

RAJASTHAN HIGH COURT

Surgeev

Vs.

Sushila Bai,

S.B. Civil Revision No. 43 of 2002

(S.K. Keshote, J.)

22.03.2002

JUDGMENT

S.K. Keshote, J.

1. Heard learned counsel for the defendant petitioners, perused the revision petition and the order of the learned Additional District Judge No. 3, Kota passed on 6.11.2001 in Civil Misc. Application No. 95 of 2000. Under this order the application filed by the plaintiff respondent No. 1 under Order 33, Rule 1 Civil Procedure Code, 1908 (hereinafter referred as the Code) was came to be allowed and she is permitted to file the suit as an indigent person.
2. It is to be noticed that the defendant petitioners have not given out the detailed facts of the suit filed by the plaintiff respondent No. 1.
3. The plaintiff respondent No. 1 undisputedly is the wife of the defendant petitioner No. 1.
4. The defendant petitioners No. 2 and 3 are the father-in-law and mother-in-law of the plaintiff respondent No. 1.
5. The defendant petitioners No. 4 and 5 are the brother-in-law and sister-in-law of the plaintiff respondent No. 1.
6. From the impugned order, it appears to be a matrimonial dispute between the plaintiff respondent No. 1 and the defendant petitioner No. 1. The Family Court, Kota,

as it transpires from the order of the learned trial Court, has ordered for payment of the maintenance of Rs. 450/- (four hundred fifty) per month by the defendant petitioner No. 1 to the plaintiff respondent No. 1. Though very specifically it is not pleaded, but this order of Family court is either under Section 24 of Hindu Marriage Act, 1956 or u/Section 125 Criminal Procedure Code , 1973.

7. The suit out of which this revision arises, has been filed for recovery of Rs. one lac sixty four thousand and five hundred by plaintiff respondent No. 1 against the defendant petitioners. As the value of her total assets is less than Rs. five hundred, she filed an application under Order 33, Rule 1 of the Code for grant of permission to her to file the suit as an indigent person. The suit, as it comes out from the impugned order of the court below, would have been filed in the beginning of 2000. As per the valuation of the suit the plaintiff respondent No. 1 has to pay the court fees of Rs. 8500/- (eight thousand five hundred).

8. The Constitution of India postulates a Society in which socio-economic and legal justice is available to all, on the basis that they are equal. To enforce the constitutional mandate of equity before the law, the State has to ensure access to justice. That is to say that the opportunity for securing justice are not denied to any citizen by reason of economic or other disability. The reference here may have to the Article 39A of the Constitution. This Article in the Constitution of India was inserted by the Constitution Amendment Act, 1976 with effect from 3.1.1977. It reads as under :

"39A. *Equal justice and free legal aid.* - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

9. The Legal Services Authorities Act, 1987 (hereinafter shall be referred to as 'the Act of 1987') was enacted by the Parliament in the 38th year of Republic of India to constitute Legal Services Authorities to provide free and competent legal services to the weaker sections of the society to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. The Act of 1987 was brought into force on 9th of November, 1987 is a tribute to the framers of the Constitution, it furthers their

endeavor to establish that there would be equity before the law and a vibrant and fair justice delivery system that would ensure it. It is for the legal functionaries to achieve the goal set out in the Act of 1987 so that meaningful assistance is given to those who are not in a position to pursue legal remedies on account of poverty, want of knowledge or other such handicappedness.

10. Legal service is defined in clause (c) of sub-section (1) of Section 2 of the Act of 1987. It includes the rendering of any service in the conduct of any case or other legal proceeding before any Court or other authority or tribunal and giving of advise on any legal matter.

11. Section 6 of the Act of 1987 makes a provision for constitution of State Legal Services Authority, the High Court Legal Services Committee, District legal Services Authority and Taluka Legal Services Committee.

12. Section 7 of the Act of 1987 lays down the functions of the State Authority. Sub-section (2) of Section 7 of the Act of 1987 provides that without prejudice to the generality of the functions referred to in sub- section (1) the State Authority shall perform, inter alia, all or any of the following functions,

- (a) give legal service to persons who satisfy the criteria laid down under this Act;
- (b) conduct Lok Adalats including Lok Adalats for High Court Cases;
- (c) undertake preventive and strategic legal aid programmes; and(d) perform such other functions as the State Authority may, in consultation with the (Central Authority), fix by regulations.

13. Section 12 of the Act of 1987 lays down criteria for giving legal services. Every person who has to file or defend a case shall be entitled to legal services under this Act if that persons is; (a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution; (c) a woman or a child;

.....

