

(1991) 02 KAR CK 0091

In the Karnataka High Court

Case No : Regular First Appeal No. 127 of 1980

Syed Abdul Jabbar

APPELLANT

Vs

Board of Wakfs

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 80
Karnataka Co-operative Societies Act, 1959 — Section 125
Waqf Act, 1954 — Section 56

Citation : (1991) ILR (Kar) 1628

Hon'ble Judges : N.D.V. Bhat, J;D.P. Hiremath, J

Bench : Division Bench

Advocate : K.S. Savanur, for the Appellant; D.L.N. Rao, for R-1, Kalemulla Shariff, for R-5, L. Umakanthan, HCGP for R-2 and H.J. Sundarkumar, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

DP. Hiremath, J.—The appellants were the plaintiffs before the trial Court claiming various reliefs enumerated in the plaint. They claim to be the chief Mujavers of a Darga called Hazrat Manickshah Wali Darga at Bangalore and two villages, viz., Bupasandra and Bellahalli that were settled by Tippu Sultan the erstwhile Ruler of the then Mysore State. Ex.P-1 is the Sanad granted by Tippu Sultan and Ex.P-2 is its translation. As we could make out from the translation the Wakif His Majesty Tippu Sultan King Gazi directed that the two villages were dedicated for the expenses of the Darga Hazrath Manickshah Wali and it was conferred as an Inam. From the beginning of the month Ahmedi in the year-1221 Hijra (which is said to correspond to 1811 A.D. as stated at the Bar) these villages have been given for the expenses of Darga and from this income expenses of Urs and other requirements of Darga should be met and prayers be made for the King's long life and prosperity. The plaintiffs claim that two villages were inhabited by Muzawars of the Tomb and they were directed by Tippu Sultan by the above said Sanad. They used the income of the villages for the Fateha and

other rituals. The Management of the Darga has always been with the Committee of Muzawars selected by the two villages and it is continuously on record in all the Public Registers and documents that these persons have from generation to generation performed their duties as hereditary Muzawars. Subsequently when the Muzrai Department took over supervision of all religious institutions, the forefathers of the plaintiffs constituted the management of the Darga and were recovering revenue dues of the lands of the two villages and offerings made at the Darga and other income secured by leasing out part of the premises to persons for trade without in any way damaging any part of the Darga. They also made a statement that the Muzawars two of whom were selected from the two villages acted as the President and Vice-President of the Committee of Muzawars from generation to generation. They contend mainly that the residents of the two villages are entitled to manage all the affairs of the Darga on their own responsibility and without any interference from others.

2. In the year 1963 when the Board of Wakfs succeeded the Muzrai Department the supervisory powers were assumed by the Wakfs Board. The plaintiffs alleged inter alia that proper funds were not being given to them to perform their duties and even though they tried to give a democratic and disciplined shape to the administration and management of the Darga, they were not encouraged. They also complained that the properties of the Darga like cash were not returned to them and their interference in the management was unabated. In the suit they made prayers that the Board of Wakfs - 1st defendant be directed not to alter the administration of the Darga excepting in accordance with the Scheme submitted by them to the Wakf Board ("the Board" hereafter for short) in the year 1964 for the approval; directing the Board not to alter the rights vested in the Muzawars i.e., the residents of Bupasandra and Bellahally; directing the Board to approve and notify the scheme for the management of the Darga; directing the Board to render a true and correct account of all the monies received by it; directing it to deliver to the plaintiffs all amounts transferred to it by the Muzrai Department; directing it to deliver to the plaintiffs all papers, correspondence documents and sanads etc., pertaining to the Darga; directing it not to act for and on behalf of the Darga or to commit it to any position before any statutory authority or institution or Government; directing it to withdraw all assurances and consents that may have been given for acquisition of the Darga etc.", directing it to refund and reimburse the plaintiffs in all amounts that may have been spent by the Board for any project of the Wakf Board without authority and sanction and to direct the Board to preserve the sanctity and sacred nature of Darga by directing its licencees viz., the Fruit peddlers and merchants from continuing to make use of the precincts of the Darga for keeping their wares and belongings etc.

