
(1959) 07 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 100 (P) of 1956

Shri Gurdwara Sahib Kothi Begowal and Another	APPELLANT
Vs	
Harnam Singh and Others	RESPONDENT

Date of Decision : 21-07-1959

Acts Referred:

General Clauses Act, 1897 — Section 3

Citation : AIR 1960 P&H 73

Hon'ble Judges : K.L. Gosain, J; Harbans Singh, J

Bench : Division Bench

Judgement

(1) On 27th of January 1956, an application was made by Mahant Sardar Singh for self and on behalf of Gurdwara Sahib Kothi Begowal as Mahant and Mohtmin of this Gurdwara, for permission to file a suit for possession of 18 standard acres of land described in the plaint. As a result of the enquiry made by the learned trial Court, it came to the conclusion that Sardar Singh was a pauper and that Gurdwara Sahib Kothi Begowal, also was possessed of no property. The Court, however, came to the conclusion that in view of the decision of this Court reported as Associated Pictures Ltd. v. National Studios Ltd. AIR 1951 P&H 447, no juristic person could take advantage of Order 33, rule 1, and that Gurdwara Sahib Kothi Begowal could not be declared a pauper. Sardar Singh was therefore directed to score out the name of Gurdwara Sahib Kothi Begowal if he wanted to proceed with the suit in forma pauperis. Against this order the present revision was filed on behalf of Gurdwara Sahib Kothi Begowal.

(2) The matter came up before Gurnam Singh J. on 22nd of April, 1958, who, in view of the conflict of authorities, referred the same to a Division Bench.

(3) The relevant provisions of Order 33 requiring consideration are as follows:--

"Rule 1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation--A person is a "pauper" when he is not possessed of sufficient

means to enable him to pay the fee prescribed by law for the plaint in such suit, or where no such fee is prescribed, when is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

Rule 2. x x x (This relates to the contents of the application).

Rule 3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Rule 4(1) Where the organisation is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(2) * * * * *

The question for consideration is whether the word "person" as used in rules 1, 3 and 4 of Order 33 means only a natural person or does it also include a juristic person. Clause(39) of section 3 of the General Clauses Act of 1897 provides that the word "person" shall include any company or association or body of individuals, whether incorporated or not. The view, however, taken by the learned Judges in S. M. Mitra v. Corporation of Royal Exchange Assurance, AIR 1930 Rang. 259 and Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another, which was followed by Falshaw J. in AIR 1951 P&H 447, was that the word "person" as used in Order 33 refers only to natural persons who are capable of (a) possessing wearing-apparel as mentioned in the Explanation to rule 1, (b) presenting the Court as provided under rules 3 and, respectively. As observed by Falshaw J., though clause(39) of section 3 of the General Clauses Act gives a wider meaning to the word "person", yet this definition is not intended to be of universal application since the opening words of section 3 read-

"In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context

* * * * *

It was held that inasmuch as a juristic person is not capable of having wearing-apparel or personally presenting the application or being personally examined as provided under rules 1,3 and 4 the wider meaning given to the word "person" in clause(39) of section 3 of the General Clauses Act s inapplicable to the provisions of Order 33.

(4) There is however, a string of authorities taking the contrary view. Under the provisions of the Civil Procedure Code, both natural as well as legal persons, i.e., incorporated bodies or associations of persons, are entitled to sue or be sued, but while bringing a suit the plaintiff is bound to pay the court-fee as prescribed under the law. Order 33 engrafts an exception and permits a plaintiff to bring a suit without paying any court-fee if he is not in a position to do so in view of his impecunious circumstance. On principle, therefore, there is no reason to exclude from the benefit of this provision plaintiffs other than natural persons.

The circumstances taken into consideration by the learned Judges for the opposite view are not such as irresistibly lead one to the conclusion that the legislature intended to limit this benefit only to the natural persons and did not intend to extend the same to other plaintiffs, who may be in need of getting redress from the Court but are unable to pay the court-fee. Taking the question of wearing-apparel, all that the Explanation to rule 1, seems to provide is that in finding out whether the plaintiff is possessed of property worth Rs. 100/- his wearing-apparel, if any, must be excluded from computation.

