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ILR (2009) VI DELHI 66
F.A.O. (OS)

B **TEXTILES COMMITTEE THROUGH ITS DIRECTOR & ANR.** ....APPELLANT

VERSUS

C **MRS. ANITA SURI** ....RESPONDENT

(SANJAY KISHAN KAUL & SUDERSHAN KUMAR MISRA, JJ.)

F.A.O. (OS) NO. : 185/2009 DATE OF DECISION : 12.05.2009

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Code of Civil Procedure, 1908—Section 80 & Order 12 Rule 6—Suit for possession, recovery of damages and permanent injunction in respect of property—Application under Order 12 Rule 6 allowed by single judge—Appeal—Maintainability of suit questioned on ground that no notice under Section 80 given to defendants/appellants—Held, bar of Section 80 would not apply as relief really claimed qua defendant no.1 (Textile Committee) and no relief claimed against defendant no.2 (Secretary Ministry of Textiles)—Since case of defendants that defendant no.2 has nothing to do with the controversy and should be deleted from the array of parties it was not now open to appellants to plead that impleadment of defendant no.2 should be treated as bar to institution of suit in view of non-compliance of provisions of Section 80—No need of prior notice under Section 80 to defendant no.1 Textile Committee as it is a body corporate having perpetual succession and a common seal, capable of suing and being sued and therefore not 'government' within the meaning of Section 80 and at best suit could be dismissed against defendant no.2 against whom no relief claimed—Appeal dismissed with costs of Rs. 25,000/-.

The material aspect on account of the factual matrix, in the present case, is that the lease is only with the Textiles Committee, a statutory body under the said Act. In fact, Union of India has neither been impleaded as the first defendant or the second defendant. The second defendant is the Secretary, Ministry of Textiles. The averments relating to execution of the lease and for possession are only against the first appellant, i.e., the Textiles Committee. The allegation against the second appellant being the Secretary of the Ministry of Textiles is that it has a role to play and the respondent apprehends that some other Government Department may be inducted into the premises. There is, however, no such relief claimed in the prayer clause of the plaint. It is, in fact, the own case of the appellants that the Secretary, Ministry of Textiles has nothing to do with the controversy and has been wrongly impleaded. The prayer, in fact, is for deletion of appellant No. 2 from the array of parties. In our considered view, it is, thus, not open for the appellants to now plead that the impleadment of Secretary, Government of India as a second defendant should be treated as a bar to institution of the suit in view of non-compliance of the provisions of Section 80 of the said Code.

(Para 19)

Important Issue Involved : Bar of Section 80 CPC would not bar entire suit in case notice not served to one of the defendants against whom no relief is claimed, at best suit can be dismissed only qua such a defendant.

[Ad Ch]

APPEARANCES :

FOR THE APPELLANT : Mr. S.V. Solanki, Advocate & Mr. Chirag M. Shroff, Advocate.

FOR THE RESPONDENT : Mr. Anil Kher, Sr. Advocate & Mr. D.R. Bhatia, Advocate.

CASES REFERRED TO :

1. *Cecil Gray, The Secretary and a Member of the Western India Turf Club* vs. *The Cantonment Committee of Poona,* ILR XXXIV Bombay Series 583.
2. *U.P. State Handloom Corporation Limited & Ors.* vs. *Prem Sagar Jaiswal,* 2008 (4) AWC 3523.
3. *Coal Mines Provident Fund Commissioner* vs. *Ramesh Chander Jha,* AIR 1990 SC 648.
4. *V. Padmanabhan Nair* vs. *Kerala State Electricity Board,* AIR 1989 Kerala 86
5. *Union of India* vs. *B.D. Jhunjhunwala,* AIR 1988 Orissa 267.
6. *Himachal Steel Rerollers and Fabricators* vs. *The Union of India & Ors.,* AIR 1988 Allahabad 191.
7. *Bihari Chowdhary & Anr.* vs. *State of Bihar & Ors.,* AIR 1984 SC 1043.
8. *Smt. Shanti Devi* vs. *Amal Kumar Banerjee,* AIR 1981 SC 1550.
9. *Firm Sardari Lal Vishwa Nath & Ors.* vs. *Pritam Singh,* AIR 1978 SC 1518 .
10. *Ebrahimbhai* vs. *State of Maharashtra & Ors.,* AIR 1975 Bombay 13.
11. *Kamta Prasad Singh & Anr.* vs. *The Regional Manager, Food Corporation of India & Ors.,* AIR 1974 Patna 376.
12. *Chandrakant Govind Deshmukh* vs. *The State of Maharashtra through Collector, Amravati & Anr.,* AIR 1970 Bombay 301.
13. *Mrs. Maniluxmi Patel & Anr.* vs. *Hindustan Co-operative Insurance Society Ltd. & Anr.,* AIR 1962 Calcutta 625.
14. *P.B. Shah & Co. & Ors.* vs. *Chief Executive Officer & Ors.,* AIR 1962 Calcutta 283.
15. *Kilaparti Appalanarasamma* vs. *Commissioner, Municipal Council & Anr.,* AIR 1945 Madras 224.

