**(1968) 06 OHC CK 0011**

**In the Orissa High Court**

**Case No :** First Appeal No. 82 of 1964

Director of Industries — APPELLANT

Vs

Janardan Nanda — RESPONDENT

**Date of Decision :** 24-06-1968

**Acts Referred:**
Bihar and Orissa Public Demands Recovery Act, 1914 — Section 43(3)
Civil Procedure Code, 1908 (CPC) — Section 80

**Citation :** AIR 1969 Ori 58

**Hon'ble Judges :** G.K. Misra, J;B.K. Patra, J

**Bench :** Division Bench

**Advocate :** L. Rath, for the Respondent

**Final Decision :** Allowed

## Judgement

G.K. Misra, J.—Plaintiffs case may be put in short by eschewing out unnecessary details. He took a loan of Rs. 17000 from the

Government on furnishing proper security under the Bihar and Orissa State Aid to Industries Act A certificate was issued against him for Rs.

19,200 inclusive of interest. Plaintiff filed objection before the Certificate Officer in Certificate Misc. Case No. 51/58-59. His objection was

overruled. An appeal against the same was dismissed. The suit is filed u/s 43/(3) of the Bihar and Orissa Public Demands Recovery Act, 1914

(hereinafter referred to as the Act) for a declaration that the certificate is void and that the same should be cancelled. A plea was taken that no

proceeding was drawn against the plaintiff under the provisions of the State Aid Industries Act to obtain his explanation for the default and that the

certificate was premature and without jurisdiction.

In the written statement a plea was taken that the suit was liable to be dismissed as no notice was issued u/s 80, C. P. C. to the defendant, who is

the Director of Industries. Plaintiff failed to repay the loan for three instalments which fell due on 31-3-56, 31-3-57 and 31-3-58. He also did not

furnish the utilisation certificate to the effect that the loan amount had been utilised for the purpose it was granted. Accordingly the certificate for the

entire loan amount inclusive of interest was validly issued. Court''s jurisdiction to try the suit was also questioned.

2. The learned Subordinate Judge held that the certificate and the proceeding arising therefrom were illegal and void and that the Court had

jurisdiction to try the suit. He held that notice u/s 80, C. P. C. was not necessary as the suit was a continuation of the certificate proceeding. He

accordingly decreed the suit with costs. Against this decree, the defendant has filed the appeal.

3. The learned Standing Counsel contended that the suit is liable to be dismissed as no notice u/s 80, C. P. C. was served on the defendant.

Admittedly no notice has been served. Mr. Rath relied upon State of Seraikella Vs. Union of India (UOI) and Another, ; Hiraluxmi Pandit Vs.

Income Tax Officer, and Hus-sain All Mirza v. State of Andh Pra AIR 1983 AP 164 in support of his contention that a notice u/s 80 C. P. C. was

not necessary. Section 43(3) of the Act runs thus:

43. The certificate-debtor may, at any time within six months-

X X X X

(3) if he appeals, in accordance with Section 60, from an order passed u/s 10 -- from the date of the decision of such appeal.

bring a suit in a Civil Court to have the certificate cancelled, or modified, and for any other consequential relief to which he may be entitled.

Thus the Act itself makes provision for a suit when the objection of a certificate debtor is overruled in appeal.

4. Question for consideration, however, is whether a notice u/s 80 C. P. C. is excluded by any provision under the Act,

In State of Seraikella Vs. Union of India (UOI) and Another, . Rule 5 of the Federal Court Rules, framed u/s 214 of the Government of India Act,

1935, laid down that none of the provisions of the CPC shall apply to any proceeding in the Federal Court unless specifically incorporated in those

Rules. The provisions of Section 80 C. P. C. had not been incorporated in the

 

Rules and that being so, their Lordships held that Section 80, C. P.

C. could not affect suits instituted in the Federal Court u/s 204, Government of India Act, 1935. There is no provision in the Act which excludes

operation of Section 80, C. P. C.

5 Hiraluxmi Pandit Vs. Income Tax Officer, and Hussain Ali Mirza Vs. State of Andhra Pradesh, support the contention of Mr. Rath. In the Patna

case it was held that a suit u/s 25 of the Act was merely a continuation of the previous claim proceeding u/s 21 of that Act and that no notice u/s

80, C. P. C. was necessary. The same view was taken in Andhra Pradesh case where a certificate was issued under the Government Demands

Act. Their Lordships held that notice u/s 80, C. P. C. was not necessary relying on certain cases under Order 21, Rule 63, C. P. C. which,

according to them, was analogous to Section 6 of the Government Demands Act.

6. In Sawai Singhai Nirmal Chand Vs. Union of India, a question arose whether notice u/s 80, C. P. C. was necessary before a suit under Order

21, Rule 53 C. P. C. was instituted. Their Lordships accepted the opinion expressed in AIR 1927 176 (Privy Council) . The Judicial Committee

had observed:

Section 80 is express, explicit and mandatory and it admits of no implications or exceptions.

The matter was summed up by their Lordships of the Supreme Court in Paragraph 14 thus:

It appears that on this question there has been a divergence of judicial opinion in India. But, in our opinion, the view that suits under Order 21,

Rule 63 did not attract the provisions of Section 80, is inconsistent with the plain, categorical and unambiguous words used by it.

The identical reasons apply to suits u/s 43 of the Act. A notice u/s 80 is mandatory unless expressly excluded by any special statute. In view of the

aforesaid Supreme Court decision Hiraluxmi Pandit Vs. Income Tax Officer, and Hussain Ali Mirza Vs. State of Andhra Pradesh, cannot be

treated as laying down good law.

Defendant''s objection that the suit is liable to be dismissed as no notice u/s 80 was served, must be upheld.

7. In view of the aforesaid conclusion, it is unnecessary to express any view on the other question decided by the learned Subordinate Judge. The

appeal can be disposed of on the sole point that the suit is to be dismissed as no notice u/s 80, C. P. C. was served.

8. In the result, the judgment of the learned Subordinate Judge is set aside and the plaintiff''s suit is dismissed. The appeal is allowed with costs

throughout.

Patra, J.

9. I agree.

 