

CIVIL REVISION.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

M. H. MASHIAH

v.

BALTHAZAR & SON, LTD. AND OTHERS.*

1936

Mar. 31,

Pauper suit—Amendment of pauper's petition—Omission of date of verification—Court's power to allow addition of date—Civil Procedure Code (Act V of 1908), O. 33, r. 3.

Order 33 of the Civil Procedure Code, as amended by this Court, provides by rule 3 that subject to the jurisdiction of the Court to allow amendments to be made the Court shall reject the petition of a person desiring to sue as a pauper in certain cases. The Court has now jurisdiction to allow an amendment of the petition in order that it should be made to conform to the rules prescribed under the Code.

Held, that where a pauper plaintiff has omitted to state the date on which he signed the verification of his petition he ought to be allowed to insert the date by way of amendment.

Maung Pe Kye v. Ma Shwe Zin, I.L.R. 7 Ran. 359—*overruled*.

K. C. Sanyal for the applicant.

Surridge and *Guha* for the respondents.

PAGE, C.J.—This application is allowed.

It appears that a petition for leave to sue *in formâ pauperis* was filed by the applicant in the District Court of Toungoo, and such a petition must be signed and verified in the manner prescribed for the signing and verification of plaints. Under Order VI, rule 15 (3) of the Code of Civil Procedure the verification shall be signed by the person making it and shall state the date on which and the place at which it was signed. This petition, although otherwise in proper form, did not state the date on which the verification was signed. The learned

* Civil Revision No. 31 of 1936 from the order of the District Court of Toungoo in Civil Misc. Case No. 31 of 1935.

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Additional District Judge rejected the petition upon the authority of *Maung Pe Kye v. Ma Shwe Zin* (1). That case, however, is no longer law having regard to the amendment of Order XXXIII by this Court, which came into force on the 18th December 1935. Order XXXIII as amended was in force before the order under revision was passed on 23rd December, 1935. It follows, therefore, under Order XXXIII, rule 3, that the learned Additional District Judge had jurisdiction to allow an amendment of the petition in order that it should be made to conform to the rules prescribed under the Code. No one can doubt that an amendment ought to be allowed to enable the plaintiff to put in the date upon which the petition was verified, and the proceedings will be returned to the District Court of Toungoo in order that the applicant may have an opportunity of applying that a formal amendment in the above sense should be made. The applicant is entitled to his costs, three gold mohurs.

BA U, J.—I agree.