

(1997) 03 DEL CK 0048

In the Delhi High Court

Case No : Civil Miscellaneous (Main) Appeal No. 199 of 1996

S. Dalip Singh

APPELLANT

Vs

Satnam Singh

RESPONDENT

Date of Decision : 01-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 4

Citation : (1997) 2 AD 947 : (1997) 66 DLT 423

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : P.S. Bhullar and M.S. Sesan, for the Appellant;

Judgement

Jaspal Singh, J.

(1) Exordial speaking, the point for decision in this petition is short but deep is its legal import.

(2) The petitioner instituted a suit for possession as an indigent person. This was in the year 1993. On April 27, 1993 the learned Additional District Judge recorded the statement of the petitioner and on its basis allowed the petitioner to sue as an indigent person. This was followed by an order for issuance of summons to the defendant.

(3) On April 5, 1994 the defendant after putting in appearance, moved an application under Order 33 Rules 1,6 and 7 and its reply was filed by the petitioner on July 13,1994. The same day the learned Additional District Judge passed an order which runs as under :

"Reply to the application u/Order 33 Rules 1A, 6 & 7 filed. Arguments heard. Counsel for the defendant has submitted that he be given an opportunity to cross examine the witnesses produced by the plaintiff inspire of the fact that he is an indigent person and can sue as such. Counsel for the plaintiff has opposed this application on the ground that statement of the plaintiff had already been

recorded. In Order 33 Rule 6 r/w 151, CPC it is clearly mentioned that an opportunity has to be given to the defendant to cross-examine the witness. Following issue is, Therefore, framed : (i) Whether the plaintiff is an indigent person? Opp (ii) Relief. Case to come up for evidence of the plaintiff on this point for 18.8.94."

This order was followed by number of adjournments. What, however, needs to be noticed is the order of February 9, 1996. This is what it says :

"No witness is present despite last opportunity granted. It is 2.30 P.M. The suit of the plaintiff is dismissed for lack of evidence. Decree sheet be prepared accordingly. Suit file be consigned to record room after due completion."

(4) I have intentionally provided a detailed sketch of the sequence of events only to get a hang of the legal core of the case. Let us now have a look at Order Xxxiii of the CPC for, it is this provision which deals with the suits by indigent persons. For our purposes special mention is required to be made to Rules 4,5, 6 and 7. As per Rule 4(1) if the application is in compliance with Rules 2 and 3, the Court may, if it thinks fit, examine the applicant, or his agent regarding the merits of the claim of the property of the applicant. The Court may reject the application under Rule 5 where inter alia, the applicant is not an indigent person. However, where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it is required to give notice to the opposite party and the Government Pleader for receiving such evidence as the applicant may adduce in proof of his indigency and for hearing any evidence which may be adduced in disproof thereof. The notice, as per Rule 6, has to be of at least clear ten days. It is thereafter that the Court is to examine the witnesses if any as per procedure laid down in Rule 7.

(5) Did the learned Additional Distt. Judge follow the procedure? The question wears a simple look but its answer strikes at judicial conscience.

(6) As far as Rule 4 is concerned, the learned Addl. District Judge did examine the applicant. But, thereafter fell into an error. Instead of following the procedure as prescribed in Rule 6, the petitioner was allowed to sue as an indigent person. It could not be done, not at that stage of the proceedings. Anyhow, when in response to the summons issued in the suit, the defendant put in an application under Order Xxxiii, Rules 6 and 7, the learned Additional District Judge did, in a way, relieve the situation to some extent by allowing the defendant to cross-examine the petitioner but fell into yet another grave error. He gave no notice to the Government pleader as enjoined by Rule 6. As if all this was not enough, on February 9,1996 the learned Additional District Judge dismissed the suit itself "for lack of evidence". As we all know by now, the "lack of evidence", if any, could only be on the point of indigence of the petitioner. It had nothing to do with the suit itself. In fact to say that "No witness is present" was also not correct because the applicant was present in Court. Anyhow, how could the learned Additional District Judge dismiss the suit itself? At the most what the Court could

do was to dismiss the application seeking permission to sue as an indigent person.

(7) It is not a comedy of errors. Where one order after the other pares down prejudicially the very right, carving the kernel out, the remedy is reduced to a husk and justicing system becomes the first casualty. Procedural pruning may be permissible; but this is amputation. It is a tragedy.

(8) Allowing the petition, I direct the learned Additional District Judge to look into the matter afresh and I do hope this time he will keep the law in view.