
(2001) 07 GAU CK 0015
In the Gauhati High Court
Case No : Regular First Appeal No. 15 of 2001

Dilip Kumar Modak

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 2, Order 33 Rule 5

Citation : (2001) 2 GLT 284

Hon'ble Judges : H.K.K. Singh, J;B.B. Deb, J

Bench : Division Bench

Advocate : A.M. Lodh, A. Lodh and M. Dutta, for the Appellant; U.B. Saha and T.D. Majumder, for the Respondent

Judgement

H.K.K. Singh, J.—Heard Mr. A.M. Lodh, the learned senior counsel appearing on behalf of the appellant and also heard Mr. U.B. Saha, the learned senior Government Advocate assisted by Mr. T.D. Majumder, the learned Addl. Govt. Advocate for the respondents.

2. This appeal has been filed u/s 96 of the CPC against the order dated 19.1.2001 passed by the learned Civil Judge, Senior Division No. 2, West Tripura, Agartala in suit No. M.S. 110/1999.

3. Upon hearing the learned counsel of both sides it is found that the plaintiff, appellant herein filed a suit which was registered as M.S. 110/1999 in the Court of learned Civil Judge, Sr. Division No. 2, West Tripura, Agartala. The suit was for a claim of a sum of Rs. 2,41,396. Along with this suit the plaintiff also filed a separate application seeking leave of the court to file the suit as an indigent person under the provision of Order 33 of CPC. This application was registered as Misc.(P) No. 123 of 1999. It appears that the said application was taken up for hearing under the provision of Order 33 and ultimately by an order dated 19.1.2001 the application seeking leave of the court to sue as an indigent person was rejected. Consequently, the impugned order dated 19.1.2001 was passed in the main Money Suit No. 110/99 dismissing the suit.

4. Law is clear in this regard. When a suit is to be filed as an indigent person, an application is to be filed seeking leave of the court to file the suit as an indigent person. Regarding the contents of such application seeking permission it is prescribed that particulars required in regard to the plaint in the suit etc. are to be given in the plaint and verified. Rule 2 is also reproduced below:-

"2. Contents of application- Every application for permission to sue as (an indigent person) shall contain the particulars required in regard to plaints in suit : a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings."

5. It may be mentioned here that if the application does not contain the particulars as prescribed under Rule 2, the application shall be rejected under Rule 5. Rule 3 of Order 33 of CPC prescribes that such an application seeking leave of the court to sue as an indigent person is to be presented by the person unless he or she is exempted from appearing in the court, in which case the application may be presented by an authorised agent. The relevant provision is quoted below:-

"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."

6. Thereafter, on examination of the applicant or his agent under Rule 4 and when the court finds no reason to reject the application under Rule 5 and after giving notice to the opposite party and the Government Pleader the matter shall be heard following the procedure prescribed under Rule 7. When the application is allowed, it shall be registered and shall be deemed to be a plaint in the suit. The relevant Rule viz. Rule 8 is also reproduced below:-

"8. Procedure if application admitted. - 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 fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit."

7. When the application to sue as an indigent person is refused the applicant shall be debarred from filing any subsequent application of the like nature in respect of the same matter. But the applicant may institute a suit in the ordinary manner in respect of such right. The relevant provision of Rule 15 is reproduced below:-

"15. Refusal to allow applicant to sue as an (indigent person) to bar subsequent application of like nature. - An order refusing to allow the applicant to sue as an (Indigent person) shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right; (Provided that the plaint shall be rejected if he does not pay either at the time of the Institution of the suit or within such time thereafter as the court may allow), the costs (if any) incurred by the (State Government) and by the opposite party in opposing his application for leave to sue as an (indigent person)."

8. Again Rule 15A (inserted by Amendment Act 104 of 1976) prescribes that where an application seeking leave of the court to sue as an indigent person is rejected, the court may grant time to the applicant to pay the requisite fees. The aforesaid Rule 15A is also reproduced below:-

"15A. Grant of time for payment of court-fee. - Nothing contained in Rule 5, Rule 7 or Rule 15 shall prevent a court, while rejecting an application under Rule 5 or refusing an application under Rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the court or extended by it from time to time; and upon such payment and on payment of the costs referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented."

9. In our present case, a regular suit being M.S. 110/1999 was filed and a separate application being Misc.(P) 123/99 was also filed seeking leave to sue as an indigent person, as stated above. After hearing, the application was rejected by an order dated 19.1.2001 and consequently the suit was also rejected by the impugned order dated 19.1.2001 in the main suit.

10. The law does not contemplate that a separate application should be filed. But what is required by law under Order 33 is that an application containing the particulars as mentioned in Rule 2 of Order 33 has to be presented and after hearing, if the application is allowed or permission is granted to sue as an indigent person, the same application shall be numbered and registered as a regular suit and the suit shall be tried in an ordinary way of trial of a suit. It has been submitted at the bar that an appeal has been filed against the order dated 19.1.2001 passed in the aforesaid Misc. case being No. 123 of 1999 and registered as F.A.O.No. 6/2001 and the same has been admitted for hearing. Thus, the matter relating to permission to sue as an indigent person is now pending for consideration in the aforesaid F.A.O.No. 6/2001.

11. In any way, the suit should not have been dismissed in such a manner as a consequence of rejection/dismissal of the application seeking leave to sue as an indigent person. At any rate, if the permission is refused by the trial court even by the appellate court also (even on failure of payment of requisite court fees) the suit cannot be dismissed. When an application is rejected, only the

application seeking permission is rejected but not a suit. The applicant is at liberty to file a regular suit in ordinary manner as noted above (Rule 15). On the other hand, if any suit is dismissed, institution of a subsequent suit for the same matter shall be barred.

12. Though the present appeal has been filed u/s 96 of CPC even without filing the copy of the decree, the learned counsel has not filed any certificate as required under the provision of Order 20 Rule 6A CPC. Considering the nature of the case, we are of the opinion that the Impugned order dismissing the suit cannot be stand in the eye of law being an order passed by the court illegally and with material irregularity while exercising jurisdiction and the same has to be quashed. Accordingly, we do so.

13. This order has been passed after considering all the facts and circumstances of the case even including the fact that this is not an appeal against the decree and also that the present matter relating to the suit of the applicant as an indigent person has to be decided in the aforesaid F.A.O.No. 6 of 2001.

14. Accordingly, this appeal stands closed and disposed of.

As prayed for by the learned counsel at the bar, send copy of this order to all the subordinate courts.