L. Ram Sarup vs Gindoo on 29 April, 1954

Equivalent citations: AIR1954ALL736, AIR 1954 ALLAHABAD 736

JUDGMENT

Brij Mohan Lall, J.

1. Under Rule 1(xiv) of Chapter II of the Rules of Court, 1952, the Joint Registrar has placed this matter before me so that I may issue directions for his future guidance. The question involved, as rightly, pointed out by him, is one of importance and of frequent occurrence.

2. It appears that Gindoo, the sole respondent in this second appeal, has died. The appellant has made an application to bring five persons on the record as the deceased's legal representatives. Two of the persons sought to be brought on the record are minors. Therefore the petition contains a further prayer, viz. that guardians 'ad litem' be appointed for the said two minors.

3. The question which the Joint Registrar has referred for decision is whether these two prayers could be combined in one petition or whether two separate petitions should have been presented. He has pointed out that prior to the coming into force of the present rules in 1952 such a composite application could be made. He, however, doubts whether in view of Rule 2(1) of Chapter IX of the Rules of Court such a composite application is now entertainable.

The reason which has created a doubt in his mind is that under the aforesaid rule every application for substitution of names and every application for appointment of a guardian or next friend is, to be "separately registered and numbered". He feels that possibly an application like the present containing these two prayers is to be given two numbers -- one as an application for substitution of names and the other as an application for appointment of a guardian -- and numbering one application twice may be impracticable.

4. Another aspect of the case, though not stressed by the Joint Registrar, but pointed out toy the learned standing Counsel is whether the provisions of Court Pees Act are defeated by reason of two prayers being embodied in one petition. It is desirable to deal with both these aspects of the case in order to finally decide this point.

5. The question of court fee may be taken up first. Under Schedule II, Article 1. of the Court Pees Act (VII of 1870) as amended in the State of Uttar Pradesh the entry is as follows:

Application or petition

(e) When presented to a High Court.

Three rupees twelve annas.

It is to be noticed that it is the application or petition which is to be taxed with court fee. The number of prayers contained in the petition has not been made the criterion for determining the amount of court fee. If there is one petition one court fee of Rs. 3/12/- is payable. If there are two separate documents they have to bear two separate court fees.

It is possible to conceive of cases where it may not be possible for a petitioner to ask for a definite relief. It may be that on account of circumstances (all of which may not be within his knowledge). he may be entitled to one relief or another. In such circumstances he may ask for an alternative relief. He is not to pay more than one court fee if he asks ior an alternative relief. I will go further and hold that he is not to pay more than one court fee even if he asks for more than one relief primarily and not alternatively. The reason for this conclusion is that, as already stated, the number of reliefs is not the test for determining the court fee on each application.

6. It will, therefore, follow that if a petition contains more than one prayer the Court cannot demand more than one court-fee, If the prayers are totally distinct and different from each other it. is open to Court to refuse some or all prayers unless they are embodied in separate documents. But while the Court may refuse some of the prayers on this ground it cannot demand payment of more than Rs. 3/12/- as court-fee in respect of one application on the ground that it contains more than one prayer.

7. No reported case has been, cited before me on this point. But my attention has been drawn to some unreported decisions. On 16-10-1935 Iqbal Ahmad J. (as he then was) held in Second Appeal No. 671 of 1935 (All) (A) that if a petition contained more than one prayer it should be treated as more than one application and a court-fee should be paid in respect of each prayer. In other words, it was held that if the petition contained two prayers two court-fees were to be paid.

On 17-3-36 the same learned Judge re-affirmed his previous view in 'Second Appeal No. 1434 of 1933 (All) (B)'.

The matter came up again for decision before Sulaiman C. J. on 5-3-37 and he was of the opinion that only one court-fee was payable irrespective of the number of prayers contained in a petition. He, however, went on to hold that although the Court could not demand more than one court-fee it was open to the Court to refuse to grant more than one prayer. The matter was considered on 7-11-46 by Malik J. (now C. J.) in 'Criminal Misc. No. 905 of 1946 (All) (C)' and he agreed with the view taken by Sulaiman C. J.

