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**(1976) 02 AHC CK 0040**

**Allahabad High Court**

**Case No:** Civil Revision No. 707 of 1975

The State of Punjab

APPELLANT

Vs

Sri R.P. Kapoor and  
Others

RESPONDENT

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**Date of Decision:** Feb. 9, 1976

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 7, Order 33 Rule 9, 115

**Citation:** AIR 1976 All 355

**Hon'ble Judges:** M.P. Saxena, J

**Bench:** Single Bench

**Advocate:** S.N. Kacker and Vijaya K. Mehrotra, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

M.P. Saxena, J.

This is a revision application u/s 115 C. P. C. by defendant No. 1 against the order dated 12-3-1975 passed by the Civil Judge, Saharanpur.

2. Briefly stated the facts giving rise to this revision application are that Sri R. P. Kapoor, opposite party No. 1, who will hereinafter be referred to as Sri Kapoor, had filed a suit against the State of Punjab and certain others for the recovery of Rs. 10,21,000/- on account of damages arising out of malicious prosecution. He was liable to pay a court-fees of Rs. 76,982.50p. thereon. But he moved an application under Order XXXIII Rule 1 C. P. C. for permission to sue as pauper alleging that he was not possessed of sufficient means to defray the said court-fees. The application was moved on 6-4-1963 in the court of the Civil Judge, Saharanpur. The following schedule of property possessed by him was given in the application:

1. Unspecified half share of a residential farm house situate at the G. T. Road from Karnal to Delhi, being six miles from Karnal. The plaintiff's share in the five-roomed house was worth approximately Rs. 10,000/- but being in a farm, being joint interest and the plaintiff having no dominion over the whole house which was inseparable, the said half interest was not saleable,

2. Rs. 400/- and odd in the bank.

3. Wearing apparel worth approximately Rs. 600/-

4. Books worth about Rs. 300/-.

3. The defendants contested that application on a number of grounds, including that the plaintiff had suppressed his assets and was possessed of sufficient means to pay the court fees on his claim.

4. On 11-11-1966 the learned Civil Judge held that the property given by the plaintiff in his schedule was complete and he had not fraudulently suppressed any asset. In his opinion the plaintiff had no means to pay Court-fees. Accordingly he allowed the plaintiff to sue in forma pauperis.

5. Against the said order the State of Punjab (Defendant No. 1) came up in revision to this Court. Certain other revisions of the parties and others on the same point were also pending. All of them were heard by a Division Bench and were dismissed on 5-10-1968. The decision is reported in 1968 All LJ 1102. As regards the question whether Sri Kapoor had suppressed any assets by not disclosing them in the schedule annexed to the petition, it was observed:--

"On the uncontroverted testimony of Sri Kapoor the Court below has arrived at the conclusion that there has been no wilful or mala fide suppression of any assets of the two petitioners and the explanations given by Sri Kapoor for not showing certain items were quite convincing. It is not every suppression of assets from the schedule annexed to a pauper petition that can result in an order of refusal of permission to sue as a pauper. There may be cases of bona fide omissions also. The view consistently taken by all the courts is that if the omission of any assets from such a schedule is bona fide, it cannot be made a ground for refusing permission to sue as a pauper. The question whether there were any omissions at all and whether such omissions were not bona fide are clearly questions of fact, which have been decided in favour of the petitioners by the court below on the basis of the uncontroverted testimony of Sri Kapoor. We have also considered the explanation given by Sri Kapoor in respect of the various items of assets said to have been suppressed from the schedules and we are satisfied that the omission to mention those assets in the schedules was clearly bona fide."

They went on to say:

"As we have mentioned above, it has not been urged that the petitioners are not paupers or that they are possessed of sufficient means to pay the court fee in the various cases. That being so, we do not find any justification for interfering with the order of the court below in exercise of our revisional jurisdiction. The order of the court for that reason is just and appropriate."

