

In Re: U. Ananthakrishna Baliga

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Court : Chennai

Decided On : Oct-02-1942

Reported in : AIR1943Mad177; (1942)2MLJ707

Appellant : In Re: U. Ananthakrishna Baliga

Judgement :

ORDER

Abdur Rahman, J.

1. Four appeals were filed in this Court in the ordinary form. They were heard ex parte and accepted by a Division Bench composed of Venkataramana Rao, J. and myself on the 20th November, 1941, after arguments had been addressed to us by Mr. Sitarama Rao on behalf of the appellant. The petitioner, who was one of the respondents and who was by our judgment also held liable for the debts, presented four petitions for review in forma pauperis after the retirement of Venkataramana Rao, J. The first question to decide is whether these petitions are legally competent and the petitioner can be allowed to prosecute them as a pauper.

2. Learned Counsel for the petitioner contends in the first instance that although his application was not in terms covered either by Orders 33 or 44 of the Code of Civil Procedure yet it is possible for this Court to permit him to make an application for review in the same way as a defendant was allowed by Wilson, J., in

Doorgachurn Doss v. Nittokilly Dossee I.L.R. (1880) Cal. 819, to defend a suit in forma pauperis. His second contention is that if a Court has power to allow a suit initially filed with the necessary court-fee to be continued in forma pauperis as held in Thomson v. Calcutta Tramway Company I.L.R. (1893) Cal. 319 and Neelikandi Moidin v. Kunhayissa (1935) 43 L.W. 380, there is no reason why a petition for review should not be allowed to be filed on the same analogy particularly when a petition for review was nothing but a continuation of the suit and could legitimately take the place of a plaint filed under Order 33, Civil Procedure Code and of a memorandum of appeal under Order 44. Reliance was placed in this connection on certain observations of Gentle, J., in Palani Gramani v. Manickammal (1937) 47 L.W. 731, where in reading the provisions of Order 33, Civil Procedure Code, along with certain original side rules of this Court, the learned Judge took the view that applications for grant of probate or letters of administration could fall within the purview of Order 33 and the exemption from paying court-fee could be extended also to succession duty. My attention was also drawn in this connection to an unreported decision of Curgenvin, J., referred to in Satyamurthi Aiyar's Court-Fees Act (1936 edition) at pages 465 and 466, where the learned Judge took the view that it was possible for an applicant who was a pauper to make an application for review in forma pauperis although he might not have preferred the appeal as a pauper.

3. The first contention advanced on behalf of the petitioner is based, as stated above, on the decision of Wilson, J., in Doorgachurn Doss's case I.L.R. (1880) Cal. 819. There is nothing in Order 33 which can, in my view, help a defendant in asking for the indulgence granted to persons who wish to file suits in forma pauperis except perhaps in cases where he (i.e., the defendant) may be, for the purposes of the suit, regarded as a plaintiff. The words in Order 33, rule 1 are unambiguous and cannot be construed so as to cover a defendant or a defence. The decision in Doorgachurn Doss's case I.L.R. (1880) Cal. 819 gives no reasons and is based on English Practice in Chancery which has no application to this country, where a plaintiff, unlike in England, is required to pay court-fee on his plaint. As for the second contention, the decisions in Thomson's case I.L.R. (1893) Cal. 319, or Neelikandi Moidin's case (1935) 43 L.W. 380 are, in my opinion, of no assistance in the present case. The decision in the first of these cases was given

in conformity with what the learned Judge considered to be the practice of the Calcutta Court but in any case the decision was correct as pointed out by Varadachariar, J., in the latter case, as the provisions of Order 7, rule 11, Civil Procedure Code had 'to be read consistently with the powers possessed by the Court under other provisions of the law' and as no useful purpose could be served " in insisting that the Court must reject the plaint in circumstances like those of the present case and insist upon the plaintiff filing a fresh petition. Neither of the reasons given by that learned Judge can have any application to the present case. The Court possesses no powers to exempt a defendant or a respondent from paying the necessary court-fee, even temporarily, when they are required to pay the same at the time when proceedings are initiated by them except perhaps, as suggested before when they really stand in the position of plaintiffs or appellants and can be brought in that category within the meaning of Orders. 33 and 44, Civil Procedure Code. There is also no question of withholding any permission from the petitioner in this case so that he may start with the proceedings afresh and no consideration as to the waste of court-fee paid by him arises here as was present in the minds of the learned Judges who decided *Neelikandi Moidin v. Kunhayissa* (1935) 43 L.W. 380. A petition for review cannot be regarded to be in the nature of continuation of the suit at least up to the time that it is not granted and in the absence of any provisions of law, it does not seem to be possible to stretch the analogy of plaints or of memoranda of appeals to such applications. It is unnecessary in my opinion to examine the decision in *Palani Gramani v. Manickammal* (1937) 47 L.W. 731 closely as that decision was given in a case where the Original Side Rules of this Court were applicable. These have no application to the present case and even if the terms of Section 141, Civil Procedure Code, are taken into consideration there appears to be no justification for transforming a defendant-respondent into a plaintiff-appellant. The decision by Curgenvin, J., is opposed to the decision in *Ma Nyein Yone v. P.D. Patel* I.L.R. (1929) Rang. 423, cited by the learned Government Pleader (to whom I had, in view of the importance of the point involved in this case and as it was likely to form a precedent for the future, decided to issue notice) but it may be possible to support it by a liberal construction of the words 'or other proceedings connected with the suit' used in Order 33, rule 8, Civil Procedure Code. This rule however can

exempt a plaintiff only from paying such fees as are mentioned in that rule and cannot possibly be extended to a defendant. The question of the petitioner's pauperism has never been gone into while the suit or appeal was pending and there is no procedure which will entitle a Court to make an enquiry in regard to a respondent's pauperism after the appeal in regard to which he is making the application has been brought to a close.

4. It was held by the Pull Bench in the Maharajah of Venkatagiri case (1929) 58 M.L.J. 510 : I.L.R. 53 Mad. 248 that a power to consolidate suits or appeals may be, in the absence of anything in the Code of Civil Procedure or in any other enactment, exercised by a Court but that power cannot be 'extended in a manner to conflict with the provisions of any enactment like the Court-Fees Act.' Similarly, in the absence of anything in the Code of Civil Procedure or in any other enactments that would authorise me to admit an application for review on behalf of the respondent in forma pauperis it is not, having regard to Section 4 of the Court-Fees Act, possible for me so to do. Even a temporary exemption from the payment of court-fee is after all in the nature of an indulgence granted and an exception made by the Legislature in favour of a pauper plaintiff or a pauper appellant and it is not easy to extend that exception to the petitioner in the present case.

5. Learned Counsel for the petitioner wants me to give his client a month's time to enable him to pay the necessary court-fee on the application for review. The application for review was filed after the statutory period prescribed for the purpose. The petitioner has also applied for the delay to be excused but this application has not been granted. I did not take it into consideration as I was not satisfied that the petition for review was in order. Nor am I in a position to give any assurance to the petitioner now that his application would be necessarily granted even if he puts in the necessary court-fee. In any case since he wants time to put in the requisite court-fee, I would let him do so within a fortnight from to-day. If the court-fee is not paid within that time the petition for review would stand dismissed.