

APPELLATE CIVIL.

Before Mr. Justice Bakewell and Mr. Justice
Kumaraswami Sastriyar.

1917,
November,
28 and 30.

PERUMAL GOUNDAN AND THREE OTHERS (RESPONDENTS),
PETITIONERS,

v.

THE THIRUMALARAYAPURAM JANANUKOOLA
DHANASEKHARA SANGHA NIDHI (LIMITED), THROUGH
ITS OFFICIAL LIQUIDATOR A. VENKATASWAMI NAIDU
(PETITIONER), RESPONDENT.*

Civil Procedure Code (Act V of 1908), O. XXXIII—Company—Official liquidator, right of, to apply for leave to sue in forma pauperis—'Person,' definition of—General Clauses Act (X of 1897), whether applicable to Order XXXIII—Explanation to rule 1 and rule 3 of Order XXXIII, construction of.

An official liquidator of a company is competent to apply for leave to sue *in forma pauperis* on behalf of the company under Order XXXIII of the Civil Procedure Code, if the company is a pauper within rule 1 thereof.

The reference to 'necessary wearing apparel' in the explanation to rule 1 and the provisions of rule 3 requiring presentation of petition by 'applicant in person' in Order XXXIII, do not necessarily exclude the application of the Order to a company, and the definition of 'person' as including a company under the General Clauses Act (X of 1897) applies to Order XXXIII of the Code as there is nothing in the definition which is repugnant to the subject or context of the Order.

The fact that the liquidator in his personal capacity is not a pauper does not affect the question; nor does the fact that the liquidator receives a commission on collections realised, make him a person interested in the subject matter of the suit within clause (e), rule 5 of Order XXXIII.

Cortes v. Kent Water-works Company (1827) 7 B. & C. 314, and *Venkatasayya v. Achemma* (1881) I.L.R., 3 Mad., 3, followed.

In the matter of the will of Demubai (1894) I.L.R., 18 Bom., 237 and *Manaji Rajinji (Rao Sahib v. Khandoo Baloo)* (1912) I.L.R., 36 Bom., 279, distinguished.

PETITION under section 115 of the Code of Civil Procedure Code (Act V of 1908), and section 107 of the Government of India Act, praying the High Court to revise the order of V. DANDAPANI PILLAI, the Subordinate Judge of Madura, in Original Petition No. 303 of 1916.

The material facts appear from the judgment.

* Civil Revision Petition No. 367 of 1917.

S. Parthasarathi Ayyangar for the petitioners.

C. Padmanabha Ayyangar and *A. Ramaswami Ayyar* for the respondent.

The judgment of the Court was delivered by

KUMARASWAMI SASTRIYAR, J.—The Thirumalarayapuram Jananukoola Dhanasekhara Sangha Nidhi (Limited), which was a company registered under the Indian Companies Act went into liquidation and an official liquidator was appointed. He as liquidator applied under Order XXXIII of the Civil Procedure Code to file a suit on behalf of the Nidhi *in forma pauperis* against the petitioners before us who are alleged to owe the Nidhi about Rs. 8,524 under a promissory note. The allegations in the petition show that the Nidhi was bankrupt and that the only properties it had (except the subject of the suit) were worth Rs. 12. The Subordinate Judge allowed the Nidhi to sue *in forma pauperis* and the respondents have filed this petition against the order.

The chief contention raised before us is that Order XXXIII of the Civil Procedure Code does not apply to companies, corporations or other associations. It is argued that as the explanation to Order XXXIII, rule 1, refers to necessary wearing apparel and rule 3 requires presentation of the petition by the "applicant in person" the order necessarily excludes petitioners who are not human beings.

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. Order XXXIII of the Civil Procedure Code refers to suits by paupers and rule(1) enacts that any suit may, subject to the provisions of the order, be instituted by a pauper and does not exclude official persons. Now a registered company or any other association may be unable to pay the court-fee payable like any other ordinary person and there is no reason to suppose that the legislature did not intend Order XXXIII to apply to such cases especially when it is remembered that the effect would be to allow debtors to escape payment and defeat or defraud the creditors and shareholders of the company. The explanation to rule (1) no doubt

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states that where no court-fee is prescribed the petitioner should not be entitled to property more than Rs. 100 "other than his necessary wearing apparel". The explanation simply allows deduction of the value of wearing apparel and can only mean that if the applicant has necessary wearing apparel he can deduct its value. We do not think it can be construed to mean that only persons who in law can possess wearing apparel, can sue as paupers. In *Cortes v. The Kent Water-works Company* (1), the argument that an enactment (47, Geo. III, C. 111) did not apply to corporations as it allowed a person to appeal on entering into a recognizance which a corporation was not competent to do was negated by BAYLEY, J., who observed as follows:—

"But assuming that they cannot enter into a recognizance yet if they are persons capable of being aggrieved by and appealing against a rate, I should say that that part of the clause which gives the appeal applies to all persons capable of appealing and that the other part of the clause which requires a recognizance to be entered into applies only to those persons who are capable of entering into a recognizance but is inapplicable to those who are not."

