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In Re: Ashfar Ahmed

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Court : Andhra Pradesh

Decided On : Jan-20-1984

Reported in : AIR1984AP247

Judge : P.A. Choudary, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 33, Rule 9

Appeal No. : C.R.P. No. 145 of 1984

Appellant : In Re: Ashfar Ahmed

Advocate for Pet/Ap. : J. Easwara Prasad, Adv.

Judgement :
ORDER

1. The wife sued her former husband as an indigent person claiming return of Mehr. She sought and obtained permission of the Court to sue as an indigent person long back. On the ground that she was not possessed of sufficient means to pay the Court-fee, the Court below, granted the wife's application filed under Order 33, Civil Procedure Code the husband allowed that order of the Court to become final. Now after the suit has been numbered as O.S. 39/82 and issues have been framed, the husband filed the present application contending in substance that the earlier order made by the Court permitting the wife to sue him as an indigent person, was wrong, because she was even by then possessed of sufficient means to pay the Court-fee. That application was rejected by Court

below. Against that, the husband files this Civil revision petition.

2. Iam not inclined to admit the revision petition and prolong the life of this litigation and aneny of the parties. Even assuming that all the petitioner says is correct and that the wife was possessed of sufficient means to pay Court-fee, it only means that the earlier order was made wrongly. But I find no jurisdiction in the Court below to set aside to earlier order passed granting permission to the wife on that ground. At best the earlier order can only be described as erroneous. Probably it could have been set aside. The present Civil Procedure Code. The question is whether such an application can completely be made. Order 33, Rule 9 Civil Procedure Code reads thus :

' the Court may, on the application of the defendant or of the Government pleader, of which seven days clear notice in writing has been given to the plaintiff, order that the permission granted to the plaintiff to sue as an indigent person be withdrawn.

(a) If he is guilty of vexatious or improper conduct in the course of the suit :

(b) if it appears that his means are such that he ought not to continue to sue as an indigent person : or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.'

3. A careful reading of the provisions of Order 33, Rule 9 (b), Civil Procedure Code , would make it clear that they cannot be applied to the case on hand. In my opinion Order 33. Rule 9(b) (sic) to sue as an indigent person acquires sufficient means subsequent to the making of the earlier order. The words ought not to continue to sue' as an indigent person, occurring in Order 33, Rule 9 (b), Civil Procedure Code are significant. They look to the present and not to the past. They presuppose that in the past the order to sue as an indigent person was rightly made. The Court-fees Act treats the liability of the litigant to pay Court-fee as inescapable and as an eternal fate of the litigant. During the period of trial it keeps a continuous and close watch on any fresh acquisitions of new means by the

plaintiff subsequent to the making of the earlier order by the Court so as to be able to collect Court-fee from him which he had escaped paying earlier. If the plaintiff acquires subsequently enough means, Order 33, Rule 9, Civil Procedure Code says that he should pay Court-fee by withdrawing the benefit of the earlier permission granted by the Court. This is to be achieved by withdrawing the earlier order. The language of withdrawal of an earlier permission does not refer to its original invalidity. I am therefore of the opinion that for the application of Order 33, Rule 9 (b) of the Code of Civil Procedure, there must be change in the financial circumstances of the litigant bringing new means to the party after making of the original order by the Court. In other words, the order under Order 33, Rule 9(b) of the Civil Procedure Code, proceeds on the assumption that earlier order is rightly made, but cannot be continued now. After the Court makes an order permitting a party to sue as an indigent person, that order can only be set aside or withdrawn by the same Court under Order 33, Civil Procedure Code, for there reasons (a) if it is found that the party is guilty of vaxatious or improper conduct in the course of the suit. (b) or if it appears to the Court that the means of the party are such that the ought not to continue to sue as an indigent person, or (c) if the party has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject matter. It may be noted that each one of these grounds refer to the subsequent events. With the past it has no concern. In other words, Order 33, Rule 9 Civil Procedure Code, cannot be used as a camoufiaged remedy for review.

4. In this case it is not argued by the husband that the wife has acquired any means subsequent to the making of he original order permitting her to sue as an indigent person. The argument of the husband is that even at the time of making of the original order, the wife was possessed of enough and sufficient means. Assuming that to be so the time for objecting to the granting of permission to the wife was long past. Once the order was made granting permission to sue as an indigent person, that order cannot be withdrawn on the above ground under Order 33, Rule 9 (b), Civil Procedure Code. I accordingly uphold the order of the lower Court and reject the husband's application filed under Order 33, Rule 9 (b), Civil Procedure Code to revoke the earlier order. I also direct the lower Court to dispose of this case with-in three months form the date of receipt of this order The Civil

Revision petition is dismissed.

5. Petition dismissed.

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