

Kamu alias Kamala Ammal

Vs

M. Manikandan and Another

Civil Appeal No. 6945 of 1997

(CJI J. S. Verma, B. N. Kirpal, M. Srinivasan JJ)

26.09.1997

ORDER

1. Leave granted.

2. The only question is whether permission to sue as an indigent person can be granted without going into the question whether there is any cause of action shown in the plaint. In the impugned order, the High Court has said as under :

"At the outset, I agree with the objection raised by Mr Varadarajan, learned counsel appearing for the first respondent, since we need not consider the cause of action or merits of the plaint. It is settled law that when application for permission to sue is in forma pauperis the court has to consider the applicant's indigence only. Any other objection or merits of the case have to be considered only at the time of the trial and not at this stage....."

Thereafter, the High Court proceeded to conclude as under :

"In the light of the abovesaid factual findings and in view of the position of law as seen from Order 33 CPC, I do not find any substance in the argument of the learned counsel for the petitioners. It is always open to them to raise those objections at the appropriate time. Hence the civil revision petition fails and the same is dismissed....."

3. A bare perusal of Order 33 Rule 5 CPC would indicate that the settled law on the point is the opposite of what has been treated as the settled law on the point in the impugned order of the High Court. Order 33 Rule 5 CPC insofar as it is material, is as under :

"5. Rejection of application. - The Court shall reject an application for permission to sue as an indigent person -

##(a)-(c) \* \* \*##

(d) where his allegations do not show a cause of action, or

## \* \* \* ##

4. It is, therefore, obvious that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint do not show a cause of action. That

being so, there was no occasion to grant the permission without deciding this objection and, therefore, the question of deferring consideration of the objection based on absence of cause of action could not be deferred for consideration after grant of the permission. This alone is sufficient to set aside that order.

5. Consequently, the appeal is allowed. The impugned order of the High Court is set aside. Since no useful purpose would be served now in sending the matter back to the High Court, we remit the matter to the trial court for deciding the application for permission to sue as an indigent person in accordance with law with advertence to the above.