That, however, does not mean that a plaintiff not possessing wearing-apparel cannot get the benefit of this provision. Furthermore, it cannot be said that no type of juristic person can ever be in possession of wearing-apparel. An "idol" is a juristic person and is capable of bringing a suit, and may be-and very often is in possession of wearing-apparel. We are of the view that the mention of the wearing-apparel has been made in the Explanation only for the purpose of making it clear that the plaintiff's wearing-apparel is not to be taken into consideration, if he possesses any, and that these words have not been used with a view to exclude all those plaintiffs who do not possess any wearing-apparel or are incapable of possessing any such apparel.

Similarly, the provision for presenting the application "in person" as used in rule 3, only mean that the plaintiffs who are so capable under the law, should present the application in person. However, if, under the law, a plaintiff has to Act only through the agency of another person, these provisions would be amply satisfied if such "other person" presents the application. Take the case of a minor. Though he is a natural person, yet under the law, he is incapable of personally bringing a suit or taking any other steps in the prosecution of such a suit. He must, bring the suit and otherwise Act through his next friend.

This however, does not mean that the provisions of Order 33, are not applicable to a minor or that an application under Order 33, rule 1. Presented by the next friend of a minor on behalf of the latter, shall not be taken to have been properly presented under rule 3. Similarly, it is provided under the company law that incorporated companies must act through their principal officers, and consequently an application presented by a principal officer shall be perfectly in order and would satisfy the provisions of rule 3.

Same arguments will apply to the provisions of rule 4. The object of giving power

to the Court to examine the applicant himself is to elicit true facts directly from the person concerned who alleges that he is not possessed of sufficient means to pay the court-fee. In case of a corporation or an association of persons, this object can be amply achieved and, in fact, the only manner in which such an information can be gathered is, by examining the person authorised under the law to act for such a juristic person.

(5) In *Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd.*, a Division Bench of the Madras High Court took the view that Order 33, Civil Procedure Code, applied to suits by companies and the latter could take advantage of its provision if they are paupers. While dealing with the word "wearing-apparel", as used in rule 1, the learned Judges observed as follows:--

Now a registered Company or any other Association may be unable to pay the court-fee payable like any ordinary person and there is no reason to suppose that the legislature did not intend. Order 33 to apply to such cases especially when it is remembered that the effect would be to allow debtors to escape payment and defeat or defraud the creditors and share-holders of the Company. The Explanation to rule 1, no doubt states that where no court-fee is prescribed, the petitioner should not be entitled to property more than Rs. 100/- "other than his necessary wearing apparel". The Explanation simply allows deduction of the value of wearing-apparel and can only mean that if the applicant has necessary wearing-apparel, he can deduct its value. We do not think it can be construed to mean that only persons who in law can possess wearing-apparel, can sue as paupers".

These observations have been approved by the Supreme Court in *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, The question before their Lordships was the interpretation of the definition of "employees", as given in the Order 2 of the Standing Orders of an electric power Company-- clause(a) of Order 2 provided as follows:--

"(a) "employees" means all person, employed in the office or the mains department or stores or power house or receiving station of the company * * *whose names and ticket numbers are included in the departmental musters."

Clause(b) of the Order defined the word "workman". An employee, who working in the office of the company, being not a workman, was not allotted a ticket and ticket number but whose name alone was on the muster, was suspended by the company was on the muster, was suspended by the company under its Standing Orders and later on discharged. An objection was taken by the dismissed employee to the effect that he did not fall within the definition of "employees", as given in clause(a) of Order 2, because though his name appeared on the muster, his ticket number was not so mentioned. S. K. Dass J., while delivering the judgment of their Lordships of the Supreme Court, at page 663 of the report observed as follows:--

"We are not unmindful of the principle that in construing a statutory provision or rule, every word occurring therein must be given its proper meaning and weight. The necessity of such an interpretation is all the more important in a definition clause. But even a definition clause must derive its meaning from the context or subject".

After considering the facts of an English case reported as *Cortis v. Kent Water-works Co.* (1827) 108 E. R. 741, wherein the matter under consideration was the question of interpretation of a statute which gave a right of appeal to any person or persons aggrieved by any rate fixed by the Commissioner, but the appeal clause required the person or persons, appealing against a rate to enter into a recognisance. While dealing with the question whether a corporation was within the purview of the appeal clause, the observations of Bayley J. to the following effect were quoted by S. K. Das J. with approval:--

"But assuming that they cannot enter into a recognizance yet if there are persons capable of being aggrieved by and appealing against a rate, I should say that part of the clause which gives the appeal applies to all persons capable of appealing, and that the other part of the clause which requires recognizance to be entered into applies only to those persons who are capable of entering into a recognizance, but is inapplicable to those who are not".

