

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2020

PRONOUNCED ON : 08.09.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1249 of 2009 and  
M.P.No.1 of 2009  
(Heard through video conferencing)

The State of Tamil Nadu,  
Rep. By the Collector of the Nilgiris,  
Udhagamandalam. ....

Appellant/ Defendant

Vs

Janaki

....

Respondent/Plaintiff

Prayer:- This Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 29.04.2009 made in A.S.No.22 of 2008 on the file of the District Judge and Appellate Authority of the Nilgiris at Udhagamandalam, confirming the judgment and decree dated 23.11.2007 made in O.S.No.264 of 2001 on the file of the Subordinate Court, Nilgiris, Ootacamund.

For Appellant

:Mr.N.Manikandan,

Special Government Pleader (CS)

For Respondent

:Mr.Sreerangan

JUDGMENT

The defendant is the appellant in this Second Appeal. This Second Appeal is filed against the concurrent finding of the Courts below. The suit is for recovery of money arose due to the rental arrears. The plaintiff is the Land lady of the suit property, which was let out to the Deputy Commercial Tax Office, Government of Tamil Nadu, for rent of Rs.495/- per month.

2.The plaintiff initiated rent control proceedings against the defendant for fixation of fair rent. In R.C.O.P.No.35 of 1986 on the file of the Kothagiri District Munsif Court. It was allowed exparte on 03.04.1986. Against the said exparte order,

the defendant filed an Interlocutory Application to set aside the exparte order. That application was dismissed by the Rent Control Tribunal. Against which, the defendant preferred a Civil Revision Petition before the High Court. This Court remanded the matter back with a direction to the Rent Controller Kothagiri to consider matter afresh and fix the fair rent on merits. On remand, R.C.O.P.No.35 of 1986 was renumbered as R.C.O.P.No.12 of 1996 and the fair rent was fixed at Rs.2,500/- per month vide order dated 08.07.1998. For the differential rent, the suit has been filed by the plaintiff.

3.In the plaint, it has been specifically stated that since the plaintiff is running out of time, they are not in a position to wait for 60 days, the statutory period prescribed under Section 80 C.P.C. The defendant contested the suit on the ground that the Collector of Nilgiris is only the nominal head of the State in the District and has no responsibility for the default of the Commercial Tax Department. Therefore, the suit is bad for non joinder of necessary party and no cause of action against the defendant. Further, it was also contended that the plaintiff before laying the suit, has not issued pre-suit notice or statutory notice as contemplated under Section 80 C.P.C.

4.The trial Court framed five issues and on considering the material evidence placed by the parties, allowed the suit thereby directing the defendant to pay a sum of Rs.1,60,000/- with 12% interest per annum from 01.12.1992 till 23.11.2007 (date of decree) and 6% per annum thereafter.

5.Aggrieved by the judgment and decree of the trial Court, the defendant preferred the appeal to the District Judge, Nilgiris at Udhagamandalam, in A.S.No.22 of 2008. The First Appellate Court on re-appreciating the evidence had dismissed the appeal confirming the judgment and decree of the trial Court.

6.In the second Appeal, the learned Special Government Pleader (CS) appearing for the appellant would submit that the finding of the Courts below regarding non compliance of Section 80 C.P.C., notice for instituting the suit is fatal to the case of the plaintiff. The suit for recovery of money was filed after the period of limitation which was not taken note by the Courts below. It is also contended by the learned Government Pleader (CS) that though the trial Court has framed an issue regarding the non compliance of Section 80 C.P.C notice, it failed to discuss about that issue and give a finding.

7.The learned counsel for the respondent would submit that it is a case of Landlady and Tenant. Because, the Tenant is a Government institution, even after 22 years of the fixation of fair rent, the respondent is unable to see the colour of the coin. The respondent/plaintiff in the plaint itself has

specifically mentioned the urgency for filing the suit before expiry of the notice period of 60 days as prescribed under Section 80 C.P.C.

8.The trial Court on considering the urgency, has allowed the Interlocutory Application filed by the plaintiff under Section 80(2) of C.P.C., to dispense with the statutory period prescribed under Section 80(1) of C.P.C. The District Collector, Nilgiris, Udhagamandalam being the head of the District and the Commercial Tax Department falling under his purview, the suit has been filed against the appellant for recovery.

9.After considering the rival submissions, this Court finds that there is no substantial question of law involved in the Second Appeal preferred against the concurrent finding. The plea regarding non compliance of Section 80 C.P.C., notice has been substantially answered by the trial Court as well as the First Appellate Court.

10.The learned Government Pleader (CS) appearing for the appellant relying upon the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh v. Pioneer Builders (AIR 2007 SC 113) would submit that it is imperative to comply Section 80 C.P.C., notice unless urgent and immediate relief is to be granted. There is a restriction on the power of the Court to exempt Section 80 C.P.C., notice. In the instant case, there is no such urgency. Therefore, the suit is liable to be dismissed. The Hon'ble Supreme Court in the above said judgment, in paragraph Nos.15 and 16 has held as follows:-

"15. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment Act, 1976) the existing Section 80 was renumbered as Section 80(1) and sub-sections (2) and (3) were inserted with effect from 1.2.1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of sub-section (1) and empowers the Court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the Court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or public officer

to show cause in respect of the relief prayed for. Proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1).

16. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit."

11.A plain reading of Section 80 C.P.C., in a clear and simple term indicates that as far as the suits against the Government are concerned, they cannot be validly instituted without giving the required notice. The said provision is mandatory with an exception under Section 80 (2) C.P.C., where the plaintiff can seek for the leave of the Court to institute a suit without serving any notice as required under Section 80(1) C.P.C.

