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GOVT. OF KERALA & ORS.

v.

SUDHIR KUMAR SHARMA & ORS.

(Civil Appeal No. 7364 of 2013)

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SEPTEMBER 02, 2013

[ANIL R. DAVE AND DIPAK MISRA, JJ.]

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Code of Civil Procedure, 1908 – s. 80(2) and Or. VII r.11 – Suit against Government – With application u/s. 80(2) seeking leave of the court to file the suit without notice u/s. 80(1) – Defendant’s application u/Or. VII r.11 seeking rejection of plaint – Rejection of application u/Or. VII r.11 without disposing of the application u/s. 80(2) – Whether correct – Held: Rejection of application u/Or. VII r.11 without deciding the application u/s.80(2) was not correct – Till a final order is passed granting application u/s. 80(2), the irregularity in filing the suit continues – By mere filing of application it cannot be presumed that the application, is granted.

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Respondent No.1 filed a suit against appellant-State with application u/s. 80(2) CPC, seeking leave of the court to file the suit without serving notice u/s. 80(1) CPC. The appellant-State filed applications u/Or.VII, r.11 CPC praying for rejection of the plaint. Trial court dismissed the applications filed by the State. In Revision, High Court confirmed the order of trial court, holding that it can be presumed that the application u/s. 80(2) was granted since the trial court entertained the application u/Or. VII, r.11, while the application u/s. 80(2) was pending. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. The trial court had wrongly rejected the applications filed by the appellants under Order VII Rule

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11 CPC. The trial court ought to have heard and decided the application filed u/s. 80(2) CPC before hearing the application under Order VII Rule 11 CPC. [Para 27] [71-G] A

2. A suit filed without compliance of Section 80(1) cannot be regularized simply by filing an application u/s. 80(2) CPC. Upon filing an application u/s. 80(2) CPC, the Court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice u/s. 80(1) to the concerned Government authorities. According to the provisions of Section 80(2) CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice u/s. 80(1) CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application u/s. 80(2) CPC. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an application, by no stretch of imagination it can be presumed that the application is granted. If such a presumption is accepted, it would mean that the court has not to take any action in pursuance of such an application and if the court has not to take any action, then there is no need to file such application. [Paras 24 and 26] [70-E-H; 71-D-F] B C D E F

3. Till a final order is passed granting the application u/s. 80(2), the irregularity in filing of the suit continues and it cannot be known whether the suit filed without issuance of notice u/s. 80(1) CPC was justifiable. If ultimately the application is rejected, the plaint is to be G H

A returned and in that event the application filed on behalf of the appellants under Order VII Rule 11 CPC is to be granted. If the application filed u/s. 80(2) is ultimately granted, the objection with regard to non-issuance of notice u/s. 80(1) CPC cannot be raised and in that event
B the suit would not fail on account of non-issuance of notice u/s. 80(1) CPC. [Paras 25 and 26] [71-A-D]

C *State of A.P. and Ors. vs. Pioneer Builders (2006) 12 SCC 119: 2006 (6) Suppl. SCR 571; M/s. Bajaj Hindustan Sugar and Industries Limited vs. Balrampur Chini Mills Ltd. and Ors. 2007 (9) SCC 43: 2007 (4) SCR 132; Irappa Basappa Kudachi vs. State of Karnataka 1996 (2) KLJ 591 – referred to.*

Case Law Reference:

D 2006 (6) Suppl. SCR 571 referred to Para14
 2007 (4) SCR 132 referred to Para 15
 1996 (2) KLJ 591 referred to Para 18

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7364 of 2013.

F From the Judgment & Order dated 20.01.2005 of the High Court of Karnataka at Bangalore in Civil Revision Petition No. 5189 of 2001.

