
(1991) 01 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 525 of 1990

Meter and Instruments Private Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 80, 80(2)

Citation : (1991) 99 PLR 401 : (1991) 99 PLR 400

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Nemo, for the Appellant; Nemo, for the Respondent

Judgement

I.S. Tiwana, J.—In this petition, the order of the trial Sub Judge, Chandigarh, dated November 18, IS 89, returning the plaint for non-compliance of Section 80, C. P. C. is impugned. The operative part of the order reads thus : -

"The learned counsel had failed to produce any law in support of his plea that even the application filed along with suit could be disposed of at this stage. So in view of these circumstances I find no merit in the request of the plaintiff for disposal of their application and his request is declined and application filed by the defendant for return of the plaint is allowed and accordingly the plaint along with documents is ordered to be returned to the plaintiff for its presentation before a court of competent jurisdiction after compliance with the requirement of Section 80 C. P. C."

Briefly the backdrop of the case is as follows

2. The petitioner company filed a suit for injunction restraining the respondents, i. e., Union of India and the Executive Engineer, Project Public Health Division No. 5, Chandigarh, from realising the water bill on the basis of carrying capacity in respect of water meter installed at its premises and for permanently injunctioning the respondents from disconnecting the water connection. Alongwith the plaint, two applications were filed on its behalf one under Order 39, Rules 1 and 2, C. P.

C. for the grant of interim injunction to the above noted effect and the other, u/s 80(1), C P. C. for the grant of the leave of the Court, for the institution of the above noted suit without serving a prior notice on the respondents as required by. Sub-section (1) of that Section The first application under Order 39, Rules 1 and 2, C. P. C. was disposed of by the trial Court on May 30, 1987 but the second application referred to above was not disposed of till the date of the passing of the impugned order even though the proceedings in the Court lingered on for about three years. It was towards the conclusion of the trial that the plaintiff petitioner moved an application that its application u/s 80(2) C P C., filed alongwith the plaint, should be disposed of before the final decision of the suit. On the other hand, the respondents also moved an application at that stage requesting the Court to return the plaint as envisaged by proviso to sub-Section (2) of Section 80 While the Court failed to pass any reasoned order on either of the applications moved by the plaintiff petitioner, it disposed of the application of the respondents with the observations as already indicated above. The suit file "as directed to be consigned to the record room.

3. Having examined the matter though in the absence of the learned counsel for the parties, I am of the opinion that, the impugned order of the Court is manifestly illegal The words "if it is satisfied, after hearing the parties" occurring in the proviso to sub Section (2), clearly show that unless a definite finding is recorded by the Court that no urgent and immediate relief is needed in the case, the Court cannot return the plaint No such finding has been recorded in the impugned order Section 80, C. P. C, provides two options to the plaintiff intending to institute a suit against the Government i. e. (i) to file it after serving two months notice u/s 80. or (ii) to file the suit without serving the notice but in that event he must satisfy the Court that urgent and immediate relief is required and also obtain previous leave of the Court to that effect. In the instant case, the plaintiff having opted for the second course, the Court was duty bound to dispose of the application filed by the plaintiff along with the plaint. This has not been so done ; even on the filing of the second application to that effect the Court has declined to dispose of the matter as indicated by the opening sentence of the part of the order extracted above for the reason that the learned counsel for the plaintiff "had failed to produce any law in support of his plea" that the first application could be disposed of at that stage. It is difficult to appreciate as to how the time factor could deprive the Court of its jurisdiction to perform its duty or to dispose of the application filed by the plaintiff to seek leave of the Court for the institution of the suit. Therefore, I set aside the impugned order and send the case back to the trial Court for deciding it afresh in accordance with law and the observations made above. The Court would summon the parties for a particular date for the bearing of the case. No costs.