

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

JUDGES ORDER NO.120 OF 2018

IN

SUIT NO.856 OF 2015

Pradeep Ram Mukhi & Ors.)...Applicant

V/s.

Manas Shelters Pvt. Ltd. & Ors.)....Defendants

JUDGES ORDER NO.124 OF 2018

IN

SUIT NO.167 OF 2015

Jaya Leasing & Finance Pvt. Ltd.)...Applicant

V/s.

Manas Shelters Pvt. Ltd. & Ors.)....Defendants

Mr.Mayur Khandeparkar a/w Ms.Nita Solanki I/by Kiran Jain and Co.
for plaintiff/applicant.

Mr.Akshay R.Pai I/by Bina R. Pai for defendant nos.1 & 2.

Ms.Ankita Singhania a/w Mr.Harsh Meghani and Mr.B.N.Shukla I/by
M/s.D.J.Kamdin and Co. for defendant nos.5 to 8 and 12 & 13.

CORAM : K.R.SHRIRAM,J

DATE : 6.3.2019

P.C.:-

1. These two Judges orders are for leave to applicants to continue to sue and prosecute the suit against defendant no.5 who was

appointed as Private Receiver by an order dated 13.4.2018 passed in Notice of Motion (L) No.916 of 2018 in Suit No.224 of 1961. None of the defendants including defendant no.5 has filed any affidavit in reply opposing the Judge's order. Counsel for defendant nos.1 & 2 states that these applications should be made before the same Court which appointed defendant no.5 as the Receiver. This is the Court to which the assignment of all Chamber matters is given and all Judge's Orders are heard by this Court. Therefore, this submission of Counsel for defendant nos.1 & 2 is without substance.

2. Ms.Singhanian for defendant nos.5 to 8 and 12 & 13 raises two legal submissions, (a) Notice under Rule 80 of the Code of Civil Procedure 1908 to the Private Receiver before suing him is mandatory and (b) not giving such notice is fatal to the suit. For these submissions, Ms.Singhanian relied upon the judgment of the Supreme Court of India in ¹*Everest Coal Company (P) Ltd. Vs. State of Bihar & Ors.* and ²*Anna Laticia D'silva Vs. Govind Balvant Parashare* .

3. There can be no dispute with the submissions made by Ms.Singhanian that if a party feeling aggrieved by conduct of the Receiver, seeks redress against him, party must obtain leave of the

¹ (1978)1 Supreme Court Cases 12

² 1920 ILR Bombay Series 895

Court. The Receiver is protected by Section 80 of the Code of Civil Procedure 1908 against any plaintiff who files a suit against him and if Receiver is sued without giving requisite notice, it will be fatal. The reason why this rule came to be introduced was because it was based on a public policy which requires that when Court has assumed possession of the property in the interest of litigants before it, the authority of the Court is not to be obstructed by suits designed to disturb the possession of the Court. Paragraph-7 of **Everest Coal Company** (supra) reads as under :-

“7. Mulla, with characteristic clarity, has condensed the whole law correctly :

A receiver cannot sue or be sued except with the leave of the Court by which he was appointed receiver. A party feeling aggrieved by the conduct of a receiver may seek redress against him in the very suit in which he was appointed receiver, or he may bring a separate suit against the receiver in which case he must obtain the leave of the Court.

There is no statutory provision which requires a party to take the leave of the Court to sue a receiver. The rule has come down to us as a part of the rules of equity, binding upon all Courts of Justice in this country. It is a rule based upon public policy which requires that when the Court has assumed possession of a property in the interest of the litigants before it, the authority of the Court is not to be obstructed by suits designed to disturb the possession of the Court. The institution of such suits is in the eye of the law a contempt of the authority of the Court and therefore, the party contemplating such a suit is required to take the leave of the Court so as to absolve himself from that charge. The grant of such leave is made not in exercise of any power conferred by statute, but in the exercise of the inherent power which every Court

possesses to prevent acts which constitute or are akin to an abuse of its authority.

In Pramaltha Nath Vs. Netra Nath Bodilly, J held that the leave of the Court to sue a receiver was a condition precedent to right to sue, and that if the leave was not obtained before suit, it could not be granted subsequent to the institution of the suit and the suit should be dismissed. This decision was dissented from in subsequent Calcutta cases where it was held that the leave may be granted even after the institution of the suit.

Leave subsequently obtained at the time of realising rents directly from the tenants will suffice. In a Bombay case (Jamshedji v.Hussainbhai) Pratt, J, after an exhaustive review of the case-law on the subject, came to the same conclusion the learned Judge held that failure to obtain leave prior to the institution of the suit was cured by subsequent leave.”

In the said judgment the Apex Court has also said grant of leave is a rule, refusal is an exception.

4. Whether notice in this particular case is required, has to be considered. Section 80 of the Code of Civil Procedure, 1908 reads as under :-

“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,..... ”*

5. The language of section 80 of the Code of Civil Procedure 1908 is that a notice is to be given against any public officer in respect of any act purporting to be done in his official capacity. In this case by an order dated 12.12.2017, leave to sue defendant no.4, who was originally appointed as private Receiver, was granted. Ms.Singhanian stated defendant no.4, in some other connected proceeding was appointed as Receiver on 21.7.1967. Defendant no.4 died during the pendency of this suit. Defendant no.5, in his place, was appointed as Receiver by an order dated 13.4.2018 passed in Notice of Motion (L) No.916 of 2018. Because he was appointed as Receiver in place of defendant no.4, this application for leave has become necessary.

