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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

COMMERCIAL FIRST APPEAL NO.25 OF 2026

M/s Harsh Advertising a Proprietary Firm,
thr Mr. Vikram Fatehchandka ...Appellant/Plaintiff

Versus

State of Maharashtra
thr Office of The Section Officer and Ors. ...Respondents

———

PRASAD RAJENDRASING RAJPUT

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Mr. Abhishek Sawant a/w Shrey Fatterpekar, Ameet Mehta, Nirav Marjadi, Sanil Gada, Kushal Harnesha and Ashraf Shaikh i/by Solic Lex for the Appellant/Plaintiff.

None for the Respondents.

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CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

RESERVED ON: 17th SEPTEMBER 2026
PRONOUNCED ON: 27th NOVEMBER 2026

JUDGMENT: (Per G.S. Kulkarni, J.)

1. The present Appeal is filed by the Appellant/Plaintiff against the judgment and order dated 04.04.2026 passed by the City Civil Court at Mazgaon, whereby the suit in question has been dismissed, primarily on the ground that, being a suit filed against the State Government, it ought to have preceded with a mandatory statutory notice issued by the Appellant/Plaintiff, under Section 80(1) of the Civil Procedure Code, 1908 ('**CPC**') to the Respondent/Respondents.

2. The narrow compass of the Appellant/Plaintiff's case in the suit was of a

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proposal being filed by the Appellant/Plaintiff with the Respondent Nos.1 to 3, for the work of beautification and maintenance of the limited portion of the Western Express Highway (centre median verge of Andheri flyover Bridge). The concerned Authority in awarding the said work was the Assistant Engineer-I, Road Development Sub Division No.10.

3. On 17.12.2015, an offer made by the Appellant/Plaintiff was accepted by Respondent No.2. The Appellant/Plaintiff was informed that an undertaking on a stamp paper of Rs.100/- was required to be given if the terms and conditions of the Respondent No.3 were acceptable to the Appellant/Plaintiff.

4. On 13.02.2016, Respondent Nos.2 requested the Appellant/Plaintiff to begin the beautification work as the Hon'ble Prime Minister of India was to visit the city in the last week of January 2016 or first week of February 2016. Accordingly, the Appellant/Plaintiff, contended to have commenced the work of beautifying the patches allotted to it. On 02.02.2016, the Appellant/Plaintiff submitted the requisite undertaking as also the Security Deposit of Rs.50,000/- and Rent of Rs.1,38,000/-, for the first year, as per the terms and conditions of the contract. The Appellant/Plaintiff contended that on 30.03.2016, the Respondents sent a revised contract informing the Appellant/Plaintiff to lessen the number of Pots and Kiosks from the patch further stating that only 1/3rd poles were allotted to the Appellant/Plaintiff. However, no reasons were assigned for reduction of the contract work. The Appellant/Plaintiff was also informed that the entire patch, which was to be utilized for putting up social messages, was raised from 10% to

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25%, which according to the Appellant/Plaintiff caused losses to it. Even in such context no reasons were assigned. In such backdrop it is the Appellant/Plaintiff's case that after the discussions, surplus pots and pole kiosks were alternatively provided as additional space below the Andheri Flyover, outside the Airport Colony and below the Vile Parle Flyover, which according to the Appellant/Plaintiff had far less commercial value. Also the Appellant/Plaintiff was asked to deposit further rent of Rs.90,000/-, which was deposited by the Appellant/Plaintiff.

5. The Appellant/Plaintiff further contended that in such backdrop, on 13.06.2016, the Appellant/Plaintiff was surprised to receive a notice from Respondent No.3 informing that permission granted to the Appellant/Plaintiff to undertake such contractual work was cancelled with immediate effect, as also the billboards installed by the Appellant/Plaintiff be removed within eight days from such notice. The Appellant/Plaintiff, aggrieved of such termination of the contract, instituted the suit in question, *inter alia*, seeking a declaration of termination of the contractual obligation to be illegal, as also claiming damages. The prayers as made in the plaint are required to noted which read thus:

> "39. The Plaintiffs therefore prays:-
>
> (a) That this Hon'ble Court be pleased to quash and set aside the notice dated 13th June, 2016, bearing outward No.MVV-4/RECHISHA/Permission/2625, as the same is illegal, bad-in-law;
>
> (b) That pending the hearing and final disposal of this suit, this Hon'ble Court may be pleased to pass an order directing the Defendants to restore the movables and goods of the Plaintiffs deployed at the said premises, back at the said premises;
>
> (c) That pending the hearing and final disposal of the suit, this Hon'ble Court may be pleased to pass an order of injunction restraining the Defendants, their officers,