The word used in the explanation is 'person' and there is nothing repugnant in applying the definition given in the General Clauses Act. Where the applicant is a company which, ex-hypothesi, can have no wearing apparel, then it will not be entitled to deduct anything on account of wearing apparel and will not be a pauper if it has property worth Rs. 100 and the suit is one for which no fee is prescribed.

As regards rule 3 which requires personal presentation of the application to sue *in forma pauperis*, it seems to us that where the law in consequence of personal appearance in Courts being impossible either by reason of the party being a company or an infant or lunatic, allows appearance by somebody else appearance by such person would be sufficient. For example, Order XXXII of the Civil Procedure Code which relates to minors and persons of unsound mind authorizes appearance by the next friend and guardian *ad litem* and it cannot be said that where the minor or lunatic is a pauper, the presentation of a petition to sue *in forma pauperis* by the next friend would be invalid or contravening the provision of Order XXXIII, rule 3. So far as companies are

(1) (1827) 7 B. & C., 814.

concerned, the Companies Act provides for the mode in which the company is to be represented. Under section 179 of the Indian Companies Act the liquidator may institute any suit or other legal proceedings in the name and on behalf of the company and under Order XXIX of the Civil Procedure Code the principal officer of the company may act in legal proceedings on behalf of the company and may be required to appear when personal appearance is necessary. The liquidator can therefore fulfil all the obligations required of a pauper petitioner under Order XXXIII. Rule 3 of Order XXXIII of the Civil Procedure Code, in our opinion, only prohibits a pauper who is competent in law to appear in person from taking advantage of Order III of the Civil Procedure Code and appearing by a pleader or recognized agent instead of being present personally. It does not cover cases where from the nature of the case physical presence is impossible or where the law, owing to any disability, directs that all acts required by the Code should be performed by a next friend. We are of opinion that there is nothing in rule 3 to prevent an official liquidator from appearing and presenting the petition. A company or other association being a person within the meaning of the definition of the General Clauses Act which applies to the Civil Procedure Code of 1908, could *prima facie* apply for leave to sue *in forma pauperis* and as we see nothing in Order XXXIII, rules 1 and 3 which will be repugnant to the application of the definition, we think a company can take advantage of the provision of Order XXXIII if it is a pauper.

It is next argued that, as the liquidator is not a pauper though the company may be so, Order XXXIII would not apply. The suit is really by the company and as the liquidator only acts for the company, being so to say its agent, his financial standing is immaterial. We think the case is covered by *Venkatanarasayya v. Achemma*(1), where it was held that a next friend who is not a pauper can sue *in forma pauperis* if the minor is proved to be a pauper. Reference was made to *In the matter of the will of Demubai*(2) and *Manaji Rajinji (Rao Sahib) v. Khundoo Buloo*(3). They were cases of executors suing and without expressing any opinion as to the correctness of the decisions it

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(1) (1881) I.L.R., 3 Mad., 3.

(2) (1894) I.L.R., 18 Bom., 237.

(3) (1912) I.L.R., 36 Bom., 279.

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is sufficient, for the purpose of this case, to say that in the case of executors the estate vests in them and they are the real plaintiffs though they sue not for their own benefit but for the benefit of the beneficiaries. For the purpose of Order XXXIII the real question is who is the actual plaintiff and is he a pauper within the meaning of the explanation to Order XXXIII, rule 1, of the Civil Procedure Code.

The last contention is that as the liquidator received by his order of appointment a commission he is interested in the subject-matter of the suit within the meaning of Order XXXIII, rule 5, of the Code of Civil Procedure. The provision only applies to agreement between the pauper and a third person with reference to the subject-matter of the suit. Where a Court or a company appoints a liquidator he is an officer who is appointed under statutory authority and the fact that he is paid a percentage of the collections does not bring him within clause (e) of Order XXXIII, rule 5. No particular debt is ear-marked with the payment and even if it were so an agreement in pursuance of the Companies Act to remunerate the liquidator for winding up the company would be on the same footing as an agreement by the pauper with his vakil to pay him the legal fees for conducting the suit.

We see no reason to interfere and dismiss the petition with costs.

K.R.