

RSA-665 of 1993 (O&M)

2024:PHHC:164703



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-665 of 1993 (O&M)

Date of decision: 09.12.2024

Tek Chand

.....Appellant

Versus

Market Committee, Rewari and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Sahil Gupta, Advocate,
for the appellant.

Mr. Pritam Saini, Advocate, and
Ms. Vamika Johar, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 23.08.1988, passed by the Court of learned Sub Judge 1st Class, Rewari, whereby suit for permanent injunction filed by the appellant-plaintiff was dismissed as well as against the judgment and decree dated 22.12.1992, passed by the Court of learned Additional District Judge, Rewari, whereby appeal filed by the appellant also met the same fate.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case, as pleaded by the plaintiff, are that plaintiff filed a suit for permanent injunction stating that plaintiff took one shop bearing No.B-26 situated in New Subji Mandi, Rewari, at a monthly rent of Rs.300/- from the defendant-

RSA-665 of 1993 (O&M)

2024:PHHC:164703



Market Committee for the period from 18.01.1985 to 17.01.1987. The defendant took an amount of Rs.7,200/- in advance from the plaintiff vide receipt No.21381/-, book No.54 dated 21.01.1985. The defendant also asked for the security for the shop whereupon the plaintiff deposited Rs.10,000/- in fixed deposit in the Oriental Bank of Commerce in favour of the defendants-Market Committee. Plaintiff carried out his business for a period of 1½ year only. As his business was not flourishing, he vacated the shop and handed over the possession of the same to the defendants on 01.07.1986. A registered letter was issued to the defendants in that behalf that the plaintiff had handed over the possession to them and, therefore, the remaining amount due out of the advance money paid and the security be refunded to him. He made some oral requests to the defendants time and again but the defendants paid no heed. Later on the defendants decided to recover an amount of Rs.26,400/- as arrears of rent towards the plaintiff.

3. On notice, defendants-Market Committee contested the suit and in the written statement took the plea that neither the plaintiff vacated nor handed over the possession of the shop to the defendants. Defendants also denied the receipt of any letter from the plaintiff. It was averred that amount of Rs.28,800/- had become due against the plaintiff, therefore, the Market Committee was entitled to recover the same. It was pleaded that suit of the plaintiff was not maintainable for want of prior notice under Section 31 of the 'Punjab Agricultural

RSA-665 of 1993 (O&M)

2024:PHHC:164703



Produce and Markets Act, 1961' and the plaintiff has no *locus standi* to file the suit.

4. On the pleadings of the parties, following issues were framed by the trial Court: -

1. Whether the suit of the plaintiff is not maintainable for want of notice as alleged in preliminary objection No.2? OPD
2. Relief.

5. After hearing the learned counsel for the parties, trial Court, vide judgment and decree dated 23.08.1988 rejected the plaint under Order 7 Rule 11 CPC for want of notice under Section 31 of the 'Punjab Agricultural Produce and Markets Act, 1961'. Aggrieved against the said judgment and decree of the learned trial Court, plaintiff preferred an appeal before the lower appellate Court, which too was dismissed vide judgment and decree dated 22.12.1992. Hence, the present Regular Second Appeal.

6. Learned counsel for the appellant contended that the Courts below have committed a grave error in dismissing the suit of the plaintiff-appellant only on the technical objection taken by the defendants-respondents. He further contended that Courts below failed to appreciate that notice under Section 31 of the said Act was required only in cases when the act is purported to have been done or is being done touching the business of the Market Committee but recovery of amount under any contract or lease does not fall in those categories of action.



7. *Per contra*, learned counsel for the respondents contended that Courts below have rightly dismissed the suit of the plaintiff being not maintainable for want of notice under Section 31 of the Act.

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

9. The only issue involved in the present appeal is whether the suit of the plaintiff was maintainable for want of service of notice under Section 31 of the Act. Section 31 of the Act reads as under: -

“31. Bar of suit in absence of notice. – (1) No suit shall be instituted against the Board or a Committees or any member or employee thereof or any person acting under the direction of any such Committee, member or employee for anything done or purporting to be done under this Act, until the expiration of two months next after a notice in writing stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims has been, in the case of the Board or a Committee delivered to him or left at its office, and in the case of the Board or a Committee delivered to him or left at its office, and in the case of any such member, employee or person as aforesaid, delivered to him or left at his office or usual place of abode and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of cause of action.”

10. Section 31(1) of the Act bars a suit in the absence of notice. The language couched in negative provides that no suit could be filed against the Board, Committee, member, employee or any person acting under the direction of any such Committee, member or

RSA-665 of 1993 (O&M)

2024:PHHC:164703



employee for anything done or purported to be done under this Act, until the expiration of two months next after a notice in writing stating the cause of action, the name and place of abode of the intending plaintiff and the relief which is claimed has been delivered to the Board or Committee or left at its office. The purpose of this provision is that before coming to the Court, the matter could be resolved at the threshold and the Board or intending litigant could avoid that litigation before the Court of law. The language of the provision is mandatory in nature. In the present case, admittedly before filing the suit, no notice was served upon the respondents-defendants by the appellant-plaintiff, therefore, it is clearly barred under Section 31(1) of the Act. So far as contention of the learned counsel for the appellant that no notice was required to be served by the plaintiff is concerned, same is untenable as leasing out shops or recovering the rent etc. is an act of the committee to be done in its official capacity, therefore, notice under Section 31 of the Act was mandatory. Therefore, suit of the plaintiff has rightly been dismissed by both the Courts below being not maintainable.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or based on misreading, non-reading or misappreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

RSA-665 of 1993 (O&M)

2024:PHHC:164703



14. Pending application(s), if any, also stand(s) disposed of.

09.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No