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servants, agents and/or person or persons claiming through them or under them from in any manner creating third party rights and/or entering into contracts with third party for the said beautification as the monies of the Plaintiffs are not returned;

OR

(d) In the alternative, this Hon'ble Court be pleased to pass an order directing the Defendants to grant compensation amounting to Rs. 1,28,28,000/- (Rupees One Crore Twenty Eight Lakhs Twenty Eight Thousand only) as per the Particulars of Claim, which was spent towards the fulfillment of the contract alongwith interest at the rate of 18% from the date of the contract till the payment and/or realization;

(e) For interim and ad-interim reliefs in terms of prayer clause (b) and (c) hereinabove;

(f) For such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

6. At this juncture, we need to note that the suit was initially instituted before this Court and was numbered as Commercial Suit No.164 of 2016. Later on, it was transferred to the City Civil Court, Mazgaon and renumbered, as the pecuniary jurisdiction of the City Civil Court stood enhanced.

7. The suit was contested on behalf of Respondent Nos.1 to 3 by filing its written statement. Considering the rival contentions, the learned Trial Judge had framed the following issues:

SR. NO.	POINTS	FINDINGS
1	Whether the suit is bad for want of notice under Section 80 of the CPC?	Affirmative
2	Whether the plaintiff has completed the work of beautification contemplated in the agreement between the parties?	Redundant
3	If so, whether the work carried out was in compliance with the standards set out in the terms conditions and in terms of the suit undertaking provided by the plaintiff?	Redundant
4	Whether the contract was terminated with due notice to the plaintiff, as contended in paragraph 13 of the written statement?	Redundant
5	What order?	As per final order
6	What relief?	As per final order

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8. On the first issue (supra), which was in regard to the non-compliance by the Appellant/Plaintiff of the mandatory provisions of Section 80 of the CPC, as no notice was served on the Respondents prior to the institution of the suit, the learned Trial Judge has held that the suit was bad for want of notice under Section 80 of the CPC and for such reason, dismissed the suit by the impugned judgment and order.

9. A paper book of the proceedings has been placed on record on behalf of the Appellant/Plaintiff which we have perused. We have heard at length learned Counsel for the Appellant/Plaintiff on the Appeal.

10. Learned Counsel for the Appellant/Plaintiff in assailing the impugned judgment and order, has limited submissions. His first submission is that the approach of the learned Trial Judge was not correct, inasmuch as in the facts of the present case, the Trial Judge ought to have held that once the State (Defendant Nos.1 to 3), in the written statement, had not raised an objection in regard to the suit not being maintainable for want of notice under Section 80 of the CPC, the learned Trial Judge ought to have held that Respondent Nos.1 to 3 have waived such notice, and therefore, the suit ought to have been adjudicated on merits. In support of said contention, learned Counsel for the Appellant/Plaintiff has placed reliance on the decision of the Madhya Pradesh High Court in the case of ***Managing Director Corporation Lamta Project Balaghat v. Bhejanlal (dead) through Lrs & Ors.***[1] to contend that the impugned judgment and order deserves

1 2023 SCC OnLine MP 6932

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to be quashed and set aside.

11. Having heard learned Counsel for the Appellant/Plaintiff and having perused the impugned judgment and order, we are not persuaded to accept the contention as urged on behalf of the Appellant/Plaintiff to hold, in the present case, that the learned Trial Judge ought to have recorded a finding in favour of the Appellant/Plaintiff that the Respondent/Defendants had waived the notice under Section 80.

12. To appreciate the contentions as urged on behalf of the Appellant/Plaintiff, at the outset, we note the provisions of Section 80 of the CPC, which reads thus:

> "**80. Notice.** - (1) Save as otherwise provided in sub-section (2), **no suit 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 a railway, the General Manager of that railway;
>
> (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 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,**

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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."

