

HIGH COURT OF PUNJAB AND HARYANA

BENCH : JUSTICE PANKAJ JAIN

Date of Decision: May 31, 2024

REGULAR SECOND APPEAL NO. 2069 OF 1992 (O&M)

Sher Singh (since deceased) through LRs and others APPELLANTS

Versus

State of Haryana through Collector, Kurukshetra ...RESPONDENT

Subject: Appeal challenging the maintainability of a suit due to the absence of mandatory notice under Section 80 of the Civil Procedure Code (CPC).

Headnotes:

Civil Procedure – Maintainability of Suit – Notice Requirement under Section 80 CPC – Second Appeal against the judgment of the lower appellate court, which dismissed the suit for lack of mandatory notice under Section 80 CPC – The suit was initially filed by plaintiffs seeking a declaration of ownership by adverse possession of agricultural land – Trial Court ruled in favor of plaintiffs, but lower appellate court reversed this, citing non-compliance with Section 80 CPC – High Court upheld the decision of the lower appellate court, emphasizing the mandatory nature of the notice requirement under Section 80 CPC – Held, compliance with Section 80 CPC is a condition precedent for instituting a suit against the Government or public officers – Appeal dismissed. [Paras 1-13]

Mandatory Nature of Section 80 CPC – Analysis – Supreme Court precedents affirming the necessity of serving notice under Section 80 CPC before instituting a suit – Section 80 aims to provide the government a chance to address grievances outside of court – Non-compliance results in the suit being deemed not maintainable – Exceptions under Section 80(2) discussed, but the case at hand did not meet the criteria for such exceptions. [Para 9-13]

Decision – Appeal Dismissed – Court upheld the lower appellate court’s judgment dismissing the suit due to the absence of mandatory notice

under Section 80 CPC – No error found in the lower appellate court’s application of law – Appeal dismissed with costs. [Para 13]

Referred Cases:

- State of A.P. v. M/s Pioneer Builders, A.P., 2007(1) R.C.R (Civil) 240
- Govt. of Kerala vs. Sudhir Kumar Sharma, 2013 (10) SCC 178
- M/s Patil Automation Pvt. Limited vs. Rakheja Engineers Private Limited, 2022(10) SCC 1
- Bhagchand Dagdusa Gujarathi v. Secretary of State for India, AIR 1927 PC 176
- State of Madras v. C.P. Agencies, AIR 1960 SC 1309
- Bihari Chowdhary & Anr. V. State of Bihar & Ors., (1984) 2 SCC 627

Representing Advocates:

Mr. Ashish Bansal for appellants

Mr. Gaurav Bansal for respondents

PANKAJ JAIN, J.

Plaintiffs are in appeal.

2. For convenience, parties herein are referred to by their original position in the suit i.e. the appellants as plaintiffs and the respondent as defendant.

3. Plaintiffs filed suit seeking declaration to the effect that they are owners in possession of agricultural land situated in village Raipur, Tehsil Thanesar, District Kurukshetra as detailed in Para No.1 of the plaint. The plaintiffs claimed that they along with their predecessors-in-interest continued to be in possession of the suit land for last more than 60 years. Their possession was continuous, peaceful and without any interruption. However, State Government has decided to auction the suit land despite the fact that they have become owners by way of adverse possession. Trial Court framed the following issues:

1. Whether the plaintiffs are owners in possession of the suit land mentioned in para No. 1 of the plaint? OPP

2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiffs have no locus-standi to file the present suit?
OPD
4. Whether the plaintiffs have not given notice under Section 80
C.P.C. If so to what effect ? OPD
5. Whether the suit is bad for misjoinder of necessary parties; if so to what effect
? OPD.
6. Whether the plaintiffs have no cause of action ? OPD.
7. Relief.

