

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 353 OF 2019

IN

JUDGE'S ORDER NO. 124 OF 2018

IN

SUIT NO 167 OF 2015

Vivek M Pittie

...Appellant

Versus

Jaya Leasing & Finance Pvt Ltd & Ors

...Respondents

WITH

APPEAL NO. 386 OF 2019

IN

JUDGE'S ORDER NO. 120 OF 2018

IN

SUIT NO 856 OF 2015

Vivek M Pittie

...Appellant

Versus

Pradeep Ram Mukhi & Ors

...Respondents

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**Ms Ankita Singhania, with Harsh Meghani & BN Shukla, i/b DJ
Kamdin & Co, for the Appellant.**

**Mr Mayur Khandeparkar, with Radha Ved, i/b Kiran Jain & Co, for
Respondent No.1.**

Mr Akshay R Pai, i/b Bina R Pai, for Respondents Nos. 8 and 9.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 6th July 2022**

PC:-

1. The Appeals assail a common order of 6th March 2019. Two Judges Orders were signed. The learned single Judge was required to pass a reasoned order on both Judge's Orders. The Judge's Orders sought leave to continue two suits against the 5th Defendant. He was appointed as a Private Receiver by an Order dated 13th April 2018 in Suit No. 224 of 1961. The 5th Defendant's predecessor, the 4th Defendant, was the private individual first appointed as private Receiver in 1967 in the 1961 suit.

2. The only ground canvassed before us in appeal is that the learned Judge was incorrect in saying that no notice under Section 80 of the Code of Civil Procedure 1908 ("CPC") was required to be given to the 5th Defendant, the private receiver. It is submitted that being a receiver, the 4th Defendant is a 'public officer'. Section 80 covers both Government Officers as also 'a public officer'. A 'Public Officer' is defined in Section 2(17) and its sub-clauses. Ms Singhania argues that the 5th Defendant falls within the definition in Section 2(17)(d). We reproduce Section 2(17).

“(17) “Public Officer” means a person falling under any of the following descriptions, namely:—

- (a) every Judge;
- (b) every member of an All-India Service;

(c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government;

(d) every **officer of a Court of Justice** whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, **or to take charge or dispose of any property**, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, **and every person especially authorised by a Court of Justice to perform any of such duties**;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty.”

(Emphasis added)

3. The 5th Defendant is, in Ms Singhanian’s submission, a person especially authorised by a Court of justice to perform the duties referred to in that clause. These extend to taking charge and disposing of property and therefore since the 5th Defendant as a private receiver, being authorised by a Court to take charge or dispose of a property, is a public officer.

4. The learned Single Judge emphatically rejected this argument. Before him much law was cited on the question of leave and the applicability of Section 80. It was specifically submitted that no notice under Section 80 was required. The only reason for the Judge’s Order was to substitute the son for the father, both private receivers. In fact as the learned Single Judge pointed out the submission was self-defeating. If the argument was to be accepted, since the 4th Defendant was already a private receiver, then the 5th Defendant as a successor would not even require leave to be obtained by the Plaintiffs in the first place.

5. The learned single Judge held that a correct reading of the decision in *Naresh Nath Mukherjee v Economic Electroplating Works*¹ is that Section 80 is a protective section where a Public Officer or Government Authority is sought to be *made personally liable for acts done in his official capacity*, i.e. in performance of those duties. This is

1 1954 ILR Cal 171.

quite distinct from an action against a public officer as a person holding that post. The learned Single Judge held that leave was necessary but also found that the Plaints had no allegations against the 5th Defendant for acts done in his official capacity.

6. Ms Singhania's objection is to the observation that no notice under Section 80 of the CPC is required. She believes this will cause difficulty at the hearing of the Suit for such a defence is taken in the written statement. We do not see how such an objection can be taken to the observation. It was the 5th Defendant who raised the objection. It had to be decided. It was. And, in our view, it was correctly decided.

7. We see no reason to interfere with this order. The Appeals are without substance. They are dismissed. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)