

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.361 of 2019**

- Producin Pvt. Ltd. A Company Registered Under The Provisions Of Company Act, 1956 Having Its Registered Office At Bangalore And Head Office At 109, Mandi Raod, Mahasamund, P.S. Mahasamund, Chhattisgarh, Through Its Authorised Representative Shri Alok Dey, District : Mahasamund, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Minor Forest Produce (T And D) Cooperative Federation Limited Having Its Registered Office At A-25, Vip Estate, Khamardih, Shankar Nagar, Raipur, Chhattisgarh, Through Its Managing Director, District : Raipur, Chhattisgarh
2. Chhattisgarh State Minor Forest Produce (T And D) Cooperative Federation Limited, District Union East Surguja, Chhattisgarh, Through Its Managing Director, District : Surguja (Ambikapur), Chhattisgarh
3. State Of Chhattisgarh, Through The Principal Secretary, Department Of Forest, Mahanadi Bhawan, New Mantralaya, Naya Raipur, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondent**FA No. 299 of 2019**

- M/s Paras Vanaspati Pvt. Ltd. A Company Registered Under The Provisions Of Companies Act, 1956 Having Its Registered Office At 21/360, Ganj Para Raipur, Chhattisgarh- 492001, Through Its Authorized Signatory Hemendra Sangoi, S/o Shri Shanti Lal Sangoi, Aged About 36 Years, R/o 354, Samta Colony, Raipur, Chhattisgarh.....(Plaintiff), District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Minor Forest, Produce (T And D) Cooperative Federation Limited Haivng Its Registered Office At A-25, Vip Estate, Khamardih, Shankar Nagar, Raipur, Chhattisgarh, Through Its Managing Director, Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh State Minor Forest Produce (T And D) Cooperative Federation Limited District Union- South Surguja, Ambikapur, Chhattisgarh, Through Its Managing Director., District : Surguja (Ambikapur), Chhattisgarh
3. State Of Chhattisgarh Through The Principal Secretary, Department Of Forest, Mantralaya, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

FA No. 360 of 2019

- Producin Pvt. Ltd. A Company Registered Under The Provisions Of Company Act, 1956 Having Its Registered Office At Bangalore And Head Office At Mumbai And Its Branch Office At 109, Mandi Road, Mahasamund P S Mahasamund, Chhattisgarh Through Its Authorised Representative Shri Alok Dey., District : Mahasamund, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh State Minor Forest Produce (T D) Cooperative Federation Limited Haing Its Registered Office At A-25, V I P Estate , Khamardih, Shankar Nagar, Raipur Chhattisgarh, Through Its Managing Director., District : Raipur, Chhattisgarh
2. Chhattisgarh State Minor Forest Produce (T And D) Cooperative Federation Limited, District Union North Surguja Chhattisgarh, Through Its Managing Director, District : Surguja (Ambikapur), Chhattisgarh
3. State Of Chhattisgarh Through The Principal Secretary Department Of Forest, Mahanadi Bhawan, New Mantralaya, Naya Raipur, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellant : Shri Manoj Paranjpe with Shri Ankit Singhal, Advocates
 For Respondents No.1 & 2: Shri A. S. Kachhawaha, Advocate
 For Respondent No.3/State: Shri Anmol Sharma, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board**Per Manindra Mohan Shrivastava, J.****23/08/2019**

1. The aforesaid three appeals are being disposed off by this common order as all the appeals contain similar issues for determination.
2. The appellants in the aforesaid three cases have filed these appeals being aggrieved by the findings on the issues framed in their respective cases where the learned trial Court framed preliminary issue as to whether the suit is barred under Section 94 of the Co-operative Societies, 1960 (In short "the Act of 1960") and held that the suit is barred under Section 94 of the Act, as the notice

given by the appellant-plaintiff to the State Minor Forest Produce Federation (Defendant) does not amount to notice under Section 94 of the Act of 1960 and therefore, the suit itself is not maintainable.

