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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-6-1994

Date of decision: 10.03.2025

Balwinder Singh

...Appellant

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gaurav Chopra, Sr. Advocate with
Mr. Harmeet Singh, Advocate for the appellant.

Mr. S.S. Hira, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present Regular Second Appeal is to the judgment dated 30.08.1993 vide which the First Appellate Court had set aside the judgment and decree dated 11.05.1992 passed by the Sub Judge, IIIrd Class, Ferozepur vide which the suit filed by the plaintiff/present appellant had been decreed, solely on the ground that the suit filed by the plaintiff was beyond limitation.

2. Learned Senior Counsel for the appellant has submitted that in the present case, the impugned order which was challenged in the suit filed by the plaintiff was admittedly passed on 10.07.1987 and vide the said impugned order, the plaintiff was awarded punishment of withholding of three annual increments with cumulative effect. It is submitted that since the



suit was filed against the State of Punjab, thus, the plaintiff had served mandatory notice under Section 80 of CPC dated 13.06.1989 and the said notice has been duly exhibited as Ex.P2 and postal receipts regarding the same have been exhibited as Ex.P3 and Ex.P4 and acknowledgments have also been exhibited as Ex.P5. It is submitted that specific averments with respect to notice having been sent to the respondents have been made in para 5 of the plaint, which fact has not been denied in the corresponding para 5 of the written statement but has rather been admitted. It is argued that the suit was within limitation as two months period with respect to notice under Section 80 CPC was required to be excluded as per Section 15(2) of the Limitation Act, 1963 and also as per the judgment of the Hon'ble Supreme Court in **Disha Constructions and others Vs. State of Goa and another**, reported as **2012(1) SCC 690** as it is not disputed that the suit was filed on 18.07.1990 and same was registered on 19.07.1990.

3. Learned Senior Counsel for the appellant has further submitted that in the present case, no objection with respect to limitation was taken in the written statement and thus, no issue was framed on the said aspect. It is further submitted that the trial Court had decided all the three issues in favour of the present appellant and the First Appellate Court, without deciding the said three issues, had solely on the point of limitation, which was never raised as a defence, allowed the appeal filed by the State of Punjab which is against law and deserves to be set aside.

4. Learned State Counsel, on the other hand, has opposed the present Regular Second Appeal and has submitted that the said judgment of the First Appellate Court is in accordance with law. It is submitted that in



the present case, the impugned order had been passed on 10.07.1987 vide which punishment of withholding of three annual increments with cumulative effect had been awarded to the plaintiff/present appellant and it cannot be said that withholding of increments gives a continuing cause of action which can be challenged at any time. It is submitted that the First Appellate Court had rightly observed that the cause of action had arisen on 10.07.1987 when the impugned order was passed and thus, filing of the suit on 18.07.1990 was barred by eight days and had rightly dismissed the suit of plaintiff.

5. This Court has heard learned counsel for the parties and has perused the paper book and has also taken into consideration the plaint, written statement and the other admitted documents which are a part of the record of the trial Court and have been duly exhibited [which have been produced during the course of arguments and have been taken on record as Mark “A” (collectively) and Mark “B” (collectively)] and is of the opinion that the judgment of the First Appellate Court is illegal, against settled law and deserves to be set aside and the judgment of the trial Court dated 11.05.1992 is in accordance with law, deserves to be upheld for the reasons stated hereinafter.

6. It is not in dispute that the appellant-plaintiff, who was working as a Conductor in Punjab Roadways, Ferozepur Depot, had filed a suit for declaration to the effect that order dated 10.07.1987 passed by the General Manager, Punjab Roadways, Muktsar imposing the penalty of withholding of three annual increments with cumulative effect upon the plaintiff and further ordering that the plaintiff shall not be entitled to anything over and



above what he had already been paid during the suspension period, was illegal, null and void. The said suit was opposed by the defendants by filing a written statement. It would be relevant to note that no specific objection with respect to the suit being barred by limitation in the said written statement was raised. On the basis of pleadings, the trial Court had framed the following issues:-

- “1. Whether the order dt. 10.7.87 passed by the General Manager, Punjab Roadways, Muktsar is illegal, null and void etc.? OPP*
- 2. Whether this Court has got no jurisdiction to try the suit?OPD*
- 3. Whether a valid and legal notice u/s 80 C.P.C. was served by the plaintiff upon the defendants/State? OPP.*
- 4. Relief.”*

A perusal of the above would show that no issue with respect to limitation had been framed as no objection in the written statement had been taken on the said aspect. Issue No.1 was decided in favour of the present appellant/plaintiff and thus, order dated 10.07.1987 was held to be illegal, null and void. Issue No.2 was also decided in favour of the plaintiff/appellant and it was held that the Court had jurisdiction to try the suit. Even issue No.3 was decided in favour of the plaintiff/present appellant and while deciding the said issue, reference was made to the legal notice under Section 80 of CPC Ex.P2, postal receipts Ex.P3 and Ex.P4 and acknowledgments Ex.P5 and also on the fact that defendants/respondents had not led any evidence to rebut the evidence led by the plaintiff/present appellant. In view of the findings on all the issues, the suit of the



plaintiff/present appellant was allowed and order dated 10.07.1987, which was the subject matter of challenge, was set aside and it was held that the plaintiff was entitled to the increments withheld by the defendants/respondents and other reliefs had also been granted.

