

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

CR-6597 of 2018 (O&M)

Date of decision: 11.12.2018

Hardayal Singh

...Petitioner(s)

Versus

Ashwapath Singh Rathore and another

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Ajay Jain, Advocate for the petitioner(s).

Ms. Divya Sharma, Advocate
for respondent no.1.

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioner challenges the orders of the learned trial Court (Civil Judge, Junior Division) Sirsa, dated August 20, 2018, by which the application filed by the petitioner (defendant no.1 in the suit out of which this petition arises), under Order 7 Rule 11 CPC, has been dismissed.

The application was filed taking a plea that no notice having been issued to defendant no.2 in the suit, i.e. to the Sub Registrar, Sirsa, under Section 80 of the CPC, as is mandatory before any suit can be instituted against a public officer, the plaint was liable to be rejected on that short ground alone.

2. A reply having been filed to the application, the learned trial Court eventually held vide the impugned order that in the suit itself

notice having been served upon defendant no.2, despite which the public officer did not put in any appearance before the Court and was therefore proceeded against *ex parte* vide an order dated 11.12.2014, it would imply that the said defendant had sufficient knowledge of the suit despite which he did not defend it and consequently, the plaint could not be rejected on that ground.

3. Before this Court, Mr. Jain, learned counsel for the petitioner, has argued that the reasoning given by the trial Court is wholly erroneous, in view of the fact that at the time when the suit was filed by respondent no.1 herein (plaintiff), obviously he could not have had any knowledge that defendant no.2, i.e. the Sub Registrar, Sirsa, would not respond to the notice issued in the suit and would therefore eventually be proceeded against *ex parte*. Hence, he submits that Section 80 of the CPC being a mandatory provision before a public officer can be sued, and the said mandate not having been complied with, with not even an application filed under sub-section (2) thereof before the Civil Court seeking waiver of service of notice (under Section 80) upon the public officer, the plaint actually deserved to be rejected.

In support of his contention, he relies upon a judgment of a co-ordinate Bench of this Court in **Ajay Jaiswal and another Vs. State of Haryana and others** (RSA No.4293 of 2006 decided on 15.01.2007), the relevant part of which is reproduced as follows:-

“The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the plaint was ordered to be returned to the plaintiffs after returning a finding that such suit is maintainable before the Principal Court of original civil jurisdiction as well as for want of service of notice under Section 80 of the Code of Civil

Procedure.

Learned counsel for the appellants states that in view of the fact that notice under Section 80 of the Code of Civil Procedure had not been served, the learned first Appellate Court should have rejected the plaint, which would have enabled the plaintiffs to file a fresh suit after serving a due notice in terms of Section 80 of the Code of Civil Procedure.

Learned counsel for respondent No.4 states that it was never conceded before the learned first appellate Court that the plaint be ordered to be returned to the plaintiff.

Since the learned first Appellate Court recorded a finding that notice under Section 80 of the Code of Civil Procedure was required to be served and has not been served and that the learned trial Court has no jurisdiction to entertain the suit, I deem it appropriate to accede to the argument of the learned counsel for the appellant. Consequently, the plaint is ordered to be rejected for want of a proper notice and for lack of jurisdiction.

The present appeal stands disposed of in the above terms.”

He further submits that even in a judgment of another co-ordinate Bench, in **Mahant Ram Vs. Nankoo Ram and another**, 2003 (1) RCR (Civil) 134, though that petition was dismissed with observations made in the context of Section 80 CPC by this Court, that petition was actually one challenging an order passed by the trial Court allowing an application filed by the plaintiff under Order 6 Rule 17 read with Order 1 Rule 10 of the CPC; and consequently such observations (in the context of Section 80) cannot be held to be *ratio decidendi* on the basic proposition itself; other than the fact that in that *lis*, the public authority had been impleaded subsequent upon the amendment in the plaint having been allowed, along with the application seeking such impleadment.

4. In response to the aforesaid arguments, Ms. Sharma, learned counsel for respondent no.1, submits that undoubtedly the respondent/plaintiff had not issued any notice under Section 80 CPC to

the public authority, i.e. the Sub Registrar, Sirsa, but with thereafter notice having been issued in the suit and the said public officer having chosen not to respond to such notice despite service thereof, and having been eventually proceeded against *ex parte*, the officer was obviously not interested in defending the suit and would be deemed to have thereby waived service of notice under Section 80 of CPC.

In support of her arguments, she relies upon two judgments of co-ordinate Benches of the Allahabad High Court, in **Raja Ram Verma Vs. Board of Revenue and others**, 2015 (47) RCR (Civil) 587 and **Ishtiyag Hussain Abbas Husain Vs. Zafrul Islam Afzal Husain and others**; one of the Patna High Court in **Bihar State Electricity Board, Patna Vs. KNH Medical College and Hospital, Bhagalpur and others**, 1978(26) BLJR 464; and a judgment of a Division Bench of the Calcutta High Court in **P.B. Shah and Co. and others Vs. Chief Executive Officer and others**, 1960(65) Cal. W.N. 1128. She also relies upon a judgment of the Supreme Court in **State of A.P. and others Vs. Pioneer Builders, A.P.**, 2007(1) RCR (Civil) 240, to submit that the same observations were even made by the Supreme Court, though in the context of an application filed under Order 6 Rule 17 CPC. Hence, she submits that the impugned order does not require to be interfered with.

5. Having heard learned counsel for the parties and having considered the matter, though undoubtedly Mr. Jain is correct to the extent that a legal notice is mandatorily required to be issued to a public officer before any suit can be instituted against such officer and he is equally right in stating that very obviously the respondent/plaintiff could

not have had knowledge at the time when the suit was filed (or prior thereto), that the public authority would not even respond to the notice issued in the suit, however, in my opinion, once the public authority, upon having been served of the notice issued in the suit itself, decided not to contest the suit, (and was eventually proceeded against *ex parte*), such authority would be deemed to have even waived of the requirement of a notice to be issued to it under Section 80 CPC, such objection not having been raised by it by appearing in court (and taking the objection).

Again undoubtedly, if there was any urgency in the matter, the respondent/plaintiff should have filed an application sub section (2) of Section 80 of the CPC at the time when the suit was filed, seeking waiver of notice upon the defendant no.2, i.e. the Sub Registrar.

Yet, in the circumstances as enumerated here-in-above and as already contained in the impugned order, I see no reason to interfere with such order, especially as the dispute is essentially between two private parties, i.e. the respondent/plaintiff and petitioner/defendant no.1, the public officer being an 'ancillary' defendant, not concerned with the outcome of the suit. Obviously it was for that very reason that the officer did not respond to the notice issued in the suit.

Consequently, finding no merit in the petition, it is dismissed.

11.12.2018

sumit.k/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No