

Krishna Devi Vs. Charan Singh

Krishna Devi Vs. Charan Singh

SooperKanoon Citation : sooperkanoon.com/682730

Court : Delhi

Decided On : Oct-17-1971

Reported in : ILR1972Delhi874

Judge : P.S. Safer, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Civil Revision Appeal No. 396 of 1971

Appellant : Krishna Devi

Respondent : Charan Singh

Advocate for Pet/Ap. : Y.K. Sabharwal and; N.R. Suri, Advs

Judgement :

Pritam Singh Safer, J.

(1) This petition is directed against the order dated the 26th of August, 1971, made by Shri H. C. Goel, Additional District Judge, Delhi, whereby he dismissed the application filed by the petitioner under order 44, rule I of the Civil Procedure Code. A copy of the said application has been filed as Annexure A with this petition and discloses that the application was preferred under the date 5th May, 1971. Earlier to the filing of that application the petitioner had preferred an application dated the 11th March, 1971, under the same provision, i.e. order 44.

rule I of the Civil Procedure Code (hereinafter called 'the Code').

(2) Shri Charan Singh respondent before me had instituted a suit against the present petitioner for the possession of the premises in suit and for the recovery of Rs. 540.00 and had obtained a decree in his favor. The present petitioner wanted to file an appeal against the decree so obtained by the respondent. He moved the appellate court under order 44, rule I, which is :-

'1.(1) Any person entitled to prefer an appeal who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable: (2) The Appellate Court, after fixing a day for hearing the applicant or his pleader and hearing him accordingly if he appears on that day, and upon a perusal of the application and of the judgment and decree appealed from, shall reject the application, unless it sees reason to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust.'

It was found by the appellate court that the memorandum of appeal was not accompanied by a certificate copy of the decree. By an order dated the 22nd of April, 1971, the appellate court rejected the application preferred under order 44, rule I of the Code. It was in those circumstances that the petitioner preferred the application, a copy whereof has been attached with this petition as Annexure A. The court of appeal dealt with the application on the 7th of May, 1971. It noticed that it had been prayed in the ultimate part of the application that the appeal papers filed on the 11th of March, 1971, be attached to the petition which was being preferred in the shape of the second application under the date 5th of May, 1971. Because of that prayer, the court of appeal passed an express order on 7th of May, 1971, directing:-

'The grounds of appeal attached in appeal Rca No. 26 of 1971 be attached along with this application.'

After the notice was served on the respondent the same court upheld the objection raised to the maintainability of the application filed under order 44, rule I of the Code and passed the impugned order. In the course of the impugned order the court observed:-

'THE present is a separate and distinct application and I had to be self-contained. It may also be mentioned here that it appears that I had entertained the present application of the petitioner on the assumption that the grounds of appeal were contained in this very application. The real position has, however, now been brought to my notice by the respondent's counsel.'

I regret that it was not open to the court of appeal to make the aforequoted observation, in face of the clear order made on the 7th of May, 1971, by which it was directed that the grounds of appeal attached in appeal No. Rca 26 of 1971 be attached with the application with which the court was then dealing. It was no longer open to the court to observe on 26th August, 1971, that the application had been entertained under the assumption that the grounds of appeal were contained in that very application. The order dated the 7th of May, 1971, discloses that the court applied its mind to the application under order 44, rule I, which was before it at that time. Finding that the grounds of appeal were not attached with the application the court made the direction contained in the order dated the 7th of May, 1971. It could not have, therefore, been said on the 26th of August, 1971, that it had dealt with the application made under order 44, rule I on the 7th of May, 1971, on the assumption that the grounds of appeal had been submitted along with it. The present petitioner would not have incurred the present situation if on the 7th of May, 1971, the court had required of the applicant to file the grounds of appeal, disagreeing with the prayer urging that the grounds of appeal already attached with the former application, might be subtracted from that record and attached with the second application. The court of appeal seems to have accepted the prayer as made in the application dated the 5th of May, 1971. The question, however, is one which calls for determination as to whether the impugned order can be impeached within the scope of section 115 of the Code or not. While passing the order dated the 26th of August, 1971, the court noticed the scope of rule I of order 44 of the Code, and then proceeded to reject the

application on the ground that it was not accompanied by the grounds of appeal. A memorandum of appeal has to satisfy the demands of order 41, rules 1 and 2. It has to be accompanied by a statement containing the grounds of appeal. A memorandum of appeal would not be treated as such where no grounds of appeal are contained therein. An application would not be treated as a competent application within order 44, rule 1, if it is not accompanied by a memorandum of appeal, which has, of necessity, to comply with the requirements of order 41, rules 1 and 2 of the Code. In a given case the appellant may have to comply with the requirements of order 42 of the Code as well.

(3) It is urged on behalf of the petitioner that while passing the order dated the 7th of May, 1971, the court had exercised the inherent jurisdiction which it declaredly had in terms of section 161 of the Code. A civil court has ample jurisdiction which is inherent in its constitution. Section 151 is a declaratory provision. By itself it does not confer any jurisdiction. Even then the inherent jurisdiction has to be exercised in order to secure the ends of justice and in order to prevent the abuse of the process of the court.

