

Assam Schedule VII. Form No. 143

HIGH COURT FORM NO. (J) 13
Form of Order Sheet

DISTRICT- SONITPUR

IN THE COURT OF MUNSIFF NO. 1, SONITPUR, TEZPUR
PRESENT : Sri V. Bhuyan

Misc(J) Case No. 69 of 2022
(I/c T.S Case No. 79 of 2010)
- Versus -

Sl No. of Orders	Date	Order	Signature
	28-11-22	<p>Both parties are represented.</p> <p>Today is fixed for order.</p> <p>With the following order I intend to dispose of this Misc.(J) Case.</p> <p>Petitioner's case in brief is that the instant suit has been filed by the two plaintiff's together, namely, Sri Gautam Moitra and Sri Tushar Kanti Moitra. They claimed to be shereholders of Assam Velly Trading Co. Ltd. Their basc contention in the suit is that the then defendant No. 1, Lt. Stayendra Ch. Moitra, leased out the suit land and premises through a registrered Lease Deed to the defendant no. 2. They prayed for declaration that the registered Deed of lease bearing No. 1209 of 2008 dated 30 May 2008 be declared null and void and inoperative in law with consequential relief of cancellation thereof. The plaintiff further prayed for a decree of permanent injunction against the defendants. That during the pendency of the suit in the recent past, one of the plaintiffs Tushar knati Moitra has expired. Naturllay</p>	Contd..

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	<p>28.11.22 Contd..</p> <p>sovereign right to take all property including the assets of the dissolved company within its jurisdiction by escheat for want of an heir or successor or as bona vacantia for want of a rightful owner. Hence even under order 7 rule 11 (a) of the CPC the shareholders or their purported legal heirs have no cause of action and indeed no locus standi to maintain the instant suit which has become barred by law and fact of subsequent development.</p> <p>Notice was issued to opposite party and the opposite party appeared upon receipt of notice and submitted their written objection, wherein the opposite party has stated that the petition filed by the petitioner is vexatious and same is not maintainable. The petitioner further states that petition has been filed after 9 years have elapsed from the date of institution of this suit. The OP further states that if the suit is not maintainable owing to bar contained in company act, 2013, no objection has been put in that regard by the defendants in the W.S or the same was not proved in the Court and hence the suit has continued. The OP has denied the claims of the petitioner/ defendant and prays for rejecting the application.</p> <p>I have perused the case record and also bestowed my anxious consideration on the submissions made by the learned counsels of both the parties.</p> <p>The learned counsel on behalf of the petitioner has relied upon 1998 Legal Eagle SC 900, 2015 Legal Eagle CAL 662, 2008 Legal Eagle KAR 772, 2022 Legal Eagle SC 101, (2006) 3 SCC 100 and (2004) 3 SCC 172.</p>	<p>Contd..</p>
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The learned counsel on behalf of the opposite party has relied upon 2012 Legal Eagle (SC) 334, 2015 Legal Eagle (SC) 95, 2019 Legal Eagle(SC) 1404, 2022 Legal Eagle (SC) 934 and AIR Online 2022 CAL 1096.

The above stated case laws cited by the learned counsels on behalf of both the parties has been noted and taken into consideration.

Prior to proceeding further, by pausing here, it is expedient that the power conferred under the mandate of Order-VII Rule-11(a) and (d) C.P.C. be revisited invoking which the petitioners/defendants made the challenge in question and same is accordingly extracted hereinbelow:-

Rejection of plaint- The plaint shall be rejected:-

a) where it does not disclose a cause of action; and

d) where the suit appears from the statement in the plaint to be barred by any law;

Order VII Rule 11(a) of CPC states about the disclosure of cause of action. The settled provision in this regard is that when no cause of action is disclosed in the plaint, the Court will not unnecessarily proceed with the suit. For this purpose it is necessary to read the plaint to see whether it discloses any cause of action, and if it does then the plaint shall not be rejected. Now, cause of action is a bundle of facts and whether the same is disclosed by the plaint is a question of fact which is to be gathered based on the averments made in the plaint itself.

