



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-1-

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

(1) **CR-1106-2024**

M/s Ruchi Enterprises and another

...Petitioners

Versus

Subhash Chander and another

...Respondents

(2) **CR-1133-2024**

M/s Ruchi Enterprises and another

...Petitioners

Versus

Ritesh Jain and another

...Respondents

Reserved on:-27.03.2025

Date of Pronouncement:-23.05.2025

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Namit Gautam, Advocate
for the petitioners in both cases.

Mr. Saurav Kanojia, Advocate
for the respondents in both cases.

SUVIR SEHGAL, J.(ORAL)

1. This order shall dispose off both the above-noted revision



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-2-

petitions as they involve common questions of law and fact. For the sake of convenience, factual matrix and arguments are being taken from **CR-1106-2024**.

2. Instant petition has been filed by the petitioners/defendants assailing order dated 23.01.2024, Annexure P6, passed by the learned Additional Civil Judge (Sr.Divn.), Ludhiana, whereby an application filed under Sections 4 & 9 CPC read with Order 7 Rule 11 (d) CPC for rejection of the plaint, has been dismissed.

3. Counsel for the petitioners submits that respondent No.1/plaintiff No.1 as well as petitioner No.1/defendant No.1 are registered under the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity hereinafter referred to as “the MSMED Act”). He submits that on an application filed, respondents produced a copy of Export Promotion Capital Goods (EPCG) licence on 14.11.2023, which shows that it has been issued in the name of respondent No.1 under the MSMED Act. Counsel submits that respondents have filed a suit, Annexure P1, for recovery of Rs.28,55,250/- besides interest, against petitioners, but it is not maintainable in view of specific bar under Sections 18 and 24 of the MSMED Act. He urges that as the respondents have an alternate remedy of referring the dispute to the Facilitation Council under Section 18, *ibid*, and without availing that remedy, they cannot approach the Civil Court. He has placed reliance upon:

(i) *Gujarat State Civil Supplies Corporation Ltd. Versus Mahakali Foods Pvt. Ltd. (Unit 2) & Anr., (2023) 6 SCC 401;*



CR-1106-2024 and
CR-1133-2024

125 (2 CASES)

-3-

(ii) C.M.D.(EZ) MPPKVCL & Another Versus Sharad Oshwal, 2016 (2) MPLJ 384;

(iii) M/s Steel Authority of India Ltd. and Anr. Versus The Micro, Small Enterprise Facilitation Council, through Joint Director of Industries Nagpur Region, Nagpur, 2010 SCC Online Bom. 2208;

(iv) Forbesvyncke Private Limited Versus M/s Turbovent Industries Private Ltd. and another, Law Finder Doc Id # 968425; and

(v) M/s SGM Packaging Industries Versus M/s Goyal Plywood LLP, 2022 (3) RCR (Civil) 409;

4. *Per contra*, counsel for the respondents has made a reference to Section 9 of the Code of Civil Procedure and has argued that the Civil Courts have the jurisdiction to try all suits of civil nature except those, which are specifically barred. He contends that MSMED Act is a special statute, which provides an alternate remedy to the firms registered under the Act and it cannot bar the jurisdiction of a Civil Court. Strength has been drawn by him from a Full Bench judgment of Bombay High Court in *M/s Sonali Power Equipment Versus Chairman, Maharashtra State Electricity Board and Ors., 2024 AIR (Bombay) 28*. Another argument has been raised by the counsel for the respondents. He has asserted that the first application filed by the petitioners under Order 7 Rule 11 CPC was rejected by the Trial Court on 09.11.2021 and the instant application, which has been filed two years later, is not maintainable.

5. I have heard counsel for the parties and considered their respective submissions besides examining the documents placed on the



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-4-

record.

6. The sole question to be considered by this Court is as to whether a civil suit for recovery can be filed by a firm, which is registered under the provisions of the MSMED Act. Section 9 of the Code of Civil Procedure provides that a Civil Court shall have jurisdiction to entertain all suits of civil nature excepting suits cognizance of which is barred either expressly or by implication. Explaining the purport of Section 9 CPC, Hon'ble Supreme Court in *Dhulabhai Versus State of Madhya Pradesh and another, 1968 SCC Online SC 40*, observed that the jurisdiction of the Civil Court is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those which are excluded as provided under Section 9 CPC. Such exclusion cannot be readily inferred and presumption to be drawn must be in favour of existence rather than exclusion of the jurisdiction of Civil Court to try a suit.

7. In the above backdrop, it is necessary to examine the statements of objects and reasons behind the incorporation of the MSMED Act, which has been brought into force while repealing The Interest On Delayed Payments To Small Scale And Ancillary Industrial Undertakings Act, 1993. MSMED Act has been promulgated for facilitating the promotion, development and enhancing the competitiveness of Micro, Small and Medium enterprises and for matters connected therewith or incidental thereto. In its statement of objects and



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-5-

reasons, it has been mentioned that world over emphasis has shifted from “industries” to “enterprises” and a growing need is being felt to extend policy support to small enterprises so that they can grow into medium ones. In order to address the concerns of small and medium enterprises sector, a need was felt to provide a single legal framework as medium industry or enterprise was not defined in any law in India. Besides providing for the statutory definitions of “small enterprise” and “medium enterprise”, provision for establishment of a national board and advisory committee, statute provided for a Micro and Small Enterprises Facilitation Council. The intention being that the micro, small and medium enterprises have a forum to explore the possibility of an amicable settlement in case of any dispute between the parties, and if dispute or difference is not settled, for its adjudication through the medium of arbitration.

