

(1989) 07 KL CK 0030
In the High Court Of Kerala
Case No : S.A. No. 426 of 1984A

T.V. Parangodan

APPELLANT

Vs

District Collector, Trichur and Others

RESPONDENT

Date of Decision : 04-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80(1), 80(2)

Citation : AIR 1989 Ker 276

Hon'ble Judges : S. Padmanabhan, J

Bench : Single Bench

Advocate : T.K.M. Unnithan and B. Suresh Kumar, for the Appellant; E. Thankappan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Padmanabhan, J.—The short question for consideration in this second appeal filed by the plaintiff is whether the leave of Court required u/s 80(2) of the CPC for instituting a suit without notice under Sub-section (1) could only be on the basis of an express order on a separate application filed for that purpose. Facts of the case and contentions of the parties are not relevant for deciding the appeal. Both the trial Court and the appellate Court held that a prayer in the plaint is not sufficient and a separate application for leave and an order granting leave are the prerequisites for the maintainability of the suit. Therefore without even considering whether it is a suit to obtain an urgent or immediate relief and whether insistence on the compliance of Sub-section (1) will defeat the purpose of the suit, maintainability of the suit was found against for the simple reason that no application was filed for leave. That finding came only when the suit was finally disposed of after evidence. Even though the trial Court considered the rival contentions also on the merits, the appellate Court dismissed the appeal solely on the ground that the suit is not maintainable since the plaintiff did not file a separate application for leave and the prayer for that purpose in the plaint is inadequate.

2. I have no hesitation in disagreeing with the courts below in this respect. Sub-section (2) was introduced by the amendment of 1976 in order to avoid failure of justice by the purpose of the suit itself being defeated by insistence on notice in cases where urgent or immediate relief is required. Want of notice is made good in such cases by providing that no relief, whether interim or otherwise, shall be granted in the suit except after giving the Government, or the public officer, as the case may be a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. It is not necessary to mention that such relief, whether interim or otherwise, could be granted in the suit only on satisfaction at least prima facie of the maintainability without the notice, even though such satisfaction may be liable to reconsideration later. Such satisfaction for proceeding with the suit or return of the plaint for representation after curing the defect in the absence of satisfaction are necessary to do justice between the parties. Acts of Court should never prejudice any party. If the suit is kept pending for long time and finally dismissed for want of notice without considering that question earlier the rights of the plaintiff may be, irreparably lost by lapse of time. That is why the proviso says that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need as granted in the suit, return the plaint for presentation to it after complying with the requirements of Sub- section (1).

3. In this case the defendant-State entered appearance and objected to the maintainability of the suit for want of notice and requested the plaint to be returned for presentation after curing the defects. That objection was not then considered. Without doing so the prayer for injunction was considered on the merits and disallowed. But the C.M. A. filed by the plaintiff was allowed by the appellate Court and in junction granted. Then the suit was tried and finally disposed of. Then only maintainability was considered and that too only on the hypertechnical ground and not on the merits.

4. I am not going to decide the question whether there is a suit to obtain urgent or immediate relief justifying leave under Sub-section (2) because that question was not considered by the courts. I shall only decide whether a separate application and an express order are the essential requisites and whether implied leave could be presumed. According to me at least after the defendant entered appearance and objected to the maintainability, the Court ought to have had the satisfaction either way after hearing the parties as enjoined by the proviso. If the satisfaction is against the plaintiff, interest of justice demands that the plaint will have to be returned for representation after curing the defects, Only if the satisfaction is in favour of maintainability without notice the reliefs in the suit could be considered. The sub-section does not prescribe any form or manner in which leave has to be granted. What it says is only "with the leave of the Court, without serving any notice as required by Sub-section (1)." Leave need not be by a formal order. It can be implied also and could be gathered from what the Court does. Proceeding with the suit after the objection by considering any relief could be a visible manifestation of an implied leave being granted. If so, what the trial

Court and the appellate Court did on the injunction application may amount to leave granted. That cannot be withdrawn at the final stage of the suit for dismissing the same on maintainability when his remedies were lost by lapse of time.

5. The finding that the suit is not maintainable for the reason that leave was not sought for by a separate application is too hypertechnical and not conducive to justice. Whenever and wherever permission, sanction or leave is required and an application is considered necessary for that purpose, the framers of the Code have not forgotten to make specific provisions. I do not mean to say that there are no exceptions. Every rule may have its exceptions. In Section 92 of the Code of Civil Procedure, the words used are only "having obtained the leave of Court". But a separate application is considered necessary. That is because leave is a condition precedent to the institution of the suit and it has to be obtained before hand. Order 1, Rule 8 only says with permission of the Court". An application is insisted because Rule 20 of the Civil Rules of Practice provides for it.

6. Proviso to Order XXXII, Rule 1 contemplates "leave of Court" for abandoning the suit or any part of the claim when the plaintiff is a minor or other person to whom the provisions of Order XXXII. Rules 1 to 14 extend. Sub-section (2) specifics that the leave will have to be obtained on an application accompanied by an affidavit of the next friend and if a pleader appears, a certificate from him also. Order XXXII. Rule 7 requires leave of Court when next friend or guardian enters into any agreement or compromise on behalf of the minor, whom he represents. There also it is specifically provided that leave should be sought by an application accompanied by an affidavit of the next friend or guardian and a certificate of the pleader, if any, Order XLI, Rule 3A deals with condonation of delay when an appeal is filed out of time. There also an application supported by an affidavit is contemplated, No such application or affidavit is contemplated in Section 80(2) which do not specify how the leave is to be sought for or given. In such cases, the mode or form of request or grant are not material. What is material is only the substance, whether there was a proper request and whether it was considered and granted. Request with grounds, if any, must be there and there need only be indications as to whether it is allowed or not, even though a reasoned order may be good and an application is also appreciable.

7. For "leave of the High Court" required u/s 378(3) of the Code of Criminal Procedure, State of Madhya Pradesh Vs. Dewadas and Others, said that no separate application is necessary and a prayer to that effect in the memorandum of appeal is sufficient. Section 5 of the Limitation Act only mentions "satisfies the Court". Nadubhagom M.S. Karayogam v. Gopalan Nair 1979 K LT 166 said that no formal application is necessary. That decision was followed in Ranadevan Vs. The State, Section 20 of the CPC also contemplates leave of Court and Rule 19 of the Civil Rules of Practice says that a prayer made in the plaint accompanied by an affidavit stating the address of parties is sufficient to obtain leave. Even without a specific provision necessity for an application may some times be there

depending upon facts and nature of leave or sanction, Statutory provisions and their interpretations are intended to advance the cause of justice and not its denial on technical grounds. Courts are concerned more with the substance than form.

8. What is required in this case is the satisfaction of the Court on the matters dealt with in Section 80(2) and action on its basis. Request for leave could be in any form provided it is capable of conveying the prayer and the grounds to the Court and the opposite party enabling effective objection and considered decision. That is satisfied in this case. Leave also must be taken as granted. Appeal had to be decided on the merits.

Second appeal is allowed. The decree and judgment of the appellate Court are set aside. The appeal is remanded to the appellate Court for decision afresh on the merits, subject to what is stated above. Court-fee paid on the memorandum of second appeal will be refunded to the appellant. The office will transmit records to the appellate Court forthwith. Parties will appear before the appellate Court on 26-8-1989. No costs.