

CIVIL REVISION.

Before U Tun Byu, J.

BENI PRASAD (APPLICANT)

v.

BABULAL FATEH CHAND AND ONE
(RESPONDENTS).*H.C.
1948
Aug. 27.

Code of Civil Procedure, Order 44, Rule 2—Powers of Registrar, District Court—Whether order rejecting application can be revised when no appeal to District Court from Registrar.

Held: Under Order 44, Rule 2 of the Code of Civil Procedure if the applicant for leave to appeal as pauper was allowed to sue as a pauper in the court from whose decree the appeal is preferred no further inquiry as to pauperism shall be necessary unless the Appellate Court directs such inquiry. In the present case, the Registrar did not record any reason for holding the enquiry and the applicant had been allowed to sue as pauper. He therefore acted illegally or without jurisdiction.

The fact that the plaintiff-applicant did not apply to the District Court under Rule 6 of the Rules made under s. 17, clause 2 of the Courts Act, 1945, does not prevent the High Court in a proper case from exercising its power of revision under s. 115 of the Code of Civil Procedure.

A. N. Basu for the applicant.

P. B. Sen for the respondents.

U TUN BYU, J.—The applicant-plaintiff Beni Prasad filed a suit for the recovery of Rs. 2,740 as wages due to him by the defendant-respondents Messrs. Babulal Fateh Chand and Latchmi Narayan Hari Prasad in the Court of the 1st Assistant Judge, Moulmein, where his claim was dismissed with costs. The applicant-plaintiff Beni Prasad then applied to the District Court, Amherst, to be allowed to appeal against the judgment and decree of the Court of the 1st Assistant Judge, Moulmein, as a pauper, but his application to be allowed to appeal as a pauper was dismissed by the Registrar of the District

* Civil Revision No. 60 of 1948 against the order of the District Registrar, Court of Amherst at Moulmein, in Civil Misc. No. 3 of 1948.

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Court, Amherst. It has been contended on behalf of the applicant-plaintiff Beni Prasad that the Registrar of the District Court acted illegally and without jurisdiction in holding an inquiry into the pauperism of the applicant-plaintiff in view of the proviso to Rule 2 of Order 44 of the Code of Civil Procedure which is as follows :

" 2. The inquiry into the pauperism of the applicant may be made either by the appellate Court or under the orders of the appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the appellate Court sees cause to direct such inquiry."

It will be observed that an inquiry into the pauperism of an applicant who has been allowed to sue as a pauper in the trial Court can be inquired into by the appellate Court only if the appellate Court sees any cause to direct such an inquiry. A copy of the judgment of the Court of the 1st Assistant Judge, Moulmein, was filed by the applicant-plaintiff with his application to be allowed to appeal as a pauper, and the last sentence in that judgment shows that anyone reading it must have known that the applicant-plaintiff had been allowed to sue as a pauper in the original Court. In the circumstances it was necessary for the Registrar to have recorded his reason for holding the inquiry into the pauperism of the applicant-plaintiff in this case and in the absence of anything on the record to indicate why the Registrar of the District Court had thought fit to hold the inquiry into the pauperism of the applicant-plaintiff it must be held that he had acted contrary to the proviso to Rule 2 of Order 44 of the Code of Civil Procedure, and he could accordingly be considered to have acted illegally

or without jurisdiction because under the proviso the Registrar had no right to inquire into the pauperism of the applicant-plaintiff unless he had reasons for holding such inquiry, and no reasons had been specified by him for holding that inquiry. The order of the Registrar made on the 13th May 1948 rejecting the applicant-plaintiff's application to be allowed to appeal as a pauper also suggests that the Registrar could have had no good or special reason for directing an inquiry into the pauperism of the applicant-plaintiff because in that order it was stated clearly that the applicant-plaintiff had no means or property to pay the necessary court-fees.

It might be mentioned that the fact that the applicant-plaintiff was earning Rs. 100 per month does not necessarily show, in the absence of any evidence to the contrary, that he could have saved any of that money in these days when the cost of living is undoubtedly high, and there was therefore no proper ground even on the merits on which the application of the applicant-plaintiff to appeal *in forma pauperis* could be rejected.

It might be added that there does not appear to be any substance in the contention that no application lies under section 115 of the Code of Civil Procedure on the ground that the Registrar in holding the inquiry into the pauperism of the applicant-plaintiff was not acting as a Court in view of the fact that the Registrar when he held that inquiry was obviously acting judicially, and the order which he passed was obviously a judicial order as distinguished from the administrative order. It is further contended on behalf of the defendant-respondents that it was fatal to the present application of the applicant-plaintiff in that the latter had not taken the matter to the District Judge before he applied to this Court in revision in view of Rule 6 of the Rules made under section 17 (2) of the Courts

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Act, 1945, which prescribed the duties, powers and functions of the Registrars of the District Courts. I do not see in Rule 6 or in any of the rules to prevent this Court from exercising its power of revision under section 115 of the Civil Procedure Code where the Registrar acted illegally or without jurisdiction. The High Court can of course refuse to entertain the application on the ground that the matter should have first been brought before the District Judge, but this is a matter which has to be decided on the facts and circumstances of each particular case. In the present case, in view of the fact that the order of the Registrar of the District Court is obviously wrong and irregular, even if it could not be said to have been made without jurisdiction, in that he had made an inquiry without conforming to a condition which was required under the proviso to Rule 2 of Order 44 of the Code of Civil Procedure ; and it would, in the circumstances, be only waste of time to direct the applicant-plaintiff to make his application before the District Court, particularly in view of the fact that there also does not appear to be any merit for rejecting the application of the applicant-plaintiff to appeal *in forma pauperis*. The application is accordingly allowed with costs. Advocate's fee five gold mohurs.