V. Giri, M.T. George, Kavitha K.T. for the Appellants.

G A.S. Chandhok, ASG, Ritu Bhardwaj, Sunita Sharma, Kiran Suri, S.J. Amith, Nakibur Rahman Barbhuiya, Venkita Subramonium T.R, Rahat Bansal, Sushma Suri, A. Raghunath, E.M.S. Anam for the Respondents.

The Judgment of the Court was delivered by

H ANIL R. DAVE, J. 1. Leave granted.

2. Being aggrieved by the judgment delivered in Civil Revision Petition No. 5189 of 2001 dated 20th January, 2005 by the High Court of Karnataka, this appeal has been filed by the Government of Kerala & other officials. A

3. The facts giving rise to the present litigation, in a nutshell, are as under: B

Respondent No. 1 has filed a civil suit, being OS No. 11286 of 1998 in the Court of the Additional City Civil Judge at Mayo Hall in Bangalore. According to respondent no.1, he had been wrongfully detained by the State Authorities and therefore, in the said suit he has prayed that he should be awarded Rs.55,00,000/- as damages with interest thereon at the rate of 18%. As the suit has been filed against the State, he was supposed to give a notice under Section 80 of the Civil Procedure Code, 1908 (hereinafter referred to as 'the CPC') but he had not given the statutory notice under Section 80 of the CPC in accordance with law. In fact, the notice was issued by him on 24th October, 1998 whereas the suit had been filed on 28th October, 1998. At the time of filing the suit, he had not even received acknowledgment from the authority to whom he had issued the notice. He had not even affixed requisite court fee stamp to the plaint when the plaint was filed in the Court. Respondent No. 1 being conscious of the defects in the suit filed by him, had also filed two interlocutory applications along with the plaint on the date on which the plaint had been filed. An I.A. No. I was filed under the provisions of Section 80(2) of the CPC seeking leave of the court to file the suit without serving a notice under Section 80(1) of the CPC and an I.A. No. II was filed under Section 151 of the CPC praying for extension of time for payment of the court fee. C
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4. On 29th October, 1998, the I.A. No. II had been granted by the court, whereby respondent no. 1 was granted time up to 28th November, 1998 for paying the court fee stamp and the same was paid by him on 28th November, 1998 and therefore, H

A summons had been issued on 28th November, 1998. Thereafter, hearing had been adjourned from time to time.

5. In the said suit, I.A. Nos. III & IV were filed on behalf of the present appellants under Order VII Rule 11 of the CPC praying for rejection of the plaint.

6. The said applications filed by the appellants had been heard by the Trial Court and ultimately, by an order dated 3rd September, 2001, the said applications praying for rejection of the plaint had been rejected.

7. Being aggrieved by the Order dated 3rd September, 2001, whereby the applications praying for rejection of the plaint had been rejected, the appellants had filed Civil Revision Petition No. 5189 of 2001, which was also rejected by the High Court by an order dated 20th January, 2005 and the said order has been challenged by the appellants in this appeal.

8. The Trial Court had rejected the I.A. Nos. III & IV praying for rejection of the plaint for the reason that it did not find any justifiable reason for rejecting the plaint.

9. So far as the High Court is concerned, it came to the conclusion that the Trial Court was right in rejecting the applications praying for rejection of the plaint as there was no justifiable reason for rejecting the plaint. The High Court also came to the conclusion that I.A. No. I filed by respondent No. 1 seeking leave of the Court to permit the filing of the suit without serving notice under Section 80(1) of the CPC had been presumed to have been granted and therefore, there was no reason for rejecting the plaint. The High Court also found that the deficit court fee stamp had also been paid within the extended period granted by the Trial Court. Thus, there was no justifiable objection to the plaint and therefore, according to the High Court the decision of the Trial Court was just and proper.

