(2004) 02 AHC CK 0160

In the Allahabad High Court

Case No : F.A.F.O. No. 445 of 2004

Lokesh Patawari APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1

Citation : AIR 2004 All 276 : (2004) 3 AWC 2191 : (2005) 2 CivCC 193

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : P.K. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju and R. S. Tripathi, JJ.—Heard learned counsel for the parties.

2. This appeal has been filed against the impugned order dated 20.11.2003 passed by the Civil Judge (Senior Division), Kanpur Nagar rejecting the petitioner''s application under Order XXXIII, C.P.C. by which he claimed to be indigent and prayed for permission to sue accordingly.

3. In his affidavit filed along with his application before the court below the appellant stated in paragraph 3 :

That the deponent has the following property in his name :

(i) the deponent is partner in the firm M/s. Avi Industries having sufficient capital in his Capital A/c but the same is in the form of fixed assets, not in cash;

(ii) the deponent has one scooter No. UP-78E-0406;

(iii) the deponent has only his Saving Bank A/c at Kanpur in Bank of Baroda Br. Balance of Rs. 4,663.80 and another S.C. A/c in Dena Bank Br. Balance Rs. 521.00;

(iv) the deponent has got shares (book value) Rs. 30,000 but not in cash in hand."

4. Thus, the appellant has admitted that he is partner in the firm M/s. Avi Industries having sufficient capital in his capital account, but he has alleged that the same is in the form of fixed asset and not in cash.

5. In the impugned order it is mentioned that the appellant admitted that the firm has income of Rs. 15 lacs per annum. However, the appellant contended that if he withdraws the money from the firm the business will stop.

6. In our opinion the appellant cannot be held to be an indigent person and hence the finding of the court below calls for no interference.

7. It may be noted that Rule 1 of Order XXXIII, C.P.C., only requires possession of means to pay the Court fee. No doubt the mere fact that the appellant has some interest in immovable property by itself should not be taken to mean that he has means to pay the Court fees. The real test is whether the appellant is in a position in the ordinary course to convert his possession into liquid cash without undue hardship and delay for paying the requisite court fees.

8. In the present case the appellant has admitted that the firm in which he is partner has annual income of Rs. 15 lacs. The mere ipse dixit of the appellant that if he used this income for paying the Court fee the business will stop cannot be accepted. If such contention is accepted even big businessmen will claim to be indigent.

9. It may be mentioned that the words "is not possessed of" occurring in Explanation 1 to Rule 1 of Order XXXIII, C.P.C. contemplate not possession of property but sufficient means, that is capacity to raise the money to pay the requisite Court fees vide Ouseph v. State 1971 Ker LR 452 and K. Ambalavana v. Bank of Madurai 83 Mad LW 549.

10. Thus, there is no force in this appeal and it is dismissed.

