

THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1774 of 2016

ORDER:

This petition under Article 227 of the Constitution of India is filed challenging the order in I.A.SR.No.No.1446 of 2014 in O.P.No.726 of 2015 passed by the I Additional Chief Judge, City Civil Court, Secunderabad, whereby the petition filed under Section 151 CPC to recall the order dated 10.12.2015 registering the Pauper petition filed under Order 33 Rule 3 CPC (Pauper petition) as O.P.No.726 of 2015 and rejected the same with exemplary costs.

2. The petitioner is the defendant / respondent in the O.P.No.726 of 2015 and it is a company known as M/s Satyam Computer Services Limited (SCSL) (now merged into M/s Tech Mahindra Ltd) represented by Mr. Sudhakar Kompally, Chief Corporate Counsel, filed petition under Section 151 of CPC before the I Additional Chief Judge, City Civil Court alleging that the original petition under Order XXXIII is not maintainable in the facts of the present case, under Law and it is liable to be dismissed at threshold as the respondent/petitioner has approached the Court with unclean hands suppressing various facts. It is also further contended that the respondent herein (petitioner) has no locus standi to seek any relief as informia pauperis as it was not presented to the Court by the applicant in-person and when it was not presented by the petitioner in-person as required under Order XXXIII Rule 3 of CPC, he cannot be permitted to sue as an indigent person. It is also contended that the respondent herein (petitioner before trial Court) failed to obtain leave of the Court under Order XXXIII Rule 3 of CPC and that the petition filed by the respondent before the trial Court cannot be looked into inasmuch as the cause of action of the petitioner cannot raise out of

fraud and person who indulged in fraud cannot and will not be entitled to claim any benefit from the Court permitting him to sue as *informa pauperis* or indigent person. The petitioner further contended that the proceedings were initiated and only seeking exemption from payment of Court fee and the sworn affidavit in the form of I.A.No.1876/2011 on 12.07.2012 in the main petition (Pauper O.P.) stating that the company is no more a pauper, fraudulently suppressed the same and obtained order dated 10.12.2015 and registration of the same petition as O.P. (Pauper O.P) is an illegality and apart from that the respondent herein (petitioner before the trial Court) is not entitled to recover any amount as it is barred by limitation and, therefore, requested to recall the order passed by the Court below.

3. The Court passed the order, challenged in this revision even at the threshold upon hearing the arguments of the counsel for the petitioner and rejected the petition without registering the interlocutory application at pre-registration stage. Aggrieved by the order, the present revision is filed.

4. The main grounds urged in the revision are that the rejection of application filed under Section 151 of CPC by the trial Court is mechanical and without application of mind and when the respondent herein (petitioner before trial Court) failed to file an application under Order XXXIII personally, but filing of application through power of attorney holder is illegal and contrary to the provisions of law. The respondent failed to obtain permission under Rule 32 of Civil Rules of Practice as no proper authorization is given to the person who presented and that the trial Court ought to have recalled the order atleast by exercising power under Order XXXIII Rule 7 of CPC and committed grave error in dismissing petition. The observation made by the trial Court is that such fraud can be enquired only during enquiry contemplated under Order XXXIII, since it is a question of fact and such filing

is unwarranted in the present facts of the case and the trial Court also failed to appreciate the law declared by the apex Court in (2010) 8 SCC 383 and the ratio laid down by this Court in 1990 (2) APLJ 70, committed an error, therefore, requested to set aside the order passed by the Court below; allowing this petition rejecting O.P.No.726 of 2015.

5. During hearing, the learned counsel for the petitioner mainly demonstrated that the respondent herein played fraud as the respondents themselves filed an affidavit before the Court that they are ready to pay Court fee as the company is no more a pauper, but such fact was not considered by the Court and when the respondent himself admitted before the Court by filing an affidavit that the company is not a pauper, registering a petition as Pauper O.P. under Order XXXIII is illegal and therefore getting the petition as Pauper O.P. under Order XXXIII, suppressing real facts is a grave illegality committed by the trial Court and making such observation with such fraud can be enquired into during trial is an illegality committed by the trial Court and when the petitioner approached the Court with unclean hands and created cause of action, the Court cannot allow such claimants and such claim have to be nipped at the bud or threshold to avoid unnecessary trauma of facing trial by the petitioner/defendant/respondent. He placed reliance on J. Kumaradasan Nair and another v. I RIC Sohan and others¹; Joginder Tuli v. S.L. Bhatia and another²; V.N. Subramaniam v. A. Nawab John³; Guruvamma and Ramasamy v. Sankarappan⁴; P.M. Gopalasamy v. C. Senpagam⁵; Sivishi Associates, Visakhapatnam and others v. Jagadeeshwari Agencies, Vizianagaram⁶.