14. Section 13 and more particularly sub-section (1) thereof, of the Act of 1987 provides that a person who satisfies all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

15. The State Legal Service Authority, in exercise of the powers conferred upon it under Section 29A of the Act of 1987, made the Regulations to give effect to the provisions of the Act. These are known as the Rajasthan Legal Services Authority Regulations, 1999 (hereinafter "the Regulations of 1999" for short).

16. The reference here may also be had to the Rajasthan State Legal Services Authority Rules, 1995 (for short, "the Rules of 1995").

17. Chapter IV of the Regulations of 1999 relates to the legal services. Regulation 18 of the Regulations 1999 provides mode of providing legal services. Legal services may be provided in all or any one of the modes, namely, process fee and all other charges payable or incurred in connection with any legal proceedings except court fees.

Representation by a legal practitioner in legal proceeding. Obtaining of certified copies of the orders and other documents in legal proceedings. Preparation of paper book including printing and translation of the documents in legal proceedings and any other expenses which the legal services authority or district committee deems fit to grant in the circumstances of the given case.

18. Regulation 22 of the Regulations of 1999 makes a provision for honorarium payable to legal practitioner on the panel. The concerned Committee/District Authority shall prepare a panel of legal practitioners who are ready to prepare a case on behalf of the persons to whom legal aid under the Regulations, 1999 is provided. The Regulations of 1999 provide that in the first instance an effort shall be made to arrange services of the legal practitioner on honorarium basis. If such services cannot be so arranged without providing assistance by another legal practitioners the concerned Committee or District Authority may appoint him legal practitioner and pay the fees at the rates provided therein.

19. Order 33 of the Code relates to the suit by indigent persons. A person is an indigent person if he is not possessed of sufficient means (other than the property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay fees prescribed by law for the plaint in such suit. Or where no such fees is prescribed, if he is not entitled to property worth Rs. 1000/- other than the property exempt from attachment in execution of a decree and the subject matter of the suit.

20. Rule 1-A of Order 33 of the Code makes a provision for enquiry into the means of an indigent person. Every enquiry into the question whether or not a person is an indigent person shall be made in the first instance by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.

21. Rule 4 of Order 33 of the Code relates to the examination of applicant.

22. Rule 5 of Order 33 of the Code provides that the Court shall reject an application for permission to sue as an indigent person, inter alia, on the ground where the applicant is not an indigent person.

23. Rule 6 of Order 33 of the Code provides that where the Court sees no reason to reject the application on any of the grounds stated in Rule 5 it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his indigence and for hearing any evidence which may be adduced in disproof thereof.

24. Rule 7 of Order 33 of the Code lays down the procedure at hearing. On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses if any produced by either party, and may examine the applicant or his agent, and shall make a full record of their evidence. Examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of Rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in Rule 5. The court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court under Rule 6 or under this rule, the applicant is or is not subject to any of the prohibitions specified in Rule 5. The Court then either shall allow or refuse to allow the applicant to sue as an indigent person.

25. Rule 8 of Order 33 of the Code reads as :- "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, except that the plaintiff shall not be liable to pay any Court fee or fees payable for service of process in respect of any petition, appointment of a pleader or other

proceedings connected with the suit.

26. Rule 9-A of Order 33 of the Code casts a duty upon the Court to assign a pleader to an unrepresented indigent person. It provides that where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

27. Rule 10 of Order 33 of the Code is with regard to the costs where an indigent person succeeds. It provides that where the indigent person succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person. This amount shall be recoverable by the State Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

28. Rule 11 of Order 33 of the Code is with regard to the procedure where an indigent person fails in the suit. This Rule provides that where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed, (a) because the summons for the defendant to appear and answer has not been served upon him on consequence of the failure of the plaintiff to pay the court fee or postal charges, (if any) chargeable for such service or to present copies of the plaint or concise statement, or (b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person.

29. Rule 18 of Order 33 of the Code empowers the State Government to provide for free legal services to the indigent person. A combined reading of Rule 9-A and Rule 18 of Order 33 of the Code leaves no doubt that the State Government has power to provide the free legal services to the indigent person and the court to provide the free Advocate to plead the case of the indigent person who is unrepresented. In the cases which do not fall under Rule 18 of Order 33 of the Code, the indigent person has been granted exemption of payment of court fees for the time being on the condition on failure or success in the litigation this amount has to be paid by him to the State Government.

