

ALLAHABAD HIGH COURT

Devendar Kumar Bharti

Vs.

Mahanta Raghuraj Bharti

Civil Revn. No. 452 of 1949

(Malik, C.J. Agarwala and V. Bhargava, JJ.)

15.02.1947. 03.11.1954

JUDGMENT

Malik, C.J.

1. (Agarwala, J. Concurring.) This revision has been filed under Section 115, Civil Procedure Code, by one of the defendants Devendra Kumar Bharti against an order passed by the learned Civil Judge of Basti granting time to the Opposite party No.1 upto 15-3-1947, for payment of the necessary court-fees. Opposite party No.1 filed an application under Order 33 of Civil Procedure Code, (Act 5 of 1908) for permission to institute the suit in forma pauperis. Notice of this application was issued to the other side and after recording the evidence of the parties, the court came to the conclusion that the plaintiff was not a pauper and was in a position to pay the requisite court-fee. While rejecting the application, the court granted time to the Opposite party No.1 to pay the court-fee. It was urged that this the court could not do. The order against which this revision application has been filed reads as follows:

"The application for permission to sue in forma pauperis is rejected accordingly with costs to the opposite parties. The applicant is however allowed time upto 15-3-1947 for payment of the necessary court-fee if he proposes to proceed with this suit. Order accordingly."

2. This case came up before a Division Bench of this Court and in view of the decision of a Full Bench of this Court in - '*Chunna Mal v. Bhagwant Kishore*¹', which, the learned Judges thought, needed reconsideration the case was referred to a larger Bench. In - '*Chunna Mal's Case*', in the majority judgment of Sulaiman, C.J. and Bennet, J. it was held that the Court could not grant time while dismissing the application for leave to sue in forma pauperis. The decision of the Privy Council in - '*Stuart Skinner v. William Orde*²', was distinguished on the ground that in that case before an order had been made dismissing the application for leave to sue in forma pauperis

the plaintiff had paid the court-fee. It was suggested in - 'Chunna Mai's case (FB), that, if the Court wished to grant time to pay the court-fees, it should keep the application for leave to sue in forma pauperis pending till the court-fees are paid. It was, however, held unanimously that after

¹ AIR 1936 All 584

² 2 All 241

the application for leave to file the suit in forma pauperis was dismissed, the Court could not by an order of a subsequent date grant time under Section 149 of the Code to pay the court-fees.

3. The point that has arisen for consideration is whether when a court is of the opinion that an application for permission to sue in forma pauperis should be rejected, it can at the time of rejecting the application grant time to the applicant to pay the court-fees.

4. It has been suggested that since - 'Chunna Mal's case (FB), 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 ' 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. In - 'Chunna Mal's case ' the application under Order 33 was rejected on 29-9-1954 with costs. On 1-10-1934 an application was filed under Order 47, Rule 1 for review on the ground that some further evidence, oral and documentary, had come into possession of the applicant from which he could prove that he was not in a position to pay the court-fee. At the time of disposing of this review application, which the learned Judge dismissed, he granted time to the applicant to pay the court-fee.

5. In the case before us, the application for leave to file the suit in forma pauperis had not been previously rejected. It was in the same order by which the permission was refused that time was granted to the applicant to pay the requisite court-fee. In our view the two positions are entirely different. In - 'Chunna Mal's case (FB) (A)' all the three learned. Judges were of the opinion that, after an application for permission to sue in forma pauperis had been finally rejected, there was nothing pending before the Court to which the provisions of Section 149 could be made applicable. In that case the point that arose 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 Procedure Code, and treat the application as a plaint?"

The learned Judges answered this question in the negative, and if we may say so with respect, we entirely agree with their decision.

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 Procedure Code, allow the applicant to pay the requisite court-fee and

treat the application as a plaint?"

6. Order 33, R 8 provides that:

"Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner....."

There is, however, no provision in the Code as to what is to happen when the Judge is of the opinion that the plaintiff should not be allowed to sue in forma pauperis and it is on that account that Judges have differed as to what should be the proper course.