12.The said exemption is subject to the condition that no interim order shall be granted exparte without giving a reasonable opportunity to the defendant. Section 80(3) C.P.C.,

is also relevant in the present context which say that no suit instituted against the Government shall be dismissed merely for the reason of error or defect in the notice. So, a person may not be deprived of the opportunity of obtaining an urgent or immediate relief when such relief is essential and that the just claim of the plaintiff cannot be defeated on technical grounds.

13. On applying the above principle to the facts in hand, the plaintiff has specifically stated in the plaint that she has issued Section 80 C.P.C., notice by registered post with acknowledgment on 14.12.1992. The same was received by the defendant. In paragraph No.9 of the plaint, it is averred that the limitation for filing the suit fast approaching therefore, without waiting for the expiry of two months period, the suit is filed.

14. For the specific issue framed regarding defect in Section 80 C.P.C., notice, the trial Court has pointed out that the rent control proceedings initiated by the plaintiff was exparte order against which, the defendant filed Interlocutory Application to set aside the exparte order. When that was dismissed, they preferred revision petition before the High Court and got the matter restored with a specific direction to dispose of the matter within a period of three months. When a demand notice was issued under Ex.A.4, the appellant neither replied nor opposed the notice in respect of non compliance of Section 80 C.P.C., procedure seriously.

15. When the same point was canvassed before the First Appellate Court, the First Appellate Court after referring several judgments of this Court and the Hon'ble Supreme Court, has pointed out that the plaintiff has taken the leave of the trial Court for dispensing with Section 80 C.P.C., notice vide order dated 12.11.2001, in I.A.No.948 of 2001. The grant of leave was not questioned by the defendant at any point of time.

16. After participated in the trial proceedings and First Appellate Court proceedings, objecting the very maintainability of the suit in the Second Appeal is only an after thought and the arrangement of provision under Section 80 C.P.C., never contemplates dismissal of the suit for premature institution of suit before expiry of 60 days. If at all there was any defect or error, the defendant cannot take advantage of that since, the trial Court has allowed the Interlocutory Application filed by the plaintiff under Section 80(2) C.P.C. In the absence of any prejudice to the defendant and without challenging the order passed by the trial Court dispensing the notice period under Section 80 C.P.C., the appellant/defendant cannot, at this point of time, challenge the proceedings on this ground. Hence, the Second Appeal is liable to be dismissed.

17.In the result, the Second Appeal is dismissed with costs.  
Consequently, connected miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The District Judge,  
Nilgiris at Udhagamandalam.

2.The Subordinate Court,  
Nilgiris at Udhagamandalam.

Copy to:

The Section Officer, VR Section, High Court, Madras.

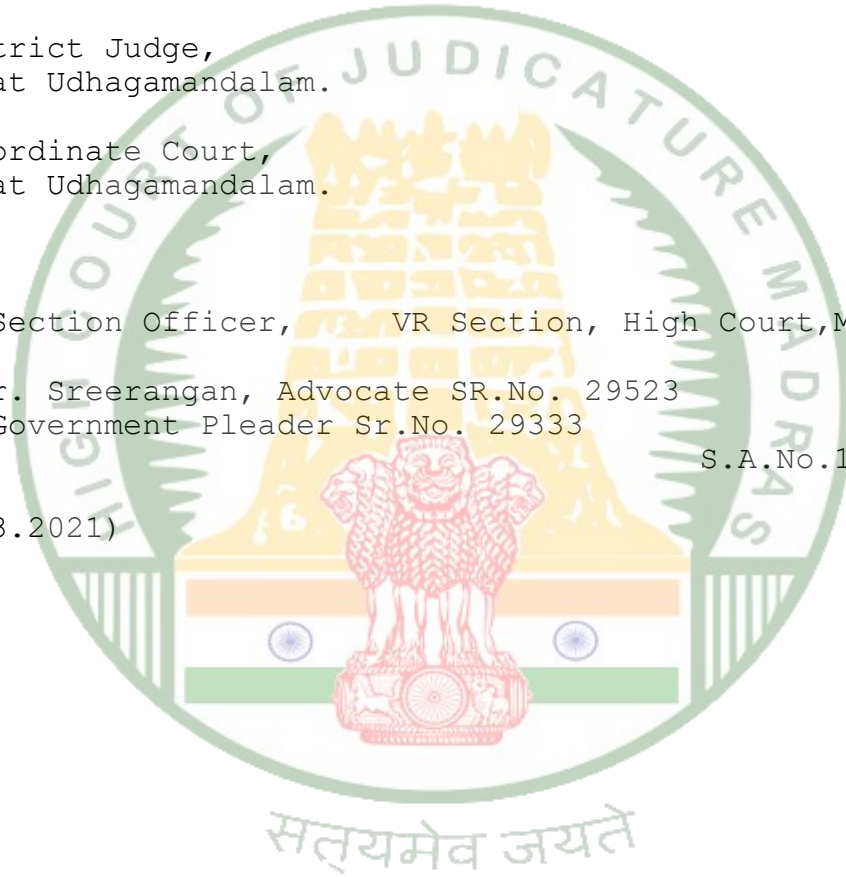
+1cc to Mr. Sreerangan, Advocate SR.No. 29523

+1 cc to Government Pleader Sr.No. 29333

S.A.No.1249 of 2009

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A.SK(29.03.2021)



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