

Savatri Devi Vs. Bhure Mal

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Court : Delhi

Decided On : Nov-02-1973

Reported in : ILR1974Delhi385

Judge : S.N. Andley, C.J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 33, Rule 3

Appeal No. : Civil Revision Appeal No. 495 of 1967

Appellant : Savatri Devi

Respondent : Bhure Mal

Advocate for Pet/Ap. : B.J. Nayar, Adv

Judgement :

S.N. Andley, C.J.

(1) This revision is directed against an order dated April 6, 1967 of the Subordinate Judge 1st Civil Delhi, rejecting the petition Filed by the petitioner in fornut iwnperh. The reasons for rejection of the petition were two-fold-(1) that the petition had not been presented personally by the petitioner as required by rule 3 of Order Xxxiii of the Code of Civil Procedure and (:) that the petitioner had failed to establish that she was a pauper.

(2) The Rules and Orders of the Punjab High Court still govern the procedure to be adopted in the subordinate Courts. For this purpose instructions to the civil Courts relating to their general jurisdiction and administration are contained in Volume 1. Chapter I-M has dealt with special features of certain classes of cases including suits by paupers. It is provided in rule 2 of Chapter I-M(e) that before a pauper suit is admitted, the petitioner or his authorised agent, when the applicant is exempted from appearance in Courts should be examined regarding the merits of the claim and the propriety of the application. If it appears to the Court that the suit is not framed and presented in the manner prescribed by Rules 2 and 3 of Order XXXIU, or that the applicant is not a pauper, or that he has fraudulently made away with any property etc. the application must be rejected. This particular rule talks of the Court which is seized of the pauper suit for the purposes of its trial. Then in Chapter 1-B rules have been made for the reception of plaints and applications. Rule 3 in Part B provides that plaints and petitions presented at the headquarters of a district will be received and distributed by the District Judge who may delegate this power under section 37 of the Punjab Courts Act to any Subordinate Judge and should always do so when it is for the convenience of the litigants. It is common knowledge that the Senior Subordinate Judge, Delhi, has been delegated this power of reception and distribution of plaints and applications which is vested in the District Judge, Delhi. Then rule 7 in this Chapter provides for the placing of a petition box in the verandah of the Court house about one hour before the Court sits, an official being specially made to attend early for this purpose. It is then opened thrice during the course of the day and the matters filed are placed before the Presiding Officer.

(3) It thus appears that in Delhi plaints and applications which are triable by Subordinate Judges are filed in such petition box which is placed outside the Court of the Senior Subordinate Judge and wherein plaints and applications which are to be distributed for trial amongst the Subordinate Judges are to be filed. Then the Senior Subordinate Judge exercises his powers of distribution and allocates such plaints and applications to various Subordinate Judges for trial. It may, however, be stated that similar petition boxes are placed outside the Court rooms of Subordinate Judges for reception of applications in suits which have been assigned to such Subordinate Judges.

(4) After the order of distribution for a particular plaint or application has been made by the Senior Subordinate Judge, it is sent to the Subordinate Judge concerned and it is there that the party or its agent has to appear for taking further proceedings and it is at that stage that the particular Subordinate Judge can be said to have been designated for trial of the suit. Rule 3 of Order Xxxiii of the Code of Civil Procedure provides that a pauper application shall be presented to the Court by the applicant in person, unless he is exempted and then rule 4 provides that where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

(5) The scheme of the aforesaid provisions seems to be that even a pauper application is to be filed in the petition-box which is placed outside the Court of the Senior Subordinate Judge who is designated as the distributing Court. But this cannot be said to be presentation within the meaning of rule 3 of Order Xxxiii of the Code of Civil Procedure. Presentation in rules 3 and 4 of Order Xxxiii of the Code of Civil Procedure appears to me to postulate presentation to the Court which is to try the application. While, therefore, the filing of a petition in forma pauperis in the petition box of the Senior Subordinate Judge is merely filing, the real presentation is when the matter having been assigned by the Senior Subordinate Judge is presented before the assignee Court. therefore, the necessity of the petitioner's personal presence as required by rule 3 of Order Xxxiii of the Code of Civil Procedure will be amply satisfied if the petitioner is present on the date when the application is presented to the Court which is to try it.

(6) The object of rules 3 and 4 of Order Xxxiii of the Code seems to be that the Court which is to try the application may examine the applicant regarding the merits of the claim and the property that he may or may not have. In the set up which is prevalent in the Courts at Delhi by reason of the Rules and Orders of the Punjab High Court, this function is not to be performed by the Senior Subordinate Judge when he is exercising his power of distribution because once he examines an applicant in forma pauperis, there would not be any question of distributing the matter and it will have to be dealt with by him.

(7) The learned Subordinate Judge in the instant case has not accepted the affidavit of the petitioner wherein it was stated that the petitioner was present in the Court of the Senior Subordinate Judge when the order for assignment of the case was made. I do not see any reason why this affidavit should not have been accepted particularly when this was controverted testimony. But even if the learned Subordinate Judge is right, it is difficult to say that the application in forma pauperis was not properly presented when it is not disputed that the petitioner was present on the day when the learned Subordinate Judge became seized of the matter. In my view, the petitioner's presence on that date is sufficient compliance with the provisions of rules 3 and 4 of Order Xxxiii of the Code of Civil Procedure particularly when it is only in the Court of the Subordinate Judge that she was examined ex-parte with regard to the merits of the claim and the property that she had.

(8) On the question about the means of the petitioner, the learned Subordinate Judge has again disregarded the testimony of the petitioner and her husband which again remained uncontroverted because the respondent did not come into the witness-box. I do not see any justification for having rejected this testimony and the rejection appears to me to be based on speculation rather than material on the record.

(9) For both these reasons I cannot justify the order passed by the learned Subordinate Judge and I hereby set it aside. There will be no order as to costs because the respondent has not appeared in this Court. The records may be sent back to the Senior Subordinate Judge, Delhi, before whom the parties will appear on December 1, 1973. The Senior Subordinate Judge will assign the matter to a subordinate Judge for trial.