¹ (2009) 12 SCC 175

² (1997) 1 SCC 502

³ 2007 (3) CTC 144

⁴ MANU/TN/7478/2007

⁵ 2007 (5) CTC 283

⁶ 2006 (3) ALD 135

6. On the strength of the principles laid down in the above judgments, learned senior counsel Sri S. Ravi, appearing on behalf of the petitioner, sought to set aside the impugned order, recall the order registering O.P.No.726 of 2015, whereas the counsel for the respondent (petitioner before the trial Court) admitted that filing of an affidavit that the company is no more a pauper and expressed readiness to pay Court fee but on account of the stay granted by this Court in revisions the trial Court did not proceed further and still the stay is in force and, therefore, such filing of an affidavit and registration of O.P. by the trial Court does not amount to playing fraud on the Court. Even otherwise when the respondent herein expressed readiness and willingness to pay Court fee, the Court should accept the Court fee in view of the law declared by Apex Court in Jugal Kishore v. Dhanno Devi (Dead) by L.Rs.⁷.

7. On the strength of the principles laid down in the above judgments, the counsel for respondents before the trial Court requested to dismiss the petition, affirming the order passed by the Court below:

8. The respondent herein filed a petition (Pauper O.P) under Order XXVI Rule 7 CPC read with Order XXXIII of CPC, seeking leave of the Court to sue, the petitioner herein as *informa pauperis* for recovery of amount of Rs.22,86,67,100/- together with interest at 18% per annum or at any rate the Court deems fit and proper from the date of suit till realization. Making several allegations, but the allegations made in the O.P. are not germane for deciding the real controversy except to the extent of Pauperism of the respondent Ekadanta Green Fields Limited rep. the Power of Attorney Holder by M/s Viswamitri Greenlands Private Limited.

⁷ (1973) 2 SCC 567

9. It is the contention of the respondent before the trial Court that the company has no means to pay the Court fee payable on the complaint but the entire material is not placed on record along with this petition including the affidavit filed by the respondent seeking leave of the Court to sue the petitioner herein as *informa pauperis*, but this Court cannot examine whether the respondent is in fact is entitled to sue as *informa pauperis*, as it is the duty of the trial Court to determine whether permission can be granted to this respondent to sue as *in forma pauperis*.

10. An application shall contain the details of movable and immovable properties belonging to the applicant and its estimated value thereof vide Rule 2 of Order 33 and it shall be presented by the petitioner in-person unless he is exempted from appearing in Court in which case, the application can be presented by an authorized agent who can answer the material questions as the party represented by him might have examined as such party attended in person and thereafter examination of the applicant under rule 4 or if the application was presented by an agent the Court may if it thinks fit order that the applicant be examined by a commission in the manner in which the examination of an absentee witness may be taken.

11. Order V Rule 5 deals with rejection of application: The Court shall reject an application for permission to sue as an indigent person_

(a) where it is not framed and presented in the manner prescribed by Rules 2 and 3, or

(b) where the applicant is not an indigent person, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person :

Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter, or

(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or (g) where any other person has entered into an agreement with him to finance the litigation.

12. Order XXXIII Rule 6 deals with notice of day for receiving evidence of applicant's indigency. Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government Pleader for receiving such evidence as the applicant may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.

