

R.C.S. No.765/2023.
Kusum @ Balutai Jagtap Vs.
Mangal Jagtap.
(CNR No.-MHST05-004875-2023)

ORDER BELOW EXH.26.

1. Defendant No.1 has moved the present application for rejection of the plaint by taking recourse of Order 7 Rule 11 of the Code of Civil Procedure, 1908 contending therein that, the plaintiff has filed suit against the state and as such pre-suit statutory notice as required under Section 80 of the Code of Civil Procedure, 1908 is not complied by the plaintiff. It is contended that, the notice sent by the plaintiff is not in the requisite format and as such there is no compliance of Section 80 of the Code of Civil Procedure, 1908. As such suit is barred and liable to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

2. On present application the plaintiff has taken strong objection that it is false that, there is no compliance of notice under Section 80 of the Code of Civil Procedure, 1908. It is contended that, the requisite notice is given to the State on 10/12/2022. As such the application being false one deserves to be rejected.

3. Contention of the defendant No.1 as it appears from the pleading is to the effect that, the plaintiff has not complied

the statutory provision of pre-suit notice under Section 80 which is to be given to the State and as such it cannot be said that there was compliance of notice under Section 80 of the Code of Civil Procedure, 1908.

4. From the rival contention of parties following points arise for my determination to which I have recorded my findings thereon with reasons to follow.

Sr.No.	POINTS	FINDINGS
1.	Whether in the facts and circumstances it can be said ... In the negative. that, there is non compliance of notice under Section 80 of the Code of Civil Procedure, 1908 in this suit ?	
2.	What order ?	... As per final order.

REASONS

AS TO POINT NOS. 1 AND 2 :-

5. Contention of defendant No.1 is to the effect that in present suit the State is made party but the plaintiff has failed to give the notice under Section 80 of the Code of Civil Procedure, 1908 in proper format to the defendant State and as such there is no compliance of Section 80 notice in this suit so, the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

6. Perused the documents filed by the plaintiff vide list Exh.3. The plaintiff has filed O.C. of notice given to the

defendant State vide list Exh.3/3. On perusal of said notice it appears that it is addressed to defendant No.5, 4 and 2. On perusal of said notice it appears that, in the said notice the name description and residence of the plaintiff has been given and even the relief claimed by the plaintiff has been substantially indicated. As such it cannot be said that, the notice issued by the plaintiff is not within the requisite format. Further clause 3 of Section 80 contends that, No suit instituted against the government or against the public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed by reason of any error or defect in the notice if the name description and residence of the plaintiff for enabling his proper identification to the public officer and notice is delivered or left at the office to appropriate authority and also in the said notice the cause of action and the relief claimed by the plaintiff had been substantially indicated. Thus, in present suit there appears compliance of Section 80 pre- suit notice upon the defendant State. Consequently, I answer point no.1 in the negative and in response to point no.2 pass the following order.

ORDER

Application is rejected.

Date:- 08/12/2023.
Place:-Karad.

(Smt.S.Y.Deshmukh)
2nd Jt. Civil Judge, Sr.Division, Karad.