

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5755 of 2013.
Decided on:-12.03.2015.

Raj Kumar

.....Petitioner.

Versus

Charan Dass and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Present:- Mr. Rajiv Joshi, Advocate,
for the petitioner.

None for respondent No.1.

Mr. Rahul Verma, AAG, Punjab.

Dr. Bharat Bhushan Parsoon, J (Oral)

Order dated 29.08.2013 of the lower court whereby application of the plaintiff under Order XXIII Rule 1 (3) for withdrawal of the suit with a liberty to institute a fresh suit on the same cause of action, has been declined. In this revision petition, it is claimed that defect in the plaint is of such nature that it is incurable by way of introducing amendments in the plaint. It is urged that thus the application was to be allowed permitting the plaintiff to file fresh suit on the same cause of action.

2. Respondents No.3 to 5 are proforma but even otherwise despite service of respondents No.3 and 4, none had appeared on 08.01.2014. Name of respondent No.5 has already been struck off on 09.04.2014; there is no representation of respondent No.1 since 06.10.2014.

3. It is claimed that the suit had been filed by the petitioner-plaintiff wherein one of the respondent is Punjab Government and notice under Section 80 C.P.C. was required to be sent before filing the suit. It is urged that it is such a defect which can not be cured by way of amendment and only remedy available with the plaintiff was to take shelter under sub-Rule 3 of Rule 1 of Order XXIII.

4. Learned counsel for the petitioner when questioned, has not been able to satisfy this Court as to how on the same cause of action, when notice under Section 80 C.P.C. had not been issued earlier, a fresh suit filed after issuance of notice under Section 80 C.P.C. now and after waiting for the statutory period to pass, would be maintainable. Clearly enough non-service of notice under Section 80 C.P.C. a pre-requisite for filing a suit against Government or a Public Officer, is a serious infirmity. Omission to issue notice under Section 80 C.P.C. is not a formal defect. It is rather a deficiency in the suit which goes to the root of the matter.

5. It is rather worth notice that right at the very beginning in the suit instituted on 26.03.2009, the defendants had taken an objection of non compliance of provision of Section 80 C.P.C. by the plaintiff. The plaintiff, petitioner herein, continued to proceed with the suit and when evidence of the defendants was being recorded and the suit was at the conclusion stage, the plaintiff woke up from the slumber and made this application.

6. Now since law of limitation also comes in the way of plaintiff for bringing a suit on the same cause of action, in addition to serious defect of non issuance of notice under Section 80 C.P.C., the lower court was right in dismissing the application of the plaintiff.

7. Citing ***Gangappa Gurupadappa Gugwad Gulbarga Versus Raghawwa, Widow of Lochanappa Gugwad 1970 (0) AIJEL-SC 9287***

(SC), counsel for the plaintiff has urged that in case of non compliance of notice under Section 80 C.P.C., it was duty of the court to reject the plaint recording order to that effect with reasons right at the beginning and the court should not have embarked upon the trial of all the issues involved. It is a clear case where for the undue long slumber of the plaintiff, petitioner herein, he has now tried to put the blame on the court. This point is left open for the lower court to take into consideration.

8. There being no infirmity either in the facts or law in the impugned order, the revision petition being devoid of any merit, is dismissed.

(Dr. Bharat Bhushan Parsoon)
Judge

March 12, 2015
prince rana