
AIR 1987 Ker 249

High Court Of Kerala

Case No: C.M.A. No. 3 of 1982

V. Sreedharan

APPELLANT

Vs

T.T. Nanu and Another

RESPONDENT

Date of Decision: March 5, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 5, Order 7 Rule 10, 141, 20

Citation: AIR 1987 Ker 249

Hon'ble Judges: U.L. Bhat, J; Chettur Sankaran Nair, J

Bench: Division Bench

Advocate: Pirappancode V.S. Nair, S.P. Aravindakshan Pillai and N. Mohandas, for the Appellant; C.J. Simon, K.P. Vijayan and T.A. Ramadasan, for the Respondent

Final Decision: Dismissed

Judgement

Bhat, J.

Appellant herein filed an application before the court below for permission to sue as an indigent person. Application was opposed by the second respondent, who contended that appellant has means to pay court-fee and that no part of the cause of action had arisen within the jurisdiction of that court and therefore the court has no jurisdiction. The court below upheld the latter contention and rejected the application for "presentation before proper court", though it was satisfied that the appellant is indigent person. This order is now challenged.

2. Learned counsel for the appellant contends that the court below contravened the scheme underlining the provisions of Order 33 of the C.P.C. and that an application can be rejected only for reasons mentioned in Rule 5. Rule 5 does not contemplate rejection of an application on account of lack of jurisdiction of the court. Learned counsel further contended that consideration of the question of jurisdiction would arise only after the application is registered as a plaint. Counsel placed reliance on the decision in Nur Muhammad v. Maulvi Jamil Ahmad (1919) 52 Ind Cas 688 : (AIR 1919 All 213), where it

was observed :

"It is thus manifest that what was presented to the court was not a plaint but an application and it would reach the stage of a plaint when the application was granted, and it would then be deemed to be the plaint in the suit. As at that stage (i.e., before registration as plaint) there was no plaint before the court, the order must be deemed to be an order returning the application. For this there is no authority in Order XXXIII Such an order was passed without jurisdiction and should not have been passed."

3. Learned counsel for the contesting respondent rebutted these contentions. According to him, Rule 5 of Order XXXIII I.P.C. is not exhaustive of the circumstances under which an application under Order XXXIII could be rejected. That application could be rejected on other grounds. Learned counsel also contended that by virtue of Section 141, C.P.C. provisions of Order VII are rendered applicable to an application under Order XXXIII and therefore rejection or return could be justified under Rule 10 of Order VII, C.P.C. Learned counsel also placed reliance on a number of decisions.

4. Order XXXIII deals with suits by indigent persons, which expression is defined in explanation (1) to Rule 1. Rule 1 states that subject to the provisions of the Order any suit may be instituted by an indigent person. Rule 2 inter alia states that every application for permission shall contain the particulars required in regard to plaints in suits, and that it shall be signed and verified in the manner prescribed for the signing and verification of pleadings. Rule 5 states that the court shall reject an application in any one of the circumstances covered by Clauses (a) to (g). If the application is not rejected under Rule 5, Rule 6 requires the court to fix a day for receiving such evidence as the applicant may adduce in proof of his indigency and for hearing any evidence which may be adduced in disproof thereof. According to Rule 7, on such day the court shall examine the witnesses produced by either party and may examine the applicant or his agent, but the examination of the witnesses under Sub-rule (1) shall be confined to matters specified in Clauses (b), (c) and (e) of Rule 5 and hear the arguments on the question whether the applicant is or is not subject to any of the prohibition specified in Rule 5. According to Rule 8, where the application is granted it shall be numbered and registered and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee or process fee. "

5. Clauses (b), (c) and (e) of Rule 5, in regard to which evidence could be adduced under Rule 7, relate to the alleged indigency of the applicant and related matters. Clause (a) relates to frame of the application and the manner of presentation. Clause (d) relates to the allegations not showing a cause of action. Clause (f) relates to the allegations not disclosing that the suit will not be barred by lime. Clause (g) relates to agreement entered into by the applicant with any other person to finance the litigation. It is argued that Rule 5 does not contemplate rejection of an application on the ground that the court has no

jurisdiction to try the suit and therefore the court could not have rejected the application.

6. No doubt, Rule 5 does not contemplate rejection of an application on the ground that the suit would not be within the jurisdiction, pecuniary or otherwise of the court. However, it has to be pointed out that Rule 5 is not exhaustive of the circumstances under which an application could be rejected. We discuss how the reason for this view.

7. It appears to us that an application for permission to sue as an indigent person is not an application pure and simple but a combination of such an application and plaint. Rule 2 clearly indicates that the application for permission to sue must contain the particulars required in regard to plaints in suits. Rule 8 states that when the application is granted it shall be numbered and registered and shall be deemed the plaint in the suit. The date of institution of the suit, if permission to sue as an indigent person is granted would be the date of institution of the application and not the date of registration of the application as the suit. These circumstances would normally indicate that application for permission to sue is not a pure and simple application but is a proceeding of composite nature that is composed of an application and the plaint. We are fortified in this view by a number of precedents.

