

**(1950) 01 GAU CK 0003**  
**In the Gauhati High Court**  
**Case No : Civil Revision No. 82 of 1949**

Mahadeo Prasad Singh

APPELLANT

Vs

The Province of Assam

RESPONDENT

**Date of Decision :** 25-01-1950

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 5, Order 33 Rule 6, 115, 80

**Citation :** AIR 1951 Guw 26

**Hon'ble Judges :** T.V. Thadani, C.J.; Ram Labhaya, J

**Bench :** Division Bench

**Advocate :** S.K. Ghose and P. Chaudhuri, for the Appellant; B.C. Barua, Jr. Government Advocate, for the Respondent

## Judgement

Thadani, C.J.—This is a revision application under the provisions of Section 115, Civil P.C seeking to revise an order passed by Sree K.C. Barua, Sub Judge, in Misc. case No. 4 of 1949, in which the plaintiff had prayed for permission to sue in forma pauperis. The learned Sub Judge, after reciting the facts of the case, rejected the plaint, presumably under the provisions of Rule 5 of Order 33. The learned Judge stated:

The contract is said to have been completed in 1944 and as such, the money, if any, due, became due in 1949, but the suit is filed only in 1949. This is, therefore, clearly barred by limitation. Considering all the facts, I reject the application.

It appears to us that the learned Judge was in error in rejecting the application on the ground that the suit was time barred. Rule 5 of Order 33, Civil P.C does not in terms empower the Court to reject an application for permission to sue as a pauper if it appears to the Court that the claim is time barred.

2. Clause (d) of Rule 5, Order 33, Civil P.C., empowers the Court to reject an application made under Order 33, where the allegations do not show I cause of

action. It is conceivable that in a given case, upon the face of the plaint, the claim may appear to be time barred and the Court might reject the application. As to this, we express no opinion. In the present case, that is not the position. Even if the work was completed in 1944, it does not follow that the plaintiff's suit was time-barred in 1919. In Para 20 of the plaint the plaintiff stated:

That the plaintiff sent a notice, dated 12-3-46, u/s 80, Civil P.C. to the Chief Secretary to the Government of Assam claiming Rs. 70,000 from the Province of Assam and Mr. F.E. Cormak, the then Secretary to the Government of Assam in the Public Works Department, by his letter No. ARP. 1A/12/42/4805, dated 20-8-46, informed the plaintiff that the Government cannot admit liability for compensation in any account whatever, but added "If you have any complaint to make on the ground of short measurement of the Chief Engineer (South) will be prepared to discuss matter with you if you bring up detail to him on a date to be fixed previously".

In a claim for work done, the cause of action does not necessarily arise on the completion of the work. Ordinarily, the work has to be measured and then a final bill is made out. At the date of the plaintiff's notice on 12-3-46, apparently measurements had not been taken. It is, therefore, by no means clear that in this case the cause of action arose in 1944 on the completion of the work. In the plaint, the cause of action is shown as having accrued in 1946. On the face of the plaint, there was no reason to reject the application on the ground stated by the learned Sub-Judge.

3. We accordingly set aside the order and remand the application to the Court below to dispose of it in accordance with law.

Ram Labhaya, J.

4. I agree with my Lord the Chief Justice in the conclusion he has reached in this case. I wish to add a few words.

5. The learned Sub-Judge did not seem satisfied that the applicant before him was such a pauper as he was trying to make out. He, however, did not give a distinct finding that he was not a pauper within the meaning of Order 33, Rule 1 or that he was able to pay court fee on his claim for Rs. 76,979/11/-. He really rejected the petition for permission to sue in forma pauperis on the ground of limitation. On this point all that he said was that the contract was said to have been completed in 1944. The money must have become due in that year. The suit was filed in 1949 and was therefore clearly barred by time.

6. The order evidently falls under Order 33, Rule 5. Notices of the application had not yet been issued to the opposite party and the Government Pleader. At that stage, therefore, the order could have been passed only under that Rule. Under Clause (d) of Rule 5 of Order 33, the application for permission to sue as pauper could be rejected if the allegations did not show a cause of action. In determining whether the allegations made disclosed a cause of action or not the learned

Judge could certainly consider the question of limitation and it was competent to him to reject the petition if on the allegations of the applicant the suit was apparently barred by time. I do not think however that such was the case. The question of limitation is not quite so simple as it was taken to be. It is not free from difficulty and in any case I find it very difficult to hold that the application and the statement of the applicant both read together justify the conclusion that the suit is obviously barred. The matter required further consideration after enquiry as contemplated by Rule 6 of Order 33.

7. I think it would have been more appropriate for the learned Judge to have considered this question at the next stage when parties could have placed their respective cases without expressing any opinion on the question of limitation itself, therefore. I agree that the Order of the learned Sub-Judge be reversed and that he be directed to dispose of the petition according to law.