
(1976) 01 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 19 of 1975

Meek Singh

APPELLANT

Vs

The State of Himchal Pradesh and Another

RESPONDENT

Date of Decision : 14-01-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 5, Order 33 Rule 7(3), Order 33 Rule 9

Citation : (1976) 5 ILR HP 137

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Ramesh Chand, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This revision petition is directed against an order of the learned Senior Subordinate Judge, Bilaspur, dismissing under Order 33 Rule 7(3) of the CPC an application by the Petitioner for leave to sue in formapauperis.

2. The Petitioner filed an application under Order 33 Rule 1 of the CPC for permission to institute a suit in formapauperis. Notice was issued to the State of Himachal Pradesh and the Collector. The Petitioner was examined as a witness. He stated that he was in receipt of about Rs. 236/- as salary and that he had no other property or income and therefore was unable to pay the court fee amounting to Rs. 3,076. In cross-examination, however, he admitted that he had about Rs. 1,200/- in his Provident Fund Account, and that he had landed property at Nahan. He admitted that he had not shown the property in the Schedule appended to the application under Order 33 Rule 1. The learned Senior Subordinate Judge has dismissed the application on the view that the Petitioner had not come to court with clean hands and had suppressed details of the property owned by him.

3. Learned Counsel for the Petitioner relies on Madan Mohan Lal Kapani Vs.

Jhalman Singh and Others, That case proceeds on the footing that the Petitioner had bona fide omitted to include an item of property in the Schedule. There is nothing in the judgment to suggest that there was an attempt to wilfully withhold full particulars of the Petitioner's properties. Reference has also been made to The State v. Sheikh Wahid AIR 1957 Pat. 562. That case is distinguishable for the same reason. Indeed the learned Judge expressly pointed out that the Petitioner was not fully aware of all the family properties and therefore an opportunity should be given for amending the Schedule.

4. The present case falls within the rule laid down by the Madras High Court in Al. Ar. Alagappa Chettiar v. Pl. Ct. Palaniappa Chettiar AIR 1970 Mad. 269. Where a Plaintiff wilfully attempts to suppress information regarding the extent of property owned by him, his application under Order 33 Rule 1 should be dismissed. There must be utmost good faith in the disclosure of assets and any intentional departure from it must attract dismissal. In the present case, the Nahan property was not included in the Schedule to the application. In his examination-in-chief the Petitioner attempted to suppress the fact that he owned such property, he stated that he had no other property or income besides the salary of Rs. 236/- per month. It was only in cross-examination that he was compelled to disclose the fact of his owning the Nahan property. In the circumstances the learned Senior Subordinate Judge was justified in dismissing his application for leave to sue in forma pauperis.

5. It is urged on behalf of the Petitioner that the ground of concealment of property is not relevant at the stage of granting leave to sue in forma pauperis, but is a ground which can be taken into consideration only after leave has been granted and when the court acts under Order 33 Rule 9 to disputer the Plaintiff. The contention is misconceived. The disappearing of a Plaintiff under Order 33 Rule 9 arises where the court finds that after it granted leave the Plaintiff has acquired property such that he ought not to continue to sue as a pauper. The present is a case where leave had not yet been granted. If while considering the question, whether the Plaintiff should be granted leave, the court finds that the Plaintiff has acted malafide and has wilfully not included all his assets, it will reject the application under Order 33 Rule 5.

6. Learned Counsel for the Petitioner then contends that the trial court has no jurisdiction to entertain the suit. I am not inclined to entertain that objection at this stage. The Plaintiff has invoked the jurisdiction of the trial court, and if for certain reasons he feels that the trial court has no jurisdiction it is that court to which he must apply in that behalf in the first instance.

7. The revision petition is, dismissed but there is no order as to costs.