

(2007) 05 UK CK 0008
In the Uttarakhand High Court
Case No : S.A. No. 562 of 2001

Harlal Sah (D.) by L.Rs. and Others

APPELLANT

Vs

State of U. P. and Others

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 100, 80, 80(2)
Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2007) 7 AWC 6938

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : B.S. Adhikari, for the Appellant; B.D. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 100 of Code of Civil Procedure, 1908 (hereinafter referred as C.P.C.), is directed against the judgment and order dated 4.5.1981, passed by learned District Judge, Pithoragarh, in Civil Appeal No. 7 of 1980, whereby order dated 14.7.1980, rejecting the plaint, under Order VII, Rule 11 (d), C.P.C., passed by Munsif, Pithoragarh, in Original Suit No. 12 of 1979, is affirmed.

2. Heard learned Counsel for the parties.

3. Brief facts of the case, giving rise to this second appeal, are that Original Suit No. 12 of 1979, was filed by the Plaintiff (Appellant), for injunction against the Defendants (present Respondents), restraining them from recovering Rs. 5,971.95P, from him. However, no notice u/s 80 of CPC was given to the Defendants nor any exemption was sought by the Plaintiff. The trial court, when the objection was raised, from the side of the Defendants, after hearing the parties, found that the suit was not maintainable, without complying provisions of Section 80 of CPC It rejected the plaint under Order VII, Rule 11 (d) of CPC Aggrieved by said order dated 14.7.1980, passed by Munsif, Pithoragarh, the

Plaintiff preferred Civil Appeal No. 7 of 1980, before District Judge, Pithoragarh. After hearing the parties, said Court dismissed the appeal. Hence, this second appeal was filed by Plaintiff before the Allahabad High Court on 3.8.1981. (This appeal is received by transfer to this Court u/s 35 of U. P. Reorganization Act, 2000, for its disposal). The appeal was admitted, by Allahabad High Court, on 3.12.1981, on following substantial question of law :

Whether the courts below were legally justified in dismissing the suit of the Plaintiff/Appellant, or the proper course was to return the plaint as contemplated by Section 80(2) of the Code of Civil Procedure?

Answer to substantial question of law :

4. Section 80 of Code of Civil Procedure, 1908, reads as under :

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 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 authorized by that Government in this behalf ;

(c) in the case of 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).

(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 reason 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 serving 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.

5. Admittedly, the Plaintiff filed the suit against the State, without serving notice of two months as required u/s 80 of CPC. It is also not disputed that Plaintiff did not seek any leave under Sub-section (2) of Section 80 of CPC. It is also clear from the plaint that State of Uttar Pradesh and Tehsildar, Pithoragarh, were impleaded as Defendant No. 1 and Defendant No. 3 respectively in the suit. The relief of injunction was sought against said parties also. As such, the provisions of Section 80 of CPC were clearly attracted to the present case.

6. Sri B. S. Adhikari, learned Counsel for the Appellants, drew attention of this Court to proviso to Sub-section (2) of Section 80 of CPC and argued that the courts below have committed error of law by not returning the plaint to the Plaintiff. He further submitted that the trial court has committed error of law in rejecting the plaint under Order VII, Rule 11 (d) of CPC. This Court is of the view that had the Plaintiff sought leave under Sub-section (2) of Section 80 of CPC for instituting the suit without serving notice under Sub-section (1), the proviso to Sub-section (2) would have got attracted. Since, there is nothing on the record that the Plaintiff sought leave to institute the suit, without serving notice, as such the trial court was not required to return the plaint under the proviso of Sub-Section 2.

7. On behalf of the Plaintiff Appellant, it is further argued that the suit filed by the Plaintiff, was not barred under any law as such the Clause (d) of Rule 11, Order VII of CPC has no application to the present case. I am unable to accept the submissions advanced on behalf of the Appellant for the reason that Sub-section (1) of Section 80 of C.P.C., specifically provides that no suit shall be instituted against the Government or against the public officer in respect of act purporting to be done in his official capacity until expiration of two months next after notice in writing has been delivered to him. The provision being mandatory, bars the suit against the Government without serving notice u/s 80 of CPC or without seeking leave as required under Sub-section (2) of Section 80 of CPC. As such, there appears no illegality in the order passed by the trial court, rejecting the plaint under Order VII, Rule 11 (d) of CPC. The lower appellate court has also committed no error of law in dismissing the appeal.

8. Lastly, it is contended by the learned Counsel for the Appellants, that since the

temporary injunction was granted by the trial court after hearing the parties, as such the same amounts to impliedly granting leave to institute the suit without serving notice required under Sub-section (1). Here, again this Court is of the opinion that had there been an application for leave or prayer in the plaint, in this regard in any of the paras of the plaint, the contention of learned Counsel for the Appellants could have carried the force, but that is not the case here. As such, this Court opines that the courts below have committed no error of law in rejecting the plaint under Order VII, Rule 11 (d) of C.P.C., instead of returning the plaint under proviso to Sub-section (2) of Section 80 of C.P.C.

Substantial question of law, accordingly, stands answered.

9. For the reasons, as discussed above, the second appeal is liable to be dismissed and the same is dismissed. No order as to costs.