

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.6575 of 2016

Date of decision: 2.5.2016

Jaideep Dhillon

... Petitioner

Versus

State of Punjab & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kewal Singh, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. In similar circumstances in CWP No.24643 of 2015, I took the following view on March 16, 2016 when the petitioner therein had approached the High Court directly after serving notices under Section 80 of the Civil Procedure Code, 1908 on the Secretary to Government in the department involved with the dispute claiming directions for vindication of his rights in discretionary writ jurisdiction provided by Article 226 of our Constitution:-

“In this case, a legal notice has been issued and served by the petitioners on the respondents under Section 80 of the Civil Procedure Code as an advance alert for removal of their grievance. When the grouse is not attended to by the department till the expiry of the prescribed period, a civil suit would naturally follow suit for claiming a decree against the State. This means that the petitioners have

elected their remedy before the civil court, where they are free to agitate the issues raised in this petition. Instead of filing suit the petitioner has approached the writ side of this Court which is a discretionary remedy provided by Article 226 of the Constitution. The process to remedy wrong once initiated by notice specifically under Section 80 of the Code, then the petitioners should be left to pursue the remedy to its logical end in the civil courts. The rights under Section 80 of the Code are not merely procedural in nature but are substantive rights.

The petitioners are accordingly relegated to their wholesome alternative remedy available before the civil courts. The petitioners were at liberty to approach the High Court directly but preferred to adopt remedy invoking the provisions of the Code. In the circumstances, a direction in the nature of mandamus ought not to issue to the respondents commanding them to act or act in any particular manner or merely to decide upon the legal notice the rights asserted by the petitioners since the mechanism in Section 80 of the Code does not provide for such a direction. Section 80 of the Code only frees the petitioners on the expiration of two months to bring suit.

I would not therefore interfere in writ jurisdiction in the present petition and instead would; by applying the doctrine of election dismiss the petition at the threshold, leaving the petitioners to avail their remedy before the chosen forum, thereby excluding by their own

act and option remedy in this Court, in the first instance.”

2. Accordingly, the petition is dismissed with liberty to the petitioner to approach the civil court exercising territorial jurisdiction for redressing such of his grievances as are ventilated in the present petition.

(RAJIV NARAIN RAINA)
JUDGE

2.5.2016
monika