10. The High Court noted that I.A. No. I was pending before the Trial Court and yet applications praying for rejection of the

plaint had been heard by the Trial Court. The High Court, therefore, presumed that I.A. No. 1, filed under Section 80(2) of the CPC, was granted and therefore, the objection with regard to non-compliance of Section 80(1) of the CPC was not justifiable. A

11. In the aforesaid circumstances, what is to be examined by this court is whether there can be any presumption with regard to grant of the application filed under Section 80(2) of the CPC, even if no order was passed on the said application and whether the Trial Court was justified in dismissing the applications of the appellants filed for rejection of the plaint though the application filed by respondent No.1-plaintiff under Section 80(2) of the CPC was not finally decided. B C

12. The learned counsel appearing for the appellants had submitted that as no order had been passed on the application filed under Section 80(2) of the CPC, it had not been finally disposed of and therefore, the High court was in error in presuming that the said application had been granted. D

13. It had been also submitted that without deciding the application filed by respondent No.1 under Section 80(2) of the CPC, the Trial Court as well as the High Court could not have come to the conclusion that the plaint was not liable to be rejected under Order VII Rule 11 of the CPC. It had been further submitted that without deciding the application filed by respondent No.1, the Trial Court should not have even heard the applications filed by the appellants for rejection of the plaint under Order VII Rule 11 of the CPC. It had been thus submitted that the High Court as well as the Trial Court had committed a grave error by coming to the conclusion that the plaint could not have been rejected under the provisions of Order VII Rule 11 of the CPC. E F G

14. So as to substantiate the aforesaid submissions made by the learned counsel appearing for the appellants, he had relied upon the judgment delivered by this Court in the case H

A of *State of A.P. & Ors. vs. Pioneer Builders* [(2006) 12 SCC
119]. He had drawn our attention to the observations made by
this court on the requirement of giving statutory notice to the
Government and the object of giving notice under Section 80(1)
of the CPC. He had drawn our attention specifically to para 14
B of the aforestated judgment, which reads as under:

C “From a bare reading of sub-section (1) of Section 80, it
is plain that subject to what is provided in sub-section (2)
thereof, no suit can be filed against the Government or a
public officer unless requisite notice under the said
provision has been served on such Government or public
officer, as the case may be. It is well-settled that before
the amendment of Section 80 the provisions of un-
amended Section 80 admitted of no implications and
exceptions whatsoever and are express, explicit and
D mandatory. The Section imposes a statutory and
unqualified obligation upon the Court and in the absence
of compliance with Section 80, the suit is not maintainable.
(See: *Bhagchand Dagdusa Gujrathi & Ors. Vs. Secretary
of State for India ; Sawai Singhai Nirmal Chand Vs. The
E Union of India and Bihari Chowdhary & Anr. Vs. State of
Bihar & Ors.*). The service of notice under Section 80 is,
thus, a condition precedent for the institution of a suit
against the Government or a public officer. The legislative
intent of the Section is to give the Government sufficient
F notice of the suit, which is proposed to be filed against it
so that it may reconsider the decision and decide for itself
whether the claim made could be accepted or not. As
observed in *Bihari Chowdhary* (supra), the object of the
Section is the advancement of justice and the securing of
G public good by avoidance of unnecessary litigation.”

15. Thereafter, the learned counsel had relied upon the
judgment delivered in the case of *M/s. Bajaj Hindustan Sugar
& Industries Limited vs. Balrampur Chini Mills Ltd. & Ors.*
[2007 (9) SCC 43] which also lays down law to the effect that
H a suit may be filed against the Government or a public officer

without serving notice as required by Section 80(1) of the CPC only with the leave of the court. A

16. He had further submitted that as the suit was defective on account of non-compliance of Section 80(1) of the CPC and as leave had not been granted by the Trial Court to respondent no. 1 plaintiff under Section 80(2) of the CPC, the plaint ought to have been rejected by the Trial Court and alternatively he had submitted that hearing of applications praying for rejection of the plaint filed under the provisions of Order VII Rule 11 of the CPC should have been postponed till the application filed under Section 80(2) of respondent No. 1 was finally decided. B
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17. On the other hand the learned counsel appearing for respondent No.1- original plaintiff had made an effort to justify the reasons given by the Trial Court as well as by the High Court for rejecting the applications filed under Order VII Rule 11 of the CPC. D

