IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

S.A. 77 of 2025

With

IA NO: CAN/1/2025

Rupendra Kumar Pal & Anr.

VERSUS

The State of West Bengal & Ors.

For the Petitioner: Mr. Dibyendu Chatterjee, Adv.
Ms. Reshmi Ghosh, Adv.

For the State: Mr. Mainak Singha Barua, Adv.

Ms. Chandayi Alam, Ld. AGP, Adv.
Ms. Ranu Mukherjee, Adv.

Last Heard on: September 15, 2026

Judgment on: October 05, 2026

Biswaroop Chowdhury, J:

The appellants before this Court were plaintiffs in a suit for declaration with a prayer that Satyendra Kumar Pal be declared dead under Section 108 of the Indian Evidence Act 1872.

The case of the plaintiffs before the Learned Trial Court may be summed up thus:-

1. The plaintiff no-1 is the brother and plaintiff no. 2 and 3 are the husband and son of the deceased sister of one Satyendra Kumar Pal and the parents of the said Satyendra Kumar Pal namely Sudhir Kumar Pal died intestate on 28th February 2002 and Sudha Pal died intestate on 2nd September 2014, leaving behind the plaintiff No-1 and their daughter Smt. Sonali Dey who died intestate on 12th March 2014 leaving behind the plaintiff Nos. 2 and 3 being the husband and son of the deceased as her legal heirs.
2. The said Satyendra Kumar Pal on 10.07.2007 reportedly disappeared at his age of 44 years who lastly resided at P.O. and village-Samabaya Polly Bally P.S. Nischinda (formerly Bally) PIN-711205.
3. After missing of said Satyendra Kumar Pal his brother Rupendra Kumar Pal the plaintiff no-1 lodged missing report of his younger brother to the then Bally Police Station on 11.07.2007 where the said missing report was duly received by the concerned duty officer.
4. After missing of the said Satyendra Kumar Pal the plaintiff no-1 and other relatives of his family made several attempts to find him out even after missing paper publication was made in the daily newspaper namely Anandabazar Patrika' on 19th July 2007 but no information regarding Satendra Pal had been received by the plaintiffs or other relatives.

5. At the time of missing of the said Satyendra Kumar Pal his father Sudhir Kumar Pal since deceased as well as his married sister Santi Dey was alive. The said Satyendra Kumar Pal at the time of missing left behind his brother Rupendra Pal and his father Sudhir Kumar Pal.
6. The plaintiffs approached several times to the inspector in charge Bally Police Station who also inspite of their tireless efforts could not trace Satyendra Kumar Pal.
7. The plaintiffs are the legal heirs of Satyendra Kumar Pal and there are no other legal heirs.
8. The plaintiffs reasonably apprehend and presume that the said Satyendra Kumar Pal is no more alive and had he been alive he could be traced out and/or could be naturally heard of by them during the period of more than 10 years.
9. As the said Satyendra Kumar Pal is unheard of for the period of more than 7 years so he be declared dead as per the provisions of the law of the land.

The Defendant no-3 Inspector in charge Nischinda Police Station contested the suit by filing written statement.

ISSUES were framed and evidence was adduced. Learned Trial Judge by Judgment dated 30th September 2019 was pleased to dismiss. Title Suit No. 1602 of 2017 by observing as follows:-

'In the instant plaint there is no statement as to the fact that the defendants have either denied or interested to deny that the said Satyendra Kumar Pal is dead. The cause of action as stated by the plaintiff is paragraph 12 of the plaint (arose on 10-07-2007) the date when he is missing is illusory.

From the statement made in the plaint it appears that defendants are neither necessary parties nor there is any cause of action against them.

From the above made discussions, I find that plaintiffs do not have any cause of action against the defendants and therefore the instant suit is not maintainable. So plaintiffs are not entitled to get any relief.'

The plaintiffs being aggrieved by the Judgment passed by the Learned Trial Court preferred an Appeal. Learned 5th Additional District Judge Howrah by Judgment dated 14th February 2025 was pleased to dismiss, Title Appeal No. 213 of 2019 preferred by the plaintiff Appellant and affirm the Judgment passed by the Learned Trial Court.

