

ORDER ON I.A. NO.III

The instant application has been filed by the counsel for the plaintiff to exempt the plaintiff from issuing statutory notice under Section 80(1) of CPC, to register and to grant interim order as prayed for. Section 80(2) of CPC clearly provides that when urgent or immediate relief is sought against the Government or public officer, the suit may be instituted with a leave of the Court without serving notice as per Section 80(1). But, the Court shall not grant relief in the suit, whether interim or otherwise, accept after giving the Government or the public officer, a reasonable opportunity to show cause in respect of the relief prayed in the suit. In view of the above provision of law this Court can dispense with notice under Section 80(1) of CPC for institution of suit and the Court cannot grant interim relief. Accordingly, the notice under Section 80(1) is hereby dispensed or institution of the suit against the Government by allowing I.A.No.III in part.

EXPARTE ORDER ON I.A. NO.II

The plaintiffs have filed this suit for relief of permanent injunction. Along with the suit, the plaintiffs have also filed I.A. No.II under Order 39 Rule 1 and 2 R/w Section 151 of C.P.C., seeking exparte temporary injunction against defendants No.2 and 3.

I have perused the plaint, I.A.No.II, supporting affidavit and the documents placed before the Court by the plaintiffs. On perusal of the records, it appears that it is just and necessary to hear the defendants No.2 and 3 before passing any restraining order on I.A.No.II. The plaintiff has issued notice under Section 80(1) of CPC dated 07-08-2019 and the same was served on the defendants No.2 and 3 on 13-08-2019 and 09-08-2019. As per Section 80(1) of CPC no suit shall be instituted against the Government or public officer until expiration of two months next after notice in writing has been delivered to the office of the concerned. In the instant case the plaintiff has not waited for expiration of two months from the date of

service of notice. The plaintiff has opted to file I.A.No.III for dispensation of notice under Section 80(2) of CPC. The said provision of law clearly provides that the Court shall not grant relief in the suit, whether interim or otherwise, except after giving the Government or the public officer, a reasonable opportunity to show cause in respect of the relief prayed in the suit. In the present case this Court is barred from passing any order against the Government without giving an opportunity of being heard. I am of the opinion that the delay in passing restraining order is not going to defeat the purpose of filing the present suit. Therefore, the Court proceeds for the following:

ORDER

Issue suit summons and notice of I.A.No.IV to the defendants and issue emergent notice of I.A.No.II to the defendants No.2 and 3.

Returnable by 27-09-2019..

**Prl. Civil Judge & JMFC
Kundapura.**