4. Issue No.1 was decided in favour of the plaintiffs. On issue No.4, Trial Court held that since the application filed by the plaintiffs under Order 39 Rules 1 and 2 was disposed off in their favour thus, it is evident that implied permission was granted to them to file the suit. Rejecting the objection raised by the defendant, Trial Court decided issue No.4 as well in favour of the plaintiffs.

5. State preferred appeal assailing the judgment and decree passed by the Trial Court. The prime challenge was to the findings on issues No.2 and 4 i.e. regarding maintainability of the suit for want of notice under Section 80 of the Civil Procedure Code. Appellate Court reverse the findings holding that for non-compliance of Section 80 CPC, the suit was bad and was thus liable to be dismissed.

6. Counsel for the plaintiffs asserts that from the contents of 2 of 10 the plaint it is evident that the suit was of urgent nature. After institution of the suit itself, the Trial Court satisfied itself and registered the suit. Once the suit is registered and entertained, it is deemed that implied permission has been granted. Judgment and decree passed by Trial Court thereafter ought not have been reversed for a technical flaw. Reliance is being placed upon law laid down in **Parangodan vs. District Collector, 1989 AIR (Kerala) 276.**

7. Per contra, State counsel submits that law prescribes that no suit can be instituted without service of notice under Section 80. Thus, notice under Section 80 is quite essential to maintain the suit. There can't be any reason for the Courts to deem implied permission. It is settled law that once a procedure/thing is prescribed by law to be done in a certain manner it has to be done in the said manner only.

8. I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.
9. The issue relates to maintainability of suit against State in the absence of mandatory notice as prescribed under Section 80 CPC, 1908.
10. The issue is no more *res integra*. The compliance of Section 80 CPC has been repeatedly held to be mandatory. Reference can be made to law laid down by the Apex Court in the case of **State of A.P. vs. M/s Pioneer Builders, A.P., 2007(1) R.C.R (Civil) 240** wherein it has been held as under “13. From a bare reading of sub-section (1) of Section **80**, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well-settled that before the amendment of Section **80** the provisions of unamended Section **80** admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The Section imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with Section **80**, the suit is not maintainable. (See :***Bhagchand Dagdusa Gujarathi & Ors. v. Secretary of State for India, AIR 1927 Privy Council 176.***; ***Sawai Singhai Nirmal Chand v. The Union of India, AIR 1966 Supreme Court 1068*** and ***Bihari Chowdhary & Anr. v. State of Bihar & Ors., 1984(1) RCR (Rent) 516 (SC) : 1984(1) RCR (Rent) 516 (SC) : (1984) 2 SCC 627.*** The service of notice under Section **80** is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the Section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in *Bihari Chowdhary* (supra), the object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.
14. It seems that the provision did not achieve the desired results inasmuch as it is a matter of common experience that hardly any matter is settled by the Government or the public officer concerned by making use of the opportunity afforded by said provisions. In most of the cases, notice given under Section **80** remains unanswered. In its 14th report (reiterated in 27th and 54th Report), the Law Commission, while noting that the provisions of this section had worked a great hardship in

a large number of cases where immediate relief by way of injunction against the Government or a public officer was necessary in the interests of justice, had recommended omission of the Section. However, the Joint Committee of Parliament, to which the Amendment Bill 1974 was referred, did not agree with the Law Commission and recommended retention of Section 80 with necessary modifications/relaxations.

15. Thus, in conformity therewith, by the Civil Procedure Code (Amendment Act, 1976) the existing Section 80 was renumbered as Section 80 (1) and Sub-sections (2) and (3) were inserted with effect from 1.2.1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of sub-section (1) and empowers the Court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the Court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. Proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1).

16. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80 (2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power

by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit.

17. Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred in the Court under subsection (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall not be granted without giving a reasonable opportunity to the Government or a public officer to show cause in respect of the relief prayed for. The provision also mandates that if the Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1).”

