

(1991) 04 MP CK 0025

In the Madhya Pradesh High Court

Case No : Civil Revision No. 316 of 1989

Shri Kailash Chandra Jain

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 02-04-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115, 80(1), 80(2)

Citation : AIR 1992 MP 242 : (1991) JLJ 524 : (1991) MPLJ 754

Hon'ble Judges : S.K Jha, C.J

Bench : Single Bench

Advocate : Y.K. Munshi, for the Appellant; K.S. Wadhwa, for the Respondent

Final Decision : Allowed

Judgement

S.K. Jha, C.J.

This application in revision has been filed by the plaintiff of C.S. No. 25-A/84 as it is now numbered, against the order passed by the II Addl. Judge to the Court of District Court, Raipur, dated 5-4-89, directing the plaint to be returned to the applicant u/s 80 of the CPC for complying with the requirement of Section 80(1).

Although the suit, as now registered in the Court of II Addl. Judge to the Court of District Judge is numbered as C.S. No. 25-A/84, it was actually instituted on 12-2-1979. Along with the plaint, an application was filed by the applicant-plaintiff to grant leave to institute the suit against the State Government, respondent No. 1 u/s 80(2), C.P.C. The other defendant is a private individual, who is non-applicant respondent No. 2 and has been subsequently added is not necessary for the purpose of the present civil revision application.

The main relief sought in the suit was for restraining the State Government from realising the dues which were assessed by way of sales tax against one M/s. Choudhary Rice & Co. with which, according to the plaintiff-applicant, it had no concern. The further prayer was that the auction proposed to be held of the property belonging to the applicant-plaintiff, be directed to be restrained from

being held.

An application under Order 39, Rules 1 and 2 of the CPC was also filed along with the plaint. Due notice thereof was given to the State Government and on the very next day, i.e. on 13-2-1979, the State Government respondent N.A. No. 1 (defendant No. 1) was represented by a counsel and a consent order was passed restraining the respondent No. 1 from holding the auction until further orders. On 10-5-79, however, after finally hearing the parties on the injunction application, the trial Court rejected the prayer and vacated the interim injunction. Against the order dated 10-5-79, the applicant filed Misc. Appeal No. 119/79 in this Court. Initially an ex parte order of injunction was granted in favour of the applicant by this Court, but after finally hearing the parties, the Misc. Appeal was dismissed on 10-10-79 with the observation that the trial Court ought to have first passed a proper order on the issue with regard to the issue whether requisite Court-fees having been paid by the plaintiff applicant or not before it could consider any application for injunction. After this order was passed, the question with regard to the requisite order was passed, the question with regard to the requisite Court-fee having been paid was ordered to be taken up as a preliminary issue. In the meantime, with the consent of parties, on 19-8-1980 again a fresh order of injunction was passed by the trial Court. Ultimately on 6-1-1981, the preliminary issue was decided in favour of the applicant and it was held that proper Court-fee had been paid. Against that order, the State Government non-applicant respondent No. 1 filed a civil revision in this Court which was registered as Civil Revision No. 570/81 which was dismissed by this Court.

Then began a new chapter. An application was filed on behalf of the State Govt. defendant No. 1, respondent No. 1, in the trial Court that the suit was not maintainable, because no notice u/s 80(1) of the CPC had been served before the institution of the suit and that, therefore, the suit was not maintainable and respondent No. 1 also pressed that issue be also tried as a new preliminary issue. In course of hearing of that application by respondent No. 1, it was urged before the trial Court by the plaintiff applicant that an application for leave of the Court to institute the suit had been filed by the plaintiff-applicant as far back as on 12-2-1979 along with the plaint itself on which presumably the Court then in season of the matter had not inadvertently passed an order in spite of the urgency of the matter. Nonetheless, injunction was granted only after notice to the State Govt.

By order dated 8-3-1989, the trial Court took up the application for leave u/s 80(2) of the CPC which had been filed, as already stated earlier, along with the plaint, on 12-2-79 and which had been registered as I. A. No. 2/ 79. The trial Court held that the leave u/s 80(2), in the circumstances of the case, was allowed. It is, however, curious to note that even in spite of that order, by the impugned order dated 5-4-1989, what the Court below has done is to have directed the plaint to be returned under the provisions of proviso to Section 80(2) for instituting the suit again after complying with the provisions of Section

80(1) of the Code of Civil Procedure.

The logic is queer enough. The learned A.D.J. has held that although the leave was granted for instituting the suit dispensing with the provisions of Section 80(1), in view of the urgency of the situation, and in spite of the fact that right from 12-2-1979 up-to-date, the parties were being heard from stage to stage -- and I am informed at the bar that written statement had already been filed in the case and issues had already been framed yet a formal notice u/s 80(1) of the CPC was still mandatory. On these facts, it is needless to say that the order of the learned A.D.J. is not only perverse, but absolutely without jurisdiction. Once leave has been granted to institute the suit u/s 80(2) of the Code of Civil Procedure, it is clear beyond doubt on the language of the statute that it is only after satisfaction of the Court after hearing the parties that urgent or immediate relief was needed in the suit and that, therefore, such a leave had been granted. Once such a leave had been granted and written statement had been filed and all the steps taken and orders passed in the case were in the presence of the State Govt. through its counsel representing the case right from 1979, it would not merely be "piling unreason upon technicality" but it also cannot stand the test of scrutiny of the specific statutory provisions as laid down in both the substantive part of Section 80 as well as the proviso thereto.

Before parting with this case, however, in deference to the submission made by Shri Wadhwa, learned counsel for the State, respondent No. I, I must put it on record, although for the purpose of rejecting it only, that a preliminary objection to the maintainability of the civil revision petition was taken by him at the very initial stage of the hearing of the civil revision application. Shri Wadhwa contended that no civil revision was maintainable, because the order was an appealable order under the provisions of Order 43, Rule 1(a) of the Code of Civil Procedure. The argument, with respect, is wholly misconceived. Order 43, Rule 1(a) makes only the orders passed under Order 7, Rule 10 appealable. Under the provisions of Order 7, Rule 10, only such orders are passed for returning the plaint for presentation to the proper Court where it is found that the suit had been instituted either in a Court not having the pecuniary jurisdiction or territorial jurisdiction to entertain it. That is why the language of Order 7, Rule 10 is very specific in laying down that.....

"the plaint shall, at any stage of the suit, be returned to be presented to the Court in which the suit should have been instituted."

Further reason for returning the plaint with the date of such return and with the endorsement of the Court or the Judge concerned thereon and the presentation of the plaint is prescribed in Sub-rule (2) of Order 7, Rule 10 of the CPC for the purpose of computation of limitation or condonation of delay. Order 7, Rule 10 is an independent and distinct provision for return of the plaint and the provision for return of the plaint as envisaged by the proviso to Section 80(2) is dehors the provision of Order 7, Rule 10. The return of the plaint under the proviso to Section 80(2) of the CPC is not covered by any of the provisions of Order 43,

Rule 1 and is, therefore, not appeal able and that is why Order 41, Rule 1 (a) itself specifically lays down that the return of the plaint is for the purpose of presentation before the proper Court. There is no question of presentation before the proper Court in so far as the return of the plaint under the proviso to Section 80(2) of the CPC is concerned.

In the result, therefore, this revision must succeed. The impugned order of the Court below is set aside and the revision is allowed with costs. Hearing fee of the counsel Rs. 250.00. The Court below shall now proceed to dispose of the suit in accordance with law after affording reasonable opportunity to the parties for being heard on the date next fixed. Records of the Court below be sent back as soon as possible.