

Pavianose Vs. Sugathan

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Court : Kerala

Decided On : Jul-22-1992

Reported in : AIR1993Ker177

Judge : Varghese Kalliath and; P.K. Balasubramanyan, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 33, Rule 5

Appeal No. : C.M.A. No. 83 of 1992

Appellant : Pavianose

Respondent : Sugathan

Advocate for Def. : S. Shyam and Philip M. Varghese

Advocate for Pet/Ap. : K.N. Narayana Pillai and T.K. Venugopalan

Disposition : Appeal dismissed

Judgement :

ORDER

1. This is an appeal against the order refusing the prayer of the appellant to file a suit as an indigent person. The court below dismissed the application to file the suit as an indigent person on the ground that the suit sought to be filed by the appellant does not disclose a cause of action.

2. Rule 5, Order 33 of the Code of Civil Procedure provides that the court shall reject an application for permission to sue as an indigent person under Clauses (a) to (g). Clause (d) enjoins the court to dismiss the application for permission to sue as an indigent person where the allegations in the proposed suit do not show a cause of action. It is almost certain on precedent on this provision that the question whether the application is liable to be dismissed or not has to be decided on the allegations made by the indigent person.

3. It is perfectly legal to argue that in considering the question whether the applicant has a cause of action or not, the court has to look only into the allegations made by the applicant and cannot enter into the merits of the claim. This proposition is a well settled proposition and finds affirmation in the decision reported in AIR 1962 SC 941 (Vijai Pratap v. Dukh Hran Nath). There are several decisions of the High Courts on this point which we are not repeating here. In AIR 1962 SC 941 : (1962 All LJ 634), it is stated that the court need not see whether the claim made by the petitioner is likely to succeed. The Court has to examine the allegations with a view to satisfy itself that the allegations made in the petition if accepted as true, would entitle the petitioner to the relief he claims. Further the Supreme Court said that if accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. Certainly in ascertaining whether the petition shows a cause of action, the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner and also the defences which the defendant may raise upon the merits. The Court is not competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. It is pertinent to note that if a court finds that accepting the allegations in the petition as true, the petition does not disclose a cause for granting relief, it will amount to 'no cause of action' within the meaning of Order 33, Rule 5, Clause (d) of the Code of Civil Procedure. This part of the judgment of the Supreme Court emphasises the importance of the relief claimed also.

4. Cause of action has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. The facts or allegations made in the plaint

should have an intimate link and nexus which would indicate that if those facts are not traversed the plaintiff is entitled to the relief. In a case where on the allegations itself even if the allegations are not traversed the court feels that the plaintiff is not entitled to the relief, it is a case of no cause of action shown to attract the provisions of Order 33, Rule 5(d) of the Code of Civil Procedure. A cause of action is something more than a ground. It not only includes the facts necessary to support the plaintiffs title, but also the facts which entitle him to relief against a particular defendant.

5. The Supreme Court has made it clear that when we are considering Order 33, Rule 5 Clause (d) of the Code of Civil Procedure, the relief also is material in the sense that even if the allegations are true and correct, whether the relief sought can be granted or not. If no relief can be granted on the allegations, there is no cause of action. So the prayer is important. If the prayer itself is a wanton and vexatious prayer in the light of the allegations and if the court is satisfied that the prayer in the suit is very unlikely to be granted even if the allegations are true, the court can say that there is no cause of action and if there is no cause of action, Order 33, Rule 5, Clause (d) of the Code of Civil Procedure is attracted.

6. The Court below very much relied on the prayer. The prayer in the suit reads thus:--

Vernacular mailer is omitted

On the nature of the prayer, the court found that there is no cause of action. On the basis of the Supreme Court decision we have adverted to, we find no error committed by the court below and the appeal is only to be dismissed. We do so.

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