



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 155 OF 2026

M/s. A.R. Construction, Thru. Its Proprietor, Chandrapur Vs. State of Maharashtra, Thru.
Collector, Gadchiroli and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S.A. Mohta, Advocate for petitioner.
Mrs. K.H. Bhondge, AGP for respondents/State.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 09.02.2026

Learned AGP waives service of notice on
behalf of respondent No.3/State and appears on behalf of
all the respondents.

2. Since the service of notice upon all the
respondents is complete, the matter is taken up for final
disposal.

3. Heard learned counsel for petitioner as well as
learned AGP for respondents/State.

4. The petitioner's challenge is to the order dated
02.08.2025 passed by the trial Court, which has ordered
the return of plaint for its presentation, after compliance
with the requirement of Sub-Section 1 of Section 80 of the
Code of Civil Procedure.

5. The petitioner is the original plaintiff, who has filed a suit for declaration and perpetual injunction under Section 36 and 37 of the Specific Relief Act. At the time of filing of the suit, a separate application for grant of leave to file the suit against the Government without serving notice under Section 80(2) of the Code of Civil Procedure, was filed and it was allowed by order dated 01.07.2025. Thereafter, the petitioner's application for temporary injunction at Exhibit 5 was decided by order dated 02.08.2025 and on the same day, the trial Court has passed the order of returning the plaint.

6. Learned counsel for the petitioner submits that in view of order dated 01.07.2025, by which, leave was granted to file the suit without serving the notice under Section 80 of the Code of Civil Procedure, the return of plaint for the same reason is absolutely unwarranted. In support of his submissions, he placed reliance on the judgment of Co-ordinate Bench of this Court in Writ Petition No.7414/2021 dated 24.11.2025, and invited my attention to paragraph No.6 from the said judgment, which is reproduced below :

*“6. Perusal of aforesaid judgment would show that once leave is granted under Section 80 of CPC observing presence of grounds for waiver of notice, it is not open for Court to revisit the same or direct return of plaint after deciding application for interim injunction. The Punjab and Haryana High Court in case of **Karnail Singh** (supra) observed in paragraph no.6 as under:*

“6. It is admitted position that on 26.4.2002, the Civil Judge has granted exemption to the plaintiff-respondent from issuing any notice under Section 80 and his suit was entertained. However, the prayer of the plaintiff-respondent for issuance of interim relief was declined on 16.5.2002. The defendant-petitioner then filed an application for return of the plaint. Therefore, no review of the order dated 26.4.2002 would be possible because if such a proposition is accepted then in cases where exemption from issuing notice under Section 80 has been granted then on the failure of application for interim relief the exemption would be revoked, plaint has to be returned and the suit has to be refiled after complying with the provisions of Section 80 of the Code.”

7. Learned AGP for respondents did not dispute the fact that the trial Court has earlier passed an order dated 01.07.2025, by which, leave was granted to file the suit without serving notice under Section 80 of the CPC.

8. Having regard to the controversy involved in the instant petition and the position of law as clarified by the Co-ordinate Bench in the above referred matter, the instant petition needs to be allowed. The order dated 02.08.2025 passed by the trial Court in Regular Civil Suit No.55/2025 is quashed and set aside.

9. Writ petition is accordingly allowed and disposed of. No order as to costs.

(Prafulla S. Khubalkar, J.)