

(1971) 06 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 482 of 1967

State of Orissa and Others

APPELLANT

Vs

Sarat Chandra Panigrahi

RESPONDENT

Date of Decision : 21-06-1971

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 43
Civil Procedure Code, 1908 (CPC) — Section 80
Orissa Public Demands Recovery Act, 1962 — Section 42
Specific Relief Act, 1877 — Section 42

Citation : AIR 1972 Ori 154

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Advocate : R.C. Ram, for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—Defendants are the appellants against a reversing judgment.

2. The plaintiff is a forest contractor, while defendant No. 1 is the Estate of Orissa and defendants Nos. 2 and 3 are the Certificate Officer and Divisional Forest Officer of Bolangir. The plaintiff's case, in brief, is that he being the highest bidder in the public auction of forest coupes in the year 1950-51 held on 15-10-50, Matkhai coupe No. 12, lot No. 4 was knocked down in his favour for Rs. 2,500/- on which he deposited the security money of Rs. 250/- and signed a blank agreement form. Under the relevant rules, the competent authority to accept the bids exceeding Rs. 2,000/- was the Conservator of Forests. The agreement (Ex. B) after acceptance and signature by the Conservator of Forests was received by him long after the date of bid. In the meanwhile, he had intimated defendant No. 3 of his unwillingness to work the coupe and revoked his offer. In spite of it, he was called upon by defendant No. 3 to pay the first instalment by the notice (Ex. C) dated 14-12-50, but he did not pay as he had already withdrawn his offer. Defendant No. 3 made a report to the Conservator

on 23-12-50 to terminate the alleged agreement, but the Conservator purported to determine it on 28-5-51 and the plaintiff was intimated that his security had been forfeited and was called upon to pay the bid amount of Rs. 2,500/-. Plaintiff's appeal against this order to Government was rejected. Thereafter, defendant No. 3 filed a certificate before defendant No. 2 for recovery of Rs. 2,563.14.0 on which the latter started Certificate Case No. 10/38 of 1952/53 dated 29-7-53. Plaintiff's objection u/s 9 of the B & O Public Demands Recovery Act denying his liability was rejected though defendant No. 2 reduced the claim by Rs. 500/- alleged to have been obtained by resale of the coupe. Plaintiff had issued a notice under Sec. 80, C. P. C. to defendant No. 1 on 24.7.52 which was received by the Collector of Bolangir on 28-7-52. As no relief was granted, he filed the present suit praying for a decree that the sum of Rs. 2,048.12.0 or any other amount is not due against him and for a declaration that the certificate in question he cancelled on the ground that no dues were outstanding against him and the order of defendant No. 2 in the certificate proceeding was not in conformity with law or Forest Contract Rules.

3. The defendants resisted the suit pleading inter alia that when the highest bid of the plaintiff was accepted and he signed Ex. B on 15-10-50 the contract was complete, and in any case, the contract became concluded on 6-11-50 when he was informed of the acceptance of the bid by the Conservator of Forests. Defendant No. 3 even at the request of plaintiff was not competent to cancel a completed contract. Therefore, the plaintiff is liable to pay the bid amount less the amount obtained by resale of the coupe in accordance with the terms and conditions of the contract and the Forest Contract Rules. In addition, it was also pleaded that the suit is not maintainable in the absence of a valid notice u/s 80 C. P. C. subsequent to the institution of the certificate case and the previous notice before the cause of action arose was not sufficient compliance with law.

4. The trial court dismissed the suit on the following findings: (1) The Conservator of Forests executed Ex. B sometime in May, 1951; (2) before completion of the contract, it was open to the plaintiff to revoke his offer, and as such, the subsequent execution of Ex. B by the Conservator of Forests cannot validate a contract which was previously revoked by the plaintiff before its acceptance; (3) there was no valid and enforceable contract and consequently the plaintiff is not guilty of breach of contract or liable to pay any damage on that score; (4) the notice u/s 80, C. P. C. (Ex. K) is not a valid and legal one entitling the plaintiff to bring the present suit for cancellation of the certificate proceeding, and as such, the suit is not maintainable. In appeal, the plaintiff confined his challenge to the finding of the trial court about the invalidity of Ex. K and non-maintainability of the suit on that ground. The defendants did not file any cross-appeal, and therefore, the other findings were not agitated. The lower appellate court held that Ex. K amounts to substantial compliance with the requirements of law, and as such, valid. On this ground, it allowed the appeal, held that the suit is maintainable and decreed the plaintiff's claim.