30. In the Act, 1987 or the Rules and the Regulations framed there under, I do not find any provision where this free legal service provided to the litigants there under same is

recoverable from the litigant on his success or failure in the litigation. In the year 1976 the Code was amended in consonance with the directive principles as contained in Article 39-A of the Constitution. These two rules 9-A and 18 were inserted, in the Order 33 of the Code the litigant who falls under any of the categories of Section 12 of the Act, 1987 is entitled for free legal services. Here this poor lady was not knowing about her this benefit, she had undergone this cumbersome procedure for grant of permission to sue as an indigent person. After the Act, 1987 I fail to see any justification in this approach of the Court below and the members of the Bar for this class of litigant to file application under Order 33 of the Code. The lady would have been advised to approach the concerned Legal Service Authority/Committee. In case where she is not granted free legal service then there may be some justification for this application.

31. Not only this, in a case where such an application is filed by the litigant of this category, it is the duty of the Court either to send the matter to the concerned Legal Service Authority/Committee under the Act, 1987 or the concerned authority under Rule 18 of the Order 33 of the Code for grant of free legal services. This would have been done on the first date of hearing of the matter by the court suo moto. What it is noticed that this class of litigant is not getting the benefits under the Act, 1987. For this who is responsible, is not a matter for consideration here. However, we cannot be oblivious of the fact that implementation, enforcement and procedure under the Act, 1987 is in hands of this institution and we have to find out the ways so the beneficiaries of this benevolent Act may get maximum benefits thereof. For this both, the members of the Bench and the Bar, are equally concerned. In the case of the litigant who falls under any of the categories enumerated in Section 12 of the Act, 1987, the approach of the member of the Bar ought to have been to inform him of his this legal right. It is a different matter that the litigant may or may not avail of the benefits.

32. Where despite of informing and made known of his this right he does not desire to avail benefit of the same it is expected that a note to this effect is to be put in the file to be presented in the court. The court when the matter first comes before it to inform to the litigant of his this legal right and to ascertain as to whether he is desirous to avail of the same or not. Where he expresses his desire to avail of his this legal right, the matter be sent for examination to the authority/committee concerned. Where he does not desire to avail of his this right the court may proceed with the matter. This way in case in the matter the court would have proceeded this exercise undertaken by

it would not have been necessary. The court has consumed unnecessarily its valuable and precious time in deciding this application. Unnecessary court work was increased in a case where the respondent would have been entitled for free legal services under the Act, 1987. This time could have been better utilized to decide other urgent or old matters or matters of senior citizens.

33. The respondent No. 1 has been granted permission to sue as an indigent person and it can reasonably be presumed, assumed and accepted that she would not be in a position to pay the fees to her Advocate also. The learned trial Court should not have felt contented and satisfied by making this order. To give real and effective legal services, the matter should have been considered under Rule 9-A of Order 33 of the Code to provide her the Advocate. The application no doubt has been filed by the respondent No. 1 under Order 33 through the Advocate but that does not mean and accepted that she is in a position to pay the fees of the Advocate Rule 9-A of Order 33 of the Code is to be read in context so as to relieve of this burden of making the payment of fees by an indigent person to his/her Advocate. The very fact that she has prayed for grant of permission to file a suit as an indigent person, it is a strong circumstance to assign to her a pleader at the cost of the Government. From the scheme of Order 33 of the Code this benefit which is extended to a litigant under Rule 9-A of Order 33 of the Code is not recoverable from the concerned litigant.

34. Leaving apart this, if this benefit as provided under Rule 9-A of Order 33 of the Code is not extended to this class of litigants, though permitted to sue as an indigent person, the litigant is to arrange for the Advocate's fees though he or she is an indigent person. To this extent, in my opinion, Rule 9-A of Order 33 of the Code may need a reconsideration of the Parliament.

35. A Judicial Officer if goes by strict rule of interpretation of a statute and feel himself to be helpless because of this language used in Rule 9-A of Order 33 of the Code to assign a pleader to an indigent person, the matter would have been and in fact should have been considered with reference to the legal right which this litigant the respondent No. 1 has under the Act, 1987. Though, as said earlier, as a whole the matter should have been referred to the concerned Legal Services Authority/Committee but where that has not been done it could have been segregated to this extent and the matter for providing the Advocate at the cost of the government to this poor litigant needs to be referred to the concerned Legal Services

Authority/Committee. The way, manner and the approach which the Judicial Officer have to this legal right of the litigants of the category as enumerated in section 12 of the Act, 1987 deserves to be deprecated. Every Judicial Officer of the State is under a legal obligation to see that this benefit of free legal services, a legal right conferred to a litigant of the category as enumerated under Section 12 of the Act, 1987 is being received by her or him. This way if it is taken, proceeded and approached, the very purpose and object of enacting this benevolent provision shall be frustrated. The members of the Bar are also equal being the Officers of the Court concerned to see that this legal right is being received by the litigants of the categories as enumerated under Section 12 of the Act, 1987. Unless the benefit of this benevolent provision reaches to the hands of the beneficiaries thereof the very purpose and object of enacting the Act, 1987 will not be fulfilled. To effectively implement and the beneficiaries of the Act, 1987 get the benefits thereof in reality, substance and fact is the duty of the members of the Bar as well as the Judicial Officers. First the Advocate has to inform the litigant of the category as enumerated under Section 12 of the Act, 1987 of this legal right as conferred upon him/her under the Act, 1987.