18. It had been submitted by the learned counsel appearing for respondent No. 1 that the High Court was right in presuming that the application filed under Section 80(2) of the CPC had been entertained and granted. The learned counsel had relied upon the judgment delivered in the case of *Irappa Basappa Kudachi vs. State of Karnataka* [1996 (2) Karnataka Law Journal 591] wherein it has been held on the facts of the case that even if no order is passed on an application filed under Section 80(2) of the CPC, it can be presumed that the said application is granted. E
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19. Relying upon the aforestated judgment of the Karnataka High Court, it had been submitted by the learned counsel for Respondent No.1 that though no order was passed on the application made under Section 80(2) of the CPC, it was rightly presumed that the Trial Court had granted the said application and therefore, there could not have been any objection with regard to filing of the suit in violation of the provisions of Section 80(1) of the CPC. G
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A 20. It had been also submitted that had the application filed under Section 80(2) been rejected by the Trial Court, the plaint would have been returned to respondent No.1-plaintiff but as the plaint had not been returned, the presumption would be that the application under Section 80(2) had been granted.

B 21. For the aforesaid reasons, the learned counsel appearing for the respondents had submitted that the appeal should be dismissed by this court.

C 22. We have heard the learned counsel at length and have also perused the judgments cited by them.

23. Looking to the facts of the case and the provisions of law, we do not agree with the view expressed by the Trial Court as well as by the High Court.

D 24. It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC whereby leave of the court had been sought for filing the suit without complying with the provisions of Section 80(1) of the CPC. In our opinion, a suit filed without compliance of Section E 80(1) cannot be regularized simply by filing an application under Section 80(2) of the CPC. Upon filing an application under Section 80(2) of the CPC, the Court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice F under Section 80(1) to the concerned Government authorities. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an G application, by no stretch of imagination it can be presumed that the application is granted. If such a presumption is accepted, it would mean that the court has not to take any action in pursuance of such an application and if the court has not to take any action, then we failed to understand as to why such H an application should be filed.

25. It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC. Till a final order is passed granting the said application, in our opinion, the irregularity in filing of the suit continues. If ultimately the application is rejected, the plaint is to be returned and in that event the application filed on behalf of the appellants under Order VII Rule 11 is to be granted. If the application filed under Section 80(2) is ultimately granted, the objection with regard to non issuance of notice under Section 80(1) of the CPC cannot be raised and in that event the suit would not fail on account of non-issuance of notice under Section 80(1) of the CPC.

26. We reiterate that till the application filed under Section 80(2) of the CPC is finally heard and decided, it cannot be known whether the suit filed without issuance of notice under Section 80(1) of the CPC was justifiable. According to the provisions of Section 80(2) of the CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) of the CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) of the CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) of the CPC would not mean that the said application was granted by the trial court.

27. In the aforesaid circumstances, we hold that the trial court had wrongly rejected the applications filed by the appellants under Order VII Rule 11 of the CPC. The trial court ought to have heard and decided the application filed under Section 80(2) of the CPC before hearing the applications under Order VII Rule 11 of the CPC.

28. As a result of the above discussion, the appeal is

- A allowed. The impugned judgment delivered by the High Court confirming the order of the Trial Court dated 30th September, 2001 is quashed and set aside. The order of the Trial Court rejecting applications under Order VII Rule 11 is also quashed and set aside. It is directed that the trial court shall first of all
- B decide the application filed by respondent no. 1 under Section 80(2) of the CPC and only after final disposal of the said application, the applications filed by the appellants under Order VII Rule 11 of the CPC shall be decided.

C 29. The appeal is allowed with no order as to costs.

K.K.T.

Appeal allowed.