Patna High Court
Ramashrey Roy And Ors. vs Pashupati Kumar Pathak And Ors. on 17 February, 1967
Equivalent citations: AIR 1968 Pat 1
Author: Narasimham
Bench: R Narasimham, R Choudhary, U Sinha
JUDGMENT Narasimham, C.J.

1. These two revision petitions arise out of two orders dated the 14th July, 1964, and 1st May, 1965, passed by the Subordinate Judge, 2nd Court, Patna, under the following circumstances. The first party opposite parties had filed an application for permission to sue in forma pauperis and the same was registered as Pauper Miscellaneous Case No. 3 of 1963.

On the 18th January 1961, the court rejected the prayer for permission to sue in forma pauperis and dismissed the miscellaneous case on contest with costs. A civil revision application to the High Court, Civil Revision No. 514 of 1964 was also refected on the 15th May, 1964. Then, on the 13th June, 1964, these members of the opposite party filed a petition before the court, praying that the original pauper application should be treated as a plaint and that they should be given an opportunity to pay the necessary court-fee. It was further alleged that the original valuation of the disputed property given as Rs. 1,00,000 may be amended to Rs. 14,000 only. They also filed the necessary court-fee of Rs. 1350 on the amended valuation on the 8th July, 1964. Then, on the 14th July, 1964, the court passed an order directing the registration of the plaint and ordering the Sarishtadar to check and report the amount of court-fee payable. It allowed the prayer for amendment of the valuation, subject, of course, to any objection that may be raised by the defendants on receipt of summons. The petitioners, who were the defendants, filed an objection on the 31st March, 1965, before the same court challenging the validity and competence of the court to pass the order dated the 14th July, 1964, further alleging that the said order was passed ex parte without giving due notice to them and praying to recall the same. The Court then, after hearing all concerned, passed the impugned order dated the 1st May, 1965, declining to recall its previous order dated the 14th July, 1964. Its attention was invited to two decisions of the Patna High Court, Lala Mistry v. Ganesh Mistry, AIR 1938 Pat 120 and Mathura Singh v. Smt. Sudama Debi, AIR 1954 Pat 170, where it was held that if an application to sue in forma pauperis is rejected and no order is passed by the court at the time of such rejection that the application would be treated as a plaint and further time granted to pay the requisite court-fee, the court has no jurisdiction on a subsequent date to order that the original application should be treated its a plaint and court-fee may be paid on the same. But the court observed that in view of Section 13 of the new Limitation Act (Act 36 of 1963) the principle laid down in the aforesaid decisions would not apply and that the court had jurisdiction after rejecting the pauper application to treat it as a plaint and to permit the payment of the necessary court-fee.

2. Civil Revision Nos. 556 and 570 of 1965 were filed against the orders dated the 1st May, 1965, and 14th July, 1964, respectively. They were first heard by a Single Judge of this Court (G.N. Prasad, J.) who felt some doubt about the correctness of the aforesaid Division Bench Judgments of the Patna High Court, in view of the judgment of the Supreme Court in Vijai Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941 and the provisions of Section 13 of the Limitation Act. He, therefore,

referred the two revision petitions to a Division Bench. But the Division Bench thought that as one Division Bench cannot overrule the decision of an earlier Division Bench, both the revision petitions should be referred to a larger Bench. These two revision petitions have, therefore, been placed before this Full Bench.

3. I may, however, point out that the well-known rule of judicial comity that a Division Bench should if it is unable to accent as correct the principle laid down in an earlier Division Bench decision, refer the matter to a Full Bench is subject to certain well-known exceptions. As pointed out in Halsbury's Laws of England, 3rd edition, Volume 22, paragraph 1687, pages 799-800, (which had been cited with approval in a judgment of the Supreme Court in Jaisri Sahn v. Rajdewan Dubey, AIR 1962 SC 83 at p. 88), the exceptions are as follows :---

"(I) This court is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) the court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion stand with a decision of the House of Lords (here Supreme Court); (3) the court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords.

