

Dharam Singh and another *v.* Addu Ram and others (J. V. Gupta J.)

Before : J. V. Gupta, J.

THE STATE OF PUNJAB THROUGH CHIEF SECRETARY,
PUNJAB,—Petitioner.

versus

TRIPTA RANI AND ANOTHER,—Respondents.

Civil Revision No. 1802 of 1988.

18th August, 1989.

Code of Civil Procedure (V of 1908) S. 79—Suit against a State—Impleading State as Party—Whether State is to be sued through its Chief Secretary.

Held, that section 79, CPC, does not provide that the State of Punjab is to be sued through the Chief Secretary. It only provides that in a suit against the State Government, the authority to be named as defendant will be the State. Admittedly, the suit related to the Health Department and, therefore, the State of Punjab should have been served through the Health Secretary. In these circumstances, the *ex parte* proceedings were liable to be set aside.

(Para 5).

Petition Under Section 115 C.P.C. for revision of the order of the Court of Shri R. S. Sachdeva, P.C.S., Sub-Judge, 1st Class, Mansa dated 12th May, 1988 dismissing the application U/o 9, Rule 7 C.P.C. filed by the G.P./applicant.

Claim : Suit for Forma Pauperies.

Application U/o 9, Rule 7 C.P.C.

Claim in Revision : For reversal of the order of the Lower Court.

Anil Malhotra, Advocate, for the Petitioner.

Rakesh Garg, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) The plaintiff (respondent) filed the suit for *forma pauperies* for recovery of certain amount. The State of Punjab was sued through the Chief Secretary to Government of Punjab. When summons were issued for December 10, 1986, and the same were served on the Chief Secretary, a letter was written to the Court dated November 18, 1986, that since the detailed particulars of the

case have not been made available, no written statement could be filed. Moreover, the case relates to the Health Department and unless the particulars are made available, the Health Department could not be directed to file the written statement. In spite of the said letter dated November 18, 1986, the Court proceeded *ex parte* against the State of Punjab on December 10, 1986. However, meanwhile the suit was being contested by defendant No. 2. When an application was filed for setting aside the *ex parte* proceedings on behalf of the State of Punjab, the trial Court dismissed the same on the ground that under section 79, Civil Procedure Code, the State of Punjab is to be sued through the Chief Secretary and consequently, dismissed the application,—*vide* impugned order dated May 12, 1988.

(2) Learned counsel for the petitioner submitted that the trial Court has acted illegally and with material irregularity in the exercise of its jurisdiction. Since the copy of the plaint was never given along with summons as required under Order 5, Rule 2, C.P.C., the State of Punjab could not be proceeded *ex parte*. Moreover, the case related to the Health Department and, therefore, the State of Punjab should have been sued through the Secretary, Health Department and not through the Chief Secretary.

(3) On the other hand, learned counsel for the plaintiff-respondent, submitted that already notice under section 80, Civil Procedure Code, was given to the State Government and, therefore, they were made aware of the particulars much earlier. It was for the State Government to come and plead on that basis. Moreover, argued the learned counsel, the application was filed after more than 1½ years and was, thus, belated one.

(4) After hearing the learned counsel for the parties, I am of the considered view that the whole approach of the trial Court was wrong and illegal. It is not a case where the State of Punjab has been sleeping over the matter. Immediately on the receipt of the summons for December 10, 1986, letter dated November 18, 1986, was written to the Court for supplying the necessary particulars. Since the case related to the Health Department. No such particulars were ever furnished by the plaintiff in reply thereto.

(5) Apart from that, section 79, CPC, does not provide that the State of Punjab is to be sued through the Chief Secretary. It only provides that in a suit against the State Government, the authority to be named as defendant will be the State. Admittedly, the suit

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related to the Health Department and, therefore, the State of Punjab should have been served through the Health Secretary. In these circumstances, the *ex parte* proceedings were liable to be set aside.

(6) As regards the delay in filing the application for setting aside the *ex parte* order, the defendant could be burdened with costs. Consequently, this petition succeeds; the impugned order is set aside and the application under Order 9, Rule 7, Civil Procedure Code, for setting aside the *ex parte* proceedings, is allowed on payment of Rs. 200 as costs.

(7) Since at the time of motion hearing further proceedings were stayed in the trial Court, parties are directed to appear on September 12, 1989, on which date the costs will be paid and the written statement will be filed.

(8) Since the suit was filed in January, 1986, in order to expedite the hearing of the same, it is directed that the parties will lead their evidence at their own responsibility through dasti summons may be given, if so desired, as contemplated under Order 16, Rule 7-A, Civil Procedure Code.

S.C.K.

Before : S. S. Grewal, J.

MUKHTIAR SINGH ALIAS MUKHI,—*Petitioner.*

versus

INSPECTOR CUSTOMS, FEROZEPUR,—*Respondent.*

Criminal Misc. No. 2325 of 1989.

October 3rd, 1989.

Criminal Procedure Code S. 200 (a), 202, 482—Narcotic Drugs and Psychotropic Substance Act, 1985—Complaint filed by Customs Officer before Judicial Magistrate—Offence triable by Court of Session—Powers of Magistrate.

Held, that the fact remains that once a case is triable by a Court of Session, the Magistrate has no power, whatsoever, to decide whether the case is triable by the Court of Sessions, or not. It is within the exclusive jurisdiction of the Sessions Court to decide this question, and, to discharge the accused at a later stage, as contemplated under Section 227 of the Code. In this view of the matter,