

Eshwarawwa Vs. Amarappa

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Court : Karnataka

Decided On : Dec-10-1996

Reported in : ILR1997KAR911; 1997(2)KarLJ95

Judge : Mohamed Anwar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Orders 9, Rule 9 - Order 33, Rules 1

Appeal No. : CRP No. 1658 of 1993

Appellant : Eshwarawwa

Respondent : Amarappa

Advocate for Def. : Veeresh B. Patil, Adv.

Advocate for Pet/Ap. : Ashok Patil, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Mohamad Anwar, J

1. Heard the arguments of Learned Counsel for petitioner. The Learned Counsel for respondent could not be heard as he could not keep himself present to

canvass his arguments.

2. This revision is direction against the concurrent orders of the Courts below rejecting the application of the petitioner filed under order Rule 9 C.P.C. for restoration of her petition filed under Order 33, Rule 1 C.P.C. in Misc. Case No. 7/89.

3. The petitioner had presented the petition under Order 33, Rule 1 C.P.C. in the said Misc. Case No. 7/1989 against respondent in the Trial Court seeking permission to sue as an indigent person for the reliefs prayed therein. That petition came to be dismissed for default on 4.7.91. Subsequently, she made an application under Order 9, Rule 9 C.P.C. in Misc. Case No. 7/91 before the Trial Court to restore her said petition. The respondent opposed that application. A formal enquiry was held by the learned Munsiff. The petitioner adduced evidence in support of her said application. On the basis of evidence the learned Munsiff recorded positive finding holding that petitioner had shown sufficient cause for her non-appearance on 4.7.1991 in the said Misc. Case No. 7/89 as she was ill and was not in a position to attend the Court, but he dismissed her application in Misc. Case No. 7/91 holding that the said application filed under Order 9 Rule 9 C.P.C. is not tenable since she had the right to make fresh application under Order 33, Rule(1) C.P.C. In her appeal before the Learned Civil Judge, he also concurred with the conclusion of the learned Munsiff and rejected the appeal by judgment dated 29.3.1993. Hence this revision by the petitioner.

4. On consideration of the relevant provisions under Order 33, Rule 1 C.P.C. and Order 9, I find that both the Courts - below have misconceived these provisions and have misdirected themselves with the result they have reached at wrong conclusions.

5. Indisputably, in the case on hand, the petitioner's application under Order 33 Rule 1 C.P.C. in Misc. Case No. 7/89 had been dismissed by the Trial Court for her default in appearance at the stage of enquiry into her indigent condition which was being conducted in accordance with Rule 7 of Order 33 C.P.C. It is well-settled that the institution of a suit by an indigent person commences from the date when he makes his application under Order 33, Rule 1 C.P.C. and the enquiry to

be conducted by the Trial Court on that application in regard to the indigent condition of the applicant forms part of the suit proceedings, and that the application itself partakes the character of a plaint (RAMAPPA PARAPPA v. GOURAWWA. AIR 1968, Mys 270 In that view of the legal position it becomes dear that the rejection I by the Trial Court of petitioner's application under Order 33 Rule 11 C.P.C. for default tantamounts for all legal purposes to dismissal of the plaint in a suit. As a necessary legal corollary, therefore, it follows that the provisions of Order 9, Rule 9 C.P.C. are clearly attracted to the instant case and hence, the impugned orders of both the Courts - below are liable to be set aside as they are not sustainable in law.

6. For the aforesaid reasons, the petition is allowed. The impugned judgment of the lower appellate Court and the impugned order of the Trial Court are set aside and the petitioner's application made under Order 9, Rule 9 C.P.C. in Misc. Cases No. 7/91 is allowed with the result her petition in Misc, Case No. 7/1989 filed under Order 33, Rule 1 C.P.C. stands restored to the file of the Trial Court.

The Trial Court shall proceed further to deal with the said petition in Misc. Case No. 7/1989 on its file in accordance with law from the stage at which it was dismissed by it.

Parties to bear their own costs.

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