

In Re: Ram Dayal De

In Re: Ram Dayal De

SooperKanoon Citation : sooperkanoon.com/850978

Court : Kolkata

Decided On : May-25-1931

Reported in : AIR1932Cal1

Appellant : In Re: Ram Dayal De

Judgement :

Mitter, J.

1. In this appeal Mr. Ram Dayal De, advocate applies to plead for the plaintiffs respondents without putting in a Vakalatnama for his appearance. He wants only to plead on behalf of the plaintiffs and he contends that under Act 22 of 19 26 by which the provisions of the Civil Procedure Code 1908 have been amended he is entitled to plead provided he puts in a memorandum of appearance in the form provided for by Order 3, Rule 4, Civil P.C. He has put in such a memorandum without any Court-fees on it. Since the amendment of the Code in 1926, that this is the first application of this kind will appear from the report of the office which we called for and as it raises a very important question of procedure, we have heard not only Mr. Ram Dayal De but also the Bar Association of the High Court which has been represented before us by Mr. Atul Chandra Gupta. The Bar Association support Mr. Ram Dayal De and contend that under the amended provisions of the Civil Procedure Coda, an advocate not entitled to practise on the original side of the High Court is entitled to plead provided he puts in a memorandum of appearance under Order 3, Rule 4, Clause 5.

2. In order to consider whether the view maintained by the Bar Association is right it is necessary to consider carefully the provisions of Order 3 of the Code.
3. Order 3, Rule 1, suggests that any appearance, application or act in or to any Court required or authorized to be done by a party in such Court may. ... be done by the party in person or by his recognized agent or by a pleader appearing, acting or applying in on his behalf.
4. Order 3, Rule 2 enacts who the recognized agents are.
5. Order 3, Rule 4 deals with the manner in which a pleader who is appointed to act is to be engaged.
6. And Order 3, Rule 4, Clause 5, states that a pleader can be engaged for the purpose of pleading if he puts in a memorandum of appearance signed by himself stating (a) the names of the parties to the suit, (b) the name of the party for whom he appears and (c) the name of the person by whom he is authorized to appear. The proviso to Rule 5 states that it won't be necessary to file this memorandum of appearance by the pleader engaged to plead if ,he has been engaged to plead by any other pleader who has been engaged to act in Court on behalf of such a party.
7. The whole scheme of this order seems to suggest that a pleader can be engaged to plead only under Rule 4 (5), Order 3, without a document in writing signed by the party, provided there is either an appearance in the suit or appeal either by the party in person or an appearance by a pleader appointed to act. The proviso meets the case where the pleader appointed to act has engaged the pleader engaged to plead only. It is difficult to understand that it could have been intended that a pleader can be engaged to plead only under Rule 4 (5) where there has been no appearance either by the party which includes his recognized agent or by a pleader appointed to act. The memorandum of appearance contemplated by Rule 4, Clause (5) is dispensed with if the pleader appointed to act has engaged the pleader engaged to plead. In every suit or appeal apart from pleading certain acts have to be done. Rule 1, Order 3, clearly suggests that there must be appearance either by the party or his pleader for the purposes of appearance, application or act. This would seem to be the intention of the

legislature. But I am free to confess that a difficulty arises from the wide language of Order 3. Rule 4, Clause 5 and it may be contended on the plain reading of the language that a person may be engaged to plead by putting in a memorandum of appearance even if there is no appearance at previous stages 'either by the party in person or by a pleader appointed to act. And it may be said that we are to construe the statute not from what might have been the intention but what appears to be the intention from the language used. We (would therefore rest our decision on this that this rule of the Civil Procedure Code is inconsistent with the rules of the [High Court framed under Section 37, Letters Patent of 1865, and as these rules of the 'Civil Procedure Code are contrary to the rules of the High Court made under Section 37, Letters Patent, the latter must prevail. Taking the present appeal, for instance the rules of the High Court require that a deposit of Rs. 7-8-0 has to be made by every respondent appearing, see Rule 29 (a) of the new rules. This can be done either by the party appearing in person or by some pleader appointed to act for him. In this case up to the present moment there has been no appearance of the parties either in person or through an advocate appointed to act for those for whom the memorandum of appearance has been put in by Mr. Da. The rules of the High Court are framed under Section 37, Letters Patent, and they are to be as far as possible, consistent with the provisions of the Civil Procedure Code of 1859 which was in force at the date when the Letters Patent were issued or with provisions of the subsequent Civil Procedure Codes replacing the Act of 1859. R..29 (a), to which reference has been made, makes it obligatory on the respondent to pay the sum of Rs. 7-8-0 into Court. Who is to make this payment Either the party who has appeared in person or some pleader who has been appointed to act can deposit the sum. Rule 59 of the Appellate Side Rules lays down this:

In case of the appellant or the respondent failing to make the necessary deposit under 29 (2) Oh. 5 the Deputy Registrar shall lay the matter before the Registrar who may at once cause the appeal to be set down before the Division Court for orders. If the appellant or the respondent fails to satisfy the Court as to the delay the appeal may be dismissed for want of prosecution or may be decreed ex parte as the case may be, or the Court may pass such other order as it may deem proper.

