Kundan Sugar Mills, Amroha Vs Indian Sugar Syndicate Ltd. and Others

Misc. Application No. 3816 of 1957

Court: Allahabad High Court

Date of Decision: March 16, 1959

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 33 Rule 1

Citation: AIR 1959 All 540 : (1959) 29 AWR 336

Hon'ble Judges: O.H. Mootham, C.J; Raghubar Dayal, J; A.P. Srivastava, J

Bench: Full Bench

Advocate: Surendra Nath Varma and J. Swaroop, for the Appellant; R.S. Pathak, for the Respondent

Final Decision: Disposed Of

Judgement

O.H. Mootham, C.J.
I have had the advantage of reading the order prepared by Srivastava J. I agree with the conclusion at which he has

arrived for the reasons stated by him.

R. Dayal, J.

2. This is an application under Order 44, Rule 1 of the CPC for filing a cross-objection in forma pauperis in First Appeal No. 333 of 1957. The

applicant is the Indian Sugar Syndicate Limited (in voluntary liquidation) through its Liquidators four in number. Notice or the application was

issued to the appellant, Kundan Sugar Mills, Amroha. A preliminary objection has been taken on behalf of the appellant to the effect that the

provisions of Order 33 of the CPC do not apply to a limited company.

3. Order 33 of the CPC deals with suits by paupers. Its Rules 1 is:

1. Suits may be instituted in forma pauperis subject to the following provisions, any suit may be instituted by a pauper.

Explanation:--A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in

such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing

apparel and the subject matter of the suit. Rule 3, as amended by this Court, is:

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is

exempted from appearing in Court or detained in prison, in which case the application may be presented by an authorised agent who can answer

all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been

examined had such party attended in person."" It is contended for the appellant that a limited company cannot possess wearing apparel and cannot

present an application in person and that therefore compliance of Rules 1 and 3 is not possible and that consequently it must appear that a limited

company is not covered by the expression ""person."" in the Explanation to Rules 1.

4. I do not agree with this contention.

5. The word ""person"" is not defined in the Civil Procedure Code, In view of Clause (39) of Section 3 of the General Clauses Act the word

person"" in the Explanation to Rules 1 of Order 33 of the Code would include a company unless there be anything repugnant in the context of the

provisions of Order 33 which deal with suits by paupers. If there be nothing repugnant in those provisions a limited company would be covered by

the word ""person"" and therefore can sue as a pauper.

6. Rule 1 of Order 33 allows the institution of any suit by a pauper. There is nothing in the Explanation to this rule which would make it

impracticable or impossible for a company to institute a suit as a pauper when a fee is prescribed for its plaint. The company can also be covered

by the definition of the word ""pauper"" with respect to a suit for whose plaint no fee is prescribed as in such a case a person is a pauper when he is

not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject matter of the suit. The mere fact that

the wearing apparel is not to be taken into consideration in evaluating property does not mean that it must necessarily be possessed by a person

who wants to institute a suit as a pauper and that one who does not possess any wearing apparel cannot be a pauper.

7. It is true that a company cannot present an application for permission to sue as a pauper in person, but that is not an insurmountable difficulty or

a circumstance which makes it repugnant that the word ""person"" in the Explanation to Rules 1 should include a company. An applicant can be

exempted from appearing in Court. The exemption may be specifically laid down in the statute or it may be granted by the Court. Sections 132

and 133 of the CPC mention persons who are exempted from personal appearance in Court. This Court has by amendment of Rules 3 also

allowed persons detained in prison to present applications for permission to sue in forma pauperis through authorised agents. There is nothing in

this rule or in any other provision which bars a Court from exempting an applicant from appearing in Court. In this connection a reference to

Section 404 of the CPC of 1882 is helpful. That section corresponds to the present Rules 3 of Order 35 of the Code. Section 404 is:

Notwithstanding anything contained in Section 36, the application shall be presented to the Court by the applicant in person, unless he is

exempted from appearing in Court u/s 640 or Section 641, in which case the application may be presented by a duly authorised agent who can

answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have

been examined had such party attended in person"".

