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(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration T.A.No. 1202 of 1986.

Khatai Ram . . . vs. . . Union of India and another.

Hon'ble Justice Shri G.Ramanujam, Vice Chairman.

Hon'ble Shri Ajay Johri, Member(A).

(delivered by Hon. G.Ramanujam, V.C.)

This matter was originally filed as Suit No. 193 of 1984 on the file of Hawali Munsif, Varanasi. After the constitution of the Central Administrative Tribunals the matter was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act), and was numbered as Registration T.A.No. 1202 of 1986.

When the case was taken up for disposal today, learned counsel appearing for the respondents (defendants in the suit) raised a preliminary objection that the suit is premature and, therefore, it should be dismissed straightaway. The contention urged by the learned counsel for the respondents is that the suit has been filed without issue of notice under Section 80 C.P.C. and that even if the court has permitted the filing

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of the suit without the issue of notice under Section 80 C.P.C., since the court has not thought fit to issue an interim injunction pending the suit, the plaint should have been returned by the court below directing the plaintiff to duly comply with Section 80 C.P.C. According to the learned counsel, Section 80 C.P.C. is a mandatory provision and a suit against the Union of India or a State Government could be maintained only after due compliance with that Section.

In this case it is not disputed that Section 80 C.P.C. notice has not been preceded the filing of the suit. The applicant as a plaintiff approached the court by means of the suit for permanent injunction and he also filed an application for an interim injunction pending the disposal of the suit. The court after considering the merits of the case did not grant any interim injunction and the application for interim injunction was dismissed. However, the court has allowed the continuation of the suit without reference to the proviso to subsection(2) of Section 80 C.P.C. On these facts the question is whether the suit could be maintained as it is, without necessity on the plaintiff of complying with Sec. 80 C.P.C. Sub-section (2) of Section 80, C.P.C. is to the following effect:-

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"(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: "

The proviso to sub-section (2) of Section 80 C.P.C. is excerpted below:-

"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). "

am/ The said proviso contemplates that wherever the Court finds that no case is made out for interim injunction or any other interim ^{relief} order, the plaint has to be returned for presentation after

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complying with Section 80, C.P.C. The object of the said proviso appears to be that wherever the plaint has been entertained without compliance with Section 80 C.P.C. the same has to be returned for due compliance with Section 80 C.P.C. notwithstanding entertaining of the plaint at the earlier stage under Section 80 (2).

In this case admittedly the plaintiff has not given ^a notice under Sec. 80 C.P.C. prior to the filing of the suit, since he wanted to have an interim injunction pending disposal of the suit and the issue of a Section 80 notice would have prevented him from getting an interim order from the court. It is not in dispute that in this case after dealing with the merits of the case the Court was not inclined to grant the interim injunction sought for by the plaintiff and the Court has dismissed the application for interim orders. As soon as it was found by the court that the plaintiff could not establish a case for interim injunction, the Court should have returned the plaint for presentation ^{to it} after compliance with Section 80 C.P.C. That has not been done in this case and the suit was allowed to continue till it was transferred to this Tribunal. Though the trial court did not return the plaint for compliance with Section 80 C.P.C. immediately after it found that no case was made out for the grant of interim injunction by the plaintiff,

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yet we cannot direct the return of the plaint *now* with a direction to the plaintiff to comply with Section 80 C.P.C. for the reason that the filing of an application before the Tribunal is not conditional upon the compliance of Sec. 80, C.P.C. Since the suit is to be treated as an application under Section 19 or as a transferred proceedings under Section 29 of the Act, pre-issue of a notice under Sec. 80 CPC. is not necessary. Therefore, even if the plaint is now directed to be returned to the applicant, he can present the same to the Tribunal without issuing a notice under Sec. 80 C.P.C. In the peculiar circumstances of this case, we are not directing the return of the plaint for the mere reason that proviso to sub-section (2) of Section 80 C.P.C. has not been followed by the Civil Court.

We, therefore, reject the preliminary objection raised by the learned counsel for the respondents (defendants in the suit) and direct the matter to be posted for final disposal on 8.4.1987.

Vice Chairman.
February 20, 1987.
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Member (A).