
(2016) 01 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 397/2014

The Sarpanch, Gram Panchayat, Bedla	APPELLANT
Vs	
Chunni Lal Paneri and Others	RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 109

Citation : (2016) 01 RAJ CK 0056

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Muktesh Maheshwari, for the Appellant;

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—1. The present appeal is directed against the order dated 15.01.2014 passed by the learned Additional District Judge No. 5, Udaipur in Civil Appeal No. 26/2013 ? Shri Chunni Lal Paneri & Anr. Vs. Shri Sarpanch, Gram Panchayat, Bedla, Tehsil Badgaon, District Udaipur, allowing the appeal of the plaintiff against the Gram Panchayat, Bedla, Tehsil Badgaon, District Udaipur, holding that the reply to the notice given by the Gram Panchayat in connection with the construction sought to be raised by the plaintiff, could be construed as notice under Section 109 of the Rajasthan Panchayati Raj Act, 1994 and the present suit having been filed after expiry of two months period after such reply, was not hit by the bar of the provisions of Section 109 of the Act of 1994 and the suit was maintainable, and therefore, the learned appellate court remanded the case back to the learned trial court of Civil Judge (Junior Division), City South, Udaipur, setting aside its order dated 13.09.2013 of the learned trial court with the direction to the learned trial court to conclude the trial in accordance with law.

2. The relevant portion of the impugned order dated 15.01.2014 of the learned appellate court is quoted below for ready reference:--

3. Learned counsel for the appellant-Gram Panchayat, Mr. Muktesh Maheshwari

urged that the notice given by the Gram Panchayat to the plaintiff for the alleged illegal construction and reply thereto by the plaintiff could not sub-serve the purpose of Section 109 of the Act of 1994, which specifically requires to give an advance notice of two months prior to filing of the suit, specifically stating the cause of action, name and place of abode of the intending plaintiff and the nature of relief, which he claims and the period of two months should necessarily elapse before such suit is instituted, otherwise such suit is barred and hit by the provisions of Section 109 of the Act of 1994. Therefore, the learned appellate court was not justified in holding otherwise and directing the learned trial court to hold trial in accordance with law.

4. No one appears for the plaintiff-respondent despite service of notice.

5. Heard the learned counsel for the defendant-appellant-Gram Panchayat.

6. Section 109 of the Act of 1994, as quoted in the memo of appeal, is quoted below for ready reference:--

"109. Suits etc. against Panchayat, Panchayat Samiti and Zila Parishad.-(1) No suit or other civil proceeding against a Panchayati Raj Institution or against any member, officer or servant thereof or against any person acting under the direction of a Panchayati Raj Institution or any member, officer or servant thereof for anything done or purporting to be done under this Act in its or his official capacity-

(a) shall be instituted until the expiration of two months after notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the nature of the relief which he claims, has been delivered or left at its office or, in the case of a member, officer, servant or person as aforesaid, delivered to him or left at the office or at his usual place of abode, and the plaint in each such case contain a statement that such notice has been so delivered or left, or

(b) shall be instituted, unless it is a suit for the recovery of immovable property or for a declaration title thereto, otherwise than within six months after transfer next the accrual of the alleged cause of action.

(2) The notice referred to in sub-section (1), when it is intended for a Panchayat, Panchayat Samiti or a Zila Parishad, shall be addressed to the Sarpanch, Vikas Adhikari or the Chief Executive Officer respectively."

7. From the perusal of the aforesaid provision, it is clear that the bar under Section 109 of the Act of 1994 is not an absolute bar against filing of such suit, but the purpose of such provision is only to put the Public body or the Panchayatri Raj Institution covered under the said Act to an advance notice about the intended filing of the civil suit against them with the cause of action stated therein, so that if any corrective measure can be undertaken by such Public Body, it can be so done within the stipulated period of two months avoiding litigative process, which entails wastage of public time and money.

8. In the present case, this Court finds that the appellant-Gram Panchayat was fully aware, having itself served a notice on the plaintiff about the alleged illegal construction, which was replied by the plaintiff vide his reply dated 23.07.2012 and the present suit was filed on 27.12.2012 after two months. The nature of suit to be filed by the plaintiff and relief claimed was itself clear in the said reply by the plaintiff to the notice given by the Gram Panchayat itself, and therefore, it cannot be held that the Gram Panchayat was unaware of the cause of action and the relief to be claimed by the plaintiff. In the present case, the provisions of Section 109 of the Act of 1994 do not call for hyper-technical approach of the Courts and the exchange of notice and reply, even preceding the filing of the suit, served the purpose of putting a Public Body in question to a notice about the suit to be filed against them in terms of Section 109 of the Act. The present appellant-Gram Panchayat has already fought this legal battle upto the High Court, after filing of the present suit in the year 2012 for last three years, not allowing the trial to take place on merits. The learned trial court had obviously fallen into an error in holding that the reply of the plaintiff dated 23.07.2012 to the notice given by the Gram Panchayat itself, could not be construed as a notice under Section 109 of the Act of 1994. This approach was too pedantic and narrow and was rightly set aside by the learned appellate court by the impugned order dated 15.01.2014. The aforequoted portion of the order of the learned appellate court clearly spells this proposition of law in its right terms. Therefore, the present appeal of the appellant-Gram Panchayat is found to be devoid of any merit and the same is liable to be dismissed.

9. Accordingly, the present appeal of the defendant-appellant-Gram Panchayat, Bedla, Teshil Badgaon, District Udaipur is dismissed. The learned trial court is expected to expedite the trial in the present suit, and conclude the same in accordance with law. No costs. Copy of this order may be sent to the concerned parties as well as the learned courts below forthwith.