6. In this manner Sri Kapoor was permitted to sue as a pauper. The defendants filed their written statements and issues were framed on 8-9-1970. After several adjournments the hearing of the suit started on 17-11-1971 and examination-in-chief of Sri Kapoor commenced. Again there were several adjournments and ultimately the case came up for hearing on 18-9-1972 when the State of Punjab (the revisionist) moved an application under Order XXXIII Rule 9 C. P. C. for dispaupering the plaintiff on the ground that he had concealed sufficient property and not mentioned it in the schedule attached with his application. The details of this property were also set out. It will be clear that this application was moved long 6 years after Sri Kapoor was allowed to sue in forma pauperis and after the oral evidence had commenced in the case.

7. On 12-3-1975 the learned Civil Judge held that Sri Kapoor was not guilty of any vexatious and improper conduct in the course of the suit and that the principles of res judicata were applicable to the proceedings relating to forma pauperis. He further held that this principle was applicable in respect of the property which existed at the time of the proceedings of pauperism and were either within the knowledge of the defendants or could be within their knowledge if proper inquiry was made. In his opinion only the post pauperism acquisitions of Sri Kapoor could be taken into consideration in connection with the application to dispauper him. Accordingly he passed an order the operative portion of which reads:

"As a result of the aforesaid I hold that the plaintiff is not guilty of any vexatious or improper conduct in the course of the suit and that principles of res judicata are applicable to the proceedings based on a petition for permission to sue in forma pauperis. The defendant is hereby directed to give a list of properties both moveable and immovable which came to be acquired by the plaintiff after the order of the Hon<sup>ble</sup> High Court on the original petition of the plaintiff to sue in forma pauperis. Let this list along with the affidavits in support thereof be filed within a period of one month. "

In this manner the application under Order XXXIII, Rule 9, CPC is still pending and the defendant-revisionist has been called upon to furnish a list of assets, if any, acquired by Sri Kapoor after the order passed by this Court on 5-10-1968. The State of Punjab (Defendant No. 1) has come up in revision against this order challenging the findings of the learned Civil Judge on both the points.

8. Sri Kapoor, who has personally argued this matter, has raised a preliminary objection that the order of the learned Civil Judge does not amount to "a case decided" within the meaning of Section 115, CPC and the revision application is legally not maintainable.

This contention is based on the ground that the application under Order XXXIII Rule 9 C. P. C. has not so far been disposed of and the remedy, if any, can be availed of after the disposal of that application. In my judgment this contention has no force. In the case of [Major S.S. Khanna Vs. Brig. F.J. Dillon](#), it has been held that:--

"The expression "case" is a word of comprehensive import. It includes civil proceedings other than suits and is not restricted by anything contained in the section to the entirety of the proceeding in a civil court. To interpret the expression "case" as an entire proceeding only and not a part of a proceeding would be to impose a restriction upon the exercise of powers of superintendence to which the jurisdiction to issue writs and the supervisory jurisdiction are not subject, and may result in certain cases in denying relief to an aggrieved litigant where it is most needed and may result in the perpetration of gross injustice.

9. The aforesaid principle was upheld in the case of [Baldevdas Shivilal and Another Vs. Filmistan Distributors \(India\) P. Ltd. and Others](#), . It was further held that a case may be said to be decided if the court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a "case decided" within the meaning of Section 115 of the Code of Civil Procedure. It makes it clear that an interlocutory order may also amount to "a case decided" provided it disposes of rights or obligations of the parties. In the instant case the learned Civil Judge has held that the application under Order XXXIII, Rule 9 so far as it relates to pre-pauperism assets is barred by res judicata and that Sri Kapoor cannot be said to be responsible of vexatious or improper conduct in the course of the suit. By giving these findings he has obviously disposed of the main pleas raised by the defendant revisionist As it affects the revisionists" right they are entitled to come up in revision.