His Lordship then went on to observe as follows:--

"The same principle of interpretation was applied in *Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd.*, in construing the Explanation to Order 33, rule 1 of the Code of Civil Procedure, which says inter alia that "a person is pauper

* * * when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit". The question was if the aforesaid provision applied to companies. It was held that it would be wrong to construe the provision to mean that only persons who possess wearing apparel can sue as paupers. We are of the view that the same rule of construction should apply in the present case, and the words "whose names and ticket numbers are included in the departmental muster" occurring in Standing Order No. 2(a) should be read as whose names and ticket number, if any are included in the departmental musters"* * *."

(6) In view of the above, therefore, we have no doubt in our mind that the words of the Explanation must be read as meaning "a person in a "pauper" * * * when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel, if any, x x."; which the learned Judges in the cases mentioned above took the contrary view. The Division Bench of the Madras High Court in *Perumal Koundan and Others Vs. The Thirumalarayapuram Jananukoola Dhanasekara Sanka Nidhi Ltd.*, also repelled the other reasons for giving a limited interpretation to the word "person". The following are the observations in the respect:--

"As regards rule 3, which requires personal presentation of the application to sue in forma pauperis it seems to us that where the law in consequence of personal appearance in Courts being impossible either by reason of the party being a Company or an infant or lunatic, allows appearance by somebody else, appearance by such person would be sufficient. For example, Order 32, Civil Procedure Code, which relates to minors and persons of unsound mind, authorises appearance by the next friend and guardian and litem and it cannot be said that where the minor or lunatic is a pauper, the presentation of a petition to sue in forma pauperis by the next friend would be invalid or contravene the provision of Order 33, rule 3.

* * * It does not cover cases in which from the nature of the case physical presence is impossible or where the law owing to any disability directs that all acts required by the Code should be performed by a next friend".

This decision of the Madras High Court has been followed in a number of other cases. In AIR 1944 248 (Oudh) a Division Bench of the Oudh Court dissented from the contrary view taken in *Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another*, In AIR 1940 148 (Oudh) the point was not directly involved but it was held that when a plaintiff sues in a representative character, such as mutwalli, trustee of a shebait, the personal property and only the property of the wakf or the trust in the hands of the plaintiff in his representative capacity should be taken into account to determine whether he has sufficient funds to pay the court-fee prescribed by law.

Same view was taken in *Mabia Khatun Vs. Sheikh Satkari and Others*, Though a Division Bench of the Rangoon High Court in AIR 1930 Rang 259 and taken the opposite view, yet another Division Bench in *D. K. Cassim and Sons v. Abdul Rahman* AIR 1930 Rang 272, held that a firm is a "person" within the meaning of Order 33, rule 1 and could file an appeal under Order 44, rule 1 as insolvent.

(7) In view of the discussion above, we are of the opinion that-

(1) The word "person" as used in Order 33 of the CPC has the same meaning as given to it in clause(39) of section 3 of the General Clauses Act and consequently the provision of this Order are available not only to natural persons but also to all other persons juristic or otherwise who are capable of bringing a suit.

(2) When a suit is brought by a person in his representative capacity, in considering the question whether the plaintiff is a pauper, only the assets of the "person", juristic or otherwise, on whose behalf the suit is brought and not the personal property of the person acting in the representative capacity, are to be taken into consideration.

(8) Before us the learned counsel for the respondents did not challenge the findings of the Court below that Gurdwara Sahib Kothi Begowal is a juristic person and is capable of bringing a suit and that the aforesaid Gurdwara is not possessed, of property sufficient to pay the court-fee.

(9) In view of the above, therefore, we set aside the order of the Court below and holding that the aforesaid Gurdwara, as a juristic person, could sue as a pauper and that both the plaintiffs in this case, namely, Gurdwara Sahib Kothi Begowal and Mahant Sardar Singh, have been found to be paupers, direct that the application filed by them, be registered as a plaint and proceeded with in accordance with law. The parties have been directed to appear before the District Judge, Kapurthala, on 28th of August, 1959, who will entrust the case to the Court of Subordinate Judge of competent jurisdiction. As the case has already been delayed considerably, the Court concerned will proceed with the same expeditiously. There will be no order as to costs in the Court.

(10) Order set aside.