11. The same has been reiterated in the case of **Govt. of Kerala vs. Sudhir Kumar Sharma (SC) 2013 (10) 178** wherein it was observed as under :

“24. It is an admitted fact that no order had been passed on the application filed under Section **80**(2) of the Civil Procedure Code whereby leave of the court had been sought for filing the suit without complying with the provisions of section **80**(1) of the CPC. In our opinion, a suit filed without compliance of Section 80(1) cannot be regularised simply by filing an application under section **80**(2) of the CPC. Upon filing an application under Section **80**(2) of the Civil Procedure Code, the Court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice under Section 80(1) to the concerned

Government authorities. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an application, by no stretch of imagination it can be presumed that the application is granted. If such a presumption is accepted, it would mean that the court has not to take any action in pursuance of such an application and if the court has not to take any action, then we failed to understand as to why such an application should be filed.

25. It is an admitted fact that no order had been passed on the application filed under section [80](#) (2) of the CPC. Till a final order is passed granting the said application, in our opinion, the irregularity in filing of the suit continues. If ultimately the application is rejected, the plaint is to be returned and in that event the application filed on behalf of the appellants under Order [7](#) Rule [11](#) is to be granted. If the application filed under Section 80(2) is ultimately granted, the objection with regard to non issuance of notice under Section [80](#) (1) of the Civil Procedure Code cannot be raised and in that event the suit would not fail on account of nonissuance of notice under Section [80](#) (1) of the Civil Procedure Code.

26. We reiterate that till the application filed under Section [80](#) (2) of the Civil Procedure Code is finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section [80](#) (1) of the Civil Procedure Code was justifiable. According to the provisions of Section [80](#) (2) of the Civil Procedure Code, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under section [80](#) (1) of the CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under section [80](#) (2) of the CPC. We, therefore, come to the conclusion that mere filing of an application under Section [80](#) (2) of the Civil Procedure Code would not mean that the said application was granted by the trial court.”

12. Recently, Supreme Court in the case of **M/s Patil Automation Pvt. Limited vs. Rakheja Engineers Private Limited, 2022(10) SCC 1**, held as under :

"33. In fact, Sub-sections (2) and (3) of Section 80 came to be inserted by virtue of the amendment. In Section 80(1), in view of the insertion of Sub-Section (2), the opening words "save as otherwise provided in sub-Section (2)" came to be inserted. There were other changes which were brought about in Section 80 as it stood, as can be discerned from Section 80(1) as substituted. The judgment of the Privy Council, in the decision reported in **Bhagchand Dagadusa Gujrathi and Ors. v. Secretary of State for India AIR 1927 PC 176**, set at rest the controversy about the mandatory nature of the requirement of a previous notice to be given to comply with Section 80. We need only notice what this Court held in the Judgment in **State of Madras v. C.P. Agencies and others AIR 1960 SC 1309**:

"1. ... The very language of Section 80 makes it clear,-and it has been so held by the Judicial Committee in **Bhagchand Dagdusa v. Secy. of State, 54 Ind App 338 : AIR 1927 PC 176**) which decision has been adopted by the same tribunal in many later cases--that Section 80 is express, explicit and mandatory and admits of no implications or exceptions. ..."

34. In **Bihari Chowdhary & Anr. v. State of Bihar & Ors. (1984) 2 SCC 627** , while on the effect of section [80](#) of the CPC, this Court laid down as follows:

"3.

The effect of the section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the section. When we examine the scheme of the section it becomes obvious that the section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the

officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months' time to Government or a public officer before a suit can be instituted against them. The object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation."

35. We may also notice, what this Court had said in *Bihari Chowdhary*(supra) about the course of action to be taken, if a Suit is filed without serving a notice:

"6. It must now be regarded as settled law that a suit against the Government or a public officer, to which the requirement of a prior notice under section [80](#) CPC is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the section and if filed before the expiry of the said period, the suit has to be dismissed as not maintainable."

13. In view of afore-stated settled law, this Court finds no error in the impugned judgment and decree passed by lower Appellate Court. Resultantly, the instant Second Appeal is dismissed.

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