

(1942) 05 AHC CK 0007

In the Allahabad High Court

Case No : Civil Revision No. 408 of 1940

Sri Maharaj Pauhari Opendra Das Mahant of Math Paikoli

APPELLANT

Vs

Ram Kumar Das alias Rajkumar Tewari

RESPONDENT

Date of Decision : 05-05-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1942) 05 AHC CK 0007

Hon'ble Judges : Mulla, J;Ismail, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ismail and Mulla, JJ.—This is in application in revision u/s 115 Code of Civil Procedure. It is directed against and order passed by the learned Civil Judge of Gorakhpur by which he has granted an Application made before him by the Plaintiff opposite-party, Ram Kumar Das, for leave to sue in forma pauperis.

2. A preliminary objection has been taken in this Court by the Plaintiff opposite-party that the order passed by the learned Civil Judge does not amount to a "case decided" within the meaning of Section 115 CPC and it is not, therefore, open to the Applicant to invoke the revision powers of this Court. Learned Counsel for the opposite party has relied on several decisions of this Court in support of his contention. It has indeed been conceded by Learned Counsel for the Applicant that the trend of authorities in this Court is undoubtedly against him but he contends that the view taken by this Court has been dissented from by all the other High Courts in India and it is, therefore, a matter which might well be referred for consideration by a Full Bench of this Court. Upon a careful consideration of a series of decisions of this Court which fully support the preliminary objection, we have arrived at the conclusion that the cases of other High Courts, upon which the Learned Counsel for the Applicant relies and which with but one exception to which we shall presently refer are all single Judge cases, do not disclose any such reason as would compel us to hold that the view

taken by this Court, which has now prevailed for more than thirty years, is so opposed to logic or public policy that it must be disturbed.

3. An examination of the case-law in this Court would show that in the earlier stages the view that prevailed was that no order passed upon an application for leave to sue in forma pauperis, whether granting it or rejecting it, was open to revision see *Harsaran Singh v. Muhammad Raza* (1881) 4 All. 91 and *Bhulneshri Dat v. Bidiadhis* 1882 2 AWN 69. Then there came a change and in the case of *Faiz Muhammad Khan v. Aziz-un-nissa* (1893) 13 AWN 218 a single Judge of this Court decided that an order rejecting an application for leave to sue in forma pauperis was open to revision by this Court and this decision was approved and followed by *Banerji J.* in the case of *Musammat Changia v. Jyoti Prasad* C.R. 24 of 1910, D. 24-5-1910. Then came the case of *Malik Muhammad Ayub v. Malik Muhammad Mahmood* (1910) 7 ALJ 741 in which the revisional power of this Court was invoked for setting aside an order granting an application for leave to sue in forma pauperis. The learned Judges who decided that case, *Karamat Husain and Chamier, JJ.*, both arrived at the conclusion that such an order did not amount to a "case decided" and was not, therefore, open to revision. They further pointed out that there was a clear distinction between a *Cass* in which an application for leave to sue in forma pauperis is rejected and a case in which it is granted. *Karamat Husain, J.* observed as follows:

A distinction, however, is to be drawn between the cases in which an application in forma pauperis is rejected and cases in which it is granted. When it is rejected the "case" of the Applicant comes to an end and is to be governed by the rulings in *Weekly Notes*, 1893, page 218 (1893) 13 AWN 218 and in *Civil Revision No. 24 of 1910* C.R. 24 of 1910 D. 24-5-1910, decided on the 24th of May, 1910. But when the application is granted the "case" of the pauper is not in my opinion decided within the meaning of Section 116 of the new Code of Civil Procedure.

4. *Chamier, J.* remarked:

It appears to me that there is a clear distinction between the case of an application for permission to sue or appeal in forma pauperis being dismissed or rejected and case in which a similar application is allowed. In the former it may be said that the case had been decided, while in the latter the order appears to be merely interlocutory. The principle thus laid down was dissented from by a Bench of this Court in the case of *Shanker Ban Vs. Ram Deo and Others*. After referring to the observations of *Chamier, J.*, cited above, *Walsh, J.*, who delivered the judgment of the Court, said that he was unable to accept the subtle distinction. It must, however, be pointed out that *Shanker Ban Vs. Ram Deo and Others* was a case of an application in revision from an order rejecting an application for leave to sue in forma pauperis. The application in revision was rejected by the Bench and it was held that an order rejecting an application for leave to sue in forma pauperis was not open to revision. This case was decided in 1926 but before that a Bench of this Court in the case of *Anwar Vs. Emperor*, had decided that no application in revision lay against an order admitting an

application for leave to sue forma pauperis. The decision in the case of Shanker Ban Vs. Ram Deo and Others was after a very careful consideration dissented from by a Bench of this Court consisting of Sulaiman C.J. and Niamat Ullah. J., in the case of Sumatra Devi, Mt. Vs. Hazari Lal and Another . In this case the principle laid down by Karamat Husain and Chamier, JJ., in the case of Malik Muhammad Ayub v. Malik Muhammad Mahmood (1910) 7 ALJ 741 was referred to with approval and it was held that the dismissal of an application for leave to sue as a pauper amounts to a "case decided" within the meaning of Section 115 of the CPC and a revision lies therefrom if there are proper grounds for a revision. In the course of his judgment Niamat Ullah, J. observed as follows:

The question as to whether an Applicant is entitled to sue as a pauper is not a question arising in the suit at all. It is a question anterior to the commencement of the suit. The decision of that question merely determines the right of the Plaintiff to be exempted from the payment of court-fee. The law in this respect has, in my opinion, been correctly laid down by Chamier and Karamat Husain JJ., in Muhammad Ayub v. Muhammad Mahmud (1910) 7 ALJ 741: ILR 1910 All. 623