13. It is clear from the conjoint reading of sub-sections (1) and (2) of the Section 80 of CPC that no suit can be filed against the Government or the public officer unless a notice as contemplated under sub-section (1) is served on the Government or the public officer, as the case may be. The exception under sub-section (2) is that a suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done in the official capacity may be instituted, however with the leave of the Court, without issuing notice as required under sub-section (1). Thus, the consequence that a suit of such nature against the Government or public servant cannot be filed unless a notice is served as mandated by sub-section (1). We may usefully refer to a decision rendered about 100 years back by the Privy Council in the case of **Bhagchand Dagdusa Gujrathi & Ors. vs. The Secretary of State for India in Council**[2], in which a five Judge Bench of this Court held that Section 80 of the Civil Procedure

2 1927 SCC OnLine PC 48

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Code, 1908 which requires that no suit shall be brought against the Secretary of State or a public officer for acts done in his official capacity till after two months from a notice in writing is express, explicit and mandatory. The provisions was not materially different. It was held that it applies to all forms of suits including a suit for injunction, even if the relief sought be from imminent and irremediable harm. Mr. Viscount Sumner, J. in such context observed as under:

> ". This section and its predecessor, Section 424 of the Code of 1882, have stood for over forty years, substantially in the same form, as a protection to officials in precise terms against personal responsibility for official action. How far-reaching such protection ought to be is a matter of policy; how far it actually extends is a question of judicial construction.
>
> That this suit is one to which Section 80 applies is common ground; the contest is as to its effect when applied. The plaint avers (para. 17) that "Notice, as required under Section 80 of the Civil Procedure Code, has been given to the Collector." This was given on June 26, 1922, and the act, purporting to have been done by him in his official capacity which was relied on, was the issue of notices for the recovery from the plaintiffs in the suit of the tax referred to in Notification 152. It does not appear that any notice was served on the Secretary of State, though the section requires it, but no independent ground of defence has been raised on this. The plaint proceeds in the same paragraph "as the suit is for an injunction, and as the defendants are about to recover the amount demanded in the notices soon, the suit is filed before the completion of the period of two months." No particulars were given to show that the Collector intended to enforce the orders before August 15, 1922, nor was any satisfactory evidence given to this effect. The plaintiffs appear to have relied simply on the fact that part of the relief claimed in the suit was an injunction.
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> For many years there has been a marked difference of opinion between the High Court of Bombay, on the one hand, and all the other High Courts in India, on the other, as to the true application of Section 80 of the Civil Procedure Code (Act V) of 1908 and of Section 424 of the Code (Act X) of 1877, which it superseded, in the case of suits against officials for acts purporting to be done in discharge of their duties, when part or the whole of the relief claimed is a perpetual injunction. After some differences of opinion among their subordinate Courts, the High Courts of Calcutta, Madras and Allahabad have now agreed in deciding that these sections are to be strictly complied with and are applicable to all forms of action and all kinds of relief, (See the cases of The Secretary of State for India in Council v. Rajlucki Debi (1897) I.L.R. 25 Cal. 239 and Dakshina Ranjan Ghosh v. Omar Chand Oswal (1923) I.L.R. 50 Cal. 992, of Secretary of State v. Kalekhan (1912) I.L.R. 37 Mad. 113 and Koti Reddi v. Subbiah (1918) I.L.R. 41 Mad. 792, F.B. of Bachchu Singh v. The Secretary of State for India in Council (1902) I.L.R 25 All. 187 and Abdul Rahim v. Abdul Rahman (1924) I.L.R. 46 All. 884). In Bombay, on the other hand, in the cases of Secretary of State v. Gajanan Krishnarao (1911) I.L.R. 35 Bom. 362, s.c. 13 Bom. L.R. 273, Noginlal

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Chunilal v. The Official Assignee, Bombay (1912) I.L.R. 37 Bom. 243, s.c. 14 Bom. L.R. 1148 and Secretary of State for India v. Gulam Rasul (1916) I.L.R. 40 Bom, 392, s.c. 18 Bom. L.R. 243, which were suits to restrain by injunction the commission of some official act prejudicial to the plaintiff, it has been intimated or held that, if the immediate result of the act would be to inflict irremediable harm, Section 80 does not compel the plaintiff to wait two months before bringing his suit, though, if nothing is to be apprehended beyond what payment of damages would compensate, the rule is otherwise and the section applies.

