

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 561 of 2018

M/s. Paras Vanaspati Pvt. Ltd. A company registered under the provisions of companies act, 1956 having its registered office at 21/360, Ganjpara, Raipur (C.G.) through its authorized signatory Hemendra Sangoi.

---- Appellant

Versus

1. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited, having its registered office at A-25, VIP Estate, Khamardih, Shankar Nagar, Raipur (C.G.) Through its Managing Director
2. Chhattisgarh State Minor Forest Produce (T&D) Cooperative Federation Limited, District Union Raigarh, Chhattisgarh Through its Managing Director
3. State of Chhattisgarh Through the Principal Secretary Department of Forest, Mantralaya, Naya Raipur, Raipur (C.G.)

---- Respondents

For the Appellant :- Mr. Ankit Singhal, Advocate
For the Respondent No.1 &2 :- Mr. A.S. Kachhawaha, Advocate
For the Respondent No.3 :- Ms. Astha Shukla, Panel Lawyer

Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board By
Prashant Kumar Mishra, J.

14.12.2018

1. Plaintiff/appellant suit for recovery of Rs. 5,55,000/- along with interest @ 16% per annum as also for setting aside the agreement dated 14.08.2009 and for verification of the account

by Chartered Accountant has been dismissed by the trial Court for non-compliance of section 80 (1) CPC.

2. Perusal of the record would reveal that when the suit was filed on 30.10.2009, it was accompanied with an application under Sub-section 2 of Section 80 CPC for permission to institute the suit without compliance of the mandate of Sub-section 1 of Section 80 CPC. This application was allowed by the trial Court on 03.11.2009. Although this order is a non speaking order passed even before filing of the reply filed by the defendant and without speaking a word about the nature of urgency projected by the plaintiff yet the defendant having not challenged this order any further, it has attained finality. When the suit progressed after filing of written statement, the defendant also moved an application under Order 7 Rule 11 CPC which has now been disposed of under the impugned order rejecting the suit for non compliance of sub-Section 1 of section 80 CPC.
3. The legal position as to when a suit instituted without following the provision contained in Sub-section 1 of Section 80 CPC can continue after the leave was granted under sub Section 2 of Section 80 CP is no longer res-integra in view of the judgment rendered by the Supreme Court in the matter of **State of Kerala and Others vs. Sudhir Kumar Sharma and Others (2013) 10 SCC 178**. In this matter the Supreme Court has held thus at para 19 and 20;

19. 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 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 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 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 an application should be filed.

20. 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.

4. In the case at hand, the application under Sub-section 2 of Section 80 CPC was allowed by the trial Court on 03.11.2009, therefore, the Court at a subsequent stage, cannot dismiss the suit for non-compliance of Sub-section 1 of Section 80 CPC. The impugned order deserves to be and is hereby set aside, the matter is remitted back to the trial court for decision afresh on merit.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Vimla Singh Kapoor