

B. Lachhmi Das And Ors. vs Panchmurti Shivalinga on 16 March, 1955

Equivalent citations: AIR1955ALL635, AIR 1955 ALLAHABAD 635

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Panchmurti Shivaling alias Pancho Pandwa filed a petition to institute a suit in forma pauperis' against a number of opposite parties. The application to sue as a pauper was rejected on 25-8-1945, it being held, after notice had been issued to the Collector and the opposite parties, that it had not been made out that the plaintiff deity was a pauper. The plaintiff-applicant then tiled another application for the review of this order. This application was allowed on 17-11-1945.

By this order, the previous order of 25-8-1945 was cancelled and the Collector was required to report about the financial position of the plaintiff deity. The opposite parties were allowed an opportunity to oppose the application. Finally on 16-3-1946 the Court ordered:

"I accept the Collector's report that the plaintiff is not a pauper. The application is, therefore, rejected with costs to the opposite parties concerned.

The plaintiff will pay court-fee necessary for the suit within 30 days from the date of this order".

The plaintiff then paid the requisite court-fee and the suit proceeded.

2. The defendants questioned the correctness of the valuation of the suit and the Court decided that the suit had been undervalued and that, on proper valuation, the amount of court-fee necessary should be Rs. 1,200/- and odd instead of Rs. 500/-and odd which had been paid in the first instance. The plaintiff was unable to pay the excess court-fee demanded and again applied to be permitted to sue as a pauper. This application was rejected summarily on 17-7-1948 by a brief order:

"The plaintiff has already paid court-fee. He cannot be declared a pauper now. Rejected."

The plaint was ultimately rejected for want of sufficient court-fee on 26-7-1948.

3. The plaintiff took other steps for the restoration of the suit but he ultimately failed In getting the suit restored. Thereafter he presented another application to be permitted to sue as a pauper with respect to the same subject-matter. This application was opposed by the defendant opposite parties on the ground that a second application to, sue as a pauper was not maintainable in view of" Rule 15, Order 33, Civil P. C. This objection did not appeal to the learned Civil Judge. He considered the prayer for permission to sue in 'forma pauperis' on merits and allowed the plaintiff to sue as a pauper. It is against this order that the defendant opposite parties have filed this application in revision".

4. The order dated 17-7-1948 rejecting the plaintiff's prayer for permission to sue as a pauper need not detain us as nothing turns on it. The applicants base their contention on the first order dated 16-3-1946 by which the plaintiff's application to sue in forma pauperis was rejected and he was required to pay the necessary court-fee within a specified period.

If that order amounts to an order refusing to allow the plaintiff to sue as a pauper, the present application to sue as a pauper with respect to the same subject-matter and on the same right to sue will be barred on account of Rule 15, Order 33, Civil F. C. which is to the effect that:

'An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as a pauper.'

5. It is contended for the opposite party that the fact that the plaintiff paid the court-fee demanded on '16-3-1946, and the suit proceeded as a regular suit made the aforesaid order ineffective as an order refusing to sue as a pauper. It is also contended that the order, dated 16-3-1946, is not an order refusing to allow the opposite party to sue as a pauper and, therefore, cannot be a bar to the present application for permission to sue as a pauper under Rule 15 of Order 33, Civil P. C.

6. We do not consider the first contention for the opposite party to be sound. If that order of 16-3-1946 amounts to an order refusing to allow the opposite party to sue as a pauper, the facts that the opposite party paid the necessary court-fee and that the application was treated as 'plaint' will not change the nature of that order. That order will continue to be a good order. The opposite party got over the effect of that order by paying the necessary court-fee.

It is true that the provisions of the latter part of the aforesaid Rule 15 did not come into play at the time of treating the application to sue as a pauper as a 'plaint' possibly for the reason that the plaint was not presented subsequently to the refusal to allow the opposite party to sue as a pauper. The mere fact that the provisions of the latter part of the aforesaid rule did not come into play would not make the provisions of the earlier part, which created a bar to the presentation of a subsequent

application to sue as a pauper, of no effect.

7. On the second contention, we are inclined to agree and hold that the order, dated 16-3-1946, does not amount to an order refusing to allow the opposite party to sue as a pauper and, therefore, the present application for permission to sue as a pauper is not barred by the provisions of Rule 15, Order 23, Civil P. C.