The Appellants/plaintiffs being aggrieved by the Judgment of the first appellate Court has come up with the instant second Appeal.

By Order dated 9th June 2025 the Hon'ble Division Bench of this Court was pleased to admit this appeal and frame the following question of Law.

i) Whether the learned Courts below overlooked the pendency of an application filed by the plaintiffs/appellants under Section 80(2) of the Code of Civil Procedure in dismissing the suit without

adjudicating on such prayer of the appellants by holding that no such leave under Section 80(2) was sought by the plaintiffs/appellants at all.

ii) Whether in view of the peculiar nature of a suit for declaration of civil death, the learned Courts below substantially erred in Law in construing that no specific cause of action had been made out against the defendants/respondents/authorities in view of the character of legal impact akin to a judgment in rem and the cause of action not being confined to the defendants/authorities.

Upon considering the facts of the case this Court is of the view that the following additional question should also be formulated.

iii) Whether notice u/s 80 of the Code of Civil Procedure is necessary although the plaintiffs sought no direction or relief against the defendants.

Heard Learned Advocate for the Appellants and Learned Advocate for the respondents. Perused the materials on record.

Learned Advocate for the appellant submits that the grounds of dismissal of the suit is not maintainable in the eye of law as because in the written statement filed by defendant no. 3, there is specific denial in respect of death of Satyendra Kumar Pal and the provision of Section 34 of specific Relief Act 1963 is not maintainable in the instant case as because the provisions of Section 34 of Specific Relief Act 1963 only declares the status and right as to any property

and apart from the provision of Section 34 of specific Relief Act there is a provision under Section 9 of the Code of Civil Procedure 1908. Learned Advocate further submits that although originally suit was proceeded with by the Learned Trial Court without disposing the application of Granting Leave under Section 80(2) of Code of Civil Procedure 1908 but the Learned Court proceeded with the suit by accepting the Written Statement by the defendant no. 3 and subsequently issues are framed which indicates that the suit is proceeded by waving the formality of under Section 80 of the Code of Civil Procedure 1908. No issue with regard to Leave under Section 80(2) of the code of Civil Procedure was framed.

Learned Advocate also submits that the judgment and order passed in Title Suit No. 1602 of 2017 wrongly and erroneously held that there was no denial on the part of the defendant although written statement speaks otherwise.

Learned Advocate relies upon the following judicial decisions:-

Yashod Kumari and Anr. VS MCD and Ors.

Reported in 2003 SCC Online Del-101.

Pratima Sinha and ors VS Shashi Kumar Narain Sinha and ors.

Reported in (2004) 13 SCC P-599.

Sant Prasad VS Kausla Nand Sinha and others.

(2017) 9 SCC-655.

Ganesh Das Aurora (Deceased) In the goods of.

Reported in Indian Law Reports Vol. LIV-186.

Sau Swati VS Shri Abhay.

Second Appeal No-18/2016.

High Court at Bombay.

With regard to the first point of law framed as to whether Learned Courts overlooked pendency of application under Section 80(2) of the Code of Civil Procedure in dismissing the suit without adjudicating on such prayer, it appears from Trial Court Record that the plaintiffs filed application under Section 80(2) for leave to proceed with the suit. Such application was filed on 21st December 2017 when the suit T.S. 1602 of 2017 was filed. Nowhere in the Order Sheet of the Trial Court there is reflection about filing of application under Section 80(2) of the Code of Civil Procedure, and the Learned First Appellate Court also overlooked the same although it is in the Trial Court Record. Moreover the Learned First Appellate Court while passing the Judgment did not give any opportunity to the appellant to submit on the issue of Leave under Section 80(2) CPC. Thus it is clear that the Learned First Appellate Court overlooked the pendency of application filed by the plaintiffs/appellants under Section 80(2) of the Code of Civil Procedure. As the

said application was overlooked by the Learned First Appellate this Court has to consider the same before proceeding to the second question formulated.

Section 80 of the Code of Civil Procedure provides as follows:-

S.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 the Government;

b) in the case of a suit against the Central Government where it relates to a 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 authorized by the Government in this behalf;

c) in the case of a 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 which public officer in his official capacity shall be dismissed merely by reason of any error of 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 indentify the person serving the notice and such notice had 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.

