

(1983) 01 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Revision No. 20 of 1981

Union of India (UOI) and Others

APPELLANT

Vs

Satya Pal Mehta and Others

RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 80

Citation : (1983) WLN 91

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This revision is directed against the order dated September 25, 1980, whereby the learned Additional Munsif No. 2, Bikaner, confirmed the leave granted on 18.10.1978 by the court to institute a suit without serving any notice u/s 80, CPC.

2. The plaintiff-non-petitioner No. 1 Satyapal Mehta instituted a suit on 17.10.1978 praying for the following reliefs:

1. That the defendant is liable to pay to the plaintiff the sum of Rs. 5 lakhs with interest at the rate of 12% per annum from the date of institution of the suit till the date of payment of the same.

2. That the defendant is liable to pay to the plaintiff the sum of Rs. 5 lakhs with interest at the rate of 12% per annum from the date of institution of the suit till the date of payment of the same.

3. That the defendant is liable to pay to the plaintiff the sum of Rs. 5 lakhs with interest at the rate of 12% per annum from the date of institution of the suit till the date of payment of the same.

4. That the defendant is liable to pay to the plaintiff the sum of Rs. 5 lakhs with interest at the rate of 12% per annum from the date of institution of the suit till the date of payment of the same.

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3. Along with, the plaintiff submitted an application for the grant of temporary injunction under Order 39, Rules 1 and 2, read with Section 151, CPC, in which he prayed that the defendants be restrained from implementing the orders dated October 5, 1978, and October 14, 1978 and that the defendants No. 5 to 7 may not be promoted affecting the plaintiff's right of promotion. Notice of this application was ordered to be issued on 18.10.1978 and no interim order was passed thereon. The plaintiff also moved an application under Sub-section (2) of Section 80, CPC, in which he stated that the plaintiff has sought an immediate or urgent relief and in case the relief is not granted the plaintiff would suffer an irreparable loss. Permission was sought to institute the suit without service of notice under Section 80, CPC. The learned Additional Munsif on October 18, 1978, passed an order that provisional permission is given to the plaintiff to institute the suit without notice u/s 80, CPC, looking to the reliefs prayed for in the plaint and also looking to the application for the grant of temporary injunction. It was also ordered that notice of application u/s 80, CPC, be issued and the plaint shall be registered only after order on the application u/s 80, CPC. The application for the grant of leave to sue without service of notice u/s 80, CPC, was resisted by the defendants and this application ultimately could be heard on September 25, 1980. The learned Court observed that the application for the grant of temporary injunction was dismissed, as the same had become infructuous, but as the plaintiff has prayed for restraining the defendants from giving effect to the order of promotion of the defendants No. 5, 6 and 7, so the suit becomes of urgent nature. Treating the suit in which an urgent and immediate relief is claimed, the provisional permission granted on October 18, 1978, was confirmed and the Court did not act under the proviso to Sub-section (2) of Section 80, CPC, thereby did not order the return of the plaint for presentation to it after complying with the requirements of Sub-section (1) of Section 80, CPC.

4. Dis-satisfied with this order the Union of India and its three other officers have approached this Court u/s 115, CPC.

5. I have heard Shri A.K. Mathur, learned Counsel for the defendant-petitioners. No body appears on behalf of the plaintiff-non-petitioner No. 1.

6. Mr. A.K. Mathur, learned Counsel for the petitioners, submitted that the court below erred in confirming the provisional permission granted to the plaintiff for instituting the suit without service of notice u/s 80, CPC. When the order had already been implemented and were given effect to, that is, when defendants No. 5, 6 and 7 had already been promoted, in pursuance of the order of promotion, there was no question for the grant of any urgent or immediate relief. That being so, it was imperative for the court to have returned the plaint for presentation to it after complying with the requirements of service of notice under Sub-section (1) of Section 80, CPC.

7. For the proper appreciation and adjudication of the controversy, which has arisen in the present case, it is necessary to read Sub-section (2) of Section 80, CPC:

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his Official capacity, may be instituted, with the leave of the Court, without serving any notice as required by Sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted to the suit, return the plaint for presentation to it after complying with the requirements of the Sub-section (1).

