

**(1922) 03 BOM CK 0009**  
**In the Bombay High Court**  
**Case No : First Appeal No. 197 of 1921**

Shankarbhat Balambhat Kanitkar

APPELLANT

Vs

Sakharambhat Harbhat Kanitkar

RESPONDENT

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**Date of Decision :** 06-03-1922

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 9, 151

**Citation :** (1922) 24 BOMLR 734

**Hon'ble Judges :** Norman Macleod, J;Coyajee, J

**Bench :** Division Bench

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## Judgement

Norman Macleod, C.J.—The plaintiff applied to the First Class Subordinate Judge to file a suit in forma pauperis. Notice was issued to the Government Pleader who did not appear, and to the opponents who asked for time. The Judge saw no reason to grant further time, and decided in favour of the applicant ex parte, the Judge being satisfied that he was a pauper and unable to pay the requisite Court fee stamp on the plaint. That order was made on the 6th November 1920.

2. On the 8th April 1921, an application was made, the exact nature of which is not quite clear from the record. But it was refused by the Judge on the ground that the plaintiff had been guilty of fraud from the beginning. The same day the Judge held the plaintiff to be dispaupered and the suit was dismissed. The Roznama is not very clear as printed at p. 1, because it will be seen that the defendant applied that the plaintiff be dispaupered since he held a life-policy. Accordingly he was dispaupered and ordered to pay Court fee by a fixed date. He did not pay it on the date fixed and took further time. On the 8th April he said he could not pay the Court fees because his policy was valued at only Rs. 245. The Judge held that his conduct had been improper and so he should be dispaupered, and as he was not going to pay Court fees, his suit was dismissed.

3. Now it is quite true that the plaintiff did not mention the fact, when he applied for leave to file a suit in forma pauper is, that he held a life-policy. That was an endowment Policy for Rs. 1,000, which would only be paid at the end of the

endowment period, provided the premia were duly paid, and it is quite possible that the plaintiff never considered the Policy as a present asset, or that it had a surrender value, so that we hardly think that the Court would be justified in saying that he had been guilty of gross fraud on the Court by concealing the Policy. The only result would be, when the fact that the plaintiff had that Policy came to the notice of the Court, that it would consider whether by surrendering the Policy the plaintiff could raise sufficient money to pay the Court fee. It is admitted that even if he surrendered his Policy he could not pay the Court fee which would amount to over Rs. 500.

4. The result is that on the merits the Judge took too severe a view of the plaintiff's conduct. Order XXXIII, Rule 9 directs that the Court may order the plaintiff to be dispaupered if he is guilty of vexatious or improper conduct in the course of the suit or if it appears that his means are such that he ought not to continue to sue as a pauper. Even assuming that concealment of property might in a particular case amount to improper conduct, which by itself would entitle the Court to dispauper a plaintiff, the fact which came to light in this case only demanded a further scrutiny by the Court to ascertain whether the plaintiff had means, so that he ought not to be allowed to continue the suit as a pauper. If that scrutiny had been made, it would have been discovered that the plaintiff was still unable to pay the Court-fees. The respondent, however, objects that it is not competent to this Court to deal with the order of the First Class Subordinate Judge dismissing the suit. It would be open, we presume, to the plaintiff to file another suit tomorrow and apply to the Court for leave to prosecute that suit in forma pauperis and the previous proceedings would not bar such an application, nor would the Court be entitled to take into consideration the plaintiff's conduct in those proceedings.

5. It would seem, therefore, to disallow the appeal on the ground set forward by the respondent, would not in way way assist him, and even assuming that the point is a good one, we could deal With the matter either in revision or u/s 151 of the Civil Procedure Code. We think this is clearly a case in which the plaintiff should not be debarred from continuing the suit. We set aside the order dismissing the suit and direct that the plaintiff be allowed to continue the suit in forma pauperis. All costs will be costs in the case.