

Om Prakash Gupta vs The State Of Uttar Pradesh on 25 October, 1952

Equivalent citations: AIR1953ALL115, AIR 1953 ALLAHABAD 115

Author: V. Bhargava

Bench: V. Bhargava

ORDER

1. In an application filed under Article 133 of the Constitution for leave to appeal to the Supreme Court the applicant filed an application under Order 44, Rule 1, Civil P. C., for being allowed to appeal in forma pauperis and attached to the application the list of properties held by him to show that he was really a pauper. Notice of this application was issued by a Bench of this Court in May 1952. On the application coming up before us in September 1952, a point was raised that the application was not maintainable.

2. We have heard learned counsel in support of the application at some length and we are not satisfied that in a matter of this kind we can grant leave to appeal in forma pauperis. There are only two provisions of the Civil Procedure Code that need be considered in this connection. Learned counsel has strongly relied on the provisions of Order 44, Civil P. C., and has urged that the language of Rule 1 of Order 44 is wide enough to include not only an appeal from a subordinate Court but an appeal from a decree of this Court to the Supreme Court. We do not think there is any substance in this argument. Order 44 must be read as a whole and there are clear indications in that Order that it applies only to appeals which are entertainable by this Court against the decisions of Courts subordinate to it. For example, the proviso to Rule 1 is as follows :

"Provided that the Court shall reject the application unless, upon perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust."

In Rule 2, it is provided that :

"The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the order of the Appellate Court by the Court from whose decision the appeal is preferred."

A Bench of this Court hearing an application for leave to appeal cannot be said to be an appellate Court with reference to the Bench which had decided the appeal and had passed the decree. Order 44 clearly provides for applications for leave to appeal to this Court against orders passed by lower Courts. This Order, we feel satisfied, does not apply.

3. Order 45, Civil P. C., was made applicable under the Adaptation of Laws Order, 1950, to applications for leave to appeal to the Supreme Court. It is provided in that Order that in the heading for 'King in Council', 'Supreme Court' is to be substituted and throughout that Order for 'His Majesty in Council', 'Supreme Court' is to be substituted. Reading Order 45 and reading 'Supreme Court' in place of 'His Majesty in Council' Order 45, Rule 7, provides that the applicant must, within the period of time fixed or within such extended period as may be granted, furnish security for the costs of the respondent and also deposit the amount required to defray the expense of translating, transcribing, indexing, printing and transmitting to the Supreme Court a correct copy of the whole record of the suit. So far as we can see the Rule gives this Court only limited power of extending the period mentioned in the Rule but it does not provide anywhere that this Court can direct that the security and amount needed for defraying the expenses mentioned above need not be deposited by the applicant in case he is found to be a pauper. The Rule makes it obligatory on this Court to insist on the deposit of the amounts mentioned in that Rule. Reference to the Rules framed by the Supreme Court as well as this Court also supports the same conclusion. Order 12, Rule 1 of the Supreme Court Rules makes Order 45 of the Code applicable to applications for leave to appeal to the Supreme Court. There is no provision making Order 44 applicable to such cases. Order 14 of the Supreme Court Rules makes provision for special leave to appeal to the Supreme Court in forma pauperis, and Order 44, Civil P. C., has been made applicable to such applications for special leave by Rule 4 of the said Order. Under chap. 23, Rule 22 of the Rules framed by this Court applications for leave to appeal to the Supreme Court are governed by the provisions of Order 45 of the Code. We are, therefore, satisfied that this application does not lie and it must fail.

4. Learned Counsel, Sri A. P. Dube, has, however, relied on a passage at p. 136 in *Munni Ram Awasty v. Sheo Churn Awasty and Mussamat Neeut Kooer*, (4 Moore's Indian Appeals, page 114). The passage, however, is not contained in the judgment of Lord Langdale, who decided the case, but was a suggestion made by Mr. Moore, which was for some reason, incorporated in the report. It is not necessary to consider how far the suggestion made by Mr. Moore was in accordance with the provisions of the Bengal Regulations 28 of 1814. The application must now be decided in accordance with the provisions of the Civil Procedure Code read with the various relevant rules that we have discussed above.

5. The view taken by us is supported by decisions of other High Courts: *Jagadannad Asram v. Ragendra Boy and Ors.*, (1913) 18 I. C. 129: (17 Calcutta Law Journal, p. 381) ; *Ramkishan Lal v. Manna Kumari*, (3 Patna Law Journal, p. 179) ; *Amba alias Padmavati v. Srinivasa Kamathi*, (I. L. R. 42 Mad. p. 32) : A. I. R. 1918 Mad. 18 and *Sm. Attar Kaur v. Lala Gopal Das and Ors.*, A. I. R. 1948 Lab 1.

6. The application has no force and is dismissed with costs.