10. Sri Kapoor has further argued that as no issues of jurisdictional error or illegality or material irregularity in the exercise of jurisdiction are involved in this case the High Court cannot interfere u/s 115, Civil Procedure Code. In this connection reliance is placed on the cases of [D.L.F., Housing and Construction Company \(P.\) Ltd., New Delhi Vs. Sarup Singh and Others](#), , [Shri M.L. Sethi Vs. Shri R.P. Kapur](#), , [The Managing Director \(MIG\) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway](#), and [K. Balasubramania Chetty Vs. N.M. Sambandamoorthy Chetty](#), . There can be no controversy about the principle laid down in these cases but the question is whether any jurisdictional error is involved in the order passed by the learned Civil Judge. As stated above, he has disposed of part of the defendant"s objections on the ground that they are barred by the principles of res judicata. In [Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav](#), the observation is:

"A plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. .... An erroneous decision on these pleas, therefore, can be said to be concerned with questions of jurisdiction falling within the purview of Section 115 of the Code."

The aforesaid makes it clear that an erroneous decision on a plea of res judicata concerns the jurisdiction of the court which tries the proceedings and Section 115 of the Code will be attracted to such orders. The question whether the order of the learned Civil Judge on res judicata is correct or not will be presently discussed. At present it will suffice to say that there being a finding on the plea of res judicata on which I am inclined to take a different view, the revision application is legally maintainable.

11. Another question which crops up for consideration is whether the application under Order XXXIII, Rule 9, C. P. C. is barred by the principles of res judicata so far as it relates to the property of Sri Kapoor which existed before he was allowed to sue as a pauper. Sri Kapoor has vehemently contended that the principles of res judicata apply to different stages of the same suit and as an inquiry about his assets has already been concluded by the High Court and it has been expressly held that there has been no concealment of assets and even if there was any, it was bona fide for which Sri Kapoor offered satisfactory explanation this matter cannot be gone in-to again. In support of this contention he has alluded to a number of cases. They may be briefly discussed at this stage. In [Arjun Singh Vs. Mohindra Kumar and Others](#), the principle laid down is that res judicata can be as much applicable to different stages of the same suit as to findings on issues in different suits. It further lays down that where the principle of res judicata is involved in the case of the different stages of proceedings in the same suit, the nature of the proceedings, the scope of the inquiry which adjectival law provides for the decision being reached as well as the specific provision made on matters touching such decisions, are some of the factors to be considered before the principle is held to be applicable. There can be no manner of doubt that principles of res judicata not only apply to findings on issues in different suits but also apply to different stages of the same suit. It is, however, further important to state that where this principle is sought to be applied in the case to the different stages of proceedings, the nature of the proceeding the scope of inquiry, the specific provision made on matters touching the decisions, deserve to be taken into consideration. As already stated, Sri Kapoor had applied for permission to sue as a pauper. Inquiry regarding his assets was thoroughly made and he was permitted to sue as a pauper under Order XXXIII Rule 7 C. P. C. Now an application has been made for dispaupering him under Order XXXIII Rule 9 C. P. C. Under this provision a plaintiff can be dispaupered-

- (a) If he is guilty of vexatious or improper conduct in the course of the suit;
- (b) If it appears that his means are such that he ought not to continue to sue as a pauper;  
or
- (c) If he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

Obviously the inquiry under Rule 9 is to some extent different from the inquiry which is made at the stage of disposing of an application for pauperism. Considering the nature of

these two proceedings and the scope of inquiry, the principle of res judicata cannot be applied to them. Cases of [Smt. Ganga Bai Vs. Vijay Kumar and Others](#), and [Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.](#), also do not fully apply to these proceedings. In the previous inquiry the question whether the plaintiff was guilty of vexatious or improper conduct in the suit was not involved and any decision given thereon in relation to his property will not have the force of res judicata. Sri Kapoor has also referred to the case of Bezwada Subbaredd (1959) 2 Andh WR 133 to show that the principle of res judicata has been made applicable to proceedings under Order XXXIII, Rule 9, C. P. C. but a contrary view was taken by the same High Court in [Sakhamani Anantha Padmanabha Prasad and Another Vs. Addepalli Venkataramanaiah](#).

