

Before Rakesh Kumar Jain, J.

DR. MAMTA RAJOTIA—Petitioner

versus

SMT. SUMAN—Respondent

CR No. 5781 of 2014

December 16, 2014

Code of Civil Procedure, 1908 - O. 33 Rls. 1A, 2, 3, 4, 5 & 6 - Indigent person - Respondent filed suit for damages against petitioner - Civil Court held respondent indigent person relying on report of Tehsildar - Petitioner argued that Civil Court erred in allowing application to sue as an indigent person as same was not presented by plaintiff in person but by her advocate that too without notice to petitioner - Held, that where Court does not find any reason to reject application to sue as an indigent person, it shall fix a date by providing at least 10 day's clear notice to opposite party and also Government pleader - Since, no such opportunity was given to petitioner in this case, order by which respondent was declared as an indigent person was illegal in clear violation of O. 33 RI. 3 read with Rls. 5 and 6 of CPC.

Held, that according to Order 33 Rule 3 of the CPC, the application for suing as an indigent person has to be presented in person unless he is exempted from appearance in the Court. In the present case, admittedly, the application to sue as an indigent person was not presented by the plaintiff in person, rather it was presented by her advocate.

(Para 10)

Further held, that as regards the question of notice to the defendant is concerned, Order 33 Rule 6 clearly provides that if the Court does not find any reason to reject the application in terms of Order 33 Rule 5 of the CPC, it shall fix a date by providing at least 10 day's clear notice to the opposite party and also the Government pleader for receiving such evidence as the applicant may adduce in proof of the indigency and also for hearing any evidence which may be adduced in disproof thereof. Since no such opportunity was given to the defendant, therefore, the impugned order by which the plaintiff was

declared as an indigent person without notice to the defendant-petitioner was patently illegal.

(Para 12)

Further held, that as I have already observed that there is a clear violation of Order 33 Rule 3 read with Rules 5 and 6 of the CPC and the observations made by the learned Court below that the question of indigency could only be decided by the executive authority and not by the Court is also patently erroneous because the said inquiry has to be made in terms of Order 33 Rule 1A of the CPC which provides that at the first instance, the inquiry has to be made by the chief ministerial officer of the Court.

(Para 14)

B.S. Giri, Advocate, *for the petitioner.*

Ram Avtar Sheoran, Advocate *for the respondent.*

RAKESH KUMAR JAIN, J.

(1) The respondent-plaintiff filed a suit for damages of ₹10,00,000/- against the petitioner, who is a doctor, for the forcible and unnecessary premature delivery, resulting into death of her male child. She also filed an application under Order 33 Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) for seeking permission to sue as an indigent person in which an order was passed on 23.11.2012 in the following manner:-

“Present: Sh. Mange Ram, Adv. for plaintiff.

Suit presented today before me. Since this suit has been filed in the capacity of indigent person so pauper application be checked and registered. Pauper report of collector through SDM, Dadri be also called on or before 12.01.2013 date fixed separately.

Yogesh Choudhary

ACJ(SD), Dadri.23.11.2012.”

(2) Ultimately, the Patwari submitted his report in which he stated that Suman wife of Ashok Kumar son of Satpal, Jat by caste, permanent resident of village Mankawas is an indigent person. The said

report dated 09.01.2013 was taken into consideration by the Civil Court and on 05.03.2013, the following order was passed:-

“Today, the case is fixed for awaiting report of Ld. Collector qua the status of plaintiff. It has been reported that the applicant is an indigent person. In view of the report submitted by Tehsildar, Charkhi Dadri, the applicant is hereby declared as an indigent person. The suit is ordered to be checked. Now notice to defendant be issued for 27.07.2013. Long date is given due to heavy pendency of old cases.”

(3) Thereafter, the petitioner filed an application for setting aside the *ex parte* order dated 05.03.2013 on the ground that no notice was given to her before deciding the application declaring the plaintiff as an indigent person. It was also alleged that the Patwari is not the competent person to declare the plaintiff as an indigent person nor he had given any reason in his report. The said application was contested by the plaintiff and vide the impugned order dated 08.05.2014, the application filed by the petitioner was dismissed, observing that the Civil Court is not competent to decide the fact as to whether the plaintiff is an indigent person or not which could have only been decided on the executive side.

(4) Counsel for the petitioner has argued that the learned Court below has erred in allowing the application filed by the plaintiff to sue as an indigent person without notice to the defendant/petitioner, as required under Order 33 Rule 6 of the CPC. It is further submitted that even otherwise, the application seeking permission to sue as an indigent person filed by the plaintiff was not presented in person, as required under Order 33 Rule 3 of the CPC and is liable to be rejected in view of Order 33 Rule 5(a) of the CPC. In support of his contention, counsel for the petitioner has relied upon two judgments of this Court in the case of *Prem Sardana versus Savitri Devi*¹ and *Birender Kumar versus Mohinder Singh and others*².

(5) On the other hand, learned counsel for the respondent has argued that the plaintiff has rightly been declared to be an indigent person as the Halqa Patwari had examined the revenue record and declared her as such. It is further submitted that the application filed

¹ 2001(1) Latest Judicial Report 103

² 1985(2) PLR 612

along with the suit to sue as an indigent person is duly signed by the plaintiff and verified in terms of Order 33 Rule 2 of the CPC and the plaintiff was not required to be present in the Court at the time of presentation of the suit along with application as she had already engaged an advocate on her behalf. It is further submitted that notice is not required to be served upon the defendant at the time of declaration of the plaintiff as an indigent person as the question of payment of Court fee is between the citizen and the State. In this regard, he has relied upon a Division Bench judgment of the Rajasthan High Court in the case of *Smt. Manjulata versus Sidhkaran*³.

(6) I have heard learned counsel for the parties and examined the record with their able assistance.

(7) There is no dispute that the plaint and the application to sue as an indigent person were drafted on the same day on 22.11.2012 and as per *zimni* order dated 23.11.2012, the plaint along with the application to sue as an indigent person were presented by Shri Mange Ram, Advocate, on behalf of the plaintiff. There is also no dispute that the Halqa Patwari has only made the report that the plaintiff is an indigent person without giving any further detail. It is also admitted fact that before the plaintiff could have been declared as an indigent person, no notice was given to the defendant.

(8) From the aforesaid resume of the facts, the following questions have arisen for adjudication in the present revision petition:-

- (i) Whether the Court is required to give a notice to the defendant before declaring the plaintiff as an indigent person?
- (ii) Whether the plaintiff is required to present the application in person to sue as an indigent person?
- (iii) Whether the application to sue as an indigent person deserves to be rejected if it is not filed in accordance with Order 33 Rule 3 of the CPC?

(9) Before I decide the aforesaid questions, it would be relevant to refer to certain provisions of the CPC, which are reproduced as under:-

³ AIR 2005 Rajasthan 32

“1A. Inquiry into the means of an indigent person.—

Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.

2. Contents of application.— Every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Presentation of application.— 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 authorized 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.

4. xx xx xx

5. Rejection of application.—The Court shall reject an application for permission to site 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, or

- (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.

6. 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 day's clear notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the application may adduce in proof of his indigency, and for hearing any evidence which may be adduced in disproof thereof.”

(10) According to Order 33 Rule 3 of the CPC, the application for suing as an indigent person has to be presented in person unless he is exempted from appearance in the Court. In the present case, admittedly, the application to sue as an indigent person was not presented by the plaintiff in person, rather it was presented by her advocate.

(11) In *Birender Kumar's case (supra)*, this Court has clearly held that if the application or the suit as an indigent person is not presented in person by the plaintiff, until and unless exempted, then the application has to be dismissed because the said defect cannot be rectified even by amendment of the original application because Order 33 Rule 5(a) provides that if the application is not framed and presented in the manner prescribed under Rules 2 and 3, the said application deserves to be rejected.

(12) As regards the question of notice to the defendant is concerned, Order 33 Rule 6 clearly provides that if the Court does not

find any reason to reject the application in terms of Order 33 Rule 5 of the CPC, it shall fix a date by providing at least 10 day's clear notice to the opposite party and also the Government pleader for receiving such evidence as the applicant may adduce in proof of the indigency and also for hearing any evidence which may be adduced in disproof thereof. Since no such opportunity was given to the defendant, therefore, the impugned order by which the plaintiff was declared as an indigent person without notice to the defendant-petitioner was patently illegal as held in *Prem Sardana's case (supra)* in which the learned Single Judge has relied upon a decision of the Supreme Court in the case of *Shri M.L.Sethi versus Sh. R.P.Kapur*⁴.

(13) Insofar as the argument raised by learned counsel for the respondent that the payment of Court fee is a matter between the plaintiff and the State, and not the contesting party i.e. defendant/petitioner, the judgment relied upon by him in *Smt.Manjulata's case (supra)* is not applicable because here in this case the question is as to whether the order passed by the Court below allowing the application of the plaintiff to sue as an indigent person is in accordance with the provisions of the CPC or not?

(14) As I have already observed that there is a clear violation of Order 33 Rule 3 read with Rules 5 and 6 of the CPC and the observations made by the learned Court below that the question of indigency could only be decided by the executive authority and not by the Court is also patently erroneous because the said inquiry has to be made in terms of Order 33 Rule 1A of the CPC which provides that at the first instance, the inquiry has to be made by the chief ministerial officer of the Court.

(15) In the present case, there is hardly any report on the record to prove that the plaintiff was an indigent person who alleged to have taken treatment from a private nursing home instead of going to the Government hospital.

(16) In view of the aforesaid discussion, the present revision petition is found to be meritorious and the same is hereby allowed and the impugned order is set aside.

P.S. Bajwa

⁴ AIR 1977 SC 2379