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Upon perusing the materials on record, it appears that the OP as plaintiffs have filed the instant suit praying for declaration of registered deed of lease bearing no. 1209 of 2008 dated 30 May 2008 as null and void as the same was granted by the defendant no.1 without valid resolution of the board of directors of the corporation.

Therefore, as stated before, the test would be as long as the claim discloses cause of action or if it raises some question which is fit to be decided, even if the facts of the case reveal that the plaintiff might not succeed, the plaint cannot be struck down on that ground.

Thus, considering the entire material on record, this Court is of the opinion that the plaint cannot be rejected on the threshold by invoking mandate of Order VII Rule 11(a) of CPC.

On perusal of plaint it is reflected that the original plaintiffs are shareholder of M/s Assam Valley Trading Co. Lt.d which is a registered company incorporated under the Companies Act of 1882 with the registrar of companies at Calcutta vide certificate of Incorporation No. 170 Dated 11-05-1896. The plaintiffs allege that defendant no.1 who is the managing director of the company has not called for and convened any Annual General Meeting(AGM) since the last 20 years as a result of which 3 numbers of post of directors are lying vacant. Furthermore, no dividend has been declared and paid to the shareholders for the last 20 years.

The plaintiffs also allege that

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during the year 2007 to 2009 the defendant no.1 without any valid resolution by duly elected board of directors of the company, started granting lease for 99 years of immovable properties belonging to the company, which includes the suit property that is being leased to defendant no.3 and later to defendant no.2. The plaintiffs therefore prayed for cancellation of registered sale deeds and subsequent award of arrears of rent for the last 20 years.

Now, under Section 9 of the C.P.C. civil court shall have jurisdiction to try all suits of a Civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

As per Section 430 of the Companies Act, 2013 specifically provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under the Act or any other law for the time being in force.

Principles relating to exclusion of jurisdiction of Civil Court has been summarised by Hon'ble Supreme Court in ***Dhulabhai and Others Vs. The State of Madhya Pradesh***, AIR 1969 SC 78; as under:

"(1) Where the statute gives a finality to the orders of the special tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the

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provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is

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to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. "

Hence from the above principle laid down by Hon'ble Supreme Court, it amply clear that the jurisdiction of Civil Court is excluded in cases where the matter in dispute is required under the Act 2013 to be determined by the Tribunal. If a matter fall outside the jurisdiction of the Tribunal under the Act 2013, the civil court shall have jurisdiction under Section 9 of the Civil Procedure Code.

From the facts as alleged by the plaintiffs, it is seen that the main

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contention is that the defendant no.1 who is the managing director of the company has not called for and convened any Annual General Meeting (AGM) and during the year 2007 to 2009 and without any valid resolution by duly elected board of directors of the company, started granting lease for 99 years of immovable properties belonging to the company which includes the lease of suit land to the defendants no. 3 and 2. In respect of this, the plaintiffs seek decree for cancellation of the registered lease deed bearing no. 1209 of 2008 dated 30 May 2008.

From the cause of action disclosed in the plaint, it is clear that the decree sought for by the plaintiffs is related to suit land which is a property of the company and thus conduct of its affairs. Hence, the suit is barred under Section 430 of the Companies Act, 2013.

After considering the provisions the Companies Act mentioned above I am certain that this court has no jurisdiction to try the instant suit. The Plaintiffs are at liberty to approach the National Company Law Tribunal for resolving their grievances. Under order VII 11(d) CPC a plaint may be rejected where the suit appears from the statement in the plaint to be barred by any law. In the instant suit the jurisdiction of Civil court is expressed barred under the aforementioned provisions. Hence the plaint filed by the Plaintiff is rejected as per provision of order VII Rule 11(d).

Misc(J) Case is disposed of.