As the Code of Civil Procedure is applicable to all the High Courts in India, and as Section 80 is intended to afford a protection (whatever exactly it may be), to all officials, high and low, it is certainly undesirable that a difference of opinion such as this should be left unresolved. What appears to have influenced the learned Judges is, firstly, their assumption as to the practical objects with which it was framed (see Shahebzadee Shahunshah Begum v. Fergusson (1881) I.L.R. 7 Cal. 499; Peary Mohan Das v. D. Weston (1911) 16 C.W.N. 145 and Raghubans Sahai v. Phool Kumari (1905) I.L.R. 32 Cal. 1130.); and, secondly, is the fact that this protection takes the form of providing for a fixed and obligatory interval of two months between the required notice and the commencement of any suit in respect of the officials' action. It is only right to observe in this connection that, under Section 80(2) of the Bombay District Police Act, at any rate, and it may be under other similar provisions, damages would not be recoverable from a public servant, who gave effect in good faith to orders issued with apparent authority. It appears, therefore, to have been due to anxiety not to expose a plaintiff to the risk of the execution of an invalid order without practical redress, that they adopted a construction, which is not in accord with that accepted generally. The point has been put in this way. Section 80 is but a part of a Procedure Code, passed to provide the regulations and machinery, by means of which the Courts may do justice between the parties. A construction which may lead to injustice is one which ought not to be adopted, since it would be repugnant to the whole tenor and purpose of the Act, and the implication of a suitable exception or qualification is, therefore, justifiable and even necessary. In effect, however, their decisions are not altogether reconcilable with one another, either as to the extent to which they go, or as to the reasoning on which they are based. Whether the section should be read as if it ran "no suit other than a suit in which an injunction is claimed," or as if it ran "no suit shall be instituted except when serious or irreparable damage might be occasioned to the plaintiff, if not prevented by the previous grant of an injunction," does not appear to have been settled. In the one case all suits falling within the section could safely anticipate the prescribed delay by the simple device of adding a claim for an injunction at the end of the plaint. In the other it would depend on the view, which a Judge might take of the elastic and indefinite expression "serious or irreparable damage," whether the official should have or should lose the benefit of the statutory interval of two months, nor can this difficulty in the least depend on the intention, which may be speculatively attributed to the Legislature in prescribing any interval at all. To some extent the Bombay decisions purport to rest on the authority of English cases, of which the principal are :- Attorney-General v. Hackney Local Board (1875) L.R. 20 Eq. 626. and Flower v. Local Board of Low Leyton (1877) 5 Ch. D. 347. These were decided respectively upon the Metropolis Management Act, Amendment Act, 1862, and on the Public Health Act, 1875, and turned on the construction then put on the Public Authorities' protection clauses therein contained. The

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> Public Authorities' Protection Act, 1893, has now repealed these clauses, and has adopted another form, to which the authority of Flower's case has not been considered applicable (Harrop v. Ossett Corporation [1898] 1 Ch. 525, Fielding v. Morley Corporation [1899] 1Ch. 1). In the Hackney case Bacon V.C. held that the words "any act done or intended to be done under their Parliamentary powers" could not apply to a nuisance, to which such powers could not in any case extend. The difficulties of this construction are shown in the judgment of Bowen L.J. in Chapman, Morsons & Co. v. Guardians of Auckland Union (1889) 23 Q.B.D. 294, 302., where he endeavours, but without much confidence, to find a less unsatisfactory basis in the words "writ or process," within which a bill for an injunction might not fall. In Flower's case the Court of Appeal held that the Public Health Act, 1875, Section 264, did not extend to a bill in Chancery, but only to an action at law, a consideration inapplicable to Section 80 of the Civil Procedure Code, and assumed that the object of the delay provided by the section was to give time for a tender of amends. .....
>
> On the other hand, the view which has been taken in the other High Courts may be shortly summarised thus. ..... Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which inter alia an injunction is prayed is still "a suit" within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. Considering how long these and similar words have been read throughout most of the Courts In India in their literal sense, it is reasonable to suppose that the section has not been found to work injustice, but, if this is not so, it is a matter to be rectified by an amending Act. Their Lordships think that this reasoning is right. To argue, as the appellants did, that the plaintiffs had a right urgently calling for a remedy, while Section 80 is mere procedure, is fallacious, for Section 80 imposes a statutory and unqualified obligation upon the Court. So, too, the contention that the "act purporting to be done by the Collector in his official capacity, in inspect of which" the suit was begun, was his threatened enforcement of payment is fallacious also, since the illegality, if any, is in the order for recovery of the tax. If that was valid, there was nothing to be restrained. Hence, though the act to be restrained is something apprehended in the future, the act alone "in respect of which" the suit lies, if at all, is the order already completed and issued."