3. Undisputedly, the respective plaintiffs in the aforesaid civil dispute entered into respective purchase agreement with the State Minor Forest Produce Federation in the matter of purchase of Sal Seeds. In course of time, a dispute arose between respective plaintiffs and the respondent-Federation. In each of the cases, the plaintiffs gave notice to the defendants and thereafter, filed suit seeking declaratory decree, injunction and refund.

4. Learned trial Court in these cases framed an issue as to whether the suit filed by the appellant-plaintiff is not maintainable due to non-compliance of notice as contemplated under Section 94 of the Act. In all the cases, the learned trial Court held that the notices given by the plaintiffs to the defendant do not comply with the statutory requirement of notice as contemplated under Section 94 of the Act and held that the suit filed by the respective plaintiffs are not maintainable for want of proper notice under Section 94 of the Act.

5. Aggrieved by the three similar judgments passed in three respective suits, holding the suit not maintainable, these appeals have been filed.

6. Learned counsel for the appellants in these three appeals raised common argument that whether or not Section 94 of the Act would be applicable, would essentially depend upon whether suit instituted against the society is in respect of any act touching the constitution, management and or business of the society. He would argue that even though in the present case, as far as the notice part is concerned, delivery of it has not been disputed by the defendants in their written statement in all the cases, unless the basic jurisdictional facts as to whether the suit is in respect of any act touching the constitution, management and or business of the society, is determined, the suit could not be

held as not maintainable for want of notice under Section 94 of the Act. He would argue that the learned Court below could decide the suit as to whether the suit instituted is in respect of any act, touching the business of the society, only after recording evidence led by the respective parties. His argument is that whether or not the dispute between the parties, is in respect of an act touching the business of the society, could be decided on the basis of factual premise as to what is the business of the society and whether dispute which arose between the plaintiff and the defendant is in respect of the business of the society. He would submit that this issue though, may be of an issue relating to jurisdiction, yet the determination depends on facts as well and therefore, it is a mixed question of law and fact as to whether a dispute between the parties touches the business of the society. It is contended that the learned trial Court proceeded to decide the issue on presumption that the suit is in respect of an act, which touches the business of the society without there being any evidence to that effect on record. This could be ascertained by way of evidence that may be brought on record by the respective parties. In support of his submissions, learned counsel for the appellant has placed reliance on decisions in the cases of ***Major S. S. Khanna (in both the Appeals) vs. Brig. F. J. Dillon (in both the Appeals)***,¹ ***Ramdayal Umraomal vs. Pannalal Jagannathji***,² and ***Satti Paradesi Samadhi and Pillayar Temple vs. M. Sankuntala (Dead) through legal representatives and others***,³.

7. On the other hand, learned counsel for the respondent-Federation would argue that the issue as to whether the suit is not maintainable for want of compliance of the provisions of Section 94 of the Act is pure question of law requiring no determination of facts and there is no dispute regarding service of

1 AIR 1964 SC 497

2 1979 MPLJ 736

3 (2015) 5 SCC 674

notice, but the contention of defendants has been that contents of notice given by the plaintiff did not fulfill the legal requirement of Section 94 of the Act. According to him, in order to find out whether the plaintiff has complied with the provisions of Section 94 of the Act before instituting the civil suit, contents of the notice alone are required to be looked into. His next submission is that as to whether it is a case where Section 94 would be applicable or not, is not an issue for determination, because this has not been raised by the plaintiff anywhere that the suit is in respect of an act, which does not touch upon the constitution, management or business of the society. Therefore, learned trial Court, it is contended, committed no illegality in proceeding on this assumption that the plaintiffs have not raised issue as to whether or not the dispute, is in respect of which suit has been instituted, touches the constitution, management or business of the society. Therefore, it is submitted that the order does not warrant interference.

8. We find that the learned trial Court framed specific preliminary issue in all the three cases, which are identical in nature and reproduced hereinbelow:-

“Whether suit is not maintainable for non-compliance of Section 94 of Chhattisgarh Co-operative Societies Act, 1960?”

9. The aforesaid preliminary issue being as to whether the plaintiff's suit is not maintainable for non-compliance of Section 94 of the Act, Section 94 of the Act, being relevant, is extracted hereinbelow:-

94. Notice necessary in suits--- No suit shall be instituted against a society or any of its officers in respect of any act touching the constitution, management or 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.”

