

(1993) 07 MAD CK 0005
In the Madras High Court

Vellachi Ammal and Others

APPELLANT

Vs

The Superintending Engineer (South Arcot Division North)
Office of the Superintending Engineer, TNEB

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1

Citation : (1996) 2 LW 157 : (1993) 2 MLJ 388

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—This petition seeks permission for the petitioners to file the Appeal SR. No. 83501 of 1992 against O.S. No. 55 of 1989

on the file of Sub Court; Villupuram as indigent persons. No doubt, the trial court in O.S. No. 55 of 1989 has held that the said suit is barred by

limitation and hence this appeal by the plaintiffs. Though in the suit the plaintiffs were allowed to sue as indigent persons, they cannot automatically

get similar permission in this appeal also. So far as appeals by indigent persons, Order 44, Rule 1, CPC provides as follows:

Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application

accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent / person subject, in all matters including the presentation

of such application, to the provisions relating to suits by indigent persons in so far as those provisions are applicable.

So, according to this Rule, the petitioners may be allowed to appeal as indigent persons subject, in all matters, to the provisions relating to suits by

indigent persons insofar as those provisions are applicable. So, Order 33, Rule 5

also is applicable when permission is sought for to prefer an appeal as an indigent person. Order 33, Rule 5(f) says that

The court shall reject an application for permission to sue as an indigent person where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force.

2. "No doubt, in considering this petition I should not take into account the decision that has been given by the court below holding that the suit is

barred by limitation. But I should take into account only the allegations made by the petitioners originally in their application seeking permission to

file the suit as indigent persons. Taking those allegations I find that the suit has been laid to recover compensation from the Tamilnadu Electricity

Board, the defendant-respondent for the death of the first petitioner's husband due to electrocution through a live wire of the defendant-

respondent. But the said electrocution took place as per these allegations on 9.12.1972 itself, while the suit was filed only on 12.10.1988 i.e.,

about 1,4 years after. No doubt, it is narrated in the plaint that after the abovesaid electrocution, there were correspondences between the plaintiffs

and the defendant-Electricity Board and that only finally on 31.10.1987 the defendant-Electricity Board refused to entertain the abovesaid

compensation claimed. So, according to the plaintiffs, the time begins to run only from 31.10.1987.

3. The learned Counsel for the petitioners relied on Article 72 of the Limitation Act. Whether that Article would be applicable to the present case

is itself a moot question. Anyway that prescribes one year time limit. The said article runs as follows:

For compensation for doing
or for omitting to do an act when the act
alleged to be in pursuance or omission
of any enactment in force One year takes place.

for the time being in the
territories to which this

Act extends.

So, according to this Article 72, the period of limitation is one year from the date when the above referred to act or omission takes place.

According to the learned Counsel in the present case the "omission" consists in the respondent leaving the live wire in the public place which

resulted in the death of the first plaintiff's husband. If that is so, omission if at all could only be on 9.12.1972. Therefore it is clear the long back the

suit ought to have been filed by on or before 9th December, 1973 itself even from the very allegations in the plaint.

4. Therefore, pursuant to what is stated in order 44 Rule 1 read with Order 33, Rule 5(f) of Civil Procedure Code, this petition has necessarily to

be dismissed. In this regard, I am also supported by another decision rendered by this Court reported in *Hanifa Bai v. Haji Siddick Bui Manji Sait*

ILR 30 Mad. 547, which no doubt did not relate to the above said clause "F", the provision in the old Code corresponding to the present clause

A" in Order 33, Rule 5 Civil Procedure Code. No doubt, the learned Counsel for the petitioners cited before me *Bhajja v. Muhammad Said*

Khan ILR 54 All. 525, *Govindaswami Pillai v. The Municipal Council, Kumbakonam* ILR 41 Mad. 620, *Vijay Pratap Singh Vs. Dukh Haran*

Nath Singh and Another, . So far as *Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another*, is concerned, it only says that in such

circumstances the court has only to see the allegations made in the petition seeking to sue as an indigent person. I have also taken, only the

allegations in the original petition filed by the plaintiffs seeking permission to sue as indigent persons. The other two decisions have no applications

at all to the present case. Therefore, this petition is dismissed However, 3 (three) months' time is given for payment of Court-fee.