

CASE NO.:
Appeal (civil) 943 of 1993

PETITIONER:
UNION BANK OF INDIA

Vs.

RESPONDENT:
KHADER INTERNATIONAL CONSTRUCTION & ORS.

DATE OF JUDGMENT: 08/05/2001

BENCH:
U.C. Banerjee & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.
L...I...T.....T.....T.....T.....T.....T.....T..J

The point for decision in this appeal is whether the first respondent, a limited company ["respondent" for short], is entitled to sue as an indigent person under Order XXXVIII, Rule 1 of the Code of Civil Procedure.

The facts of the case, in brief, are thus. The respondent filed a suit before the Sub-Court, Kochi, and sought permission to sue as an indigent person. The appellant herein raised objections and contended that the plaintiff being a public limited company was not a 'person' coming within the purview of Order XXXVIII, Rule 1 CPC, and the word 'person' referred to therein applies only to a natural person and not to other juristic persons. The Subordinate Judge permitted the respondent-plaintiff to sue as an indigent person. Aggrieved thereby, the appellant filed a Revision and the same was dismissed by the learned Single Judge of the the High Court and that judgment of the High Court is assailed in this appeal.

We heard Mr. K.K. Venugopal, learned Senior Counsel for the appellant and Mr. T.L. Vishwanatha Iyer, learned Senior Counsel for the respondent. Learned counsel for the appellant contended that under Order XXXVIII, Rule 1, an Explanation has been given as to who shall be an 'indigent person' and it was pointed out that an 'indigent person' is one who is not possessed of sufficient means [other than property exempt from attachment in execution of a decree and the subject-matter of the suit] to enable him to pay the fee prescribed by law for the plaint in such suit; or where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit. It was further pointed out that prior to the amendment of Rule 1 of Order XXXVIII, CPC, an 'indigent person' was mentioned in the Explanation to Rule 1 of Order XXXVIII as a person who is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit, and this

according to the appellant's counsel, indicated the 'person' mentioned in Rule 1 of Order XXXVIII which refers only to natural person and not other juridical person. It was also submitted by the appellant's counsel that under Rule 3 of Order XXXVIII, the application to sue as an indigent person 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. According to the appellant's counsel, a public limited company being a juristic person cannot present an application in accordance with Rule 3 of Order XXXVIII. It was submitted that under Rule 3, the person who is presenting the application must be such person who can answer all material questions relating to the application and therefore, the scheme of Order XXXVIII of the CPC envisages only a natural person to file a suit as an indigent person.

The counsel for the respondent, on the other hand, contended that a suit can be filed as an indigent person not only by natural persons but also by all juristic persons who are permitted to file a suit in that capacity. It was contended that Order XXXVIII is a benevolent provision intended to help the litigants who are unable to pay the court fee at the initial stage and that the said provision is to be construed liberally. It was submitted that when a company, firm, deity, etc. are permitted to file a suit in their juristic capacity, there is no reason why they should not be allowed to sue as an indigent person. Counsel argued that the definition of the word 'person' contained in the General Clauses Act will apply and that extended meaning is to be attributed to the word 'person' referred to in Order XXXVIII.

Reference was made to series of decisions on the subject. A survey of the various decisions would show that the preponderance of the view is that the word 'person' referred to in Order XXXVIII includes a juristic person also. The context in which the word 'person' is used in Order XXXVIII would also indicate that a company also can sue as an indigent person. The relevant provision in the C.P.C. is as follows :

"1. Suits may be instituted in forma pauperis -- Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I -- A person is an indigent person , --

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II -- Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an

indigent person.

Explanation III -- Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity."

One of the earliest decisions is AIR 1918 Madras 362 [Perumal Koundan vs. Tirumalayapuram Jananukoola Dhanasekhara Sanka Nidhi Ltd.]. There, the company registered under the Companies Act went into liquidation and an official liquidator was appointed. The official liquidator applied under Order XXXVIII Rule 1 to file a suit on behalf of the company in forma pauperis against the petitioner therein. The petitioner raised objections that the company could not file a suit in forma pauperis. Repelling this contention, the Division Bench held:

"We are unable to accept this contention. The word 'person' is not defined in the Code of Civil Procedure and consequently the definition of the word 'person' as including any Company or Association or body of individuals whether incorporated or not, in the General Clauses Act [X of 1897] would apply unless there is something repugnant to the subject or context."

The petitioner therein had raised a contention that the unamended Explanation to Rule 1 of Order XXXVIII allowed deduction of the value of wearing apparel only which means that if the applicant had wearing apparel, he can deduct its value. The Court held that it cannot be construed to mean that only persons who in law can possess wearing apparel can sue as paupers.

