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

% *Date of Judgment: 17.01.2013*

\+ FAO (OS) 298/2010

SHIROMANI GURUDWARA PRABHANDHAK COMMITTEE AND ANR ..... Appellants

Through Mr. H.S. Phoolka, Sr. Adv. with Mr.Ashok Kashyap, Mr. Virender Verma nd Mr. Gursimran Singh, Advs.

Versus

UNION OF INDIA AND ORS ..... Respondents

Through Mr Rajesh Katyal, Adv. for R-1 & R2
None for respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE INDERMEET KAUR

SANJAY KISHAN KAUL, J. (Oral)

.

1 The present appeal has a saga of 27 years of dispute and the issue arose at the threshold itself i.e. whether the appellant was entitled to sue as an indigent person within the meaning of Order XXXIII of the Code of the Civil Procedure, 1908 (hereinafter referred to as the said Code). We are informed that out of these 27 years, almost 23 years were spent

in the proceedings before the Chief Ministerial Officer who had the occasion to deal with evidence about the status of being an indigent person.

2 The appellant before us filed an IPA through the then President seeking recovery of damages of Rs.1,000/- crores for loss of moveable and immoveable properties of various gurdwaras administered by the appellants across the country under the provisions of the Punjab Sikh Gurdwara Act, 1925 in the wake of operation Blue Star. Respondents No. 1 & 2 being the Union of India opposed the application by filing objections to the same. On completion of pleadings of IPA No. 23/1986, the matter has been taken up by the learned Single Judge who passed the order dated 20.09.1989. This order is of some significance in view of the pleas advanced before us by the learned senior counsel for the appellant which we will examine later on but in view thereof, we consider it necessary to note about the salient aspects of this order.

3 The learned Single Judge noticed that amongst the objections raised by respondents No. 1 & 2 to the IPA was not only the objection about the right of the appellant to sue as a pauper in view of the moneys

at the disposal of the appellant but also that the IPA did not disclose a cause of action. In the same context, reliance was also placed on the provisions of the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983. The suit had been originally instituted in Amritsar but on an application filed by respondents No. 1 & 2 before the Hon'ble Supreme Court, the same was transferred to this Court. The learned Single Judge has noted that lengthy arguments were advanced before him on the question whether the suit was barred under the provisions of clause (d) & (f) of Rule 5 of Order XXXIII of the said Code. The main contention being that there was a bar under the said Code and thus no cause of action arose. In the said context while examining the scheme of Order XXXIII of the said Code, the aspect which arises for consideration was whether such a question could be decided by the Court when the petitioner was being allowed to lead evidence as contemplated by Rule 7 of Order XXXIII of the said Code. The learned Single Judge opined that the examination of witnesses of the indigent person though being confined under sub-Rule 1 (A) of Rule 7 of the said Code to the matters specified in Clause (b), (c) and (e) of Rule 5 of Order XXXIII of the said Code, did not preclude the examination of the

appellant or indigent to any of the other matters specified in Rule 5 of the said Code. Thus the conclusion reached was that the petitioner has a right to lead evidence even on Clause (d) and (f) of Rule 5 of Order XXXIII of the said Code. The learned Single Judge thus came to the conclusion that it is only after the evidence is recorded that the Court has to hear arguments which the parties may desire to offer on the question whether on the face of the application, the same is subject to 'any of the prohibitions specified in Rule 5'. Since the evidence was yet to be recorded, the learned Single Judge declined to pronounce on the question relating to absence of cause of action and gave opportunity to the appellant before us to examine itself and its witnesses under Clause 1 (A) of Rule 7 of Order XXXIII of the said Code. Such an inquiry under the Statute being mandated to be done by the Chief Ministerial Officer, the same was so directed and the question as to whether the petition was barred under the provisions of Clauses (d) and (f) of Rule 5 of Order XXXIII of the said Code was observed to be considered by the Court after receipt of the report.

4 It is after the aforesaid order, the Chief Ministerial Officer proceeded to record the evidence produced by the appellant and submitted a report dated 31.07.2008 concluding that the appellant has the sufficient means to pay the Court fees. In coming to this conclusion, the moneys invested by appellant No. 1 in FDRs and those lying to the credit of the SGPC in various bank accounts amounting to Rs.23,33,43,675.13 were taken into consideration as the requisite Court fees payable was Rs.10 crores in respect of the relief claimed for on behalf of the appellant. To this report, objections were filed by the appellants.

5 We may note that there is another order passed on 23.02.2006 by another learned Single Judge in the IPA to which our attention has been drawn by the learned senior counsel for the appellant. This order was however passed while the inquiries before the Chief Ministerial Officer were still pending and once again stated that the question of the suit being barred under Clause (d) & (f) of Rule 5 of Order XXXIII of the said Code was to be considered after the report was received.

