

(2007) 07 AHC CK 0246
In the Allahabad High Court

Punjab National Bank and Others

APPELLANT

Vs

A Unique Export House and Others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2008) 1 AWC 847

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—At the time of hearing no one appeared on behalf of respondents hence only the arguments of learned counsel for the defendant/revisionists were heard.

2. This is defendants" revision directed against order dated 28.3.1990 passed by Civil Judge, Moradabad, in Misc. Case No. 71 of 1989, through which opposite party Nos. 1 and 2 in this revision were permitted to file suit as indigent person. The suit was instituted for recovery of Rs. 25 lacs and odd against applicants and proforma respondent.

3. District Magistrate submitted his report dated 15.12.1989 to the effect that plaintiffs did not possess sufficient means to pay court fees and State had no objection in case plaintiffs were permitted to institute suit without payment of court fees.

4. According to the learned counsel for the defendant-applicants the most objectionable portion in the impugned order is the observation of the court below that under Order XXXIII, Rule 1. C.P.C., it is not necessary to see that how much movable or immovable property plaintiffs own and the relevant thing to be decided under the said provision is as to whether plaintiffs have got sufficient means to pay the court fees at once.

5. The other objection of the applicant is that there was immovable property of

deceased mother of plaintiff No. 2 which had been mortgaged with the defendant-bank and thereafter mother of plaintiff No. 2 died hence he became owner of the said property and the valuation of the said property was so much that plaintiff could easily arrange for the amount to pay the court fees. In that regard the defence of the plaintiff No. 2 was that firstly, the property was mortgaged hence not capable of immediate sale and secondly, after the death of his mother, his sisters also inherited share in the said property.

6. It has been held in *Mashooque Ali v. State of U.P. and Ors.* 1979 ALJ 1082 that:

Where petitioner is possessed of some property which is not cash, the test to decide whether he is a pauper is not whether in the abstract he has the power of raising money, but whether in the concrete circumstances of the case he can succeed in raising anything substantial by exercising that power.

7. In *A. Prabhakaran Nair Vs. K.P. Neelakantan Pillai*, it has been held that the expression possession of sufficient means under Order XXXIII, Rule 1, C.P.C. means capacity to raise money and not the actual possession of property. In the said case property of the plaintiff was hypothecated to a Bank to secure principal and interest and the plaintiff was not in a position to convert the said property into cash hence it was laid down that he could not be held to be a person possessing sufficient means to pay the court fees.

8. Learned Counsel for applicant has cited *Fakruddin and Another Vs. Iqbal Ahmad and Another*, . In the said authority also it has been held that means must be such from which plaintiff can raise the necessary cash for payment of court fees.

In view of the above authorities, I do not find any error in the impugned order.

9. Revision is accordingly dismissed.