14. In ***Sawai Singhai Nirmal Chand vs. Union of India***[3]**,** the only issue which fell for decision of the Supreme Court was whether Section 80 of the Code applies to a suit instituted in pursuance of the provisions of Order 21 Rule 63 and in such context, it was held that in considering the question whether the suit falls within the purview of Section 80 of the Code, it was held that the the material words used in Section 80 are unambiguous; they are express, explicit and mandatory and that it

3 AIR 1966 SC 1068

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would be difficult to except from their operation any proceeding which would be regarded as a suit against the Government. While dealing with the applicability of Section 80, it was held that the question to ask is whether it was a suit against the Government or not? If it is, then Section 80 by the very force of its words must apply. The relevant extract of the said decision is required to be noted, which reads thus:

> "6. In considering the question whether this suit falls within the purview of Section 80 of the Code, it is necessary to read the relevant portion of Section 80 itself; it provides, inter alia, that no suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to or left at the office of the authorities specified by clauses (a), (b) & (c); and it further provides that such notice shall state 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.
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> 7. It would be noticed that the material words used in s. 80 are wide and unambiguous; they are "express, explicit and mandatory", and it would be difficult to except from their operation any proceeding which can be regarded as a suit against the Government. While dealing with the applicability of s. 80, the question to ask is: is it a suit against the Government or not? If it is, then Section 80 by the very force of its words must apply. We have already referred to the provisions of Order 21 Rule 63. In terms, the said rule provides that the order passed in the investigation proceedings shall be conclusive, subject to the result of a suit which the aggrieved party may institute. So, there can be no doubt that the proceedings which the aggrieved party commences by virtue of the provisions of Order 21 Rule 63, are intended to be a suit. In fact, the present proceedings have commenced with the presentation of a plaint as required by Section 26 of the Code; and the very article under which the plea of limitation is raised against the appellant shows that it is plea in respect of the institution of a suit beyond the period of limitation. It is thus plain that what we are dealing with is a suit and that it is a suit against the Union of India. Therefore, on a fair and reasonable construction of Section 80. we do not see how it is possible to hold that a suit filed under Order 21 Rule 63 can be taken out of the provisions of Section 80 of the Code. If we were to accede to the argument urged before us by Mr. Karkhanis for the respondent, we would, in substance, have to add certain words of exception in Section 80 itself, and that plainly is not permissible.
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> ....
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> 13. It will be recalled that prior to the decision of the Privy Council in Bhagchand Dagadusa & Others vs. Secretary of State for India in Council and others(1), there was a sharp difference of opinion among the Indian High Courts on the question as to whether Section 80 applied to suits where injunction was claimed. The Privy Council held that Section 80 applied "to all forms of suit and whatever the relief sought, including a suit for an injunction." In dealing with

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> the question about the construction of Section 80, the Privy Council took notice of the fact that some of the decisions which attempted to exclude from the purview of Section 80 suits for injunction, were influenced by the "assumption as to the practical objects with which it was framed". They also proceeded on the basis that Section 80 was a rule of procedure and that any construction which may lead to injustice is one which ought not be adopted, since it would be repugnant to the notion of justice. Having noticed these grounds on which an attempt was judicially made to except from the purview of Section 80 suits, for instance, in which injunction was claimed, Viscount Sumner, who spoke for the Privy Council, observed that "the Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words", and he added that "section 80 is express, explicit and mandatory, and it admits of no implications or exceptions". That is why it was held that a suit in which an injunction is prayed, is still a suit within the words of the section, and to read any qualification into it is an encroachment on the function of legislation. In our opinion, these observations apply with equal force in dealing with the question as to whether a suit under Order 21 Rule 63 is outside the purview of Section 80 of the code."
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> (emphasis supplied)

15. The Supreme Court in the case of ***State of A.P. and Ors. v. Pioneer Builders A.P.***[4] has held that the said provision imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with Section 80, the suit is not maintainable. In making these observations the Court has referred to the decisions in the case of ***Bhagchand Dagadusa v. Secy. Of State of India for India in Council***[5], ***Sawai Singhai Nirmal Chand v. Union of India***[6] and ***Bihari Chowdhary v. State of Bihar***[7]. The Supreme Court thus held that service of notice under Section 80 was a condition precedent, for institution of a suit against the Government or a public officer. It was further held that the legislative intent of Section 80 is to give the Government sufficient notice of the suit which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. It was further held by the

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4 (2006) 12 SCC 119
5 AIR 1927 PC 176
6 AIR 1966 SC 1068
7 (1984) 2 SCC 627