6 The objections to the report of the Chief Ministerial Officer were examined by the learned Single Judge and the same have been dismissed vide the impugned order dated 08.03.2010 on IA No. 12841/2008 and the appellants were granted eight weeks to pay the requisite Court fees failing which necessary consequential orders would follow.

7 A perusal of the impugned order shows that the learned counsel for the appellant confined his objection within a limited compass as set out in para 3 of that order. It was submitted before the learned Single Judge that respondents No. 1 & 2 had not only raised objections to the appellant being an indigent person but also raised objections with regard to the maintainability of the IPA on grounds provided under Rule 5 clauses (d) & (f) of the Order XXXIII of the said Code. This in turn was predicated on the plea of lack of cause of action and the suit being barred under the provisions of Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983. It was the submission of the learned counsel for the appellant that in view of the observations made by the learned Single Judge in the order dated 20.09.1989, the issue of indigency of the

petitioner is to be decided along with the issue with regard to maintainability of the petition in the light of the objections raised by the respondents pertaining to lack of cause of action and bar to the proceedings. On the other hand, the learned counsel for respondents No. 1 & 2 pleaded absence of any such direction in the order dated 20.09.1989 read with clarification contained in the order dated 23.02.2006. The learned Single Judge found against the appellant in the impugned order. The evidence to be led under the provisions of Rule 7 of Order XXXIII of the said Code was required to be led qua only matters covered under Rule 5 (b), (c) and (e) of Order XXXIII of the said Code. Thus the learned Single Judge opined that the issue of payment of Court fees could be segregated from the issue of maintainability of the suit.

8 The only other aspect urged by the learned counsel for the appellant before the learned Single Judge was that the funds lying in the fixed deposit to the credit of the appellant were not designated for the purpose of litigation and thus those funds could not be taken into account; those funds were being capable of being used only for the

maintenance and improvement of gurdwaras. In this behalf a similar objection was raised before the Chief Ministerial Office who concluded that the expenses incurred towards litigations are obligations covered under Sections 106 and 108 of the Punjab Sikh Gurdwara Act as they are obligations to the State in view of the provisions of the Court Fees Act, 1870. Not only that there was annual budgets maintained by appellant No. 1 right from the year 1986-1987 till 2006-2007 but there was a reference to debit of expenses also in respect of litigation. In fact PW-4 Sardar Avtar Singh conceded in his deposition that the expenses which have been incurred on litigation in the past were debited to the head "General Miscellaneous Expenses Account". Allocation of funds under different heads being essentially within the domain of appellant No. 1, it was held that such allocation could not be made to deprive the State of its legitimate dues in the form of Court fees.

9 We have heard the learned counsel for the parties and the scope of arguments are more or less in the same canvass as noted aforesaid.

10 In order to appreciate the rival contentions, the scheme of Order XXXIII of the said Code has to be noticed keeping in mind the

submission of the learned senior counsel for the appellant that it is not the indengcy alone which has to be decided. We may notice that Rule 1A was added by the amendment Act of 104 of 1976 w.e.f. 01.02.1977 and reads as under:-

"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."

11 It is thus apparent from the insertion of the aforesaid Rule that every inquiry qua the indigency of a person is to be made in the first instance and that too by a Ministerial Officer of the Court.

12 The circumstances under which an application preferred as an indigent person can be rejected are set out in Rule 5 which reads as under:-

"5. 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 & 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."

13 It is important to note that each of the Clauses is suffixed with the expression 'or'. Thus the existence of any of the seven eventualities covered under clauses (a) to (g) would be sufficient to reject an application as an indigent person and it is not as if all the seven conditions need to be satisfied (an aspect emphasized by the learned counsel for respondents No. 1 & 2).

14 Sub- Rule 7 provides for the procedure at hearing and reads as under:-

"7. Procedure at hearing.- (1) On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent and shall make [a full record of their evidence].

[(1A) The examination of the witnesses under sub-rule (1) shall be confined to the matters specified in clause (b), clause (c) and clause (e) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5]

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether on the face of the application and of the evidence (if any) taken by the Court [under rule 6 or under this rule], the applicant is or is not subject to pay of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as [an indigent person].

15 Sub-Rule 1 (A) of this Rule 7 again inserted by the said amendment Act 104 of 1976 specifies that the examination of the witnesses is to be confined to the matters specified in clause (b), clause (c) and clause (e) of Rule 5 but the examination of the applicant/indigent may relate to any other matter specified in Rule 5.

16 Learned senior counsel for the appellant contends that respondents No. 1 & 2 had the option to raise only the issue qua the indigency of a person in which case the inquiry would have been confined to that aspect alone. However respondents No. 1 & 2 mentioned other grounds beyond that in their opposition to the application for indigency and raised the issue arising from clauses (d) & (f) and thus in such a situation, the decision on the issue of indigency has to be coupled with the decision on other aspects. He further submits that there cannot be a decision on indigency alone while withholding the decision on the other two aspects.