A decision may also be given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to he given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Hence, if as stated by the referring Division Bench, the earlier Division Bench judgment may not be correct in view of the decision of the Supreme Court in Vijay Pratap Singh's case, AIR 1962 SC 94l and also in view of Section 13 of the new Limitation Act, that Bench need not have referred this case to a Full Bench and could have disposed of these two revision petitions in the light of the principles laid down above.

4. Section 13 of the new Limitation Act, 1963, may not, however, apply in the present case. Clause (b) of Section 31 of that Act expressly says that any application which may be pending at the commencement of that Act will not be affected by the provisions of that Act. The new Limitation Act came into force on the 1st January, 1964, but the pauper application of the first party opposite parties was then pending and it was disposed of only on the 18th January 1964. Hence the law to he applied in respect of the said pauper application is the law as it stood under the provisions of the old Limitation Act of 1908 and not the new law.

5. The main question for consideration is whether on the rejection of the pauper application on the 18th January 1964, the court became functus officio, and whether there was nothing pending before the court and the court had no jurisdiction thereafter to allow to applicant to pay the necessary court-fee and to treat the pauper application as a plaint. There is undoubtedly a sharp conflict of judicial opinion in all the High Courts in India, as pointed out in Mt. Jinatun Nisa Bibi v. Mt. Idrakun Nisa, AIR 1950 Orissa 183, where in my judgment at pages 187-188 I have referred to three conflicting views on the subject. So far as Patna High Court is concerned the law as laid down in Lala Mistry's case, AIR 1938 Pat 120 has been followed in all subsequent decisions (see Mathura Singh's case, AIR 1954 Pat 170). This view is based on the assumption that an application for leave to sue as a pauper is neither a plaint nor a composite document including a plaint, as pointed out by Rowland. J. in Lala Mislry's case AIR 1938 Pal 120. He had noticed the well-known Privy Council judgment in Stuart Skinner v. William Orde, (1878) 6 Ind App 126 (PC) where there are clear observations to the effect that a pauper application "contains in itself all the particulars the statute requires in a plaint, and plus these a prayer that the plaintiff may be allowed to sue in Forma pauperis." This observation of the Privy Council would suggest that a pauper application is in reality a composite document. Rowland, J., however, distinguished it on the ground that the facts in the Privy Council case were different.

Some of the other High Courts have taken [he view that a pauper application is a composite document, and merely because leave to appeal in forma pauperis is rejected the court does not become functus officio, and it can be treated as a plaint on payment of the necessary court-fee. Apart from the observations in the Privy Council judgment, this view gels support from the language of Sub-rule (3) of Rule 7 of Order 33, Civil Procedure Code, which says that the court may refuse to allow the applicant to sue as a pauper. Hence, even if the court concerned instead of passing an order in terms of this sub-rule goes further and dismisses the pauper application, that order must be construed in the light of the language of Sub-rule (3) of Rule 7 of Order 33, as being nothing else but the mere refusal of permission to sue as a pauper, leaving the residuary portion of the application undecided.

It is not necessary to further discuss the relative merits of the various conflicting views on the subject, because their Lordships of the Supreme Court in Vijai Pratap Singh's case, AIR 1962 SC 941 at p. 945 have settled the matter beyond controversy. To quote their Lordships (paragraph 13), "An application to sue in forma pauperis is but a method prescribed by the Coda for institution of a suit by a pauper without payment of fee prescribed by the Court Fees Act. If the claim made by the applicant that he is a pauper is not established the application may fail. But there is nothing personal in such an application. The suit commences from the moment an application for permission to sue in forma pauperis as required by Order 33 of the Code of Civil Procedure is presented." These observations show that the view taken by the Patna High Court, based on the aforesaid decisions that a pauper application is not a composite document including a plaint cannot (speaking with great respect) be taken as correct. Hence the principle laid down in the aforesaid two Patna decisions should to that extent, be deemed to have been overruled by the aforesaid decision of the Supreme Court.

6. For these reasons I am of opinion that no error was committed by the lower court in directing the registration of the original pauper application as a plaint on payment of the court-fee. These petitions are, therefore, dismissed with costs. There will be one set of hearing fee of Rs. 100 payable to first party opposite parties only.

Choudhary, J.

7. I agree.

Sinha, J.

8. I agree.