5. The short question that arises in this appeal is whether the suit with the reliefs as claimed attracts the provision of Section 80, C.P.C., and if so, whether the requirements of that provision have been complied with.

6. The object of a notice u/s 80, C.P.C. in suits instituted against Government or public officers in respect of acts purporting to have been done by them in their official capacity is to give Government or the public servants concerned, as the case may be, an opportunity to reconsider its or their legal position, and if that course is justified to make amends or settle the claim out of court. The legal position is well settled that the section is imperative and failure to serve the notice complying with the requirements of the Statute will entail dismissal of the suit. It is equally well settled that the notice has to be reasonably construed, and if in substance, there is compliance with the requirements any unimportant error or defect in it cannot be used to defeat a just claim. In the decision reported in *Beohar Rajendra Sinha and Others Vs. State of Madhya Pradesh and Others*, their Lordships observed:

"In considering whether the provisions of the Statute are complied with, the court must take into account the following matters in each case; (1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice; (2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity; (3) whether a notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section and (4) whether the suit is instituted after expiration of two months next after notice has been served and the plaint contains a statement that such a notice has been delivered or left."

7. Learned counsel for appellants points out that the two reliefs prayed for by the plaintiff in the plaint are as follows: (1) The court be pleased to pass a decree that the sum of Rs. 2,048.12.0 or any other amount is not due against the plaintiff and (2) for a declaration that the certificate in question be cancelled on the ground that defendants Nos. 1 and 2 have no dues on the plaintiff; that the certificate was illegal and that proceeding and the order of defendant No. 2 in the certificate case were not in conformity with law or the Forest Contract Rules.

8. Admittedly, Ex. K is the only notice u/s 80, C.P.C. issued by the plaintiff to the State of Orissa on 24-7-52 and served on the Collector of Bolangir on 28-7-52. The first contention of learned counsel for appellants is that by the date of issue of Ex. K, certificate proceeding No. 10/38 of 1952/53 had not been initiated, as admittedly, the same was started at the instance of defendant No. 3 on 29-7-53. So also, the objection filed by the plaintiff u/s 9 of the B & O Public Demands Recovery Act had not been considered or rejected by the date of issue of Ex. K. Therefore, the suit so far it relates to the relief for cancellation of the certificate proceeding and the orders passed by defendant No. 2 thereon is not maintainable as the cause of action for such a relief had not arisen and notice of this cause of action was not and could not have been embodied by the plaintiff in his notice u/s 80, C.P.C. It is also contended that though Ex. K was issued

against defendant No. 1, no such notice was issued against defendants Nos. 2 and 3 who have been impleaded in respect of acts purported to have been done by them in their official capacity.

9. So far as the other relief is concerned it is argued that plaintiff had no cause of action to file the suit and for that purpose to issue a notice u/s 80, C.P.C. as no suit was maintainable merely because defendant No. 3 made a demand for payment of the bid amount. Such a demand by itself does not give a cause of action and a suit for a declaration as prayed for is not maintainable in view of the provisions contained in Section 42 of the old Specific Relief Act corresponding to Section 34 of the present Act.

10. Mr. Ram, learned counsel for respondent relying on the decision reported in (1965) 31 C LT 1140 (State of Orissa v. Gouri Charan Kanungo) contended that a suit u/s 43 of the B & O Public Demands Recovery Act of Section 42 of the Orissa Act being a continuation of the certificate proceeding, notice u/s 80, C.P.C. is not necessary. In that case, the question arose whether in a suit filed under Order 21, Rule 63, C.P.C. arising out of a claim proceeding will attract the provisions of Section 80, C.P.C. The Division Bench decision, no doubt, lends support to Mr. Ram's contention, because on that analogy a suit u/s 42 of the Orissa Public Demands Recovery Act may, in essence, be considered in the nature of a review or appeal of an order passed in the certificate proceeding. This decision is no longer good law in view of the decision of the Supreme Court reported in Birendra Pratap Singh and Another Vs. Gulwant Singh and Others, and another Division Bench decision of this Court reported in Director of Industries Vs. Janardan Nanda, . The Supreme Court in the aforementioned decision held that the provisions of Section 80, C.P.C. are attracted to suits filed under Order 21, Rule 63, C.P.C. observing:

"Therefore it would be impossible to hold that such a suit is outside the purview of Section 80 of the Code."

In the decision reported in Director of Industries Vs. Janardan Nanda, a point similar to the one under consideration directly arose for decision. Relying on the decision reported in AIR 1966 SC 1068, it was held:

"A certificate-debtor can file a civil suit u/s 43 (3) (B. & O. Public Demands Recovery Act) to cancel the certificate or for other reliefs only after serving a notice u/s 80 of CPC on the Director of Industries. Though the Act itself provides for a suit when the objection of a certificate-debtor is overruled in appeal, a notice u/s 80, Civil P. C. is mandatory and its application is not excluded by any provision of the Act."

