

(2012) 10 MAD CK 0110

In the Madras High Court

Case No : C.R.P. PD No's. 1609 and M.P. No's. 1 and 2 of 2012 and C.R.P. PD No. 1610 of 2012

Sharp Tools Machinery Division

APPELLANT

Vs

ARC TEC Systems Ltd.

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 2, Order 33 Rule 5, Order 33 Rule 7

Citation : (2012) 6 CTC 182

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Valliappan, for the Appellant; K. Sankaran, Advocate for Respondent No. 1 and Saraswati Shiraram Iyer, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The First Respondent herein filed the Petition under Order 33, Rule 1 of C.P.C. seeking permission to sue as an indigent person and that Petition was numbered and the Revision Petitioner, who is the First Respondent in I.A. No. 356 of 2010, filed Application in I.A. No. 242 of 2012 to reject the Application on the ground that there is violation of mandatory provision of Order 33, Rule 2, C.P.C. as the First Respondent herein did not file the list of assets and therefore, the Application is liable to be rejected as per Order 33, Rule 5, C.P.C. Thereafter, the First Respondent herein filed I.A. No. 243 of 2012 to amend the Petition to include the list of assets and both the Applications were heard together and the Application filed by the Revision Petitioner to reject the Petition was dismissed and the Application filed by the First Respondent to amend the Petition was allowed and aggrieved by the same, these two Revisions are filed. It is submitted by the learned Counsel for the Revision Petitioner that as per Order 33, Rule 5, C.P.C., when the Application seeking permission to sue as an indigent person was not filed as per the mandate of Order 33, Rule 2, the Court below ought to have rejected the Application and it is not open to the Court to permit

the Petitioner to amend the Petition at the later point of time and hence, the Court below committed serious error in rejecting the Petition filed by the Revision Petitioner and also erred in allowing the amendment. He also relied upon the Judgments reported in Fakir Mohebubshah Vs. Bai Chandbu and Others, Al. Ar. Alagappa Chettiar Vs. Pl. Ct. Palaniappa Chettiar, ; Navadu Nuka Raju Vs. Rajani China Appanna and Others, Dilshada Bano Vs. Gh. Nabi, Doddananjappa and Others Vs. The Sub-Registrar and Others, Chingakhm Chaoba Singh Vs. Naorem Sajou Singh and another ; and P.V. Chandrasekharan and Others Vs. Thirumalai Chit Funds and Others, in support of his contentions.

2. On the other hand, the learned Counsel for the First Respondent Mr. Sankaran submitted that there is no illegality committed by the Court below in entertaining the Application filed by the First Respondent herein to sue as an indigent person and on the date of taking cognizance of the Application filed by the First Respondent, the list of assets were already filed and were available before the Court and on being satisfied with that, the Court numbered the Application and therefore, it cannot be stated that there is failure to comply with the provision under Order 33, Rule 2, C.P.C. Therefore, the Petition has been rejected. He further submitted that though the list of assets were furnished before numbering of the Application filed by the First Respondent, that was not incorporated in the Petition and for that purpose, the Application was filed and considering all these aspects, the Court below has rightly allowed the Application for amendment and dismissed the Petition filed by the Revision Petitioner for rejection of the Petition and there is no infirmity in the orders passed by the Court below. He also relied upon the Judgment reported in Madan Mohan Lal Kapani Vs. Jhalman Singh and Others, , in support of his contention.

3. I am unable to accept the contention of the learned Counsel for the Revision Petitioner, having regard to the facts of this case. It is true that when the Application seeking permission of the Court to sue as indigent person does not contain the list of assets as per Order 33, Rule 2, C.P.C., it has to be rejected as per the provision of Order 33, Rule 5, C.P.C. The various judgments referred to by the learned Counsel for the Revision Petitioner also reiterated the said position of law and also held that when there was willful suppression of fact regarding the assets, in the list of assets originally filed along with the Petition can be rejected on that ground. But the facts of this case is different. It is seen from the records that the Application to permit the Petitioner to sue as an indigent person was filed on 25.9.2009 and the paper was returned on 16.12.2009 and was represented on 2.1.2010 thereafter, by order dated 3.1.2010, the Court below directed the First Respondent to file their assets statement along with the Petition and time was extended and finally the Petition was represented on 25.10.2010 along with the Affidavit of assets and an Application was also filed to condone the delay in filing the list of assets and that Application was considered and delay was condoned and thereafter, the Application was numbered as I.O.P. No. 356 of 2010 on 30.10.2010. Therefore, on the date of taking cognizance of the Application by the Court while numbering the same, list of assets was filed by

the Petitioner and that was accepted and after being satisfied with the compliance of provision of Order 33, Rule 2, C.P.C., the Court below has numbered the Application filed by the First Respondent. Therefore, it cannot be stated that the provisions of Order 33, Rule 2, has not been complied with by the First Respondent and the Petition is liable to be rejected. The contention of the learned Counsel for the Revision Petitioner is on the date of filing of the Application, admittedly the First Respondent did not file the list of assets and therefore, Order 33, Rule 2, has not been complied with and hence it is liable to be rejected.

