

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION Nos.3889 AND 4759 OF 2016

C O M M O N O R D E R

M/s.Neptune Synthetics, Kukatpally, Industrial Area, Ranga Reddy District, filed O.S.No.917 of 2015 before the learned III Additional District Judge, Ranga Reddy District at L.B.Nagar, under Order 37 CPC for recovery of a sum of Rs.88,48,939/- with interest and costs. Kisan Veer Satara Sahakari Sakhar Karkhana Limited was defendant 1 while Kisan Pratapgad Sahakari Sakhar Udyog was arrayed as defendant 2 in the suit.

The defendants filed I.A.No.129 of 2016 in the suit under Order 37 Rule 3(5) CPC seeking leave to defend the suit. They also filed I.A.No.130 of 2016 under Order 7 Rule 11 (d) CPC seeking rejection of the plaint on the ground that the suit was barred by Section 164 of the Maharashtra Co-operative Societies Act, 1960 (for brevity, 'the Act of 1960'). By separate orders dated 17.03.2016, the trial Court dismissed both I.A.s. Aggrieved thereby, the defendants in the suit are before this Court under Article 227 of the Constitution.

Civil Revision Petition No.3889 of 2016 was filed by them against the order in I.A.No.129 of 2016 in O.S.No.917 of 2015, while Civil Revision Petition No.4759 of 2016 arises out of the order passed in I.A.No.130 of 2016 in O.S.No.917 of 2015.

By order dated 12.08.2016 passed in CRPMP No.5017 of 2016 in CRP No.3889 of 2016, this Court granted interim stay of further proceedings in the suit, as the validity of the order passed by the trial Court refusing the petitioners leave to defend required examination.

CRPMP No.5587 of 2016 in CRP No.3889 of 2016 was filed by the respondent/plaintiff to vacate the said order.

Heard Sri D.Jaipal Reddy, learned counsel for the petitioners/defendants, and Sri Dinesh K. Gilda, learned counsel representing Sri Damodar Mundra, learned counsel for the respondent/plaintiff.

As comprehensive arguments were advanced by the learned counsel, the cases are taken up for final disposal.

Parties shall hereinafter be referred to as arrayed in the suit.

Perusal of the orders passed by the trial Court reflects that an order on merits was passed only in relation to I.A.No.129 of 2016 and the dismissal of I.A.No.130 of 2016 was merely consequential thereto without further ado. The preliminary ground taken by the defendants before the trial Court was that the suit had been filed without complying with the statutory mandate of Section 164 of the Act of 1960. The defendants asserted that the contract in relation to which the summary suit was filed was for supply of material by the plaintiff in relation to the business of the defendants and therefore, it was mandatory for the plaintiff to issue notice to the concerned Registrar before instituting the suit. The trial Court was however of the opinion that as the plaintiff had sent a notice to the defendants prior to filing of the suit and as the defendants were limited companies, the question of invoking Section 164 of the Act of 1960 did not arise. Significantly, the trial Court did not advert to the basis on which it came to the conclusion that the defendants were limited companies, except for stating that the same was averred in para 2 of the affidavit. However, para 2 of the affidavits filed in support of both the I.A.s had no relevance to this aspect.

Sri D.Jaipal Reddy, learned counsel, drew the attention of this Court to the Certificates of Registration issued by the Joint Registrar,

Co-operative Societies, State of Maharashtra, confirming the registration of both the defendants as co-operative societies under the provisions of the Act of 1960. Learned counsel would state that these two documents were placed before the trial Court but were not taken heed of. It is clear from this documentary evidence that the defendants are both co-operative societies registered in Maharashtra under the Act of 1960 and were not companies.

Section 164 of the Act of 1960 reads as under:

‘164 : Notice necessary in suits

No suit shall be instituted against a society, or any of its officers in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left.’

This provision is in *pari materia* with Section 126 of the Andhra Pradesh Co-operative Societies Act, 1964 (for brevity, ‘the Act of 1964’). In **JAS RAJ GANESHMAL V/s. A.P. DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LIMITED, HYDERABAD**¹, a Division Bench of this Court had occasion to consider Section 126 of the Act of 1964 and observed that filing of a suit is barred against a co-operative society in relation to its constitution, management or business without causing notice to be served upon the Registrar of Co-operative Societies. The same view was expressed by a learned Judge of the Bombay High Court in **SUPRABHAT CO-OPERATIVE HOUSING SOCIETY LIMITED V/s. SPAN BUILDERS**² in relation to

¹ 2004 (1) ALD 878 (DB)

² 2002 LawSuit (Bom) 267

Section 164 of the Act of 1960. The learned Judge observed that Section 164 lays down a mandatory principle that where the suit touches the business of the society, it shall not be instituted unless a notice as prescribed thereunder has been issued and served.

