



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

C.R.A NO.90 OF 2025

- 1] The Chopda Agriculture Market Produce Committee,
Market Yard, Chopda, Through its Secretary,
Rohidas Bhaskarao Sonawane
Age: 52 years, Occ: Service Secretary of APMC Chopda,
R/o: Plot No. 5B, Chanda Gavri Nagar,
Yaval Road, Chopda, Tq. Chopda,
Dist. Jalgaon.
- 2] Narendra Vasantrao Patil
Chairman of Agricultural Produce,
Market Committee, Chopda.
Age: 40 years, Occ: Business,
R/o: House No. 21, Gujar wada, Gartad,
Post Vele, Tq. Chopda, Dist. Jalgaon.

..Applicants

VERSUS

- 1] Devendra Vishwasrao Sonawane
Age: 54 years, Occ: Business,
R/o: Hated (Bk.) Tq. Chopda, Dist. Jalgaon.

...Respondent

Advocate for Applicants : Mr. Sanjay S. Dudhane h/f. Mr. Dhorde Vikram R.
Advocate for Respondent/Sole : Mr. Vijay B. Patil h/f. Mr. C. V. Borse

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 19th AUGUST 2025

PRONOUNCED ON : 26th AUGUST 2025

FINAL ORDER :

1. Heard both sides finally at the admission stage.
2. This revision is directed against order dated 02.04.2025 passed below Exhibit-18 in R.C.S No.04 of 2025, refusing to reject the plaint under Order 7 Rule 11 of C.P.C. Respondent has filed R.C.S No.04 of 2025 against the applicants, plaint of which is sought to be rejected.
3. The controversy pertains to shop No.31 allotted to the Respondent by the Applicant/Committee on lease. Respondent was inducted by passing resolution on 04.10.2017. The allotment is stated to be against following due procedure of law and he was sought to be evicted. A resolution to that effect was passed on 23.07.2023. In pursuance of that notices were issued to the Respondent on 01.08.2023, 17.08.2023 and 24.12.2023 for vacating the shop. Being aggrieved, the respondent has filed R.C.S No.04 of 2025.
4. It's a case of respondent that by following due procedure of law he was allotted shop No.31. There was no violation of terms and conditions. Due to political rivalry, action was proposed against him for vacating the shop. He was issued notices for eviction which is cause of action for him to file suit. He has prayed for declaration that the notices are bad in law. Sealing of shop is also illegal. He is also praying for mandatory and perpetual injunction.

5. Applicants filed application Exhibit-18 under Order 7 Rule 11 of C.P.C on the ground that before filing suit, mandatory requirement of Section 55 of 'The Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963' (hereinafter referred to as 'Act' for sake of brevity and convenience) was not followed and the suit is not tenable. It is further contended that respondent has virtually challenged the decision of committee for which remedy under Section 52(B) of the Act is provided. By impugned order, application is rejected.

6. Learned counsel Mr.Dhorde submits that neither any notice was issued by the respondent to the applicants nor is there any averment in the plaint about notice. Hence, bar under Section 55 of Act is attracted. It is contended that the resolution and the decisions of the market committee are virtually challenged in the suit by-passing statutory remedy under Section 52(B) of the Act. When mechanism is provided for ventilating grievances before the forum, jurisdiction of the civil court is barred. It is submitted that impugned order is perverse because the submission that there is bar under Section 55 of Act has not been dealt with even.

7. *Per contra*, learned counsel Mr.Patil supports impugned order. It is submitted that in view of Section 55(3) of Act, bar is not attracted to the suit filed for declaration and injunction. It is submitted that only

resolutions were passed but final decision has not been taken by the committee. It is further submitted that jurisdiction of the civil court under Section 9 of C.P.C can not be excluded for the relief of declaration or mandatory injunction. It is further submitted that Section 52(B) is not attracted in the present case which pertains to contractual obligation.

8. Having heard both sides what is relevant is that respondent has filed suit for declaration, challenging the notices, mandatory injunction for removing the seal and perpetual injunction to protect the possession. The scope of enquiry under Order 7 Rule 11 of C.P.C is very limited. It is not necessary to deal into the disputed facts as to whether the allotment of shop is in accordance with law or the action proposed against the respondent is illegal or not, at this juncture. Undisputedly, respondent was allotted shop No.31 and against him action is proposed for vacating the shop.

