

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7938 OF 2018

Smt.Kalinda Uddhav Nichal

...Petitioner

Versus

The Pune District Collector & District
Magistrate Collector Kacheri Compound & Ors.

...Respondents

.....

Mr.Sachin S. Punde for the Petitioner.

Mr. A.R.Metkari, AGP for the State/ Respondent Nos. 1 and 10.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 24, 2018**

P.C. :

1. Upon urgent mentioning, taken on Production Board.
2. This Petition is directed against the order dated 19th July, 2018 passed by the learned Civil Judge, Senior Division, Pune thereby rejecting the permission for waiving legal notices under Section 80 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the C.P.C."). The petitioner is the original plaintiff and respondent Nos. 1 and 10 are the original defendant Nos. 1 and 10.

3. The legal notices under Section 80 of the C.P.C. are required to be served on defendant No.1 – The Pune District Collector and defendant No. 10-The Tahsildar, Haveli, Pune.

4. The plaintiff has filed a Special Civil Suit bearing filing No. 1040 of 2018 before the learned Civil Judge, Senior Division, Pune. In the said suit, the plaintiff has moved an application for waiving legal notices under Section 80 of the C.P.C. against defendant Nos. 1 and 10 However, the said application was rejected by the learned Judge of the trial Court on 19th July, 2018 by one line order, which is as under :

“Rejected as the reasons mentioned in the Appln. are not found satisfactory”.

5. The learned Counsel for the petitioner has pointed out that the Tahsildar i.e. respondent No. 10 has issued a notice to the son of the petitioner and the other persons in respect of attachment of the residential house property situate at Budruk Kondhwa, Gokul Nagar, Taluka Haveli, District Pune. In the said notice, respondent No. 10 has informed that he is going to take possession in the presence of the police security on 25th July, 2018. Thereafter, the

suit was filed on 17th July, 2018 and prayer for waiving legal notice under Section 80 of the C.P.C.

6. The learned AGP for respondent Nos. 1 and 10 opposes this Petition.

7. Considered submissions and the facts. Urgency is made out by the learned Counsel for the petitioner and hence, notices to respondent Nos. 1 and 10 under Section 80 of the C.P.C. are hereby waived. Respondent No.2 -Co-operative Housing Society is a decree holder with whom property was mortgaged. The petitioner has not given notice to respondent No. 2 due to urgency and, therefore, the following order is passed :

ORDER

- (i) Writ Petition is allowed.
- (ii) The order dated 19th July, 2018 passed by the learned Civil Judge, Senior Division, Pune is hereby set aside.
- (iii) Notices under Section 80 of the C.P.C. are waived against respondent Nos.1 and 10/ defendant Nos. 1 and 10.

(iv) Respondent Nos. 1 and 10 not to take any coercive action against the petitioner till 27th July, 2018. In the meanwhile, the application for interim orders can be heard on 25th July, 2018 or on 26th July, 2018 by the trial Court.

8. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)