16. *Boyini Kanganna* vs. *Pedini Ramlingam Subudhi,* AIR 1948 Patna 117. A

17. *Secy. of State* vs. *Amarnath & Ors.,* AIR 1936 Patna 339.

18. *V. Padmanabhan Nair* vs. *Kerala State Electricity Board, AIR 1989 Kerala 86.* B

RESULT : Appeal dismissed.

SANJAY KISHAN KAUL, J. (ORAL)

1. The respondent filed a suit for possession, recovery of damages and permanent injunction in respect of the property comprising of ground, mezzanine, first, second and third floors situated at 41, Community Centre, Naraina Phase – I, New Delhi (hereinafter referred to as, „the said property.) against the appellants. C D

2. The case of the respondent is that she is the exclusive owner of the said property, which was given on lease to appellant No. 1 in the year 1985 and thereafter the lease was renewed from time to time. The last extension was granted upto 30.04.208 at the rent of Rs.1,12,000/- per month as per the Lease Agreement dated 01.12.2005. This Agreement, thus, stood expired by efflux of time on 30.04.2008 whereafter there has been no renewal of the lease. Appellant No. 1 was required to hand over vacant and peaceful possession of the said property on the expiry of the lease, but appellant No. 1 failed to do so. Damages have also been claimed. A legal notice dated 21.05.2008 was also served under Section 106 of the Transfer of Property Act, 1882 (for shot, „the T.P. Act.). The respondent claimed that it had come to its notice that appellant No. 1 is under the control and management of appellant No. 2 / Government of India and an endeavour was being made to part with possession to some other Department of appellant No. 2. E F G

3. The appellants filed the written statement and on merits, all that was claimed was that the respondent was demanding unreasonable increase in rent, which was not conceded to by appellant No. 1. A preliminary objection had also been raised that no notice under Section 80 of the Code of Civil Procedure, 1908 (for short, „the said Code.) was given, though appellant No. 2 is the Secretary, Ministry of Textiles. In the same breath, it has also been stated that the suit is liable to be dismissed for mis-joinder of parties as *'appellant No. 2 has nothing to do with the* H I

A *plaintiff in the present lease matter'*. The prayer was for deletion of appellant No. 2 from the array of the defendants.

4. The respondent filed an application under Order XII Rule 6 of the said Code, which has been allowed by the impugned order dated B 23.04.2009. Learned Single Judge has noted that in such a matter of a tenanted premises for which lease has expired, the three ingredients have been satisfied in the present case viz.

C (i) existence of relationship of lessor and lessee;

(ii) rent being more than Rs.3,500/- per month and, thus, being outside the protection of the Delhi Rent Control Act, 1958; and

(iii) the determination of such relationship in any of the D contingencies as envisaged under Section 111 of the T.P. Act.

In fact, the notice under Section 106 of the T.P. Act was superfluous, as the lease had already expired by efflux of time.

