
(1967) 06 OHC CK 0006
In the Orissa High Court
Case No : Civil Revision No. 297 of 1966

Judhistir Natia and Another	Vs	APPELLANT
Mani Dei and Others		RESPONDENT

Date of Decision : 28-06-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1(2)

Citation : AIR 1967 Ori 197 : (1968) 34 CLT 126

Hon'ble Judges : S. Barman, C.J

Bench : Single Bench

Advocate : R.N. Misra and S.K. Mitra, for the Appellant; B.B. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S. Barman, C.J.—This is defendants' petition, challenging an order of the learned District Judge, Cuttack, dated August 2, 1966 by which he allowed the unsuccessful plaintiffs-appellants' application to appeal as a pauper. The only point urged on behalf of the defendants petitioners is that the learned District Judge did not apply his mind to the question whether the decree appealed from is "contrary to law" as required by Order 44, Rule 1(2) Civil Procedure Code. Order 44, Rule 1 (2) CPC is this.

"The appellate court, after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day and upon a perusal of the application and of the judgment and the decree appealed from shall reject the application unless it sees reason to think that the decree is contrary to law or to some usage having the force of law. or is otherwise erroneous or unjust."

2. This matter arose out of Title Suit No. 114 of 1963 filed by the plaintiffs (mother and son) in the Court of the Fourth Additional Subordinate Judge, Cuttack, for declaration of title in respect of the suit properties. The suit was dismissed by the trial court; against the decision, the mother-plaintiff filed a

petition before the District Judge to be permitted to prosecute the appeal in forma pauperis alleging that she has no property except articles worth Rs. 27.00. The said petition was opposed mainly on the ground that the mother-plaintiff is possessed of sufficient property to pay court fee. The learned District Judge heard the application and allowed it. The material portion of his finding is this:

"Thus I find that the petitioner is a pauper without means to pay the required court fee and accordingly allow her to file the appeal in forma pauperis. Accordingly the petition is allowed."

3. There is nothing at all to show from the judgment somewhat lengthy, having regard to the limited scope of the application that the learned District Judge at all kept in view the proviso to Rule 1(2) of Order 44, Civil Procedure Code, namely, that the Court shall reject the application:

"Unless it sees reason to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust"

The learned Judge does not appear to have expressed or recorded any reasons for his allowing the application to appeal as a pauper; he is absolutely silent and does not even indicate that he kept in view the mandatory provisions of the proviso to Rule 1(2) of Order 44, Civil Procedure Code.

4. The question is: Is the Court required under the proviso to Order 44, Rule 1(2) Civil Procedure Code, to give his reasons for allowing the application to appeal as a pauper? Though different High Courts have expressed apparently somewhat conflicting views, yet, in my opinion, in substance there is no real difference of opinion on the essential point; the difference, which is understandable, is only in form and the views are reconcilable.

5. That the proviso to Order 44, Rule 1(2) CPC is mandatory is not in dispute. The Court should first see if the requirements of the proviso are satisfied; this involves the assumption that the applicant is a pauper. The first thing to do is to see if the applicant is a pauper; if he is, the next thing to do is to see if the conditions in the proviso are satisfied; if he is not a pauper there is no question of compliance with the terms of the proviso. As to the necessity for complying with the requirements of the proviso there is no difference in the views of the High Courts; upto this their views are consistently the same.

6. The only point of difference in the views of the High Courts is whether it is necessary that the court should express or record in the order its reasons for allowing the application to sue as a pauper.

7. One view is that assuming that no reasons are given by the court while granting the application and admitting the appeal, such infirmity does not mean that the order is bad. The reasoning on which this view is based is that it is extremely unlikely that the mandatory requirements of the proviso were not present in the mind of the Judge; in other words, the reasons in support of the view are assumed to have existed. This is a somewhat extreme view with which

with great respect. I cannot agree.

8. Another view is that in such cases the court, while granting the application, should, after reading the judgment and decree, indicate that the question was so controversial as to enable the appellate court to say that it "saw reason to think that the decree was contrary to law": the proviso to Order 44, Rule 1(2) Civil Procedure Code, does not require that an actual decision of any particular point of law arising in the case should be taken as the appellate court does on merits. In other words, in determining such application the court is not required to prejudge on any point as contrary to law.

9. A contrary view is however expressed that the proviso does contemplate that before the granting of leave to appeal in forma pauperis the court should arrive at a definite and final conclusion that the decree complained against is contrary to law or is otherwise unjust or erroneous; when the pauper application comes to the court for leave to continue as a pauper it is incumbent upon him to satisfy the court that the judgment is erroneous. This view also, in my opinion, is not what Order 44, Rule 1(2) CPC contemplates.

10. In my opinion, the court, while dealing with an application to appeal as a pauper, need not give detailed reasons; but it must very briefly indicate the reason in support of its view. The mere fact that the court gave no detailed reasons in support of its conclusion is no proof that the court did not apply its mind to the facts of the case or the arguments that the learned counsel had urged; the mind of a highly trained judicial officer like a District Judge cannot be taken to be a vacuum to which arguments were addressed without leaving any effect behind; in fact, there is nothing which requires a District Judge to give detailed reasons for dealing with a pauper application under the proviso to Order 44, Rule 1(2) Civil Procedure Code. This view is consistent with the view taken in the earliest decision on the point by Sir Lawrence Jenkins in a Division Bench Case *Sakubai v. Ganpat* ILR (1904) 28 Bom 451 where it was held that"

"The proviso is a very necessary safeguard introduced by the Legislature for the benefit of litigants who find themselves opposed by paupers, and in our opinion the Court should be careful to see that the proviso is satisfied. It is to be noticed that the Court must come to its conclusion upon a perusal only of the application, the judgment and the decree This proviso is apt to be overlooked, but it would provide a safeguard against this if the Judge or Bench admitting a pauper appeal were to express and record very briefly the reasons for granting leave so that the Bench before whom the appeal ultimately comes may have an assurance that the leave was properly given."

These observations in my view, give the correct guidance to the court in deciding an application for leave to appeal as a pauper under Order 44, Civil Procedure Code. Indeed, in most cases it will be sheer waste of time, money and energy to write long orders when deciding such applications. It is enough if the Judge is proved to have applied his mind to the judgment and decree and the pauper

application.

11. In this view of the position in law, the order of the learned District Judge allowing the plaintiff's application for leave to appeal as a pauper without giving any reasons whatever in his judgment, cannot be maintained, and the case has to be sent back on remand to the learned District Judge.

12. In the result, therefore, the order of the learned District Judge is set aside and the matter is directed to be sent back to the District Judge, for disposing of the application for leave to appeal as a pauper in accordance with law in the light of the observations made above. This Civil Revision is accordingly allowed with a direction as aforesaid for remanding the case to the learned District Judge. There will be no order for costs of this civil revision.