the inherent jurisdiction does not contain any legislative power. It cannot be utilised to vary the statutory requirements of any provision whether it is occurring in the Civil Procedure Code or elsewhere. No court can exercise inherent jurisdiction to relieve any part of the rigors of any substantive provision. Wherever any obligations are imposed, then unless express power is given to the court to dispense with any of the impositions, the court has in the interest of justice to seek a strict compliance with the provisions. If a reference is made to rule 1 of order 41 of the Code, then it becomes visible that a memorandum of appeal is required to be accompanied by a copy of the decree appealed from and of the judgment on which it is founded. The power of the court to dispense with the filing of the two is limited to the judgment on which the decree may be founded. The court cannot dispense with the filing of a copy of the decree. The terms employed in rule 1 of order 44 clearly establish that the person moving the court within the scope of that provision has to comply with the requirements of rules 1 and 2 of order 41 of the Code. The inherent power of the Court declared by section 151 of the Code or which may be otherwise there, cannot be exercised so as to alter the obligations

imposed by the statutory provisions with which I am concerned. Such power, as I have already observed, can be exercised only to further the cause of justice and it would be doing injustice to the statute if the court resorts to its inherent power to vary, alter or amend a statute. It is the court's obligation to see that the statutory provisions are complied with. The inherent power can be exercised in addition to or in aid of the powers which may have been conferred expressly. Its exercise cannot be contradictory of any statutory provision. If it were to be held that the inherent power is wide enough to do anything which may be just according to the court, then it would be conferring an arbitrary power on the court which may be utilised to the extent of interfering with any kind of legislative provision. I find that the court had no inherent power whatsoever to relieve the applicant of the rigors of rule 1 of order 44 of the Code. With the second application preferred under that provision the applicant was to file a memorandum of appeal which was not a memorandum of appeal as it did not contain any grounds of appeal whatsoever. In exercise of its inherent power the court could not direct that the record of R.C.A. No. 26 of 1971 be interfered with and the grounds of appeal should be clipped out of it and attached with the new application. R.C.A. No. 26 of 1971 was an appeal which had been earlier dismissed. Its record was to remain intact. The record in that appeal needed to be preserved for all future reference. It is submitted by the counsel for the petitioner that certain documents which are filed in the course of the trial of a suit are allowed to be returned on their true or certified copies being filed in substitution thereof. That is done by the courts because of the express provisions meeting the object of returning the original documents to the litigants. The litigants may in future be requiring the original documents for many purposes. For returning the documents special provisions have been enacted. If anything, that shows that the power to take away any part of the record is expressly provided and the return of documents is not left to the exercise of the inherent power. If it were to be the intention of the Legislature to allow that any part of a memorandum of appeal may be returned after its disposal, then that could have been expressly provided for. I am of the view that the order dated the 7th of May, 1971, directing the disengagement of the grounds of appeal as contained in R.C.A. No. 26 of 1971 and their being attached with the application under order 44 rule 1, which was then before the court, was illegal and while passing the impugned order the court

merely acted on the discovery that it had passed an order which was without jurisdiction.

(4) The learned counsel for the petitioner has placed reliance on *Kanni v. V'iswanatha Chettiar and others* Air 1968 Madras 391. There the court was dealing with the Scope of rule 1(2) of order 44 of the Code. The second case cited is *Lulchetty Mohalakshnii and another v. Devala Nagamani and of others*, Air 1971 Orissa 11. There also the Full Bench was concerned with rule 1(2) of order 44 of the Code. The High Court in the last mentioned decision observed:-

'A decision admitting the application to file an appeal as pauper though taken behind the back of the other party does not affect any of his vested rights and is not open to challenge.'

That observation, in my estimation, proceeded on the assumption that the application under order 44, rule I was the one accompanied by a memorandum of appeal. Where the application is preferred under order 44, rule 1(1) and fulfills the obligations of that provision, then the order of admission will certainly be an order to which the observations made by the Orissa High Court may be applicable. On the other hand where the application preferred under order 44, rule I is not accompanied by a memorandum of appeal, as envisaged by rules 1 and 2 of order 41 of the Code, then there is no application as such under order 44 rule I of the Code and it cannot be said that the admission order had been ever passed on any application which could have legally secured it. That being the situation, any court of law whenever it would become concerned with the legality of the institution of such an application will have to adjudicate thereupon. Even a court of second appeal, if it becomes concerned with the legality of an institution under order 44, rule I may decide that in law no pauper had been validly instituted.

(5) Although I do not find any justification for interfering with the impugned order and although I do not propose to do so, I must observe that while passing the order dated the 7th of May, 1971, the court made the present petitioner believe that a competent application had been filed by her within the requirements of order 44, rule I of the Code. The court of appeal should have on the 7th of May, 1971, either rejected the application or at once pointed out that it was required of the

applicant to file fresh grounds of appeal and that no indulgence was to be allowed for getting the grounds of appeal preferred with the earlier application attached with the new application. If the court had on 7th of May, 1971, clarified that it was not prepared to deal with the application under order 44, rule I, because the so-called memorandum of appeal was not in law a memorandum of appeal because it did not contain the grounds, then the present petitioner might have filed the grounds of appeal or a proper application on the 7th of May, 1971, itself. Failing that, the present petitioner could have on the 10th of May, 1971, filed a competent application within the scope of order 44, rule I or might have filed the grounds of appeal if the court of appeal had allowed that course to the petitioner. The petitioner could not have performed anything on the 8th or 9th of May, 1971, because both the days happened to be holidays. While dismissing this petition, without costs, I indicate that it would be open to the petitioner to seek such relief which may be available at law. The rigour of the law of limitation will be looked at from this angle that the petitioner has suffered the present situation because of the express order passed on the 7th of May, 1971, directing that the grounds of appeal attached with R.C.A. No. 26 of 1971 be attached with the application with which the court was then dealing. The petitioner has been prosecuting this litigation with the bone-fide belief that the court had purported to exercise its inherent power. I have held that the court had no such inherent power. I must, however, notice that the petitioner is suffering because of the statutory impositions contained in rules 1 and 2 of order 41 of the Code which become applicable in terms of order 44, rule I thereof.

(6) With these observations the petition is dismissed. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com