

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6318 of 2016

ORDER:

Heard.

2. The present civil revision petition is filed under Article 227 of the Constitution of India assailing the order dated 26.09.2016, passed in I.A.No.603 of 2016 in O.S.No.196 of 2010 on the file of the Additional Senior Civil Judge, Madanapalle, wherein, the petition filed under Order 33 Rule 9 read with Order 7, Rule 11 of CPC and Section 151 of CPC praying to withdraw the permission given to plaintiffs 1 and 2 as indigent persons and thereby collect the Court-fee due on the plaint within time fixed by the Court and in default to reject the plaint with costs, was rejected.

3. The facts in issue are as under:

The respondents herein filed O.S.No.196 of 2010 seeking the following relief:

“To declare the clauses 3 and 4 of the compromise decree as invalid, illegal and not binding by setting the compromise decree accordingly declaring the rights of the plaintiffs over the same.

To divide the entire suit schedule property items 1 to 8 and allot 2/ 5th share to the 2nd plaintiff and 1/ 10th share to the 1st plaintiff by separate metes and bounds.

To declare that the 1st plaintiff alone is entitled for the pensionary benefits on the death of late Mr.Ramana Kumar Reddy by directing defendants 7 and 8 to pay the same to the 1st plaintiff Smt.K.Parvathamma.”

Pending the said suit, the above mentioned I.A. came to be filed under Order 33 Rule 9 read with Order 7, Rule 11 of CPC and Section 151 of CPC praying to withdraw the permission given to plaintiffs 1 and 2 as indigent persons and thereby collect the Court-fee due on the plaint within time fixed by the Court and in default to reject the plaint with costs, which was dismissed. Aggrieved thereby, the present CRP came to be filed.

4. The averments would disclose that while the first plaintiff was in the witness box, as PW1, the matter was posted to 25.07.2016 for further cross examination. It is stated that in the cross examination, PW1 clearly admitted that she is conducting the said suit on behalf of plaintiff 2 also, who is her daughter, who is a post graduate in fashion designing. It is further admitted that the second plaintiff was in U.K. for two years or so and after filing of the suit, she came back to India and is living in Marathahally of Bangalore City along with her husband. It is the case of the petitioners that the second plaintiff being fashion designer might have earned huge income and as such cannot be declared as indigent person. It is stated that as per the terms and conditions of compromise effected, during pendency of A.S.No.2301 of 1993 before this Court, defendants 1 to 4 are depositing monthly amounts of Rs.1,100/- into State Bank of India, Madanapalle Branch for withdrawal by plaintiffs. This averment was deliberately suppressed in the plaint by both the plaintiffs, for instituting the said suit as indigent persons. Under the above circumstances, the defendants sought for withdrawal of the permission granted to the plaintiffs 1 and 2 for filing of the suit as indigent persons. A counter came to be filed by the plaintiffs stating that they have no property or avocation to pay the

court fees. Plaintiff No.2 has not done her fashion designing but she did MCA in computer applications. In reply to the averment of suppressing the amount of Rs.1,100/- being sent by other side, it is stated that it is a trivial amount which is of no help to their living. It is averred in the counter that the compromise decree does not say anything about payment of Rs.1,100/- and the allegation against them is only to damage their interest, and infact the compromise itself is denied in the counter. After considering the rival submissions made, the trial Court rejected the request made by the defendants, which lead to filing of the present CRP.

5. Relying upon the judgment of the Apex Court in *Mathai M.Paikeday Vs. C.K.Anthony*¹, learned counsel for the petitioners strenuously contended that since the plaintiffs are having sufficient means, they cannot be declared as indigent persons. In order to show that the plaintiffs are having sufficient means, learned counsel for the petitioners refers to the orders passed in A.S.No.2301 of 2003, wherein this Court directed the respondents therein to pay Rs.1,500/- per month to the appellant (plaintiff herein) and thereafter to pay Rs.1,100 to the first appellant (respondent No.1 herein) only. This arrangement shall continue till the marriage of the second appellant (respondent No.2 herein) and after her marriage the first appellant therein shall be entitled to receive Rs.1,500/- per month till the date of the retirement of the respondents therein from service.

6. The above submission is strenuously opposed by the respondents/ plaintiffs stating that the amount of Rs.1,100/- is towards their maintenance; that the said amount is not enough to meet daily

¹ 2011 (6) ALD 100 (SC)

expenses and as there are no valuable properties to pay the court fee seeks to declare them as indigent persons. In order to appreciate the same, it would be useful to refer to the judgment of the Apex Court in *Mathai M.Paikeday Vs. C.K.Anthony*, wherein para No.18 reads as under:

“To sum up, the indigent person, in terms of Explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay Court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees which such Court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. Moreover, the factors such as person’s employment status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person’s total indebtedness and financial assistance received from the family member or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite Court fee. Therefore, the expression “sufficient means” in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay Court fee.”

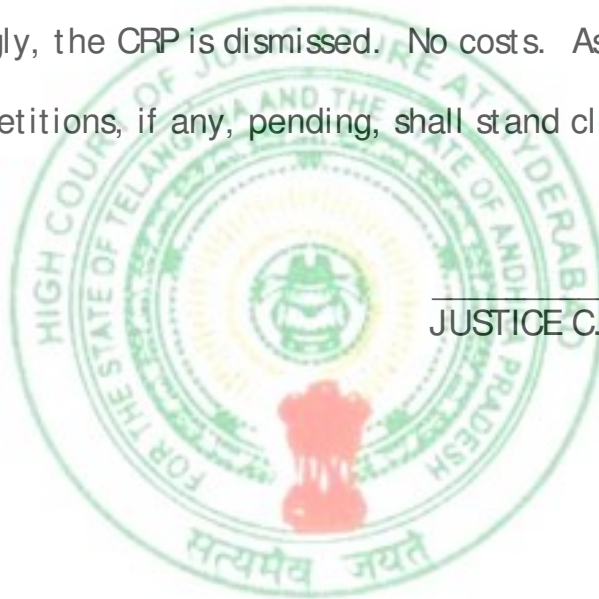
7. As seen from the above expression of the Apex Court “sufficient means” in Order 33 Rule 1 of CPC contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee. Admittedly, in the instance case, the plea of the petitioners is only with regard to receipt of Rs.1,100/- from the defendants. It is also not in dispute that the said amount was being paid towards maintenance to the respondents herein. It is also contended that court fee exemption was obtained from the Chairman of

Legal Services Authority, Madanapalle, and thereafter the suit was registered on 06.08.2010. It is to be noted that only when the suit has come up for cross examination of PW1, the above said objection came to be raised. From the above, it is clear that respondents willfully raised the plea to withdraw the permission given to declare the plaintiffs as indigent persons. Even the written statements filed by the defendants does not anywhere indicate about the said issue.

8. Having regard to the above circumstances, the request of the petitioners cannot be considered.

9. Accordingly, the CRP is dismissed. No costs. As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

17.02.2017
vnb



JUSTICE C. PRAVEEN KUMAR