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In Re: Bommisetty Ramayamma

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Court : Chennai

Decided On : Feb-04-1954

Reported in : AIR1954Mad880; (1954)IMLJ544

Judge : Panchapakesa Aiyar, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 115 - Order 7, Rule 11 - Order 33, Rules 2(2) and 5

Appeal No. : S.R. No. 57630 of 1953

Appellant : In Re: Bommisetty Ramayamma

Advocate for Pet/Ap. : A.V. Krishna Rao, Adv.

Disposition : Petition rejected

Judgement :
ORDER

Panchapakesa Aiyar, J.

1. The office has objected to the maintainability of the Civil Revision Petition sought to be filed by the petitioner. I nave heard the petitioner's counsel. The facts are rather curious. The petitioner filed O. P. No. 57 of 1951 on the file of the Sub-Court, Bapatla, under Order 33, Rule 1, Civil P. C., for leave to sue as a pauper. Her petition was rejected on 6-8-1953 and she was directed to pay court-fee due

on the plaint, and ten days' time was fixed for it. She failed to pay the court-fee within the time fixed, and the pauper plaint rejected on 20-8-1953. She has now filed a civil revision petition against the order dated 6-S-I953, refusing leave to file the suit in 'forma pauperis', but, unfortunately, only after the later order dated 20-8-1953 rejecting the pauper plaint.

2. A Pull Bench of this Court, to which I too Was a party, has held in -- 'Satyanarayana-charyulu v. Ramalirigam', : AIR1952 Mad86 (A), (the ruling relied on by the office) that where a plaint, on which additional court-fee is required to be paid, is rejected under Order 7, Rule 11, C. P. C., for default of payment of additional court-fee within the time granted, the remedy of the plaintiff is to file an appeal against the order reiect-ing the plaint, which is a decree under Section 2(2), C. P. C., and not to file a revision against the order requiring the payment of the additional court-fee, and if the plaintiff wants to file such a revision, he should do so before the plaint is rejected; and that if he waits till the rejection of the plaint, his remedy lies only in filing an 'appeal', and not in filing a revision petition.

The Pull Bench decision will apply to the re-jection of the plaint of a would-be pauper also, as in this case. Any party who is aggrieved by an order calling for an additional court fee should at once take a copy of that order and file a revision petition and get a stay, if he does not want, to pay the additional court fee and only wants time to file a revision petition against that order. If he waits till the time granted for paying the additional court fee expires and the plaint is rejected, and does not even request the court be-fore the plaint is rejected to grant him time for getting copies to file a revision petition in which case the court will certainly grant a reasonable time he cannot afterwards file a revision petition, as his remedy then is only an appeal. In this case, it seems to me that the petitioner, on being refused leave to sue as a pauper, hoped to pay the court fee due, and did not want to file a revision petition. Having failed to pay it, the pauper plaint was rejected. Then, as an afterthought, this revision petition against the earlier order has been filed by this petitioner.

3. I am not impressed with the petitioner's counsel's argument that a would-be pauper, who has to pay additional court fee, stands on a better footing than an

original non-pauper, who has to pay additional court fee. Once a man is refused to be treated as a pauper, by an order of court, he at once becomes a declared non-pauper, and I cannot see any distinction after such refusal between the would-be pauper and an original non-pauper. In the case of a pauper, he is, under the law, required to affix a 8 anna court fee stamp to his pauper petition, and, when he is refused to be treated as a pauper, he is given credit for this eight annas and asked to pay the deficit of the court fee due on the plaint. It used to be the practice in olden days for some non-paupers also to file plaints, requiring stamps of Rs. 100, Rs. 200, etc., with one rupee or half rupee stamps, and pray for time to pay the deficit. That evil practice, which might result in black-mailing the other side by holding a Damocles' sword over it, has been practically put a stop to by circulars of this court. But, it is obvious that in those cases also, the deficit court fees will be very great, and, if not paid, the plaints wilt have to be rejected just as in the cases of people like the petitioner. So. there can be no difference. on this ground also between would-be paupers and original non-paupers.

4. The civil revision petition is incompetent and cannot be allowed to be filed. It is rejected.

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