

## APPELLATE CIVIL.

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

GOVINDASAMI PILLAY (PETITIONER), APPELLANT,

v.

THE MUNICIPAL COUNCIL, KUMBAKONAM  
(RESPONDENT), RESPONDENTS.\*

1917,  
November 27.

*Civil Procedure Code (Act V of 1908), O. XXXIII, r. 5—Application for leave to sue in forma pauperis—Question to be decided by Court before granting leave—Limitation—Doubtful question—Difference of judicial opinion—Duty of Court.*

Upon an application for leave to sue *in forma pauperis*, the Court is not justified in determining, at the stage contemplated by Order XXXIII, rule 5 of the Civil Procedure Code, a question of limitation as to which there has been considerable difference of judicial opinion.

Order XXXIII, rule 5 (d) applies only to cases where the allegations of the petitioner do not show a cause of action, and this should appear *clearly upon the face* of the petition.

APPEAL under clause 15 of the Letters Patent against the judgment of SPENCER, J., in *Govindasami Pillay v. The Municipal Council of Kumbakonam*(1).

The appellant filed an application in the District Munsif's Court of Kumbakonam for leave to sue *in forma pauperis* against the Municipality of Kumbakonam, claiming to recover a sum of money as the balance of a deposit made by him in respect of a contract of lease of the right to collect rents and dues of a vegetable market, which was purchased by him in auction, and also damages for alleged breach of contract by the municipality in respect of the lease. The District Munsif rejected the petition holding, after an elaborate investigation of the authorities, that the claim was barred by limitation. The petitioner preferred a civil revision petition to the High Court, which was heard by SPENCER, J., who dismissed the petition holding, after examining the authorities cited before him, that the suit

\* Letters Patent Appeal No. 74 of 1917.

(1) Civil Revision Petition No. 887 of 1916 praying the High Court to revise the order of S. NARAYANASWAMI AYYAR, the Principal District Munsif of Kumbakonam, in Original Petition No. 1251 of 1915.

was barred by limitation. The petitioner preferred an appeal under the Letters Patent and contended (1) that the suit was not really barred, and that (2) in any event the Court was not justified in determining such a highly doubtful question of law as to limitation at that stage under Order XXXIII, rule 5 of the Code.

*K. Ramachandra Ayyar* for the appellant.

*N. Rajagopala Achariyar* for the respondent.

The judgment of the Court was delivered by

KUMARASWAMI SASTRIYAR, J.—We are of opinion that the District Munsif was not justified in determining a question of limitation as to which there has been considerable difference of judicial opinion upon an application to sue *in forma pauperis*. Order XXXIII, rule 5 (d), applies only to cases where the allegations of the petitioner do not show a cause of action and we think that this should appear clearly upon the face of the petition.

We have been referred to cases where it was held that the Court can go into the question of limitation to see if the petitioner has a subsisting cause of action. The cases do not decide that an elaborate enquiry into doubtful and complicated questions of law should be raised at the stage contemplated by Order XXXIII, rule 5. The pauper has no right of appeal if the decision on the question of law is wrong. We do not think it necessary to decide the question of limitation at this stage. This should form the subject matter of an issue.

In the present case, moreover the question of limitation may depend upon the construction of the contract between the parties and it is possible that other evidence may be admissible as to the rights of the parties to the deposit made by the applicant, and we think such matters should not be considered by the Court at this stage.

The appeal is allowed, the order of the District Munsif is set aside and the petition is remanded for disposal according to law. The costs in the Civil Revision Petition No. 887 of 1916 and this Letters Patent Appeal will abide the result of the suit.

K.R.

GOVINDASAMI  
PILLAY  
v.  
MUNICIPAL  
COUNCIL,  
KUMBakonam.

KUMARASWAMI  
SASTRIYAR,  
J.