Council had to consider the question where in the case of a pauper application, pending enquiry into pauperism, applicant obtains funds and pays court-fee and thereupon the application is registered as plaint, whether the suit shall be deemed to have been instituted from the date when he filed the application and limitation runs against him only up to that time. The Privy Council answered question in the affirmative after analysing the provisions of C.P.C. 1850, which contains provisions parallel to those in the present Code. In [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), the Supreme Court pointed out :

"An application to sue in forma pauperis is but a method prescribed by the Code for institution of a suit by a pauper without payment of fee prescribed by the Court-Fees Act. If the claim made by the applicant that he is a pauper, is not established the application may fail..... The suit commences from the moment an application for permission to sue in forma pauperis as required by Order XXXIII is presented, and Order I Rule 10 would be as much applicable in such a suit as in a suit in which court-fee had been duly paid".

See also [Chidambaram represented by his maternal grandfather Natesa Mudaliar as his next friend Vs. Nataraja Mudaliar and Others](#), ; [Dhulipalla Brahamaramba Vs. Dhulipalla Seetharamayya and Others](#), , [Jagadiswari Debi and Others Vs. Tinkari Bibi and Others](#), , [Bank of Behar Limited Vs. Ramchanderji Maharaj and Others](#), , [Totaram Ichharam Wani Vs. Dattu Mangu Wani](#), , [Mahanth Jaikishun Dass Vs. Ram Narain Das](#), , and [Raj Narain Saxena Vs. Bhim Sen and Others](#), .

9. Considering the logic of the reasoning which we have indicated above, we are, with great respect, unable to follow the decision in Nur Muhammed v. Maulvi Jamil Ahmad (1919) 52 Ind Cas 688: (AIR 1919 All 213), or [Mohammad Abbas Mallik Vs. Tahera Khatoon and Others](#), .

10. Section 141 of the C.P.C. states that procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. The application for permission to sue as an indigent person under Order XXXIII, C.P.C. is a proceeding in a court of civil jurisdiction and therefore procedure provided in the Code shall be followed in such applications. We have already indicated that Order XXXIII itself provides that the application for permission to sue as an indigent person shall contain all particulars required in a plaint and that application itself shall be deemed to be a plaint on permission being granted. The particulars to be contained in the plaint are those indicated in Rule 1 of Order VII. Rule 1 Clause (f) requires that the plaint shall contain facts showing that the court has jurisdiction. Rule 10 states that subject to the provisions of Rule 10-A plaint shall at any stage of the suit be returned to be presented to the court in which it should have been instituted. In other words, on a consideration of the averments in the plaint regarding facts showing the court has jurisdiction it is open to the court at any stage and on being satisfied that it has no jurisdiction to return the plaint to be presented before proper court. The procedure prescribed in Rule 10 of Order VII would be applicable to the application for permission to sue.

11. A learned single Judge of this court had occasion to consider the question in Pandara Mukundan v. Pandara Kumaran 1967 KLR 372. That was a case in which the trial court dismissed the application in respect of part of the claim and returned the application for presentation before proper court to enforce the relief in regard to another part of the claim. Learned single Judge observed after referring to the observations of the Supreme Court in [Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another](#), : The above decision is therefore an authority for the proposition that the provisions of Order 1, Rule 10, C.P.C. can be applied to an application to sue as a pauper even before registering the same as a suit. On the same principle objections under Order 1 Rule 13 C.P.C. on the ground of non-joinder or mis-joinder of parties or objections on the ground of mis-joinder of cause of action under Order 2, Rule 7, C.P.C. can also be taken in respect of an application to file the suit in forma pauperis. Even though Order 33, Rule 5, C.P.C. does not specifically deal with a ground relating to the pecuniary jurisdiction of the court to entertain an application to sue in forma pauperis, when such an objection is raised by the opposite party it is the duty of the court to deal with such an objection. We find no difficulty in agreeing with the above observation. We therefore hold that the court considering an application for permission to sue as an indigent person has jurisdiction to return the application for presentation before proper court on the ground that it lacks jurisdiction. The order impugned in this case though it purports to reject the application in fact passed an order returning the application.

12. We now turn to the facts of the case. The averments in the application filed by the appellant show that the suit is for realisation of money arising out of a contract dated 14-8-1976. The contract was admittedly signed and entered into at Virajpet, Coorg in Karnataka State. It is not averred in the application that any of the promises was to be performed within the jurisdiction of the trial Court. It is also not averred that the respondents reside or conduct business within the jurisdiction of the trial court. There is also nothing to show that any part of the cause of action arose within the jurisdiction of that court. The only contention urged by the learned counsel for the appellant is that the preliminary negotiations were entered into, in Karnataka State were confirmed at Trivandrum. We do not think that the preliminary negotiations would form part of the cause of action or determine the jurisdiction of the court. We therefore agree with the court below that it has no jurisdiction to try the application or suit.

13. We therefore dismiss the appeal, but without costs. However, we indicate that the application to sue as an indigent person is not rejected, it is only returned to be presented before proper court. Time two months.