

(1938) 01 PAT CK 0020
In the Patna High Court

Bihari Sahu and Others

APPELLANT

Vs

Mt. Sudama Kuer and Others

RESPONDENT

Date of Decision : 03-01-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1938 Patna 209

Hon'ble Judges : Verma, J;Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This is an application in revision against an order allowing what is usually called a pauper application giving to the party leave to sue in forma pauperis. It has been contended on behalf of the opposite party at the outset that in such a case revision does not lie, and in support of this contention reference has been made to Muhammad Ayab v. Muhammad Mahmud (1910) 32 All 623 and Sumatra Devi, Mt. Vs. Hazari Lal and Another . The Allahabad view however proceeds on the footing that Section 115, Civil P.C., dealing as it does with cases decided, does not apply to interlocutory orders. A contrary view has been repeatedly taken by the Calcutta High Court, and that view has been adopted in this Court, as Chapman and Atkinson, JJ. said in Nauratan Lal v. Wilford Joseph Stephenson A.I.R.1922. Pat 859:

It has however been the established practice of the Calcutta High Court to interfere with interlocutory orders, and that practice has been adopted by this Court.

2. Continuing his preliminary objection, Dr. Sen has cited Maratab Ali Shah v. Madan Lal A.I.R.1934. Lah 295 in support of the contention that the petitioners can have no possible grievance against the leave that has been given to the opposite party to proceed forma pauperis, the Government not having moved further in the matter. The discretion to be exercised by this Court in revision cannot however be crystallised in that manner and each case will have to be decided on its merits; nor is the view prevailing in the Lahore High Court as

regards the application of Section 115, Civil P.C., the view adopted in Calcutta and followed in this Court. The preliminary objection on behalf of the opposite party must therefore be overruled. Coming now to the merits of the application before us, it is necessary to state that the suit was brought by a pardanashin widow to get rid of certain alienations made by her husband. The petitioners before us are the husband's agnates and it appears that they opposed the pauper application on the ground that the pauper applicant was possessed of sufficient means to pay the requisite court fees. They had originally taken the plea that the pauper applicant had entered into an agreement with third parties in respect of the subject-matter of the litigation, but this was given up at a later stage, as is stated in the judgment of the learned Subordinate Judge.

3. The lower Court, therefore proceeded to deal with what it called "the only point for determination in the proceeding", namely whether the applicant was possessed of sufficient means to pay the requisite court-fee. On this, the finding of the lower Court was against the petitioners before us. The learned Subordinate Judge then proceeded:

As a last resource, it was argued that the applicant herself mentioned in her cross-examination that she did not know the facts alleged in her plaint and she did not know what the disputed properties were mentioned in her plaint etc, and hence her application should be rejected.

4. There were admissions made by the pauper applicant in her cross-examination, and the learned Subordinate Judge referred to the circumstances in which they were made and came to the conclusion that they did not provide sufficient ground for rejecting her application to sue in forma pauperis. One property, it appeared, had been omitted from the application or the annexures to the application, and the learned Subordinate Judge gave the pauper applicant leave to make the necessary amendment.

5. Upon this it has been urged by the Advocate-General, who appears for the petitioners before us, that Order 6, Civil P.C. applies to the amendment of pleadings and not of applications to sue in forma pauperis. But it cannot be said that Order 6 is exhaustive of the powers of the Court in such a matter, and I have not the slightest doubt that the Court had jurisdiction to allow the amendment to be made. The substantial point that has been urged before us is that on the admissions made by the pauper applicant the pauper application does not comply with Rules 2 and 3 of Order 33 and should therefore have been rejected under Clause (a) of Rule 5 of the same Order. But the admissions in question were obtained from the pauper applicant after the Court had declined ex parte to reject the application for permission and had issued notice to the parties. Under Rule 6 such notice is for "receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof." It is true that after such evidence is taken, the Court is required under Sub-rule 2 of Rule 7 to

hear any argument which the parties may desire to offer on the question whether on the face of the application and of the evidence, if any, taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

6. But it is obvious that where the objection relates to Sub-rule (a) of Rule 5, that objection cannot be made out by the evidence required under Rule 6 and taken under Rule 7, Sub-rule (1) which must be confined to proof of the pauperism and disproof thereof. The admissions obtained from the lady, in so far as they travelled beyond the issue of pauperism, cannot be regarded as available to the objector for establishing that the Court should have rejected the application under Sub-rule (a) of Rule 5.

7. In Sheikh Muhammad Nasrullah Vs. Sheikh Muhammad Shukurullah, evidence was taken under Rules 6 and 7 relating to limitation, and the learned Judges were inclined to hold that the trial Court acted beyond its jurisdiction in taking that evidence and rejecting the application for permission on the ground that the claim was barred by time. The petitioners are not able to establish on there materials which were before the lower Court before issuing notice under Rule 6 that the Court should have rejected the application for permission on the ground that it was not framed and presented in the manner prescribed by Rules 2 and 3. The admissions obtained from the lady, assuming for a moment that it was permissible to refer to them in this connexion, were also not such as to convince any Court that there had been any breach of Rule 2 or Rule 3. The pauper applicant was a pardanashin lady and the cross-examination was a test more of what she remembered of the application before the Court than of whether or not she was a party to that application. To get her to admit that she did not know who got the plaint and the pauper application drafted, that she was not literate and that she did not ask any body to sign the vakalatnama or plaint on her behalf was, in the face of it, not a fair way of dealing with the witness, having regard to the fact that the vakalatnama and plaint bore not her signature but her thumb impression.

8. It is obvious that the petitioners have been shifting their ground from time to time, that they thought of a breach of Rules 2 and 3 only as a last resort and that they have not been able to establish the breach by the only means which were available to them.

9. I would therefore dismiss this application in revision with costs. Hearing fee two gold mohurs.

Verma, J.

I agree.