

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. 60 of 2025

Ratri Seal

Vs.

**The Commissioner of Police, Detective Department,
Government of West Bengal and others**

For the appellant	:	Mr. Arabinda Chatterjee, Snr. Adv. Mr. Tanmoy Mukherjee Ms. Kakali Ganguli Mr. Rudranil Das
For the State-respondents	:	Mr. Vivekananda Bose Ms. Priyamvada Singh
Heard on	:	25.06.2025 & 10.07.2025
Judgment on	:	10.07.2025

Sabyasachi Bhattacharyya, J.:-

1. Heard learned senior counsel appearing for the appellant as well as learned counsel for the respondents.
2. The brief conspectus of the appeal is whether a notice under Section 80 of the Code of Civil Procedure is required in a suit for declaration of the civil death of a person within the contemplation of Sections 107 and 108 of the Evidence Act.

3. The learned trial Judge, while rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, held that the suit was palpably barred by non-compliance of Section 80 of the Code of Civil Procedure.
4. A bare perusal of the plaint shows that the plaintiff sought a decree for declaration of the civil death of one Kamaleswar Mallick, along with other omnibus reliefs.
5. Since such a suit is in the nature of a legal action in *rem*, as its outcome affects the world at large, we are of the opinion that the reliefs sought are not confined to the defendant-authorities.
6. That apart, by its very nature, the suit did not claim any relief as such against the defendant-authorities but such defendants were made formally as parties, as the nature of the suit is one for declaration which is not adversarial in nature.
7. Hence, there arises no question of prior service of notice under Section 80 of the Code of Civil Procedure in such a suit.
8. Thus, the very premise of the impugned deemed decree is erroneous in law.
9. Accordingly, FA 60 of 2025 is allowed on contest, thereby setting aside the impugned deemed decree dated December 3, 2024 passed by the Learned Judge, Tenth Bench, City Civil Court at Calcutta in Title Suit No. 249 of 2024 and restoring the said suit to its original file and number.

- 10.** The learned Trial Judge shall now proceed to dispose of the suit on its merits and in accordance with law.
- 11.** We make it clear that we have not touched on the merits of the contentions of the parties in the suit and it will be open to the learned Trial Judge to decide all questions independently and in accordance with law without being unduly influenced by any of the observations made above.
- 12.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

AD-8
AK