3. The suit was resisted on various grounds and even the Hereditary rights of the plaintiffs to act as Muzawars were challenged by the Board. It denied that the plaintiffs have become the chief Muzavaree. One Syed Ghouse has not been, accepted as Chairman of the Committee of Muzawars. When the Darga and its

properties vested with the Board, there is no question of their interference with the management or administration. In brief it contended that the prayers made by the plaintiffs are not at all tenable and if the plaintiffs were actually Muzawars as alleged and had any right in the affairs of the Darga and its properties they should have challenged the very Notification published by the Wakf Board under the powers conferred on it by the Wakf Act.

4. In our view for the disposal of this appeal the rest of the allegations and contentions are not quite necessary. The trial Court framed as many as eight issues and among them was the issue whether the suit is bad for multifariousness on which it gave a finding in the affirmative. On issue No. 1 however it gave a finding in favour of the plaintiffs that they are the chief Muzawars. It may be stated here that the prayers with regard to the framing of the scheme which is the subject matter of prayer No.3 and also the prayers with regard to the direction to the Board not to act for and on behalf of Darga or to commit it to any position before any statutory authority or institution and directing the Board to refund and reimburse the plaintiffs in all amounts that may have been spent by the Board were deleted on the prayer made by the plaintiffs. On issue No.7 which is the main prayer with regard to the approval and notifying the scheme, the trial Court found that such a prayer cannot be granted. All the findings of the trial Court that went against the appellants are challenged in this appeal and during the hearing of the appeal, a point was raised on behalf of the Board - 1st respondent that the trial Court has observed in its Judgment that no notice u/s 56 of the Wakf Act ("the Act" for short) was issued and therefore the suit itself is not maintainable. In para-16 dealing with issues 6 to 8 the trial Court observed as follows:

"Under Section 56 no suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or any rules made thereunder, until the expiration of two months, next after notice in writing has been delivered to, or left at the office of the Board, 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. When there is no such notice, the suit filed by the plaintiff for the relief that the Wakf Board is not managing the said Darga and its properties and for a direction to approve the scheme for the management of Darga of Hazrath Manickshah Wall cannot be entertained."

While it was argued for 1st respondent - Board that this observation of the trial Court clearly indicates that no such statutory notice was issued it was urged by the learned Counsel for the appellants that the appellants have stated in the plaint that statutory requirement of sending a notice prior to the institution of the suit to the Board of Wakfs under the Act was issued and the relevant notice with the proof of its delivery to the defendants was also produced with the plaint. There was no contention raised by the respondent that no such notice was issued. Therefore, it was argued that in the absence of any contentions to the

contrary no issue on the point of notice arose and it must be deemed that the Board had admitted the issue of such notice. It was urged that it is the duty of the Court to find whether the statutory notice which is mandatory was issued u/s 56 of the Act and the Court before giving finding on the other issues also should give a finding with regard to issuing of such notice.

5. In this behalf, our attention was invited to a decision of this Court rendered by us in R.F.A.No.119/1980 Karnataka Board of Wakfs v. Narayana Rao and Ors. relying on a decision of the Supreme Court in the case of STATE OF PUNJAB v. M/ S. GEETHA IRON & BRASS WORKS LTD. AIR 1978 SC 1008 that Section 56 makes it obligatory that a plaintiff should make an averment that such a notice has been issued and it is necessary for the Court to consider issuance of such notice. In the case of Sayyed Murtujahaseni @ Murshad Peer Vs. Karnataka State Board of Wakfs, in R.S.A.No.860/1980 the learned single Judge of this Court pointed out that Section 56 of the Act specifically directs that no suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of the Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff etc., as required under that section. The learned Judge observed, normally the law provides for issuing of notice to statutory institutions and public authorities and public officer so that they can settle the claim before the plaintiff institutes the suit if the claim made in the notice is tenable or justified. The Court should raise a specific issue regarding this aspect of the matter and permit the plaintiff to produce notice issued by him before filing the original suit. When it was thus urged for the respondent that no notice was issued the attention of the learned Counsel for the respondents was drawn to an averment in the plaint that such a notice has been issued and copy as well as acknowledgements of receiving the same were produced. The learned Counsel for the respondent No.1 filed a memo that the Board has received notice u/s 56 of the Act sent by the plaintiffs and that it has no objection for marking the same in evidence subject to satisfying all the conditions specified in Section 56 of the Act. Acting on this memo, we have permitted the copy of the notice given by the two plaintiffs to be taken as evidence and the same is marked as Ex.P-34.