8. Interpreting the provisions, Hon’ble Supreme Court in *Mahakali’s* case (supra) held that in view of Section 24, *ibid*, which specifically give an overriding effect to the provisions of Sections 18 to 23, *ibid*, over any other law for the time being in force, MSMED Act would have overriding effect over the Arbitration and Conciliation Act, 1996. Supreme Court held that an independent arbitration agreement entered into between the parties under the Arbitration and Conciliation Act, 1996 would not prevail over the statutory provisions of the MSMED Act. Sub Section (1) of Section 18 of the MSMED Act is an enabling provision, which gives the party to a dispute covered under Section 17 thereof, a choice to approach the Facilitation Council despite an



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-6-

arbitration agreement existing between the parties. In other words, MSMED Act provides an alternate and a speedy remedy to a party to recover its dues. A party therefore has an option of filing a suit before a Civil Court or of seeking a reference under Section 18 of the MSMED Act.

9. The question in issue directly came up for consideration before Full Bench of Bombay High Court in *M/s Sonali Power Equipment's* case (supra). The observations of the Full Bench, which are relevant for the determination of the controversy in the present case, are reproduced hereunder:

“(i) Issue A: Whether in view of more comprehensive scheme in MSMED Act, 2006, and improvement made by it over the Act, No.32 of 1993, jurisdiction of Civil Court is taken away by 2006 Act?”

*The jurisdiction of the Civil Court under Section 9 of the CPC, is all pervading, unless it is shown to be barred by an express provision contained in any statute or is held to be impliedly barred [see : **Dhalabhai Versus State of M.P.** (supra) and **South Delhi Municipal Corp. V. Today Homes & Infrastructure (P) Ltd.** (supra)]. Admittedly there is no express provision of ouster of the Civil Courts jurisdiction in the MSMED Act, 2006. As indicated above the MSMED Act, 2006, does not create any right in the supplier for recovery of the money due to it, but only creates a mechanism for speedy recovery of such monies. The right to recovery such money as pointed out above, is under the Common Law based upon a contract which may exist for supply made/services rendered, which is equally enforceable by filing of a suit or approaching the Consumer Commission. The MSMED Act,*



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-7-

2006 thus does not state that proceedings under Section 18 is the only remedy available. This being the position merely because a speedy mechanism is created under Section 18 of the MSMED Act, 2006 that by itself cannot be held to indicate the ouster of jurisdiction of the Civil Court. All that the MSMED Act, 2006 does is provide an alternate mode of recovery, to the supplier, claimed to be speedier, which may be chosen by him, in preference to the common law remedy of a civil suit being also available to him, in which also a claim for interest as provided in Section 16 of the MSMED Act, 2006 would be entertainable, as Section 34 of CPC would not restrict the power of the Civil Court to award a higher rate of interest if that is provided in a Statute, applicable to the claim before it. It is also pertinent to note that a cause of action can give rise to multiple remedies and thus it is open for the litigant to choose one which according to him, would be the most apt for him. The MSMED Act, 2006, thus does not debar the jurisdiction of the Civil Court even impliedly.”

10. Following the above observation in ***M/s Goms Electricals Pvt. Ltd. Versus M/s Indelecsa India Pvt. Ltd., NC : 2024: KHC : 47530,*** it was held that there is no provision in MSMED Act which bars the jurisdiction of the Civil Court. Karnataka High Court rejected the contention that jurisdiction of the Commercial Court to deal with the issues raised, is ousted by the MSMED Act.

11. It is, thus, evident from the above judicial precedents that the jurisdiction of the Civil Court cannot be treated to have been ousted in view of the provisions of MSMED Act. Section 18 of MSMED Act at best provides an additional remedy to an aggrieved party to expedite the



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-8-

payment of dues, but it cannot bar the jurisdiction of the Civil Court either expressly or impliedly. The contention of counsel for petitioners is without merit and hence, rejected. This Court, therefore, expresses its respectful disagreement with the contrary view taken by the High Court of Madhya Pradesh in *Sharad Oshwal's* case (supra), Bombay High Court in *M/s Steel Authority of India Ltd.* case (supra) and Telangana and Andhra Pradesh High Court in *Forbesvyncke's* case (supra), relied upon by counsel for the petitioners.

12. Coming to the submission raised by counsel for the respondents, it deserves to be noticed that the principle of *res judicata* cannot be said to be applicable insofar as the filing of the applications under Order 7 Rule 11 CPC are concerned. At an earlier stage, petitioners/defendants had filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that it is barred by time. While relying upon the observations of the Supreme Court in *In Re : Cognizance for Extension of Limitation (2022) 3 SCC 117*, Trial Court by order dated 09.11.2021 dismissed the application and held that the suit is within limitation after excluding the Covid period. Second application under Order 7 Rule 11 CPC, though filed two years later, has been instituted for rejection of the plaint on the ground that from the EPCG licence produced by the respondents before the Trial Court, it transpires that respondent is registered under the MSMED Act and the suit is barred. There is no bar under the Code of Civil Procedure from filing applications under Order 7 Rule 11 CPC at different stages of the suit. If a new ground



**CR-1106-2024 and
CR-1133-2024**

125 (2 CASES)

-9-

arises or if a plaint is amended, a fresh application under this rule can always be filed. There is no averment in the plaint, Annexure P1, to show that the respondent was registered under the MSMED Act. That is only when respondent No.1 produced the EPCG licence that this fact came to the knowledge of the petitioners enabling it to file the application. Although the application is held to be maintainable, but for the reasons recorded above, it has been rightly rejected by the Trial Court.

13. As a result of the foregoing discussion, this Court is of the view that the impugned order does not suffer from any irregularity or illegality. No interference is called for therein.

14. Petitions being devoid of merit are dismissed, though with no order as to costs.

15. Pending application (s) is/are disposed off.

23.05.2025
Brij

**(SUVIR SEHGAL)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No