10. A rational and logical interpretation of the aforesaid provision reveals that

the requirement of notice in terms of the provisions contained in Section 94 would be with regard to suit where the suit is in respect of any act touching the constitution or management or business of the society. If it could be established that the dispute, which is subject matter of the suit, has nothing to do and does not touch upon the constitution, management or business of the society, requirement of notice will not be there.

11. Learned counsel for the respondents-defendant contented, in view of the stand which have been taken in their written statement and which is also not disputed, that the receipt of notice by the plaintiff has not been disputed, but what has been disputed is that the contents of the notice did not fulfill the legal requirement of Section 94 of the Act. Certainly, as far as question whether the notice given by the plaintiffs in these cases to the defendants could be termed as notice under Section 94 fulfilling the legal requirements, the very applicability of Section 94 is dependent upon the determination of fact as to whether the act is in respect of which, the suit has been brought, touches constitution, management or business of the society. While, according to learned counsel for the appellant, the act is in respect of which, the suit has been brought, does not touch upon the business of the society, according to learned counsel for the respondents-defendants, the nature of dispute between the parties clearly touches upon the business of the society.

12. In our considered opinion, whether the act in respect of suit has been decided touches the business of the society itself is a mixed question of law and fact, though it is a jurisdictional issue. It is held that the suit is in respect of an act which touches the business of the society, the suit in order to be maintainable, it has to be proved that before institution of the suit, the plaintiff fulfilled the legal requirement of a notice as envisaged under Section 94 of the Act. Therefore, determination of the issue as to whether the notice given by the

plaintiff fulfilled the legal requirement of notice under Section 94 of the Act or nor, it is only when first a finding is recorded that the suit is in respect of an act, which touches constitution, management or business of the society. This part could not be decided, unless the parties are allowed to lead oral as well as documentary evidence. As the jurisdictional issue is not purely a question of law, but it is based on determination of facts also. In that sense, it being a mixed question of law and fact, there should be clear adjudication by the learned trial Court. The trial Court, after full fledged trial, has to decide the issue of jurisdiction along with other issues framed by it in the case.

13. Legal position in this regard has been well settled by a catena of decisions of the Supreme Court. In one of the earliest decision in the case of **Major S. S. Khanna** (supra), legal position in this regard was authoritatively pronounced, as below:-

18. “The third question may now be dealt with. By the order passed by the Court of First Instance on the third issue it was held that the suit filed by Dillon was not maintainable. That decision, in our judgment, affected the rights and obligations of the parties directly. It was a decision on an issue relating to the jurisdiction of the Court to entertain the suit filed by Dillon. In any event the decision of the Court clearly attracted cl. (c) of s. 115 Code of Civil Procedure, for the Court in deciding that "the suit was not maintainable as alleged in paragraphs 15, 16, 17 and 18 of the written statement" purported to decide what in substance was an issue of fact without a trial of the suit on evidence. Dillon alleged in his plaint that at the request of Khanna, he had advanced diverse loans (from the funds lying in deposit in the joint account) and that the latter had agreed to repay the loans. The cause of action for the suit was therefore the loan advanced in consideration of a promise to repay the amount of the loan, and failure to repay the loan. By his written statement Khanna had pleaded in paragraph 15 that Dillon had not advanced any money to him and that Dillon had not claimed the amount for himself and therefore he was not entitled to file a suit for recovery of the amounts. By paragraph 16 he pleaded that Dillon having admitted in the plaint that the amounts in suit were to be paid back to the joint account he was not entitled to file the suit. By paragraph 17 it

was pleaded that a suit by one joint owner against the other joint owner for recovery of the Joint Fund or any item of the joint fund was not maintainable and by paragraph 18 he pleaded that Dillon could not institute a suit against him because the amount was not repayable. All these contentions raised substantial issues of fact which had to be decided on evidence, and Dillon could not be non-suited on the assumption that the pleas raised were correct. At the threshold of the trial two problems had to be faced :

(1) Whether in a suit to enforce an agreement to repay an amount advanced in consideration of a promise to repay the same, the question as to the ownership of the fund out of which the amount was advanced is material ; and

(2) if the answer is in the affirmative, whether the fund in fact belonged jointly to Dillon and Khanna.

