
(1983) 10 BOM CK 0048
In the Bombay High Court
Case No : Pauper Petition No. 20 of 1983

Malati Madhav Potbhare

APPELLANT

Vs

Madhav Gopal Potbhare and another

RESPONDENT

Date of Decision : 15-10-1983

Acts Referred:

Citation : (1983) MhLj 1056

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : Chougule, K.N. Paradkar, for the Appellant;

Final Decision : Allowed

Judgement

Mrs. Sujata Manohar, J.—The petitioner had presented a petition in forma pauperis under Order 33 of the CPC 1908, on 3rd November, 1982. By this petition she had asked for permission to institute a suit as an indigent person and had asked for declarations relating to a property known as "Potbhare Building" and for further monetary reliefs against the respondents as set out in the petition. After the petition was filed, under the provisions of Order 33, rule 1A read with rules 212 and 213 of the High Court Rules on the original side an investigation into pauperism was started before the Prothonotary and Senior Master of this Court in order to decide whether permission should be granted to the petitioner to institute a suit in Forma Pauperis. For this purpose some meetings were held before the Prothonotary and Senior Master and on a number of occasions investigation was adjourned. Before the investigation could be completed the parties settled the matter and the petitioner through her advocate applied for permission to withdraw the petition. Accordingly on 27th September 1983 the petition has been allowed to be withdrawn by the petitioner.

2. The only question that that requires consideration is whether any court-fees are payable by the petitioner in these circumstances. Under Order 33, rule 8 it is provided as follows :

8. Where the application for permission to sue as an indigent person is granted, it shall be numbered and registered, and shall be deemed to be 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.

Thus it is only after the application for permission to sue as an indigent person is granted under Order 33 that the petition is numbered and registered and is deemed to be a plaint in the suit. Till that point of time the petition is not deemed to be a suit and there can be no question of payment of court-fees on this petition on the basis that it is deemed to be a plaint. Since the petition is being withdrawn before the application for permission to sue as an indigent person is granted, there is no question of payment of any court-fee on the basis that it is a plaint.

3. A notice was given to the State and Mrs. Chougule learned counsel for the State who appears at the hearing of this application has submitted that in this case the petitioner took out a notice of motion dated 10th December 1982 being Notice of Motion No. 1733 of 1982. No ad interim orders were obtained on this motion and no relief has been granted on this motion. Nevertheless, it is submitted by Mrs. Chougule that this notice of motion was taken out in order to pressurise the respondent into settling the matter. This can be done only if the petition is treated as a suit and therefore an order must be made asking the petitioner to pay the court-fees. In support of her submission she relied upon a decision of the Gujarat High Court in the case of *Mistri Parshottam Jinabhai Vs. Shah Motichand Shamji and Another*, . In that case the respondents had filed a suit to recover a sum of Rs. 435,000 at the foot of mortgage executed by the appellant in favour of the respondents. In the suit a decree was passed against the appellants for Rs. 5,35,428. The appellant went in appeal from this decision asking for a credit of Rs. 1,75,625. The appellant was allowed to file an appeal in *forma pauperis*. No court-fees were paid by the appellant before the filing of the appeal. Thereafter the dispute between the parties was settled and a consent decree was passed. At that point a question arose regarding payment of court-fees and it was held that in order to attract the applicability of Order 33, rule 11 it is not necessary that there should be an adjudication by the Court or that the plaintiff should succeed or fail in the suit as a result of such adjudication. Such success or failure may also result from a consent decree. Accordingly the Court held that the appellant had succeeded in the appeal to the extent of Rs. 86,100 by virtue of the consent decree and the appellant was directed to pay half the court-fees on the said amount. The decision in that case can have no bearing on the issue in the present case. The Gujarat case dealt with a case where the application to file an appeal as an indigent person had been granted and thereafter the appeal was actually filed in "*forma pauperis*" and terminated in a consent decree. Hence the provisions of Order 33, rules 10 and 11 were applicable. In the present case no adjudication has been made on the application

of the petitioner to be permitted to sue as an indigent person. Therefore, no suit is deemed to have been filed and hence no court-fees are payable. Merely taking out a notice of motion makes no difference to this position. Accordingly, since there is no question of payment of any court-fees, no further directions are required to be given, as the petitioner has already withdrawn the petition.