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Supreme Court that on conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, however, it is held that this can be done only with the leave of the Court and that leave of the Court is a condition precedent and such leave must precede the institution of a suit without serving notice. It was held that even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. It was further held that a restriction on the exercise of the power by the Court has been imposed, namely, that the Court cannot grant relief, whether interim or otherwise, except after giving the Government or public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit. The relevant observations as made by the Court are required to be noted, which read thus:

> "14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The section imposes a statutory and unqualified obligation upon the Court and in the absence of compliance with Section 80, the suit is not maintainable. (See Bhagchand Dagadusa v. Secy. of State for India in Council; Sawai Singhai Nirmal Chand v. Union of India and Bihari Chowdhary v. State of Bihar.) The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in Bihari Chowdhary the object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.
>
> "15. It seems that the provision did not achieve the desired results inasmuch as it is a

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matter of common experience that hardly any matter is settled by the Government or the public officer concerned by making use of the opportunity afforded by the said provisions. In most of the cases, notice given under Section 80 remains unanswered. In its 14th Report (reiterated in the 27th and 54th Reports), the Law Commission, while noting that the provisions of this section had worked a great hardship in a large number of cases where immediate relief by way of injunction against the Government or a public officer was necessary in the interests of justice, had recommended omission of the section. However, the Joint Committee of Parliament, to which the Amendment Bill, 1974 was referred, did not agree with the Law Commission and recommended retention of Section 80 with necessary modifications/relaxations.

16. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment) Act, 1976 the existing Section 80 was renumbered as Section 80(1) and sub-sections (2) and (3) were inserted with effect from 1-2-1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of sub-section (1) and empowers the court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso to the said sub-section enjoins that in case the court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1).

17. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the court. Leave of the court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given, yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the court has been imposed, namely, the court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit."

16. On the touchstone of what has been held by the Supreme Court, we deal with the contention as urged on behalf of the Appellant/Plaintiff that a finding ought to have been recorded its favour, more particularly, because Respondent Nos.1 to 3 did not raise a specific objection in that regard in the written statement. In our opinion, mere non-raising an objection would not be of any consequence inasmuch as the first statutory threshold itself was not been crossed by the Appellant/Plaintiff i.e., the mandatory compliance with Section 80 by seeking

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leave of the Court to institute the suit on the ground of urgency, thereby dispensing with the notice under Section 80(1) of the CPC, as categorically held by the Supreme Court in paragraph 17 of the aforesaid decision. The contention urged on behalf of the Appellant/Plaintiff, in fact, militates against the clear position in law as read by the Courts that Section 80 imposes a statutory and unqualified obligation upon the Court, that in the absence of compliance of the mandate of Section 80, the suit itself is not maintainable. Such defect goes to the root of the institution, and it is such obligation which is cast on the Court in examining whether such mandatory compliance of the provisions of law has been adhered by the Plaintiff.

17. In the present case admittedly the Appellant/Plaintiff had not sought any urgent relief from the Court to institute a suit even for which leave would be required to be obtained from the Court. Thus, merely because Respondent Nos.1 to 3 did not raise any plea in the written statement, that the suit was bad for want of notice under Section 80 of the CPC would not extinguish and / or dispense with the obligation on the Court to examine the mandatory compliance of Section 80(1) of the CPC, as held in the case of ***State of A.P. and Ors.*** (supra) that the Court needs to examine compliance of the requirements of Section 80. Thus, the learned Trial Judge is not incorrect in answering Issue No.1 in the affirmative so as to hold that the suit itself was not maintainable for want of the notice being issued to the Respondent No.1. In view of the aforesaid settled principle of law as laid down by the Supreme Court, the decision as relied on behalf of the Appellant/Plaintiff in the case ***Managing Director Corporation Lamta Project Balaghat*** (supra) would not

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assist the Appellant/Plaintiff inasmuch as, the present case is not a case where, in an express manner, the requirement of Section 80 of the CPC has been waived by the defendant. To dispense with such requirement, there needs to be an express waiver of the requirement of Section 80 at the time of institution of the suit, as the mandate of Section 80 operates in regard to the institution of the suit. Any other interpretation would render sub-sections (1) and (2) of Section 80 as nugatory. The decision of the learned Single Judge of the High Court of Madhya Pradesh in the case of ***Managing Director Corporation Lamta Project Balaghat*** (supra) would not assist the Appellant/Plaintiff as the said decision does not take any different view than what has been held by the Supreme Court in the case of ***State of A.P. and Ors.*** (supra).

18. For the aforesaid reasons, we are of the clear opinion that no interference is called for in the impugned judgment and order. The Appeal is accordingly dismissed. No costs.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**

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