(2018) 08 CHH CK 0279

Chhattisgarh High Court

Case No: First Appeal No. 49 Of 2002

Anil Agrawal		APPELLANT
	Vs	
Krishi Upaj Mandi Samity Nevra And Ors		RESPONDENT

Date of Decision: Aug. 27, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Section 2(2), 96, Order 7 Rule 11
- Chhattisgarh Krish Upaj Mandi Adhiniyam, 1972 - Section 33, 34, 66
- Court Fees Act, 1870 - Section 13

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: B.P. Sharma, Aman Tamboli, R.S. Marhas

Final Decision: Allowed

Judgement

Ram Prasanna Sharma, J

1. The appellant has preferred this appeal under Section 96 of Code of Civil Procedure 1908 against the order dated passed by the 3rd Additional

District Judge, Raipur (CG) in Civil Suit No. 14-A/2001 (amounting to decree under Section 2(2) of CPC 1908), wherein the said Court rejected the

plaint filed by the appellant under Order 7 Rule 11 of the CPC on the ground that there is provision of appeal under Section 34 of the Chhattisgarh

Krish Upaj Mandi Adhiniyam, 1972 (for short, ""the Act, 1972"") against the order passed under Section 33 (1) of the said Act and civil suit is not

maintainable.

2. The facts, in brief, are that the appellant is wholesale dealer dealing in grains and is having a licence to deal in the food- grains products from

respondent No.1/Krishi Upaj Mandi Samiti as per provisions of the Act, 1972. On 22-1-2001 the appellant has been informed that his licence is

cancelled under Section 33 of the Act, 1972 and the said licence was restored on 23-1-2001. The appellant has field a suit before the trial Court stating

that he suffered loss day in a day out @ Rs.10,000/- per day, but the trial Court rejected the plaint as mentioned above. As per the appellant,

cancellation of licence was not bonafide and, therefore,, suit was maintainable, and therefore, the finding of the trial Court be reversed.

3. Power of cancellation of a licence is conferred on Market Committee and that too for the reasons to be assigned in writing as per Section 33 of the

Ac,t, 1972 which may be read as under:

33. Power to cancel or suspend licences. - (1) Subject to the provisions of sub-section (4) a Market Committee may, for reasons to be recorded in

writing, suspend or cancel a licence,-

(a) if the licence has been obtained through wilful misrepresentation or fraud; or

(b) if the holder of the licence or any servant or any one acting on his behalf with his express or implied permission, commits a breach of any of the

terms or conditions of the licence; or

(c) if the holder of the licence in combination with other licence holders commits any act or abstains from carrying on his normal business in the

market area with the intention of wilfully obstructing, suspending or stopping the marketing of notified agricultural produce in the market yard/yards

and in consequence whereof the marketing of any produce has been obstructed, suspended or stopped;

(d) if the holder of the licence has become an insolvent;

(e) if the holder of the licence incurs any disqualification as may be prescribed, or

(f) if the holder of the licence is convicted of any offence under this Act.

4. In the present case, order of cancellation was not filed by the respondent before the trial Court and it is also not established that any appeal is

preferred under Section 34 of the Act, 1972.

As per Section 66 of the said Act, 1972, no suit in respect of anything in good faith done or intended to be done under this Act or rules or bye-laws

made thereunder, shall lie against the Manning Director or any officer of the State Government or against the Board or any market committee, or

against any officer or servant of the Board or any person acting under and in accordance with the directions of the Managing Director, such officer,

or such committee.

5. It is clear from plain reading of the Section 66 of the said Act, 1972 that jurisdiction of Civil Court is barred only when authority of Krish Upaj

Mandi is acting in good faith and/or acting as per direction of the Managing Director. In the present case, no order under Section 33 regarding

cancellation of licence of the appellant is produced before the trial Court and no proceeding regarding any appeal under Section 34 of the Act, 1972 is

filed, therefore, the trial Court ought to have considered whether the act of the respondent is done in good faith, but without appreciating the material

placed on record in its true perspective the trial Court straight-way rejected the plaint which is not sustainable.

6. Since all the above aspects of the matter have not been con- sidered by the trial court, I am of opinion that this matter requires re-consideration for

adjudication afresh from the end of the trial Court.

7. Accordingly, the appeal is allowed and the order passed by the trial Court is set aside. Now the matter is remitted back to the tri- al Court for

reconsideration afresh in the light of observations made in this order.

8. The trial Court is directed to re-hear the matter and after providing opportunity to both parties shall decide the matter afresh, in accordance with

law.

9. Both parties are directed to appear before the trial court for further proceedings on 24-9-2018

10. As the plaint is rejected by the trial court and the case is remitted back to the trial court for re-hearing the matter afresh, Registry shall issue a

certificate authorising the appellant to receive back from the Collector the full amount of fee paid on the memorandum of the appeal as per provisions

of Section 13 of the Indian Court Fees Act, 1870.