12. The learned counsel for the revisionist on the other hand has referred to certain cases to show that the principle of res judicata does not apply to such proceedings. I have looked into these cases also. In [Rajdeo Singh Vs. Jagdeo Singh](#), it was held that when the plaintiff has been declared as a pauper res judicata does not prevent the question from being reopened. The question can be reopened on any one of the three grounds mentioned in Rule 9.

13. In [Anangabhusan Vs. Ghanashyam Patro and Another](#), it was observed that an order under Order XXXIII, Rule 7, CPC may not be such on which a plea of res judicata can be based, but in order to avoid multiplicity of proceedings some sort of finality limited within the scope of the suit or the proceedings in which it was passed should be attributed to it.

14. This question arose for consideration in the case of Life Insurance Corporation of India v. Gunwant Singh Nahar an 1965 All LJ 1056d the following observation was made by this court.

"The principle of res judicata is applicable to miscellaneous proceedings and on the basis of this principle it was urged that it was not open to the plaintiff to challenge, directly or by implication at a later stage, an order by which the defendant was permitted to prosecute the counter claim as a pauper. It cannot, however, be lost sight of that in pauper matters a party can ask for review. ....

In spite of due diligence the party may not be able to gather information as to the assets of the other. Where fresh facts come to the notice of the party, he can move an application for review. In other words, the order granting permission to sue as a pauper is not final in the sense that it cannot ordinarily be challenged at a later stage. Such an order can, without any difficulty, be challenged by way of review."

At another place it was observed:--

""When, in the instant case, the plaintiff could, by moving a review application, challenge the order declaring the defendant a pauper he can also challenge the order by other means, if permissible, under the law. The taking of a broader view of Order XXXIII Rule 9

C. P. C. will thus not multiply the litigation. In fact there shall be only one litigation irrespective of whether a review application is made or an application for dispaupering the party."

It is thus clear that the principle of res judicata is not applicable to these proceedings though some sort of finality may be attached to matters which have been disposed of as a result of contest, provided the petitioner has exercised utmost good faith in the matter of disclosure of his assets and has not intentionally departed from good faith. I am, therefore, in judgment that the learned Civil Judge was wrong in holding that the principle of res judicata applies to these proceedings. The question which now arises is whether the past financial condition of a person allowed to sue as a pauper can be taken into consideration. If so, under what circumstances. It is important to state that in the instant case the State of Punjab did not specifically mention in their application under Order XXXIII, Rule 9, CPC under which clause of this rule the application for dispaupering the plaintiff was made. They simply gave details of certain property owned by Sri Kapoor at the time of applying to sue as a pauper or acquired during the course of the proceedings which was concealed and prayed that he may be dispaupered on this ground. In this Court the learned counsel for the revisionist has confined his case to Clauses (a) and (b) of Order XXXIII Rule 9, Civil Procedure Code. Clause (a) says that the plaintiff may be dispaupered if it appears that his means are such that he ought not to continue to sue as a pauper. On Clause (a) the learned Civil Judge has held that Sri Kapoor has not been guilty of any vexatious or improper conduct. I find force in this view because vexatious or improper conduct means fraudulent concealment of property. A mere omission to state certain property is not sufficient ground to dispauper the plaintiff under this clause. In [Anangabhusan Vs. Ghanashyam Patro and Another](#), also it has been held that mere omission of certain property from the inventory submitted by the applicant will not necessarily amount to active concealment and, therefore to vexatious and improper conduct. In the instant case the defendant-revisionist had specifically alleged while contesting the application under Order XXXIII Rule 1 C. P. C. that Sri Kapoor had wilfully concealed certain property. This question was directly gone into by the learned Civil Judge as well as by this Court. The learned Civil Judge referred to every item of the property which was alleged to have been concealed and arrived at the conclusion that there was no fraudulent concealment. In his opinion, concealment, if any, was bona fide and the court fees payable in this case could not be met out of that property because Sri Kapoor had no disposing power over the same. When the matter came up to this Court a specific finding was given on this point. The relevant observations have been reproduced above. It was held that:--

"We have considered the explanation given by Sri Kapoor in respect of the various items of assets said to have been suppressed from the schedules and we are satisfied that the omission to mention those assets in the schedules was clearly bona fide."

