CIVIL REVISION.

Before Mukerji and Jack JJ.

1929

Aug. 23.

PRAVASHCHANDRA LAHIRI

v.

THE MUNICIPAL COMMISSIONERS OF HOWRAH*.

Pauper—Application to sue in forma pauperis*—Admission of part of claim and readiness of defendant to pay the same, whether should be taken into consideration in determining pauperism—Code of Civil Procedure (Act V of 1908), O. XXXIII, r. 1.*

In determining the question whether a person is entitled to sue in *forma pauperis* under Order XXXIII, rule 1 of the Civil Procedure Code (1908), the subject-matter of the suit cannot be taken into consideration, even if the defendant admits a portion of the claim and is ready to place it at the petitioner's disposal, and, even if the case falls under the first part of the explanation to rule 1. Any amount which is not actually in the petitioner's possession, and is not in his power or control at the date when the application was made cannot be taken into account in making the calculation for the purpose of determining his means.

In re Pokala Mahalakshmi Ammal (1) and *Dwarkanath Narayan* v. *Madhavrav Vishvanath* (2) dissented from.

Bai Balagauri v. *Motilal Ghellabhai* (3) referred to.

CIVIL RULE obtained by the plaintiff, Pravashchandra Lahiri.

The petitioner, who was a Sanitary Inspector under the Howrah Municipality, for over eleven years, was arrested on suspicion by the police, in connection with a murder case, upon which the Municipality passed an order, suspending him from service. Some time later, he was discharged from custody by the police, after inquiry, and there was no case against him, but his services were dispensed with by the Municipality. The petitioner then made an application to the Subordinate Judge of Howrah for permission to sue the Municipality in *forma pauperis* for damages for wrongful dismissal, and

*Civil Revision No. 775 of 1929, against the order of P. B. Banerjee, Subordinate Judge of Howrah, dated May 16, 1929.

(1) (1925) 50 Mad. L. J. 114. (2) (1886) I. L. R. 10 Bom. 207.
(3) (1922) I. L. R. 47 Bom. 523.

balance of Provident Fund, *etc.*, making a total of Rs. 32,161. The Collector caused enquiries to be made in petitioner's native district and found that he owned properties worth only Rs. 495-5-5. The Municipality filed a written objection to the petitioner's application, in which they stated that a sum of Rs. 633-8 on account of his contributions to the Provident Fund, was available to the petitioner and he could get it at any time he chose, and, subsequently in an additional written objection they admitted the claim to the extent of Rs. 1,307-10-8, which they stated was available to the petitioner at any time he merely asked for it. The Municipality, however, did not give any account as to how the figure was worked out. Relying on this the Subordinate Judge refused permission to the petitioner to sue in *forma pauperis*.

The petitioner, thereupon, moved the High Court and obtained the present Rule.

Mr. Surajitchandra Lahiri, for the petitioner.

Mr. Manmathanath Ray and *Mr. Suryakumar Aich*, for the opposite party.

MUKERJI AND JACK JJ. This Rule was issued to show cause why a certain order passed by the Subordinate Judge of Howrah, on the 24th of May, 1929, should not be set aside or such other or further order made as to this Court may seem fit and proper. The order complained of was passed on an application, which the petitioner Pravashchandra Lahiri had made for leave to sue in *forma pauperis*. The order was one, by which the learned Judge refused the leave asked for.

The circumstances that are necessary to be set out, for the purposes of this Rule, are the following :— The petitioner was a Sanitary Inspector under the Howrah Municipality. He made an application, for the purpose of obtaining permission to sue, in *forma pauperis*, the Chairman and the Commissioners of the Howrah Municipality, claiming damages for wrongful dismissal from service. He claimed

1929

PRAVASH-CHANDRA LAHIRI v. THE MUNICIPAL COMMISSIONERS OF HOWRAH.

damages to the extent of Rs. 32,000 odd. The said amount is made up of several items, amongst which there is one of Rs. 1,290 as being due to him on account of balance of money at his credit in the Provident Fund. On receipt of the aforesaid application, notice was given by the Subordinate Judge to the opposite party. The opposite party, on 2nd February, 1929, submitted a statement, in which it was stated that, as regards the sum of Rs 633-8, which was subscribed by the said Pravash-chandra Lahiri to the Provident Fund, it was available to him and that he could get it at any time he chose. On the 4th of May, 1929, the opposite party filed an additional written statement, in which they stated that the Provident Fund money payable to the plaintiff was found to be Rs. 1,307-10-8 and that the said sum was available to the plaintiff at any time that he would ask for it. The amount of court-fees payable for the plaint in the contemplated suit is Rs. 1,590. The learned Subordinate Judge dealt with the application for pauperism by the order of the 24th May, 1929, in which he held that the Municipality had not disputed their liability for the amount which was payable to the plaintiff on account of the Provident Fund and in fact were prepared to deposit it and furthermore that the Municipality was also willing to pay a few rupees in excess. He was, therefore, of opinion that, inasmuch as the said amount was available to the petitioner for payment of court-fees, and, inasmuch as that amount, together with his other properties, the value whereof amounted to Rs. 400 and odd, were sufficient for the payment of the court-fees, the petitioner was not really a pauper. He, accordingly, refused the petitioner's application for suing in *forma pauperis*. The question for consideration in the Rule, which the petitioner has obtained, is whether, in the circumstances which have been referred to above, it can be said that the petitioner is a pauper within the meaning of that word as used in Order XXXIII, Civil Procedure Code. It may be mentioned here

that there was an investigation made by the Collector and that the Collector did not oppose the application of the petitioner to be permitted to sue in *forma pauperis*.

