
(2012) 07 P&H CK 0218
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 7267 of 2010

Bishamber Lal and another	Vs	APPELLANT
Shanti Pershad Jaiswal and others		RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 6, Order 33 Rule 7
Constitution of India, 1950 — Article 227

Citation : (2012) 168 PLR 450 : (2013) 1 RCR(Civil) 581

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Ashish Aggarwal, with Mr. Gaurav Arora, for the Appellant; J.K. Goel, for the Respondent

Final Decision : Allowed

Judgement

L.N. Mittal, J.—By this common order, I am disposing of four civil revisions i.e. CR No. 7267 of 2010, CR No. 5900 of 2010, CR No. 957 of 2011 and CR No. 2075 of 2011 all titled Bishamber Lal & another v. Shanti Pershad Jaiswal & others, filed under Article 227 of the Constitution of India. These revision petitions have arisen out of four separate suits out of which three were filed by Smt. Raj Rattan (since deceased and represented by her husband Shanti Pershad Jaiswal-respondent No. 1) whereas the fourth suit was filed by Shanti Pershad Jaiswal-respondent No. 1 himself. Both the husband and the wife claimed themselves to be indigent persons. In two suits, applications for permission to file the suits as indigent person were allowed without even issuing notice to the defendants whereas in the other two suits, the applications for permission to file the suits as indigent persons were allowed after issuing notice to defendants but without granting opportunity of leading evidence to either party. The instant revision petitions have been filed by some of the defendants to challenge the aforesaid orders of the trial Court permitting the plaintiffs to file the suits as indigent persons.

2. I have heard learned counsel for the parties and perused the case files.

3. Counsel for petitioners contended that vide order 33 Rule 6 of the CPC (in short, CPC), it is mandatory to issue notice of the application to the opposite party as well as to Government pleader and under Order 33 Rule 7 CPC, it is necessary to give opportunity of leading evidence to both the parties, but in the instant case, these mandatory provisions were not followed because in two suits, neither notice of the application was issued nor opportunity of leading evidence was afforded to the parties whereas in the remaining two suits, although notice of the application was issued, opportunity to lead evidence was not given to the parties and all the four applications were allowed merely on the basis of report of Collector and, therefore, impugned orders are unsustainable.

4. On the other hand, counsel for respondent No. 1-plaintiff contended that defendants have no right to assail the impugned orders because the matter pertaining to Court fee is between plaintiff and Stage Government and, therefore, impugned orders cannot be challenged in superior Court by any defendant on the ground of technicality. Reliance in support of this contention has been placed on judgment of this Court in case of *Kailasho v. Vidya and others*, 1989(1) RLR 477.

5. I have carefully considered the aforesaid contentions.

6. Order 33 Rules 6 and 7 CPC are reproduced hereunder:

6. Notice of day for receiving evidence of applicant's indigency- Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) 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.

7. Procedure at hearing - (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witness (if any) produced by either party, and may examine the applicant or his agent, shall make a full record of their evidence.

(1-A) The examination of the witnesses under Sub-rule (1) shall be confined to the matters specified in Clause (b), Clause (c) and Clause (e) of Rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in Rule 5.

(2) The Court shall 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 under Rule 6, or under this rule the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as an indigent person.

7. From the aforesaid provisions, it is clear that it was mandatory to issue notice of the applications to the opposite party as well to the Government Pleader and also to afford opportunity of leading evidence to both the parties in proof of indigency of the plaintiffs and in disproof thereof. But in the instant cases, no such procedure has been followed by the trial Court. In two suits, even notice of the applications was not issued to the opposite party nor opportunity of leading evidence was granted to either party whereas in the other two suits, although notices were issued but opportunity of leading evidence was not granted. Thus in all the four suits, the applications were decided merely on the basis of report of the Collector without affording opportunity of leading evidence to the parties. It is thus manifest that mandatory procedure laid down in Rules 6 and 7 of Order 33 CPC has not been followed by the trial Court while granting permission to the plaintiffs to file the suits as indigent persons. Impugned orders passed by the trial Court are, therefore, patently perverse and illegal and suffer from jurisdictional error.

8. Judgment in the case of Kailasho (supra) is completely distinguishable on facts and is not applicable to the facts of the instant case. In that case, notice of the application had been given to the defendant who had even contested the said application but in spite of contest, the application was allowed by the trial Court. In these circumstances, it was held that substantial justice had been done and, therefore, order of the trial court permitting the plaintiff to file the suit as indigent person could not be set aside on the ground that notice of the application was not given to the Government Pleader. It was observed that the defendant, who had been given opportunity by the trial Court, could not assail the order of the trial Court in superior Court on the ground that notice had not been given to the Government Pleader. Moreover, in that case, substantial justice had been done inasmuch as notice of the application had been given to the defendant who had contested the application. In the instant case, however, notice of applications in two suits was not given to the defendants whereas in all the four suits, no opportunity of leading evidence was given to the parties. Thus substantial justice has not been done in the instant four suits whereas in the case of Kailasho (supra), substantial justice had been done by granting opportunity to the defendant to contest the application. Consequently judgment in the case of Kailasho (supra) has no applicability to the facts of the cases in hand. For the reasons aforesaid, all the four revision petitions are allowed. Orders passed by the trial Court as impugned in the revision petitions are set aside. Trial Court is directed to re-decide the applications of respondent No. 1-plaintiff for permission to file the suits as indigent person, in accordance with law, after granting opportunity of leading evidence to both the parties.