
(1934) 01 AHC CK 0031
In the Allahabad High Court
Case No : Civil Revn. No. 264 of 1933

The Secretary of State for India in Council	APPELLANT
Vs	
Mst. Soukali	RESPONDENT

Date of Decision : 03-01-1934

Acts Referred:

Citation : (1934) 01 AHC CK 0031

Final Decision : Allowed

Judgement

Mukerji, J.—This is a Civil Revision u/s 115, Code of Civil Procedure, which has arisen in the following circumstances. The Respondent, who is unfortunately unrepresented before us, brought a suit in forma pauperis in the Court of the Munsif of Jaunpur for certain reliefs. She having failed there, filed in appeal before the learned Subordinate Judge of Jaunpur. The learned Subordinate Judge thought that the appeal was not liable to be rejected under the proviso to Rule 1, Order 44, Code of Civil Procedure, and being of that opinion ordered notice to issue to the Government Pleader and to the Respondent. When however the Government Pleader appeared, he wanted to contend that the appeal was liable to be rejected in view of the proviso to Rule 1 Order 44. The learned Subordinate Judge thought that the fact that he had allowed notice to issue precluded him from considering the question again. Accordingly he passed the following order:

The application to appeal as pauper is allowed and notice should be issued to the Respondents in accordance with law.

2. The learned Government Advocate has filed this revision on behalf of the Secretary of State for India in Council. By an oversight evidently of the office of the learned Government Advocate the heading of the application contains the words "through Phunan Singh... Defendant" in the case. The learned Government Advocate informs us that he filed the revision on behalf of the Secretary of State and not on behalf of the Defendant. We have accordingly directed that the heading of the petition of revision may be amended.

3. There can be no doubt that an application in revision is maintainable. There has been a case decided so far as the Government is concerned. By allowing the Plaintiff to appeal as a pauper without hearing the Government Pleader, the Court has decided so far as the Secretary of State is concerned that the Secretary of State has no locus standi in opposing the presentation of the appeal in forma pauperis, and no court-fee need be paid.

4. On the merits we think that the revision should succeed.

5. As we read Order 44, Rule 1, it means this. When a person wants to appeal as a pauper, the first thing that he is to do is to present an application for that purpose. The Court has then to scrutinise the application as laid down in the proviso to Rule 1. That has to see whether the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. If the Court finds that the decree does not contravene any of these rules, then the Court must reject the application for permission to sue as a pauper. On the other hand, if the Court finds that prima facie there is no reason to reject the application, it is to issue notice to the Government Pleader and also to the Respondent to show cause why the application should not be granted. The CPC in Appendix G Form No. 11 prescribes how the notice is to be worded. It is true that Rule 1 does not in so many terms say that the Court is to issue notice to the Government Pleader or to the Respondent, but Para. 1 of Rule 1 has the following words:

Subject in all matters... to the provisions relating to suits by paupers in so far as those provisions are applicable.

6. These words imply that so far as possible the procedure laid down in Order 33 of Schedule 1, Code of Civil Procedure, are to be followed. The Form No. 11 in Appendix G seems to confirm this view. In most cases issue of a notice would be desirable, even if it be not incumbent on the Court to issue it in all cases. When a notice has been issued, it is open to the Government Pleader and also to the Respondent to show not only that the applicant is not entitled owing to possession of sufficient property to appeal as a pauper, but they are also entitled to show that the decree appealed against is not contrary to law or to some usage having the force of law Or is not otherwise erroneous or unjust.

7. The learned Judge of the Court below has followed a single Judge decision of this Court in which it was held that after the Court has decided to issue notice to the Government Pleader and the Respondent, it is no longer open to it to consider whether the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. The learned Government Advocate argues that this view of the learned single Judge in *Mst. Hubraji v. Balkaran Singh* (1932) 54 All. 394, was based on certain rulings of the Patna High Court and that the Patna High Court itself by a Full Bench ruling has overruled the previous decisions. The Full Bench decision of the Patna High Court is *Tilak Mahto v. Aktul Kishore* (1931) 10 Pat. 606 (F.B.). We have been taken through the three

judgments of the three learned Judges who composed the Full Bench and we are of opinion that the pronouncements contain the true exposition of the law. The view taken there is in substance what we have stated to be the correct view of the law, namely, the Court has first to consider on receipt of the application whether prima facie there is any ground for the rejection of the application. If the application is rejected, the whole matter ends there. If it is not rejected, a notice is to go to the Government Pleader and the Respondent and when they appear the Court has to decide on hearing them whether the applicant is in a position to pay the court-fee and further whether the decree is one which is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. The view taken in the Patna High Court is also the view taken by the learned Chief Justice of the Lahore High Court in AIR 1929 514 (Lahore) .

8. This being our view, the order of the learned Subordinate Judge allowing the opposite party, Mst. Soukali, to appeal as a pauper, dated 30th November, 1932, should be set aside. We order accordingly, set aside that order and send back the case to the learned Subordinate Judge at Jaunpur and direct him to hear the Respondent if he appears and the Government Pleader and after hearing them to pass such orders as may be in accordance with law. We make no order as to costs.