
(1997) 01 KL CK 0033
In the High Court Of Kerala
Case No : C.R.P. No. 2198 of 1995-D

Mercantile Credit Corporation Ltd. and Another	APPELLANT
Vs	
K. Sathyan	RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5

Citation : AIR 1997 Ker 276 : (1997) 1 CivCC 319 : (1997) 3 ILR (Ker) 519

Hon'ble Judges : B.N. Patnaik, J

Bench : Single Bench

Advocate : V.V. Asokan, K.I. Mayankutty Mather and Jijimol J. Vadakken, for the Appellant; B. Krishnamani, for the Respondent

Final Decision : Allowed

Judgement

B.N. Patnaik, J.—The counter petitioners in O. P. (Pauper) No. 3/86 on the file of the Principal Sub Court, Trivandrum have preferred this revision against the order dated 16-3-1995 by which the application by the respondent herein to file a suit as an indigent person under Order 33 of the CPC (for short "C. P.C.") was allowed. The respondent herein filed the petition to permit him to file a suit as an indigent person for recovery of damages on account of theft of his vehicle alleged to have been committed by the petitioners herein. The suit is valued at Rs. 4,08,000/-. The court-fee payable thereon is Rs. 40,780/-. He pleaded that he has no sufficient means to pay the court-fee.

2. The Court below held that the applicant (the respondent herein) has no sufficient means to raise the required funds to pay the court-fee. He rejected the contention of the petitioners herein that the application is not maintainable.

3. Learned counsel for the petitioners contended that even if it is held that the respondent does not have sufficient means to pay the requisite court-fee, yet the prayer to file the suit as an indigent person deserves to be rejected on the ground that the suit is not maintainable under Clause (0 of Rule 5 of the Order

33, C.P.C.

4. The only question that arises for consideration is whether the provision of Clause (f) of Rule 5 of Order 33, C.P.C. is applicable to the facts of the case.

5. Rule 5 of Order 33, CPC lays down certain grounds on which the court shall reject an application for permission to sue as an indigent person. Clause (f) thereof provides that where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, such an application should be rejected. It is admitted in the application that the theft of the vehicle took place on 22-5-1982. The application to sue as an indigent person was filed on 2-1-1986. Article 91 of the Limitation Act, 1963 lays down that the period of limitation for claiming compensation is three years which shall run from the date when the property is wrongfully taken or acquired by theft. It is well settled that a suit by an indigent person must be regarded as a suit instituted on the date of presentation of application to sue as an indigent person. From the averments in the application it becomes clear that the claim is barred by limitation. This Court in *Mohammed Kunju v. Sudhamma* (1990) 1 K LT 464 held on an interpretation of Order 33 Rule 5 that if the suit appears to be barred by any law, then the Court is bound to reject the application for permitting to sue as an indigent person. Learned counsel for the respondent relied on the decisions in *Ayipala Venkataraya Chetty Vs. Ayipala Ramachandriah Chetty and Others*, and in *re K. Annamalai Chettiar* AIR 1956 Mad 677. In *Annamalai's* case it has been held that a Court has jurisdiction to enquire in the pauper application stage itself into the question of limitation, allowing evidence to be adduced by both sides. The scope of the enquiry, however, is a matter within the discretion of the trial Judge and in, exercising this discretion it must not be exercised arbitrarily or capriciously and must be guided by sound judicial principles. The Court should not at that stage embark upon the consideration of complicated or doubtful questions of limitation as may arise on the allegation of the respondent (Counter petitioner in the application) or decide questions affecting the merits, as questions of limitation are seldom pure questions of law but more often than not mixed questions of fact and law that more properly and fairly can be determined at the hearing of the suit. There can be no contrary opinion about the aforesaid proposition of law. But where it is apparent from the averments of the applicant and not from the defendants' statement in defence that the suit is barred by the law of limitation, the matter does not pose any complicated or doubtful questions of law. The facts of the cases of Madras and Andhra Pradesh High Courts are clearly distinguishable inasmuch as in those cases, the defendants raised the plea of limitation in their defence. But here it is otherwise.

6. For the reasons stated above, I find that Clause (f) of Rule 5 or Order 33, CPC squarely applies to this case. The order of the Court below therefore cannot be sustained in law. The prayer of the respondent to file the suit as an indigent person is rejected. The Court below shall pass appropriate consequential orders

under Order 33 Rules 15 and 15A.

The revision is accordingly allowed. No costs.