8. Sections 640 and 641 of the CPC 1882 correspond to Ss. 132 and 133 of the present Code. Section 404 therefore meant that only those

persons who were exempted from personal appearance under Ss. 640 and 641 could apply for permission to sue in forma pauperis through

authorized agents. Any person exempted by the Court from appearing in Court could not have presented such an application through an authorised

agent. The change in Rules 3 of Order 33 of the Code therefore makes the rigour of the rule less stringent.

It is contended for the appellant that a Court can exempt a person only when it be possible for that person to appear in person in case exemption is

not granted. There is no such restriction in the language of Rules 3. Exemption may be granted to a person who can otherwise appear. It can also

be granted to a person who be incapable of appearing. In fact the exemption should be given to the latter person more readily. He is not to suffer

on account of his physical inability to appear in person when he is entitled to rights and subject to liabilities under the general law.

In the absence of any strong reasons _it is not to be presumed that the law makes a discrimination in his case and does not allow him to approach

the Court for redress in case he is unable to pay the Court fee. The inability of a party to appear in person does not in any way affect adversely the

merits of the determination of the rights of the parties which is the primary object for the establishment of courts of justice. When different

provisions of the law must in the nature of things provide for a company or any person not capable of appearing in Court to institute suits or to take

other steps in connection with litigation through someone who can appear in Court to institute suits or to take other steps in connection with

litigation through someone who can appear in Court and take steps, there seems to be no sufficient reason for thinking that such"" a person would

be deprived of presenting an application for permission to sue in forma pauperis through such agency. The sole object behind the provision for the

applicant presenting an application in person is that the Court be able to examine him in connection with the material questions relating to the

application.

If any other person can serve that purpose equally well, the object of this rule is achieved. The rule itself allows presentation of an application by an

authorised agent in certain circumstances and thus clearly indicates that personal presentation of the application is not of such significance that if

personal appearance is not possible by an applicant he be debarred from suing as a pauper.

9. I am therefore of opinion that there is nothing in the provision of Rules 1 or Rules 3 of Order 33 of the Code which on account of repugnancy

makes the definition of the word ""person"" in the General Clauses Act inapplicable to the word ""person in the Explanation to Rules 1 of Order 33 of

the Code, This view finds support from the cases of Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka

Nidhi Ltd., Shankarji Maharaj v. Mt. Godavaribai AIR 1935 Nag 209 Swaminathan v. Official Receiver Ramnad AIR 1937 Mad 649 AIR 1944

248 (Oudh) Syed Ali v. Deccan Commercial Bank Ltd. AIR 1951 AP 124 and Prabhulal v. Imamuddin AIR 1955 Raj 4030.

10. In The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, the interpretation of Rules 1 of Order 33 of the Code by

the Madras High Court in ILR 41 Mad 624: Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi

Ltd., was approved and the same rule of construction was applied by the Supreme Court in interpreting the provisions of a certain standing order.

This case finally sets at rest that the non-possession of wearing apparel by a company does not take it out from the definition of the word ""person.

11. The learned counsel for the appellant relied on the cases of S. M. Mitra v. Corporation of the Royal Exchange Assurance AIR 1930 Rang

259; Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another, and Associated Pictures Ltd. v. National Studios

Ltd. AIR 1951 P&H 447.

