
(1974) 04 OHC CK 0006
In the Orissa High Court
Case No : M.J.C. No. 101 of 1973

Bagusethi Manikyam

APPELLANT

Vs

Bagusethi Ramamurty

RESPONDENT

Date of Decision : 19-04-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 3, Order 44 Rule 1, 132 , 133

Citation : AIR 1975 Ori 20 : (1974) 40 CLT 701

Hon'ble Judges : G.K. Misra, C.J

Bench : Single Bench

Advocate : B. Raghava, V. Kameshwara Rao and B.L.N. Swamy, for the Appellant; H.G. Panda, for the Respondent

Judgement

G.K. Misra, C.J.—The petitioner filed Title Suit No. 8 of 1971 in forma pauperis against the opposite party in the court of the Subordinate Judge, Rayagada, for recovery of past and future maintenance claiming herself as the legally married wife of the opposite party. The suit was dismissed on 27-3-1973 on the finding that the petitioner was not the legally married wife of the opposite party though admittedly she was his concubine. The petitioner filed a First Appeal in this Court on 3-7-1973 under Order 44, Rule 1, C.P.C. Along with the grounds of appeal she filed two applications -- one for allowing her to prosecute the appeal in forma pauperis and the other to permit her to present the application and the memorandum of appeal through her Advocates in whose favour she had executed Vakalatnama. The last application was sworn to by the petitioner by an affidavit on 25th of June, 1973 at Raya-gada. The office took objection that the presentation was not valid under Order 44, Rule 1 read with Order 33, Rule 3, C.P.C. The matter was placed before the Registrar who directed that the case is to be placed before the Bench for orders. Mr. Panda raised the same objection. This is how the question of maintainability has been taken up before further action is taken.

2. Mr. Panda contends that there is no provision in the CPC to authorise an

Advocate to present a pauper application and the presentation is not valid. In support of his contention he places reliance on Sections 132, 133. Order 3, Rules 1 and 2, Order 6, Rule 14 and Order 33, Rules 3, 4 and 5 (a), C.P.C.

3. For convenience the aforesaid provisions may be extracted:--

"132. Exemption of certain women from personal appearance.--

(1) Women who, according to the custom and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133. Exemption of, other persons. (1) The following persons shall be entitled to exemption from personal appearance in Court, namely,

(i) the President of India;

(ii) the Vice-President of India;

(iii) the Speaker of the House of the People;

(iv) the Ministers of the Union;

(v) the Judges of the Supreme Court;

(vi) the Governors of States and the Administrators of Union Territories;

(vii) the Speakers of the State Legislative Assemblies;

(viii) the Chairman of the State Legislative Councils;

(ix) the Ministers of States;

(x) the Judges of the High Courts, and

(xi) the persons to whom Section 78B applies.

(2) Omitted by Act 66 of 1956.

(3) Where any person claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

"Order 3, Rule 1. Appearances, etc. may be in person, by recognised agent or by pleader.-- Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf :

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognised agents.-- The recognized agents "of parties by whom such appearances, applications and acts may be made or done are--

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts,

X XX

Order 6, Rule 14. Pleading to be signed.--Every pleading shall be signed by the party and his pleader (if any); Provided that where a party pleading is by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Order 33, Rule 3. Presentation of application.-- 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, 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.

Order 33, Rule 4. Examination of applicant. -- (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.-- (2) Where the application is presented by an agent, the Court may if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. Rejection of application.-- The court shall reject an application for permission to sue as a pauper--

(a) where it is not framed and presented in the manner prescribed by Rules 2 and 3, or

x x x"

4. The first contention of Mr. Panda that unless a person is exempted under Sections 132 and 133, C.P.C. from personal appearance in court he is not entitled

to exemption from personal appearance under Order 33, Rule 3, C.P.C, is fantastic. Section 132 lays down some circumstances when certain women would be exempt from personal appearance. Section 133 deals with exemption of other persons enumerated therein. Those persons are high dignitaries and accordingly they have been given the privilege of exemption from personal appearance in Court. If any person is exempt from personal appearance under Sections 132 and 133, his personal appearance cannot be insisted upon under Order 33, Rule 3, C.P.C. But the converse is not true. In other words, persons not coming within the ambit of Sections 132 and 133 are not precluded from claiming exemption from personal appearance under Order 33, Rule 3 provided the conditions of that rule are otherwise fulfilled. I express my surprise that Mr. Panda could advance such a contention.

