
(1990) 02 GAU CK 0005
In the Gauhati High Court
Case No : Civil Revision No. 22 of 1984

Balindra Nath Kakaty and Others

APPELLANT

Vs

Beharilal Agarwalla and Others

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 80, 80(1), 80(2), 80(3)

Citation : (1990) 2 GLR 416

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : S.K. Senapati, for the Appellant; A. Roy, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—This revision application, directed against the order dated 25.11.83 passed by the learned Assistant District Judge, Dibrugarh in Money Suit No. 16/77, involves an important question of law regarding the scope and ambit of the powers of the Court under Sub-section (2) of Section 80 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code of Civil Procedure).

2. The facts of the case, as stated by the Plaintiff--opposite party No. 1, in brief, are as follows. The Plaintiff made some deposits of house rents in the Court of the Munsiff-cum-Rent Controller at Dibrugarh and these amounts were withdrawn by the Defendant Nos. 1 and 2 (Petitioner Nos. 2 and 3 herein) without his knowledge. The Defendants 3 and 4, who were respectively the Munsiff and the Sheristadar, in course of their official duty, issued refund vouchers for withdrawal of the said amounts. A suit was filed by the Plaintiff--Opposite party No. 1 for recovery of the said amounts from the Defendants, including Defendant Nos. 3 and 4, who are public officers. No police was served u/s 80 CPC A petition was fited under Sub-section (2) of Section 80 or the CPC along with the plaint praying for leave of the court to file the suit without service of the statutory notice u/s 80. The petition for leave was resisted by the Defendants Petitioners. However, leave was granted by the Court. The trial

commenced. One of the issues framed was whether the suit was maintainable for want of notice u/s 80 CPC. The said issue was taken up for consideration by the Court as a preliminary issue and by order dated 25.11.88 it was decided in favour of the Plaintiff. Aggrieved by the said order, the present revision petition has been filed by the three Defendants.

3. I have heard Mr. S.K. Senapati, the learned Counsel for the Petitioners. Also heard Mr. A. Roy, the learned Counsel for opposite party No. 1. The sole point that arises for determination is whether in a case for recovery of certain amount, where admittedly no urgent or immediate relief is sought for, the Court in exercise of the powers under Sub-section (2) of Section 80 can relax the statutory requirement of the notice under Sub-section (1) of Section 80 of the CPC. The admitted position in the instant case is that the suit was for recovery of money. There was no urgent or immediate relief sought for in the suit. Out of the four Defendants, two Defendants were public officers. The Court exercised power under Sub-section (2) of Section 80 of the CPC without any finding or material on record to the effect that any urgent or immediate relief was sought for. The aforesaid order has been challenged in this revision petition by the Defendants. It is sought to be sustained by the Plaintiff on the ground that as no notice had been served u/s 80 on the public officers concerned in time the suit could not have been instituted unless in exercise of power under Sub-section (2) leave was granted to the Plaintiff to institute the suit without serving the notice is required by Sub-section (1), as otherwise the suit might have been barred by limitation. According to the learned Counsel for the Plaintiff-opposite party such circumstances give rise to urgency to the institution of the suit which, according to him, would justify the passing of the impugned order by the Court to relax the requirements of the statutory notice.

4. To properly appreciate the aforesaid submission, it is necessary to refer to the provisions of section 80 of the Code of Civil Procedure. The relevant portion of Section 80, as it originally stood, reads as follows:

80. Notice.--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--

... ..

5. It was amended by the CPC (Amendment) Act, 1976 (104 of 197). The Original section was renumbered as Sub-section (1) and for the words "No suit shall be instituted" the words ""Save as otherwise provided in Sub-section (2), no suit shall be instituted" were substituted. Two new sub-sections, namely, Sub-sections (2) and (3) were also inserted. Section 80, as amended, in so far as it is relevant, reads as follows:

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--

... ..

(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, 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 bearing the parties, that no urgent or immediate relief need not be granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reasons of any error or defect in the notice referred to in Sub-section (1), if in such notice--

(a) the name, description and the residence of the Plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person saving the notice and such notice had been delivered or left at the office of the appropriate authority specified in Sub-section (1), and

(b) the cause of action and the relief claimed by the Plaintiff had been substantially indicated.

6. From a reading of Section 80 it is clear that this section puts a bar on the institution of any suit against the Government or public officer in respect of any act purporting to be done by such public officer in his official capacity until expiration of two months next after notice in writing containing the requisite information is delivered. It is well-settled that this provision is mandatory, its terms are imperative and admit of no exceptions or implications, except the one provided in Sub-section (2) thereof. The object of the notice contemplated by this section is to give to the concerned Government and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation. The legislative intention behind this provision is that public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. A suit not complying with this provision cannot be entertained by any Court and if instituted must be rejected under

Order 7 Rule 11 of the Code of Civil Procedure.

