



of notice under Section 80 of the CPC, and as such, in the absence of proper service of notice, the suit against the State Respondent/Government would not lie. Further, it was also contended by the respondents before the court below, that the plaint did not state or disclose as to when the cause of action arose and as such it was prayed that the plaint be rejected by the Court of Assistant to Deputy Commissioner.

4) The learned Court below thereafter, after hearing the parties vide order dated 11.07.2018, was pleased to dispose of the case and allowed the Misc Case and the plaint of the plaintiffs was rejected for non compliance of the provisions of Section 80 of the CPC.

5) Being aggrieved thereby, the petitioners preferred this revision application. The main grievance of the petitioners herein is that while disposing the matter i.e. Misc. Case No. 4 of 2018 in Money Suit No. 1 of 2017, the impugned order was not passed in the capacity of the Court Assistant to Deputy Commissioner but the matter was disposed of by the Court of Judicial Magistrate First Class, West Garo Hills, Tura. As such, their contention is that the matter being disposed by a Court which lacks jurisdiction, the impugned order is liable to be set aside and quashed.

3) Per contra, learned counsel for the respondents submitted that it just a matter of nomenclature and that it is the same Court which functions as Judicial Magistrate and also Assistant to Deputy Commissioner. He further submits that the same can be corrected by an application under Section 152 of the CPC. With regard to Sec 80 CPC the learned counsel for the respondents cited the following decisions which he placed reliance on namely: **“Shamsher Singh v. Rajinder Prashad”** (1973) 2 SCC 524 (para 3), **“Jugal Kishore v. Dhanno Devi”** (1973) 2 SCC 567 (para 16), **“Shyam Sunder Agarwal v. Union of India”** (1996) 2 SCC 471 (para), **“State of A.P. v. Pioneer Builders”** (2006) 12 SCC 119, **“State of Maharashtra v. Chander Kant”** (1977) 1 SCC 257, **“Kuldeep Singh Pathania v. Bikram Singh Jaryal”** (2017) 5 SCC 245, **“Vaish Agarwal Panchayat v. Inder**



Kumar AIR” 2015 SC 3257. He lastly submits for an order to be interfered; there should be manifest error on the face of the record itself.

6) In reply to the submissions advanced by learned counsel for the respondents with regard to Section 80 of the CPC and other points, learned counsel for the petitioners emphasized that he was only on the point of jurisdiction, and that the entire revision application is only against the order passed by the Court which had no jurisdiction. He further placed reliance in the case of **“HARSHAD CHIMAN LAL MODI VS. DLF UNIVERSAL LTD. & ANOTHER”** reported in **(2005) 7 SCC 791** and **“ZUARI CEMENT LIMITED VS. REGIONAL DIRECTOR, EMPLOYEES’ STATE INSURANCE CORPORATION, HYDERABAD AND OTHERS”** reported in **(2015) 7 SCC 690**. On this point alone without touching the merits of the case, he prayed that the impugned order be set aside.

7) I have heard both the learned counsels at length and after careful examination of the material on records and considering the submissions advanced by the learned counsel, the only point that emerges here is to determine, whether the learned Court below had committed manifest error in law in rejecting the plaint in exercise of its powers in the capacity of Judicial Magistrate First Class, inasmuch as, the impugned order bears the seal and signature of the Court of Magistrate First Class. As such, in this proceeding this Court will confine itself to this point and will not dwell on the other merits of the case, that is Section 80 CPC. As the matter concerning Sec. 80 will not be looked into in disposing of this matter, the judgments cited by the respective counsels in this regard will not be taken into consideration.

8) It is on record, that the Suit instituted was a Money Suit filed in the Court of the Assistant to Deputy Commissioner at Tura which exercises civil jurisdiction. Though it has been stated, that the same Judicial Officer is the presiding officer over both these courts, the exercise of powers especially in a Civil suit in the capacity of a Judicial Magistrate First Class brings into question as to whether this exercise of



power will be fatal to the cause, or the same be taken to be a mistake in nomenclature and can be overlooked, or corrected at this stage.

9) In ***“HARSHAD CHIMAN LAL MODI VS. DLF UNIVERSAL LTD. & ANOTHER”*** reported in (2005) 7 SCC 791, it has been held by the Hon’ble Supreme Court that *“where a court has no jurisdiction over subject- matter of suit, it cannot take up the cause or matter and an order passed therein is a nullity”*. Para 32 which encapsulates this principle is quoted herein below :-

“32. In Bahrein Petroleum Co. (1966) 1 SCR 461 : AIR 1966 SC 634 this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well settled and needs no authority that “where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing”. A decree passed by a court having no jurisdiction is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.”

10) In ***Surya Devi Rai Vs Ram Chander Rai*** (2003) 6 SCC 675, relying on the judgment rendered in ***Satyanarayan Laxminarayan vs Millikajun Bhavanappa Trimuale***, AIR 1960 SC 137, with regard to ‘Error apparent on the face of record’ and ‘Patent error’ it was held that, *“the alleged error should be self evident. An error which needs to be established by lengthy and complicated arguments or an error in a long drawn process of reasoning on points where there may be conceivably two opinions cannot be called a patent error.”*

11) The instant order impugned herein, being clearly passed by a Court having no jurisdiction, though the same Presiding Officer may be manning both Courts, and taking into account the judgments of the Hon’ble Supreme Court cited hereinabove, there cannot be any other conceivable opinion, that there is no patent error i.e. apparent error in the face of the records. The same therefore, if not set right will result in condoning judicial and procedural irregularity.



12) For the foregoing reasons, the impugned order dated 11.07.2018 passed by Smt N.I. Dkhar, in the capacity of Judicial Magistrate First Class, West Garo Hills, Tura in Misc. Case No. 4 of 2018 rejecting the plaint in Money Suit No. 1 of 2017 is hereby set aside and quashed.

13) Before parting with the records it is necessary to note herein that the Judicial Officers, of the Subordinate Judiciary should be conscious, diligent and mindful in discharging judicial functions and to exercise their jurisdictions in accordance with the powers vested in them by law.

14) The Civil Revision Petition is allowed. Parties are to appear before the Court of the Learned Assistant to Deputy Commissioner, West Garo Hills, Tura for fresh hearing of Misc. Case No. 4 of 2018 in Money Suit No. 1 of 2017, which should be disposed of as expeditiously as possible.

15) No order as to costs.

JUDGE



Meghalaya
28.02.2019
"V. Lyndem PS"