6. After the said notice was admitted in evidence, our attention was invited to the contents thereof and especially as to the persons who had issued it as well as the relief claimed in the said notice. The Advocate who issued this notice has stated that it was issued on behalf of Muzawars of the Darga and Board of management represented by its President Syed Abdul Jabbar s/o Syed Ghouse Saheb of Bupasandra and Syed Budab @ Nawab of Bellahalli the Secretary of the Board of management. Thus to put it in other words it was issued on behalf of these two persons who of course described themselves as the persons filling in the capacities stated above. Though majority of the reliefs claimed in the suit have been stated the one with regard to the direction to the Board to frame a scheme was conspicuously absent in this notice. Referring to these infirmities in

the notice it was urged by the learned Counsel for the respondent Board that notice was not in compliance with Section 56 of the Act inasmuch as the notice was issued by only two persons whereas presently four persons have filed the suit and secondly the main relief on which arguments at length have been advanced in this appeal is absent. Therefore, the notice is bad in law and hence the suit cannot be entertained. The learned Counsel for the appellants however has urged that the capacities in which the notice has been issued by two of the persons mentioned therein is sufficient to come to the conclusion that there is substantial compliance with requirement of Section 56 of the Act and it could as well be said that the notice was issued on behalf of other two persons named in the plaint as well when it is the Committee of Management of Darga. As far as the main relief is concerned it was urged that the notice be construed liberally and that on that score alone the suit need not fail.

7. The short point therefore for our determination is whether the notice issued only by two of the plaintiffs is in compliance with Section 56 of the Act and whether it is also bad for not stating the important relief of directing the Board to frame a scheme.

8. The plaint now is signed by four persons viz., Syed Abdul Jabbar and Syed Mahaboob of Bupasandra and Syed Gulzar Ali and Syed Budab of Bellahalli but it is stated that notice is on behalf of Syed Abdul Jabbar plaintiff No. 1 and Syed Budab @ Nawab plaintiff No.4. The notice however is totally silent as to the claim of plaintiffs-2 and 3 Syed Mahaboob and Syed Gulzar Ali, In the body of the plaint however they have alleged that these plaintiffs are the chief Muzawars of the Darga. They claim that two of the Muzawars were selected from the two villages and they acted as President and Vice-President of the Committee of Muzawars from generation to generation. What is significant to note at the outset is that it is not a representative suit representing either village people of two villages or the body of Muzawars of two villages though contended by the plaintiffs that the people of these two villages have been the Muzawars of the Darga. What they alleged specifically is that the management of Darga has always been with the committee of Muzawars selected by the two villages of Bupasandra and Bellahalli and it is continuously on record in all the public registers and documents that they have from generation to generation performed the duties of hereditary Muzawars. Thus even according to them there is unspecified body of Muzawars of these two villages but still they maintain they constitute the committee selected by the village people to perform the duties of hereditary Muzawars. They also alleged periodically from among Mutuwallis the Committee was appointed by process of selection from amongst the heirs of the previous senior mutuwallis. Therefore according to the learned Counsel for the appellants when two of the plaintiffs who are the President and Secretary of the Board of management issued notice u/s 56 of the Act it is perfectly a valid notice.

9, In this behalf, reference may be made to a decision of this Court in the case of Shama Rao Hanumantharao Kulkarni and Others Vs. State of Karnataka and

Others, and rendered by a learned single Judge. One of the contentions raised was that the suit notice u/s 80 of the CPC ("the Code" for short) in that case had not been issued by all the plaintiffs and the suit filed by plaintiffs some of whom had not issued notice and others that had issued notice u/s 80 C.P.C. was not maintainable. Reference was made to the decision of the Privy Council in the case of BHAGCHAND DAGADUSA v. SECRETARY OF STATE. ILR 1951 Bom 725 In para-27 of the Judgment the learned Judge observed thus:

