

Order below Exh-1

1. Heard, learned advocate for the plaintiff Shri M.Y. Malek. Present suit is presented today by learned advocate of the plaintiff. The present suit is filed by the plaintiff against the State Government through, Collector Shri Kheda along with Surpanch Shri Laxmanbhai Vajesinh Rathod, Aboch Gram Panchayat and against Talati-Cum-Mantri, Aboch Gram Panchayat.
2. The present suit has been filed by the plaintiff for seeking declaration and permanent injunction against the defendants. Looking to the contents of the present suit, the suit filed against the State Government. Therefore, it is necessary to served two months mandatory notice as per Section- 80 of the Code of Civil Procedure, 1908. Learned advocate for the plaintiff has argued that, on 11.10.2018 notice has been given as per Section- 80 of the Code of Civil Procedure, 1908, that was produced by Mark-3/24. However, further stated that, at that time issues were resolved. Now, before two days ago, Surpanch trying to snatch away the possession of the plaintiff. Therefore, it is necessary to file the present suit.

3. On perusing the present suit, it appears that, suit is filed against the State Government, therefore, it is necessary to serve two months prior notice before filing the suit. However, here in this case, notice was given on 11.10.2018 and suit is presented today. Therefore, here at this stage, this Court do not founds that notice valid as per Section- 80 of Code of Civil Procedure, 1908. Here at this stage, it is necessary to go through the **Judgment of Hon'ble Supreme Court of India in Salem Advocate Bar Association Vs. Union of India, 2005 6 SCC 34**, it was held in this case that, *Section- 80(1) of the Code requires prior notice of two months to be served on the Government as a condition for filing a suit except when there is urgency for interim order in which case the Court may not insist on the rigid rule of prior notice. The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the litigation. The object also is to curtail the area of dispute and controversy. Similar provisions also exist in various other legislations as well. Wherever the statutory provision requires service of notice as a condition*

precedent of filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The Governments, Government departments or statutory authorities are defendants in large number of suits pending in various courts in the country.

4. On plain reading of above principle laid down by the Hon'ble Supreme Court, it is clear that, before filing of the suit against the State Government two months prior notice is mandatory. However, here in this case on hand, notice has been served to the Government on 11.10.2018 and that, cause of action was resolved as per the says of the plaintiff. However, now at present plaintiff having the new cause of action for which plaintiff do not make compliance of Section- 80 of the Code of Civil Procedure, 1908. Therefore, here at this stage, this Court do not finds the present suit fixed for the institution. Plaintiff must fulfilling the condition requisite as per the Section- 80 of the Code of Civil Procedure, 1908 and then after, come before the Court.

Therefore, at this stage, this Court come to the conclusion that, the present suit must to be return to the plaintiff as per the Order- 7 Rule- 10(1) of the Code of Civil Procedure for fulfilling the prerequisite condition. Therefore, after considering the plaint, as well as, principle laid down by the Apex Court and argument advanced by the learned advocate pass the necessary order below.

Order

1. The present plaint preferred by the plaintiff is hereby order to be returned as per the Order- 7 Rule- 10(1) of the Code of Civil Procedure, 1908.
2. Plaintiff must come after fulfilling the prerequisite condition of Section- 80 of the Code of Civil Procedure, 1908.
3. Registry is directed to return the original plaint along with the accompanied document thereof and directed to keep one copy for the Court records.
4. No order as to cost.

Pronounced and signed in open Court on 3th day, month of
March, in the year, 2020.

Place : Kapadwanj
Date :-03/03/2020.
Ritesh

(Atul Mohanbhai Vasava)
Principal Senior Civil Judge,
Kapadwanj
Judge Code No. GJ01117