E **5.** In so far as the objection of non-service of notice under Section 80 of the said Code is concerned, learned Single Judge has taken note of the fact that the stand of the appellants is that appellant No. 2 is not a necessary party and the tenant was only appellant No. 1, which is the Textiles Committee constituted under the Textiles Committee Act, 1963 F (for short, „the said Act.). Section 80 of the said Code does not come to the aid of appellant No. 1. The objective of Section 80 of the said Code is noted, which is to avoid unnecessary litigation if the claim of the plaintiff is lawful. It was held that no separate notice under Section 80 G of the said Code was required when the lease had come to an end by efflux of time and more so when a notice under Section 106 of the T.P. Act was issued determining the lease w.e.f. 30.06.2008. It is this order, which is assailed in the present appeal.

H **6.** Learned counsel for the appellants initially did seek to contend that there were various letters exchanged between the parties, which showed that appellant No. 1 was willing to give an appropriate market value, but the demand of the respondent was very high. However, this I plea has no sustenance in law when the parties are governed by the T.P. Act and once the lease has expired by efflux of time and the lessor is not willing to extend the lease on terms and conditions sought for by the lessee, the premises must be vacated. We have no hesitation in coming

to the conclusion that there is no infirmity in the impugned order in this behalf for all the three ingredients necessary for a decree under Order XII Rule 6 of the said Code have been satisfied in the present case, as the period of the lease having come to an end is not disputed nor the relationship of lessor and lessee or the rate of rent.

7. Learned counsel for the appellants, in fact, laid great stress on the fact that the conclusion of the learned Single Judge on the requirement of notice under Section 80 of the said Code is misplaced and the absence of notice is a complete embargo to the institution of the suit itself.

8. Learned counsel referred to the provisions of Section 80 of the said Code, which reads as under :-

> **"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 & Kashmir) or against a public officer in respect of any act purporting to be done by such 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;
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> (bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised 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 this 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

& 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).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

9. The submission of learned counsel for the appellants is a dual one. Learned counsel submits that the very institution of the suit by the respondent could not have taken place in the absence of the notice under Section 80 of the said Code and, in any case, against a public officer. Learned counsel sought to emphasize that the respondent herself had arrayed the Secretary of the Ministry of Textiles as respondent No. 2, who is a "public officer and the Textiles Committee also was a" statutory committee to which the benefit of Section 80 of the said Code should be extended.

10. On perusal of the provisions of the said Act, we find that the Textiles Committee is a body corporate having perpetual succession and

common seal with the power to acquire, hold and dispose of property and to contract and to sue or be sued in its own name in terms of the provisions of Section 3 of the said Act. The funds available with the Committee not only consists of Government amounts, but also monies, which may be received by the Committee on account of fee and other charges levied under the said Act or all monies received by way of grant, gift, donation, contribution, transfer or otherwise.

11. Learned counsel for the appellants to support his contentions relied upon a very old judgment in **Cecil Gray, The Secretary and a Member of the Western India Turf Club vs. The Cantonment Committee of Poona,** ILR XXXIV Bombay Series 583, which was delivered on 28.06.1910. It was noted in the said judgment that the Cantonment Committee under the Indian Cantonments Act, 1889 is a quasi body corporate and was a public officer as defined in Section 2(17) of the said Code. The plaint and the pleadings were held to show that the cause of action complained of was one founded in tort. This conclusion was necessary as it was simultaneously concluded that Section 80 of the said Code applies only to actions in tort and has no application to actions in contract.

12. Learned counsel for the appellants referred to the judgment of the Division Bench of Patna High Court in **Secy. of State vs. Amarnath & Ors.,** AIR 1936 Patna 339. The Secretary of State was impleaded as a proforma defendant, but no notice under Section 80 of the said Code was served on him. It was held that notice under Section 80 of the said Code was a condition precedent to the institution of the suit. Some observations have also been made while relying on the judgment of the Privy Council to the effect that no distinction can be made for the requirement of compliance of Section 80 of the said Code dependent on the nature of the suit.

13. Learned counsel referred to the judgment of the Supreme Court in **Bihari Chowdhary & Anr. vs. State of Bihar & Ors.,** AIR 1984 SC 1043 to advance the proposition that no suit can be validly instituted until the expiry of the period of two months next after the notice in writing has been delivered to the authorities in view of the provisions of Section 80 of the said Code.