These two decisions clearly negative the argument advanced on behalf of respondent, as admittedly, no notice u/s 80 had been served after commencement of the certificate proceeding or passing of the order by defendant No. 2. The contention of appellants must be upheld and the suit so far as the prayer for cancellation of the certificate and the orders passed in the

certificate proceeding is concerned, is not maintainable for want of notice u/s 80, C.P.C.

11. The other ground of attack by appellants relates to the second prayer made by the plaintiff to pass a decree that the sum of Rs. 2,048.12.0 or any other amount is not due against him. Mr. Patnaik for appellants has urged that Ex. K. issued on 24-7-52 is invalid as by that date no cause of action accrued to the plaintiff to file a suit against the State or the public officers. Admittedly, except defendant No. 3 making a demand for payment of Rs. 2,500/-, no other steps had been taken to recover the amount. The point is whether mere making a demand for payment before taking any steps to enforce it will give a cause of action to the plaintiff to file a suit. Section 42 of the Specific Relief Act provides for suits for declaration of status or right. The essential requisites for a declaratory action under that provision are that the plaintiff must at the time of the suit be entitled to any legal character or to any right to any property; that the defendant should have denied or interested in denying the character or title of the plaintiff and that the declaration asked for must be a declaration that the plaintiff is entitled to a legal character or to a right to property. It is argued that by defendant No. 3 making the demand for payment, plaintiff's legal character or his right to property cannot be said to have been disputed or denied. Therefore, the plaintiff had no cause of action to file a suit with a prayer like the present one. On the other hand, Mr. Ram, learned counsel for respondent argued that as it was reasonable to expect that the demand if not met would be followed by coercive action, the demand itself constituted the cause of action. He relied on the decisions reported in AIR 1949 78 (Privy Council) and Amar Nath Dogra Vs. Union of India (UOI), . These decisions, in my opinion, are not relevant to the question under consideration. On the other hand, there are authorities in support of the contention of appellants that to entitle the plaintiff to maintain a declaratory suit, he must show that he has a legal character or some right to property and that his opponent was denying or interested in denying the same. In the decision reported in AIR 1955 MP 111 (Madanlal v. State of Madhya Bharat), a similar question arose for decision. In that case, the plaintiff's case was that Government had entrusted foodgrains for distribution on certain terms to the Congress Committee, but subsequently a demand was made from the plaintiff personally for certain amount as due on account of the undertaking. Alleging that the demand was illegal and wrong, plaintiff filed the suit for a declaration that he would not be liable for the amount if the State started proceedings against him for enforcing the demand. It was held that a mere demand did not give a cause of action and such a suit was not maintainable. In another decision reported in AIR 1946 Nag 78 (Akola Municipality v. Shantarani Madhorao), it was held that no suit can lie for a perpetual injunction restraining a municipal corporation or a private individual from sending in a bill and making a demand for moneys which they consider, rightly or wrongly to be due to them. In another case of the Madhya Bharat High Court reported in AIR 1955 MP 3878 (Vol. 42), (State v. Babu-lal), it was held that a suit for a declaration that the

State was not entitled to recover from the plaintiff certain amount as loss sustained by it at the resale of the right to extract forest products and for an injunction restraining it from realising the amount from him is not maintainable. So also, in a decision reported in Mahabir Jute Mills Vs. Firm Kedar Nath Ram Bharose, , it was held that a suit for declaration that a contract between the parties does not subsist and the plaintiff is on that account not liable for damages for breach of contract is not maintainable u/s 42 of the Specific Relief Act. It is rightly contended for appellants that the mere demand of the money by defendant No. 3 did not amount to denial of the legal character or right to property of the plaintiff, and as such, he had no cause of action to institute a declaratory suit. Necessarily, a notice purporting to be u/s 80, C.P.C. when such a cause of action did not exist is not valid in law. Hence, the suit, so far as this relief claimed by the plaintiff is concerned, is also not maintainable. It is unnecessary to deal with the other contention of appellants of maintainability of the suit against defendants Nos. 2 and 3 in the absence of a notice served on them, in view of my above findings. The judgment of the lower appellate court decreeing the suit on the ground that there has been substantial compliance with the requirements of Section 80, C. P. C. is erroneous and cannot be maintained.

12. In the result, the appeal is allowed with costs, the judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court restored.