In AIR 1961 Bombay 1 [Gendalal Cotton Mills Ltd. & Anr. vs. Basant Kumaribai & Ors.], the learned Single Judge of the High Court held that the word 'person' in the Explanation to Order XXXVIII, Rule 1 includes a natural as well as juristic person. The Learned Judge further explained that the impossibility of a corporation presenting an application before the Court in person is not a circumstance to justify the inference that the Legislature did not intend to extend the provisions of Order XXXVIII Rule 1 to Corporations.

In AIR 1951 Hyderabad 124 [Syed Ali vs. The Deccan Commercial Bank Ltd.], it was held as under :

"The Legislature while passing the Civil Procedure Code had before it the definition of 'person' in General Clauses Act. Now, is there anything repugnant in the Code which makes the definition of 'person' inapplicable to 'person' in O.33 or is the explanation of 'person' in the Code merely illustrative without being exhaustive? No doubt, the expressions 'apparel' & 'examination of pauper in Court' lend colour to the view that the 'person' contemplated is a natural person but there is nothing to suggest that these words are meant to be exhaustive or to exclude categories of juristic persons who are entitled to sue though they are not natural persons."

In AIR 1961 Kerala 181 [Mathew vs. Kerala United Corporation Ltd.], it was held that the word 'person' mentioned in Order XXXVIII, Rule 1 should have the extended meaning given to it in law. Under O. 33, R.1, any suit may

be instituted by a pauper. Suits under the Code of Civil Procedure can be instituted not only by natural human beings but also by artificial persons such as a corporation or an idol and also by persons like executors, administrators, trustees and official receivers who represent the estate of another. Prima facie, therefore, having regard to the scheme of the Code, the context and object of the enactment would not exclude juridical persons from the category of persons within the meaning of the said rule.

The same view was held in AIR 1981 Calcutta 259 [Jogesh Chandra Bera & Ors. vs. Sri Iswar Braja Raj Jew Thakur], where it was held that a deity as a juristic person can file a suit in forma pauperis under Order XXXVIII, Rule 1.

In AIR 1935 Nagpur 209 [Shree Shankarji Maharaj & Anr. vs. Mt. Godavaribai], it was held that an idol represented by a shebait, can file a suit in forma pauperis. It was held that the word 'person' in Order XXXVIII has reference to all those who have a right to institute a suit.

In AIR 1972 Allahabad 287 [Moorti Shree Behari Ji vs. Prem Das & Ors.], the same view was held.

In AIR 1965 Gujarat 207 [Chimanlal Bhogilal Panchani & Anr. vs. Chandanben Manchand Shah & Ors.], it was pointed out that the word 'person' in the Explanation to Order XXXVIII, Rule 1, CPC being capable of both a wide and a narrow meaning, should be given the construction which would advance the salutary remedy and achieve the purpose underlying enactment so that this facility for institution of a suit without the payment of the requisite court-fees can be properly availed of by all persons, who would otherwise be denied the remedy merely because they had no funds to pay the requisite fees.

In AIR 1961 Patna 15 [East Indian Coal Co. Ltd. vs. East Indian Coal Co. Ltd. Workers' Union], it was explained that the definition of 'person' under the General Clauses Act can be applied to the word person occurring in the Explanation to Rule 1 of Order XXXVIII and a registered trade union which is a body corporate within the meaning of Section 13 of the Trade Unions Act can, therefore, sue in forma pauperis under Order XXXVIII.

Contrary view was taken by some of the High Courts. One of them is AIR 1930 Rangoon 259 [S.M. Mitra vs. Corporation of the Royal Exchange Assurance] wherein it was held that the word 'person' means a natural person, that is a human being, and does not include a juridical person such as a receiver. Therefore, a receiver appointed under the Provincial Insolvency Act cannot be allowed to sue as a pauper. It was observed by the then Acting Chief Justice Heald :

"It seems to me that the provisions of R. 3, O.33 prescribing that an application for leave to sue as a pauper must be presented by the applicant in person is repugnant to the view that "person" in that rule was intended to mean anything but a natural person or was intended to include a juridical or artificial person, and that the provisions of Rr.4 and 7 regarding the examination of the applicant and the reference to "wearing apparel" in the explanation to R.1 tend in the same direction. I would accordingly hold that "person" in O.33 means a natural person, that is a human

being and does not include a juridical person such as a receiver".

AIR (38) 1951 Punjab 447, [Associated Pictures Ltd. vs. The National Studios Ltd.], also held the same view that the 'person' in Order XXXVIII means only an individual person and does not include a limited Company incorporated under the Companies Act.