36. The litigant of this category on having come to know about her or his this legal right desires to get the free legal services, the Advocate concerned is to send him or her to the concerned Legal Service Authority/Committee and the latter shall proceed, consider and decide the matter for grant of this benefit to her or him in accordance with the provisions of the Act, 1987, Rules and the Regulations framed there under.

37. were despite of having been made known of her or his this legal right under the Act, 1987, the litigant of the category enumerated under Section 12 of the Act, 1987 does not desire to get the free legal service the Advocate concerned to mention and bring it to the notice of the Court concerned in the form of formal declaration of his own or of the litigant concerned to be enclosed to the petition, suit, application, revision and appeal etc. as the case may be, which is presented in the Court.

38. The Court, on the first available opportunity to it to ascertain from the litigant concerned whether he or she is desirous of taking the free legal services or not; where he or she desires to get this benefits, he or she may be directed to approach the concerned Legal Service Committee or the Authority. Where the litigant of this category as enumerated under Section 12 of the Act, 1987 is not desirous to avail of his/her this legal right, the court may proceed in the matter. The court may have to

record this fact in the proceedings.

39. From the Act, 1987 this free legal services is available to a person who has to defend a case also. It is a matter concerned to the Court to make known to this person of the category as enumerated under Section 12 of the Act, 1987 of her or his this legal right. For this the Court may have a rubber seal to be put on the notice or summon to be sent to that person of the proceedings having this information of his/her this legal right. What should be the form and substance of this seal is a matter for the concerned court. There may not be any difficulty to get prepared this informative rubber seal. Putting of the same on the notice or the summon, in my opinion, may not be illegal or contrary to any of the provisions of the Civil Procedure Code and the Act, 1987. Contrary to it, putting of this seal on the summons/notices may be in consonance with of the Act, 1987.

40. In the case of the persons of the category as enumerated under Section 12 of the Act, 1987 who has to defend the case, the same procedure has to be followed by the Advocate and the Court as what it is stated above to be followed in the case of a person who files a suit.

41. The learned trial court has not committed any illegality muchless any material irregularity in exercise of its jurisdiction in passing the impugned order. Here is the case where the respondent is getting Rs. 450/- per month as maintenance under the order of the Family Court. The Family Court would have granted this maintenance either under Section 125 of the Criminal Procedure Code or under Section 24 of the Hindu Marriage Act, 1956 or under the provisions of the Hindu Adoption and Maintenance Act. This maintenance is awarded by the court only in a case where the spouse concerned has no means to maintain or support herself. In this category of the person there would not have been much debate or argument on the question of her entitlement for free legal services under the Act, 1987 or grant of permission to file a suit as an indigent person and to assign the pleader under rule 9-A of Order 33 of the Code. Criminal Revision No.

42. Thus considering the matter from any angle I do not find any illegality in the order impugned in this revision petition under Section 115 of the Civil Procedure Code. Leaving apart that, the learned counsel for the petitioner has failed to show in case order of the learned trial court allows to stand how it will result failure of justice or

may cause any irreparable injury to the petitioner. The respondent No. 1 is permitted to sue as an indigent person meaning thereby it is only deferment of the payment of the court fees. She has to make the payment of the court fees at later stage. She has to pay court fees to the Government irrespective of her success or failure in litigation where she has not been granted the free legal services under the Act, 1987. The matter of payment of court fees in sum and substance is a matter between the litigant and the State Government and for which this objection as what raised and dragged up to this stage by filing this revision petition by the petitioner deserves to be deprecated and it is wholly untenable. This revision petition is not only wholly misconceived, misplaced but an abuse of the process of the Court also.

43. In the result this revision petition fails and the same is dismissed. Dismissal of this revision petition will not come in the way of the trial Court to make known to the respondent No. 1 of her this legal right of free legal services under the Act, 1987. The respondent No. 1 is free to apply for the free legal services in the matter to the concerned Legal Service Authority or the Committee and in a case where she applies for availing of her this legal right, the concerned Legal Service Committee or the Authority may consider the application under Act, 1987, Rules and Regulations framed there under and without being influenced by the fact that the respondent No. 1 has been permitted to sue as an indigent person.

Petition dismissed.