

ORDER ON IA U/s 80(2) OF CPC

1. Heard on I.A.No.1.
2. The plaintiff has filed suit for recovery for sum of Rs.4,70,000/- at the rate of interest 18% p.a. Further he has filed I.A.No.1 under Section 80(2) of C.P.C praying this Court to dispense the statutory period before instituting the suit.
3. Perused the affidavit. It is deposed that he has filed suit for recovery of money along with the documents and it is learned by him that defendant no.3 i.e., Accountant General is ready to release the retirement benefit of defendant no.1. If the defendant no.1 succeeds in his attempt then it would be difficult for him to recover the said amount. Hence in view of this urgency he has sought the leave of the Court to give him permission to institute the suit dispensing the rule laid down in Section 80 of CPC.
4. On perusal of the facts of the case and in view of existing circumstance narrated out in the affidavit, this Court is of the opinion that plaintiff has made out sufficient grounds to dispense issuance of notice and permit him to file the case. Hence in view of the same this Court proceed to pass the following ;

ORDER

The I.A.No.1 filed U/s 80(2) of CPC stands allowed.

The plaintiff is permitted to institute the suit for the relief against the defendants. Thus leave granted.

(Santhosh Srivastava)
Prl. Civil Judge and JMFC,
Arsikere.

ORDER ON I.A.NO.2

1. The I.A.No.2 is filed under Order 38 Rule 5 of CPC praying this Court to issue direction to the Accountant General i.e., the defendant no.3 to attach Rs.4,80,000/- i.e., retirement benefit belongs to defendant no.1.
2. The plaintiff in the affidavit submits that he has filed suit for recovery of money against the defendant no.1 because he had obtained loan from him on dated : 05-12-2019 to the sum of Rs.4,70,000/-and thus executed promissory note in favour of him along with consideration receipt and agreed to return the amount within 1 year. Further it is learnt that defendant no.1 is about to withdraw all the retirement benefits from the defendant no.3. Hence at this stage the plaintiff prays that to issue direction to the

Accountant General i.e., defendant no.3 to attach Rs.4,80,000/- retirement benefit of defendant no.1.

3. The learned counsel for the plaintiff has also invited the attention of one Judgment of **Hon'ble High Court of Madras** i.e., **M. Kannasamy V/s I.G. Manoharan, C.R.P (pd) md. No.1378/2009** and canvassed his argument stating that at this stage appropriate relief can be granted by the Court.
4. This Court has perused the case papers and gone through the citation furnish by the learned Counsel for the plaintiff. In the said Judgment given by the learned counsel for the plaintiff Para no.4 of the said Judgment is simple, loud and clear that the trial Court after appreciating the contention of both the parties was pleased to pass an order of attachment. This Court further would like to mention that the suit is filed by impleading the Government parties and the plaintiff is granted liberty to file the suit by dispensing issuance of notice Under Section 80 of CPC. In such circumstances this Court cannot grant any ex parte relief or any other reliefs as sought by the plaintiff without giving opportunity to the other side. As the Section 80(2) is very clear on that point. Hence this Court proceed to pass the following ;

ORDER

***Issue notice to the defendants
upon I.A no.2 filed Under Order 38
Rule 5 along with the suit summons
expediately to the defendants
returnable by 29-06-2020.***

(Santhosh Srivastava)
Prl. Civil Judge and JMFC,
Arsikere.