17 In our view such a plea is based on a misconstruction of the Statute. Respondents No. 1 & 2 are entitled to seek rejection on any of the grounds mentioned in clause (a) to clause (g). Thus even in a case where a person is found to be indigent, the IPA is not liable to be registered as a suit if the petitioner is entitled to be knocked off on any other grounds. A threshold bar can thus be created on any of these grounds. The object is that the suit should not proceed fruitlessly even in case of an indigent person if there is a bar as contained in other clauses.

Whether the person is an indigent or not is only one of the parameters for rejection of such an application as contained in clause (b). These clauses are mutually exclusive and can stand alone by themselves as a bar to the suit.

18 The aforesaid would not imply that where an application cannot be proceeded with on account of an adverse finding under clause (b), all other aspects necessarily have to be decided at the same stage. In fact it would amount to giving a license to a person who has the capacity to pay the Court fees to file a frivolous suit to get the issue of maintainability of the suit decided without paying the requisite Court fees. The intent of the Legislature is that where a person may be held to be an indigent person, yet the suit may not proceed or rather the IPA is liable to be dismissed if any of the other clauses apply.

19 In our view the orders passed by the learned Single Judge of this Court on 20.09.1989 and further clarified on 23.02.2006 are towards the same objective and have to be read accordingly. It is not as if the impugned order has been passed contrary to the mandate of the earlier two orders.

20 Learned senior counsel for the appellant sought to rely upon an order of the Hon'ble Supreme Court in *Kamu Alias Kamala Ammal Vs. M. Manikandan and Another* (1998) 8 SCC 522. The question there was that whether permission to sue as an indigent person can be granted without going into the question whether there is any cause of action shown in the plaint. The answer to the same was held to be in the negative which is in line with our reasoning as recorded aforesaid that even where a person is an indigent person, it does not imply that despite failure to show cause of action such a petitioner would be entitled to continue the IPA as a suit. In fact the very objective is that even an indigent person must be blocked at the threshold if it is a frivolous claim barred by any other clause of Rule 5. The other judgment, which to our mind is effectively laying down the same proposition, and cited at the bar is *Nasir Ahmed Vs. Delhi Development Authority* 25 (1984) DLT 346. One of the principles laid down therein was that once it is held that a person is not an indigent person, time ought to have been granted to pay the Court Fees. There is no issue qua this aspect in the present appeal. In fact this is the ratio of that judgment. The learned Single Judge has only opined that even after the merits of an indigency have

been discussed, the Court is not precluded from dismissing an IPA on any of the grounds stated in Rule 5.

21 We are not really required to examine the plea of res-judicata urged by the learned senior counsel for the appellant for the reason that the same is predicated on a reading of the order dated 20.09.1989 with which interpretation we are not in agreement. It has to be kept in mind that if the opinion is against the indigent person qua the issue of indigency, then the plaint can be registered only on payment of Court Fees. It is only then that it can be said that there is a proper plaint before the Court to examine the matter. The result of an adverse finding under clause (b) of Rule 5 is that the Court Fees has to be paid within the time specified so that there is a proper plaint before the Court.

22 In the present case, clause (b) itself is a bar to the continuation of the IPA and thus the appellant is required to pay the requisite Court Fees for the suit to proceed further. Respondents No. 1 & 2 rightly took all the objections as they were entitled to in response to the IPA in view of the wording of the clauses of Rule 5 as they had the option to seek the dismissal of the IPA on the other two grounds even if an opinion was

rendered in favour of the appellant qua the issue of indigency under clause (b) of Rule 5.

23 We may also add that once again the learned counsel for the appellant, possibly more out of formality, sought to plead the issue of there being no allocation of funds by appellant No. 1 to pay the Court fees. The findings of the learned Single Judge, based on the appreciation of evidence produced before the Chief Ministerial Officer, are well reasoned and endorsed by us. Appellant No. 1 has been initiating legal proceedings and paying Court fees out of certain heads of funds available with it though the heading of the fund may be different i.e. "General Miscellaneous Expenses Account". The witness of the appellant himself admitted to even meeting expenses in this manner. The learned Single Judge thus rightly opined that the bifurcation of heads being within the domain of appellant No. 1, the interest of the revenue of the State cannot be prejudiced by the non-payment of Court fees by raising a plea as sought to be raised on behalf of the appellant.

24 We thus find the appeal meritless and dismiss the same. In view of the factual matrix, we refrain from imposing costs.

25 In view of there having been a stay of suit proceedings, the appellant is now granted another period of eight weeks from today to pay the Court fees, time period specified by the learned Single Judge in the impugned order.

26 List before the learned Single Judge on 18.03.2013.

SANJAY KISHAN KAUL, J

INDERMEET KAUR, J

JANUARY 17, 2013
A