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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 26.03.2021

+ **CM(M) 273/2021**

CHANDER KANTA & ORS Petitioners
Through Mr.Amit Sharma, Adv.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents
Through Mr.Anupam Srivastava, ASC for
GNCTD with Ms.Sarita Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

CM No.12220/2021 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 273/2021 & CM No.12221/2021 (Stay)

1. This petition has been filed by the petitioners challenging the order dated 08.03.2021 passed by the learned Civil Judge-06 (Central), in Suit No. 637 of 2021, titled *Chander Kanta & Ors. v. Govt. of NCT of Delhi*, filed by the petitioners.

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2. The Suit has been filed by the petitioners praying for the following relief:

“A) Pass a decree of declaration in favour of the Plaintiffs and against the Defendants thereby declaring the Vacation Notice dated 18.01.2020 and 26.02.2021 as null and void being illegal and non-sustainable; AND ·

B) Pass a decree of Permanent Injunction in favour of the Plaintiffs and against the Defendants thereby restraining the defendants and their successors, assigns, representatives etc. from dispossessing the Plaintiffs from their respective kiosks in question as mentioned in para no.2 above without following the due process of law and further without providing them an alternate site.”

3. Alongwith the Suit, the petitioners had filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the Code’), praying for the following relief:

“i) Pass an ad-interim injunction thereby restraining the defendants from dispossessing the plaintiffs from their kiosks and/or causing any interference in the smooth running/functioning of the said kiosks (including the restrain order from disconnecting the electricity/water connection) by the applicants/plaintiffs while staying the operation of vacation notice dated 26.02.2021 and 18.02.2020 till the pendency of the suit.”

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4. The learned Trial Court, however, was pleased to return the plaint to the petitioners, observing that there is no urgency or requirement for an immediate relief justifying dispensation of notice under Section 80(1) of the Code to the respondents.

5. Feeling aggrieved of the said order, the petitioners had earlier filed an Appeal under Order XLIII Rule 1 of the Code, however, as the same was not maintainable, withdrew the same vide order dated 18.03.2021.

6. The learned counsel for the respondents, who appears on advance notice, submits that as the Impugned Order returns the plaint in terms of the proviso to Section 80(2) of the Code, the remedy of the petitioners would be in form of an Appeal under Order XLIII Rule 1 of the Code. He further submits that the petitioners have also not moved any application before the learned Trial Court under Section 80(2) of the Code seeking exemption from sending a prior notice under Section 80(1) of the Code to the respondents. He further submits that the cause of action pleaded by the petitioners dates back to 12.07.2018 and therefore, in any case, this was not a fit case for granting exemption to the petitioners from complying with the provisions of Section 80(1) of the Code.

7. I have considered the submissions made by the learned counsels for the parties. In the present case, as noted hereinabove, the learned Trial Court has pleased to return the plaint under the Proviso to Section 80(2) of the Code.

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8. Sub-Sections (1) and (2) to Section 80 of the Code are relevant for the present petition and are reproduced hereinbelow:

“80. Notice. – (1) Save as otherwise provided in sub-section (2), no suits 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, until the expiration of two months next after notice in writing has been delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;

(c) in the case of suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).”

9. A reading of the above provision would clearly show that the service of a notice, in case the Suit is filed against the Government, is mandatory prior to the institution of the Suit. However, in case the Suit is filed to obtain an urgent and immediate relief, the same can be instituted with the leave of the Court without serving any notice as required in Sub-Section (1). The Court, however, shall not grant relief in the Suit, whether interim or otherwise, except after giving to the Government, a reasonable opportunity of showing cause in respect of the relief prayed for in the Suit. The Proviso to Sub-Section (2) of Section 80 of the Code states that where the Court consider that no urgent or immediate relief needs to be granted in the Suit, it may

return the plaint for presentation of it after complying with the requirements of Sub-Section (1).

10. The scheme Sub-Sections (1) and (2) of Section 80 of the Code has been explained by the Supreme Court in ***State of A.P. and Ors. v. Pioneer Builders, A.P.***, (2006) 12 SCC 119, as under:

“14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The section imposes a statutory and unqualified obligation upon the court and in the absence of compliance with Section 80, the suit is not maintainable. [See Bhagchand Dagadusa v. Secy. of State for India in Council, (1926-27) 54 IA 338 : AIR 1927 PC 176]; Sawai Singhai Nirmal Chand v. Union of India, (1966) 1 SCR 986 : AIR 1966 SC 1068; & Bihari Chowdhary v. State of Bihar, (1984) 2 SCC 627] The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in Bihari Chowdhary [(1984) 2 SCC 627] the object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

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15. It seems that the provision did not achieve the desired results inasmuch as it is a matter of common experience that hardly any matter is settled by the Government or the public officer concerned by making use of the opportunity afforded by the said provisions. In most of the cases, notice given under Section 80 remains unanswered. In its 14th Report (reiterated in the 27th and 54th Reports), the Law Commission, while noting that the provisions of this section had worked a great hardship in a large number of cases where immediate relief by way of injunction against the Government or a public officer was necessary in the interests of justice, had recommended omission of the section. However, the Joint Committee of Parliament, to which the Amendment Bill, 1974 was referred, did not agree with the Law Commission and recommended retention of Section 80 with necessary modifications/relaxations.

16. 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. The proviso to the said sub-section enjoins that in case the court is of the opinion that no urgent and

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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).”

11. In the present case, the petitioners have filed the Suit challenging the notice dated 26.02.2021 issued by the respondent no.2. The said notice calls upon the petitioners to vacate the booths/kiosks in their possession on or before 28.02.2021. It therefore, cannot be said that the petitioners were not claiming any urgent or immediate relief, as the petitioners had pleaded threat of dispossession from the kiosks/booths. The mere fact that the earlier similar threats of the respondents had not been given effect to, would not be sufficient for the Court to conclude that even the present threat would not have been acted upon by the respondents. In any case, Sub-Section (2) of Section 80 of the Code requires the Court to issue notice to the Government before passing any interim order. Therefore, the say of the respondents could have been obtained by the Court on the threat that was being pleaded by the petitioners for seeking exemption from giving a prior notice.

12. As far as the remedy of appeal under Order XLIII Rule 1 of the Code is concerned, the same on the face of it is applicable where the plaint is returned under the provisions of Order VII Rule 10 of the Code. The said provision is not applicable where the plaint is returned under the Proviso to Section 80(2) of the Code. As far as the non-

filing of the application, seeking leave of the Court for dispensing with prior notice under Section 80(1) of the Code is concerned, the learned Court has not denied the relief to the petitioner on that ground.

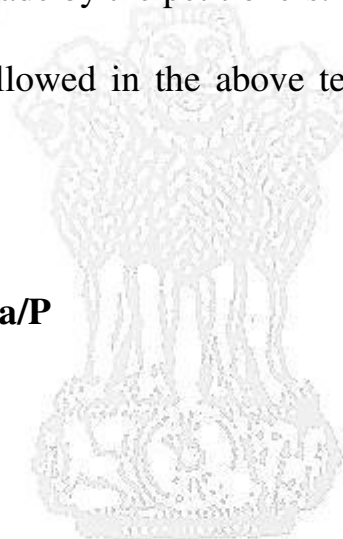
13. In view of the above, the Impugned Order dated 08.03.2021 is set aside. The plaint is restored back to its original number. The same shall be listed before the learned Trial Court on 31st March, 2021.

14. It is made clear that this Court has not expressed any opinion on the merit of the claim made by the petitioners.

15. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

MARCH 26, 2021/Arya/P



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