12. The case of AIR 1930 Rang 259 did not consider the earlier case of D. K. Casssim and Sons v. Abdul Rahman AIR 1930 Rang 272 which

held that a firm can be considered to be a person under Order 33. Rules 1. The case is distinguishable. Otter J. himself distinguished the case of

ILR 41 Mad 624: Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd., which allowed the

liquidator of a company to sue in forma pauperis if the company could be held to be a pauper. He also distinguished the case of Venkatanarasaya

v. Achemma ILR 3 Mad 3 where a minor was allowed to sue as a pauper through a next friend who himself was not a pauper. Otter J. expressed

himself thus at page 262:

Further, as was pointed out by the learned Judge of the original side, the question, for us is not whether the word ''person'' covers an individual in

capacities other than his personal capacity, but whether upon a consideration of the provisions of the order of the Code relating to pauper status

the word ''person'' should be held to refer to a person who is not in fact a pauper.

He was considering the case of a suit instituted by a Receiver appointed in insolvency proceedings and considered that a Receiver gets vested with

the rights of the insolvent in the insolvent''s property and as such institutes a suit as an owner. Further, he observed:

In the present case, however, it seems to us from an examination of Order 33 and of the rules thereunder that the whole matter is one personal to

the applicant. It is the applicant''s means, of course, that have to be considered, it is the applicant in person who presents his application and so on

... We agree that the word person'' in the provision under review must be considered in its ordinary and plain meaning, and we see nothing in the

context in which it stands to indicate that the legislature meant that the word "person" should or might have the meaning of a juridical person.

With respect, it appears to me that the last observation makes a wrong approach to the question whether the word ""person"" in a certain context

includes a juridical person or not. The context is not to indicate that the word "person" should have the meaning of a juridical person but it should

indicate that the word ""person"" should not have such a meaning. It is only then that the eon-text would create such a repugnancy as would make

non-applicable the definition of the word ""person"" in the General Clauses Act. Lastly he observed:

The real point seems to us to be that a receiver takes the place of an insolvent and sues in respect of what in law are for the time being his own

interests. He acts in a personal capacity throughout.

It is in view of such capacity of the receiver in instituting a suit that Otter J. held that the person to be considered is the person actually applying and

no other person and that the receiver must be considered from his personal point of view and not from any representative point of view.

13. In the case of Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another, a company wanted to appeal in

forma pauperis. This case followed the case of AIR 1930 Rang 259 and considered the company''s not possessing necessary wearing apparel and

its inability to be present in person sufficient for the non-application of the definition of the word ""person"" in the General Clauses Act. With respect,

I differ from the view expressed.

14. In the case of AIR 1951 P&H 447 too a company wanted permission to sue in forma pauperis. Falshaw J. considered the question so obvious

that he held that the company was not covered by the word ""person"" in the Explanation to Rules I and relied on the aforesaid Rangoon and

Calcutta cases cited for the appellant.

15. For the reasons stated above I repeal the preliminary objection and hold that the applicant company comes within the expression ""person"" in

the Explanation to Rules 1 of Order 33 of the Code and can file a cross-objection in forma pauperis, if other requirements of the law are satisfied.

A.P. Srivastava, J.

16. In First Appeal No. 333 of 1957 Kundan Sugar Mills Amroha is the appellant. One of the respondents is the Indian Sugar Syndicate Limited

in voluntary liquidation. The Indian Sugar Syndicate Limited sought the permission of this Court for filing a cross-objection in forma pauperis.

When notice of the application was given to the appellant a preliminary objection was raised and it was urged that it was not open to a limited

company to take advantage of the provisions of Order 33 of the CPC and to file a cross-objection in forma pauperis. The point being of some

importance and judicial opinion in respect of it being conflicting the Division Bench before which the preliminary objection was raised has referred

the question to a Full Bench.

17. The short question which has to be considered therefore is whether the benefit of the provisions of Order 33 of the CPC can be extended to

limited companies.

18. Rule 1 of Order 33 reads as follows:

Suits may be instituted in forma pauperis. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation: A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in

such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing

apparel and the subject matter of the suit. Rule 3 of the Order as amended by this Court is as follows:

Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted

from appearing in Court or detained in prison, in which case the application may be presented by an authorised agent who can answer all material

questions relating to the application, who may be examined in the same manner as the party represented by him might have been examined had

such party attended in person.