8. In the Full Bench case of Chunna Mal v. Bhagwant Kishore, AIR 1936 All 584 (FB) (A) the following two questions were referred to the Full Bench:

"(1) Whether while rejecting the application for permission to sue as a pauper the Court can under S, 149, Civil P. C. allow the applicant to pay the requisite "court-fee and treat the application as a plaint?

(2) 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?"

9. The Full Bench held that the application for permission to sue as a pauper was a single document having the nature of a mere petition in spite of the fact that it contained the particulars necessary to be mentioned in a plaint and that this document, originally of the nature of a petition, becomes a 'plaint' if the Court allows the applicant to sue as a pauper or, before the Court had refused to allow the applicant to sue as a pauper, the applicant pays the necessary court-fees or asks for time to pay the necessary court-fees and the Court orders the petition to be treated as a plaint'.

10. The answer to the first question was that if the Court has passed an order rejecting the application under Rule 5, there will be no bar of Rule 15 which applies only when an order refusing to allow the applicant to sue as a pauper is passed after receiving evidence. Under Rule 7 (3) and that if a question arose that while refusing to allow the applicant to sue as a pauper under Order 33 Rule 7, the Court also allowed him to pay the requisite court-fee, then the answer must be in the negative. It was observed:

' The Court having refused to allow him to sue as a pauper must follow the provision of Rule 15 which should not be evaded."

The second question was answered in the negative.

11. In the Full Bench case of Devendar Kumar v. Raghuraj Bharti', (S) AIR 1955 AH 154 (B), it is held when a Court has finally disposed of an application for leave to sue in forma pauperis so that it has ceased to have seizin of the case, it cannot by a subsequent order grant time to pay the court-fees as there was no proceeding pending before the Court to which Section 149, Civil P. C. could apply. This was also the view of the Full Bench in Chunna Mal v. Bhagwant Kishore(A).

12. It was also held in *Devendar Kumar v. Raghuraj Bharti* (B) that where the application for leave to sue in forma pauperis was still pending or at the time of refusing to grant leave, the Court could grant time under Section 149 of the Code to pay the court-fees and if the court-fees were paid within the time allowed by the Court, the plaint could be deemed, to have been filed on the date on which the application for leave to sue in forma pauperis was made. This is against the view expressed in *Chunna Mal's case* (A).

13. These two contradictory views on this question exist, both the views being expressed by Full Benches of three Judges. Malik C. J. said at p. 155 in *Devendar Kumar Bharti's case* (B).

"It has been suggested that since *Chunna Mal's case* (A) was decided by a Bench of three Judges this case should go before a larger Bench. The facts that gave rise to the decision in *Chunna Mal's case* (A) are in certain material particulars different from the facts of this case and 'we do not, therefore, consider it necessary to refer it to a larger Bench.'"

After referring to the facts in both the cases and to the answer of the Full Bench to the second question in *Chunna Mal's case* (A) he observed with respect to the second point referred in that case:

"The other point, on which there was difference of opinion, did not arise in that case and was as follows:

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

It is true that that question did not arise on the facts of *Chunna Mal's case* (A) but that question was referred to the Full Bench and answered by it in a particular manner. Its decision on this question, therefore, does not appear to be obiter.

14. The question before us is different. It is not whether the Court can or cannot grant time under Section 149, Civil P. C., to pay the court-fees at the time of refusing to grant leave to sue as a pauper. It is whether an order by which the Court rejects an application for permission to sue as a "pauper and grants time to pay court-fees is an order refusing to allow the applicant to sue as a pauper as contemplated by Rule 7(3) or Rule 15 of Order 33, Civil P. C. In '*Chunna Mal's case* (A)', Allsop J., who dealt with this question at some length, observed at P. 591.

"As I have already said, I think that the application for leave to sue as a pauper must be regarded as one application which does not require more than one order of the Court and it follows from this that the proceeding based on the application must come to an end as soon as the Court passes an unconditional order refusing to allow the applicant to sue as a pauper."

This means that the order we are considering is not an unconditional order refusing to allow the applicant to sue as a pauper and therefore the proceedings based on the application for permission to" sue as a pauper do not come to an end on the making of such an order.

15. In considering the question whether at the time of rejecting an application to sue as a pauper the Court can allow the applicant to pay the requisite court-fee and treating the application "The as a plaintiff, Allsop J. observed on pp. 591-592:

"The question assumes an order which contains two parts, namely, a refusal to allow the applicant to sue as a pauper and a permission under the provisions of Section 149, Civil P. C. granted to the applicant to stamp his application so as to convert it into a plaintiff.

