

Kalap Nath Singh And Anr. vs Shyama Nand And Ors. on 12 October, 1954

Equivalent citations: AIR1955ALL159, AIR 1955 ALLAHABAD 159

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This case was referred to a Bench of five Judges by our brothers Sankar Saran and Gurtu who were of the opinion that the decision of the Full Bench in -- 'Chunna MaA v. Bhagwant Kisbore', AIR 1936 All 584 (A) needed reconsideration. In that case the point referred to the Full Bench for decision was as follows :

"Whether after rejecting the application for permission to sue as a pauper, can the court by a separate and subsequent order allow the applicant to pay the requisite court-fee under Section 149. Civil P. C., and treat the application as a plaint."

The facts given in that' judgment are that the application for leave to sue in forma pauperis was rejected on 29-9-1934. On 1-10-1934, an application was made for review on the ground of discovery of some new material to prove that the applicant was a pauper. This application was rejected, but at the time of rejecting the application time was granted to pay the court-fee. Sulaiman, C. J., Ben-

net and Allsop, JJ., all agreed that, after the application for leave to sue in forma pauperis had been finally disposed of, it was not possible for the court to grant time under Section 149, as there was no document before the court to which Section 149 of the Code could apply. The learned Judges also considered the question, whether at the time of rejecting the pauper application the court could grant time to pay the court-fee. Sulaiman, C. J., and Bennet, J., were of the opinion that even while dismissing the pauper application the court could not by the same order grant time to pay the court-fee. Mr. Justice Allsop took a different view.

2. The second point on which the learned Judges had differed was again referred to a Full Bench, and it came up before a Bench of which three of us were members, but the judgment has not yet been delivered -- 'Divendar Kumar v. Mahant Raghuraj Bharti', AIR, 1955 All 154 (FB) (B) since reported. There was another case under Order 33 in which there was a difference of opinion between one of us and Pearey Lal Bhargava, J. Pearey Lal Bhargava, J., was of the opinion that on the death of the petitioner no rights survived and the application for leave to sue in forma pauperis could not

be continued by the legal representatives of the deceased.

The other view was that, if the legal representatives were themselves paupers, they could claim in their own right to continue the application to sue in forma pauperis and, in case it was held that they were paupers and that the application filed by their predecessor was a bona fide application, the suit would be deemed to have been filed when the original petition was presented in court. The case was again referred to a Full Bench which held that on the death of the petitioner his legal representatives could pay the court-fees and continue the suit or if they were themselves paupers they could apply to continue the proceedings without payment of court-fees, and in that connection discussed the nature of an application for leave to sue in forma pauperis and agreed with the view expressed by Allsop, J., in -- Chunna Mal's case (A)'; 'Latifunnissa v. Mst. Khairunnissa', (S) AIR 1955 All 53 (FB) (C).

3. There can be no doubt that an order under Section 149 of the Code can only be passed when there is a document still before the court, and once the court has lost seisin of the case and there is no document before it. it cannot grant time to pay the court-fee under that section.

4. Learned counsel for the opposite parties has urged that, on 13-11-1943, at the time when the court was passing the order on the pauper application an oral request was made to the court to grant time and the court asked the applicant to make a written application, and the order of the 19th of November was, therefore, passed on an oral prayer made on the 13th of November while the court was still seised of the case. But the application of the 13th of November, does not bear out that contention. On the other hand, from the application it appears that it was filed not before the court but probably before the Munsarim. No mention is made on the order sheet of the 13th of November that such an application was filed by the plaintiffs on that day. The stamp was not punched or initialled by the Court Reader, as would have been done if it was filed in court, but was punched and initialled by the Munsarim of the court and the application was put up before the court for the first time on the 19th of November, when the court passed the following order:

"Time for payment of court-fee is given till 22nd December".

The application on which this order was passed reads as follows :

"1. That the court has been pleased to disallow the applicant's application for permission to sue as pauper.

2. That under the circumstances it is necessary that the court be pleased to allow at least two months' time to deposit the requisite court-fee otherwise plaintiff's suit may involve question of limitation.

It is, therefore, prayed that the court be pleased to allow at least two months' time to deposit the court-fee."

No mention is made in this application that an oral request was made. Almost a year afterwards, when the learned Judge who had passed the order of the 13th of November had been transferred and the defendants had raised a plea of limitation, an application along with an affidavit was filed that a request was made before the pauper application had been rejected but the court asked the petitioner to make a written application. The application and the affidavit show that by that time the plaintiffs were fully aware of the difficulties that they had to face on account of the decision in -- 'Chunna Mal's Case (A)' and an attempt was made as far as possible to bring it in line with that decision. We are not satisfied that any request was made to the court on the 13th of November, before the pauper application was finally disposed of, to grant time.

5. After the court has once lost seisin of the case and the document is no longer before it the court cannot exercise jurisdiction under Section 149 of the Code and grant time. We, therefore, hold that the lower court, after having finally disposed of the pauper application on 13-11-1943, had no jurisdiction on 19-11-1943, to grant time to pay court-fee under Section 149, Civil P. C.

6. It often happens that pauper applications, which are contested take some time before final orders can be passed thereon and during this period sometimes limitation for filing the suit on payment of court-fees expires. If a bona fide application for leave to sue in forma pauperis has been filed, merely because the petitioner has not been able to prove that he was a pauper on the date of the suit, his claim should not be allowed to get barred and he should be given a chance to pay the court-fee and continue the proceedings when, therefore, a court is not satisfied that the petitioner is a pauper but has no reason to think that the application was not a bona fide one, it should, before it has signed the order disallowing the prayer to be allowed to sue in forma pauperis, grant time for payment of court-fees. If before signing the order disallowing the prayer to sue in forma pauperis an application, oral or written, has been made to the Court praying that time for payment of court-fees be granted, it is the duty of the Court to pass a suitable order on that application as part of the order disallowing the prayer to sue in forma pauperis. If by mistake or oversight this has not been done, the Court has jurisdiction to correct its own error by reviewing its previous order rejecting the application and by adding thereto a suitable order dealing with the prayer contained in the application for time. In the case before us, however, no prayer was made and no order granting time was passed at the time when the petition was rejected on 13-11-1943, and we have already held that after the pauper application has been finally dismissed there is no jurisdiction in the court to grant time, several days later, to pay the court-fee.

7. This revision application is, therefore, allowed. The order of the lower court granting time for payment of court-fees is set aside. The parties shall bear their own costs of this revision.