8. It would seem from this rule of the appellate side that where there is no appearance for the respondent and no deposit of the sum of Rs. 7-8-0 the matter is to be dealt with as an ex parte matter. From this an inference may be legitimately drawn that it was not intended by the rule that a respondent would be heard unless he has made the necessary deposit and this deposit can only be made by a person who is entitled to act i. e., either by the respondent in person or by a pleader appointed to act for him.

9. Take for instance the case of first appeals where there are elaborate provisions regarding the filing of the list, the deposit of paper book costs, the preparation of paper book by the advocates appointed by the parties. It can hardly be argued that in the absence of either the party appearing in person or through a pleader appointed to act these acts could be done. These are stages of the appeal prior to the stage when the question of pleading arises.

10. Mr. Atul Chandra Gupta, appearing for the Bar Association has cited a case from the Bengal Law Reports to the effect that a barrister, who is entitled only to plead, was heard for the respondent without there being a pleader to instruct him: see *Gobind Chunder Dutt v. O.B. Andrews* [1875] 14 B.L.R. 12. An examination of that case shows that the party had appeared in person and it was in that state of facts that the barrister was allowed to plead for the respondent. Mr. Gupta pointed out that the practice is still followed for this case is referred to in Mr. Hechle's rules of the original side. It is doubtful if there are any other cases of this kind since the case in the Bengal Law Reports. But the case is obviously distinguishable as there the party has appeared in person. We sent for the records of S.A. 1952 of 1874 *Gobind Chunder v. O.B. Andrews* [1875] 14 B.L.R. 12 and we find that the respondent had paid the paper book costs, which under the rules prevalent in the appellate sides in 1870 amounted to Rs. 5, and the respondent was given that sum in the decree. The respondent appeared in person and deposited the sum of Rs 5 as will appear from some endorsement on the back of the memorandum of appeal. Conceding therefore that on the language of Order 3, Rule 4, Clause 5, it may apply to a case where there is no appearance for the respondent, this rule is inconsistent with the rules of the appellate side framed under Section 37, Letters Patent under which unless the deposit of Rs. 7-8-0 is made by the respondent the

matter would be treated as ex parte.

11. After all as has been pointed out by a recent decision of the Madras High Court Order 3, Rule 4, does not lay down an absolute rule but it is subject to the rules of the High Court regulating procedure: see Veerappa v. Sunderassa A.I.R. 1925 Mad. 1201.

12. In this view we are of opinion that a [pleader who under the definition given in Section 2 (15), Civil P.C. includes an advocate, of the High Court cannot plead in the High Court by merely putting in Memorandum of appearance unless there has been an appearance by the party in person or by a pleader appointed to act for him. In the latter case if the pleader appointed to act for a party has engaged the pleader merely to plead for the said party, then this memorandum of appearance need not be filed.

13. The rules of the appellate side provide for appearance of a party in person and when that is done he can appoint a pleader to plead.

14. It is not necessary to decide the question whether a memorandum of appearance should bear a court-fee stamp of Rs. 2 as it contains an authority to plead although the authority is filed by the pleader himself: see Abdul Ghaffur v. Dourin A.I.R. 1926 Pat. 246. It may be a question whether the memorandum of appearance is a Vakalatnama within the meaning of Article 10, Schedule 2. The question has not been debated before us and we express no opinion. We may point out, however, that in Madras a memorandum of appearance which is the nature of a document showing that the pleader has been retained for a party has to bear a Court-fee stamp as a Vakalatnama by reason of the amendment of the Court-fees Act Article 10 by Madras Act 5 of 1922.

15. The application of Mr. Ram Dayal De must be rejected and the case proceeded with as if there had been no appearance for the plaintiffs-respondents. His clients did not comply with the rules of the appellate side of the High Court regarding the necessity of the deposit of Rupees 7-8-0 by every respondent before the appeal can be regarded as a contested one. The case would proceed as if Mr. De's clients had not appeared.

Patterson, J.

16. I agree.

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