8. A perusal of the above provision would show that with the leave of the Court, a suit can be instituted without serving any notice as required by Sub-section (1), when the suit is to obtain an urgent or immediate relief against the Government or any public officer. Even after grant of leave, the court is under a duty to give to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit and till such reasonable opportunity of showing cause, is not given, the Court cannot grant any relief whether interim or otherwise, in the suit. The proviso to Sub-section (2) of Section 80 further lays down that after hearing the parties, if the court is satisfied that no urgent or immediate relief need be granted in the suit, it is required to return the plaint for presentation to it after complying with the requirements of Sub-section (1). The purport and the object of the proviso to Sub-section (2) of Section 80 appears to be that after hearing the parties if the Court finds that there is no need to grant any urgent or immediate relief, then in that situation, the Court is required to return the plaint for presentation to it after service of notice. Soon after issuance of notice giving a reasonable opportunity of showing cause under Sub-section (2) of Section 80, the Court is required to hear the parties on the question of grant of urgent or immediate relief and decide whether such a relief need be granted or not. In case it comes to the conclusion that such a relief is required to be granted, it will proceed with the hearing of the matter regarding grant of relief and proceed with the suit and in case it finds that such a relief need not be granted, then it will return the plaint for presentation to it after service of notice u/s 80, CPC.

9. It may be pointed out that in the present case the application u/s 80, CPC, for leave to sue without service of notice was not heard and decided till September 25, 1980. Before deciding this application, the application for grant of temporary injunction was heard on September 22, 1960, and was rejected on that date on the ground that the application had become anfractuous, as defendants No. 5 and 6 assumed the charge on the post of their promotion on October 14, 1978

and defendant No. 7 was working on the post of promotion with effect from November 3, 1978. Thus, by lapse of time the very object and scheme of the proviso to Sub-section (2) of Section 80 was defeated. It is true that the plaintiff sought relief of temporary injunction against the defendants not to give effect to the order of promotion of defendants No. 5 to 7 and on that basis it can be said that an urgent and immediate relief was sought by the plaintiff in a suit for declaration by moving an application for the grant of temporary injunction but under the proviso to sub-section 2 plication u/s 80, Sub-section (2) for the grant of leave. In case such an application is dragged on the ultimately the court finds that an urgent or immediate relief need not be granted. and orders the return of the plaint and then, by the time of re-presentation of the plaint, the suit may become barred by time. Such a situation, in my opinion, has not been contemplated by the proviso. I do not agree with the learned Additional Munsif that the provisional permission should be confirmed only on the basis that the suit was of an urgent nature. Action under the proviso to Sub-section (2) is not based on the urgent nature of the suit or the urgent nature of the relief prayed by the plaintiff. Action under the proviso is based on the satisfaction of the Court as to whether any urgent or immediate relief needs to be granted or not in the suit. If such a relief needs to be granted, then there is no question of return of the plaint and if such a relief need not be granted, whatever may be the reason, whether the reason may be that the relief has become infructuous, the plaint has to be returned. In my opinion whenever permission is given under Sub-section (2) of Section 80, CPC, the courts must bear the parties at the earliest and decide as to whether any urgent or immediate relief need be granted or not. Determination of this question should not take long time. If period of limitation is allowed to elapse without determining this question and then if the Court orders return of the plaint on coming to the conclusion that an urgent or immediate relief need not be granted, then the plaintiff would be deprived of his legitimate remedy of redressing his grievance on account of expiry of period of limitation. In the present case, considering the period of limitation, the Court could have ordered for the return of the plaint, but now more than four years have expired. In such a situation it would not be legitimate and just to direct the return of the plaint for presentation to the court below after compliance with the requirement of Sub-section (1) of Section 80. It does not appear to be the intention behind the provision contained in the proviso to Sub-section (2) that irrespective of the lapse of time the court has to return the plaint for presentation to it after service of notice u/s 80 for in that situation, the suit may be barred by time. However, I hold that the proviso is mandatory and in case the suit does not become barred by time, the court shall return the plaint for re-presentation to it after compliance of Sub-section (1) of Section 80, CPC.

10. In the above view of the matter, action for return of the plaint under the proviso to Sub-section (2) of Section 80, C.P.C., is not called for and the impugned order as such does not call for any interference.

11. In the result, this revision petition is hereby dismissed with no order as to

costs.