13. In the present facts of the case, the main contention before this Court is that the respondent filed an affidavit before the Court informing that they are ready to pay the Court fee on the plaint, as the company is no more a pauper and the affidavit was filed on 12.07.2011 in I.A.No.1876 of 2011. This fact is within the knowledge of the trial Court but on account of the stay granted by this Court, the trial Court did not proceed further vide orders in CRP No.4252 of 2011 dated 28.09.2011 granting interim stay of all further proceedings in O.P.SR No.2225 of 2010 on the file of I Additional Chief Judge, City Civil Court. But in view of the disposal of the petition, the petition

was numbered as O.P.No.726 of 2015 but before the petition I.A.SR.No.1446 of 2014 was filed by the petitioner herein before the trial Court under Section 151 of CPC to recall the order dated 10.12.2015 registering the pauper petition making a serious allegation of suppression of facts. It is not the petitioner's case that the factum of possessing means to pay the Court fee was suppressed when the petition was presented before the trial Court but due to subsequent events, the respondent herein is able to pay Court fee but filing an affidavit expressing readiness and willingness to pay Court fee as the company is no more a pauper, it is the duty of the Court to take necessary steps to direct the respondents to pay Court fee since it affects the revenue of the State but instead of following such procedure, to direct the respondent to pay Court fee when the respondent company itself filed an affidavit informing that the company is no more pauper, registering O.P.No.726 of 2015 but filing an affidavit on 12.07.2011 does not amount to fraud or suppression of any fact.

14. Fraud is defined under Section 17 of the Indian Contract Act, which reads as follows:

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: — 1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact; (3) a promise made without any intention of performing it; (4) any other act fitted to deceive; (5) any such act or omission as the law specially declares to be fraudulent.

Explanation —

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Therefore, to constitute a fraud, the petitioner has to plead either of the requirements contained in Clause (1) to (5) of Section 17; and the transaction is designed to defeat the rights of the petitioners, it amounts to fraud.

15. Therefore, all these ingredients have to be prima facie shown to exist but in the absence of satisfying the ingredients of fraud, more particularly, when the respondent company itself filed an affidavit that the company is no more a pauper and agreeing to pay Court fee, such act would not fall within any of the clauses mentioned under Section 17 of the Indian Contract Act. Therefore, it is difficult to conclude at this stage that the respondent obtained an order by playing fraud on the Court, consequently, on this ground, the Court cannot exercise power under Section 151 to recall the order dated 10.12.2015.

16. Yet another contention raised by the learned counsel for the petitioner is that the petition was not presented by the petitioner/respondent herein in compliance of Rule 3 of Order XXXIII, which reads as under:

“Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Provided that, where there are more plaintiffs than one, it shall be sufficient if the application is presented by one of the plaintiffs.”

17. In the present case, M/s Ekadanta Green Fields Private Limited is the Principal but it was represented by its power of attorney holder M/s Vishwamitri Greenlands Private Limited being the General Power of Attorney Holder. The GPA holder filed this O.P. seeking leave of the Court to permit the Principal i.e., Ekadanta Green Fields to sue the petitioner as *informa pauperis*. Though Ekadana Green Fields is not exempted but when it is represented by the GPA Holder, the acts done by the GPA holder are deemed to be the acts done by its principal. The relation between the GPA holder and the executor under the GPA is the relationship of an Agent and Principal and the acts done by the agent GPA Holder are binding on the Principal. Therefore, Vishwamitri Greenlands Private Limited is authorized agent of the Ekadanta Green Fields Private Limited.

18. The scheme of Order XXXIII is only to deprive any person from redressing the grievance from want of means to pay the Court fee and seek such permission by presenting the application through an agent also. When the Rules permit presenting an application through an agent, the presentation of the application cannot be faulted at this stage and similar question came up before the apex Court in the *Union Bank of India Vrs. Khader International Construction and others*⁸, while the apex Court considering Order XXXIII Rule 3 CPC observed that the word 'person' has to be given its meaning in the context in which it is used. It refers to a person who is capable of filing a suit and this being a benevolent provision, it is to be given an extended meaning. It is further held that a public limited company, which is otherwise entitled to maintain a suit as a legal person, can very well

⁸ AIR 2001 SC 2277

maintain an application under Order XXXIII Rule 1 C.P.C. The word 'person' mentioned in Order XXXIII includes not only a natural person, but other juridical persons also.