5. The learned Judges had to deal with a case in which leave had been granted. In revision the order granting such leave was questioned. The suit instituted by the pauper Plaintiff was pending. There is some justification for the view that no "case", under those circumstances, could be said to have been decided; but the learned Judges took care to point out that if the application for leave to sue as a pauper had been dismissed, the same considerations could not be applicable. In commenting upon the observations quoted above, the learned Judges who decided the case of Shankar Ban v. Ram Dei ILR 1926 All. 493 say that the distinction drawn is "subtle." It is submitted with very great respect that the distinction is obvious and real and has been clearly set forth by those learned Judges. If the application to sue as a pauper is dismissed, no further proceedings can continue; and if the application to sue as a pauper was the foundation of a "case, " it must be deemed to have terminated with the order of dismissal; whereas, if the application had been granted, the proceedings may be taken to continue. In the latter case, according to the learned Judges who decided the case of Muhammad Ayub v. Muhammad Mahmud ILR 1910 All. 623, proceedings in the case continue and no case can be deemed to have been decided.

6. The learned Judges who decided the case of Sumatra Devi, Mt. Vs. Hazari Lal and Another were not concerned with the question which has been raised in the present case, namely as to whether an order granting an application for leave to sue in forma pauperis is or is not open to revision by this Court, but a perusal of their judgments would show that they were inclined to agree with the principle laid down in the case of Malik Muhammad Ayub v. Malik Muhammad Mahmood (1910) 7 ALJ 741. The question with which we are concerned in the present case arose directly for consideration in the case of B.B. and C.I. Ry. Co. Vs. Mitthu and a Bench of this Court consisting of Mukerji and Niamat Ullah, JJ. held that where an application to sue as a pauper is accepted, no revision lies, Mukerji, J.,

who delivered the judgment of the Court, observed as follows:

It has been held in *Sumotra Devi v. Hazari Lal* AIR 1910 SC (901) that a decision disallowing an Applicant to sue as a pauper is a "case decided." That has been so held because the matter ends there and unless the Applicant is prepared to pay court-fees, he cannot prosecute his application by way of suit any further. There the matter ends. But, in this particular case, the matter does not come to an end; but the litigation continues. We cannot, therefore, say that a case has been decided. The order is more or less in the nature of an interlocutory order and not a final order.

7. In *Muhammad Ayub v. Muhammad Mahmud* ILR 1910 All. 623 a Division Bench of this Court held that "where an application to sue as a pauper is accepted, no revision lies. Thus we have got a clear authority in support of the proposition that no revision is maintainable."

In the case of *Piare Lal v. Bhagwan Das* (1933) 1 AWR 756 a Bench of this Court observed:

It has been held in several cases in this Court that, where a court admits an application to sue as a pauper and thereby converts the application into a plaint, no revision is maintainable to contest the validity of the order accepting the application for permission to sue as a pauper, but where the order is one rejecting the application and thereby putting an end to the proceedings before the Court below, a revision is maintainable.

8. No subsequent case was placed before us to show that a different view was ever taken in this Court and it may, therefore, be taken as settled law so far as this Court is concerned that an order granting an application for leave to sue in forma pauperis is not open to revision u/s 115 Code of Civil Procedure. This view has now prevailed for more than thirty years and the question is whether there is any compelling reason to disturb it.

9. Learned Counsel for the Applicant has drawn our attention particularly to the case of *Lala Durga Prasad v. Babu Gur Dularey* (1938) 14 Luck 116 : AIR 1938 Oudh 146, decided by a Bench of the Oudh Chief Court. The learned Judges who decided that case could not persuade themselves to accept the settled view of this Court as shown by the various cases referred to above and found themselves in agreement with the view expressed in the case of *Shankar Ban v. Ram Dei* that the fine distinction drawn in the case of *Shanker Ban Vs. Ram Deo and Others* , between a case in which an application for leave to sue in forma pauperis is granted and one in which it is rejected cannot be justified. We have already pointed out that the decision in the case of *Shanker Ban Vs. Ram Deo and Others* , was carefully considered but dissented from in the subsequent case of *Sumatra Devi, Mt. Vs. Hazari Lal and Another* . Learned Counsel for the Applicant has also referred to the cases of *Thummalapalli Venkatakrishnayya Vs. Thummalapalli Sayamma and Others*, (1); *Krishna Kumar Brijbhooshan v. Radhelal Biharilal* AIR 1938 Nag 210, *Ma Ma Gale v. Ma Mi* AIR 1931 Rang 318,

AIR 1926 642 (Lahore) and AIR 1934 Lahore 231 .

10. As mentioned above, all those cases are single Judge cases and the only point which emerges from them is that the learned Judges were not able to see any fundamental distinction in principle between a case in which an application for leave to sue in forma pauperis is rejected and one in which it is granted. There is no doubt something to be said for this view, but the question which we have to consider is whether there is a sufficient reason for boding that the consistent view taken by this Court is so opposed to logic or public policy that it must be disturbed and reversed. In our judgment the basic idea which underlies the decisions of this Court is an anxiety to preclude all possibility of a rightful claimant being denied the assistance of the Court for enforcing his claim simply because he happens to be too poor to pay the necessary court-fee. this Court seems to have deliberately placed a limitation upon the exercise of its revisional power in dealing with cases in which an application for leave to sue in forma pauperis is granted In oar judgment it is a wholesome and salutary limitation and we are not inclined to be anxious to have it set aside.

11. The result, therefore, is that we uphold the preliminary objection which is supported by a series of decisions of this Court and dismiss the application in revision with costs.