

(1935) 01 PAT CK 0032
In the Patna High Court
Case No : Civil Revn. No. 396 of 1934

Sudhir Kumar Choudhuri and another	APPELLANT
Vs	
Jagannath Marwari and others	RESPONDENT

Date of Decision : 28-01-1935

Acts Referred:

Citation : (1935) 01 PAT CK 0032

Judgement

Wort, J.—The basis of the argument addressed to me in support of this rule is that the application to sue in forma pauperis was in fact a plaint; and although the Court below rejected the application to sue in that form, it was also bound to proceed under O. 7 and reject or accept the plaint. That argument appears to be based on a decision of this Court, an isolated statement in Bank of Behar Limited v. Ram Chandarji 1929 Pat 637 = 118 I C 329. That case in turn was based upon the decision of their Lordships of the Judicial Committee in Stuart Skinner v. William Orde, (1878-80) 2 All 241 = 6 I A 120 = 3 Suther 627 = 4 Sar 31 (P C), the statement relied upon being that the application to sue in forma pauperis was in fact the plaint. But on a perusal of the judgment of their Lordships of the Privy Council it is quite clear that no such statement was ever made by their Lordships. What the Judicial Committee pointed out was that in that case, before them, the application could be treated as a plaint for the simple reason that it had not at the time, which was material for the purpose of the decision of that case, been rejected by the Court. That makes a considerable difference. It is to be noticed that under O. 33, R. 2 the application should contain all particulars required in a plaint of a suit. Then R. 5 of the same order provides for circumstances under which a Court is entitled to reject an application to sue in forma pauperis. But from neither of these rules can it be said that for all purposes such an application is a plaint.

2. Under O. 33, R. 8 when once the application is granted the particulars which have already been given are treated as those of a plaint; but under Rule 15 of the same Order if the application is rejected, the plaintiff then has to proceed in the ordinary way. It may be that the particulars he has given will be the same

and indeed he will present the same document as the plaint while proceeding in the ordinary way. But it by no means follows that the Court is then bound to consider whether the document containing or confirming the particulars of the application is to be rejected or accepted under O. 7. Until the matter comes [before the Court in the proper form, that is to say, in the form of a document being a plaint, together with the court-fees, the Court is not in a position either to accept or to reject the plaint.

3. In this case the Judge has said that an application of this kind is not to be allowed because it was not bona fide. He states in the course of his order that the application was for extension of time, and it is contended by the learned advocate appearing in behalf of the petitioners that it was not in fact an application for time, but it was an application asking that the court-fees be accepted. At first I was impressed by that argument; but when the matter is analysed, it will be seen that in substance it was an application to extend the time for the simple reason that the action was barred by limitation and unless the plaintiffs could force the Court to accept the application as the plaint and to accept the court-fee on the date on which they made the application, there was no possibility of their proceeding in the action. It was only on the footing of treating the plaint as filed on the date that the application to sue in forma pauperis was filed that the petitioners could succeed. It appears that sometime before the suit was commenced it was withdrawn and it is with regard to that matter that one supposes that the Judge was referring to when he stated that the petitioners had already paid court-fees. The application, it was contended, was an application under S. 149, Civil P.C., but that gave the Judge a power to accept the plaint on payment of a part of the Court-fees. It is to be noted in this case that neither on 4th November 1933, when the original application was rejected by the Judge nor on 4th September of the same year when the application was rejected by this Court did either Court extend time for the payment of court-fees, and an application could have been made at the time, with what result it is immaterial. It is impossible in my judgment; to come to the conclusion that the Judge has acted with material irregularity in refusing the application in the circumstances.

4. The rule is therefore discharged with costs; hearing fee one gold mohar.