Mr. Panda placed reliance on Mohammad Ismail Maricair Vs. Wazir Bi Bi Saheba, where a Bench of the Madras High Court examined the scope and ambit of Section 132, C. P. C. There is no controversy that u/s 132 women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court. It follows that such a woman would be exempt from personal appearance when she filed an application under Order 33, Rule 3. C.P.C. It was decided in that case that customs and manners of the country mean the customs and manners of the different communities and classes and sections of the people in the country and not the customs and manners of the country as a whole. The case did not at all deal with the question that unless a woman is exempted u/s 132 she cannot claim exemption from personal appearance under Order 33, Rule 3, C.P.C. It is difficult to see why Mr. Panda cited this decision.

5. Before the scope and ambit of Order 33, Rule 3 is examined it will be profitable to discuss the relevancy of Order 3, Rules 1 and 2 and Order 6, Rule 14 which were invoked by Mr. Panda in support of his contention that an Advocate cannot be an authorised agent within the provisions of Order 33, Rule 3, C.P.C.

Under Order 3, Rule 1, C.P.C. appearance, application or act in any Court may ordinarily be made by the party in person or by his recognised agent or by his Advocate. In this case the Vakalathnama filed in favour of the Advocates authorises them to appear for the petitioner and to conduct and prosecute all proceedings that may be taken in respect of any application connected with the same. The Advocates would, therefore, appear on behalf of the petitioner to prosecute the first appeal.

Order 3, Rule 2, C.P.C. enumerates "recognized agents". Persons holding powers-of-attorney authorising them to make and do such appearances, applications and acts on behalf of the parties constitute one class of recognised agents. The Advocates in this case do not hold any such powers-of-attorney. Consequently, they are not "recognized agents" within the meaning of Order 3, Rule 2 (a). It is, however, to be noted that "recognized agents" are different from "authorised

agents". The two expressions have been used separately in different rules. "Authorised agent" has not been defined in the Code. Consequently, a person can be an "authorised agent" even though he may not be a "recognised agent". The Advocates in this case can be authorised agents though they are not recognised agents if necessary authority from the petitioner has been obtained. An application supported by an affidavit sworn in by the petitioner on 25-6-73 has been filed wherein she authorised the Advocates to present the memorandum of appeal and the pauper petition on her behalf. Material portions of that petition may be extracted :

"2. That the petitioner is a poor lady and is living in a distant village in Srikakulam District in Andhra Pradesh and is unable to undertake journey to Cuttack to present the memorandum of appeal and the pauper petition.

3. That the petitioner has engaged Sri B. R. Rao, Shri B. L. N, Swamy and Sri V. K. Rao, Advocates on her behalf in the first appeal.

PRAYER.

The petitioner therefore prays that the Hon"ble Court be pleased to exempt her from appearance in the Court and allow any of her Advocates to present the memorandum of appeal on her behalf."

Thus, the petitioner authorised the Advocates by a separate application to present the pauper petition and the memorandum of appeal on her behalf. By virtue of this application before the Court the Advocates were her authorised agents. Admittedly the memorandum of appeal accompanied by the petition to allow her to file the appeal in forma pauperis and for exemption from personal appearance was filed by Sri B. L. N. Swamy, one of the Advocates. The memorandum of appeal and the application to file the appeal in forma pauperis and for exemption from personal appearance have (been signed by the Advocates. There has been, therefore, no contravention of the provisions of Order 3. Rule 1 or Order 6. Rule 14, C.P.C.

6. I now proceed to examine the scope and ambit of Order 33, Rule 3, C.P.C. Presentation of the application to sue in forma pauperis by the applicant in person is mandatory. The rule, however, enjoins that exemption can be given from such personal appearance by the Court and in such a case the application may be presented by an authorised agent. Whether the party or the authorised agent presents the application, he would be in a position to answer all material questions relating to the application. If the authorised agent presents the application, he would be examined in the same manner as the party. Under Order 33, Rule 4 the Court has also got power to examine the party on commission if the application is presented by the authorised agent.