7. Order 33, R.15 deals with a case where an application has already been rejected and it runs as follows:

"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."

It will be clear from the provision quoted above that this rule deals with a case where an application to sue as a pauper has already been rejected. In the case of '*Chunna Mal v. Bhagwant Kishore (PB)*,' Sulaiman, C.J. and Bennet, J. took the view that the Court cannot grant time to pay the court-fee as in that case the question of previous payment of the costs would not arise and the order would therefore be in conflict with the provisions of Order 33, Rule 15. But in a later portion of their judgment, the learned Judges suggest that the plaintiff can ask for time to pay the court-fee and request the Court to withhold the order of dismissal under Order 33, Rule 7 till the court-fees were paid. Even if the procedure suggested is followed and the court-fees are allowed to be paid before the prayer for permission to sue in 'forma pauperis' is disposed of, Order 33, Rule 15 will not apply and no question of previous payment of costs would arise. As was pointed out by Allsop, J., Order 33, Rule 15 can only apply to a case where an application for leave to sue in 'forma pauperis' has been dismissed and an order for costs has already been passed. But where an application is still pending and at that stage the Court grants time under Section 149 of the Code, R.15 cannot be made applicable.

8. We agree with Allsop J's decision in - '*Chunna Mal's case (FB) (A)*' that once it is admitted that the application for permission to sue in forma pauperis may be converted into a plaint by payment of the court-fee it must be conceded that this can only be done under the provisions of Section 149 of the Code. If Section 149 is applicable, there does not seem to be any good reason why the Court should not exercise the discretion given under that section while it is still seized of the application.

9. There seems to be no difference of opinion on the point that while the application for permission to file a suit in 'forma pauperis' is still pending if the petitioner offers to pay or pays the court-fees the provisions of Section 149 of the Code will apply. Section 149 is as follows:

"Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

The opinion expressed in the majority judgment is that this provision can only apply to a plaint insufficiently stamped and if there is no plaint insufficiently stamped it is not possible to apply the provisions of Section 149 to it. If, however, this is the correct view, it is not possible for the petitioner at any stage of the proceedings to pay the court-fees and convert the petition into a plaint, nor will it be possible to consider that the fee had been paid in the first instance. But the learned Judges have themselves taken a different view in - 'Chunna Mal's case (FB) (A)'. In 2 All 241 (PC) it was held by the Privy Council that the petition can be converted into a plaint on payment of court-fees and the same view has been taken by almost every High Court in India.

10. The question, therefore, that arises for consideration is whether the application for leave to file a suit 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.

11. An examination of the provisions of O.33 will show that R.1 provides that a suit may be instituted by a pauper. Rule 2 provides that every application for permission to sue as a pauper shall contain the particulars required in regard to plaints, a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings. In some Courts a rule has been made, in line with the provisions of O.44, that along with an application for leave to sue in forma pauperis a duly verified but unstamped copy of the plaint may be filed. No such rule has been made by this Court and the application for permission to sue in forma pauperis contains all the details and the reliefs that are required in a plaint along with a proper verification so that it can be treated as a plaint when the application is granted or when the court-fees are paid.

12. According to the view expressed by Sulaiman, C.J. and Bennet, J. in - 'Chunna Mal's case ' it is open to a plaintiff, before his application has been finally disposed of, to offer to the Court that he is prepared to pay the court-fees and the court may in such a case grant time and on payment of the court-fees the plaint would be deemed to date back to the date when the application for

leave to sue in forma pauperis was filed. The learned Judges were of the opinion that this was possible only if the petitioner considered that he was not entitled to sue in forma pauperis and offered to pay the court-fee. But that where the Court was not satisfied that the petitioner was a pauper the request, either express or implied, that the petitioner be allowed time to pay the court-fees could not be granted while refusing the prayer to sue in forma pauperis.

13. Argument has centered round the question whether the application for leave to sue in forma pauperis is a composite document and must be deemed to be both an unstamped plaint and also an application for leave to sue in forma pauperis or it must be deemed to be a single document with only one prayer that leave be granted to file the suit in forma pauperis. In - 'Chunna Mal's case ' various anomalies were pointed out which were likely to arise if the document was held to be a composite document, both an unstamped plaint and an application for permission to sue in forma pauperis. In our view the document, cannot be considered to be a composite document, i.e., a plaint as also an application for permission to sue without payment of the court-fees. The document no doubt contains everything that is required in a plaint except that it is unstamped and there is a prayer that the petitioner is unable to pay the court-fee and be excused from payment of the court-fee. If the Court holds that the applicant is a pauper and grants the permission, the petition becomes a plaint in accordance with the provisions of the Code. Rule 8 provides that the application when granted shall be deemed to be a plaint. In our view it is not the provisions of R.8 that make it a plaint but even if there was no such provision, the permission having been granted the application would become a plaint and would have to be registered as such without payment of the court-fees. If, on the other hand, before the application is disposed of the court-fees are paid then again the potential plaint or a document which was in germino a plaint becomes a plaint as the only defect which existed in it had been rectified. 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 seisin 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.'

14. It is possible to take another view which probably is a simpler view that the document filed by the pauper is an unstamped plaint with a prayer superimposed that the petitioner may be allowed to claim reliefs without payment of court-fees so that if the permission is granted, there is nothing more that need be done and the document becomes 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 Procedure Code, to pay the court-fee. On payment of such amount Section 149 of the Code would apply and the suit would be deemed to have been filed on the day when

the unstamped plaint with the prayer for permission to institute the suit in forma pauperis was filed.

15. In 'Chunna Mal's case, it was pointed out that if the petition is deemed to be an unstamped plaint with a prayer to file it without payment of court-fees then O.7 of the Code would also apply and Orders 7 and 33 are not in all respects similar. Order 7, however, provides for the filing of a suit in the ordinary way on payment of court-fees, while O.33 provides for filing of a suit without payment of court-fees. The special provisions of O.33 would, therefore, exclude the general provisions of O.7 and there will be no possibility of a conflict between the two Orders. Section 149 of the Code applies to all documents filed in Court and if the document is deemed to contain all the particulars required in a plaint with a prayer superimposed that the plaintiff be permitted to file the suit in forma pauperis, i.e. without payment of court-fees then there is no reason why to such a document Section 149 should not be applied and the Court should not be entitled to allow time for payment of the requisite court-fees. Nor can there be conflict between the provisions of Order 7, Rule 11 and Section 149 of the Code. Order 7 applies to suits filed in the ordinary way and not to an application under Order 33 of the Code and Rule 11 of Order 7 will, therefore, not apply to such an application. 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 becomes unnecessary by payment or by time being granted for payment.

16. In '2 All 241 (PC)', their Lordships of the Judicial Committee pointed out that it was possible for a plaintiff to pay the court-fees and then the suit would be deemed to have been filed on the date that the application for permission to sue in 'forma pauperis' was filed. 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. Most of the High Courts in India, as appears from the authorities cited by counsel, have taken the view indicated by us above.

17. Our attention has been drawn to a case in - '*Mt. Shamzadi Begam v. Alakh Nath*³', That case related to an appeal under Order 44 of the Code, but the observations in the body of the judgment are helpful. In - '*Bir Ram v. Lachmi Rai*⁴', Iqbal Ahmad, J. took the view that when an application to sue in forma pauperis is rejected but the Court grants time to pay the court-fees, the Court must be deemed to have exercised the powers vested in it by Section 149 and had intended to treat the application to sue in forma pauperis as a plaint and to such a case Order 33, Rule 15 did not apply. The same view was taken by a Bench of the Oudh Chief Court in - '*Tej Dat Singh v. Dat Singh*⁵', by Ghulam Hussain and Misra, JJ.

18. Coming to the decision of the Calcutta High Court, the recent rulings of that Court seem to be in favour of the opposite party. The only case in which a different view was taken was a judgment of a learned Single Judge, Edgley, J. in - '*Biswa Nath v. Khejer Ali Molla*⁶', In that case even though the plaintiff had applied for payment of the court-fees before the application was dismissed and had actually paid the same, the learned Judge held that the plaint must be deemed to have been filed on the day that the court-fees were paid and the plaintiff's suit was, therefore, held to be time barred. This decision of the learned Single Judge goes against the decision of the Privy Council in 'Stuart Skinner's case'. In - '*Jagadishwaree Debi v. Tinkari Bibi*⁷', the application for leave to sue in forma pauperis was refused on 30-1-1928 and on 8-11-1928 time was allowed for payment of the court-fees and the court-fees having been paid the suit was registered on 4-4-1928. The question arose whether the suit should be deemed to have been filed on the day when the court-fees were paid or on the day when the application was filed. The learned Judges purported to follow the decision in '*Stuart Skinner v. William Orde (PC)*', and certain other decisions mentioned in their judgment, but with great respect to them, they did not notice that the application for leave to sue in forma pauperis having been finally rejected on 30-1-1928, the Court was not seized of any proceeding to which Section 149 could apply and the decision in 'Stuart Skinner's case (PC)', or some of the other cases relied on did not, therefore, apply. In - '*Bhusan Chandra v. Kanailal Sadhukhan*⁸', the application for leave to sue in forma pauperis was dismissed on 24-3-1936 and thereupon the plaintiff asked for

³ AIR 1935 All 620 (2) (FB)

⁵ AIR 1948 Oudh 157

⁷ AIR 1936 Cal 28

⁴ AIR 1937 All 781

⁶ AIR 1939 Cal 394

⁸ AIR 1937 Cal 241

permission to pay the court-fees and he was given a month's time and he actually made the payment on 15th April. Reliance was placed on Section 3, Small Cause Courts Act, the explanation to which was as follows:

"A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made...."

The learned Judge refused to hold that the explanation applied only to a case in which the application to sue in forma pauperis had been granted and not to a case where it had been rejected. In - '*Kali Dasi v. Santosh Kumar*⁹', the application to sue in forma pauperis was rejected but time was granted to pay the court-fees and the court-fees were paid within the time allowed. The two objections (1) that Order 33, Rule 15 applied to such a case and (2) that the suit must be deemed to have been instituted on the date the court-fees were paid were both overruled.

19. Reference has been made by the learned counsel to a Bombay decision, in - '*Mahadev Gopal v. Bhikaji Vishram*', AIR 1943 Bombay 292. In that case on 15-4-1940 the application for leave to sue in forma pauperis was refused. On the same day however the learned Judges passed the following order:

"Receive rupee one on account of court-fee today and allow suit to be filed. Balance of

costs to be paid in seven days."

The question arose whether the suit should be deemed to have been filed on the day when the court-fees were paid or on the day when the pauper application was made. The learned Judges held that if the Court decides to reject the application under Order 33, Rule 5 or R.7, it may treat the application as an unstamped plaint and may in its discretion under Section 149 allow the applicant time to pay the requisite court-fees, and upon such payment within the time allowed, number and register the plaint. In such a case the suit will be deemed to have been instituted on the day on which the application for leave to sue as pauper was made. In - *Vamanrao Lallubhai v. Pranlal Bhagwandas*¹⁰, a contrary view was taken by a learned Single Judge who held that the Court could not grant time when rejecting an application for leave to sue in forma pauperis to pay the court-fees under Section 149 of the Code.

20. A number of single Judge cases of the Madras High Court has been cited, namely: - *Balaguru Naidu v. Mithu Ratnam*¹¹, - *Duraipandiyar v. Solaimalai Pillai*¹², - *Krishna Ayyangar v. Janaki Ammal*¹³, - *Kanthimathi Ammal v. Ganesa Iyer*¹⁴, and - *Anasuyamma v. Subbareddi*¹⁵, in which the learned Judges granted time when rejecting an application for leave to file a suit in forma pauperis and it was held that under Section 149 of the Code time could be granted and if the court-fees were paid within the time allowed, Section 149 would apply. Mack, J. in - *Ganga Bhavanamma v. Surayya*¹⁶, held that the normal procedure in such cases where an application for leave to sue in forma pauperis is rejected is to leave a party to file a fresh suit under Order 33, Rule 15 on payment of the court-fees and the costs that

⁹ AIR 1938 Cal 730

¹¹ AIR 1924 Mad 118

¹³ AIR 1935 Mad 878

¹⁰ AIR 1944 Bom 63

¹² AIR 1934 Mad 467

¹⁴ AIR 1936 Mad 101

¹⁵ AIR 1943 Mad 646

¹⁶ AIR 1950 Mad 50

had been previously incurred. But the learned Judge recognised that a practice had grown up of giving pauper applicants after the rejection of their petitions to sue in forma pauperis time to pay court-fee and allowing them in fact to sue without first paying the costs of those opposing their pauper applications, and the learned Judge proceeded to say:

"I do not, however, propose to say anything to upset the existing practice which appears to have developed out of a feeling of charity towards bona fide pauper suitors except to say that a Court is under no legal obligation at all to give time to pay court-fees when it rejects a pauper petition, though in special cases such a concession may perhaps be granted. The normal procedure contemplated by the Code is, when the petition is rejected, to leave the petitioner to his remedy under Order 33, R.15, Civil Procedure Code"

21. The latest case of the Patna High Court that has been cited is a decision by Narayan and Ahmad, JJ. In - *Mathura Singh v. Sm. Sudama Debi*¹⁷, where it was held that the Court having once dismissed the pauper application without giving any time to the applicant for payment of the court-fee, it could not by a subsequent order give time to deposit the court-fee. The learned Judges, however, did not differ from their previous decision that an application to sue as a pauper

may be deemed to be an unstamped plaint and that the Court had power under Section 149, Civil Procedure Code, to allow the requisite stamp to be paid thereon within the time fixed by it. See the decision of Jwala Prasad and Rowland, JJ. in -'*Bank of Bihar Ltd. v. Ramchanderji Maharaj*¹⁸,

22. In - '*Chudaman Shamrao v. Babaji Daduappa*¹⁹', Bobde J. took the same view and so did Jai Lai and Abdul Rashid, JJ. in - '*Ram Het Gir v. Banwari Lal*²⁰',

23. The latest decision of this Court which has not yet been reported is - '*Mst. Latifunnissa v. Mst. Khairunnissa*', decided by Malik, C.J. and Brij Mohan Lall and Chaturvedi, JJ. (since reported as AIR 1955 Allahabad 53 (FB)). The observations in that case lead to the same conclusion that we have arrived at though the point for decision in that case was different.

24. We are, therefore, of the opinion that where 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. This view follows from the fact that there is no proceeding pending before the Court to which Section 149 can apply, but where the application for leave to sue in forma pauperis is still pending or at the time of refusing to grant leave, the Court can grant time under Section 149 of the Code to pay the court-fees, and if the court-fees are paid within the time allowed by the Court, the plaint would be deemed to have been filed on the date on which the application for leave to sue in forma pauperis was made.

25. This revision has, therefore, no force and must be dismissed with costs. We order accordingly.

¹⁷ AIR 1954 Pat 170 ¹⁹ AIR 1944 Nag 357

¹⁸ AIR 1929 Pat 637 ²⁰ AIR 1938 Lah 41

V. Bhargava, J.

26. I have had the benefit of reading the judgment proposed to be delivered by my Lord the Chief Justice on behalf of himself and my brother Agarwala, J. I only want to express the difficulty that I have felt, on the language of the various rules of O.33, Civil Procedure Code, in agreeing with the view that a court can, when refusing permission to sue as a pauper under Rule 7(3), grant time to the applicant to pay court-fee under Section 149, Civil Procedure Code, so that on payment of the court-fee the document becomes a plaint instituted on the date on which the document was first presented as an application for permission to sue as a pauper. I entirely agree with the view that an application under Rule 2 of Order 33 has to be treated as one single document, i.e., an application for permission to sue as a pauper and though it contains the particulars required to be set out in a plaint and is signed and verified in the manner prescribed for the signing and verification of pleadings, it cannot be treated as a composite document consisting of an application for permission to sue as a pauper as well as a plaint. It appears to me that a Court, in order to exercise its powers under Section 149, Civil Procedure Code, and grant

time to the applicant to pay the requisite court-fee, must have before it a plaint deficiently stamped at the time of passing the order. Section 149, Civil Procedure Code, cannot be interpreted to empower a court, when granting time for payment of court-fee, to convert an application into a plaint. Such conversion of the application into a plaint can be permitted by the court on the request of the applicant himself provided the applicant makes that prayer, before the court proceeds to pass orders on the application under Rule 7(3), either expressly or impliedly by tendering the requisite court-fee. In such a case, if the court accepts the court-fee tendered, the application must be deemed to have been amended the prayer for permission to sue as a pauper abandoned and the document converted into a plaint. On such conversion into a plaint the document would take effect from the day on which it was presented. This seems to be the principle which was laid down by their Lordships of the Privy Council in '2 All 241 (PC)'.

27. If the applicant himself does not voluntarily choose to convert his application into a plaint by an express or implied request, the court dealing with the application has to pass orders either allowing or refusing the applicant to sue as a pauper under Rule 7(3), and whatever be the order passed by the court the application is finally disposed of. At the stage of the passing of the order under Rule 7(3) the court has before it a single document, viz., an application for permission to sue as a pauper, and does not have a plaint before it. If the prayer is allowed and the applicant is permitted to sue as a pauper, the document becomes a plaint not because it already consisted of a plaint and an application for leave to sue as a pauper, but only because R.8 by a fiction of law directs that application to be treated as a plaint. On the other hand, no provision has been made for bringing a plaint into existence by a fiction of law where the prayer to sue as pauper is refused as is the case when the prayer is allowed. Rule 15 of Order 33 gives the indication that on refusal of the prayer the applicant has the right to institute the suit in the ordinary manner, and even this right can be exercised after first paying the costs, if any, incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper. At the time when the court is passing an order under Rule 7(3) either allowing or refusing permission to sue as a pauper the court has before it one single document only, which is an application for such permission, and does not have before it a plaint. Consequently, it appears to me that the court cannot by the same order exercise its powers under Section 149, Civil Procedure Code, to grant time to the applicant to pay the court-fee while continuing to proceed to deal with the application as an application for leave to sue as a pauper, because this would amount to treating the document as both an application and a plaint which would be the only position justifying the court in passing two distinct orders at the same time.

28. This strict interpretation of the language of the various rules of O.33, Civil Procedure Code, will, however, lead to great hardship and will cause irreparable loss to applicants who may have moved the Court bona fide, for permission to sue as paupers, but who for some reason or the other could not succeed in satisfying the court that they were entitled to do so. In numerous cases, the time for instituting the suit may expire before the court passes final orders on the application and the lapse of time may not be the fault of the applicant, but may be due to the

prolonged proceedings in court. It appears that the necessity for a provision that the time which elapses, between the presentation of an application under Rule 2 of Order 33 and the refusal of permission to sue as a pauper under Rule 7 of Order 33 shall be excluded in computing the period of limitation when the suit is subsequently filed as permitted by Rule 15 of Order 33, was overlooked; and consequently, courts would be justified in giving a liberal interpretation, so as to cause the least amount of hardship and injustice. There is further consensus of opinion in almost all the courts in India that the provisions of O.33 should be so interpreted as to leave discretion with courts to give adequate relief to the 'bona fide' applicants by exercising their power under Section 149, Civil Procedure Code, at the same time when they refuse to grant permission to sue as a pauper under Order 33, Rule 7(3). In these circumstances, I am not prepared to differ from the view taken by my Lord the Chief Justice, and consequently, concur in the order proposed.

Revision dismissed.