Thus upon plain reading of provision of subsection 2 of section 80 of the Code of Civil Procedure it is clear that by obtaining leave from Court suit can be instituted against the Government without service of Sixty days notice.

When relief is not sought against Government but the Government is defendant notice under Section 80 CPC is not mandatory.

In the case of M. G. Tipnis VS. The Secretary, Ministry of Commercee, Union of India, New Delhi and other reported in AIR 1970 M.P. 5 it was observed as follows:-

'*1. The question for consideration in this appeal relates to sufficiency of Court-fee paid on the memorandum of appeal. It arises in this manner. The appealing plaintiff brought a suit claiming Rs. 15,000 as arrears of salary against a Secretary to the Union of India, the State of Madhya Pradesh and others. It transpired that the plaint was rejected under Order 7, Rule 11(d) of the Code of Civil Procedure on the ground that notice under Section 80 of the Code was not served either on the Secretary to the Union of India or the State of Madhya Pradesh. Thereupon, the plaintiff filed this appeal challenging the order of rejection of the plaint and paid on the memorandum of appeal a court-fee of Rs. 7/8/- only.*

2. The learned counsel for the plaintiff made the point that, in a case like this, the plaint as a whole ought not to have been rejected and the suit should have been allowed to proceed against defendants other than those to whom a notice under Section 80 of the Code had to be given. For this view, reliance is placed upon Shankarrao Balaji v. Shambihari AIR 1951 Nag 419, Mst. Chandani v. Rajasthan State, AIR 1962 Raj 36 and Ramcharan v. Custodian Evacuee Property, AIR 1964 Pat 275. We are inclined to think that that course could have been followed in this case. The fact, however, is that it was not adopted and the question we have to consider is what court-fee ought to be paid on a memorandum of appeal filed against an order rejecting a plaint on the ground of non-compliance with the requirements of Section 80 of the Code.'

In the case of Mst. Chandandani VS State of Rajasthan reported in AIR-1962. Raj 36 it was observed as follows:-

'9. Applying the conclusion, to which I have come above, to the facts and circumstances of this case, I think that the present is a case, where, fully accepting that the present suit was rightly dismissed against defendants Nos. 2 and 3 for the plaintiff's failure to give statutory notice under Section 80 C. P. C. to them, I am not at all satisfied that there are any considerations of substantive law which would make the suit non-maintainable in the absence of the other defendants against defendant No. 1 namely the State to whom such a notice was indisputably given. This seems to me to be all the more so because, in the case before me, the State has not only supported, nay, justified the act of its

officers which has given rise to this suit but has completely adopted, and identified itself with, all they did as would be evident from the stand taken by it in its written statement to which I have already made detailed reference. That being so, I entirely fail to understand the learned trial Judge when he felt. persuaded to make the following observations in deciding the issues in question:-

"What I mean by all this is that the plaintiff's suit is to recover the price of the grain which was taken away by Shri Radhakishen and Shri Faujraj. If this is the whole position, the Rajasthan Government cannot be made liable for the acts of these two persons even if they are the Government Servants of that State. As I have already said that the plaint taken as a whole seems to be as if against the personal acts of defendants Nos. 2 and 3. If the plaintiff wants to make the defendant No. 1 responsible for those acts, he should have cleared the whole matter but it has not been done".'

Service of Notice upon the Government u/s-80 CPC is a representation seeking justice prior to institution of suit. The object of issuing such notice is to give the Government Authority or Public Officer a reasonable opportunity to consider the representation and take necessary decision of the same. When Government Authority does not in their written statement raise the issue of non-service of notice on the ground that they did not get an opportunity to consider the claim/grievance no issues are required to be framed and service of notice will be treated to be waived by the Government Authority.

In the case of Chairman Electricity Board VS Benay Kumar Jha reported in AIR-2011 Patna 187 the Hon'ble Court observed as follows:-

11. 'Point No. I:

Learned counsel appearing for the

Appellants submitted that in view of the non-service of notice under section 80, CPC, which is mandatory, the suit was bad and was liable to be dismissed. Learned Counsel for the appellants drew attention of this Court to paragraph No. 3 of the written statement. This point has been taken by the defendants. However, this submission on behalf of the defendants-appellants is noted to be rejected.

