

Bill No. XII of 2015

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 2015

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BILL

further to amend the Code of Civil Procedure, 1908

BE it enacted by Parliament in the Sixty-sixth year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2015.

Short title
and
commencement.

(2) It shall come into force at once.

5 of 1908.

2. In the Code of Civil Procedure, 1908, after sub-section (1) of section 80, the following
5 proviso be inserted, namely:—

Amendment
of section 80.

10 “Provided that, if a public officer until the expiration of two months next after
notice in writing has been delivered to does not give the reply or grant relief as per law
to the plaintiff, which resulting into cause of litigation, such public officer shall be
liable to pay the entire expenses of the litigation incurred by the State or the Central
Government, as the case may be, and the responsibility of the public officer shall be
fixed in such manner as may be prescribed”.

STATEMENT OF OBJECTS AND REASONS

Section 80 of the Code specifies that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing. The objective is to afford an opportunity to the Government or the public officer to consider the legal position and to settle the claim put forward by the plaintiff, if the same appears to be just and proper. The Government or the public officer after obtaining proper legal advice, can take an appropriate decision in the public interest within a period of two months allowed by the section, thereby saving public time and money and settling the claim without driving a person to avoidable litigation. The Supreme Court in *Bihari Chowdhury vs. State of Bihar* (AIR 1984 SC 1043) held that the objective of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation. The administration is often unresponsive and shows no courtesy even to intimate the aggrieved party. Therefore, such notice has become an empty formality under section 80. The law commission also observed that in most cases, the notice given under section 80 remained unanswered till the expiry of the period of two months and in most cases, the government and public officer utilized the section merely to raise technical defenses contending either that no notice had been given or that the notice actually given, did not comply with the requirements of the section. These technical defenses appeared to have succeeded in a number of cases defeating the just claims of citizens. The Bill seeks to achieve the above objectives.

Hence, this Bill.

AVINASH RAI KHANNA

ANNEXURE

EXTRACTS FROM THE CODE OF CIVIL PROCEDURE, 1908

(5 OF 1908)

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80. Notice.—(1) [Save as otherwise provided in sub-section (2), no suit [shall be instituted] against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been [delivered to, or left at the office of—

(a) in the case of a suit against the Central Government, [except where it relates to a railway], a Secretary to that Government;

[(b)] in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;]

[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;]

(c) in the case of suit against [any other State Government], a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.

[(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1), but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice has been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.]

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RAJYA SABHA

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BILL

further to amend the Code of Civil Procedure, 1908

(Shri Avinash Rai Khanna, M.P.)