I think that there can be no doubt that the Court at the time when it passes such an order would have jurisdiction under Section 149 to allow the application to be stamped as a plaintiff and I do not think that that discretion should be taken away because as a matter of form that permission is accorded at the same time and on the same document as an order refusing to allow the applicant to sue as a pauper..... am of opinion that too much importance should not be attached to the fact that the Court intends to refuse to allow the applicant to sue as a pauper and writes an order to that effect.....

The point is that we should look to the substantial intention of the Court at the time when it still has jurisdiction under Section 149, Civil P. C. and if it means to exercise that jurisdiction before the proceedings came to an end we would not say that it is incompetent to do so merely because it expresses its intention at the same time not to allow the applicant to sue as a pauper."

The judgment of Allsop J., was a minority judgment in the case, but his view is approved by the later Full Bench in 1954 and therefore reference has been made to his views to find out the nature of such an order. These observations at Allsop, J. indicate that he did not consider such an order to be really a final order refusing to allow the applicant to sue as a pauper and thus disposing of the application for permission to sue as a pauper.

He considered it to be an Order allowing the applicant to pay the, court-fees after the Court had expressed its intention not to allow the applicant to sue as a pauper. More expression of intention would not amount to an order and would not therefore make such, an order an order refusing to allow the applicant to sue as a pauper within the meaning of that expression in Rule 7(3) or Rule 15, Order 33, C. P. C.

16. The observations of Malik C. J., in "Devendar Kumar Bhartis case (B)', also point to the same conclusion. At p. 155 he said:

"But where an application is still pending and at that stage the Court grants time under Section 149 of the Code, Rule-15 cannot be made applicable."

He formulated the question for consideration thus at the same page: -

"The question, therefore, that arises for consideration is whether the application for leave to sue in 'forma pauperis' can be considered to be a document which can be converted into a plaint on payment of court-fees before orders have been passed rejecting it and whether the Court can grant time to pay the requisite court-fees on it as a plaint before or at the time of passing such an order."

It would appear that the question formulated contemplated, the conversion of the application into a plaint before orders are passed rejecting the application, and the second part of the question related to the power of the Court to grant time to pay the requisite court-fees at the time of passing such an order, which, in view of the terms of the first part, must be before orders had been passed rejecting the application. Again at pp. 156-157 Malik C. J. observed:

"Then arises the question and that is the point for decision in the case whether the Court can grant time when refusing to grant permission to sue in 'forma pauperis,' Once the Court has dismissed the application, there is nothing more pending before it and two separate orders do not seem to be needed before the Court ceases to have seized of the application for leave to sue, in 'forma pauperis'. Before the Court has finally rejected the application, the Court has before it a document in which the petitioner has claimed various reliefs but has prayed that he be allowed to claim them without payment of court-fee. While the Court is still seized of the case it might say you shall not be exempted from payment of the court-fee, but you can claim the other reliefs if you pay the court-fee within the time allowed to you under Section 149. of the Code."

Again, at the same page he observes when considering an alternative view about the nature of the document containing the prayer for permission to sue as a pauper and the particulars required in a plaint:

"The Court, however, may instead of rejecting the application and putting an end to the proceedings before it, refuse to allow the prayer for exemption from payment of court-fee, but at the same time grant time under Section 149, Civil P. C. to pay the court-fee."

He again observes at p. 157:

"The petition cannot be treated as two documents, an unstamped plaint and an application praying to be excused from payment of the court-fees. It is one document in which the prayer is that the petitioner be allowed to claim the reliefs mentioned in

it, without payment of court-fees. The other reliefs are, therefore, subordinate and do not arise unless the main prayer relating to court-fee is either granted or become unnecessary by payment or by time being granted for payment."

Here no reference is made to the arising of the other reliefs for consideration on the refusal to allow the applicant to sue as a pauper.

Lastly he observes on the same page:

"The view that by reason of the plaintiff withdrawing the prayer to file the suit in 'forma pauperis' the document becomes an unstamped plaint to which Section 149 applies, but if the Court considers that the plaintiff should not be allowed to file the 'suit in 'forma pauperis' but grants time to pay the court-fees the same result would not follow, is, to our minds, not based on any sound reason."

This language is similar to that used by Allsop J. in 'Chunna Mal's case (A)' and lays emphasis on the Court view that the applicant should not be allowed to file the suit in 'forma pauperis' as distinct from the Court's order refusing the applicant to sue as a pauper. It should follow, therefore, that what the Full Bench meant was that before the tentative order of the Court indicating its views to refuse to allow the applicant to sue as a pauper becomes a final operative order, which it would be only after it is signed by the Court, the Court can pass an order allowing the applicant to pay the necessary court-fees within a certain time.

