

**Order below Exh.34 in RCS No.23/2026****CNR No.MHST180000332026**

This application is filed by the defendants No.4 and 5 under Order VII Rule 10 of the Code of Civil Procedure, 1908.

02. It is contended by defendants No.4 and 5 that plaintiffs have filed this suit for declaration and perpetual injunction. Defendants No.1 to 3 are the Government Officers. By filing an application on Exh.5 which is for temporary injunction, the relief is claimed against the defendant No.3, who is the Tahsildar. Prior to the filing of this suit, plaintiffs have issued a notice under Section 80 of the CPC on 16.12.2025. The notice has been served on defendants No.1 to 3, of which, the receipts are filed on record by the plaintiffs themselves. The main claim of the plaintiffs is in respect of the judgments passed by the Tahsildar and Sub-Divisional Officer, to be not binding on them. The notice under Section 80(1) is mandatory in nature. After issuing the notice, it is also mandatory to wait for a period of 60 days. Unless, the said period is expired, no suit can be filed against the Government Officers. Hence, it is contended by the defendants that the suit is filed before the expiry of the said mandatory period. Hence, the suit is liable to be returned to the plaintiffs for the compliance of Section 80(1) of the Code of Civil Procedure, 1908.

03. Plaintiffs have filed their say to this application at Exh.42 and contended that defendants No.3 to 5 have been served with notice. They have filed their written statement and say to the suit. As per the order of defendant No.3, defendants No.4 and 5 are going to

execute the order dated 05.03.2026. This application filed by the defendants is false and liable to be rejected. Defendants want that the order of Tahsildar be executed, hence, in order to prolong the matter, this application is filed. Plaintiffs have already filed on record, the acknowledgment receipts regarding the service of notice on defendants No.1 to 3. In order to get the urgent relief, the plaintiffs were required to file this suit before limitation. While filing this suit, plaintiffs have got the leave of the Court and as per the order of Court, the 60 days period is waived. Thereafter, the suit was registered. In view of the provision contained in Section 80 of the CPC, the Court can waive the said period considering the urgency in the matter. Hence, plaintiffs have prayed for rejection of this application.

04. Heard the argument on both the sides at length.

05. In support of this application, defendants have placed reliance the judgment of the Hon'ble Apex Court in ***Bihari Chowdhary Vs. State of Bihar, 1984(1) RCR (Rent) 516***. It has been held in the said case law by the Hon'ble Apex Court that notice under Section 80 of the Code of Civil Procedure served on the Government, but the suit before the expiry of statutory period of two months, which is a suit for declaration of title and the delivery of possession, it is not maintainable on the ground of non compliance of the provision contained in Section 80 (1) and 80 (2) of the Code of Civil Procedure.

06. Further, plaintiffs have also relied upon one case law of the Hon'ble Apex Court in ***State of A. P and others Vs. M/s. Pioneer Builders A.P, AIR 2007 SC 113***, wherein, it is held by the Hon'ble

Apex Court that *“The power conferred in the Court under Sub-Section 2 of Section 80 is to avoid genuine hardship and therefore, coupled with a duty to grant leave to institute a suit without complying with the requirement of Sub-section (1) thereof, suit bearing in mind, only urgency of the relief prayed for and not merits of the case.”*

07. Plaintiffs have filed this suit for a declaration that the judgment passed by the defendant No.3 in Rasta Case No.4/2023 and by the defendant No.2 in Rasta Appeal No.86/2025, which came to be allowed are beyond the jurisdiction of defendants No.2 and 3, hence, *void-ab-initio* and liable to be set-aside. Plaintiffs have also claimed the relief of perpetual injunction against the defendants No.3 to 5 from making any way through the suit property till the final decision of the suit on the basis of judgment of defendants No.2 and 3. It has to be mentioned here that admittedly, plaintiffs have issued notice under Section 80(1) to defendants No.1 to 3 before the filing of this suit. It is also an admitted position that the notices are served on them. The only contention of the defendants is that without waiting for a period of two months, plaintiffs have filed this suit, hence, it is not maintainable and liable to be returned. It has to be mentioned here that Order VII Rule 10 of the CPC is in respect of return of plaint to the proper Court in which the suit should have been filed. It has to be mentioned here that order VII Rule 10 speaks only in respect of jurisdiction of the Court, in which the suit had to be filed. If the particular Court does not have a jurisdiction to entertain and try the suit, that Court has to return the plaint to the Court having such jurisdiction. In the case in hand, defendants are praying for return of the plaint under Order VII Rule 10 of the CPC, merely, on

the ground of non compliance of Order 80 Rule (1)and (2) of the CPC, which is not maintainable.

08. It has to be stated here that the conjoint reading of Section 80(1) and 80(2) of the CPC says that even after service of notice on the Government Officer, plaintiff can file a suit before expiry of the period of 60 days, if there is urgency in the matter or he is in need of some urgent relief regarding the suit property. Considering the nature of this suit and the documents filed on record, it appears that on the basis of judgment of defendants No.2 and 3, the concerned Revenue Officers are going to create way through the suit property in respect of which present plaintiffs have filed this suit. Admittedly, the plaintiffs have made the compliance of Section 80(1) of the CPC, but if they waited for mandatory two months period, the whole purpose to file this suit would be frustrated.

09. Further, it has be mentioned here that on Exh.8, plaintiffs have filed an application for waiving the period of 60 days, for filing this suit, accordingly, the concern Court has waived the notice period under Section 80(2) of the CPC, considering his urgency. Under such circumstances, it is clear that with the leave of the Court and after getting the mandatory period of 60 days waived by the Court, this suit is filed. Hence, there is no force in the contention of the defendants that the suit is not maintainable. The case law relied by the defendants that *Bihari Chowdhari (cited supra)*, is not applicable to the case of defendants on the ground that there was no such period waive application filed by the plaintiffs and allowed by the Court. On the contrary, the case law filed by the plaintiffs i.e. *State of A.P (cited supra)*, is helpful to them considering

the facts of this case. Accordingly, I hold that the plaintiffs have complied with the provision under Section 80(1) of the CPC and by getting a period waive under Section 80(2), he has filed this suit, which is maintainable. Hence, I pass following order:

**ORDER**

Application at Exh.34 is rejected.

Date: 13.03.2026  
Vaduj.

( F. B. Baig )  
I/c. Civil Judge Sr. Div, Vaduj.