In the face of this finding it is now not open to the revisionist, who had keenly contested the application, to say that Sri Kapoor had fraudulently or mala fide suppressed certain

assets from the schedules, and is responsible of vexatious and improper conduct in the course of the suit.

15. Another question which arises for consideration is whether in determining the "means" of Sri Kapoor his past financial condition should also be taken into consideration or only post pauperism assets are to be considered. In *Life Insurance Corporation of India v. Gunwant Singh* 1965 All LJ 1056 (supra) it has been held that to avoid unnecessary applications under Order XXXIII Rule 9 C. P. C. the courts would look into the past financial condition of the pauper in clear and "exceptional cases only i.e. where some clear documentary evidence is available as to the properties owned and possessed by the pauper. In this case this requirement is conspicuously wanting in as much as there is nothing to show that it is a case of clear and exceptional nature. Not an iota of evidence exists to support the allegations made in the application. On the other hand Sri Kapoor gives out that most of these properties were not owned and possessed by him and over the rest he had no disposing power. Therefore, it is not a case of the nature in which Ms past financial condition may be considered and the order of the learned Civil Judge cannot be interfered with. Besides it, exercise of jurisdiction u/s 115 C. P. C. by the High Court is discretionary and this Court is not bound to interfere merely because the conditions in Clauses (a), and (b) and (c) of this section are satisfied. While exercising its discretion the High Court can take into consideration such circumstances and facts as may disentitle the petitioner in revision petition from being granted any relief. This view is supported from the cases of [Major S.S. Khanna Vs. Brig. F.J. Dillon](#), and [Brij Gopal Mathur and Another Vs. Kishan Gopal Mathur and Others](#), . In the instant case Sri Kapoor was allowed to sue in forma pauperis by the learned Civil Judge on 11-11-1966. A revision was filed by the defendant-revisionist which was dismissed in 1968. The defendant, with all the agencies at its command to find out the assets owned and possessed by Sri Kapoor, remained quiet for long six years and moved an application for dispauperism on 18-9- 1972 when recording of evidence had already started in the case. Even in this application it was not specifically mentioned under which clause of Rule 9, Order XXXIII the plaintiff was sought to be dispaupered. Not a single document in support of the allegations that the plaintiff had suppressed certain assets from the Schedule was filed. In these circumstances the discretion cannot be exercised in favour of the revisionist. The learned Civil Judge has already allowed the revisionist to furnish a list of the property acquired by Sri Kapoor after he was permitted to sue as a pauper by this Court and there is no such error in the order which may require interference by this Court.

16. It will not be out of place to mention here that the exercise of jurisdiction u/s 115, CPC by the High Court is discretionary and this Court is not bound to interfere merely because the conditions in Clause (a), (b) or (c) of that section are satisfied. While exercising its discretion the High Court can take into consideration such circumstances and facts as may disentitle the petitioner in a revision petition from being granted any relief. One of such relevant considerations would be whether the order sought to be revised has occasioned substantial failure of justice-- [Brij Gopal Mathur and Another Vs. Kishan](#)

[Gopal Mathur and Others,](#) . In this case no substantial failure of justice can be said to have been occasioned.

17. The revision application is accordingly rejected with costs to the opposite party. The revisionist is allowed two months" time to furnish list of property as directed by the learned Civil Judge. The stay order, if any, is vacated. The record may be sent back to the court below without delay.