

(2009) 09 DEL CK 0396

Delhi High Court

Case No: IA No. 176 of 2009 in CS (OS) No. 1578 of 2006

Sh. Gian Chand

APPELLANT

Vs

Gaon Sabha Aya Nagar and
Others

RESPONDENT

Date of Decision: Sept. 10, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 151, 80, 80(1), 80(2)

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Pankaj Vivek, Adv Sanjeev Sabharwal, for the Appellant;

Final Decision: Dismissed

Judgement

Manmohan Singh, J.

The plaintiff has filed the present suit for declaration and injunction seeking, inter alia, a declaration to the effect that the plaintiff is the proprietor/owner of the suit property bearing Khasra No. 1658, measuring 2 bighas situated in the revenue estate of Village Aya Nagar, Delhi and that vesting of the said land in the Gaon Sabha, defendant No. 1 was illegal and unlawful.

2. The present application being IA No. 176/2009 has been filed by the defendant No. 1 under Order VII Rule 11 read with Section 151 of CPC for rejection of the plaint u/s 80 of CPC. It is submitted by the defendants that the plaintiff has not served upon them the statutory and mandatory notice required to be filed two months prior to the filing of the suit u/s 80 CPC. It is further stated that the plaintiff has not even filed any application u/s 80(2) of CPC seeking leave of the Court to file the present suit if there is any urgency or immediate relief sought against the defendants. The defendant No. 1 therefore, has prayed for the dismissal of the suit on the ground of violation of Section 80 CPC.

3. The plaintiff in reply to the application filed by the defendant No. 1 stated that the suit was filed claiming urgent and immediate reliefs u/s 80(2) CPC and therefore, the suit is not liable to be dismissed. Defendant No. 1 was served on 19th December, 2006, 7th February, 2006, 13th March, 2007 and 21st May, 2007 and has also filed written statement.

4. It is submitted that in para 22 of the plaint, the plaintiff has sought dispensing of the notice u/s 80(2) CPC by requesting leave of the court for institution of the present suit without serving notice u/s 80 CPC. It is urged that the procedures are nothing but the handmade of justice. No separate application is required as claimed by defendant No. 1 for obtaining leave of the court to institute the suit u/s 80(2) of CPC. The plaintiff's counsel relied upon the case of [T.V. Parangodan Vs. District Collector, Trichur and Others](#), wherein it was held that the plaintiff need not file a separate application u/s 80(2) CPC. Request for leave can be in any form provided it is capable of conveying the prayer and grounds to the court and the opposite party, enabling effective objection as well as a considered decision. He also relied upon the case of [State of A.P. and Others Vs. Pioneer Builders, A.P.](#), wherein the Apex Court observed that if the plea of want of notice is not raised by the Govt. in the written statement filed in a suit, defect is deemed to be waived.

5. Apparently in the present case, the suit was registered on 1st November, 2006 and notice was issued to the defendants. Defendant No. 1 was duly served on 13th February, 2007. However, none appeared on its behalf. Thereafter, a court notice was issued to the standing counsel for defendant Nos. 1, 2 and 3. No written statement was filed by the defendant Nos. 1 and 2 till 6th August, 2007. Thus, the right of the said defendants to file the written statement was closed vide order dated 17th September, 2008. The defendant Nos. 1 and 2 filed an appeal being FAO (OS) No. 462/2008 against the order dated 17th September, 2008 before a Division Bench of this Court for extension of time to file the written statement. The appeal was allowed by the Division Bench.

6. Before the Division Bench the counsel for the plaintiff made a statement that he would not press the relief of declaration as prayed in the suit. He stated that he would take appropriate proceedings in this regard under the Land Reforms Act.

7. I have heard learned Counsel for both the parties and perused the record. To deal with the contention as to whether the present suit is in violation of Section 80 CPC, we must look at Section 80 itself which is reproduced herein below:

Section 80. Notice.- [(1)] Save as otherwise provided in sub-section (2), no suit shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of:

(a) in the case of a suit against the Central Government, [except where it relates to a railway,] a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

[* * *]

[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;]

(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district; [* * *]

[* * *]

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit: Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub-section (1).

8. From a reading of the abovesaid provision, it is clear that service of notice is a condition precedent for the institution of a suit against the Government or a public officer. It imposes a statutory and unqualified obligation and in the absence thereof, the suit is not maintainable, except where Section 80(2) applies. Section 80 in effect provides that an advance copy of the plaint should be served on the defendant and no suit should be instituted in court until the expiry of two months after such service. Section 80 does not define the rights of parties nor does it confer any right on the parties. It only provides a procedure for getting relief in respect of a cause of action. It is a part of the machinery for obtaining legal rights, i.e. machinery as distinguished from its products.

9. In the case of [Ghanshyam Dass and Others Vs. Dominion of India and Others](#), it was held that Section 80 of the Code is but a part of the procedure code passed to provide the regulation and machinery, by means of which the courts may do justice

between the parties. It is therefore, merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to subserve and advance the cause of justice rather than to defeat it. As far as possible, no proceedings in a court of law should be allowed to be defeated on mere technicalities. This is the principle on which our laws of procedure are based.

10. Section 80(2) provides that if the court is satisfied that immediate relief needs to be given the plaintiff, it would not insist that the plaintiff should approach the court after expiry of two months after service of notice on the Government or the public officer. Section 80(2) does not prescribe any form or manner in which leave has to be granted. Leave need not be granted by a formal order. It can be implied also and can be gathered from the actions of the court. Hence, proceeding with the suit after the objection while considering any relief could be a visible manifestation of an implied leave being granted. Consequently, the finding that the suit is not maintainable for the reason that the leave was not sought for by a separate application is too hypertechnical and not conducive to justice. [Ref. Smt. Janak Raji Devi v. Chandrabati Devi and Anr. AIR 2002 Cal 11(15)]. It is not necessary that the notice should be in any particular or technical form. [Ref: Nannah v. Union of India AIR 1964 Raj 41(44)].

11. The Court can judicially exercise its discretion u/s 80(2) of the CPC to grant leave to institute a suit without notice u/s 80(1)~CODE OF CIVIL PROCEDURE, 1908~^ or before the expiry period under the notice in a case where urgent relief is prayed for and no irreparable loss would be caused to the defendant and the suit can be decided on merits instead of on technical grounds.

12. In view of my above discussion, I consider that the plaintiff in para 22 of the plaint sought leave of this Court to dispense with the mandatory requirement of serving notice u/s 80(1) by claiming urgent or immediate relief against the government. A reasonable opportunity of show cause is also afforded to the defendants and the suit was duly registered by the court by order dated 1st November, 2006. No separate application for leave needs to be filed if the Court is satisfied, after hearing the parties, that urgent or immediate relief is prayed for in the suit. Sub-section (2) of Section 80 does not provide any form or manner in which leave has to be granted or the mode or form of leave/request. It could be in any form provided it contains the proper reasons/request for leave. Since the defendant has already filed the written statement in the suit and admission/denial of documents has also been completed, in my view, even if there is no urgent or immediate relief sought by the plaintiff, the plaint should not be returned at this stage to complete the requirements of Sub-section (1) of Section 80.

13. I, therefore, hold that the suit cannot be dismissed on account of non-filing of the application to obtain leave of this Court u/s 80(2) CPC. I find no merit in the contentions raised by the defendant. The application IA No. 176/2009 being devoid of merits is hereby dismissed.