
(1966) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Civil Revision No. 102 of 1962

Ramdharlal Nagendra Prasad Sao and Others

APPELLANT

Vs

Nagendra Prasad Sao and Others

RESPONDENT

Date of Decision : 21-04-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 7, 149

Citation : AIR 1967 MP 1 : (1966) 11 MPLJ 724

Hon'ble Judges : P.V. Dixit, C.J;N.M. Golvalker, J;K.L. Pandey, J

Bench : Full Bench

Advocate : Ram Kumar Verma, for the Appellant; A.P. Sen and A.D. Deoras, for the Respondent

Judgement

Pandey, J.

This matter comes before us on a reference made by Bhargava J., and the question which has been referred to us for our opinion is as follows

Whether after rejecting the application for permission to sue as a pauper, can the Court by a separate and subsequent order allow the applicant-plaintiff to pay the requisite court-fee u/s 149 of the Cods of Civil Procedure and treat the application as a plaint ?

The material facts, shortly stated, are these. On 31st October 1957, the applicants made aa application under Order 38, Rule 1, of the Code for permission to sue as paupers. That application, which was contested, came to be ultimately dismissed on 1st January 1962, without giving any lime for payment of the requisite court-fee. Immediately after the order was passed, the applicants made an oral request for grant of time to pay the court-fee. The Additional District Judge fixed 19th January 1962 for consideration of this request. A day before the last mentioned date, the applicants made a written application u/s 149 of the Code praying for a week's time to pay the court-fee. On 19th January 1962, the Judge declined to grant any time for the purpose on the view that he

ceased to have seisin of the case as soon as he dismissed the application for permission to sue as a pauper. Thereupon, the applicants moved this Court for, revising the order dated 19th January 1962 Bhargava J., before whom this revision came up for hearing, noticed a difference of opinion in the several decisions of this Court and made the reference.

The first of the decisions, which was mentioned before us as having a bearing on the question, is AIR 1944 357 (Nagpur) . In that case, Bobde, J., held that, if the Court decided to reject the application for permission to sue as a pauper under Rule 5 of Order 33 of the Code or to refuse to allow the applicant to sue as a pauper under Rule 7, of Order 33 of the Code, it could treat the application as a plaint and. either before or at the time of the passing of the order under Rule 5 or Rule 7, allow in its discretion u/s 149 of the Code, time to pay the requisite court-fee. The learned Judge further held that, when the court-fee is so paid, the suit would be deemed to have been instituted on the day on which the application for permission to sue as a pauper was made.

The second case relied upon is Channulal v. Shama Ramcharan 1955 Nag LJ 545 : (AIR 1955 Nag 259). A Division Bench of this Court held that, for purposes of exercise of the power under Order 39, of the Code, the suit should be deemed to have commenced as soon as an application for permission to use as a pauper was made. The Division Bench pointed out that when such an application was made, there was before the Court a plaint without the necessary court-fee plus an application for permission to sue as a pauper and the suit grounded on that plaint was kept in abeyance till the question of pauperism was decided. The third case is Bhanu Vs. Dalmia and Co. and Another, . There the question referred to a larger Bench was whether, having once granted time for payment of prescribed court-fee by the very order by which permission to sue as a pauper was refused, the Court could extend u/s 149 of the Code the time initially granted by it. A Division Bench of this Court answered that narrow question in the affirmative. Hidayatullah C. J. (as he then was) observed as follows :

" It has been held in this Court that in proceedings for permission to sue in forma pauperis there are two matters before the Court, (a) the plaint, and (b) the application to sue in forma pauperis. Even if the application (a) be dismissed, there still remains the plaint (a), and if time is given to pay court-fee and it is paid, the plaint is good from the time when the plaint (a) was filed. This is not only the *cursus curiae* but also the settled opinion of this Court. "

The last case is Fateh Ali v. Ratanlal F. A. No. 1 of 1959, D/-12-2-1962 (Madh Pra) by Naik and Bhargava JJ. (at p. 731 of MPLJ): (at p 172 of AIR). Following the view taken in AIR 1944 357 (Nagpur) , they held that, since the application under Order 33, Rule 1 of the Code had been dismissed without giving to the applicant any time to pay the prescribed court-fee, the Court ceased to have seisin over the case and it could not grant to the applicant any time to pay the court-fee on the basis of an application made by him after many days, even by recourse to Section 149 of the Code. Upon a consideration of the conclusions

reached in the four cases as grounded on the facts of those cases, we do not find them to be irreconcilable In Channulal's case. 1955 Nag LJ 545 : (AIR 1955 Nag 259). (supra), the question which we are now considering did not arise at all and the only question there was whether the powers under Order 39, could be exercised when there was before the Court only an application for permission to sue as a pauper.