It is true that objection in this regard was raised in the written statement. However, from the perusal of the judgment, it appears that neither any issue was framed in this regard nor was such issue pressed at the time of hearing of the case and, as such, it appears that the trial Court did not discuss this issue at all. Learned counsel tried to impress upon that the issue might have been raised at the time of hearing but not considered by the court below. However, in such case it was open for the appellants to immediately file review taking this ground which was not done. In this appeal also affidavit could have been filed appending therewith the certificate of the advocate concerned that the issue was raised but not considered by the court.

In the absence of any such step and in the facts and circumstances of the case notice u/S. 80, C.P.C. would be deemed to have been waived. Thus, that issue cannot be allowed to be raised in the appeal.'

In the case of Sant Prasad VS Kausla Nand Sinha and others reported in (2017) 9 SCC-655 Hon'ble Supreme Court observed as follows:-

'The only issue raised in these appeals is whether Section 80 C.P.C. notice was required for instituting the suit. The High Court has stated, in principle, that for instituting a suit notice under Section 80 C.P.C. is required. But unfortunately the High Court omitted to take note of the fact that the respondent/State was permitted to be impleaded as party and there was no objection taken by the State at that time.

2. In that factual background, we are of the view that the stand taken by the High Court is not tenable, though, in principle, we have no quarrel with the general proposition that for instituting a suit notice under Section 80 C.P.C. is required.'

It is to be remembered that procedures are to advance justice and not to deprive the same. In exceptional circumstance for the interest of justice and to prevent the abuse of process of law Courts may waive the service of notice. u/s-80 CPC.

In the instant case at the outset it appears that an application under Section 80(2) CPC was made before Trial Court which was overlooked by both

Trial Court and Appeal Court. Secondly no direction or relief is sought against the defendants Government Authority, and grant of declaratory relief will not prejudice the Government. Thirdly no plea of non-service of notice was raised by defendant no-3 and no issue was framed.

Thus service of notice is first of all not necessary in this case secondly it is waived by the defendant no-3 who appeared. Learned First Appellate Court thus erred in holding that the suit was not maintainable due to non service of notice.

Hence the first question and third question goes in favour of appellant.

With regard to the second question formulated at the outset it is necessary to consider the provisions contained in Section 107, and Section 108 of the Evidence Act.

Section 107 of the Evidence Act provides as follows:-

Burden of proving death of person known to have been alive within thirty years. When the question is whether a man is alive or dead and it is shown that he was alive within thirty years the burden of proving that he is dead is on the person who affirms it.

S-108. Burden of proving that person is alive who has not been heard of for seven years – Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for seven years by those

who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Thus Section 108 of the Evidence Act provides the condition when a person is presumed to be dead. In the case of LIC of India V Anuradha (2004) 10 SCC 131. it was observed by the Hon'ble Supreme Court that presumption under Section 108 would not arise at any time shorter than seven years, and of course so long as the dispute is not raised before any forum and in any legal proceeding.

However it is to be kept in mind that when a person is unheard for more than seven years although the presumption of death can be made by Courts in accordance with law if any legal proceedings is instituted but where certain matters are pending before Government Authority, Banks or financial Institutions where disbursal of funds cannot be made by the said Authority neither can presumption be made by the said Authorities without the death certificate or death declaration by Court, such declaration can only be obtained by filing Civil Suit by making the Authorities who are claiming death certificate or death declaration parties to suit and in general where in future dispute with regard to death will be raised by the Authorities regarding property or any other matter relating to missing person declaration by Civil Court is necessary. In obtaining such declaration Government Authority, and Police Authority should be impleaded to enable the Court to make necessary presumption and declaration upon perusing Police report and giving the Authorities an

opportunity of being heard. During pendency of suit if the Police Authority is able to find whereabouts of missing person or gives specific information of death, on the basis of such report the suit may be disposed. On the other hand if the Police Authority could not give whereabouts of missing person, necessary presumption under Section 108 of the evidence Act and declaration to that effect, can be issued by Civil Court.

In the instant case the Police Authority could not furnish the whereabouts of missing person before Trial Court. In the Second Appeal also Police Authority the respondents no-2, and 3 herein were given opportunity to furnish latest position but could not specify the whereabouts.

