the Society and the plaintiff which would have been covered u/s 64 of the Cooperative Societies Act and therefore the said order be set aside.

6. On the contrary, learned State Counsel supported the impugned order and would submit that the order is well merited which do not call for any interference.

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

8. A perusal of the plaint would reflect that the plaintiff has arrayed the State Government as defendant No.1 through its Collector and M.P. Rajya Laghu Vanupaj Vyapar and Vikas Sahkari Sangh Maryadit, Durg, as defendant No.2 through the Conservator of Forest who is ex-officio the Managing Director of co-operative society. It is not in dispute that an agreement was entered between the plaintiff firm and defendant No.2 i.e., through the Managing Director, M.P. Rajya Laghu Vanupaj Vyapar and Vikas Sahkari Sangh Maryadit, Durg, on 11th October, 1991. The copy of the agreement which is placed before this Court also fortifies the same which is not disputed by the parties. The agreement was signed by defendant No.2 and the plaintiff. Defendant No.2 is shown to have executed the agreement for and on behalf of the Governor of Madhya Pradesh. The fact remains that the existence of defendant No.2, a cooperative society which entered into agreement cannot be ignored. Reading in between lines of the agreement also refers that the agreement will be governed by *M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam 1964 (for short the Act, 1964)* as also the Indian Forest Act and the Rules framed thereunder. Reading of the agreement would further reveal that the acceptance of tender was made by the *Sangh* i.e., Cooperative Society and the agreement further uses the word *Sangh* i.e., cooperative society. Therefore, the argument which has been advanced by counsel for the appellant that the cooperative society was working as an agent and therefore, the provisions of Section 64 of the Co-operative Societies Act, 1960 would not be applicable is difficult to accept.

9. Section 4 of the Act, 1964 defines the appointment of agents. It says that the State Government may, for the purpose of purchase of, and trade in, tendu leaves on its behalf, appoint agents in respect of different units and any such agent may be appointed in respect of more than one unit meaning thereby the State Government either can do itself or it may

further get the process through the agents. In the instant case it was through the cooperative society, the defendant no.2

10. Reading of the agreement and the plaint allegations would further go to show that the collection and sale of forest produce is one of the main object of the Society for which it is formed. Therefore, to construe the words "touching the business" used in sub-section (1) of Section 64 of Cooperative Societies Act, 1960 it cannot be understood in narrower sense. As far as the word "touching" used in sub-section (1) of Section 64, Justice Shivdayal (as he then was) in case of *The Regional Cooperative Marketing Society Ltd. Vs. Sitaram*, 1972 MPLJ Note 3 observed that the word "touching" is of wide import. Therefore, the defendant being in the business of purchase and sale of forest produce is one which can be said to be touching the business of society. Admittedly, the agreement was executed by the Cooperative Society with the plaintiff. Therefore, the presence and existence of the Cooperative Society which was dealing in business of such forest produce cannot be sidelined or ignored.

11. The dispute in this case was with respect to the quality of the tendu leaves, which was revolving around the agreement which interalia raises the claims and counter claims. The agreement was entered between the cooperative society and the plaintiff. Therefore, it cannot be said that Defendant No.2 was working on behalf of the State and therefore it has no existence. The joining of respondent No.2 in the plaint would also fortify the fact that the agreement was entered between the plaintiff and defendant No.2 Sangh. Even if for the sake of argument it is admitted that defendant No.2 was working as an agent of the State but the very existence of defendant No.2 who entered into agreement cannot be denied. Therefore, it can be substantiated that the dispute touches the business of the Society was within the meaning of sub-section 64 of the Cooperative Societies Act. The plaintiff being non-member of the Society had the business transaction with the Society within the meaning of Section

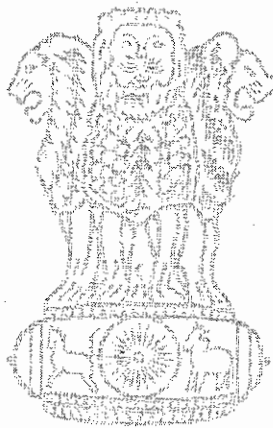


64. Thus the nature of dispute is clearly referable to the Registrar for its adjudication. Secondly the finding and the direction of the learned court below to return the plaint and to file it before appropriate forum in exercise of jurisdiction under Order 7 Rule 10 of CPC cannot be faulted with. Consequently, the appeal has no merit and it is dismissed.

Sd/-
Goutam Bhaduri
Judge

Rao

CHHATTISGARH HIGH COURT



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