

11.12.2024
Ct. No. 22
Sl. No.109
KB

**In The High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

C.O. 3085 of 2022

**Sharadindu Das & Ors.
-versus-
Smt. Chandana Mitra & Ors.**

**Mr. Samiran Mandal
Mr. Abhinaba Dan
... For the petitioners.**

**Mr. Subhas Chandra Atha
Ms. Payel Paramanik
... For the opposite party nos.1 & 2.**

1. This revisional application has been filed assailing the order dated 02.08.2022 passed in connection with Title Suit No. 169 of 2021 wherein Learned Civil Judge (Junior Division), Bishnupur rejected the prayer of dismissal of the suit under Order 7 Rule 11(d) read with Section 151 of the Code of Civil Procedure.

2. The application under Order 7 Rule 11(d) of the Code of Civil Procedure was filed at the instance of the defendant contending, inter alia, that Government officials were made parties to the suit without complying the provision of Section 80 of the Code of Civil Procedure.

3. Learned Judge relying on several decisions of Hon'ble Apex Court rejected the application on the ground that Government officials were made parties to the suit. But no claim was made against them.

4. Learned counsel appearing on behalf of the petitioners harped on the stand of Section 80 of the Code of Civil Procedure and also relied on a case of *Bihari Chowdhary and Another vs. State of Bihar and Others* reported in (1984) 2 SCC 627 wherein Hon'ble Apex Court observed that the suit against the Government official or public officer, to which the requirement of a prior notice under Section 80 is attracted, cannot be validly instituted prior to expiration of the period of two months next, after the notice in writing has been delivered.

5. Per contra, Learned counsel appearing on behalf of the opposite parties has submitted that all these officials were made proforma defendants to the suit and no claim was made against them according to paragraph 27 of the plaint.

6. Learned counsel appearing on behalf of the opposite parties has further relied on a reportable Judgment of Hon'ble Apex Court in a case of *Ram Kumar and Anr. Vs. State of Rajasthan & Ors.* wherein Hon'ble Apex Court dealt with a notice under Section 80 of the Code of Civil Procedure which was not necessary unless the subject matter of the suit is in respect of any

act purporting to be done by such public officer in his official capacity.

7. Here in this case no such suit was filed against any act of public officer in discharge of his official duties.

8. The case of Bihari Chowdhary (supra) also interpreted Section 80 of the Code of Civil Procedure in the same line.

9. In the aforesaid view of the matter, I do not find any reason to interfere with the order impugned in this revisional application.

10. With the aforesaid observations, the revisional application stands dismissed.

11. Interim order, if there be any, stands vacated.

12. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bibhas Ranjan De, J.)