In the case of Ganesh Das Aurora (Deceased) (supra) this Hon'ble Court observed as follows:-

'GHOSE J. This is an application for an order that the death of one Ganesh Das Aurora may be presumed and that the petitioner may be at liberty to declare and state in her intended petition for grant of Letters of Administration to her of the property and credits of the said Ganesh Das Aurora deceased that the death of the said Ganesh Das Aurora occurred on or since the 29th August, 1918 and she may be at liberty to verify such statement in her intended petition.

The circumstances under which this application has been made, briefly stated, are as follows:-The applicant is the wife of the said Ganesh Das Aurora. It is stated that the applicant's husband disappeared on or about the 29th August 1918, and has not been heard of since by her or any other member of his family

or any relations or friends or by any one to the applicant's husband disappeared on or about the 29th August 1918 and has not been heard of since by her or any other member of his family or any relations or friends or by any one to the applicant's knowledge. It is further stated that diligent enquires and searches to find out the whereabouts of the said Ganesh Das Aurora in various places in British India, such as Calcutta, Howrah, Hardwar, Bindhyachal, Muttra, Etawah, Brinduban, Ammoti and Agra have been made but without success and advertisements were inserted in various papers in Calcutta. The said Ganesh Das Aurora could not be found nor was any information received about him.

Now, under section 108 of the Indian Evidence Act, I think in this case Ganesh Das Aurora must be presumed to be dead. There is no presumption, however, as to the time of his death and if any one seeks to establish the precise period at which such person died he must do so by actual evidence. The question for which provision is made in section 108 of the Indian Evidence Act is whether a man is alive or dead at the time the question is raised; in other words, the pre-sumption of the continuance of life [there is a pre-sumption in favour of continuance of life, see Tani V. Rikki Ram (1)] ceases at the expiration of seven years from the period when the person in question was last heard [see in this connection In Re Benjamin (2), In Re Walker(3)].'

In the case of Sou Swati VS Shri Abhay (supra) it was observed as follows:-

‘6. There is no need for this Court to delve upon the niceties of sa.18.16 interpretation of Sections 107 an108 of the Evidence Act, as the issue is no more res integra, in view of decision of the Hon'ble Supreme Court in AIR 2004 SC 2070 (supra), the relevant portion from the said judgment is quoted below :

"On the basis of the above said authorities, we unhesitatingly arrive at a conclusion which were sum up in the following words. The law as to presumption of death remains the same whether in Common Law of England or in the statutory provisions contained in Sections 107 and 108 of the Indian Evidence Act, 1872. In the scheme of Evidence Act, though Sections 107 and 108 are drafted as two Sections, in effect, Section 108 is an exception to the rule enacted in Section 107. The human life shown to be in existence, at a given point of time which according to Section 107 ought to be a point within 30 years calculated backwards from the date when the question arises, is presumed to continue to be living. The rule is subject to a proviso or exception as contained in Section 108. If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108 subject to its applicability being attracted, has the effect of shifting the burden of proof back on the on the sa.18.16 one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person who's life or death is in issue. Though it will be presumed that the

person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise."

7. In the light of the dictum laid down by the Apex Court as above, I am of the firm opinion that the Civil Court acting under Section 9, has inherent powers in its plenary jurisdiction de hors with reference to Section 34 of the Specific Relief Act to grant relief qua Section 108 of the Evidence Act. Therefore, the reason that Section 34 of the Specific Relief Act was required to be called in aid does not appear to be sound.'

In view of the discussion made hereinabove the 2nd point formulated is answered in favour of the appellant.

Hence this Appeal SA-77 of 2025 stands allowed. Judgment and decree dated 30-09-2019, passed by Learned Civil Judge (Junior Division) 1st Court Howrah in Title Suit No-1602/2017 and Judgment dated 14th February 2025 passed in Title Appeal No. 213 of 2019 passed by Learned Additional District

Judge 5th Court Howrah are set aside. Appellants/plaintiffs do get a declaration of Civil death of Satyendra Kumar Pal as per provisions of Section 108 of the Indian Evidence Act 1872. The Decree be drawn up.

TCR be returned.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)