19. Therefore, presentation of petition under Order XXXIII Rule 3 by an agent is not a ground to reject the petition, at this stage, recalling the order. Though the counsel demonstrated that the respondent played fraud, failed to pay Court fee and got the OP registered seeking permission to sue the petitioner as *informa pauperis* but it is not fraud that the respondent played on the Court, if really fraud is played by respondent on the Court in obtaining order i.e., registration of pauper petition as O.P., such order can be recalled but when the petitioner himself filed an affidavit informing the Court that the respondent is no more an indigent person, it is the duty of the Court to collect the Court fee payable on the plaint to avoid loss to the exchequer of the State. But for one reason or the other the Presiding Officer of the Court did not look at the file, as to the information that the company is no more an indigent but for the mistake of the Court or its office, the respondent cannot be deprived of the claim in the suit.

20. The petitioner also raised a contention that the suit claim is barred by limitation. The question of limitation is a mixed question of fact and law that cannot be decided at the threshold in view of the law declared by the apex Court in *Vaish Agarwal Panchayat v. Inder Kumar*⁹.

21. Therefore, on the ground of limitation, the Court cannot recall the order passed by the Court registering the petition filed by the respondent.

22. Learned counsel while drawing the attention of this Court to various judgments contended that when the respondent himself filed an affidavit and

⁹ 2015 (6) CTC 555

failure to pay the Court fee on the plaint amounts to playing fraud and in such case the Court shall reject the plaint. He placed reliance on the judgment of the apex Court in Joginder Tuli (referred supra) where the Supreme Court considered the procedure to be followed for presentation in a proper Court while observing that normally when the plaint is directed to be returned for presentation to the proper court perhaps, it has to start from the beginning but in the case since the evidence was already adduced by the parties, the matter was tried accordingly and the High Court had directed to proceed from that stage at which the suit stood transferred and that there is no illegality in the order passed by the High Court warranting interference. But this judgment is of no assistance to the petition to substantiate the contention raised by the petitioner. Moreover, in V.N. Subramaniyam (referred supra), the Madras High Court held that without appreciating bonafides of plaintiffs, interlocutory applications shall not be allowed, but in the facts of the above judgment, the question of limitation came up for consideration. The petition was filed under Section 149 CPC before the Subordinate Judge for condonation of delay in payment of deficit Court fee which was allowed, and the Additional District Judge dismissed the application for rejection of plaint. A revision was preferred against that order and the Court held that when sufficient cause was not shown against the affidavit filed in condonation of delay in representation and allowing the application without appreciating bonafides is illegal.

23. In another judgment by Madras High Court in Guruvamma (referred supra), the Court considered the limitation to file an appeal and Court fee payable thereon. In the facts of the above judgment, petition was filed under Order VII Rule 11 of CPC to reject the plaint on the ground that the suit was barred by limitation. The trial Court dismissed the application and

the same was carried before the High Court in revision. The plaint was returned to comply certain defects in one months' time. However, suit papers were represented by complying with other returns excepting payment of deficit court fee and therefore suit was again returned indicating that deficit court fee was to be paid on plaint and one month time was granted for compliance. Thus admittedly on that when deficit court fee was paid suit was hit by law of limitation. Hence in the absence of getting leave from court under Section 149 of CPC, to pay deficit court fee, suit would definitely become time barred and the plaint shall be liable to be rejected.

24. Similarly in another judgment of Madras High Court in P.M. Gopalasamy (referred supra), the single Judge of the High Court reiterated the same principle.

25. In Sivishi Associates (referred supra) an identical question came up for consideration but this is not the stage to decide all these questions and if for any reason the Court finds during enquiry contemplated under Order XXXIII Rules 6 and 7 and issue necessary direction, if the Court finds that the respondent is not a pauper and denied permission to pass appropriate order under Order XXXIII Rule 9. According to Order XXXIII Rule 9, the Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered.

26. But the O.P is now at the stage of enquiry under Rule 6 and when a notice for receiving the application of the applicants for indigency was issued, the procedure contemplated under rule 7 is to be followed. If for any reason, the Court finds that the respondent is not entitled to claim to sue the petitioner as *informa pauperis*, upon compliance of Order 33 Rule 7(1), (1A)

and (2), the Court shall then either allow or refuse to allow the applicant to sue as an indigent person vide Sub-rule (3) of Rule 7.

