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HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 157 of 2013**

Suresh Gandhi S/o Late Shri Kantilal Gandhi aged about 64 years R/o Rojgari Para Kondagaon Post Office Police Station and Tahsil Kondagaon District Kondagaon (Chhattisgarh).

---- Appellant**Versus**

1. Batuk Rai Diwan S/o Late Shri Gokul Das Diwan aged about 64 years
 2. Vinod Rai Diwan S/o Late Shri Gokul Das Diwan aged about 66 years
- Respondents No. 1 & 2 are residents of Rojgari Para Kondagaon Post Office Police Station and Tahsil Kondagaon District Kondagaon (Chhattisgarh)
3. State of Chhattisgarh through the Collector Bastar Jagdalpur (Chhattisgarh)

---- Respondents

For Appellant	:	Shri Malay Shrivastava, Advocate.
For Respondents 1&2	:	Shri Manoj Paranjpe, Advocate.
For Respondent No.3/State	:	Shri R.K. Gupta, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****26/02/2016**

1. I.A. No. 1 of 2013 has been filed to condone delay of 257 days in preferring the appeal.

2. Learned Counsel for the Appellant submitted that against the impugned order dated 6.10.2012 dismissing Civil Suit No. 8-A of 2012 passed by the Additional District Judge, Kondagaon, the Appellant had initially preferred a writ petition under Article 227 of the Constitution of India bonafide, with alertness on 5.11.2012 itself. The writ petition after hearing the parties was dismissed on 7.8.2013 as not maintainable reserving liberty to the Appellant for availing remedies as available under the law. The present appeal has then been filed with due diligence as early as 19.9.2013. Since a wrong remedy was being pursued bonafide, it constitutes sufficient cause for condoning delay.

3. Learned Counsel for Respondents No. 1 and 2 opposing condonation of delay submitted that if a writ petition was filed which was not maintainable, as the appropriate remedy was an appeal, it cannot be said that a wrong remedy was being pursued bonafide.

4. We have considered the submissions on behalf of the parties and are satisfied in the facts of the case to condone the delay. I.A. No. 1 of 2013 is allowed.

5. The Appellant filed a suit for declaration of title over the subject lands having an area 4823 Sq.Ft. accompanied by delivery of possession and injunction restraining Respondents No. 1 and 2 from carrying out any construction or transferring the same. Respondents No. 1 and 2 filed written statement contending that in the plaint it had been pleaded that the lands originally belonged to the State Government and the Appellant himself had averred that Respondent No. 3 was a necessary party, the suit was not maintainable in absence of prior notice under Section 80 of the Code of Civil Procedure having been given to Respondent No. 3. The Additional District Judge by the impugned order dated 6.10.2012 decided it as a preliminary issue and dismissed the suit as not maintainable in absence of prior Section 80 CPC notice to the State.

6. Learned Counsel for the Appellant submitted that the order is not sustainable as no relief had been sought against the State in the plaint. It was made a formal party only because the settlement had originally been made on government lands. There was no dispute with regard to this fact. AIR 1995 SC 872 (Smt. Sooraj v. S.D.O. Rehli) has no application to the facts of the case and the Learned Judge grossly erred in placing reliance upon it to dismiss the suit.

7. Learned Counsel for Respondents No. 1 and 2 submitted that the Court committed no mistake in view of the pleadings in the plaint itself that the State was a necessary party.

8. Learned Counsel for the State could not point out from the plaint that any relief had been sought against it.

9. The Court has considered the submissions on behalf of the parties and deems it appropriate to first set out Section 80 CPC in the relevant extract:

"80. Notice.-[(1)] [Save as otherwise provided in sub-section (2), no suit [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, [except where it relates to a railway], a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;]

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;]

(c) in the case of suit against [any other State Government], a Secretary to that Government or the Collector of teh district, [***]

[***]

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

10. The prohibition is against the institution of a suit against the Government or against a public officer in respect of any act done in official capacity until after expiration of two months from the date of the notice. The notice is required to state the cause of action, the name, description and place of residence of the plaintiff and the relief he claims. The purpose of requiring a prior notice to the State is salutary and guided by an object. The primary purpose is that the State has to be given an opportunity to understand and appreciate the grievance and the nature of relief sought against it and consider matters appropriately. If the State is satisfied, relief may also be granted without the suit having to be decided in a prolonged proceedings. Alternatively, if the State on consideration is satisfied, it is required to prepare itself for defending it appropriately. The provision is based on public policy to keep frivolous and avoidable litigation at bay.

11. In (2006) 12 SCC 119, State of A.P. and Pioneer Builders, A.P., it was observed as follows:

"14.The legislative intent of the section is to give the Government sufficient notice of the suit, which proposed to be filed against is 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 the object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation."

12. The only reference to Respondent No. 3 in the plaint is to be found at Paragraph-18. It states that Defendant No. 3 was the State administration because the father of Appellant was in possession of Government plot No. 449 and therefore it was a necessary party. The written statement by Respondents No. 1 and 2 suggested by interpreting Paragraph-18 of the plaint that the Appellant appeared to be an encroacher but no notice under Section 80 CPC had been given.

13. We have gone through the plaint carefully and do not find that any relief of any nature whatsoever has been claimed against Respondent No. 3. It is also not reflected from Paragraph-18 as pleaded that the Appellant was claiming forcible or adverse occupation of the plot in question against the government. The only relief claimed was against Respondents No. 1 and 2. In any event, this was a matter to be considered in the suit. The impugned order simply states that from Paragraph-18 of the plaint, it was evident according to the Appellant himself, the State was a necessary party. A bare perusal of the plaint revealing that no relief had been claimed against the State, makes it evident that the conclusion arrived at in the impugned order is not sustainable at all. Dispensing justice is the duty of the Court and it is required to apply its mind independently to the pleadings for arriving at its own conclusions rather than taking decisions on basis of any infirmity in pleadings without proper application of mind. The finding that the suit was not maintainable in absence of a notice under Section 80 CPC without any conclusive finding by the Judge with regard to the nature of relief sought against the State, makes the impugned order unsustainable.

14. Reliance on Smt. Sooraj (supra) is completely misconceived. It had no application to the facts of the present case. The question therein related to excess surplus lands under the Lands Ceiling Act having been vested in the State and which was required to be reconveyed according to the claim.

15. The impugned order dated 6.10.2012 is therefore set aside and Civil Suit No. 8-A of 2012 is restored to file for disposal on merits in accordance with law. The conclusion with regard to the applicability of Section 80 CPC is based on the pleadings as they stand at present.

16. Since the suit was instituted as far back as 2012 and was not even allowed to see the light of the day, we direct that the hearing of the suit shall be expedited without granting unnecessary and prolonged adjournments to the parties. Reasons must be recorded in the order-sheet for each adjournment

granted to the satisfaction of the Court so that the suit itself is concluded within an outer limit preferably within a maximum period of two years from the date of receipt and/or production of a copy of this order.

17. Let the Lower Court Record be returned for the purpose forthwith.

18. The appeal is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE