

MADHYA PRADESH HIGH COURT

Bhanu

Vs.

Dalmia

Civil Revn. No. 201 of 1957
(M. Hidayatullah, C.J. and P.K. Tare, J.)

23.09.1958

JUDGMENT

ORDER OF REFERENCE

P.K. TARE, J.

1. This revision under section 115 of the Civil Procedure Code has been filed by the plaintiff against the order of Shri S.R. Tiwari, Second Civil Judge, 'Chhindwara rejecting, by order dated 3-5-1957, the plaintiff-applicant's prayer for further extension of time for payment of the court-fees, after his application for permission to sue in forma pauperis was rejected and 15 days' time initially granted, had already expired.
2. By order dated 9-4-1957, the trial Judge 'dismissed the plaintiff's application for permission 'to sue in forma pauperis, and by the same order, 'the plaintiff was granted 15 days' time to pay the 'requisite court-fees of Rs. 100/-. The plaintiff, however, failed to pay the court-fees within the time initially granted. The plaintiff had purchased a court-fee stamp of Us. 100/- on the 16th day of the said order dated 9-4-1957. The said stamp was filed in court by the plaintiff's counsel on 29-4-1957 i.e. on the 20th day.
3. The learned trial Judge by an exhaustive and well written order dated 3-5-1957, after considering various authorities of different High Courts, came to the conclusion that he had no power to extend the time, beyond the one granted at the time of dismissing the pauper application.
4. There is considerable conflict of authorities on the question, whether the court,

while rejecting the pauper application can pass an order granting time for payment of court-fees under section 149 of the Civil Procedure Code. It is not necessary for me to enter into that controversy in view of the reported case of this Court, namely, *Chudaman v. Babaji*, decided by Bobde, J. and reported in ¹

The proposition laid down by this ruling does not solve the question in the present case. I do feel that I am bound by the view expressed in the case of ILR (1944) Nag 623 : AIR 1944 Nagpur 357 (supra), but the further question involved in the present case is whether, after having initially granted time for payment of court-fees at the time of dismissing the pauper application, the court can further extend time under section 149 of the Civil Procedure Code. So far as I have seen the various authorities, which I shall presently advert to, none of the cases has touched this aspect of the question.

5. The ratio decidendi of the various rulings appears to be that, till the time the court rejects the pauper application, it has seisin of the case, but once the pauper application is dismissed, the court becomes functus officio. It is on this basis that some of the High Courts have taken the view that time can be granted, when the court dismisses the pauper application. On this reasoning, the Court would lose seisin of the case, when it dismisses the pauper application and, therefore, the court would have power to grant extension of time only till it dismisses the pauper application, but, not subsequently.

6. In *Rajkumar v. Shrinivas*, ² Hidayatullah, C.J. relying on the case of ILR (1944) Nag 623 : (AIR 1944 Nag 357), held that the lower court, while rejecting the pauper application, ought to have granted time for payment of the court fees.

In the case of *Jagadiswari Debi v. Tinkari Bibi*,³ a Division Bench of the Calcutta High Court following the pronouncement of their Lordships of the Privy Council, in the case of *Stuart Skinner v. William Orde*, ⁴ took the view that the court, while rejecting the pauper application, had jurisdiction to extend time the payment of court fees under section 149 of the Civil Procedure Code. The contrary view was rejected by the learned Judges as being opposed not only to the specific wording of Section 149, Civil Procedure Code, but also to the pronouncement of their Lordships of the Privy Council. The said case was relied on by another Division Bench in the case of *Kali Dasi v. Santosh Kumar*, ILR (1939) 1 Cal 112 . A Full Bench of the Allahabad High Court in the case of *Chunna Mal v. Bhagwant Kishore*, ⁵ held that a court, before rejecting a pauper application, but not after rejecting the same, can extend time under

section 149 Civil Procedure Code. Later, another Full Bench, in the case of *Devendra Kumar Bharti v. Mahant Kaghuraj Bharti*,⁶ took the same view.

The learned Judges considered all the case law including the Privy Council case, 6 Ind App 126. The main reason that persuaded the learned Judges to hold that the court had no jurisdiction to grant time after the rejection of the pauper application was the wording of O. 33 Rules 5, 6, 7 and 15 of the Civil Procedure Code, in view of which, they were of the opinion that after the rejection of the pauper application, nothing remained pending before the court, so as to attract the application of section 149 of the Civil Procedure Code. A single Bench of the Madras High Court, in the case of *Uthuman Pillai v. Muhammad Usuf Tharaganar*,⁷ adopted the same view relying on the earlier Full Bench case of AIR 1936 Allahabad 584. Sen, J. of the Bombay High Court in the case of *Vamanrao Lallubhai v. Pranlal Bhagwandas*,⁸ was of the opinion that section 149 of the Civil Procedure Code was not attracted in such a case and the only course left open to the plaintiff was to file a fresh suit after payment of costs, as required by Order 33 Rule 15 of the Civil Procedure Code. A Division Bench of the Patna High Court in the case of *Mathurasingh v. Sudama Debi*,⁹ expressed the opinion that after rejection of the pauper application, Section 149 Civil Procedure Code could not be resorted to. The learned Judges of the later Allahabad Full Bench in the case of AIR 1955 Allahabad 154 (supra) had occasion to consider the said Patna case. A Single Bench of the Hyderabad High Court in the case of *Gangurla Veeranamma v. L. Shrinivas Rao*¹⁰ adopted the same view, relying on the Patna case and the two Full Bench Allahabad cases. Another Full Bench of the Allahabad High Court consisting of 5 Judges, in the case of *Kalapnath Singh v. Shyama Nand*,¹¹ approved of the view in the case of AIR 1936 Allahabad 584, that the Court, after rejection of the pauper application, had no power to grant time under section 149, Civil Procedure Code, but overruled it partly, holding that the view that the court could not grant time simultaneously at the time of rejection was incorrect. Thus the Full Bench of the Allahabad High Court consisting of five Judges has ultimately come to adopt the same view, as this court did in the case of ILR (1944) Nag 623 : AIR 1944 Nagpur 357 and Civil Revn. No. 685 of 1953, D/-18-1-1955 (Nag). A Division Bench of the Pepsu High Court, in the case of *Badrinath L. Tirath Ram v. State of Pepsu*,¹² had occasion to review all the case law on the subject.

7. It may be pertinent to note that in none of these cases, except the case of AIR 1936 Allahabad 584 (supra), the question arising in the present case was directly involved. In the case of AIR 1936 Allahabad 584 (supra), the court fees were sought to be paid

in the review proceedings after the pauper application had been dismissed. The only question involved in all the cases referred to above, was whether the court could, simultaneously, at the time of dismissing the pauper application, grant time for payment of court fees under section 149 of the Civil Procedure Code. After a considerable conflict of views, the different High Courts have adopted the view, which is in link with the view of this Court namely, that at the time of rejecting the pauper application, the court has power to grant time under section 149 of the Civil Procedure Code.

8. If once it is assumed that section 149 of the Civil Procedure Code, can be availed of, there appears to be no reason why under the same Section, the court cannot grant a further extension as and when found necessary. In my opinion the effect of Sections 148 and 149 of the Civil Procedure Code is that the Court is empowered to extend time as and when found necessary, except when the dismissal or rejection is automatic without further reference to the court.

9. The reason that prompted their Lordships of the Privy Council in the case of 6 Ind App 126 (supra) to hold that the court had power to grant time for payment of court fees was their Lordships' opinion that an application for permission to sue in forma pauperis consisted of two parts, namely, one, relating to the prayer for being allowed to sue as a pauper, and, the other part, relating to the essential ingredients constituting the plaint. If the application for permission to sue as a pauper be rejected, the unstamped plaint still remains as a document, which can be acted upon by the court. With due deference to the learned Judges of the various High Courts, I do not see my way to concur with the view that the plaint, as a whole, stands rejected along with the dismissal of the pauper application. If at the time of dismissing the pauper application, the court has power under section 149 of the Civil Procedure Code, in my opinion, the same power is vested in the court even after dismissal of the pauper application, as according to the dictum of their Lordships of the Privy Council, the other part relating to the essential ingredients of the plaint still remains, and, this other part cannot be said to be disposed of, unless, by an order of the Court, the plaint is rejected under Order 7 Rule 11 of the Civil Procedure Code, or the suit is dismissed. In view of this aspect, I am unable to see, as to why, the operation of section 149 of the Civil Procedure Code should be limited to the time, when the pauper application is dismissed. If the other part relating to the plaint remains indisposed of, there is no reason, why section 149 of the Civil Procedure Code cannot be resorted to, till such