27. But at this stage all these questions cannot be considered in a petition filed under Section 151 CPC on the ground of playing fraud on the Court etc., and the trial Court cannot recall such an order since the Additional District Judge is not a Court of Record and the remedy available to such a person is to approach appropriate Court by filing a revision.

28. Therefore, the petition filed by this petitioner is pre-mature. Moreover, it is left open to this petitioner to raise all these contentions during hearing under Order 33 Rule 7 and if for any reason the Court finds that the respondent is not a pauper, the Court is bound to follow the law laid down in Jugal Kishore (referred supra) wherein the apex Court held that “15. In the appeal before us the plaintiff had offered to pay court fee on the application regarded as a plaint and the court had agreed that this may be done. There is nothing in Order 33 Civil Procedure Code which prevents an applicant from telling the court that though he had prayed for permission to sue in forma pauperis, he is now in possession of funds and would like to pay the Court fee on the application treating it as a plaint. Thereby, in effect the applicant withdraws his prayer for permission to sue as a pauper and requests the court not to apply the provisions of Order 33 to him. If the court agrees, and, generally in practice the court does agree, to treat the application as a plaint, in view of the fact that it contains all the necessary particulars required in a plaint, there could be no objection to the suit being treated as one instituted by, the presentation of a plaint. In the present case, as already stated. even before, the issue regarding pauperism came for trial and decision the plaintiff offered to pay the requisite fee on the application treating it as a plaint and the court agreed to that course. The plaintiff prayed

for three months time to Pay the court fee by her application dated February 26, 1949 and the court acceded to that request and adjourned the proceedings from time to time, on several occasions. The plaintiff was finally granted time to pay the court fee until July 15, 1949 but unfortunately the plaintiff did not attend the court on that day, nor was the court fee paid. Hence the court passed the Order dated July 18, 1949 expressly saying that the application to sue as a pauper is dismissed with costs. Now the above Order dismissing the application to sue as a pauper was, to say the least, otiose. The plaintiff had already withdrawn his prayer for permission to sue as a pauper and the court had agreed to the withdrawal of that prayer and to treat his application as a plaint. From that time onward the suit which had been properly instituted could only proceed on the basis that the suit was as good as a suit filed on a plaint. And in such a case it was open to the court under section 149 C.P.C. to order the plaintiff to pay the deficit court fee and enlarge the period to pay such court fee. If the court fee is not paid, the only order that the court could have passed was to reject the. plaint under Order 7 rule 1 1 (c) C.P.C. The rejection of a plaint is a decree and appealable as such. The question, therefore, is whether in this case there was any rejection of the plaint for non-payment of the deficit court fee,. The actual order passed by the court on July 18, 1949 does not show that the plaint had been rejected. What the court did was to reject the plaintiff's application to sue as a pauper which was a redundant order because the prayer to sue as a pauper had been withdrawn much earlier and the application to sue as a pauper, as such, did not survive for being dismissed on July 18, 1949. In law, therefore, there was no rejection of the plaint in the suit and, therefore, the suit continued to remain on the file. While it continued on the file the plaintiff applied to the court and paid the court fee ,as ordered. On the acceptance of the court fee by the court, the document, namely, the plaint would by virtue

of Section 149 C.P.C., have the same force and effect as if such fee had been paid in the first instance viz. on the date it was presented to the court i.e. January 2, 1948. In our view therefore, the suit must be regarded as properly filed on January 2, 1948; and that being admittedly the last date on which the suit could have been legally filed to avoid the bar of limitation, the plea of limitation made on behalf of the defendants must fail. In the result the appeal fails and is dismissed with costs.

29. Therefore, in view of the law declared by the apex Court, at this stage, the petitioner is precluded from raising such contention. But the petitioner is permitted to raise such contentions during enquiry under Order XXXIII Rule 7 CPC.

30. In view of my foregoing discussion, the civil revision petition is dismissed, having found no illegality or irregularity in the order passed by the trial Court, warranting interference under Article 227 of the Constitution of India. However, it is left open to the petitioner to raise any contentions in the enquiry under Order XXXIII Rule 6, 7 of CPC.

No costs. Pending miscellaneous petitions, if any, shall also stand dismissed.

M. SATYANARAYANA MURTHY, J

21st December, 2018

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THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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