

(1939) 12 AHC CK 0003
In the Allahabad High Court

Mahadeo Das and Others

APPELLANT

Vs

Bishwanath Das and Others

RESPONDENT

Date of Decision : 22-12-1939

Acts Referred:

Citation : AIR 1940 All 251 : (1940) 10 AWR 153

Hon'ble Judges : Verma, J

Bench : Division Bench

Judgement

Verma, J.—This is a somewhat peculiar case. The applicants for revision are defendants in a suit in which certain persons have been allowed to sue as paupers. The order against which the present application in revision is filed is dated 21st March 1938 and runs thus:

The plaintiffs were allowed to be treated as paupers on condition of paying a certain amount of costs by 21st March 1938. The plaintiffs are unable to pay the same at present. So I order that plaintiff be treated as paupers at present without being made to pay costs which should be paid when they can afford to do so. For this purpose a formal order should be made in favour of the vakil to whom the costs are due. Register the case.

2. That this is an extraordinary order, to put it mildly, cannot be denied. But the party that can legitimately have a grievance against this order is the plaintiff. To put it in simple language what has happened is this. The Court below granted permission to the plaintiffs to sue as paupers and made the permission conditional on the payment of certain costs by the plaintiffs to the defendants at any time up to 21st March 1938. The portion of the order granting permission" to sue as paupers was correct, but the condition attached, namely the payment of costs, was wholly incorrect. It is difficult to understand an order which holds that a person is a pauper and is unable to pay the court-fee which consequently allows that person to sue as a pauper and which yet directs the pauper to pay costs to the opposite party as a condition precedent to being allowed to sue as a pauper. It appears that these pauper plaintiffs filed an application inviting the

attention of the Court below to the fact that the condition as to payment of costs was illegal. On that application the Court below instead of deleting that portion of the order said that they need not pay the costs "at present" and that they should pay "when they can afford to do so." We are told that these costs were due on account of a previous application for leave to sue as paupers which had been rejected. To direct that such costs should be realized in the manner in which the Court below has done is wholly without warrant or precedent. We have no doubt that when this matter goes back to the Court below it will consider the advisability of passing proper legal orders.

3. So far as the revision filed by the defendants is concerned there are no merits in it. What has happened is that the Court below has, at any rate to some extent, modified the illegality of the condition of payment of costs which had been attached to the previous order. Learned counsel has argued that a previous application for permission to sue as a pauper having been rejected under Order 33, Rule 5, Civil P.C., on the ground that the petition has not been framed and presented in the manner prescribed by Rule 2 and 3 of Order 33 the Court had no jurisdiction to entertain a second application. He further argues that the order of 21st March 1938 against which the present revision application has been filed must be taken to be the final order granting the application for permission to sue as pauper and not the earlier one dated 26th February 1938 by which permission had been granted subject to the payment of costs. Apart from the question whether the latter argument is correct or not, it seems to us that the rejection of an application under Order 33, Rule 5 on the ground that the application was not framed and presented in the manner prescribed by Rule 2 and 3 does not bar a subsequent application. Order 33, Rule 15 provides that an order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue. In our opinion the refusal contemplated in Rule 15 is the one that is provided for in Rule 7. To the same effect is the decision of a Full Bench of the late Chief Court of Lower Burma, *Hwa v. Sit Shein* AIR(1918) LB 86. Reference may also be made to the case in *Rajendranath Paramanik Vs. Tushtamayee Dasee*, . The argument advanced by the learned Counsel for the applicants is not in our opinion well founded. The application in revision fails and is dismissed with costs.