19. The main ground urged on behalf of the respondent in support of the contention that a limited company can also sue as a pauper is that the

Explanation of Rules 1 of Order 33 of the CPC makes that rule applicable to all persons. The word ""person"" has not been defined in the CPC

itself. Under Clause (39) of Section 3 of the General Clauses Act an in-corporated company would be included in the word ""person"" unless there

is anything repugnant in the context in which the word is used. In the Order 33 of the CPC there is nothing to show that the intention was to

exclude artificial persons like limited companies from the benefit of that Order. In support of this contention reliance is placed on the cases

reported in Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd.,

20. The reply of the appellant, on the other hand, is that the meaning attributed to the word ""person"" in the General Clauses Act can apply only if

there is nothing repugnant in the context. A perusal of Rules 1 and 3 of Order 33 of the Civil Procedure Code, it is pointed out, will show clearly

that the word ""person"" as used in Rules 1 could not have been intended to include artificial persons, like limited companies. It is pointed out in

particular that under the Explanation added to Rules 11 the value of the necessary apparel of the person who is seeking to sue as a pauper has to

be excluded when considering the question whether he is possessed of sufficient means to enable him to pay the fee prescribed for the plaint.

Rule 3 of Order 33, it is stressed, requires that the application to sue as forma pauperis must be presented by the applicant in person. It is

contended that a limited company cannot have any wearing apparel nor is it possible for it to present an application in person. These

considerations, it is urged, show that in the context in which the word ""person"" has been used in the Explanation to Rules 1, it cannot be considered

to be wide enough to include artificial persons. The learned counsel for the respondent sough support for his contention from the cases, reported in

AIR 1930 Rang 259. Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another, and AIR 1951 P&H 447.

21. The question is by no means free from difficulty. But in view of the observations made by their Lordships of the Supreme Court in the recent

case of The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, I feel that the respondent''s contention must be

preferred to that of the appellant. In the case before the Supreme Court the question was whether the respondent K. Shreepathirao was an

employee within the meaning of the term as was defined in Standing Order No. 2. That order provided in its definition clauses:

In these orders, unless there is anything repugnant in the subject or context:

(a) ""employees"" means all persons, male or female, employed in the office or Main Department of Stores or Power House or Receiving Station of

the Company either at Nagpur or at Wardha whose; names and ticket numbers are included in the departmental musters.

No ticket had been issued to the respondent K. Shreepathirao. He therefore contended that he did not fall within the definition of the term

""employees"" as given in the Standing Order because that definition could apply only to those persons to whom tickets had been issued. On

behalf of the Company however it was urged that even the definition clause had to be interpreted in accordance with the context or the subject,

and if that was done the words ""whose names and ticket numbers are included in the departmental musters"" used in the definition clause must be

read as those ""whose names and ticket numbers, if any, are included in the departmental musters."" The contention of the Company was accepted.

22. The rule of interpretation which was employed was that though every word occurring in a statute should be given its proper meaning and

weight it could not be overlooked that the meaning was derived from the context or the subject. This rule, it was pointed out, had been employed

in the case of Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd., where a company had

been held entitled to the benefits of Order 33, Rules 1 of the CPC even though it could not be a person who could possess wearing apparel. The

line of reasoning suggested on behalf of the respondent in the present case was thus approved by their Lordships of the Supreme Court. If follows

by implication that the narrower interpretation of Order 33, Rule 1, C. P. C. put forward on behalf of the appellant in its preliminary objection must

be rejected as unacceptable. A limited company can therefore take advantage of the provisions of Order 33 if it otherwise fulfils the necessary

requirements. The preliminary objection raised by the appellant) must therefore be overruled.

23. We therefore overrule the preliminary objection and hold that a limited company can take advantage of the provisions of Order 33 of the CPC

if it otherwise fulfils the necessary requirements.