14. In **Ebrahimbhai vs. State of Maharashtra & Ors.,** AIR 1975

Bombay 13, it was observed that since the main relief prayed for in the suit was against the State, the provisions of Section 80 of the said Code would be attracted. In **Himachal Steel Rerollers and Fabricators vs. The Union of India & Ors.,** AIR 1988 Allahabad 191, it was observed that even in excepted class of cases, the suit had to be filed only with the leave of the court.

15. Learned counsel also relied upon the judgment of the Supreme Court in **Coal Mines Provident Fund Commissioner vs. Ramesh Chander Jha,** AIR 1990 SC 648 where the Coal Mines Provident Fund Commissioner was held to be a *'public officer'*. within the meaning of Section 2(17) of the said Code. A distinction was made in respect of some of the judgments where the concerned officer did not hold his office in a public corporation by virtue of being a government employee and, thus, was held not to be a public officer.

16. In **Union of India vs. B.D. Jhunjhunwala,** AIR 1988 Orissa 267, a notice sent under Section 78–B of the Railways Act was not held to be notice under Section 80 of the said Code.

17. Learned senior counsel for the respondent referred to the judgment of the Supreme Court in **Firm Sardari Lal Vishwa Nath & Ors. vs. Pritam Singh,** AIR 1978 SC 1518 to contend that the present case was one where no notice under Section 80 of the said Code was necessary or under Section 106 of the T.P. Act as there was expiry of lease by efflux of time. The observations in respect of a notice under Section 106 of the T.P. Act to the same effect have been made in **Smt. Shanti Devi vs. Amal Kumar Banerjee,** AIR 1981 SC 1550.

18. We find, in the present case, a technical plea of Section 80 of the said Code being advanced though the appellants have no defence on merits. No doubt, the object of Section 80 of the said Code is to give an advance notice to the Government to avoid unnecessary litigation, but then the statutory provision is a bar by itself unless leave has been granted. It is also true that the present case is one only for possession of a property given on lease for which the period of lease had expired and for damages.

19. The material aspect on account of the factual matrix, in the present case, is that the lease is only with the Textiles Committee, a statutory body under the said Act. In fact, Union of India has neither

been impleaded as the first defendant or the second defendant. The second defendant is the Secretary, Ministry of Textiles. The averments relating to execution of the lease and for possession are only against the first appellant, i.e., the Textiles Committee. The allegation against the second appellant being the Secretary of the Ministry of Textiles is that it has a role to play and the respondent apprehends that some other Government Department may be inducted into the premises. There is, however, no such relief claimed in the prayer clause of the plaint. It is, in fact, the own case of the appellants that the Secretary, Ministry of Textiles has nothing to do with the controversy and has been wrongly impleaded. The prayer, in fact, is for deletion of appellant No. 2 from the array of parties. In our considered view, it is, thus, not open for the appellants to now plead that the impleadment of Secretary, Government of India as a second defendant should be treated as a bar to institution of the suit in view of non-compliance of the provisions of Section 80 of the said Code.

20. We are fortified in our view in view of the judgment of Full Bench of the Bombay High Court in **Chandrakant Govind Deshmukh vs. The State of Maharashtra through Collector, Amravati & Anr.,** AIR 1970 Bombay 301 wherein the judgment of the Calcutta High Court in **Mrs. Maniluxmi Patel & Anr. vs. Hindustan Co-operative Insurance Society Ltd. & Anr.,** AIR 1962 Calcutta 625 has been considered, the expression *"suit against the Government or against a public officer in respect of any act"* used in Section 80 of the said Code has been interpreted to refer to a suit of such a nature in which relief is claimable against the Government or a public officer and it is within the competence of the Government or public officer, as the case may be, to grant the relief. In the present case, it is not even as if the Secretary, Ministry of Textiles (a 'public officer'. within the meaning of Section 2(17) of the said Code and against whom no suit can be instituted in view of the provisions of sub-section (3) of Section 80 of the said Code) is a proforma party as in the case of **Secy. of State vs. Amar Nath's** case (supra). The stand of the appellants is that he should not even be impleaded as a party.

