

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.372 OF 2022

**HIMAYAT NOOR ISLAM PATEL
VERSUS
SOW. ALAKNANDA BHAGWANDAS HEDA AND OTHERS**

...
Advocate for Petitioner : Mr. Mayur Salunke h/f Mr. V. D. Salunke
AGP for Respondents – State : Mrs. V. S. Chaudhari
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10th JANUARY, 2022

PER COURT :

1. This petition challenges the order dated 27-11-2021, passed by the learned Civil Judge Junior Division, Latur, below Exhibit-100 in R.C.S. No.260/2015.

By application Exhibit-100 the petitioner – defendant No.3 contended that respondent No.1 – plaintiff has filed documents to defendant No.1 which appears to be suspicious. No notice appears to be issued to defendant No.2, and therefore, the suit is liable to be dismissed for non-compliance of Section 80 of the Code of Civil Procedure. The trial Court rejected the said application holding that defendant Nos. 1 and 2 have jointly filed written statement in which they have not denied the notice issued under section 80 of the Code of Civil Procedure to them. By relying on the decision in **Kanakku Karthrayani Pillai Narayani**

Pillai and Others Vs. Neelacanta Pillai Raman Pillai and another, reported in **AIR 1969 Kerala 280**, the trial Court has held that, benefit of Section 80 is only available to the Government and its officers and not to private parties. Hence, the trial Court rejected the said application. This order is impugned in the present petition.

2. In paragraph No.13 of the plaint there is a specific pleading that on 12-03-2013 RPAD notice was issued to the defendants which was received by them on 20-03-2013. In this view of the matter, reasons given by the trial Court appears to be correct. The trial Court has rightly relied in the decision of **Kanakku Karthrayani Pillai Narayani Pillai and Others** (supra).

3. The learned advocate for the petitioner relied in **Ramakrishna Ganapayya Hegde Vs. Lakshminarayana Timmayya Hegde**, reported in **1983 DGLS (Kar.) 35**, wherein the learned Single Judge of the Karnataka High Court relying on **Waman Shrinivas Kini vs Ratilal Bhagwandas & Co**, reported in **AIR 1959 SC 689**, held that there cannot be a favour on a party in contravention of statutory provisions based on public policy.

4. There cannot be any dispute about the above proposition. However, in the facts of the present case, since specific pleadings are

made in the plaint about issuance and service of notice under Section 80 and in view of the cogent reasons assigned by the trial Court, no merit is found in the challenge raised by the petitioner in the present petition.

5. No illegality or perversity is found in the impugned order. The writ petition, being devoid of merits, is therefore, dismissed.

(NITIN B. SURYAWANSHI, J.)