



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

WRIT PETITION NO. 11497 OF 2023

Maruti Fakira Gadekar

.. Petitioner

Versus

The State Of Maharashtra
Through Collector And Others

.. Respondents

Mr. Dhananjay A. Mane, Advocate for the Petitioner.
Mr. P. D. Patil, AGP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 12th MARCH, 2025.

P. C. :-

. Heard learned advocate for the petitioner and learned A.G.P for respondent Nos. 1 to 4.

2. None appears for respondent No. 5 in spite of service.

3. The only issue involved in this petition is as to whether it is open for the Court to return the plaint under Section 80 (2) of the Code of Civil Procedure (for short "C.P.C.") when the suit has proceeded to advance stage and when it is registered under specific order passed by the Court granting dispensing the notice.

4. The facts in short are that, the petitioner filed Regular Civil Suit

No. 282/2019 in the Court of learned C.J.S.D., Nanded. Prior to filing of the suit he filed an application under Section 80 (2) of the C.P.C. for dispensing the notice against the defendant Nos. 1 to 3 who are present respondent Nos. 1 to 3. The learned Judge specifically directed the office to accept the plaint by dispensing the notice vide order dated 12.07.2019. The suit proceeded further. Even evidence of the petitioner/plaintiff was recorded. However, the learned Judge passed an order suo motu and returned the plaint to the plaintiff in view of proviso to Section 80 (2) of the C.P.C. It is observed that, the plaintiff has not pressed the application for temporary injunction at Exh. 5 and thus, there does not appear to be any urgency.

5. The learned advocate for the petitioner relied upon the judgment of the Patna High Court in First Appeal No. 84/2012 in the case of **Govt. of India, Union of India through General Manager E.C.R., Hajipur and Ors. Vs. Ram Ekbal Rai s/o Late Bhimri Rai**. In the said judgment, it is held that, once the Court grants permission to file suit without compliance of Section 80 (1) of the C.P.C., at later stage cannot return the plaint under proviso of Section 80 (2) of the C.P.C.

6. This Court at Principal Seat at Mumbai in the case of **Deputy Commissioner of Sales Tax Vs. Narendrakumar Devendrakumar Purohit**

reported in **2005 (1) Bombay Cases Reported 848** held in similar facts and circumstances that, once the suit is entertained, thereafter it is not open for the Court to return the plaint. In the said case even specific permission for dispense of statutory notice was not specifically obtained. The Court held that, it can be taken as implied waiver in view of entertainment of the suit.

7. Considering the above position, this Court finds that, the impugned order deserves to be quashed and set aside by allowing the petition.

8. The writ petition, therefore, is allowed in terms of prayer clauses (B) and (C).

9. Since the suit is of the year 2019, the learned Trial Court shall make endeavour to dispose of the suit as early as possible and preferably within one year from today.

10. With this, the writ petition stands disposed of. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.