Once an order for paying the necessary court-fees is passed, there cannot be any possible occasion still to consider whether the prayer for allowing the applicant to sue as a pauper should be granted or not. The request of the applicant to pay court-fees, and thus to get the petition converted into a plaint, amounts to a request for permission to withdraw his prayer for permission to sue as a pauper. The fact that the Court has, in its order, incorporated its views on the question of the applicant's claim to be adjudged a pauper will not make the order a final order refusing to allow the applicant to sue as a pauper.

We cannot, therefore, interpret the order of the Full Bench to mean that the order, whose validity the learned Judges were determining, amounted to two orders, one refusing to allow the applicant to sue as a pauper, and the other allowing the applicant to pay the court-les and get his petition converted into a plaint when it clearly expressed the opinion that the latter order could be passed only so long as the order refusing the applicant to sue as a pauper had not been passed.

17. We are, therefore, of opinion that the expression 'or at the time of refusing to grant leave" in the final opinion expressed at p. 155 by Malik C. I. delivering the majority judgment does not actually mean at the time of passing of the order refusing the applicant to sue as a pauper but should be taken to mean at the time of the Court expressing its intention not to allow the applicant to sue as a pauper. It would follow that such a composite order by which a Court expresses its view that the applicant should not be allowed to sue as a pauper and grants time to pay the deficient court-fees is not an order refusing to allow the applicant to sue as a pauper within the meaning of that expression

in Rules 7(3) and 15 of Order 33, C. P. C. We feel confirmed in our view by the observations of Malik C, J. delivering the judgment for the Full Bench of five Judges in -- 'Kalap Nath Singh v. Shyama Nand', (S) AIR 1955 All 159 (C). The observations he made at the conclusion of the judgment were not necessary for that case but seem to repeat what had been held earlier in 'Devendar Kumar Bharti's case (B)' and which would give relief to such applicants for leave to sue in 'forma pauperis', who on account of the rejection of their application may file a fresh suit barred by limitation. He observed at p. 161:

"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."

Emphasis is laid that the order to grant time should be given before the order disallowing the prayer to sue in "forma pauperis" is signed. An order of a Court becomes effective after it is signed and so long as the order is not signed it retains the character of a tentative opinion. It should follow, therefore, that when the Court passes a final order granting time to pay the deficient court-fees, its previous expression of opinion in the same order that the applicant should not be allowed to sue in 'forma pauperis' did not attain the final character of an effective order refusing to allow the applicant to sue as a pauper.

18. It has been contended that the view we are taking of the decision in '(S) AIR 1955 All 154 (B)' amounts "to a view contrary to that expressed by the said Full Bench and that it would be desirable that a reference be made to a larger Bench. We are of opinion that we are not laying down any view contrary to that expressed by the Full Bench a view which is also practically confirmed by a larger Full Bench of five Judges in the case of (S) AIR 1955 All 159 (C)'. What we are doing is simply to interpret what the learned Judges, mean when they say that where the application for leave to sue in 'forma pauperis' was still pending or at the time of refusing to grant leave, the Court could grant time under Section 149 of the code to pay the court-fees.

19. We are, therefore, of opinion that the order of 16-3-1946 does not amount to an order refusing to allow the applicant to sue as a pauper but is an order allowing the applicant to pay the necessary court-fees and get his petition converted into a plaint on such payment. The order, therefore, implies that either the plaintiff has withdrawn his prayer for permission to sue as a pauper or the Court did not desire to pass a formal order refusing such a prayer and allowed an opportunity to the

plaintiff to pay the necessary court-fees even if he himself did not request for it.

The plaintiff subsequently availed of that concession, paid the necessary court-fees and proceeded with the suit. The result is that the present application to sue as a pauper was not barred on account of the earlier order of 16-3-1946.

20. It was also contended for the applicants in this revision that the order" of 16-3-1946, was not a correct order and that, therefore, the original order of 25-8-1945 was still an effective order and barred the present application to sue as a pauper. We do not see that this contention has any force when the order, dated 16-3-1946, said that the earlier order was being set aside due to a certain mistake having been committed. The present applicants submitted to that order. We cannot, therefore, treat now the order of 25-8-1945 to be a good order.

21. In view of the above, we dismiss this revision with costs. Let the record of the case be returned to the Court below at an early date.