"After the Privy Council rendered its decision in Bhagchand's case, the British Indian High Courts have consistently taken the view that a suit filed by a person who had not issued a notice along with a person who had issued a notice was not maintainable and the entire suit was liable to be dismissed without restricting the same to the person that had issued the notice. Even after India attained independence and the jurisdiction of the Privy Council was abolished, our Supreme Court or the other High Courts have not dissented with the enunciation made by the Privy Council in Bhagchand's case, Sri T.L. Venkatarama Aiyar one of the eminent Judges of our Supreme Court, editing the 13th edition of Mulla's CPC considered to be one of the classic treatises on the subject under the heading "sufficiency of notice" does not dissent from the view expressed by the Privy Council in Bhagchand's case and the later rulings of the Madras High Court which definitely ruled that a suit filed by a person that had not issued a notice along with a person that had issued a notice, was not maintainable. As pointed out in the same book "sufficiency of notice" is not the same thing as "substantial compliance" of Section 80 of the Code."

A similar view was taken by the Madras High Court in the case of C.A. Khaja Mohidden Sahib and Others Vs. The Madras State Wakf Board and Others, in which the learned single Judge relying on the Privy Council decision aforesaid observed that if notice is issued by only one of the plaintiffs and the suit is filed along with others such a notice is not a proper notice u/s 56 of the Act. In that suit there were six plaintiffs who had brought the suit whereas notice was given by only first plaintiff and not others.

10. The learned Counsel for the appellants invited our attention to a decision of the Supreme Court in the case of Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI), and urged that the defendant -respondent must be deemed to have waived the objection with regard to the notice, in our view this decision is not attracted for the reason that we are now called upon to interpret the contents of the notice and find out whether it is a valid notice complying with the requirements of Section 56 of the act which is mandatory, the argument of the learned counsel for the appellants that because the notice is issued by the president and the Secretary of the Committee of Muzawars it is representative in nature and hence notice is valid cannot be accepted for the reason that there was no such valid and lawful committee existing at the time when the notice was issued. To make it representative in character it was for the plaintiffs-appellants to satisfy the Court the two persons were acting in a representative capacity of a

lawful body which had authorised them to issue notice and to file the suit. Simply because a group of individuals come together and style some of them as office-bearers like President, Vice-President, or Secretary or Treasurer, notice issued by any such alleged office-bearers cannot be considered as a notice issued by such persons representing a recognised body. The case of unregistered club or society is an instance of this nature. What is pertinent to note is that all the plaintiffs claim to be Muzawars by inheritance inheriting such rights from their fore-fathers and therefore there is nothing like a body recognised under law making a claim for the rights they assert and for the reliefs that they have claimed in the suit. In our view therefore the objection of the respondent-Board that the notice issued by only two of the plaintiffs cannot be considered as lawful has to be upheld.

11. The next contention is one of the omission of the main relief of framing of scheme which was not at all stated in the notice. As already pointed out from a decision of this Court in R.F.A.119/1980 the object of issuing notice is to provide an opportunity to the statutory body like the respondent in the instant case to consider the relief claimed and if possible to accept it without driving the parties to the suit. In the case of *State of Punjab v. M/s. Geetha Iron & Brass Works Ltd.*, (supra) the Supreme Court held that a statutory notice of the proposed action u/s 80 of the Code is intended to alert the State to negotiate a just settlement or atleast have the courtesy to tell the potential outsider why the claim is being resisted. A litigative policy for in the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. This exactly is the object and purpose of giving notice before suit. What is true of observation with regard to the notice u/s -80 of the Code is also true of notice u/s 56 of the Act the purpose of statutory notice being the same.

12. As already stated Section 56 of the Act is analogous to Section 80 C.P.C. and one of the requirements of the notice is the relief which the plaintiff claims. The trial Court found that the suit is bad for multifariousness and we do not propose to express any opinion with regard to this part of observation of the trial Court as we are now disposing of the appeal only on the point of notice. If the purpose and object of issuing a statutory notice like the one u/s 56 of the Act is considered in the light of the decisions of the Supreme Court referred to above it follows that the plaintiffs must bring to the notice of the Government or the body like the respondent in the present appeal the relief which he claims. It is one thing to consider if there is substantial compliance with the requirements of Section 56 of the Act as far as other requirements are concerned and totally another thing to see whether the. relief claimed is stated in the notice. As we have made it amply clear during arguments the learned Counsel for the appellants was quite assertive that the plaintiffs have a right to get a relief in the hands of the Court directing the Board to frame a scheme which is one of the functions of the Board u/s 15(2) of the Act. Therefore if at all the plaintiffs wanted such a relief to be included in the plaint it was required of them to state

so in the notice as one of the reliefs that they intended to claim. When there is total absence of such a relief in the notice there is no alternative for us but to hold that the notice is bad on this account as well. However if other reliefs claimed could be granted, the Court may refuse the relief which is not stated in the notice and grant those that are stated in the notice.