7. The First Appellate Court, without reversing the findings on issue Nos.1 to 3, solely by observing that the suit was barred by limitation, allowed the appeal and set aside the judgment and decree of the trial Court and dismissed the suit of the plaintiff/appellant. It was observed by the First Appellate Court that the cause of action arose to the plaintiff/present appellant on 10.07.1987 whereas the suit was filed on 18.07.1990 and that thus the suit was barred by limitation by 8 days.

8. The primary question of law which arises for consideration before this Court is as under:-

“Whether the suit filed by the plaintiff/appellant was barred by limitation or was it within limitation, as benefit of mandatory notice under Section 80 of CPC was required to be given to the plaintiff/appellant in view of Section 15 of the Limitation Act, 1963?”

9. Before considering the facts of the present case, it would be necessary to refer to the relevant provision.

10. Section 80(1) and 80(2) of CPC, which has been highlighted by learned Senior Counsel for the appellant, is reproduced hereinbelow:-

“80. Notice - [(1)][Save as otherwise provided in sub-section (2), no suits [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official



capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of

(a) in the case of a suit against the Central Government, [except where it relates to a railway], a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;]

(bb) in the case of suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorized by that Government in this behalf;]

(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying



with the requirements of sub-section (1).

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A perusal of the above Section would show that in case of any suit instituted against the Government or against a public officer in respect of any act purported to be done by such public officer in his official capacity, the suit is necessarily required to be preceded by two months notice in writing. Sub-Section 2 provides the exception to Section 80(1) and would apply in a case where some urgent relief is being sought. The said Sub-Section 2 would not apply in the present case, as the suit which had been filed in the present case was for declaration and for setting aside the order dated 10.07.1987 and thus, neither any urgency was projected nor leave of the Court was sought.

11. Section 15(2) of the Limitation Act, 1963, which has also been highlighted by learned Senior Counsel for the appellant, is reproduced as under:-

“15. Exclusion of time in certain other cases.— (1)In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2)In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction



shall be excluded.

Explanation.—In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

Xxx xxx”

A perusal of the above provision would show that while computing the period of limitation for any suit of which notice has been given in accordance with requirements of any law for the time being in force, the period of such notice was required to be excluded.

12. The Hon'ble Supreme Court in the case of ***Disha Constructions and others*** (supra) had observed that the proper interpretation of Section 15(2) of the Limitation Act would be that in computing the period of limitation, the period of notice, would be required to be mandatorily excluded in case the notice has been given within limitation and a suit for which the limitation is three years would be within limitation, even if it is filed within two months after the expiry of three years, provided notice has been given within the limitation period. The relevant portion of the said judgment is reproduced hereinbelow:-

“12. We are of the view that in the facts and circumstances of this case, the notice under Section 80 was admittedly given on 19-2-2009 which is within the period of limitation and the same was received on 27-2-2009 and two months from the date of receipt expired on 27-4-2009. The High Court has held, in our view erroneously, that since the suit was filed on 24-10-2009, which is beyond 30-9-2009, the appellant-plaintiffs are not entitled to the benefit of exclusion statutorily provided



under [Section 15\(2\)](#) of the Act and the suit is barred by limitation. The said interpretation of the High Court is erroneous in view of the fact that if the notice under Section 80 had been given, say, on 29-9-2009, in that case the appellants according to High Court's interpretation, would have been given the benefit of exclusion of time after 30-9-2009. **Just because the appellants gave the notice before the expiry of the period of limitation, the benefit which is given under [Section 15\(2\)](#) of the Act cannot be taken away. We are of the view that the said period of two months must be computed and benefit of exclusion of the said two months must be given to the appellants even if they had given the said notice within the period of limitation.** If the appellants had given the notice after the expiry of period of limitation, say, after 30-9-2009, then possibly they could not have been given the benefit.

13. In this connection, we may refer to the decision of this Court in [Union of India v. West Coast Paper Mills Ltd.](#), where in a somewhat similar situation, this Court has held as follows: (SCC p.464. Para 14)

"14.Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the [Limitation Act](#) which deprives the remedy of one who has a right".

