

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 37/2017

AFJAL CHAUDHARY

..... Petitioner

Through: Mr.Nitish Kush & Ms.Mercy
Hussain, Advocates.

versus

SARVARI BEGUM

..... Respondent

Through: Mr.Hameed S. Saikh, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

09.05.2017

CM(M) 37/2017

1. This petition has been filed impugning the order dated 3rd October, 2016, passed by learned ADJ in Civil Suit No.2705/2016, whereby the application of the respondent under Order XXXIII of Code of Civil Procedure seeking permission to file the suit as *forma pauperis* has been allowed.
2. Learned counsel for the petitioner has submitted that the order impugned herein declaring the respondent as pauper has not been passed in accordance with the procedure laid down under Order XXXIII of Code of Civil Procedure.
3. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in *Sh.M.L.Sethi vs. Sh.R.P.Kapur* (1972) 2 SCC 427 wherein in para 10 it was held as under:

“We venture to think that the High Court was labouring under a mistake when it said that the enquiry into the question whether the respondent was a pauper was exclusively a matter between him and the State Government and that the appellant was not interested in establishing that the respondent was not a pauper. Order 33, Rule 6 provides that if the Court does not reject the application under Rule 5, the Court shall fix a day of which at least 10 days’ notice shall be given to the opposite party and the Government pleader for receiving such evidence as the applicant may adduce in proof of pauperism and for hearing any evidence in disproof thereof. Under Order 33, Rule 9, it is open to the Court on the application of the defendant to dispauper the plaintiff on the grounds specified therein, one of them being that his means are such that he ought not to continue to sue as a pauper. An immunity from a litigation unless the requisite Court-fee is paid by the plaintiff is a valuable right for the defendant. And does it not follow as a corollary that the proceedings to establish that the applicant-plaintiff is a pauper, which will take away that immunity, is a proceeding in which the defendant is vitally interested? To what purpose does Order 33, Rule 6 confer the right on the opposite party to participate in the enquiry into the pauperism and adduce evidence to establish that the applicant is not a pauper unless the opposite party is interested in the question and entitled to avail himself of all the normal procedure to establish it? We can think of no reason why if the procedure for discovery is applicable to proceeding under Order 33, the appellant should not be entitled to avail himself of it.

4. Learned counsel for the respondent who is appearing along with the respondent on instructions submits that the respondent has no objection if the order dated 3rd October, 2016 is set aside and the matter regarding declaring the respondent as pauper is remanded to the learned Trial Court for decision afresh in accordance with the procedure laid down under Order XXXIII of Code of Civil Procedure.

5. With the consent of the parties and in view of the legal position laid

down in *M.L.Sethi* (Supra) the order dated 3rd October, 2016, passed by the learned Trial Court declaring the respondent to be a pauper, is set aside.

6. The learned Trial Court shall dispose of the prayer of the respondent for being declared as pauper in accordance with Order XXXIII of Code of Civil Procedure and the legal position laid down by Hon'ble the Supreme Court in *M.L.Sethi* (Supra).

7. To avoid further delay in the matter, learned counsel for the petitioner submits that the parties shall appear before the learned Trial Court on the date notified by this Court.

8. Parties are directed to appear before the learned Trial Court on 29th May, 2017. The date has been given as per the convenience of the parties to enable them to appear before the learned Trial Court on that date.

CM No.1239/2017 (stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 09, 2017

'hkaur'