The Judge of the Court of First Instance unfortunately assumed without a trial an affirmative answer to both these questions. Under O. 14 r. 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court ; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of the suit.”

14. The same legal position was later on reiterated by the Full Bench of High Court of Madhya Pradesh in the case of ***Ramdayal Umraomal*** (supra), wherein it is held:-

7. “On a perusal of the record, it appears that on the rival pleas taken in the suit, the evidence required on the issues of jurisdiction would cover almost the entire scope of the suit and it is, therefore clear that requiring of

evidence to be led initially on the issue of jurisdiction, treating it as a preliminary issue, would be meaningless and it would result in a lop-sided trial. It further appears that almost the entire evidence required to be adduced in the suit would be relevant for deciding the question of jurisdiction. That being so, it would be proper to record the entire evidence at one time, rather than to record it piecemeal when practically the entire evidence would be required to be led on the question of jurisdiction also. It is only issue of law going to the root of the case and capable of being decided without recording the evidence that must be tried in the first instance and decision on the issues of fact should be postponed till after the legal issues have been determined. In the present case the learned trial court was of the view that the decision on the issue of jurisdiction depended upon the question of fact also which would require recording of evidence and in this view of the matter, the learned trial court has committed no error in exercise of its jurisdiction in passing the impugned order. The decision reported in [Ghatmal v. Amaravathi Dyeing Private Ltd.](#) (AIR 1976 Andh Pra 70) holds that the statutory rule of procedure which must be generally followed, is that the Court should give its decision on all the issues in the case so as to avoid unnecessary remand and protraction of litigation. It has also been held therein that an order that a preliminary issue should be taken first or not for decision, does not decide rights of the parties and is not a case decided within the meaning of Section 115 C. P. C., and cannot be interfered with in revision. This decision has also relied on the Supreme Court decision reported in [S. S. Khanna v. F. J. Dillon](#) (AIR 1964 SC 497). [In Estrela Batteries Ltd. v. Modi Industries Ltd.](#) (AIR 1976 All 201) relying on its earlier decision reported in [Basti Ram Roopchand v. Radhey Sham](#) (AIR 1973 All. 499), as also on the Supreme Court decision reported in [S. S. Khanna v. F. J. Dillon](#) (supra) has held that the finding of the trial court that an issue about jurisdiction, which involves a mixed question of law, cannot be decided as a preliminary issue, under Order 14 Rule 2, C. P. C., is not vitiated by any error within Section 115, C. P. C. and cannot be interfered with in revision.”

15. In a recent decision in the case of ***Satti Paradesi Samadhi and Pillayar Temple*** (supra), reiterating the earlier legal position, held by it in the case of ***Major S. S. Khanna*** (supra), legal position was re-stated by the Supreme Court, as below:-

14. In **Ramesh D. Desai and others v. Bipin Vadilal Mehta and others, (2006) 5 SCC 638**, while dealing with the issue of limitation, the Court opined that:

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact.”

The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed in sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows: -

“13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* and it was held as under:

“18....Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue”

16. In view of above settled legal position, we are of the view that the learned

trial Court committed illegality in deciding the preliminary issue of jurisdiction without allowing the parties to lead oral as well as documentary evidence in this regard. In this case, it is to be decided as to whether the act, in respect of which, the suit has been instituted, actually touches the business of the society. If it is held that the dispute touches the business of the society, then would an occasion arise to comply with the legal requirement of Section 94 of the Act whether the plaintiff, before filing the suit fulfilled the legal requirement as envisaged under Section 94 of the Act.

17. As an upshot of the above discussion, the impugned judgment and decree passed in all the three cases are liable to be set aside and are accordingly set aside. All the three cases are remanded to the Trial Court. The Trial Court shall decide all the issues including the issue of non-maintainability of the issue on the stated non-compliance of Section 94 of the Act, after allowing the parties to lead oral as well as documentary evidence in this regard.

18. In the result, these appeals are accordingly allowed. Let appellate decree be drawn.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge