

(1974) 03 DEL CK 0002

In the Delhi High Court

Case No : A.S. Appeal No's. 2696 of 1973, 3050 of 1973 and Petition No. 3 of 1969

R.P. Kapur

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 19-03-1974

Acts Referred:

Citation : (1975) 11 DLT 150

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : S.S. Chadha and P.N. Sethi, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) On 7th January, 1969, the petitioner filed an application for permission to sue in forma pauperis against the Union of India, the State of Punjab and the Accountant General, Punjab for the recovery of Rs. 10,56,000 on account of damages. The pauper application was heard and on 24th April, 1972, Prithvi Raj J. held that the petitioner is not a pauper and cannot be permitted to sue as such. The learned Judge, however, granted one month's time to the petitioner to pay the requisite court fee. The petitioner took the matter in appeal. His appeal was dismissed in limine on 31st May, 1972. He urged the matter in the Supreme Court. The Supreme Court declined to grant special leave.

(2) On 18th July, 1972, the petitioner made an application (IA 1276 of 1972) for extension of time for payment of court fee. On 5th April, 1973, time was extended by one month from the date of the order. The petitioner did not pay court fee within the period extended. He made another application (IA 1079 of 1973) On 14th May, 1973, time was again extended by one month. Again the petitioner did not pay court fee. He made still another application (IA 1732 of 1973). On this application Chawla J. on 16th July, 1973, granted time to the petitioner to pay court fee within three months and the learned judge said that

this was to be the last opportunity. This time expired on 15th October, 1973. Court fee was, however, not paid even within this period.

(3) On 8th October, 1973, that is, before the expiry of the time granted by Chawla J. the petitioner moved an application u/s 151, CPC in which he stated that he was unable to pay court fee of Rs 12,300 which is livable on a claim for Rs, 10.56,000 He stated that he wished to amend his claim and confine his relief for general damages to Rs. 3,00,000 instead of Rs. 10,00,000. In the original application for forma pauperis he had claimed Rs. 10,00,000.00 on account of general damages and Rs. 56,000 on account of special damages. He, Therefore, wanted to reduce his claim for general damages to Rs. 3,00,000.00 . The petitioner stated in this application that he was prepared to deposit court fee if he was allowed to reduce his claim to Rs. 3,00,000.00 .

(4) On 20th November, 1973, "the petitioner made yet another application u/s 151 of the CPC in which he stated that delay in making payment of the court fee may be condoned and he may be allowed to make payment of the court fee on the amended claim

(5) These are two applications filed by the petitioner. This order will govern them both.

(6) Mr. S S. Chadha appearing on behalf of respondents I and 2 has opposed these applications. As regards the application for reduce -corporation of the claim from Rs. 10,00.000 to Rs. 3,00,000, it is said that only, a plaint can be amended and there is no plaint in this case before the court. There is only an application to sue in forma pauperis, he says. Secondly, it was argued that as required by the amended rule 17 of Order 6, CPC the petitioner has not filed the amended plaint. In my opinion, there is no substance in either of these grounds. All that the petitioner wants is to reduce his claim from Rs. 10,00,000 to Rs. "3.00,000.00 . No other amendment is sought. What the petitioner seeks"-is the amendment of his plaint He offers to pay the court fee treating his application as a plaint. It is a misnomer to call the plaint.""as an application in forma pauperis.

(7) In Vijai Pratap Singh v. Dukh Haran Singh the Supreme Court said:

"An application to sue in forma pauperise 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..... The suit commences from the moment an application for permission to sue in forma pauperis as required by 0.33 of the CPC is presented."

ORDER6 Rule 17, CPC would be as much applicable to such a suit as to a suit in which court fee had been duly paid.

(8) When the court refuses to allow the applicant to sue as a pauper under Order 33 Rule 7 (3) the suit which was already instituted does not come to an end because the application by which the suit was commenced is a composite document comprising a plaint and a prayer to sue in forma pauperis and,

Therefore, when the latter alone is refused the suit does not automatically come to an end: See *Jugal Kishore v. Dhanno Devi*".

(9) The other objection is purely technical and is stated to be rejected. It is enough to say that all that the amended rule 17 of, Order 6, Code of Civil Procedure, requires is that the amendment sought should be specified in the application. This the petitioner has done in this case.

(10) The other application for extension of time has been opposed principally on two grounds. Firstly, it is said that by reason of the failure of the petitioner to pay court fee on before 15th October, 1973, the pauper application stood rejected as the time extended by Chawla J. had expired and the petitioner had failed to make an application for extension of time within that period. The second ground is that in case of an application under Order 33, CPC the court has no power to extend the time once the time originally granted or subsequently extended has expired. I do not agree. Under the present Code the court has power to treat the refused application to sue in forma pauperis as an unstamped plaint and to permit the requisite court fee to be paid within a time to be fixed by it. The court can extend the time from time to time. Section 149. CPC gives ample power to the court to extend the time. In *Mahanth Ram Das v. Ganga Das*", it was observed :

"SECTION 148 of the Code, in terms allows extension of time, even if the original period has expired, and Section 149 is equally liberal."

(11) It is true that on 15th October, 1973, the time extended by Chawla J. has expired. Though till very recently there was a divergence of opinion amongst the various High Courts on the power of the court under Order 33 Rule 7 (3), CPC to allow the court fees to be paid u/s 149 so as to treat the suit as one instituted on the date of the filing of pauper application and not on the date on which the court fees are paid it can now be no longer doubted that the court has the power to extend the time even if the period originally fixed or subsequently extended has expired. It is also not in doubt that the date for limitation would be the date on which the application for forma pauperis was presented to the court. In *Davendar Kumar Bharti v. Mahanta Raghuraj Bharti*, this view was taken. The Supreme Court in *Jugal Kishore* (supra) has approved this view. The conflict in judicial decisions has now happily been set at rest.

(12) Let me now examine the decision of the Supreme Court in *Jugal Kishore* (supra). In that case one Dhanno Devi filed an application in forma pauperis on 2nd January, 1948. the last day of limitation. Before the question of pauperism was decided by the court she agreed to pay court fee. Three months time was granted to her to pay court fee. The court adjourned the case from time to time to enable her to pay the court fee. On 15th July, 1949, the plaintiff did not appear nor did she pay the court fee. On 18th July, 1949, the application in forma pauperis was dismissed. On 13th August, 1949 she made an application under Order 9 Rule 9. Code of Civil Procedure, for restoration of the case. The

trial court allowed the plaintiff to pay court fee and restored the suit. The plaintiff paid court fee on 12th November, 1949. The suit was in the end decreed. The defendants in appeal to the Supreme Court contended that on 12th November, 1949, the suit had become barred by limitation. The Supreme Court held that the suit was within time as having been filed on 2nd January, 1948.

(13) The law may now be stated in the form of following propositions :

(1) That suit by a pauper must be regarded as instituted on the date of the presentation of the application for permission to sue in forma pauperis as required by rules 2 and 3 of Order 33, Code of Civil Procedure.

(2) Where before the formal disposal of the application to sue as a pauper the plaintiff offers to pay the court fee treating the application as his plaint, or the court agreeing to treat it as a plaint, enlarges the time for payment of the court fee the application must be regarded as a plaint instituted on the date when the application was presented.

(3) When the plaintiff agrees to pay court fee the application becomes a suit filed on a plaint.

(4) In such a case it is open to the court u/s 149, CPC to order the plaintiff to pay the deficit court fee and enlarge the period to pay such court fee.

(5) If court fee is not paid the court can reject the plaint under Order 7, Rule 11(c). Code of Civil Procedure. 14. The Supreme Court held that the trial court did not pass any order rejecting the plaint. Therefore, there was no rejection of the plaint and that suit continued to remain on the file. While it continued on the file the plaintiff applied to the court and paid the court fee. On payment of court fee the plaint had by virtue of Section 149, CPC the same force and effect as if such fee had been paid in the first instance i.e. 2nd January, 1948.

(15) The counsel contends that on 15th October, 1973, when the time of three months granted by Chawla J. had expired and the petitioner did not pay any fee the pauper application stood rejected and time cannot, therefore, be extended now. This argument is fallacious. There was then no pauper application before the court. On 15th October, 1973, it was a plaint. The court agreeing to treat it as a plaint had enlarged the time for payment of court fee from time to time. This plaint cannot stand automatically rejected without an express order of the court. The court never passed an order rejecting this plaint under Order 7 Rule 11(c). Code of Civil Procedure. If the plaint has not been rejected and the time for payment of court fee has expired the court certainly has the power to extend the time u/s 149, Code of Civil Procedure. As was said by the Supreme Court in Jugal Kishore's case (supra) :-

".....the court has power to permit the application to sue in forma pauperis to be treated as a plaint and to extend the time if necessary, for payment of court fee on the document in view of the fact that it contains all the necessary particulars for the purpose of a plaint."

(16) Lastly, the counsel urged that in spite of several opportunities the petitioner has not paid the court fee. First he was given time so that he could agitate the matter before the Supreme Court. Subsequently, the petitioner said, he was unable to raise money. The petitioner, on the other hand, says that he was willing to pay court fee even on 8th October, 1973, when he made the application if his claim had been allowed to be reduced to Rs300,00.00 and he has said so in his application. Today he undertakes to pay the court fee within a week.

(17) In the result, I allow both these applications. The petitioner is allowed to reduce his claim from Rs 100,000 to Rs.3.00,000 on account of general damages. He is allowed to pay the requisite court fee within a week from today. There will, however, be no order as to costs.

(18) The parties will appear before the Deputy Registrar on 29th March, 1974.