AIR 1938 Calcutta 745 [Bharat Abhyudoy Cotton Mills Ltd. vs. Maharajadhiraj Sir Kameswar Singh] also was of the view that in order to decide whether a person includes an artificial person or a corporation or a company, regard must be had to the setting in which the word 'person' is placed, to the circumstance in which it is used, and above all to the context in which it stands.

In AIR 1963 Manipur 40 [Radha Krishna Devata vs. Nathmal Mohta], it was held that the word 'person' in Order XXXVIII is intended to apply only to a natural person or a human being filing a suit and not to a juridical person like a deity, filing suit through a Shebait or trustee.

Order XXXVIII, CPC is an enabling provision which allows filing of a suit by an indigent person without paying the court fee at the initial stage. If the plaintiff ultimately succeeds in the suit, the court would calculate the amount of court fee which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person and that amount would be recoverable by the State from any party ordered by the decree to pay the same. It is further provided that when the suit is dismissed, then also the State would take steps to recover the court fee payable by the plaintiff and this court fee shall be a first charge on the subject matter of the suit. So there is only a provision for the deferred payment of the court fees and this benevolent provision is intended to help the poor litigants who are unable to pay the requisite court fee to file a suit because of their poverty. Explanation I to Rule 1 of Order XXXVIII states that an indigent person is one who is not possessed of sufficient amount (other than property exempt from attachment in execution of a decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit. It is further provided that where no such fee is prescribed, if such person is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject matter of the suit he would be an indigent person. Prior to the passing of the CPC (Amendment) Act 104 of 1976, the term "indigent person" had a slightly different explanation. In that Explanation, it was stated that a person is a pauper when he is not possessed of sufficient means to enable him to pay the fees prescribed by law for the plaint in such suit, or where no such fee is prescribed, if he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject matter of the suit. The expression 'other than his necessary wearing apparel' was deleted by CPC Amendment Act No. 104 of 1976. These words had assumed some importance in attributing the meaning 'natural person' to the word 'person' mentioned in Order XXXVIII. A company, idol or other juristic person cannot have the wearing apparel. However, as these words are now deleted by the Amending Act No. 104 of 1976, the present Explanation I need alone be taken to construe the meaning of the term

'person' in Order XXXVIII. In the CPC, though the term 'person' occurs in several other parts, it is not defined in the Code. The term "decree holder" defined in Section 2(3) is as follows :

"Decree-holder means any person in whose favour a decree has been passed or an order capable of execution has been made."

Under Section 2(10), "judgment-debtor" is defined to mean any person against whom a decree has been passed or an order capable of execution has been made. Order I of the CPC deals with the parties to suit. Rule 1 of Order I says who are all the persons that may be joined as plaintiffs in one suit. Rule 3 states who are all the persons who may be joined as defendants.

Any juristic person such as a company or idol can maintain a suit. These persons can be either decree-holders or judgment-debtors and in all these instances, the term 'person' is used to describe such company or idol or other juristic person as provided in the General Clauses Act. The definition of the term 'person' is given in the General Clauses Act according to which such term shall include any company or association or body of individuals whether incorporated or not. The said definition provides that the word 'person' would include both natural and artificial persons.

Under Order XXXVIII, the petitioner who files an application has to present the application in person. Rule 3 states that the person who is presenting the application shall be in a position to answer all material questions relating to the application and he may also be examined by the court.

The counsel for the appellant argued that in view of this provision, the word "person" has to be understood to mean a natural person, otherwise the company would not be in a position to present the application. We do not think that such a view is correct. A company being a juristic person, it would be represented by a person competent to represent it. It is enough that a person competent to represent a company need present the application under Rule 3 of Order XXXVIII. Minors, lunatics or persons under any disability are also entitled to file suit either represented through a guardian or next friend. They can also maintain an application under Order XXXVIII. Under such circumstances, the real petitioner is not the person to present the application, but the guardian or the next friend who is competent to represent such petitioner to present the application under Rule 3, Order XXXVIII. Therefore, to give meaning to the word 'person', the procedure prescribed under Rule 3 has no significance.

Lord Selborne in *Pharmaceutical Society v. London and Provincial Supply Association*, 5 Appeal Cases 857, observed :

"There can be no question that the word 'person' may andprima facie does, in a public statute include a person in law; that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which as I said, perhaps ought to be attributed to it in the construction of a statute unless

there should be any reason for a contrary construction, it is never to be forgotten, that in its popular sense and ordinary use it does not extend so far."

Therefore, 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. Therefore, we are of the view that a public limited company, which is otherwise entitled to maintain a suit as a legal person, can very well maintain an application under Order XXXIII, Rule 1 CPC. We hold that the word 'person' mentioned in Order XXXIII includes not only a natural person but other juridical persons also. The appeal is, therefore, without any merit and dismissed without any order as to costs.

