

[4 Mad. 323]

APPELLATE CIVIL.

The 25th November, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
KINDERSLEY.

Koka Ranganayaka Ammal.....Petitioner

and

Koka Venkatachellapati Nayudu.....Respondent.*

*Civil Procedure Code, Sections 403, 407—Application for leave to sue in
formâ pauperis—Conditions precedent.*

The Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue.

When an application for leave to sue *in formâ pauperis* is made, the Courts should not go into evidence as to the merits of the claim.

THIS was a petition under Section 403 of the Code of Civil Procedure for leave to sue *in formâ pauperis*.

The petitioner claimed Rupees 10,000 for maintenance and stridhanam property left in her husband's possession.

The District Judge having examined witnesses found that the petitioner was a pauper, but that she did not deserve the privilege of suing *in formâ pauperis*, inasmuch as she had lived an immoral life since she left her husband's house ten years before. The petition was rejected.

The petitioner thereupon applied to the High Court under Section 622 of the Code of Civil Procedure on the ground that, having found her to be a pauper and her allegations disclosing a right to sue, the Court should have permitted her to sue, and that the examination of the witnesses produced by the respondent was irregular.

Tirumaranachariar for Petitioner.

Respondent was not represented.

[324] The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

Judgment:—The Judge found the petitioner was a pauper. Consequently if, on her allegations, she showed a right to sue, the Judge should have allowed her application without satisfying himself as to the merits of her claim. The Code directs the examination of an applicant for leave to sue *in formâ pauperis* regarding the merits of his claim, that it may be ascertained whether his allegations show or do not show a right to sue. Section 407 declares in what cases the application shall be rejected, and here it will be observed that the law does not direct the refusal of the application by reason that the Court is not satisfied of the existence of merits. On the other hand, an Appellate Court may refuse leave to appeal *in formâ pauperis* if it has not reason to apprehend the existence of error in the decree of the Court of First Instance which calls for remedy in appeal.

The order is set aside and the Judge is directed to pass fresh orders.

* C. M. P. No. 721 of 1880 against the order of S. T. McCarthy, Acting District Judge of Cuddapah, dated 21st March 1879.