13. The next point for our consideration would be what should be the order of this Court when it finds that the notice is bad in law. In this behalf the learned Counsel for the appellants invited our attention to a decision of the learned single Judge of this Court in the case of MAHADEVIAH v. SALES OFFICER ILR 1990 Kant 151 arising out of a case u/s 125 of the Karnataka Co-operative Societies Act 1959. While finding that the suit could not have been instituted without issuing notice u/s 125 of the Act this Court allowing the appeal set aside the Judgment of the Court below and directed that plaint be returned to the plaintiff. We have given our anxious thought to the provision under Order 7 Rule 10 of the CPC which states 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. Thus the only contingency under which the plaint could be returned is the one where the Court in which it is instituted has no jurisdiction to try the suit. If it comes to the notice of the Court at the time of filing of the suit that such notice has not been issued the course open is to reject the plaint. We find ourselves unable to accede to the argument that the plaint to returned to the appellants herein.

14. Section 125 of the Karnataka Co-operative Societies Act which came up for consideration before the learned single Judge K.A. Swami, J., reads as follows:

"Notice necessary in suits - No suit shall be instituted against a Co-operative Society or any of its Officers in respect of any act touching the Constitution, management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar 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."

Section 56 of the Wakf Act which is also similar to Section 125 of the Co-operative Societies Act reads as follows:

"Notice of suits by parties against the Board - No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any Rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at the office of the Board, 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."

Both these provisions in the respective statute are analogous to the provisions of Section 80 of the Code of Civil Procedure. The cause of action, the name, description and place of residence of the plaintiff and the relief claimed shall all

be stated in such notice and the plaint shall contain a statement that such notice has been so delivered or left. Thus the decisions rendered either by various High Courts or the Supreme Court in cases of non-compliance with the provisions of Section 80 CPC would be attracted even to cases of non-compliance of the provisions regarding notice under the Co-operative Societies Act or the Wakf Act. The learned single Judge agreed with the first Appellate Court that the suit should not have been instituted without issuing a notice u/s 125 of the Co-operative Societies Act relying on a decision of the Supreme Court in the case of Amar Nath Dogra Vs. Union of India (UOI), of the Judgment in the Report in that case states:

"Whenever, a statute prescribes that a notice shall be issued before the institution of the suit, a suit brought without issuing such a notice is bad in law and the Court will not have jurisdiction to entertain such a suit. The Supreme Court considered this aspect of the matter while considering the institution of a suit without issuing a notice u/s 80 CPC (see Amar Nath Dogra Vs. Union of India (UOI), What applies to the suit filed without issuing a notice u/s 80 of the C.P. Code will equally apply to the suit instituted without issuing a notice u/s 125 of the Act. Therefore, point No. 1 is answered in the affirmative."

Even in Amarnath Dogra's case before the Supreme Court observation referring to Section 80 CPC that to the suits to which Section 80 applies compliance with it is mandatory and that a suit which does not satisfy its terms is liable to be dismissed is not in dispute. The only question for consideration before the Supreme Court was whether notice issued had substantial compliance with the requirement of Section 80 CPC. While confining the Judgment to the point of notice u/s 80 CPC Their Lordships observed as follows:

"It would be seen from the above narration that what may be termed the merits of the appellant's claim for damages could arise for consideration only if the suit was maintainable. As we were clearly of the opinion that the appeal must fail principally on the point that the suit was not maintainable because of the non-compliance of the terms of Section 80 of the Civil Procedure Code, we did not hear learned Counsel about the merits of the appellant's complaint regarding breach of contract on the part of the State and the relief to which the appellant would be entitled on that basis."