Sri Dinesh K. Gilda, learned counsel, would however contend that notwithstanding the failure on the part of the plaintiff to issue a notice as required under Section 164 of the Act of 1960, the plaintiff should not be non-suited on that ground and he may be permitted to rectify the defect at this stage. Learned counsel would place reliance on Section 2(11) of the Sale of Goods Act, 1930, which defines 'property' to mean the general property in goods and not merely a special property and would contend that until the defendants paid for the material supplied by the plaintiff, they did not become owners thereof and therefore, the suit should be held to be maintainable despite non-service of a notice under Section 164 of the Act of 1960. In the alternative, the learned counsel would point out that the main activity of the defendants was sale of sugar and the contract entered into by them with the plaintiff was for supply of plastic gunny bags, and contend that this supply was not related to the core activity of the defendants, viz., sale of sugar. He would assert that as Section 164 of the Act of 1960 requires issuance of a notice before filing of a suit 'in relation to the business activity' of the society and as the core activity of the defendants was not concerned with supply of plastic gunny bags, the said provision would have no application.

This Court is however not persuaded to agree with either of the contentions urged by the learned counsel. Once the material was supplied by the plaintiff to the defendants, irrespective of whether or not there was transfer of title therein, the suit filed by the plaintiff for

recovery of the money due from the societies for such supply invariably 'touched' the business of the defendant societies. Given the wide latitude of the language in Section 164 of the Act of 1960 – 'in respect of any act touching the business of the society', it is not open to the learned counsel to interpret this expression to mean only the core business activity and not other aspects relating to such business. Any act 'touching upon the business of the society', which is the subject matter of a suit, would require compliance with the mandate of Section 164 of the Act of 1960. To hold otherwise would do violence to the language and mandate of the provision. Further, the sale of sugar without packaging in plastic gunny bags would not be possible and therefore, the said supply cannot be separated from the core activity of sale of sugar by the defendants, in any event.

Sri Dinesh K. Gilda, learned counsel, placed reliance on ***B.Y.CHAVAN V/s. ASSOCIATION OF TENANTS OF THE BOMBAY CATHOLIC HOUSING SOCIETY***³, wherein a learned Judge of the Bombay High Court, while dealing with Section 164 of the Act of 1960, observed that if the conduct of a party is such that giving of the notice would render the suit instituted against the society infructuous or would effectively or substantially prejudice the party's right to approach the Court for relief, it must be deemed to have waived the requirement of a notice thereunder. Elaborating further, the learned Judge observed that the notice is to enable the society, upon being informed by the Registrar, to avoid litigation involving time and expense by settling a just claim and if therefore, such a party by its act deprives the plaintiff of an opportunity of approaching the Court and seeking relief, it is axiomatic that it does not wish to

³ MHLJ-2011-4-935

avail the benefit or opportunity provided by the legislature to avoid the litigation. The conclusion of the learned Judge thereafter was to the effect that the logical inference would be that the party who does not wish to settle the dispute and avoid litigation, waives its right to a notice under Section 164 of the Act of 1960.

With due respect, this Court cannot subscribe to the view taken by the learned Judge. Unfortunately, it appears that the earlier decision of the Bombay High Court in ***SUPRABHAT CO OPERATIVE HOUSING SOCIETY LIMITED***² was not even brought to the notice of the learned Judge and that apart, the interpretation placed by the learned Judge upon Section 164 of the Act of 1960 is not borne out by the language thereof. There is no indication therein of the Registrar being required to put the concerned society on notice about the suit proposed to be filed against it. Notice to the Registrar on the face of it appears to be for the purpose of keeping him informed of the proposed litigation concerning a society borne out on his Register. Further, the provision does not envision any waiver of the mandatory notice required to be served upon the Registrar.

Viewed thus, the very institution of O.S.No.917 of 2015 by the plaintiff was barred, as it was admittedly filed without adhering to the mandate of Section 164 of the Act of 1960. In consequence, Order 7 Rule 11(d) CPC stood attracted and the suit, bereft of an averment that a notice in terms of Section 164 of the Act of 1960 had been delivered upon the Registrar, was liable to be rejected as being barred by law. The application filed by the defendants in I.A.No.130 of 2016 in this regard therefore warranted consideration and acceptance. Unfortunately, the trial Court misapplied itself on facts in coming to the conclusion that the defendants were not co-operative societies

and in losing sight of the applicability and the mandatory nature of Section 164 of the Act of 1960. This Court therefore holds that O.S.No.917 of 2015 on the file of the learned III Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, was not maintainable for want of prior compliance with Section 164 of the Act of 1960. The plaint was therefore liable to be rejected under Order 7 Rule 11(d) CPC.

Civil Revision Petition No.4759 of 2016 is accordingly allowed setting aside the order dated 17.03.2016 passed by the trial Court in I.A.No.130 of 2016 in O.S.No.917 of 2015 and allowing the said I.A. The trial Court shall take steps accordingly.

In the light of the order passed by this Court in Civil Revision Petition No.4759 of 2016, no further orders are required to be passed in Civil Revision Petition No.3889 of 2016, as the suit itself is held to be not maintainable, and the same is accordingly closed. Needless to state, the plaintiff in O.S.No.917 of 2015 is at liberty to institute a fresh suit before the appropriate forum in accordance with law, after complying with Section 164 of the Act of 1960.

Pending miscellaneous petitions, if any in both the CRPs, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

23rd DECEMBER, 2016

PGS