time, as the plaint is finally disposed of. To hold, that the plaint stands rejected along with the dismissal of the pauper application, would, in my opinion, be not only contrary to the wording of section 149 of the Civil Procedure Code, but also contrary to the dictum laid down by their Lordships of the Privy Council in the case of 6 Ind App 126 (supra). The difficulty that the learned Judges felt in applying section 149 of the Civil Procedure Code, after the dismissal of the pauper application, was the wording of Order 33 Rule 15 of the Civil Procedure Code. I feel that the difficulty is not a real one. Rule 15 of O. 33 permits a suit to be filed on payment of court fees, after paying the costs, as directed by the order dismissing the pauper application. It also bars the filing of a similar application for the second time; but the difficulty was done away with, while holding that section 149 of the Civil Procedure Code was applicable, when the court dismissed the pauper application. To limit the operation of section 149 of the Civil Procedure Code to that eventuality alone, would be to restrict its operation unnecessarily.

If it be a binding proposition of law (which undoubtedly it is, because of the pronouncement of their Lordships of the Privy Council) that the pauper application consists of two parts, one the prayer for permission to sue as a pauper, and, the other, consisting of the essential ingredients of a plaint, by no stretch of imagination could the Code be limited to the time when the pauper application is dismissed. However, I would leave this question for consideration by a larger Bench in all its aspects.

10. As this is an important question, which is not directly covered by any authority, I place the papers of the case before my Lord the Chief Justice for considering the advisability of constitution of a larger Bench to decide the following question :-

"Whether the court, having initially granted time while dismissing the pauper application, can further extend time under Section 149 of the Civil Procedure Code, after the expiry of the time initially granted."

The papers of the case be placed before my Lord the Chief Justice.

OPINION OF THE DIVISION BENCH

M. HIDAYATULLAH, C.J. :-

11. The question referred for decision is :

'Whether the Court, having initially granted time while dismissing the pauper application, can further extend time under section 149 of the Civil Procedure

Code, after the expiry of the time initially granted.'

It has been held in this Court that in proceedings for permission to sue in forma pauperis there are two matters before the Court, (a) the plaint, and (b) the application to sue in forma pauperis. Even if the application (b) be dismissed there still remains the plaint (a), and if time is given to pay court-fee and it is paid, the plaint is good from the time when the plaint (a) was filed. This is not only the *cursus curiae* but also the settled opinion of this Court.

12. The question is whether having once given time the Court can extend it. Here again the settled practice is to extend it if sufficient cause is shown. This rule has been undeviatingly and unhesitatingly followed, and the practice is so inveterate as to have become an authority as a Rule of the Court. I accordingly answer the question in the affirmative, pausing only to point out that sufficient cause must always be made out before extension can be claimed. The papers will now be laid before a Single Judge to decide the revision application. There shall be no order about the costs of this reference.

P. K. Tare, J

I agree.

Reference answered.

Cases Referred.

1. ILR (1944) Nag 623: AIR 1944 Nag 357
2. Civil Revn. No. 685 of 1953, D/-18-1-1955 (Nag)
3. ILR 62 Cal 711
4. 6 Ind App 126
5. AIR 1936 All 584
6. AIR 1955 All 154
7. AIR 1939 Mad 316
8. AIR 1944 Bom 63
9. AIR 1954 Pat 170
10. AIR 1956 Hyd 201

11. AIR 1955 All 159

12. AIR 1957 Pepsu 14