What the Supreme Court calls "one of the technical objections" in that suit was that the suit was bad for want of proper notice u/s 80 of the CPC and the same was applied by the trial Court and though the suit failed on this technical objection findings on issues on merits were also rendered. Having found that the circumstances clearly proved that there was no compliance with the terms of Section 80 CPC the Court found that the entire claim in the suit must fail and therefore the appeal should fail. In Mahadevaiah's case referred to above the learned single Judge referring to the compliance with Section 125 of the Co-operative Societies Act concluded in para-14 of the Report as follows:

"The lower Appellate Court having held that the suit should not have been instituted without issuing a notice u/s 125 of the Act, it should have simply set aside the Judgment and decree of the lower Appellate Court and directed the return of the plaint instead of dismissing the suit because it is still open to the plaintiff to issue notice and file a suit. Therefore, the lower Appellate Court, to the extent it dismissed the suit is not justified. Accordingly, point No.2 is answered in the affirmative."

So observing the appeal was allowed, Judgments and decrees of the Courts below were set aside and the plaint was directed to be returned to the plaintiff.

15. We are of the firm opinion that return of the plaint in a situation like the one before the learned single Judge and before us is wholly out of question. Order 7 Rule 10 CPC says:

"Return of Plaint - (1) Subject to the provisions of Rule 10A, the plaint shall at any stage or the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation:- For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub rule.

(2) Procedure on returning plaint - On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."

Rule 10A deals with power of Court to fix a date of hearing in Court where plaint is to be filed after its return. It is as follows:

"Power of Court to fix a date for appearance in the Court where plaint is to be filed after its return -

(1) Where in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under subsection (1), the plaintiff may make an application to the Court -

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be, given to him and to the defendant.

(3) Where an application is made by the plaintiff under Sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of

plaint was made by it on the ground that it has no jurisdiction to try the suit -

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under Sub-rule (3) -

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court, by which the plaint was returned.

(5) Where the application made by the plaintiff under Sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint."

If there is a delay in re-filing the suit in the Court having jurisdiction to try the suit after the plaint has been returned under Order 7 Rule 10 CPC the same may have to be explained to the Court in which the suit is re-filed. Therefore after taking return of the plaint from the Court which has ordered return of the same the plaintiff has to be diligent to refile it without loss of time. If there is want of proper statutory notice the plaintiff may file the suit for the same relief on the same cause of action after issuing proper statutory notice and only after the period prescribed therein expires and not earlier. Therefore no suit can be filed before expiry of two months after notice either u/s 125 of the Co-operative Societies Act or Section 56 of the Wakf Act or Section 80 C.P.C. Hence the question of refiling the same plaint in the same Court in which it was filed initially does not arise and so also the question of representing it in another Court because there is no case of the Court where the plaint was originally filed having no jurisdiction to try the suit. In the case of *State of Andhra Pradesh Vs. Gundugola Venkata Suryanarayana Garu*, the Supreme Court held that Section 80 CPC is imperative and must be strictly construed. Failure to serve a notice complying with the requirement of the statute will entail the dismissal of the suit. Similarly in a later decision in the case of *Bihari Chowdhary and Another Vs. State of Bihar and Others*, also the Supreme Court held that the suit against Government or Public Officer, to which the requirement of a prior notice u/s 80 CPC is applicable cannot be validly instituted until expiration of two months next after the notice in writing delivered to the authorities concerned in the manner prescribed and if filed before the expiry of the said period the suit has to be dismissed as not maintainable. In view of this settled position of law as to what should be done in the event of the statutory notice not being issued, or the same not being in substantial compliance with the requirements of such a notice or the suit having been filed before the expiry of the period stated in the provisions of

the statute the only course open to this Court is to dismiss the suit. For the reasons aforestated we find that the view taken by the learned single Judge in Mahadevaiah's case (supra) does not have the support of law. In view of the discussion made above we over rule the principle of law set out in Mahadevaiah's case that in the event of there being no compliance with requirement of issuing statutory notice before suit the plaint shall be returned.

For the reasons discussed above we set aside the findings of the Court below on all the issues as the suit must fail on the ground that there was no compliance with the requirement of Section 56 of the Wakf Act. Though we concur with the trial Court that the suit is liable to be dismissed we dismiss the same on the ground that the suit must fail for want of statutory notice to the appellant. The appeal therefore is dismissed. Parties to bear their own costs.