8. The position, therefore, is that if a petition contains more than one relief the Court is not entitled to demand more than one court-fee but it is open to the Court to. reject some of the prayers on the ground that they are disconnected with main petition.

9. No hard and fast rule can be laid down as to which of the two prayers can legitimately be joined and which cannot. It will depend upon the circumstances of each case as to whether one or more prayers can legitimately be joined together, and embodied in one petition.

10. In the present petition there are two prayers-- one for bringing the legal representative of the deceased respondent on the record and the other to appoint the guardians 'ad litem' of two of them who happen to be minors. The two prayers are closely connected with each other. As a matter of fact the first prayer cannot be grant-ed unless the second is granted.

The Court cannot bring a person on the record without hearing his objections, if any, and if he happens to be minor the objections cannot be put forward by him unless a guardian 'ad litem' is appointed. The appointment of a guardian is, therefore, a condition precedent to the bringing on the record the deceased's minor legal representatives. In the circumstances I am of opinion that these two prayers can legitimately be grouped together in one application and that the Court will not be justified in refusing any one of them because they are both contained in one document.

Similarly, if a petition contains a prayer for bringing the deceased's legal representatives on the record and also a prayer for setting aside the abatement the two prayers will be interconnected that it will not be proper to reject them on the ground that they are contained in the same petition.

11. A substitution application may, however, be made in certain cases more than 150 days after the death. In that case a prayer for granting a relief under Section 5 of the Limitation Act will also have to be made. Article 176 prescribed a period of 90 days for making an application for bringing the deceased's legal representatives on the record. After the expiry of this period of 90 days an automatic abatement takes place and Article 171 prescribes a period of 60 days for setting aside the abatement. But if the petitioner has allowed the period of 150 (90 plus 60) days to expire and has made an application under Section 5 of the Limitation Act his prayer for condoning the delay is a separate and independent prayer. Such a prayer can, in my opinion, be rejected on the ground that it should not have been embodied in the substitution application.

12. I am, therefore, of the opinion that considered from the point of view of court-fee there is no bar to prayer for substitution of names and another for appointment of guardians being grouped together in one petition.

13. Now I come to the second question, viz., whether in view of the provisions of Rule 2(1) of Chapter IX the two prayers can be embodied in one application.

In deciding this question it is necessary to take note of the historical back-ground. Before the coming into force of these Rules the practice in Allahabad High Court was that the appeals, revisions and reference were numbered, but no application presented during the pendency of the litigation was ever separately numbered or registered. All applications whether for stay of execution, for substitution of names, appointment of guardians or receivers, for injunction, or for any other interlocutory matter, were described as applications in appeals or revisions. No separate order-sheets were maintained in respect of such petitions.

On the other hand, the practice in the erstwhile Chief Court at Lucknow, which was followed at Lucknow even after the amalgamation, was that every application was separately entered in the Miscellaneous Register and was given a separate number which was distinct from the number of the parent record. While the new rules were being framed it was considered desirable to establish a uniform practice and the choice had to be made out of the aforesaid two practices. The Lucknow practice was preferred and adopted. Therefore while the rule says that all such applications "shall be separately registered and numbered" the intention is to give them a number separate and distinct from the number of the parent record. If, therefore, a composite petition like the present one is given a number separate from the parent record and is registered as a miscellaneous case the requirements of the rules will be complied with. It was not the intention of the rules that if a petition contained two prayers two separate numbers should be given and it should be registered as two separate cases. In my opinion the office will be complying with the requirements of Rule 2(1) by numbering and registering such a composite application as one miscellaneous case.

14. Under chapter VI, Rule 1, of the Rules of Court a separate order-sheet is to be attached to such a petition so that the history of that petition may appear at the very first glance by having a look at that order-sheet. The object is not to mix up the orders passed on miscellaneous applications with those passed in the appeal or revision itself.

15. In the circumstances my reply to the query made by the Joint Registrar is that a petition containing two prayers, viz., one for substitution of names as legal representatives and the other for appointment of guardians 'ad litem' of the minors, is legally entertainable.