In support of the view that the learned Subordinate Judge has taken, reliance has been placed by the learned advocate, who has appeared on behalf of the opposite party, upon the decision of the Madras High Court in the case of *Pokala Mahalakshmi Ammal* (1), and it has been contended by him that the words "subject matter of the suit," to be found at the end of the explanation to Order XXXIII, rule 1 of the Code, cannot be said to form a part of the first part of that explanation and that, therefore, in a case in which the defendant places a part of the amount for which the suit is to be laid at the disposal of the plaintiff, that amount, though it may form the subject matter of the suit, may and should be taken into consideration in determining the question whether the plaintiff is a pauper or not. Now the case of *Pokala Mahalakshmi Ammal* (1), it is true, is a decision which supports the contention of the opposite party, though there is one point of difference between that case and the present one and that lies in the fact that there the money was actually deposited in court and so was available to the petitioner, while in the present case there was only an offer made by the opposite party to put in the money so that it might be available to the petitioner. For the purposes of the present Rule, however, I am not prepared to lay any stress upon this difference. In the case aforesaid the learned Judge, Jackson J., sitting singly, took the view that, under circumstances such as those existing in that case, it could be said that the petitioner was possessed of sufficient means to put in the court-fees. The learned Judge relied upon a decision of the Bombay High Court, in the case of *Dwarkanath Narayan* v. *Madhavrav Vishvanath* (2), which was to the effect that, if any property is found at the enquiry to be such as regards which

(1) (1925) 50 Mad. L. J. 114. (2) (1886) I. L. R. 10 Bom. 207.

1929

PRAVASH-CHANDRA LAHIRI v. THE MUNICIPAL COMMISSIONERS OF HOWRAH.

there is really no dispute, such property cannot be regarded as part of the subject matter of the suit, and, if a part of the articles, for which the suit is to be instituted, is deposited in court, so as to be freely at the disposal of the petitioner, the value of such part cannot be excluded from consideration. Certain other decisions of the Bombay High Court, which to him appeared to have taken a different view, were also referred to by the learned Judge, but he was not prepared to make a reference to the Full Bench on the ground that *Dwarkanath Narayan's case* (1) had not been duly considered therein.

Now, it is true that there is a certain difficulty, by reason of the wording of the explanation, but it is plain enough that the wording of the first part of the explanation is very different from the wording of its second part. The first part says "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;" and the second part says "Where no such fee is prescribed, when "he is not entitled to property worth one hundred "rupees other than his necessary wearing apparel "and the subject matter of the suit." The first point that strikes one is that, whereas in the first part the words used are "is not possessed of," the words used in the second part are "is not entitled "to." In a case, in which it is the second part of the explanation that has to be considered, one has to see whether the petitioner is or is not entitled to property worth one hundred rupees, and in order to find that out, the necessary wearing apparel and the subject matter of the suit have to be excluded. In such a case, where it is a question of the petitioner's means being judged by taking into account what he is entitled to, the subject matter of the suit has been excluded expressly by the legislature; and *Dwarkanath Narayan's case* (1), and other cases say that property, which it is contemplated to include in the suit, if really available to the petitioner, is not to be

(1) (1886) I. L. R. 10 Bom. 207.

excluded from consideration. The first part of the explanation, however, says that the applicant is to be treated as a pauper, if he is not possessed of sufficient means to enable him to pay the court-fee. It is actual possession or power of control over the amount necessary for the payment of court-fee that is the question that has to be considered in connection with this part of the explanation. It is true that the words "subject matter of the suit" have no concern with the first part of the explanation; but this does not mean that, in dealing with the first part of the section, the subject-matter of the suit has to be taken into consideration; because the word "possession," which is used in that part, sufficiently indicates that any amount which forms the subject-matter of the suit and is not in the actual possession of the petitioner cannot be taken into account for the purpose of determining his means. Again, in considering the question of pauperism, one must look at the matter as it stood at the date when the application was made. If the circumstances of the petitioner, on the date of the said application, bring him within the terms of the explanation and are sufficient to have him declared as a pauper, the immunity that the law confers upon him for the purpose of court-fees will be enjoyed by him till the termination of the suit or until such time when sufficient materials would be forthcoming to justify an order cancelling the permission. These and other considerations which have been very well pointed out in the case of *Bai Balagauri* v. *Motilal Ghellabhai* **(1)** sufficiently indicate that, even in regard to cases coming under the first part of the explanation, the subject-matter of the case cannot be taken into consideration and any amount which is not actually in the petitioner's possession cannot be taken into account in making the calculation. We are of opinion, therefore, that the view which the learned Judge has taken cannot be supported and that the petitioner, upon the facts to which reference has been

(1) (1922) I. L. R. 47 Bom. 523.

1929

PRAVASH-CHANDRA LAHIRI v. THE MUNICIPAL COMMISSIONERS OF HOWRAH.

made, is entitled to institute the suit in *forma pauperis*. In view of the circumstances, to which we have already referred, it seems to us desirable that the amount which the opposite party has offered to the petitioner, on account of his Provident Fund dues, should not be allowed to be withdrawn by the petitioner or spent in any other way, until the disposal of the suit. We, accordingly, make an order to the effect that, while the Subordinate Judge should grant the petitioner's application, he would at the same time issue injunctions on the petitioner, as well as the opposite party, restraining them respectively from withdrawing or parting with the amount of Rs. 1,307-10-6, which the opposite party offered to pay to the petitioner, till such time as proper orders are passed, with regard to court-fees, after the termination of the suit. The Rule is made absolute in the above terms. We make no order as to costs of the Rule.

Rule absolute.

A. A.