6. In ³*Ram Kumar & Anr. Vs. State of Rajasthan & Ors.* relied upon by Mr.Khandeparkar, the Apex Court held that a notice under Section 80 of the Code of Civil Procedure was necessary only if a suit was filed against the Receiver suing him for action done in his official capacity. Paragraph nos.14, 15 & 16 read as under :-

“14. Looking into the allegations made in the plaint and the reliefs claimed, we do not find any reason to disagree with the view expressed by the trial court when it had held that no act was performed by Respondent 3 in his official capacity. If we look at the plaint in the present case, it would be clear that in the plaint, no act of Respondent 3 is being challenged. The appellants do not seek to set aside any order of Respondent 3 or to declare

³ (2008) 10 Supreme Court Cases 73

illegal any of the acts of Respondent 3; they merely seek a decree for recovery of possession in the suit to handover possession of the suit land to the appellants. The suit which is not in respect of any act done by Respondent 3, as a public officer, and in which no act of Respondent 3 is either challenged or sought to be set aside is not a suit to which Section 80 CPC can very well apply. Therefore, in the facts and circumstances of the present case, Respondent 3 had not acted in his official capacity for which service of notice under Section 80 CPC was necessary. That apart, it is not in dispute that Respondent 2 was Administrator and overall in-charge including the Government Middle Schools (Students Institutions) in the district and the notice served on the State Government through the District Collector of the district was sufficient compliance with the requirements of Section 80 CPC. In view of the aforesaid fact, it was not necessary to separately serve a notice to Respondent 3 as we find that no order was passed by the District Education Officer, which was under challenge in the suit itself.

15. In view of our discussions made hereinabove, we are therefore of the view that the High Court had fallen in error in reversing the order of the trial court holding that service of notice on Respondent 3 under Section 80 CPC was not necessary to be served to maintain the suit.

16. In *State of Maharashtra v. Chander Kant* this Court laid down the principle as to when service of notice on the defendant State under Section 80 CPC was necessary. In the said decision, this Court observed as follows :

14. The language of Section 80 of the Code of Civil Procedure is that a notice is to be given against not only the Government but also against the public officer in respect of any act purporting to be done in his official capacity. The Registrar is a public officer. The order is an act purporting to be done in his official capacity.

15. In the present case, the suit is to set aside the order made by a public officer in respect of an act done in the discharge of his official duties. Therefore, notice under Section 80 of the Code of Civil Procedure was required.

From the aforesaid, it would be evident that this Court held that service under Section 80 CPC was necessary as in that case, the suit was filed for setting aside an order passed by a public officer in respect of an act done in the discharge of his official duties. In that eive of the matter, in that decision, it was held that service of notice under Section 80 CPC was necessary and in the absence of that service, the suit must be dismissed. This is not the factual position in this case. We have already held that Respondent 3 had not passed any order as a public officer nor had the appellants asked for setting aside any order passed by Respondent 3 as a public officer in respect of any act done in the discharge of his official duties. As noted hereinearlier, the appellants have made Respondent 3 as a party although he was a public officer only on the ground that possession was delivered to him by Respondent 2 in the exercise of his official capacity. For the purpose of possession to be delivered back to the appellants. Respondent 3 was made a party by which, in our view, he had not at all acted in discharge of his official capacity. A look at the reliefs claimed in the plaint would clearly show that only a consequential relief was claimed in the suit to the extent that possession of the suit land should be restored in favour of the appellants by Respondent 3. Therefore, in view of the aforesaid discussion made hereinabove, we hold that even in the absence of service of notice on Respondent 3 under Section 80 CPC, the suit was maintainable in law.”

7. Mr.Khandeparkar also relied upon a judgment of a single Judge of Calcutta High Court in ⁴***Naresh Nath Mukherjee Vs. The Economic Electroplating Works***, to submit that section 80 of the Code

4 1954 ILR Calcutta Series 171

of Civil Procedure 1908 contemplates suit against public officer which seeks to make him personally liable to the acts done or purported to be done in his official capacity. Mr.Khandeparkar submitted that although a leave of the court which appointed defendant no.5 should be obtained, no such notice is required under Section 80 of the Code of Civil Procedure, 1908. Mr.Khandeparkar submitted that though defendant no.5 originally a party to the suit, now he is also appointed as Receiver in place of defendant no.4 and hence, leave is being sought. Mr.Khandeparkar stated that the plaint certainly has allegations against defendant no.4 but those allegations were in his personal capacity and not for acts done or purportedly to be done in his official capacity. Mr.Khandeparkar submitted that the plaint has not undergone any change after defendant no.5 was appointed as Receiver, so question of making allegations in the plaint against defendant no.5 in his official capacity, would not even arise. Though Ms.Singhanian did not have any dispute on this, she submitted that defendant no.5 has stepped into the shoes of defendant no.4 and as defendant no.4 was already appointed as Receiver in 1967, allegation against defendant no.5 should be also construed as allegations made against him in his official capacity.

In my view, submission of Ms.Singhanian is very far fetched and under no circumstances can be accepted. If for a moment, we

accept this submission, then leave already granted against defendant no.4, would automatically continue against defendant no.5.

8. Therefore, as held in *Naresh Nath Mukherjee* (supra) section 80 of the Code of Civil Procedure contemplates suit against public officer which seeks make him personally liable to the acts done or purportedly to be done in his official capacity. Defendant no.5 was already a defendant to the suit and having been appointed as receiver after the death of defendant no.4, certainly leave of the Court was required. The plaint does not have any allegations against defendant no.5 for acts done or purportedly done in his official capacity because plaint has not undergone any change after defendant no.5 was appointed as receiver.

9. As held by Justice V.R.Krishna Iyer, J in *Everest Coal Company (P) Ltd.* (supra), grant of leave is a rule. I see no reason in this case to refuse leave. I also hold, in the facts and circumstances of the case, no Notice under Rule 80 of the Code of Civil Procedure, 1908 is required.

Judges order is signed separately and accordingly disposed.

(K.R.SHRIRAM,J)