4. According to me, the date of filing of the Application cannot be taken into consideration for rejecting the Application under Order 33, Rule 5, C.P.C. for non-compliance of Order 33, Rule 2, C.P.C. and the date on which the Court takes cognizance of the Application, by numbering the Application has to be taken into consideration to decide whether the Petition has been filed complying with the provision of Order 33, Rule 2, C.P.C. or not. When the Court took cognizance of the Application on 30.10.2010, the First Respondent has already filed the list of assets along with Affidavit and that Application was received by the Court after condoning the delay and therefore, on the date of taking cognizance of the Application, the First Respondent has complied with Order 33, Rule 2, C.P.C. and hence the Petition is not liable to be rejected under Order 33, Rule 5, C.P.C. As a matter of fact in the Judgments reported in Madan Mohan Lal Kapani Vs. Jhalman Singh and Others, , it has been held that the Application for amendment to include certain items of property would lie and therefore, even in the case of omission to include some of the properties in the list of assets, it is open to the Petitioner namely the person who filed the Application to sue as indigent person to file such Application to include those properties by way of filing the Amendment Application and the only consideration is that there should not be any willful omission on the part of the person who files Application to sue as indigent person to defraud the Court by suppressing the state of affairs of his assets.

5. Mr. P. Valliappan the learned Counsel for the Revision Petitioner relied upon the Judgment in Fakir Moheebubshah Vs. Bai Chandbu and Others, , and submitted that on the date of Application, the list of assets ought to have been filed and that cannot be filed belatedly. He relied upon the passage in the Judgment as follows:

9..... In Ratikanta Moyra Vs. Sanaton Baidya and Others, , the Applicant, who applied for a permission to sue as a pauper, had prayed for two reliefs, one of damages and the other of recovery of provident fund amount. At the time of the inquiry under Rule 7, the opposite party offered to pay provident fund amount to the tune of Rs. 1307-10-6 and called upon the Applicant to take away the amount as and when he desired. Having made this statement, in the Written Statement, a contention was raised that the Applicant could not be said to be a person who was not possessed of sufficient means to enable him to pay Court-

fees. This contention was negated observing that in considering the question of pauperism, one must look at the matter as it stood at the date when the Application was made. If the circumstances of the Petitioner on the date of the said Application bring him within the that of the Explanation and are sufficient to have him declared as a pauper, the immunity that the law confers upon him for the purpose of Court-fees will be enjoyed by him till the termination of the Suit or until such time when sufficient materials would be forthcoming to justify an order cancelling the permission. The view, that I am taking, is in accord with the view taken by the Calcutta High Court.

6. According to me, the proper date is the date on which, the Application was taken cognizance and the date of filing of the Application cannot be taken into consideration to decide whether there is proper compliance under Order 33, Rule 2, C.P.C. or not. As the list of assets was furnished prior to numbering of the Application and that was accepted by the Court below, it cannot be stated that there is violation under Order 33, Rule 2, C.P.C. and according to me, there is no need to file the Application to amend the Petition as the list of assets was already filed before the numbering of the Application. Further the purpose of directing the person who files the Application to sue as an indigent person to enclose the list of assets is to ascertain whether he is capable of paying Court-fee or not and it is a matter between the Government and the Court and the Respondents cannot have any say in such matters before numbering of the Application and after numbering the Application, it is open to the Respondent to raise the plea that the Petitioner namely the Petitioner who filed an Application to sue as an indigent person has suppressed certain assets in the list of assets or he played fraud on the Court and on being satisfied with the contention of the Respondent, the Court can either allow or reject the Application filed by the Respondent as per provision under Order 33, Rule 5, C.P.C. However, Order 33, Rule 7, C.P.C. also makes it clear that after appearance of the Respondent, the Petitioner may be directed to give evidence and after hearing the arguments of both parties, the Court can either allow or refuse to allow the Application to sue as an indigent person and the same makes it clear that in the event of failure to mention the properties of the indigent person or non disclosure to the properties, the Court can consider such objection on the Petition filed by the Respondents to the Application for indigent person and pass orders on merits. Further as submitted by the learned Counsel for the Respondent that amendment Petition was already filed to include the list of assets in the schedule to the Petition.

7. Hence the Court below has properly appreciated the provision of Order 33, Rule 5 & 7, C.P.C. and allowed the Application for amendment and reject the Application filed by the Revision Petitioner and therefore, I do not find any reasons to interfere with the orders of the Court below.

8. In the result, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs. The Court below is directed to dispose of the I.O.P. No. 356 of 2010 within a period of three months

and it is also open to the Revision Petitioner to raise the pleas available under law in that Application.