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16. In our view, proper interpretation of [Section 15\(2\)](#) of the Act would be that in computing the period of limitation, the period of notice, provided notice is given within the limitation period, would be mandatorily excluded. That would mean a suit, for which period of limitation is three years, would be within limitation even if it is filed within two months after three



years, provided notice has been given within the limitation period. In such a case, the period of notice cannot be counted concurrently with the period of limitation. If it is done, then the period of notice is not excluded. Any other interpretation would be contrary to the express mandate of [Section 15\(2\)](#) of the Act.

17. We, therefore, set aside the order of the High Court and we hold that the suit is within the period of limitation.....”

13. In the abovesaid case, the High Court had not given the benefit of the said two months notice to the appellant-plaintiff therein and had held the suit to be barred by limitation, however, the Hon'ble Supreme Court had observed that just because the appellant therein had given the notice before the expiry of period of limitation, the benefit under Section 15(2) of the Limitation Act would not be taken away and the said benefit had to be mandatorily given. The law laid down in the abovesaid judgment would cover the present case on all fours, as is apparent from the admitted facts which have been crystalized hereinafter. No law to the contrary has been cited on behalf of the respondents.

14. In the present case, it is not in dispute that on 10.07.1987, the impugned order which was the subject matter of challenge in the suit withholding three annual increments with cumulative effect was passed against the present appellant-plaintiff. A notice dated 13.06.1989 (Ex.P-2) was sent by the appellant-plaintiff and postal receipt regarding the same was duly exhibited as Ex.P3 and Ex.P4 and the acknowledgment regarding the same was duly exhibited as Ex.P5. It was specifically averred in paragraph 5 of the plaint that the respondents-defendants, which were State of Punjab



and the General Manager, Punjab Roadways had been served with notice under Section 80 of the CPC and the copies of same were attached along with the same. In the written statement, the averments made in paragraph 5 were admitted although it was stated that the validity and the legality of the notice under Section 80 of the CPC were being challenged. It is thus apparent that from the above said averments, the receipt of the notice under Section 80 of the CPC was admitted. Paragraph 5 of the plaint is reproduced hereinbelow:-

“5. That the defendants were served with a notice under section 80 of the Code of Civil Procedure. The copy of the notice, postal receipts and acknowledgments dues are attached herewith. No reply has been received. Hence this suit.”

15. Paragraph 5 of the written statement is reproduced hereinbelow:-

“5. That the para no.5 of the plaint is admitted but the validity and legality of the notice u/S 80 CPC is challenged.”

16. The trial Court had specifically decided issue no.3, which was with respect to validity and legality of the notice under Section 80 CPC, in favour of the present appellant-plaintiff after taking into consideration the documents Ex.P2 to Ex.P5 and had also observed that there was no evidence produced by the respondents-defendants to the contrary. The finding on the said issue has admittedly not been reversed by the Ist Appellate Court. It is also not in dispute that the defendants in the present case are the State of Punjab and the General Manager, Punjab Roadways and thus, it was incumbent upon the plaintiff, who was seeking declaration that the order dated 10.07.1987 passed by the respondents-defendants was



null and void, to send a notice under Section 80 of the CPC. In view of the same, the present appellant-plaintiff was entitled to the benefit of exclusion of the notice period, which is two months in accordance with the provision of Section 15 of the Limitation Act, 1963 and also in view of the law laid down by the Hon'ble Supreme Court in *Disha Constructions and others* (supra). Moreover, it is also not disputed that the legal notice was sent prior to the expiry of limitation. As the period of three years for challenging the order dated 10.07.1987 would elapse on 10.07.1990 and the benefit of two months period, with respect to the notice under Section 80 of the CPC, would necessarily have to be given to the appellant-plaintiff and therefore the suit, which has been admittedly filed on 18.07.1990, would be within limitation. The question of law as framed in paragraph no.8 of this judgment is answered in favour of the appellant-plaintiff and against the respondents-defendants.

17. Additionally, it would be relevant to mention that no such objection was taken by the respondents-defendants in their reply and accordingly, no specific issue with respect to the limitation was framed. The Ist Appellate Court, without there being any basis, by virtue of a cryptic order, without considering the aspect of the legal notice under Section 80 of the CPC, has observed that the suit is barred by limitation. The said judgment of the Ist Appellate Court is against law and deserves to be set aside. It would also be relevant to mention that finding on the three issues, which were framed and were held in favour of the appellant-plaintiff by the trial Court, were not set aside by the Ist Appellate Court. Accordingly the judgment of the Ist Appellate Court is illegal and deserves to be set aside.



18. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of *Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters* reported as *(2016) 6 Supreme Court Cases 157*, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. In the present case, the judgment of the Ist Appellate Court is against law.

19. Keeping in view the abovesaid facts and circumstances, the present appeal is allowed and the judgment of the Ist Appellate Court dated 30.08.1993 is set aside and the judgment of the trial Court dated 11.05.1992 is restored and the suit filed by the appellant-plaintiff is decreed in the same terms as was decreed by the trial Court.

10.03.2025

Pawan/Davinder

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No