

RAJAGOPAL
v.
KUPPUSWAMI.

applications under section 9 have not yet been finally disposed of. The lower Court will therefore pass fresh orders on those applications in the light of our observations. If the orders that will be passed on those applications are not complied with, then the plaintiff-respondent will be entitled to revive his applications under section 4 of the Act and ask the Court to pass orders on them.

For the above reasons, we would set aside the order of the lower Court and ask the Court to pass the necessary orders in the circumstances of the case. Each party will bear his own costs here.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

1934,
August 17.

IN RE JANA YELLAMRAJU AND THREE OTHERS, PETITIONERS.*

Agency Rules of 1924, r. 2—Pauper appeal—Admission of—Provision of O. XLIV of Code of Civil Procedure as to decree appealed from being contrary to law, etc.—Applicability of.

Under rule 2 of the Agency Rules of 1924, an appeal *in forma pauperis* is not bound to be admitted, whatever the merits of the case may be, if once pauperism is established. The High Court is entitled to take into consideration the merits of the case and to be guided by the provision in Order XLIV of the Code of Civil Procedure, which enables the High Court to refuse leave to appeal *in forma pauperis*, unless upon a perusal of the judgment and decree appealed from it has reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

* Civil Miscellaneous Petition No. 2419 of 1934.

APPLICATION under Order XLIV of Act V of 1908 to be allowed to appeal *in forma pauperis* against the decree of the Agency Subordinate Judge's Court of Vizagapatam in Original Suit No. 111 of 1931.

YELLAMRAJU,
In re.

C. Rama Rao and *K. V. Gopalaswami* for petitioners.

The ORDER of the Court was delivered by VARADACHARIAR J.—The question of the effect of rule 2 of the Agency Rules of 1924 has been argued before us. Mr. Rama Rao lays stress upon the fact that this rule reproduces only some of the provisions of Order XXXIII and Order XLIV, Civil Procedure Code, while other provisions are not reproduced and contends that, as the Civil Procedure Code is not applicable to the Agency Tracts, we ought not, in dealing with this case, to be guided by the provision in Order XLIV of the Code, which enables the High Court to refuse ~~to~~ leave to appeal *in forma pauperis*, unless upon a perusal of the judgment and decree appealed from it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. He also draws our attention to the fact that in the case of appeals from the Agent, there is no provision corresponding to Order XLI, rule 11, Civil Procedure Code. As regards the use of the word “may” in rule 2 of the Agency Rules he invokes the well-established doctrine that, in particular contexts, the word “may” must be understood as importing an obligation and contends that the Court is bound to exercise in favour of paupers the privilege intended to be conferred upon them by rule 2. He maintains that, under the rules, the appeal must

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be admitted as a matter of course and no leave of Court is necessary at all.

We are unable to accede to his contention that this Court ought not to take into consideration the merits of the case at all, in dealing with the question of admitting an appeal without payment of court-fee. It is true that many of the provisions of Order XXXIII and Order XLIV of the Code have not been reproduced in the Agency Rules and it may also be conceded that in particular contexts the word "may" imports an obligatory signification. But it will be noticed that in rule 2 both suits and appeals are dealt with on the same footing and by the same language, and we are unable to persuade ourselves that, in the case of suits, considerations of the kind specified in clauses (c), (d) and (e) of Order XXXIII, rule 5, of the Code have no place at all. It ought not to be forgotten that the privilege of suing or appealing *in forma pauperis* is only an indulgence and it is not strange that the rule-making authority has left the matter, in general language, to the discretion of the Court by the use of the word "may" so that its discretion may be properly exercised with due regard to all the circumstances of the case. While on the one hand it is an indulgence to the alleged pauper, it has also to be borne in mind that the insistence on payment of court-fee is some safeguard against the other party to the litigation being harassed [see per JENKINS C.J. in *Sakubai v. Ganpat*(1)]. The question therefore is not one of public revenue alone but also of making sure that frivolous litigation is not started or continued by

a person who has nothing to lose, while the other party will be put to expense in defending himself. These considerations prevent us from holding that the Court is helpless in the matter of admitting suits or appeals *in forma pauperis*, whatever the merits of the case may be, if once pauperism is established. A person coming to Court as a pauper has the less reason to complain against this construction of the rule so far at any rate as appeals are concerned, because he has had one chance of litigating his claim in the Court of first instance, and, unless we are satisfied beyond doubt that the rule-making authority intended to give him a second chance, without any expenditure on court-fees, we are not disposed to extend the indulgence unconditionally.

YELLAMRAJU,
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A.S.V.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice King.*

1934,
August 21.

CHIKKA VEERAPPA SETTI (RESPONDENT), APPELLANT,

v.

SARKARU MUNISAMI ACHARI AND FOUR OTHERS
(APPELLANTS), RESPONDENTS.*

Limitation Act (IX of 1908), art. 182 (5)—Step in aid of execution—Batta application filed under O. XVI, r. 1, Code of Civil Procedure (Act V of 1908), for summoning witnesses to disprove plea of satisfaction of decree by judgment-debtor if.

A decree-holder put in an execution application for the transfer of the decree to another Court for execution. The

* Letters Patent Appeal No. 27 of 1933.