On the plain language of the rule an authorised agent is competent to present the pauper application if exemption from personal appearance is granted to the party. In what circumstances exemption will be granted is not mentioned in the

rule. It would be a matter of common-sense to determine the circumstances. For instance, if a party is seriously ill and within the prescribed period of limitation he is unable to come to Court to present the petition, personal appearance can be exempted. Similarly, a person coming within the ambit of Sections 132 and 133, C.P.C. would be exempted from personal appearance. If party is so indigent that he has no money to travel a long distance to present the pauper application in Court, personal appearance can be exempted. These instances are merely illustrative and not exhaustive.

7. On the aforesaid tests, the presentation of the memorandum of appeal in this case is valid. The petitioner on affidavit asserted that she is a poor and indigent lady and had no means to travel the long distance from Srikakulam to Cuttack. She had been allowed to sue in forma pauperis after proper enquiry in the trial court. This is a sufficient ground to exempt her from personal appearance provided the other conditions are fulfilled.

In her absence the application can be presented by her authorised agent. As has already been stated, the Advocates appearing for her had a general authority to do such acts by the Vakalatnama. Whether the general authority and the Vakalatnama would be sufficient for the purpose of Order 33, Rule 3, C.P.C. need not be discussed as a special authority was given to the Advocates by the application filed in Court. The pauper appeal was, therefore, presented through authorised agent.

The next condition is whether the Advocate is in a position to answer all material questions relating to the pauper appeal. It is the practice of this Court that no party is ever examined at the time of presentation of such appeal. There are no materials on record that the Advocate Sri B. L. N. Swamy was not in a position to answer such questions. It is open to this Court under Order 33, Rule 4, C.P.C. to examine the petitioner on commission, if necessary.

On the aforesaid analysis, it will be clear that all the conditions of Order .33, Rule 3, C.P.C. were fulfilled and the presentation of the appeal was valid.

8. Mr. Panda placed reliance on AIR 1951 Mad 758 (Muthu Krishna v. Venkata) where the learned Single Judge held that exemption can be granted only by the High Court and not by the subordinate Courts. This case noticed the Madras amendment to Order 33, Rule 3, which runs thus :

"The following shall be added to Rule 3.

"The High Court may by general or special order exempt any person or class of persons from the obligation to present in person an application for permission to sue as a pauper." "

After the introduction to this amendment the learned Single Judge held that exemption granted by a Subordinate Court was without jurisdiction. In my view, this decision was not correctly decided. The Madras amendment did not delete Rule 3 itself. It merely added a provision conferring power on the High Court.

Rule 3 with the Madras amendment would mean that by virtue of the main provision Subordinate Courts have jurisdiction to grant exemption and by the new provision which was added further power was conferred upon the High Court that in respect of Sub-Courts the High Court also had power to grant ex-emption by general or special order. The learned Single Judge did not appreciate the effect of the amendment. That apart, such a question does not arise in Orissa where there is no amendment corresponding to what is prevailing in Madras. With respect, again I must say that it is difficult to see why Mr. Panda cited this decision.

9. Mr. Panda also relied on (1951) 1 Mad LJ 446 : AIR 1951 Mad 841 (Parvathi Ammal v. Meenakshi Ammal). In that case the plaint as originally presented had been returned after the question of pauperism of the plaintiff was decided by the Court of the Subordinate Judge, for presentation to the District Munsifs Court, as the suit was within the pecuniary jurisdiction of the latter Court and had to be filed there u/s 15, C.P.C. The suit ceased to be pending in the court of the Subordinate Judge. The plaint was subsequently amended by the plaintiff suo motu after return of the plaint and reliefs not originally claimed were included bringing the suit within the jurisdiction of the Court of the Subordinate Judge. When it was represented before the Sub-Judge, it was not presented by the party in person nor by any authorised agent. The learned Single Judge held that the second presentation was not in conformity with the provisions of Order 33. Rule 3, C. P. C. and the presentation was not valid. This decision also throws no light on the point in issue. Doubtless, the earlier presentation of the plaint was valid but after return of the plaint to be filed in the District Munsifs Court when the plaint was represented before the Subordinate Judge after certain amendment there was no valid presentation either by the party or by an authorised agent. The earlier valid presentation cannot enure to the benefit of the subsequent presentation after amendment.

10. On the conclusions reached by me, the presentation in this case is valid. The case be listed for taking further steps for prosecution of the appeal. The preliminary objection raised by Mr. Panda is rejected.