

THE HIGH COURT OF MADHYA PRADESH

W.P. No. 4223/2014

1 *Yusuf Khan Vs. Sheikh Gulam Mohammad @ Shahanshah*

Indore, dated : 02.05.2018

Ms. Sonali Gupta, learned counsel for the petitioner.

Shri Ajay Giriya, learned counsel for the respondent.

ORDER

The petitioner/plaintiff has filed the present petition being aggrieved by order dated 21.2.2014 passed by 3rd Additional District Judge, Ujjain

2. Facts of the case, in short, are that the plaintiff filed the suit seeking relief of specific performance of the contract. Along with the suit, he filed an application under Order 33 Rule 3 of the C.P.C. seeking permission to sue as an indigent person. The learned trial Court has dismissed the said application in default.

3. Thereafter, the plaintiff filed an application under Order 9 Rule 9 of the C.P.C. seeking restoration of the aforesaid application. During pendency of the application under Order 9 Rule 9 of the C.P.C., the plaintiff filed another application seeking permission of the Court to deposit the Court-fees. Thereupon, the learned trial Court vide order dated 4.7.2013 has permitted the plaintiff to deposit the Court-fees and also directed that the suit be registered under the category 'A'.

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4. Being aggrieved by the aforesaid order dated 4.7.2013, the defendant filed W.P. No.9459/2013 before this Court. The defendant has challenged the order dated 4.7.2013 on the ground that no direction can be given to pay the Court-fees unless the application filed under Order 9 Rule 9 of the C.P.C. is decided. This Court vide order dated 30.10.2013 disposed of the petition with a direction to the defendant to file an application before the trial Court for recalling of the order dated 4.7.2013.

5. After the aforesaid order of this Court dated 30.10.2013, the defendant filed an application u/s. 151 of the C.P.C. The said application came up for consideration before the learned trial Court on 21.2.2014. The learned trial Court has held that the suit for all purposes be treated to be filed on 4.7.2013 when the Court-fees was paid.

6. Being aggrieved by the aforesaid order dated 21.2.2014, the plaintiff has filed this writ petition.

7. I have heard the learned counsel appearing for the parties and perused the record of the trial Court.

8. The plaintiff filed the suit for specific performance of contract on 4.5.2011. Along with the plaint, has also filed application under Order 33 Rule 3 of the C.P.C. separately seeking leave to file the suit as an indigent person. The said application was dismissed in default on 10.5.2012. Thereafter, the plaintiff preferred an application

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under Order 9 Rule 9 of the C.P.C. which was registered as M.J.C. No.2/2013. The plaintiff filed another application u/s. 151 of the C.P.C. in pending M.J.C. seeking permission to pay the Court-fees. The application was opposed by the defendant. Vide order dated 4.7.2013, the learned trial Court has granted permission to pay the Court-fees.

9. On the next date of hearing i.e. on 10.7.2013, the plaintiff has presented the Court-fees of Rs.54,500/-. Thereafter, the learned trial Court has directed the defendant to file the written statement. The defendant raised an objection that the trial Court has wrongly granted the permission to pay the Court-fees without passing any order on the application under Order 9 Rule 9 of the C.P.C. Vide order dated 21.2.2014, the trial Court decided the said objection and held that the suit for all purposes be treated as filed on 4.7.2013 when the Court-fees was paid.

10. Under Order 33 Rule 1, the suit may be instituted by an indigent person, if he do not possess sufficient means to pay the adequate Court-fees. Under Rule 1A, an enquiry about the indigency of the person shall be made at the first instance by Chief Ministerial Officer of the Court. Under Rule 2, every application for permission to sue as an indigent person shall contain the particulars required in regard to schedule of any movable or immovable property belonging to the applicant. Under Rule 3, such application is

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required to be filed before the Court by the applicant in person. After examination of the applicant, the Court may reject the application for permission to sue as an indigent person under Rule 5 and if the application is not rejected, then the Court may direct the parties to lead evidence in support of their application. The procedure of hearing is provided in Rule 7 and under Sub Rule 3 of Rule 7, the Court may either allow or refuse to allow the application to sue as an indigent person. Under Rule 11, where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person or the permission granted to him has been withdrawn, the Court shall order the plaintiff to pay the Court-fees which would have been paid by the plaintiff if he had not been permitted to sue as an indigent person. Under Rule 15, if the Court rejects the application to sue as an indigent person, then the applicant shall be at liberty to institute the suit in the ordinary manner in respect of such right. Under Rule 15A, despite Rule 5, 7 or 15, the Court while rejecting the application the Court may grant time to the applicant to pay the requisite Court-fees within such time or the extended time and if the Court-fees is paid, then the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. Rule 15A of Order 33 of the C.P.C. is reproduced below :

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“15A. Grant of time for payment of Court-fee – Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite Court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.”

Therefore, under aforesaid Rule 15A, if the Court has granted time to pay the Court-fees and the Court-fees has been paid, then the suit is deemed to have been instituted on the date on which the application for permission to sue as an indigent person was filed. In the present case, such an application was filed along with the plaint on the same day, therefore, the suit shall also be deemed to have been instituted on the same date on which the application for permission to sue as an indigent person was filed.

11. This Court in the case of **Union of India V/s. Rameshwar Prasad : AIR 1983 MP 59** has held that once the delay in payment of Court-fees is condoned by the Court in exercise of powers conferred, the suit or the memo of appeal, as the case may be, cannot be attacked as time barred by limitation.

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12. In view of the above discussion, in the considered opinion of this Court, the impugned order dated 21.2.2014 is not sustainable. Accordingly, the petition deserves to be and is hereby allowed and the impugned order dated 21.2.2014 is quashed. The suit filed the plaintiff is directed to be treated as filed on the date when the application for permission to sue as as an indigent person was filed. The record of the Court below be sent back forthwith.

No order as to costs.

(VIVEK RUSIA)
JUDGE

Alok/-