In Bhanu Vs. Dalmia and Co. and Another, , time to pay the requisite court-fee had already been granted by the very order by which the application for permission to sue as a pauper was dismissed, a course approved by Bobde J., and Naik and Bhargava JJ.. in the other two cases, and the only question was whether the time initially granted could be further extended u/s 149 of the Code A cleavage of opinion, however, appears in the wide observations made in Channulal's case 1955 Nag LJ 545: (AIR 1955 Nag 259), fsupra), and Bhanu Vs. Dalmia and Co. and Another, and, since the question has been referred to us, we consider it proper to express our opinion on it.

(4) Long ago, the Privy Council observed in Skinner v Orde. 1878 IA 126 (PC). as follows :

" The petition is filed, and proceedings are taken to inquire into the pauperism which are delayed by various orders of the Courtuntil a very considerable period of time has elapsed Then, pending that inquiry, the plaintiff by paying the amount of stamp-fees into Court, admits that he is no longer desirous to sue as a pauper, and gives up so much of the prayer of his petition as asks to be allowed so to sue but no more.... Is there then anything in the Act which requires that in such a state of things the petition of plaintiff shall be rejected altogether, and the plaintiff be compelled to commence de novo? The plaint is not converted into a point from that time only, but remains with its original date on the file of the Court.. . . . In their view the suit must be deemed to be instituted when that application was filed."

In Vijai Pratap v. Dukh Haran Nath AIR 1902 SC 941 Supreme Court observed :

" An application to sue in forma pauperis is but a method prescribed by the Code for institution of a suit by a pauper without payment of fee prescribed by the Court Fees Act. If the claim made by the applicant that he is a pauper is not established, the application may fail. But there is nothing personal in such an application. The suit commences from the moment an application for permission to sue in forma pauperis as required by Order 33 of the CPC is presented, and Order 1 Rule 10 of the CPC would be as much applicable in such a suit as in a suit in which court-fee had been duly paid."

Even in the case of AIR 1944 357 (Nagpur) , Bobde J. recognised the dual character of the application for permission to sue as a pauper and quoted with approval the head-note to that effect in Bank of Behar Limited Vs. Ramchanderji Maharaj and Others, and the observations in Mahadev Gopal Savant Vs. Bhikaji Vishram Chavan, If. as indicated by the observations in the last paragraph, an

application for permission to sue as a pauper is also to be regarded as a plaint from the inception, mere refusal of the request for permission to sue as a pauper would not determine the application in its character as a plaint. Once the dual character of the application is recognised, there is, we think no justification for assuming that, unless the application is before it is dismissed, treated as an unstamped plaint and time is granted for payment of the prescribed court-fee, any subsequent order to the same effect would amount "to renovating the plaint which accompanied the application"

In our opinion, the application in its character as a plaint remains pending even after refusal of the permission to sue as a pauper and that explains the practice, which has grown up, of treating it as an unstamped plaint and granting time to pay the prescribed court-fee. It was for this reason that Hidayatullah C. J. (as he then was) forcefully stated:

"This is not only the *cursus curiae* but also the settled opinion of this court."

The criticism that there is no support for such a course in the provisions of Order 38 of the Code is pointless because they do not provide even for grant of time to pay the prescribed court-fee at the time of refusing permission to sue as a pauper. Once the dual character of an application for permission to sue as a pauper is accepted, it justifies not only the procedure of treating it, at the time of refusing permission to sue as a pauper, as an unstamped plaint and giving time to pay the prescribed court-fee but also the view that, even thereafter, it could be so regarded. This is, however, subject to one exception. If, at any earlier stage, the application has been dealt with in its character as an unstamped plaint and the Court has, in the exercise of discretion, declined to grant time to pay the requisite court-fee, the matter cannot be reopened.

It will not serve any useful purpose to examine the decisions of other High Courts which are conflicting. We may, however, mention that the dual or composite character of an application for permission to sue as a pauper is now widely recognised and the Calcutta High Court held in *Jagadiswari Debi and Others Vs. Tinkari Bibi and Others*, and *Kali Dasi Dasi Vs. Santosh Kumar Pal and Others*, that the termination of the proceedings in the matter of granting or refusing leave to sue as a pauper does not amount to rejection of the unstamped plaint, which continues to be before the Court and in relation to which the Court can subsequently grant, u/s 149 of the Code, time for payment of the prescribed court-fee. The Madras High Court too took the same view in *Nallavadiva Aramal v. Subramania Piliai* ILR Mad 667: AIR 1918 Mad 1039 and *Sundarathammal and Another Vs. Paramaswami Asari and Others*, .

In view of the discussion in the foregoing paragraphs, we are of opinion that, even after rejecting an application for permission to sue as a pauper, the Court can, so long as the unstamped plaint (which it is in another character) is not rejected and a request for time to pay the prescribed court-fee not refused, grant by a separate order passed subsequently time u/s 149 of the Code to pay the

prescribed court-fee.