7. Sub-section (2) is an exception to the rule contained to Sub-section (1). It provides for institution of a suit for obtaining an urgent or immediate relief, without serving any notice. The object of this sub-section is to make some relaxation of the provision of Sub-section (1), so that a person may not be deprived of the opportunity of obtaining an urgent or immediate relief where such relief is essential. However, in such a case also the Court cannot grant any relief 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. If on such hearing the Court is satisfied that no urgent or immediate relief need be granted in the suit it should return the plaint for presentation to it after complying with the requirement of Sub-section (1).

8. Sub-section (3) provides that a suit against a Government or public officer would not be dismissed merely by reason of any technical error or defect in the notice if it complies with the provisions of Clauses (a) and (b) thereof. This sub-section was enacted with a view to see that just claim of any person is not defeated on technical grounds. This sub-section, in fact, gives effect to the decision of the Supreme Court in *Beohar Rajendra Sinha and Others Vs. State of Madhya Pradesh and Others*, wherein it was held that any unimportant error or defect could not be permitted to be treated as an excuse for defeating a just claim. In construing the notice the Court cannot ignore the object of the legislature to give the Government or public servant concerned an opportunity to consider its or his legal position. If on a reasonable reading of the notice the Plaintiff is shown to have given the reasonable opportunity, the statute requires him to give, any incidental defects or irregularities should be ignored. The law laid down by the Supreme Court in the aforesaid decision has now been incorporated in the statute itself by insertion of Sub-section (3).

9. A conjoint reading of the three sub-sections of Section 86 makes it clear that the service of a notice u/s 80 is still mandatory. It has, however, now been made subject to exception contained in Sub-section (2). The rigour of this provision has also been diluted by incorporation of Sub-section (3) which provides that just claim of a person should not be defeated on the ground of technical defect in the notice. In this connection it may be pertinent to mention that in the Amendment Bill of 1976, there was a proposal to omit Section 80 from the Code. The said proposal, however, did not find favour with the Joint Committee of Parliament to which the Bill was referred. The joint Committee in the report observed as follows:

The Committee feel that the omission of Section 80 of the Code, as proposed in the Bill, will not be in the public interest. It might prompt people to file suit against the Government to prevent it from undertaking any measure for the benefit of the society and this might also hinder the pace of development activities. The Committee are therefore of the view that provisions contained in Section 80 should be retained subject to modifications indicated hereafter.

10. Section 80, therefore, remained in the Code subject, however, to the modifications referred to above. As stated earlier, after the insertion of Sub-section (2) in Section 80 a suit to obtain on urgent or immediate relief against the Government or any public officer etc., may be instituted with leave of the Court, without service of any notice as required by Sub-section (1). The condition precedent for availability of the relaxation contained in this sub-section is that the suit is to "obtain on urgent or immediate relief." Only if this pre condition exists, a suit may be instituted without service, or any notice and not otherwise. The power of the Court to relax the requirement of statutory notice-is restricted to the suits of the type described in Sub-section (2). Any attempt to extend the scope and ambit of this exception will go counter to the object and scheme of the section itself.

11. Before exercising the exceptional power under Sub-section (2), the Court should record its finding that the suit in question is "a suit to obtain an urgent or immediate relief". In the absence of such a finding, an order passed by the Court relaxing the requirement of notice will not be an order in accordance with law. Besides, the Court can grant any relief in such a suit only after giving to the Government or public officer concerned a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. If on hearing," the parties, the Court is satisfied that no urgent or immediate relief need be granted in the suit, it should return the plaint to be presented after complying with the requirement of Sub-section (1).

12. Considering the facts, and circumstances of the present case it is clear that it does not fall within the scope and ambit of the exception contained in Sub-section (2) of Section 80. Admittedly it is a simple suit for recovery of money. No urgent or immediate relief is sought for. The fact that the suit may get barred by limitation is totally irrelevant consideration for deciding whether the suit is to obtain any urgent or immediate relief or not. The provision of Sub-section (2) cannot be used to circumvent the provisions of the Limitation Act. Its scope cannot be enlarged to cover oases which were not intended by the legislature to fall within it.

13. I am, therefore, of the opinion that the learned Court below (sic) erroneously in holding that the suit in question was maintainable without service of notice u/s 80 of the Code of Civil Procedure. The impugned order is therefore, set aside.

Mr. Roy, the learned Counsel for the opposite party No. 1 submits that he may be granted leave to strike out the names of Defendants 3 and 4 who are public officers. I do not propose to consider this prayer at this staff. Necessary prayer may be made before (sic) learned trial Court which will consider the same in accordance with law.

14. This petition is allowed. No order as to costs.