9. I have gone through Agenda dated 13.07.2023 for convening a meeting and the resolution dated 22.07.2023 passed by the Applicant/committee which shows that allotment of the shop was found to be illegal. It was resolution No.16 which is referred in the notices dated 24.07.2023, 01.08.2023 and 17.08.2023 issued to the respondent for vacating the shop. The resolution dated 29.09.2023 passed by the committee shows that the approval was granted by

resolution No.10 for evicting the respondent from the shop and it was resolved to take further steps after soliciting legal advice. Further resolution dated 23.12.2024 also shows that it was resolved to seal the shop and approval was granted.

10. The resolutions referred above do not suggest that any conclusive decision is taken by the committee against the respondent. Neither is there any order evicting respondent. The allotment of shop to the respondent is a contractual matter. No provision is pointed out from the Act empowering the applicants to terminate the contract and to secure the possession of shop. Therefore, remedy under Section 43 or Section 52(B) is not available to the respondent. Learned counsel Mr.Patil is right in his contention that in the absence of any conclusive decision or order, remedy under Section 52(B) of the Act is not attracted.

11. Learned counsel for the applicants relied on the judgment of this Court in the matter of **Agricultural Produce Market Committee vs. M/s.Jugalkishore Kedarnath Agrawal & Sons** reported in 2008(5) ALL MR 643. My attention is adverted to paragraph No.17 to buttress the submission that when tribunal under the Act is conferred jurisdiction under Section 57 then remedy of civil suit is barred. In that case A.P.M.C had filed suit for rendition of account and dues payable under

Section 57 of the Act. By implication of Section 57(3), it is held that remedy of civil suit is excluded. In the case at hand, no specific remedy or forum in respect of contractual obligations are provided so as to exclude jurisdiction of the civil court under Section 9 of C.P.C. This judgment will be of no help to the applicants.

12. Further reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Raja Ram Kumar Bhargava (dead) by Lrs vs. Union of India** reported in **AIR 1988 SC 752**. The said case pertains to the action and remedy under the Income Tax Act. In view of particular provision of Section 66 (7) of Act, it was held that remedy of civil suit is barred. The facts are distinguishable from the present case and this judgment will also of no help to the applicants.

13. Respondent did not issue any notice before approaching civil court. The plaint is silent in respect of service of notice. Learned counsel Mr.Dhorde is right in contending that bar is attracted under Section 55(1) for want of notice. In the present case suit is filed for declaration, perpetual and mandatory injunctions. The suit filed for perpetual injunction are saved by implication of Section 55(3) of Act which is as under :

“55. Bar of Suit in absence of notice :

(1)_____

(2)_____

(3) Nothing in this section shall be deemed to apply to any suit instituted under section 54 of the Specific Relief Act,1877.”

. Section 54 of The Specific Relief Act,1877 provides for perpetual injunction under Chapter X. Thus, the suit is maintainable for relief of injunction. The suit is not maintainable for relief of declaration. In such a situation, a useful reference can be made to judgment of **Central Bank of India and Ors. Vs. Prabha Jain and Ors.** reported in **(2025) 4 SCC 38** for the ratio that if the suit is partly maintainable, then Order 7 Rule 11 of C.P.C can not be invoked.

14. The civil court has always jurisdiction under Section 9 of C.P.C unless it is expressly or impliedly excluded by any statutory provision. There are disputed questions of facts which can be addressed in a full-fledged trial. The rejection of the plaint at the threshold in the present matter can not be permitted. I am of the considered view that no apparent illegality or perversity is committed by the trial court.

15. Reliance is placed by the applicants on the judgment of this Court in the matter of **Nagpur Improvement Trust vs. Jain Kalar Samaj** in 2024 DGLS (Bom.)4088. I have gone through paragraph Nos.54 to 57 and 83 of the judgment. I have already recorded that even if it is held that the compliance of Section 55(1) would be mandatory and suit is barred for relief of declaration injunction, suit

would be tenable to the extent of relief of injunction due to Section 55(3) of the Act. This judgment will be of no assistance to the applicants.

16. For the reasons stated above, I find no substance in the revision application. Hence, Civil Revision Application (C.R.A) is dismissed.

17. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

18. After pronouncement of the judgment, learned counsel for the applicants prays for continuation of the interim relief, which is in operation till this date.

19. Learned counsel Mr. Patil opposes the request.

20. It's a matter of rejection of plaint under Order 7 Rule 11 of C.P.C. There is no need to stay the proceedings of the suit which is registered as R.C.S. No.4 of 2025. It's a trite law that plaint can be rejected at any stage of the proceedings. The request is rejected.

[SHAILESH P. BRAHME, J.]

vsj