
(1966) 04 AP CK 0006

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 432 of 1961

Ram Bai

APPELLANT

Vs

Suraj Karen and Others

RESPONDENT

Date of Decision : 07-04-1966

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 — Rule 95
Civil Procedure Code, 1908 (CPC) — Order 32 Rule 10, Order 33 Rule 17, Order 33 Rule 18

Citation : AIR 1967 AP 383

Hon'ble Judges : Kumarayya, J; Ananta-Narayana Ayyar, J

Bench : Division Bench

Advocate : D.M. Deshmukh and C. Narasimhacharya, for the Appellant; C. Mallikharjuna Rao, for the Respondent

Judgement

Kumarayya, J.

(1) This is a petition to revise the order dated 22-6-1960 of the 1st Additional Judge, City Civil Court, Hyderabad, whereby he refused to include in the decree, the Court fee amount and also the Advocate's fee as costs of the suit, payable by the judgment-debtor to the decree-holder. The plaintiff had brought her suit in forma pauperis. She could not pay the Advocate's fee which she had agreed to pay as she was possessed of no means. The advocate filed his certificate stating that the stipulated fee which was an amount certain, was not paid on account of pauperism. It was requested that the might be included in the decree as a taxable amount. A decree according was drawn with the said amount included therein. The court fee was also included in the decree. Thereafter the judgment-debtor by an application took objection to the inclusion of both the items. The objection with regard to the court fee was to the effect that the court fee was directed to be recovered by the Government from the plaintiff. The court-fee thus being payable by the plaintiff it was said that it cannot be taxed as costs of the suit. Then the objection with regard to the Advocate's fee was on the ground that the certificate filed did not show that the Advocate had actually received the

fee. Unless there is statement to that effect. The fee could not be included in the decree according to the rules of force. These objections found favour with the learned Judge. Hence this revision petition.

(2) It is contended on behalf of the petitioner that having regard to the clear provisions of O. 33 R. 10 C. P. C ., the order of costs did include the amount which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

(3) It is also urged that the costs according to O. 33, R. 16 would include all costs of an application for permission to sue as a pauper and of an inquiry into pauperism. Such being the case, merely because the court had ordered that the State Government may recover the court-fee from the plaintiff, the Judgment debtor is not absolved from payment of the same which in fact under the clear provisions of law should be included in the costs. To our minds this plea is tenable.

O. 33, R. 10 reads to the following effect:-

"Where the plaintiff succeeds in the suit the court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit."

As per this rule it was incumbent on the court to calculate the amount of court-fees the plaintiff had to pay if he had not been permitted to sue as a pauper.

(4) So then it cannot be disputed that the amount of court-fees is one of the items of the costs of the suit and when the plaintiff succeeds it has to be calculated as an item to be included in the decree. Of course it is payable to the Government in terms of the decree and shall be first charge on the subject-matter of the suit. As the plaintiff has been awarded costs she has been directed to pay the court fee to the Government. Such a direction for payment does not absolve the defendant to pay that part of the costs of the suit which has to be necessarily calculated and taxed as costs under the clear provision (including the heading) of R. 10 OR. 33 C. P. C. The trial Court was wrong in holding otherwise. The court-fee as included originally in the decree must have been allowed to remain as an item of costs of the suit.

(5) Then comes the question of the advocate's fee. Indeed the normal rule is that unless the certificate filed shows that the advocate has received the fee, the fee mentioned cannot be taxed as such. This is not however an absolute rule which cannot be departed from under the orders of the Court. The court passing the decree has of course wide discretion to order otherwise even suo motu. It is judicial discretion to be exercised where the circumstances of the case justify. In a case of pauperism where the petitioner is unable to pay even court-fees it cannot be expected that he could pay the Advocate's fee. The C. P. C., contains

various provisions to guard against the fact that the payment of court fee is in no manner evaded by making payment to the advocate by way of his fee. It is particular at the same time to see that plaintiff is not handicapped by reason of absence of legal aid. Rule 18 of Order 33, C. P. C., provides that where the pauper is unable to engage a counsel the court may assign a pleader or advocate to assist him. It follows that the legal assistance is made available to the pauper without payment in the first instance of the legal fee by him Rule 20 of O. 33 C. P. C. Further provides thus:-

"After a person has been granted leave to sue as a pauper no person shall take except in pursuance of an agreement as certified to court under rule 17 or agree to take or seek to obtain from him, any fee, profit or reward, for the conduct of his business in the court.

Provided that, notwithstanding anything herein contained, the court shall have power to award costs against the adverse party or out of the property recovered in the suit and to direct the payment thereof to the advocate or pleader representing the pauper.

Rule 95 of the Civil Rules of Practice gives power to the court to direct that the fee may be entered even though the certificate does not bear reference to the fact that the Advocate has received such fee. This provision evidently has been made to meet such exigencies as in case of pauperism, etc., The trial Court had originally allowed the advocate's fee to be included in the costs of the suit but later on the application of the defendant disallowed the same on the ground that the certificate merely showed the stipulated fee and that was not the fee by him by that time.

(6) We are of the view that in the circumstances of the case the trial Court order to have considered the advisability or propriety of exercising its power under the Rule 95. Evidently the court below had not mind the opening clause of that provided and thus it failed to exercise jurisdiction in it under the provisions of rule 95 and the Civil Rule of Practice.

(7) We do not think it necessary to remand the case for this purpose. Has be regard to the clear facts of the case, we of the opinion that it is a fit case where court should direct that, even though the Advocate had not received the fee from plaintiff, the stipulated fee should be in ordered in the costs of the suit so that the advocate who had conducted the case and the promised the fee may be able to get the same. That will be quite in accord with the letter and spirit of the provisions of Order. 33 C. P. C.

(8) We, therefore, allow this revision petition and direct that both the court-fee and the Advocate's fee be included as payable items in the decree. The decree be accordingly. In the circumstances of the case there will be no order as to costs.

(9) LJ/JHS/D.V.C.

(10) Revision allowed.