

Regular Civil Suit No. 05 of 2014.
Abhay Kishor Vs. Gramvikas Adhikari
Order Below Exh.14.

1. The defendant has moved this application under O.7 R.11 of Civil Procedure Code for amendment.

2. The plaintiff pleads that suit is for compensation and therefore, the plaintiff should have issued a notice under Section 180(2) of Bombay Village Panchayat Act (Hereinafter to be referred as "The Act" for the sake of brevity) and after lapse of two months, the suit should have been filed. But without completing two months, the plaintiff has filed this suit which is pre-mature and not tenable, therefore, plaint may be rejected.

3. The plaintiff has given say below Exh.15 and contended that he issued notice on 06/01/2014 to defendant. But defendant failed to reply the same. Then on 17/01/2014, this suit came to be filed alongwith an application for dispensed-with the notice period of two months. This Court, without passing any order on the application, took cognizance and issued suit summons to the defendant. Thereafter, the Court has passed an order below Exh.8 and rejected the application. On the next day, the Court realised its mistake that

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the suit summons was already issued and therefore, the Court again passed an order and allowed the application thereby dispensed-with the notice period of two months. During the pendency of application (Exh.8), the defendant has filed present application for rejection of the plaint. As this Court has dispensed-with the stipulated period, this application is not tenable and liable to be rejected.

4. In view of rival pleadings, the following points arise for determination to which findings recorded with reasons which are as under.

Points		Findings
1]	Whether plaint is liable to be rejected ?	In the negative.
3]	What order ?	Application is allowed.

REASONS

As to Point Nos. 1 and 2 :

5. Learned Advocate Shri. P.P. Kochar for plaintiff argued that this Court has already dispensed-with the stipulated period as per order below Exh.8 on 25/03/2014. Hence, this application is not tenable and liable to be rejected.

6. Per-contra, learned Advocate Shri. V.T. Kulkarni for defendant argued that order dated 25/03/2014 is not sustainable in law as the said application was already rejected by this Court. The plaintiff must have been filed the suit after lapse of two months from the date of issuance of notice and same is not complied as per Section 180(2) of the Act. Hence, suit is pre-mature, not tenable and liable to be rejected.

4.

7. Having heard both the sides, I have gone through the entire suit. It appears from the record that plaintiff issued notice on 06/01/2014 to defendant. Thereafter, on 17/01/2014, the plaintiff has filed this suit alongwith application (Exh.8) for dispensed-with the stipulated period as per Section 180(2) of the Act. Under such circumstances, my learned Predecessor should have passed an order below Exh.8. In inadvertently, my learned Predecessor passed an order below Exh.1 and issued suit summons to the defendant. Then on 03/03/2014, my learned Predecessor passed an order below Exh.8 that notice under Section 180(2) of the Act is necessary and therefore, application came to be rejected. Then on the next date i.e. on 25/03/2014, my learned Predecessor realised that suit summons was already issued to the defendant and two months have already expired. Hence, by taking reports of Section 51 of the Code of Civil Procedure, my learned Predecessor pleased to allow the application with effect from 17/01/2014. Thus, my learned Predecessor already dispensed-with the stipulated period as required under Section 180(2) of the Act. The defendant has not challenged this order either before Hon'ble Appellate Court or Hon'ble High Court. Hence, said order dated 25/03/2014 is binding on both the parties. Once this order is in force, it means that the Court has dispensed-with two months period of notice. Hence, the defendant has no locus-standi to say that as two months period is not dispensed-with, the application has to be rejected.

8. Considering the above facts and circumstances, I hold that my learned Predecessor has already dispensed-with the stipulated period and therefore, on that count only, the plaint cannot be rejected. Hence, point no. 1 is answered accordingly and following order is passed.

5.

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ORDER

1. Application (Exh.14) under O.7 R.11 of Civil Procedure Code is rejected with costs.

Date : 03/03/2015.

Sd/-
(Sanjay B. Dige)
Civil Judge Junior Division,
Pimpalgaon (B.)