21. Another important aspect, in the present case, is that the relief would suffice against appellant No. 1. No relief is to be granted against appellant No. 2. Thus, even if the suit is dismissed qua appellant No. 2,

the same bar would not arise against appellant No. 1. In **P.B. Shah & Co. & Ors. vs. Chief Executive Officer & Ors.,** AIR 1962 Calcutta 283, the order rejecting the plaint was found to be erroneous on the ground that if the suit was dismissed qua the Corporation of Calcutta, the plaint could not have been rejected as a whole. It has been observed that the suit may become defective for non-joinder of necessary parties and if so, the suit would be dismissed against the said defendants, but it could not be dismissed qua the other defendants on the bar of Section 80 of the said Code. As noticed above, if the present suit is dismissed qua appellant No. 2, it can still be decreed against appellant No. 1, which is, in fact, the only decree required to be passed. A similar view has been taken in **Boyini Kanganna vs. Pedini Ramlingam Subudhi,** AIR 1948 Patna 117 and **Kilaparti Appalanarasamma v. Commissioner, Municipal Council & Anr.,** AIR 1945 Madras 224. A conclusion was reached that the suit should be permitted to proceed in the absence of the notice against such of the parties to whom there is no requirement of serving a notice under Section 80 of the said Code. We find ourselves in agreement with this view more so in the facts of the present case.

22. The view we have formed would, thus, imply that in the absence of a notice under Section 80 of the said Code, a decree could certainly be passed against appellant No. 1. However, the second limb of the submission of learned counsel for the appellants is to be dealt with, that even against appellant No. 1, the absence of notice under Section 80 of the said Code would be fatal. We have already noticed that appellant No. 1 is a body corporate having a perpetual succession and a common seal as constituted under Section 3 of the said Act. It is capable of suing and being sued.

23. In **U.P. State Handloom Corporation Limited & Ors. vs. Prem Sagar Jaiswal,** 2008 (4) AWC 3523, it has been held that co-operative societies and public sector undertakings are conceptually different. The State Handloom Corporation may be a public sector undertaking, but not the State Government Department. It may be 'State' for the purpose of Article 12 of the Constitution of India, but would not answer the description of the Government as understood in law and in the context of Section 80 of the said Code. A similar view has been expressed in **V. Padmanabhan Nair v. Kerala State Electricity Board,** AIR 1989 Kerala 86 and **Kamta Prasad Singh & Anr. vs. The Regional**

Manager, Food Corporation of India & Ors., AIR 1974 Patna 376. A

24. In the latter judgment, it was observed that the Officers of the Food Corporation of India are not in the service or pay of the Government, but of the Corporation and are paid out of the funds of the Corporation and would, thus, not be public officer. B

25. The judgments referred to by learned counsel for the appellants to advance the proposition that prior notice under Section 80 of the said Code is mandatory are on the general principle of law. However, the question is whether Section 80 of the said Code would apply to appellant C No. 1 to which our answer is in the negative. We may also note that in **Ebrahimbhai's** case (supra), it was specifically observed that since the main relief prayed for in the suit by the plaintiff against the State Department, the bar of Section 80 of the said Code would apply. In the present case, the relief can be claimed really only against appellant No. D 1. The present case is also not one like **Coal Mines Provident Fund Commissioner v. Ram Chander Jha's** case (supra) where the Commissioner was appointed by virtue of his office with his expenses being completely met from the Government funds. Similar is the position E in **Cecil Gray's** case (supra). We are, thus, of the considered view that the bar of Section 80 of the said Code would not apply to appellant No. 1 against whom the relief is really claimed and the suit at best could have been dismissed only qua appellant No. 2 against whom, in any case, no F relief is necessary, the lessee being only appellant No. 1 under the lessor / respondent.

26. In the end, we must express our anguish at this fruitless litigation being contested by the appellants. The law under the T.P. Act is well G established. Appellant No. 1 fully knows that if the lease has expired and is not renewed, possession has to be handed over. The parties have not been able to renew the lease on account of lack of agreement over the rent. Appellant No. 1 has no defence on merits, but has dragged on this litigation. We would have expected appellant No. 1, which is constituted H under an Act of the Parliament, to have conducted itself in a more responsible manner. In fact, the hearing of the appeal itself has gone on for more than 45 minutes.

27. We find no merit in the appeal and dismiss the same with costs I of Rs.25,000/- payable to the respondent.